THE DECRETALS OF GREGORY IX (LIBER EXTRA)

Pope Gregory IX · 1234

English and Latin

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

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

Contents

Book I **8**

Title I: On the Supreme Trinity and the Catholic Faith 9
Title II: On Constitutions 14
Title III: On Rescripts 33
Title IV: On Custom 73
Title V: On the Postulation of Prelates 86
Title VI: On Election and the Authority of the Elected 101
Title VII: On the Translation of a Bishop 205
Title VIII: On the Authority and Use of the Pallium 213
Title IX: On Resignation 217
Title X: On Supplying the Negligence of Prelates 244
Title XI: On the Times of Ordinations and the Quality of Those to Be Ordained 250
Title XII: On the Scrutiny to Be Made in Ordination 263
Title XIII: On Those Ordained by a Bishop Who Renounced the Bishopric 265
Title XIV: On the Age, Quality, and Order of Those to Be Placed in Authority 266
Title XV: On Sacred Anointing 277
Title XVI: On Sacraments Not to Be Repeated 283
Title XVII: On Whether the Sons of Priests Are to Be Ordained 284
Title XVIII: On Slaves Not to Be Ordained and Their Manumission 296
Title XIX: On Whether Those Bound to Render Accounts Are to Be Ordained 301
Title XX: On Whether Those Maimed in Body Are to Be Ordained 301
Title XXI: On Bigamists Not to Be Ordained 305
Title XXII: On Foreign Clerics 310
Title XXIII: On the Office of the Archdeacon 312
Title XXIV: On the Office of the Archpriest 320
Title XXV: On the Office of the Primicerius 323
Title XXVI: On the Office of the Sacristan 324
Title XXVII: On the Office of the Custodian 324
Title XXVIII: On the Office of the Vicar 325
Title XXIX: On the Office and Power of a Delegated Judge 329
Title XXX: On the Office of a Legate 381
Title XXXI: On the Office of an Ordinary Judge 388
Title XXXII: On the Office of a Judge 405
Title XXXIII: On Superiority and Obedience 407
Title XXXIV: On Truce and Peace 423
Title XXXV: On Agreements 424

Title XXXVI: On Settlements 428
Title XXXVII: On Pleading 437
Title XXXVIII: On Proctors 438
Title XXXIX: On the Syndic 452
Title XL: On Things Done by Force or Because of Fear 453
Title XLI: On Restitution to the Former Condition 461
Title XLII: On Alienation Made for the Purpose of Changing the Court 474
Title XLIII: On Arbitrators 476

Book II 493
Title I: On Judgments 493
Title II: On the Competent Forum 510
Title III: On the Offering of the Complaint 524
Title IV: On Mutual Claims 527
Title V: On Joinder of Issue 528
Title VI: That Before Issue Has Been Joined No Proceeding Is to Be Had to the Reception of Witnesses or to Definitive Sentence 529
Title VII: On the Oath against Calumny 543
Title VIII: On Delays 548
Title IX: On Judicial Vacations 552
Title X: On the Order of Judicial Inquiry 556
Title XI: On Excessive Claims 561
Title XII: On the Cause of Possession and Ownership 562
Title XIII: On the Restitution of Those Despoiled 570
Title XIV: On Fraud and Contumacy 592
Title XV: On One Sent into Possession for the Purpose of Preserving the Property 604
Title XVI: That Nothing Be Altered While Litigation Is Pending 608
Title XVII: On the Sequestration of Possessions and Fruits 612
Title XVIII: On Confessions 618
Title XIX: On Proofs 620
Title XX: On Witnesses and Attestations 637
Title XXI: On Witnesses Being Compelled or Not 685
Title XXII: On the Credibility of Instruments 692
Title XXIII: On Presumptions 708
Title XXIV: On Oaths 720
Title XXV: On Exceptions 748
Title XXVI: On Prescriptions 764
Title XXVII: On Sentence and a Matter Adjudged 785
Title XXVIII: On Appeals, Recusations, and References 818
Title XXIX: On Clerics Journeying 883

Title XXX: On Useful or Useless Confirmation 884

Book III 892

Title I: On the Life and Honorable Conduct of Clerics 892
Title II: On the Cohabitation of Clerics and Women 901
Title III: On Married Clerics 907
Title IV: On Clerics Not Residing in a Church or Prebend 913
Title V: On Prebends and Dignities 922
Title VI: On a Sick or Debilitated Cleric 954
Title VII: On Institutions 957
Title VIII: On Granting a Prebend and a Church Not Vacant 965
Title IX: That Nothing Be Innovated While the See Is Vacant 988
Title X: On Those Things Which Are Done by a Prelate Without the Consent of the Chapter ... 991
Title XI: On Those Things Which Are Done by the Greater Part of the Chapter 999
Title XII: That Ecclesiastical Benefices Be Conferred Without Diminution 1006
Title XIII: On Whether the Property of a Church May Be Alienated 1012
Title XIV: On Precarious Grants 1018
Title XV: On Loan for Use 1020
Title XVI: On Deposit 1020
Title XVII: On Purchase and Sale 1021
Title XVIII: On Letting and Hiring 1026
Title XIX: On Exchange of Things 1029
Title XX: On Fiefs 1035
Title XXI: On Pledges and Other Securities 1036
Title XXII: On Sureties 1043
Title XXIII: On Payments 1046
Title XXIV: On Donations 1049
Title XXV: On the Peculium of Clerics 1057
Title XXVI: On Testaments and Last Wills 1060
Title XXVII: On Intestate Successions 1076
Title XXVIII: On Burials 1079
Title XXIX: On Parish Priests and Another's Parishioners 1089
Title XXX: On Tithes, First Fruits, and Offerings 1092
Title XXXI: On Regulars and Those Passing to Religion 1117
Title XXXII: On the Conversion of Spouses 1134
Title XXXIII: On the Conversion of Infidels 1150
Title XXXIV: On a Vow and the Redemption of a Vow 1153
Title XXXV: On the Status of Monks and Regular Canons 1167
Title XXXVI: On Religious Houses, That They Be Subject to the Bishop 1180

Title XXXVII: On the Chapels of Monks and Other Religious 1190
Title XXXVIII: On the Right of Patronage 1193
Title XXXIX: On Censuses, Exactions, and Procurations 1217
Title XL: On the Consecration of a Church or Altar 1240
Title XLI: On the Celebration of Masses, the Sacrament of the Eucharist, and the Divine Offices ... 1244
Title XLII: On Baptism and Its Effect 1261
Title XLIII: On an Unbaptized Priest 1269
Title XLIV: On the Custody of the Eucharist, Chrism, and the Other Sacraments 1272
Title XLV: On Relics and the Veneration of Saints 1273
Title XLVI: On the Observance of Fasts 1274
Title XLVII: On Purification after Childbirth 1277
Title XLVIII: On Churches to Be Built or Repaired 1277
Title XLIX: On the Immunity of Churches, Cemeteries, and Things Pertaining to Them ... 1281
Title L: Lest Clerics or Monks Involve Themselves in Secular Business 1287

Book IV 1295
Title I: On Betrothals and Marriages 1295
Title II: On the Betrothal of Minors 1317
Title III: On Clandestine Betrothal 1329
Title IV: On the Betrothed Woman of Two Men 1331
Title V: On Conditions Appended in Betrothal or in Other Contracts 1335
Title VI: Which Clerics or Persons under Vows Can Contract Marriage 1339
Title VII: On One Who Took as Wife Her Whom He Polluted by Adultery 1344
Title VIII: On the Marriage of Lepers 1350
Title IX: On the Marriage of Slaves 1352
Title X: On Those Born from a Free Womb 1355
Title XI: On Spiritual Kinship 1355
Title XII: On Legal Kinship 1361
Title XIII: On One Who Knew a Blood Relative of His Wife or Betrothed Woman 1361
Title XIV: On Consanguinity and Affinity 1369
Title XV: On the Frigid and Those Rendered Impotent by Sorcery, and on Impotence for Intercourse ... 1376
Title XVI: On Marriage Contracted against an Interdict of the Church 1383
Title XVII: Which Children Are Legitimate 1386
Title XVIII: Who Can Accuse a Marriage or Testify against It 1400
Title XIX: On the Separation of Spouses 1405
Title XX: On Donations between Husband and Wife, and on Dowry to Be Restored after Separation ... 1414

Title XXI: On Second Marriages 1424

Book V **1427**

Title I: On Accusations, Inquisitions, and Denunciations 1427

Title II: On Calumniators 1456

Title III: On Simony, and That Nothing Is to Be Demanded or Promised for Spiritual Things ... 1458

Title IV: That Prelates Are Not to Grant Their Deputed Powers or Churches Under an Annual Rent ... 1492

Title V: On Masters, and That Nothing Is to Be Demanded for a License to Teach 1494

Title VI: On Jews, Saracens, and Their Servants 1499

Title VII: On Heretics 1512

Title VIII: On Schismatics and Those Ordained by Them 1535

Title IX: On Apostates and Those Repeating Baptism 1536

Title X: On Those Who Killed Their Children 1539

Title XI: On Exposed Infants and the Sick 1541

Title XII: On Voluntary or Accidental Homicide 1542

Title XIII: On Tournaments 1562

Title XIV: On Clerics Fighting in a Duel 1563

Title XV: On Archers 1564

Title XVI: On Adulteries and Defilement 1564

Title XVII: On Robbers, Incendiaries, and Violators of Churches 1568

Title XVIII: On Thefts 1573

Title XIX: On Usuries 1575

Title XX: On the Crime of Forgery 1586

Title XXI: On Sorceries 1597

Title XXII: On Detecting Collusion 1599

Title XXIII: On the Offenses of Children 1601

Title XXIV: On a Cleric Who Hunts 1602

Title XXV: On a Cleric Who Strikes 1603

Title XXVI: On Those Who Utter Curses 1605

Title XXVII: On an Excommunicated, Deposed, or Interdicted Cleric Who Ministers ... 1606

Title XXVIII: On a Cleric Who Ministers Without Being Ordained 1617

Title XXIX: On a Cleric Promoted by a Leap 1618

Title XXX: On One Who Secretly Received an Order 1618

Title XXXI: On the Offenses of Prelates and Subjects 1620

Title XXXII: On Notification of a New Work 1637

Title XXXIII: On Privileges and the Offenses of Privileged Persons 1647

Title XXXIV: On Canonical Purgation 1688

Title XXXV: On Vulgar Purgation 1704
Title XXXVI: On Injuries and Damage Inflicted 1705
Title XXXVII: On Penalties 1709
Title XXXVIII: On Penances and Remissions 1717
Title XXXIX: On the Sentence of Excommunication 1728
Title XL: On the Meaning of Words 1775
Title XLI: On Rules of Law 1802

Book I

Compilation of the Decretals of Lord Pope Gregory IX

Book One

Rex pacificus

Gregory,

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

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

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

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

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

Book One

DECRETALIUM D. GREGORII PAPAE IX. COMPILATIO

LIBER PRIMUS.

GREGORIUS,

Episcopus servus servorum Dei, dilectis filiis doctoribus et scholaribus universis Bononiae commorantibus salutem et apostolicam benedictionem.

Rex pacificus pia miseratione disposuit sibi subditos fore pudicos, pacificos et honestos. Sed effrenata cupiditas, sui prodiga, pacis aemula, mater litium, materia iurgiorum, tot quotidie nova litigia generat, ut, nisi iustitia conatus eius sua virtute reprimeret, et quaestiones ipsius implicitas explicaret, ius humani foederis litigatorum abusus exstingueret, et dato libello repudii concordia extra mundi terminos

exsularet. Ideoque lex proditur, ut appetitus noxius sub iuris regula limitetur, per quam genus humanum, ut honeste vivat, alterum non laedat, ius suum unicuique tribuat, informatur. Sane diversas constitutiones et decretales epistolas praedecessorum nostrorum, in diversa dispersas volumina, quarum aliquae propter nimiam similitudinem, et quaedam propter contrarietatem, nonnullae etiam propter sui prolixitatem, confusionem inducere videbantur, aliquae vero vagabantur extra volumina supradicta, quae tanquam incertae frequenter in iudiciis vacillabant, ad communem, et maxime studentium, utilitatem per dilectum filium fratrem Raymundum, capellanum et poenitentiarum nostrum, illas in unum volumen resecatis superfluis providimus redigendas, adiicientes constitutiones nostras et decretales epistolas, per quas nonnulla, quae in prioribus erant dubia, declarantur. Volentes igitur, ut hac tantum compilatione universi utantur in iudiciis et in scholis, districtius prohibemus, ne quis praesumat aliam facere absque auctoritate sedis apostolicae speciali.

LIBER PRIMUS.

Title I: On the Supreme Trinity and the Catholic Faith

Chapter I

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

Innocent III, at the general council, chapter I.

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

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

§2. And at last the only-begotten Son of God, Jesus Christ, incarnate in common by the whole Trinity, conceived from Mary ever-Virgin with the cooperation of the Holy Spirit, having become true man, composed of a rational soul and human flesh, one person in two natures, demonstrated the way of life more clearly. Although according to his divinity he is immortal and impassible, the very same, according to his humanity, became passible and mortal. He also, for the salvation of the human race, suffered and died on the wood of the cross, descended to the lower regions, rose from the dead, and ascended into heaven; but he descended in soul and rose in flesh, and ascended equally in both, to come at the end of the age, to judge the living and the dead, and to render to each according to his

works, to the reprobate as well as to the elect. All of them will rise with their own bodies, which they now bear, so that they may receive according to their works, whether these were good or evil: the former, with the devil, perpetual punishment; the latter, with Christ, everlasting glory.

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

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

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

> **DE SUMMA TRINITATE ET FIDE CATHOLICA.**
>
> Tractat de trinitate et ipsius operibus; de fide et articulis fidei. § 3. Tractatur hic de sacramentis ecclesiasticis. Abb. Sic.
>
> Innocentius III. in concilio generali, cap. I.
>
> Firmiter credimus et simpliciter confitemur, quod unus solus est verus Deus, aeternus, immensus et incommutabilis, incomprehensibilis, omnipotens et ineffabilis, Pater, et Filius et Spiritus sanctus: tres quidem personae, sed una essentia, substantia seu natura simplex omnino; Pater a nullo, Filius autem a Patre solo, ac Spiritus sanctus pariter ab utroque, absque initio, semper ac sine fine; Pater generans, Filius nascens, et Spiritus sanctus procedens; consubstantiales, et coaequales, et coomnipotentes, et coaeterni; unum universorum principium; creator omnium visibilium et invisibilium, spiritualium et corporalium; qui sua omnipotenti virtute simul ab initio temporis utramque de nihilo condidit creaturam spiritualem et corporalem, angelicam videlicet et mundanam, ac deinde humanam, quasi communem ex spiritu et corpore constitutam. Diabolus enim et alii daemones a Deo quidem natura creati sunt boni; sed ipsi per se facti sunt mali. Homo vero diaboli suggestione peccavit. § 1. Haec sancta trinitas, secundum communem essentiam individua et secundum personales proprietates discreta, primo per Moysen et sanctos Prophetas aliosque famulos suos iuxta ordinatissimam dispositionem temporum doctrinam humano generi tribuit salutarem. § 2. Et tandem unigenitus Dei Filius Iesus Christus, a tota trinitate communiter incarnatus ex Maria semper virgine Spiritus sancti cooperatione conceptus, verus homo factus, ex anima rationali et humana carne compositus, una in duabus naturis persona, viam vitae manifestius demonstravit. Qui quum secundum divinitatem sit immortalis et impassibilis, idem ipse secundum humanitatem factus est passibilis, et mortalis. Qui etiam pro salute humani generis in ligno crucis passus et mortuus descendit ad inferos, resurrexit a mortuis, et ascendit in coelum; sed descendit in anima et resurrexit in carne, ascenditque pariter in utroque venturus in fine saeculi, iudicaturus vivos et mortuos, et redditurus singulis secundum opera sua, tam reprobis quam electis, qui omnes cum suis propriis resurgent corporibus, quae nunc gestant, ut recipiant secundum opera sua, sive bona fuerint sive mala, illi cum diabolo poenam perpetuam, et

isti cum Christo gloriam sempiternam. § 3. Una vero est fidelium universalis ecclesia, extra quam nullus omnino salvatur, in qua idem ipse sacerdos est sacrificium Iesus Christus, cuius corpus et sanguis in sacramento altaris sub speciebus panis et vini veraciter continentur, transsubstantiatis pane in corpus et vino in sanguinem potestate divina, ut at perficiendum mysterium unitatis accipiamus ipsi de suo quod accepit ipse de nostro. Et hoc utique sacramentum nemo potest conficere, nisi sacerdos, qui rite fuerit ordinatus, secundum claves ecclesiae, quas ipse concessit Apostolis eorumque successoribus Iesus Christus. § 4. Sacramentum vero baptismi, quod ad Dei invocationem et individuae trinitatis, videlicet Patris, et Filii et Spiritus sancti, consecratur in aqua, tam parvulis quam adultis in forma ecclesiae a quocunque rite collatum proficit ad salutem. Et si post susceptionem baptismi quisquam prolapsus fuerit in peccatum, per veram potest semper poenitentiam reparari. § 5. Non solum autem virgines et continentes, verum etiam coniugati per fidem rectam et operationem bonam placentes Deo ad aeternam merentur beatitudinem pervenire.

Chapter II

Latin source headnote (Abbas Siculus): The Father, the Son, and the Holy Spirit, by a true union—not a collective union or one based upon likeness—are one essence, substance, or nature. This substance is not begetting, begotten, or proceeding, because those acts are attributed not to the substance but to the persons; nor on this account is a quaternity inferred in the Trinity. Those holding the contrary are to be deemed heretics unless they recover from their error and submit themselves to the correction of the Apostolic See.

The same, at the same council.

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

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

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

added: "And there are three who give testimony on earth: the spirit, the water, and the blood, and these three are one," as is found in certain codices.

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

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

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

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

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

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

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

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

> Pater et Filius et Spiritus sanctus vera unione, non collectiva seu similitudinaria, sunt una essentia, substantia seu natura; quae substantia non est generans, nec genita, nec procedens; quia illi actus non attribuuntur substantiae, sed personis: nec per hoc in trinitate concluditur quaternitas. Contrarium sentientes ut haeretici sunt censendi, nisi ab errore resipiscant, et correctioni apostolicae sedis se supponant. Abb. Siculus.
>
> Idem in eodem.
>
> Damnamus ergo et reprobamus libellum seu tractatum, quem Abbas Ioachim edidit contra magistrum Petrum Lombardum de unitate seu essentia trinititatis, appellans ipsum haereticum et insanum pro eo, quod in suis dixit sententiis: "Quoniam quaedam summa res est Pater, et Filius et Spiritus sanctus, et illa non est generans, neque genita, neque procedens." Unde asserit, quod ille non tam trinitatem, quam quaternitatem adstruebat in Deo, videlicet tres personas, et illam communem essentiam quasi quartam; manifeste protestans, quod nulla res est, quae sit Pater, et Filius et Spiritus sanctus; nec est essentia, nec substantia, nec natura; quamvis concedat, quod Pater, et Filius et Spiritus sanctus sunt una essentia, una substantia unaque natura. Verum unitatem huiusmodi non veram et propriam, sed quasi collectivam et similitudinariam esse fatetur, quemadmodum dicuntur multi homines unus populus, et multi fideles una ecclesia, iuxta illud: "Multitudinis credentium erat cor unum et anima una," et: "Qui adhaeret Deo, unus spiritus est cum illo." Item: "Qui plantat, et qui rigat, unum sunt," et: "Omnes unum corpus sumus in Christo." Rursus in libro Regum: "Populus meus et populus tuus unum sunt." Ad hanc autem suam sententiam adstruendam illud potissimum verbum inducit, quod Christus de fidelibus inquit in evangelio: "Volo, pater, ut sint unum in nobis, sicut et nos unum sumus, ut sint consummati in unum." Non enim, ut ait, fideles Christi sunt unum, id est quaedam una res, quae communis sit omnibus, sed hoc modo sunt unum, id est una ecclesia, propter catholicae fidei unitatem, et tandem unum regnum, propter unionem indissolubilis caritatis, quemadmodum in canonica Ioannis Apostoli epistola legitur: "Quia tres sunt, qui testimonium dant in coelo, Pater, et Filius et Spiritus sanctus, et hi tres unum sunt," statimque subiungitur: "et tres sunt, qui testimonium dant in terra: spiritus, aqua et sanguis; et hi tres unum sunt," sicut in quibusdam codicibus invenitur. § 1. Nos autem sacro et universali approbante concilio credimus et confitemur cum Petro, quod una quaedam summa res est, incomprehensibilis quidem et ineffabilis, quae veraciter est Pater et Filius et Spiritus sanctus: tres simul personae ac sigillatim quaelibet earundem. Et ideo in Deo solummodo trinitas est, non quaternitas, quia quaelibet trium personarum est illa res, videlicet substantia, essentia seu natura divina, quae sola est universorum principium, praeter quod aliud inveniri non potest. Et illa res non est generans, neque genita, nec procedens; sed est Pater, qui generat, et Filius, qui gignitur, et Spiritus sanctus, qui procedit, ut distinctiones sint in personis, et unitas in natura. Licet igitur alius sit Pater, alius Filius, alius Spiritus sanctus, non tamen aliud, sed id, quod est Pater, est Filius, et Spiritus sanctus idem omnino, ut secundum orthodoxam et catholicam fidem consubstantiales esse credantur. Pater enim ab aeterno Filium generando suam substantiam ei dedit, iuxta quod ipse testatur: "Pater quod dedit mihi, maius omnibus est." Ac dici non potest, quod partem substantiae suae illi dederit, et partem ipse sibi retinuerit, quum substantia Patris indivisibilis sit, utpote simplex omnino. Sed nec dici potest, quod Pater in Filium transtulerit suam substantiam generando, quasi sic dederit eam Filio, quod non retinuerit ipsam sibi; alioquin desiisset esse substantia. Patet ergo, quod sine ulla diminutione, Filius nascendo substantiam Patris accepit, et ita Pater et Filius habent eandem substantiam, et sic eadem res est Pater et Filius, nec non et Spiritus sanctus ab utroque procedens. Quum ergo Veritas pro fidelibus suis orat ad Patrem: "Volo," inquiens, "ut ipsi sint unum in nobis, sicut et nos unum sumus," hoc nomen "unum" pro fidelibus quidem accipitur, ut intelligatur unio caritatis in gratia; pro personis vero divinis,

ut attendatur identitatis unitas in natura, quemadmodum alibi Veritas ait: "Estote perfecti, sicut et Pater vester coelestis perfectus est," ac si diceret manifestius: Estote perfecti perfectione gratiae, sicut Pater vester coelestis perfectus est perfectione naturae. Utraque videlicet suo modo: quia inter creatorem et creaturam non potest tanta similitudo notari, quin inter eos maior sit dissimilitudo notanda. § 2. Si quis igitur sententiam vel doctrinam praefati Ioachim in hac parte defendere vel approbare praesumpserit, tanquam haereticus ab omnibus evitetur. In nullo tamen propter hoc Florensi monasterio, cuius ipse Ioachim exstitit institutor, volumus derogari, quoniam ibi et regularis est institutio, et observantia salutaris, maxime quum ipse Ioachim omnia scripta sua nobis assignari mandaverit apostolicae sedis iudicio approbanda seu etiam corrigenda, dictans epistolam, quam propria manu subscripsit, in qua firmiter confitetur, se illam fidem tenere, quam Romana tenet ecclesia, quae disponente Domino cunctorum fidelium mater est et magistra. § 3. Reprobamus etiam et condemnamus perversissimum dogma impii Almarici, cuius mentem sic pater mendacii excaecavit, ut eius doctrina non tam haeretica censenda sit quam insana.

Title II: On Constitutions

Chapter I

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

From the Council of Meaux.

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

DE CONSTITUTIONIBUS.

Iuris canonici statuta omnes ligant, et eorum ritu tam in pronunciando quam in decidendo iudicia sunt regulanda.

Ex concilio Meldensi.

Canonum statuta [sine praeiudicio] custodiantur ab omnibus, et nemo in actionibus vel iudiciis ecclesiasticis suo sensu, sed eorum auctoritate ducatur.

Chapter II

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

Gregory, in the Register.

Recognizing [what zeal for Christian slaves, whom the Jews buy from the regions of Gaul, has inflamed your fraternity, we indicate that your solicitude has so pleased us that our deliberation also judged that they should be restrained from trade of this kind. But, when Basil the Hebrew came with other Jews, we learned that the purchase of these slaves is imposed upon them by various judges of the commonwealth, and that it happens that pagans and Christians alike are purchased. Hence it was necessary so to dispose the matter by a careful ordinance that neither those issuing the mandates should be frustrated nor those who say that they obey against their will should unjustly sustain any losses. Accordingly, let your fraternity provide with vigilant solicitude that this be observed and maintained: when they return from the aforesaid province, any Christian slaves whom they happen to bring are either to be delivered to those who commissioned them or certainly sold to Christian

purchasers within the fortieth day; and, when this number of days has elapsed, none is to remain with them in any manner. But if some of those same slaves should perhaps incur such illness that they cannot be sold within the appointed days, solicitude must be employed so that, when they have been restored to their former health, they are likewise disposed of by every means, because] it is not fitting that a matter which is free from fault be made the occasion of loss. Whenever something new is established, it is customary for it to impose a rule upon future matters in such a way that it does not consign the past to numerous losses. [If any slaves from purchases of the past year have remained with them, or have recently been taken from them by you, while they are in your keeping, let them have permission to alienate them,] lest, before the prohibition, they be able in ignorance to incur a loss which, after they have been prohibited, it is fitting for them to sustain. [It has been reported, etc.]

> Constitutio respicit futura, et non praeterita.
>
> Gregorius in Registro.
>
> Cognoscentes, [qualis fraternitatem vestram zelus pro Christianis mancipiis, quae Iudaei de Galliarum finibus emunt, accenderit, adeo nobis sollicitudinem vestram placuisse signamus, ut inhibendo eos ab huiusmodi negotiatione nostra etiam deliberatio iudicaret. Sed Basilio Hebraeo cum aliis Iudaeis veniente comperimus, hanc illis a diversis iudicibus reipublicae emptionem iniungi, atque evenire, ut inter paganos et Christiani pariter comparentur. Unde necesse fuit, ita causa cauta ordinatione disponi, ut nec mandantes frustrari, nec hi, qui contra coluntatem suam se inquiunt obedire, aliqua sustineant iniuste suspendia. Proinde fraternitas vestra hoc vigilanti sollicitudine observari ac cusodiri provideat, ut revertentibus eis a praefata provincia Christiana mancipia, quae ab ipsis adduci contigerit, aut mandatoribus contradantur, aut certe Christianis emptoribus intra diem quadragesimum venundentur, et transacto hoc dierum numero nullus apud eos quolibet modo remaneat. Si autem quaedam ex iisdem mancipiis talem aegritudinem fortassis incurrerint, ut intra statutos dies vendi non valeant, adhibenda sollicitudo est, ut, dum saluti fuerint pristinae restituta, similiter omnibus modis distrahantur, quia] Rem quae culpa caret, in damnum vocari non convenit. Quoties vero novum quid statuitur, ita solet futuris formam imponere, ut multis dispendiis praeterita non commendet; [Si qua apud eos mancipia de emptione anni praeteriti remanserunt, vel a vobis nuper ablata sunt, dum apud vos sunt posita, ea habeant alienandi licentiam,] ne detrimentum ante prohibitionem possint ignorantes incurrere, quod eos postmodum dignum est vetitos sustinere. [Nunciatum etc.]

Chapter III

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

Augustine, on the Epistle to the Hebrews.

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

> Potestas legem condendi et mutandi est penes vicarium Christi. Et quod de uno connexorum statuitur, ad aliud connexum extenditur. Abbas Sicul.
>
> Augustinus super illud epist. ad Hebraeos:

"Translato sacerdotio necesse est ut legis translatio fiat." Quia enim simul et ab eodem, et sub eadem sponsione utraque data sunt, quod de uno dicitur necesse est ut de altero intelligatur.

Chapter IV

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

The same, on the Epistle to the Romans.

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

Omne prohibitum a lege peccatum est, et omne illud, quod sequitur ex eo. Hoc d.

Idem super epist. ad Romanos.

"Nam concupiscentiam nesciebam, etc." Hoc enim elegit Apostolus generale, unde omnia mala oriuntur. Bona est ergo lex, quae, dum hoc prohibet, omnia mala prohibet.

Chapter V

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

Jerome, on Proverbs.

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

Constitutiones decretorum singularibus sunt opinionibus praeferendae.

Hieronymus in Parabolas.

"Ne innitaris prudentiae tuae." Prudentiae suae inititur, qui ea, quae sibi agenda vel dicenda videntur, Patrum decretis praeponit.

Chapter VI

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

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

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

But it has come to our hearing that our beloved sons, the canons of Troyes, intent upon their own advantages and envious of the advancement of others, have made a new constitution in the church of Troyes: that, while they themselves are to receive their revenues in full both when present and when absent, those who were instituted in the same church after that constitution, or who will be instituted in the future, are not to receive revenues from it in their absence, but only when they have been resident there—even though, according to the custom of the church of Troyes, all have

customarily been equal in this matter. They also established that, although vineyards are annexed to the individual prebends, with the canons themselves possessing their own vineyards while they live, the vineyards of those who die are not to pass to their successors, but their proceeds are to be divided among the individual canons.

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

> Non valet constitutio collegii in damnum aliquorum et commodum aliorum, cessante rationabili causa. Vel sic: Absque rationabili causa non potest maior pars capituli tollere consuetudinem, utilitatem privatam nutriendo.
>
> Innocentius III. Senonensi Archiepiscopo et Episcopo Trecensi.
>
> Quum omnes unum corpus simus in christo, singuli autem alter alterius membra, non debent maiores minoribus, aut seniores iunioribus invidere, sed omnes, qui in una ecclesia uni Domino famulantur, pari gaudeant libertate, quum pondus et pondus, mensura et mensura utrumque abominabile sit apud Deum, et evangelicus paterfamilias pari mercede primos vineae suae operarios remuneraverit et extremos. Verum Ad audientiam nostram pervenit, quod dilecti filii Trecenses canonici propriis inhiantes commodis, et aliorum profectibus invidentes novum fecerunt in Trecensi ecclesia constitutum, ut eis tam in praesentia sua, quam in absentia reditus suos ex integro percepturis, qui in eadem ecclesia post illam constitutionem fuerunt vel de cetero fuerint instituti, reditus ex ea in absentia non percipiant, sed tunc solum, quum in ea fuerint residentes; quum secundum Trecensis ecclesiae consuetudinem omnes in hoc consueverunt esse pares. Statuerunt etiam, ut, quum singulis praebendis annexae sint vineae, ipsis suas, dum vixerint, possidentibus, vineae decedentium ad successores non transeant, sed proventus earum inter singulos dividantur. Quum igitur quod quisque iuris in alterum statuit ipse debeat uti eo, et sapientis dicat auctoritas: "Patere legem, quam tu ipse tuleris:" fraternitati vestrae per apostolica scripta mandamus, quatenus antiquos canonicos iunioribus, et iuniores in perceptione fructuum tam praebendarum quam vinearum coaequetis antiquis, secundum priorem consuetudinem usque ad tempus praedictae constitutionis servatam, vel secundum rationabilem institutionem in posterum observandam, illos per districtionem ecclesiasticam percellentes, si qui duxerint renitendum. [Nullis literis etc. Dat. etc. 1198.]

Chapter VII

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

The same to the Bishop of Trent.

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

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

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

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

> Constitutio laicorum ecclesiam seu eius bona non adstringit.
>
> Idem Tridentino Episcopo.
>
> Quae in ecclesiarum et ecclesiasticorum virorum praeiudicium attentantur, firmitatem sortiri non debent, sed ad ecclesiarum indemnitatem debent potius infirmari. Sane pervenit ad audientiam nostram, quad cives Tervisini et Coneglanenses constituendi sibi, et utinam sibi tantum, iurisdictionem temere usurpantes, impietatem palliant sub nomine pietatis, et, dum quibusdam ex alieno gratiam exhibere nituntur, ecclesiis sunt et viris ecclesiasticis onerosi. constituerunt siquidem, sicut accepimus, ut, si quis se ad inopiam vergere probabiliter allegaverit, alienandi feudum, quod ab ecclesia vel aliis tenet, per officiales ad hoc a Tervisinis civibus et Coneglanensibus deputatos, liberam habeat facultatem, nec emptor priori teneatur domino respondere, nisi tantummodo in sexta parte pretii, quam ipsi, si recipere voluerit exhibebit, ex quo ecclesiastica non modicum iura laeduntur. Volentes igitur ecclesiarum indemnitati consulere, et huiusmodi gravaminibus providere, constitutionem huiusmodi et venditiones feudorum ecclesiasticorum, factas sine legitimo ecclesiasticarum personarum assensu, occasione constitutionis, imo verius destitutionis vel destructionis istius, praesentium auctoritate cassamus et, vires decernimus non habere. [Nulli ergo etc. Dat. Lat. X. Kal. Apr. 1199.]

Chapter VIII

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

The same.

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

[Those judges, executing the apostolic mandate, cited the parties to their presence. On the appointed day, when the said Master W. and F. appeared before them, John the priest presented himself in their

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

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

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

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

The same party answered that neither could it prejudice the matter that the said judges proceeded when the issue had not been joined, since they had been commissioned not to adjudicate a cause but only to investigate the truth; for this reason the solemnity of judicial procedure was not to be observed in the investigation itself. To this the chapter's party answered that, although the full solemnity of law is not observed in certain investigations, nevertheless the order of law ought to have been observed in an investigation of this kind, since certain persons are peaceable possessors of the possessions and revenues which formerly pertained to the office of primicerius, and they ought not

and could not have been despoiled of them without the order of law. Moreover, even if the said judges could have proceeded without adjudicating the cause, they nevertheless chose instead to adjudicate it solemnly, summoning the canons of Toul as a party to their judgment.]

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

[Against this the archdeacon's party answered thus: because that dignity had been instituted there for the public and common honor of the church of Toul, it could not be abolished in that church without the authority of the Apostolic See. Nor could the confirmation obtained for so unlawful a constitution give firmness to what was invalid by law itself. Moreover, after all these things the same canons jointly elected Archdeacon Terricus as primicerius, and he was thereafter confirmed by apostolic authority; for this reason they appear not only tacitly to have renounced the confirmation they had obtained but also to have revoked their own institution. But to this the chapter's party replied that what was done concerning T. could not prejudice them, since he usurped the office of primicerius for himself not through canonical election but rather through intrusion.]

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

> Dignitas sublata de ecclesia per statutum capituli, confirmatum per Papam, ulterius non censetur vocare, nisi per contrarium actum statutum fuerit revocatum.
>
> Idem.
>
> Quum accessissent ad apostolicam sedem dilecti filii archidiaconus Tullensis et G. Tullensis capituli procurator venerabilem fratrem nostrum Hugonem Hostiensem episcopum eisdem concessimus auditorem, in cuius praesentia archidiaconus proposuit memoratus, quod, quum olim quidam Tullenses canonici nostris auribus intimassent, quod primiceriatus et scholastria in Tullensi ecclesia tanto tempore vacavisset, quod ad manus nostras illius personatus esset donatio devoluta, dilectis filiis Altaesilvae et Belliprati abbatibus, et Columbae monasterii decano dedimus in mandatis, ut super hoc inquirerent veritatem, et, si personatus illos tanto tempore vacavisse constaret, quod iuxta Lateranensis statuta concilii ad nos ipsorum esset devoluta donatia, ipsi personas idoneas de Tullensi ecclesia vel aliunde in ipsis personatibus instituerent vice nostra, et eosdem facerent ab illis pacifice possideri. [Ipsi vero iudices mandatum apostolicum exsequentes, partes ad suam praesentiam citaverunt, et die statuta dictis magistro W. et F. comparentibus coram ipsis, Ioannes presbyter cum Tullensis capituli literis ipsorum se conspecui praesentavit, in quibus idem se capitulum excusabat, quod ad locum ab eisdem iudicibus constitutum sine rerum et personarum discrimine propter ducem Lotharingiae, qui eos diffidaverat, accedere non valebant, et hoc ipsum dictus presbyter proprio volens iuramento firmare,

locum, ad quem Tullenses canonici possint tute accedere, postulavit. Quumque super hoc inter dictos magistrum et presbyterum fuisset aliquamdiu litigatum, demum idem presbyter, requisitus praestare iuramentum, quod prius obtulerat, recusavit, et vocem appellationis emittens, literas capituli praesentavit, in quibus ad appellandum solummodo procurator exstiterat constitutus. Verum iudices supradicti excusationes ab ipso sacerdote propositas et appellationem interpositam frustratorias reputantes, de prudentum virorum consilio receperunt testes, quos dicti magister et F. inducere voluerunt, diem aliam apud S. Aprum saepedicto cappitulo praefigentes, qui quum nec ea die curassent in iudicio comparere, iudices ipsi attestationibus solenniter publicatis, quum constitisset eisdem, quod tamdiu primiceriatus in Tullensi ecclesia vacavisset, ut eius ad nos donatio pertineret, ipsum vice nostra supradicto S. archidiacono contulerunt, quam concessionem idem archidiaconus petiit auctoritate apostolica confirmari. Dictus vero G. capituli procurator ex adverso respondit, quod huiusmodi concessio et processus iudicum praedictorum debebant merito retractari, utpote qui post appellationem ad nos pro diversis gravaminibus legitime interpositam processerunt; prima siquidem citatione capitulum ipsum edicto peremtorio evocarunt, et quum postmodum ad eorum praesentiam proprium nuncium capitulum destinasset, licet ipse nuncius, allegando, quod ad praefixum locum propter viarum discrimina et insidias capitales capitulum accedere non poterat, vel sufficientes transmittere responsales, sollicite postularet locum tutum partibus assignari, excusationem tamen huiusmodi dicti iudices admittere contempserunt, propter quod idem nuncius, sicut in mandatis acceperat, ad appellationis praesidium convolavit. Praeterea dictus procurator adiecit, quod eorundem iudicum processus ex ea causa iudicandus erat invalidus, quoniam ad sententiae calculum processerunt lite minime contestata, contra quod fuit ex parte archidiaconi replicatum, quoniam appellationi huiusmodi non fuit aliquatenus deferendum, quum non ex causis legitimis, sed frustratorie duntaxat fuerit appellatum. Quum enim capitulum fuisset citationibus legitimis evocatum, simplicem nuncium, et non responsalem idoneum destinavit, qui, quum excusiationem capituli allegasset, et super ea obtulisset proprium iuramentum, postmodum illud praestare noluit requisitus. Quum igitur excusatio ab eodem nuncio proposita delusoria merito videtur, appellatio super ea interposita fuit merito respuenda, maxime quum idem nuncius literas capituli praesentaverit, in quibus continebantur expresse, quod ad provocandum tantummodo fuerat destinatus. Sed nec illud nocere posse pars eadem respondit, quod lite non contestata dicti iudices processerunt, quum non causae cognitio, sed inquisitio veritatis solummodo ipsis fuerit demandata, propter quod in inquisitione ipsa non fuerat iudiciarii ordinis solennitas observanda. Ad haec capituli pars respondit, quia, quamvis in quibusdam inquisitionibus omnimoda iuris solennitas non servetur, in inquisitione tamen huiusmodi servari debuit ordo iuris, quoniam, quum possessionum et redituum, olim ad primiceriatum spectantium, quidam sint pacifici possessores, eisdem sine iuris ordine non debebant nec poterant spoliari. Praeterea etsi dicti iudices potuerint sine causae cognitione procedere, solenniter tamen de causa cognoscere potius elegerunt, Tullenses canonicos tanquam partem ad suum iudicium evocando.] Fuit insuper ex parte capituli allegatum, quod rescriptum ad praedictos iudices impetratum exstiterit per falsam suggestionem obtentum. Quum enim de communi assensu et unanimi voluntate canonicorum Tullensium fuerit constitutum, ne primiceriatus dignitas esset ulterius in ecclesia memorata, inter canonicos ipsos primiceriatus proventibus et possessionibus distributis, et eadem institutio a bonae memoriae Alexandro P. praedecessore nostro fuerit postmodum confirmata: propter quod evidenter apparet, quod primiceriatus ipse tanto tempore non vacaverit, sicut nobis fuerat falsa insinuatione suggestum. [Contra quod pars archidiaconi sic respondit, quod, quum illa dignitas ad publicam et communem Tullensis ecclesiae honestatem ibidem fuerat instituta, absque sedis apostolicae auctoritate in eadem ecclesia non poterat aboleri. Confirmatio quoque super tam illicita constitutione obtenta firmare non potuit quod erat invalidum ipso iure. Praeterea iidem canonici post haec omnia Terricum archidiaconum in primicerium communiter elegerunt, qui fuit postmodum auctoritate apostolica confirmatus, propter

quod non solum confirmationi obtentae tacite renunciasse videntur, sed etiam institutionem propriam revocasse. Sed ad haec pars capituli replicavit, quia quod de ipso T. factum est eis praeiudicare non potest, qui non per electionem canonicam, sed per intrusionem potius sibi prilmiceriatus officium usurpavit.] Quocirca discretioni vestrae per apostolica scripta mandamus, quatenus, inquisita diligentius veritate, si vobis constiterit, Tullenses canonicos, ne ulterius in Tullensi ecclesia primiceriatus esset officium, communiter statuisse, ac statutum ipsum auctoritate sedis apostolicae fuisse postmodum, sicut dicitur, confirmatum, vos illud faciatis in suo robore permanere, nisi postea dicti canonici contravenerint, aliquem videlicet in primicerium eligendo. [Si vero consueverit etc. Dat. Rom. ap. S. Petr. Kal. Febr. Ao. IX. 1207.]

Chapter IX

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

The same to the Bishop of Chioggia.

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

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

We command you, therefore, since in the aforesaid constitution and confirmation of the Apostolic See there either was, or ought to have been, as is customary, the express clause, "unless the resources of the church should increase to such an extent that they could competently suffice for more

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

> Non obstante certo canonicorum numero, etiam per Papam confirmato, providendum est receptis ultra numerum de superexcrescentibus fructibus; maxime si voluntarie per canonicos fuerint recepti.
>
> Idem Clugiensi Episcopo.
>
> Quum Martinus Ferrariensis canonicus, F. W., B. et G., canonicorum Ferrariensium, et magister G., Ferrariensis capituli procuratores ad sedem apostolicam accessissent, super quaestione, quam de praebendis et reditibus habebant ad invicem, dilectum filium nostrum S. Mariae in Cosmedin diaconum cardinalem eis concessimus auditorem, coram quo Dictus M. pro se ac quatuor sociis suis proposuit, quod Ferrarienses canonici, ut eo amplius suos reditus augmentarent, quo proventus ecclesiae, qui dividi consueverant inter plures, in usus cederent paucorum, quatuordecim praebendas tantum, praeter id, quod mensae communiter deputarunt, in eadem ecclesia contra antiquam consuetudinem statuerunt. Postmodum vero, contra constitutionem ipsam voluntarie venientes, dictos quinque in canonicos receperunt, nullis praebendis assignatis eisdem. Et licet eorum reditus non modicum fuerint argumentati, nondum tamen eis voluerunt ex superexcrescentibus reditibus providere. Verum ex adverso fuit propositum, quod olim de communi tam canonicorum, quam tunc Ferrariensis episcopi voluntate quatuordecim praebendarum numero in Ferrariensi ecclesia provida deliberatione instituto et apostolicae protectionis praesidio roborato, [tandem], quum una in eadem ecclesia praebenda vacasset, ad multam quorundam instantiam duos ad eam, et postmodum ad preces venerabilis fratris nostri Ferrariensis episcopi dictum M. et quendam alium sine praeiudicio dictae constitutionis in canonicos receperunt ita, quod ipsi canonici de canonia nihil perciperent, donec primi duo essent praebendas integre assecuti. Quumque per canonicorum industriam fuerit procuratum, ut ex possessionibus, quas [eadem] ecclesia tempore longo possedit, plures eis reditus solverentur, superexcrescentes reditus communi mensae, quae minus sufficiens fuerat, communiter deputaverunt, quos dicti quinque sibi postmodum petierunt contra capituli constitutionem in beneficium assignari. Quia vero super his plena nobis, sicut idem cardinalis asseruit, exhiberi non poterat certitudo, causam ipsam tuo duximus examini committendam. Mandamus, quatenus, quum in constitutione praedicta et confirmatione sedis apostolicae vel fuerit vel esse debuerit, sicut consuevit, expressum: "nisi in tantum excrescerent ecclesiae facultates, quod pluribus possent sufficere competenter," et quum iidem canonici in derogationem suae constitutionis ad vacaturas praebendas quatuor receperunt ultra numerum constitutum, ab antiquis canonicis praebendas cum integritate percipientibus consuetas, superexcrescentes reditus praedictis canonicis appellatione remota facias assignari, ita tamen, quod, si ex eis pares potuerint cum aliis sortiri praebendas, quod superfuerit in communes canonicorum usus, sicut prius statuerant, sive aliter, prout melius videbitur, convertatur, revocatis in irritum omnibus, quaecunque ab alterutra partium in praeiudicium alterius post motam quaestionem coram episcopo Ferrariensi circa praebendas vel possessiones fuerint innovata. [Nullis literis etc. Dat. Rom. ap. S. Petr. XII. Kal. Mai. 1198.]

Chapter X

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

The same to the Abbot and Convent of Saint Sylvester.

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

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

Now the said B. Carosomi had issued a certain statute, alike approved and accepted by the Roman people, providing that, if anyone transferred to another a thing claimed from him after joinder of issue, possession was to be given to the claimant, and the other party was to become a claimant instead of a possessor. Since the same I., after joinder of issue, had presumed to transfer the thing itself to the monastery, B. assigned possession of the thing claimed to the aforesaid church. But because the said I. had rendered an annual rent to the monastery of Saint Sylvester from those possessions, B. added that the same was to be done by the church of Santa Maria until the ownership of the estate should be adjudicated; yet the payment which was made [of the rent] was to prejudice in no respect the right of the church of Santa Maria in Via Lata.

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

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

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

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

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

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

concerning contracts of this kind are also to have no force. The same constitution, however, expressly excepts from the aforesaid penalties those who have given or received things of this kind by way of dowry, antenuptial gift, transaction, or division of hereditary property, or by reason of a legacy or trust.

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

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

Even if the senatorial forum had been wholly foreign to the monastery, nevertheless, because the administrator of the said monastery, before Judge L.—delegated by the aforesaid B. in the dispute between the church of Santa Maria and the said I. de Atteia—stood with I. himself and defended him at law, the monastery could no longer decline that judge's jurisdiction. The statute of B. himself, of which mention has so often been made, was not contrary to law but rather consonant with it (since it is also provided in canon law that a thing placed in litigation is not to be transferred to another person). It ought to extend not only to possessors but also to those who could be sued by virtue at least of their detention of any thing, such as even temporary tenants are known to be. For perpetual tenants, having at least beneficial possession, can both be sued and transfer to another what they have, as the aforesaid I. had done. Neither the aforesaid arbitration nor the transaction could excuse his act, since they had been undertaken with guile and fraud. For the arbitrator to whom the matter was committed by the parties was said to have been a kinsman of I. himself and a feudal tenant of the monastery, and to have done nothing in public but everything in secret, although arbitrations were introduced after the pattern of judicial proceedings. He also compelled the parties to make a settlement, as appears from the rescript of settlement. And since the parties had not submitted the matter of a settlement to arbitration—a settlement being a matter not of necessity but rather of free will—the administrator asserted that, guile having now been proved as though from manifest contrivances, the settlement was wholly ineffective.

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

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

> Statutum generale laicorum ad ecclesias vel ecclesiasticas personas, vel earum bona in earum praeiudicium non extenditur; nec speciale, etiamsi earum commodum et favorem concernat. Hoc dicit quoad intellectum. Abbas Siculus.
>
> Idem Abbati et Conventui sancti Silvestri.
>
> Ecclesia sanctae Mariae in Via lata contra I. de Atteia qui quasdam possessiones ipsius dicebatur contra iustitiam detinere, movit tempore B. Carosomi dicti senatoris sub L. iudice quaestionem. In ipso autem iudicio praefato I. de Atteia syndicus monasterii vestri adstitit, et ab eo testes producti quidam de monachis exstiterunt. Iudex vero, auditis rationibus partium, pro eodem Ioanne absolutionis sententiam promulgavit; a cuius sententia pars altera vocem appellationis emisit. Super hac igitur quaestione suborta, proponente parte victrice, quod non potuerit appellari, quum dictus L. non ut iudex, sed tanquam arbiter fuisset electus, victa e contrario asserente, quoniam, quum arbitrio fuerit contradictum, quod partes non nisi metu poenae constringit, quae in praemisso arbitrio non fuerat comprehensa, merito potuit appellari, et fortius, si iudicium exstitisset. De hoc igitur ad iam dictum B. Carosomi quaestione perlata, causam appellationis S. primicerio iudicum delegavit, in cuius praesentia partibas constitutis, dictus Ioannes de Atteia proposuit, se conveniendum non esse, quum non possideret id, quod pars altera requirebat, sed monasterium S. Silvestri possideret rem petitam. Dictus autem B. Carosomi, quoniam statutum quoddam emiserat, a populo Romano approbatum pariter et acceptum, quod, si quis post litem contestatam rem a se petitam transferret in alium, daretur possessio petitori, et alter fieret de possessore petitor, et idem I. post litem contestatam, rem ipsam in monasterium transferre praesumsit, possessionem rei petitae assignavit ecclesiae memoratae. Verum quoniam dictus I. de possessionibus ipsis monasterio S. Silvestri annuam reddiderat pensionem, adiecit, ut hoc ipsum ab ecclesia S. Mariae fieret, donec de proprietate fundi cognosceretur; sed solutio, quae fieret [pensionis], ecclesiae S. Mariae in Via lata in iure suo penitus non noceret. [Hanc autem possessionem ecclesia S. Mariae usque ad tempora Ioannis Petri Leonis, senatoris Urbis, inconcusse possedit, qui, supplicatione monasterii vestri clementer admissa, R. iudici causam commisit eandem, qui auditis hinc inde propositis pro monasterio ipso sententiam promulgavit, renovans quod praefatus B. Carosomi statuerat contra ipsum. Per quam sane sententiam quoniam ecclesia S. Mariae se laesam

enormiter querebatur, et ipsa senatori supplicavit praedicto, qui causam commisit R. iudici cognoscendam. Et quoniam eius iurisdictio erat in proximo desitura, supplicatum fuit ob eandem causam successoribus eius senatoribus iam electis, et ab eis causa ipsa eidem iudici delegata. Iudex vero ex veteris et novorum pariter senatorum delegatione cognoscens, quod a iam dicto B. statutum fuerat approbans, ecclesiae S. Mariae possessionem restituit antedictam. Et quum novem consiliarios haberet senatus, per octo ipsorum exsecutioni fuit sententia demandata; sed unus ex iis, qui et nepos erat abbatis S. Silvestri, quorundam senatorum favore suffultus, ecclesiae S. Mariae possessionem violenter ablatam monasterio tribuit nominato. Ex hoc ergo rixa crescente usque ad armorum strepitum est processum. Ne vero deterius quid contingeret, bonae memoriae C. Papa praedecessor noster totum negotium ad suam sollicitudinem revocavit. Et quoniam tempus colligendorum fructuum imminebat, fructus praecepit apud colonos in sequestro deponi, circa quos si qua partium violentiam inferre praesumeret, causae suae dispendium pateretur, venerabilibus fratribus nostris G. Portuensi, et I. nunc Albanensi, tunc vero Tusculanensi episcopis tituli S. Clementis, et dilecto filio nostro G. S. Angeli diacono cardinali causam committens eandem. In quorum praesentia partibus constitutis, pro ecclesia S. Mariae fuit contra monasterium vestrum obiectum, quod violentiam pars vestra commiserat in fructibus sequestrandis. Et quum super hoc testes fuissent utrimque producti, quia violentia liquido probata non fuit, et in dimidio ruglo hordei dicebatur admissa, abbate nihilominus prohibente, ne delictum personae redundaret in damnum ecclesiae, facta hordei restitutione provisum est, ut ad quaestionem possessionis fieret in causa processus, de qua coram eisdem productis testibus et attestationibus publicatis fuit diutius disceptatum. Consequenter vero post decessum praefati praedecessoris nostri partibus in nostra praesentia constitutis, ecclesia etc. (cf. c. 4. ut lite pend. II. 16.) Et quoniam alii senatorum sententiam pro monasterio, alii latam pro ecclesia processu temporis confirmarant: nos etc. (cf. c. 4. cit.) Quum ergo nobis constiterit, et ex ipsa confessione partium tenuerimus, quod unus consiliariorum contra sententiam de voluntate octo exsecutioni mandatam de fa3RvLCBxdWlhIGRlIGl1cmUgbm9uIHBvdGVyYXQsIHZlbmllbnMsIGVjY2xlc2lhbSBpcHNh m possessione sua spoliaverit violenter, et nihilominus attendentes, quod etiam iniusto possessori violenter eiecto restitutionis sit beneficio succurrendum, spoliatam ecclesiam in eo statu decrevimus reponendam, in quo fuerat tempore violentiae perpetratae. Verum quoniam (etc. cf. c. 4. cit.)] Et quia saepefatum monasterium vestrum se querebatur a praemisso B. Carosomi contra iustitiam spoliatum, et ipsum per officium nostrum restitui suppliciter postulabat, quod statutum eius nullius valoris exstiterit multipliciter asseverans. [Saepefatus enim B., quum se ipsum intruserit in senatoriam dignitatem, nec apostolicae sedis favorem habuerit, ad quam institutio pertinet senatorum, statutum non potuit emittere, quod valeret. Qui etiamsi fuisset legitime institutus, ipsius statutum, quamvis sibi subiectos, ecclesias tamen nullatenus obligaret, praesertim quum iuri civili esset adversum, quod aliam poenam litigiosas res transferentibus statuit imponendam, illa distinctione inter contrahentes adhibita, ut, si quis sciens ad donationes, venditiones seu alios contractus accesserit, non solum redimere rem compellatur, sed etiam pretium eius amittat, non ut lucro cedat alienanti, a quo etiam alia tanta quantitas est fisci iuribus inferenda. Sin autem ignorans rem litigiosam emerit vel per aliam speciem contractus acceperit, tunc alienatione rei facta irrita pretium eius cum alia tertia parte recipiet, instrumentis etiam nullam vim obtinentibus, quae super contractibus huiusmodi statuuntur. Verum eos, qui dotis nomine, vel ante nuptias donationis, transactionis vel divisionis rerum hereditariarum factae, vel per legati vel fideicommissi causam huiusmodi dederint vel acceperint, a praemissis poenis eadem constitutio excipit nominatim. Quodsi etiam obligare posset ecclesias, monasterium in illa constitutione nequaquam inciderat, quum antedictus I. nullam in illud penitus possessionem transtulisset, qui tanquam colonus terras illas tenuerat, et eas non suo, sed monasterii nomine possidebat. Quod etiamsi fecisset, quoniam prius conventus a monasterio quam ab ecclesia fuerat, et per arbitrium et nihilominus iure transactionis, per quam citra poenam litigiosi contractus res potest in

alium lite contestata transferri, res restituit antedictas, in statutum praemissum nullatenus incidisset. Quin potius, etsi contra illud fecisset statutum, quoniam nec conventum, nec confessum in iudicio vel convictum possessione sua monasterium fuerat spoliatum, instanter eam sibi restitui postulabat, quam ex nulla, vel saltem iniusta causa pars altera detinebat. Has autem rationes oeconomus S. Mariae nitebatur multifariam infirmare. Quamvis enim dictus B. circa praelationis suae primordia gratiam sedis apostolicae non habuerit, quia tamen ab ea fuit tempore procedente receptus, et ratihabitio retrotrahitur, perinde habendus erat, tanquam ab initio legitime fuerit institutus; qui tanquam alienus iudex non poterat a monasterio evitari, quum nec novum sit nec insolitum, quod, ubi clerici sunt actor et reus, causas civiles in Urbe coram iudicibus, per sedem apostolicam institutis, ex delegatione senatorum ab ea iurisdictionem habentium prosequantur. Unde nec in alieno foro intelliguntur, sed in proprio Romani Pontificis litigare, cuius auctoritate sortiri videntur effectum quae ab huiusmodi senatoribus vel iudicibus statuuntur. Quodsi forum senatorium fuisset monasterio penitus alienum, quia tamen oeconomus dicti monasterii sub L. iudice a praefato B. inter ecclesiam S. Mariae et dictum I. de Atteia delegato, ipsi I. adstitit, et eum in iure defendit, iudicium eius non potuit ulterius doclinare. Statutum autem ipsius B., de quo saepius est praemissum, et quod non iuri adversum, sed consonum potius exsistebat, (quum etiam in iure canonico caveatur, quod res in litigio posita non sit in personam aliam transferanda), non ad possessores solos, sed etiam ad illos decebat extendi, qui tenore saltem detentionis cuiusque poterant conveniri, quales constat esse colonos etiam temporales. Perpetui namque utilem saltem possessionem habentes et conveniri possunt, et in alium transferre quod habent, sicut I. fecerat ante dictus, cuius factum neque praemissum arbitrium poterat, nec transactio excusare, quum in dolum et fraudem fuerint attentata. Iudex namque, in quem fuit a partibus compromissum, consanguineus ipsius I. et infeudatus monasterii dicitur exstitisse, nihilque fecisse in publicum, sed omnia in secreto; quamvis instar iudiciorum sint arbitria introducta. Coegit quoque partes ad transigendum, sicut ex rescripto transactionis apparet. Et quum de transactione non fuerit compromissum, quae non est necessitatis, sed liberae potius voluntatis, dolo quasi ex perspicuis insidiis iam probato transactionem inefficacem penitus asserebat. Illa quoque ratione dicebat ecclesia petitionem monasterii repellendam, quod, quum possessionem ipsam sine dolo et culpa sua obtinuerit auctoritate praetoris, et per hoc ius sibi fuerit acquisitum, monasterium vestrum super possessiorio audiri ulterius non debebat, cui parata erat in petitorio respondere.] His ergo et similibus in nostra et fratrum nostrorum praesentia prudenter a partibus allegatis, Nos attendentes, quod laicis, etiam religiosis, super ecclesiis et personis ecclesiasticis nulla sit attributa facu1tas, quos obsequendi manet necessitas, non auctoritas imperandi, a quibus, si quid motu proprio statutum fuerit, quod ecclesiarum etiam respiciat commodum et favorem, nullius firmitatis exsistit, nisi ab ecclesia fuerit approbatum, unde statutum Basilii de non alienandis praediis rusticis vel urbanis, ministeriis et ornamentis ecclesiarum, illa reprobatum fuit potissima ratione, quod auctoritate non fuit Romani Pontificis roboratum, ne in exemplum transeat similia praesumendi, quod a senatore factum fuerat in praeiudicium monasterii, non conventi, nec confessi etiam vel convicti, prorsus in irritum revocantes, easdem possessiones restituendas sibi sententialiter diffinimus, nec ipsas etc. [cf. c. 3. ut lite pend. II. 16. Datum Lateran. V. Kal. Dec. 1199.]

Chapter XI

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

The same to all the Doctors residing at Paris.

We have learned from the letters of your devotion that, when certain modern doctors of the liberal arts departed from the footsteps of their predecessors especially in three matters—namely, in dishonorable dress, in the order of lectures and disputations not being observed, and in the pious custom of celebrating the obsequies of deceased clerics now being almost wholly omitted through negligence—you, wishing to take thought for your own honor, unanimously chose eight sworn men from among yourselves for this purpose: that, concerning the said matters, on the advice of prudent men they should in good faith establish what would be expedient and honorable, binding you all by an intervening oath to observe it thereafter. The sole exception was Master G., who, refusing and fearing to swear, offered only a surety bond for himself.

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

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

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

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

> Poena simpliciter apposita propter contumaciam in dubio intelligitur temporalis, et non perpetua.

Idem universis Doctoribus Parisiis commorantibus.

Ex literis vestrae devotionis accepimus, quod, quum quidam moderni doctores liberalium artium a maiorum suorum vestigiis in tribus praesertim articulis deviarent, habitu videlicet inhonesto, in lectionum et disputationum ordine non servato, et pio usu in celebrandis exsequiis decedentium clericorum iam quasi penitus negligenter omisso, vos, cupientes vestrae consulere honestati, octo ex vobis iuratos ad hoc unanimiter elegistis, ut super dictis articulis de prudentium virorum consilio bona fide statuerent quod foret expediens et honestum, ad illud in posterum observandum vos iuramento interposito communiter adstringendo, excepto duntaxat magistro G., qui, iurare renuens et formidans, fideiussoriam pro se tantum obtulit cautionem. Fuit insuper ad cautelam a vobis fide praestita protinus constitutum, ut, si quisquam magistrorum adversus alios duceret resistendum, et primo, secundo tertiove commonitus infra triduum universitati parere contemneret magistrorum, ex tunc beneficio societatis eorum in magistralibus privaretur, et quidem hoc ultimum quidam ex vobis simpliciter, quidam vero, nisi satisfaceret, et nonnulli, nisi per nos se admitti ab aliis obtineret, se intellexisse fatentur. Quum autem supradictus magister G. infra triduum universitati non paruerit requisitus, iuxta condictum vestrum ex tunc a vobis habitus est exclusus. Qui, quum satisfactioni condignae postmodum se obtulisset, in IV. vestrum iuramento interposito compromisit, illorum dictum pro bono pacis se gratum et ratum pariter habiturum. Illi vero, usi consilio sapientum, dictum suum communiter promulgarunt, memorato magistro in virtute iuramenti praestiti prohibentes, ne deinceps in licitis universitati resisteret magistrorum, et iniungentes eidem, ut tamdiu in eo statu persisteret, quo tunc erat, donec per se vel procuratorem suum se posse ab aliis magistris admitti per sedem apostolicam obtineret, salva in omnibus honestate. Unde nobis humiliter supplicastis, ut eundem magistrum, virum utique providum et honestum, qui tanquam obedientiae filius quod sibi praedicti quatuor iniunxerunt suscepit humiliter et patienter observat, ex benignitate sedis apostolicae faceremus communioni restitui magistrorum. Nos igitur ex praemissis intelligentes, eidem magistro fuisse mandatum, ut tam diu in eo statu persisteret, quo tunc erat, donec magistrorum communioni de mandato sedis apostolicae redderetur, et paratus sit super praemissis satisfactionem congruam exhibere: Licet a vobis fide praestita fuerit constitutum, ut, si quis magistrorum ordinationi universitatis ipsorum duceret resistendum, et primo, secundo tertiove commonitus infra triduum universitati parere contemneret magistrorum, ex tunc beneficio societatis eorum in magistralibus privaretur, et ob hoc magister G. fuit eorum communione privatus, quia tamen constitutum non fuit, ut in perpetuum huiusmodi privatio perduraret, quum tam iuris canonici quam nostri moris exsistat, ut is, qui propter contumaciam communione privatur, quum satisfactionem congruam exhibuerit, restitutionem obtineat: universitati vestrae praesentium auctoritate mandamus, quatenus supradictum magistrum statutis vestris nunc humiliter parere curantem, ad communionis vestrae consortium in magistralibus admittatis.

Chapter XII

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

Honorius III to the Bishop and Cantor of Chalon.

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

And, in protection of their act, they are said to have obtained from us letters of confirmation concerning this in the common form.

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

> Non possunt canonici sine causa restringere numerum canonicorum seu praebendarum. Abb. Sicul.
>
> Honorius III. Episcopo et Cantori Cabilonensi.
>
> Ex parte venerabilis fratris nostri episcopi Eduensis fuit propositum coram nobis, quod canonici Eduenses propriis commodis inhiantes praebendarum numerum ab antiquo in ecclesia Eduensi statutum, licet non sint eius diminuti reditus, restrinxerunt, ut sic in temporalibus magis abundent, dum ea, de quibus valet sustentari canonicorum numerus consuetus, tali praetextu nituntur in augmentum convertere praebendarum, et in facti sui tuitionem super hoc confirmationis literas a nobis dicuntur impetrasse in communi forma. § 1. Nolentes igitur divini numinis minui cultum huiusmodi occasione in ecclesia ipsa, sed potius augmentari, discretioni vestrae mandamus, quatenus, si praemissis veritas suffragatur, antiquum numerum facientes auctoritate nostra servari, praebendas, quas a tempore ultimi statuti inveneritis vacasse in ecclesia memorata, non obstante aliqua constitutione super hoc a canonicis ipsis facta, vel confirmatione a nobis ab eisdem obtenta, personis idoneis cum consilio eiusdem episcopi sublato appellationis obstaculo conferatis.

Chapter XIII

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

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

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

> Constitutio futura respicit, et non praeterita, nisi in ea de praeteritis caveatur.
>
> Gregorius IX. Archipresbytero S. Mariae maioris de Urbe.
>
> Quoniam constitutio apostolicae sedis omnes adstringit et nihil debet obscurum vel ambiguum continere, declaramus, constitutionem, quam nuper super praeferendis in perceptione portionis maioribus et consuetis servitiis, a minoribus exhibendis, edidimus, non ad praeterita, sed ad futura tantum extendi, quum leges et constitutiones futuris certum sit dare formam negotiis, non ad praeterita facta trahi, nisi nominatim in eis de praeteritis caveatur.

Title III: On Rescripts

Chapter I

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

Alexander III to the Archbishop of Sens.

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

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

> **DE RESCRIPTIS.**
>
> Privilegio generali, secundum ius commune obtento, obstat rescriptum speciale, etiam de eo mentionem non faciens. H. d. secundum intellectum magis communem.
>
> Alexander III. Senonensi Archiepiscopo.
>
> Sicut Romana ecclesia omnium ecclesiarum disponente Domino mater est et magistra, ita etiam nos, qui eidem ecclesiae, licet immeriti, supernae dispositionis providentia praesidemus, [et] prout Dominus nobis ministraverit, consultationibus respondere cogimur singulorum, et quae videntur dubia apostolicae circumspectionis providentia declarare. Sane Quaesitum est a nobis ex parte tua, utrum, si alicuius causa inter aliquos delegatis iudicibus sublato remedio appellationis committitur, et literis apostolicis altera pars munita, quibus ei generaliter est indultum, ut libere sibi liceat appellare, si in vocem appellationis proruperit, an eius in eadem causa debeat appellationi deferri? Huic igitur Inquisitioni tuae praesentibus literis taliter respondemus, quod eius in hac parte appellatio non debet admitti, postquam est causa iudicibus appellatione remota commissa, quia speciale mandatum derogat generali. [Praeterea etc. cf. c. 5. de off. iud. del. I. 29.]

Chapter II

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

The same to the Archbishop of Canterbury.

It has been intimated to our ears on behalf of our *venerable brother*, the Bishop of Coventry, that, while lawfully adjudicating the cause which is pending between the clerics G. and F. concerning the prebend of Novals, in accordance with the tenor of our letters—which contained that, if it were

established that F. himself had been convicted of perjury and had renounced that prebend forever, he was, *appeal ceasing*, to be removed from it—when this had been adjudicated and proved, he adjudged that same prebend [to G.]. F. himself broke forth into a declaration of appeal and brought back to you our letters directing you to restore the prebend to him peremptorily and without cognizance of the cause, *and, with appeal ceasing, to deprive the bishop who had despoiled him of the prebend after the appeal of authority to confer a benefice upon anyone, until he should come to the Apostolic See, in person, through a messenger, or by his letters, to make satisfaction for so great an excess; and to bind the aforesaid G., if he presumed to molest F. in the said prebend, with the bond of excommunication until worthy satisfaction*.

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

> In rescripto apostolico subintelligitur clausula: "si preces veritate nitantur." Et si rescriptum prohibet causae cognitionem, est de falsitate suspectum.
>
> Idem Cantuariensi Archiepiscopo.
>
> Ex parte venerabilis fratris nostri Conventrensis episcopi nostris est auribus intimatum, quod, quum de causa, quae inter G. et F. clericos vertitur super praebenda de Novalis, cognoscens legitime eidem F. secundum tenorem literarum nostrarum, continentium, quod, si constaret, ipsum F. de periurio esse convictum, et perpetuo illi renunciasse praebendae, appellatione cessante amoveretur ab ea; eo cognito et probato, praebendam adiudicasset eandem, ipse in vocem appellationis prorupit, et ad te, quod ei praebendam praecise et absque causae cognitione restitueres, literas nostras reportavit, et episcopum, qui post appellationem eum praebenda spoliavit, auctoritate alicui beneficium conferendi appellatione cessante privares, donec per se, vel per nuncium, aut per literas suas de tanto excessu satisfacturus ad sedem apostolicam accederet, et praenominatum G., si eundem F. in iam dicta praebenda praesumeret molestare, vinculo excommunicationis usque ad dignam satisfactionem adstringeres. Verum quoniam non credimus, nos ita praecise scripsisse, et si taliter scripsimus, hoc ex nimia occupatione contigit, et in huiusmodi literis intelligenda est haec conditio, etiamsi non apponatur: "si preces veritate nitantur:" fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus inspectis literis, quas episcopo praedicto direximus, si inveneris, quod secundum praedictum modum ei scripserimus, et in literis nostris appellatio fuerit inhibita, et in literis, quas tibi praefatus F. reportavit, non fuerit habita mentio priorum literarum, sententiam praefati episcopi omni occasione et appellatione cessante confirmes, et saepedictum F. cum literis nostris, quas tibi detulit, ad praesentiam nostram venire compellas.

Chapter III

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

The same to the Bishop of Winchester.

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

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

> Si in secundo rescripto, per adversarium impetrato, non fiat mentio de primo, valet primum, et non secundum; alias valet secundum. Et si primum fuit impetratum communi consensu partium, non valet secundum impetratum per alteram partem, hoc tacito.
>
> Idem Wintoniensi Episcopo.
>
> Ceterum si aliquis ad iudices super aliqua causa ab apostolica sede impetraverit literas commissionis, et adversarius eius eandem causam postmodum obtinuerit committi aliis, de commissione priori non habita mentione, priores iudices ad decisionem causae possunt procedere, nec secundae literae obtinent alicuius roboris firmitatem. Si vero in secundis literis habeatur mentio de commissione priori, praedicta causa a priorum est exempta iudicio, quum eaedem literae non sint veritate tacita impetratae. Verum si de assensu partium causa committitur, et processu temporis, vel etiam continuo, alterutra pars altera nesciente causam ipsam, tacito de commissione priori facta, alii iudici obtinuerit delegari: non immerito is, qui tali dolo vel fraude adversarium suum laborare coegit, in expensis condemnari debet eidem.

Chapter IV

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

The same to the Archbishop of York.

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

> Si Papa mandat in rescripto de duobus inquiri alternative, ad certum effectum consequendum sufficit alterum probari.
>
> Idem Eboracensi Archiepiscopo.
>
> Inter ceteras consultationes tuas [id nobis] fuit propositum coram nobis, quid tenere debeas, quum aliqua sub disiunctione mandantur, quorum unum verum est, alterum falsum, utputa si proponatur, quod si talis sit sacerdotis filius, et in sacerdotio genitus, qui proximo in tali ecclesia ministravit, vel quod illicite ecclesiam occupavit eandem. Huic ergo quaestioni taliter respondemus, quod convenit,

> iudici quodcunque istorum constiterit, illi praelibatam ecclesiam adiudicari debere. Et idem in similibus observandum est. Sane si etc. (cf. c. 8. de off. iud. del. I. 29.)

Chapter V

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

The same to the Archbishop of Ravenna.

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

> Is, ad quem rescriptum Papae dirigitur, debet illi parere, vel causam rationabilem assignare, quare parere non potest.
>
> Idem Ravennati Archiepiscopo.
>
> Si quando aliqua tuae fraternitati scripta dirigimus, quae animum tuum exasperare videntur, turbari non debes neque moveri, aut credere, quod personam tuam velimus contemptibilem reddere vel despectam, quia te sicut carum fratrem nostrum et immobilem columnam ecclesiae affluentissima caritate diligimus, et honoris et exaltationis tuae desideramus modis omnibus incrementum. Nam etsi saepe fratribus et coepiscopis nostris secundum varietatem eorum, quae nobis suggeruntur, aspere et dure scribamus, hoc tamen non ex minori affectione contingit, sed ut clamoribus querelantium secundum Deum et iuxta officii nostri debitum satisfacere comprobemur. Quapropter monemus prudentiam tuam et hortamur attentius, quatenus de cetero non movearis, neque turberis, nec tuus animus deiiciatur, si tibi durum vel asperum scripserimus; sed sicut vir providus et discretus Qualitatem negotii, pro quo tibi scribitur, diligenter considerans et attendens, aut mandatum nostrum devote et reverenter adimpleas, aut per literas tuas quare adimplere non possis sufficientem et rationabilem causam praetendas quia nos patienter sustinebimus, si non feceris quod prava nobis fuerit insinuatione suggestum.

Chapter VI

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

The same to the Cistercian Brothers.

Since, having professed the Cistercian order, *you enjoy the privilege which the other brothers* [*of the same order*] *enjoy, when a dispute concerning tithes has arisen between you and other secular clerics, those clerics,*

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

> Cistercienses sunt privilegiati, quod non possunt conveniri per rescriptum Papae, nisi in eo fiat mentio de eorum ordine.
>
> Idem Cisterciensibus Fratribus.
>
> Quum ordinem Cisterciensem professi eo privilegio, quo fratres alii [eiusdem ordinis], gaudeatis, inter vos et clericos alios saeculares super decimis quaestione suborta, tacito quod sitis Cisterciensis ordinis, contra vos velut contra monachos alterius ordinis literas a sede apostolica impetrantes, deinde iuramentis et litigiis, sicut vobis significantibus accepimus, et expensis difficilibus vos inquietant. Volentes ergo vobis sollicite providere, ne contra tenorem privilegiorum vestrorum possitis quorumlibet temeritate vexari, auctoritate apostolica vobis mandamus, ut Si contra vos super decimis vel aliis, quae ordini vestro specialiter sedes apostolica indulsit, non facta mentione Cisterciensis ordinis, literae fuerint a sede apostolica impetratae, per eas minime teneamini respondere.

Chapter VII

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

The same to the Bishop of Tournai.

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

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

he was a Jew. (*And below*:) *We command your fraternity to receive him as a canon of your church and assign him a stall in the choir and a place in the chapter.*

> Si sede vacante scribitur capitulo, ut gerenti vices episcopi, ut praebendam alicui conferat, si creatur episcopus nondum exsecuto mandato, et ad eum spectet collatio praebendarum, illud adimplere tenetur. Hoc dicit secundum lecturam communiter approbatam. Abb. Sicul.
>
> Idem Tornacensi Episcopo.
>
> Eam te (Et infra:) Dudum siquidem ante tuam promotionem literae a nobis, si bene meminimus, emanarunt, quibus decano et ecclesiae tibi commissae, te adhuc in eodem capitulo exsistente, mandatum dedimus et praeceptum, ut dilectum filium nostrum P. praesentium latorem, qui de gente Iudaeorum originem duxit, et divina gratia fidem Christi humiliter et devote suscepit, obtentu suae conversationis, obtentuque literarum, in quibus ita profecit, quod ecclesiastico beneficio dignus non immerito reputatur, receptis literis nostris in canonicum reciperent, et praebendam, si qua vacaret, vel quam primo vacare contingeret, liberaliter sibi conferre deberent. (Et infra:) Ipsi vero, sicut eodem M. referente recepimus, literis nostris post consecrationem tuam receptis, quia donatio praebendarum ad te spectabat, praeceptum nostrum, sicut asserebant, debitae exsecutioni non potuerunt mandare. Quum itaque praescriptus P., sicut asserit, te super hoc ex parte nostra instanter requireret, tu ei respondisti, quod nullum inde a nobis mandatum receperas, et sic eum a te infecto negotio remisisti. Quod nullatenus fecisse deberes, si data literarum diligentius attendisses; quum tempore, quo literae ipsae datae fuerunt, de capitulo ipso esses, sicut qui eras archidiaconus et canonicus eiusdem ecclesiae, licet nec esses adhuc in episcopum consecratus. (Et infra:) Pro eo vero, quod Iudaeus exstiterit, ipsum dedignari non debes. (Et infra:) Fraternitati tuae mandamus, quatenus eum in canonicum ecclesiae tuae recipias, et ei stallum in choro et locum in capitulo assignes.

Chapter VIII

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

Lucius III to the Bishop of Lincoln.

It has come to our ears *through your report* that deans, archdeacons, precentors, or others endowed with ecclesiastical dignities, when obtaining letters concerning lesser benefices *through intermediary persons*, very often suppress the name of their dignity and designate themselves by their simple name, as though they held no ecclesiastical office; *and therefore you ask to be instructed by our rescript whether this fraud of concealment ought to produce prejudice against them.*

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

> Non valet rescriptum impetratum ad beneficia, si in eo tacetur dignitas impetrantis.
>
> Lucius III. Linconensi Episcopo.
>
> Ad aures nostras te significante pervenit, quod plerumque decani, archidiaconi, praecentores vel alii ecclesiasticis praediti dignitatibus, super minoribus beneficiis per interpositas personas literas impetrantes, nomen supprimunt dignitatis suae, et simplici nomine se appellant, tanquam non habeant aliquem personatum, ideoque rescripto nostro postulas edoceri, si fraus ista tacendi praeiudicium eis

> debeat generare? Consultationi igitur tuae taliter respondemus, quod, quum non sit intentionis nostrae, ut personae pluribus reditibus abundantes per literas nostras pauperes clericos super minoribus beneficiis inquietent, literas, in quibus actor suae nomen dignitatis supprimit, vires nolumus aliquas obtinere. Postremo etc. (cf. c. 36. de app. II. 28.)

Chapter IX

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

The same to the Bishop of Norwich.

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

> Valet secundum rescriptum impetratum ab adversario, licet non faciat mentionem de primo, si primus impetrans dolo vel negligentia non fuit usus illo.
>
> Idem Norvicensi Episcopo.
>
> Si autem aliquis, auctoritate posteriorum literarum per adversarium in iudicium tractus, obiecerit, literas se priores habere, de quibus in posterioribus mentio non habetur, si eis dolo vel negligentia uti postposuerit, excusari non debet. Si autem, quia delegati iudicis copiam nequiverit habere, per posteriores literas non poterit conveniri.

Chapter X

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

The same.

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

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

> Non valent rescripta, per quae incerti iudices dantur, vel futura negotia committuntur.

Idem.

Ad haec sumus in sede iustitiae disponente Domino constituti, ut quae contra iustitiam attentantur nostra sollicitudine ad rectitudinis tramitem revocentur etc. (Et infra:) Proinde Significatum est nobis, quosdam in provinciae tuae partibus tales, ut asserunt, de cancellaria nostra literas recepisse, per quas eorum omnia negotia unius iudicis vel plurium, quos sibi elegerint, arbitrio committuntur, sicque fit, ut, si aliquem pulsare voluerint, examen ordinarii iudicis non requirant, sed ad unum iudicem vel plures delegatos sibi propitios et exinde parti adversae suspectos super examinanda quaestione recurrant. Quod quantum sit Deo contrarium et sacris canonibus inimicum, nemo ambigit, qui vel modicam notitiam canonicae institutionis apprehendit. Tales itaque literas a cancellaria nostra non credimus prodiisse, vel, si forte prodierint, conscientiam nostram, quae diversis occupationibus impedita singulis examinandis non sufficit, effugerunt. Nos igitur huic morbo celeri volentes obviare remedio, fraternitati tuae per apostolica scripta mandamus quatenus, si literas tales in provincia tua vel impetratas vel deinceps impetrandas inveneris, eas carere viribus nostra auctoritate decernas, et ne ab aliquo in iudicium admittantur super quacunque quaestione prohibeas.

Chapter XI

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

The same.

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

Falsa latinitas vitiat rescriptum Papae. Hoc dicit Ioan. Andr.; concordat Abbas.

Idem.

Ad audientiam nostram te significante pervenit, quod H. de sancto Stephano super absolutione sua literas tibi, ut prima facie videbantur, apostolicas praesentavit, quas, quoniam habuisti suspectas, nec de cancellaria ecclesiae Romanae emanasse putasti, ad nos remittere curavisti, consulens apostolatum nostrum, unde devotionem tuam in Domino commendamus, utrum occasione ipsarum literarum praefatum virum habere debeas absolutum. Quibus quoniam manifestum continent in constructione peccatum, fidem te nolumus adhibere.

Chapter XII

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

Clement III.

It became known to us on behalf of S., a dignitary of the church of Tarentum, that, although the chapel of Emptonn. belongs by right to the aforesaid church, *it has for a long time been unjustly withdrawn from it; and* O. the deacon, who detains the said chapel, after making an appeal removed *G.*, the

chaplain of that church, who was ministering in it in the name of S. When S. had prosecuted the matter and obtained letters to judges, O. himself did not take care to prosecute his appeal. When by authority of the aforesaid judges he was summoned to court, he said that he had earlier letters of which no mention was made in the later ones. He suppressed them until the third citation and postponed using them through guile or negligence, as appeared from the length of time; in those letters no mention was made of the appeal taken by him, although two years had already elapsed from the time of the appeal.

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

> Contra secundum rescriptum non potest opponi de taciturnitate primi impetrati per appellantem, de sua appellatione non habita mentione. Hoc dic. Ioan. Andr.; concord. Abb. Sicul.
>
> Clemens III.
>
> Ex parte S. personae ecclesiae de Tarento nobis innotuit, quod, quum capella de Emptonn. ad praedictam ecclesiam de iure pertineat, ab ea multis temporibus iniuste est subtracta, et O. diaconus, qui iam dictam capellam detinet, capellanum ipsius ecclesiae G., nomine ipsius S. in ea ministrantem, post appellationem a se factam amovit. Quam quum esset S. prosecutus, et ad iudices literas impetrasset, ipse O. appellationem suam prosequi non curavit, quumque auctoritate praedictorum iudicum in ius esset vocatus, dixit, se literas priores habere, de quibus nulla mentio in posterioribus habebatur, quas usque ad tertiam citationem suppressit, eisque dolo vel negligentia uti postposuit, quod ex diuturnitate temporis videbatur, in quibus nulla mentio de appellatione ab ipso facta fiebat, quum biennium a tempore appellationis iam fuisset elapsum. Ideoque fraternitati vestrae per apostolica scripta mandamus, quatenus, si ita esse constiterit, revocatis in statum pristinum omnibus, quae post appellationem ipsius O. inveneritis attentata, praescriptam capellam matrici ecclesiae appellatione remota restituere procuretis, praedictum O., si eum appellationem suam non fuisse prosecutum constiterit, memorato S. in expensis necessariis condemnantes.

Chapter XIII

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

Celestine III.

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

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

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

> Rescriptum, quo scribitur pluribus cum clausula: "Quod si non omnes etc." intelligitur tam de impotentia facti, quam iuris.
>
> Coelestinus III.
>
> Sciscitatus es a nobis petitorio destinato, de qua impotentia illud intelligatur, quod in literis nostris saepe consuevit apponi, ut si duo vel tres, vel etiam plures, quibus literae diriguntur, ipsis exsequendis simul interesse nequiverint, unus aut plures eorum, quibus scribitur, nihilominus exsequantur. Nos vero in hoc ita sentimus, quod tam de iure quam de facto illa impotentia censeatur. De iure, si aliquem illorum, quibus literae diriguntur, servum, vel infamem aut alio legitimo impedimento detentum esse constiterit; de facto, si constiterit, eum casu mortis occumbere, aut inevitabilis necessitatis articulo impediri, quo minus valeat interesse; dummodo is, qui pro necessitate praesens esse non potest, collegis suis canonice excusationem suam curet, si poterit, destinare, ut alii coniudices vel exsecutores nihilominus ad consummationem iniuncti mandati procedant. Nec ille, qui tantummodo non vult interesse, hac impossibilitatis interpretatione valet aliquatenus excusari, nisi forte sic in rescripto habeatur expressum, si non omnes interfuerint, vel simul nequiverint aut noluerint interesse.

Chapter XIV

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

Innocent III to the Bishop of Ely.

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

Since letters are often obtained from us under a form of this kind, namely, “We have considered that the cause which such a person proposes that he has against such a person and certain others concerning this and concerning certain other things should be committed to you,” you also solicitously asked whether, from a delegation of this kind, the judge has power over the persons or things to be specified before the specification of those persons or things. You added the question whether, before the persons or things have been specified by name, special letters concerning matters

not expressed in the earlier commission but generally comprehended in it, making no mention of the earlier commission, should issue from the Apostolic See to other judges and obtain the same force.

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

> In quaestione revocationis rescriptorum recurritur ad arbitros, si iudices in cognitione sibi non deferant, nec invicem concordent. H. d. usque ad § Quoniam. - (Quoniam etc.:) Per generalem clausulam positam in rescripto delegatus ante expressionem personarum vel rerum iurisdictionem habet in habitu, et non in actu. Et speciales literae derogant literis generalibus super non specificatis in eis, quamquam de illis nullam faciant mentionem. Abb.
>
> Innocentius III. Eliensi Episcopo.
>
> Pastoralis officii (Et infra: [cf. c. 28. de off. iud. del. I. 29.]) Praeterea quaesivisti, quando de revocatione literarum ambigitur, utrum iudices priores, an posteriores cognoscere debeant, et utrum per secundas sint primae literae revocatae? Ad quod tibi respondemus, quod, nisi posteriores prioribus, vel e converso duxerint deferendum, simul utrique cognoscant, et, si forte nequiverint simul in unam sententiam concordare, quamvis plures sint ex una parte quam ex altera, per arbitros communiter electos a partibus huiusmodi concertatio sopiatur. Quoniam autem sub huiusmodi forma, videlicet: "Causam, quam talis adversus talem, et quosdam alios super hoc, et quibusdam aliis se habere proponit, tibi duximus committendam," a nobis multotiens literae impetrantur, et sollicite quaesivisti, an iudex ex delegatione huiusmodi ante personarum vel rerum expressionem super personis vel rebus exprimendis habeat potestatem, adiiciens, utrum, si antequam personae vel res expressae fuerint nominatim, super non expressis in commissione priori, sed generaliter comprehensis speciales literae, quae de priori commissione nullam faciant mentionem, ad alios iudices a sede apostolica emanaverint, eundem vigorem debeant obtinere? Nos igitur ad haec duo taliter respondemus, quod, quum generali per speciale procul dubio derogetur, iurisdictio per generales literas attributa, per speciales, quantum ad ea, quae specialiter exprimuntur, penitus enervatur, licet de prioribus non faciant mentionem. Unde superflua relinquitur prima quaestio; etsi merito dici possit, quod, donec iurisdictio revocetur, eam super rerum vel personarum articulis exprimendis obtinet delegatus; sed antequam exprimantur personae vel res, delegatus nequit iurisdictionem huiusmodi exercere. [Quia vero etc. (cf. c. 28. de off. iud. del. I. 29.) Dat. Rom. ap. S. Petr. XIV. Kal. Iun. 1204.]

Chapter XV

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

The same to the Archbishop of Sens.

The Apostolic See is accustomed to show itself liberal to petitioners; but certain persons wickedly abuse its grace, *when they twist to malice what it grants out of benignity. For certain persons, wishing to act*

maliciously, express lesser and more insignificant persons by their proper names in our commissions, but do not designate greater and more dignified persons by specific terms; rather, they comprehend them under a certain covering of generality so that they may more easily obtain the commissions themselves from us, under this form: "Such persons complain of this or that person, and of certain others to be expressed by their proper names, who are exceedingly injurious and burdensome to them concerning such an affair and certain other matters."

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

> Per generalem clausulam: "Quidam alii, et res aliae," multitudo effrenata non includitur, nec personae, nec res maiores expressis, sed pares vel minores.
>
> Idem Senonensi Archiepiscopo.
>
> Sedes apostolica consuevit exhibere se petentibus liberalem; sed quidam eius gratia nequiter abutuntur, dum quod ipsa de benignitate concedit ipsi ad malignitatem retorquent. Quidam enim malignari volentes, in commissionibus nostris minores et viliores personas propriis nominibus exprimunt, maiores autem et digniores specialibus vocabulis non designant, sed eas sub quodam generalitatis involucro comprehendunt, ut commissiones ipsas a nobis facilius impetrent, sub hac forma: "Conquerentur tales de isto vel illo, et aliis quibusdam propriis nominibus exprimendis, qui eis super tali negotio et quibusdam aliis rebus iniuriosi nimis et graves exsistunt." Nos igitur volentes eorum malitiis obviare, decernimus, ut, quum in commissionibus nostris minores et viliores personae solummodo designantur, maiores et digniores sub generali clausula non intelligantur includi. Sed nec liceat occasione generalitatis huiusmodi multitudinem effrenatam in iudicium evocare, nec super maioribus et gravioribus negotiis audiantur qui de minoribus et levioribus tantum faciunt mentionem. Si quis vero aliquas personas expresserit, non, ut velit cum eis in iudicio experiri, sed ut ad pares transire valeat vel minores, quia fraus et dolus ei patrocinari non debent, tanquam mendax precator careat penitus impetratis. [Dat. Anagniae XV. Kal. Ian. Ao. VI. 1203.]

Chapter XVI

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

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

From the tenor of the letters which you sent us *through our beloved son Ph., the bearer of the present writings*, we understood *clearly* that R., the priest of Colleville, had obtained apostolic letters to other judges concerning the dispute pending between himself *and our beloved son,* the abbot *and convent* of Bec, *concerning the manor of Colleville and other property*. When those judges cited the opposing party, the said priest refused to litigate before them. *Later, however, that same priest presented to you our letters concerning the same affair, in which no mention of the earlier letters was made.* And when you wished to proceed to cognizance of the cause, *the parties having been summoned to your presence, the aforesaid* abbot

proposed before you that he was not bound to answer the priest by virtue of the letters directed to you, since by other letters he had been cited by other judges, and those letters had not been revoked by authority of the letters directed to you. *But because you were in doubt concerning this, you considered that the Apostolic See should be consulted.*

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

> Qui contra unum super eodem ad diversos iudices diversa rescripta impetrat, et eis utitur, perdit commodum utriusque.
>
> Idem R. Cantori et R. Priori de Monte Leprosorum.
>
> Ex tenore literarum, quas nobis per dilectum filium Ph. latorem praesentium destinastis, intelleximus evidenter, R. sacerdotem de Collovilla ad alios iudices super quaestione, quae inter ipsum et dilectum filium abbatem et conventum de Becco super manerio de Colevill. et rebus aliis vertitur, literas apostolicas impetrasse. Qui quum partem citassent adversam, dictus presbyter coram eis noluit litigare. Postmodum vero idem presbyter super eodem negotio vobis nostras literas praesentavit, in quibus de prioribus mentio non fiebat. Quumque vos in causae cognitione procedere velletis, partibus ad vestram praesentiam convocatis, memoratus abbas coram vobis proposuit, quod non tenebatur per directas ad vos literas presbytero respondere, quum per alias ab aliis iudicibus fuisset citatus, quae auctoritate illarum non fuerant revocatae. Verum quia super hoc dubitastis, sedem duxistis apostolicam consulendam. Nos igitur attendentes fraudem presbyteri memorati, duas commissiones super eodem negotio impetrantis, quarum altera non faciebat mentionem de reliqua, quia fraus et dolus alicui patrocinari non debent, decernimus, ut ipse commodo careat utriusque. [Dat. Ferentini IV. Id. Iul. Ao. VI. 1203.]

Chapter XVII

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

The same to the Archbishop of Milan.

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

For in those *same* letters neither was mention made of P.'s prebend, nor was he called a canon of Modecia—indeed, he was not *even* called a cleric in them—and this condition was appended in the letters themselves: "if he should be worthy to obtain an ecclesiastical benefice, *and if the same church had acquired from the gift of his parents a certain chapel with its endowment, and for a time received offerings and mortuary dues from his kinsmen, and tithes annually*." You could have understood how those letters had

been obtained, *in which no mention was made of the benefice of the person on whose behalf it was written. Therefore, by apostolic writings we command your fraternity that, whenever apostolic letters are directed to you or to persons subject to you, you diligently attend to their tenor and cause what is commanded in them to be put into effect, provided that they were obtained neither by suppression of the truth nor by expression of a falsehood.* [*Given at Rome, etc., on the thirteenth day before the Kalends of June,* 1198.]

> Non valet rescriptum ad beneficium impetratum, de beneficio impetrantis non faciens mentionem.
>
> Idem Mediolanensi Archiepiscopo.
>
> Quum adeo scripta sedis apostolicae moderemur, ut ex certa scientia nihil in eis faciamus apponi, quod de iure debeat reprehendi, miramur non modicum et movemur, quod, quotiens ad te vel ad aliquos tibi subiectos nostras literas destinamus, te super eis mirari rescribis, ac si mandaremus aliquid inhonestum. Scripsisti etenim nobis, quod, quum P. clericus in ecclesia Modecensi sufficientem sibi sit praebendam adeptus, mirabaris, quod pro receptione ipsius in ecclesia de Gronzola praeposito et fratribus eiusdem ecclesiae literas apostolicas miseramus, quum, si literarum nostrarum diligenter seriem attendisses, nihil penitus invenisses in eis, quod debuisset tuum animum offendisse. Quum enim in literis ipsis nec de praebenda ipsius P. mentio haberetur, nec Modecensis canonicus, immo nec etiam clericus diceretur in eis, et in literis ipsis haec esset adiecta conditio: "si dignus exsisteret ad ecclesiasticum beneficium obtinendum, et si eadem ecclesia ex dono parentum ipsius quandam capellam cum dote fuisset adepta, et a consanguineis eius oblationes et mortuaria pro tempore, et decimas perciperet annuatim: intelligere potuisses, qualiter literae ipsae fuerant impetratae, in quibus de beneficio ipsius, pro quo scribebatur, mentio non fiebat. Ideoque Fraternitati tuae per apostolica scripta mandamus, quatenus quum ad te vel ad tuos literae apostolicae diriguntur, earum tenorem diligenter attendas, et quod mandatur in eis, dum tamen nec per suppressionem veritatis, aut expressionem falsitatis obtentae fuerint, facias effectui mancipari. [Datum Romae etc. XIII. Kal. Iun. 1198.]

Chapter XVIII

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

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

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

We therefore command *your discretion by apostolic writings*, understanding it to be placed there, not to delay in proceeding in the *same* cause according to the tenor of *those* letters, taking *earnest* care that, if lawful proceedings have been conducted in the same affair by authority of the earlier letters, they remain firm and stable. Otherwise, if it is established that, on occasion of the aforesaid clause, anything was attempted to the prejudice of the other party, we decree that it shall lack force; *wishing nevertheless* and commanding that, in deciding the affair itself, as was set forth above, you proceed

canonically, appeal being removed, concerning both the principal and the incidental questions. [*No contrary provisions, etc. Given at the Lateran, on the thirteenth day before the Kalends of April,* 1198.]

> Ordo rescripti interpretationem recipit a iuro communi.
>
> Idem Electo, Decano, et N. Canonico Cameracensi.
>
> Causam, quae inter Praemonstratensem et Pramonensem ecclesias super possessionibus de Anapia vertitur, discretioni vestrae commisisse meminimus fine canonico terminandam. Sed Quia in literis illis animadvertimus fuisse insertum, quod, si ulterutra partium citata legitime praesentiam vestram adire vel iudicio vestro parere contemneret, vos nihilominus praesentis partis probationes recipere, et, quantum de iure poteritis, in causae cognitione ac decisione procedere minime tardaretis: nos volentes, ut clausula illa, "quantum de iure poteritis," quae ante, quam de probationum receptione mentio fieret, fuerat inserenda, clausulam illam de receptione probationum praecedat, discretioni vestrae per apostolica scripta mandamus, quatenus ipsam intelligentes ibidem in eadem causa iuxta tenorem literarum illarum procedere non tardetis, attente provisuri, ut, si literarum auctoritate priorum in eodem negotio legitime est processum, firmum et stabile perseveret; alioquin, si occasione clausulae memoratae aliquid constiterit in alterius partis praeiudicium attentatum, id viribus decernimus cariturum, volentes nihilominus et mandantes, ut in decisione ipsius negotii, sicut praemissum est, tam super principali, quam super incidentibus quaestionibus appellatione remota canonice procedatis. [Nullis obstantibus etc. Dat. Lateran. XIII. Kal. April 1198.]

Chapter XIX

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

The same to the Archbishop of Sens.

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

[*Meanwhile, when a messenger of the chapter came to the Apostolic See and suggested that P. himself had prebends in several churches, he obtained the absolution of the church of Bourges from his claim, and also obtained an indulgence that they should not be compelled to receive anyone as a brother within three years. When afterward the same P. returned to the Roman Church and took care to explain to our same predecessor that, although he had obtained in the church of Clermont a certain benefice which is customarily granted even to laymen and is called a* familiaritas, *nevertheless he could not be fittingly sustained from it or from another which he held, that predecessor enjoined the said dean and chapter, while the aforesaid indulgence remained in its force, to confer upon him the first prebend that should become vacant after the three-year period, and meanwhile to assign him a stall in the choir and a place in the chapter. Execution of this mandate was delegated to our beloved son the provost of Clermont. As was manifestly evident from his letters, after he had diligently admonished the said dean and chapter to fulfill the*

apostolic mandate and had made no progress at all, by apostolic authority he took care to invest the aforesaid P. with the first prebend to become vacant after the three-year period, granting him a stall in the choir and a place in the chapter.]

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

> Non valet impetratio in ecclesia numerata, non facta de numero mentione, si per eam frangitur numerus canonicorum, licet non frangatur numerus praebendarum; et processus inde factus est nullus. Hoc dicit quoad intellectum Panor.
>
> Idem Archiepiscopo Senonensi.
>
> Constitutus apud sedem apostolicam in praesentia dilecti filii nostri G. sancti Angeli diaconi cardinalis P. clericus, quem ei concesseramus et parti alteri auditorem, proposuit olim coram ipso, quod quum bonae memoriae C. Papa praedecessor noster dilecto filio decano et capitulo Bituricensi dederit in mandatis, ut ipsum reciperent in canonicum et in fratrem, et praebendam ei conferrent, si qua tunc in eorum vacaret ecclesia, vel proximo vacaturam, venerabili fratre nostro Bituricensi archiepiscopo ei monitore concesso, et ipsi quum mandatum eius admittere non curassent, eis praecipiendo mandavit, ut quod eis mandaverat adimplerent, sibi super hoc exsecutoribus deputatis. [Interim autem capituli nuncius ad apostolicam sedem accedens, quum suggessisset, ipsum P. in pluribus ecclesiis habere praebendas, Bituricensem ecclesiam ab eius obtinuit impetitione absolvi, indulgentia etiam impetrata, ne infra triennium aliquem recipere in fratrem cogerentur. Quumque postmodumn idem P. ad ecclesiam Romanam reversus, eidem praedecessori nostro exponere curavisset, quod, licet in Claromontensi ecclesia quoddam beneficium, quod concedi etiam laicis consuevit, et familiaritas appellatur, fuisset adeptus, et ex ipso tamen vel alio, quod haberet, non posset commode sustentari, idem praedecessor noster dictis decano et capitulo iniunxit, ut, praedicta indulgentia in suo robore permanente, praebendam, quae post triennium primo vacaret, ipsi conferrent, interim autem ei stallum in choro et locum in capitulo assignarent, exsecutione huius mandati dilecto filio Claromontensi praeposito delegata, qui, sicut ex eius literis manifeste liquebat, quum dictos decanum et capitulum ad implendum mandatum apostolicum diligentius monuisset, nec profecisset in aliquo, praedictum P. de praebenda primo post triennium vacatura auctoritate curavit apostolica investire, ei stallum in choro et locum in capitulo concedendo.] Verum pars adversa respondit, quod, quum in Bituricensi ecclesia certus esset numerus canonicorum institutus, firmatus iureiurando, et per Romanum Pontificem confirmatus, et quum de hoc memoratus P. non fecisset in suis literis mentionem, intelligendum erat, circumvenisse

> praedecessorem nostrum, et dictas literas veritate tacita impetrasse. Licet enim, quum in aliqua ecclesia certus statuitur numerus, haec apponatur conditio vel intelligatur apponi: "salva sedis apostolicae auctoritate," non tamen erat credendum, quod eum ex certa scientia contra iuramenta eorum recipi mandavisset, quum de hoc in eius literis nihil fuisset expressum. Nos igitur de praedictis per memoratum cardinalem instructi Discretioni vestrae per apostolica scripta praecipiendo mandamus, quatenus, si legitime vobis constiterit, numerum canonicum, qui nunc est in eadem ecclesia, per decanum et capitulum eiusdem ecclesiae iuramento firmatum, antequam praedictus clericus a praedecessore nostro literas exsecutorias impetrasset, quicquid factum est occasione literarum ipsarum, quas idem clericus a sede apostolica impetrasse dignoscitur, cassum et irritum decernatis haberi, alioquin ei faciatis in eadem ecclesia praebendam, si qua vacat, sublato cuiuslibet appellationis obstaculo assignari. [Contradictores etc. Dat. Spoleti, XI. Kal. Sept. 1198.]

Chapter XX

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

The same to A., Canon of Poitiers.

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

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

Among the others, however, who obtain letters in the latter manner, we have considered that a distinction is to be made according to what falsehood was suggested or what truth was suppressed. For if the falsehood stated or the truth concealed is of such a kind that, although that falsehood had been concealed or that truth expressed, we would nevertheless have given letters at least in the common form, the delegate, not following the form appended in the letters themselves, is to proceed in the cause according to the order of law. But if, through the expression of such a falsehood or even the suppression of the truth, letters were obtained which, had that falsehood been concealed or that truth expressed, we would not have given at all, the delegate is not to proceed in any respect—except perhaps only so far as, after summoning the parties to his presence, he may adjudicate the character of the petitions—so that in both cases the same reason which would move the delegating authority may also move the delegate, and where the delegating authority would refuse its letters, the delegate

likewise is in no way to interpose the office of his cognizance. [*Given at Ferentino, on the fifteenth day before the Kalends of November, in the eleventh year of our pontificate,* 1208.]

> Difficile et famosum c. et est clavis totius tituli. Et h. d. in summa: Exprimens falsum, vel tacens verum in rescripto, si malitiose, caret prorsus impetratis. Sed si per simplicitatem vel ignorantiam aut obtinuisset vero expresso, et suppresso falso saltem literas in forma communi, et delegatus procedit servato iuris ordine, et non speciali forma rescripti; secus, si nullo modo literas habuisset.
>
> Idem A. Canonico Pictaviensi.
>
> Super literis, quae ab aliquibus ex malitia, et a nonnullis ex ignorantia, tacita veritate vel suggesta falsitate impetrantur a nobis, diversos intelleximus diversa sentire, aliis asserentibus, eos debere prorsus carere omni commodo literarum, quum mendax precator carere debeat penitus impetratis; aliis vero dicentibus, quod, etsi forma carere debeant in literis nostris expressa, nihilominus tamen iuxta rigorem iuris sit a delegato iudice in negotio procedendum. Nos igitur inter eos, qui per fraudem vel malitiam, et illos, qui per simplicitatem vel ignorantiam literas a nobis impetrant, huiusmodi credimus discretionem adhibendam, ut hi, qui priori modo falsitatem exprimunt vel supprimunt veritatem, in suae perversitatis poenam nullum ex illis literis commodum consequantur, ita videlicet, quod delegatus, postquam sibi super hoc facta fuerit fides, nullatenus de causa cognoscat. Inter alios autem, qui posteriori modo literas impetrant, duximus distinguendum, quae falsitas suggesta fuerit, vel quae veritas sit suppressa. Nam si talis expressa sit falsitas vel veritas occultata, quae, quamvis fuisset tacita vel expressa, nos nihilominus saltem in forma communi literas dedissemus: delegatus, non sequens formam in literis ipsis appositam, secundum ordinem iuris in causa procedat. Si vero per huiusmodi falsitatis expressionem vel suppressionem etiam veritatis literae fuerint impetratae, qua tacita vel expressa nos nullas prorsus literas dedissemus, a delegato non est aliquatenus procedendum, nisi forsitan eatenus, ut partibus ad suam praesentiam convocatis de precum qualitate cognoscat, ut sic in utroque casu eadem ratio, quae delegantem moveret, moveat etiam delegatum, et ubi delegans suas literas denegaret, delegatus etiam suae cognitionis officium nullatenus interponat. [Dat. Ferentini XV. Kal. Nov. Pont. nostri Ao. XI. 1208.]

Chapter XXI

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

The same to the Abbot and Convent of Prémontré.

By *your letters* you asked to be instructed by us whether, by virtue of letters obtained against abbots *of your order* without any mention being made of their convents, the abbots themselves are bound, in causes which pertain to the convents and to those same abbots, to answer persons complaining against them concerning those causes; and whether, although appeal has been prohibited, they can protect themselves by raising an appeal so that they need not answer.

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

In causa monasterii convenitur abbas per rescriptum, in quo nulla fit mentio de conventu; nec propter hoc appellari potest, nisi abbatis et conventus bona essent distincta omnino.

Idem Abbati et Conventui Praemonstratensi.

Edoceri per vestras literas postulastis a nobis, utrum per literas adversus abbates vestri ordinis, nulla mentione habita de suis conventibus, impetratas, teneantur abbates ipsi super causis, quae ad conventus pertinent et eosdem, de ipsis querelantibus respondere, ac, licet inhibita sit appellatio, per appellationis obiectum possint, ne respondeant, se tueri. Super quo vobis duximus respondendum, quod iidem abbates, nisi alia causa rationabilis suffragetur, per appellationem se tueri non possunt, quo minus debeant auctoritate literarum huiusmodi legitime respondere, quum ex officio suo teneantur abbates congregationum suarum negotia procurare, nisi forte abbatis et conventus negotia essent omnino discreta. [Dat. Laterani IV. Kal. Mart. Ao. XI. 1208.]

Chapter XXII

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

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

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

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

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

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

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

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

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

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

censure with appeal removed, to desist from their temerity. If named witnesses withdrew through favor, hatred, or fear, they were likewise to compel them, by the same constraint and with appeal ceasing, to bear testimony to the truth.

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

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

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

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

Afterward, publishing the witnesses received concerning the aforesaid articles, they wholly invalidated the sentence of confirmation rendered for the often-mentioned custodian. Inquiring nevertheless into her election, they quashed it as having been celebrated less than canonically and granted the sisters free power to elect. Assembling together, the sisters unanimously elected the often-mentioned nun G. The said judges confirmed her election and solemnly assigned her possession of the abbey and its chair, publicly declaring the aforesaid custodian and her supporters excommunicated.

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

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

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

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

> Processus factus per literas subreptitias irritatur; sed factus contra formam rescripti, irritus nunciatur.
>
> Idem Archiepiscopo et Magistro W. Canonico Magdeburgensibus.
>
> Quum dilecta in Christo filia R. custos Hesiensis ecclesiae, ac Volpertus clericus procurator G. monialis, olim ad sedem apostolicam [iam] accessissent [et] super electionibus in eadem ecclesia celebratis de custode ac moniali dictis litigaverint aliquamdiu coram nobis, [nos iis diligenter auditis, quae tam a procuratore ipso fuere proposita, quam custode, Helerwardensi et Hergensi abbatibus ac praeposito Geismariensi dedimus in mandatis, ut quicquid factum fuerat super monialis electione iam dictae,

auctoritate nostra suffulti, nullius contradictione vel appellatione obstante, denunciarent irritum et inane, ac super ipsius electione custodis veritate diligentius inquisita, si electionem ipsius canonicam et personam idoneam invenirent, ipsam auctoritate apostolica confirmarent, contradictores per censuram ecclesiasticam appellatione postposita compescentes. Verum quum ipsa custos mandatum huiusmodi iudicibus praesentasset, quod de praefata moniali factum fuerat, denunciaverunt irritum et inane. Quae quum nollet dimittere abbatiam, iudices ipsi excommunicationis eam vinculo innodantes: mandaverunt eandem arctius evitari; sed ipsa cum electricibus suis post aliquot dies super electione sua per nuncium appellavit. Iudices autem appellationi nullatenus deferentes, praesertim quum de nostro expresso mandato fuisset eius electio irritata, et appellatio esset in literis nostris inhibita, citato Herisiensi conventu, de ipsius electione custodis, prout ipsis iniunctum fuerat, inquirere studuerunt. Quumque ipsius electionem invenissent canonicam idoneamque personam, habito prudentum consilio electionem confirmantes ipsius, abbatiam Herisiensem auctoritate nostra per diffinitivam sententiam adiudicaverunt eidem. Et licet dioecesanus episcopus appellarit et inhibuerit. Herisiensi conventui, ne illi tanquam abbatissae praesumerent obedire, ipsi tamen eam in corporalem eiusdem abbatiae possessionem cum omni mansuetudine induxerunt, a qua per .. fratrem monialis praedictae ac fautores ipsius per violentiam est eiecta, et praeter alia mala, quae ibidem fuere nequiter perpetrata per illos, dictam R. coegerunt sacramento firmare, ut usque ad festum beati Martini tunc futurum proxime Herisiensem ecclesiam non intraret, nec etiam domo simplici vel quod ibidem obtinebat stipendio uteretur. Porro quum dicta R. super iis et aliis graviter vexaretur, ad nostram duxit praesentiam recurrendum, memorata G. moniali similiter veniente. Quumque super iis ipsa R. proposuerit quaestionem, et postulaverit confirmari processum iudicum praedictorum, et ut satisfieret sibi de damnis et iniuriis irrogatis, dicta G. proposuit ex adverso, quod quum electa fuerit in Herisiensis ecclesiae abbatissam a maiori et saniori parte conventus, et eius electio per dioecesanum fuerit episcopum confirmata, ipsa custos ad abbatem de Conradesburch et eius coniudices literas impetravit. Ad quorum praesentiam quum ipsa G. citata veniret, et ostenderet, se spoliatam fuisse ipsius occasione custodis, sententiam ab ipsis iudicibus reputavit se illi nullatenus respondere teneri, nisi foret primitus restituta. Sed ipsa custos ab eadem sententia provocando, appellationem suam est personaliter prosecuta. Ceterum quum ipsa G. ad hoc tantum procuratorem transmiserit, ut eadem confirmaretur sententia, procurator ipsius mandati fines excedens passus est obtinere custodem quod voluit contra ipsam, et ad supradictos iudices literas reportavit, quorum unus excommunicationis sententiae subiacebat, prout literae venerabilis fratis nostri Maguntinensis archiepiscopi nobis exhibitae continebant; cum quo alter eorum, absente tertio, in omnibus inordinate processit, et licet tam ipsa quam Herisiense capitulum pro diversis gravaminibus appellarint, ipsi tamen nihilominus procedentes, eandem custodem per Albertum familiarem ipsius, qui, sicut ex eisdem literis memorati archiepiscopi probabatur, vinculo erat excommunicationis adstrictus, et B. plebanum in corporalem fecerunt possessionem induci. Ad probandum vero, quod procurator iamdictus mandatum tale receperit, ut videlicet appellationem interpositam prosequi procuraret, testes coram auditore sibi dato produxit. Sed e contra responsum est, quod, etsi testes illi mandatum tale probassent, per hoc tamen nullatenus est ostensum, quin aliud recepisset, et ideo, quum esset pro sententia praesumendum, praesertim quum fuisset a nobis cum maturitate consilii promulgata, manifeste intelligi poterat, quod super principali negotio procurator praedictus mandatum receperat generale, sicut eadem custos per testem unicum, quem produxit, plenius ostendebat. Nos autem iis et aliis intellectis, quae fuerunt ab unaquaque parte proposita, praefatam G. monialem ab administratione ipsius abbatiae sententialiter duximus removendam, dilectis filiis scholastico Hildesemensi, custodi et scholastico Mindensibus dantes nostris literis in praeceptis, ut, ad ipsam ecclesiam personaliter accedentes, abbatiae administrationem eiusdem alii personae idoneae committere procurarent, cui ad opus ecclesiae fieret hinc inde resignatio subtractorum; ipsi vero interim de confirmationis sententia, quae super electione custodis lata erat a

delegatis iudicibus, cognoscentes, sicut iustum esset, confirmarent vel infirmarent eandem; ita videlicet, quod, si pro eo, quod unus ex iudicibus delegatis, qui eandem sententiam tulerant, excommunicationis esset vinculo publice innodatus, quando sententia lata fuit, sicut per metropolitani literas monstrabatur, aut ex alia causa ipsam constaret sententiam infirmandam, ea cassata cognoscerent iterum de ipsius electione custodis, et quae in factum fuissent proposita vel personam plenius audientes, ipsam, si fuisset inventa canonica, infirmarent; alioquin ea penitus infirmata, darent sororibus facultatem liberam eligendi, et, quam in abbatissam sibi ducerent regulariter eligendam, eius electionem sublato appellationis obstaculo confirmarent, ac praefatae custodi de bonis ecclesiae facerent in expensis legitimis provideri; contradictores nihilominus vel rebelles, ut a sua temeritate desisterent, per censuram ecclesiasticam appellatione remota cogentes. Testes etiam, qui nominati essent, si se gratia, odio vel timore subtraherent, per districtionem eandem cessante appellatione cogerent veritati testimonium perhibere. Ipsi vero iudices tam custodem ipsam quam conventum Herisiensis ecclesiae ad suam praesentiam evocantes, dilationis eis terminum indulserunt; sed dilatione pendente praeposita Herisiensis cum complicibus suis abbati de Reinvehusen, praeposito de Nova Ecclesia, et plebano de Eschenshuseim nostras literas praesentavit, in quibus eisdem iudicibus mandabatur, ut supradicta custos quaedam ipsius ecclesiae ornamenta, custodiae quoque proventus ad usum ecclesiae pertinentes, et reditus de Meinchsern, qui debebant sororum necessitatibus ministrari, ac quaedam alia de praebendis earum, quae per quosdam praedones malitiose subtraxerat et ipsa pro suae voluntatis arbitrio detinebat, per censuram ecclesiasticam appellatione remota iustitia mediante restituere cogeretur; quarum auctoritate custos ipsa citata, quum statuto sibi die non posset coram iudicibus comparere, ipsi post appellationem a Lamberto clerico interpositam pro parte custodis eiusdem, in ipsam excommunicationis sententiam protulerunt. Et licet eodem die procurator ipsius comparuerit coram eis, et eandem excommunicationis sententiam, utpote minus rationabiliter latam, peteret relaxari, quum in nullo penitus audiretur, appellationem a praedicto Lamberto clerico interpositam ratam habuit, et recessit. Ipsi vero appellationi minime deferentes receperunt testes a praepositae ac complicum eius parte productos, et eorum depositionibus in ipsius custodis absentia publicatis, ipsam cum complicibus suis ad restitutionem centum quinquaginta marcarum, et de furto ac sacrilegio nihilominus condemnarunt, excommunicationis sententiae supponentes easdem. Postmodum autem quum procurator custodis ipsius praedictorum scholastici Mindensis et coniudicum suorum conspectui se statuto termino praesentasset pro eadem custode in iudicio processurus, iidem iudices asserentes, quod, quum praefata custos excommunicata esset a iudicibus memoratis, sicut ipsa non poterat agere, sic nec eius debebat procurator audiri, eam ab agendo per sententiam repulerunt. Procurator autem ex adverso respondit, quod talis excommunicationis sententia sibi nocere non poterat vel custodi, quum per legitimae appellationis obstaculum, quae sententiam ipsam praecesserat, de iure fuerit impedita. Quumque iudices ipsi, allegationem huiusmodi frivolam reputantes, nollent de appellatione cognoscere, procurator iam dictus ad sedem apostolicam appellavit; sed ipsi appellationi deferre nolentes, testes, quos pars altera producere voluit ad probandum, quod unus ex delegatis iudicibus, qui sententiam tulerant pro custode, tunc excommunicatus erat, quum pro ea confirmationis sententia lata fuit, ea occasione sumpta, quod quidam ex ipsis testibus a remotis partibus venerant, receperunt. Propter quod quaedam sorores Herisienses pro se ac praedicta custode ad sedem apostolicam provocarunt. Qui appellationem interpositam contemnentes, G. monialem ab administratione Herisiensis ecclesiae removerunt, ipsam eiusdem ecclesiae praepositae committentes, aliquas personas idoneas in suum adiutorium recepturae. Iidem quoque iudices articulum de resignatione subtractorum intermittentes, qui primo fuerat in mandato nostrarum literarum insertus, testes super alio articulo receperunt, quia videlicet ab abbate praedicto et coniudicibus suis legitime olim fuerat provocatum, eo, quod rescripti nostri copiam partibus facere noluerunt. Qui receptos testes super praemissis articulis postmodum publicantes, confirmationis sententiam pro saepe dicta custode latam penitus infirmarunt; ac de ipsius

electione nihilominus inquirentes, tanquam celebratam minus canonice cassaverunt, concessa sororibus eligendi libera facultate. Quae convenientes in unum saepedictam G. monialem unanimiter elegerunt, cuius electionem dicti iudices confirmantes, abbatiae possessionem et cathedram solenniter assignarunt eidem, supradictam custodem et fautrices eius excommunicatas publice nunciando. Subsequenter autem ii, qui super articulo praenotato, de resignatione scilicet subtractorum, auditores fuerant a praedictis iudicibus deputati, recipientes testes a praedictae praepositae ac suarum complicum parte productos, depositiones ipsorum sub sigillis propriis interclusas eisdem iudicibus transmiserunt. Verum quum custos ipsa iter arripuisset ad sedem apostolicam veniendi, memorati iudices noluerunt dicta testium publicare, ad nostram praesentiam eadem sub sigillis suis destinantes inclusa.] Nos igitur haec et alia, quae tam custos praedicta, quam I. clericus, qui pro eodem negotio venerat contra ipsam, nuper apud sedem apostolicam constituti proponere voluerunt, et acta iudicun ab iisdem nobis exhibita diligentius attendentes, deprehendimus manifeste, praedictas literas ad abbatem de Remech, et suos coniudices impetratas, fuisse per subreptionem obtentas, quum in eis illius articuli, videlicet de subtractorum resignatione, fuerit praeter conscientiam nostram cognitio demandata, qui in prioribus literis ad scholasticum Hildesensem et coniudices suos obtentis, insertus fuerat, de quibus in secundis literis mentio aliqua non fiebat, et ideo quod ipsarum literarum occasione dignoscitur attentatum penitus duximus irritandum. Dictum insuper scholasticum Hildesemensen et coniudices suos invenimus minus provide processisse. Quum enim in literis nostris eisdem principaliter mandaretur, ut ad praedictam ecclesiam personaliter accedentes personae idoneae administrationem committerent abbatiae, cui ad opus eius fieret hinc inde resignatio subtractorum, ipsi formam mandati apostolici transponentes, illo capitulo praetermisso de aliis articulis inordinate plurimum cognoverant, propter quod processum ipsorum contra nostri formam rescripti ac iuris ordinem attentatum irritum decernimus et inanem. Ideoque mandamus, quatenus, convenientes in loco competenti et tuto G., A. et quibusdam aliis sororibus eiusdem ecclesiae, sicut iustum fuerit, restitutis, et forma mandati nostri exacta diligentia observata, in negotio ipso iuxta tenorem praecedentium literarum appellatione remota ratione praevia procedatis ita, quod per vestram sollicitudinem circumspectam saltem hac vice negotio tamdiu prorogato finis debitus imponatur. [Quia vero etc.]

Chapter XXIII

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

The same.

It very often happens that certain persons, after obtaining our letters against others concerning certain matters and postponing their use for a long time, finally produce them when, by authority of other letters, they begin to be sued by those against whom they had first obtained letters, saying that the later letters are not valid because they make no mention of the earlier ones. Since human malice is not to be indulged, by authority of the present writings we establish that, if anyone obtaining our letters postpones using them through malice or negligence for a year after he has had access to the judges, he may be sued by authority of the later letters, although no mention of the earlier ones is made in them.

Valet secundum rescriptum, licet de primo non faciat mentionem, quo uti noluit impetrans intra annum.

Idem.

> Plerumque contingit, quod aliqui contra quosdam super aliquibus rebus nostris literis impetratis, illis uti multo tempore postponentes, tunc demum eas exhibent, quum aliarum literarum auctoritate ab eis, contra quos ipsi primitus literas impetrarant, coeperint conveniri, dicentes, posteriores literas non valere, utpote non facientes de prioribus mentionem. Quum igitur non sit malitiis hominum indulgendum, praesentium auctoritate statuimus, ut, si quis nostras literas impetrans infra annum, postquam copiam iudicum habuerit, ex malitia vel negligentia postposuerit uti eis, auctoritate posteriorum literarum valeat conveniri, licet in ipsis nulla de prioribus mentio habeatur.

Chapter XXIV

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

The same to the Archbishop of Rouen.

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

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

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

In all these matters, however, it is fitting that you have a pure and provident intention, lest, in order to decline a command, you say that you are in doubt where no doubt exists, or, in order to execute [a command], assert that you are certain where you ought not to be certain. Although from these things definite instruction is given to you concerning how you ought to conduct yourself in these matters, no power is attributed to you to adjudicate the jurisdictional dispute between the delegates or the parties. [*Moreover, etc.* (compare chapter 36, *On the Office of a Delegated Judge, I.*29.) *Given at the Lateran, on the Kalends of September, in the thirteenth year,* 1210.]

> Si a delegato aliquid mandatur ordinario, debet humiliter exsequi. Sed si alius delegatus per alias literas post exsecutionem mandat contrarium, vel si ante exsecutionem innotuerit ordinario, inter delegatum, qui mandavit, et alium, contentionem esse de iurisdictione, faciat sibi utrarumque literarum copiam exhiberi; non ut iurisdictionaliter cognoscat, sed ut se informet, an per secundas revocentur primae. Et si primae revocentur, exsequatur secundum mandatum. Si autem non revocentur, vel de hoc dubitet, non exsequatur secundum mandatum, donec contentio de iurisdictione terminetur. Abb. Sic.
>
> Idem Rothomagensi Archiepiscopo.
>
> Quum contingat (Et infra: [cf. c. 11. de aet. et qual. I. 14.]) Praeterea quum quidam super aliquo litigantes ad diversos iudices literas impetrant, quorum quidam obtenti a parte altera tibi mandant, ut partem adversam denuncies excommunicationis sententiae subiacere, aliis iudicibus postmodum tibi iniungentibus, ut eandem denuncies absolutam: quaeris a nobis an utrisque, an neutris, vel alterutris saltem obedire debeas in hac parte? Super quo tuae prudentiae respondentes credimus distinguendum, an, quum primum mandatum recepisse dignosceris, tibi forsan innotuerit, inter illos et alios super iurisdictione discordiam suscitatam, an super hoc nihil omnino scivisti? Et quidem, si super contentione huiusmodi nihil tibi penitus innotescat, quum primum mandatum recipere te contingat, illud debes humiliter exsecutioni mandare. Sed si postea contrarium tibi ab aliis demandatur, tunc, literarum ad utrosque a sede apostolica obtentarum copia postulata, quas tibi auctoritate praesentium districte praecipimus exhiberi, si ex ipsarum tenore deprehenderis evidenter ita, quod non sit aliquatenus haesitandum, quod literae, quae ad illos, a quibus secundum mandatum receperis, impetratae noscuntur, expresse revocent literas aliorum, tu illud intrepidus exsequaris, quod tibi secundo loco mandatur. Si vero ex literarum inspectione manifeste tibi constet, quod literae obtentae ad illos, qui primum dedere mandatum, per alias minime revocantur, secundum mandatum nullatenus exsequaris. Quod si super hoc tibi merito fuerit dubitandum, ad exsequendum secundum mandatum te procedere non oportet, donec iuxta cuiusdam nostrae constitutionis tenorem inter eos huiusmodi concertatio sopiatur. Et id ipsum facere debes, si primo mandato recepto et nondum exsecutioni mandato tibi forsan innotuerit, quod inter se, super iurisdictione videlicet demandata, coeperint disceptare. Ceterum in his omnibus puram et providam te convenit intentionem habere, ne vel ad declinandum mandatum dubitare te dicas, ubi dubitandum non est, vel etiam ad [mandatum] exsequendum te asseras esse certum, ubi certus esse non debes. Licet autem ex his certa tibi detur doctrina, qualiter in his te debeas habere, nulla tamen tibi attribuitur potestas, ut inter delegatos aut partes de iurisdictione debeas iudicare. [Insuper etc. (cf. c. 36. de off. iud. del. I. 29.) Dat. Lat. Kal. Sept. Ao. XIII. 1210.]

Chapter XXV

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

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

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

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

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

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

> Quando in rescripto plura narrantur, diversos effectus operantia, non sufficit impetranti alterum solum probare, ad utrumque effectum consequendum.
>
> Idem Magistro G. et P. de Firmisca.
>
> Olim ex literis dilectorum filiorum sancti Nicasii Remensis, Sargiensis et Vallis Regiae abbatum fuit nostris auribus intimatum, quod, quum ad eos semel et iterum a nobis literae processissent, super eo videlicet, quod P. clericus sancti Remigii Remensis parochiam de Salice S. Remigii, quam R. de Clivo clericus per interpositam personam ab abbate S. Remigii sibi collatam fuisse proposuit, detinebat, ipsi partes semel, secundo et tertio citaverunt, et dictum P. de S. Remigio, quia citatus pluries comparere noluit per se vel per responsalem aliquem coram eis, excommunicationis vinculo innodantes, fecerunt fructus ipsius parochiae sequestrari. Quumque postmodum idem P. accedens ad eos se iuri promiserit pariturum, ac obtinuerit se absolvi, ipsi absolutionis literas concedentes diem ei assignaverunt et locum, quibus coram eis quod promiserat adimpleret; qui diem et locum ex literis illis radens, in loco rasurae

scripsit, quod ipsi ei sequestratos fructus assignari mandabant, quod coram duobus eorum tandem, tertio sui absentiam excusante per literas, est confessus. Nos igitur, quum tantae temeritatis excessus falsitatis scrupulo non careret, vobis dedimus in mandatis, ut, si esset ita, ipsi praesumptori super dicta parochia perpetuum silentium imponentes, praefato R. de Clivo clerico assignaretis eandem cum fructibus sequestratis. Verum sicut vos, filii G. et P., per vestras nobis literas intimastis, quum dictus R. rasuram praefatam coram vobis per testes idoneos probavisset, et ob hoc postulasset sibi dictam ecclesiam assignari, vos utrum clausula illa: "si esset ita," de omnibus superioribus, an de articulo tantum rasurae deberet intelligi dubitastis; in negotio ipso procedere ulterius distulistis, eligentes secundum hoc potius sedis apostolicae oraculum implorare, quam aliquid temere definire. Nos igitur diligentiam vestram in Domino commendantes respondemus, quod clausula illa ad omnia debet superiora referri, ad hoc, ut ipsi R. praefata ecclesia conferatur; quia, licet vitium falsitatis ad imponendum ei perpetuum silentium super ecclesia ipsa sufficiat, qui falsitatem huiusmodi perpetravit, non tamen propter hoc eadem ecclesia est adversario assignanda, nisi super aliis facta fuerit plena fides. [Dat. Lat. VI. Non. Mart. Pont. nostr. Ao. XV. 1212.]

Chapter XXVI

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

The same to the Bishop of Imola.

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

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

Non valet rescriptum super restitutione beneficii impetratum, quod de causa excommunicationis et amotionis impetrantis non facit mentionem.

Idem Episcopo Imolensi.

Dilectus filius, abbas sancti Stephani Bononiensis, per suas nobis literas intimavit, quod, quum ipse, cui visitationis officium in civitate ac dioecesi Bononiensi commisimus, B. et A. presbyteros ab ecclesiis suis propter eorum graves et manifestos excessus duxerit amovendos, iidem presbyteri super restitutione sua nostras ad te in communi forma literas impetrarunt, de amotionis suae causa et excommunicationis, qua tenentur adstricti, nullam facientes penitus mentionem. Procuratoribus igitur vicinorum et ecclesiarum ipsarum exceptiones in tua praesentia proponentibus antedictas, tu supersedendum huiusmodi negotio decrevisti, donec super hoc nostrae voluntatis beneplacitum recepisses. Nos igitur in hoc tuam prudentiam commendantes fraternitati tuae per apostolica scripta mandamus, quatenus, si est

ita, literas ipsas, tanquam per veri suppressionem obtentas, viribus carere decernas, et quod circa presbyteros praedictos provide factum est, per memoratum abbatem praecipias firmiter observari, appellatione remota.

Chapter XXVII

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

The same to the Bishop of Veratisama.

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

Per literas iustitiae non tenetur episcopus providere habenti perpetuam vicariam vel sufficiens patrimonium, nec valent literae gratiae ad beneficium obtinendum, in quibus impetrans tacuit perpetuam vicariam. Hoc dicit comprehendendo utrumque intellectum.

Idem Episcopo Veratisamensi.

Postulasti per sedem apostolicam edoceri, utrum alicuius ecclesiae perpetuo vicario, de proventibus vicariae bonisque paternis habenti unde valeat commode sustentari, tenearis per illam formam communem: "Quum secundum Apostolum," in ecclesiastico beneficio providere. Ad quod sic duximus respondendum, quod, quum per formam praedictam necessitatibus pauperum clericorum, qui nullum sunt ecclesiasticum beneficium assecuti, sicut ibidem exprimi consuevit, sedes apostolica duxerit succurrendum, perpetuus vicarius, nisi de vicaria fecerit mentionem, commodum reportare non debet de huiusmodi literis, utpote veritate tacita impetratis. Non enim beneficio ecclesiastico carere debet dici, cui competenter de perpetuae vicariae proventibus est provisum. Et pro habente beneficii sufficientis subsidium ex certa scientia super obtinendo alio beneficio de levi non scribimus, quin faciamus de primo in nostris literis mentionem. [Tu denique etc. Dat. Lat. VI. Id. Ian. Pont. nostri Ao. XVI. 1214.]

Chapter XXVIII

Latin source headnote: Through apostolic letters making no mention of this constitution, no one can be drawn beyond two days' journeys outside his diocese unless the letters were obtained with the consent of the parties. This it says as far as § "There are also others." — §1. Letters obtained for

lawsuits without the lord's special mandate are not valid unless they are obtained by a connected person. This it says.

The same, in the General Council.

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

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

> Per literas apostolicas, de hac constitutione mentionem non facientes, non potest quis trahi ultra duas diaetas extra suam dioecesim nisi de consensu partium literae fuerint impetratae. Hoc dicit usque ad § Sunt et alii. - § 1. Non valent literae, ad lites impetratae, sine speciali mandato domini, nisi impetrentur per coniunctam personam. h. d.
>
> Idem in concilio generali.
>
> Nonnulli gratia sedis apostolicae abutentes, literas eius ad remotos iudices impetrare nituntur, ut reus fatigatus laboribus et expensis liti cedere vel importunitatem actoris redimere compellatur. Quum autem per iudicium iniuriis aditus patere non debeat, quas iuris observantia interdicit, statuimus, ne quis ultra duas diaetas extra suam dioecesim per literas apostolicas ad iudicium trahi possit, nisi de assensu partium fuerint impetratae, vel expressam de hac constitutione fecerint mentionem. § 1. Sunt et alii, qui se ad novum genus mercimonii convertentes, velut sopitas possint suscitare querelas vel novas immittere quaestiones, fingunt causas, super quibus a sede apostolica literas impetrant absque dominorum mandato, quae vel reo, ne propter eas laborum vel expensarum dispendio molestetur, aut actori, ut per ipsas adversarium indebita molestatione fatiget, venales exponunt. Quum autem lites restringendae sint potius quam laxandae, hac generali constitutione sancimus, ut, si quis super aliqua quaestione de cetero sine speciali mandato domini literas apostolicas impetrare praesumpserit, et literae illae non valeant, et ipse tanquam falsarius puniatur, nisi forte de illis personis exstiterit, a quibus non debet exigi de iure mandatum.

Chapter XXIX

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

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

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

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

> Si occasione duorum rescriptorum, unius scilicet in causa principali, alterius in causa appellationis, contenditur, non iudex super principali, sed deputatus super appellatione, cognoscere debet de validitate appellationis.
>
> Honorius III. Cantuariensi Archiepiscopo et Coniudicibus suis.
>
> Dilectus filius I. Sarracenus clericus exposuit coram nobis, quod, quum Iordanus clericus Dumeliensis ipsum super ecclesia sancti Nicolai Dumeliensis coram vobis auctoritate literarum nostrarum traxisset in causam, ex parte ipsius I. in praesentia vestra fuit excipiendo propositum, quod auctoritate ipsarum literarum non debebat, nec poterat conveniri eo, quod ultra duas diaetas a dioecesi, ubi praedicta ecclesia sita erat, contra statuta concilii generalis, de quo in eisdem literis non fiebat mentio, distabatis. Et quia huiusmodi exceptionem admittere denegantes nihilominus procedebatis in causa, pro eo duntaxat, quod idem I. in Rophensi et Eliensi dioecesi beneficia obtinet, quasi ex hoc ibi domicilium intelligeretur habere, ipse ad nostram audientiam appellavit. Sed vos, eius appellatione contempta, partem alteram mittendam in possessionem eiusdem ecclesiae causa custodiae decrevistis. Quumque idem I. appellationem interpositam prosecutus, ad venerabilem fratrem nostrum Eboracensem archiepiscopum et eius collegas nostras super praemissis literas impetrasset, vos, in causa ipsa nihilominus procedentes, eisdem iudicibus, ne in commisso sibi procedant negotio, inhibetis. Quocirca discretioni vestrae mandamus, quatenus, si est ita, causae supersedeatis eidem, quum non vos, sed dicti iudices cognoscere habeant, ad quos iurisdictio debeat pertinere.

Chapter XXX

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

The same to the Bishop and Archdeacon of León.

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

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

> Si plures impetrant in eadem ecclesia, statur datae, ut primus impetrans praeferatur, et solus admittatur. Ita communiter summant doctores, et procedit istud summarium secundum opinionem communem, quae hodie invaluit, propter iura nova.
>
> Idem Episcopo et Archidiacono Legionensibus.
>
> Capitulum sanctae crucis Cameracensis exhibita nobis petitione monstravit, quod Callimacho clerico Noviomensis dioecesis, super praebendali beneficio in eorum ecclesia obtinendo literas nostras ad eos prius monitorias, et demum praeceptorias impetrante, B. clericus Tornacensis dioecesis contra eos super consimili beneficio in eadem sibi ecclesia conferendo ad I. archiepiscopum Tornacensem et eius collegas, de praedictis literis non habita mentione, exsecutorias a nobis literas impetravit, qui post appellationem ad nos interpositam in eos suspensionis et excommunicationis sententias protulerunt, ac dictus C. super exsecutione mandati pro eo facti ad alios obtinuit scripta nostra, qui tulerunt suspensionis et excommunicationis sententias in eosdem. Unde nobis humiliter supplicarunt, ut, quum in eadem ecclesia XII. tantum sint praebendae, et ob hoc non sine magno gravamine simul providere possent, utique faceremus easdem sententias relaxari, et provideri eorum alteri in eadem ecclesia de praebenda: praesentim, quum in utriusque literis clausula illa contineretur inserta, nisi eadem ecclesia de mandato nostro foret in alterius receptione gravata. Quocirca discretioni vestrae mandamus, quatenus, eo recepto in canonicum et in fratrem, assignatoque sibi beneficio praebendali, qui ad eos prius mandatum apostolicum reportavit praefatas sententias iuxta formam ecclesiae sublato appellationis obstaculo relaxetis, alteri super praebendali beneficio in eadem ecclesia silentium imponentes.

Chapter XXXI

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

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

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

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

> Si habens literas Papae ad beneficium eis propter annuam pensionem renunciat, non valent literae beneficiales per eum hoc tacito impetratae.
>
> Idem Bituricensi Archiepiscopo apostolicae sedis Legato.
>
> Ad audientiam nostram te significante pervenit, quod quidam clerici, obtentis a sede apostolica literis super provisione sua in aliquibus ecclesiis tibi lege dioecesana subiectis, recipientes ab eis annuas pensiones, seu alia beneficia, ab eorum impetitione desistunt, renunciantes nostrarum beneficio literarum, deinde ad sedem apostolicam accedentes super provisione sua obtinent alias literas ab eadem, de literis antea impetratis non habita mentione, et sic gratia benignitatis apostolicae abutentes, ecclesias multipliciter inquietant. Ne igitur tales de suae circumventionis astutia glorientur, Fraternitati tuae mandamus, quatenus eos, qui, post literas nostras taliter venditas, alias, de illis mentione non habita, impetrabunt de cetero, vel hactenus impetrarunt, carere decernas commodo earundem, et ecclesias, contra quas fuerint impetratae, non permittas earum occasione vexari, revocando in irritum, si quid earum praetextu inveneris esse factum.

Chapter XXXII

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

Gregory IX to the Archbishop of Milan.

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

> Receptus per literas apostolicas, licet praebendam exspectet, per alias literas hoc supprimentes in alia ecclesia recipi non debet. Hoc dicit inhaerendo verbis literae.
>
> Gregorius IX. Archiepiscopo Mediolanensi.

In nostra proposuisti praesentia, quod nonnulli clerici a sede apostolica plures literas, non tamen alias de aliis mentionem facientes, impetrant fraudulenter, ut in pluribus ecclesiis admittantur, sicque aliquando in aliis recepti, licet nondum in eis ecclesiasticum beneficium sint assecuti, alias ecclesias super receptione sua nihilominus impetunt et molestant. (Et infra:) Mandamus, quatenus eos clericos ecclesiis, in quibus recepti sunt, faciens esse contentos, non permittas alias ab eis occasione literarum huiusmodi molestari, nisi de receptione forte sua expressam fecerint mentionem.

Chapter XXXIII

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

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

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

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

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

Non valet rescriptum, quod procurator revocatus et de hoc certificatus extra iudicium impetravit; secus tamen, si in iudicio, dummodo revocatio ad notitiam adversarii vel iudicis non pervenerit. Hoc dicit secundum lecturam magis communem.

Idem Episcopo Silvanectensi, et Abbati Caroliloci.

Ex parte decani et capituli Laudunensis fuit propositum, quod, quum ipsi auctoritate apostolicae indulgentiae in nobilem virum I. excommunicationis sententiam protulissent, procuratoribus partium

propter hoc ad sedem apostolicam accedentibus, et lite super diversis articulis contestata, nos causam vobis commisimus terminandam, hoc adiecto, ut non obstarent literae praeter assensum partium impetratae. Dictus autem nobilis citatus proposuit, quod per illas literas procedendum non erat ex eo, quod V., qui easdem literas impetraverat, falsus exstiterat procurator, quum ipse ante impetrationem literarum ipsarum, propter suspicionem, quam contra eundem conceperat, mandatum sibi traditum revocasset. Eis igitur proponentibus ex adverso, quod ad nos vel ad ipsos huiusmodi revocatio non pervenit, vos, quod deberetis per literas ipsas procedere, per quandam interlocutoriam protulistis. (Et infra:) Petente itaque procuratore ipsorum, ut inspiceretis praedictam indulgentiam, procurator ipsius nobilis ex adverso respondit, quod non erat per iam dictas literas procedendum, exhibens alias quasdam posterius impetratas, inter alia continentes, ut, si de partium voluntate procederet, causam terminaretis eandem; alioquin ipsam sufficienter instructam remitteretis ad sedis apostolicae examen cum indulgentia memorata. Quas literas ipsi ex eo non valere dicebant, quia per eundem V. et post revocationem mandati fuerant impetratae. Quia vero iuxta generalis statuta concilii apostolicae literae, quas sine speciali mandato domini quis impetrat, valere non debent, nisi sit de illis personis, a quibus non est exigendum de iure mandatum, mandamus, quatenus, si revocatio mandati ad procuratorem pervenit, quum minus valere debeant literae, quae impetrantur ab illo, a quo mandatum dominus revocavit, in negotio iuxta priorum continentiam literarum, non obstantibus posterioribus, procedatis.

Chapter XXXIV

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

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

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

Rescriptum, impetratum contra hominem alicuius dioecesis, non extenditur ad hominem eiusdem nominis alterius dioecesis.

Idem Decano et Magistro G. Canonico Leodiensi.

Significante V. nos noveritis accepisse, quod, quum R. contra V. Remensis dioecesis super quibusdam pannis et aliis ad iudices literas impetrasset, idem V. excipiendo proposuit, quod, quum idem non de Remensi, sed de Leodiensi dioecesi exsisteret, per huiusmodi literas, quum de dioecesi Leodiensi non facerent aliquam mentionem, conveniri de iure non poterat, nec debebat. Et quia exceptionem huiusmodi admittere denegarunt, nostram audientiam appellavit. Ideoque mandamus, quatenus, si est ita, revocato in irritum, etc.

Chapter XXXV

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

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

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

> Per rescriptum, impetratum contra homines dioecesis, non possunt conveniri homines civitatis.
>
> Idem Priori sancti Laudinensis, et Succentori Rothomagensi.
>
> Rodulphus clericus, rector ecclesiae sancti Christophori de civitate Sagiensi sua nobis insinuatione monstravit, quod, quum magister R. eum per quasdam literas, contra episcopum Sagiensem et quosdam alios Sagiensis dioecesis super reditibus et rebus aliis impetratas a nobis, corum iudicibus super eadem ecclesia per generalem clausulam: "quidam alii" convenisset, idem rector proposuit excipiendo, quod, quum esset de civitate Sagiensi, et sub eadem clausula nullus de civitate ipsa intelligitur inclusus, conveniri non poterat per eandem. Et quia dicti iudices exceptionem huiusmodi recusarunt admittere, nostram audientiam appellavit. Ideoque mandamus, quatenus, si est ita, revocetis in irritum, etc.

Chapter XXXVI

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

The same to the Abbot of Saint James.

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

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

> Si conveniendus per clausulam moriatur re integra, successor conveniri non potest.
>
> Idem Abbati sancti Iacobi.
>
> Significavit nobis comitissa Namutensis, quod, quum mortuo comite fratre suo ipsa in eius successerit comitatu, G. et B. per quasdam literas apostolicas contra Tullensem episcopum et quosdam alios clericos et laicos impetratas, eam coram iudicibus, ad quos obtentae fuerant, super quadam summa pecuniae, quam eidem fratri suo se mutuasse dicebant, per illam generalem clausulam: "quidam alii," quia in praedicto comitatu successerat, convenerunt. Excipiente itaque procuratore suo, quod, quum adhuc frater eiusdem mulieris viveret, quando eaedem literae impetratae fuerunt, nec per ipsas, dum viveret, fuerat ad iudicium evocatus, earum auctoritate non poterat conveniri. Et quia iudices

exceptionem non admittebant ipsius, nostram audientiam appellavit. (Et infra:) Ideoque mandamus, quatenus, si est ita, revocato in irritum, etc.

Chapter XXXVII

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

The same to the Abbot of Saint Victor.

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

Non valent literae exsecutoriae, in quibus impetrans falso dixit, monitorias praecessisse.

Idem Abbati sancti Victoris.

Ex insinuatione episcopi Ambianensis accepimus, quod I. clericus super eius provisione ad ipsum praeceptorias, et postmodum ad vos exsecutorias contra eum literas impetravit. (Et infra:) Quocirca mandamus, quatenus, si nullae monitoriae super hoc praecesserint, exsecutoriis supersedeatis eisdem, dummodo eaedem exsecutoriae de monitoriis fecerint mentionem; alioquin in exsecutionis negotio iuxta directum ad vos pro ipso mandatum ratione praevia procedatis.

Chapter XXXVIII

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

The same to the Bishop of Noyon.

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

Cessantibus clausulis in dubio Papa non intendit gravare eundem collatorem super provisione duorum; ideo secundus impetrans repellitur, sive primus exspectet, sive sit iam gratiam consecutus. Hoc dicit secundum intellectum Gloss.

Idem Noviensi Episcopo.

Mandatum apostolicum ad te directum, ut magistrum S. faceres in canonicorum recipi et in fratrem Noviensis ecclesiae, si pro alio ibidem non scripsimus, qui huiusmodi gratiam prosequatur, alio iam beneficium per nostras literas obtinente prosequi non teneris, quum super receptione duorum gravandi ecclesiam antedictam non fuerit intentio mandatoris.

Chapter XXXIX

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

The same.

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

> Ecclesia, in qua Papa primus dedit monitorias, et secundus exsecutorias, per primum, non per secundum intelligitur gravata.
>
> Idem.
>
> Literis apostolicis ad vos directis, ut G. clericum reciperetis in canonicum et in fratrem, nisi pro alio fuisset per nos ecclesia vestra gravata, mandatum nostrum vos exsequi volumus et mandamus; non obstante, quod T. subdiaconum per nostras literas exsecutorias recepistis, qui a bonae memoriae H. praedecessore nostro monitorias impetravit, quum factum praedecessoris nostri potius, quam nostrum fuerimus prosecuti.

Chapter XL

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

The same.

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

> Dioecesanus, cui scribitur, ut in dioecesi sua, ubi pro alio scriptum non est, provideat vel faciat provideri, non potest id exsequi circa beneficium spectans ad collationem alterius, iam pro alio gravati.
>
> Idem.
>
> Abbatem, qui mandatum apostolicum iam recepit, ut S. clerico in aliqua ecclesiarum sui monasterii provideret, et per literas generales ad dioecesanum episcopum obtentas, ut in dioecesi sua, ubi pro alio scriptum non esset, faceret provideri, cogi iuris ratio non permittit, nec super conferendis ecclesiis aut beneficiis aggravari, etiamsi facultatem habeat dioecesanus per easdem literas providendi.

Chapter XLI

Latin source headnote: By a rescript directed to the person who imposed an excommunication, ordering him to absolve the excommunicated person if he excommunicated him contrary to the

council, with executors appointed to execute it if he does not obey, cognizance is committed not to the person who imposed the excommunication but to the executors.

The same.

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

> Per rescriptum directum excommunicatori, ut absolvat excommunicatum, si contra concilium eum excommunicavit, datis exsecutoribus, qui eo non parente exsequantur, non excommunicatori, sed exsecutoribus cognitio demandatur.
>
> Idem.
>
> Ab excommunicato, qui contra statuta concilii generalis asserit se ligatum, literis ad excommunicatorem obtentis, ut, si est ita, sine difficultate absolvat eundem, et aliis deputatis iudicibus, qui, eo non parente, mandatum apostolicum exsequantur, non excommunicatori, qui de facto suo certus esse debet, licet in hoc deferatur eidem, sed illis cognitio demandatur.

Chapter XLII

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

The same.

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

> Si impetrans rescriptum ad beneficium, dixit se non beneficiatum, quum tamen haberet beneficium, licet exiguum, non valet rescriptum.
>
> Idem.
>
> Si proponente aliquo, nondum se beneficium ecclesiasticum assecutum, super provisione ipsius, licet minus competens obtinentis, rescriptum apostolicum de hoc mentionem non faciens impetretur, illud veluti fraudulenter obtentum dicimus non valere.

Chapter XLIII

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

The same to the Bishop of Paris.

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

- those who deliver letters obtained in their own name to others of the same name, who unduly weary through those letters whomever they wish;
- those who receive them in this manner;
- those who cause persons against whom they have no dispute to be summoned to judgment;
- those who extend the letters to future controversies which had not yet arisen at the time they were obtained;
- those who draw anyone concerning one affair—or even maliciously concerning several personal actions which could more conveniently be tried before one judge—before different judges through various letters, so that, wearied by labor and expense, he may be compelled either to make a settlement or to yield his right; and
- a defendant who causes the claimant to be cited at the same time to different places, or without specification to a town which has a name in common with several towns of the same province, so that, when he does not appear, he may be excommunicated as contumacious and thus repelled from his claim.

> Abutentes rescripto apostolico in casibus hic enumeratis, privantur commodo rescripti, et condemnantur in sumptibus et damnis adversario.
>
> Idem Episcopo Parisiensi.
>
> Quia nonnulli diversis modis literis apostolicis abutuntur, statuimus, ut, quicunque obtentas sub nomine suo literas aliis eiusdem nominis tradunt, qui quos volunt fatigant indebite per easdem, et qui eas tali modo recipiunt, quique illos, contra quos nihil habent quaestionis, faciunt in iudicium evocari, aut literas ipsas ad futuras trahunt controversias, quae nondum fuerant tempore impetrationis exortae, seu quemquam super uno negotio, vel etiam malitiose super pluribus personalibus actionibus, quae sub uno iudice possent tractari commodius, per varias literas coram diversis iudicibus trahunt, ut laboribus fatigatus et sumptibus vel compellatur componere, vel cedere iuri suo, aut reus actorem eodem tempore ad diversa loca, vel indeterminate ad villam, quae commune cum pluribus eiusdem provinciae villis habet vocabulum, citari procurat, ut, dum non comparuerit, excommunicetur quasi contumax, et sic eum a sua intentione repellat, earundem literarum commodo careant, et adversariis in moderatis expensis ac damnis, quae propter hoc eos pertulisse constiterit, condemnentur.

Title IV: On Custom

Chapter I

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

Gregory I, in the Register.

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

> **DE CONSUETUDINE.**
>
> Consuetudo, inferens gravamen ecclesiis, debet iudicis officio tolli. Hoc dicit secundum intellectum magis singularem.
>
> Gregorius I. in Registro.

> Consuetudines, quae ecclesiis gravamen inducere dignoscuntur, nostra nos decet consideratione remittere, [nec illuc etc.]

Chapter II

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

Innocent III to the Archbishop and Chapter of Lund.

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

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

But because, as you assert, a donation of this kind is maliciously obstructed by certain quibblers, you humbly petitioned us to provide with paternal solicitude that religious places and churches upon which many possessions have been conferred under such *scotatio* cannot or ought not rashly to be disturbed by anyone. Therefore, unwilling that such constitutions—which, as you assert, length of time has maintained and the practice of a custom hitherto approved has preserved—should be weakened by any temerity, we command your discretion by apostolic writings to cause donations of those things which, by virtue of the custom, are piously and providently conferred, or have already been conferred, upon cloisters, churches, or any religious places to be irrevocably observed, since a sign of this kind, which is called *scotatio*, is clear evidence not so much of a donation made as of possession delivered. If you find any contradictors or rebels, relying upon apostolic authority you are to restrain them through ecclesiastical censure, warning having first been given and the obstacle of appeal removed. [Given at the Lateran, on the sixteenth day before the Kalends of December, 1198.]

> Ex consuetudine potest introduci actus sive solennitas, per quam sine apprehensione reali transfertur possessio rei absentis. H. d. et est casus singularis secundum Abbatem Siculum.
>
> Innocentius III. Archiepiscopo et Capitulo Lugdunensi.
>
> Ex literis, quas tu nobis, frater archiepiscope, destinasti, intelleximus manifeste, quod regnum Daciae, quantum ad ea, quae ad ius fori contingunt, consuetudinibus suis et institutionibus regum suorum omnino regatur. Unde nullum usum testamentorum illius provinciae habere contingit, qui alibi in ultimis decedentium voluntatibus secundum legalem observantiam custoditur. Si vero quis possessiones aliquas claustris vel aliis religiosis locis in bona valetudine vel ultima voluntate constitutus pro suorum vult remedio peccatorum conferre, hanc ecclesiae conferendi formam esse proponitis, quod in huiusmodi donationibus modicum terrae consuevit in manu accipere, vel in extremitate pallii, quod

manu episcopi vel cuiuslibet alterius praelati ecclesiae sustinetur, aut super ipsum altare aliquo involutum panniculo cum debita humilitate ponendum sub testimonio videntium et audientium, sub dicta forma, quae scotatio vulgariter appellatur. Verum quia huiusmodi donatio malitiose a quibusdam cavillatoribus, sicut asseris, impeditur, a nobis humiliter postulasti, ne loca religiosa et ecclesiae, quibus multae possessiones sub scotatione huiusmodi sunt collatae, ab aliquibus possint vel debeant temere perturbari, paterna debemus sollicitudine providere. Nolentes igitur, ut tales constitutiones, quas diuturnitas temporis, ut asseris, observavit, et usus consuetudinis hactenus approbatae retinuit, temeritate qualibet infirmentur, Discretioni vestrae per apostolica scripta mandamus, quatenus donationes eorum, quae sub obtentu consuetudinis claustris, ecclesiis vel quibuslibet locis religiosis pie ac provide conferuntur vel etiam sunt collata, faciatis irrevocabiliter observari, quum huiusmodi signum, quod scotatio dicitur, non tam factae donationis, quam traditae possessionis sit evidens argumentum, si quos contradictores inveneritis aut rebelles, auctoritate freti apostolica per censuram ecclesiasticam, monitione praemissa, sublato appellationis obstaculo, compescentes. [Dat. Lat. XVI. Kal. Dec. 1198.]

Chapter III

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

The same to the Bishop of Poitiers.

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

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

Non valet consuetudo, ut in causis ecclesiasticis dictum populi pro sententia teneatur.

Idem Episcopo Pictaviensi.

Ad nostram audientiam noveris pervenisse, quod in tua dioecesi etiam in causis ecclesiasticis consuetudo minus rationabilis habeatur, quod, quum aliqua causa tractatur ibidem, et allegationibus et querelis utriusque partis auditis, a praesentibus literatis et illiteratis, sapientibus et insipientibus, quid iuris sit quaeritur, et quod illi dictaverint vel aliquis eorum, praesentium consilio requisito pro sententia teneatur. Nos igitur attendentes, quod consuetudo, quae canonicis obviat institutis, nullius debeat esse momenti, quum sententia a non suo iudice lata nullam obtineat firmitatem, ut in causis ecclesiasticis subiectorum tuorum, postquam tibi de meritis earum constiterit, sententiam proferre valeas, sicut ordo postulat rationis, auctoritate tibi praesentium, praemissa consuetudine non obstante, concedimus facultatem. [Nulli ergo etc. Dat. Lat. XII. Kal. Mart. 1199.]

Chapter IV

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

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

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

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

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

> Consuetudo non potest operari, ut clericus non episcopus possit exercere ea, quae sunt reservata ordini episcopali. Et est casus notabilis. Abb. Sicul.
>
> Idem L. Vicario nostro apud Constantinopolim constituto.
>
> Quanto de benignitate sedis apostolicae locum obtines celsiorem, tanto tibi est sollicitius procurandum, ut te talem exhibeas in agendis, non declinans ad dextram vel ad sinistram, quod non minus re, quam nomine vices apostolicas gerere videaris. Pervenit sane ad audientiam nostram, quod quidam simplices sacerdotes apud Constantinopolim ea sacramenta praesumunt fidelibus exhibere, quae ab Apostolorum tempore rite fuerunt solis pontificibus reservata, ut est sacramentum confirmationis, quod chrismando renatos soli debent episcopi per manus impositionem conferre, ad excusandas excusationes in peccatis et sui erroris fomentum solam consuetudinem praetendentes, quum diuturnitas temporis peccata non minuat, sed augmentet, quae tanto graviora exsistunt, quanto infelicem animam diutius detinent alligatam. Volentes igitur haec et alia, quae oculos divinae maiestatis offendunt, de agro dominico exstirpari, Discretioni tuae per apostolica scripta praecipiendo mandamus, quatenus omnibus latinis presbyteris apud Constantinopolim constitutis districte prohibeas, ne talia de cetero sua temeritate praesumant, quae licet non sint a fidelibus contemnenda, tutius tamen est ea sine periculo ex necessitate, quae legem non habet, omittere, quam ut ab his, quibus ea conferre non licet, ex temeritate, quae lege damnatur, non sine gravi periculo inaniter conferantur, quum umbra quaedam ostendatur in opere, veritas autem non subeat in effectu. [Alios quoque etc. Dat. Lat. XVI. Kal. Dec. 1199.]

Chapter V

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

The same to the Dean and Chapter of Le Mans.

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

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

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

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

We therefore, recognizing that the sinew of ecclesiastical discipline would be broken by such a custom, if any such custom existed, have considered that it should be wholly invalidated with the consent of our brothers, since it is to be regarded not as custom but rather as corruption. We nevertheless grant the same church of Saint Peter, from the benignity of the Apostolic See, that when a general interdict has been imposed in the city it shall be lawful for them to celebrate the divine

offices with doors closed, those excommunicated and under interdict excluded, without bells being rung, and in a subdued voice. [Therefore let no one ... of our definition and concession ...] If anyone, however, [should infringe] the sentence of our definition, etc. [Given on the third day before the Nones of February, in the eighth year of our pontificate, 1206.]

> Non valet consuetudo, per quam interdicti sententia violator.
>
> Idem Decano et Capitulo Cenomanensi.
>
> Quum inter vos ex una parte, et canonicos sancti Petri de Curia ex altera, super eo, quod dicti canonici sancti Petri generale interdictum a venerabili fratre nostro episcopo vestro, vel a vobis in civitate Cenomanensi positum non servabant, quaestio verteretur, utraque pars, ut eadem causa fine posset debito terminari, suum nuncium ad sedem apostolicam destinavit. Partibus igitur in nostra praesentia constitutis per procuratores idoneos audientiam praebuimus liberam et benignam, et quidem ecclesiae vestrae proposuit procurator, quod, quum Cenomanensis ecclesia suo loco et tempore pro excessibus saecularis potestatis interdicto velit supponere civitatem, ecclesia beati Petri de Curia, tanquam membrum suo capiti non cohaerens, campanis palsatis, apertis ianuis divina officia celebrare aliis cessantibus non omisit. Quum autem venerabilis frater noster Oct. Ostiensis episcopus tunc in partibus illis legationis officio fungeretur, iidem ad eius praesentiam accedentes, suam ei super hoc querimoniam exponere curaverunt. Qui, partibus convocatis, et rationibus utriusque diligenter auditis et cognitis, quum pars ecclesiae S. Petri per privilegia sedis apostolicae non posset ostendere se munitam, immo ei firmiter constaret, quod ex superbia potius ad hoc, quam ex causa rationabili ducerentur, sententialiter definivit, quod, quum in civitate Cenomanensi positum fuerit interdictum, illud eadem ecclesia observaret, vinculo quoque excommunicationis ac poenae ordinis et beneficii eos supponens, qui suae ducerent sententiae resistendum. Postmodum vero quum propter quosdam excessus saecularis potestatis tota Cenomanensis civitas supponeretur ecclesiastico interdicto, et ipsis canonicis S. Petri denunciatum fuisset, ut a divinorum celebratione cessarent, et observarent, sicut aliae ipsius civitatis ecclesiae, interdictum, ipsi maiorem temeritatem suae audaciae adiungentes, cum maiori solennitate suum sunt officium exsecuti, venire contra ipsius legati sententiam non verentes. Procurator vero ipsorum proposuit ex adverso, quod ipsa ecclesia sancti Petri a sui fundatione libera exstitit et exempta, et de bonis progenitorum carissimi in Christo filii nostri Ioannis, Anglorum regis illustris fundata fuerat et dotata, firmiter asseverans, et ex hoc suam credens intentionem fundare, quod decanatum et praebendas ipsius ecclesiae idem rex et progenitores sui conferebant dioecesano episcopo inconsulto. Proposuit etiam, quod ex consuetudine tali hactenus eadem ecclesia gavisa fuerat libertate, et hoc multotiens idem vester episcopus recognovit, quod vos parochialem potestis interdicere capellanum, qui extra chorum celebrat ecclesiae ante dictae, allegans de consuetudine antedicta, quod in generali etiam interdicto licitum erat eis, pulsatis campanis, alta voce, interdictis tamen et excommunicatis exclusis, divina officia celebrare. Nos igitur cognito, quod ex tali consuetudine, si qua foret, disrumperetur nervus ecclesiasticae disciplinae, ipsam de consensu fratrum nostrorum penitus duximus irritandam, quum non consuetudo, sed corruptela potius sit censenda, concedentes tamen eidem ecclesiae S. Petri, quod, quum generale in civitate fuerit interdictum, ex benignitate sedis apostolicae licitum sit eis, clausis ianuis, exclusis excommunicatis et interdictis, non pulsatis campanis, submissa voce divina officia celebrare. [Nulli ergo ... nostrae definitionis et concessionis ...] Si quis autem nostrae diffinitionis sententiam etc. [Dat. III. Non. Febr. Ao. VIII. 1206.]

Chapter VI

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

observed.

The same to the Bishop of Ely.

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

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

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

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

> In attribuendis officiis novae dignitati servatur consuetudo vicinarum civitatum. Quae si diversa fuerit, servabitur magis rationabilis et aliis non praeiudicans.
>
> Idem Episcopo Heliensi.
>
> Quum olim venerabilis frater noster Londonensis episcopus nostris auribus intimasset, quod in sua ecclesia proposuerat statuere praecentorum certum reditum assignaturus eidem sine laesione cuiusquam, nos eius precibus inclinati, ei licentiam concessimus praecentorem huiusmodi ordinandi, dummodo in conferendis sibi reditibus nulli inferretur praeiudicium, nihilominus statuentes, ut praecentor taliter institutus in sessionibus, processionibus et aliis illam haberet in Londonensi ecclesia dignitatem, quam habent alii praecentores in aliis ecclesiis Anglicanis. Postmodum autem nostris fuit auribus intimatum, quod, licet idem episcopus dilectum filium B. in eadem instituisset ecclesia praecentorem, quod tamen a vobis fuerat de praelibata dignitate statutum biennio iam elapso exsequi non curarat. Quapropter tibi dedimus in mandatis, ut illud, sublato cuiuslibet contradictionis et appellationis obstaculo, exsequi non postponeres, contradictores per censuram ecclesiasticam compescendo. Noviter vero dilectus filius decanus et quidam alii, personatus habentes in ecclesia memorata, suam nobis transmisere querelam, quod, quum per ecclesias Anglicanas consuetudines sint diversae, ac quidam cantorum minorem, quidam vero maiorem habeant dignitatem, nec possint

dignitares eorum, quum sint vel variae vel repugnantes, convenire simul in unam, is, qui noviter est institutus in ecclesia Londoniensi praecentor, non contentus eo, quod habere potest sine praeiudicio aliorum, occasione literarum nostrarum quasdam ipsius decani et aliarum personarum eiusdem dignitates ecclesiae sibi nititur in eorum praeiudicium arrogare. Quocirca fraternitati tuae per apostolica scripta mandamus, quatenus, si secundum diversas consuetudines locorum diversas habere noveris praecentores in Anglicanis ecclesiis dignitates, iam dictum praecentorem illam habere facias in Londonensi ecclesia dignitatem, eaque appellatione remota manere contentum, quam, rationabilibus et approbatis consuetudinibus ecclesiae salvis, sine praeiudicio alieno poterit obtinere. [Dat. Lat. II. Non. Febr. Pont. nostr. Ao. XI. 1208.]

Chapter VII

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

The same to the Convent of the Monastery of Corvey.

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

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

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

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

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

> Non potest induci ex consuetudine, ut quis possit dimittere dignitatem sine superioris licentia, vel ut possit, electus administrare, non habita confirmatione a superiore.
>
> Idem Conventui Corbiensis monasterii.
>
> Quum venerabilis frater noster episcopus Hostiensis et dilectus filius L. tituli sanctae crucis presbyter cardinalis olim in partibus Alemaniae legationis officio fungerentur, invenerunt abbatem de monasterio Hermionensi, quod ad Romanam ecclesiam noscitur pertinere nullo mediante, ad monasterium Corbiense, quod est etiam Romanae ecclesiae speciale, propria temeritate migrasse, licentia illud deserendi, vel confirmatione a nobis, vel ab ipsis, qui vices nostras in illis partibus tunc gerebant, nec habita, nec petita. [Quumque Northusium advenisset regalia recepturus, iisdem exsistentibus ibidem, ut contemptus eius manifestior appareret, ad eos accedere non curavit, se mandatorum ipsorum exhibens modis omnibus contemptorem. Propter quod dicti legati venerabili fratri nostro Padeburnensi episcopo dederunt firmiter in mandatis, ut eundem ad suam praesentiam evocaret, et praedictis omnibus diligentius expositis coram eo, ipsum ab omni officio et beneficio suspendere non differret, donec nostro se conspectui praesentaret, de contemptu veniam petiturus. Ceterum quum suum nuncium ad eorundem praesentiam destinaret, se super praedictis omnibus per eundem excusans illius terrae allegavit consuetudinem generalem, asserens, quod pro electionis confirmatione vel obtinenda etiam benedictione vel licentia de uno ad aliud monasterium transeundi, summus Pontifex vel eius legati non erant aliquatenus requirendi, quum in illis partibus consuetudo talis hactenus sit servata. Iidem vero legati precibus multorum inducti tam ecclesiasticorum quam saecularium principum, qui eosdem pro ipso instantissime rogaverunt, praedictam sententiam relaxarunt, praefato episcopo Padeburnensi mandantes, ut memorato abbati iniungere non differret, ut usque ad dominicam, qua cantatur "Laetare Ierusalem," proximo praeteritam nuncios suos ad sedem apostolicam destinaret, mandatum nostrum tam super hoc quam aliis eisdem mediantibus nunciis recepturus; quod si facere forte negligeret, ex tunc ipsum in pristinam sententiam reducere non differret, et eam faceret firmiter observari.] Postmodum autem, quum suos ad sedem apostolicam nuncios destinasset, iidem volentes eum multipliciter excusare, nuncii eius ad defensionem ipsius generalem illius terrae consuetudinem allegarunt. Quum igitur haec non tam consuetudo, quam corruptela merito sit censenda, quae profecto sacris est canonibus inimica, ipsam mandamus de cetero non servari. [Dat. Lat. V. Non. Maii Ao. XI. 1208.]

Chapter VIII

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

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

When our beloved son William, a monk of the church of Andres who presented himself as the elect of that same church, and G. Daubins, a monk and proctor of the monastery of Charroux, litigated against one another in our presence concerning the right of electing an abbot in the monastery of Andres and concerning the election of that same William, William petitioned that his election, celebrated unanimously by the brothers of the church of Andres, be confirmed by apostolic authority.

He asserted that, both by common law and by a special privilege granted to them by Pope Alexander of happy memory and afterward confirmed by us, the free authority of electing belonged to those brothers alone.

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

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

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

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

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

the other party replied that, even if the said sentence had perhaps been less than just, they were nevertheless bound humbly to obey it, since it had been promulgated by the diocesan bishop.]

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

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

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

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

> De consuetudine potest induci, quod una ecclesia de gremio alterius teneatur sibi praelatum elegere. Et consuetudo est optima legum interpres.
>
> Idem Decano Salesberiensi, A. Archidiacono et Magistro P. Penetel, Canonico Parisiensi.
>
> Quum dilectus filius Guil. Andrensis ecclesiae monachus, qui pro electo eiusdem ecclesiae se gerebat, et G. Daubins monachus ac procurator monasterii Karofensis super iure eligendi abbatem in Andrensi monasterio, et eiusdem Guilelmi electione in nostra praesentia invicem litigarent, idem Gu. electionem suam a fratribus Andrensis ecclesiae concorditer celebratam auctoritate apostolica petiit confirmari, asserens tam de iure communi, quam de privilegio speciali eis a felicis recordationis Alexandro Papa concesso, et a nobis postmodum confirmato, liberam eligendi auctoritatem ad eosdem fratres tantummodo pertinere. Nam de iure communi omnis congregatio monachorum eligere sibi debet abbatem, et in eiusdem Alexandri privilegio continetur, ut obeunte monasterii Andrensis abbate nullus ibi qualibet subreptionis astutia seu violentia praeponatur, nisi quem fratres vel eorum pars consilii sanioris secundum Deum et beati Benedicti regulam duxerint eligendum. A nobis quoque praedictis fratribus dignoscitur esse concessum, ut licitum sit eisdem, quum ecclesiam suam abbate vacare contigerit, personam idoneam de gremio eiusdem ecclesiae vel aliunde per regularem electionem sibi

praeficere in pastorem Karoffensi monasterio praesentandam, ut ab ipso confirmationem accipiat, et reverentiam ei, quam debet, impendat. Dictus vero Gaufridus procuratur proposuit ex adverso, quod, quum olim ad petitionem comitis Balduini, uxoris et filiorum eius, patronorum ecclesiae Andrensis a bonae memoriae G. Moriensi episcopo fuerit constitutum, quod si praefatus locus divino munere adeo pullularet, ut prior aut abbas constitueretur ibidem, electio eius penes fratres eiusdem loci et capitulum Karofense penderet, et huiusmodi obtentu statuti sic fuerit longe retroactis temporibus observatum, ut monasterio Andrensi vacante, Andrenses fratres in Karofensi capitulo aliquem de gremio monasterii Karofensis sibi eligerent in abbatem, electio praedicti G. tam contra statuti tenorem, quam etiam contra consuetudinem approbatam, quae optima est legum interpres, minus canonice attentata, merito cassari debebat, et mandari fratribus antedictis, ut iuxta quod est hactenus obtentum, procederent ad electionem abbatis, [adiiciens, quod per privilegium supradicti praedecessoris nostri, nec etiam confirmationem nostram praeiudicari poterat monasterio Karoffensi, quum nulla penitus de praedicto statuto et approbata consuetudine habita mentione fuerint per subreptionem obtenta. Proposuit insuper idem G., quod ex alia quoque causa dicta electio cassari debebat, quia videlicet et ab interdictis et de interdicto fuerat celebrata. Quum enim bonae memoriae Lambertus Morinensis episcopus supradictis fratribus dederit in praeceptis, prout in eius patentibus literis perspeximus contineri, ut ad Karoffense monasterium, de cuius gremio eligere debebant abbatem, infra octo dierum spatium accedentes, ibidem eligerent, ut debebant, quod si non facerent, scirent se ab omni officio et beneficio et ecclesiarum ingressu fore suspensos, ipsi mandato episcopi vilipenso infra praefixum tempus, prout debebant, eligere contempserunt. Unde quum post elapsum terminum suspensionis sententia coeperint esse ligati, electio post haec ab ipsis praesumpta debebat irrita iudicari. Ad hoc autem fuit ex adverso responsum, quod quum praedicto modo eligere Andrenses monachi minime tenerentur, episcopo sine causae cognitione hoc praecise mandanti non tenebantur obedire, ac ideo praedicta sententia interdicti eos ligare non potuit, utpote minus rationabiliter promulgata, maxime quum infra terminum ab episcopo constitutum ad Karoffense monasterium accedentes, licentiam petierint de suo monasterio eligendi, licet eam nequiverint obtinere. Contra quod pars altera replicavit, quod, etsi fuisset forsitan dicta sententia minus iusta, humiliter tamen parere tenebantur eidem, quum fuisset a dioecesano episcopo promulgata.] His igitur et aliis, quae coram nobis utrinque fuere proposita, perspicaciter intellectis, Quia nobis constitit, electionem ipsam a suspensis, et de suspenso etiam celebratam, eam de consilio fratrum nostrorum iustitia cassavimus exigente. [Excommunicationis autem et suspensionis in ipsum Guilelmum et alios monachos Andrenses, et interdicti sententias in eorum ecclesias a venerabili fratre nostro Silvanectensi episcopo et coniudicibus eius post appellationem ad nos interpositam promulgatas ad cautelam duximus relaxandas.] Ceterum quum supradictum statutum, videlicet, quod penes fratres eiusdem loci et capitulum Karoffense pendeat abbatis electio, ita sane posset intelligi, quod per illud nec iuri communi, nec [apostolico] privilegio derogetur, ut videlicet ad saepedictos fratres electio spectet abbatis, et ad Karofense capitulum confirmatio, devotioni vestrae praesentium auctoritate mandamus, quatenus, auditis hinc inde propositis, si ex parte Karofensis coenobii talis fuerit consuetudo probata, quae iuri communi praeiudicet, in hac parte vos secundum illam consuetudinem decernatis electionem Andrensis abbatis de cetero faciendam; alioquin, quodsi talis consuetudo probata non fuerit, per quam in hoc casu praeiudicetur iuri communi, vos Andrensibus monachis ius eligendi abbatem sublato appellationis obstaculo adiudicare curetis, ut sic de cetero liberam habeant facultatem vel de gremio ecclesiae suae, vel etiam aliunde, per electionem canonicam eligendi personam idoneam in abbatem praesentandam Karofensi capitulo, ut ab eo, si fuerit canonica [electio], confirmetur. [Porro etc. Dat. Lat. III. Non. Ian. Ao. XI. 1209.]

Chapter IX

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

Honorius III to the Chapter of Paris.

Since the authority of custom and long-standing usage is not slight, and innovations very often produce discord, by authority of the present writings we prohibit you from altering the constitutions of your church and your approved customs, or even introducing new ones, without the counsel and consent of our venerable brother your bishop. If perhaps you have made any to the prejudice of that bishop since he obtained the governance of the church of Paris, we decree them invalid. [On the sixth day before the Nones of March, in the fifth year of our pontificate, 1221.]

> Capitulum sine episcopo statuta seu consuetudines novas facere vel antiquas immutare non potest.
>
> Honorius III. Parisiensi Capitulo.
>
> Quum consuetudinis ususque longaevi non sit levis auctoritas, et plerumque discordiam pariant novitates, auctoritate vobis praesentium inhibemus, ne absque venerabilis fratris nostri episcopi vestri consilio et consensu immutetis ecclesiae vestrae constitutiones et consuetudines vestras approbatas, vel novas etiam inducatis; si quas forte fecistis in ipsius episcopi praeiudicium, postquam est regimen Parisiensis ecclesiae adeptus, irritas decernentes. [VI. Non. Mart. Ao. V. 1221.]

Chapter X

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

The same to the Mayor and Burgesses of La Rochelle.

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

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

> Non valet consuetudo, per quam quis inducitur ad peccandum vel bona propria dissipandum.
>
> Idem Maiori et Burgen. de Rupella.
>
> Ex parte vestra fuit propositum coram nobis, quod quum in patria vestra servatae sint hactenus duae consuetudines abusivae, quod si forte indigena vel extraneus prodigalitatis vitio, vel incuria, seu quocunque casu alio dissipaverit vel amiserit omnia bona sua, bona uxoris suae, quantumcunque

> laudabilis et honestae vitae, tam mobilia quam immobilia, pro suae voluntatis libito alienat, quare fit interdum, ut, viro defuncto, uxor remaneat indotata, et superstites filii extremae subiaceant incommodis paupertatis; et, quod si vir ducat uxorem, quae fide coniugii violata committat adulterium manifeste, nihilominus ipsa medietatem omnium bonorum, quae fuerit vir adeptus, impudenter exigit et improbe apprehendit, quae potius privanda esset omnibus viri bonis, quare super his provideri vobis per apostolicam sedem suppliciter postulastis. Nos itaque saluti et utilitati vestrae provide consulere cupientes, Tenore praesentium declaramus, vos non teneri ad huiusmodi consuetudines tanquam iuri contrarias observandas.

Chapter XI

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

Gregory IX.

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

> Consuetudo non derogat iuri naturali seu divino, cuius transgressio peccatum inducit; nec positivo, nisi sit rationabilis et praescripta.
>
> Gregorius IX.
>
> Quum tanto sint graviora peccata, quanto diutius infelicem animam detinent alligatam, nemo sanae mentis intelligit, naturali iuri, cuius transgressio periculum salutis inducit, quacunque consuetudine, quae dicenda est verius in hac parte corruptela, posse aliquatenus derogari. Licet etiam longaevae consuetudinis non sit vilis auctoritas, non tamen est usque adeo valitura, ut vel iuri positivo debeat praeiudicium generare, nisi fuerit rationabilis et legitime sit praescripta.

Title V: On the Postulation of Prelates

Chapter I

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

Innocent III to the Dean and Chapter of Sens.

To these matters in blessed Peter ... (*And below:*) Indeed, since the church of Sens has always been devoted to the Roman Church, not undeservedly do we share in the suffering of that church and grieve with its sorrows, since it has been bereaved of a pastor who, although noble by birth, was nevertheless, as we believe, nobler in holiness. (*And below:*) We grieve further that another grief has supervened upon the excessive grief which the church of Sens had conceived at the death of so great a father. For when it had scarcely risen from the funeral office for so mournful a death, and the obsequies of so great a father had scarcely been worthily celebrated, the king himself, unjustly

moved, occupied the possessions belonging both to the table of the archbishop and to that of the canons—not as was fitting or as he ought, but as he wished and was able—and also compelled into exile the persons who, by our mandate, had suspended their organs. (*And below:*)

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

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

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

For although the cardinal himself had departed from the kingdom of the Franks, he had not yet passed beyond the boundaries of his legation, since he had received from us the solicitude of the legation entrusted to him not only in the kingdom of the Franks but also in the provinces of Vienne, Lyon, and Burgundy. Moreover, he did not issue the said sentence of interdict but rather published it; nor was he its author, but more truly its executor. Hence, since according to canon and civil law it is not lawful to appeal from executors unless perhaps they exceed the proper measure in executing, and since in the letters directed to him concerning this we took care to prohibit the obstacle of appeal, deference was not to be shown to an appeal of this kind. The cardinal certainly did not defer to it, but rather delayed so that he might more conveniently fulfill our mandate elsewhere.

Meanwhile it was not for them to interpret our mandate or to challenge the cardinal's interpretation, since they ought rather to have trusted him. When he departed from us he understood more fully the

good pleasure of our will concerning the mandate, and he received our mandate from us, through which the meaning of our mind was more clearly revealed to him. Moreover, in doubt the way of obedience was to be chosen as the safer course rather than at last declining into disobedience, since according to the testimony of the prophet, refusing to acquiesce is the sin of divination and refusing to obey is the crime of idolatry.]

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

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

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

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

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

DE POSTULATIONE PRAELATORUM.

Impostulabilis est qui violat interdictum. H. d. quoad titulum; habet enim multa alia dicta, quae non faciunt ad tit.

Innocentius III. Decano et Capitulo Senonensi.

Ad haec in B. Petro (Et infra:) Sane, quum ecclesia Senonensis semper fuerit ecclesiae Romanae devota, non immerito ipsius ecclesiae passioni compatimur et doloribus condolemus, quum eo sit viduata pastore, qui, etsi nobilis esset genere, nobilior tamen fuit, sicut credimus, sanctitate. (Et infra:) Dolemus insuper quod dolori nimio, quem de tanti patris obitu conceperat ecclesia Senonensis, dolor alias supervenit, quum ea vix surgente ab officio funeris tam funesti, vix digne celebratis exsequiis tanti patris, rex ipse iniuste commotus possessiones ipsius tam ad mensam archiepiscopi, quam canonicorum atiam pertinentes, non ut decuit vel debuit, sed ut voluit et valuit, occupavit, et personas etiam, quae de mandato nostro suspenderant organa sua, compulit exsulare. (Et infra:) Quumque propter persecutionem instantem et diffidentiam animorum, quam in talibus et zelus movet interdum, et usus excusat, de facili non possetis in unum locum et propositum convenire, sed ad nos fuisset ab aliquibus appellatum, tandem non sine difficultate convenientes in unum, Altissiodorensem episcopum in archiepiscopum unanimiter postulastis, postulationem vestram per magistrum R. praecentorem vestrum, virum in utroque iure peritum, honestum, providum et discretum, qui apud nos super assumpti promotione negotii fideliter institit, et de contingentibus nihil omisit, et per abbatem S. Petri, et per vestras etiam literas exponentes et petentes humiliter, ut faciendae translationi favorem apostolicum et pium praeberemus assensum, considerata praesertim persecutione, quae communiter instat ecclesiae Gallicanae, ac necessitate, quae incumbit specialiter ecclesiae Senonensi. Verum quoniam antequam idem magister ad sedem apostolicam accessisset, audieramus a multis, immo etiam nobis quasi pro certo constabat, quod idem episcopus interdicti sententiam non servasset, quod etiam idem magister non negavit, in nostra et fratrum nostrorum praesentia requisitus a nobis, in ipsius episcopi excusationem allegans, quod sententiam latam servare nullatenus tenebatur, quae ad eius notitiam nec per literas nostras, nec per dilectum filium P. S. Mariae in Via lata diaconum cardinalem tunc apostolicae sedis legatum, qui eandem sententiam promulgarat, nec per deputati ad hoc exsecutoris mandatum vel literas pervenisset, et quod in Altissiodorensi dioecesi rex ipse terram propriam non haberet, et quod eadem Altissiodorensis dioecesis ex alia causa fuerat interdicta. [Ceterum nuntii Remensis archiepiscopi et aliorum quorundam prius ad apostolicam sedem accesserant, ad excusandas excusationes in peccatis, occasiones quasdum frivolas praetendentes, scilicet quod dictus legatus post appellationem ad nos interpositam, cui visas fuerat detulisse constitutus iam extra fines regni Francorum in terram regis ipsius sententiam tulerat interdicti et modum excesserat in exsequendo, et quod ad quosdam eorum ipsius litterae non pervenissent. Sed si considerassent diligentius veritatem, quum scirent, quod frustra iacetur rete ante oculos pennatorum se sicut non poterant non debuerant taliter excusare, quum in accusationem potius excusatio convertatur. Licet enim Cardinalis ipse regni Francorum exiisset, nondum tamen fuerat metas suae legationis egressus quum non solum in regno Francorum sed in Viennensi, Lugudenensi et Burginensi provinciis iniunctam sibi a Nobis legationis sollicitudinem suscepisset. Praetera dictam interdicti sententiam ipse non edidit, sed potius publicavit, nec fuit dictator ipsius, sed verius exsecutor. Unde quum secundum ius canonicum et legale ab executoribus non liceat appellari nisi forsan modum excederent in exsequendo, et nos in litteris super hoc directis ad ipsum appellationis curavimus obstaculum inhibere, appellationi huiusmodi non fuerat deferendum, cui non profecto cardinalis ipse non detulit sed distulit potius, ut alibi mandatum nostrum commodius adimpleret. Interea non erat ipsorum nostrum interpretari mandatum nec interpretationem arguere cardinalis, cum ei potius credere debuissent, qui quum a Nobis recederet intellexit plenius nostrae super ipso mandato beneplacitum voluntatis, et nostrum

mandatum recepit a nobis per quod ei liquidius mentis nostrae patuit intellectus. In dubio insuper via obedientiae tanquam tutior erat eligenda potius quam ad inobedientiae demum declinandum, quum iuxta propheticum testimonium crimen ariolandi sit nolle acquiescere et scelus idolatriae nolle obedire.] Quod nec sufficit, immo nec proficit ad excusationem praedicti Altissiodorensis episcopi, et aliorum similium, quod mandatum nostrum et cardinalis eiusdem, vel exsecutoris etiam ad se per speciales literas ad ipsos directas vel speciale mandatum non pervenisse proponunt; quum cardinalis idem sententiam interdicti, praesentibus multis archiepiscopis et episcopis, solenniter ac publice promulgaverit, et eadem interdicti sententia in regno Francorum iam a multis publice coeperit observari; nec sit necessarium, quum constitutio solenniter editur aut publice promulgatur, ipsius notitiam singulorum auribus per speciale mandatum vel literas inculcare; sed id solum sufficit, ut ad eius observantiam teneatur, qui noverit eam solenniter editam aut publice promulgatam; quum et contra quosdam, qui Sardicense concilium non servabant, tanquam illud non habuerint aut perceperint, canonica tradat auctoritas, quod eis non facile facultas credendi tribuitur, quum idem penes illos in suis regionibus actum fuerit et receptum. Nec valet, quod in Altissiodorensi dioecesi dictus rex terram propriam dicitur non habere, quum nos terram totam regis ipsius subiici mandaverimus interdicto, et cardinalis, nostrum interpretatus mandatum, in terram illam sententiam promulgaverit, quae regi tunc temporis adhaerebat. Quodsi episcopatus eius ex alia causa fuerat interdictus, interdicti sententiam et tenebatur fortius, et poterat facilius observare. Sed inde liquido constat, saepe dictum episcopum sufficienter excusari non posse, quod suam metropolitanam ecclesiam generalis interdicti sententiam et recepisse noverat et servare. Ideoque unus eorum exstiterat, qui deliberantes super eadem sententia communi consilio decreverunt, sed erraverunt, ut ipsam sententiam non servarent, quum, si verbum Apostoli Petri de Clemente dicentis diligentius attendissent, commonitionem super hoc non debuerint exspectare, sed obsecundare prudenter et humiliter obedire. Nos igitur, qui secundum Apostolum prompti sumus inobedientiam omnem ulcisci, eiusdem episcopi Altissiodorensis inobedientiam attendentes, ne nil obedientia prodesse videretur humilibus, si contemptus contumacibus non obesset, quum iuxta canonicas sanctiones quaedam sint culpae, in quibus culpa est relaxare vindictam, habito cum fratribus nostris super hoc diligenti tractatu, quantumcunque vobis tanquam obedientiae filiis deferre vellemus, postulationem tamen huiusmodi non propter postulantem ecclesiam, sed propter postulatam personam repulimus ut indignam. Licet autem ex eo, quod hominem, qui vestro non conveniebat proposito, postulastis, quum vos interdicti sententiam servaretis, et ipse tamen eam contemneret observare, permissa vobis facile abusi fueritis potestate, ac ideo vos ea non immerito privare possemus, quum iuxta divinae legis edictum non liceat vestem induere de lana linoque contextam: ne tamen vestrae videamur devotionis ingrati, de solita tamen apostolicae sedis benignitate concedimus, ut vobis et eidem ecclesiae per postulationem indoneam seu electionem canonicam de persona congrua consulatis.

Chapter II

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

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

We regard it as pleasing and acceptable, and greatly commend your fraternity, that you prudently and effectively attended to the promotion of our venerable brother P., formerly Bishop of Cambrai but now Archbishop of Sens. We learned from your letters that you commanded the canons of Sens—whose postulation had been quashed by our authority, although they had fraudulently suppressed the letters of quashing—to proceed concordantly and canonically to an election. You also added that,

unless perhaps they concordantly directed their votes to such a person as ought deservedly to obtain your assent, you would afterward do concerning provision for that church what you believed expedient.

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

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

> Qui postulationem cassatam vitio personae innovat est eligendi et postulandi potestate privatus.
>
> Idem Hostiensi Episcopo apostolicae sedis Legato.
>
> Gratum gerimus et acceptum, et fraternitatem tuam plurimum commendamus, quod ad promotionem venerabilis fratris nostri P. quondam Cameracensis episcopi, nunc autem archiepiscopi Senonensis, prudenter et efficaciter intendisti. Accepimus autem ex literis tuis, quod canonicis Senonensibus, quorum postulatio, quam fecerunt, nostra fuit auctoritate cassata, licet cassationis literas suppressissent in fraudem, ut concorditer et canonice ad electionem procederent, mandavisti, adiiciens etiam, quod, nisi forsitan in talem personam concorditer vota sua transferrent, pro qua merito tuum obtinere deberent consensum, de provisione ipsius ecclesiae postmodum faceres quod crederes expedire. Quumque plures eorum postulationem cassatam a nobis innovare denuo niterentur, quidam vero episcopum Cameracensem in archiepiscopum postularent, tu intelligens, eos, qui cassationem nostram quodammodo revocare volebant, eligendi privilegium amisisse, quia concessa sibi ex apostolicae sedis benignitate abuterentur temere potetaste, ac ideo ad alios, licet pauciores numero, quantum tamen ad hoc pertinet, consilio saniores, eligendi vel postulandi devolutam esse licentiam, praedictum Cameracensem ad eorum instantiam in pastorem auctoritate fretus apostolica providisti, et deputasti ad regimen ecclesiae Senonensis. Nos igitur, tanto id magis gratum et ratum habentes, quanto in eius promotione de mandato nostro et beneplacito potius processisti, a sollicitudine Cameracensis ecclesiae ipsum reddidimus absolutum, ut liberius gerat curam metropolis Senonensis, quod a te de mandato nostro factum est auctoritate apostolica confirmantes.

Chapter III

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

The same to the Clergy of the Church of Ravenna.

When William, your archbishop of good memory, had entered upon the way of all flesh, you intimated his death to us through your letters. We commanded you to elect canonically as your

pastor a suitable person who would persist in devotion to us. Afterward, when, having received our letters, you treated concerning the election of a pontiff to be substituted, your votes were divided in different directions. For certain of you postulated our beloved son S., cardinal-priest of the title of Saint Praxedes, while certain others postulated our venerable brother the Bishop of Imola.

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

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

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

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

> Postulatio, per quam privata vel minor utilitas communi vel maiori praefertur, vel quae fit a minori quam a tertia parte collegii, admitti non debet.
>
> Idem Clericis Ravennatis ecclesiae.
>
> Bonae memoriae Guil. archiepiscopo vestro viam universae carnis ingresso, eius nobis obitum per vestras literas intimastis. Nos autem vobis dedimus in mandatis, ut personam idoneam, quae in nostra

devotione persisteret, vobis eligeretis canonice in pastorem. Quumque vos postmodum, receptis literis nostris, super electione substituendi pontificis tractaretis, vota vestra fuerunt in diversa divisa. Nam quidam vestrum dilectum filium nostrum S. tituli sanctae Praxedis presbyterum cardinalem, quidam vero venerabilem fratrem nostrum Imolensem episcopum postulaverunt. Quumque partes postulationes suas per nuncios suos nobis praesentassent, proponebatur ab iis, qui cardinalem postulaverant memoratum, quod plures, quam duae partes vestrum, convenerant in eundem. Verum pars altera proponebat, quod digniores personae postularant episcopum Imolensem, et quod in postulatione ipsius et forma canonica et tenor compromissionis fuerat observatus, quum tanquam suffraganeus Ravennatis ecclesiae postulatus de ipsius gremio exstitisset. Fuerat enim compromissum, ut de corpore Ravennatis ecclesiae vel archiepiscopatu personam eligerent congruentem: quod pars altera frivolum asserebat, quum, etsi talis conditio fuisset adiecta, poterat tamen de Romanae sedis collegio propter ipsius privilegium praefata postulari persona, quum membra capitis a membris corporis censeri non debeant aliena. Nos igitur, auditis, quae de facto hinc inde proposita et de iure insuper fuerant allegata, deliberavimus cum fratribus nostris, et plenius etiam pro utralibet partium curavimus allegare. Consideravimus vero, quod eiusdem cardinalis praesentia utilior sit non solum Romanae, sed etiam ecclesiae generali, tam apud apostolicam sedem, quam apud ecclesiam Ravennatem, et quod maioris meriti sit in huiusmodi necessitatis articulo praeire in sanctae terrae subsidium exercitui Iesu Christi, quam suscipere pondus pastoralis officii. Unde non immerito praeferentes speciali utilitati communem et minori maiorem, praedictum cardinalem postulationi vestrae non duximus concedendum. Attendentes autem ex altera parte, quod praedictus episcopus Imolensis, a minori quam tertia parte fuerit postulatus, et quod apostolica sedes postulationes huiusmodi non consueverit in tanta divisione ac contradictione recipere, quum etiam quando aliquis ab aliis unanimiter postulatur, ad admittendam postulationem earum non tam ex iustitia, quam ex gratia moveatur, postulationem ipsius non duximus admittendam. Monemus igitur discretionem vestram et exhortamur attentius, et per apostolica scripta Mandantes, quatenus infra mensem post susceptionem praesentium cum his, qui vocem in electione habere noscuntur, per electionem, postulationem seu nominationem canonicam in personam idoneam, quae in ecclesiae Romanae devotione persistat, concorditer convenire curetis, et electionem, postulationem seu nominationem vestram per idoneos nuncios sedi apostolicae praesentetis. Veniant autem iidem nuntii parati, ut si forte, quod absit, factum vestrum fuerit exigente iustitia reprobandum, illum recipiunt, quem nos vobis providebimus in pastorem. Alioquin quum eidem. ecclesiae cupiamus sollicitius providere, nullatenus omittemus, quin ei auctoritate apostolica postorem idoneum assignare curemus.

Chapter IV

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

The same to the Provost and Chapter of Esztergom.

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

sought as a matter of favor concerning the appointment of a pontiff for you, but that they denied you [both counsel and assistance].

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

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

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

But before our letters reached you, relying upon the earlier mandate, you recalled to concord the suffragans who were present in the kingdom, with the exception of the aforesaid Bishop of Pécs. Thus the bishops of Vác, Veszprém, and Győr—for the present, and saving their right for the future, which they were setting aside because of the affliction and necessity of the church of Esztergom—humbly petitioned us for the translation of the Archbishop of Kalocsa. The aforesaid Bishop of Nitra wrote that, if it did not please us to admit the election made concerning the Bishop of Pécs, he humbly entreated us for the postulation of the other man without prejudice to his right.

After this, when our mandate had been received, those who had agreed upon the Archbishop of Kalocsa did not, as was proposed before us, wish to withdraw from his postulation, but renewed it. Certain of the canons who had declined to the other party returned to them. With the letters of the

aforesaid king and the suffragans, they sent our beloved sons A., master of the schools, M. the treasurer, A. the archdeacon, and F. and N., canons of Esztergom, to the Apostolic See to seek the grace of dispensation concerning their postulation.

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

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

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

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

Having therefore heard these and other matters proposed on each side and held diligent deliberation concerning them with our brothers, we understood that, even if neither postulation should be approved, provision for the church of Esztergom would henceforth pertain to us according to the tenor of the later rescript. But because we did not have full knowledge of the persons of that kingdom, and therefore could not with a safe conscience fittingly provide for that church in another person originating from the kingdom of Hungary, and because we were unwilling to set a foreigner over it, although it seemed more regular and honorable for a suffragan to ascend to his own metropolitan see than for an archbishop to be transferred from one metropolitan see to another, we nevertheless chose the preferable course.

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

> Archiepiscopus in archiepiscopum postulatur. Et ex quo postulatio praesentata est Papae, non possunt postulantes ab ea recedere; sed debet superioris iudicium exspectari. H. d. quoad titulum.
>
> Idem Praeposito et Capitulo Strigonensi.
>
> Bonae memoriae Guil. archiepiscopo vestro viam universae carnis ingresso, quum in venerabilem fratrem nostrum Colocensem archiepiscopum postulandum a nobis contulissetis unanimiter vota vestra, et regium super hoc obtinuissetis assensum, suffraganei Strigonensis ecclesiae, Quinqueecclesiensis episcopus videlicet et quidam alii, postulationi vestrae se opponere curaverunt, asserentes, quod eis contemptis, qui ius habebant eligendi vobiscum, postulatio eadem fuerat attentata; licet vestri nuncii proponerent ex adverso, quod super praeficiendo vobis pontifice de gratia multotiens suffraganeorum fuerat requisitus assensus, sed ipsi vobis consilium [et auxilium] denegaverunt. Nunciis igitur in nostra praesentia constitutis, et proponentibus adversariis quaedam alia contra postulationis vestrae processum, quae in prioribus literis meminimus nos plenius expressisse, quia nobis de propositis non constabat, ita duximus providendum, ut, si suffraganeis persistentibus in contradictione sua, vos postulationi vestrae velletis instare, usque ad septuagesimam tunc primo venturam per procuratores idoneos, ad omnia sufficienter instructos, ad sedem apostolicam veniretis, ut statueremus utraque parte praesente quod iustitia suaderet; si autem illi a contradictione sua cessarent, et vos instaretis proposito vestro, ad praesentiam nostram mitteretis personas idoneas infra terminum supra dictum, quae super his, quae opportuna forent, nos redderent certiores. Quodsi contradicentibus episcopis memoratis vos contingeret de iure vestro diffidere, ne laborem et dolorem subiretis incassum, aliam personam idoneam provideretis vobis canonice in pastorem. Ceterum, quum inclytae recordationis [H,] rex Hungariae viam fuisset universae carnis ingressus, quidam vestrum, a postulatione vestra, quam nobis praesentaveratis communiter, temere recedentes, aliis persistentibus in eadem, et ad sedem apostolicam appellantibus, praedictum Quinqueecclesiensem episcopum in archiepiscopum postulaverunt. Quorum votis nullus suffraganeorum assensit, excepto duntaxat episcopo Nitriensi. Et licet carissimus in Christo filius noster A. Hungariae rex illustris, tunc dux et regni Hungarici, L. nepotis sui regis nomine, cuius tutelam et regni curam ipsi frater eius commiserat, gubernator, precum suarum primitias ad nos pro praedicti Colocensis postulatione transmiserit, postmodum tamen pro Quinqueecclesiensi episcopo ad Strigoniensem metropolin transferendo nobis per literas suas humiliter supplicavit. Nos igitur, postulationem ipsam, quam invenimus post appellationes interpositas in multa discordia, non solum suffraganeorum, verum etiam canonicorum Strigonensis ecclesiae, ac contra formam mandati nostri regulari ordine praetermisso temere celebratam, illam exigente iustitia non duximus admittendam; sed vobis dedimus in mandatis, ut ad providendum vobis pastorem idoneum per electionem canonicam vel postulationem concordem, requisito suffraganeorum assensu, si esset de antiqua et approbata consuetudine requirendus, infra mensem post susceptionem literarum nostrarum procedere curaretis; alioquin ex tunc, ne gregi dominico deesset diutius cura pastoralis, nos ipsi provideremus ecclesiae viduatae, secundum officii nostri debitum ex plenitudine apostolicae potestatis. Verum antequam ad vos literae nostrae pervenissent, innitentes mandato priori, suffraganeos, qui erant in regno praesentes, praeter praedictum Quinqueecclesiensem ad concordiam revocastis ita, quod Watiensis, Wesprimiensis et Ianviensis

episcopi pro translatione Colocensis archiepiscopi, salvo iure suo in posterum, cui propter afflictionem et necessitatem Strigoniensis ecclesiae supersedebant, ad praesens nos humiliter rogaverunt, praedicto Nitriensi scribente, quod, si non placeret nobis electionem factam de Quinqueecclesiensi admittere, pro postulatione alterius sine praeiudicio iuris sui nos suppliciter exorabat. Post haec autem mandato nostro recepto, hi, qui in archiepiscopum Colocensem covenerant, ab eius postulatione, sicut fuit propositum coram nobis, recedere noluerunt, sed innovaverunt eandem, reversis ad eos quibusdam canonicorum, qui in partem alteram declinarant, cum praedicti regis et suffraganeorum literis dilecti filii A. magistrum scholarum, M. thesauranium, A. archidiaconum, et F. et N. canonicos Strigonienses ad sedem apostolicam destinarunt, super postulatione sua dispensationis gratiam petituros. Ceteri vero, qui Quinqueecclesiensem episcopum postularunt, sicut ex eorum parte fuit propositum coram nobis, convenientes in unum, ceteros canonicos ad capitulum convocarunt, ad postulationem concordem vel electionem canonicam iuxta mandatum apostolicum infra praefixum terminum sibi procedere cupientes. Sed, illis nolentibus convenire, intelligentes, penes se tantum remansisse facultatem liberam eligendi, quia reliqui ius suum prosequi negligebant, praedictum Quinqueecclesiensem episcopum, licet ne id fieret fuisset ab aliis appellatum, denuo postularunt. Quum ergo utriusque partis nuncii ad sedem apostolicam pervenissent, hi, qui pro Quinqueecclesiensi episcopo venerant, proponebant, partem suam iuxta mandatum apostolicum processisse, nec obstare discordiam vel contradictionem eorum, qui iuxta formam mandati nostri procedere contemnentes, illo recepto nec elegerant quenquam canonice, nec concorditer postularant. Unde concors debebat eorum postulatio reputari, quum ceteri, tanquam iussionis apostolicae contemptores, eligendi et postulandi se iure privassent, dum nec postulare nec eligere voluerunt, immo nec etiam ad capitulum convenire. Ad haec autem ex adverso poterat responderi, quod illi, qui Colocensem archiepiscopum postularant, formam secuti fuerant per nostras literas sibi datam, quoniam innitentes postulationi priori, iuxta tenorem priorum literarum nostrarum concordem fecerant, quae fuerat prius discors, dum suffraganeos ad concordiam revocarunt. Nec obstabat eorum discordia, qui alium postularunt, quum prius in postulatione archiepiscopi supradicti convenissetis pariter universi, et consensum vestrum annotatum literis, et subscriptionibus propriis roboratum, petiissetis a nobis per communes nuncios confirmari, nosque vestram recepissemus postulationem diiudicandam, si suffraganei forsitan in contradictione persisterent, vel, si consentirent, aut etiam cederent, approbandam. Si enim, postquam postulatio subscriptionibus postulantium roboratur, et praesentatur Romano Pontifici approbanda, possent ab ea recedere postulantes, nobis frequenter illuderent, et iudicium nostrum ex eorum pendere arbitrio videretur. Poterat quoque addi, quod pars altera mandatum apostolicum non servarat, utpote quae nec postulationem concordem, nec electionem canonicam celebrarat, quum in maiori contradictione quam prius, non solum canonicorum, sed suffraganeorum etiam, ipso rege adversae parti favente, praedictum Quinqueecclesiensem episcopum postulasset. Auditis igitur his et aliis, quae fuerunt hinc inde proposita, et habito super his cum fratribus nostris diligenti tractatu, Intelleximus itaque quod, etsi neutra esset postulatio approbanda, iuxta tenorem tamen posterioris rescripti ad nos de cetero Strigonensis ecclesiae provisio pertineret. Quia vero non plenam de personis illius regni notitiam habebamus, ideoque non poteramus salva conscientia nostra eidem ecclesiae in alia persona, quae de regno Hungariae originem duceret, congrue providere, nec vellemus ei praeficere alienum, quamvis regularius et honestius videretur, si suffraganeus ad metropolim suam accederet, quam archiepiscopus a metropoli ad metropolim transferretur, partem tamen elegimus potiorem, et eundem archiepiscopum, in quem omnes, quorum consensus in electione vel postulatione pastoris requiritur, licet diversis temporibus convenerant, a vinculo, quo tenebatur Colocensi ecclesiae, absolventes, ad metropolim Strigonensem transferimus, et ei licentiam tribuimus transeundi, pallium ei ad nomen et usum eiusdem ecclesiae transmissuri. [Monemus igitur etc. Dat. Romae II. Non. Oct. 1205.]

Chapter V

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

The same to the Chapter of Esztergom.

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

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

Through the same letters they further intimated to us that, since the aforesaid Archbishop of Kalocsa had until those times asserted that the church of Kalocsa was equal to the metropolitan church of Esztergom and had inflicted various and intolerable injuries upon it both in word and deed, they feared not a little that, if he were transferred to the aforesaid metropolitan church, mindful of his own profession and assertion and as though covered with shame lest he seem contrary to himself, he would undertake the advancement of the affairs of the church of Esztergom less effectively. They feared also that he would not cease to oppress those bishops who, according to their duty, had sometimes sternly resisted his words and acts, although according to the canonical sanctions a judge ought not to be given to persons to whom he is suspect.

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

toward the aforesaid Archbishop of Kalocsa so that you might postulate him from us. You supplicated them to petition us by their letters on behalf of your postulation, which they wholly refused to do.

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

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

> Postulatio, contra quam agitur de contempto, potest sine praeiudicio alicuius reiici; potest tamen de speciali gratia admitti. Hoc dicit.
>
> Idem Capitulo Strigonensi.
>
> Postulationem, quam celebrastis [de venerabili fratre nostro I. Colocensi archiepiscopo ad Strigoniensem metropolim transferendo, venerabiles fratres nostri eiusdem metropolis suffraganei, videlicet C. Quinqueecclesiensis, B. Watiensis, R. Vesprimiensis et I. Nitriensis episcopi penitus contradicunt, per suas nobis literis intimantes, quod V. bonae memoriae archiepiscopo vestro viam universae carnis ingresso, eis inconsultis vos, habito ad invicem consilio diligenti, quosdam de concanonicis vestris ad carissimi in Christo filii nostri Ungarorum regis illustris praesentiam destinastis, et quem vobis praefici volebatis nominetenus expressistis. Post dilationem vera non longam, quum ad festum B. Stephani regis iidem episcopi solenniter convenissent, ut super electione Strigoniensis ecclesiae unanimi deliberatione tractarent, vos, ab eisdem episcopis requisiti, quem illi sedi velletis praefici ac praeponi, taliter respondistis, quod nullum auderetis eligere, nisi qui plenam regis gratiam obtineret, et protinus praedictum Colocensem archiepiscopum nominare curastis, adiicientes, quod in electione archiepiscopi suffraganei nihil iuris haberent, quibus ipsi suffraganei responderunt, quod a prima Christianitatis institutione in regno Ungariae usque ad ista tempora nullus ad sedem Strigoniensem fuerat electus, nisi suffraganeis una cum canonicis eligentibus iuxta consuetudinem canonicam et consuetudinem approbatam. Dixerunt etiam, quad prius inquiri deberet, utrum de gremio illius ecclesiae posset utilis et idoneus reperiri, asserentes, quod in ea multi sunt viri honesti, discreti et literati, qui possent illi ecclesiae decentius praesidere. Illud insuper per easdem nobis literas instimarunt, quod, quum praedictus Colocensis archiepiscopus usque ad haec tempora

Colocensem ecclesiam Strigoniensi metropoli asseruerit esse parem, eique tam verbo quam opere varias et intolerabiles iniurias irrogarit, non modicum formidabant, ne, si ad memoratam metropolim transferretur, propriae confessionis et assertionis non immemor, quasi rubore perfusus, ne sibi ipsi contrarius videretur, negotia Strigoniensis ecclesiae minus efficaciter assumeret promovenda, et ipsos episcopos, qui eius verbis et actibus iuxta debitum suum dure quandoque restiterant, opprimere non cessaret, quum tamen, iuxta canonicas sanctiones, iudex aliquibus non debeat dari suspectus. Porro dilecti filii, ... abbas de Bucco et magister Petrus pro rege praedicto, nec non et ... praepositus Posonensis et ... thesaurarius ecclesiae vestrae pro vobis in contrarium allegantes asseruere constantes, ea, quae ab ipsis episcopis proposita fuerant, penitus esse falsa, firmiter proponendo, quod per eundem praepositum et alios ante communem tractatum vocati fuerunt solenniter, et venerunt, eorumque de gratia multoties fuit requisitus assensus; sed, quum super ecclesiae vestrae provisione consilium et auxilium vobis congruum denegarent, vos, ipsi ecclesiae desolatae providere volentes, vocatis praedictis episcopis, convenistis in unum, et vota vestra in praedictum Colocensem archiepiscopum, ut ipsum postularetis a nobis, unanimiter eis praesentibus contulistis, suppliciter exorantes, ut nos suis literis pro postulatione vestra rogarent, quod ipsi facere penitus recusarunt. Praenominatis autem nunciis asserentibus, quod translationem ipsius archiepiscopi urgens necessitas et evidens utilitas exigebant, in ipsa disceptatione fuit propositum coram nobis, quod memoratus archiepiscopus Colocensis, in grave Strigoniensis ecclesiae praeiudicium, vobis reclamantibus et confirmationes sedis apostolicae ostendentibus, filium praedicti regis coronavit in regem, quum non ad Colocensem ecclesiam, sed ad metropolim vestram coronatio regis Ungariae pertinere noscatur; unde tamquam alieni iuris invasor et apostolici statuti contemptor debebat graviter castigari, poteratque verisimili coniectura praesumi, quod, quum ipse querelam contra se ipsum et contra factum proprium non esset moturus, ius ecclesiae vestrae super hoc praetermitteret indefensum, per quod ei grave posset praeiudicium generari, quamvis e contrario fuerit replicatum, quod absque contradictione cuiuslibet et praeiudicio alicuius praescripta coronatio ab universitate fuerat celebrata.] Licet ergo per postulationem huiusmodi nullum ius sit alicui acquisitum, ideoque sine praeiudicio alicuius postulationem potuissemus repellere memoratam; ut tamen vobis, quantum cum Deo possumus, de speciali gratia consulamus, ita duximus providendum, quod, si praedicti pontifices in contradictione persisterent, et vos ad postulationem institeritis obtinendam, quia nobis non constitit de praemissis, usque ad septuagesimam proximo venturam per procuratores idoneos, ad omnia sufficienter instructos, nostro vos conspectui praesentetis, quatenus utraque parte praesente quod iustum fuerit decernamus. [Si autem illi etc. Dat. Romae ap. S. Petr. X. Kal. Dec. 1204.]

Chapter VI

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

Honorius III to the Chapter of Cagliari.

Although your votes unanimously concurred in electing our venerable brother the Bishop of Sutri as archbishop of your church, since, being bound to his own church, he does not have free flight without our permission, with the counsel of our brothers we have considered that the election made concerning him should be invalidated as having been attempted less than lawfully against the canons, since by no law could he be elected, but rather ought to have been postulated.

Wishing nevertheless to concur with your desires by benign favor insofar as we can with God, we have considered that it should be enjoined upon our beloved sons the subdeacon and B., our chaplain, legates of the Apostolic See, that they both inquire into your wishes concerning him and diligently examine the merits of the person in our stead, sending him to us with their letters

containing the truth, so that, if he is found suitable, with the Lord disposing, both he may be usefully provided for in the church and your church in him.

> Episcopus non est eligendus ad aliam dignitatem, sed postulandus.
>
> Honorius III. Capitulo Calaritano.
>
> Etsi unanimiter vota vestra concurrerint ad venerabilem fratrem nostrum Sutrinum episcopum in ecclesiae vestrae archiepiscopum eligendum, quum suae alligatus ecclesiae liberum non habeat sine nostra permissione volatum, electionem de ipso factam, tanquam contra canones minus licite attentatam, de fratrum nostrorum consilio duximus irritandam, quum eligi nullo iure potuerit, sed potius postulari. Volentes tamen quantum cum Deo possumus vestris desideriis concurrere benigno favore dilectis filiis subdiacono et B. Capellano nostris, apostolicae sedis legatis, duximus iniungendum, ut et vota vestra circa ipsum exquirant, et personae merita vice nostra examinent diligentes, eundem ad nos cum literis suis veritatem continentibus destinando, ut si idoneus repertus fuerit, disponente Domino, et ipsi in ecclesia et ecclesiae vestrae utiliter provideatur in ipso.

Title VI: On Election and the Authority of the Elected

Chapter I

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

Pope Lucius.

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

> **DE ELECTIONE ET ELECTI POTESTATE.**
>
> Ecclesiae collegiatae non debet provideri de praelato per collationem seu provisionem, sed per electionem canonicam fiendam per ipsum collegium. H. d. Abbas.
>
> Lucius Papa.
>
> Nullus in ecclesia, ubi duo vel tres fratres fuerint in congregatione, nisi eorum electione canonica presbyter eligatur, et eisdem convocatis, et parochianis, atque in unum consentientibus. Si vero aliter quis ecclesiam adeptus fuerit, eo, quod per cupiditatem illam acquisierit, atque contra canonicae regulae disciplinam egerit, expellatur.

Chapter II

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

From the Council of Sardica.

Bishop Hosius said: "If anyone should be so rash that, perhaps bringing forward such an excuse, he asserts that he received letters from the people, although it is manifest that many of those who do

not have sincere faith could have been corrupted by reward and payment so that they shouted in the church and appeared to seek him as bishop, I judge that these frauds ought entirely to be condemned. Such a man is not even to receive lay communion at the end of his life unless he has repented of this. If this pleases everyone, decree it." The synod answered: "It pleases us."

> Electus ad clamorem populi, non debet per superiorem confirmari.
>
> Ex concilio Sardicensi.
>
> Osius episcopus dixit: Si quis ita temerarius exstiterit, ut fortasse talem excusationem afferens, asseveret, quod literas populi acceperit, quum manifestum sit potuisse plures eorum qui sinceram fidem non habent, praemio et mercede corrumpi, ut clamarent in ecclesia, et ipsum petere viderentur episcopum, omnino fraudes has damnandas esse arbitror ita, ut nec laicam in fine communionem, nisi de hoc poenituerit, talis accipiat. Si vero omnibus placet, statuite. Synodus respondit: Placet.

Chapter III

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

Gregory III.

After [the man who had been elected to the episcopate of the city of Sorrento did not appear suitable to us, they elected Amandus, priest of the oratory of Saint Severinus situated in the *castrum Lucullanum*. Therefore we command your experience to take care, every excuse being set aside, to send that priest to us with all haste, so that] the desires of those seeking confirmation [with Christ's help] may be fulfilled, if there is nothing which impedes the person elected. Since his life and acts can be better known there, where he has lived [for a long time], let inquiry be made there. [And if no, etc.]

> Electio canonica confirmanda est; debet tamen superior ante confirmationem inquirere de conversatione et vita electi, ubi fuit conversatus.
>
> Gregorius III.
>
> Postquam [is, qui ad episcopatum Surrentinae civitatis electus fuerat, aptus nobis visus non est, Amandum presbyterum oratorii S. Severini, quod in castro Lucullano situm est, elegerunt. Ea propter experientiae tuae praecipimus, ut eundem presbyterum excusatione postposita sub omni ad nos studeat festinatione transmittere, quatenus] Confirmationem petentium desideria, [cum Christi auxilio,] si nihil est, quod electum impediat, impleantur. Cuius vita vel actus, quia melius possunt illic, ubi [diu] est conversatus, cognosci, inquirantur ibidem. [Et si nulla etc.]

Chapter IV

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

Paschal to the Archbishop of Palermo.

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

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

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

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

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

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

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

They can despise the Apostolic See; they can lift their heel against us; but they cannot overthrow or take away the privilege given by God, by which it was said to Peter: "You are Peter, and upon this rock

I will build my Church, and I will give you the keys of the kingdom of heaven." Nevertheless, by the decrees of the four councils the manner of giving the pallium was prescribed and the order of profession or obedience was sanctioned [as law].

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

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

> Electo in archiepiscopum sedes apostolica pallium non tradet, nisi prius praestet fidelitatis et obedientiae iuramentum.
>
> Paschalis Panormitano Archiepiscopo.
>
> Significasti, frater carissime, reges et regni maiores admiratione permotos, quod pallium tibi ab apocrisariis nostris tali conditione oblatum fuerit, si sacramentum, quod a nobis scriptum detulerant, exhiberes. In pallio, frater, plenitudo conceditur pontificalis officii, quia iuxta sedis apostolicae et totius Europae consuetudinem ante acceptum pallium metropolitanis minime licet aut consecrare episcopos, aut synodum celebrare. Mirentur in hac causa et Dominum nostrum Iesum Christum, qui, quum ovium suarum curam Simoni Petro committeret, conditionem posuit, dicens: "Si diligis me, Simon Petre, pasce oves meas." Si conscientiarum factor et cognitor secretorum conditione hac usus est, nec semel tantum, sed et secundo, et usque ad contristationem: qua nos sollicitudine, qua provisione oportet tantam ecclesiae praelationem, tantam Christi ovium curam imponere fratribus, quorum conscientias non videmus? illis maxime, quos nullo usu novimus, quorum dilectionem penitus ignoramus? Aiunt omne iusiurandum in evangelio a Domino Deo esse prohibitum, nec ab [ipsis] Apostolis post Dominum, nec in conciliis inveniri posse statutum. Quid est ergo, quod idem Dominus subsequenter ait: "Quod amplius est, a malo est?" Hoc enim amplius ut exigamus, malum nos illo permittente compellit. Nonne malum est ab ecclesiae unitate et a sedis apostolicae obedientia resilire, et nonne malum est contra [sacrorum] canonum statuta prorumpere? Quod quam multi etiam post sacramentum praestitum praesumpserunt? Nonne praedecessor tuus praeter Romani Pontificis conscientiam damnavit episcopum? Quibus hoc canonibus, quibus hoc conciliis legitur esse permissum? Quid super episcoporum translationibus loquar, quae apud vos non auctoritate apostolica, sed nutu regio praesumuntur? Propter haec mala et alia evitanda huiusmodi iuramentum exigitur. Cur autem Dominus iuramentum prohibuerit, Apostolus Iacobus manifeste adiiciens docet, ut non sub iudicium incidatis, ne quisquam, sicut et Augustinus exponit, assiduitate iurandi ad periurium per consuetudinem dilabatur. Quapropter iuratione [quis] non utatur, nisi necessitate, quum videt pigros homines esse ad credendum quod eis utile est credere, nisi iuratione firmetur. Hoc nimirum malo ac necessitate compellimur iuramentum pro fide, pro obedientia, pro unitate requirere. Porro pro auditorum diffidentia Apostolum Paulum iurasse, ipsius epistolae testantur. Aiunt in conciliis statutum non inveniri, quasi Romanae ecclesiae legem concilia ulla praefixerint, quum omnia concilia per Romanae ecclesiae auctoritatem et facta sint, et robur acceperint, et in eorum statutis Romani Pontificis patenter excipiatur auctoritas.

[Nonne in Chalcedonensis concilii actione decima sexta slatutum est, ante omnia quidem primatus honorem praecipuum secundum canones antiquae Romae reverendissimo archiepiscopo conservari? Itaque quod censuerunt rex et magnates a supradicta sacramenti conditione te quiescere, videturne vobis iudicium evangelicum? Videturne primatus nostri honor praecipuus? Numquid animo cecidit illa sententia Domini: non est discipulus super magistrum? Numquid Hungarico principi dictum est: et tu conversus confirma fratres tuos? Numquid haec nos commodi nostri profectione requirimus, et non unitatis catholicae statuimus firmamentum?] Possunt apostolicam sedem contemnere, possunt adversum nos calcaneum elevare, datum a Deo privilegium evertere vel auferre non possunt, quo Petro dictum est: "Tu es Petrus, et super hanc petram aedificabo ecclesiam meam, et tibi dabo claves regni coelorum." Quibus tamen quatuor conciliorum decretis dandi pallii modus praescriptus est, et professionis vel obedientiae ordo sancitus [est]. Quum igitur a sede apostolica vestrae insignia dignitatis exigitis, quae a beati Petri tantum corpore assumuntur, iustum est, ut vos quoque sedi apostolicae subiectionis debitae signa solvatis, quae vos cum beato Petro tanquam membra de membro habere, et catholici capitis unitatem servare declarent. In quibus a praedecessoribus nostris ea est adhibita moderatio, ut nihil iniuriosum, nihil difficile sit appositum, quod non etiam praeter exactionem nostram ab omnibus debeat Episcopis observari, qui sub Apostolorum Petri et Pauli obedientia decreverunt, et unitate persistere. Numquid non ultra vos Saxones, Danique consistunt? Et tamen eorum Metropolitani et idem iuramentum asserunt, et legatos sedis Apostolicae honorifice tractant, et in suis necessitatibus adiuvant et Apostolorum limina per legatos suos non tantum per triennium sed annis singulis visitant. [Ita te etc.].

Chapter V

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

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

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

Si schismaticus ad unionem ecclesiae reversus, eligitur in episcopum, electio non tenet, sed ex dispensatione potest confirmari.

Alexander III. Petro Presbytero cardinali apostolicae sedis Legato.

Quia diligentia tua per dilectum filium nostrum S. a nobis sollicite requisivit, an electionem electi, qui nuper abiurato scismate ad unitatem ecclesiae et devotionem nostram rediit, debeas confirmare: id tibi duximus respondendum, quod, si a schismatico nullum ordinem susceperit, et eius electio unanimiter et concorditer secundum formam canonum fuerit celebrata, eum, dummodo alia non impediant, dispensative permittimus confirmari, mandantes, ut eum facias a catholicis episcopis suffraganeis Aquilegiensi ecclesiae in episcopum ordinari, salva tamen debita iustitia et reverentia eiusdem ecclesiae, quum ad catholicam redierit unitatem.

Chapter VI

Latin source headnote: A person elected Roman Pontiff by two-thirds of the cardinals is Pope, notwithstanding any exception; but a person elected by the smaller number who conducts himself as Pope incurs, together with those adhering to him, the penalties contained here.

The same, in the Lateran Council.

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

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

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

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

> Electus in Romanum Pontificem a duabus partibus cardinalium, nulla exceptione obstante est Papa; electus autem a minori numero gerens se pro Papa, incidit una cum sibi adhaerentibus in poenas hic contentas.
>
> Idem in concilio Lateranensi.
>
> Licet de vitanda discordia in electione Romani Pontificis manifesta satis a praedecessoribus nostris constituta manaverint, quia tamen saepe post illa per improbae ambitionis audaciam gravem passa est ecclesia scissuram: nos etiam ad malum hoc evitandum de consilio fratrum nostrorum et sacri approbatione concilii aliquid decrevimus adiungendum. § 1. Statuimus ergo, ut, si forte, inimico homine superseminante zizaniam, inter cardinales de substituendo summo Pontifice non poterit esse plena concordia, et duabus partibus concordantibus pars tertia concordare noluerit, aut sibi alium praesumpserit nominare, ille absque ulla exceptione ab universali ecclesia Romanus Pontifex habeatur, qui a duabus partibus concordantibus electus fuerit et receptus. § 2. Si quis autem de tertiae partis nominatione confisus, quia de ratione esse non potest, sibi nomen episcopi usurpaverit, tam ipse, quam

ii, qui eum receperint, excommunicationi subiaceant, et totius sacri ordinis privatione mulctentur ita, ut viatici etiam eis, nisi tantum in ultimis, communio denegetur, et si non resipuerint, cum Dathan et Abiron, quos terra vivos absorbuit, accipiant portionem. § 3. Praeterea si a paucioribus quam a duabus partibus aliquis electus fuerit ad apostolatus officium, nisi maior concordia intercesserit, nullatenus assumatur, et praedictae poenae subiaceat, si humiliter noluerit abstinere. Ex hoc tamen nullum canonicis constitutionibus et aliis ecclesiis praeiudicium generetur, in quibus debet maioris et sanioris partis sententia praevalere, quia quod in eis dubium venerit superioris poterit iudicio diffiniri. In Romana vero ecclesia speciale aliquid constituitur, quia non poterit ad superiorem recursus haberi.

Chapter VII

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

The same, in the same council.

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

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

§2. Let no one at all receive lower ministries—such as a deanery, an archdeaconry, and others which have the care of souls annexed—nor the governance of a parish church, unless he has already attained the twenty-fifth year of age and is commendable in learning and morals. When, however, he has been assumed, if an archdeacon has not been ordained to the diaconate, and a dean and the others, after being admonished, have not been ordained to the priesthood within the time appointed by the canons, let them be removed from that office and let it be conferred upon others who are both willing

and able to fulfill it fittingly. Nor let the refuge of appeal profit them if perhaps they wish to protect themselves through an appeal in transgression of this constitution. We command that this be observed not only concerning persons to be promoted but also concerning those who have already been promoted, if the canons do not obstruct it.

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

> Electio ad episcopatum fieri debet de digno scientia, moribus et aetate, et quod habeat trigesimuro annum completum, et sit de legitimo matrimonio natus. Hoc dic. usque ad § Quum vero. - § 1. Beneficia electi in episcopum vacant per confirmationem, adeptionem possessionis, et consecrationem secutam, vel postquam praefixum tempus ad petendam consecrationem lapsum fuerit. Hoc dic. usque ad § Inferiora. Abbas Siculus. - § 2. In dignitatibus et officiis citra episcopatum ac curatis beneficiis debet assumendus vigesimum quintum annum attigisae, et alias esse idoneus scientia et moribus; et si non est in ordine requisito, debet se facere promoveri in proximis temporibus; alias monitus non parens privatur beneficio, non obstante appellatione, nisi ex causa legitima excusetur. Hoc dic. usque ad § Clerici. Abb. Siculus. - § 3. Eligentes indignum contra formam huius c. privati sunt pro prima vice potestate eligendi, et idem in collatore; et defectum capituli supplet episcopus, et e converso. Et si capitulum negligit, fit devolutio ad metropolitanum. Hoc dic. usque ad finem.
>
> Idem in eodem.
>
> Quum in cunctis sacris ordinibus et ecclesiasticis ministeriis sint et aetatis maturitas, et gravitas morum, et literarum scientia inquirenda, multo fortius in episcopo haec oportet inquiri, qui ad curam aliorum positus in se ipso debet ostendere, qualiter alios in domo Dei oporteat conversari. Ea propter, ne quod de quibusdam pro necessitate temporis factum est trahatur a posteris in exemplum, praesenti decreto statuimus, ut nullus in episcopum eligatur, nisi qui iam trigesimum annum aetatis exegerit, et de legitimo matrimonio sit natus, qui etiam vita et scientia commendabilis demonstretur. § 1. Quum vero electus fuerit, et confirmationem electionis acceperit, et ecclesiasticorum bonorum administrationem habuerit, decurso tempore de consecrandis episcopis a canonibus diffinito, is, ad quem spectant beneficia, quae habebat, de illis disponendi liberam habeat facultatem. § 2. Inferiora etiam ministeria, ut puta decanatum, archidiaconatum, et alia, quae curam animarum habent annexam, nullus omnino suscipiat, sed nec parochialis ecclesiae regimen, nisi qui iam vigesimum quintum annum aetatis attigerit, et scientia et moribus commendandus exsistat. Quum autem assumptus fuerit, si archidiaconus in diaconum, et decanus et reliqui admoniti non fuerint praefixo a canonibus tempore in presbyteros ordinati, et ab illo removeantur officio, et aliis conferatur, qui et velint et possint illud convenienter implere. Nec prosit eis appellationis refugium, si forte in constitutionis istius transgressionem per appellationem voluerint se tueri. Hoc sane non solum de promovendis, sed etiam de his, qui iam promoti sunt, si canones non obsistant, praecipimus observari. § 3. Clerici sane, si contra formam istam quemquam elegerint, et eligendi tunc potestate privatos, et ab ecclesiasticis beneficiis triennio noverint se [esse] suspensos. Dignum est enim, ut quos Dei timor a malo non revocat ecclesiasticae saltem coerceat severitas disciplinae. Episcopus autem si contra haec fecerit aut consenserit fieri, in conferendis praedictis officiis et beneficiis potestatem [suam] amittat, et per capitulum, aut per metropolitanum, si capitulum concordare nequiverit, ordinetur.

Chapter VIII

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

The same to the Archbishop of Ravenna.

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

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

> Compromittentes super electione tenentur recipere electum a compromissario, si est idoneus.
>
> Idem Ravennati Archiepiscopo.
>
> Causam, quae inter moniales sanctae Margaretae super discordia et dissensione electionis, quam fecerunt, agitari dignoscitur, experientiae tuae iam pridem commisimus terminandam. Verum quoniam ipsa causa in tantum protrahitur, et nondum, sicut accepimus, processisti, et periculosum et damnosum est monasterio, quod causa ipsa in tantum protrahitur, fraternitati tuae per apostolica scripta mandamus, quatenus infra XL. dies, vel duos menses ad plus, secundum tenorem aliarum nostrarum literarum in eadem causa procedas, ita videlicet, quod si sorores ipsae in episcopum electionem contulerint, promittentes, quod illam, quam episcopus eis provideret, reciperent, ipsam, quam episcopus illis providerit, facias ab eis, appellatione remota, si tamen exsistat idonea, in suam recipi abbatissam. Si autem in causa procedere non poteris, dilectis filiis I. basilicae duodecim Apostolorum, presbytero Cardinali, Apostolicae sedis Legato et Priori S. Victoris ex parte nostra significes, ut in eadem causa procedant, et eam debito fine decidant.

Chapter IX

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

The same to the Bishop of Worcester.

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

For this reason we command your fraternity by apostolic writings, by way of precept, not to delay more strictly prohibiting the aforesaid elect on our behalf from presuming to confer upon anyone the archdeaconry of Norantine or the prebend which W., archdeacon of that place, held. And if—which

we do not suppose—he has granted that archdeaconry or prebend to anyone, we therefore command you to order him by our authority to take care, as quickly as possible and with every contradiction and appeal ceasing, to revoke any grant which he made concerning the aforesaid matters. [But if he delays, etc.]

> Electus ante confirmationem beneficia conferre vel aliter administrare non potest.
>
> Idem Wigorensi Episcopo.
>
> Nosti, sicut vir prudens et sapiens, quomodo dilectus filius noster G. Linconensis electus concedendi honores vel praebendas, aut alias disponendi de rebus ecclesiae, quum sua non sit electio confirmata, non habeat facultatem. Inde est, quod fraternitati tuae per apostolica scripta praecipiendo mandamus, ut praedicto electo ex parte nostra non differas arctius inhibere, ne archidiaconatum de Norantine, vel praebendam, quam W. eiusdem loci archidiaconus tenuit, alicui conferre praesumat. Et si eundem archidiaconatum vel praebendam cuiquam, quod non arbitramur, concessit, Mandamus igitur, quatenus ei auctoritate nostra praecipias, ut concessionem suam quam citius, omni contradictione et appellatione cessante, si quam fecit de praedictis, studeat revocare. [Quodsi distulerit etc.]

Chapter X

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

The same.

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

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

> Electio facta post appellationem, et prima non cassata, et contra privilegia ecclesiae, cassanda est.
>
> Idem.
>
> Consideravimus, quod electio Ioannis Frontini post appellationem ad nos interpositam et contra tenorem privilegiorum ecclesiae vestrae fuerit celebrata. Perpendimus etiam, quod electio B. post illam qualemcunque electionem non cassatam, nec non et post appellationem, per quam ad suum statum omnia debent reduci, facta fuit, et illata violentia, quanquam rex penitus inficietur, violentiam aliquam in hoc de assensu vel conscientia sua unquam perpetratam fuisse. Quapropter nos utriusque electionem de communi fratrum nostrorum consilio omnino cassamus, et vobis in aliam personam idoneam et honestam conveniendi liberam tribuimus facultatem; ita tamen, quod utrique praedictorum fama sua non minus propter hoc integre conservetur, et quod in aliis ecclesiis possint, si Deus dederit, ad dignitatem promoveri. Vobis autem liceat praeter istam ecclesiae vestrae ordinationem in eorum

alterum, si voluntas fuerit, iterum convenire, et eum vobis in abbatem atque magistrum canonice providere.

Chapter XI

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

The same.

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

Metropolitanus confirmatus, licet nondum receperit pallium, potest suum suffraganeum consecrari facere.

Idem.

Suffraganeis alicuius metropolitani, ad mandatum ipsius metropolitani, post confirmationem electionis suae, etiamsi pallium non receperit, licitum est aliquem electum, qui ad eius iurisdictionem pertinet, consecrare, et metropolitano aegritudine laborante vel alias praepedito, post susceptionem pallii, et etiam ante si eius est electio confirmata suffraganei sui ad mandatum ipsius possunt electo munus consecrationis conferre.

Chapter XII

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

Clement III.

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

Is, cuius electio fuit cassata, non vitio personae, sed electionis modo, iterum eligi potest; secus, si vitio personae.

Clemens III.

Super eo vero, quod quaerere voluisti, si alicuius electione cassata idem ad alterius ecclesiae regimen electus fuerit, an eius electio debeat confirmari, hoc tuam volumus discretionem tenere, quod, si prior electio non vitio personae, sed modo electionis cassatur, promotionem eius in eadem etiam ecclesia, nisi forte simoniacae pravitatis aliquid intercessisse constiterit, non debeat impedire.

Chapter XIII

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

Celestine III.

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

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

> Non professus potest postulari in abbatem, si ex aliqua bona causa fiat talis postulatio. Hoc dic. secundum lecturam, quae est magis singularis.
>
> Coelestinus III.
>
> Quum monasterium de Pellicia in tuo situm episcopatu, ad eam dissolutionem devenerit, sicut tuarum literarum insinuatio patefecit, quod fratres eiusdem domus observantiam religionis et ordinem abiecerunt, et, bonis eius dilapidatis atque consumptis, ad eligendum sibi abbatem de ipsius ecclesiae gremio non potuerunt hactenus convenire, ad tuae tamen admonitionis et exhortationis instantiam in unum convenientes, in quendam, qui cum fratribus suis in eremo est laudabiliter conversatus, boni testimonii virum unanimiter consenserunt, et eum in abbatem totis desideriis postulantes, eius subiici disciplinis et habitui postulabant. Tu vero postulationi eorum de prudentum et discretorum virorum consilio praebuisti assensum, et humiliter postulasti eandem ordinationem a sede apostolica confirmari. Nos autem petitioni tuae facorem nostrum et assensum liberaliter impertientes ordinationem ipsam, sicut facta est canonice, confirmamus et praesentis scripti patrocinio communimus. [Super eo vero etc. (cf. c. 1. de confessis II. 18)]

Chapter XIV

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

The same.

Since the land which was regarded as the measuring-line of the Lord's inheritance ... (*And below:*) As we have learned from the tenor of certain letters and the report of many persons, a disease of depraved custom formerly crept into elections: namely, when the election of some prelate is to be celebrated, the convent to which it is known to belong names two persons, who are secretly to be

declared in the ears of the patriarch or prince, so that the same patriarch or prince may thus have full power either to choose one of them or wholly to invalidate the entire election.

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

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

> Electio debet esse in libertate eligentium, nec valet contraria consuetudo.
>
> Idem.
>
> Quum terra, quae funiculus hereditatis Domini censebatur (Et infra:) Sicut autem ex quarundam literarum tenore pluriumque relatione accepimus, quidam olim in electionibus pravae consuetudinis morbus irrepsit, ut videlicet, quum alicuius praelati electio debet celebrari, conventus, ad quem pertinere dignoscitur, duas personas nominet latenter auribus patriarchae vel principis exprimendas, ut sic illarum alterius eligendae, vel totius electionis penitus irritandae idem patriarcha vel princeps plenariam habeat facultatem. Quia igitur hoc redundat in gravamen et perniciem ecclesiasticae libertatis, praescriptam consuetudinis pravitatem sancimus penitus abolendam, statuentes, ut forma electionis canonicae in omnibus conventualibus ecclesiis observetur, videlicet, ut, quum debet ecclesiae consuli pastoris regimine destitutae, electores in unum locum, in quo fuerit electio celebranda, conveniant, et invocata Spiritus sancti gratia personam solemniter nominent, in qua omnes, vel [maior] pars sanioris consilii potuerint convenire, et ea sine ullius contradictione, dummodo persona idonea fuerit, et electio sine simoniaca pravitate celebrata, ad illius regimen ecclesiae admittatur. Quod si in persona fuerit vel in electionis modo peccatum, tamdiu electores in electione diligentiam inquisitionis apponant, donec secundum praescriptam formam vacanti ecclesiae de persona idonea valeant providere. Quo facto non prohibemus, quin regis seu patriarchae, qui pro tempore fuerit, requiratur assensus; sed propter hoc ipsam electionem nolumus impediri.

Chapter XV

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

The same.

Your affection has now repeated the question which, as you took care to intimate, was previously transmitted to our hearing. You asked what is to be done by you concerning the fact that clerics of your diocese, when they are struck for their excesses by a sentence of suspension, interdict, or

excommunication, make light of it, abandon their churches, and transfer themselves to the commercial occupations of laymen. Certain of them also set aside the clerical habit, put on lay garments, and, involving themselves like lay merchants in base gains, join the company of laymen like themselves and elude ecclesiastical correction through contempt. They say that you do not have the power to correct them unless the Apostolic See has specially granted it to you.

We therefore answer that, whenever you find such persons, if after being admonished they are unwilling to be recalled from such base acts, to make full satisfaction for their contempt, and to return to clerical dress, you, supported by our authority, are to subject them to excommunication with appeal ceasing and cause them to be more strictly avoided by everyone until they have purged their guilt by suitable satisfaction, especially if any of them have been established in sacred orders.

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

> Per confirmationem electionis non transfertur potestas exercendi ea, quae sunt ordinis. Illa enim transferuntur per consecrationem. Abbas.
>
> Idem.
>
> Transmissam dudum, sicut insinuare curasti, ad nostram audientiam quaestionem, tua nunc dilectio replicavit. Quaesivisti, quid faciendum sit tibi super eo, quod clerici tuae dioecesis, quum pro suis excessibus suspensionis, vel interdicti, vel excommunicationis sententia percelluntur, parvipendentes eam, dimittunt ecclesias, et transferunt se ad mercimonia laicorum; nonnulli quoque ipsorum habitu clericali postposito vestes induunt laicales, et sicut laici mercatores se turpibus quaestibus implicantes, consimilium sibi laicorum manus associant, et correctionem ecclesiasticam per contemptum eludunt, dicentes, quod potestatem non habeas eos, nisi tibi specialiter apostolica sedes indulserit, corrigendi? Respondemus igitur, quod, si quando tales repereris, si commoniti noluerint a tam turpibus actibus revocari, et de contemptu satisfacientes plenarie ad clericale schema redire, tu eos auctoritate nostra suffultus excommunicationi appellatione cessante subiicias, faciasque eos arctius ab omnibus evitari, donec reatum suum congrua satisfactione diluerint, praesertim si qui eorum in sacris sunt ordinibus constituti. Etiam haec sine speciali mandato exsequi posses, quum ex quo electionis tuae confirmationem accepisti, de talibus et consimilibus, praeter ea, quae maioris inquisitionis discussionem exigunt, et ministerium consecrationis desiderant, quod iustum est et ecclesiasticae convenit utilitati statuendi habeas liberam facultatem.

Chapter XVI

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

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

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

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

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

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

R., prosecuting the appeal interposed through a messenger, obtained letters of commission within the appointed term to specified judges. Those letters commanded that, after what had been adjudged against him on occasion of the earlier commission had been restored to its due state, they should restore the abbey to him and cause the monks to show him due reverence. But the monks remained obstinate and were unwilling to obey him.]

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

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

Meanwhile our beloved son P., cardinal-deacon of Santa Maria in Via Lata and Legate of the Apostolic See, approaching those regions, both suspended the monks and placed the monastery under interdict

because of the aforesaid and many other excesses. But they, despising the cardinal's sentence, celebrated the divine offices more promptly than before; and while this suspension remained, the aforesaid adversary of R. was taken from their midst by death.

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

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

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

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

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

Afterward, while R. nevertheless murmured, both men together approached the presence of our predecessor, who, as we have already stated, appointed us and the aforesaid cardinal-priest as their auditors. When the cause had at length been conducted for a long time, a settlement was celebrated by our predecessor with the assent of each party: H. was to obtain the abbey, and R. the priory and custodianship, on account of which R. promised obedience to H. When they thus returned home, R. approved the aforesaid settlement before the diocesan bishop. But when afterward he was asked a

third time by the abbot whether he wished to have the custodianship and priory, he came after a third citation and said that he wished to have the aforesaid offices not through the abbot but through the Roman Pontiff; and therefore he was unwilling to show the abbot any obedience.

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

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

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

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

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

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

Although our beloved sons P. the provost and the chapter of Constance inserted in their letters the interdict which the cardinal had imposed, nevertheless, because the fact that the diocesan bishop conferred the office of blessing upon R. the younger seems to conflict with what we have stated—so that either the writing prejudices the deed or the deed the writing—and because, although it was

alleged, it was not proved that the election had been celebrated by persons under interdict, we could not invalidate it, especially since nothing was attempted against the person elected.

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

> Qui electioni de se factae renunciat appellare nequit ad impediendam electionem alterius. Et electio, quae est a suspensis celebrata, non tenet.
>
> Innocentius III. de Cella sancti Petri et Mutinensi Abbatibus.
>
> Quum inter dilectum filium R. seniorem, et R. iuniorem super abbatia Scaphusensi quaestio verteretur, eis in nostra praesentia constitutis dilectos filios G. SS. Cosmae et Damiani, et G. S. Mariae in Aquiro diaconos cardinales dedimus auditores, in quorum praesentia [pro R. seniore] fuerunt proposita [quae sequuntur. Quod quum H., quondam abbas ipsius coenobii onus regiminis invito capitulo suo spontanee resignasset, et ab obedientia sua monachos absolvisset, ipsi praedictum R. seniorem, etiam dicto H. consentiente, sibique obediente cum aliis, in abbatem unanimiter elegerunt. Postea vero electus dioecesano episcopo praesentatus, munus ab eo benedictionis accepit, ecclesiam ipsam per biennium et amplius sicut abbas proprius administrans. Verum quoniam moniales S. Agnetis eiusdem villae, quae peccandi materiam iunioribus monachis ministrabant, arctiori custodiae mancipavit, exinde occasione inventa iuvenes monachi contra ipsum alios concitarunt, tanquam praedicti H. resignatio minus canonica exstitisset. Quod audiens episcopus antedictus ad locum accessit, causam dissensionis requirens, et praedictum H. paterne redarguens, tanquam odii fomitem in ecclesia seminasset, accepit ab eo, quod per ipsum talia non fiebant. Et quum quidam de monachis ipso episcopo praesente se dicerent ab obedientia praefati H. nullatenus absolutos, idem H. quod eos absolverat est professus. Et ut omnem a se suspicionis materiam amoveret, cum iureiurando vehementer asseruit coram episcopo antedicto, quod neque illam nec aliam habere vellet ulterius abbatiam. Monachi vero post recessum episcopi ad artes solitas nihilominus recurrentes, coram dicto episcopo et capitulo Constantiensi adversus eundem R. controversiam agitarunt, tanquam minus canonice dictus H. dimiserit abbatiam. Quum dictus R. paratus esset de iustitia sua in continenti probare, monachi defectum causae suae videntes, in nullo gravati sedem apostolicam appellarunt, et per literas infra terminum appellationis per subreptionem obtentas, contra ipsum R. per nuncios appellantem iniqua sententia promulgata, eius fuit adversarius restitutus. Ipse vero R. appellationem interpositam per nuncium prosequens, et termino constituto commissionis literas ad certos iudices impetravit, ut quod occasione prioris commissionis contra eum iudicatum fuerat ad statum debitum revocato, et ei restituerent abbatiam, et a monachis sibi facerent debitam reverentiam exhiberi. Sed monachis obstinatis et sibi obedire nolentibus], ambae partes ad sedem apostolicam accesserunt, quibus a bonae memoriae Coelestino Papa praedecessore nostro nos ipsi, dum in minori eramus officio constituti, et dilectus filius noster Ioannes tt. S. Stephani presbyter cardinalis, dati fuimus auditores. Et quum utrimque coram nobis esset diutius allegatum, et eidem praedecessori nostro per nos esset processus negotii declaratus, ipse bonae memoriae Coelestinus praedecessor noster praedictum R. seniorem, sententiam cum instantia postulantem, ad componendum coegit invitum; et sic abbatiae renuncians, de manu eius custodiam et etiam prioratum recepit, ab eo, dum viveret, sine quaestione qualibet possidendos. Cui ordinationi licet consentiret invitus, domum tamen reversus, adversariis compositionem ipsam nolentibus observare, non potuit

quae [sibi] concessa sunt obtinere, quin potius in eum, quod deterius est, manus iniecerunt postea violentas. Sed adiutus ab illius loci hominibus et monachorum manus evadens, ad appellationis subsidium convolavit. Interim vero dilectus filius noster P. S. Mariae in Via lata diaconus cardinalis apostolicae sedis legatus, ad partes illas accedens, pro iam dictis et aliis multis excessibus et suspendit monachos, et monasterium interdixit. Ipsi vero contempta sententia cardinalis divina promptius quam antea celebrarunt, et in hac suspensione praedictus adversarius eius de medio est sublatus. Quo comperto ad ecclesiam venit, et, quum vellet praedictae compositioni parere, parte altera hoc nolente, ne ad electionem abbatis procederetur, quousque quaestio inter eos finiretur, obicem provocationis obiecit; sed monachi per omnia contumaces, et dictum R. iuniorem pariter eligentes, ipsum benedicendum dioecesano episcopo praesentarunt, qui post appellationem interpositam benedixit eum, et in ecclesia interdicta. [Unde idem R. iterato ad sedem apostolicam accedens, a nobis literas impetravit, ut quod post appellationem legitime interpositam perperam fuerat a monachis attentatum ad statum debitum revocato, si constaret a suspensis et interdictis electionem factam fuisse, denunciarent eam penitus non tenere, super restitutione vero ipsius R. senioris et aliis, quae utrinque ducerent proponenda, statuerent, appellatione remota, quod ordo posceret rationis. Ceterum iudices delegati literis his receptis, partes ad suam praesentiam citaverunt, et quum monachi per suggestionem falsi probare vellent literas impetratas, iudicibus nolentibus ipsarum probationem recipere, sedem apostolicam appellarunt. Delegati vero, quia remota erat in literis appellatio, in causa nihilominus procedentes, quum per depositiones testium eis de veritate negotii constitisset, pro saepedicto R. seniore sententiam protulerunt, adiudicantes ei ecclesiam memoratam. Petebat itaque quod factum erat ex delegatione apostolicae sedis per nos obtinere debitam firmitatem, ut repressa contumacia monachorum pacifica ipsius abbatiae possessione gauderet. Ceterum contra eundem R. seniorem fuit ex parte altera taliter allegatum, quod, quum dictus H. quondam abbas minus legitime resignasset, et monachi de electione tractarent, senior R. fraude adhibita procuravit, quod, quum vesperae cantarentur, et die sequenti esset electio celebranda, homines burgi ad ecclesiam accedentes ipsum R. fere omnibus monachis reclamantibus ibidem per violentiam intruserunt, Monachi vero postea cognoscentes renunciationem praefati H. minime tenuisse, pariterque pensantes, quod sub eius conversatione laudabili monasterium proficere posset, ipsum tanquam abbatem proprium requirebant. Unde factum est, quod post multas altercationes et commissiones factas tandem de utriusque partis assensu commissio est obtenta, quod, si de informi resignatione H. et inutili substitutione R. senioris constaret iudicibus delegatis, R. remoto, saepe dicto H. restituerent abbatiam, et ita fuit effectui mancipatum. Post haec ipso R. nihilominus murmurante, ambo pariter ad praedecessoris nostri praesentiam accesserunt, qui, sicut iam praemisimus, nos et praefatum presbyterum cardinalem eis tribuit auditores, et tandem causa diutius actitata per eundem praedecessorem nostrum de utriusque partis assensu fuit compositio taliter celebrata, quod H. abbatiam, R. vero prioratum et custodiam obtineret, propter quod ipsi H. obedientiam promisit. Sic ergo eis reversis ad propria, praefatam compositionem idem R. coram dioecesano episcopo approbavit. Sed ab ipso abbate postea requisitus tertio, si custodiam et prioratum vellet habere, post trinam citationem veniens dixit, quod non per eum, sed per Romanum Pontificem volebat habere praemissa, unde nullam obedientiam ei voluit exhibere. Recedens igitur absque abbatis licentia, quum extra monasterium moram faceret longiorem, ab ipso H. de fratrum consilio fuit excommunicationis vinculo innodatus; et quum per longum tempus non rediret ad monasterium, abbas dicta officia, consulentibus fratribus, aliis assignavit, qui, quamdiu abbas vixit, ea pacifice tenuerunt. Abbate vero defuncto, fratres convenerunt in unum, nonnullis abbatibus et aliis viris religiosis praesentibus, qui ad defuncti convenerant sepulturam, et R. iuniorem, seniore absente, in abbatem unanimiter elegerunt, quem praesentatum sibi dioecesanus episcopus confirmavit et benedixit. Consequenter vero senior R. ad praesentiam nostram accedens, literas ad remotos per diaetas quatuor iudices et suspectos monachis per mendacium impetravit, ad quos pars monachorum ante aliquam

citationem accedens, copia commissionis obtenta, literas per falsi suggestionem proposuit impetratas pro eo, quod dicebatur in eis, compositionem sibi non fuisse servatam, monasterium interdictum, et se appellasse prius, quam R. iunior electus fuerit in abbatem, quae falsa penitus asserebat. Tacuit etiam, se excommunicatum ab hoc abbate defuncto, et alia quaedam, quibus expressis literas ipsas nullatenus impetrasset. Quumque omnia, quae praemisimus, sufficienter probare vellent, et iudices eorum probationes recipere, tanquam demandatum eis non fuerit, recusarent, ipsi monachi ante ingressum iudicii appellarunt, sicut ex depositionibus testium est probatum. Delegati vero nihilominus procedentes, et recipientes testes partis adversae, seniorem R. instituendum sententialiter decreverunt, quorum factum, tanquam iniquum, irritari a nobis monachi suppliciter postulabant.] Quum autem quae praemissa sunt et alia quaedam praefati cardinales nobis et fratribus nostris prudenter et fideliter retulissent, Nos attendentes, quod ex consensu compositionis receptae, quam praedecessor noster etiam confirmaverat, ius, si quod sibi competierat, R. senior amisisset, ac per hoc, ne monachi ad electionem procederent, de iure minime appellare potuisset, quum, nisi quorum interest, audiri non soleant appellantes, de consilio fratrum nostrorum appellationem illam dicimus legitimam non fuisse. Unde per eam electio non potuit impediri. [Quia vero constitit nobis, monachos ante litis exordium rationabiliter appellasse pro eo, quod super falsi suggestione probationem nolebant admittere delegati, et per consequentiam eo ipso, quod bene appellatum fuerat, iurisdictionem iudicum exspirasse, quicquid ab eis est perperam attentatum, vel de recipiendis ante litem contestatam testibus, vel de sententia proferenda denunciamus sententialiter non tenere.] Sane quamvis dilecti filii P. praepositus et capitulum Constantiense de interdicto, quod cardinalis posuerat, in suis literis inseruerint, quia tamen per id, quod R. iuniori dioecesanus episcopus munus benedictionis impendit, ei videtur quod praemisimus obviare, unde vel scriptura facto, vel factum scripturae praeiudicat, nec probatum fuit, licet obiectum, quod ab interdictis electio fuerit celebrata, ipsam non potuimus irritare, praesertim quum contra personam electi nihil fuerit intentatum. Ideoque causam ipsam sub ea forma vobis duximus de consensu partium committendam, ut, si constiterit, quod electio fuerit facta a suspensis, ea omnino cassata ipsi monasterio, post satisfactionem condignam, suspensionis et interdicti sententia relaxata, de persona idonea consulatur. Alioquin ne utilitas monasterii retardetur, praemissam electionem per vos appellatione remota volumus confirmari, et R. iuniorem abbatiae pacifica possessione gaudere, [aliam vero etc. Dat. Later. VII. Id. Apr. 1199.]

Chapter XVII

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

The same to the Chapter of Penne.

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

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

> Si electus non habet sufficientem scientiam, vel ante confirmationem administrat, eius electio cassari debet.
>
> Idem Capitulo Pennensi.
>
> Qualiter post obitum bonae memoriae Pennensis episcopi ecclesia vestra vacante, receptis prius super electione facienda literis nostris, primicerium vestrum vobis elegeritis in pastorem, vos tanquam auctores electionis ipsius plenius cognovistis. Verum quoniam electus a vobis ante confirmationem obtentam administrationi episcopatus se irreverenter immiscuit, recipiendo tam a clericis quam a laicis iuramenta, non attendens, quod secundum Apostolum nemo debet sibi honorem assumere, sed qui vocatur a Deo tanquam Aaron, praecipue quia nec donum scientiae pontifici conveniens fuerat assecutus, quum iuxta verbum dominicum: "Qui fecerit et docuerit magnus vocetur in regno coelorum," postquam nobis praesentastis eundem electum, sufficienti examinatione praemissa, communicato fratrum consilio, electionem de ipso factam exigente iustitia duximus irritandam, quicquid ex ea et ob eam factum est denunciantes penitus non tenere. [Ne autem gregi etc. Dat. Lat. XI. Kal. Oct. 1199.]

Chapter XVIII

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

The same to the Chapter of Capua.

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

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

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

Si vocantur ad electionem non vocandi, valet electio facta eis non exspectatis. H. dic. secundum lecturam communem.

Idem Capitulo Capuano.

Quum inter universas metropoles Capuana sit apostolicae sedi vicinior, ad provisionem ipsius specialius adspiramus, talem ipsi personam praefigi cupientes, quae sicut alios metropolitanos loci vicinitate, sic et devotionis affectu praecellat, per quam et ipsa metropolis tam in spiritualibus quam in temporalibus optatum suscipiat incrementum. Intelleximus autem per dilectos filios I. et F. canonicos vestros, et per literas, quas ad sedem apostolicam detulerunt, quod ad decanum et alios canonicos vestros Panormi manentes, quum ex eorum parte fuisset vobis per literas intimatum, ut ecclesiae Capuanae damna pensantes sic tractaretis super electione substituendi pastorem, quod nullum deberetis in eorum absentia nominare, quendam socium vestrum cum literis destinastis, duodecim dierum terminum assignantes, infra quem post receptionem literarum vestrarum iter arriperent redeundi, quamvis ecclesiastica consuetudo non exigat, ut ad electionem pastoris canonici tam remoti vocentur, et illi praecipue, qui longe antequam vos metropolitani vestri obitum praesentialiter cognoverunt, quorum aliqui post eius decessum ad Capuanam ecclesiam sunt reversi. Quia vero mora longior est in electionibus valde suspecta, immo saepe damnosa, discretioni vestrae per apostolica scripta mandamus atque praecipimus, quatenus invocata Spiritus sancti gratia personam idoneam per electionem canonicam concorditer assumatis ad regimen Capuanae ecclesiae, consequenter ad audientiam nostram nuncios idoneos transmissuri, per quos a nobis vice regia postuletis assensum, et apostolicae confirmationis gratiam requiratis, attentius provisuri ut eo discretionis et caritatis studio procedatis, quod nec in electione vitium, nec in electo defectus valeat inveniri. Alioquin et factum electionis revocaremus in irritum, et personas eligentium puniremus.

Chapter XIX

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

The same to the Archdeacon and Chapter of Capua.

When formerly the death [of the Archbishop of Capua of good memory had been established before us through both your letters and your messengers, wishing, as the solicitude of our office requires, that a pastor be provided more quickly for the widowed church, we commanded you to make a canonical election of a suitable person through whom the church of Capua could be fittingly governed in spiritual and temporal matters.

You received our mandate humbly and devoutly and assembled in the metropolitan church on the appointed day. When you were sitting in chapter to treat concerning the election to be made, and you, son archdeacon, had begun the hymn invoking the grace of the Holy Spirit, our beloved son M., Archdeacon of Teano and canon of Capua, commanded silence and said: "The Lord Pope has commanded us to make a canonical election, and I prohibit an election from being made unless it is canonical, and I issue the voice of appeal to him." When the aforesaid archdeacon was asked by certain of you what he understood by a canonical election, he answered that, according to the

canonical decrees, no one should be elected bishop from another church while a suitable person could be found in one's own.

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

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

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

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

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

Although, as we have said, we diligently inquired publicly into the truth, nevertheless, lest we appear to omit anything concerning which fuller proof should be furnished to us, we commanded certain of

our brothers to examine you and those clerics individually, so that each of you might set forth the truth more fully and securely before them. They found nothing other than what had previously been proposed.

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

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

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

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

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

Moreover, since the Apostolic See is the head of all churches and the Roman Pontiff is the ordinary judge of every individual, when someone from it is assumed as prelate of another church, it does not appear that it can be objected against him, because of the privilege of the head which possesses the fullness of power, that he was elected from another church, since the members ought not to be regarded as foreign to the head.

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

mandate, especially since the same archdeacon, when afterward questioned, answered that he wished to give it his assent in our presence.

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

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

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

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

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

> Non debet inspici, an post appellationem, sed an contra fuerit electio celebrata. Et penes vocantes, quibus competit vocandi potestas, remanet ius eligendi, si vocati venire contemnunt. Et ad officium confirmatoris spectat examinare electum, etiam nemine opponente. Et nisi electus doceatur, legitimae aetatis et literaturae, habetur pro non legitime electo.
>
> Idem Archi. et Capitulo Capuano.
>
> Quum nobis olim de obitu [bonae memoriae archiepiscopi Capuani tam per vestras literas quam nuncios constitisset, volentes, prout officii nostri sollicitudo deposcit, in pastorem provideri celerius ecclesiae viduatae, vobis dedimus in mandatis, ut electionem canonicam de persona idonea faceretis, per quam in spiritualibus et temporalibus Capuana ecclesia posset congrue gubernari. Vos autem

mandatum nostrum suscipientes humiliter et devote, statuto die in metropolitana ecclesia convenistis, et, quum ad tractandum de facienda electione in capitulo sederetis, et tu, fili archidiacone, hymnum ad invocandam Spiritus sancti gratiam incepisses, dilectus filius M. archidiaconus Theatinus, canonicus Capuanus, silentium indicens, sic ait: "Dominus Papa ut faceremus canonicam electionem praecepit, et ego ne fiat, nisi canonica, interdico, et ad ipsum vocem appellationis emitto." Quumque a quibusdam vestrum quaesitum fuisset ab archidiacono memorato, quid intelligeret per canonicam electionem, respondit, ut secundum decreta canonica nullus in episcopum de aliena eligeretur ecclesia, dum in propria posset idoneus inveniri. Et sic aliquantulo facto tumultu, quum tu, fili archidiacone, hymnum iterum incepisses, ipse archidiaconus Theatinus cum quibusdam complicibus suis chorum exivit, et coepit in quodam angulo ecclesiae commorari, et vos hymnum in choro solenniter complevistis. Sed quum post invocatam Spiritus sancti gratiam foret de electione tractandum, unum presbyterum, et unum diaconum, et alium acolythum vicem gerentem subdiaconi, qui etiam est cancellarius ecclesiae Capuanae, ut vota singulorum seriatim perquirerent, elegistis. Qui universorum perquirentes diligentius voluntates, vos omnes, qui ad eligendum in capitulo remansistis, invenerunt in electione concordes, dilectum filium R. subdiaconum et capellanum nostrum, filium dilecti filii nobilis viri P. comitis Celanensis, unanimiter nominantes. Demum vero praedictum archidiaconum, et qui cum eo exierant, per quosdam de vestris admonere curastis, ut ad electionem accederent faciendam. Sed quum ipsi venire penitus recusassent, et diceret idem archidiaconus, quod non ei feceratis tantum honoris et gratiae quod vobiscum vellet in electione facienda persistere, vos publicata electione vestra cantastis "Te Deum laudamus," et pulsari fecistis cum solennitate companas, ut quod per vos factum fuerat innotesceret civitati. Ad quarum sonitum quum universus populus ad ecclesiam advenissent, et audissent, qualiter a vobis electio fuerat celebrata, factum vestrum communiter approbarunt; et quidam eorum, ut archidiaconum et alios, qui ab electione discordabant, ad concordiam revocarent, multipliciter institerunt. Verum ipse archidiaconus, ut proponitur, se tunc ipsi electioni minime consentire, sed in nostra praesentia suum assensum ipsi velle praestare respondit, quod etiam, sicut dicitur, saepe ac saepius in multorum praesentia replicavit. Tu vero, fili archidiacone, cum multis de canonicis Capuanis decretum electionis afferens, eligentium subscriptionibus roboratum, ad nostram praesentiam accessisti, et, quum apud nos fuissetis aliquamdiu commorati, tres canonici Capuara pro parte adversa post aliquot dies nostro se conspectui praesentarunt. Vobis igitur et ipsis in nostra et fratrum nostrorum praesentia constitutis, utrique partium praecepimus dicere veritatem, et quantum quidem erat in narratione facti usque ad exitum archidiaconi praedicti de choro, neutra partium discordabat. Dicebant tamen clerici antedicti, quod multi, qui exierant cum archidiacono, minis et terroribus fuerant inducti electioni a vobis postmodum factae consentire. Quumque tam a vobis quam clericis illis quaesiverimus diligenter, quot erant clerici Capuani, qui electioni debuerant interresse, inventi non fuistis in responsione discordes, sed tam vos quam ipsi certum super hoc numerum designastis. Et quum quaereremus sollicite, quot exierant cum archidiacono Theatino, quum appellationem opposuit, interpositae appellationi faventes, licet in hoc a vobis praefati tres clerici discordarent, quod scilicet XII. vel XIII. ad plus de canonicis ab electione facta proponerent dissentire, et vos eos esse V. aut VI. solummodo diceretis, secundum tamen expressum a vobis et ipsis canonicorum numerum tres partes et amplius erant in electione concordes, si etiam praedictorum clericorum assertio vera esset, quod scilicet XIII. canonici dissentirent. Quamquam autem, ut praediximus, diligenter inquisivimus publice veritatem, ne tamen aliqua videremur omittere, de quibus fides nobis erat plenior exhibenda, per quosdam de fratribus nostris singulatim vos et ipsos clericos examinari praecepimus, ut quisque vestrum coram ipsis plenius et securius exponeret veritatem; qui non aliud, quam ante propositum fuerat, invenerunt. Interrogati vero clerici antedicti, qui quosdam canonicorum dixerant minis et terroribus ad consentiendum inductos, si viderunt aliquibus quamlibet coactionem inferri, taliter responderunt, quod post factam electionem audiverunt quosdam de canonicis

aliis comminantes et dicentes: "De civitate trecenti vocentur armati, et tunc apparebit, quis electioni nostrae noluerit consentire." Sed licet hoc dictum fuerit, non viderunt tamen propter hoc cum armis aliquem venientem, vel ipsis coactionem aliquam intulisse.] Quum autem ex utriusque partis assertione constaret, interpositam fuisse appellationem canonicam, quando ne fieret electio, nisi canonica, secundum mandati nostri tenorem, ad nostram fuit audientiam appellatum, videri poterat, quod post eam medio tempore nihil debuit innovari, unde talis electio iudicanda erat irrita et inanis, utpote post appellationem canonice interpositam attentata. Sed contra, quum appellatum fuisset, non ut nulla electio fieret, sed ut fieret canonica, si factum electionis canonice fuerit subsecutum, non utique contra formam appellationis huiusmodi, sed magis secundum eam videbatur esse processum, et ideo, licet post appellationem, non tamen contra eandem fuit electio celebrata, propter quod non erat aliquatenus irritanda. Nam quum duae partes et amplius electioni consenserint et consentiant, licet cautum reperiatur in canone, ut tunc alter de altera eligatur ecclesia, quum nullus in propria fuerit repertus idoneus, quia tamen hoc in favorem introductum est clericorum, et cuique licet renunciare iuri, quod pro se noscitur introductum, vos, qui duae partes eratis et amplius, quum quod duae partes capituli faciunt totum facere videatur, in hac parte iuri, quod pro vobis facere videbatur, renunciare potuistis, et electionem de persona alterius ecclesiae celebrare, praesertim quum illud decretum locum videatur habere, quando clericis renitentibus et invitis per alicuius violentiam potestatis extraneus ingeritur ex adverso, propter quod sequitur in decreto, ut sit facultas clericis renitendi, si se viderint praegravari, et quos ingeri sibi viderint ex adverso, non timeant refutare. Praeterea quum sedes apostolica caput omnium ecclesiarum exsistat, et Romanus Pontifex iudex sit ordinarius singulorum, quando de ipsa quis assumitur in praelatum alterius, ei posse obiici non videtur, propter capitis privilegium, quod obtinet plenitudinem potestatis, quod de alia ecclesia eligatur, quum a capite membra reputari non debeant aliena. Item quum post appellationem emissam, non ut non fieret electio, quia talis appellatio nulla foret, sed ut fieret canonica, archidiaconus Theatinus cum suis fautoribus chorum exiisset, et vos illos, ut interessent electioni faciendae vobiscum, curassetis sollicite revocare, quoniam ad electionem faciendam accedere noluerunt, alienos se fecisse videntur, propter quod electioni a vobis iuxta formam mandati apostolici concorditer celebratae de iure non posse contradicere videbantur, praesertim quum idem archidiaconus postea requisitus responderit, quod in praesentia nostra vellet suum ei praebere consensum. Et ideo quum secundum statuta concilii Lateranensis appellatione remota semper id debeat praevalere, quod a pluribus et sanioribus fuerit ordinatum, nisi forte a paucioribus et inferioribus aliquid rationabile obiectum fuerit et ostensum, a vobis celebrata electio, tanquam a maiori et saniori parte, non obstante contradictione vel appellatione paucorum, debebat et poterat rationabiliter confirmari, quum id, quod obiectum exstitit et ostensum, rationibus praemissis appareat rationabile non fuisse. His igitur et aliis allegatis, quanquam contra personam illius, quem elegistis, nihil unquam dictum fuerit vel obiectum, quia tamen iuxta verbum Apostoli, dicentis: "Nemini cito manum imponas," debemus attendere diligenter ad ea, quae circa personam inquirenda fuerant, duximus ex officio nostro, sicut decuit, procedendum. Et quidem, quum tria sint in persona electi praecipue inquirenda, videlicet aetas legitima, morum honestas, et literatura sufficiens, licet de honestate morum, tanquam ei, qui nobiscum est aliquamdiu laudabiliter conversatus, possimus ipsi laudabile testimonium perhibere, Illius quoque literaturae, licet non eminentis, tamen convenientis electus exsistit, ut pro defectu scientiae, sicut plenius intelleximus ab his, qui eum melius cognoverunt, ab electione non deberet excludi. De legitima tamen aetate scire plene non potuimus veritatem, de qua nec vos, ut accepimus, aliquid cogitastis, quia, quum a multis, cuius aetatis exsisteret, curaverimus indagare, a nemine unquam audivimus, quod annum aetatis tricesimum attigisset. Quum autem secundum praedicti statuta concilii nullus debeat in episcopum eligi, qui tricesimum aetatis non egerit annum, licet senectus venerabilis sit non diuturna, nec annorum numero computata, sed cani hominis sint sensus eius, et aetas senectutis vita immaculata, quia tamen post illa tria, quae Salomon asserit difficilia, quartum quasi reputet

impossibile, viam videlicet viri in adolescentia sua, tanquam investigari non possit: Nos ecclesiae pariter et personae providere volentes, et tam rationes quam canones observare, habito super hoc cum fratribus nostris diligenti tractatu, quia propositum vestrum providum intelleximus, et ideo propter urgentem necessitatem et evidentem utilitatem ecclesiae Capuanae, quam in hac parte potius approbamus, volumus ipsum firmiter perdurare, praefatum subdiaconum nostrum de communi fratrum nostrorum consensu vobis in procuratorem concedimus, liberam administrationem ei tam in temporalibus quam in spiritualibus committentes. [Quapropter etc. Dat. Laterani. 1220.]

Chapter XX

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

The same to the Archbishop of Canterbury.

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

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

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

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

We therefore, after diligent deliberation concerning this with our brothers and rereading the canons, found certain canons which forbid those not lawfully begotten to be promoted to the pastoral office, perhaps deriving their rationale from the divine law through which the spurious and *mamzeres* are prohibited from entering the church of God down to the tenth generation. We also found others

which do not prohibit persons of whatever birth from being promoted to sacred orders, provided that their merits support them, asserting that the fault of parents is not to be imputed to the children.

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

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

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

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

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

Although the canon of the Lateran Council issued by Alexander our predecessor so pursues those born illegitimately that it intimates their election is null, nevertheless our faculty of dispensing was not taken away through it. For this was not the intention of the one prohibiting, who could generate no prejudice in this matter against his successors, who after him would exercise an equal—indeed the same—power, since an equal has no authority over an equal. Rather, his intention was only that,

because certain persons extended grace into license from the fact that something had once been done by dispensation because of the necessity of the time, took an example from it, believed that they could lawfully elect such persons, and elected such persons indiscriminately, [although] he prohibited such things from being done. Hence he inflicted a grave penalty upon the electors.

We nevertheless deliberated with our brothers whether, in such a case and with such a person, we ought mercifully to dispense or rather preserve the rigor of the law. For we found that Pope Urban of good memory, our predecessor, dispensed in a much more difficult case with the Bishop-elect of Le Mans, who was the son of a priest, and with the Bishop of León, who after his consecration humbly and spontaneously confessed that he had been born of an illegitimate mother whom his father had known while his own wife was living. But Urban prohibited this from being drawn thereafter into a precedent as though it were a rule.

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

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

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

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

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

Illegitimus potest postulari, non autem eligi, et electores, nisi probaverint, illum ignoranter elegisse, incidunt in poenas Lateranensis concilii.

Idem Cantuariensi Archiepiscopo.

Innotuit nobis olim tam per tuas literas, quam quorundam suffraganeorum tuorum et dilectorum filiorum prioris et conventus Wigorniensis ecclesiae, quod, Vigoriensi ecclesia destituta pastore, dicti prior et conventus eiusdem dilectum filium magistrum M. archidiaconum Eboracensem in episcopum unanimiter elegerunt, cuius, quum eius tibi fuisset electio praesentata, confirmationem usque in adventum ipsius, qui absens eligebatur et inscius, distulisti; qui tandem, quod factum fuerat audito, ad praesentiam tuam devotus accessit, et praeter opinionem omnium, qui nihil obstare credebant, quin statim concors et canonica deberet electio confirmari, spontanea tibi et secreta confessione monstravit, quod conscientia eius aliquantisper ex natalibus esset laesa, et, quod ad tantae dignitatis apicem praeter indulgentiam sedis apostolicae nollet aliquatenus promoveri, proposuit, etiamsi promoventem benignum et facilem inveniret. Tu autem, sicut vir providus et discretus, intellecta conscientia eius, noluisti protinus ad confirmationem procedere, sed nobis rei seriem per tuas insinuans literas, et per eas ipsius magistri merita et conscientiam commendasti; capitulum autem eiusdem ecclesiae, quare per te fuisset electionis confirmatio protelata, se ignorare, per literas suas nobis transmissas exposuit, cuius electionem capitulum petiit per sedem apostolicam confirmari, praesentato nobis electionis decreto subscriptionibus eligentium roborato. Quidam autem suffraganeorum tuorum, quod per tuas literas videbaris obscure aliquantulum innuisse, per suas literas in aliquibus asseruerunt, eum fuisse filium cuiusdam militis, et ab eo ex quadam ingenua et non coniugata susceptum. Interim vero idem quoque magister ex insperato ad praesentiam nostram accessit, et quod nobis de nativitate ipsius per literas aliquorum suffraganeorum tuorum fuerat intimatum exposuit, et adiecit, quod nunquam pater eius habuerat uxorem, sed matris eius virginitatis florem praeripuit quasi furtim, et ipsa infra quadriennium a nativitate ipsius matrimonium non contraxit. Nos ergo cum fratribus nostris habito super hoc diligenti tractatu, relectis canonibus, quosdam invenimus, qui non legitime genitos promoveri vetant ad officium pastorale, causam forte trahentes ex lege divina, per quam spurii et manzeres usque in decimam generationem in ecclesiam Dei prohibentur intrare. Invenimus etiam alios, qui undecunque genitos non prohibent ad sacros ordines promoveri, dummodo sibi merita suffragentur, asserentes, quod culpa parentum non est filiis imputanda. Et ad hoc probandum inducunt, quod Dominus noster Iesus Christus non tantum ex alienigenis, sed etiam ex adulterinis voluit commixtionibus nasci, qui est sacerdos in aeternum secundum ordinem Melchisedech. Hi etiam scripturae divinae videntur inniti, qua dicitur; "Filius non portabit iniquitatem patris, et pater non portabit iniquitatem filii," per quam antiquum videtur proverbium removeri, quod inter filios Israel dici solebat: "Patres comederunt uvam acerbam, et dentes filiorum obstupescunt." Quidam vero ad concordiam discordantia revocantes, repugnantiam canonum praedictorum sopire quodammodo videbantur, dicentes, quod illegitime geniti si religiose fuerint aut in coenobiis, aut in canonicis conversati, a sacris ministeriis minime revocentur, et inter illegitime genitos quidam asserunt eos solos a sacris officiis prohibendos, qui paternam incontinentiam imitantur. Et hi quoque videntur auctoritate divinae legis inniti, qua dicitur: "Ego sum Deus zelotes visitans peccata patrum in filios usque in tertiam et quartam progeniem in iis, qui oderunt me [gratis]," quasi dicat, in his, qui circa me paternum odium imitantur. Verum canon concilii Lateranensis a bonae memoriae Alexandro Papa praedecessore nostro editus in synodo generali, primis concordans canonibus non solum tales vetat in episcopos promoveri, verum etiam eligentibus talem personam poenam infligit, immo ipso facto eandem poenam asserit incurrisse, ut secundum hoc canon latae sententiae esse videatur, cuius tenor talis est: "Ne videlicet, quod de quibusdam pro necessitatibus temporis factum est, in exemplum trahatur a posteris, nullus in episcopum eligatur, nisi qui de legitimo matrimonio sit natus," circa finem subiungens: "Clerici sane si contra formam istam quemquam

elegerint, et eligendi tunc potestate privatos, et ab ecclesiasticis beneficiis triennio se noverint esse suspensos." Sane praedictus canon, qui non per eum, qui canones non nosset antiquos, sed [per] illum, qui plene noverat canonicas sanctiones, in concilio multorum iurisperitorum est editus et ipsius approbatione concilii roboratus, natis de non legitimo matrimonio omnem videtur in episcopos promovendi aditum praeclusisse, quum id etiam ad consequentiam trahi prohibeat, quod pro necessitate innuit prioribus temporibus esse factum, licet nihil amplius quam necessitas dispensantem ad dispensationem inducat. Praeterea electionem talium innuit nullam esse, dum in poenam statuit electorum, ut tunc eligendi potestate se noverint privatos, quod nihil esset, si tunc non occurreret electio facienda; quod fieri non posset, priori electione seu etiam nominatione durante. Ex quo patet, electionem huiusmodi per ipsum canonem irritatam. Quamvis autem canon Lateranensis concilii, ab Alexandro praedecessore nostro editus, non legitime genitos adeo persequatur, quod electionem talium innuit nullam esse, nobis tamen per eum adempta non fuit dispensandi facultas, quum ea non fuerit prohibentis intentio, qui successoribus suis nullum potuit in hac parte praeiudicium generare, pari post eum, immo eadem potestate functuris, quum non habeat imperium par in parem, sed ea tantum fuerit mens ipsius, ut, quia ex eo, quod aliquando ex dispensatione pro necessitate temporis factum fuerat, quidam gratiam in licentiam extendentes, et inde sumentes exemplum, se licite credebant eligere tales, et indifferenter huiusmodi eligebant, [quum] talia fieri prohiberet. Unde gravem electoribus poenam inflixit. Deliberavimus tamen cum fratribus nostris, utrum in tali casu et cum tali persona deberemus misericorditer dispensare, vel iuris potius servare rigorem. Invenimus enim, a bonae memoriae Urbano Papa praedecessore nostro in casu multo difficiliori cum Cenomanensi dispensatum electo, qui fuerat filius sacerdotis, et Legionensi episcopo, qui post consecrationem suam humiliter fuerat et sponte confessus, quod fuisset ex matre non legitima procreatus, quam pater, vivente uxore propria, cognovisset. Sed idem Urbanus prohibuit, ne id quasi pro regula in poslterum ad consequentiam traheretur. Videbatur enim, quod, quum cum illegitime natis fuisset aliquamdiu dispensatum, et ex certa causa forsitan in posterum dispensandum, in hac causa celerius deberet dispensatio indulgeri, illi personae videlicet, quae minus imperfectionis, plus perfectionis habebat. Multa enim in hoc casu dispensationem inducere videbantur, literarum scientia, morum honestas, vitae virtus, et fama personae, multipliciter a quibusdam etiam ex fratribus nostris, qui eum in scholis cognoverant, approbatae. Faciebant etiam ad id non modicum concors capituli Vigoriensis electio, petitio populi, assensus principis, votum tuum, suffraganeorum suffragia, et humilis devotio confitentis, qui sponte ac humiliter suum maluit confiteri reatum, quam laesa conscientia thronum conscendere pastoralem. Habito ergo super hoc cum fratribus nostris diligenti tractatu, intelligentes, Vigoriense capitulum eundem magistrum non humiliter postulasse, sed improvide potius elegisse, quum ad obtinendum dispensationis beneficium procedendum fuisset, non per electionem inhibitam, sed per postulationem permissam, electionem ipsam praedicti canonis auctoritate cassatam denunciamus irritam et inanem, parcentes non modicum Vigoriensi capitulo, quod eis nec poenam infligimus expressam in canone supradicto, nec probare cogimus ignorantiam, quam allegant. Et quamvis post cassationem huiusmodi a nobis a multis fuerit humiliter supplicatum, ut propter causas praedictas dignaremur cum eo misericorditer dispensare, quum ad dispensandum in talibus nullus se casus habilior posset afferre, quia tamen praedicto capitulo liberam facultatem eligendi vel postulandi volumus reservare, supplicationem huiusmodi, quae nomine capituli non fiebat, quum non ad postulandam dispensationem, sed ad petendam confirmationem ipsius capituli fuerint nuncii destinati, ad praesens non duximus admittendam, decernentes irritum et inane quicquid super ordinatione ipsius episcopatus ante susceptionem literarum nostrarum fuerit attentatum. Volumus igitur et mandamus, quatenus per Cantuariensem provinciam ex parte nostra facias districtius inhiberi, ne, quod de multis in eadem provincia, quod sine pudore non dicimus, inordinate noscitur esse factum, de cetero contra formam praescriptam nullatenus attentetur. Quod si Vigoriense capitulum eundem magistrum propter

praerogativam meritorum ipsius duxerit postulandum, postulationem ipsius apud sedem apostolicam praesentare procuret.

Chapter XXI

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

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

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

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

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

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

But when at the messenger's command the parties had gone to Milan to seek *apostoli*—letters permitting prosecution of the appeal—they were diligently admonished by the archbishop to return to peace. The provost steadfastly asserted that he was willing to abide by his arbitration if the opposing party would do the same, which, after taking counsel, the aforesaid subdeacon promised. After this they returned to their own places and were then summoned again by the archbishop. The archpriest, furnished on behalf of the other party with letters of ratification, as he said, and S. himself

on his own behalf took care to submit the matter by compromise to the Archbishop of Milan. He gave them as bishop Master G., described in the source as a *Modicensis* canon, and also confirmed him.

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

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

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

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

> Non possunt electores in praeiudicium electi compromittere; sed, si consenserit electioni suae vel consentire velit, non obstante laudo in contrarium lato, est confirmandus, si aliud canonicum sibi non obsistat, licet non sit de gremio illius ecclesiae, quamcunque ob causam a maiori parte fuerit appellatum. Et in hoc ultimo est iste textus multum notabilis.
>
> Idem Genuensi Archiepiscopo, et Placentino et Bobiensi Episcopis.
>
> Quum inter dilectos filios canonicos Saonenses super electione pontificis quaestio verteretur, eligentium votis in diversa divisis, ad sedem apostolicam dilecti filii S. subdiaconus Saonensis et I. procurator capituli accesserunt, quibus venerabilem fratrem nostrum I. Albanensem episcopum et dilectum filium nostrum A. tit. S. Martini presbyterum cardinalem dedimus auditores. Proposuit autem procurator praedictus, quod singuli requisiti communi assensu in Hastensem praepositum, excepto praedicto subdiacono, convenerunt, quo in sua duritia permanente, aliorum consensus redactus fuit in scriptum publicum consequenter. Ceterum pro parte altera fuit propositum ex adverso, quod, quum septem essent canonici Saonenses, in capitulum se receperunt, de futura electione pontificis tractaturi, ubi diversi a diversis nominati fuere. Sed archidiacono, archipresbytero et praeposito dictum Hastensem praepositum nominantibus, fuit a praefato S. fortiter obviatum, asserente, ipsum morbo epileptico laborare, pro quo alia vice tanquam inhabilis fuerat recusatus; nec ad aliam ecclesiam debere fieri transitum, donec reperiretur idoneus in ecclesia Saonensi. (Et infra:) Sed praepositus Saonensis spretis

appellationibus interpositis praepositum Hastensem elegit, obiiciente parte adversa, quod huiusmodi electio propter appellationes interpositas et alia etiam obstacula non teneret. (Et infra:) Sed et civitatem idem praepositus et alii omnes egressi, exceptis presbytero et subdiacono saepedictis, secum sigillum ignorantibus eis detulerunt, et ad Mediolanensem archiepiscopum accedentes petierunt electionem, quam fecerant, confirmari, licet a solo praeposito, et post appellationem facta fuisset. Sed quoniam indebitus electionis processus archiepiscopo antea innotuerat, petitioni eorum non annuens, quendam de fratribus suis ad investigandum electionis processum Saonam direxit. Sed quum testes producerentur coram eo, et postularetur, ut nuncium pariter ipsum procurarent, pars adversa iam dictum archiepiscopum, altera vero sedem apostolicam invocavit. Sed quum ad mandatum nuncii partes Mediolanum ivissent apostolus petiturae, ab archiepiscopo, ut ad pacem redirent, fuerunt monitae diligenter, cuius arbitrio praepositus se velle stare constanter asseruit, si hoc et ipsum pars faceret adversa, quod deliberato consilio praefatus subdiaconus repromisit. Post haec reversi ad propria, et demum ab archiepiscopo evocati, archipresbyter pro parte altera de rato, ut dicebat, literis praemunitus, ipse vero S. pro parte sua in Mediolanensem archiepiscopum compromittere curaverunt, qui magistrum G. Modicensem canonicum eis dedit in episcopum, et etiam confirmavit, quem in Saonensi ecclesia, praesente clero et populo civitatis, adhibitis solennitatibus consuetis, electum publice nunciarunt, cui archiepiscopus, praeposito sedem apostolicam provocante, consecrationis manus distulit impertiri. (Et infra:) Postquam igitur coram praefatis auditoribus fuit super his et similibus diutius disputatum, qui nobis ea sufficienter ac fideliter retulerunt, quoniam de ipsis nobis non potuit fieri plena fides, causam ipsam vestro duximus examini committendam, Discretioni vestrae per apostolica scripta mandamus, quatenus, quum constet, electionem de praeposito memorato a maiori et saniori parte capituli celebratam etiam et subscriptam, si dictus praepositus eidem electioni consenserit, ut per mutuum consensum eligentium et electi quasi coniugale vinculum spiritualiter sit contractum, nisi sufficienter sit ostensum, eundem praepositum morbo epileptico laborare, super quo contra ipsum dicitur appellatum, vos, non obstante appellationis obiectu, si qua forsan ex aliis causis superius memoratis proponitur interposita, quum ex iis, quae coram nobis allegata fuerunt, eas appellationes certa ratione frivolas reputemus, electionem nostra freti auctoritate, sublato cuiuslibet contradictionis et appellationis obstaculo, confirmetis ipsius, non obstante, quod post talem electionem a praefato archiepiscopo proponitur esse factum, etiamsi a partibus in eum fuerit compromissum, quum electores a tali electione sic resilire nequiverint. Quod si electores illius non compromiserint in archiepiscopum memoratum, etiamsi dictus praepositus nondum electioni de se factae consenserit, eo tamen consentire volente, dummodo a morbo sit immunis obiecto, vos electionem ipsius nihilominus confirmetis.

Chapter XXII

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

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

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

establish for the parties a suitable term at which they should approach the Apostolic See in person or through suitable representatives to receive sentence.

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

When the messengers of the Provost of the Holy Apostles approached our presence at the appointed term, the Provost of Saint George neither came nor sent a suitable representative for himself. [But our venerable brother the Archbishop of Cologne excused his absence, asserting that, after undertaking the journey to come to the Apostolic See, he had been captured and was being detained by the nobleman W., Count of Jülich. Lest we appear to dispose of anything to his prejudice, however, we commanded through our beloved son the Provost of Saint Gereon and B., his fellow canon, that both parties be cited under a peremptory order for the feast of the Lord's Resurrection. As we learned from their letters, they cited the Provost of the Holy Apostles orally, and the Provost of Saint George both by letters and messengers; after receiving the citation, the latter wrote that he would approach the Apostolic See. But since, though awaited both at the term and beyond it for as many as eight weeks, he neither came nor sent a suitable representative, we adjudged him contumacious and condemned him to the opposing party's lawful expenses.]

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

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

But because the allegations proposed before those judges on behalf of the same Provost of Saint George were not presented to us, for which reason we could not know for ourselves what he had objected or what he had answered to the objections, and thus the remitted cause had not been sufficiently instructed, [then] we did not consider that we should proceed to a definitive sentence. Instead, we committed the decision of the cause itself to the judges under this form: if it either was notorious or was established through the matters already stated that, at the time of the election, the Provost of Saint George suffered a defect in orders, knowledge, or age that, according to the canonical

sanctions, prevented him from being promoted to such an office, then, removing the impediment of appeal and notwithstanding his bodily absence, they were to impose silence upon him, adjudge the same provostship to the Provost of the Holy Apostles, and, putting him into bodily possession, cause him to enjoy peaceful possession.

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

> Electus a maiori et saniori parte capituli, si est et erat idoneus tempore electionis, confirmabitur; si autem erat indignus in ordinibus, scientia vel aetate, et fuit scienter electus, electus a minori parte, si est dignus, confirmabitur.
>
> Idem Praenestino Episcopo, apostolicae sedis Legato.
>
> Dudum ad audientiam nostram quaestione perlata, quod, vacante praepositura Colocensis ecclesiae, in duo se vota eligentium divisissent, causam iudicibus duximus committendam, quod auditis, quae proponerentur hinc inde, si de partium procederet voluntate, definitivam sententiam promulgarent; alioquin causam sufficienter instructam ad nostram remitterent audientiam; statuentes partibus terminum competentem, quo per se, vel idoneos responsales ad sedem apostolicam accederent sententiam recepturae. Ipsi vero, mandatum apostolicum fideliter exsequi cupientes, partes ad suam praesentiam convocarunt, receperunt testes hinc inde productos, examinaverunt eligentium conscientias, audiverunt allegationes utrinque. Et quoniam praepositus sancti Georgii eorum sententiae se tandem asseruit nolle stare, processum ad sedem apostolicam destinarunt, partibus festum beati Michaelis tunc proximo venturum veniendi ad sedem apostolicam terminum praefigentes, [quem praepositus SS. Apostolorum, allegans, quod terminus tam prolixus dispendium ecclesiae generaverat, ad festum S. Servatii breviavit.] Quumque nuncii praepositi sanctorum Apostolorum statuto termino ad praesentiam nostram accessissent, praepositus sancti Georgii nec venit, nec pro se misit idoneum responsalem. [Sed venerabilis frater noster Coloniensis archiepiscopus eius absentiam excusavit, asserens eum captum, arrepto itinere ad sedem apostolicam veniendi, a nobili viro W. Iuliacensi comite detineri. Nos autem ne aliquid disponere in eius praeiudicium videremur, per dilectum filium praepositum S. Gereonis et B. concanonicum suum mandavimus ad festum Resurrectionis dominicae sub peremptorio partem utramque citari. Qui, sicut ex literis ipsorum accepimus, SS. Apostolorum praepositum viva voce, praepositum vero S. Georgii per literas et nuncios pariter citaverunt; qui citatione recepta se scripsit ad sedem apostolicam accessurum. Verum, quum nec ad terminum, nec ultra terminum, etiam per VIII. hebdomades exspectatus venerit, vel miserit idoneum responsalem, eum reputavimus contumacem, eundem in expensas legitimas parti condemnantes adversae.] Visis attestationibus et Gestis igitur iudicum diligenter inspectis, invenimus, quod pro praeposito sanctorum Apostolorum auctoritas, pro praeposito vero sancti Georgii numerus eligentium faciebat, quum primus a quatuordecim, tum personis, tum canonicis, qui alios dignitate, aetate et tempore praecedebant, secundus vero a viginti quatuor fuisset electus. Obiiciebatur autem praeposito S. Georgii minor scientia, defectus aetatis, et quod in minoribus erat ordinibus constitutus. Unde quum praepositurae illi esset archidiaconatus annexus, nondum erat ei dignitas conferenda, ratione cuius cogebatur infra praefixum a canonibus spatium in diaconum promoveri. Proponebatur autem pro altero, quod vir erat aetate, scientia et moribus commendandus. Unde meliori ducti zelo propter hoc electores ipsius in eum se confessi fuerant convenisse; non solum sui, sed quidam alterius etiam electores eum prudentiorem esse

praesertim in spiritualibus asserebant, quamvis alium magis utilem maxime circa temporalia propter potentiam fuerint protestati. Quum autem allegationes pro eodem praeposito sancti Georgii coram iudicibus ipsis praepositae nobis non fuerint praesentatae, propter quod non potuimus scire per nos, quid obiecerit, vel quid responderit ad obiecta, sicque causa remissa non fuit sufficienter instructa, [tunc] ad diffinitivam sententiam non duximus procedendum, sed decisionem causae ipsius iudicibus commisimus sub hac forma, ut, vel si notorium esset, vel per ea, quae iam dicta erant, constaret, quod praepositus S. Georgii electionis tempore pateretur vel in ordinibus, vel in scientia, vel in aetate defectum, qui eum iuxta canonum sanctiones impediret ad huiusmodi officium promoveri, ei, sublato appellationis obstaculo, non obstante ipsius absentia corporali, silentium imponentes, praeposito sanctorum Apostolorum praeposituram adiudicarent eandem, et eum in possessionem corporalem mittentes pacifica facerent possessione gaudere. Alioquin, quum in eum non solum plures, sed duae paene partes convenerint, et impedimentis cessantibus appareat, quod eum bono zelo elegerint, praepositi sanctorum Apostolorum electione appellatione remota cassata, electionem confirmarent ipsius, et ei facerent praeposituram assignari praedictam, et de cetero tanquam praeposito responderi, [contradictores etc. Dat. Lat. V. Id. Apr. 1203.]

Chapter XXIII

Latin source headnote: Those who receive a man postulated to a church as instituted or as administrator before the postulation has been admitted by the superior are deprived of the power of electing, and the power of electing devolves upon the others, although they are fewer. And if all are deprived, in cathedral churches it devolves upon the Pope. Say this according to the more principal understanding, which agrees more closely with the text.

The same to the canons of Mainz.

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

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

Then he was to inquire more diligently into the truth concerning the election of the archbishop himself. If the violence which he and his men feared were established to him, he was, notwithstanding that the archbishop's election had been proceeded with after an appeal was interposed to us, to confirm the election, provided that nothing in the canonical institutes obstructed

it, removing the impediment of appeal. For the others, who did not consider that they should defer to the appeal interposed to us lest an election be proceeded with without him and his associates, could not use this exception against him, since he who commits an offense against the law invokes the law's aid in vain. Hence it did not seem that they could object that the same man had been elected by fewer persons, according to their assertion, since by contemning the appeal lawfully interposed to us and receiving the aforesaid bishop without our license, they had rendered themselves unworthy.

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

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

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

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

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

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

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

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

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

We therefore, although because of judicial authority we presume in favor of those things done by the legate, nevertheless rely more upon the reason that the archbishop's adversaries, for the three aforesaid causes, rendered themselves unworthy to such an extent that they ought not to be heard against him. Hence, what had been done concerning him could not be impeded by them. Indeed,

even if the electors of his party had likewise offended so that they rendered themselves unworthy, provision for the church of Mainz would on this occasion have devolved upon us. Consequently, without injury to the law, we could have placed the said archbishop over that church as its pastor, especially since he had been consecrated Bishop of Mainz by a legate of the Apostolic See.

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

> Recipientes postulatum ad ecclesiam tanquam institutum vel administratorem ante admissionem postulationis a superiore factam, privati sunt potestate eligendi, et ad alios, licet pauciores, devolvitur potestas eligendi; et si omnes privati sunt, devolvitur ad Papam in ecclesiis cathedralibus. Hoc dic. secundum principaliorem intellectum, qui magis congruit literae.
>
> Idem Canonicis Maguntinensibus.
>
> Bonae memoriae C. Maguntinensi archiepiscopo, episcopo Sabinensi, viam universae carnis ingresso, quum vota vestra se in varia divisissent, et quibusdam petentibus Wormaciensem episcopum quibusdam vero venerabilem fratrem nostrum nunc archiepiscopum vestrum, tunc praepositum sancti Petri Maguntinensis, sibi eligentibus in pastorem, dilectus filius magister P. scholasticus Maguntinus cum quibusdam aliis pro illis, qui Warmatiensem episcopum postularunt, procurator ad apostolicam sedem accessit; pro aliis vero dilecti filii E. et R. clerici [Maguntini] venerunt, quorum alter institutus fuit procuratur. Partibus igitur in nostra praesentia constitutis, et eis in consistorio nostro diligenter et sufficienter auditis, de fratrum nostrorum consilio venerabili fratri nostro Praenestino episcopo, a sede apostolica legato, dedimus in mandatis, ut, si eundem episcopum quoad temporalia vel spiritualia recepisse constaret ecclesiam Maguntinensem, vel ministrasse in temporalibus aut spiritualibus in eadem, prout obiectum fuerat ex adverso, postulationem factam de ipso, sublato cuiuslibet appellationis obstaculo, nunciaret irritam, de gratia nostra concedens eidem, ut Warmatiensem sibi ecclesiam retineret. Nam de iure communi, quia praeter auctoritatem nostram transire praesumpsit, utraque erat spoliandus, ut [et] ea careret, quam concupivit avare, et ea, quam superbe despexit. Quod si parere contemneret, utraque ipsum ecclesia denunciaret auctoritate nostra privatum. Deinde inquireret de ipsius electione archiepiscopi diligentius veritatem, et, si ei de vi, quam ipse et sui metuebant, constaret, eo non obstante, quod post appellationem ad nos interpositam fuerat in ipsius electione processum, quum alii, qui appellationi ad nos interpositae, ne sine ipso ac sociis eius haberent in electione processum, non duxerint deferendum, uti contra ipsum hac exceptione non possent, quia frustra legis auxilium invocat qui committit in legem, unde nec ab eis posse obiici videbatur, quod idem esset a paucioribus secundum eorum assertionem electus, quum ipsi, appellationem ad nos legitime interpositam contemnentes, et praeter licentiam nostram recipientes episcopum memoratum, reddiderint se indignos, electionem archiepiscopi, dummodo nihil obstaret de canonicis institutis, sublato appellationis obstaculo confirmaret. Quod si nec recepisse praefatam ecclesiam quoad spiritualia vel temporalia, nec in spiritualibus vel temporalibus ministrasse constaret episcopum memoratum, idem legatus audiret quae super postulatione ipsius et electione archiepiscopi proponerentur hinc inde, testes utrinque reciperet, et eorum depositionibus publicatis usque ad calculum sententiae definitivae procedens, gesta omnia sub sigillo suo ad nostram praesentiam destinaret, statuens partibus terminum competentem, quo apostolico se conspectui praesentarent sententiam recepturi. Licet autem essent notoria, quae contra dictum Wormaciensem episcopum et eius fautores fuerant obiecta, praedictus tamen legatus ad maiorem cautelam multos et magnos testes recepit, ex ipsius archiepiscopi parte productos, qui super praedictis deposuere iurati. Unde ipse iuxta

mandati nostri tenorem procedens, postulationem factam de Wormaciensi cassavit, et electionem archiepiscopi memorati, quamvis a paucissimis celebratam, curavit auctoritate apostolica confirmare, ipsumque ordinavit in presbyterum, et tandem in archiepiscopum consecravit. Ipse autem humiliter ad nostram praesentiam accedens, suppliciter postulavit, ut pallium sibi, videlicet insigne pontificalis officii, de consueta sedis apostolicae benevolentia conferremus. Verum quidam simplex nuncius ab adversariis eius ad sedem apostolicam destinatus ex eorum parte apertas nobis cum sigillo pendente literas praesentavit, per quas iidem significabant canonici, quod praedictus legatus corruptus pecunia iniquam sententiam protulisset. Addebant etiam, quod Maguntini cives pariter iuraverunt, quod eum nunquam haberent episcopum, et quod universi clerici, paucis exceptis, suo favebant electo. Quum autem super his coepissemus deliberare cum fratribus nostris, electioni eiusdem archiepiscopi duo videbantur obstare, videlicet quod a paucissimis, et post interpositam a se ipso appellationem videbatur electus. Nam quum postulatio Warmaciensis episcopi fuerit praecedentis appellationis ratione cassata, archiepiscopi electio debebat etiam ex eadem causa cassari. Sed econtra, sicut superius est expressum, qui in appellationem deliquerant, appellationem contra eundem archiepiscopum non poterant allegare. Poterat quoque dici, quod, etsi post appellationem, non tamen contra formam appellationis fuisset electus archiepiscopus saepe dictus, quum appellaverit in hac forma, ne canonici Maguntiae residentes sine ipso ac sociis suis haberent in electione processum. Nec nocet, quod posset ex altera parte replicari; quia nec ipse et socii sui debuerant procedere sine ipsis, quia ipsi appellationem apud nos interpositam contemnendo reddiderant se indignos, et abusi fuerant iure suo. Unde, quum in Lateranensi concilio de his, qui quasdam personas inhibitas eligunt, sit statutum, ut eligendi tunc potestate privatos, et ab ecclesiasticis beneficiis triennio noverint se suspensos, illis pro longe maiori delicto tanquam indignis ab electionis potestate cadentibus, penes eundem ac socios suos tantum ius remanserat eligendi. Quare, si multo pauciores in ipsum quam convenerint convenissent, intelligendum est tamen, quod omnes, qui tunc eligere poterant, elegerunt eundem. Contra legati vero processum hoc facere videbatur, quod non citatis Wormaciensi episcopo et eius fautoribus processisset. Porro iuxta canonicas sanctiones excessus notorius examinatione non indiget, et pro his, quae a iudice sunt acta, praesumitur, quod omnia rite fuerint celebrata; quamvis et, quod citati non fuerint, non posset de facili comprobari, quia negantis factum per rerum naturam nulla est directa probatio, quum, etsi quilibet de se posset asserere, quod ad eum citatio minime pervenisset, singuli tamen vestrum essent in suo testimonio singulares. Ad ipsum quoque legatum, si voluissent, secure potuissent procuratorem idoneum destinare, sicut [et] nuncium destinarant, quemadmodum ex ipsorum ad nos directis literis comprobatur, qui secure ad eundem legatum accessit, et ad propria remeavit, quum et ipse legatus paratus fuerit securitatem omnimodam providere. Nec obest, quod idem nuncius dicitur appellasse, quum appellationi renunciaverit, et in commissione nostra, quam pars reportavit utraque, obstaculum fuisset appellationis amotum. Sed nec apparebat etiam, qui contra factum legati quicquam posset obiicere ac probare, quum non procurator sufficiens, sed simplex ad nos contra praedictum archiepiscopum fuisset nuncius destinatus. [Praeterea si appareret etiam, non esset aliquatenus audiendus, quum adversarii eius per praesumptionem, contemptum et blasphemiam audientia nostra se reddiderint indignos. Praesumptio enim fuit, quod virum, pastorali praeditum dignitate, alteri ecclesiae spirituali coniugio copulatum, praeter auctoritatem nostram contra formam canonicam non solum eligere, sed recipere praesumpserunt. Contemptus accessit ex eo, quod postquam procurator eorum nostras literas reportavit, in quibus mandabatur expresse, quod si Warmaciensis episcopus Maguntinam ecclesiam quoad spiritualia vel temporalia recepisset, vel in spiritualibus vel temporalibus ministrasset in ea, ipsius postulatio cassaretur, et eisdem non veniret in dubium, sed potius manifeste constaret, quod Warmaciensis temporalia saltem receperat, et ministrarat in iis, ipsi postmodum tanquam electo suo, sicut ex literis ipsorum apparet, in quibus eum electum suum nominant et ei se asserunt unanimi consensu favere, temere paruerunt, et consenserunt in ipsum, spirituale cum eo adulterium perpetrantes, quum et per nuncium ad nos ultimo

destinatum electionem ipsius in publico consistorio postulaverunt confirmari. Blasphemia vero in eo fuerat subsecuta, quod, ponentes in coelo os suum, legatum nostrum, qui fungebatur in illis partibus vice nostra, et qui prius etiam, quam assumeretur ad officium pastorale, multae religionis exstiterat, utpote qui in Cisterciensi ordine fuerat primo abbas, quantum in eis exstitit infamantes, eum corruptum fuisse pecunia sunt mentiti.] Nos igitur, etsi propter auctoritatem iudiciariam praesumamus pro his, quae acta sunt a legato, illi tamen plus innitimur rationi, quod adversarii archiepiscopi ex tribus causis praedictis se usque adeo reddiderunt indignos, quod contra eum non debebant audiri. Unde quod de ipso factum fuerat non poterat impediri per eos, quin etiam si electores eiusdem partis pariter deliquissent, ut se reddidissent indignos, ad nos devoluta fuisset hac vice ordinatio ecclesiae Maguntinensis, quare dictum archiepiscopum sine iuris iniuria potuissemus eidem ecclesiae praeficere in pastorem, praesertim quum per legatum apostolicae sedis fuisset in Maguntinum episcopum consecratus. Super his ergo cum fratribus nostris habito diligenti tractatu, de ipsorum consilio cassationem postulationis factae de Wormaciensi episcopo ratam habemus, electionem memorati archiepiscopi confirmantes. [Dat. Lateran. X. Kal. April. 1202.]

Chapter XXIV

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

The same to the clerics of Saint Agatha.

The complaint which our beloved son G., now cardinal-priest of the title of Saint Vitalis but then cardinal-deacon of Saint Mary in Aquiro, brought through the administrator of your church, of which the same cardinal is governor, against P., now priest but then deacon of the church of Saint Saviour called *de Cornutis*, before Pope C. of good memory, our predecessor, concerning that church itself, Pope C., our predecessor, committed to us, while we were constituted in a lesser office, to be heard and examined.

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

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

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

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

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

> Sufficit electo ad obtinendum docere, eligentem fuisse in quasi possessione tempore electionis, licet non probet, quod proprietas iuris eligendi ad illum pertineret.
>
> Idem Clericis sanctae Agathes.
>
> Querelam, quam dilectus filius G. tituli sancti Vitalis nunc presbyter, tunc sanctae M. in Aquiro diaconus cardinalis per oeconomum ecclesiae vestrae, cuius idem cardinalis est gubernator, contra P. nunc presbyterum, tunc vero diaconum ecclesiae sancti Salvatoris, quae dicitur de Cornutis, coram bonae memoriae C. Papa praedecessore nostro super ecclesia ipsa proposuit, C. papa praedecessor noster nobis, in minori officio constitutis, audiendam et examinandam commisit. Petebat igitur idem oeconomus praefatum P. ab ecclesia sancti Salvatoris, quam in praeiudicium vestrae ecclesiae ad iniuriam cardinalis praedicti occupare praesumpserat, removeri, quum ipsa ecclesia sancti Salvatoris pertineat ad ecclesiam sanctae Agathes pleno iure, petens etiam pensionem sexdecim denariorum Papiensium, debitam ecclesiae sanctae Agathes, pro eadem ecclesia Salvatoris de Thermis sibi restitui de novo subtractam. Praedictus vero P. clericus respondebat, quod ipse nullam iniuriam irrogaverat cardinali, nec in praeiudicium ecclesiae vestrae receperat dictam ecclesiam, quum haec ad illam nullo iure pertineat, nec aliquam sibi debeat reddere pensionem; sed ipse per electionem populi, ad quem de antiqua consuetudine pertinet electio, a cardinali sanctae Susannae, cui eadem ecclesia Salvatoris, tanquam capella suo titulo, in spiritualibus est subiecta, canonice fuerat institutus. Quumque ad suam assertionem probandam utraque pars multoties testes produxisset, nos illos recepimus et examinavimus diligenter, quorum depositionibus publicatis disputationem audivimus super illis. Sed antequam huiusmodi controversia finem accipere potuisset, praefatus praedecessor noster debitum carnis exsolvit. Demum autem utraque pars a nubis cum instantia postulavit, ut causam ipsam decidere dignaremur. Nos igitur, rationibus utriusque partis diligenter auditis, et plenius intellectis, habito fratrum nostrorum consilio, dictum P. ab impetitione oeconomi vestri, super electione ac institutione de se facta in ecclesia sancti Salvatoris absolvimus, et super his praefato oeconomo silentium duximus imponendum, quum per testes idoneos nobis constiterit evidenter, quod populus in quasi possessione praesentandi clericum ad illam ecclesiam exsistebat, quando ipsum presbyterum ad illam elegit, et ecclesia eadem spectat ad titulum sanctae Susannae in spiritualibus pleno iure, salva quaestione super iure patronatus inter ecclesiam vestram, et populum saepe dictae ecclesiae sancti Salvatoris. Quia vero

per testes omni exceptione maiores fuit liquide comprobatum, quod pensio sexdecim denariorum Papiensis monetae fuerit clericis ecclesiae vestrae pro ecclesia sancti Salvatoris de Thermis annuatim per multa tempora persoluta, sed de novo subtracta, nos in eundem statum percipiendi pensionem huiusmodi de ecclesia sancti Salvatoris de Thermis ecclesiam vestram decernimus reducendam, et ad solutionem pensionis subtractae condemnamus presbyterum antedictum, salva quaestione proprietatis inter ecclesias memoratas. [Dat. II. Non. Iun. 1205.]

Chapter XXV

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

The same.

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

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

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

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

The others answered that, although the man whom they had elected had been less than legitimately born, nevertheless he had merited to be legitimated through the favor of the Apostolic See, and they asserted that they would lawfully prove this. We therefore, considering that the former had admitted the latter to celebrating the second election after the first election, and that the decree of the

aforesaid council decreed that presumers of this kind were deprived of the power of electing for one occasion only, judged that they were to be admitted to elect, since the election they wished to celebrate before us was now not the second but the third to occur, in such manner that the proctor of the archdeacons should participate without prejudice to the monks.

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

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

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

> Eligentes scienter indignum privati sunt potestate eligendi in electione, quae primo occurrit facienda.
>
> Idem.
>
> Quum Wintoniensis ecclesia pastore vacaret, archidiaconus cum suis fautoribus Salubriensem decanum, prior vero et complices eius praecentorem Linconensem in episcopum elegerunt. [Quumque propter hoc partes ad nostram praesentiam accessissent, quoniam super serie rei gestae non modicum discordabant, testes utrinque recipi fecimus, et attestationes iussimus publicari, quibus perspicaciter intellectis, postquam ab utraque parte sufficienter exstitit allegatum, super ferenda sententia cum fratribus nostris deliberavimus diligenter. Invenimus autem, electionem utramque fuisse contra formam canonicam attentatam, et ut de coniurationibus, appellationibus et excommunicationibus taceamus, primam per inordinatam praesumptionem, secundam vero per violentam impressionem comperimus esse factam; ideoque, via regia procedentes, utramque duximus exigente iustitia sententialiter irritandam. Post aliquot vero dies pars illa, quae praecentorem Lincolniensem elegerat, ad praesentiam nostram accedens, quoddam sub sigillo capituli protulit instrumentum, in quo continebatur expressum, quod Wintoniensis conventus vices suas priori et quibusdam fratribus super electione pontificis in nostra praesentia celebranda commiserat, eisque plenam et liberam eligendi sibi pontificem contulerat potestatem, unde suppliciter postulabat a nobis licentiam eligendi. Nos autem alteri parti exhiberi fecimus instrumentum, quod quum fuisset ab omnibus comprobatum, quaesivimus, utrum isti cum illis eligere vellent, an potius sine illis. Qui habito consilio responderunt, quod salvis exceptionibus, quas contra illos habebant, ipsi cum eis electionem volebant unanimem celebrare.] Licet igitur omnes in communi de facienda electione tractaverint, quia tamen nequiverunt esse concordes, infecto negotio ad nos habuere recursum. Et hi quidem, qui praecentorem elegerant, [firmiter] asserebant, quod illi, qui

decanum elegerant, eligendi erant potestate privati pro illa maxime causa, quod hominem non legitime natum scienter eligere praesumpserunt, unde secundum Lateranense concilium et eligendi hac vice perdiderant potestatem, et per triennium ecclesiasticis beneficiis carere debebant, suppliciter postulantes, ut super hoc inlerloqui dignaremur. Illi vero taliter respondebant, quod, licet is, quem elegerant, fuisset minus legitime natus, per gratiam tamen apostolicae sedis legitimari promeruit, et hoc asserebant se legitime probaturos. Nos igitur attendentes, quod isti post primam electionem admiserant illos ad celebrandam secundam, et quod decretum memorati concilii decrevit, huiusmodi praesumptores una vice duntaxat eligendi potestate privatos, quoniam electio, quam coram nobis celebrare volebant, non iam secunda, sed tertia concurrebat, ad eligendum illos censuimus admittendos, ita ut procurator archidiaconorum sine monachorum praeiudicio interesset. Cumque rursus in unum locum ad tractandum super electione facienda communiter convenissent, nequiverunt tamen in unum votum concorditer convenire, quamvis in hoc utrique communiter concordarent, quod, nisi celebraretur electio coram nobis, irreparabile detrimentum Wintoniensi ecclesiae imminebat. Verum, eo faciente qui fecit utramque unum ad unanimem tandem concordiam redierunt, praefatum praecentorem sibi pari consensu in episcopum eligentes. Nos autem, et honestati nostrae providere volentes, et ecclesiasticae libertati, non prius electionem illam decrevimus confirmandam, quam in consisitorio nostro publice iuravissent, quod nec per aliquam obligationem erant astricti nec per aliquam coactionem inducti, ut electionem huiusmodi celebrarent. Iuramentis igitur sic receptis, et electionem examinavimus et electum. Quumque per literas venerabilis fratris nostri ... Turonensis archiepiscopi, nec non aliorum multorum, de ipsius ordinatione canonica et procreatione legitima nobis et fratribus nostris plenissime constitisset, et carissimus in Christo filius noster I. rex Anglorum illustris, cui libente animo, quantum possumus, cum honestate deferimus, sicut ex patentibus eius literis nobis innotuit, suum praestitisset assensum, ceteris regulariter concurrentibus, quia rectis dispositionibus nihil morae vel difficultatis debet afferri, ne gregi dominico diu desit cura pastoralis, electionem ipsam, de communi fratrum nostrorum consilio, duximus confirmandam. [Quocirca universitati etc. Dat. XI. Kal. Iul. Ao. VIII. 1205.]

Chapter XXVI

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

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

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

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

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

> Eligens scienter indignum in episcopum, est ob hoc suspensus a beneficiis ecclesiae per triennium, nec potest interim ad dignitatem illius eligi vel assumi.
>
> Idem Abbati Cisterciensi, R. et P. Monachis Fontis frigidi.
>
> Per inquisitionem, quam de mandato nostro fecistis super statu episcopatus et episcopi Tholosani, perspicaciter intelleximus, quod Mascaron cancellarius iuratus asseruit, se scivisse pro certo, R. olim Tholosanum episcopum et amicos ipsius ante suam electionem habuisse colloquium cum quibusdam canonicis nominatim expressis, eosque sollicitasse precibus, ut ipsum eligerent in episcopum, seque vidisse pariter et audivisse, quando praedictus episcopus, exsistens in domo S. Petri de Coquinis recognovit in quorundam canonicorum praesentia, se canonicis illis, qui adversati fuerant suae primae electioni, iurasse in domo Actonis de Montibus, credens pro certo, quod iuramentum illud illicitum fuit, et praestitum, ut idem R. eligeretur ex pacto, et quod ipsemet post primam electionem ipsius cassatam domum episcopalem eius nomine detinebat, recipiens quosdam reditus et proventus, quos de ipsius conscientia et consensu in eiusdem negotiis expendebat. Quum igitur talem scienter in episcopum eligendo, sicut ipse suo iuramento firmavit, ecclesiasticis beneficiis reddiderit se indignum, grave gerimus et molestum, quod dilecto filio Tholosano praeposito in episcopum Convennarum electo idem Mascaron in praepositum dicitur substitutus. Quocirca discretioni vestrae per apostolica scripta mandamus, quatenus, eundem Mascaronem ab officio praepositurae penitus amoventes, faciatis virum idoneum ad officium illud assumi. [Contradictores etc. Dat. II. Non. Iul. An. VIII. 1205.]

Chapter XXVII

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

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

When we formerly considered that the cause being conducted between Bonus the priest and Brunus, a canon of the church of Saint Peter of Lucca, should be committed to you—concerning the fact that the said priest Bonus is said to have been elected prior by the greater part of the canons of the same church, the aforesaid B. and a certain other dissenting—you took care, as we learned from your letters, to cite the parties, so that according to our mandate you might be able to conclude the cause itself by a canonical end.

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

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

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

> Si non professus eligitur ad regimen ecclesiae regularis, cassatur electio, consuetudine in contrarium non obstante.
>
> Idem Priori sancti Frigidiani, G. et G. Canonicis Lucanensibus.
>
> Quum causam, quae inter Bonum presbyterum et Brunum canonicum ecclesiae sancti Petri Lucanensis vertitur super eo, quod dictus presbyter Bonus a maiori parte canonicorum eiusdem ecclesiae, praedicto B. et quodam alio contradicentibus, in priorem, sicut dicitur, est electus, olim vobis duximus committendam, vos, sicut ex literis vestris accepimus, partes citare curastis, ut iuxta mandatum nostrum causam ipsam fine possetis canonico terminare. Quumque in vestra essent praesentia constitutae, dictus presbyter Bonus cum instantia postulabat, ut electionem de se factam auctoritate curaretis apostolica confirmare. Sed praefatus Brunus e contrario respondebat, illum non esse dignum regimine prioratus, crimen ei obiiciens simoniae, quodque ipsius electio non erat canonice celebrata. Et, quia professus non erat, ipsum asserebat merito repellendum. Verum quum de simonia nihil fuisset probatum, nec aliquid contra modum electionis ostensum, movit vos vehementer ipsius ecclesiae privilegium, in quo continebatur expressum, ut nullus ibi qualibet subreptionis astutia praeponatur, nisi quem fratres communi consensu, vel fratrum pars consilii sanioris secundum Dei timorem et B. Augustini regulam, providerint eligendum. Quamvis autem multi priores continue unus post alium in ipsa ecclesia per multa et longa tempora fuerint non professi, quia tamen praefatus presbyter B. non est professus observantiam regularem, dubitatis, et merito, nobis procedere inconsultis contra privilegium sedis apostolicae concessum ecclesiae memoratae. Quia igitur non debemus attendere solummodo, quid factum sit, sed potius, quid sit faciendum, consultationi vestrae taliter respondemus, quod, quum secundum legem divinam non sit in bove arandum et asino, nec quisquam debeat vestem induere de lana linoque contextam, sublato cuiuslibet appellationis obstaculo irritetis electionem praedictam, et compellatis praefatum presbyterum, aliosque clericos non professos, ut vel beati Augustini regulam in eadem ecclesia constitutam profiteantur et servent, aut ipsam ecclesiam omnino dimittant. [Contradictores etc. Dat. Ferentini VIII. Id. Iul. 1203.]

Chapter XXVIII

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

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

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

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

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

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

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

gravely reproved him concerning this, he said—and others from his regions confessed—that such a custom had hitherto been observed in Ireland.

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

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

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

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

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

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

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

But if the aforesaid Bishop of Meath and Abbot of Mellifont, who ought to have participated, were not contemned but were summoned to the election—provided that they could have been summoned

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

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

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

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

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

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

Nominatio vel appellatio eius, cuius non interest, electionem non impedit. Sed si vocandus contemnitur, eo prosequente contemptum, cassatur electio etiam confirmata; et potest prosequi, nisi consenserit electioni; quod potest etiam ex post facto. H. d. usque ad § Super eo. - § 1. Episcopus, dum celebratur missa consecrationis suae, vel archiepiscopus ante receptum pallium, ordines conferre non debet. H. d. usque ad ver. Quod autem. - § 2. Iste vers. non summatur, tum propter diversitatem lecturarum, tum quia non facit ad titulum. Abb.

Idem I. tit. sancti Stephani in Celio monte Presbytero cardinali apostolicae sedis Legato.

Quod, sicut ex literis tuis [nostro nuper apostolatui praesentatis accepimus, post multos labores maris et terrae, ac diversitatem gentium ad iniunctum tibi legationis officium exsequendum prospere per Dei gratiam pervenisti, et Hibernicanam ecclesiam studuisti pro posse in melius reformare, sicut ipsa operis exhibitio manifestat, gratum gerimus admodum et acceptum, et tuae sollicitudinis studium plurimum in Domino commendamus. Verum ecclesiae Armachanae negotium, quod tibi videbatur arduum et difficile, sine nostro noluisti consilio terminare, sed nobis eiusdem duxisti negotii seriem tuis literis intimandam, ut ex nostro postmodum rescripto cognosceres, qualiter tibi foret in ipso negotio procedendum. Sicut enim in tuis perspeximus literis contineri, bonae memoriae Armachano archiepiscopo viam universae carnis ingresso, a iustitiario regio vocatus fuit archidiaconus Armachanus, ut pro substituendo pontifice, ne regni pax posset aliquatenus impediri, suffraganeos Armachanae ecclesiae convocaret, et omnes illos, qui ad faciendam conventionem debuerant convenire; ac sic per eum, ut dicebatur, omnes vocati fuerunt; sed pauci apud villam de Ponte, ad quos pertinebat electio, convenerunt, duo videlicet suffraganei Armachanae ecclesiae, abbas de Mellifonte, qui privilegium demonstrabat, se primam in electione vocem habere, ac praedictus archidiaconus Armachanus. Qui deliberato consilio in tres personas, ut dicitur, convenerunt; in Midensem videlicet episcopum, qui unus erat ex suffraganeis, in archidiaconum Midiae, et magistrum Manfredum, regium capellanum. Unus vero de duobus episcopis, qui ad talem nominationem convenerat requisitus, firmiter asserebat, quod interfuit illi electioni, sed tacuit, nec praebuit in ipsa electione consensum; aliis e contrario asserentibus, quod ipsum consensisse crediderant, quia interfuit et nullatenus contradixit. Postmodum autem, plurimis diebus elapsis, praefatus archidiaconus Armachanus apud Armachanum episcopos suffraganeos convocavit, et omnes convenientes in ipsam metropolim, exceptis Midensi episcopo et abbate Mellifontis, qui nulla ratione per Hibernienses illuc poterant convenire, abbatem canonicurum regularium de Benger in archiepiscopum elegerunt, et ipsum, sicut consuetudinis esse dicebant, sequenti die dominica in episcopum consecraverunt; qui post inunctionem suam, antequam missarum solennia finirentur, quendam in acolythum ordinavit, et administrare praesumpsit. Quumque ipsum super hoc graviter redargueres, dicebat ipse, ac confitebantur alii de partibus ipsius, quod talis consuetudo erat hactenus in Hibernia observata. Contentio vero maxima ex electione huiusmodi erat inter Hibernienses et Anglicos, quoniam Anglici firmiter asserebant, se nolle penitus Hiberniensem aliquem eorum esse archiepiscopum, nullatenus paterentur, ac sic multa plurima in tua praesentia proponentes quidam Anglici et Hibernici asserebant, quod, si Anglicus praeficeretur Armachanae ecclesiae, non provideretur utiliter ipsi ecclesiae ac totius terrae quieti. Postmodum autem, quum dicto electo administratio per te interdicta fuisset, et concessa archidiacono memorato, ei unus suffraganeorum obiecit, quod quandam tabulam argenteam distraxerat ab ecclesia Armachana, qui tibi tandem confessus exstitit tabulam ipsam ab Armachanis clericis et laicis recepisse, ac vendidisse pro XXV. marchis eandem, sed firmiter promittebat, quod quicquid de ipso contingeret, ipsius ecclesiae super hoc indemnitatibus praecaveret. Significasti praetera nobis, quod facta prima electione apud villam de Ponte, ne quid fieret in praeiudicium illius electionis et dignitatis regis, qui assensum suum in electionibus asserit requirendum, ad nostram fuit audientiam appellatum.] Nos igitur, literarum tuarum tenore diligenter inspecto, sex in eis perspicimus contineri, quorum tria contra praedictum electum; et

alia tria contra eius electionem facere videbantur. Primum, nominatio facta de tribus, quam in literis tuis aliquoties electionem appellas, contra quam, si electio vera fuit, antequam cassaretur, non debuerat aliquid aliquatenus attentari. Secundum, appellatio interposita, quae si legitima fuit, sequentem electionem penitus impedivit. Tertium, quia Midensis episcopus et abbas Mellifontis, qui interesse debuerant, ad electionem minime convenerunt. Unde si contempti fuerunt vel alter vel ambo, plus eorum contemptus, quam multorum contradictio praedictam electionem debuit impedire. Quartum, quia praefatus abbas sic electus ante confirmationem obtentam administrare praesumpsit. Quintum, quia in die consecrationis suae ordines celebravit, quum nondum pallium obtineret. Sextum, dilapidatio, quia tabulam argenteam alienare minime formidavit. Verum quum ex prima electione, quae facta est de tribus, dicenda videtur potius nominatio, non nisi quatuor de omnibus, ad quos electio pertinebat, videlicet duo suffraganei ecclesiae Armachanae, et praedictus abbas Mellifontis, et archidiaconus Armachanus convenerint, et ex illa tali nominatione nihil iuris acquisitum fuerit nominatis, licite procedi potuit ad electionem regulariter celebrandam, praesertim in ecclesia Armachana, quum iuxta constitutiones canonicas, si fieri potest, in cathedrali ecclesia debeat electio celebrari. Nec talis appellatio interposita electionem illam potuit impedire, quum in ea nihil attentatum fuerit in praeiudicium regiae dignitatis, quia non simplex nominatio, sed solennis electio debet principi praesentari, ut postulationi praestet assensum, etsi secus aliquando per usurpationem aliqui faciant abusive. Si autem praefati Miridiensis episcopus et abbas Mellifontis, qui interesse debuerant, non contempti fuerunt, sed ad electionem vocati, si tamen sine periculo potuerint convocari, sive nequiverint sive noluerint ad electionem celebrandam accedere ipsorum absentia non potuit electionem impedire, quoniam, si ad locum illum inter Hibernienses secure non poterant proficisci, nec ceteri ad alium locum inter Anglicos tute poterant convenire, propter quod tibi super hoc credimus veritatem diligentius inquirendam, et, si eos vocatos fuisse constiterit, si vocati absque periculo poluerunt, et illos noluisse, vel non potuisse ad electionem celebrandam venire, propter eorum absentiam, si canonicum aliud non obstitit, electio ipsa non debet aliquatenus irritari. Quodsi eos vocatos non fuisse constiterit, sed contemptos, infirmanda erit penitus electio taliter celebrata, nisi postea propter bonum pacis diligenter admoniti curaverint consentire. Ceterum, quum, antequam tu ad partes Hibernicas pervenisses, illa fuerit electio celebrata, et electus ipse statim coeperit ministrare, tu satis id potes sub dissimulatione transire, quum id, sicut nosti, de metropolitanis Angliae, Franciae, Alemaniae et aliarum partium remotarum, qui concorditer sunt electi, Romana ecclesia patiatur, ecclesiarum utilitate pensata, quia, si tanto tempore, quousque posset electus confirmationem cum pallio a sede apostolica obtinere, regalia non reciperet, ecclesia, quae interim administratore careret, non modicum incurreret detrimentum. § 1. Super eo autem, quod in die consecrationis suae, antequam missarum solemnia finirentur, acolythum ordinavit, pro tali excessu eum corripias et castiges, nisi forte hoc esse de antiqua consuetudine cognoveris ecclesiae Armachanae. De qua si tibi constiterit, quod nunc factum est propter simplicitatem et ruditatem gentis illius poteris misericorditer sustinere. Districte tamen ex parte nostra prohibeas, ne de cetero aliquid simile attentetur, quum solus Romanus Pontifex, qui, sicut nosti, ante hymnum angelicum consecratur, et postmodum ipse missarum sollennia incipit et perficit consecratus, in die consecrationis suae valeat ordines celebrare. Ceteri vero, qui inter epistolam et evangelium consecrantur, quia consecrati concelebrant principaliter celebranti, ne dividatur mysterium unitatis, non debent tunc ordines celebrare. Praeterea quum non liceat archiepiscopo sine pallio convocare concilium, conficere chrisma, dedicare basilicas, ordinare clericos, et episcopos consecrare, multum profecto praesumit, qui, antequam impetret pallium, clericos ordinare festinat, quum id non tanquam simplex episcopus, sed tanquam archiepiscopus facere videatur. § 2. Quod autem tabulam argenteam dicitur vendidisse, dummodo ecclesiam Armachanam, sicut promisit, reddat indemnem, aequanimiter poteris praeterire, quum id de cleri et populi processerit voluntate. Sane secundum ea, quae nobis tuis literis intimasti, tibi praescripto modo duximus rescribendum; sed quum tu de circumstantiis eiusdem negotii

habere valeas notitiam pleniorem, et nos de discretione tua plurimum confidamus, in isto et aliis negotiis, te sic credimus auctore Domino processurum, quod tuae sollicitudinis prudentia merito poterit commendari, et tua legatio ad honorem et commodum sedis apostolicae multipliciter redundabit. [Postquam autem literae etc. Datum. ... 1202.]

Chapter XXIX

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

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

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

But the dean himself, without having the assent of the greater part of the chapter but only that of a far lesser part, suddenly broke forth into an election, appealing that no one should attempt anything against the election itself. This was so although he asserts that immediately afterward several others assented to the election made; nevertheless, what was not valid from the beginning could not acquire validity after the fact, since an election which was invalid by the law itself could not be made ratified through subsequent assent, especially while an appeal was pending.

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

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

Electio per minorem partem capituli facta non tenet, nec per subsequentem consensum ratificari potest. Hoc dicit secundum communem intellectum.

Idem Toletano Episcopo, et Sagonensi et de Ardenna abbatibus.

Auditis et intellectis meritis causae de duabus electionibus celebratis in ecclesia Baiocensi, unam de G. archidiacono, et alteram de R. subdiacono invenimus utramque contra formam canonicam attentatam. Quum enim, inquisitis voluntatibus singulorum, decanus cum paucioribus in ipsum R., et cantor cum pluribus in dictum G. archidiaconum convenissent, solo cantore postmodum quendam alium, videlicet

magistrum R. de Algediis nominante, ad nostram fuit audientiam appellatum, ne decanus, qui primam in electione vocem habebat, ad electionem procederet sine consensu totius capituli, vel maioris et sanioris partis ipsius, ut discordiae ianua, quae iam videbatur aperta, per appellationis obstaculum clauderetur. Ipse vero decanus, non habito consensu maioris partis capituli, sed longe minoris, subito in electionem prorupit, appellans, ne quis contra ipsam electionem aliquid attentaret, quamvis asseveret, quod electioni factae statim plures alii consenserunt; quum tamen ex postfacto nequiuerit convalescere quod ab initio non valebat, quoniam electio, quae fuerat irrita ipso iure, per subsequentem consensum, maxime appellatione pendente, non poterat esse rata. Eis ergo ad propria recedentibus, cantor et alii, qui remanserant in capitulo, post illam electionem nondum cassatam, et appellationem ad nos interpositam, a nominatione dicti archidiaconi recedentes, de novo praefatum subdiaconum absque Romani Pontificis vel etiam metropolitani proprii conscientia, quum subdiaconus esset, non solum eligere praesumpserunt, verum etiam pulsatis campanis cum processione solenni, cantando hymnum, in ecclesiam deportare. Nos igitur his et aliis, quae coram nobis fuere proposita, diligenter auditis, de communi fratrum nostrorum consilio electionem utramque duximus irritandam. [Per apostolica etc. Dat. Rom. ap. S. Petr. X. Kal. Maii Ao. VIII. 1205.]

Chapter XXX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> Potestas data compromissariis ad eligendum praelatum, re non integra revocari non potest, et desinit res esse integra, postquam compromissarii coeperunt habere tractatum.
>
> Idem Grandissylvae et Bellaeperticae Abbatibus.
>
> In causis, quae [apostolicae sedis deferuntur examini iura debent subtiliter observari quia quod in una causa per Romanum Pontificem iudicatur in aliis causis formam tribuit iudicandi.] Nimirum quum in ecclesia Tholosana vacante duo per dissensionem capituli sui, videlicet venerabilis frater noster episcopus Convenarum, et dilectus filius R. archidiaconus Agennensis nominati fuissent, et R. canonicus S. Licerii, B. archidiaconus, et R. canonicus S. Stephani Tholosani pro parte dicti episcopi, pro parte vero altera dilectus filius magister P. de Rama et G. socius eius ad nostram praesentiam accesserunt, quibus venerabilem fratrem nostrum Albanensem episcopum et dilectum filium H. tit. S. Martini presbyterum cardinalem deputavimus auditores. Coram quibus proposuerunt nuncii praedicti, quod, Quum capitulum Tholosanensis ecclesiae ad tractandum de electione episcopi convenissent, duos, scilicet R. de Ponte, et M. cellerarium, elegerunt, ut quinque de eodem capitulo eligerent electores, qui praestito iuramento de substituendi pontificis electione tractarent, et a singulis de capitulo statutum est et concessum, ut ille, quem illi quinque concorditer, vel tres ex illis eligerent, ab eis, si persona esset idonea, pro episcopo sine contradictione aliqua haberetur. Et etiam statutum fuit expresse, quod, si quinque electores in unam personam convenire non possent, tribus ex eis concordantibus reliqui duo illorum sequi tenerentur assensum, et electionem eorum ratam habere. Postmodum vero, quum a praedictis duobus quinque electores electi fuissent, et ad tractandum de electione secessissent in partem, et non possent omnes in unam pariter concordare personam, tres ex

eis convenerunt in praedictum episcopum Convennarum, qui erat archidiaconus ecclesiae Tholosanae et antequam praenunciarent nominationem ipsius, eam sub protectione apostolica posuerunt, et deinde electionem, quam de postulando eodem episcopo fecerant, capitulo publicarunt; ac reliqui duo subsequenter tertia die cum paucis de capitulo, reliquis absentibus, elegerunt praedictum archidiaconum Agennensem. Adiecerunt insuper praedicti R. et alii nuncii memorati quod a dilecto filio I. tit. S. Priscae presbytero cardinali apostolicae sedis legato fuit ex parte illa specialis nuncius destinatus. Et quoniam episcopus ipse postulandus erat a nobis, et legatus nullum concedendi vel transferendi eum potestatem habebat, quum huiusmodi dispensatio sedi duntaxat apostolicae reservetur, ne quid contra fieret, nostram audientiam appellavit. Nuncii vero praedicti archidiaconi coram praedictis auditoribus e contrario responderunt, quod, quum praedicti quinque electores, in quos totum capitulum eligendi transtulerat potestatem, seorsum de electione tractantes, inter se dissiderent ita, quod contentiosae voces eorum a fratribus, qui remanserant in capitulo, auditae fuissent, capitulum, ipsos propter huiusmodi contentiones suspectos habentes, ad eos duos de canonicis destinarunt, per quos inhibuerunt eis ex parte nostra et praedicti legati, ne ulterius in facto procederent. Et ita potestatem eligendi, quam eis commiserant, revocarunt, mandantes eis, ut redirent ad capitulum, et pariter cum aliis fratribus de electione tractarent, et huiusmodi revocationi duo ex ipsis electoribus adhibentes consensum, reliquis tribus non contradicentibus, cum nunciis capituli ad ipsum capitulum sunt reversi. Sed alii tres, usque ad fores capituli subsecuti, ab eis postmodum discesserunt. Capitulum vero, illorum absentiam admirantes, quum tota die illa ipsorum praesentiam exspectassent, subsequenti die campanam pulsari fecerunt, sicut moris est, ad capitulum congregandum, et praedictis tribus cum paucis complicibus suis sese contumaciter absentantibus, prior, sacrista et maior cellarius ecclesiae sancti Stephani quia speciale super hoc praepositi absentis mandatum habebant, cum maiori et saniori parte capituli, convocatis abbatibus, prioribus ac monachis et aliis viris religiosis, elegit in episcopum archidiaconum supradictum. Exhibuerunt etiam eiusdem archidiaconi nuncii literas praedicti legati, quas nobis super hoc destinavit. [Quarum erat continentia, quod quum capitulum Tholosanum de electione pontificis tractatum haberet, quibusdam episcopum Convenarum, reliquis archidiaconum Agenensem eligentibus in duos sua vota divisit, et utraque electio fuit illi a partibus diversis diversis temporibus praesentata] (et infra.) Quum autem praedicti auditores praemissa nobis et fratribus nostris fideliter retulissent, nos memoratum legatum piam intentionem in hoc facto habuisse pro certo credentes, ex ipso tamen tenore literarum suarum intelleximus, eum circumventum fuisse et per subreptionem, tacita veritate, perpendimus elicitum et extortum quicquid ab eo fuit obtentum, quum in ipsis literis non expresserit formam postulationis. Quia vero postulatio de episcopo Convennarum, quae praecesserat, et facta erat per eos, in quos totum capitulum eligendi transtulerat potestatem, propter quod unanimiter de consensu totius capituli intelligitur esse facta, quam potestatem, quum res non esset integra, quia in tractatu iam processerant electores, et tres, duobus discordantibus, convenerant in unam personam, capitulum minime potuit revocare, praesertim ex illa causa, quia illi quinque erant discordes, quum in translatione potestatis illius manifeste fuisset expressum, quod, si illos quinque contingeret dissidere electionem trium ratam haberent et firmam. Praeterea liquet, eundem legatum fuisse deceptum, quoniam in commissione sua, praetermisso de electione episcopi, qui erat a nobis solummodo postulandus, inquisitionem de sola electione archidiaconi sub forma superius expressa commisit, super quibus nequaquam taliter processissent, si omnia ex ordine, prout fuit in veritate processum, sibi enarrata fuissent. Unde, communicato fratrum nostrorum consilio electionem ipsius archidiaconi non ex vitio vel culpa personae ipsius, sed quia processum eius minus canonicum esse cognovimus, et ipsum legatum multipliciter circumventum, decernimus penitus irritandam. Quocirca discretioni vestrae per apostolica scripta mandamus et districte praecipimus, quatenus, si personam ipsius episcopi utilem et necessariam inveneritis ad regimen ecclesiae Tholosanae, et idoneam tam scientia literarum, quam suae conversationis exemplo ad haereticorum perfidiam de Tholosana dioecesi

exstirpandam, quae ibi per negligentiam praesulum miserabiliter et damnabiliter hactenus pullulavit, et si vobis ita constiterit, transeundi ad ecclesiam Tholosanam, propter urgentem necessitatem, et eorundem utilitatem auctoritate nostra, sublato cuiuslibet contradictionis et appellationis obstaculo, ei licentiam tribuatis; alioquin, ipsius postulatione repulsa, capitulo eiusdem ecclesiae auctoritate apostolica iniungatis, ut personam ad hoc idoneam eligant in pastorem.

Chapter XXXI

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

The same to the Bishop of Florence.

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

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

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

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

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

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

On behalf of the chapter, however, it was answered to the contrary that by common law the election of canons belonged not to the bishop but to the chapter itself, to prove which they alleged certain

canons. But since diverse statutes of the canons have been issued concerning this, a diversity of this kind appeared rather to be referred to the customs of the different places: in some places the election of canons belongs to the bishop alone, elsewhere to the chapter alone, and in some places equally to both.

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

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

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

The party of the chapter also added that the statute of the Lateran Council claims no place in those churches in which ecclesiastical benefices are by no means distinct, but rather in those in which there is a fixed number of canons and distinct prebends. Furthermore, if according to the tenor of the council the aforesaid canons were found negligent, nevertheless the bishop, who had been negligent for a longer time, acquired no right from this. He should deservedly be punished for it, since no one ought to merit both penalty and reward from the same act. Indeed, in this case the power of electing had deservedly devolved upon the superior, as is manifestly inferred from the tenor of the council, and therefore the bishop ought not to have put his sickle into another's harvest.

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

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

Concerning the second article of the aforesaid petition, in which the same bishop sought that the said canons permit him freely to use the right of election, you are likewise to take care to absolve the

often-mentioned canons, especially if it is notorious that the general custom observed in Tuscany is that, in cathedral churches, the chapter alone, without consulting the bishop, has the faculty of electing canons. [But lest, etc. Given at the Lateran, on the sixteenth day before the Kalends of November, in the ninth year, 1206.]

> De consuetudine potest canonicorum electio ad solum capitulum pertinere. Hoc dicit, et solet quotidie allegari.
>
> Idem Episcopo Florentino.
>
> Quum ecclesia Vulterana debito canonicorum obsequio longo fuisset tempore destituta, venerabilis frater noster Vulteranus episcopus, volens ministrorum defectum in eadem ecclesia restaurare, canonicos quosdam elegit, et instituit in eadem, quos residentes canonici recipere noluerunt, asserentes, quod talis electio fuerat in eorum praeiudicium attentata. Quumque super hoc suam ad nos ipse episcopus querimoniam destinasset, causam ipsam tibi commisimus fine canonico terminandam. [Partibus autem in tua praesentia constitutis, idem episcopus a te per suum petit responsalem ut dilectos filios, magistrum Mitidum, Ildebrandum, Placitum, Tholomaeum et Sofredum ab iniuria, quam ei super electione canonicorum Vulteranae ecclesiae inferunt, prohiberes, et ut ipsum iure electionis uti libere patiantur, nec ipsi eligenti, vel volenti eligere contradicant, asserens idem episcopus, quod ius eligendi canonicos ad ipsum multipliciter pertinebat. Iure siquidem communi hoc sibi competere proponebat, quia, secundum quod sacrorum canonum statuta declarant, in sua ecclesia dispositionem, provisionem et iurisdictionem episcopus plenam habet; nam, etsi subditorum quisquam in suo officio et honore praecedat, episcopus tamen provisor est et ordinator in cunctis. Proposuit etiam, quod ex approbata consuetudine canonicorum electio ad ipsum in eadem ecclesia pertinet, sicut ad praelatos ceteros regionis, qui vel per se vel cum sociis consueverunt electionem facere clericorum. Sed, etsi dubium esset, cuiusmodi consuetudo in talibus servaretur ibidem, ad sedem esset apostolicam recurrendum, quum in aliis ecclesiis, quae sunt metropolitano subiectae, in huiusmodi dubiis ad consuetudinem metropoleos recurratur. Unde, quum apud Romanam ecclesiam solus summus Pontifex eligat cardinales, canonicorum electionem in sua ecclesia idem episcopus ad se solum proposuit pertinere. Allegabat insuper, quod etsi nullo iure talis ad ipsum pertinuisset electio, propter canonicorum tamen negligentiam eligendi auctoritas ad ipsum fuerat devoluta. Sacris siquidem constitutionibus est permissum, ut episcopus quilibet pastorali diligentia suorum suppleat negligentiam clericorum. In Lateranensi quoque concilio noscitur esse statutum, ut, quum donatio dignitatis vel beneficii ad capitulum pertinet, si infra sex mensium spatium conferre distulerit, hoc episcopus exsequatur. Pro parte vero capituli fuit ex adverso responsum, quod de iure communi non ad episcopum, sed ad ipsum capitulum canonicorum electio pertinebat, ad quod probandum quosdam canones allegabant. Verum, quum circa hoc diversa canonum edita sint statuta, videbatur potius ad diversorum locorum consuetudines huiusmodi diversitas referenda, quum canonicorum electio alicubi ad solum spectet episcopum, alibi ad capitulum tantum, et alicubi pariter ad utrosque. Sed, nec consuetudo sedis apostolicae, quam pro se praedictus episcopus introduxit, obesse posse canonicis videbatur, quia, licet summus Pontifex solus eligat cardinales, in sua tamen ecclesia cathedrali, Lateranensi videlicet, vel principis Apostolorum basilica, capitulum sibi concanonicos eligere consuevit, quamvis et in ipsis, sicut et in aliis ecclesiis, Romanus Pontifex interdum canonicos eligat ex plenitudine potestatis. Ad hoc autem, quod episcopus consequenter obiecit, quia videlicet propter capituli negligentiam eligendi ius ad ipsum fuerat devolutum, pars capituli respondebat, quod, propter neglectum huiusmodi episcopus eligendi ius sibi non potuit vendicare, nisi canonica monitione praemissa, quum in tali casu tempus minime sit determinatum a canone, quod vicem commonitionis suppleat, vel interpellare fingatur, praesertim, quum electos a canonicis et episcopo praesentatos ipse pro suae voluntatis arbitrio noluit confirmare. Quum itaque ordinarii iuris sit, ut admonitio debeat

praeire vindictam, et praetextu negligentiae, monitione omissa episcopus poenam inflixerit, pars eadem proponebat merito improbandum quod ab ipso temere noscitur attentatum. Adiecit et pars capituli, quod Lateranensis statutum concilii sibi locum non vendicat in illis ecclesiis, in quibus nequaquam ecclesiastica beneficia sunt distincta, sed in quibus certus est canonicorum numerus et distinctae praebendae. Praeterea, si, iuxta tenorem concilii, deprehenderentur praedicti canonici negligentes, episcopus tamen, qui diuturniori tempore fuit negligens, ex hoc ius minime acquisivit, qui propter hoc esset merito puniendus, quum nemo ex eodem facto poenam debeat et praemium promereri; quin immo in hoc casu eligendi potestas ad superiorem exstitit merito devoluta, sicut ex concilii tenore coniicitur manifeste, unde in alienam messem non debuit mittere falcem suam. Quum autem haec et alia coram te fuissent proposita, et tu tamen deliberare velles super sententia proferenda, quia nimis diversa concilia reperisti, et fere quilibet, cuius in hac parte volebas uti consilio, suspectus alterutri parti ex causis aliquibus habebatur, causam instructam ad nostram praesentiam remisisti, sub tuo sigillo attestationes et allegationes partis utriusque transmittens.] Nos vero utriusque partis attestationibus et rationibus diligenter inspectis, de consilio fratrum nostrorum fraternitati tuae praesentium auctoritate mandamus, quatenus super primo articulo petitionis episcopi, in quo postulavit a te, ut praenominatos canonicos ab iniuria, quam ei super electione canonicorum Vulteranensis ecclesiae inferunt, prohiberes, ab impetitione ipsius episcopi saepe dictos canonicos appellatione postposita absolvere non postponas; quia, sicut iuris regula dicit, non videtur iniuriam facere qui utitur iure suo, quum per testes longe melius sit probatum, quod canonici supradicti hoc iure usi fuerint, ante quam episcopus memoratus. In secundo quoque praescriptae petitionis articulo, quo idem petebat episcopus, ut dicti canonici ipsum iure electionis uti libere paterentur, absolvere studeas canonicos saepedictos, maxime si sit notorium, quod in Thuscia generalis consuetudo servetur, ut in cathedralibus ecclesiis solum capitulum, irrequisito episcopo, eligendi canonicos habeat facultatem. [Ne vero etc. Dat. Lat. XVI. Kal. Nov. Ao. IX. 1206.]

Chapter XXXII

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

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

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

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

Afterward, having received the regalia from the king, at the petition of the same chapter he was ordained priest by our venerable brother the Bishop of Arras at the command of the aforesaid

metropolitan. For some time, with no one contradicting, he obtained free and peaceful administration of the church of Thérouanne in both spiritual and temporal matters.

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

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

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

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

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

We, however, considering that it would be a matter pernicious as an example if anyone should ascend to the summit of dignity through the cunning of subreption, considered by the counsel of our brothers that provision should be made in this manner. After the objectors have furnished an oath that they are not maliciously bringing a question of this kind against the aforesaid elect, the aforesaid three electors are to be bound by the bond of an oath to tell the truth concerning how many of the canons agreed upon the aforesaid archdeacon at the time of the examination.

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

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

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

> Compromittentes tenentur recipere electum a compromissariis, si sit dignus, nisi contra formam compromissi eum appareat electum.
>
> Idem Abbati sancti Victoris, et Decano Parisiensi, et Magistro R. Decortonensi, Canonico Morinensi.
>
> Quum dilectus filius, archidiaconus Morinensis nobis intimasset (Et infra:) Ecclesia Morinensi episcopi solatio destituta, canonici eiusdem ecclesiae de pastoris substitutione tractantes, in tres canonicos Morinenses potestatem eligendi episcopum unanimiter contulerunt, iuramento interposito promittentes, ut illum reciperent in pastorem, quem de gremio ipsius ecclesiae ducerent in episcopum eligendum; qui, postmodum examinatis voluntatibus singulorum, Ioannem archidiaconum eiusdem ecclesiae, virum literatum, providum et discretum, in episcopum elegerunt. Metropolitanus quoque tam electionem et electi personam diligenter examinans, quam etiam super ipsius aetate, de cuius defectu fuerat ab aliquibus dubitatum, inquirens sollicite veritatem, per sententiam declarando electum ipsum minime sustinere in aetate defectum, electionem factam de ipso utpote canonice celebratam solenniter confirmavit. Qui postea, regalibus receptis a rege ad petitionem eiusdem capituli a venerabili fratre nostro Atrebatensi episcopo de mandato metropolitani praedicti fuit in presbyterum ordinatus, et aliquamdiu nullo contradicente liberam et pacificam tam in spiritualibus quam in temporalibus administrationem obtinuit in ecclesia Morinensi. Unde procuratores ipsi a nobis humiliter petierunt, ut his, qui post haec omnia invidiae stimulis agitati, contra factum proprium temere veniendo, adversus electum ipsum materiam discordiae suscitare praesumunt, silentium imponentes, et memoratam electionem tam concorditer celebratam et confirmatam solenniter approbantes, eidem faceremus electo munus consecrationis impendi, multorum super hoc non solum abbatum et capitulorum civitatis et dioecesis Morinensis, sed etiam aliorum presbyterorum nobis literis praesentatis, qui super praemissis omnibus testimonium perhibentes, electum ipsum de literatura, discretione ac honestate reddiderunt apud nos multipliciter commendatum, quinimmo et electorum ipsorum super hoc nobis literas obtulerunt, quibus erat illarum literarum de verbo ad verbum, sicut iidem asserunt electores, tenor insertus, quae de potestate ipsis tradita iuxta praemissam formam confectae in capitulo fuerant, et sigillo capituli sigillatae. Verum supradictus B., qui contra electum venerat memoratum, proposuit ex

adverso, quod, quum supradictis tribus sub hac forma iuramento praestito fuerat eligendi concessa potestas, ut capitulum eum recipere teneretur, quem illi tres ab omnibus, vel maiori et saniori parte de gremio ipsius ecclesiae nominatum eligerent in pastorem, electores ipsi terminos potestatis sibi traditae non servantes, praedictum archidiaconum eligere praesumpserunt, quem pauci de capitulo nominarant. Unde canonici Morinenses postmodum admirantes, qualiter archidiaconus electus fuerat memoratus, quum plures essent in eadem ecclesia digniores, super electionis processu invicem colloquendo coeperunt fere omnes publice profiteri, quod nullatenus archidiaconum nominarant supra dictum, et reputantes, se in hac parte delusos, quod super hoc factum fuerat, per eundem B., cui suas testimoniales literas assignarunt, nostro curaverunt apostolatui reserare. Qui coram nobis sollicite postulavit, ut eadem electione cassata faceremus ipsi ecclesiae de persona idonea canonice provideri, quum vere omnes canonici Morinenses sint parati, sicut asseruit, praestito iuramento firmare, quod praefatum archidiaconum nunquam in episcopum nominarant, et legitime possit ostendi, quod iuxta praemissam formam supradictis tribus collata fuerit auctoritas eligendi, ut videlicet de gremio ecclesiae illum eligerent, in quem omnes, vel maior et sanior pars capituli consentirent, asserens idem B., se nihilominus probaturum, quod saepe dictus electus patitur in aetate defectum. Nos vero attendentes, quia res perniciosa esset exemplo, si per surreptionis astutiam quis ascenderet ad apicem dignitatis, de consilio fratrum nostrorum ita duximus providendum, ut, praestito a contradictoribus iuramento, quod ipsi malitiose contra praefatum electum non moveant quaestionem huiusmodi, praedicti tres electores iuramenti vinculo adstringantur dicere veritatem, quot ex canonicis examinationis tempore in praefatum archidiaconum convenerunt. Et si tres simul aut duo saltem ex ipsis iurati dixerint, maiorem canonicorum partem in ipsum archidiaconum convenisse, vos contradictoribus silentium imponatis, quum contra hoc eorum esset probatio insufficiens, eo, quod singuli essent in suis testimoniis singulares. Si vero per eorum depositiones constiterit, saepedictum archidiaconum exstitisse a paucioribus nominatum, tunc demum sollicite audiatis quicquid utraque pars proposuerit, ad probandum formam, secundum quam eligendi potestas praefatis tribus electoribus asseritur fuisse concessa, et, si fuerit sufficienter ostensum, quod illum de gremio ecclesiae secundum formam sibi traditam debebant eligere, in quem omnes, vel maior et sanior pars capituli conveniret, vos electionem ipsius archidiaconi omnino cassetis, et faciatis ecclesiae Morinensi per electionem canonicam de persona idonea in pontificem provideri. Alioquin, quod de ipso factum est ratum habentes, contradictores ab eius impetitione per censuram ecclesiasticam appellatione postposita compescatis, praefatum B. praebenda Morinensis ecclesiae spoliantes, qui se ad hanc poenam, si forsan in probatione deficeret, obligavit; non obstante, quod super aetatis defectu obiectum est contra illum, quum idem canonicus huic obiectioni non multum institerit, et super hoc a metropolitano fuerit iudicatum, cuius sententia in rem transiit iudicatam, quum infra decendium non fuerit legitima provocatione suspensa. [Quod si non omnes etc. Dat. Lat. IV. Non. April. Ao. XI. 1208.]

Chapter XXXIII

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

The same to the Bishop of Bayeux.

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

The first article of your consultation contained that, when the dean of a certain church had died, the chapter of the same place submitted the matter by compromise to seven of its canons under this

form: that the chapter itself would receive as dean the man whom all of them equally or the greater part of them nominated from among themselves or from others of the body of that church. Hence, when one of those seven was nominated as dean by three of them and another, who was not of their number, was nominated by three others, you asked which of them ought to be assumed by the chapter as dean.

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

> Si ex septem compromissariis tres eligunt quartum, et ille consentit, et est idoneus, confirmabitur electio.
>
> Idem Episcopo Baiocensi.
>
> Quum in iure peritus exsistas, et copiam habeas peritorum non possumus non mirari, quod super quibusdam iuris articulis nos consulere voluisti, qui nihil aut modicum dubitationis continere noscuntur. Primus siquidem tuae consultationis articulus continebat, quod cuiusdam ecclesiae decano defuncto, eiusdem loci capitulum sub hac forma in septem ex ipsis canonicis compromisit, ut illum, quem ex se vel aliis de gremio ipsius ecclesiae omnes pariter, vel maior eorum pars nominaret, idem capitulum reciperet in decanum. Unde, quum unus ex illis septem a tribus ipsorum, et alius, qui non erat de numero eorundem, a tribus aliis in decanum fuerint nominati, requisisti, uter eorum assumi debeat a capitulo in decanum. Super quo tibi taliter respondemus, quod is, qui de numero septem a tribus eorum dignoscitur nominatus, iuxta compromissi tenorem debet in decanum assumi, dummodo electioni de se factae consentiat, et aliquod canonicum non obsistat. Praeterea etc. (cf. c. 31. de off. iud. del. I. 29.) [Dat. Lat. X. Kal. Dec. Pont. nostr. Ao. XI. 1208.]

Chapter XXXIV

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

The same to the Duke of Carinthia.

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

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

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

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

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

Therefore, answering the objection of the princes, we assert that our legate the Bishop of Palestrina, by approving our dearest son in Christ King Otto and rejecting Philip, Duke of Swabia, acted neither in the person of an elector—as certain princes objected to us through their letters—inasmuch as he neither caused anyone to be elected nor himself elected, and thus in no way intruded himself into the election; nor did he present the person of a judge, since he considered that the election of neither man, with respect to the act of those electing, should be confirmed or invalidated. Thus he in no way usurped the right of the princes for himself or acted against it.

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

Hence, because those who abused the power permitted to them merited losing their privilege, it can not undeservedly appear that, notwithstanding an injury of this kind, the others could use their own right. And because the aforesaid duke received the crown and anointing neither where he ought nor from whom he ought, whereas the aforesaid king received both where he ought—namely, at Aachen

—and from whom he ought—namely, from our venerable brother the Archbishop of Cologne—we, as justice requires, regard and name not the duke but the other man as king.

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

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

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

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

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

He was also, because of the invasion and devastation of the patrimony of Blessed Peter, with admonition often first given, publicly and solemnly bound by the bond of excommunication by Pope Celestine of good memory, our predecessor, while he was dwelling in Tuscany. He afterward acknowledged this when through his messenger he sought the benefit of absolution from our same predecessor. Later, after his election, he caused himself to be absolved secretly at Worms by the then Bishop of Sutri, whom we had sent into Germany with the Abbot of Saint Anastasius for the liberation of our venerable brother the Archbishop of Salerno, contrary to the form of our mandate and merely in fact, since in law he could not be absolved. Hence it is evident that he was elected while excommunicated.

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

He is also manifestly believed to lie under the sentence of excommunication from this: the perfidious Markward, enemy of God and the Church, together with all his supporters, both German and Latin, is bound by the bonds of a publicly proclaimed excommunication for the merits of his iniquity. As we remember intimating to you through our letters directed through P., judge of Piacenza and the messenger of Philip himself—which we believe reached Philip's hearing—nevertheless, although this

came to his knowledge not only from the report of the judge himself but also through public rumor, he not only communicates with the same excommunicated man but supports him in his malice and, through his messengers and letters, sharpens his fury so that our dearest son in Christ Frederick, illustrious King of Sicily, his nephew, whom he has already deprived of his paternal inheritance, may still be deprived of his maternal possession.

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

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

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

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

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

Therefore, since we can by no occasion whatsoever be deflected from our purpose but rather persist in it most steadfastly, and since you have often considered that it should be suggested to us through your letters that we should in no way favor the same duke, admonishing your nobility, we command by apostolic writings that, just as you trust in our favor and we hope in your devotion, you withdraw entirely hereafter from the aforesaid Duke Philip, notwithstanding an oath, if any, which you made to

him by reason of the kingdom, since, he having been rejected with respect to obtaining the empire, an oath of this kind ought not to be observed.

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

> Electio imperatoris, spectat ad principes Germanos, tres praelatos, et quatuor laicos, et electio facta per eorum maiorem partem, ceteris non contemptis, tenet. Et ad Papam pertinet electum examinare, approbare, et inungere, consecrare, et coronare, si est dignus; vel reiicere, si est indignus, ut quia sacrilegus, excommunicatus, tyrannus, fatuus et haereticus, paganus, periurus, vel ecclesiae persecutor. Et electoribus nolentibus eligere, Papa supplet. Et data paritate vocum eligentium, nec accedente maiori concordia, Papa potest gratificari cui vult. H. d. notanter iste textus.
>
> Idem Duci Caringiae.
>
> Venerabilem fratrem nostrum Salzburgensem archiepiscopum, et dilectum filium abbatem de Salem et nobilem virum marchionem orientalem, quorundam principum nuncios ad sedem apostolicam destinatos benigne recepimus, et eis benevolam duximus audientiam indulgendum. Literas quoque, quas per eos quidam nobiles principes destinarunt, diligenter perlegi fecimus, et quae continebantur in eis, notavimus universa. Inter cetera vero quidam principes hac praecipue obiectione sunt usi, dicentes, quod venerabilis frater noster Praenestinus episcopus apostolicae sedis legatus aut electoris gessit aut cognitoris personam; si electoris, in messem alienam miserat falcem suam, et electioni se ingerens principum derogaverat dignitati; si cognitoris, absente altera partium, videtur perperam processisse, quum citata non fuerit, et ideo non debuit contumax iudicari. Verum nos, qui secundum apostolicae servitutis officium sumus singulis in iustitia debitores, sicut iustitiam nostram ab aliis nolumus usurpari, sic ius principum nobis nolumus vindicare. Verum illis principibus ius et potestatem eligendi regem, in imperatorem postmodum promovendum, recognoscimus, ut debemus, ad quos de iure ac antiqua consuetudine noscitur pertinere; praesertim, quum ad eos ius et potestas huiusmodi ab apostolica sede pervenerit, quae Romanum imperium in personam magnifici Caroli a Graecis transtulit in Germanos. Sed et principes recognoscere debent, et utique recognoscunt, sicut iidem in nostra recognovere praesentia, quod ius et auctoritas examinandi personam electam in regem et promovendam ad imperium ad nos spectat, qui eum inungimus, consecramus et coronamus. Est enim regulariter et generaliter observatum, ut ad eum examinatio personae pertineat, ad quem impositio manus spectat. Numquid enim, si principes non solum in discordia, sed etiam in concordia sacrilegum quemcunque, vel excommunicatum in regem, tyrannum, vel fatuum, haereticum eligerent, aut paganum, nos inungere, consecrare ac coronare hominem huiusmodi deberemus? Absit omnino. Obiectioni ergo principum respondentes, asserimus, quod legatus noster episcopus Praenestinus carissimum in Christo filium nostrum approbando regem Ottonem, et reprobando Philippum ducem Suaviae, nec electoris gessit personam, iuxta quod nobis per literas suas quidam principum opponebant, utpote qui nec fecit aliquem eligi, nec elegit, et sic electioni nequaquam ingessit se, nec cognitoris personam exhibuit, quum neutrius electionem quoad factum eligentium confirmandam duxerit, aut etiam infirmandam. Et sic ius sibi principum nullatenus usurpavit, aut venit contra illud, Exercuit autem denunciatoris officium, quia personam ducis eiusdem indignam, et personam regis denunciavit idoneam quoad imperium obtinendum, non tam propter studia eligentium, quam propter merita electorum; quamvis plures ex illis, qui eligendi regem in imperatorem promovendum de iure ac de consuetudine obtinent potestatem, consensisse perhibeantur in ipsum regem Ottonem, et ex eo, quod fautores Philippi ducis, absentibus aliis et contemptis, ipsum eligere praesumpserunt, pateat, eos perperam processisse, quum

explorati sit iuris, quod electioni plus contemptus unius, quam contradictio multorum obsistat. Unde, quia privilegium meruerunt amittere, qui permissa sibi abusi sunt potestate, videri non immerito potest, quod iniuria huiusmodi non obstante ceteri uti poterint iure suo. Et quoniam dux praedictus nec ubi debuit, nec a quo debuit coronam et unctionem accepit, memoratus vero rex et ubi debuit, videlicet Aquisgrani, et a quo debuit, scilicet a venerabili fratre nostro Coloniensi archiepiscopo recepit utrumque; Nos utique non ducem, sed reliquum reputamus et nominamus regem iustitia exigente. In reprobatione vero praefati Philippi ducis Suaviae propter manifesta impedimenta personae non accusatione, sed condemnatione potius fuit opus, quia non accusatione, sed condemnatione indigent manifesta. Quod autem, quum in electione vota principum dividuntur, post admonitionem et exspectationem alteri partium favere possimus, maxime postquam a nobis unctio, consecratio et coronatio postulantur, sicut utraque pars a nobis multoties postulavit, ex iure patet pariter et exemplo. Numquid enim, si principes admoniti et exspectati vel non potuerunt, vel noluerunt in unum propositum convenire, sedes apostolica advocato et defensore carebit, eorumque culpa ipsi redundabit in poenam? Sciunt autem principes et tua nobilitas non ignorat, quod, quum Lotharius et Corradus in discordia fuissent electi, Romanus Pontifex Lotharium coronavit, et imperium obtinuit coronatus, eodem Corrado tunc demum ad eius gratiam redeunte. Eos igitur duximus commonendos, ut, sicut nos a iuris ipsorum cessamus iniuria, sic ipsi contra ius nostrum se nequaquam iniuriosos ostendant, sed a praefato duce, iusto quidem a nobis iudicio reprobato, recedant, et praefato regi Ottoni non abnuant adhaerere, nisi tunc demum contra personam vel factum legitimum quid ab eis obiectum fuerit et ostensum. (Et infra:) Sunt enim notoria impedimenta ducis Suaviae, scilicet excommunicatio publica, periurium manifestum, et persecutio divulgata, quam progenitores eius et ipse praesumpserunt in apostolicam sedem et alias ecclesias exercere. Fuit quoque a bonae memoriae Coelestino Papa praedecessore nostro propter invasionem et devastationem patrimonii beati Petri, commonitione saepe praemissa, publice ac solenniter excommunicationis vinculo innodatus, quum in Tuscia moraretur, quod ipse postmodum recognovit, dum per nuncium suum ab ipso praedecessore nostro absolutionis beneficium postulavit, et postmodum a tunc Sutrino episcopo, quem cum abbate sancti Anastasii pro liberatione venerabilis fratris nostri Salernitani archiepiscopi nos in Theutoniam miseramus, contra formam mandati nostri de facto solummodo, quia de iure non potuit, post suam electionem apud Wormatiam occulte se fecit absolvi. Unde patet, quod fuit excommunicatus electus. Et videtur non immerito, quod adhuc sit ex eadem causa excommunicationis sententia innodatus, quum praedictus episcopus eum sua auctoritate non posset absoluere, auctoritate vero nostrae delegationis nec posset plus, nec aliter liceret hoc ipsi, quam ei fuerat ab apostolica sede concessum. Ex eo etiam excommunicationis sententiae subiacere creditur manifeste, quod, quum perfidus Marcualdus, Dei et ecclesiae inimicus, cum universis fautoribus tam Theutonicis quam Latinis, excommunicationis vulgatae vinculis suae iniquitatis meritis sit adstrictus, sicut iam vobis per literas nostras directas per P. iudicem Placentinum ipsius Philippi nuncium intimasse meminimus, quas ad ipsius Philippi audientiam credimus pervenisse, ipse nihilominus, quamvis id non tantum ex relatione ipsius iudicis, sed etiam per publicam famam ad notitiam eius devenerit, eidem excommunicato non solum communicat, sed eum in malitia sua fovet, et per nuncios et literas suas exacuit furorem ipsius, ut carissimum in Christo filium nostrum Fridericum, Siciliae regem illustrem, nepotem suum, quem iam hereditate paterna privavit, adhuc privet possessione materna. Idem etiam contra proprium iuramentum, super quo nec consilium a sede apostolica requisivit, ambitionis vitio regnum sibi usurpare praesumpsit, non alium causa necessitatis in regem eligere, quod utcunque tolerabilius videretur, quum super illo iuramento prius Romana ecclesia consuli debuisset, sicut et eam quidam consuluere prudenter, apud quam ex institutione divina plenitudo residet potestatis. Nec valet ad plenam excusationem ipsius, si iuramentum illud dicatur illicitum, quum nihilominus super eo nos prius consulere debuisset, quam contra ipsum propria temeritate venire, praesertim illo exemplo, quod quum Gabaonitae a filiis Israel

per fraudem surripuerint iuramentum, ipsi tamen cognita fraude contra illud venire temere noluerunt. Utrum vero dictum iuramentum sit licitum vel illicitum, et ideo servandum an non servandum exstiterit, nemo sanae mentis ignorat ad nostrum iudicium pertinere. Quod autem Philippus de genere persecutorum exsistat, principes non credimus dubitare, quum Henricus, qui primus imperium de genere hoc accepit, bonae memoriae Paschalem Papam praedecessorem nostrum cum episcopis, cardinalibus et multis nobilibus Romanorum praesumpserit captivare. Fridericus autem pater ipsius Philippi contra felicis recordationis Alexandrum Papam praedecessorem nostrum longo tempore schisma fovit. Henricus frater ipsius Philippi, qualiter se habuerit circa interfectores sanctae memoriae Alberti Leodiensis episcopi, quem ipse prius coegerat exsulare, ac Conradus, qui praedictum Ostiensem episcopum ceperat, satis nostis. Qui etiam qualiter venerabilem fratrem nostrum Auximanum episcopum alapis caedi fecerit, et pilos de barba eius avelli, et tractari eum in pluribus inhoneste, qualiter quoque quosdam familiares ecclesiae Romanae naso fecerit mutilari, qualiter praedictum Salernitanum archiepiscopum captivarit, et quosdam, viros ecclesiasticos flammis torreri fecerit, quosdam vero viros in mare submergi, ad tuam et aliorum principum credimus audientiam pervenisse. Insuper, si praedictus dux, quod absit, imperium obtineret, libertas principum in electione periret, et imperium obtinendi de cetero ceteris fiducia tolleretur. Nam si, prout olim frater dicti ducis patri eorum, sic dux ipse fratri suo succederet, videretur imperium non ex electione, sed ex successione deberi, et in praeiudicium principum redundaret, si non nisi de domo ducis praedicti videretur aliquis ad imperium assumendus. Quum ergo nos flecti a nostro proposito nulla penitus occasione possimus, sed in ea potius firmissime persistamus, et tu nobis saepe per literas tuas duxeris suggerendum, ut eidem duci nullatenus faveremus, nobilitatem ergo tuam monentes per apostolica scripta mandamus, quatenus, sicut de gratia nostra confidis, et nos de tua devotione speramus, de cetero a praefato duce Philippo recedas omnino, non obstante iuramento, si quod ei ratione regni fecisti, quum, eo quantum ad obtinendum imperium reprobato, iuramentum huiusmodi non debeat observari. Praedicto vero regi Ottoni, quem nos, concedente Domino, ad coronam imperii disponimus evocare, patenter adhaereas et potenter; ut quum ei ad commonitionem nostram adhaeseris, inter primos gratiam et benevolentiam eius obtinere praecipue merearis, ad quod nos pro tuae nobilitatis amore dabimus operam efficacem [Dat. Laterani.]

Chapter XXXV

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

The same.

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

Absentes ad electionem de provincia sunt vocandi, et confirmatur electio maioris et sanioris partis.

Idem.

Coram dilecto filio nostro tituli sanctae Pudentianae presbytero cardinali (Et infra:) Si vero utriusque partis fuerit cassata electio, vos, fratribus omnibus, qui fuerint in provincia, convocatis, quod maiori et saniori parti eorum super praedictis videritis complacere, per censuram ecclesiasticam faciatis firmiter observari.

Chapter XXXVI

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

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

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

But on the second weekday after Pentecost, when the said bishop had entered upon the way of all flesh, the chapter, before his body had been delivered for burial and while the aforesaid canon was absent, conferred the power of electing a bishop upon four men from the chapter itself and three from the clergy of the city, with the express condition that the lesser part of those seven should follow the greater part in the election.

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

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

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

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

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

Moreover, wishing to provide for the church of Cremona with special solicitude, we grant and command that, if the chapter wishes to persist in its assent, you concede the archpriest himself by

our authority as pastor to the church of Cremona. Otherwise, unless within eight days they provide for themselves and their church with a suitable person as bishop through a canonical and concordant election, you are by authority of the Apostolic See to take care to provide for them from the same archpriest or the archdeacon or another suitable man.

> Cassatur electio partis maioris facta, contempta minori parte, etiam si est unus solus; non tamen ius eligendi devolvitur ad minorem. H. d. secundum intellectum communem.
>
> Idem Parmensi Episcopo et eius Coniudicibus.
>
> Bonae memoriae S. Cremonensi episcopo in extremis agente, quum de convalescentia ipsius desperaretur, Cremonense capitulum H. canonicum suum, Regii disciplinis scholasticis insistentem, ad certum terminum in vigilia Pentecostes pro futuri electione pontificis citari fecerunt. Verum secunda feria post Pentecosten, dicto episcopo viam universae carnis ingresso, capitulum, antequam corpus illius esset sepulturae traditum, absente canonico memorato, in quatuor de ipso capitulo et tres de clero civitatis potestatem eligendi pontificem contulerunt, expresso, ut minor pars illorum VII. sequeretur in electione maiorem. Habito itaque post mortem, sed ante sepulturam tamen ipsius episcopi, de futuri pastoris electione tractatu, quum vota illorum scinderentur in partes, quatuor in archipresbyterum, duobus in archidiaconum, uno in alium consentientibus, tandem, illo sepulto, minoris partis arbitrio ad iudicium accedente maioris, eundem archipresbyterum concorditer elegerunt. Cui electioni archidiaconus cum capitulo et clero civitatis nullo contradicente consensit. Verum adveniens postmodum Hu., et asserens se fuisse contemptum ac propter hoc electionem huiusmodi nullius fuisse momenti, quasi ius eligendi devolutum fuisset ad ipsum pro se, prout potuit archidiaconum memoratum elegit. Constituto autem dicto H. pro sua electione, et dilecto filio nostro I. pro electione archipresbyteri coram nobis, electionem ab ipso H. post electionem archipresbyteri non cassatam, licet de viro multae literaturae, honestae vitae et clarae famae, non tamen sine multa temeritate praesumptam, quum de priori nostrum deberet exspectare iudicium, antequam procederet ad secundam, duximus irritandam, in poenam interdicentes eidem contradictionis vocem, in primo consensu capitulo permanente. Electionem autem archipresbyteri, quamvis laudabile testimonium perhibeatur de ipso, iustitia exigente cassavimus, tum quia, corpore dicti episcopi nondum tradito sepulturae, habuerunt de ipsa electione tractatum contra canonicas sanctiones, tum quia inventus est H. fuisse contemptus, licet unus solus exstiterit, quum plus in talibus consueverit contemptus unius obesse, quam multorum contradictio in praesenti. Nec praedicta debet dici citatio valuisse, quia, quum episcopi mortem praevenerint, temeraria nimis exstitit, et ideo non potuit arcere citatum. Adhaec volentes Cremonensi ecclesiae speciali sollicitudine providere, concedimus et mandamus ut si capitulum voluerit in suo perdurare consensu, ipsum archiepiscopum auctoritate nostra in pastorem Cremonensi ecclesiae concedatis, alioquin nisi forte infra VIII. dies de persona idonea in pontificem sibi et ecclesiae suae providerint per electionem canonicam et concordem, vos eisdem auctoritate sedis apostolicae de ipso archipresbytero vel archidiacono seu alio viro idoneo providere curetis.

Chapter XXXVII

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

The same.

When it recently came to our knowledge that H., who conducted himself as Abbot of Lisieux, had not been a monk before he was elected, we, considering that this had been attempted contrary to the regular traditions—since one ought to become a monk while having no hope or promise that he will be made abbot—took care, with the assent of our brothers, to invalidate the election made of him.

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

> Non monachus in praelatum regularem eligi non potest.
>
> Idem.
>
> Quum ad nostram nuper notitiam pervenisset, quod H., qui se pro abbate Lexoviensi gerebat, non fuit ante monachus quam electus, nos attendentes, quod contra regulares traditiones illud fuerat attentatum, quum nullam spem vel promissionem habens, ut abbas fiat, debeat monachari, electionem de ipso factam de consensu fratrum nostrorum curavimus irritare. Quocirca fraternitati vestrae per apostolica scripta mandamus, quatenus tam monachis quam aliis fidelibus monasterii memorati studeatis ex parte nostra districtius inhibere, ne praefato H. ullam obedientiam vel reverentiam propter iam dictam electionem audeant exhibere, et si quid in eodem monasterio, disponendo iam perperam attentavit, nullius robur habere volumus firmitatis, sed penitus irritari. [Quod si contra etc. Dat. Lat. III. Id. Ian. 1199.]

Chapter XXXVIII

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

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

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

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

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

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

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

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

> In abbatem eligi non potest, nisi instructus in regula monachali.
>
> Idem Magistro C. Presbytero cardinali, sedis apostolicae Legato.
>
> Officii tui prosequeris laudabilem actionem, quum super illis, de quibus dubitas, per nos postulas edoceri. Sane nobis tuis literis intimasti, quod, quum monasterium quoddam possessionibus convenienter ditatum, sed positum in medio nationis pravae pariter et perversae, pastore careret, monachi de electione abbatis tractantes, necessarium duxerint personam eligere aliquam, cuius potentia valeret a persecutoribus liberari; quum non possent sui ordinis idoneam invenire personam, in quendam virum nobilem oculos direxerunt, per quem poterant melius defensari, et consilio quorundam iuris peritorum patrem adierunt ipsius, humiliter postulantes, quod filium suum induceret, ut habitum susciperet monachalem, nullam patri de ipsius promotione fiduciam tribuentes. Et pater ad hoc induxit filium providum et discretum, literatum, XXV. annorum aetatis, qui effectus est monachus, nulla spe, ut asserit, de sublimatione tributa; sed die, in quo monachus est effectus, fuit in abbatem electus: cuius electio exstitit per dilectum filium nostrum G. de Lab. subdiaconum nostrum rectorem Messanensem apostolicae sedis legatum, qui omnibus praedictis interfuit, confirmata. Quum autem idem sit paratus purgare se, quod nulla fuit ad hoc ambitione inductus, per literas nostras postulas edoceri, utrum dictus legatus electionem huiusmodi confirmare, vel dispensare potuit, vel quod factum est stare possit, et utrum, electione rite cassata, iterum valeat eligi in abbatem? Nos autem consultationi tuae taliter respondemus, quod, quum ex his, quae in continenti subsecuta sunt, ostendatur, quod talis taliter non possit eligi in abbatem, maxime pro eo, quod ante, quam esset discipulus, voluit esse magister, electionem illam irritam esse decrevimus et inanem. Verum, postquam fuerit in regula competenter instructus, si urgens necessitas et evidens utilitas ipsius monasterii postulaverit, purgatione recepta poterit in abbatem assumi, ne monasterium opprimatur incursibus malignorum. [Secundo etc. - cf. c. 11. de testam. III. 26.]

Chapter XXXIX

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

The same.

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

Indeed, when our venerable brother Albert, your archbishop, then elect, approached our presence, wishing with paternal solicitude to take counsel for the church of Magdeburg as for a special daughter—which has always shown itself devoted to its mother, the sacrosanct Roman Church, not

only in prosperity but also in adversity—we had already some time ago diligently heard and understood what our beloved sons [name omitted], Provost of Saint Sebastian; [name omitted], Provost of Saint Mary; [name omitted], Provost of Mildensee; C. and C., canons of the greater church; Master Gernandus, canon of Saint Nicholas; and Litulfus, canon of Saint Peter of Magdeburg, had solicitously proposed before us both orally and in writing.]

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

> Electio alias canonica confirmatur, licet quidam eligentium essent minori excommunicatione ligati.
>
> Idem.
>
> Illa quotidiana instantia, [sollicitudo videlicet ecclesiarum omnium, quae ministerium cingit apostolicae servitutis, potissimum nos inducit, ut ad illarum consolationem intendamus sollicite, ac benigne iusta desideria earundem effectu celeri prosequendo, quae pastorum sunt solatio destitutae, ne pro pastoris carentia in spiritualibus et temporalibus sustineant detrimentum, et grex dominicus luporum morsibus relinquatur, si non sit qui noctis vigilias custodiat super eum. Sane quum venerabilis frater noster, Albertus archiepiscopus vester, tunc electus, ad nostram praesentiam accessisset, nos ecclesiae Magdeburgensi, quae non solum in prosperis, verum etiam in adversis sacrosanctae Romanae ecclesiae, matri suae, devota semper exstitit, tanquam filiae speciali sollicitudine volentes paterna consulere, iam pridem diligenter auditis et intellectis, quae dilecti filii ... S. Sebastiani, ... S. Mariae, et ... de Mildense praepositi, et C. et C. maioris ecclesiae, et magister Gernandus S. Nicolai, et Litulfus S. Petri canonici Magdeburgenses tam verbis quam scriptis proposuerant sollicite coram nobis.] Quia pro certo didicimus, electionem de ipso factam canonicam exstitisse, ipsam auctoritate apostolica duximus confirmandam, supplentes de plenitudine potestatis, si quis in ea ex eo fuisset defectus, quod quidam interfuerunt electioni eiusdem, qui ex sola participatione in simplicis excommunicationis laqueum inciderunt, [sicut etc. Dat. Romae ap. S. Petrum VI. Id. Febr. Ao. IX. 1207.]

Chapter XL

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

Likewise to Master Maximus, our notary.

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

This throne is understood to be the Roman Church, which by customary expression is called the Apostolic See—certainly the throne of the Lamb, the throne of the one living forever and ever. In its

midst, as if daughters in its bosom, reside, and around it, as if handmaids in service, stand the four patriarchal churches—Alexandria, Antioch, Jerusalem, and Constantinople—which are designated by those four living creatures.

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

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

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

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

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

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

Indeed, to this church—namely, Constantinople—two [certain] living creatures have been called, would that they were full of eyes and had six wings: namely, our venerable brother the Archbishop of Heraclea and our beloved son the parish priest of Saint Paul in Venice, as was proposed before us through the proctors both of those postulating the archbishop and of those electing the parish priest.

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

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

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

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

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

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

Although the whole body of clerics had earlier petitioned that four persons be admitted on its behalf, nevertheless, because the party of the canons was unwilling to admit so many, lest the number of the others grow excessively, it was finally ordained for the good of peace that only two of them be admitted with the aforesaid reservation. Therefore, those electing asserted that the two had only two

votes and not those of the others, especially since thirty provostships had been reduced to seven, although that reduction had not yet been approved by the authority of their judge.

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

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

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

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

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

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

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

Hence the same provosts could not and ought not to be excluded, also for the reason that seven persons in the name of the seven provosts, and two in the place and name of twenty-three prelates for the whole body itself, were admitted by the canons to deliberation concerning the election. Thus,

since the votes of seven provosts and eighteen prelates present, together with those of six others absent whose proctors were present in the city, concurred upon the person postulated through their assent, they alleged a number more than twice greater for their party. For only fifteen canons and one provost had assented to the parish priest at the beginning, and no right accrued to him in this case through the subsequent assent of nine canons who were not present at the time of the election and who neither could nor ought conveniently to have been summoned. This was especially so since eight of them had been absent for so long that, according to the constitution of the patriarch and chapter of Constantinople, they would in no way be held as canons.

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

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

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

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

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

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

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

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

From this it was inferred that, if this had been done by agreement, it could not lack ambition. But if it had not been prearranged, since because of the distance between the places this could not have

reached those electing in so short a time, it followed that according to their own consciences they were electing an ineligible person. Or, if error—not free from accusation—were alleged as an excuse, negligence would come into the confession, which in these matters does not differ greatly from fault.

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

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

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

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

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

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

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

But if the number of those postulating is found to have been twice greater, as aforesaid, and the person postulated is found unworthy, you are not to delay rejecting both the postulation and the election, unless perhaps all or the greater part of those postulating, with damnable presumption,

knowingly postulated an unworthy person, so that on this occasion they ought deservedly to be deprived of the power of electing or postulating. In this case also, you are to confirm the election if it is established that it was celebrated concerning a suitable person. [Moreover, etc. Given at Segni, on the fifteenth day before the Kalends of September, in the fifteenth year of our pontificate, 1212.]

> Si postulatio cum electione concurrit, et numerus postulantium est duplo maior, et postulatus est idoneus, postulatio admittitur reiecta electione. Si vero indignus, et hoc maior pars postulantium ignoravit, postulatio et electio reprobatur. Si vero sciebant, et electus est idoneus, confirmatur electio, et idem, si numerus postulantium non est duplo maior. Hoc dicit intelligendo secundum quod continet ius commune.
>
> Item Magister Maximo Notario nostro.
>
> Scriptum est in Apocalypsi Ioannis, quod in medio sedis et in circuitu sedis erant quatuor animalia, [plena oculis ante et retro; primum animal simile leoni, secundum animal simile vitulo tertium animal habens faciem quasi hominis, et quartum animal simile aquilae volanti; et quatuor animalia singula eorum alas senas habebant. Sedes ista Romana ecclesia intelligitur, quae usitato vocabulo sedes apostolica nuncupatur, utique sedes agni sedes viventis in saecula saeculorum; in medio cuius quasi filiae in gremio resident et in circuitu adstunt quasi famulae in obsequio quatuor patriarchales ecclesiae, Alexandrina, Antiochena, Hierosolymitana et Constantinopolitana, quae per illa quatuor animalia designantur. Marcus enim Alexandrinam fundavit et rexit ecclesiam, qui secundum visionem Ezechielis accipitur per leonem, eo, quod evangelium inceperit a rugitu, dicendo: "Vox clamantis in deserto," et quia, quemadmodum leo catulum suum post diem tertium suo asseritur excitare rugitu, sic Deus Pater filium suum, qui leo de tribu Iuda esse describitur, de cuius resurrectione principaliter tractat Marcus, divinitatis suae potentia post triduum a mortuis suscitavit. Unde in die resurrectionis dominicae ipsius evangelium antonomastice in ecclesia recitatur. Lucas autem fuit natione Antiochenus; qui propterea in vituli figura describitur, in quo sacerdotalis hostia designatur, quoniam a sacerdotio inchoans evangelium, de immolatione tractavit praecipue summi sacerdotis et veri, qui est hostia salutaris, vitulus videlicet saginatus, quem pater iussit occidi pro filio prodigo redeunte. Unde bene per ipsum Antiochena ecclesia designatur, in qua primum Apostolorum princeps in summi sacerdotii cathedram a fidelibus exstitit sublimatus. Matthaeus quidem fuit natione Iudaeus, et evangelium primus descripsit etiam hebraice in Iudaea, et ob hoc per hominis speciem designatur, quod ab incarnatione Christi suum inchoans evangelium, principaliter humanam eius nativitatem ostendit, quam ipse Christus de Iudaeis et in Iudaea pro nobis assumens, Hierosolymitanam ecclesiam metropolim Iudaeorum sua humana praesentia consecravit, de qua dictum fuerat per Prophetam: "Homo factus est in ea, et ipse fundavit eam altissimus." Ioannes vero Asianam fundavit ecclesiam, et Apocalypsim septem ecclesiis, quae sunt in Asia, ipse descripsit, quibus et ceteris Graecorum ecclesiis Constantinopolitana tandem praeferri meruit et praeponi per aquilam merito designata, quia sicut aquila volatu omnes aves excellit, et oculorum eius intuitum solis radius non offendit, sic Ioannes tribus aliis animalibus in terra relictis, supra coelos coelorum ascendens, veram lucem oculis inverberatis adspexit, et a divina verbi nativitate suum evangelium inchoavit; qui, licet inter universos Evangelistas fuerit ultimus tempore, praecipuus tamen exstitit dignitate quoniam, in coena supra pectus Christi recumbens, fluenta doctrinae de ipso sacri dominici pectoris fonte potavit. Sic Constantinopolitana ecclesia, licet posterior tempore, postmodum propter honorificentiam piissimi Constantini praelata est aliis dignitate; sicque facti sunt primi novissimi, et novissimi primi, ut merito ipsi dicatur: "Multae filiae congregaverunt divitias, sed tu sola supergressa es universas." Ad cuius ecclesiae regimen talis est pontifex assumendus, qui ad similitudinem illorum quatuor animalium ante et retro plenus sit oculis, ut pleno lumine veteris et novi testamenti mysteria contempletur, per experientiam videns praeterita, et futura praevidens per cautelam. Debet etiam habere sex alas, scilicet sex legum notitiam, naturalis, MosaW?ae, et

propheticae, evangelicae, apostolicae et canonicae, quibus perfecto libramine inter coelum volans et terram, de terris ad coelestia et de temporalibus transvolet ad aeterna.] Sane ad hanc ecclesiam, scilicet Constantinopolitanam, duo [quaedam] animalia sunt vocata, utinam plena oculis, et alas habentia senas, videlicet venerabilis frater noster Eradiensis archiepiscopus, et dilectus filius plebanus sancti Pauli de Venetiis, sicut per procuratores tam postulantium archiepiscopum, quam eligentium plebanum fuit propositum coram nobis. [Proposuerunt siquidem procuratores electorum plebani, quod, quum ecclesia Constantinopolitana vacante canonici Ph. decanum suum sibi elegerint in pastorem, et nos cassaverimus electionem eandem, quia quibusdam exclusis, qui adesse debuerunt, exstitit celebrata, ne diu gregi fidelium deesset cura pastoris, tam canonici quam quidam alii, qui se in electione Constantinopolitani patriarchae ius habere dicebant, ut de electione tractarent, adinvicem convenerunt. Quumque septem personae pro septem praepositis se offerrent, et quidam alii pro ceteris praelatis se tractatui electionis ingererent, post multam concertationem tam illas septem personas quam duas alias ad universitatis instantiam, quae tamen duas tantum voces haberent, salvo in omnibus iure suo tam in praesenti quam in futuro, pro bono concordiae receperunt. Sed factum est, quod humani generis inimico, qui unitatem ecclesiae scindere nititur, superseminante zizania messi dominicae, in duas partes sunt vota divisa, novem de canonicis et novem aliis praenominatis personis postulantibus archiepiscopum memoratum, et quindecim canonicis et praeposito sanctorum Apostolorum plebanum eligentibus supradictum; cuius electioni cantor, qui pro utilitate absens erat ecclesiae, et ante tractatum electionis per literas suas consensum expresserat de plebano, si aliis complaceret, et octo alii canonici, qui electionis tempore non fuere praesentes, suum praestitere consensum; et sic in plebanum praedictum vota viginti quatuor canonicorum et unius praepositi convenerunt. Dicebant ergo postulantium numerum esse minorem, quum decem et octo tantum archiepiscopum postularent; de quibus quosdam eorum, quos cum praefata protestatione sui iuris admiserant, excludere nitebantur, duos videlicet de Blakerna et Buccaleone praepositos; quia, quum per exemptionis privilegium a sede apostolica impetratum se subtraxerint oneri, tacite renunciasse videbantur honori, ut ad electionem non pertinerent illius, cui electo nullatenus subiacerent. Alii quatuor non erant praepositi, sed aliarum ecclesiarum clerici, qui se tractatui electionis suorum praepositorum nomine ingerebant, quia eorum domini adeo erant absentes, quod ad tractatum electionis vocari commode nec poterant, nec debebant; quoniam, si absentes possent per procuratores adesse, vix iura devolverentur absentium ad praesentes, quum raro contingeret, quod per se vel per alios interesse non possent. Septimus autem, qui praesens exstiterat, iam electus et confirmatus in archiepiscopum Verricensem et translatus ad suam ecclesiam, possessionem eiusdem adeptus fuerat corporalem. Et licet universitas clericorum quatuor prius pro se postularet admitti, quia tamen pars canonicorum tot nolebat admittere, ne numerus aliorum nimis excresceret, ita tandem pro bono pacis exstitit ordinatum, ut duo tantum admitterentur ex illis cum protestatione praedicta, et ideo eligentes asserebant illos duas tantum voces et non ceterorum habere, maxime quum triginta praepositurae fuerint ad septem redactae, quae tamen nondum fuerunt auctoritate sui iudicis approbatae. Conventuales autem ecclesias ultra quinque vel sex tunc temporis esse negabant, et, si plures fuissent, tempore tamen electionis praedictae praelatos earum dicebant non fuisse praesentes. De malo denique zelo intendebant arguere postulantes eo, quod, ut proponebant, illiteratum et impudicum ex certa scientia postularant; cuius incontinentiam dicebant per filium in monachatu genitum paternae libidinis testem posse probari. Eundem etiam archiepiscopum de ambitione notabant eo, quod in vigilia Nativitatis dominicae se suae subtraxit ecclesiae, et esset in urbe regia, ubi tunc erat postulatio celebranda, et passus est cum hymno "Te deum laudamus" se in sede locari, in qua profestis diebus residere consueverat patriarcha. Qui etiam auctoritate propria bona patriarchatus post mortem patriarchae distribuens, eiusdem sigillo violenter arrepto de scrinio camerarii, literas quasdam, quibus illud impressit, misit Ravennam, et quandam pecuniae summam ibi depositam auctoritate literarum illarum sibi fecit afferri, eandemque distribuit pro suae voluntatis

arbitrio in ecclesiae Constantinopolitanae praeiudicium et gravamen, quod totum et alia in capitulo fuere proposita, quum quidam de ipso postulando tractarent. Unde petebant, ut, quum pars postulantium archiepiscopum esset numero minor, inferior zelo, et a suo iure ceciderit postulando scienter indignum, electionem confirmare factam de dicto plebano canonice dignaremur; maxime quum ipsi usi fuerint iure communi personam eligibilem eligendo, quod ordinarii iuris exsistit, et alii iuris communis contempto beneficio ad extraordinarium auxilium transvolarint. Ad haec procuratores partis alterius responderunt, quod universi praelati conventualium ecclesiarum apud Constantinopolim exsistentium per nostram constitutionem in electione Constantinopolitani patriarchae ius habent. Unde universitas praelatorum, de qua in eadem constitutione cavetur expresse, restringi non debet ad septem, quum ratione suae dignitatis in hoc bene fuerit ecclesiae memoratae provisum; tum ut sanior haberetur super electione tractatus, quum integrum sit iudicium plurimorum sententiis confirmatum; tum etiam, ut per numerum praelatorum illis posset occurri, qui Dei sanctuarium iure volebant hereditario possidere. Addebant etiam, quod praefatae constitutionis beneficium duo exempti praepositi per exemptionis privilegium nullatenus amiserunt, quum ea, quae in favorem alicuius introducta sunt, in eius laesionem non debeant redundare, et per privilegia Pontificum Romanorum addi, non subtrahi consueverit illis, quibus specialiter indulgentur, propter praedictam maxime rationem, ut illis obsisterent prudenter, qui Domini sanctuarium moliuntur in ius hereditarium usurpare. Unde iidem excludi non poterant nec debebant, ea etiam ratione, quod septem nomine septem praepositorum et duo vice ac nomine viginti trium praelatorum pro ipsa universitate fuerint a canonicis ad tractatum electionis admissi; et sic, quum in postulatum vota septem praepositorum et decem et octo praelatorum praesentium, et aliorum sex absentium, quorum procuratores erant in civitate praesentes, consensu mediante illorum concurrerint, pro parte sua ultra duplo maiorem numerum allegabant; quum in plebanum quindecim tantum canonici et unus praepositus a principio consensissent, nec aliquid ei iuris accreverit in hoc casu per subsequentem consensum novem canonicorum, qui electionis tempore non fuere praesentes, nec vocari potuerint commode nec deberent; praesertim quum octo ex illis tanto tempore fuissent absentes, quod secundum constitutionem patriarchae ac capituli Constantinopolitanorum pro canonicis nullatenus haberentur. Auctoritatem etiam introducebant pro se, quum regulariter maioris auctoritatis praelatus quam simplex canonicus habeatur. Bonum vero zelum ea ratione probabant, quod Venetum pro vitando scandalo longa conversatione notum, laudabili administratione probatum, carum clericis, et acceptum laicis postularant; in quem assensus principis, suffraganeorum vota plebisque desiderium concurrebant; nec debebant aliquid sinistrum de ille praesumere, quem et excellentia dignitatis et communis reddebat fama praeclarum. Nec etiam erant adversarii audiendi, qui promotionis eius tempore tacuerunt, nisi forte aliquid novum proponerent, vel quod postmodum didicissent, maxime quum obiectam notam incontinentiae, si qua forsitan praecessisset in ipso, quod tamen inficiabantur omnino, subsequens longae conversationis delevisset honestas. Proposuerunt etiam, quod nisi pars altera se ab iniuriis temperaret, intendebant quaedam proponere tam in personas eligentium quam electi. Ad excusationem vero eiusdem archiepiscopi super obiectione ambitus proponebant, quod idem ex honesta et probabili causa Constantinopolim venerat, et habebat necesse frequenter accedere, tum propter negotia patriarchalis ecclesiae, tum etiam propter exsecutionem ultimae voluntatis patriarchae defuncti suae discretioni commissae; qui licet interfuerit vesperis et matutinis in patriarchali ecclesia ob solennitatem diei, in loco tamen decani resedit, nec aliquid de patriarchalibus usurpavit. Ipsum etiam literatum, etsi non eminenter, competenter tamen esse dicebant, sufficientem intelligentiam et eloquentiam de scripturis et in scripturis habentem; nihilominus allegantes, quod, etsi quaedam conventuales ecclesiae tunc vacarent, aut forsan propter pauperiem non haberent numerum clericorum, ipsum capitulum, aut etiam unus, qui vicem capituli retineret, ad electionem pro praelato deberet admitti, quum in talibus saepe capitulum vicem consueverit supplere praelati, et nomen ac ius universitatis multotiens devolvatur ad unum et retineatur

in uno. De malo nihilominus zelo arguebantur electores plebani eo, quod hominem elegerant, quem electionis tempore credebant in minoribus ordinibus constitutum, asserentes, quod in vigilia nativitatis dominicae altera pars apud Constantinopolim consenserat in plebanum, qui se paulo ante apud Venetias fecerat in subdiaconum promoveri. Ex quo inferebatur, quod, si hoc actum fuerit ex condicto, non poterat ambitione carere. Si vero praeordinatum non exstitit, quum propter locorum distantiam hoc ad eligentes tam brevi tempore nequiverit pervenisse, sequitur, quod secundum conscientias suas ineligibilem eligebant; vel si error ad excusationem accusatione non vacuam allegetur, in confessionem negligentia veniet, quae super iis non multum distat a culpa. Adiiciebant etiam, quod magis erat extraordinarium consentire in hominem, non solum extra totum patriarchatum, verum etiam extra totum imperium constitutum, quam in vicinum et familiarem, suffraganeum eiusdem ecclesiae, de cuius pastoris electione tractatur. Personam quoque plebani de vehementi ambitione notabant, dicentes, quod ipse per literas suas quosdam Constantinopolitanos canonicos expresse rogaverat, ut eum in suum eligerent patriarcham; quod pars adversa negabat. Unde petebant postulatores archiepiscopi saepedicti, ut, quum esset altera pars zelo, auctoritate ac numero minor, cassato quod factum fuerat de plebano, postulationem ipsorum admittere dignaremur.] Verum quia de his, quae per assertionem partium in iudicium deducta fuerant, nobis non potuit fieri plena fides, quamvis super his, quae de numero dicta sunt postulantium, per quoddam instrumentum publicum, nec non per confessionem procuratoris adversae partis in iudicio quidem factam, sed postea revocatam, pars altera assereret suam intentionem esse fundatam, causam discretioni tuae duximus committendam, per apostolica scripta mandantes, quatenus super his et aliis inquiras diligentissime veritatem, de meritis electi et postulati apud Venetias, ubi nati fuerunt et diutius conversati, de studiis autem eligentium et postulantium, et omnibus generaliter, quae causam possunt instruere, apud Constantinopolim, ubi huiusmodi postulatio et electio celebratae fuerunt, et, si partes consenserint, procedas hoc modo, ut, si constiterit de mutuo convenisse consensu, quod ad electionem patriarchae septem admitterentur praepositi, sive per se ipsos sive per alios, et duo alii ex parte universitatis pro ceteris conventualium ecclesiarum praelatis, totque tunc temporis conventuales ecclesias habuisse praelatos, quod cum septem praepositis et novem canonicis, quos quidem canonicos constat in postulatione praefati archiepiscopi convenisse, duplo maiorem facerent numerum quam sexdecim electores plebani, tu vice nostra postulationem admittas, (nisi probatum fuerit, postulato aliquid obviare de canonicis institutis, quod promotionem ipsius debeat impedire), ac plebani electione cassata ipsum archiepiscopum absolvas a vinculo, quo Eradiensi ecclesiae tenetur, concedendo ipsum Constantinopolitanae ecclesiae in pastorem. Quod si ad faciendum duplo maiorem numerum simul omnes praedicti minime sufficerent, sive dignus sive indignus fuerit postulatus, tu, postulatione repulsa, electionem plebani auctoritate nostra confirmes, dummodo nihil obsistat eidem, quod ipsum tanto praesulatu reddat indignum. Si vero numerus postulantium inventus fuerit duplo maior, quemadmodum praedictum est, et persona postulata reperta fuerit indigna, tu tam postulationem, quam electionem non differas reprobare, nisi forsan omnes aut maior pars postulantium praesumptione damnabili postulaverint scienter indignum, ut hac vice merito debeant eligendi seu postulandi potestate privari. Et hoc quoque casu electionem confirmes, si eam de persona idonea constiterit celebratam. [Porro etc. Dat. Signiae XV. Kal. Sept. Pont. nostr, Ao. XV. 1212.]

Chapter XLI

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

The same in the general council.

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

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

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

> Si illi, ad quos spectat electio, negligunt eligere praelatum cathedralis vel regularis ecclesiae infra tres menses, proximus superior ecclesiam ordinabit; quod si intra tres alios menses non fecerit, canonice punietur.
>
> Idem in concilio generali.
>
> Ne pro defectu pastoris gregem dominicum lupus rapax invadat, aut in facultatibus suis ecclesia viduata grave dispendium patiatur, volentes in hoc etiam occurrere periculis animarum, et ecclesiarum indemnitatibus providere, statuimus, ut ultra tres menses cathedralis vel regularis ecclesia praelato non vacet. Infra quos, iusto impedimento cessante si electio celebrata non fuerit, qui eligere debuerant, eligendi potestate careant ea vice, ac ipsa eligendi potestas ad eum, qui proximo, praeesse dignoscitur, devolvatur. Is vero, ad quem fuerit devoluta potestas, Deum prae oculis habens, non differat ultra tres menses cum consilio capituli sui et aliorum virorum prudentium viduatam ecclesiam de persona idonea ipsius quidem ecclesiae, vel alterius, si digna non reperiatur in illa, canonice ordinare, si canonicam voluerit effugere ultionem.

Chapter XLII

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

The same in the same council.

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

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

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

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

> Per aliquam de tribus formis hic contentis, scilicet scrutinii, compromissi et inspirationis, procedi debet ad electionem in ecclesiis cathedralibus; aliter electio celebrata non valet, et contra facientes privandi sunt ea vice potestate eligendi. H. d. usque ad § Illud. - § 1. Interdicit procuratorem in electionis negotio constitui, nisi concurrant hic contenta usque ad § Electiones. Abbas Siculus. - § 2. Praecipit electiones solenniter publicari, et clandestinas reprobari. H. d. usque ad finem. Abbas Siculus.
>
> Idem in eodem.
>
> Quia propter diversas electionum formas, quas quidam invenire conantur, et multa impedimenta proveniunt, et magna pericula imminent ecclesiis viduatis, statuimus, ut, quum electio fuerit celebranda, praesentibus omnibus, qui debent, et volunt et possunt commode interesse, assumantur tres de collegio fide digni, qui secrete et sigillatim vota cunctorum diligenter exquirant, et in scriptis redacta mox publicent in communi, nullo prorsus appellationis obstaculo interiecto, ut is collatione habita eligatur, in quem omnes, vel maior et sanior pars capituli consentit. Vel saltem eligendi potestas aliquibus viris idoneis committatur, qui vice omnium ecclesiae viduatae provideant de pastore. Aliter electio facta non valeat, nisi forte cornmuniter esset ab omnibus, quasi per inspirationem abque vitio celebrata. Qui vero contra praescriptas formas eligere attentaverint, eligendi ea vice potestate priventur. § 1. Illud autem penitus interdicimus, ne quis in electionis negotio procuratorem constituat, nisi sit absens in eo loco, de quo debeat advocari, iustoque impedimento detentus venire non possit, super quo, si opus fuerit, fidem faciat iuramento, et tunc, si voluerit, uni committat de ipso collegio vicem suam. § 2. Electiones quoque clandestinas reprobamus, statuentes, ut, quam cito electio fuerit celebrata, solenniter publicetur.

Chapter XLIII

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

The same in the same council.

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

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

the power of electing.

> Consentiens electioni de se factae per abusum potestatis saecularis, efficitur ineligibilis ad dignitatem, et electio est nulla. Eligentes autem a beneficiis per triennium suspenduntur, et tunc sunt privati potestate eligendi.
>
> Idem in eodem.
>
> Quisquis electioni de se factae per saecularis potestatis abusum consentire praesumpserit contra canonicam libertatem, et electionis commodo careat, et ineligibilis fiat, nec absque dispensatione ad aliquam valeat eligi dignitatem. Qui electionem huiusmodi, quam ipso iure irritam esse censemus, praesumpserint celebrare, ab officiis et beneficiis penitus suspendantur per triennium, eligendi tunc potestate privati.

Chapter XLIV

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

The same in the same council.

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

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

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

§ 2. Moreover, those who pertain immediately to the Roman Pontiff shall, to receive confirmation of their office, present themselves personally before his sight if this can conveniently be done, or transmit suitable persons through whom diligent inquiry concerning the elections and the elected

can be held. Thus at last, through the circumspection of his counsel, they may obtain the plenitude of their office when nothing from the canonical institutes obstructs them. Meanwhile, however, those very remote—namely, situated beyond Italy—if they were elected in concord, may by dispensation, because of the necessities and utilities of the churches, administer in spiritual and temporal matters, in such manner nevertheless that they alienate absolutely nothing from ecclesiastical property. They shall receive the gift of blessing or consecration just as they have hitherto been accustomed to receive it.

> Si praelatus per negligentiam confirmavit indignum electum ad regimen animarum, perdit potestatem confirmandi primum successorem, et a perceptione proprii beneficii suspenditur, et promotus deiicitur. Si vero per malitiam hoc fecit, gravius punitur. Electi vero immediate subiecti Papae, per se aut per personas instructas debent adire Papam, et petere confirmationem. Et si sint electi in concordia, et valde remoti, videlicet ultra Italiam constituti, interim administrant, ita tamen, quod nil alienent; benedicuntur autem et consecrantur, prout consueverunt.
>
> Idem in eodem.
>
> Nihil est, quod ecclesiae Dei magis officiat, quam quod indigni assumantur praelati ad regimen animarum. Volentes igitur huic morbo adhibere necessariam medelam, irrefragabili constitutione sancimus, quatenus, quum quisquam ad regimen animarum fuerit electus, is, ad quem pertinet ipsius confirmatio, diligenter examinet et electionis processum, et personam electi, ut, quum omnia rite concurrerint, munus ei confirmationis impendat, quia, si secus fuerit incaute praesumptum, non solum deiiciendus est indigne promotus, verum etiam indigne promovens puniendus. Ipsum quoque decernimus hac animadversione puniri, ut, quum de ipsius constiterit negligentia, maxime si hominem insufficientis scientiae, vel inhonestae vitae, vel aetatis illegitimae approbaverit, non solum confirmandi primum successorem illius careat potestate, verum etiam, ne aliquo casu poenam effugiat, a perceptione proprii beneficii suspendatur, quousque, si aequum fuerit, indulgentiam valeat promereri. Si vero convictus fuerit in hoc per malitiam excessisse, graviori subiaceat ultioni. § 1. Episcopi quoque tales ad sacros ordines et ecclesiasticas dignitates promovere procurent, qui commissum sibi officium digne valeant adimplere, si et ipsi canonicam cupiunt effugere ultionem. § 2. Ceterum qui ad Romanum pertinent immediate Pontificem, ad percipiendam sui confirmationem officii eius se conspectui, si commode fieri potest, personaliter repraesentent, aut personas transmittant idoneas, per quas diligens inquisitio super electionibus et electis possit haberi, ut sic demum per ipsius circumspectionem consilii sui plenitudinem officii assequantur, quum eis nihil obstiterit de canonicis institutis, ita, quod interim valde remoti, videlicet ultra Italiam constituti, si electi fuerint in concordia, dispensative propter necessitates ecclesiarum et utilitates in spiritualibus et temporalibus administrent; sic tamen, ut de rebus ecclesiasticis nihil penitus alienent. Munus vero benedictionis seu consecrationis recipiant, sicut hactenus recipere consueverunt.

Chapter XLV

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

Honorius III to the Chapter of Constantinople.

So that, once the subject matter of the past contention has been decided, the occasion for future disputes may be cut off, by authority of the present writings we establish that the necessary expenses which the chapter of Constantinople or its messengers have incurred while the see was vacant for the

business of the election shall be made entirely or repaid from the goods of the patriarchate, provided that they do not occupy or usurp the goods of the deceased patriarch.

> Expensae necessariae, quas facit capitulum pro electione praelati, de bonis praelaturae debent fieri vel reddi.
>
> Honorius III. Capitulo Constantinopolitano.
>
> Ut praeteritae contentionis decisa materia futuris litigiis occasio amputetur, praesentium auctoritate statuimus, ut expensae necessariae, quas capitulum Constantinopolitanum vel eius nuncii vacante sede pro electionis negotio fecerint, de bonis patriarchatus fiant totaliter vel reddantur, dummodo ipsi bona decedentis patriarchae non occupent vel usurpent.

Chapter XLVI

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

The same to the Bishop-elect of Lyon.

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

> Electio post collationem ex intervallo celebrata non valet. H. d. secundum opinionem magis communem.
>
> Idem Electo Lugdunensi.
>
> Quum post petitam instanter et demum obtentam venerabilis fratris nostri quondam Lugdunensis archiepiscopi cessionem vota canonicorum Lugdunensium in te, tunc ipsorum praepositum, concorditer convenisset, quia tandem examinato, sicut decuit, processu electionis tuae, invenimus eam post publicationem consensuum et collationis tractatum aliquamdiu fuisse protractam, assensumque tuum prius, quam electus fueris, requisitum, electionem eandem ex ipsius duntaxat inordinato processu iustitia cassavimus exigente. [III. id. Ian. Ao. VIII. - 1224.]

Chapter XLVII

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

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

When the proctors of our beloved sons, the abbots of Saint-Taurin of Évreux and Saint-Leufroy de la Croix, and of the monastery of Fécamp, had appeared in our presence, we appointed our beloved brother B., cardinal-priest of the title of Saints John and Paul, as auditor. Before him the proctors of the aforesaid abbots alleged that, when the aforesaid monastery—which belongs immediately to the Roman Church—was vacant, the monks of that place, in contempt of the aforesaid abbots, who

conveniently could and by right ought to have been summoned, rashly proceeded to the election of an abbot and presumed to elect Ethard, formerly Abbot of Saint-Josse, who was insufficiently suitable for its governance. They therefore sought to have an election of this kind rendered wholly void. But when the proctors of those abbots were ordered to state by what right the abbots themselves ought to take part in the election of the abbot of the monastery of Fécamp, they answered that formerly, when they were taken up as abbots in their own monasteries, it had been specially granted to them by the abbot and convent of the monastery of Fécamp that they should have a voice in the chapter of the same. We, however, judging a reason of this kind frivolous, with the counsel of our brothers impose perpetual silence upon the aforesaid abbots concerning this matter.

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

> Monachus unius monasterii alterius factus abbas, in electione abbatis prioris monasterii vocem non habet, etiamsi tale ius ab abbate et monachis prioris monasterii sibi fuit reservatum.
>
> Idem Eboracensi Priori, et Magistro Guidoni de Canopo.
>
> Constitutis in praesentia nostra procuratoribus dilectorum filiorum sancti Taurini Eboracensis et sancti Leofredi de Cruce abbatum, ac monasterii Fiscanensis, dilectum fratrem nostrum B. tit. SS. Ioannis et Pauli presbyterum cardinalem dedimus auditorem, coram quo proposuerunt procuratores praedictorum abbatum, quod vacante praefato monasterio, quod immediate ad Romanam ecclesiam pertinet, monachi eiusdem loci contemptis praefatis abbatibus, qui commode poterant et debebant de iure vocari, ad electionem abbatis temere procedentes, Ethard. quondam abbatem S. Iudoci ad eiusdem regimen minus idoneum eligere praesumpserunt, quare petebant electionem huiusmodi penitus irritari. Quum autem procuratores ipsorum abbatum iussi essent exprimere, quo iure ipsi abbates deberent electioni abbatis Fiscanensis monasterii interesse responderunt, quod olim, quum assumerentur in suorum monasteriorum abbates, fuit specialiter indultum eis ab abbate et conventu monasterii Fiscanensis, ut haberent vocem in capitulo eorundem. Nos autem rationem huiusmodi frivolam reputantes, de consilio fratrum nostrorum super hoc perpetuum silentium imponimus abbatibus supradictis.

Chapter XLVIII

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

The same to the Chapter of Rouen.

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

quashed what was done concerning the aforesaid T., the petition of those agreeing upon the chancellor likewise not being admitted.

> Electio debet fieri verbo, et de illo, in quem consenserit maior pars capituli, et non respectu aliarum partium.
>
> Idem Rothomagensi Capitulo.
>
> Ecclesia vestra destituta pastore, et votis vestris, quum de futura praelati haberetis successione tractatum, in diversa divisis, quidam in Thomam, quidam in cancellarium, et quidam singulares in singulares personas eiusdem ecclesiae consensistis. Verum quum super his in nostra et nostrorum fratrum praesentia multa fuissent hinc inde proposita, invenimus, quod illi, qui sua in Thomam desideria dirigebant, licet maiorem partem facerent partium comparatione minorum, non tamen ad maiorem partem capituli pervenerunt. Consideravimus nihilominus, quod post publicationem consensuum et collationis tractatum ad electionem nullus habitus est processus, quamvis deportationis solennitas etiam post appellationem legitimam fuerit subsecuta, quam pro electione nec deceret, nec etiam expediret haberi. Unde de fratrum nostrorum consilio quod factum est de T. praedicto cassavimus, petitione consentientium etiam in cancellarium non admissa.

Chapter XLIX

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

Gregory IX.

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

> Non professus in abbatem eligi non potest.
>
> Gregorius IX.
>
> Quum in magistrum assumi non debeat qui formam discipuli non assumpsit, nec sit praeficiendus qui subesse non novit, nos, intellecto per te, quod in quibusdam regularibus domibus, iure tibi dioecesano subiectis, sunt quidam in abbates non professi ordinem regularem assumpti, mandamus, quatenus, quum tales abbates esse non debeant, qui per professionem monachi et regulares canonici non fuerint, ad amotionem eorum, quos tales inveneris, sublato appellationis impedimento, procedas.

Chapter L

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

The same to the Chapter of Como.

The church of Como being deprived of the consolation of a pastor, and those of the canons of Como who were present having assembled on the day fixed for celebrating the election, together with three abbots [namely, those of Saint Abbondio, Saint Carpophorus, and Saint Julian of Como], who are known to have a voice in the election, the chaplains and clerics of the city, saying that they ought to take part in the election, were admitted under this protest: that the vote of those who ought not to

take part by law or custom would not be valid. At length, after a scrutiny had been held in accordance with the form of the general council, seven of the canons, one of the abbots, eleven chaplains, and nine clerics agreed upon the archpriest of the same church, while nine canons, one of the abbots, one chaplain, and eleven clerics directed their votes toward the archdeacon of that church.

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

> Electio facta a non maiori parte capituli et omissa collatione non valet.
>
> Idem Cumanensi Capitulo.
>
> Cumana ecclesia pastoris solatio destituta, et congregatis die ad celebrandam electionem praefixa, qui praesentes erant de Cumanis canonicis, ac tribus abbatibus, [videlicet S. Abundii, S. Carpophari et S. Iuliani Cumani] qui vocem in electione habere noscuntur, capellani et clerici civitatis, electioni se debere interesse dicentes, sub huiusmodi protestatione admissi fuerunt, quod vox eorum, qui non deberent interesse de iure vel consuetudine, non valeret. Tandem praemisso iuxta formam concilii generalis scrutinio, VII. de canonicis, unus abbatum, XI. capellani et novem clerici in eiusdem ecclesiae archipresbyterum convenerunt, novem canonicis, uno de abbatibus, uno capellano et XI. clericis in ipsius ecclesiae archidiaconum dirigentibus vota sua. [Quumque super electione utriusque procuratores eorum ad nostram praesentiam accessissent, dil. filium nostrum O. S. Nicolai in Carcere Tulliano diaconum Cardinalem eis deputavimus auditorem, qui quum ea quae fuerunt proposita coram ipso nobis fideliter retulisset,] Quum decem et octo fuerint canonici, tres abbates, XX. clerici et XIV. capellani, neutram electionem comperimus ad maiorem partem totius capituli pervenisse. Nec probatum fuerat, [ab eisdem procuratoribus] quod clerici admitti debuerint, nec quod capellani admissi fuerint de consuetudine vel de iure. Nam etsi capellani duabus electionibus episcoporum interfuerint, et scrutatores dederint voluntatum, non tamen inquisita vota sua fuisse, vel eos aliquos elegisse probatur. Sed et si inquisita fuissent vota, vel ipsi aliquos elegissent, per hoc tamen non constitit, id eis de iure competere, vel ex consuetudine iam praescripta. Unde nos electiones ipsas praesumptas etiam contra formam concilii generalis, quum collatio in communi omissa fuerit, quae post publicationem scrutinii fieri debuisset, de fratrum nostrorum consilio sententialiter duximus irritandas, [et] electores hac vice eligendi potestate privantes, [Dat. Laterani XII. Kal. April Ao. II. - 1228.]

Chapter LI

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

The same to the Abbot of Cluny.

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

> Per compositionem factam cum praelato et capitulo non potest ius eligendi competere laico, etiam patrono in ecclesia collegiata.
>
> Idem Abbati Cluniacensi.
>
> Sacrosancta Romana ecclesia (Et infra:) Sane proposuisti in nostra praesentia, quod super ordinatione prioris monasterii sancti Pancratii, ad Cluniacensem ecclesiam pertinentis, cum comite de Varenna patrono ipsius quidam praedecessor tuus de consensu capituli sui compositionem quandam inivit iuri contrariam et ecclesiae ipsi damnosam, videlicet, ut in optione sit ipsius comitis, assumere ad prioratum dicti monasterii, Cluniacensi et de Caritate prioribus duntaxat exceptis, unum de duobus melioribus totius Cluniacensis ordinis, quos abbas duxerit nominandos. (Et infra:) Attendentes itaque, quod ius eligendi in collegiata ecclesia non cadit in laicum, et ideo id esset perniciosum exemplo, et redundaret in dispendium ecclesiasticae libertatis, volumus, ut dictum prioratum libere possis, non obstante compositione ipsa, sicut alios prioratus tibi subditos ordinare, denunciando ordinationem factam patrono, ut suum, si voluerit, honestum impertiatur assensum.

Chapter LII

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

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

Since in the old law (*And below:*) Indeed, some time ago we commanded you that, within forty days after receipt of our letters, with the counsel of the abbots of Saint-Bénigne and Morimond and of Brother G. of the Order of Preachers, you were canonically to elect a suitable person as pastor; otherwise, the said counselors were to provide you with an archbishop. But on the day fixed for electing, six of you conferred the power of electing, which was to last until the consumption of a certain candle that was then lit there. At length, when electors of this kind had agreed upon the

aforesaid Abbot of Saint-Bénigne and had sought the counsel of his associates concerning this, one of them proposed that they should answer after deliberate counsel. While they delayed giving them a prompt response, the aforesaid electors, because the candle was failing, did not await their counsel but elected the said abbot as Archbishop of Besançon. (*And below:*) Therefore, when the business had been reported to the Apostolic See, we enjoined the Archbishop of Vienne and the Abbot of La Ferté that, if it were established that the same electors had held a deliberation concerning the election and that the counsel of the aforesaid persons had been sought during the deliberation concerning the election, they should confirm the election of the abbot himself if his person was suitable. But if their counsel had not been sought during the deliberation concerning the election, although it had afterward been sought at an unsuitable time and their response had not even been awaited, or if that abbot were not suitable, they were to render void, as invalid, what had been done concerning him. (*And below:*) Since, however, it was not found that counsel concerning the person of the aforesaid abbot had been sought at a suitable time, and, when it was sought, their response was awaited only for a short time, and since it ought not to be imputed to others that those men had so greatly narrowed the time for themselves, we have decreed that the election of the abbot himself is to be rendered void, not because of a defect in the person, but because of a defect in the election.

> Si per Papam mandatur habentibus eligere, quod eligant cum consilio aliquorum, alioquin conciliarii provideant, eligentes debent consilium requirere in tractatu electionis, et congruo tempore exspectare responsum; alias electio non tenet.
>
> Idem Decano et Capitulo S. Ioannis et sancti Stephani Bisuntinensis.
>
> Quum in veteri lege (Et infra:) Porro iam dudum vobis dedimus in mandatis, ut infra quadraginta dies post susceptionem literarum nostrarum cum consilio sancti Benigni et Morismundi abbatum et fratris G. de ordine Praedicatorum eligeretis personam idoneam canonice in pastorem; alioquin dicti consiliarii vobis de archiepiscopo providerent. Verum die ad eligendum praefixa sex ex vobis potestatem eligendi dedistis, usque ad consumptionem cuiusdam candelae, quae ibidem accensa exstitit, duraturam. Tandem quum electores huiusmodi convenissent in praedictum abbatem sancti Benigni, et super hoc sociorum eius consilium requisissent, proponente uno ex illis, quod deliberato consilio responderent, et differentibus eis festinanter dare responsum, praefati electores, quum candela ipsa deficeret, non exspectato ipsorum consilio, dictum abbatem in Bisuntinensem archiepiscopum elegerunt. (Et infra:) Relato ergo ad apostolicam sedem negotio, archiepiscopo Viennensi et abbati de Firmitate iniunximus, ut, si constaret ab eisdem electoribus de electione tractatum fuisse habitum, et in tractatu electionis praedictorum consilium requisitum, electionem ipsius abbatis, si persona esset idonea, confirmarent. Quod si in tractatu electionis non fuisset illorum consilium requisitum, licet postea requisitum fuerit non competenti tempore, nec etiam exspectatum responsum ipsorum, aut non esset idoneus idem abbas, quod de ipso factum erat tanquam invalidum irritarent. (Et infra:) Quum autem compertum non fuerit competenti tempore requisitum consilium de persona praedicti abbatis, et quando exstitit requisitum, non fuit exspectatum responsum nisi modico tempore, nec debeat aliis imputari, quod in tantum illi sibi tempus arctarant, electionem abbatis ipsius, non personae, sed electionis vitio duximus irritandam.

Chapter LIII

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

The same to the Bishop of Senlis.

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

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

> Si maior pars capituli scienter eligit indignum, valet electio de digno a minori parte, etiam ex eodem scrutinio facta. Hoc dicit secundum veriorom intellectum et intrinsecum.
>
> Idem Episcopo Silvanectensi.
>
> Congregato Nivernensi capitulo ad electionem futuri pastoris, XIII. in decanum, et XVIII., computato pro curatore cuiusdam absentis, in cantorem ipsius ecclesiae convenerunt, qui, quum plures in eum, et pauciores in alium sua desideria direxissent, a parte sua electus exstitit in pastorem ecclesiae Nivernensis. Postmodum, credente parte decani, quod alii plurimum deliquissent eligendo personam scientiae literalis expertem, propter quod illis secundum statuta Lateranensis concilii ipso iure eligendi potestate privatis potestas eligendi ad eos exstitit devoluta, decanum ipsum, qui in eum sua vota direxerant, in suum episcopum elegerunt, ad sedem apostolicam appellantes. (Et infra:) Reliquis petentibus, ut irritare decani electionem attentatam a paucioribus, et post aliam non cassatam, ac confirmare reliquam veluti canonice celebratam a pluribus de pesrsona idonea dignaremus. Nos igitur mandamus, quatenus, si dictus cantor defectum in literatura non patitur, et alias est idoneus ad regimen pastorale, ipsius electionem procures auctoritate nostra, infirmata reliqua, confirmare. Alioquin, ipsius cantoris electione irrita nunciata, praenominatum decanum, si nihil ei de canonicis obstiterit statutis, eadem auctoritate praeficias ecclesiae memoratae.

Chapter LIV

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

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

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

§ 1. Hence, since it was established in the same council that whoever receives any benefice having the cure of souls annexed to it, if he previously held such a benefice, is deprived of the latter by the law itself, and, if perchance he contends to retain it, shall be despoiled of the other also, the aforesaid elect, by acting contrary to statutes of this kind, incurred from the plurality of benefices the mark of transgression as well as the vice of cupidity, which he ought to have reproved in others. And by retaining benefices that did not belong to him—since after the receipt of the other benefice the former benefices had become vacant by the law itself—he consequently handled the property of another, and thus in a certain manner committed theft or rapine. To the detriment of his own salvation and of many souls he also retained the aforesaid parish churches, although their cure, of which he had already been deprived by the law itself, in no way belonged to him; and thus those souls were damnably deceived through him.

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

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

§ 4. At length the archdeacon petitioned that the election be rendered void for the aforesaid reason, while the aforesaid elect answered that his election was not to be rendered void. But when the issue had lawfully been joined before us and an oath to tell the truth had been taken by the parties, the same elect, although he admitted that he had held the said benefices at the time of the election, nevertheless strove to excuse himself concerning this, namely because he did not believe that the said archdeaconry had the cure of souls. But since in judicial proceedings he admitted that the Archdeacon of Amiens customarily suspends, excommunicates, and absolves priests and priors,

places parish churches under interdict, and also visits, inquires into those matters that he sees ought to be investigated, and receives procurations by reason of visitation, it plainly appears that the archdeaconry has the cure of souls annexed to it. Even if it did not have that cure, he cannot deny that it is a personate, since the same judgment is to be made concerning personates as concerning benefices having the cure of souls.

§ 5. Moreover, we judged invalid the indulgence that he asserts he has concerning this, since in obtaining it he suggested a falsehood and suppressed the truth, although, had the former been concealed or the latter expressed, he would in no way have obtained it. For he suggested that he had canonically obtained the aforesaid parish churches before he was assumed as archdeacon, although no one could hold several parish churches unless one depended upon the other, or unless he had one by title and the other in commendam. Hence, since he had both of those churches by title, he could not have held them canonically. Likewise, by suggesting that the revenues of his personate were slight and meager, he suppressed the fact that he was known to hold other revenues in several churches. He also suppressed the fact that he held several parish churches together with several other benefices in different churches, although it was not our intention to dispense with him in so many benefices, especially those having the cure of souls; nor was it our intention to grant anything new, but only that through the indulgence he might lawfully retain what he already had. (*And below:*)

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

> Habens plures dignitates vel plura beneficia curata, sine dispensatione Papae ineligibilis est. Hoc dic. quoad titulum.
>
> Idem Silvanectensi Episcopo, et Ioanni de Monte mirabili Archidiacono et Succentori Parisiensi.
>
> Dudum ecclesia Rothomagensi pastoris solatio destituta, contra electionem, quae in eadem ecclesia fuerat celebrata, A. archidiaconus et quidam alii eiusdem ecclesiae canonici ad sedem apostolicam accesserunt. Dicto vero archidiacono pro se ac parte sua, et G. archidiacono procuratore illorum, qui electionem celebraverant, in nostra praesentia constitutis, inter alia, quae contra electum obiecta fuerant, archidiaconus proposuit memoratus, quod idem electus post generale concilium archidiaconatum Ambianensem adeptus, ipsum cum pluribus parochialibus ecclesiis, quas ante idem concilium obtinuerat, retinere praesumpsit, eoque dimisso retinuit ecclesias memoratas. § 1. Unde, quum in eodem concilio sit statutum, ut, quicunque receperit aliquod beneficium, curam animarum habens annexam, si prius tale beneficium obtinebat, eo sit ipso iure privatus, et si forte illud retinere contenderit, etiam alio spolietur, praedictus electus contra huiusmodi veniens statuta, transgressionis notam, nec non cupiditatis vitium, quod in aliis reprobare debuerat, ex pluralitate beneficiorum incurrit. Et retinendo beneficia, quae non spectabant ad ipsum, quum post receptionem alterius priora beneficia vacaverint ipso iure, rem contrectavit per consequens alienam, et sic furtum commisit quodammodo vel rapinam. In suae quoque salutis et multarum animarum dispendium praedictas parochiales ecclesias retinebat, quum earum cura, qua iam privatus fuerat ipso iure, ad eum nullatenus pertineret, et sic per ipsum eadem animae damnabiliter sunt deceptae. § 2. Verum procurator eorum, qui elegerant ipsum, etsi pluralitatem beneficiorum huiusmodi coram nobis profiteretur in iure, per concessionem tamen Rothomagensis archiepiscopi nobis exhibitam eundem electum nisus est multipliciter excusare. Nos igitur dictam excusationem, utpote frivolam, nullatenus admittentes, vobis dedimus in mandatis, ut, si constaret, quod idem post receptum archidiaconatum praedictum, curam animarum habentem,

praefatas parochiales ecclesias electionis tempore retineret, nec ostenderet secum per sedem apostolicam super hoc dispensatum, electionem illius auctoritate apostolica cassaretis. (Et infra:) Partibus ergo propter hoc in vestra praesentia constitutis, praestito quoque iuramento de veritate dicenda, et factis positionibus et responsionibus hinc inde, tandem eodem decano praetextu quorundam gravaminum ad nostram audientiam appellante, vos electionem huiusmodi irritantes, eidem ecclesiae de Cenomanensi episcopo providistis, (Et infra:) § 3. Licet autem positiones et responsiones super pluribus articulis factae fuerint coram vobis, quia tamen contestationem litis non invenimus esse factam, quum non per positiones et responsiones ad eas factas, sed per petitionem in iure propositam et responsionem factam contestatio litis fiat, eundem processum de fratrum nostrorum consilio irritum duximus nunciandum. § 4. Tandem archidiaconus electionem ex praemissa causa petiit irritari, electo respondente praedicto, quod non erat eius electio irritanda. Lite vero coram nobis legitime contestata, praestitoque de veritate dicenda a partibus iuramento, idem electus, etsi confiteretur, se dicta beneficia electionis tempore tenuisse, tamen excusare se super hoc nihilominus nitebatur, quia videlicet dictum archidiaconatum non credebat curam animarum habere. Sed quum in iure confessus fuerit quod archidiaconus Ambianensis de consuetudine suspendit, excommunicat et absolvit presbyteros et priores, et parochiales ecclesias interdicit, nec non archidiaconus visitat, et inquirit quae viderit inquirenda, et procurationes ratione visitationis recipit, evidenter apparet, quod curam habeat animarum annexam. Quam si etiam non haberet, negare non potest, quin personatus exsistat, quum idem de personatibus, quod et de beneficiis curam animarum habentibus, iudicium sit habendum. § 5. Insuper indulgentiam, quam super hoc asserit se habere, invalidam reputavimus, quum in ea falsitatem suggesserit, et suppresserit veritatem, qua tacita vel expressa ipsam nullatenus habuisset. Suggessit enim, quod praedictas parochiales ecclesias, antequam fuisset in archidiaconum assumptus, canonice fuerat assecutus, quum nullus potuerit plures parochiales ecclesias obtinere, nisi una penderet ex altera, vel unam intitulatam, et alteram commendatam haberet. Unde, quum idem utramque illarum intitulatam haberet, ipsas nequivit canonice habuisse. Item suggerens, quod reditus personatus sui erant tenues et exiles, suppressit, quod alios reditus in pluribus ecclesiis noscitur obtinere. Suppressit etiam, quod plures parochiales ecclesias cum pluribus aliis beneficiis in diversis ecclesiis obtineret, quum intentionis nostrae non fuerit, secum in tot beneficiis, praesertim habentibus curam animarum, dispensare, nec intentionis nostrae fuerit, aliquid de novo concedere, sed ut per indulgentiam posset habita licite retinere. (Et infra:) § 6. Tandem quum non restaret, nisi proferenda sententia, idem tam iuri, si quod ei competere videbatur, quam liti cessit spontanea voluntate; cuius cessionem duximus admittendam.

Chapter LV

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

The same.

In Genesis it is read (*And below:*) Since provision is made in the council that, after a comparison has been held, he is to be elected upon whom all or the greater and sounder part of the chapter agrees; and since the greater part of the whole chapter did not agree upon G., although he had the greater faction in comparison with the smaller factions; and since there was no full comparison of number with number, because whether G. and H., concerning whom the adversaries raise a question, had a voice in the election was neither deliberated nor determined; and since no comparison was made of zeal with zeal or merit with merit; and since the election was not even celebrated in common—for, although the individuals had each individually agreed upon the same G., nevertheless an individual

election ought not to have followed, but a common one, lest either the same thing seem to be repeated or from this there follow the absurdity that there should be as many elections in number as there were electors; nor from individual or particular assents would a universal or common election appear, although each individual assent expresses the truth of its own part, just as a universal proposition does not appear from individual propositions, although true, unless perhaps it is expressed through a universal sign; and since the aforesaid two canons could not be excluded in this way, because the first was in possession or quasi-possession of a canonry, having a stall in the choir and a place in the chapter, reading and chanting as a canon, and had been summoned as a canon to deliberations and elections of dignities and personates that arose to be made from time to time, although on this occasion he was admitted under protest, while the second was in such a place that he ought to have been summoned from it to the election, since by the custom of the Gallican Church absentees are summoned from the whole kingdom of France—we, having understood these matters more fully, with the counsel of our brothers decree the aforesaid election void and empty, as one attempted contrary to the form of the council.

> Irrita est electio, quam collatio non praecessit, vel quae facta non est a maiore parte capituli, vel quae non fuit communis.
>
> Idem.
>
> In Genesi legitur (Et infra:) Quum in concilio caveatur, ut is collatione habita eligatur, in quem omnes, vel maior et sanior pars capituli consentit, et in G. maior pars totius capituli non consenserit, quanquam maiorem partem habuit partium comparatione minorum, nec plene numeri ad numerum, quia, utrum G. et H., de quibus adversarii referunt quaestionem, in electione vocem habuerint, tractatum non exstitit nec discussum, nec zeli ad zelum, nec meriti ad meritum collatio facta fuerit, nec etiam electio communiter celebrata, quoniam, licet in eundem G. singulariter singuli consensissent, non tamen debuit subsequi singularis electio, sed communis, ne vel idem repeti videretur, vel ex hoc sequeretur absurditas, ut tot essent electiones, quot essent numero eligentes, nec ex singularibus vel particularibus consensibus appareret universalis electio vel communis, licet quilibet singularis veritatem exprimat suae partis, quemadmodum ex singularibus propositionibus, licet veris, universalis propositio non apparet, nisi per signum universale forsitan exprimatur, nec praemissi duo canonici poterant sic excludi, quum primus exsisteret in canonicatus possessione vel quasi, habendo stallum in choro, locum in capitulo, legendo et cantando ut canonicus, et ad tractatus ac electiones dignitatum et personatuum, quae occurrerunt pro tempore faciendae, tanquam canonicus sit vocatus, quanquam hac vice fuerit cum protestatione admissus, secundus vero esset in tali loco, de quo fuerat ad electionem vocandus, quum de toto regno Franciae vocentur absentes de consuetudine ecclesiae Gallicanae: nos, his plenius intellectis, de consilio fratrum nostrorum praemissam electionem, utpote contra formam concilii attentatam, decernimus irritam et inanem.

Chapter LVI

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

The same to the Chapter of Massa.

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

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

> Non valet electio pontificis per laicos et canonicos faxcta, etiamsi hoc habeat consuetudo. Hoc dic. et quotidie solet allegari.
>
> Idem Capitulo Massano.
>
> Massana ecclesia pastore vacante (Et infra:) Edicto perpetuo prohibemus ne per laicos cum canonicis pontificis electio praesumatur. Quae si forte praesumpta fuerit, nullam obtineat firmitatem, non obstante contraria consuetudine, quae dici debet potius corruptela.

Chapter LVII

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

The same to the Chapter of Châlons.

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

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

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

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

> Non sufficit ad confirmationem electionis, quod sit facta a maiori parte capituli, nisi etiam illa pars sit sanior.
>
> Idem Capitulo Cathalanensi.
>
> Ecclesia vestra destituta pastore, convenientes in unum, absente G., qui tunc noluit interesse, ad celebrandam electionem terminum statuistis. Veniente vero termino, et dicto G., quum absens exsisteret, non vocato, praemisso iuxta formam concilii generalis scrutinio, XIV. magistrum G. presbyterum cardinalem, concanonicum vestrum, et XVII. R. Remensem canonicum elegerunt, praefato G. postmodum electioni eiusdem R. suum praebente consensum. Tandem procuratoribus utriusque partis in nostra praesentia constitutis, allegabatur pro electione dicti R., quod, quum in IV. excederet aliam, computato G. praedicto, maiorem capituli partem habebat, et per hoc debebat pars sua sanior reputari, quum, ubi maior numerus est, zelus melior praesumatur. Pars vero altera electionem eandem multipliciter impugnabat, proponens, praenominatum R. in aetate pati defectum, nec esse sufficientis scientiae ad ecclesiam supradictam, quum aetatis maturae et eminentis scientiae praefatus cardinalis exsistat, et, quum electores cardinalis alios meritis et auctoritate praecellerent, habito praesertim respectu ad personam electam, meliorem zelum eos habuisse constabat. Dicebatur praeterea, quod consensus dicti G., quem pars eiusdem R. confitebatur fuisse contemptum, asserente parte reliqua, capitulum potius contemptum ab ipso fuisse, quum non fuerit consensus praestitus in scrutinio, sed post electionem accesserit, adiicere nil valebat. (Et infra:) Denique statutum generalis concilii, quod electionem decernit invalidam, quum contra eiusdem concilii formam in electione peccatur, non debet ad contemptum et ad alia, quae non sunt de forma, referri. Unde quod ibi dicitur, quod aliter electio celebrata non valeat, ea respicit tantum, quae attentantur contra formam concilii memorati, non autem alia, quae ponuntur ibidem, sicut est istud, quod praesentibus omnibus, qui debent, volunt et possunt commode interesse, haberi debeat in electione processus, ne cetera, quae super hoc alibi statuta noscuntur, uno verbo videbantur everti. Neque enim credendum est, Romanum Pontificem, qui iura tuetur, quod alias excogitatum est multis vigiliis et inventum, uno verbo subvertere voluisse. Nos ergo, quae hinc inde fuere proposita, plenius intellectis, quum ex Lateranensi concilio in ordinationibus ecclesiarum maior et sanior pars capituli exigatur, et statutum generalis concilii contineat inter cetera, ut is eligatur, in quem omnes, vel maior et sanior pars consentit, electionem dicti R. non personae, sed potius electionis vitio, quum maior et sanior pars non consenserit in eundem, de fratrum nostrorum consilio duximus sententialiter irritandam.

Chapter LVIII

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

The same.

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

> Publicato scrutinio non possunt electores variare, sed compelli debent ad collationem et electionem.
>
> Idem.
>
> Publicato scrutinio variare nequeunt electores, quum sit facienda collatio, et electio celebranda. Ad quod per superiorem, si oportuerit, compellantur.

Chapter LIX

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

The same.

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

> Cassata electione propter simoniam, etiam sine culpa electi, non dispensat episcopus ea vice cum cassato; secus si electus libere resignavit. H. d. secundum intellectum glossae 2. in fin.
>
> Idem.
>
> Si alicuius electionem propter simoniam, eo ignorante ac ratum non habente commissam, contigerit reprobari, cum eo super praelatione, ad quam taliter fuerat electus, illa vice non potest episcopus dispensare, quamvis circa eum, qui ignoranter recipit simplex beneficium per simoniacam pravitatem, post liberam resignationem episcopi dispensatio toleretur.

Chapter LX

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

The same.

For those who are forbidden to presume to elect without the license of a superior, the time established by the canon runs from the point at which they are in delay in seeking such a license.

> Electoribus impeditis currit tempus, si possunt impedimentum tollere.
>
> Idem.
>
> His, quibus interdicitur, ut absque superioris licentia eligere non praesumant, tempus statutum a canone currit, ex quo in mora fuerint licentiam huiusmodi postulandi.

Title VII: On the Translation of a Bishop

Chapter I

Latin source headnote: A patriarch who transfers one confirmed as archbishop to an episcopal see is suspended from the confirmation of bishops. Johannes Andreae.

Innocent III to the Patriarch of Antioch.

Since from that general privilege which our Lord granted to blessed Peter and, through him, to the Roman Church, canonical institutes afterward flowed, containing that the greater causes of the Church are to be brought to the Apostolic See; and since through this the translations of bishops, like their depositions, and changes of sees belong by law to the supreme prelate of the Apostolic See, and nothing concerning these matters ought to be altered without his assent: we wonder not a little and are moved that [you], following the example of your predecessor—who is said, by a movement of his own will, to have transferred the Archbishop of Mamistra to Tarsus—transferred L., formerly elect of Apamea, to the church of Tripoli. Nor was it sufficient for you merely to imitate the aforesaid presumption of your predecessor; rather, to our injury you even surpassed his excess and, by a certain new kind of change, made the greater small and in a certain manner diminished the great, presuming to make an archbishop a bishop—or rather, to un-archbishop him—although your said predecessor transferred the aforesaid archbishop from the church of Tarsus to a church of like dignity.

For although the said L. had not yet been consecrated as archbishop, he had nevertheless received the gift of confirmation and had exercised archiepiscopal functions insofar as it was lawful for him, as became known to us through his own account; for, when he had appeared in our presence, he asserted that he had confirmed the Bishop of Valania. Therefore, lest boldness to perpetrate similar acts be furnished to others if so great an excess should be left unpunished, we have decreed that you are to be suspended from the confirmation of bishops until we establish otherwise concerning this, [knowing, etc. Given at the Lateran, on the sixteenth day before the Kalends of April, 1198.]

> **DE TRANSLATIONE EPISCOPI.**
>
> Patriarcha, qui confirmatum in archiepiscopum transfert ad sedem episcopalem, ab episcoporum confirmatione suspenditur. Ioan. Andr.
>
> Innocentius III. Antiocheno Patriarchae.
>
> Quum ex illo generali privilegio, quod beato Petro et per eum ecclesiae Romanae Dominus noster indulsit, canonica postmodum manaverint instituta, continentia maiores ecclesiae causas esse ad sedem apostolicam perferendas, ac per hoc translationes episcoporum, sicut depositiones eorum, et sedium mutationes ad summum apostolicae sedis antistitem de iure pertineant, nec super his quicquam praeter eius assensum debeat immutari: miramur non modicum et movemur, quod [tu], praedecessoris tui exempla secutus, qui motu propriae voluntatis Mamistanum in Tarsensem dicitur transtulisse, L. quondam Apamensem electum in Tripolitanam ecclesiam transtulisti, nec tibi sufficit dictam praedecessoris tui praesumptionem solummodo imitari, immo etiam in iniuriam nostram ipsius transgressus excessum et, novo quodam mutationis genere parvificasti maiorem, et magnum quodammodo minorasti, episcopare archiepiscopum, immo potius dearchiepiscopare praesumens, quum dictus praedecessor tuus dictum archiepiscopum de Tharsensi ecclesia in ecclesiam transtulerit similis dignitatis. Licet enim dictus L. nondum fuisset in archiepiscopum consecratus, confirmationis tamen munus receperat, et archiepiscopalia, quantum ei licuit, ministrarat, sicut nobis ipsius relatione innotuit, qui se Valiensem episcopum quum in nostra esset praesentia constitutus, asseruit confirmasse. Ne igitur perpetrandi similia ceteris audacia tribuatur, si tantus excessus relictus fuerit impunitus te ab episcoporum confirmatione duximus suspendendum, quousque super hoc aliud statuamus, [sciturus etc. Dat. Lateran. XVI. Kal. Apr. 1198.]

Chapter II

Latin source headnote: The Pope alone can transfer persons elected and confirmed as bishops.

The same to the Dean and Chapter of Angers.

Between corporeal and spiritual things we have recognized this difference: corporeal things are more easily destroyed than constructed, but spiritual things are more easily constructed than destroyed. Hence, according to the canonical sanctions, a bishop alone can give an honor, but he alone cannot take it away. Bishops also receive the gift of consecration from their metropolitans, but they cannot be condemned except through the Roman Pontiff.

Since, therefore, the spiritual bond is stronger than the carnal, it ought not to be doubted that almighty God reserved for his judgment alone the dissolution of the spiritual marriage that exists between a bishop and a church, for he also reserved for his judgment alone the dissolution of the carnal marriage that exists between a man and a woman, commanding that man not separate those whom God has joined. For a spiritual marriage is dissolved not by human but rather by divine power, when by the authority of the Roman Pontiff—who is established to be the vicar of Jesus Christ—a bishop is removed from a church through translation, deposition, or even resignation. Consequently these three things which we have set forth are reserved to the Roman Pontiff alone, not so much by canonical constitution as by divine institution.

For just as a consecrated bishop ought not leave his church without the license of the Roman Pontiff, so also one elected [and] confirmed cannot, apart from his assent, leave his church, to which he is bound matrimonially. It ought not to be called into doubt that, after canonical election and confirmation, a spiritual marriage is contracted between the persons of the electors and the elect. Episcopal dignity assuredly adds nothing to this, since one endowed with episcopal dignity can nevertheless be the bishop of no church, as happens with one who renounces the burden of the pontificate but not its honor. Hence, since the bond of a bishop to a church is not greater than that of an elect—especially when he has been confirmed—but is entirely the same and not another, the same rule of law obtains in both. Therefore, just as the translation, or even the deposition and resignation, of bishops, so also that of elects after confirmation is, by reason of the spiritual marriage, reserved to the Roman Pontiff alone. Although down to these times what had been provided concerning bishops had not been expressed concerning elects, nevertheless, because of the manifest similarity—or rather identity—it could seem doubtful to no one looking closely, since the same judgment is to be made concerning similar things.

§ 1. Nor could the passage read in the canon concerning an elect support those who understood otherwise: that if through his own negligence he keeps a church widowed for more than six months, he is to receive the gift of consecration neither there nor elsewhere, but rather is to yield to the judgment of his metropolitan. For a church is not understood to be widowed as though it has no spouse, but because, since its spouse has not yet been consecrated, it still remains in certain respects as though deprived of the consolation of a husband; just as, according to the common manner of speaking, that church is called widowed which, although it has a bishop, is nevertheless said to have a useless one.

Nor ought what follows concerning yielding, and was established as a penalty, be drawn into a favor, so that, just as an elect is cast down by the judgment of his metropolitan, he may likewise be transferred to another church—especially since even the aforesaid resignation or casting down does not occur without the authority of the Roman Pontiff, who granted to metropolitans by that canon that they could do these things. Hence, if he had wished the same thing to be done concerning

translation as he had said concerning resignation, he could also have expressed it concerning translation. What has not been sanctioned by a decree of the holy Fathers is not to be presumed through superstitious inventions, especially since that which is not found to have been granted is sometimes understood to have been prohibited.

§ 2. Indeed, because the Archbishop of Tours presumed, apart from the authority of the Apostolic See, to transfer the elect of Avranches—afterward confirmed by his metropolitan—to your church and to consecrate him as bishop, and because our venerable brother the Archbishop of Rouen also, without our mandate, released him and granted him license to pass over, the Archbishop of Bourges, according to the tenor of our mandate, suspended the aforesaid archbishops, who ought at least to have consulted the Apostolic See concerning this new matter that had arisen, especially since according to the canonical sanctions the greater ecclesiastical causes are to be referred to the Apostolic See, from the consecration and confirmation of pontiffs alike, and suspended the bishop from the exercise of the pontifical office.

And although the same Archbishops of Tours and Rouen, as the greater persons, transgressed more in the aforesaid matters, while the aforesaid bishop transgressed less, inasmuch as he followed the error of those greater persons, nevertheless, having learned through the letters and messengers of those archbishops of their spontaneous confession and devout supplication, we granted pardon for their error, because they sinned not from malignity but from simplicity.

And because the aforesaid bishop, who had both sinned less and, as appears from the foregoing, had been chastised more severely, approached the Apostolic See, though of his own free will yet not without many labors and expenses, humbly and devoutly acknowledging his guilt, seeking mercy and not demanding judgment, we held a common deliberation with our brothers concerning his deed. Looking closely, we saw that, although the gift of consecration had been bestowed upon him, it had made him the pontiff neither of the first church nor of the second: of the first, because he had not been consecrated for it; and of the second, because, while the former bond endured, he could not canonically be consecrated for it, since he was still conjugally bound to the other.

Nevertheless, prudently attending to the fact that both the urgent necessity and the evident utility of your church—since you could not agree upon another suitable person—required the favor of dispensation, after absolving him entirely, from the plenitude of power, both from the bond of the former church and from the penalty of suspension, we decreed, from the benignity of the Apostolic See, that it should be granted to him that, since the former assent has endured until now, as was intimated to us through the letters of the persons of your church, he is to strive to govern the church of Angers as its proper pontiff, to the glory and praise of God's name, to the honor and exaltation of that church, and to the salvation and utility of himself and of both the clergy and people committed to him, so that, with divine grace preceding and following, he may wish and be able to profit more than to preside [etc. Given at the Lateran, on the twelfth day before the Kalends of February, 1199.]

> Electos in episcopos et confirmatos transferre potest solus Papa.
>
> Idem Decano et Capitulo Andegavensi.
>
> Inter corporalia et spiritualia eam cognovimus esse differentiam, quod corporalia facilius destruuntur quam construantur, spiritualia vero facilius construuntur quam destruantur. Unde iuxta canonicas sanctiones episcopus solus honorem dare potest, solus autem auferre non potest. Episcopi quoque a

metropolitanis suis munus consecrationis accipiunt, qui tamen non possunt nisi per Romanum Pontificem condemnari. Quum ergo fortius sit spirituale vinculum quam carnale, dubitari non debet, quin omnipotens Deus spirituale coniugium, quod est inter episcopum et ecclesiam, suo tantum iudicio reservaverit dissolvendum, qui dissolutionem etiam carnalis coniugii, quod est inter virum et feminam, suo tantum iudicio reservavit, praecipiens, ut quos Deus coniunxit homo non separet. Non enim humana, sed potius divina potestate coniugium spirituale dissolvitur, quum per translationem, vel depositionem, aut etiam cessionem auctoritate Romani Pontificis, quem constat esse vicarium Iesu Christi, episcopus ab ecclesia removetur: et ideo tria haec, quae praemisimus, non tam constitutione canonica, quam institutione divina soli sunt Romano Pontifici reservata. Sicut enim episcopus consecratus sine licentia Romani Pontificis suam non debet ecclesiam derelinquere, sic et electus [et] confirmatus praeter eius assensum suam deserere nequit ecclesiam, cui est matrimonialiter alligatus, quum non debeat in dubium revocari, quin post electionem et confirmationem canonicam inter personas eligentium et electi coniugium sit spirituale contractum, cui profecto episcopalis dignitas nihil addit, quum quis episcopali praeditus dignitate nullius tamen ecclesiae possit esse episcopus, quemadmodum de illo contingit, qui oneri pontificali renunciat, non honori. Unde, quum non sit maius vinculum episcopi ad ecclesiam, quam electi, maxime quum fuerit confirmatus, immo idem penitus, et non aliud, idem iuris obtinet in utroque. Sicut ergo episcoporum translatio, vel etiam depositio et cessio, sic et electorum post confirmationem spiritualis ratione coniugii soli est Romano Pontifici reservata. Licet usque ad tempora ista quod cautum fuerat de episcopis expressum non fuerat de electis, propter expressam tamen similitudinem, vel identitatem potius, nemini poterat videri dubium subtiliter intuenti, quum de similibus idem iudicium sit habendum. § 1. Sed neque illud, quod in canone legitur de electo, ut, si ultra sex menses per suam negligentiam retinuerit ecclesiam viduatam, nec ibi, nec alibi donum consecrationis accipiat, immo metropolitani sui cedat iudicio, aliter intelligentibus poterat suffragari, quum non intelligatur ecclesia viduata, quasi sponsum non habeat, sed quia, quum sponsus eius nondum sit consecratus, adhuc quoad quaedam quasi viri maneat solatio destituta, sicut iuxta communem modum loquendi illa dicitur ecclesia viduata, quae, licet episcopum habeat, inutilem tamen perhibetur habere. Nec quod de cessione subsequitur, et statutum fuit ad poenam, trahi debet ad gratiam, ut, sicut metropolitani iudicio electus deiicitur, ita etiam ad aliam ecclesiam possit transferri, praesertim quum nec sine auctoritate Romani Pontificis fiat cessio vel deiectio memorata, qui, ut haec possent, ex illo canone metropolitanis indulsit. Unde, si circa translationem idem fieri voluisset, quod de cessione dixerat, et de translatione poterat expressisse, et quod non est sanctorum Patrum decreto sancitum superstitiosis non est adinventionibus praesumendum, praesertim quum nonnunquam intelligatur prohibitum quod non invenitur concessum. § 2. Sane quoniam Turonensis archiepiscopus electum Abricensem, per metropolitanum suum postea confirmatum, in ecclesiam vestram praeter auctoritatem sedis apostolicae transferre praesumpsit et in episcopum consecrare, quem etiam venerabilis frater noster Rothomagensis archiepiscopus citra madatum nostrum absolvit, et ei licentiam tribuit transeundi: praedictos archiepiscopos, qui saltem apostolicam sedem super hoc, quod novum emerserat, praesertim quum iuxta canonicas sanctiones maiores ecclesiasticae causae ad sedem apostolicam sint referendae, consulere debuerunt, a consecratione pariter et confirmatione pontificum, episcopum vero ab exsecutione pontificalis officii Bituricensis archiepiscopus iuxta mandati nostri tenorem suspendit. Et quamvis iidem archiepiscopi Turonensis et Rothomagensis tanquam maiores plus excesserint in praemissis, praefatus vero episcopus minus, utpote illorum tanquam maiorum errorem secutus, nos tamen, intellecta per literas et per nuncios eorum archiepiscoporum confessione spontanea et supplicatione devota, veniam errori dedimus, quia non ex malignitate, sed ex simplicitate peccaverunt. Et quoniam praefatus episcopus, qui et minus peccaverat, et sicut ex praemissis apparet, severius fuerat castigatus, ad apostolicam sedem, licet spontanea voluntate, non tamen sine multis laboribus et expensis accessit, reatum suum recognoscens humiliter et devote, ac misericordiam

postulans, et iudicium non requirens: nos super facto eius cum fratribus nostris communem tractatum habentes et subtiliter intuentes, quod, licet sibi munus consecrationis impensum, nec prioris ecclesiae ipsum pontificem fecerit, nec secundae, quum ad primam non fuerit consecratus, et ad secundam priori vinculo perdurante non potuerit canonice consecrari, adhuc coniugaliter alteri alligatus, illud tamen provide attendentes, quod et urgens necessitas, et evidens utilitas ecclesiae vestrae, quoniam non poteratis in aliam personam idoneam convenire, dispensationis gratiam requirebant, ei de plenitudine potestatis tam a vinculo prioris ecclesiae, quam a poena suspensionis penitus absoluto, de benignitate sedis apostolicae duximus concedendum, ut, priori consensu hactenus perdurante, sicut per literas personarum ecclesiae vestrae nobis est intimatum, Andegavensem ecclesiam tanquam proprius pontifex ad gloriam et laudem nominis Dei, ad honorem et exaltationem ipsius et ad salutem et utilitatem suam, et tam cleri quam populi sibi commissi, studeat gubernare, ut praeveniente divina gratia et sequente plus prodesse velit et valeat, quam praeesse [etc. Dat. Lat. XII. Kal. Febr. 1199.]

Chapter III

Latin source headnote: A bishop who by his own authority transfers himself from his church to another shall lack both.

The same to the Bishop and Peter, Scholasticus of Mainz.

The more sincerely we loved the person of our venerable brother, the former Bishop of Hildesheim, the more confidently we hoped that he would attempt nothing against his mother, the Roman Church, to the prejudice of his order and the detriment of ecclesiastical discipline. But he, as we discovered from the certain assertion of many and likewise learned from the testimony of his own letters directed to us, in which he styled himself Bishop of Würzburg, left the church of Hildesheim, to which he had been joined in marriage by spiritual grace, and by his own authority transferred himself to the church of Würzburg without the authority of the Roman Pontiff, not attending to what the Truth declares in the Gospel: "What God has joined, let man not separate."

[For] the Lord and Master so retained to himself the power of transferring pontiffs that by a special privilege he bestowed and granted it to blessed Peter alone, his vicar, and through him to his successors, and to us ourselves, who, although unworthy, hold his place on earth. Antiquity bears witness to this, to which the decrees of the Fathers sanctioned that reverence should be shown, and the sanctions of the sacred canons plainly affirm it. For it is not man, but God, who separates those whom the Roman Pontiff—who exercises on earth the office not of a mere man but of the true God—releases, after weighing the necessity or utility of the churches, not by human but rather by divine authority. (*And below:*)

But lest the perversity of the deed pass as an example to presumptuous persons—a deed which, if it is true, cannot but be notorious—by the authority of almighty God, of the blessed Apostles Peter and Paul, and of ourselves, with the common counsel of our brothers, in the power of the Holy Spirit we strictly command him that, upon seeing our letters, all contradiction and appeal ceasing, he entirely abandon the administration of the church of Würzburg in both spiritual and temporal matters.

If, however, which we do not believe, he does not take care humbly to observe this suspension of ours and presumes to usurp what has been forbidden to him, we decree that he is bound by the bond of excommunication. We also command all the clerics and laymen of the diocese of Würzburg, under threat of anathema, that, notwithstanding an oath of fidelity, they withdraw from him all obedience,

which he has usurped for himself contrary to the sacred canons, not attending to what the Apostle says: “Let no one assume the honor for himself, but he who is called by God, as Aaron was.”

Moreover, because the canons of the church of Würzburg conferred their votes upon him wholly unlawfully, wishing, as is fitting, that they be punished in that in which they sinned, we suspend them from the power of electing on this occasion. If, contrary to the prohibition of the Apostolic See, they proceed to the nomination of anyone, we decree that what is done by them is void and empty.

And because he most improperly abandoned the aforesaid church of Hildesheim, to which he had been bound and from which, according to the Apostle, he ought not seek release, we more strictly prohibit him, in the power of the Holy Spirit, from returning to it hereafter. For according to the canonical traditions, one who transfers himself to a greater people ought to be driven from the chair of another and to lack his own, so that he may preside neither over those whom he spurned through pride nor over those whom he coveted through avarice. [We also, etc. Given at Spoleto, on the twelfth day before the Kalends of September, 1198.]

> Episcopus, qui propria auctoritate de sua ecclesia se transfert ad aliam, carebit utraque.
>
> Idem Episcopo et Petro Scholastico Maguntinensi.
>
> Quanto personam venerabilis fratris nostri Hildesemensis quondam episcopi sinceriori diligebamus affectu, tanto securius sperabamus, quod nihil adversus matrem suam Romanam ecclesiam in praeiudicium sui ordinis et ecclesiasticae disciplinae dispendium attentaret. Ipse vero, sicut certa multorum assertione comperimus, et suarum didicimus nihilominus testimonio literarum, quibus ad nos directis Herbipolensem se pontificem nominabat, relicta Hildesemensi ecclesia, cui fuerat spirituali gratia coniugio copulatus, ad Herbipolensem ecclesiam sine auctoritate Romani Pontificis auctoritate propria se transtulit, non attendens, quod Veritas in evangelio protestatur: "Quos Deus coniunxit homo non separet." Potestatem [enim] transferendi pontifices ita sibi retinuit Dominus et magister, quod soli beato Petro vicario suo, et per ipsum successoribus suis, et nobis ipsis, qui locum eius licet indigni tenemus in terris, speciali privilegio tribuit et concessit, sicut testatur antiquitas, cui decreta Patrum sanxerunt reverentiam exhibendam, et evidenter asserunt sacrorum canonum sanctiones. Non enim homo, sed Deus separat, quos Romanus Pontifex, qui non puri hominis, sed veri Dei vicem gerit in terris, ecclesiarum necessitate vel utilitate pensata, non humana, sed divina potius auctoritate dissolvit. (Et infra:) Ne autem facti perversitas transeat praesumptoribus in exemplum, quod quidem, si verum est, non potest non esse notorium, auctoritate omnipotentis Dei et beatorum Petri et Pauli Apostolorum, et nostra, de communi fratrum nostrorum consilio, in virtute sancti Spiritus districte sibi praecipimus, ut, visis literis nostris, omni contradictione et appellatione cessantibus administrationem ipsius Herbipolensis ecclesiae tam in spiritualibus quam temporalibus penitus derelinquat. Si vero, quod non credimus, hanc suspensionem nostram non curaverit humiliter observare, et inhibita sibi usurpare praesumpserit, excommunicationis vinculo ipsum decernimus innodatum. Omnibus etiam tam clericis quam laicis Herbipolensis dioecesis sub anathematis interminatione praecipimus, ut, non obstante iuramento fidelitatis, omnem ipsi obedientiam subtrahant, quam ipse sibi contra sacros canones usurpavit, non attendens, quod dicit Apostolus: "Nemo sibi assumat honorem, sed qui vocatur a Deo, tanquam Aaron." Ceterum quoniam Herbipolensis ecclesiae canonici vota sua in ipsum prorsus illicite contulerunt, volentes, sicut dignum est, ut in eo puniantur, in quo peccaverunt, eligendi eos hac vice suspendimus potestate, et si contra sedis apostolicae interdictum ad cuiusdam nominationem processerint, quod ab eis factum fuerit irritum decernimus et inane. Quia vero iam dictam Hildesemensem ecclesiam, cui fuerat alligatus, unde secundum Apostolum solutionem quaerere non debeat, nimis improbe dereliquit, ne ad ipsam redeat ulterius, in virtute sancti Spiritus ei districtius

> prohibemus, quum secundum traditiones canonicas qui ad maiorem se plebem transtulerit a cathedra repelli debeat aliena, et carere propria, ut nec illis praesideat, quos per superbiam sprevit, nec illis, quos per avaritiam concupivit. [Nos quoque etc. Dat. Spoleti, XII. Kal. Sept. 1198.]

Chapter IV

Latin source headnote: The Pope alone transfers bishops, and an indulgence granted by him concerning such a translation is to be observed according to the letter.

The same to the Bishop of Brandenburg and the Scholasticus of Mainz.

Although to such an extent [the authority of the Apostolic See is regarded that nothing in all the affairs of the churches may reasonably be ordered apart from its authority, inasmuch as it either issued the canons through which the form of the ecclesiastical constitution is expressed or approved them when issued by others, making its own by reception and approval what perhaps appeared to belong to another by invention or issuance;] nevertheless, it has reserved certain things to itself in a certain special and singular manner, so that apart from its special authority they neither ought lawfully to be done nor can be attempted with effect.

Among these things, the translations of bishops in particular have been committed to its power alone, not so much by canonical constitution as by divine institution. Just as man cannot dissolve the bond of a lawful marriage which exists between husband and wife, the Lord saying in the Gospel, "What God has joined, let man not separate," so also the spiritual covenant of marriage which exists between a bishop and [his] church—which is initiated in election, ratified in confirmation, and understood to be consummated in consecration—cannot be dissolved without the authority of him who is the successor of Peter and the vicar of Jesus Christ.

But C., formerly Bishop of Hildesheim, not attending to this, with our license neither sought nor obtained, contrary to the canonical sanctions and to the injury of the Apostolic See—whose assent concerning this was both to be sought and obtained—passed from the church of Hildesheim to the church of Würzburg, not by our authority but by his own temerity; and, intruding himself into its administration, caused himself to be styled Bishop of Würzburg.

Nor does that indulgence of our predecessor Pope Celestine of happy memory, which he is reported to have obtained, excuse his presumption in this matter; rather, it accuses his ambition, inasmuch as it rendered him noted for ambition and did not confer authority to pass to another episcopal church. For it is expressed in that indulgence that, if he should perhaps be called to a greater dignity, it would be lawful for him to assume it, provided that nothing in the canonical statutes stood against him. Hence, although it might perhaps seem to some that by occasion of that indulgence he could pass to a greater dignity, it was nevertheless not lawful for him to pass to an equal one, since a dispensation is more readily customarily made in the case of a greater dignity because of the greater utility.

Moreover, since a postulation, like an election, is customarily examined diligently, and since the tenor of that indulgence appears to reserve not only the examination of the postulation but also that of the person, adding, "provided that nothing appears which stands against you from the canonical institutes," he ought on no account to have passed over before the postulation had been examined by the person to whom it was to be made. [Although, however, etc. Given at the Lateran, on the seventh day before the Kalends of February, 1200.]

Solus Papa transfert episcopos; et indulgentia, per eum super tali translatione concessa, ad literam servanda est.

Idem Branbur. Episcopo et Scholastico Maguntinensi.

Licet in tantum [apostolicae sedis attendatur auctoritas, ut nihil praeter eius auctoritatem in cunctis ecclesiarum negotiis rationabiliter disponatur, utpote quae canones, quibus forma ecclesiasticae constitutionis exprimitur, vel edidit, vel ab aliis editos approbavit, suum receptione ac approbatione faciens, quod adinventione vel editione videbatur forsitan alienum;] quaedam tamen sibi quodammodo specialiter et singulariter reservavit, ut praeter specialem auctoritatem ipsius nec iure agi debeant, nec attentari valeant cum effectu. In his autem specialiter translationes episcoporum non tam constitutio canonica, quam divina eius tantum potestati commisit, ut Sicut legitimi matrimonii vinculum, quod est inter virum et uxorem, homo dissolvere nequit, Domino dicente in evangelio: "Quos Deus coniunxit, homo non separet," sic et spirituale foedus coniugii, quod est inter episcopum et [eius] ecclesiam, quod in electione initiatum, ratum in confirmatione, et in consecratione intelligitur consummatum, sine illius auctoritate solvi non potest, qui successor est Petri et vicarius Iesu Christi. Hoc autem C. quondam Hildesemensis episcopus non attendens, licentia nostra nec postulata nec habita, contra canonicas sanctiones et in iniuriam apostolicae sedis, cuius super hoc fuerat et requirendus et obtinendus assensus, ad Herbipolensem ecclesiam ab Hildesemensi non auctoritate nostra, sed propria temeritate transivit, et administrationi eius se ingerens Herbipolensem se fecit episcopum nominari. Nec illa felicis recordationis Coelestini Papae praedecessoris nostri indulgentia, quam impetrasse refertur, in hoc praesumptionem excusat ipsius, sed ambitionem accusat, utpote quae ipsum reddidit de ambitione notabilem, non auctoritatem contulit ad aliam episcopalem ecclesiam transeundi, quum in ea sit expressum, quod, si ad maiorem vocaretur forsitan dignitatem, eam sibi liceret assumere, dum tamen nihil ei de statutis canonicis obviaret. Unde, licet forsitan aliquibus videatur, ut indulgentiae occasione ipsius ad dignitatem possit transire maiorem, ad parem tamen ipsi transire non licuit, quum in maiori dignitate propter maiorem utilitatem facilius soleat dispensari. Praeterea quum postulatio, sicut et electio, examinari soleat diligenter, et tenor illius indulgentiae non solum videatur postulationis examinationem, sed personae etiam reservare, subiungens: "dummodo nihil appareat, quod tibi de canonicis obviet institutis," antequam per eum postulatio examinata fuisset, cui fuerat facienda, nulla ratione debuerat transisse. [Licet autem etc. Dat. Lat. VII. Kal. Febr. 1200.]

Title VIII: On the Authority and Use of the Pallium

Chapter I

Latin source headnote: An archbishop can use the pallium within any church of his province, but he cannot use it outside the province.

Clement III.

Concerning a certain matter (*And below:* [cf. c. 8, *On the Alienation of Ecclesiastical Property*, III.13.]) You also asked how that which is contained in the form for the delivery of the pallium is to be understood, namely: “We deliver the pallium to you so that you may use it within your church.” This is understood thus: “within your church,” namely, within any church of the province committed to you. But if it happens that, clothed in sacred vestments, you leave the church processionally or in another manner, then you ought by no means to use the pallium. [Given at the Lateran, in the third year, 1193.]

Textual note: The source attributes the decretal to Clement III but dates it to 1193, after Clement's pontificate. The translation preserves both printed statements rather than silently reconciling them.

> **DE AUCTORITATE ET USU PALLII.**
>
> Intra quamlibet ecclesiam provinciae suae archiepiscopus pallio uti potest sed extra, non potest.
>
> Clemens III.
>
> Quum super aliqua re (Et infra: [cf. c. 8. de reb. eccl. al. III. 13.]) Quaesivisti etiam, quomodo intelligatur, quod in forma traditionis pallii continetur, videlicet: "tradimus tibi pallium, ut eo infra ecclesiam tuam utaris." Quod ita intelligitur, infra ecclesiam tuam, videlicet infra quamlibet ecclesiam provinciae tibi commissae. Si vero te sacris indutum vestibus ecclesiam processionaliter vel alio modo exire contigerit, tunc pallio minime uti debes. [Dat. Lat. Ao. III. 1193.]

Chapter II

Latin source headnote: An archbishop cannot lend his pallium to another archbishop.

Celestine III.

As to the fact that it has been asked of us on your behalf whether it is lawful for you to lend your pallium to another metropolitan if it should happen that he comes without his own pallium to the church committed to you on some principal solemnity and celebrates the solemnities of Mass in that church: although we do not recall having found an express canon concerning this, nevertheless we answer your inquiry in such a manner that it does not seem fitting for you to lend your pallium to anyone, since the pallium does not pass beyond the person, but each person ought, as your discretion knows, to be buried with it.

> Archiepiscopus alteri archiepiscopo pallium suum commodare non potest.
>
> Coelestinus III.
>
> Ad hoc, quia quaesitum est a nobis ex parte tua, utrum liceat tibi pallium tuum metropolitano alii commodare, si contigerit, ipsum sine pallio suo ad ecclesiam tibi commissam in aliqua praecipua solennitate venire, et in eadem ecclesia missarum solennia celebrare, licet exinde nos non recolamus expressum canonem invenisse, super hoc tamen Inquisitioni tuae taliter respondemus, quod non videtur esse conveniens, ut pallium tuum alicui commodes, quum pallium personam non transeat, sed quisque cum eo debeat, sicut tua novit discretio, sepeliri.

Chapter III

Latin source headnote: Through the pallium are conferred the fullness of the pontifical office and the archiepiscopal name.

Innocent III to C., Cardinal-priest and Legate of the Apostolic See.

Unless that special affection (*And below:* [cf. c. 8, *On the Office of a Legate*, I.30.]) Indeed, even if the postulation of our venerable brother, the Bishop of Troia and Chancellor of the Kingdom of Sicily, to the church of Palermo had been approved by us, he nevertheless ought not call himself archbishop before he had received the pallium from us, in which the fullness of the pontifical office is conferred together with the appellation of the archiepiscopal name. You, therefore, as a provident and discreet man, are to take care so to cloak what has been done that it does not redound to your confusion and the reproach of the Apostolic See, because, if it is necessary that either we or you be confounded by

this business, we shall choose that you be confounded rather than that we injure the dignity of the Apostolic See.

> Per pallium confertur plenitudo pontificalis officii et nomen archiepiscopale.
>
> Innocentius III. C. Presbytero cardinali, apostolicae sedis Legato.
>
> Nisi specialis dilectio illa (Et infra: [cf. c. 8. de off. leg. I. 30.]) Sane, si postulatio venerabilis fratris nostri Troiani episcopi regni Siciliae cancellarii ad Panormitanam ecclesiam fuisset per nos etiam approbata, non tamen deberet se archiepiscopum appellare prius, quam a nobis pallium suscepisset, in quo pontificalis officii plenitudo cum archiepiscopalis nominis appellatione confertur. Tu ergo, sicut vir providus et discretus quod factum est sic studeas palliare, ut id in confusionem tuam, et sedis apostolicae opprobrium non redundet, quoniam, si oporteat, ut vel nos vel tu ex hoc negotio confundamur, eligemus potius te confundi, quam laedamus sedis apostolicae dignitatem.

Chapter IV

Latin source headnote: The Roman Pontiff uses the pallium always and everywhere; others use it only in their own churches and on certain days.

The same.

For the honor of God [almighty, of the Blessed Virgin Mary, of the blessed Apostles Peter and Paul, of the lord Pope Innocent and the Roman Church, and also of the church committed to you, we deliver to you the pallium taken from the body of blessed Peter, namely the insignia of the fullness of the pontifical office, which you are to use for the solemnities of Mass within the churches subject to you on the Nativity of the Lord, the feast of Stephen the Protomartyr, the Circumcision of the Lord, the Epiphany, the Hypapante, Palm Sunday, the Supper of the Lord, Holy Saturday, Easter, the second weekday after Easter, the Ascension of the Lord, Pentecost, the three feasts of Saint Mary, the Nativity of blessed John the Baptist, the solemnities of all the Apostles, the Commemoration of All Saints, dedications of churches, ordinations of clerics, the principal feasts of your church, and the anniversary of your consecration.]

Indeed, the Roman Pontiff alone always and everywhere uses the pallium in the solemnities of Mass, because he has been assumed into the fullness of ecclesiastical power, which is signified by the pallium. Others, however, ought to use it neither always nor everywhere, but in their own church, in which they have received ecclesiastical jurisdiction, and on certain days, because they have been called into a share of solicitude, not into the fullness of power.

> Romanus Pontifex semper et ubique utitur pallio; alii in ecclesiis suis et certis diebus tantum.
>
> Idem.
>
> Ad honorem Dei [omnipotentis et B. Mariae Virginis et beatorum Apostolorum Petri et Pauli et domini Papae Innocentii et Romanae ecclesiae, nec non ecclesiae tibi commissae, tradimus tibi pallium de corpore B. Petri sumptum, insigne videlicet plenitudinis pontificalis officii, quo ad missarum solennia infra ecclesias tibi subiectas utaris in Nativitate Domini, festivitate protomartyris Stephani, Circumcisione Domini, Epiphania, Hypapanti dominica in ramis palmarum, Coena Domini, sabbato sancto, Pascha, feria secunda post Pascha, Ascensione Domini, Pentecoste, tribus festivitatibus S. Mariae, Natali B. Ioannis Baptistae, solennitatibus omnium Apostolorum, Commemoratione omnium sanctorum, dedicationibus ecclesiarum, ordinationibus clericorum, ecclesiae tuae principalibus festivitatibus et anniversario consecrationis tuae.] Sane solus Romanus Pontifex in missarum solenniis

> pallio semper utitur et ubique, quoniam assumptus est in plenitudinem ecclesiasticae potestatis, quae per pallium significatur; alii autem eo nec semper, nec ubique, sed in ecclesia sua, in qua iurisdictionem ecclesiasticam acceperunt, certis debent uti diebus, quoniam vocati sunt in partem sollicitudinis, non in plenitudinem potestatis.

Chapter V

Latin source headnote: An archbishop cannot use the pallium outside his province, even if custom supports this.

The same to the Archbishop of Compostela.

We have learned from the tenor of your letters that, although in the grant of the pallium it was said to you that you were to use it within your church, nevertheless, because you frequently sojourn outside your province both by royal mandate and for attending to the business of your church, it is embarrassing for you to minister without the pallium. Since, as you assert, there is a general custom in Spain that archbishops use the pallium outside their provinces without distinction, you petitioned that the Apostolic See grant you permission to use the pallium outside your province.

Although a use of this kind is an abuse, such a custom is to be called a corruption instead, and those who use their palliums outside their provinces without the special license of the Apostolic See are known to offend gravely, nevertheless, by special grace we grant you that, if at any time, impeded by some necessity, you should perhaps be unable to approach a church subject to you for the purpose of consecrating your suffragans or ordaining clerics, and it should happen that you turn aside for this purpose to the church of another, provided that the person to whom the church belongs permits it, you shall have free faculty to use the pallium in the aforesaid cases. [Given at the Lateran, on the fourth day before the Nones of April, in the year 1209.]

> Archiepiscopus extra suam provinciam pallio uti non potest, etiamsi hoc habeat consuetudo.
>
> Idem Compostellano Archiepiscopo.
>
> Ex tuarum tenore literarum accepimus, quod, quum fuerit in concessione pallii tibi dictum, ut ipso infra ecclesiam tuam utaris, et tibi tam de mandato regio, quam etiam pro ecclesiae tuae negotiis procurandis frequenter extra tuam provinciam commoranti verecundum sit absque pallio ministrare, quum consuetudo sit, sicut asseris, in Hispania generalis, quod archiepiscopi extra suas provincias pallio indifferenter utantur, ut extra tuam provinciam uti pallio valeas, indulgeri tibi a sede apostolica postulasti. Licet autem usus huiusmodi sit abusus, et talis consuetudo dicenda sit potius corruptela, et ii graviter offendere dignoscantur, qui utuntur palliis extra suas provincias absque licentia sedis apostolicae speciali, nos tamen de speciali gratia indulgemus tibi, ut, si quando necessitate aliqua praepeditus ad ecclesiam tibi subiectam accedere forte nequiveris pro consecrandis suffraganeis tuis vel clericis ordinandis, et ad ecclesiam alienam propter hoc te contigerit declinare, dummodo is, ad quem ecclesia pertinet, id permittat, utendi pallio in iam dictis casibus liberam habeas facultatem. [Dat. Later. IV. Non. Apr. Ao. 1209.]

Chapter VI

Latin source headnote: In any church of his province, on the permitted days, an archbishop celebrating Mass can use the pallium.

The same.

Since you are in the most remote regions, we hold it pleasing and acceptable that, in your actions, whenever a scruple of doubt arises, etc. (*And below:*) You should therefore know that, where necessity requires, you may consecrate both several altars in one church and several bishops at the same time; and wherever you are situated in celebrations of Mass, on solemn days you may more freely exercise the use of the pallium, through which the fullness of the pontifical office is signified.

> In qualibet ecclesia suae provinciae permissis diebus archiepiscopus missam celebrans, uti potest pallio.
>
> Idem.
>
> Quum sis in partibus remotissimis, gratum gerimus et acceptum, quod in actibus tuis, quotiescunque dubitationis scrupulus emergit etc. (Et infra:) Noveris igitur, quod, nbi exposcit necessitas, et plura in una ecclesia altaria, et plures episcopos simul poteris consecrare, et Ubicunque fueris in missarum celebrationibus constitutus, diebus solennibus usum pallii, per quod plenitudo pontificii designatur, poteris liberius exercere.

Chapter VII

Latin source headnote: An archbishop can celebrate without the pallium and sandals.

Honorius III to the Archbishop of Lund.

Because we (*And below:* [cf. the final chapter, *On Apostates*, V.9.]) We answer your inquiry in this manner: both in your own and in another diocese you can celebrate without the pallium and sandals, for assuredly in your own diocese you ought not always celebrate with the pallium, but only on those days which are expressed in the privileges of your church. And thus the fourth question is resolved, by which you asked whether it is lawful for you to celebrate for the dead with the pallium. [Given at Rieti, on the third day before the Ides of August, 1225.]

Textual note: The source abbreviates the addressee as *Archiepiscopo Tri.*; the matching dated letter is identified in the Danish regesta as addressed to the Archbishop of Lund.

> Sine pallio et sandaliis potest archiepiscopus celebrare.
>
> Honorius III. Archiepiscopo Tri.
>
> Quia nos, (Et infra: [cf. c. ult. de apost. V. 9.] Inquisitioni tuae taliter respondemus, quod tam in tua quam in aliena dioecesi potes sine pallio et sandaliis celebrare, qui utique in tua dioecesi non debes semper celebrare cum pallio, sed diebus illis duntaxat, qui in ecclesiae tuae privilegiis sunt expressi. Sicque soluta est quarta quaestio, qua quaesivisti, an tibi sit licitum pro defunctis cum pallio celebrare. [Dat. Reate III. Id. Aug. 1225.]

Title IX: On Resignation

Chapter I

Latin source headnote: Permission to resign is not given to a bishop who wishes to resign because of old age if he is necessary or useful to his church.

Alexander III to the Archbishop of Lyon.

We recently received your letters, full of devotion and not devoid of sorrow, since they both intimated to us your most affectionate charity and sought a resignation from your archiepiscopal office—which we rejoice that you have faithfully discharged and still discharge—that is contrary to the interests of

the Church. For you know, as a provident and prudent man, that the evil of the day is so great, and the pressure of persecution against the Church of God so grave and so prolonged, that it would by no means conduce to its advantage if your see should happen to suffer a failure.

But if, perhaps considering either your old age or your insufficiency, you petition to be released as one who has completed his service, know that we believe and hold for certain that it is safer at this time for the church committed to you to be governed under the shadow of your name than for its governance amid so great a crisis to be committed to another, new and unknown person—especially because the vigor of devotion and faith does not fail in you even as your body grows old; rather, as your bodily condition declines downward, the fervor of your spirit ascends toward higher things.

Therefore, lest the sting of this sorrow wound the living charity of our breast toward you, we admonish you not to make yourself troublesome by any importunity concerning this in these days, because it is proved altogether unfitting to unfasten the belt of military service before the adversity of battles yields to the victor. Press on, therefore, like a good soldier of Christ, and persevere in the office of your solicitude, lest, while you seek the desires of your own quiet, you suffer some loss of the talent entrusted to you.

You ought also to attend to this: if you have wings with which you strive to fly into the wilderness so that you may rest, they are nevertheless bound by the bonds of precepts which, as you know, so bind you by the institution of the sacred canons that you do not have free flight without our permission.

Moreover, brother, lest you complain that we burden you intolerably—you who can know the weakness both of your mind and of your body better than we can—we finally grant you this, if in the judgment of your conscience the matter altogether requires it: that, when an opportunity has been received, you be solicitous concerning the substitution of a person, both through yourself and through the prince of the land, or also through your letters and suitable messengers if you are unable or unwilling to exhibit your bodily presence there, and through other religious and industrious men of that kingdom; and that you strive to find such a successor as will neither degenerate from the brightness of the faith nor stray from the path of rectitude and honor. It is also fitting for you to discuss and deliberate with the same persons concerning those things which you consider should be reserved for your necessities, so that, when all these things have become known to us through both your assertion and theirs, we may be able to proceed in the matter so providently and securely that neither we nor you yourself ought afterward to repent of this work.

Textual notes:

1. The source prints *Londonensi Episcopo*, "to the Bishop of London," although the body expressly calls the office archiepiscopal. The parallel reading *Lugdunensi archiepiscopo*, "to the Archbishop of Lyon," is followed here.
2. The source's *incedens* is the evident typographical error *indecens*, "unfitting."

DE RENUNCIATIONE.

Non datur licentia cedendi episcopo, qui propter senectutem vult cedere, si necessarius vel utilis sit ecclesiae suae.

Alexander III. Londonensi Episcopo.

Literas tuas, nuper accepimus, devotione plenas et dolore non vacuas, quandoquidem et tuam, nobis insinuaverunt affectuosissimam caritatem, et tui archiepiscopalis officii, quod fideliter gessisse, et adhuc te gerere gaudemus, contrariam exigebant ecclesiae utilitatibus cessionem. Nosti enim, sicut vir providus et prudens, quod tanta est diei malitia, et contra ecclesiam Dei tam gravis, tam diuturna persecutionis instantia, ut nequaquam ei cedat ad commodum, si tuam sedem contigerit subire defectum. Quod Si tuam aut senectutem aut insufficientiam forte considerans, te tanquam emeritum postulas relaxari: scito, nos credere et pro certo tenere, quod tutius sit hoc tempore, si commissa tibi ecclesia sub umbra tui nominis gubernetur, quam si alteri novae incognitaeque personae gubernanda in tanto discrimine committatur, maxime quia in te vigor devotionis et fidei etiam corpore senescente non deficit, sed vergente deorsum conditione corporea fervor spiritus in sublimiora conscendit. Ne igitur huius doloris aculeus vividam circa te nostri pectoris vulneret caritatem, Monemus te igitur, ut super hoc diebus istis nulla te facias importunitate molestum, quia incedens omnino probatur, prius solvere militiae cingulum, quam cedat victori adversitas proeliorum. Insta igitur sicut bonus miles Christi, et in tuae sollicitudinis officio persevera; ne dum tuae quietis desideria quaeris, tu aliquid talenti tibi crediti detrimentum patiaris. Illud quoque te oportet attendere, quod si pennas habeas, quibus in solitudinem volare satagis, ut quiescas: ligatae sunt tamen nexibus praeceptorum, quae ita ut nosti, ex sacrorum canonum institutione te vinciunt, ut liberum non habeas absque nostra permissione volatum. Ceterum ne, frater, te intolerabiliter nos gravare causeris, qui melius tui potes tam animi debilitatem nosse, quam corporis: hoc tandem tibi, si iudicio conscientiae tuae res id prorsus exigit, indulgemus, ut suscepta oportunitate, tam per te quam per principem terrae, vel etiam per literas tuas, et idoneos nuntios, si corporalem ibi vel non potueris vel nolueris exhibere praesentiam, aliosque regni illius religiosos, et industrios de substituenda sis persona sollicitus, et talem invenire satagas successorem, qui non a fidei claritate degeneret, neque a tramite rectitudinis et honestatis aberret. De his quoque quae tuis duxeris necessitatibus reservanda, cum eisdem personas tractare et deliberare te convenit: ut quum nobis haec omnia tam tua quam illorum fuerint assertione comperta, ita provide ac secure possimus in facto procedere, quod neque nos, neque te ipsum oporteat huius operis in posterum poenitere.

Chapter II

Latin source headnote: One who has abjured a benefice can lawfully obtain it if he is elected anew.

The same to the Abbot of Dol and the Prior of Artigia.

When a dispute had been conducted for a rather long time in our presence between P. Gaufridi and certain other canons of Saint I. concerning a spiritual benefice—namely, a stall in the choir and a place in the chapter—the business could not be concluded because the other party had not come sufficiently instructed. Therefore, committing the cause itself to your examination, we command you by apostolic writings to summon the parties before your presence and, after inquiring more fully into the truth of the matter, if you find that the aforesaid P. Gau. was invested by apostolic authority with the aforesaid benefice with the assent of the greater and sounder part of the chapter, you are, appeal being removed, to cause him peaceably to possess the benefice itself. For the oath which he is alleged to have taken that he would not seek it further does not appear to us to present an impediment, if the assent of the greater and sounder part of the canons of the church intervened.

Qui abiurat beneficium, licite potest illud, si denuo eligatur, obtinere.

Idem Abbati Dolensi et Priori de Artigia.

Quum inter P. Gaufridi et quosdam alios canonicos sancti I. super spirituali beneficio, scilicet stallo in choro et loco in capitulo, in praesentia nostra quaestio fuisset diutius agitata, quia tamen altera pars sufficienter instructa non venerat, negotium non potuit terminari, Ideoque causam ipsam vestro examini committentes vobis per apostolica scripta mandamus, quatenus partes ante vestram praesentiam convocetis, et rei veritate plenius inquisita, si praefatum P. Gau. inveneritis de consensu maioris et sanioris partis capituli fuisse de praedicto beneficio auctoritate apostolica investitum, eum faciatis appellatione remota beneficium ipsum pacifice possidere. Non enim videtur nobis impedimentum afferre iuramentum, quod de eodem non petendo ulterius proponitur praestitisse, si consensus maioris et sanioris partis canonicorum ecclesiae intercessit.

Chapter III

Latin source headnote: One who has resigned his benefice cannot reclaim it.

The same to the Bishop of Veroli.

It was intimated to our ears from the transmitted report of the Abbot of Saint Nicholas of Ceprano that the cleric P. Rubeus, when formerly suffering from illness, petitioned at the monastery of the Holy Savior of Telese that the monastic habit be granted to him. After he later recovered his health, he approached that monastery for the purpose of fulfilling his vow and, remaining there for a little while, caused those things which he had conferred upon the aforesaid church of Saint N. to be restored to him. Now, however, having changed his mind, he labors through you and through your friends to be restored in the aforesaid church.

But since the said church is known to have been released from him from the time when, at his own will and petition, it restored to him those things which he had conferred upon it, we admonish and command your fraternity that, if the matter stands thus, you are on no account to compel the aforesaid abbot and his associates, against their will, to receive the aforesaid P., nor are you to permit them to be compelled by the people of Ceprano. You may nevertheless exhort and admonish them, if it matters so much to you, to receive him as an associate and brother, not as one of the church but as though he ought to enter anew.

Qui renunciavit beneficio suo, illud repetere non potest.

Idem Episcopo Verulano.

Ex transmissa relatione abbatis sancti Nicolai de Ceparano nostris est auribus intimatum, quod P. Rubeus clericus, dum olim infirmitate laboraret, apud monasterium sancti Salvatoris de Telesia, sibi petiit habitum monasticum indulgeri, qui, recuperata postmodum sanitate, ad monasterium illud gratia complendi suum votum accessit, et ibidem moram aliquantulam faciens, ea, quae praedictae ecclesiae sancti N. contulerat, sibi fecit restitui. Nunc autem, mutato animo, per te, et per amicos tuos laborat, ut restituatur in ecclesia supradicta. Verum quoniam iam dicta ecclesia ab eo soluta dignoscitur, ex quo illi ea, quae sibi contulerat, ad voluntatem et petitionem suam resignavit eidem, fraternitatem tuam monemus atque mandamus, quatenus, si res ita se habet, praedictum abbatem et socios eius ad receptionem praefati P. nulla ratione compellas invitos, nec a populo Ceparano compelli permittas. Hortari tamen eos et monere poteris, si tanti tibi fuerit, ut illum non tanquam unum de ecclesia, sed, quasi de novo deberet intrare, recipiant in socium et in fratrem.

Chapter IV

Latin source headnote: A beneficed person cannot resign a benefice without the license of his prelate.

The same to the Bishop of Tournai.

The care of the governance we have undertaken admonishes us, and pontifical authority induces us, to be solicitous for the condition of churches and to attend with undiminished zeal to their progress and increase. Therefore, by apostolic writings we command your fraternity, by way of precept, to establish and ordain by our authority and yours that the ecclesiastical persons of your bishopric shall not dare to make any testament concerning those things which come to them from the goods of churches or which have accrued to them by reason of those churches, but that those goods shall pass to the churches themselves, as is just and canonical. If, however, any of those persons have died intestate, you shall likewise decree that the goods which accrued to them from the churches or by reason of them pass to those same churches. Indeed, concerning those goods which were acquired by right of patrimony or from elsewhere in favor of the person, they shall have free faculty to make a testament.

Likewise, on our behalf and yours, under strict prohibition you shall forbid all ecclesiastical persons of your bishopric to dare, without your assent, to enter or detain churches of your diocese that pertain to your appointment, or to relinquish them without consulting you. If anyone presumes to act contrary to your prohibition, relying upon our authority and yours you shall exercise canonical punishment against him.

> Beneficiatus sine licentia praelati sui beneficio renunciare non potest.
>
> Idem Episcopo Tornacensi.
>
> Admonet nos cura suscepti regiminis et auctoritas pontificalis inducit, ut pro statu ecclesiarum simus solliciti, et earum profectibus et incrementis integro studio intendamus, quapropter fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus auctoritate nostra et tua statuas et ordines, ut ecclesiasticae personae tui episcopatus de his, quae sibi de bonis ecclesiarum proveniunt, aut ratione ipsarum accesserint, nullum audeant condere testamentum, sed bona ipsa ecclesiis ipsis, prout iustnm est et canonicum cedant. Si autem aliquae de personis ipsis intestatae decesserint, bona, quae ipsis pro ecclesiis aut ratione ipsarum accesserunt, nihilominus ecclesiis eisdem cedere decernas. Sane de bonis illis, quae iure patrimonii aut aliunde favore personae acquisita sunt, testandi liberam habeant facultatem. Nihilominus etiam ex parte nostra et tua Universis personis tui episcopatus ecclesiasticis sub districtione prohibeas, ne ecclesias tuae dioecesis ad ordinationem tuam pertinentes absque assensu tuo intrare audeant aut detinere, aut te dimittere inconsulto. Quodsi quis contra prohibitionem tuam venire praesumpserit, in eum auctoritate nostra et tua fretus canonicam exerceas ultionem.

Chapter V

Latin source headnote: Against one seeking a benefice, the exception of voluntary abjuration is admitted even when the cause of the resignation is not added. Against this the plaintiff will be able to reply that he did not resign voluntarily, and the one who proves his case better will prevail.

Clement III.

Concerning your inquiry whether, against persons reclaiming ecclesiastical benefices, an exception of voluntary abjuration is to be admitted without cognizance of the cause, and whether the proofs of the plaintiff that he did not resign voluntarily or those of the defendant concerning voluntary resignation ought to be admitted, we answer your experience thus: no reason renders it likely that anyone would easily and rashly resign voluntarily, without a weighty cause, a benefice acquired perhaps through many expenses and labors and by which he ought to be supported. Consequently, we do not believe it superfluous for the cause of the renunciation or resignation to be diligently investigated.

If the ordinary or delegated judge should find that cause to be a probable one—that is, one not extorted by force, fear, oppression, the intervention of money, or a promise—and especially if no oath intervened, which is scarcely believed to be made of one's own will and is almost always from evil, he shall not postpone admitting the exception unless a canonical reply has been opposed.

Moreover, although by the nature of things there is no proof of a fact for one who denies it, nevertheless, in the case of one who denies a voluntary resignation, since by replying he implicitly and in a certain manner takes issue with the assertion, we believe that proofs are to be admitted, regard being had to his dignity and reputation.

> Contra petentem beneficium admittitur spontaneae abiurationis exceptio, etiam causa renunciationis non adiecta; contra quam actor replicare poterit, quod non sponte renunciavit, et qui melius probaverit obtinebit.
>
> Clemens III.
>
> Super hoc, quod sciscitaris, utrum ecclesiastica beneficia reposcentibus obiecta spontaneae abiurationis exceptio sine causae cognitione sit admittenda, et an actoris, quod sponte non renunciavit, an rei de spontanea renunciatione debeant probationes admitti, sic tuae experientiae respondemus, quod nulla ratio hoc verisimile reddit, ut quisquam beneficium multis forte expensis et laboribus acquisitum, et quo sustentari debet, facile sine magna causa temere sua sponte resignet, ideoque supervacuum esse non credimus, causam renunciationis vel resignationis diligenter inquiri, quam si forte probabilem, id est, non vi, nec metu, nec oppressione, nec interventu pecuniae, nec promissione extortam iudex ordinarius seu delegatus invenerit, et maxime si non intervenerit iuramentum, quod vix fieri de voluntate propria creditur, quod fere semper a malo est, nisi replicatio canonica fuerit opposita, admittere non postponat. Porro licet negantis factum per rerum naturam nulla sit probatio, eius tamen, qui spontaneam renunciationem negat, quum implicite et quodammodo replicando inficietur super assertione sua, habito ad dignitatem et opinionem respectu probationes credimus admittendas.

Chapter VI

Latin source headnote: One who voluntarily renounced an election made concerning him ought not thereafter to be heard concerning that election.

The same.

In our presence [our beloved son R., formerly Abbot of Thorney, appeared and set forth before us that, when you had once come to his monastery, which he himself had enlarged by an income of one hundred marks, and, having entered the chapter of the monks, had begun to make an inquiry against him, he, fearing that he would be aggrieved, appealed to the Apostolic See. You, however, not deferring to the appeal, suspended him from the office of administration; and, after an inquiry was afterwards made in his absence, you shamefully dragged him, unwilling though he was, after you as

far as the monastery of Ramsey, and made him swear upon the cross that he would follow you as far as London. Therefore, upon coming to London, he solemnly renewed the appeal that he had previously interposed, and obtained letters of commission to be directed to our venerable brother the Bishop of Winchester and his co-judges, which he delivered to a certain merchant to be carried. You, however, caused him, as he was returning to England, to be seized at London and committed to prison in the monastery of Ely. On account of this, the merchant who was carrying the letters did not dare to come into England. At length, however, having been released from prison, he appealed to the Apostolic See. You, however, not deferring to his appeal, as before, pronounced against him the sentence of deposition itself and caused him, once deposed, to be thrust into prison.

But when he had been released from his bonds, he came into our presence and obtained letters to our venerable brother the Bishop of Durham and our beloved son Master John of London, that they should diligently inquire into the truth concerning the matters set forth, and, if the parties were willing, should terminate the cause itself harmoniously with the proper conclusion; otherwise, they should not delay in remitting the cause to us after it had been sufficiently instructed. The same abbot therefore maintained that all the aforesaid matters had been sufficiently proved before the same judges.

But our beloved son Master Honorius, Archdeacon of Richmond, your envoy, set forth on the other side that, when you once discharged the office of legation, you came to the monastery of Thorney in order to bestow upon it the favor of visitation; and, when you had inquired more diligently into the life of R. himself, his dilapidation, incontinence, and shameful conduct were established for you through the testimony of the monks. Therefore, having taken the counsel of prudent men, you suspended him from the office of administration, since, according to the canonical enactments, one suspected of dilapidation ought to be suspended from administration. Nor had the same abbot appealed at that time; nor, even if he had appealed, had he made known to you that he had appealed, since, as his witnesses assert, having left the chapter, he decided in a private conference that an appeal should be made. But when he afterwards appealed at London, you not only received the appeal interposed but also supplied expenses sufficient for its prosecution.

Then, when through your letters you had made known his enormities to our predecessor of good memory, Celestine, he admonished your fraternity that you should depose him from the office of the abbacy and, having committed him to prison, should detain him so long as his mandate did not again reach you. Therefore, fearing the sentence of deposition, he voluntarily renounced the abbacy in the presence of many bishops and other religious men; but, repenting a little afterwards, he entirely denied that he had renounced. Therefore, since you were his metropolitan, discharged the office of legation, and were specially delegated for this, following the form of the apostolic mandate you took care, because of the manifest character of the crimes, to impose perpetual silence upon him concerning the abbacy.

At length, when cognizance of your sentence had been delegated under the aforesaid form to the aforementioned Bishop of Durham and his co-judge, you proved before them by lawful witnesses that the same abbot had renounced the abbacy; that he suffered from the vice of incontinence; that he had alienated certain vessels of the monastery without the consent of the monks; that you had deferred to his appeal and supplied expenses to him as appellant; that, by the authority of the letters of our aforesaid predecessor, you had proceeded to his deposition because of the manifest character of the

crimes and his voluntary cession; and that, by the special mandate of the same predecessor of ours, you had committed him to prison in the monastery of Gloucester, where he had formerly been a monk. Afterwards, however, when the judges themselves had reduced all the proceedings to writing and assigned a term to the parties, the same R. both withdrew from the suit in your hands and voluntarily renounced the abbacy, and you received his renunciation at the great insistence of certain religious men.

But, although the often-mentioned R. had at first denied that he had renounced the abbacy, at length he nevertheless confessed it in our presence, adding that, because he had renounced while despoiled, his renunciation was not valid. Furthermore, since you had promised suitably to provide for him but were unwilling to fulfill the promise, he was not bound to hold as ratified what he had done. Moreover, he had been induced to renunciation by fear, since you had threatened him that, if he came to us with the judges' report, you would obtain from us that we put him in a cage.

Against this, however, the said archdeacon replied that it could not and ought not benefit the same R. that he had renounced while despoiled, inasmuch as it was not an adversary but rather the judge who had despoiled him. Moreover, the fear that the opposing party had alleged could not excuse him, since it ought not to have fallen upon a steadfast man. For what steadfast man would presume that at your wish we would thrust anyone into prison and exercise tyranny against those who prosecute their causes before the Apostolic See? Therefore, the said R. ought not on any occasion to have presumed that we would wish to exercise cruelty of this kind. Moreover, that his presumption was frivolous appeared from what was done afterwards.]

Therefore, although a judge does not always apply his mind to one kind of proof, but forms the movement of his mind from confessions, depositions, allegations, and other matters that are set forth in his presence, and judicial authority is so great that it must always be presumed in its favor until something against it is lawfully proved—wherefore, even if you had proved absolutely nothing against the aforesaid R. before the Bishop of Durham and his co-judges, nevertheless the sentence would have had to stand unless the adversary showed that it ought to be annulled—yet, because in addition to these matters his voluntary renunciation was established through certain letters of bishops and his own confession, we, with the counsel of our brothers, have decided that silence should be imposed upon him concerning the same abbacy.

[We will, however, that, out of regard for divine mercy, you cause suitable provision to be made for him from the revenues of the monastery of Thorney in some religious place. Let no one therefore, etc. Given at the Lateran, on the second day before the Nones of June, 1202.]

> Qui sponte renunciavit electioni de se factae, super ipsa ulterius audiri non debet.
>
> Idem.
>
> In praesentia nostra [constitutus dilectus filius R. quondam abbas Torneae proposuit coram nobis, quod quum olim ad eius monasterium accessisses, quod ipse in C. marcharum reditum ampliaverat, et ingressus capitulum monachorum inquisitionem coepisses facere contra eum, ipse gravari se timens ad sedem apostolicam appellavit; tu vero, appellationi non deferens, eum ab administrationis officio suspendisti, et in eius absentia inquisitione post facta, ipsum usque ad monasterium de Ramessia licet invitum turpiter post te tractum super crucem fecisti iurare, quod te usque Londoniam sequeretur. Ipse igitur Londoniam veniens appellationem, quam prius interposuerat, solenniter innovavit, et ad venerabilem fratrem nostrum Wintoniensem episcopum et coniudices eius commissionis obtinuit

literas destinari, quas deferendas cuidam tradidit mercatori. Tu vero ipsum in Angliam redeuntem capi fecisti Londoniis et in Eliensi monasterio carceri mancipari. Propter quod mercator, qui literas deferebat, venire in Angliam non praesumpsit, tandem vero a carcere liberatus ad sedem apostolicam appellavit. Tu vero eius appellationi non deferens, sicut prius, in ipsam depositionis sententiam protulisti, et depositum in carcerem fecisti retrudi. Ceterum, quum fuisset a vinculis absolutus, ad praesentiam nostram venit, et ad venerabilem fratrem nostrum Dunelmensem episcopum, et dilectum filium magistrum Io. de Londoniis literas impetravit, ut super propositis diligenter inquirerent veritatem, et causam ipsam, si partes vellent, concorditer fine debito terminarent; alioquin causam sufficienter instructam ad nos remittere non differrent. Proponebat igitur idem abbas, quod praedicta omnia sufficienter fuerant coram eisdem iudicibus comprobata. Verum dilectus filius magister Honorius, archidiaconus Richemundiae, nuncius tuus, proposuit ex adverso, quod, quum olim legationis officio fungereris, ad monasterium de Tornea, ut ei visitationis impenderes gratiam, accessisti, quumque de vita ipsius R. diligentius inquisiisses, de dilapidatione, incontinentia et turpi eius conversatione per testimonia tibi constitit monachorum. Unde communicato prudentum virorum consilio eum ab administrationis officio suspendisti, quum iuxta canonicas sanctiones de dilapidatione suspectus debeat ab administratione suspendi. Nec appellaverat tunc temporis idem abbas, nec etiam, si appellasset, tibi eum innotuerat appellasse, quum, sicut asserunt testes eius, egressus capitulum in secreto collocutorio duxerit appellandum. Verum, quum postmodum apud Londonias appellasset, non solum appellationem interpositam recepisti, sed ministrasti etiam ad prosecutionem ipsius sufficienter expensas. Deinde quum enormitates ipsius bonae memoriae Coelestino praedecessori nostro per tuas literas intimasses, ipse tuam fraternitatem monuit, ut eum ab officio deponeres abbatiae, ac carceri mancipatum tamdiu detineres, donec ad te mandatum eius denuo perveniret. Ipse igitur depositionis sententiam expavescens, in praesentia multorum episcoporum et aliorum religiosorum virorum renunciavit spontanee abbatiae, sed post paululum poenitens se renunciasse penitus denegavit. Tu igitur, quum metropolitanus exsisteres eius, et legationis officio fungereris, et ad hoc esses specialiter delegatus, mandati apostolici formam sequens, propter criminum evidentiam super abbatia ei perpetuum imponere silentium curavisti. Tandem vero, quum praedicto Dunelmensi et coniudici eius sub forma praedicta sententiae tuae foret cognitio delegata, coram eis quod idem abbas renunciaverit abbatiae, quod incontinentiae vitio laborabat, quod vasa quaedam monasterii praeter consensum monachorum alienaverat, quod tu eius appellationi detuleras et expensas ministraveras appellanti, quod auctoritate literarum praedicti praedecessoris nostri propter criminum evidentiam et spontaneam cessionem processeras ad depositionem ipsius, et de speciali mandato eiusdem praedecessoris nostri eum in monasterio Glocestrensi, ubi prius monachus fuerat, carceri mancipaveras, per testes legitimos comprobasti. Deinde autem, quum iudices ipsi gesta omnia redegissent in scriptis et terminum partibus assignassent, idem R. in manibus tuis et liti cessit, et renunciavit spontaneus abbatiae, tuque renunciationem eius ad multam quorundam religiosorum virorum instantiam recepisti. Ceterum, licet saepedictus R. se renunciasse abbatiae ab initio denegasset, tandem tamen id in nostra praesentia confessus est, adiiciens, quod, quia renunciaverat spoliatus, eius renunciatio non tenebat. Praeterea, quum tu ei congrue promiseris providere, nec volueris adimplere promissum, nec ipse ratum habere quod fecerat tenebatur. Insuper metu fuerat ad renunciationem inductus, quum tu ei fueris comminatus, quod, si ad nos cum iudicum relatione veniret, obtineres a nobis, quod eum in caveam poneremus. Contra hoc autem dictus archidiaconus replicavit, quod eidem R. prodesse non poterat nec debebat, quod renunciaverat spoliatus, utpote quem non adversarius, sed iudex potius spoliaverat. Metus autem, quem allegaverat pars adversa, eum non poterat excusare, quum cadere non debuerit in constantem. Quis etenim constans praesumeret, quod nos ad votum tuum aliquem retruderemus in carcerem, et tyrannidem exerceremus in eos, qui causas suas apud sedem apostolicam prosequuntur? Non ergo dictus R. debuit qualibet occasione praesumere, quod nos huiusmodi vellemus saevitiam

exercere. Quod autem praesumptio eius frivola fuerit, apparuit ex postfacto.] Licet igitur iudex non semper ad unam speciem probationis applicet mentem suam, sed ex confessionibus, depositionibus, allegationibus et aliis, quae in eius praesentia proponuntur, formet animi sui motum, et tanta sit iudicialis auctoritas, ut semper pro ipso praesumi debeat, donec contra ipsum aliquid legitime comprobetur, quare, si tu contra praedictum R. coram Dulmensi episcopo et eius coniudicibus nihil penitus probavisses, standum tamen sententiae fuerat, nisi adversarius eam ostenderet irritandam, quia tamen praeter ista constitit de ipsius renunciatione spontanea per quasdam episcoporum literas et confessionem ipsius, nos de consilio fratrum nostrorum ei super eadem abbatia silentium duximus imponendum. [Volumus autem, ut eidem divinae pietatis intuitu de reditibus monasterii de Tornea in aliquo loco religioso congrue facias provideri. Nulli ergo etc. Dat. Later. II. Non. Iun. 1202.]

Chapter VII

Latin source headnote: One who has renounced beneficial letters is not for that reason deemed to have renounced an institution already made.

Celestine III.

Indeed, we remember that we enjoined, by our living voice and by letters, upon our beloved son I., cardinal-priest of the title of Saint Pudentiana, then legate of the Apostolic See, that, all contradiction and appeal being removed, he should take care to institute as a canon in the church of Poitiers our beloved son H., a subdeacon, who has served your church from the first flower of childhood; and he, obeying our mandates, instituted the aforementioned subdeacon as a canon there. You, however, showing reverence neither to us nor to the cardinal himself, did not take care to fulfill what the same cardinal enjoined upon you in his letters concerning the already-mentioned Hugh, nor even to observe his suspension in any respect. But afterwards the same H., led by the counsel of certain of you, returned his letters to you and subjected himself to your mercy.

But because he is compelled to sustain loss from that from which he ought to have obtained mercy, we command that, notwithstanding the fact that with his letters he subjected himself to your mercy, within twenty days after the reception of the present letters, all delay, contradiction, and appeal being removed, you admit him fully and completely as a brother and canon according to the custom of the church; and, assigning him a stall in choir and a place in chapter, you take care thereafter to treat him with fraternal charity.

Otherwise, know that we have strictly commanded our venerable brother the Archbishop and our beloved sons the Dean of Bordeaux and the Dean of Saintes that, relying upon our authority, all delay, contradiction, and appeal ceasing, they fully execute this, striking contradictors with ecclesiastical constraint, and that they not postpone sending them, suspended from office and benefice, to the Apostolic See to answer for their disobedience and for the aforesaid suspension in no way having been observed, so that there, with punishment as their teacher, they may learn how dangerous and unworthy it is to oppose apostolic mandates; notwithstanding any letters obtained from the Apostolic See with the tenor of these letters suppressed.

Qui renunciavit literis beneficialibus, non ideo institutioni iam factae renunciare videtur.

Coelestinus III.

Sane dilecto filio nostro I. tituli S. Prudentianae presbytero cardinali, tunc apostolicae sedis legato, nos viva voce meminimus ac literis iniunxisse, ut dilectum filium nostrum H. subdiaconum, qui ecclesiae

vestrae a primo pueritiae flore servivit, contradictione et appellatione remotis canonicum in Pictaviensi ecclesia instituere procuraret, qui mandatis nostris obtemperans ibidem instituit in canonicum subdiaconum memoratum. Vos autem nec nobis nec ipsi cardinali reverentiam exhibentes, quod in literis suis de iam dicto Hug. idem cardinalis vobis iniunxit, adimplere non curavistis, nec etiam ipsius suspensionem in aliquo observare. Sed Postmodum idem H. quorundam vestrum ductus consilio literas suas vobis reddens, vestrae misericordiae se subiecit. Quia vero unde misericordiam debuit impetrare, inde cogitur dispendium sustinere, mandamus, quatenus, hoc non obstante quod cum literis suis vestrae misericordiae se subiecit, infra XX. dies post susceptionem praesentium, dilatione, contradictione et appellatione remotis, iuxta ecclesiae consuetudinem ipsum in fratrem et canonicum integre ac plenarie admittatis, et eidem in choro stallum et in capitulo locum assignantes, ipsum curetis de cetero fraterna caritate tractare. Alioquin noveritis, nos venerabili fratri nostro Archiepiscopo et dilectis filiis decano Burdegalensi et Sanctonensi decano districtius mandavisse, ut auctoritate nostra freti, dilatione et contradictione et appellatione cessantibus, id plenarie exsequantur, contradictores districtione ecclesiastica percellentes et ad sedem ap. ab officio et beneficio suspensos de inobedientia responsuros et suspensione praedicta nullatenus observata transmittere non postponant, ut ibi poena docente addiscant, quam periculosum sit et indignum, mandatis apostolicis obviare, nullis literis obstantibus harum tenore tacito a sede ap. impetratis.

Chapter VIII

Latin source headnote: A resignation of a benefice made into the hands of a layman is not valid; nevertheless, the one resigning is to be despoiled of the benefice.

Innocent III to the Archbishop of Nidaros.

As to what in doubtful matters—(*And below:* [cf. c. 30, On the Sentence of Excommunication, V.39.]) Those, moreover, who, voluntarily resigning into a lay hand an ecclesiastical benefice conferred upon them, received it anew from the layman, are to be despoiled of the same benefice, although the resignation of such persons made to a layman obtains no force. [But the altar, etc. (cf. c. 3, On the Consecration of a Church, III.30.) Given near Civita Castellana, on the sixth day before the Ides of October, 1198.]

Renunciatio beneficii facta in manibus laici non tenet; renuncians tamen est beneficio spoliandus.

Innocentius III. Nidrosiensi Archiepiscopo.

Quod in dubiis (Et infra: [cf. c. 30. de sent. exc. V. 39.] Hi praeterea, qui beneficium ecclesiasticum sibi collatum sponte in manum laicam resignantes, illud denuo a laico susceperunt, eodem sunt beneficio spoliandi, licet resignatio talium facta laico nullam obtineat firmitatem. [Altare vero etc. (cf. c. 3. de cons. eccl. III. 30.) Dat. ap. civ. Castellanam VI. Id. Oct. 1198.]

Chapter IX

Latin source headnote: The Pope grants permission to resign to a bishop who cannot remain in his church without danger of death.

The same, to the Archbishop of York.

At the urgent supplication of our venerable brother the Archbishop of Ragusa, we have decided that he should be absolved from the care and solicitude by which he was bound to the church of Ragusa, namely because he could not remain there safely and, if he had access to it, danger of death threatened him. (*And below:*) But lest the same archbishop suffer a lack in temporal things to the

reproach of our ministry, we earnestly admonish your fraternity and command [you] by apostolic writings that you preserve for his support the benefice that has been conferred upon him from royal liberality and your grant in the bishopric of Carlisle and in the church of Malebron. We have granted to him that he may exercise the episcopal office in that bishopric without the use of the pallium, while rendering reverence and obedience to you as metropolitan.

> Papa concedit licentiam cedendi episcopo, qui sine mortis periculo in ecclesia sua morari non potest.
>
> Idem Eboracensi Archiepiscopo.
>
> Ad supplicationem instantem venerabilis fratris nostri Ragusiensis archiepiscopi, eum a cura et sollicitudine, qua tenebatur ecclesiae Ragusiensi, duximus absolvendum, eo videlicet, quod ibi non poterat secure morari, et, si accessum haberet ad illam, mortis sibi periculum imminebat. (Et infra:) Ne vero idem archiepiscopus in vituperium ministerii nostri defectum in rebus temporalibus patiatur, fraternitatem tuam monemus attente, ac per apostolica [tibi] scripta mandamus, quatenus beneficium, quod de liberalitate regia ac concessione tua in episcopatu Carleoli et ecclesia de Malebron est illi collatum, ad sustentationem conserves ipsius. Cui concessimus, ut in ipso episcopatu absque usu pallii officium episcopale valeat exercere, tibi tanquam metropolitano reverentiam et obedientiam impensurus.

Chapter X

Latin source headnote: The weak, the ignorant, one conscious of guilt, the irregular, one whom an evil people hates, and one giving scandals may resign.

The same, to the Bishop of Cagliari.

Unless, when some time ago you entered the pastoral office for divine service, we believed that you had prepared your soul for temptation, and had prudently foreseen that it lies by no means within human frailty to be able to sustain, without the great assistance of God, the various afflictions of anguish that you knew you would suffer in that office, we would certainly fear that afterwards you had neglected to dash your little ones against the rock, and had allowed them to grow so strong against you that you are now scarcely able to resist their insistence as they suggest to you the resignation of the ministry you have undertaken. But because, as we believe, when you knew that you would fight against spiritual wickedness, admonished by the Apostle you put on the armor of God by which you might stand against the snares of the tempter, and, though inexperienced, you were not ignorant of the anguishes of pastoral solicitude, which, now perhaps experienced, you abhor, we do not know why you so insistently wish uselessly to abandon the governance you have undertaken, which you ought not altogether to have avoided undertaking usefully. For if in a resignation of this kind you promise yourself the fruit of a better life, you ought to know that you are not holier than the one sanctified in the womb; and therefore you ought not to desert the ministry of preaching already undertaken, since he at length received the word of God to be preached, whose bearer he had [before] refused to become.

§ 1. But if perhaps for the sake of humility you seek to descend from the pontifical summit, and strive, contrary to the decision of the heavenly will, to abandon through that humility the prelacy given to you, by that very fact you seem wrongly to raise the head of humility, because you show yourself too obstinate in the purpose of resigning. For then you will preserve true humility in yourself, when through it you both flee an exalted place and through obedience do not relinquish it.

Therefore, our venerable brother in Christ, we will you to consider that these are the grounds through which a bishop may seek permission to resign the pastoral office: consciousness of crime, weakness of body, defect of knowledge, malice of the people, grave scandal, and irregularity of the person. But in all these discretion must be employed and caution observed.

§ 2. For because of consciousness of a crime, permission to resign the pastoral office may be sought, and perhaps not because of just any crime, but only because of one on account of which the execution of that office is impeded even after penance has been performed. For since the Lord declares that, at whatever hour a sinner shall have been converted, he will not remember any of his iniquities, and sacred scripture testifies that no one is without sin, it appears that no one ought to resign the pastoral office because of consciousness of just any crime; for if all whom consciousness of any fault accuses were to resign, perhaps few or none would remain in that ministry. For in many things we all offend, and, if we say that we have no sin, we deceive ourselves and the truth is not in us, because he mercifully excuses the one who wretchedly accuses himself.

§ 3. Another ground is weakness of body, on account of which someone may seek to be absolved from the burden of pastoral solicitude, a weakness that proceeds either from infirmity or from old age; yet not every such weakness, but only that by which he is rendered unable to execute the pastoral office. For if the office of an undertaken service could be abandoned because of any bodily weakness, the Apostle would in vain declare that he glories in his infirmities. And someone burdened with old age ought not altogether to excuse himself from the care of pastoral governance, since sometimes the weakness of old age no more exhorts someone to resign than the moral maturity that is accustomed to exist in the elderly counsels him to remain in his office. For on behalf of such persons the Apostle says of himself, "When I am weak, then I am stronger," because sometimes infirmity of body increases strength of heart.

§ 4. Because of a defect of knowledge also, someone can very often seek resignation from the pastoral office. For, since knowledge is especially necessary concerning the administration of spiritual things and useful concerning the care of temporal things, the prelate, who ought to govern in both respects the church committed to him, beneficially renounces it if he is ignorant of the knowledge by which he may govern it. For, since he has to teach his subjects what they ought to do and what to avoid, he will neither teach them well what he himself has not learned to flee, nor practice what he has not learned. "For you," says the Lord, "have rejected knowledge, and I will reject you, that you may not discharge the priesthood for me." Although eminent knowledge is to be desired in a pastor, nevertheless competent knowledge is to be tolerated in him, because according to the Apostle, "knowledge puffs up, but charity builds up"; and therefore the perfection of charity can supply the imperfection of knowledge.

§ 5. Moreover, because of the malice of the people a prelate is sometimes compelled to withdraw from their governance, [and] this when the people are so stiff-necked and are found so obstinate in their rebellion that he is unable to make progress among them, but, because of their hardness, the more he strives [to make progress], the more by a just judgment he is permitted to fail, the Lord saying through the Prophet: "I will cause your tongue to cleave to your palate, because it is a provoking house"; and the Apostles are read to have said to the Jews: "Behold, we turn to the gentiles, because you have made yourselves unworthy of the word of God." Nevertheless, a pastor ought not to desert his flock for just any fault, lest perhaps he be compared to the hireling who sees

the wolf coming, leaves the sheep, and flees; but with the permission of his superior he can at last not so much flee timidly as withdraw providently, when the sheep are turned into wolves and those who ought humbly to have obeyed now irrevocably contradict. Although such persons are to be punished severely for their crime, nevertheless they are usefully to be tolerated for a time, because he draws blood who presses the nose too hard.

§ 6. To avoid a grave scandal also, when it cannot be quieted otherwise, a bishop is permitted to seek resignation, lest he seem to affect temporal honor more than eternal salvation, mindful of what the Apostle says: "If food scandalizes my brother, I will not eat flesh forever," lest I scandalize my brother. But one must distinguish subtly between scandal and scandal, as the Lord himself distinguished. When the Apostles had said to him, "Do you know that the Pharisees are scandalized upon hearing this word?" he answered: "Let them alone; they are blind and leaders of the blind." Elsewhere, however, he said: "Whoever scandalizes one of these little ones who believe in me, it is expedient for him that an ass's millstone be suspended from his neck and that he be submerged in the depth of the sea." For although it is necessary that scandals come, nevertheless woe to him through whom scandal comes.

Irregularity of the person, moreover—as, for example, if someone is a bigamist or the husband of a widow—is a ground on account of which someone can seek permission to resign the pontifical dignity, the Apostle attesting when he says: "A bishop ought to be the husband of one wife." Nevertheless, permission to resign ought not to be granted because of every personal irregularity to one who has ministered regularly, as, for example, if he was not born of a lawful marriage. For, although he could not have kept silent about an irregularity of this kind, nevertheless, if both the fault and its cause lie hidden, a dispensation can be granted to one who has laudably fulfilled his office, after a suitable penance has been enjoined upon him, no less usefully than mercifully. "I am," he says, "a jealous God, visiting the sins of the fathers upon the sons to the third and fourth generation in those who hate me," that is, in those who imitate the paternal hatred against me. From this it is clear that, for those who do not follow their fathers' vices, their own virtues can assist them in such matters, with this moderating exercise of discretion employed: that a distinction be made among *nothi* and *manzeres*, natural children and *spurii*.

But because vices very often falsely represent themselves as virtues to a mind insufficiently provident, you ought subtly to consider whether the purpose of resigning that you appear to carry so fervently in your breast is worthy of God's hatred or love. For if you were seeking to resign for any of the foregoing grounds, we would grieve equally over both the ground and its effect. But lest detestable impiety drive you to resignation beneath the covering of undiscerning piety, we will you to consider that there are also other grounds on account of which someone badly seeks, and still worse desires, to resign an office of this kind.

For if from pusillanimity—perhaps so that he may lay aside labor or escape persecution—or, far be it, from vanity—so that he may more fully have leisure for idleness or indulge in pleasures more freely—someone wishes to desert pastoral care, he does not merit to be absolved from it, although through vanity of this kind, as one who sins mortally, he renders himself unworthy of it; rather, he ought to take pains that, after vanity has been laid aside, he make satisfaction for the sin.

Indeed, we believe another ground for resignation to be utterly detestable: namely, if someone wishes to depart from the pontifical dignity so that he may capture human glory, as though he were choosing

to be abject in the house of the Lord rather than to dwell in the tabernacles of sinners; or so that he may not lose the worldly honor that he acquired through hypocrisy, whether because his pretense is now beginning to be revealed, or because his fervor grows lukewarm from any cause and he does not wish it to appear either that he was evil or that he is becoming so, and therefore beneath the pretext of religion he wishes to cover his depravity, so that, as though deserting Martha, he may embrace Mary and, disdaining Leah's weak eyes, may desire Rachel's beauty.

But what if he wishes to resign for this reason: that in a time of prosperity, while fortune smiled, he appeared to minister laudably because all things were succeeding prosperously for him, but when a time of adversity threatens, he fears that, if adverse things occur by any chance, they will be imputed to his negligence? Plainly, if for this reason he seeks to resign, he can be compared to an improvident sailor who, when the sea lay calm, worked the rudder of the ship without much labor, but, when a storm arises, abandons it and allows it to go down into the deep.

We also utterly detest that ground of resignation if perhaps a bishop wishes to resign so that another may succeed him, whether with a view to a price or from carnal affection, or so that, when one worse than himself has succeeded him, he himself may be exalted as though the best. Moreover, we reject and condemn as an impiety the claim that a bishop, because of worldly occupations and secular solicitudes, cannot exercise the pontifical office without crime, since the Church venerates many saints who administered spiritual and temporal things together. Nevertheless, the left hand ought to be under the head and the right hand in the embrace.

But we also will you diligently to consider lest perhaps through this purpose of your disposition you wish to become one of those concerning whom it is said through the Prophet: “The sons of Ephraim, bending the bow and shooting arrows, turned back on the day of battle,” when instead you ought to set yourself as a wall for the house of Israel against those ascending from the opposite side, because according to the pronouncement of Truth it is not the one who has begun, but the one who has persevered, who will be saved. Take more diligent care lest you place a stain upon your glory, not only before men but also before God, because beneath this cloak you will not be able to conceal yourself—not merely before God, who searches the reins and hearts, but not even before men, who suspect such things from probable conjectures. And prudently consider that, according to the pronouncement of the wise man, the spirit of discipline will flee the fictitious and will take itself away from thoughts that stand without understanding.

If, however, you fear to incur the burden of difficulty in protecting the liberty of the Church, you ought not on that account to desert the honor of the prelacy. Consider diligently lest perhaps by a just judgment you are being tempted by him who is the tempter to evils, so that it may be proved whether you are willing to make satisfaction in that matter in which perhaps you transgressed. But one who scorns or neglects to make satisfaction for a transgression stores up wrath for himself on the day of wrath, when God will reveal the hidden things of darkness. Behold, indeed, we have brought a mirror before you, that you may contemplate yourself in it and, having searched your conscience, may recognize from what ground you importunately seek permission to resign. For we—as the Most High knows—are ignorant why you persist in the purpose of resigning, since neither infirmity of body, nor length of age, nor defect of knowledge, nor malice of the people, nor irregularity of person renders you unfit, nor do you confess that you have consciousness of a grievous crime.

§ 7. But if you desire resignation for other grounds, favor is not to be shown to you as you seek it in this matter, since a request of this kind appears not to be discreet. For, to omit as very well known the fact that idleness and pleasure are the weapons of the ancient enemy for capturing wretched souls, you ought not to desert your bride because of the anguishes of labor or assaults of persecution, to whom, by striking your hand with a stranger, you joined yourself by an intervening pledge, knowing that "blessed are those who suffer persecution for justice," because, when they have been proved, they will receive the crown of life that God has promised to those who love him.

§ 8. But you will say that "the spirit breathes where it wills, and you do not know whence it comes or where it goes," and therefore there is no one who can search out the paths of that spirit; and those who are led by the Spirit of God are not under the law, because where the Spirit of God is, there is liberty. Therefore, if permission to resign has not been given to you by man, nevertheless you will resign, because liberty to resign has been given to you by God. Certainly you are foolish if you think thus. For how is one led by the Spirit of God who acts against the Spirit of God? For if the matters we have set forth above are true—indeed, because they are indubitably true—without doubt one who attempts any of these matters against the truth acts against the Spirit of God, because he is the Spirit of truth.

§ 9. But if you say that perhaps there is another hidden ground on account of which the will to resign is inspired in you from heaven, we answer in turn: how do you know that such inspiration is heavenly? Do you not remember what that glorious pontiff said when he began suddenly to be deprived of the strength of his body? "Lord," he said, "if I am still necessary to your people, I do not refuse the labor; let your will be done!" He followed the example of the one who said: "I desire to be dissolved and to be with Christ, but to remain in the flesh is necessary for you."

Therefore, because we have distinguished for you diverse grounds in this matter and are ignorant for which of them you desire to resign, we have decided to commit you to yourself, so that, judging yourself from the tribunal of your own mind, you may see whether you can satisfy the desire of resigning in such a way that you may withdraw without fault from the care of the flock committed to you. For if by resigning you desire to benefit yourself alone, without doubt you subtract as much from your own benefit as you fail to expend upon others what you could expend, because then you would acquire greater gains for your soul when, without your own salvation, you procured the salvation of many. For it is of greater merit for someone to gain very many for God together with himself than to seek his own salvation without those whose salvation is known to pertain to his care.

§ 10. Indeed, however great the flower of virtues with which you shine, if you do not have charity in yourself, you are proved to have nothing. Under what pretext of virtue, then, do you seek to lay aside the burden of pastoral solicitude, which can scarcely be deserted without loss of charity? "For there can be no greater charity than that someone lay down his life for his friends." And since because of this charity it befits you to lay down your life for your subjects, on no occasion, provided that you can benefit them—even if not all, nevertheless many—does it befit you to excuse yourself from their governance. For if you put forward labor as the ground, the Apostle's example will sustain you. He counsels you not to flee labor of this kind when he asserts that he labored more than the rest for the common salvation; for although the result does not always follow the labor, nevertheless the labor itself is meritorious before God, according to what is written: "God will render the reward of the labors of his saints."

But grant that you have labored greatly until now and, with the same Apostle, can say that you have fought the good fight: nevertheless, in order that thereafter the crown of justice may be laid up for you, it befits you to complete the course of a perfect work. For however much, amid the labors of the anguishes that accompany the pastoral office, you number for yourself laborious nights and, like a wearied stag, desire the shade of rest; however much, distressed amid the squalors of the road, you are drawn by love of the homeland and, like a hired laborer who has completed his service, anxiously await the end of your work; nevertheless, it is expedient for you to perfect virtue in infirmity and crown your struggle with perseverance. And, knowing that you struck your hand with a stranger when you received the souls of the flock committed to you into your own soul, you ought not so to desire for yourself the harbor of repose that you allow the children who have sailed with you until now to be tossed, without the aid of an oarsman, upon this great and spacious sea in fear of shipwreck.

§ 11. Nor should you think that Martha chose an evil part, she who was busy about many things, because Mary chose the best part, which will not be taken away from her. For, although the latter is safer, the former is nevertheless more fruitful; and, although the latter is sweeter, the former is nevertheless more useful, since, in fruitfulness of offspring, Leah's weak eyes are preferred to Rachel's beauty. Yet you can be both contemplative and active together at once, after the example of the lawgiver, who at one time ascended the mountain so that there he might see the glory of the Lord with greater freedom, but at another descended into the camp so that he might provide for the necessities of the people with greater usefulness. Therefore, it is more easily permitted that a monk ascend to the prelacy than that a prelate descend to the monastic life.

§ 12. We therefore admonish you that, abhorring that expression of Davidic imprecation and fearing lest it be applied to you through the effect of your deed—the imprecation that the days of the impious man become few, that another may receive his bishopric—you not refuse the labor of pastoral governance. And, casting your thought upon the Lord, determine nothing concerning yourself against the will of the Most High, who, when he sees that you are necessary to his people, perhaps would bear it grievously if it should happen that he himself was neglected by you; lest perhaps he should scorn to receive you with Mary at his feet, when you had scorned solicitously to minister with Martha to him when he turned aside to lodge with you.

This also ought to establish you more firmly in the purpose of ministering: since you have until now ministered laudably in the church committed to you, if—which God forbid—when you resign, another less useful should be assumed to it, assuredly you would be disturbed not a little in the very repose that you desire, when, where you had exercised your ministry well, you would see not without sorrow the failure of a useless minister. And it would happen that you would recognize that as much had been lost to you in the citadel of contemplation as you would see, not without your confusion, had through you been withdrawn from the church over which you preside.

But because, both personally and through your envoys and letters, you have already insisted too much before us in seeking permission to resign, behold, we have decided to leave you to yourself. The grounds on account of which one ought to resign or not to resign having been distinguished for you, if you persevere in a purpose of this kind because of some useful and honorable ground, you may resign with our permission—although you should know that this is exceedingly grievous and troublesome to us. Otherwise, you should know that permission to resign is altogether forbidden to

you by apostolic authority, because, even if you have wings by which you strive to fly away into solitude, they are nevertheless so bound by the chains of the commandments that you do not have free flight without our permission. But if, finally, your will should drive you to fly, we will and command that you cause our letters to be recited in the hearing of your chapter. [Etc. Given at Rome, at Saint Peter's, on the Kalends of March, in the ninth year of our pontificate, 1206.]

Textual note: In section 9 the source prints *sine tua salute* ("without your own salvation"), a reading also present in the Friedberg-derived reference text but difficult in context; the following sentence instead speaks of gaining many for God "together with oneself." The translation retains the printed reading rather than silently emending it.

> Debilis, ignarus, male conscius, irregularis, Quem mala plebs odit, dans scandala cedere possit.
>
> Idem Episcopo Calaritano.
>
> Nisi, quum pridem in officio pastorali ad divinum servitium accessisti, praeparasse te ad tentationem animum crederemus, ac praevidisse prudenter, nequaquam in humana fragilitate consistere, varios angustiarum languores, quos te in ipso sciebas officio perpessurum, posse absque magno Dei adiutorio sustinere: formidaremus utique, ne parvulos tuos postmodum ad petram allidere neglexisses, eosque tantum in te permiseris invalescere, ut ipsorum, suggerentium tibi suscepti ministerii cessionem, instantiae vix iam valeas repugnare. Verum quoniam, sicut credimus, quum te scires contra spirituales nequitias pugnaturum, armaturam Dei, qua posses stare contra insidias tentatoris, ab Apostolo monitus induisti, et inexpertus non ignorasti sollicitudinis pastoralis angustias, quas forsitan expertus abhorres, nescimus cur tam instanter susceptum velis regimen inutiliter derelinquere, quod suscipiendum utiliter non deberes usquequaque vitare. Si enim in huiusmodi cessione frugem tibi melioris vitae promittis, scire te debes non esse sanctificato in utero sanctiorem, et ideo non oportet te praedicationis iam susceptae deserere ministerium, quum ille, cuius [ante] fieri baiulus recusabat, tandem praedicandum receperit verbum Dei. § 1. Quod si forsan humilitatis causa de culmine quaeris pontificali descendere, ac contra superni nutus arbitrium datum tibi per illud niteris deserere praesulatum, eo ipso humilitatis videris erigere male verticem, quod te nimis in resignandi proposito exhibes pertinacem, quia tunc in te veram humilitatem custodies, quum et per eam locum sublimen fugies, et per obedientiam non dimittes. Intueri te itaque, venerabilis frater noster in Christo, volumus, quod haec sunt illa, per quae cedendi episcopus officio pastorali licentiam potest postulare: conscientia criminis, debilitas corporis, defectus scientiae, malitia plebis, grave scandalum, irregularitasque personae. Sed in his omnibus est adhibenda discretio et observanda cautela. § 2. Propter conscientiam enim criminis cedendi pastorali officio potest licentia postulari, et forsitan non cuiuslibet, sed duntaxat illius, propter quod ipsius officii exsecutio post peractam etiam poenitentiam impeditur; quum enim quacunque hora peccator conversus fuerit omnium iniquitatum suarum non recordari se Dominus fateatur, et neminem esse sine peccato sacra scriptura testatur, apparet, quod non per cuiuslibet criminis conscientiam quemquam cedere oporteat officio pastorali, quum si omnes, quos arguit conscientia cuiuslibet culpae, cederent, pauci vel nulli forsitan in illo ministerio remanerent. In multis enim offendimus omnes, et si dixerimus, quia peccatum non habemus, nos ipsos seducimus et veritas in nobis non est, quia misericorditer illum excusat, qui miserabiliter se accusat. § 3. Alia vero causa est debilitas corporis, propter quam aliquis potest petere ab onere sollicitudinis pastoralis absolvi, quae videlicet vel ex infirmitate, vel ex senectute procedit; nec tamen omnis, sed illa solummodo, per quam impotens redditur ad exsequendum officium pastorale. Nam si pro qualibet corporali debilitate susceptae servitutis officium posset deseri, frustra se fateretur Apostolus in suis infirmitatibus gloriari, et senectute gravatus quispiam a cura se non debet omnino pastoralis regiminis excusare, quum interdum non plus hortetur senilis debilitas aliquem cedere, quam moralis maturitas, quae in senibus esse solet, ipsum in suo suadet officio permanere. Pro

talibus enim de se dicit Apostolus: "Quum infirmor, tunc fortior sum," quia nonnunquam corporis infirmitas fortitudinem cordis augmentat. § 4. Pro defectu quoque scientiae plerumque potest quis pastoralis officii petere cessionem, quia, quum ipsa circa spiritualium administrationem sit potissimum necessaria, et circa curam temporalium opportuna, praesul, qui commissam sibi debet ecclesiam regere in utrisque, salubriter ei renunciat, si scientiam, in qua ipsam regat, ignorat, quoniam, quum subiectos docere habeat, quid facere debeant, quid cavere, nec bene docebit eos, quod nescierit ipse fugere, nec illud, quod ignoraverit, exercere. "Tu enim," inquit Dominus, "scientiam repulisti, et ego repellam te, ne sacerdotio fungaris mihi." Quanquam, etsi desideranda sit eminens scientia in pastore, in eo tamen sit competens toleranda, quia secundum Apostolum "scientia inflat, caritas autem aedificat," et ideo imperfectum scientiae potest supplere perfectio caritatis. § 5. Propter malitiam autem plebis cogitur interdum praelatus ab ipsius regimine declinare, [et] quando plebs adeo durae cervicis exsistit, et in rebellione sua ita pertinax invenitur, ut proficere nequeat apud ipsam, sed propter eius duritiam, quo magis [proficere] satagit, eo magis iusto iudicio deficere permittatur, dicente Domino per Prophetam: "Linguam tuam adhaerere faciam palato tuo, quia domus exasperans est," et Apostoli leguntur dixisse Iudaeis: "Ecce convertimur ad gentes, quia verbi Dei vos indignos fecistis." Non tamen pro qualibet culpa pastor debet gregem deserere suum, ne forte mercenario comparetur, qui videt lupum venientem, et dimittit oves, et fugit, sed de superioris licentia tunc demum potest non tam timide fugere, quam provide declinare, quum oves convertuntur in lupos, et qui debuerant humiliter obedire iam irrevocabiliter contradicunt; quum, etsi tales sint graviter pro crimine puniendi, sunt tamen pro tempore utiliter tolerandi, quia sanguinem elicit qui nimis emungit. § 6. Pro gravi quoque scandalo evitando, quum aliter sedari non potest, licet episcopo petere cessionem, ne plus temporalem honorem quam aeternam videatur affectare salutem, memor illius, quod dicit Apostolus: "Si esca scandalizaverit fratrem meum, non manducabo carnem in aeternum," ne fratrem meum scandalizem. Sed inter scandalum et scandalum est subtiliter distinguendum, sicut Dominus ipse distinxit, cui quum dixissent Apostoli: "Scis, quia pharisaei audito hoc verbo scandalizantur?" respondit: "Sinite illos, caeci sunt, et duces caecorum." Alibi vero dixit: "Qui scandalizaverit unum de pusillis istis, qui in me credunt, expedit ei, ut suspendatur mola asinaria m collo eius, et demergatur in profundum maris." Nam etsi necesse sit, ut scandala veniant, vae tamen illi, per quem scandalum venit. Personae vero irregularitas, ut, si forte sit bigamus vel viduae maritus, est causa, propter quam petere potest licentiam aliquis resignandi pontificii dignitatem, attestante Apostolo, qui dicit: "Oportet episcopum esse unius uxoris virum." Non tamen propter quamlibet irregularitatem personae debet ei, qui regulariter ministravit, cedendi licentia indulgeri, utpote si de legitimo matrimonio non sit natus, quia, licet irregularitatem huiusmodi non potuerit subticere, si tamen et culpa latet et causa, cum eo, qui laudabiliter suum implevit officium, iniuncta sibi poenitentia competenti, potest non minus utiliter, quam misericorditer dispensari. "Ego sum," inquit, "Deus zelotes, vindicans peccata patrum in filios usque in tertiam et quartam generationem in his, qui oderunt me," id est, in illis, qui contra me paternum odium imitantur. Unde patet, quod illis, qui paterna vitia non sequuntur, propriae possunt in talibus suffragari virtutes; illo discretionis adhibito moderamine, ut inter nothos et manzeres, naturales et spurios distinguatur. Quum autem plerumque vitia se virtutes esse menti minus providae mentiantur, subtiliter advertere te oportet, utrum resignandi propositum, quod tam ferventer gestare videris in pectore, dignum sit Dei odio vel amore. Si enim propter causam aliquam praemissarum cedere postulares, tam super causa, quam super eius effectu pariter doleremus. Sed ne sub improvidae pietatis amictu ad resignandum detestabilis impietas te impellat, considerare te volumus, et alias esse causas, propter quas male quis petit et peius appetit officium huiusmodi resignare. Si enim ex pusillanimitate, fortassis ut laborem deponat, vel persecutionem effugiat, aut ex vanitate, quod absit, ut plenius vacet otiis, seu liberius indulgeat voluptatibus, curam vult aliquis deserere pastoralem, ab ea non meretur absolvi, quamvis propter huiusmodi vanitatem, tanquam qui mortaliter peccat, ea reddat se indignum, sed satagere debet, ut

vanitate deposita satisfaciat de peccato. Aliam vero cedendi causam omnino credimus detestandam. Si quis videlicet a pontificali velit discedere dignitate, ut gloriam captet humanam, tanquam eligat abiectus esse in domo Domini magis, quam habitare in tabernaculis peccatorum, vel ut mundanum non amittat honorem, quem per hypocrisin acquisivit, sive quod eius simulatio revelari iam incipit, sive quod fervor ipsius ex qualibet causa tepescit, nec vult videri, quod malus fuerit, aut quod fiat, et ideo sub religionis praetextu suam vult contegere pravitatem, ut quasi deserens Martham amplexetur Mariam, et Liae fastidiens lippitudinem Rachelis pulchritudinem concupiscat: quid autem, si propterea velit cedere, quod tempore prosperitatis, arridente fortuna, visus est laudabiliter ministrare, quoniam omnia sibi prospere succedebant, sed adversitatis tempore imminente veretur, ne, si quolibet casu sinistra contingant, ipsius negligentiae imputetur? Plane si propter hoc petit cedere, nautae se potest improvido comparare, qui, quum mari sub tranquillitate iacente sine multo labore navis exercuerit gubernaculum, ipsam tempestate surgente deserit, et devenire patitur in profundum. Illam quoque cedendi causam penitus detestamur, si forte cedere velit episcopus, ut vel alter sibi succedat, vel obtentu pretii vel affectu carnali, vel ut quum peior sibi successerit, ipse velut optimus extollatur. Illud autem quasi nefas respuimus et damnamus, quod episcopus propter occupationes mundanas et sollicitudines saeculares non valeat sine crimine pontificale officium exercere, quum multos sanctos ecclesia veneretur, qui spiritualia simul et temporalia ministrarunt. Verum tamen laeva debet esse sub capite, et dextra in amplexu. Sed et, illud te volumus advertere diligenter, ne forte per hoc tuae dispositionis propositum effici velis ex illis, de quibus dicitur per Prophetam: "Filii Effrem intendentes arcum et mittentes sagittas conversi sunt in die belli," quum potius pro domo Israel murum debeas te opponere ascendentibus ex adverso, quia iuxta sententiam veritatis non qui inceperit, sed qui perseveraverit salvus erit; cavens attentius, ne maculam in gloria tua ponas, non solum apud homines, sed etiam apud Deum, quoniam sub hoc pallio te non poteris occultare, nedum apud Deum, qui renes rimatur et corda, sed nec etiam apud homines, qui ex verisimilibus coniecturis talia suspicantur. Illudque prudenter attendas, quod iuxta sententiam sapientis spiritus disciplinae effugiet fictum, et auferet se a cogitationibus, quae sine intellectu consistunt. Si vero pro tuenda ecclesiae libertate difficultatis onus incurrere pertimescis, non ideo deserere debes praesulatus honorem, considerans diligenter, ne forte iusto iudicio tenteris ab illo, qui malorum est intentator, ut probetur, utrum satisfacere velis in eo, in quo forsan deliquisti. Qui vero contemnit aut negligit satisfacere pro delicto, thesaurizat sibi iram in die irae, quum revelabit Deus abscondita tenebrarum. Ecce quidem admovimus tibi speculum, ut te ipsum contempleris in ipso, tuamque, conscientiam perscrutatus agnoscas, ex qua causa cedendi licentiam postules importune. Nos enim, novit altissimus, ignoramus, quare in cedendi proposito perseveres, quoniam nec infirmitas corporis, nec longaevitas temporis, nec defectus scientiae, nec malitia plebis, nec irregularitas personae te reddit ineptum, nec conscientiam saevi criminis te fateris habere. § 7. Verum si propter alias causas cessionem affectes, non est in hoc tibi postulanti favendum, quum huiusmodi postulatio videatur non esse discreta, quoniam, ut id tanquam notissimum omittamus, quod otiositas et voluptas arma sunt hostis antiqui ad miseras animas captivandas, propter laboris angustias, aut persecutionis incursus non debes deserere sponsam tuam, cui defigendo manum apud extraneum te fide media copulasti, sciens quod, "beati sunt illi, qui persecutionem patiuntur propter iustitiam," quoniam, quum probati fuerint, accipient coronam vitae, quam repromisit Deus diligentibus se. § 8. Sed dices, quod "spiritus, ubi vult, spirat, et nescis, unde veniat, aut quo vadat," et ideo non est, qui possit vias illius spiritus perscrutari; qui vero spiritu Dei aguntur, non sunt sub lege, quoniam ubi Spiritus Dei, ibi libertas. Quare si cedendi tibi licentia data ab homine non fuerit, nihilominus tamen cedes, quia data est tibi libertas cedendi a Deo. Certe desipis, si sic sapis. Nam quomodo spiritu Dei agitur qui contra spiritum Dei agit? Si enim vera sunt quae praemisimus, immo quia indubitanter sunt vera, procul dubio contra spiritum Dei agit, qui aliquid horum contra veritatem attentat, quoniam ipse est spiritus veritatis. § 9. Porro si dicas, quod forsitan alia est causa latens, propter quam cedendi voluntas tibi coelitus inspiratur, et nos siquidem

respondemus: tu quomodo scis, quod talis inspiratio sit coelestis? Nonne recolis, quod ille gloriosus pontifex dixerit, quum coepisset viribus corporis repente destitui: "Domine," inquit, "si adhuc populo tuo sum necessarius, non recuso laborem, fiat voluntas tua!" Illius exemplum secutus, qui dixit: "Cupio dissolvi, et esse cum Christo, manere autem in carne necessarium est propter vos." Quia igitur diversas tibi causas super hac causa distinximus, et propter quam earum cedere desideres ignoramus, te ipsum tibi duximus committendum, ut, de propriae mentis tribunali te iudicans, videas, si sic possis resignandi desiderio satisfacere, ut gregis tibi commisi curam sine culpa valeas declinare. Si enim cedendo proficere appetis tibi soli, profectui tuo sine dubio tantum subtrahis, quantum quod impendere poteras aliis non impendis, quia tunc maiora animae tuae lucra conquireres, quum sine tua salute salutem plurium procurares. Potioris enim est meriti secum Deo quemquam plurimos lucrifacere, quam salutem propriam quaerere sine illis, quorum salus ad eius curam noscitur pertinere. § 10. Quippe si quantocunque virtutum flore refulgeas, et in te non habeas caritatem, nihil te comprobaris habere, sub quo virtutis praetextu deponere quaeris onus sollicitudinis pastoralis, quod vix potest absque iactura deseri caritatis? "Nulla siquidem maior poterit esse caritas, quam ut animam suam ponat quis pro amicis suis." Quum autem propter hanc te deceat animam tuam pro subditis tuis ponere, nulla occasione, dummodo proficere illis possis, etsi non omnibus, tamen multis, ab eorum regimine te convenit excusare; quoniam, si laboris causam praetendis, exemplum te Apostoli sublevabit, qui suadet tibi laborem huiusmodi non refugere, dum se asserit pro communi salute plus ceteris laborasse, quia, licet non semper sequatur laborem effectus, nihilominus tamen ipse labor est meritorius apud Deum, iuxta quod legitur: "Reddet Deus mercedem laborum sanctorum suorum." Sed esto, quod multum hactenus laboraveris, et bonum certamen certaveris, cum eodem Apostolo possis dicere, tamen ut corona tibi iustitiae de reliquo reponatur, cursum te decet perfecti operis consummare. Quantumlibet enim in angustiarum laboribus, qui comitantur officium pastorale, noctes tibi laboriosas enumeras, et tanquam fatigatus cervus umbram quietis affectes, quantumlibet inter viae squalores angustians patriae dilectione traharis, et velut emeritus mercenarius operis tui finem anxius praestoleris, expedit tibi tamen virtutem in infirmitate perficere, et pugnam tuam perseverantia coronare, sciensque, quod apud extraneum defixeris manum tuam, quum animas tibi commissi gregis in tuam animam suscepisti, non sic debes portum tibi quietis appetere, ut navigantes hactenus tecum filios sine remigis adiutorio patiaris in hoc mari magno et spatioso cum timore naufragii fluctuare. § 11. Nec putes, quod ideo Martha malam partem elegerit, quae circa plurima satagebat, quia Maria optimam partem elegit, quae non auferetur ab ea; quoniam, licet illa sit magis secura, ista tamen est magis fructifera, et licet illa sit magis suavis, haec tamen magis est utilis, quum in foecunditate sobolis lippitudo Liae Rachelis pulchritudini sit praelata; quamvis simul in unum et contemplativus esse valeas et activus legislatoris exemplo, qui nunc ascendebat in montem, ut ibi gloriam Domini cum maiori cerneret libertate, nunc vero descendebat in castra, ut cum utilitate maiori necessitatibus populi provideret. Quapropter facilius indulgetur, ut ascendat monachus ad praesulatum, quam praesul ad monachatum descendat. § 12. Monemus itaque, ut illam vocem Davidicae imprecationis abhorrens, tibique formidans eam per effectum operis adaptari, quae dies impii paucos fieri, ut episcopatum eius accipiat alter, imprecatur, laborem pastoralis regiminis non recuses, iactansque tuum in Domino cogitatum, nihil contra voluntatem altissimi statuas de te ipso, qui, quum te suo viderit esse populo necessarium, forte grave ferret, quum ipsum a te contingeret esse neglectum, ne fortassis ad pedes suos cum Maria sperneret te recipere, qui sibi apud te divertenti sprevisses cum Martha sollicita ministrare. Illud quoque te debet fortius in ministrandi proposito stabilire, quia, quum hactenus in ecclesia tibi commissa laudabiliter ministraris, si quod absit, alius te cedente minus utilis assumeretur ad ipsam, profecto non parum in ipsa quiete, quam appetis, turbareris, quum, ubi bene tuum exercueras ministerium, non absque dolore cerneres inutilis ministri defectum, fieretque, ut tantum in contemplationis arce tibi deperisse cognosceres, quantum ecclesiae, cui praesides, non sine tua confusione per te subtractum esse videres.

> Quia vero tam per te, quam per nuncios et literas tuas apud nos iam nimis in postulando cedendi licentiam institisti, ecce tibi te duximus relinquendum, ut distinctis tibi causis, propter quas cedere oporteat, vel non cedere si propter aliquam causam utilem et honestam in huiusmodi proposito perseveres, de licentia nostra cedas, quod tamen grave nobis plurimum esse noveris et molestum. Alioquin cedendi licentiam auctoritate apostolica tibi scias esse penitus interdictam, quoniam, etsi pennas habeas, quibus satagas in solitudinem advolare, ita tamen adstrictae sunt nexibus praeceptorum, ut liberum non habeas absque nostra permissione volatum. Quodsi denique tua voluntas te impulerit ad volandum, volumus et mandamus, ut nostras literas in audientia tui capituli facias recitari. [etc. Dat. Rom. ap. S. Petr. Kal. Mart. Pont. nostr. Ao. IX. 1206.]

Chapter XI

Latin source headnote: A bishop who resigned his bishopric because of a crime and passed into the religious life cannot be reassumed to a bishopric; it is otherwise if he resigned because of persecution, infirmity, defect of knowledge, simony committed without his knowledge, or another similar ground.

The same, to the Bishop of Faenza, elected Archbishop of Ravenna.

After your translation to the church of Ravenna, when our beloved sons the provost and canons, the abbots and *primicerii* of Faenza, and the entire clergy of the city, as we have learned through their letters, had unanimously conferred upon our beloved son I., a priest and their fellow canon, free authority to elect, he, after the grace of the Holy Spirit had been invoked, chose our beloved son I., a canon of Saint Fridianus of Lucca and formerly Bishop of Sarno, to be postulated as Bishop of Faenza. Through his circumspect solicitude—he who first as canon and afterwards as provost conducted himself laudably in the church of Faenza—it is hoped that benefits will come to the same church in many ways. Moreover, after the prior of Saint Fridianus, our beloved son, had been consulted concerning this and his consent obtained, the provost and the others named above humbly sought that the same postulation be approved by us.

But at first sight a chapter of the Council of Constantinople seemed to oppose a postulation of this kind. In it, it was established that whoever descends from the pontifical dignity to the life of monks and a place of penance shall by no means rise again thereafter to the pontificate. Therefore, contrary to the said council, since it is one of the four principal councils that the catholic Church venerates as the four Gospels, their postulation seemed in no way admissible.

§ 1. But certain special cases are found in which, notwithstanding the aforesaid council, one who has chosen the monastic life can lawfully be assumed to a bishopric again. For if anyone, while the fury of persecution rages or bodily ill health impedes him, when he cannot make progress in pastoral governance, descends with the authority of his superior to the monastic life, he will be able, when the impediment of persecution or sickness ceases, to rise again to the episcopal dignity.

§ 2. Likewise, if anyone, because of a defect of learning, lest as a blind man he offer guidance to a blind man, has abandoned the place of governance by apostolic authority and betaken himself to monastic leisure, and through the exercise of reading has found the pearl of knowledge, without doubt he will be able, when called anew by the Lord, to ascend again to the pastoral chair.

§ 3. Again, if anyone, through the cupidity of his relatives but entirely without his knowledge, has obtained a bishopric, and, once this is discovered, relinquishing the bishopric itself with his

superior's permission, has chosen regular observance, although he cannot afterwards return to the same bishopric according to the canonical enactments, nevertheless he can lawfully be reassumed to another.

§ 4. Although in these and similar cases one who, having relinquished a bishopric, chose the monastic life can rise again to the pastoral office, nevertheless nothing in these cases is understood to be attempted contrary to the aforesaid council, which speaks in the case in which someone, abandoning a bishopric because of some crime, descends to the monastic life for the sake of penance. Hence certain persons have said that the chapter named above speaks in the case in which someone, because of a crime of which he had been convicted or which he had confessed, was deposed from the episcopal dignity and shut up in a monastery to perform penance, or when someone, because of a grave crime for which he could not worthily perform penance while retaining the bishopric, obtained permission to resign and chose the monastic life. Others assert that the aforesaid chapter is to be understood so that he cannot rise again by his own action—that is, reclaim as though it were owed what he relinquished in such a manner—although he can be elected, especially if he resigned only the place and not the order.

§ 5. Therefore, since it could not be fully established for us for what ground the aforesaid I. once resigned the bishopric—for in our letters transmitted concerning this, only this was expressed to him: that we, having received his letters concerning his resignation and commending in the Lord his purpose, because he preferred the salvation of his soul to temporal honor, absolved him from the burden of pastoral solicitude—although it was suggested to us very recently by a certain canon of Saint Fridianus that the said Joachim sought permission to resign for this reason: that it had come to his knowledge that certain relatives of his, so that he would be elected bishop, had given certain things, though few, we command your fraternity by the authority of the present letters that, after the truth concerning these matters has been most diligently investigated, if it should be established for you that the same I. resigned the aforementioned bishopric because of one of the grounds set forth above or grounds similar to them, you, by our authority and with the obstacle of any contradiction and appeal removed, provided that necessity or utility requires it, grant him permission to ascend to the governance of the church of Faenza.

This is especially so if what both the aforesaid provost and canons of Faenza and the prior and chapter of Saint Fridianus expressed to us in their letters is supported by truth: namely, that the said I. resigned only the aforementioned place and not the order, or even the dignity. For then it would have to be very strongly presumed that he migrated to the regular life not because of any crime committed by him, but for the sake of performing penance, especially since, after the resignation, the Apostolic See would have permitted him, if entangled in such a crime, much less than before to minister in the pontifical order. Otherwise, since it would be exceedingly harsh to admit a postulation of this kind contrary to so solemn a council, you shall enjoin upon the aforesaid provost and canons that they elect another suitable person as their pastor. [Given at the Lateran, on the fourth day before the Ides of February, in the eleventh year of our pontificate, 1208.]

> Episcopus, qui propter crimen renunciavit episcopatui, et ad religionem transivit, ad episcopatum reassumi non potest; secus, si renunciavit propter persecutionem, infirmitatem, defectum scientiae, simoniam ipso ignorante commissam, vel aliam similem causam.
>
> Idem Episcopo Faventino in Archiepiscopum Ravennatem electo.

Post translationem tuam ad ecclesiam Ravennatensem quum dilecti filii praepositus et canonici, abbates et primicerii Faventini, totusque civitatis clerus, sicut per literas eorundem accepimus, in dilectum filium I. presbyterum eorum concanonicum liberam eligendi auctoritatem unanimiter contulissent, ipse sancti Spiritus gratia invocata dilectum filium I. sancti Fridiani Lucanensis canonicum, olim episcopum Sarnatensem, in Faventinum episcopum postulandum elegit, per cuius sollicitudinem circumspectam, qui primo canonicus, et postea praepositus in Faventina ecclesia fuit laudabiliter conversatus, multipliciter sperantur eidem ecclesiae commoda proventura. Porro a dilecto filio sancti Fridiani priore super hoc requisito et obtento consensu, praepositus et alii supra dicti postulationem eandem approbari a nobis humiliter petierunt. Verum postulationi huiusmodi videbatur concilii Constantinopolitani capitulum prima facie obviare, in quo statutum est, ut quicunque de pontificali dignitate ad monachorum vitam et poenitentiae locum descenderit, nequaquam ulterius ad pontificatum resurgat. Unde contra dictum concilium, quum sit unum ex quatuor principalibus, quae sicut quatuor evangelia ecclesia catholica veneratur, nullatenus videbatur eorum postulatio admittenda. § 1. Ceterum speciales quidam casus inveniuntur, in quibus, praedicto concilio non obstante, is, qui vitam monachalem elegit, rursum licite potest ad episcopatum assumi. Si enim quisquam persecutionis rabie saeviente, vel praepediente invalitudine corporis, quum proficere nequeat in regimine pastorali, de superioris auctoritate ad monasticam vitam descendat, persecutionis vel aegritudinis impedimento cessante ad episcopalem poterit resurgere dignitatem. § 2. Item si quis propter literaturae defectum, ne tanquam caecus caeco ducatum praebeat, locum regiminis auctoritate apostolica deserendo ad otium se contulerit monachale, ac per exercitium lectionis scientiae repererit margaritam, proculdubio poterit denuo vocatus a Domino cathedram reascendere pastoralem. § 3. Rursus, si quis per cupiditatem parentum, eo tamen penitus ignorante, fuerit episcopatum adeptus, et hoc comperto episcopatum ipsum de licentia superioris dimittens, observantiam elegerit regularem, etsi ad episcopatum eundem redire postmodum nequeat iuxta canonicas sanctiones, ad alium tamen poterit licite reassumi. § 4. Quanquam autem in his et consimilibus casibus is, qui episcopatu dimisso monasticam vitam elegit, resurgere valeat ad officium pastorale, nihil tamen in his contra praescriptum intelligitur concilium attentari, quod in eo loquitur casu, quum propter aliquod crimen episcopatum quis deserens ad vitam monasticam poenitentiae causa descendit. Unde quidam in eo casu loqui dixerunt capitulum supra dictum, quum quis pro crimine, de quo convictus fuerat vel confessus, ab episcopali dignitate depositus, in monasterio exstitit ad poenitentiam agendam inclusus, vel quum aliquis propter grave crimen, pro quo episcopatum retinens poenitentiam digne agere non valebat, cedendi obtenta licentia vitam monachalem elegit. Aliis asserentibus, sic intelligendum esse capitulum antedictum, ut per se resurgere nequeat, id est, repetere quasi debitum quod tali modo dimisit, quanquam eligi possit, praesertim, si locum tantum, et non ordinem resignavit. § 5. Quum ergo nobis plene constare nequiverit, ob quam causam praedictus I. episcopatui olim cesserit, quum in nostris literis, super hoc transmissis, eidem hoc solummodo exprimatur, quod nos, literis super sua resignatione receptis, eius propositum in Domino commendantes, quod temporali honori salutem animae praeponebat, eundem absolvimus ab onere sollicitudinis pastoralis: quanquam per quendam S. Fridiani canonicum nobis nuperrime sit suggestum, quod idcirco dictus Ioachim cedendi licentiam postulabat, quod ad notitiam eius pervenerat, quod quidam parentes ipsius, ut eligeretur in episcopum, quaedam dederant, licet pauca, fraternitati tuae praesentium auctoritate mandamus, quatenus, inquisita super eis diligentissime veritate, si tibi constiterit, quod propter aliquam ex praemissis causis seu consimilibus idem I. episcopatui cesserit memorato, tu auctoritate nostra, sublato cuiuslibet contradictionis et appellationis obstaculo, dummodo necessitas vel utilitas id exposcat, licentiam ei tribuas ascendendi ad regimen ecclesiae Faventinensis, maxime si veritate subnititur, quod tam praefati praepositus et canonici Faventini, quam prior et capitulum sancti Fridiani nobis suis literis expresserunt, quod videlicet dictus I. loco tantummodo cesserit memorato, et non ordini, vel etiam dignitati. Tunc enim esset vehementissime praesumendum,

quod non propter crimen aliquod ab ipso commissum, sed causa poenitentiae peragendae ad vitam migraverit regularem, praesertim quum apostolica sedes post cessionem multo minus quam antea permisisset eidem tali crimine irretito in pontificali ordine ministrare; alioquin, quum durum nimis exstiterit, contra tam solenne concilium huiusmodi postulationem admittere, praeposito et canonicis memoratis iniungas, ut aliam personam sibi idoneam eligant in pastorem. [Dat. Lat. IV. Id. Febr. Pont. nostr. Ao. XI. 1208.]

Chapter XII

Latin source headnote: One who sought permission to resign is compelled to resign once he has obtained it.

The same, in the General Council.

Certain persons, insistently seeking permission to resign, omit to resign once it has been obtained. But since in seeking resignation of this kind they seemed to have regarded either the advantages of the churches over which they preside or their own salvation, and we do not will that either of these be impeded by the persuasions of certain persons who seek the things that are their own, or even by any fickleness, we decree that they are to be compelled to resign.

Qui petiit cedendi licentiam, ex quo illam obtinuit, cedere compellitur.

Idem in concilio generali.

Quidam cedendi licentiam cum instantia postulantes, ea obtenta cedere praetermittunt. Sed quum in postulatione cessionis huiusmodi aut ecclesiarum commoda, quibus praesunt, aut salutem videantur propriam attendisse, quorum neutrum suasionibus aliquorum, quaerentium quae sua sunt, seu etiam levitate qualibet nolumus impediri, eos ad cedendum decernimus compellendos.

Chapter XIII

Latin source headnote: One who submits himself to the grace of his adversary does not renounce his right.

Honorius III, to the Dean of the cathedral church and Master R., Cantor of Saint Denis of Liège.

Coming to the Apostolic See, I., a poor subdeacon, appeared and set forth in our presence that, when Pope I. of good memory, our predecessor, had by his letters given a mandate to our beloved son the Abbot of Emenco in the diocese of Trier and to the cantors of the cathedral church and of Saint Paul at Trier that, if nothing canonical stood in the way, they should, with the obstacle of appeal removed, assign to the same I. a prebend in the church of Saint Florentin at Koblenz, which James, dean of that church, had resigned into his hands through his letters, the same John showed the letters themselves to the aforesaid dean and the others, but the same dean, perhaps repenting of the resignation, concealed the abovementioned letters. At length, after the aforesaid letters had been restored to the same John, he presented them to the named judges so that they would execute the apostolic mandate.

And when those judges wished to fulfill the apostolic mandate, certain canons of the aforementioned church opposed them, saying that the aforesaid subdeacon had renounced his right that belonged to him from those letters. Therefore, when the said subdeacon denied this, the already-mentioned

canons produced certain witnesses to prove it. Since through them it seemed to have been proved that he had committed himself to the grace of the chapter, two of the aforesaid judges—namely, the cantors of Trier—decreed by sentence that the same John could no longer use the abovementioned letters, because the same I. had thus committed himself to the grace of his adversary, through which he seemed to have renounced the right belonging to him from those letters.

The same I., appealing from that sentence, although he had also appealed previously, fixed the most recently past vigil of Epiphany as the term of his appeal. When the same I. had come on that date and narrated to us the sequence of the fact as expressed above, we granted him as auditor concerning this our beloved son Peter of Colle Medio, our chaplain. But when his adversary had not come, though awaited for two months and more, nor did any sufficient authorized respondent appear for him, at length someone having letters to contradict and impetrate appeared before the same auditor. When he was believed in law to be insufficient to conduct the cause, we gave a mandate to the aforesaid auditor, who reported all these matters to us, that he consult some of the brothers concerning this and proceed in the cause according to their counsel. The same auditor, having taken the counsel of our beloved son T., cardinal-priest of the title of Sabina, and also of others, as justice required annulled by sentence the sentence of the aforesaid judges.

We therefore hold as ratified and firm the sentence of the aforementioned chaplain, and command you by apostolic writings that, revoking as void whatever you find was attempted after the appeal interposed to us, notwithstanding the sentence of the judges of Trier, you, by apostolic authority and with the obstacle of appeal removed, confer the aforesaid prebend upon the same subdeacon, unless some other canonical objection has been made and proved why this ought not to be fulfilled.

> Non renunciat iuri suo, qui gratiae adversarii se submittit.
>
> Honorius III. maioris ecclesiae Decano, et Magistro R. Cantori sancti Dionysii Leodiensis.
>
> Veniens ad sedem apostolicam I. pauper subdiaconus in nostra proposuit praesentia constitutus, quod, quum bonae memoriae I. Papa praedecessor noster dilecto filio abbati de Emenco Treverensis dioecesis, et maioris ecclesiae ac sancti Pauli cantoribus Treverensibus suis dederit literis in mandatis, ut eidem I., si nihil canonicum obviaret, praebendam in ecclesia sancti Florentini in Confluentia, quam Iacobus decanus ipsius ecclesiae in eius manibus per suas literas resignavit, sublato appellationis obstaculo assignarent eidem, eodem Ioanne literas ipsas praedicto decano et aliis ostendente, idem decanus de resignatione forte poenitens occultavit literas supradictas; demum eidem Ioanni praefatis literis restitutis, eas nominatis iudicibus, ut exsequerentur mandatum apostolicum praesentavit. Quumque iidem iudices apostolicum vellent adimplere mandatum, quidam se opposuerunt canonici ecclesiae memoratae, dicentes, subdiaconum antedictum renunciasse iuri suo, quod sibi ex ipsis literis competebat. Dicto igitur subdiacono hoc negante, iam dicti canonici ad hoc probandum testes aliquos produxerunt. Per quos quum videretur probatum, ipsum se gratiae capituli commisisse, duo iudices praedictorum, cantores videlicet Treverenses, sententialiter decreverunt, eundem Ioannem non posse uti de cetero literis supradictis, pro eo, quod idem I. sic adversarii se gratiae commisisset, per quod visus est renunciasse iuri, sibi ex ipsis literis competenti. A qua sententia idem I. appellans, licet etiam antea appellasset, in vigiliam Epiphaniae proximo praeteritam terminum suae appellationis praefixit. Ad quem quum idem I. venisset, et nobis, prout superius est expressum, facti seriem enarraret, dilectum filium Petrum de Colle medio, capellanum nostrum, super hoc sibi concessimus auditorem. Sed quum eius adversarius non accesserit, per duos menses et amplius exspectatus, nec ullus compareret pro eo sufficiens responsalis, tandem quidam literas habens ad contradicendum et impetrandum coram eodem

comparuit auditore. Qui quum de iure ad tractandum causam minus sufficiens crederetur, auditori praedicto, nobis haec omnia referenti, dedimus in mandatis, ut super hoc aliquos de fratribus consuleret, et in causa procederet iuxta consilium eorundem: idem auditor habito consilio dilecti filii nostri T. tituli Sabinae presbyteri cardinalis ac etiam aliorum, sententiam praedictorum iudicum sententialiter iustitia exigente cassavit. Nos igitur ratam et firmam habemus capellani sententiam memorati, vobis per apostolica scripta mandamus, quatenus revocantes in irritum, quicquid inveneritis post appellationem ad nos interpositam attentatum, sententia iudicum Treverensium non obstante, praedictam praebendam eidem subdiacono, nisi aliud canonicum obiectum fuerit et probatum, quare id non debeat adimpleri, auctoritate apostolica sublato appellationis obstaculo conferatis.

Chapter XIV

Latin source headnote: If a prelate absolves his subjects from obedience, he does not for this reason renounce the prelacy.

The same, to the Archbishop of Trier.

The letters of your fraternity read before us contained that the Abbot of Saint Peter of Toul, whom you commend for uprightness of conduct and life, humbly confessed to you that, when he was laboring under so grave an illness that his life was despaired of, on the counsel of a certain rival of his —in whom he trusted, since he did not believe him to be a rival—in the presence of certain of his monks, after revoking any sentence of excommunication that he had pronounced against any one of them, he absolved his monks from the obedience in which they were bound to him, and summoned the diocesan bishop so that he might resign the abbey into his hands. Nevertheless, having employed sounder counsel, he did not do this; and, although the same abbot was afterwards restored to health, all and each of the convent, when required by him in chapter, promised obedience and reverence.

Nevertheless, doubting about the fact that he had acted thus, he sought from you that you should counsel his salvation concerning this. On account of this, since, after counsel of those skilled in law had been taken concerning it, different persons thought differently, you sought our counsel as to whether the same abbot had resigned by this act. But we do not see that by such an act alone the same abbot resigned his governance.

Si praelatus ab obedientia subditos absolvit, non propter hoc praelaturae renunciat.

Idem Archiepiscopo Treverensi.

Lectae coram nobis fraternitatis tuae literae continebant, quod abbas sancti Petri Tullensis, quem de conversationis et vitae honestate commendas, tibi humiliter est confessus, quod, quum adeo gravi aegritudine laboraret, quod de vita desperaretur ipsius, ad cuiusdam aemuli sui consilium, de quo ipse, quum non crederet eum aemulum, confidebat, in quorundam monachorum suorum praesentia, excommunicationis sententia, si quam in eorum aliquem protulerat, revocata, monachos suos ab obedientia, in qua sibi tenebantur, absolvit, vocato dioecesano episcopo, ut abbatiam in eius manibus resignaret; quod tamen usus consilio saniori non fecit, et licet eidem abbati postmodum restituto sanitati, universi et singuli de conventu obedientiam et reverentiam requisiti ab eo in capitulo promiserunt. Idem tamen super eo, quod sic fecerat, dubitans, a te, ut super hoc saluti suae consuleres, postulavit, propter quod tu, quum habito super hoc iuris peritorum consilio diversi diversa sentirent, nostrum consilium, an idem abbas ex hoc resignaverit, requisisti. Nos autem ex tali facto duntaxat eundem abbatem suo resignasse regimini non videmus.

Chapter XV

Latin source headnote: An exempt abbot cannot resign without the Pope's permission.

Gregory IX, to the Bishops of Agde and Uzès.

Our beloved sons, the convent of the monastery of Saint G. of the Deserts, belonging immediately to the Roman Church, have made known to us by their letters that their abbot, feeling himself insufficient for the burden of governing the abbey, resigned into their hands. They also canonically elected as abbot our beloved son G., a monk of Saint Victor of Marseille, supplicating that, sparing their labors and expenses, we cause their election to be confirmed in those regions.

Therefore, since the said abbot could not resign without our permission, we, decreeing both the aforesaid election and resignation to be void and empty, command your discretion by apostolic writings that you cause the abbot himself to be restored to his place and, after he has been restored fully, receive his resignation in our stead.

> Abbas exemptus sine licentia Papae renunciare non potest.
>
> Gregorius IX. Agathensi et Uticensi Episcopis.
>
> Dilecti filii conventus monasterii sancti G. de Desertis immediate ad Romanam pertinentis ecclesiam, suis nobis literis intimaverunt, quod abbas eorum, sentiens se insufficientem oneri regiminis abbatiae, cessit in manibus eorundem; ipsi quoque dilectum filium G. monachum sancti Victoris Massiliensis elegerunt canonice in abbatem, supplicantes, ut eorum parcentes laboribus et expensis, electionem ipsorum faceremus in illis partibus confirmari. Quum igitur dictus abbas cedere sine licentia nostra nequiverit, nos tam electionem quam cessionem praedictas decernentes irritas et inanes, discretioni vestrae per apostolica scripta mandamus, quatenus abbatem ipsum loco suo restitui faciatis, quo integre restituto vice nostra recipiatis cessionem ipsius.

Title X: On Supplying the Negligence of Prelates

Chapter I

Latin source headnote: If the diocesan bishop, when requested, is unwilling to bless a Cistercian abbot, the abbot himself will be able to bless his monks.

Alexander III, to the Cistercians.

We establish, furthermore, that if a bishop, having been requested a third time with humility and devotion, as is fitting, should perhaps refuse to bless your substituted abbots, it shall be permitted to those abbots to bless their own monks and to exercise the other things that pertain to an office of this kind, until the bishops themselves reconsider their hardness and do not refuse to bless the abbots [who are to be blessed]. [Indeed, etc. Given at Benevento, on the fourth day before the Nones of July, in the second indiction, 1169.]

> **DE SUPPLENDA NEGLIGENTIA PRAELATORUM.**
>
> Si dioecesanus requisitus benedicere nolit Cisterciensem abbatem, ipse monachos suos benedicere poterit.
>
> Alexander III. Cisterciensibus.

> Statuimus praeterea, ut, si episcopus tertio cum humilitate ac devotione, sicut convenit, requisitus substitutos abbates vestros benedicere forte renuerit, eisdem abbatibus liceat proprios monachos benedicere, et alia, quae ad officium huiusmodi pertinent, exercere, donec ipsi episcopi suam duritiam recogitent, et abbates [benedicendos] benedicere non recusent. [Sane etc. Dat. Beneventi IV. Non. Iul. Ind. II. 1169.]

Chapter II

Latin source headnote: Regulars cannot convert to their own uses churches in which they possess the right of patronage; and if, when those churches are vacant, they do not present rectors to them within the time of the Lateran Council, the superior will ordain those churches.

Clement III.

As your fraternity has made known to us, certain monks and canons regular, having in your bishopric churches that pertain to their presentation, strive to assign them to their own uses, and, when they have become vacant, are unwilling to call persons [suitable] to them. Rather, on the occasion of a grant by certain bishops, they institute and remove vicars in them according to their own will, so burdening those admitted with pensions that they can neither competently serve the churches in their excessive poverty, nor answer to the bishop in episcopal dues, nor bestow hospitality upon travelers, as is fitting.

But, unwilling that the due and ancient condition of a church be overturned through anyone's indolence, we command that, unless the aforesaid churches are exempt from your jurisdiction, you take pains reasonably to correct the aforesaid excesses; and, unless the aforesaid persons present suitable persons to you for the vacant churches within the time established in the Lateran Council, from then on it shall be permitted to you, appeal being removed, to ordain in those churches rectors who know how both to preside over and to benefit them, yet in such a way that from this no prejudice is engendered for the patrons in the future. [Given at the Lateran, on the sixth day before the Kalends of March, in the second year of our pontificate, 1199.]

Textual note: The source attributes the decretal to Clement III but dates it to 1199, during the pontificate of Innocent III. Both printed statements are preserved rather than silently reconciled.

> Regulares in suos usus convertere non possunt ecclesias, in quibus ius obtinent patronatus, et, si infra tempus Lateranensis concilii, quando vacant, non praesentent rectores ad eas, superior orbinabit easdem.
>
> Clemens III.
>
> Sicut nobis tua fraternitas intimavit, monachi quidam et canonici regulares, ecclesias, quae ad praesentationem eorum pertinent, in tuo episcopatu habentes, propriis usibus deputare nituntur, nec ibi volunt ad eas, quum vacaverint, vocare personas [idoneas]; quin potius, occasione concessionis quorundam episcoporum, vicarios in eis pro sua instituunt et destituunt voluntate, admissos ita pensionibus onerantes, quod nec ecclesiis competenter possunt in paupertate nimia deservire, nec episcopo in episcopalibus respondere, neque hospitalitatem, sicut convenit, transeuntibus impertiri. Nolentes autem, ut status ecclesiae debitus et antiquus per insolertiam alicuius subvertatur, mandamus, quatenus, nisi a iurisdictione tua exemptae sint ecclesiae supradictae, praedictos excessus studeas rationabiliter emendare, et, nisi praedictae personae infra tempus in Lateranensi concilio constitutum ad vacantes ecclesias tibi personas idoneas praesentaverint, ex tunc tibi liceat appellatione remota in

eisdem ordinare rectores, qui eis et praeesse noverint et prodesse, ita tamen, quod ex hoc nullum patronis praeiudicium in posterum generetur. [Dat. Lat. VI. Kal. Mart. Pont. nostr. Ao. II. 1199].

Chapter III

Latin source headnote: A superior supplies the negligence of an inferior in conferring benefices if the time of the Lateran Council has elapsed, and a collation afterwards made by the inferior is not valid.

Innocent III.

Although our beloved sons Master H., Archdeacon of H., and R., procurator of R. of Saint Cadimundus, litigated for a rather long time before us concerning the archdeaconry of Richmond, nevertheless it was afterwards made known to our ears that it belonged to neither of them by right, inasmuch as it had been granted to neither within the time defined in the Lateran Council.

Therefore, lest we seem to neglect our own right, we who sustain others in their justice, we command your discretion by apostolic writings that, after summoning the same men so that they may set forth whatever they decide should be set forth in opposition, you inquire more diligently into the truth. And if it is established for you that the archdeaconry of Richmond had been vacant for a year, but that the period of six months during which the grant pertained either to the archbishop or to the chapter was computed not from the vacancy but from knowledge of it, since, because the Archbishop of York has no other superior, the grant had from that time devolved upon us, you shall, with the obstacle of appeal removed, impose silence upon both men concerning it, publicly declaring that the archdeaconry pertains to our grant, and decreeing void and empty whatever anyone should afterwards presume to ordain concerning it.

> Supplet superior inferioris negligentiam in beneficiis conferendis, si tempus Lateranensis concilii lapsum sit, et collatio per inferiorem postea facta non valet.
>
> Innocentius III.
>
> Licet dilecti filii magister H. archidiaconus de H. et R. procurator R. de sancto Cadimundo super archidiaconatu Richemundiae diutius litigaverint coram nobis, tamen postmodum nostris est auribus intimatum, quod neutri eorum de iure competeret, utpote qui neutri fuerat concessus infra tempus in Lateranensi concilio definitum. Ne igitur ius nostrum negligere videamur, qui alios in sua iustitia confovemus, discretioni vestrae per apostolica scripta mandamus, quatenus convocatis eisdem, ut proponant, si quid contra duxerint proponendum, inquiratis diligentius veritatem, et si vobis constiterit, archidiaconatum Richemundiae vacasse per annum, tempore tamen semestri, quo vel ad archiepiscopum, vel ad capitulum donatio pertinebat, non a vocatione, sed a notitia computato, quum pro eo, quod Eboracensis archiepiscopus alium superiorem non habet, extunc fuerat ad nos donatio devoluta, utrique super eo sublato appellationis obstaculo silentium imponatis, archidiaconatum ad nostram spectare donationem publice denunciantes, decernentes irritum et inane, si quid in eo postmodum quisquam praesumserit ordinare.

Chapter IV

Latin source headnote: If the one to whom the collation of a benefice belongs confers after the time of the Lateran Council has elapsed, the collation is not valid, unless it is tolerated out of mercy.

The same, to Master P. of Châteauneuf and R., monk of Fontfroide, legate of the Apostolic See.

We have received the letters of your discretion [in which you implore an apostolic response concerning those matters that are doubtful for you, namely], that, when in certain churches subject to your legation certain benefices and dignities had been vacant for so long that both the prelates and the chapters were deprived of the right of instituting according to the tenor of the Lateran Council, after your arrival became known [to them], they presumed to institute less suitable persons in those benefices.

Hence, although you received counsel from men skilled in law that by apostolic authority you should annul such institutions, made by those to whom it did not belong and who by their own fault had deprived themselves of the right of instituting, you first decreed that you would have our counsel in this. You set forth, furthermore, etc. We therefore, responding briefly to your inquiry, command your discretion by apostolic writings that, if you know the benefices or dignities themselves to have been assigned to suitable persons, through tolerance you permit them to be possessed peacefully by those persons. Otherwise, removing the persons themselves entirely from them, you, supported by our authority, shall not delay in ordaining them as quickly as possible with suitable persons, [with no obstacle of contradiction or appeal], [the contradictors, etc. Given at Rome, at Saint Peter's, on the eighth day before the Ides of December, in the seventh year, 1204.]

> Si is, ad quem spectat beneficii collatio, lapso tempore Lateranensis concilii consecrat; non valet collatio: nisi de misericordia toleretur.
>
> Idem Magistro P. de Castro novo, et R. monacho Fontis frigidi, apostolicae sedis Legato.
>
> Literas vestrae discretionis accepimus [quibus responsum apostolicum imploratis super his, quae ambigua vobis exsistunt, videlicet], quod, quum in quibusdam ecclesiis, legationi vestrae subiectis, quaedam beneficia et dignitates tanto tempore vacavissent, quod tam praelati quam capitula secundum tenorem Lateranensis concilii essent iure instituendi privati, postquam adventus vester [illis] innotuit, in beneficiis illis personas minus idoneas instituere praesumpserunt. Unde, quum receperitis consilium a viris peritis, ut tales institutiones ab his, quorum non intererat, et qui propria culpa iure instituendi se privaverant, factas, auctoritate apostolica cassaretis, in hoc nostrum prius decrevistis consilium habere. Proposuistis praeterea etc. Nos igitur inquisitioni vestrae breviter respondentes Discretioni vestrae per apostolica scripta mandamus, quatenus, si beneficia vel dignitates ipsas noveritis personis idoneis assignatas, eas de patientia permittatis ab ipsis pacifice possideri: alioquin personas ipsas amoventes prorsus ab ipsis, eas de personis idoneis auctoritate nostra suffulti, [nullius contradictionis vel appellationis obstaculo] non differatis quantocius ordinare, [contradictores etc. Dat. Rom. ap. S. Petr. VIII. Id. Dec. Ao. VII. 1204.]

Chapter V

Latin source headnote: The one to whom the collation of a benefice pertained in the first place will not be able to confer it after the time of the Lateran Council has elapsed.

The same, to the Bishop of Samo.

Our beloved son P., cardinal-priest of the title of Saint Marcellinus, having been granted as auditor to S. and R., the procurators of P. and G. appearing at the Apostolic See, the same treasurer set forth before him that, when in the church of Salamanca, in which the election of the cantor belongs jointly

to the bishop and chapter, the cantorship was vacant, the said chapter had rather often admonished the bishop that he should assemble together with it to celebrate the election of a cantor. When that bishop neglected to do this within the period of six months, the chapter, desiring to use its right, elected as cantor in the chapter of the aforementioned church, as is customary, the above-mentioned Paschasius, a canon of that place, appealing lest anything be done to the prejudice of the same election. The above-mentioned treasurer sought that this election be confirmed by apostolic authority and that the election that our venerable brother the Archbishop of Compostela had made after an appeal of this kind concerning G., a cleric entangled in many crimes and at that time bound by the bond of excommunication, be annulled as less than canonically celebrated.

But the said Dominic set forth on the other side that, after the period of six months had passed, within which the election of the cantor belonged to the bishop and chapter, the dean and certain canons of Salamanca, without consulting the bishop, the archdeacon, and certain canons who were present in the city, presumed to elect very foolishly and inordinately—not at the customary hour or in the chapter according to custom, but rather in the church, with certain laymen having been called. And when they were unwilling to approach the presence of the already-mentioned archbishop, who had summoned them on account of this, he, understanding that the authority of electing had devolved upon him according to the statute of the Lateran Council, elected the above-mentioned G. as cantor and caused him to be corporally invested with the cantorship.

Afterwards, however, the dean and his accomplices, making no mention to us of these matters and suggesting that the bishop—who, though admonished rather often, had been unwilling to elect within six months, to the detriment of the church—had, after the cantor who had been instituted by the same dean with the greater part of the chapter was despoiled, instituted another as cantor, obtained our letters to the dean, archdeacon, and archpriest of Ávila. When, by the authority of these letters, the above-mentioned G. had been summoned by those judges, he prohibited them from proceeding against him by the said letters, since no mention was made in them of his election made by the archbishop; and, both because of this and [also] because he had been cited peremptorily to distant places by the first citation, and also because the judges were related in the line of consanguinity to certain of the electors of the said Paschasius, he appealed to the Apostolic See. But the judges nevertheless, going to the church of Salamanca, contrary to justice inducted the often-mentioned P. into possession of the cantorship as a measure for preserving the matter.

Therefore, when the procurators themselves had litigated for some time before the same cardinal concerning these and other matters, and he had faithfully reported to us what had been set forth before him, because it was established for us that the dean of Salamanca and his followers, after the period of six months had elapsed—within which the bishop and chapter, insofar as it belonged jointly to them, had neglected to proceed to the election of the cantor—celebrated the election of the above-mentioned P. less than canonically, we decree that election void and empty. We also decree that the appeal interposed by the dean and his supporters could in no way impede the act of the archbishop, to whom the authority of electing had already devolved.

But because certain matters were objected against the person of G. himself, concerning which full proof could not be made for us, [we command your discretion by apostolic writings] that, unless some canonical impediment stands in the way of the already-mentioned G., you confirm the election made concerning him, with the obstacle of appeal removed, causing him to enjoy peaceful possession

of the same cantorship; the contradictors, etc. [Given at the Lateran, on the fifth day before the Kalends of November, in the thirteenth year, 1210.]

> Is, ad quem primo loco spectabat collatio beneficii, lapso tempore Lateranensis concilii conferre non poterit.
>
> Idem Episcopo Samo.
>
> Dilecto filio nostro P. tituli sancti Marcellini presbytero cardinali S. et R. procuratoribus P. et G. apud sedem apostolicam constitutis auditore concesso, idem thesaurarius proposuit coram eo, quod, quum in Salamantina ecclesia, in qua cantoris electio ad episcopum et capitulum communiter pertinet, cantoria vacante, dictum capitulum saepius episcopum monuisset, ut ad celebrandam cantoris electionem cum eo pariter conveniret, eodem episcopo infra semestre tempus id facere negligente, capitulum uti cupiens iure suo, in ecclesiae memoratae capitulo, sicut est moris, supradictum Paschasium eiusdem loci canonicum in cantorem elegit, ne quid in eiusdem electionis praeiudicium fieret appellando, quam supradictus thesaurarius auctoritate apostolica petiit confirmari, ac electionem, quam venerabilis frater noster Compostellanus archiepiscopus post appellationem huiusmodi de G. clerico multis criminibus irretito ac tunc temporis vinculo excommunicationis adstricto fecerat, tamquam minus canonice celebratam cassari. Dictus vero Dominicus proposuit ex adverso, quod, emenso VI. mensium spatio, infra quod ad episcopum et capitulum cantoris electio pertinebat, decanus et quidam canonici Salamantini, episcopo, archidiacono et nonnullis canonicis qui praesentes in civitate aderant, inconsultis, non consueta hora, vel in capitulo iuxta morem, sed in ecclesia potius, quibusdam laicis advocatis stulte et inordinate nimis eligere praesumpserunt. Et quum iam dicti archiepiscopi, qui eos propter hoc evocaverat, adire praesentiam noluissent, ipse intelligens eligendi auctoritatem ad se iuxta Lateranensis concilii statutum devolutam, supradictum G. in cantorem elegit, et eundem fecit de cantoria corporaliter investiri. Postmodum autem decanus et sui complices nobis, de his mentione non habita, suggerendo, quod episcopus, qui monitus saepius infra sex menses eligere noluerat in ecclesiae detrimentum, cantore, qui ab eodem decano cum maiore parte capituli institutus fuerat, spoliato, alium instituerat in cantorem, ad decanum, archidiaconum et archipresbyterum Abulenses nostras literas impetrarunt. Quarum auctoritate, quum supradictus G. ab eisdem fuisset iudicibus evocatus, eisdem inhibuit, ne per dictas literas procederent contra eum, quum in eis de sua electione facta per archiepiscopum nulla mentio haberetur, et cum propter hoc, tum [etiam], quia prima citatione ad loca remota peremptorie citatus exstiterat, tum etiam, quia iudices quosdam ex electoribus dicti Paschasii consanguinitatis linea contingebant, ad sedem apostolicam appellavit. Sed iudices nihilominus ad Salamantinam ecclesiam accedentes, saepedictum P. in cantoriae possessionem causa rei servandae contra iustitiam induxerunt. Quum igitur super his et aliis coram eodem cardinali procuratores ipsi aliquamdiu litigassent, et ipse nobis fideliter retulisset, quae proposita fuerant coram eo, Quia nobis constitit a Salamantino decano et eius sequacibus, post elapsum sex mensium spatium, infra quod episcopus et capitulum, prout communiter spectabat ad eos, procedere ad electionem cantoris neglexerant, electionem supradicti P. minus canonice celebratam, eandem decernimus irritam et inanem, et appellationem a decano et suis fautoribus interpositam factum archiepiscopi, ad quem iam erat eligendi auctoritas devoluta, nequivisse aliquatenus impedire. Quia vero contra personam ipsius G. quaedam obiecta fuerunt de quibus nobis non potuit fieri plena fides, [discretioni vestrae per apostolica scripta] Mandamus, quatenus, nisi iam dicto G. aliquod canonicum obviet, electionem de ipso factam sublato appellationis obstaculo confirmetis, facientes ipsum eiusdem cantoriae pacifica possessione gaudere; contradictores etc. [Dat. Lat. V. Kal. Nov. Ao. XIII. 1210.]

Title XI: On the Times of Ordinations and the Quality of Those to Be Ordained

Chapter I

Latin source headnote: Sacred orders ought not to be conferred on Sundays or on the Saturday of Pentecost by anyone other than the Pope.

Alexander III, to the Bishop of Bath.

Moreover, let it be permitted to no one except the Roman Pontiff to ordain subdeacons on Sundays, although they have permission on these days to celebrate the consecration of virgins dedicated to God and the conferral of minor orders. Indeed, on the Saturday of Pentecost it shall not be permitted to anyone to celebrate sacred orders, since they are celebrated in the following week after the grace of the Holy Spirit has been received.

> **DE TEMPORIBUS ORDINATIONUM ET QUALITATE ORDINANDORUM.**
>
> Diebus dominicis vel sabbato Pentecostes sacri ordines ab alio, quam a Papa, conferri non debent.
>
> Alexander III. Batoniensi Episcopo.
>
> Subdiaconos autem nulli, nisi Romano Pontifici, liceat in diebus dominicis ordinare, quamvis consecrandi Deo dicatas virgines, et minores ordines his diebus habeant licentiam celebrandi. Sabbato quidem Pentecostes non liceat alicui sacros ordines celebrare, quum in sequenti septimana recepta Spiritus sancti gratia celebrentur.

Chapter II

Latin source headnote: A custom that sacred orders are conferred outside the established times is not valid.

The same, to the Bishop of Hereford.

Indeed, concerning the fact that you said it is customary in certain churches of Scotland and Wales, at the dedications of churches or altars, to promote clerics to sacred orders outside the fasts of the Four Times, we signify to your prudence that that custom, as hostile to ecclesiastical institution, is both detestable and utterly to be disapproved. And, unless the multitude and the ancient custom of the land were [the cause], those ordained in such a manner ought not to be permitted to minister in the orders they received. For among us those so ordained would be deposed, and those ordaining would be deprived of the authority to ordain. [But concerning that, etc.; cf. the following chapter.]

> Non valet consuetudo, quod extra statuta tempora sacri ordines conferantur.
>
> Idem Episcopo Herfordensi.
>
> Sane super eo, quod moris esse dixisti in ecclesiis quibusdam Scotiae et Valliae in dedicationibus ecclesiarum vel altarium extra ieiunia quatuor temporum clericos ad sacros ordines promovere, prudentiae tuae significamus, quod consuetudo illa, utpote institutioni ecclesiasticae inimica, et detestabilis est et penitus improbanda, et, nisi multitudo et antiqua consuetudo terrae esset [in causa] taliter ordinati non deberent permitti in susceptis ordinibus ministrare. Nam apud nos sic ordinati deponerentur, et ordinantes privarentur auctoritate ordinandi. [De eo autem etc. cf. cap. seq.]

Chapter III

Latin source headnote: Minor orders can be conferred on feast days, but sacred orders ought to be conferred in the Four Times, or on Holy Saturday, or on the Saturday before Passion Sunday.

The same, to the same.

But concerning what you asked—whether it is permitted outside the fasts of the Four Times to promote some persons as doorkeepers, readers, exorcists, or acolytes, or even to promote subdeacons—we respond thus to your prudence: it is lawful for bishops to promote one or two persons to minor orders on Sundays and other feast days; but no bishop other than the Roman Pontiff is permitted to ordain anyone to the subdiaconate except in the Four Times, on Holy Saturday, or on the Saturday before Passion Sunday.

> Minores ordines conferri possunt diebus festis, sacri vero conferri debent in quatuor temporibus, vel sabbato sancto, vel sabbato de passione.
>
> Idem eidem.
>
> De eo autem, quod quaesivisti, an liceat extra ieiunia quatuor temporum aliquos in ostiarios, lectores, exorcistas, vel acolythos promovere, aut etiam subdiaconos promovere, prudentiae tuae taliter respondemus, quod licitum est episcopis, dominicis et aliis festivis diebus unum aut duos ad minores ordines promovere; sed ad subdiaconatum, nisi in quatuor temporibus, aut in sabbato sancto, vel in sabbato ante dominicam de passione, nulli episcoporum, praeterquam Romano Pontifici, licet aliquos ordinare.

Chapter IV

Latin source headnote: A secret criminal can be admonished not to be promoted to orders, but ought not to be prohibited.

The same.

From the tenor of your letters we have learned that N., a cleric, transgressed to such a degree that, if his sin were public, he would be degraded from the order that he received and could no longer be promoted to higher orders. But because you said that his sin was secret and private, we command your fraternity by apostolic writings that you impose upon him a worthy penance and counsel him that, after part of the penance has been performed, he use the order received and, remaining content with it, ascend no further to higher orders. Nevertheless, because the sin is secret, if he wishes to be promoted, you cannot and ought not for any reason to prohibit him. [Given at Benevento, on the fourth day before the Kalends of May.]

> Criminosus occultus moneri potest, ne promoveatur ad ordines, sed prohiberi non debet.
>
> Idem.
>
> Ex tenore tuarum literarum accepimus, quod N. clericus adeo deliquit, quod, si peccatum eius esset publicum, de gradaretur ab ordine, quem suscepit, et amplius non posset ad superiores ordines promoveri. Verum quoniam peccatum ipsius fore occultum et privatum dixisti, fraternitati tuae per apostolica scripta mandamus, quatenus poenitentiam ei condignam imponas, et ei suadeas, ut parte poenitentiae peracta ordine suscepto utatur, quo contentus exsistens ad superiores ordines amplius non ascendat. Verum tamen, quia peccatum occultum est, si promoveri voluerit, eum non potes, nec debes aliqua ratione prohibere. [Datum Beneventi IV. Kal. Maii.]

Chapter V

Latin source headnote: A religious ought not to be ordained contrary to the prohibition of his prelate.

Lucius III, to the Archbishop of Tours.

Through your report it has reached our ears that certain religious, having zeal for God, desire to be promoted to higher orders, thinking that a greater reward is to be accumulated the higher the office that they, placed in a greater grade, have executed; but their prelates contradict their desires. Therefore, your fraternity decided to inquire whether those constituted in lower orders ought, according to the good pleasure of their prelates, to whom the promotion is displeasing, to abstain from higher orders, or whether they may be promoted despite the resistance of their prelates.

We therefore respond thus to your question: it is more honorable and safer for subjects, by rendering the obedience owed to their superiors, to serve in a lower ministry than, with scandal to their superiors, to seek the dignity of grades. Nor is the desire of the subjects to be fostered in this matter, since it may be that their prelates know secret matters committed by them, from which it is established for the prelates that those subjects cannot be elevated with their conscience safe, because the kingdom of God is acquired not in the loftiness of grades, but in the breadth of charity.

> Religiosus contra prohibitionem praelati sui ordinari non debet.
>
> Lucius III. Archiepiscopo Turonensi.
>
> Ad aures nostras te significante pervenit, quod religiosi quidam zelum Dei habentes ad superiores desiderant ordines promoveri, putantes, maius praemium cumulandum, quo in maiore gradu positi sublimius officium fuerint, exsecuti; sed praelati eorum desideriis contradicunt. Ideoque tua duxit fraternitas requirendum, an in inferioribus ordinibus constituti iuxta beneplacitum suorum praelatorum, quibus promotio displicet, a superioribus debeant abstinere, an valeant praelatis suis renitentibus promoveri. Tuae igitur quaestioni taliter respondemus, quod honestius et tutius est subiectis debitam praepositis obedientiam impendendo in inferiori ministerio deservire, quam cum praepositorum scandalo graduum appetere dignitatem. Nec est in hac parte subiectorum desiderium confovendum, quoniam esse potest, quod praelati eorum commissa secreta noverint, ex quibus constat eis, quod salva conscientia nequeunt sublimari, quia non in sublimitate graduum, sed in amplitudine caritatis acquiritur regnum Dei.

Chapter VI

Latin source headnote: A metropolitan is consecrated by all his suffragans, but a suffragan by three, at the metropolitan's command.

The same.

If an archbishop has met [his day of] death and another archbishop is to be ordained [having been elected], all the bishops of the same province shall assemble at the metropolitan see, so that he may be elected and ordained by them all. For it is fitting that the one who ought to preside over all of them be elected and ordained by all of them. The other bishops of the province, however, if it should be necessary, can, with the rest consenting, be ordained by three at the command of the archbishop; but it is better if he himself with them all elects the one who is worthy and all together consecrate the pontiff.

> Metropolitanus ab omnibus suffraganeis consecratur; suffraganeus vero a tribus, metropolitano iubente.
>
> Idem.
>
> Si archiepiscopus [diem] obierit, et alter fuerit ordinandus archiepiscopus [electus], omnes episcopi eiusdem provinciae ad sedem metropolitanam conveniant, ut ab omnibus ipse eligatur et ordinetur. Oportet autem, ut ipse, qui illis omnibus praeesse debet, ab omnibus illis eligatur et ordinetur. Reliqui vero comprovinciales episcopi, si necesse fuerit, ceteris consentientibus, a tribus iussu archiepiscopi poterunt ordinari; sed melius est, si ipse cum omnibus eum, qui dignus est, elegerit, et cuncti pariter pontificem consecraverint.

Chapter VII

Latin source headnote: It says the same as in the preceding chapter.

From the Council of Arles.

Let no bishop presume to ordain a bishop without the metropolitan's permission, nor a metropolitan bishop without three or two bishops of the same province, in such a way that the other bishops of the province are admonished by letters so that they may signify by their reply that they have consented. But if any doubt has [arisen] between the parties, the metropolitan shall agree in the election with the greater number.

> Dicit idem, quod in praecedenti.
>
> Ex concilio Arelatensi.
>
> Ne episcopi sine metropolitani permissu, nec episcopus metropolitanus sine tribus vel duobus episcopis comprovincialibus praesumat episcopum ordinare, ita, ut alii episcopi comprovinciales admoneantur epistolis, ut se suo responso significent consensisse. Quod si inter partes aliqua [nata] dubitatio fuerit, maiori numero metropolitanus in electione consentiat.

Chapter VIII

Latin source headnote: One ordained outside the proper times is suspended until a dispensation is granted to him, and the one ordaining is punished.

Urban III, to the Archbishop of Pisa.

Since certain Sardinian bishops, as has been set forth to us on your part, have not paid certain persons money that they were bound by oath to pay, and a certain bishop of that land celebrated orders on the day of the dedication of a church, although that day was not established for this purpose, and certain persons have also sometimes sworn that they ought not to speak to a brother or sister, father or mother, or furnish any assistance to them, your fraternity asked us what should be done concerning matters of this kind.

We, therefore, unwilling to deny what, with charity suggesting it, you appear to seek from us, respond to your discretion by the present letters that vengeance is to be taken against those bishops who transgressed their oath, more gravely to the extent that they are eminent in greater dignity and that by their example others could more easily be incited to similar acts. You ought, moreover, to correct by canonical discipline the bishop who celebrated orders on a day on which he ought not to have done so, and to render those ordained unable to exercise the orders received for so long as they do not obtain from us or our successors the grace of restoration. But those who swear not to speak to

father, mother, sister, or brother, or to show them the assistance of humanity, are to be absolved from observance of that oath, since it is unlawful and contrary to all reason, although a suitable penance is to be enjoined upon them for having sworn wrongly.

> Ordinatus extra tempora suspenditur, donec dispensetur cum eo, et ordinans punitur.
>
> Urbanus III. Archiepiscopo Pisano.
>
> Quum quidam episcopi Sardi, sicut nobis est ex tua parte propositum, quibusdam pecuniam, sicut iuramento tenebantur adstricti, non solverint, et quidam episcopus ipsius terrae in die dedicationis ecclesiae ordines, quum dies ille ad hoc institutus non fuerit, celebraverit, quidam etiam iuraverint aliquando, quod fratri vel sorori, patri vel matri loqui non debeant, aut quodlibet eis subsidium ministrare, a nobis, quid de huiusmodi faciendum sit, tua fraternitas requisivit. Nos itaque denegare nolentes quod a nobis caritate suggerente postulare videris, discretioni tuae praesentibus literis respondemus, quod in episcopos illos, qui suum transgressi sunt iuramentum, est tanto gravius vindicandum, quanto maiori praeeminent dignitate, et eorum exemplo facilius alii poterunt ad similia provocari. Episcopum autem, qui die, quo non debuit, ordines celebravit, canonica disciplina corrigere, et ordinatos a susceptis ordinibus tamdiu reddere debes expertes, donec apud nos vel successores nostros restitutionis gratiam consequantur. Illi vero qui iurant non loqui patri, vel matri, vel sorori, vel fratri, aut eis humanitatis subsidium exhibere, absolvendi sunt ab illius observantia iuramenti, quum illicitum sit, et omni contrarium rationi, iniuncta tamen eis de hoc, quod male iuraverunt, poenitentia competenti.

Chapter IX

Latin source headnote: Greeks ought not to be ordained by Latins, nor conversely, if they differ in the rite of ordaining.

Celestine III, to the Archbishop of Otranto.

Since, according to ecclesiastical rules and the institutions of the holy Pontiffs, sacred orders are to be conferred at certain times, certain Greek bishops, applying observance of their rite and custom to Latin clerics, indiscriminately promote them to sacred orders, which ought not to be conferred except in the Four Times. Indeed, as we learned from the report of John, the bearer of the present letters, when he had been presented to a certain Greek bishop by a certain lord whom he had served, so that he might celebrate divine offices in that lord's chapel, the same Bishop Cathamarsenis promoted him to the priesthood. His diocesan bishop afterwards believed that he should be suspended from the execution of the office or of the order received in such a manner.

That custom is indeed hostile to ecclesiastical custom, detestable, and utterly to be disapproved; and, unless the multitude and ancient custom were the cause, those so ordained ought not to be permitted to minister in the orders they received. For among us those so ordained would be deposed, and by the censure of the canons those ordaining would be deprived of the authority to ordain.

But because, as is said, in the regions of Calabria Latins are ordained by Greeks and Greeks by Latins according to the observance of the institution of each, and because your fraternity will be better able to discern whether this has been observed from antiquity, we have decided to commit the judgment of the same John to you. We command by apostolic writings, and by the authority of the present letters grant you power, that, after the truth and the observance of the custom have been more diligently learned—if any custom concerning these matters has been received by Latin clerics and

approved until now—or if it should appear to you that you should discern otherwise concerning John himself, you do not delay in establishing, with the evasion of appeal ceasing, what you can establish with the salvation of his soul. You shall consider very carefully whether he is to be reordained or ought, without danger to his soul, to celebrate in the order thus received, with the addition, if you know anything that is to be added to complete the order. But we do not will that mixtures and customs of rites in orders be observed hereafter, nor that this case be taken as an example by others if you decide that a merciful dispensation should be granted to this man.

> Graeci a Latinis ordinari non debent, nec econtra, si in ritu ordinandi sunt diversi.
>
> Coelestinus III. Hidronensi Archiepiscopo.
>
> Quum secundum regulas ecclesiasticas et sanctorum instituta Pontificum sacri sunt ordines in certis temporibus conferendi, quidam Graeci episcopi ritus sui et consuetudinis observantiam in Latinos clericos exercentes, eos ad sacros ordines passim provehunt, qui non sunt praeterquam in IV. temporibus conferendi. Sane sicut latoris praesentium Io. relatione cognovimus, quod, quum ipse a quodam domino, cui servierat, et ut in capella sua divina officia celebraret, cuidam Graeco episcopo foret praesentatus, idem episcopus Cathamarsenis eum in sacerdotem promovit, quem postmodum dioecesanus episcopus ab exsecutione officii vel taliter suscepti ordinis credidit suspendendum, quae utique consuetudo consuetudini ecclesiasticae inimica et detestabilis est et penitus improbanda, et, nisi multitudo et antiqua consuetudo esset in causa, sic ordinati non deberent permitti in susceptis ordinibus ministrare. Nam apud nos sic ordinati deponerentur, et ordinantes auctoritate ordinandi de censura canonum privarentur. Quia vero, sicut dicitur, in partibus Calabriae ut Latini a Graecis, et Graeci a Latinis secundum alterutrius institutionis observantiam ordinantur, et an sit antiquitus observatum, fraternitati tuae, quae, discernere melius ista poterit, eiusdem Iohannis iudicium duximus committendum, per apostolica scripta mandantes et potestatem tibi praesentium auctoritate indulgentes, ut, cognita diligentius veritate et observantia consuetudinis, si qua super his a Latinis clericis recepta est, et hactenus approbata, vel si tibi apparuerit aliter discernere de ipso Iohanne, quod cum salute animae suae poteris, cessante appellationis diffugio, statuere non moreris, studiosius attendens, utrum reordinandus sit, an sine periculo animae suae in sic recepto ordine debeat celebrare, addito, si quid noveris in supplemento ordinis adiungendum. Nolumus autem de cetero commixtiones et consuetudines rituum in ordinibus observari, nec sumi ab aliis in exemplum, si cum isto duxeris misericorditer dispensandum.

Chapter X

Latin source headnote: If a monk of one order receives the priesthood in a second order to which he passed, upon returning to the first order he will minister freely in it.

Innocent III, to the Abbot and Convent of Carilocum.

On your part it was disclosed to our apostolate that a certain monk of yours, transferring himself to the Black Monks and assuming their black habit there, was promoted to the order of priesthood in that habit. Hence, because on this point you doubted whether he ought to minister in the order thus assumed, we, resolving the scruple of doubt of this kind, command you by apostolic writings that, unless another canonical impediment stands in his way, you permit that monk freely to execute the office of priest. [Given at Rome, at Saint Peter's, 1198.]

> Si monachus unius ordinis in secundo ordine, ad quem transivit, recipit sacerdotium, ad primum ordinem rediens, in eo libere ministrabit.

Innocentius III. Abbati et Conventui Cariloci.

Ex parte vestra nostro fuit apostolatui reseratum, quod quidam monachus vester, se ad nigros monachos transferens, et habitum eorum nigrum ibidem assumens, ad sacerdotii ordinem in ipso habitu est promotus. Unde, quia in hoc articulo dubitastis utrum in assumpto taliter ordine ministrare debeat, nos huiusmodi dubietatis scrupulum enodantes, per apostolica vobis scripta mandamus, quatenus, nisi ei canonicum aliud obviet, ipsum monachum officium sacerdotis libere exsequi permittatis. [Dat. Romae ap. S. Petrum, 1198.]

Chapter XI

Latin source headnote: If a Greek subject to a Latin bishop is ordained by a Greek without the Latin's permission, execution of the order is forbidden to him; but if it was with permission, he is then tolerated.

The same, to C., Cardinal-Priest and legate of the Apostolic See.

As to the translation of a pontiff—(*And below:* [cf. c. 4, On the Office of a Legate, I.30.]) But concerning the matter on which you wished to consult us, namely that many Greek clerics dwelling in the dioceses of Latins receive from Greek bishops—not in the Four Times—sometimes all the orders together and sometimes a part of them, and are afterwards prohibited by Latin bishops from celebrating, we respond thus to your consultation: when a Greek cleric subject to a Latin bishop is ordained by a Greek pontiff, unless it is done by the mandate or permission of his bishop, execution of the order thus received is to be forbidden to him, as one ordained by another's pontiff without the mandate or permission of his own bishop.

But if, by the mandate or permission of his own prelate, he was ordained by a Greek pontiff according to the custom of the Greeks, although the Latin bishop who causes his clerics to be ordained by a Greek prelate is to be blamed, nevertheless, for as long as such a custom is tolerated by the Church, the cleric ought not to be impeded from executing the orders thus received. Nevertheless, on this point we have resolved at an opportune time to ordain, with the counsel of our brothers, what shall seem honorable.

Si Graecus episcopus Latino subiectus ordinatur sine Latini licentia a Graeco, interdicitur sibi exsecutio: si vero de licentia, tunc toleratur.

Idem C. Presbytero Cardinali, apostolicae sedis Legato.

Quod translationem pontificis (Et infra: [cf. c. 4. de off. leg. I. 30]) Super eo vero, quod nos consulere voluisti, quod multi Graecorum clerici consistentes, in dioecesibus Latinorum ab episcopis Graecis non in quatuor temporibus, interdum omnes ordines simul, nonnunquam partem recipiunt, qui postmodum prohibentur a Latinis episcopis celebrare, Consultationi tuae taliter respondemus, quod, quum clericus Graecus, episcopo Latino subiectus, a Graeco pontifice ordinatur, nisi de mandato vel licentia sui episcopi fiat, interdicenda est ei ordinis exsecutio sic suscepti, tanquam ab alieno pontifice sine mandato vel licentia sui episcopi ordinato. Si vero de mandato vel licentia sui praesulis a Graeco pontifice secundum morem Graecorum fuerit ordinatus, licet culpandus sit episcopus Latinus, qui clericos suos a Graeco facit antistite ordinari, quamdiu tamen talis mos ab ecclesia toleratur, impediri non debet ab exsecutione ordinum taliter susceptorum. Nos tamen super hoc articulo disposuimus tempore oportuno de consilio fratrum nostrorum quod honestum visum fuerit ordinare.

Chapter XII

Latin source headnote: One ordained by the Pope is not promoted to higher orders without the Pope's permission.

The same, to the Bishop of Modena.

Since in distributing [orders the canonical constitutions distinguish certain times, which approved custom has taught are to be observed especially concerning sacred orders, we are compelled both to wonder and to be disturbed because, as we have learned from many and as is circulated in common report, the infamous Bishop of Bologna presumed to ordain Albert, bishop-elect of Imola, as deacon and priest at the same time. But because we are unwilling to leave uncorrected things that are attempted contrary to the canonical constitutions—especially where canonical laws are taught with greater renown—lest they pass as an example to presumptuous persons, since these things not only do not lack the mark of presumption and foolishness but also that of ambition and depravity, we command your discretion by apostolic writings, under precept, that you inquire most diligently into the truth concerning these matters, nevertheless hearing the excuses of the one ordaining and of the one ordained, if perhaps they decide to allege any, so that, instructed by your report, we may proceed more fully and securely in the business itself.] For we remember that this was humbly sought from us and mercifully granted: that, because the aforesaid A. was a subdeacon of the Roman Church, we would command him to be promoted by the Bishop of Bologna. [Given at the Lateran, 1200.]

> Ordinatus a Papa sine licentia Papae ad superiores ordines non promovetur.
>
> Idem Mutinensi Episcopo.
>
> Quum in distribuendis [ordinibus constitutiones canonicae tempora certa distinguant, quae praecipue circa sacros ordines approbata quoque consuetudo docuit observanda, mirari cogimur et moveri, quia, sicut a multis accepimus et in fama vulgatur, infamis Bononiensis episcopus Albertum Imolensem electum in diaconum et presbyterum simul ordinare praesumpsit. Quia vero dimittere nolumus incorrecta quae contra constitutiones canonicas attentantur, praesertim ubi celebrius canonica iura docentur, ne praesumptoribus transeant in exemplum, quum haec non solum praesumptionis et fatuitatis nota non careant, sed nec ambitionis et pravitatis: discretioni vestrae per apostolica scripta praecipiendo mandamus, quatenus super his inquiratis diligentissime veritatem, excusationes ordinatoris et ordinati, si quas forte duxerint allegandas, nihilominus audientes, ut per relationem vestram instructi plenius et securius in ipso negotio procedamus.] Meminimus enim, id a nobis fuisse suppliciter postulatum, et clementer indultum, ut, quia praefatus A. ecclesiae Romanae subdiaconus erat, mandaremus ipsum per Bononiensem episcopum promoveri. [Dat. Lateran. 1200.]

Chapter XIII

Latin source headnote: Two sacred orders cannot be conferred upon the same person on one day, or on two days with the fast continued.

The same, to the same and to Master H., our subdeacon.

We have received your letters in reply concerning the disorderly ordination of [A.], bishop-elect of Imola, whom [G.], Bishop of Bologna, ordained as deacon on the preceding Saturday and as priest on the following Sunday with the fast continued. How greatly each of them transgressed in this matter is clearly understood by one who considers it prudently. For if it was not permitted to confer both orders upon him on the same day, by equal reason it was not permitted that one order be conferred

on one day and the other on the next with the fast continued. For, because of the continuation of the fast, by canonical fiction, whether the morning of Sunday is drawn back to Saturday or the evening of Saturday is referred to Sunday, certainly morning with evening, or evening with morning, will be said to pertain to the same day. For if, insofar as this point of necessity is concerned, morning is referred to one day and evening to another, why would continuation of the fast be necessary, since they are understood to be fasting both on Saturday before supper and on Sunday before the midday meal?

But lest, if we passed over a deed of this kind in silence, others, deeming it lawful, should attempt to do similar things, and thus the perversity of the deed be drawn into an example by posterity, we therefore will that the aforesaid Bishop of Bologna, so that he may be punished in that in which he transgressed, remain suspended from the conferral of orders—namely, of the diaconate and priesthood—and the other from execution of the priestly office, until we dispose otherwise concerning them. Therefore, so that the apostolic mandate may obtain its due effect, we command you by apostolic writings that you cause the things set forth above to be published both by the bishops themselves and throughout the dioceses of Bologna and Imola.

> Duo sacri ordines non possunt conferri eidem uno die, vel duobus, continuato ieiunio.
>
> Idem eidem et Magistro H. Subdiacono nostro.
>
> Literas vestras recepimus responsivas super inordinata ordinatione [A.] Imolensis electi, quem [G.] Bononiensis episcopus praecedenti sabbato in diaconum, et sequenti die dominico continuato ieiunio in presbyterum ordinavit. In quo quantum uterque deliquerit, evidenter intelligit qui prudenter attendit. Si enim utrumque ordinem eodem die conferre illi non licuit, pari non licuit ratione unum ordinem uno die, et alium altero ieiunio continuato conferri, quum propter continuationem ieiunii fictione canonica, sive mane diei dominicae trahatur ad sabbatum, sive vespera sabbati ad diem dominicam referatur, profecto mane cum vespera seu vespera cum mane ad eundem diem pertinere dicetur. Nam si, quantum ad hunc necessitatis articulum pertinet, mane ad unum diem, et vespera referatur ad alium, cur esset continuatio ieiunii necessaria, quum et sabbato ante coenam, et dominica ante prandium intelligantur esse ieiuni? Ne autem si factum huiusmodi sub silentio transiremus, id alii licitum reputantes similia facere attentarent, et sic facti perversitas a posteris traheretur in exemplum, Praefatum itaque Bononiensem episcopum, ut puniatur in quo deliquit, a collatione ordinum, diaconii scilicet et presbyterii, alterum vero ab exsecutione officii sacerdotalis tamdiu volumus manere suspensos, donec de illis aliter disponamus. Ut igitur mandatum apostolicum, debitum consequatur effectum, per apostolica scripta vobis mandamus, quatenus quae praemissa sunt, faciatis tam ab ipsis episcopis quam per Bononiensem et Imolensem dioeceses publicari.

Chapter XIV

Latin source headnote: One who ordains a boy of thirteen years as deacon is suspended from conferring orders, and the one ordained from executing that order until the lawful age.

Honorius III, to the Bishop and Archdeacon of León.

Either the Bishop of Coventry is not master of himself, or he seems to have rejected knowledge too greatly from himself, or he is proved to have sinned from malice. For, to keep silent about the other enormities said of him, he is said, contrary to the institutions of the sacred canons, to have disorderly ordained as deacon M., the boy bearing the present letters, who is still thirteen years of age, in mockery of the clerical order. Indeed, if this were fully established for us, however much we are more inclined toward pardon than even toward due vengeance, we would so chastise this in him that the

notorious fault would be rendered manifest by the punishment, and his revealed disgrace would make others more cautious in similar matters.

Unwilling, however, to leave this unexamined, we command your discretion that, after the truth concerning these matters has been investigated and learned, if you find the matter to be so, you suspend the aforesaid bishop from the conferral of orders, with the obstacle of appeal removed, and compel him by ecclesiastical censure, appeal being set aside, to provide a suitable ecclesiastical benefice for the same M., whom, to the disgrace of the one ordaining, we suspend from execution of the office of deacon until the lawful age.

> Ordinans puerum tredecim annorum in diaconum, suspenditur a collatione ordinum: et ordinatus ab ipsius executione usque ad aetatem legitimam.
>
> Honorius III. Episcopo et Archidiacono Legionensi.
>
> Vel non est compos sui episcopus Conventrensis, vel nimis videtur a se scientiam repulisse, aut probatur ex malignitate peccasse, qui ut alia, quae de ipso dicuntur, enormia taceamus, M. puerum latorem praesentium adhuc XIII. annorum contra sacrorum canonum instituta inordinate in diaconum dicitur ordinasse, in ludibrium ordinis clericalis; quod utique, si nobis plene constaret, quantumcunque simus proniores ad veniam, quam ad debitam etiam ultionem, taliter hoc castigaremus in ipso, quod ex poena culpa notoria redderetur, et revelata eius ignominia efficeret alios in similibus cautiores. Nolentes autem hoc relinquere indiscussum, Discretioni vestrae mandamus, quatenus, inquisita super his et cognita veritate, si rem inveneritis ita esse, praedictum episcopum a collatione ordinum sublato appellationis obstaculo suspendentes, ipsum, ut eidem M., quem ab exsecutione officii diaconi usque ad aetatem legitimam in iniuriam suspendimus ordinantis, provideat in ecclesiastico beneficio competenti, per censuram ecclesiasticam appellatione postposita compellatis.

Chapter XV

Latin source headnote: A bishop who confers several sacred orders upon the same person on one day, even if he did this by mandate of the metropolitan, is suspended from the power of ordaining.

The same, to the Abbots of Leton and Cala.

Our beloved son G., a canon of Humilis, some time ago disclosed to our apostolate that, when the church of Humilis had been widowed of its pastor, its canons, treating of the election of a pastor to be substituted, elected him unanimously. Since he was constituted below the sacred orders, our venerable brother the Archbishop of Cashel, their metropolitan, commanded the Bishop of Trecensis to promote him to three sacred orders on one and the same day, which that bishop fulfilled not by his own daring but by the mandate of the archbishop himself.

[At length, when requested, the same archbishop refused to bestow upon him the gift of consecration, putting forward the occasion of an ordination of this kind. Hence, it was humbly supplicated of us that, from the kindness of the Apostolic See, we deign to dispense concerning this with the aforesaid W., especially since it was said that he had hastened to receive the orders in this way not from the haste of his own will, but under so great a necessity and from the useful providence of almost all those present there he had permitted himself to be ordained in this manner, because manifold danger threatened the church of Emly if, while the same W. remained below the office of priesthood, his ordination were delayed.

Although the ecclesiastical norm had been transgressed enormously in the deed itself, nevertheless, from mercy, which exalts itself above judgment, we remember that we gave a mandate to our venerable brother the Archbishop of Armagh, the Bishop of Meath, and our beloved son the Archdeacon of Armagh that, after the truth concerning the foregoing had been more diligently investigated, if they found the matter to stand in such a way and the same W. otherwise suitable and useful to the church of Emly, by way of dispensation they should grant him permission to be consecrated. They were also to make known to us by their letters whatever they found had been attempted in this matter by the same archbishop, so that, rendered more certain by their report, we might take care to provide concerning it as would be expedient.

They, having summoned those whom they knew should be summoned and having investigated the truth more fully, transmitted into our presence the depositions of the witnesses produced on both sides. Having inspected them, we clearly understood that, after the election concerning the aforesaid W. had been celebrated, when on the following day the same W. had been promoted to the order of subdiaconate by the aforementioned Bishop of Roffensis, the same bishop separately summoned the archdeacon and canons of Emly. Saying that, because of the disturbance of the land and the many ill-disposed men who were preparing snares for the same W., he was unwilling to leave him below the order of priesthood, he confirmed by oath that the aforesaid archbishop had commanded this both from fear of the death of W. himself and because of the threatening danger of the church of Emly, and that the official of the same archbishop on his part prohibited the aforementioned bishop from then promoting the already-mentioned W., already ordained as subdeacon, to further orders.

When the same bishop answered him that in this matter he believed the archbishop, who had commanded him this with his own mouth, more than he believed that official, with his hand extended over the altar he swore upon the holy things that the often-mentioned archbishop had commanded it, and thus promoted the often-mentioned W. as deacon and priest.

Moreover, we found it sufficiently proved that the said archbishop enjoined upon John, Dean of Hely, that he prohibit the aforesaid bishop from promoting the said W., on the day on which he was promoted to three orders, to any order except the subdiaconate, nevertheless also prohibiting the same W. from permitting himself to be promoted further. But when the same dean had come to the church of Emly, on the part of God and of the Archbishop of Cashel he prohibited both the often-mentioned bishop—who had already ordained the subdeacons, after those who were to be promoted as deacons had been summoned and silence enjoined upon all—from promoting the already-mentioned W. to further orders, and the aforesaid W. from permitting himself to be promoted further.

It was also established for us from the letters of the aforesaid judges that the often-mentioned bishop, when questioned judicially, answered that the archbishop had not commanded him to promote W. to three orders on the same day, but from the archbishop's words he believed him to will this. The said bishop also made this same matter known to us through his letters. Furthermore, we understood from the letters of those judges that the same bishop spontaneously swore judicially that all the things contained in the attestations of the same W. were true.

We also learned from the letters both of the aforesaid archbishop and of the chapter of the church of Emly that, when a question had arisen between the said W. and the canons before the aforesaid archbishop, at a council celebrated at Kolmoellocum, both concerning the election and ordination of the often-mentioned W. and concerning certain of his excesses, and at length an appeal had been

made by both parties to our hearing, the same W., not awaiting the term that he had decided to fix for his appeal, obtained the aforesaid letters from us with the truth suppressed.]

Therefore, since [from the foregoing] it has been established for us that the abovementioned bishop transgressed in several matters—both because, without the archbishop's mandate, as he himself confessed, he proceeded disorderly to an ordination of this kind; and because, even if the archbishop's mandate were established, since a dispensation of this kind is by no means permitted to the archbishop by the canon, and there is no doubt that it pertains to the Roman Pontiff alone, the bishop ought not to have obeyed him in this matter; and also because he varied the guilt of perjury several times, first swearing that the archbishop had commanded it and afterwards confessing judicially that he had not mandated it—we, with the counsel of our brothers, suspend him from the power of ordaining until he shall merit to obtain our grace. [The often-mentioned man also, etc. Given at the Lateran, on the Nones of January, in the thirteenth year of our pontificate, 1211.]

Textual note: The source shifts the elect's initial from G. to W., calls the ordaining bishop first *Trecensis* and later *Roffensis*, and prints the grammatically difficult phrase *tam te magna necessitate*. The translation preserves the changes of initial and episcopal designation; it renders the last phrase contextually as "under so great a necessity." The forms occur in both the Latin Library transcription and the Friedberg-derived reference text.

> Episcopus conferens eidem una die plures sacros ordines, etiamsi de mandato metropolitani hoc fecerit, ab ordinandi potestate suspenditur.
>
> Idem Leton. et Cala. Abb.
>
> Dilectus filius G. Humiliensis canonicus nostro dudum apostolatui reseravit, quod Humiliensi ecclesia suo viduata pastore, canonici sui, de substituendi pastoris electione tractantes, ipsum unanimiter elegerunt. Qui quum esset citra sacros ordines constitutus, venerabilis frater noster archiepiscopus Cassalensis metropolitanus eorum episcopo Trecensi mandavit, ut eum uno et eodem die ad tres sacros ordines promoveret, quod ille non ausu proprio, sed ipsius archiepiscopi mandato perfecit; [demum idem archiepiscopus requisitus consecrationis ei munus huiusmodi ordinationis occasione praetensa, impendere recusavit. Unde fuit nobis humiliter supplicatum, ut super hoc circa praefatum W. dignaremur de benignitate sedis apostolicae dispensare, maxime quum ad ordines ita suscipiendos non ex voluntatis propriae diceretur festinantia properasse, sed tam te magna necessitate quam de utili providentia paene omnium ibi praesentium se permiserit taliter ordinari, pro eo, quod ecclesiae Ymilicensi multiplex periculum imminebat, si eiusdem W. citra presbyteratus officium ordinatio differretur. Licet autem contra normam ecclesiasticam in facto ipso enormiter fuisset excessum, de misericordia tamen, quae superaltat iudicio, venerabili fratri nostro Armachano archiepiscopo, et episcopo Midensi, et dilecto filio archidiacono Armachano dedisse recolimus in mandatis, ut inquisita super praemissis diligentius veritate, si rem invenirent taliter se habere, ac eundem W. alias idoneum et utilem ecclesiae Ymilicensi, dispensative ipsi tribuerent licentiam consecrandi, et quicquid in hoc per eundem invenirent archiepiscopum attentatum, per suas nobis literas intimarent, ut per eorum relationem certiores effecti providere in eo, sicut esset expediens, curaremus. Ipsi vero vocatis quos noverant evocandos, et investigata plenius veritate, depositiones testium productorum utrimque ad nostram praesentiam transmiserunt. Quibus inspectis intelleximus evidenter, quod celebrata de praedicto W. electione, quum die sequenti fuisset idem W. a supradicto Roffensi episcopo ad ordinem subdiaconatus promotus, idem episcopus archidiacono et canonicis Ymilicensibus seorsim vocatis, dicens, quod propter turbationem terrae ac multos malevolos, qui eidem W. insidias praeparabant, nolebat ipsum citra ordinem presbyteratus relinquere, iuramento firmavit, id supradictum

archiepiscopum tam metu mortis ipsius W., quam propter imminens periculum Ymilicensis ecclesiae praecepisse, et quod officialis eiusdem archiepiscopi ex parte ipsius episcopo memorato inhibuit, ne iam dictum W., iam in subdiaconum ordinatum, tunc ad ulteriores ordines promoveret. Cui eodem episcopo respondente, quod plus archiepiscopo, qui hoc ei ore suo mandaverat, quam illi crederet in hac parte, extensa super altare manu per sacrosancta iuravit, quod id mandaverat archiepiscopus saepedictus, et sic in diaconum et presbyterum W. saepedictum promovit. Probatum insuper sufficienter invenimus, quod dictus archiepiscopus Ioanni decano de Hely iniunxit, ut praefato episcopo inhiberet, ne dictum W. eo die, quo ad tres ordines promotus exstitit, nisi ad subdiaconatus ordinem promoveret, eidem W. nihilominus inhibendo, ne se promoveri ulterius pateretur. Verum quum idem decanus ad Ymilicensem ecclesiam accessisset, tam saepedicto episcopo, qui iam subdiaconos ordinarat, vocatis his, qui erant in diaconos promovendi, et silentio cunctis indicto, ex parte Dei ac archiepiscopi Cassellensis inhibuit, ne iam dictum W. ad ulteriores ordines promoveret, quam praefato W., ne se promoveri ulterius sustineret. Constitit quoque nobis ex literis iudicum praedictorum, quod saepefatus episcopus interrogatus in iure respondit, quod archiepiscopus non mandarat eidem, ut W. eodem die ad tres ordines promoveret, sed ex verbis archiepiscopo eum credidit illud velle. Hoc idem etiam dictus episcopus per suas nobis literas intimavit. Praeterea ex ipsorum iudicum literis intelleximus, quod idem episcopus ultro iuravit in iure, quod universa, quae continebantur in eiusdem W. attestationibus, vera erant. Ex literis quoque tam supradicti archiepiscopi, quam capituli ecclesiae Ymilicensis, quod, quum tam super electione ac ordinatione saepedicti W., quam etiam super quibusdam eius excessibus in concilio apud Kolmoelloco celebrato coram praefato archiepiscopo inter dictum W. et canonicos quaestio suborta fuisset, et demum ab utraque parte ad nostram audientiam appellatum, idem W., non exspectato termino, quem appellationi suae duxerat praefigendum, supradictas a nobis literas veritate tacita impetravit.] Quum ergo [ex praemissis] nobis constiterit, supradictum episcopum in pluribus deliquisse, tum, quia sine mandato archiepiscopi, ut ipse confessus exstitit, ad huiusmodi ordinationem inordinate processit, tum, quia, et si de mandato archiepiscopi constaret, quum illi huiusmodi dispensatio a canone minime sit permissa, quam ad solum Romanum Pontificem non est dubium pertinere, ipsi obtemperare non debuit in hac parte; tum etiam, quia reatum periurii saepius variavit, iurando prius, quod archiepiscopus id praeceperat, et postea, quod illud non mandaverat in iudicio confitendo, ipsum de fratrum nostrorum consilio tamdiu ab ordinandi suspendimus potestate, donec nostram meruerit gratiam obtinere. [Saepedictum quoque etc. Dat. Lat. Non. Ian. Pont. nostr. Ao. XIII. 1211.]

Chapter XVI

Latin source headnote: One ordained to sacred orders outside the established times receives the order, and after penance the bishop dispenses with him.

Gregory IX, to the Archbishop of Bar.

We respond thus to your consultation: there is no doubt that those who received sacred orders outside the established times received the character. For a transgression of this kind, after first imposing a suitable penance upon them, you will be able to allow them to minister in the orders received, [being more diligently provident, etc. Given at Rieti, on the second day before the Ides of November, in the fifth year of our pontificate, 1231.]

Ordinatus ad sacros extra tempora statuta, ordinem recipit, et post poenitentiam cum eo dispensat episcopus.

Gregorius IX. Archiepiscopo Baranensi.

> Consultationi tuae taliter respondemus, quod eos, qui extra tempora statuta sacros ordines receperunt, characterem non est dubium recepisse, quos pro transgressione huiusmodi, primo eis poenitentia imposita competenti, sustinere poteris in susceptis ordinibus ministrare, [attentius provisurus etc. Dat. Reate II. Id. Nov. Pont. nostr. Ao. V. 1231.]

Chapter XVII

Latin source headnote: A secret criminal, except a homicide, after penance ministers in the orders received and ascends to higher orders; before penance he is admonished not to minister even in those received.

The same.

It has been asked concerning priests or other clerics who through the guilt of adultery, perjury, homicide, or false testimony have lost the good of an upright conscience. (*And below:*) We respond that, if the crimes set forth have not been proved in judicial order or are not otherwise notorious, these persons, except those guilty of homicide, ought not after penance to be impeded in orders already received or to be received. If they have not repented, they are to be admonished and adjured under threat of divine judgment not to minister even in the orders received as a testimony of their own damnation.

> Occultus criminosus, praeter homicidam, post poenitentiam in susceptis ministrat, et ad superiores adscendit; ante poenitentiam monetur, ut etiam in susceptis non ministret.
>
> Idem.
>
> Quaesitum est de sacerdotibus vel aliis clericis, qui per reatum adulterii, periurii, homicidii vel falsi testimonii bonum conscientiae rectae perdiderunt (Et infra:) Respondemus: quod, si proposita crimina ordine iudiciario comprobata, vel alias notoria non fuerint, non debent hi, praeter reos homicidii, post poenitentiam in iam susceptis vel suscipiendis ordinibus impediri; qui, si non poenituerint, monendi sunt et sub interminatione divini iudicii obtestandi, ut in testimonium suae damnationis in susceptis etiam ordinibus non ministrent.

Title XII: On the Scrutiny to Be Made in Ordination

Sole Chapter

Latin source headnote: A bishop questioned in the scrutiny of a bishop to be ordained can answer that he is worthy if he does not know him to be unworthy.

Innocent III.

It was set forth on your part—(*And below:*) You asked, furthermore, to be taught by the Apostolic See how, with conscience safe, you can respond in questions of this kind when bishops are summoned by an archbishop, or even by another, to the consecrations of bishops, and they present the bishop-elect to the metropolitan himself to be consecrated, saying: "Reverend father, holy mother Church seeks that this elect be consecrated as bishop"; and, when the archbishop asks whether they know him to be worthy, they answer that they know and likewise believe him to be worthy; and you judge that in a response of this kind, lest you offend man, you have offended God, by responding sometimes beyond and sometimes against your conscience, since the conduct of the elect is either less well known or entirely unknown to you.

To this we respond thus to your fraternity: when we promote someone as deacon or priest, the first of the deacons who assists us says: "Holy mother catholic Church seeks that this deacon or subdeacon be assumed to the burden of the priesthood or diaconate"; and, when we ask whether he knows him to be worthy, he answers that, insofar as human frailty permits one to know, he both knows and testifies that he is worthy of the burden of an office of this kind. Hence, in such a response we do not believe that anyone sins, provided that he does not speak against his conscience, because he does not assert simply that the man is worthy, but insofar as human frailty permits one to know, since he ought to deem worthy the one whom he does not know to be unworthy.

Therefore, you will be able to use a response of this kind safely, unless perhaps the unworthiness of the one to be consecrated has been established for you. But if you know him to be unworthy, before the matter comes to a scrutiny of this kind, you should take care secretly to announce or make it known to the metropolitan—although, as we have said, we make a question of this kind not in the consecration of a pontiff but in the ordination of a deacon or priest. [You sought, etc. Given at Rome, at Saint Peter's, on the Ides of March, in the ninth year, 1206.]

DE SCRUTINIO IN ORDINE FACIENDO.

Episcopus interrogatus in scrutinio episcopi ordinandi, potest respondere illum dignum, si non novit illum indignum.

Innocentius III.

Ex parte tua fuit propositum (Et infra:) Quaesivisti praeterea per sedem apostolicam doceri, ut, quum episcopi ad consecrationes episcoporum ab archiepiscopo vel etiam alio evocentur, et ipsi metropolitano electum offerant consecrandum, dicentes: "Reverende pater, postulat sancta mater ecclesia hunc electum in episcopum consecrari, et interrogante archiepiscopo, si sciant, illum esse dignum, respondeant, quod illum sciunt et credunt pariter esse dignum, et te in responsione huiusmodi, ne offenderes hominem, Deum existimes offendisse, quandoque praeter, quandoque contra conscientiam respondendo, quum electi conversatio aut minus tibi cognita aut penitus sit ignota, qualiter in huiusmodi interrogationibus, salva conscientia, valeas respondere. Ad quod Fraternitati tuae taliter respondemus, quod, quum nos aliquem in diaconum vel presbyterum promovemus, prior diaconorum, qui nobis assistit, dicit: "Postulat sancta mater ecclesia catholica hunc diaconum vel subdiaconum ad onus presbyteratus vel diaconatus assumi," et nobis interrogantibus, si eum cognoverit esse dignum, idem respondet, quod, quantum humana fragilitas nosse sinit, et scit, et testificatur, illum ad huiusmodi onus officii esse dignum. Unde in tali responsione aliquem peccare non credimus, dummodo contra conscientiam non loquatur, quia non simpliciter illum asserit esse dignum, sed in quantum humana fragilitas nosse sinit, quum illum, quem indignum esse non novit, dignum debeat aestimare. Huiusmodi ergo responsione secure uti poteris, nisi forte de indignitate tibi constiterit consecrandi. Si autem illum indignum esse cognoscis, metropolitano, priusquam ad huiusmodi scrutinium veniatur, secreto studeas nunciare vel intimare, quamvis, ut duximus, nos interrogationem huiusmodi non in consecratione pontificis, sed in ordinatione diaconi vel presbyteri faciamus. [Postulasti etc. Dat. Rom. ap. S. Petr. Id. Mart. Ao. IX. 1206.]

Title XIII: On Those Ordained by a Bishop Who Renounced the Bishopric

Chapter I

Latin source headnote: A bishop who has renounced only the place can, when invited, confer orders as before. But if he has renounced the dignity also, the ordinand's own bishop dispenses with one ordained by him to minor orders, or unknowingly to sacred orders; he does not, however, dispense with one knowingly ordained by him to sacred orders.

Alexander III, to the Archbishop of Toledo.

Your fraternity asked us whether clerics who received orders after the renunciation made by your predecessor ought to remain in them or by the law of the canons to be promoted to greater orders. We, therefore, because the truth is not fully established for us, cannot respond to you briefly concerning this. We respond, therefore, by distinguishing whether he renounced only the place or both the place and the dignity together. For in the first case, unless prohibited by the Supreme Pontiff or his legate, when requested by some bishop he will reasonably be able to confer orders as before.

In the second case, however, we think a distinction must be made whether he conferred sacred or minor orders. For if someone received from such a man orders as far as the subdiaconate, because orders of this kind are also sometimes conferred by non-bishops, he will both be able to serve in them and, if suitable, to be promoted to greater orders. Indeed, if someone, after the renunciation had been made, knowingly received sacred orders from the same man, because he rendered himself unworthy, he will not have execution of the office. But where he did not do so knowingly, a discerning pontiff will be able to dispense, unless the ignorance was gross and supine.

> **DE ORDINATIS AB EPISCOPO, QUI RENUNCIAVIT EPISCOPATUI.**
>
> Episcopus, qui renunciavit loco tantum, invitatus conferre potest ordines, sicut prius. Si vero et dignitati, cum ordinato per eum ad minores vel ignoranter ad sacros dispensat episcopus suus; cum ordinato vero scienter ad sacros, non dispensat.
>
> Alexander III. Toletano Archiepiscopo.
>
> Requisivit a nobis tua fraternitas, utrum clerici, qui post renunciationem factam a praedecessore tuo ordines receperunt, in ipsis debeant remanere, aut ad maiores de iure canonum promoveri? Nos igitur, quia nobis non plenarie de veritate constat, non possumus tibi super hoc breviter respondere. Respondemus igitur distinguendo, utrum renunciaverit loco tantum, an loco simul et dignitati. Nam in primo casu ordines, sicut antea, nisi a summo Pontifice vel eius legato prohibitus fuerit, rogatus ab episcopo aliquo poterit de ratione conferre. In secundo vero casu distinguendum putamus, utrum sacros contulerit, an minores. Si enim a tali ordines usque ad subdiaconatum aliquis acceperit, quia et huiusmodi ordines a non episcopis quandoque conferuntur, et in illis deservire poterit, et ad maiores, si idoneus fuerit, promoveri. Sane si ab eodem sacros ordines facta renunciatione scienter quis receperit, quia indignum se fecit, exsecutionem officii non habebit. Ubi autem non scienter, poterit, nisi crassa et supina fuerit ignorantia, discretus pontifex dispensare.

Chapter II

Latin source headnote: It is brief.

Gregory IX.

With clerics who unknowingly received orders from an excommunicated bishop, a dispensation will be able to be granted by their own bishops.

> Breve est.
>
> Gregorius IX.
>
> Cum clericis, qui ab excommunicato episcopo ignoranter ordines receperunt, per suos poterit episcopos dispensari.

Title XIV: On the Age, Quality, and Order of Those to Be Placed in Authority

Chapter I

Latin source headnote: No summary is given.

From the Council of Poitiers.

Let abbots, deans, and provosts who are not priests become priests or lose their prelacies; let those who hold archdeaconries become deacons, and those who hold archpresbyterates become priests or lose the honor. But if, because some just cause prohibits it, they cannot be priests or deacons, let them lose the prelacies.

> **DE AETATE ET QUALITATE ET ORDINE PRAEFICIENDORUM.**
>
> Non summatur.
>
> Ex concilio Pictaviensi.
>
> Ut abbates et decani et praepositi, qui presbyteri non sunt, presbyteri fiant, aut praelationes amittant; qui archidiaconatus tenent, diaconi fiant, qui vero archipresbyteratus, presbyteri, aut amittant honorem. Quod si aliqua iusta causa prohibente presbyteri aut diaconi esse non potuerint, praelationes amittant.

Chapter II

Latin source headnote: A church granted by dispensation to a minor ought to be governed not by laymen but by clerics until he reaches the proper age.

Alexander III, to the Archbishop of Canterbury.

By reason of the dignity committed to you and in consideration of your legation, you ought to extend the edge of your solicitude to all the churches of your legation, and with pastoral care to correct and amend the things that have been done enormously or contrary to justice, so that you may be able to render a full account before the father of the household concerning the sheep committed to you, and an abundant reward may be accumulated for you in heaven for your labor and solicitude.

We have learned, however, that the Bishop of Coventry, not attending to what the statutes of the sacred canons decree, nor preserving pontifical moderation, granted several churches to boys who are constituted below their tenth year in the archdeaconry of our beloved son R., Archdeacon of Chester, which are administered and disposed not by clerics but by laymen. Hence, because this is hostile to ecclesiastical utility and contrary to reason, and therefore ought not to be tolerated in any way, we command your fraternity by apostolic writings, under precept, that, if the matter stands thus, you rebuke and chastise the aforesaid bishop with a living rebuke; and, all occasion and appeal ceasing

and the laymen having been removed, commit the administrations and custody of the aforesaid churches to suitable clerics until the aforesaid boys reach a fitting age.

You shall prohibit the same bishop more strictly from hereafter granting churches to be governed except to persons who possess age and knowledge. But if he acts otherwise, imposing the due punishment upon him, you shall decree his institution and grant altogether to lack force.

> Ecclesia dispensative minori concessa non per laicos, sed per clericos regi debet, donec ille perveniat ad aetatem.
>
> Alexander III. Cantuariensi Archiepiscopo.
>
> Ex ratione commissae tibi dignitatis et consideratione legationis ad universas ecclesias tuae legationis aciem sollicitudinis tuae debes extendere, et quae enormiter seu contra iustitiam facta fuerint pastorali cura corrigere et emendare, quatenus de commissis ovibus coram patrefamilias plenam reddere valeas rationem, et tibi pro labore et sollicitudine tua merces copiosa cumuletur in coelis. Accepimus autem, quod Conventrensis episcopus, non attendens, quid sacrorum canonum statuta decernant, nec modestiam pontificalem conservans, pueris, qui sunt infra decennium constituti, in archidiaconatu dilecti filii nostri R. archidiaconi Cistrensis ecclesias plures concessit, quae non per clericos, sed per laicos dispensantur et disponuntur. Unde quoniam hoc ecclesiasticae utilitati est inimicum et rationi contrarium, et ideo non debet hoc aliquatenus tolerari, fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus, si ita res se habet, praedictum episcopum super his viva increpatione corripias et castiges, et clericis idoneis administrationes et custodiam praescriptarum ecclesiarum, donec praedicti pueri ad congruam veniant aetatem, omni occasione et appellatione cessantibus laicis amotis committas, eidem episcopo arctius prohibens, ne de cetero ecclesias, nisi personis, quae aetatem et scientiam habeant, regendas concedat. Quod si secus egerit, ei debitam poenam infligens, institutionem et concessionem ipsius omnino viribus carere decernas.

Chapter III

Latin source headnote: Governance of a church ought not to be committed to one under fourteen years of age.

The same, to the Archbishop of Canterbury and his suffragans.

It is exceedingly indecorous and absurd that those who do not know how to govern themselves should govern churches, since such persons are to be admitted to the governance of churches as excel in discretion and shine in uprightness of morals. Therefore, unwilling to endure that at the prayers or insistence of any persons, as is frequently accustomed to be done in your regions, the governance of a church should be committed to little children, we command your fraternity by apostolic writings, [under precept], that you do not presume, for anyone's favor or with a view to it, to grant the personatus of any church to anyone constituted below his fourteenth year. You are to know for certain that, if you presume to contravene our precept in this matter, with the Lord as author we will entirely invalidate what you have done as a result, and will punish your disobedience gravely.

> Regimen ecclesiae minori XIV. annis committi non debet.
>
> Idem Cantuariensi Archiepiscopo et eius Suffraganeis.
>
> Indecorum est admodum et absurdum, ut hi debeant ecclesias regere, qui non noverunt gubernare se ipsos, quum ad ecclesiarum regimen tales personae sint admittendae, quae discretione praeemineant, et morum fulgeant honestate. Nolentes itaque sustinere, ut ad preces vel ad instantiam aliquorum, sicut

> frequenter solet in vestris partibus fieri, parvulis ecclesiae regimen committatur, fraternitati vestrae per apostolica scripta [praecipiendo] mandamus, quatenus nemini infra annum XIV. constituto personatum cuiuslibet ecclesiae aliquorum gratia vel obtentu concedere praesumatis, scituri pro certo, quod, si praecepto nostro in hac parte contraire praesumpseritis, quod inde feceritis auctore Domino penitus irritabimus, et inobedientiam vestram graviter puniemus.

Chapter IV

Latin source headnote: One unworthy in knowledge, morals, or age ought not to be instituted to the governance of churches; and one who has two churches is compelled to relinquish one, unless a cause supports him.

The same.

It befits you to employ such care in ordaining the churches of your diocese that no cleric is ordained in them contrary to the decrees that we promulgated in the Lateran Council, or even contrary to the ancient enactments of the sacred canons; rather, take pains to place in them such persons as can suitably conduct the care of the flock committed to them and invite them to virtues by the example of a good work.

Hence it is that by the present letters we more strictly prohibit you from instituting in those churches persons who are to be ordained to the care of souls in the churches of your episcopate, or permitting them to be instituted on any occasion or even with a view to our letters, if they do not conform in knowledge, morals, and age to the institutions of the council. But you shall also be permitted, appeal being set aside, to compel those having several churches that do not depend upon one another to relinquish whichever one of them they prefer, unless those churches are so slender in substance that they cannot suitably support their own priests. But those, etc. [cf. c. 22, On the Right of Patronage, III.38.]

> Ad regimen ecclesiarum non debet institui indignus scientia, moribus, vel aetate, et qui habet duas ecclesias, alteram dimittere cogitur, nisi causa subsit.
>
> Idem.
>
> Eam te decet in ordinandis ecclesiis tuae dioecesis curam habere, ne ullus in eis contra decreta, quae in Lateranensi concilio edidimus, vel etiam contra antiquas sacrorum canonum sanctiones clericus ordinetur, sed tales in ipsis satagas ponere, qui commissi sibi gregis curam commode gerere possint, et exemplo boni operis ad virtutes invitent. Inde est, quod praesentibus tibi literis Arctius inhibemus, ne personas, quae in ecclesiis tui episcopatus ad curam animarum fuerint ordinandae, in ipsis instituas, nec aliqua occasione, vel etiam literarum nostrarum obtentu institui patiaris, quae scientia, moribus et aetate concilii non congruant institutis. Sed etiam habentes plures ecclesias, quae ex una non pendeant, tibi liceat appellatione postposita cogere ad unam ipsarum, quam maluerint, dimittendam, nisi ita fuerint tenues in substantia, quod proprias sacerdotes non possint convenienter alere. Illas autem etc. [cf. c. 22. de iure patron. III. 38.]

Chapter V

Latin source headnote: One who is not yet in sacred orders, if otherwise suitable, can by dispensation be assumed to the governance of a parish church.

The same.

Furthermore, although no one ought to be admitted to the governance of a parish church unless he is at least a subdeacon, nevertheless those constituted in minor orders are customarily assumed by dispensation, provided that they are such as can be ordained priests within a short time.

> Is, qui nondum est in sacris, si alias est idoneus, ad regimen parochialis ecclesiae dispensative potest assumi.
>
> Idem.
>
> Praeterea licet ad regimen parochialis ecclesiae non debeat aliquis, nisi subdiaconus sit ad minus, admitti, dispensative tamen in minoribus ordinibus constituti consueverunt assumi, dum tamen tales sint, quod infra breve tempus possint in presbyteros ordinari.

Chapter VI

Latin source headnote: Because of the necessity and utility of the church, its clerics are compelled to receive orders not annexed to their benefices.

The same.

You ask us what is to be done concerning clerics committed to your jurisdiction who, although they abound in many ecclesiastical benefices, after being admonished by you are unwilling to be promoted to greater orders, saying that they have secretly committed something of such a kind that it does not permit them to be ordained with conscience safe. Therefore, since the sacred canons appear to disagree concerning this case—some saying that they are by no means to be compelled, while others assert the contrary—we resolve every bond of contrariety by the present page, establishing that, if the aforesaid clerics confess themselves to be unworthy to receive greater orders because of their secret sins, their inferiors in the same church whose life is approved shall, according to canonical institution, be preferred to them. And, unless perhaps those who refuse to be ordained for the already-mentioned cause are very useful in other services of the church, let their benefices be taken away and canonically conferred upon others.

But if from their will alone they refuse to be ordained, and the utility of the church counsels it or necessity altogether requires it, provided that they are suitable, you shall, with appeal ceasing, compel them to receive greater orders through loss of the places or orders that they possess and withdrawal of their benefices.

> Propter necessitatem et utilitatem ecclesiae compelluntur clerici ipsius recipere ordines, suis beneficiis non annexos.
>
> Idem.
>
> Quaeris a nobis, quid agendum sit de clericis tuae iurisdictioni commissis, qui, quum beneficiis ecclesiasticis multis abundent, a te commoniti nolunt ad maiores ordines promoveri, se tale quid secreto commisisse dicentes, quod eos salva conscientia ordinari non sinit. Quum igitur super hoc casu videantur sacri canones discordare, quum quidam dicant, eos minime compellendos, alii vero contrarium asseverant, omnis contrarietatis vinculum praesenti pagina enodamus, statuentes, ut, si praedicti clerici perceptione maiorum ordinum propter occulta sua peccata se indignos esse fatentur, inferiores in eadem ecclesia, quorum sit vita probabilis, secundum institutionem canonicam praeferantur eisdem. Et nisi forte illi, qui ordinari pro iam dicta causa recusant, in aliis ecclesiae servitiis valde utiles fuerint, auferantur eis beneficia et aliis canonice conferantur. Quod si pro sola voluntate renuerint ordinari, et suaserit utilitas ecclesiae, aut necessitas prorsus exegerit, ipsos,

dummodo idonei sint, ad maiores ordines recipiendos per amissionem locorum, vel ordinum, quos habent, et beneficiorum subtractionem, appellatione cessante, compellas.

Chapter VII

Latin source headnote: The event of the death of a sick person does not impede the promotion of his physician who is skilled, solicitous, and observes the traditions of the art.

Clement III, to R., Canon of Cologne.

Through your report it has reached our ears that, since you are learned in the medical art, you have with diligence furnished medicine to several persons according to the tradition of that art, although the result rather often occurred to the contrary, and those to whom you thought you were applying a remedy incurred the danger of death after receiving the medicines. But because, as you assert, you desire to be promoted to sacred orders and wished to consult us concerning this, we respond briefly to you that, if your conscience stings you concerning the foregoing, by our counsel you should not ascend to greater orders.

Eventus mortalitatis infirmi non impedit promoveri eius medicum peritum, sollicitum et traditiones artis observantem.

Clemens III. R. Coloniensi Canonico.

Ad aures nostras te significante pervenit, quod, quum in arte physica eruditus sis, pluribus iuxta ipsius artis traditionem exhibuisti cum diligentia medicinam, licet pluries in contrarium successerit, et quibus putabas adhibere medelam, medicinis perceptis mortis periculum incurrerunt. Verum quia, sicut asseris, ad sacros ordines desideras promoveri, et super eo nos consulere voluisti. Tibi breviter respondemus, quod, si super praemissis conscientia tua te remordeat, ad maiores ordines de nostro consilio non ascendas.

Chapter VIII

Latin source headnote: One who has remained under suspension for a year is deprived of the benefice that he previously had and of that which he acquired in the meantime.

Celestine III.

When Pope Clement of good memory, our predecessor, had summoned I. Buccarum, Melearum, Maius Raofaca, and certain other clerics of Bar to come into his presence to answer H., their archdeacon, whom they had gravely injured, because they scorned to come according to the apostolic mandate, he caused a sentence of suspension to be promulgated against them through the Bishop of Vigilia. Remaining under it, as is said, for three years, certain of those suspended obtained another ecclesiastical benefice.

And because you wished to consult us whether benefices received in this manner can reasonably be retained, we respond to you by the notice of the present letters that they are not permitted to retain in any way either the benefices that they had or those that they afterwards obtained. Hence, we gave a mandate to our venerable brother the Archbishop of Bar that for such great obstinacy and apostolic contempt he should not delay in despoiling them of the benefices that they possess, to be detained in his hands until he receives our letters and mandate concerning what he ought to do about these matters.

> Qui steterit per annum in suspensione, privatur beneficio, quod prius habebat, et quod interim acquisivit.
>
> Coelestinus III.
>
> Quum bonae memoriae Clemens Papa praedecessor noster I. Buccarum, Melearum, Maium Raofacam, et quosdam alios Baranenses clericos vocavisset, ut ad praesentiam ipsius accederent, H. archidiacono suo, quem graviter laeserant, responsuri, quia venire iuxta mandatum apostolicum contempserunt, in eos fecit per Vigiliensem episcopum sententiam suspensionis promulgari, in qua, sicut dicitur, triennio permanentes, quidam ex ipsis suspensi aliud beneficium ecclesiasticum sunt adepti. Et quia, utrum beneficia sic recepta possint rationabiliter retinere, nos consulere voluisti, significatione tibi praesentium respondemus, quod non licet eis nec illa, quae habuerunt beneficia, vel quae postmodum sunt adepti aliquatenus retinere. Unde venerabili fratri nostro Baranensi archiepiscopo dedimus in mandatis, ut eos pro tanta pertinacia et contemptu apostolico beneficiis, quae habent, non differat spoliare, ea tamdiu in suis manibus detenturus, donec quid super his facere debeat, literas nostras accipiat et mandatum.

Chapter IX

Latin source headnote: A subdeacon can be elected bishop.

Innocent III.

Many persons very often doubt whether a subdeacon can be elected bishop. Indeed, Pope Urban I decreed that no one should be elected bishop unless he was found to be in sacred orders and living religiously. "By sacred orders," he says, "we mean the diaconate and priesthood, for the primitive Church is read to have possessed only these. Subdeacons, however, because they too minister at altars, we permit, when expediency requires, to be elected bishops, provided that they are of excellent knowledge and religion; and we do not permit this to be done without the permission of the Roman Pontiff or metropolitan." In these words it is intimated that Urban, referring himself to the state of the primitive Church, in which the order of subdiaconate was by no means called sacred, instituted that an election concerning a subdeacon could not be celebrated except for the sake of utility, and even then only with the permission of the metropolitan or Roman Pontiff.

§ 1. But since today the subdiaconate is counted among the sacred orders, as Pope Urban II expressed in these words: "Let the impious blush and understand that, by the judgment of the Holy Spirit, those who are placed in sacred orders—the priesthood, diaconate, and subdiaconate—if they have not lived chastely, are to be excluded from every dignity of those grades"; and again: "Let no one be permitted to approach sacred order unless he is either a virgin or of proved chastity, and he who, up to the subdiaconate, has had one wife and a virgin"; and since, after the likeness of a deacon and priest, a subdeacon ought to observe continence, as was established in the Sixth Synod, that if anyone of those who enter the clergy should wish to be joined to a woman by nuptial law, he shall do this before the order of subdiaconate; and blessed Gregory is read to have established that bishops should presume to make no one a subdeacon unless he has promised that he will live chastely—

§ 2. We, wishing to cut away the matter of dispute concerning this point, establish that a subdeacon can be freely elected bishop just as a deacon or priest can.

> Subdiaconus in episcopum eligi potest.
>
> Innocentius III.

A multis multotiens, an subdiaconus in episcopum eligi valeat, haesitatur. Siquidem Urbanus Papa primus decrevit, ut nullus in episcopum, nisi in sacris ordinibus et religiose vivens inventus fuerit, eligatur. "Sacros," inquit, "ordines diaconatum dicimus et presbyteratum; hos siquidem solos primitiva ecclesia legitur habuisse. Subdiaconos vero, quia etiam ipsi ministrant altaribus, opportunitate exigente concedimus in episcopos eligi; si tamen praeclarae scientiae ac religionis exsistant; quod ipsum non sine Romani Pontificis vel metropolitani licentia fieri permittimus." In quibus verbis innuitur, quod Urbanus ad statum primitivae ecclesiae se referens, in quo subdiaconatus ordo sacer minime dicebatur, instituit, ut de subdiacono, nisi utilitatis causa, et tunc etiam, nisi de permissione metropolitani vel Romani Pontificis, non posset electio celebrari. § 1. Verum quum hodie subdiaconatus inter sacros ordines computetur, sicut Urbanus Papa II. sub his verbis expressit: "Erubescant impii et intelligant, iudicio Spiritus sancti eos, qui in sacris ordinibus, presbyteratu, diaconatu, subdiaconatu sunt positi, si caste non vixerint, excludendos ab omni eorundem graduum dignitate," et iterum: "Nemo ad sacrum ordinem permittatur accedere, nisi aut virgo aut probatae castitatis exsistat, et qui usque ad subdiaconatum unicam et virginem habuerit uxorem;" et ad similitudinem diaconi et presbyteri subdiaconus debet continentiam observare, sicut est in sexta synodo constitutum, ut, si quis eorum, qui ad clerum accedunt, nuptiali iure mulieri voluerit copulari, hoc ante subdiaconatus ordinem faciat; et beatus Gregorius statuisse legitur, ut nullum facere subdiaconum praesumant episcopi, nisi qui se caste victurum promiserit. § 2. Nos volentes super hoc articulo disceptationis materiam amputare, statuimus, ut subdiaconus in episcopum valeat libere eligi sicut diaconus vel sacerdos.

Chapter X

Latin source headnote: An irregular person in minor orders can by dispensation be instituted as abbot.

The same, to the Cardinal-Priest of the title of the Holy Cross.

We commend in the Lord your diligence, which you are known to employ in reforming the monastery of Saint Quiricus. By the authority of the present letters we command your devotion that, if you cannot provide better for the same monastery with a suitable person, you institute as abbot that monk whom you commended in your letters for uprightness and industry, through whom it is believed that the condition of the same place is to be reformed. You shall have absolutely no regard for the unlawful petition that certain laymen were making, but shall act solely from the office of your own provision, in such a way, namely, that he does not ascend to sacred orders, since, when the point of necessity presses, one constituted even in minor orders can be assumed as abbot. And let the aforesaid laymen not be joined to the aforementioned monk by consanguinity or affinity, such that from their petition any adverse suspicion ought to arise against him.

Irregularis et in minoribus potest dispensative in abbatem institui.

Idem tit. S. Crucis Presbytero cardinali.

Tuam in Domino diligentiam commendamus, quam super monasterio sancti Quirici reformando dignosceris adhibere. Devotioni tuae praesentium auctoritate Mandamus, quatenus, si non potes eidem monasterio de persona idonea melius providere, tu monachum illum, quem in literis tuis de honestate ac industria commendasti, per quem status eiusdem loci creditur reformandus, nullum prorsus habens respectum ad petitionem illicitam, quam quidam laici faciebant, sed ex tuae duntaxat provisionis officio, instituas in abbatem, ita videlicet, quod ad sacros ordines non ascendat, quum, instante necessitatis articulo possit in abbatem assumi etiam in minoribus ordinibus constitutus. Et laici memorati non sint

consanguinitate vel affinitate coniuncti monacho memorato, ut ex ipsorum petitione debeat contra eum aliqua sinistra suspicio suboriri.

Chapter XI

Latin source headnote: An abbot, if he is a priest and has been blessed, can confer the clerical order.

The same, to the Archbishop of Rouen.

Since it sometimes happens that laymen flying to monasteries are tonsured by their abbots, you sought an oracle from the Apostolic See as to whether clerical order is conferred in the tonsure. Concerning this we respond to you that, since it was established in the Seventh Synod that each abbot is permitted, by imposition of hands, to make readers solely in his own monastery, provided that it is known that imposition of hands was made upon those abbots by a bishop according to the custom for abbots to be placed in authority, and it is established that he is a priest, clerical order is conferred through the first tonsure, according to the form given by the Church, by abbots of this kind. [Furthermore, etc. (cf. c. 24, On Rescripts, I.3.) Given at the Lateran, on the Kalends of September, in the thirteenth year, 1210.]

Abbas, si est presbyter, et est benedictus, conferre potest ordinem clericalem.

Idem Rothomagensi Archiepiscopo.

Quum contingat interdum, quod laici ad monasteria convolantes a suis abbatibus tonsurentur, apostolicae sedis oraculum requisisti, an clericatus ordo in tonsura conferatur? Super quo tibi respondemus, quod, quum in VII. synodo sit statutum, ut lectores per manus impositionem licentia sit unicuique abbati in proprio monasterio solummodo faciendi, dummodo ipsis ab episcopo, secundum morem praeficiendorum abbatum, manus impositio facta noscatur, et constet, eum exsistere sacerdotem, per primam tonsuram, iuxta formam ecclesiae datam, a talibus abbatibus clericalis ordo confertur. [Praeterea etc. (cf. c. 24. de rescr. I. 3.) Dat. Later. Kal. Sept. Ao. XIII. 1210.]

Chapter XII

Latin source headnote: If a canon regular, having become a monk, has returned for a just cause to a canonry where he is afterwards placed in authority, he will lawfully be able to hold the prelacy.

The same.

We have understood that, before you were assumed to the governance of the abbey, although you had conducted yourself laudably in your monastery, you went to the monastery of Saint Innocent of such an order. When you had remained for some time in that order, at length, returning to your heart, with the counsel of the metropolitan and other [religious men], you took care to return to the first house. There at length, under the discipline of regular observance, you so pleased God and men that, at the requirement of your merits, your brothers unanimously placed you over themselves as abbot.

Therefore, lest on the occasion of the stay that you contracted in the aforesaid monastery your conscience, as it were, sting you, [and] you grow lukewarm in the care of the administration undertaken, we attend to what is provided in the canon: that no canon regular should become a monk unless perhaps—which God forbid—he has publicly fallen; and, if he has become one, he shall return to the order of canons, remaining last in choir and bearing the cowl as a memorial. We command your discretion that you take pains to exercise indefatigable solicitude concerning the care

committed to you, and so continue the subsequent good things with the prior ones that you may be able to expect from God a worthy reward. [Given at the Lateran, on the seventh day before the Kalends of March, in the thirteenth year of our pontificate, 1210.]

> Si canonicus regularis factus monachus, iusta de causa ad canoniam reversus, ubi postea praeficiatur, licite tenere poterit praelaturam.
>
> Idem.
>
> Intelleximus, quod, quum ante, quam esses assumptus ad regimen abbatiae, in monasterio tuo fueris laudabiliter conversatus, ad monasterium sancti Innocentii talis ordinis accessisti, ubi, quum aliquamdiu in ipso ordine permansisses, demum ad cor reversus de metropolitani et aliorum [religiosorum] consilio ad primam domum redire curasti, in qua tandem sub regularis observantiae disciplina taliter Deo et hominibus placuisti, quod per tuorum exigentiam meritorum fratres tui praefecerunt te sibi unanimiter in abbatem. Ne igitur occasione morae, quam in praescripto monasterio contraxisti, quasi conscientia tua te re mordeat, [et] in susceptae administrationis cura tepescas, attendentes, quod cautum est in canone, ne quis canonicus regularis, nisi forte (quod absit) publice lapsus sit, efficiatur monachus, et si factus fuerit, ad canonicatus ordinem revertatur, ultimus in choro manendo, cucullam ad memoriam delaturus: discretioni tuae mandamus, quatenus circa curam tibi commissam sollicitudinem exercere studeas indefessam, et taliter sequentia bona continuare prioribus, quod dignum a Deo possis meritum exspectare. [Dat. Lat. VII. Kal. Mart. Pont. nostr. Ao. XIII. 1210.]

Chapter XIII

Latin source headnote: One ordained to sacred orders without a title justly seeks a benefice from the one who ordained him.

The same.

We have learned through your report to our ears that certain clerics who were promoted to sacred orders without a title harass you concerning the obtaining of benefices in the church of Braga, although you could not then suitably furnish them from all the revenues of your church, especially since we command provision in necessary things to be made for those who by neither merits nor knowledge deserve ecclesiastical benefices even in parish churches, much less in the church of Braga, and whose life and knowledge are altogether unknown to us. If we had certainty concerning them, we would not command provision to be made for them in either greater or lesser churches. And although, according to the apostolic mandate, you are willing to provide for suitable persons in your chapels and in other parish churches outside the city, since you cannot provide for everyone in the greater church, nevertheless they disdain to receive provision in those churches. The judges also, and the admonitors or executors, to whom they carry our letters, do not admit your lawful exceptions that you set forth in their presence; hence you sought from us that we provide for you more kindly in this matter.

§ 1. Therefore, although in the ordinations of clerics you and your predecessors ought to have employed such diligence that less suitable persons were not ordained by you, and for this reason after their promotion you will not be able to put forward an exception of this kind against them, unless perhaps after they were promoted they rendered themselves unworthy, nevertheless, from superabundance, when it is fitting that we write for such persons, we cause this to be placed in our letters: that if the ordained person for whom we write is held to be suitable and not unworthy of an

ecclesiastical benefice, a competent benefice shall be granted to him by the one who ordained him or that man's successor. For, even if we wished to proceed against you at law, we could deservedly compel you to provide for those whom it was established had been ordained by you or your predecessors, especially because you ought to regard as suitable to obtain an ecclesiastical benefice those whom you received into orders. Hence you ought not to bear it gravely, but rather are bound devoutly to incline to us, if we cause those to be examined by others whom we do not believe were ordained without examination, before we wish to compel you to provide for them.

§ 2. We therefore command your fraternity by apostolic writings under precept that you not delay in providing, in the greater church or other parish churches of the diocese of Braga, for those concerning whom it should happen that you receive our mandates in the common form, since we do not will that you be compelled for less suitable persons. But if you put forward any exceptions against such impetrators of our letters in the presence of the delegates, we command that they be heard.

> Ordinatus ad sacros sine titulo, ab ordinatore iuste petit beneficium.
>
> Idem.
>
> Accepimus te nostris auribus intimante, quod quidam clerici, qui ad sacros ordines sine titulo sunt promoti, te ad ecclesiam Bracharensem super beneficiis obtinendis infestant, quibus etiam de cunctis reditibus ecclesiae tuae tunc commode ministrare non posses, praesertim quum mandemus eisdem in necessariis provideri, qui nec meritis, neque scientia etiam in parochialibus ecclesiastica beneficia promerentur, ne dum in ecclesia Bracharensi, quorum vita et scientia nobis est penitus ignota. De quibus si certitudinem haberemus, nec in maioribus eis, nec in minoribus praeciperemus ecclesiis provideri. Et licet idoneis in tuis capellis et in aliis parochialibus ecclesiis extra civitatem velis iuxta mandatum apostolicum providere, quum omnibus in maiori providere non possis, ipsi tamen provisionem in eisdem ecclesiis recipere dedignantur. Iudices quoque et monitores seu exsecutores, ad quos literas nostras deportant, exceptiones tuas legitimas, quas in eorum praesentia proponis, non admittunt, unde postulabas a nobis, ut tibi provideremus benignius in hac parte. § 1. Licet igitur in ordinationibus clericorum illam tu ac praedecessores tui diligentiam debueritis adhibere, ut minus idonei non ordinarentur a vobis, ac ideo post promotionem eorum exceptionem huiusmodi non poteris praetendere contra illos, nisi forte, postquam promoti fuerint, reddiderint se indignos, nos ex superabundanti tamen, quando scribere pro talibus nos oportet, facimus in literis nostris apponi, ut, si ordinatus, pro quo scribimus, idoneus habeatur et ecclesiastico beneficio non indignus, ei ab ordinatore vel successore ipsius competens beneficium tribuatur, quum, et si tecum de iure agere vellemus, te possemus merito ad provisionem eorum compellere, quos a te vel praedecessoribus tuis ordinatos fuisse constaret, eo praesertim, quod ad obtinendum ecclesiasticum beneficium eos debes idoneos reputare, quos ad ordines suscepisti. Unde graviter sustinere non debes, sed nobis potius devote inclinare teneris, si illos examinari per alios facimus, quos sine examinatione non credimus ordinatos, antequam ad provisionem eorum te compellere velimus. § 2. Mandamus igitur fraternitati tuae per apostolica praecipiendo scripta, quatenus eis, pro quibus te contigerit recipere nostra mandata in forma communi, in maiori ecclesia vel aliis ecclesiis parochialibus dioecesis Bracharensis providere non tardes, quum te pro minus idoneis compelli nolumus; exceptiones autem, si quas contra tales impetratores literarum nostrarum in delegatorum praesentia proposueris, praecipimus audiendas.

Chapter XIV

Latin source headnote: One less suitable ought not to be promoted as priest or assumed to the governance of souls.

The same, in the General Council.

Since the governance of souls is the art of arts, we strictly command that bishops diligently instruct and inform those to be promoted as priests, either personally or through other suitable men, concerning the divine offices and ecclesiastical sacraments, and how they may celebrate them rightly. For if hereafter they presume to ordain the untrained and ignorant—which indeed can easily be detected—we decree that both those ordaining and those ordained are subject to grave vengeance. For it is holier, especially in the ordination of priests, to have few good ministers than many evil ones, because, if the blind leads the blind, both slip down into the pit.

> Minus idoneus in sacerdotem promoveri vel ad regimen animarum assumi non debet.
>
> Idem in concilio generali.
>
> Quum sit ars artium regimen animarum, districte praecipimus, ut episcopi promovendos in sacerdotes diligenter instruant et informent, vel per se ipsos, vel per alios idoneos viros super divinis officiis et ecclesiasticis sacramentis, qualiter ea rite valeant celebrare, quoniam, si de cetero rudes et ignaros ordinare praesumpserint, quod quidem facile poterit deprehendi, et ordinatores et ordinatos ultioni gravi decernimus subiacere. Sanctius enim est, maxime in ordinatione sacerdotum paucos bonos, quam multos malos habere ministros, quia, si caecus caecum ducit, ambo in foveam dilabuntur.

Chapter XV

Latin source headnote: A defect of knowledge casts down one already promoted.

Honorius III, to the Chapter of Bremen.

Although many matters were set forth against our venerable brother the Bishop of Calinum, even if none of them had been proved, nevertheless, because he confessed before us that he had never learned grammar nor even read Donatus, and through the evidence of the fact his illiteracy and insufficiency are established to such a degree that it would be contrary to God and the canonical enactments to tolerate so great a defect in a bishop, by the common counsel of our brothers we have decided that he must be removed altogether from execution of the pontifical office and from administration of the church of Calinum, invalidating whatever he shall hereafter attempt in the name of that church or concerning its goods.

> Defectus scientiae deiicit iam promotum.
>
> Honorius III. Capitulo Bremensi.
>
> Quamvis multa proposita fuerint contra venerabilem fratrem nostrum episcopum Calinensem, etsi nihil probatum esset de illis, quia tamen confessus est coram nobis, se nunquam de grammatica didicisse, nec etiam legisse Donatum, et per evidentiam facti usque adeo de illiteratura et insufficientia sua constat, quod contra Deum esset et canonicas sanctiones, tantum in episcopo tolerare defectum, de communi fratrum nostrorum consilio ipsum a pontificalis officii exsecutione et ab administratione Calinensis ecclesiae penitus duximus amovendum, irritantes si quid nomine ipsius ecclesiae vel de bonis eiusdem de cetero attentabit.

Title XV: On Sacred Anointing

Chapter I

Latin source headnote: The Church of the Greeks ought in ordinations and consecrations to observe the anointings that the Roman Church observes; moreover, when a bishop is consecrated, he is anointed with chrism on the head and hands; if this has been omitted, it is to be supplied by three bishops. § 5. It treats of the anointing of kings and of the differences in anointing between kings and pontiffs. Pan. § 6. It treats of the anointing of all Christians. § 7. It treats of the anointing with chrism after baptism, which is called confirmation. § 8. It treats of the consecration of an altar. Abbas.

Innocent III.

When our venerable brother the Bishop of Barcar came to the Apostolic See, who had not received sacred anointing in his consecration because among you pontiffs are not accustomed to be anointed when they are consecrated, we commanded that what had been lacking in him be supplied in him, causing his head and hands to be smeared with sacred chrism according to ecclesiastical custom by our venerable brother John, Bishop of Albano, with two bishops assisting him.

For the catholic Church holds this not only from divine precept but also from the example of the Apostles. Indeed, in Exodus it is read that the Lord commanded Moses to anoint Aaron and his sons so that they might discharge the priesthood. And Pope Anacletus, Greek by nation, who was ordained priest by blessed Peter and afterwards succeeded Clement in the office of the apostolate, hands down in his ordinance that bishops are to be anointed after the custom of the Apostles and Moses, because all sanctification consists in the Holy Spirit, whose invisible power is mingled with sacred chrism. Hence:

§ 1. We will you to know that there are two kinds of anointing: the exterior, which is material and visible, and the interior, which is spiritual and invisible. By the exterior the body is visibly anointed; by the interior the heart is invisibly anointed. Concerning the first, the Apostle James says: “Is anyone among you infirm? Let him bring in the priests of the Church, and let them pray over him, anointing him with oil in the name of the Lord, and the prayer of faith will save the infirm man.” Concerning the second, the Apostle John says: “Let the anointing that you received from him remain in you, and you have no need that anyone teach you, but as his anointing teaches you concerning all things.” The visible and exterior anointing is a sign of the interior and invisible anointing. But the invisible and interior anointing is not only a sign but also a sacrament, because, if worthily received, it without doubt either effects or increases what it signifies.

§ 2. To furnish the exterior and visible anointing, however, the oil that is called the oil of catechumens or of the infirm is blessed, and chrism, which by mystical reason is made from oil and balsam, is prepared. For by oil the brightness of conscience is signified, according to what is read: “The prudent virgins received oil in their vessels with their lamps”; but by balsam the fragrance of reputation is expressed, on account of which it is said: “Like fragrant balsam, I gave forth an odor.”

§ 3. Therefore, a bishop ought to be anointed with this chrism not so much in body as in heart, so that inwardly he may have brightness of conscience toward God and outwardly have the fragrance of reputation toward his neighbor. Concerning the brightness of conscience the Apostle says: “Our glory is this, the testimony of our conscience,” for “all the glory of the king's daughter is within.”

Concerning the fragrance of reputation the same Apostle says: "We are the good fragrance of Christ in every place, and to some we are the fragrance of life unto life, to others the fragrance of death unto death." For a bishop ought to have good testimony both from those who are within and from those who are without, so that curtain may draw curtain, and the one who hears may say: come.

§ 4. With this ointment the head and hands of a bishop are consecrated. For by the head the mind is understood, according to this: "Anoint your head and wash your face." By the hands works are understood, according to this: "My hands dripped myrrh." Therefore, the hand is anointed with the oil of piety so that the bishop may work good toward all, but especially toward the household of faith. The head, however, is anointed with the balsam of charity so that the bishop may love God with his whole heart, whole mind, and whole soul, and his neighbor as himself. The head is anointed because of authority and dignity, and the hands because of ministry and office.

The head is anointed so that it may be shown that he represents the person of him concerning whom it is said through the Prophet: "Like the ointment upon his head that descended upon the beard, the beard of Aaron." For the head of man is Christ; the head of Christ is God, who says concerning himself: "The Spirit of the Lord is upon me; because he anointed me, he sent me to evangelize the poor." The hands of a bishop are anointed so that it may be shown that he receives the power of blessing and consecrating. Hence, when the consecrator anoints them, he says: "Deign, Lord, to consecrate and sanctify these hands through this sacred anointing and through our blessing, so that whatever they consecrate may be consecrated, and whatever they bless may be blessed in the name of the Lord."

§ 5. Hence, in the Old Testament not only a priest but also a king and a prophet was anointed, as in the Book of Kings the Lord commanded Elijah: "Go and return to your house through the desert to Damascus, and when you have arrived there, you shall anoint Hazael king over Syria, and you shall anoint Jehu son of Nimshi king over Israel. Moreover, you shall anoint Elisha son of Shaphat, who is from Abel-meholah, as prophet in your place."

But when Jesus of Nazareth—whom God anointed with the Holy Spirit, as is read in the Acts of the Apostles—was anointed with the oil of gladness above his fellows, he who according to the Apostle is the head of the Church, which is his body, the anointing of a prince was transferred from the head [namely] to the arm, so that thereafter a prince is anointed not on the head but on the arm, or on the shoulder, or on the upper arm, in which princely power is fittingly signified, according to what is read: "Princely power was placed upon his shoulder, etc." To signify this also, Samuel caused the upper arm to be placed before Saul, to whom he had given a place at the head before those who had been invited. But the sacramental anointing was preserved on the head of a pontiff because in the pontifical office he represents the person of the head. There is a difference, moreover, between the anointing of a pontiff and that of a prince, because the head of a pontiff is consecrated with chrism, while the arm of a prince is smeared with oil, so that it may be shown how great the difference is between the authority of a pontiff and the power of a prince.

§ 6. But because Christ made us in his blood a kingdom and priests for our God, on account of which the Apostle Peter says, "You are a chosen race, a royal priesthood," therefore in the New Testament not only kings and priests are anointed, but also all Christians: twice before baptism, namely with blessed oil, first on the breast and then between the shoulder blades; and twice after baptism, namely with sacred chrism, first on the crown of the head and finally on the forehead.

For the one to be baptized is anointed on the breast so that through the gift of the Holy Spirit he may cast away error and ignorance and receive the right faith, because the just man lives by faith. The one to be baptized is anointed between the shoulder blades so that through the grace of the Holy Spirit he may cast off negligence and torpor and exercise good works, because faith without works is dead, so that through the sacrament of faith there may be purity of thoughts in the breast and through the exercise of work there may be strength for labors on the shoulders, in order that faith may work through love according to the Apostle.

But the baptized person is anointed on the crown of the head so that he may be prepared to render an account of the faith to everyone who asks, because by the head the mind is understood, according to what is read: "The eyes of the wise man are in his head," of which the higher part is reason and the lower is sensuality. Hence, by the crown, which is the higher part of the head, reason, which is the higher part of the mind, is well understood. The baptized person is anointed on the forehead so that he may freely confess what he believes, because "with the heart one believes unto justice, but with the mouth confession is made unto salvation," mindful of what the Lord says: "Whoever confesses me before men, I also will confess him before my Father."

Therefore, before baptism he is anointed with blessed oil, and after baptism with sacred chrism, because chrism belongs to a Christian alone. For Christ is said from chrism, or rather chrism is said from Christ—not according to the form of the name but according to the account of faith. Christians, however, are said from Christ, as though the anointed were derived from the Anointed One, so that all may run together into the fragrance of that ointment whose name is oil poured forth.

§ 7. By chrismation of the forehead the imposition of hands is signified, which by another name is called confirmation, because through it the Holy Spirit is given for increase and strength. Hence, although a simple priest or presbyter may furnish the other anointings, only the high priest—that is, a bishop—ought to confer this one, because it is read concerning the Apostles alone, whose vicars bishops are, that through the imposition of hands they gave the Holy Spirit, as the reading from the Acts of the Apostles makes manifest: "When," it says, "the Apostles who were at Jerusalem had heard that Samaria had received the word of God, they sent Peter and John to them; and when they had come, they prayed for them that they might receive the Holy Spirit. For he had not yet come upon any of them, but they had only been baptized in the name of the Lord Jesus; then they laid hands upon them, and they received the Holy Spirit."

His coming is signified through the ministry of anointing, because the dove in which the Holy Spirit descended upon Christ in baptism, returning in the evening during the flood, brought back a branch of flourishing olive, whose sacrament David the Prophet, foreknowing it, proclaimed that the face would be gladdened with oil.

§ 8. Furthermore, according to ecclesiastical custom, an anointing is performed when an altar is consecrated, when a temple is dedicated, and when a chalice is blessed, not only from the mandate of divine law but also from the example of blessed Sylvester, who, when he consecrated an altar, anointed it throughout with chrism. For the Lord commanded Moses to make the oil of anointing, from which he should anoint the tabernacle of testimony and the ark of the covenant, and the table with its vessels. Concerning these anointings also, if perhaps you should doubt, when we have been consulted by you, we will instruct your fraternity more fully. Nevertheless, the sacrament of anointing effects and figures another thing both in the New Testament and in the Old; hence the

Church does not Judaize when she celebrates the sacrament of anointing, as the ancients falsely claim, who know neither the scriptures nor the power of God.

§ 9. We therefore admonish your fraternity and exhort it more attentively, commanding [you] by apostolic writings that, at the mandate of our beloved son the cardinal-priest of the title of the Holy Cross, legate of the Apostolic See, you too receive sacred anointing, lest anything be lacking to you for the fullness of the sacrament. Thus, when you have been smeared with sacred chrism, you shall likewise anoint your archbishops and bishops, and through them cause the hands of priests to be anointed with blessed oil, so that hereafter in ordaining priests and consecrating bishops you observe and cause to be observed the custom that the Apostolic See observes, which, by the Lord's disposition, is the mother and teacher of all the faithful.

Moreover, through the aforesaid cardinal we send you the pontifical ornaments: stockings and sandals, amice and alb, girdle and subcinctorium, stole and maniple, tunicle and dalmatic, gloves and ring, chasuble and mitre. But we had previously sent the pallium through our beloved son John, our chaplain. And although the Roman Pontiff does not use a pastoral staff, both because of history and also because of a mystical reason, which the same cardinal, as he received it from us, will be able to teach, nevertheless you will be able to use it after the likeness of other pontiffs. [Given at Anagni, on the sixth day before the Kalends of March, in the seventh year of our pontificate, 1204.]

Textual note: In section 8 the Latin Library-derived working transcription contained a base64-like corruption in place of *requisiti, fraternitatem tuam plenius instruemus. Verum tamen*. The reading printed here and translated above has been restored from the Friedberg-derived reference text. Three stray *ñ* characters separating portions of the source headnote were likewise removed.

> **DE SACRA UNCTIONE.**
>
> Ecclesia Graecorum in ordinationibus et consecrationibus servare debet unctiones, quas servat ecclesia Romana; episcopus autem, quum consecratur, inungitur chrismate in capite et manibus; quod, si fuerit praetermissum, per tres episcopos est supplendum. § 5. Tractat de unctione regum, et de differentiis in unctione inter reges et pontifices. Pan. § 6. Tractat de Christianorum omnium unctione. § 7. Tractat de unctione chrismatis post baptismum, quae dicitur confirmatio. § 8. Tractat de consecratione altaris. Abbas.
>
> Innocentius III.
>
> Quum venisset ad apostolicam sedem venerabilis frater noster Barcarensis episcopus, qui in consecratione sua sacram non acceperat unctionem, quoniam apud vos non consueverunt pontifices, quum consecrantur, inungi, nos quod illi defuerat mandavimus in ipso suppleri, facientes caput eius et manus per venerabilem fratrem nostrum Ioannem Albanensem episcopum, assistentibus ei duobus episcopis, secundum morem ecclesiasticum sacro chrismate deliniri. Hoc enim catholica ecclesia tenet, non solum ex praecepto divino, verum etiam Apostolorum exemplo. In Exodo quippe legitur praecepisse Dominus Moysi, ut Aaron et filios eius inungeret, quatenus sacerdotio fungerentur. Et Anacletus Papa, natione Graecus, qui a B. Petro fuit in presbyterum ordinatus, et postea in apostolatus officio Clementi successit, tradit in ordinatione sua, ungendos episcopos more Apostolorum et Moysi, quia omnis sanctificatio in Spiritu sancto consistit, cuius invisibilis virtus sancto chrismati est permixta. Unde § 1. Scire te volumus, duas esse species unctionis: exteriorem, quae materialis est et visibilis, et interiorem, quae spiritualis est et invisibilis. Exteriori visibiliter inungitur corpus; interiori invisibiliter inungitur cor. De prima Iacobus Apostolus ait: "Infirmatur quis in vobis, inducat presbyteros ecclesiae, et orent super eum, ungentes eum oleo in nomine Domini, et oratio fidei salvabit infirmum." De

secunda Ioannes Apostolus ait: "Vos unctionem, quam accepistis ab eo, maneat in vobis, et non necesse habetis, ut aliquis doceat vos, sed sicut unctio eius docet vos de omnibus." Unctio visibilis et exterior signum est interioris et invisibilis unctionis. Unctio vero invisibilis et interior non solum est signum, sed etiam sacramentum, quia, si digne sumitur, vel agit vel auget absque dubio quod designat. § 2. Ad exhibendum autem exteriorem et visibilem unctionem benedicitur oleum, quod dicitur catechumenorum vel infirmorum, et conficitur chrisma, quod ex oleo fit et balsamo mystica ratione. Per oleum enim nitor conscientiae designatur, iuxta quod legitur: "Prudentes virgines acceperunt oleum in vasis suis cum lampadibus;" per balsamum autem odor famae exprimitur, propter quod dicitur: "Sicut balsamum aromatizans, odorem dedi. § 3. Hoc ergo chrismate ungi debet episcopus, non tam in corpore, quam in corde, ut et interius habeat nitorem conscientiae, quantum ad Deum, et exterius habeat odorem famae, quoad proximum. De nitore conscientiae dicit Apostolus: "Gloria nostra haec est, testimonium conscientiae nostrae," nam "omnis gloria filiae regis ab intus." De odore famae idem Apostolus ait: "Christi bonus odor sumus in omni loco, et aliis sumus odor vitae in vitam, aliis odor mortis in mortem." Debet enim episcopus bonum habere testimonium, et ab iis, qui sunt intus, et ab iis, qui sunt foris, ut cortina cortinam trahat, et qui audit dicat: veni. § 4. Hoc unguento caput et manus episcopi consecrantur. Per caput enim mens intelligitur, iuxta illud: "Unge caput tuum, et faciem tuam lava." Per manus opera intelliguntur, iuxta illud: "Manus meae distillaverunt myrrham." Manus igitur ungitur oleo pietatis, ut episcopus operetur bonum ad omnes, maxime autem ad domesticos fidei. Caput autem ungitur balsamo caritatis, ut episcopus diligat Deum ex toto corde, et ex tota mente, et ex tota anima, et proximum suum sicut se ipsum. Caput inungitur propter auctoritatem et dignitatem, et manus propter ministerium et officium. Caput inungitur, ut ostendatur illius repraesentare personam, de quo dicitur per Prophetam: "Sicut unguentum in capite eius quod descendit in barbam, barbam Aaron." Caput enim viri Christus, caput Christi Deus, qui de se dicit: "Spiritus Domini super me eo, quod unxit me, evangelizare pauperibus misit me." Manus episcopi inunguntur, ut ostendatur accipere potestatem benedicendi et consecrandi. Unde, quum eas consecrator inungit, "Consecrare," inquit, "et sanctificare digneris, Domine, manus istas, per istam sanctam unctionem et per nostram benedictionem, ut quaecunque consecraverint consecrentur, et quaecunque benedixerint benedicantur in nomine Domini." § 5. Unde in veteri testamento non solum ungebatur sacerdos, sed etiam rex et Propheta, sicut in libro Regum Dominus praecepit Heliae: "Vade et revertere in domum tuam per desertum in Damascum, quumque perveneris illuc, unges Hazael regem super Syriam, et Iehu filium Namsi unges regem super Israel. Elisaeum autem filium Saphat, qui est de Abel-Meula, unges Prophetam pro te." Sed ubi Iesus Nazarenus, quem unxit Deus Spiritu sancto, sicut in Actibus Apostolorum legitur, unctus est oleo pietatis prae consortibus suis, qui secundum Apostolum est caput ecclesiae, quae est corpus ipsius, principis unctio a capite [scilicet] ad brachium est translata, ut princeps extunc non ungatur in capite, sed in brachio, sive in humero, vel in armo, in quibus principatus congrue designatur, iuxta illud, quod legitur: "Factus est principatus super humerum eius, etc." Ad quod etiam significandum Samuel fecit poni armum ante Saul, cui dederat locum in capite ante eos, qui fuerunt invitati. In capite vero pontificis sacramentalis est delibutio conservata, quia personam capitis in pontificali officio repraesentat. Refert autem inter pontificis et principis unctionem, quia caput pontificis chrismate consecratur, brachium vero principis oleo delinitur, ut ostendatur, quanta sit differentia inter auctoritatem pontificis et principis potestatem. § 6. Quia vero Christus fecit nos in sanguine suo Deo nostro regnum et sacerdotes, propter quod Petrus Apostolus ait: "Vos estis genus electum, regale sacerdotium:" idcirco in novo testamento non solum reges et sacerdotes unguntur, sed etiam omnes Christiani bis ante baptismum, scilicet oleo benedicto, primum in pectore, deinde inter scapulas, et bis post baptismum, scilicet chrismate sancto, primum in vertice, demum in fronte. In pectore namque baptizandus inungitur, ut per sancti Spiritus donum abiiciat errorem et ignorantiam, et suscipiat fidem rectam, quia iustus ex fide vivit. Inter scapulas autem baptizandus inungitur, ut per

Spiritus sancti gratiam excutiat negligentiam et torporem, et bonam operationem exerceat, quia fides sine operibus mortua est, ut per fidei sacramentum sit munditia cogitationum in pectore, et per operis exercitium sit fortitudo laborum. In scapulis, quatenus fides per dilectionem secundum Apostolum operetur. In vertice vero baptizatus inungitur, ut sit paratus omni petenti de fide reddere rationem, quia per caput intelligitur mens, iuxta quod legitur: "Oculi sapientis in capite eius," cuius superior pars est ratio, et inferior est sensualitas. Unde bene per verticem, quae est superior pars capitis, intelligitur ratio, quae est superior pars mentis. In fronte ungitur baptizatus, ut libere confiteatur quod credit, quia "corde creditur ad iustitiam, ore vero fit confessio ad salutem," memor eius, quod Dominus ait: "Qui me confessus fuerit coram hominibus, confitebor et ego ei coram Patre meo." Ante baptismum ergo ungitur oleo benedicto, et post baptismum chrismate sancto, quia chrisma soli competit Christiano. Christus enim a chrismate dicitur, vel potius a Christo dicitur chrisma, non secundum nominis formam, sed secundum fidei rationem. A Christo vero Christiani dicuntur, tanquam uncti deriventur ab uncto, ut omnes concurrant in odorem illius unguenti, cuius nomen oleum est effusum. § 7. Per frontis chrismationem manus impositio designatur, quae alio nomine dicitur confirmatio, quia per eam Spiritus sanctus ad augmentum datur et robur. Unde quum ceteras unctiones simplex sacerdos vel presbyter valeat exhibere, hanc non nisi summus sacerdos, id est episcopus, debet conferre, quia de solis Apostolis legitur, quorum vicarii sunt episcopi, quod per manus impositionem Spiritum sanctum dabant, quemadmodum Actuum Apostolorum lectio manifestat: "Quum audissent," inquit, "Apostoli, qui erant Hierosolymis, quia recepisset Samaria verbum Dei, miserunt ad eos Petrum et Ioannem; qui quum venissent, oraverunt pro ipsis, ut acciperent Spiritum sanctum. Nondum enim in quemquam illorum venerat, sed baptizati tantum erant in nomine Domini Iesu; tunc imponebant manus super illos, et accipiebant Spiritum sanctum." Cuius adventus per unctionis ministerium designatur, quia columba, in qua Spiritus sanctus super Christum in baptismo descendit, ad vesperum in cataclysmo revertens, ramum retulit virentis olivae, cuius utique sacramentum David Propheta praenoscens, exhilarandam faciem in oleo praedicavit. § 8. Ungitur praeterea secundum ecclesiasticum morem, quum consecratur altare, quum dedicatur templum, et quum benedicitur calix, non solum ex mandato legis divinae, verum etiam exemplo beati Silvestri, qui, quum consecrabat altare, illud chrismate perungebat. Praecepit enim Dominus Moysi, ut faceret oleum unctionis, de quo ungeret testimonii tabernaculum et arcam testamenti, mensamque cum vasis, de quibus etiam unctionibus, si forsitan dubitaveris, quum a te fuerimus requisiti, fraternitatem tuam plenius instruemus. Verum tamen unctionis sacramentum aliud quidem efficit et figurat tam in novo quam in veteri testamento, unde non iudaizat ecclesia, quum unctionis celebrat sacramentum, sicut antiqui mentiuntur, qui neque scripturas, neque Dei novere virtutem. § 9. Monemus igitur, fraternitatem tuam et exhortamur attentius, per apostolica [tibi] scripta mandantes, quatenus ad mandatum dilecti filii nostri tit. sanctae Crucis presbyteri cardinalis apostolicae sedis legati tu quoque sacram suscipias unctionem, ne quid tibi desit ad plenitudinem sacramenti, ut, quum sacro fueris chrismate delibutus, archiepiscopos et episcopos tuos similiter ungas, et per eos facias manus sacerdotum inungi oleo benedicto, ut illum de cetero in ordinandis presbyteris et consecrandis episcopis morem serves et facias observari quem apostolica sedes observat, quae disponente Domino cunctorum fidelium mater est et magistra. Mittimus autem tibi per cardinalem praedictum pontificalia ornamenta, caligas et sandalia, amictum et albam, cingulum et succinctorium, orarium et manipulum, tunicam et dalmaticam, chirothecas et annulum, planetam et mitram. Pallium vero per dilectum filium Io. capellanum nostrum antea miseramus. Et Licet Romanus Pontifex non utatur baculo pastorali, tum propter historiam, tum etiam propter mysticam rationem, quod idem cardinalis, sicut a nobis accepit, poterit edocere, tu tamen ad similitudinem aliorum pontificum poteris eo uti. [Dat. Anagniae VI. Kal. Mart. Pont. nostr. Ao. VII. 1204.]

Title XVI: On Sacraments Not to Be Repeated

Chapter I

Latin source headnote: In the case of one ordained subdeacon without imposition of hands, and one confirmed with an anointing not of chrism but of oil, there shall be no repetition, but what was omitted shall be supplied.

Innocent III.

The pastoral—(*And below:* [cf. c. 28, On the Office of a Delegated Judge, I.29.]) Furthermore, you wished to consult us whether one who was assumed to the order of subdiaconate without imposition of hands ought to be permitted to minister, and whether the sacrament of confirmation ought to be repeated in one who through error was smeared not with chrism but with oil. To this we have decided to respond briefly to your fraternity that in such matters nothing is to be repeated, but what had been incautiously omitted is cautiously to be supplied. [Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.]

> **DE SACRAMENTIS NON ITERANDIS.**
>
> In ordinato in subdiaconum sine manuum impositione, et confirmato non chrismatis, sed olei unctione, non fiet iteratio, sed supplebitur praetermissum.
>
> Innocentius III.
>
> Pastoralis (Et infra: [cf. c. 28. de off. iud. del. I. 29.]) Praeterea nos consulere voluisti, an permitti debeat ministrare qui sine impositione manuum fuerit ad ordinem subdiaconatus assumptus, et si confirmationis sacramentum in eo debeat iterari, qui per errorem fuit non chrismate, sed oleo delinitus. Ad quod fraternitati tuae breviter duximus respondendum, quod in talibus non est aliquid iterandum, sed caute supplendum quod incaute fuerat praetermissum. [Dat. Rom. ap. S. Petr. XIV. Kal. Ian. 1204.]

Chapter II

Latin source headnote: It prohibits those buried by schismatics from being exhumed, the vestments in which they celebrated from being blessed again, and the altars upon which they celebrated from being consecrated again.

Honorius III, to the Archbishop of London and his suffragans.

You humbly asked us what ought to be done concerning the bodies of the dead who in the time of the schismatic and reprobate Waldemar were buried by schismatics, and concerning the priestly vestments in which, as well as the altars upon which, degraded priests celebrated. We respond briefly to your inquiry that we do not believe that those thus buried are to be exhumed solely on this account, or that such vestments ought to be blessed again, or the aforesaid altars reconsecrated.

Textual note: The source prints *Archiepisco Londonensi*, although the reference to Waldemar's schism indicates the Archbishop of Lund. The translation preserves the printed addressee rather than silently correcting it.

> Prohibet sepultos a schismaticis exhumari, vestimenta, cum quibus celebrarunt, iterum benedici, et altaria, in quibus celebrarunt, iterum consecrari.
>
> Honorius III. Archiepisco Londonensi et eius Suffraganeis.

A nobis humiliter quaesivistis, quid fieri debeat de mortuorum corporibus, qui tempore schismatici et reprobi Waldemarii a schismaticis sunt sepulti, et de indumentis sacerdotalibus, cum quibus, nec non de altaribus, in quibus degradati presbyteri celebrarunt. Nos autem inquisitioni vestrae breviter respondemus, quod non credimus, ob hoc duntaxat sepultos huiusmodi exhumandos, aut debere indumenta talia iterum benedici, vel reconsecrari altaria supradicta.

Chapter III

Latin source headnote: If imposition of hands was omitted in the ordination of a priest or deacon, it shall be supplied at the times established.

Gregory IX, to the Archbishop of London.

When a priest and deacon is ordained, he receives the imposition of hands by bodily touch according to the rite introduced by the Apostles. But if this was omitted, it is not in any way to be repeated; rather, at the time established for conferring orders of this kind, what was omitted through error is cautiously to be supplied. The suspension of hands, however, ought to be made when the prayer is poured forth over the head of the one to be ordained. [Given at Anagni, on the fifth day before the Ides of December, in the sixth year of our pontificate, 1232.]

Textual note: As in the preceding chapter, the source prints *Londonensi* ("of London"); the Scandinavian context may instead indicate Lund, but the printed form is retained.

Si in ordinatione presbyteri vel diaconi manus impositio fuerit praetermissa, statutis temporibus supplebitur.

Gregorius IX. Archiepiscopo Londonensi.

Presbyter et diaconus quum ordinatur, manus impositionem tactu corporali ritu ab Apostolis introducto recipiunt. Quod si omissum fuerit, non est aliquatenus iterandum, sed statuto tempore ad huiusmodi ordines conferendos caute supplendum quod per errorem exstitit praetermissum. Suspensio autem manuum debet fieri, quum oratio super caput effunditur ordinandi. [Datum. Anagniae V. Id. Dec. Pont. nostr. Ao. VI. 1232.]

Title XVII: On Whether the Sons of Priests Are to Be Ordained

Chapter I

Latin source headnote: An illegitimate person is not ordained unless he becomes a religious; and even then he is not placed in authority, that is, he is not made eligible for a prelacy.

From the Council of Poitiers.

Let the sons of priests and others born from fornication not be promoted to sacred orders unless they either become monks or live regularly in a canonical congregation. But let them in no way have a prelacy. Nor shall slaves, unless they are endowed with freedom by their masters.

DE FILIIS PRESBYTERORUM ORDINANDIS VEL NON.

Illegitimus non ordinatur, nisi ut religiosus fiat, nec tunc praeficitur, id est ad praelaturam non habilitatur.

Ex concilio Pictaviensi.

> Ut filii presbyterorum et ceteri ex fornicatione nati ad sacros ordines non promoveantur, nisi aut monachi fiant, vel in congregatione canonica regulariter viventes. Praelationem vero nullatenus habeant. Sed neque servi, nisi a dominis suis libertate donentur.

Chapter II

Latin source headnote: An illegitimate son of a priest who, with this fact suppressed, obtained his father's church through an apostolic rescript is removed from it.

Alexander III, to the Bishop-Elect of Lincoln.

Coming into our presence, R., a priest, having suppressed the fact that he was the son of a priest, fraudulently obtained [letters] from us that he should be chaplain in the church of Bilesby, in which his father ministered. Therefore, we command your discretion by apostolic writings, [under precept], that within forty days after reception of these letters you diligently inquire into the truth of the matter; and, if it is established for you that the aforesaid R. was begotten during his father's priesthood and that his father ministered in the same church, notwithstanding our aforesaid letters, you shall remove him from it, with every occasion and appeal ceasing.

> Illegitimus filius sacerdotis, qui, hoc tacito, per rescriptum apostolicum paternam ecclesiam impetravit, removetur ab illa.
>
> Alexander III. Linconensi Electo.
>
> Ad praesentiam nostram accedens R. presbyter, tacito, quod esset filius sacerdotis, per fraudem [literas] impetravit a nobis, ut in ecclesia de Bilesbi, in qua pater eius ministravit, exsisteret capellanus. Ideoque discretioni tuae per apostolica scripta [praecipiendo] mandamus, quatenus infra XL. dies post harum susceptionem literarum rei veritatem inquiras diligenter, et si tibi constiterit, quod memoratus R. sit in sacerdotio genitus, et quod pater eius in eadem ecclesia ministravit, non obstantibus praedictis literis nostris, ipsum omni occasione et appellatione cessantibus amoveas ab eadem.

Chapter III

Latin source headnote: The son of a priest cannot preside over his father's church. This is said with the following chapter.

The same.

By the authority of the present letters we also command you that you in no way permit the sons of priests to minister in their fathers' churches or to obtain them on any occasion, but, with every obstacle of appeal ceasing, take pains to remove them altogether from the churches in which their fathers are known to have ministered.

> Non potest filius sacerdotis ecclesiae paternae praeesse. H. d. cum sequ.
>
> Idem.
>
> Praesentium etiam auctoritate tibi iubemus, ut filios sacerdotum in ecclesiis paternis ministrare, vel eas qualibet occasione obtinere nullatenus patiaris, sed ipsos ab ecclesiis, in quibus patres eorum ministrasse noscuntur, cessante omni appellationis obstaculo studeas penitus amovere.

Chapter IV

Latin source headnote: It says the same.

The same, to the Bishop of Worcester.

Through the complaint of M., a cleric, it became known to our ears that, when R., a priest, had for a rather long time held the church of Blessed Mary of Vicum as persona, [and] after his death the same Milo had been presented by Richard Paciford, lord of the soil, R., the son of that priest, begotten during his priesthood, strove to impede the institution of that cleric and aspires by every means he can to have the same church.

Therefore, because it is unworthy and contrary to canonical enactment that sons should succeed fathers in churches, we, wishing solicitously and diligently to attend to the eradication of this enormity, command your fraternity by apostolic writings, under precept, that, if it is public and notorious that the father of the aforesaid cleric R. held the personatus in the aforesaid church, you in no way permit his son to minister there or to have the personatus of the same church. And if perhaps [for some cause] he has already been instituted there, you shall not delay in removing him from it by our authority, with the remedy of appeal removed. And, if the aforementioned M. has been presented to you for that church by the one to whom the presentation is known to belong, provided that he is otherwise suitable, you shall not postpone receiving him there, with contradiction and appeal ceasing, and shall cause him peacefully to possess the aforesaid church.

> Idem dicit.
>
> Idem Vigorensi Episcopo.
>
> Conquerente nobis M. clerico auribus nostris innotuit, quod, quum R. presbyter ecclesiam B. Mariae de Vicum tanquam persona diutius habuisset, [et] post mortem eius idem Milo a Richardo Paciford domino fundi fuisset praesentatus, R. filius eius presbyteri in sacerdotio genitus institutionem ipsius clerici nisus est impedire, et ad habendam ecclesiam eandem modis omnibus, quibus potest, adspirat. Quoniam igitur indignum est et canonicae obviat sanctioni, ut filii debeant patribus succedere in ecclesiis, nos ad enormitatem istam eradicandam sollicite volentes et diligenter intendere, Fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus, si publicum est et notorium, patrem praedicti R. clerici habuisse in praedicta ecclesia personatum, filium eius ibidem ministrare aut eiusdem ecclesiae personatum habere nullatenus patiaris, et, si forte [aliqua causa] iam institutus est ibi, eum, sublato appellationis remedio, auctoritate nostra inde non differas amovere, et memoratum M. si tibi ad ipsam ecclesiam fuerit praesentatus ab eo, ad quem praesentatio spectare dignoscitur, ibi dummodo alias idoneus sit, contradictione et appellatione cessantibus, non postponas recipere, ipsumque facias praedictam quiete possidere ecclesiam.

Chapter V

Latin source headnote: A bishop who knowingly conferred the father's church upon the son of a priest cannot afterwards remove him from it.

The same, to the Bishop of London.

Coming into our presence, N., a cleric and bearer of the present letters, set forth to us in a supplicatory representation that, when you had given him a title to the chapel of the church of Saint I. of Newburgh, which you granted and assigned to him, and had ordained him priest for it, you afterwards despoiled him of it because his father had ministered in the aforesaid church. Therefore, we command your fraternity by apostolic writings, under precept, that, if it was known to you when you gave it to him that his father, a priest, had ministered in the said church, you restore it to him,

with delay and appeal ceasing, and leave him in peace, removing another if perhaps you instituted anyone in it. But if you did this in ignorance, since you ordained him priest for that church, you shall restore it to him and, until you provide for him in another church from which he can be honorably supported, shall inflict no burden or trouble upon him concerning the aforesaid church.

> Episcopus, qui scienter contulit filio sacerdotis paternam ecclesiam, exinde eum removere non potest.
>
> Idem Londonensi Episcopo.
>
> Veniens ad praesentiam nostram N. clericus lator praesentium supplici nobis insinuatione proposuit, quod, quum illum ad capellam ecclesiae sancti I. de Novoburgo, quam ei concessisti et assignasti, attitulasses, et ad eandem in presbyterum ordinasses, ipsum ea postea spoliasti eo, quod pater eius in praedicta ecclesia ministravit. Ideoque fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus, si tibi innotuerit, quando eam sibi dedisti, quod pater eius presbyter in dicta ecclesia ministrasset, ipsam ei dilatione et appellatione cessante restituas et in pace dimittas, amoto alio, si quem instituisti forsitan in eadem. Verum si hoc ignorans fecisti, ex quo ad ecclesiam ipsam eum in presbyterum ordinasti, eam sibi restituas, et donec in alia ecclesia sibi provideas, unde honeste valeat sustentari, eidem nullum super praedicta ecclesia gravamen inferas vel molestiam.

Chapter VI

Latin source headnote: It contains a grace and says this: Once the son of a priest has been ordained, he ought not to lack a benefice. Johannes Andreae.

The same, to the Bishop of Oxford.

R., the bearer of the present letters, set forth to us that, when he had been presented to the church of Saleb. by the lord of the soil, you were unwilling to commit the care of souls to him or furnish your assent to this matter because he was the son of a priest. Concerning this, indeed, we commend your discretion in the Lord, as is worthy, and hold your providence exceedingly pleasing and acceptable.

But because with inward affection of mind we have compassion upon his necessities and the labors that he sustained in coming to us, and it is unworthy that he, after he has, as he asserts, been ordained subdeacon, should altogether lack provision of an ecclesiastical benefice, we admonish and command your discretion by apostolic writings that within forty days after reception of these letters, with contradiction and appeal ceasing, you take pains to find, with the assent of the same cleric, some honorable priest to serve the aforesaid church, in such a way that the aforesaid R., while serving the same in his own order, ought, out of regard for God and by our and your authority, peacefully to obtain for as long as he lives one half of all the benefices of the aforesaid church. For a priest alone cannot celebrate the solemnities of masses or other divine offices without the aid of a minister.

> Gratiam continet et hoc dicit: Ex quo filius sacerdotis est ordinatus, non debet carere beneficio. Ioan. Andr.
>
> Idem Oxonensi Episcopo.
>
> Proposuit nobis R. lator praesentium, quod quum ipse ad ecclesiam de Saleb. a domino fundi fuerit praesentatus, tu curam animarum noluisti sibi committere, vel huic rei assensum tuum praestare pro eo, quod esset filius sacerdotis. Super quo utique discretionem tuam, sicut dignum est, in Domino commendamus, et providentiam tuam gratam gerimus admodum et acceptam. Ceterum, quia necessitatibus eius et laboribus, quos ad nos veniendo sustinuit, interna mentis affectione compatimur, et indignum est, ut ipse, postquam est in subdiaconum, ut asserit, ordinatus, omnino debeat

ecclesiastici beneficii provisione carere, discretionem tuam per apostolica scripta monemus atque mandamus, quatenus aliquem honestum presbyterum cum assensu eiusdem clerici infra XL. dies post harum susceptionem literarum, contradictione et appellatione cessantibus invenire studeas, qui ecclesiae serviat supradictae, ita, quod praefatus R. medietatem omnium beneficiorum praedictae ecclesiae, eidem in suo ordine serviendo, divino intuitu, quoad vixerit, nostra et tua auctoritate pacifice debeat obtinere. Non enim solus presbyter missarum solemnia vel alia divina officia potest sine ministri suffragio celebrare.

Chapter VII

Latin source headnote: A son can preside over a church over which his father presided mediately.

The same, to the Archbishop of Canterbury.

From the complaint of G., a cleric, transmitted to us, we have perceived that you delayed at present to receive him in a certain benefice of the church of N. upon the presentation of our beloved son the Abbot of Castris because a certain [E.], who was said to be his father, ministered in the aforesaid church, but after his death an intermediate person intervened upon whom the aforesaid benefice was conferred. Therefore, we command and order your fraternity by apostolic writings that, if it is so, you do not postpone admitting the aforementioned G. to the aforesaid benefice, with every occasion and appeal ceasing, the decree of the apostolic rescript being no less observed for this reason, which here detests hereditary succession in the Church of God so that it may approve canonical possession. [But if both of you cannot be present to execute these matters, let one of you nevertheless execute them.]

Filius praeesse potest ecclesiae, cui pater praefuit mediate.

Idem Archiepiscopo Cantuariensi.

Ex transmissa nobis conquestione G. clerici percepimus, quod ad dilecti filii nostri abbatis de Castris praesentationem in quodam beneficio ecclesiae de N. eum in praesenti recipere distulisti eo, quod quidam [E.], qui dicebatur pater eius, in praefata ecclesia ministravit, quo defuncto media intercessit persona, cui praedictum beneficium est collatum. Ideoque fraternitati tuae per apostolica scripta mandamus atque praecipimus, quatenus, si est ita, praenominatum G. ad praefatum beneficium admittere non postponas omni occasione et appellatione cessantibus, non ideo minus observato apostolici rescripti decreto, quod hic successionem in ecclesia Dei hereditariam detestatur, ut canonicam approbet possessionem. [Porro si his exsequendis ambo non poteritis interesse, alter vestrum nihilominus exsequatur.]

Chapter VIII

Latin source headnote: A son can preside over a church in which his father ministered without a title.

The same, to the Bishop of Worcester.

Appearing in our presence, G., a cleric and bearer of the present letters, showed us in a supplicatory representation that, when he had canonically obtained the chapel of Storton and had possessed it peacefully for several years, R., a knight, despoiled him of it without judgment and justice. And when the aforementioned cleric had lodged a complaint concerning this before you, brother and fellow bishop, it was objected against him that his father had ministered in the same chapel, and he has not yet been able to recover the aforesaid chapel.

But because it pertains to our office to restrain with due severity the insolence of laymen against ecclesiastical men, we command your fraternity by apostolic writings, under precept, that, after the truth of the matter has been diligently investigated and learned, if it is established for you that the same cleric was cast out of the aforesaid chapel through lay power, and that his father was not the persona or perpetual vicar of the aforesaid chapel, although he sometimes ministered in it in the name of the same G., you shall not omit to restore it to him with the revenues received from it, removing another if anyone holds it, with delay, occasion, and appeal ceasing; any letters of ours that may have been obtained not prejudicing truth and justice. And you shall cause him to possess it peacefully, as it was canonically obtained. [If both of you cannot be present to execute these matters, let one, having associated with himself discreet and honorable men, nevertheless execute them.]

> Filius praeesse potest ecclesiae, in qua pater sine titulo ministravit.
>
> Idem Vigorensi Episcopo.
>
> Constitutus in praesentia nostra G. clericus lator praesentium supplici nobis insinuatione monstravit, quod, quum capellam de Storton. canonice fuisset adeptus, et eam pluribus annis pacifice possedisset, R. miles ipsum ea sine iudicio et iustitia spoliavit. Quumque memoratus clericus exinde apud te, frater coepiscope, deposuisset querelam, obiectum fuit ei, quod pater suus in capella ministravit eadem, et praefatam capellam nondum potuit rehabere. Quia vero ad nostrum spectat officium, insolentiam laicorum contra viros ecclesiasticos debita severitate compescere: Fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus, rei veritate diligenter inquisita et cognita, si tibi constiterit, quod idem clericus a capella fuerit praedicta per potentiam laicalem eiectus, et quod pater eius praefatae capellae persona seu perpetuus vicarius non fuerit, licet in eadem nomine eiusdem G. quandoque ministraverit, ipsam sibi cum reditibus inde perceptis, amoto alio, si quis eam detinet, dilatione, occasione et appellatione cessantibus, restituere non omittas, literis nostris, si quae sint impetratae, veritati et iustitiae non praeiudicantibus, et ipsum sicut canonice adeptus fuit, faciatis pacifice possidere. [Si his exsequendis ambo interesse non poteritis, alter adhibitis sibi discretis viris et honestis ea nihilominus exsequatur.]

Chapter IX

Latin source headnote: If one to whom it was granted by the Pope that he could dispense with the sons of priests concerning the immediate holding of their fathers' churches dispenses with someone, that person cannot be removed through letters of justice afterwards obtained against him.

The same, to the Archbishop of York.

It was set forth to us on your part that, when formerly in response to your consultation concerning the sons of priests you received such letters from us that you could sustain in the churches that their fathers had possessed without anyone intervening those whom you knew to be of approved life and sound conduct, or whom it was established had held those churches for a long time, certain persons obtained letters to judges that, if it were established that they were the sons of priests or clerics who had held the churches immediately before them, silence should be imposed upon them concerning these matters, with appeal ceasing, and those churches should be assigned to the petitioners, although they could not show themselves to have been instituted in them by bishops.

Concerning this we respond thus to you: if through our earlier letters you dispensed with any clerics, we do not will your dispensation to be invalidated with a view to our later letters, but command that it be preserved unimpaired. But by apostolic authority we prohibit other clerics from being instituted,

with a view to a lay grant and without the authority of their own pontiff, in churches subject to parochial law, or, if instituted, from remaining in them.

> Si is, cui concessum est a Papa, ut possit dispensare cum filiis sacerdotum circa ecclesias paternas immediate tenendas cum aliquo dispensat, ille per literas iustitiae postea contra eum impetratas removeri non poterit.
>
> Idem Eboracensi Archiepiscopo.
>
> Ex tua nobis parte est propositum, quod, quum olim ad tuam consultationem super filiis sacerdotum tales a nobis literas recepisses, ut eos posses in ecclesiis, quas patres eorum nullo mediante possederant, sustinere, quos probatae vitae et sanae conversationis cognosceres, vel quos longo tempore illas tenuisse constaret: quidam ad iudices literas impetraverunt, ut, si constaret, eos esse filios sacerdotum vel clericorum, qui in proximo ante eos ecclesias tenuerunt, super his imponatur eis, appellatione cessante, silentium, et ecclesias istas ipsis assignent, quamvis in eis se ostendere nequeant per episcopos institutos. Super quo tibi taliter respondemus, quod, si per priores literas nostras cum aliquibus clericis dispensasti, dispensationem tuam posteriorum literarum nostrarum intuitu nolumus irritari, sed eam servari praecipimus illibatam. Alios vero clericos laicae donationis intuitu in ecclesiis parochiali iuri subiectis sine auctoritate pontificis sui institui, aut institutos in eis remanere, auctoritate apostolica prohibemus.

Chapter X

Latin source headnote: If it is manifest that a son immediately succeeded his father in a church, he shall be removed from it without any reception of witnesses.

The same, to the Archbishop of Canterbury and his suffragans.

Because it is prohibited by the sacred canons that any persons presume to possess ecclesiastical benefices by hereditary right, and those who were begotten during priesthood ought not to be promoted to sacred orders unless they have lived an approved life in a cloister of monks or canons regular, we command you that, if it is manifest and public that fathers exercised personatus in churches, you altogether exclude the sons from those same churches, even if they have obtained them, with appeal ceasing; nor shall they be assumed thereafter to their governance. For we do not will that a cause be brought into judgment on that account, or that witnesses even be admitted, if this is manifest.

> Si manifestum est, quod filius in ecclesia immediate successit patri, sine aliqua testium receptione ab illa removebitur.
>
> Idem Cantuariensi Archiepiscopo et eius Suffraganeis.
>
> Quoniam est sacris canonibus prohibitum, ne qui hereditario iure ecclesiastica beneficia possidere praesumant, nec hi, qui in sacerdotio sunt geniti, nisi probate vixerint in claustro monachorum vel canonicorum regularium, ad sacros ordines debeant promoveri, vobis Praecipimus, quatenus, si manifestum et publicum fuerit, patres in ecclesiis personatus gessisse, filios ab eisdem ecclesiis, si etiam eas adepti sunt, appellatione cessante penitus excludatis, nec ad earum gubernationem ulterius assumantur. Nolumus enim, ut propterea causa in iudicium deducatur, vel testes etiam admittantur, si hoc manifestum exsistat.

Chapter XI

Latin source headnote: Even a legitimate son is removed from a church in which he immediately succeeded his father as vicar or rector.

The same, to the Archbishop of Canterbury.

We ought to attend with the zeal of complete solicitude to extirpating successions from holy churches; it also befits you to exhibit vigilant care for this, lest we seem to be less diligent concerning the ministry of the governance undertaken if we permit that vice to sprout in churches or in ecclesiastical businesses and men. Hence it is that we command your fraternity by apostolic writings, under precept, that, if any sons of priests of your province hold churches in which their fathers ministered as personae or vicars with no intervening person, you shall not delay in removing them from those churches, with contradiction and appeal ceasing, whether they were begotten during the priesthood or not.

But if there are any sons of clerics who obtained, with other persons intervening, churches that their fathers held, provided that they are suitable you will be able to sustain them in those churches; in such a way that, if one man possesses several churches that his father held and one of them can suffice for him, you shall cause him to be content with whichever one he prefers, provided that they are not such that the others are known to depend upon one of them.

> Filius etiam legitimus removetur ab ecclesia, in qua immediate successit patri vicario vel rectori.
>
> Idem Cantuariensi Archiepiscopo.
>
> Ad exstirpandas successiones a sanctis ecclesiis studio totius sollicitudinis debemus intendere; te etiam ad hoc decet vigilem curam exhibere, ne circa ministerium suscepti regiminis videamur minus diligentes exsistere, si id vitium in ecclesiis vel in negotiis ecclesiasticis et viris permittimus pullulare. Hinc est, quod Fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus, si qui filii presbyterorum provinciae tuae teneant ecclesias, in quibus patres eorum tanquam personae vel vicarii nulla persona media ministrarunt, eos, sive geniti sint in sacerdotio, sive non, ab eisdem ecclesiis, contradictione et appellatione cessantibus, non differas amovere. Si vero aliqui sint filii clericorum, qui ecclesias quas patres eorum tenuerunt, personis aliis mediis sunt adepti, eos dummodo idonei sint, in illis poteris sustinere; ita quod si unus plures ecclesias, quas pater eius tenuerat, possidet, quarum una possit sibi sufficere, ipsum una, quam maluerit, facias esse contentum, dummodo tales non sint, a quarum una reliquae, pendere noscantur.

Chapter XII

Latin source headnote: A legitimately born son of a bishop can be promoted to orders and receive a benefice in his father's church.

Clement III, to the Archbishop of Cashel.

In addition, on your part it was reported to our ears—(*And below:*) Your fraternity asked us whether those begotten by pontiffs can be promoted to sacred orders if they are approved in knowledge and uprightness of morals. Let your fraternity know that, if they were procreated from lawful marriage and no other canonical impediment stands in the way, they can lawfully ascend to sacred orders and obtain a benefice in the same churches over which their parents preside or even presided.

> Filius episcopi legitime natus, promoveri potest ad ordines, et in paterna ecclesia beneficiari.

Clemens III. Cassel. Archiepiscopo.

Ad haec ex parte tua nostris auribus est relatum (Et infra:) Quod a nobis fraternitas tua requisivit, an a pontificibus generati valeant ad sacros ordines promoveri, si scientia fuerint et morum honestate probabiles: sciat fraternitas tua, quod, si ex legitimo sint matrimonio procreati, nec aliud canonicum obviat, licite possunt ad sacros ordines ascendere, et in eisdem ecclesiis, in quibus praesunt vel etiam praefuerunt genitores eorum, beneficium obtinere.

Chapter XIII

Latin source headnote: A son cannot be vicar of the church in which his father was the immediately preceding rector.

The same.

Michael, priest of Saint Germanus, showed by a complaint transmitted to us that, when he had canonically obtained the church of Saint I. of Corona in your diocese, M., the son of Antony, who held the personatus of that church immediately before him, asserts that its vicarage pertains to himself.

Therefore, because successions to prelacies and ecclesiastical dignities in a church are condemned by the canonical statutes, we command your fraternity by apostolic writings that, after the truth has been more diligently investigated, if it is established for you that the same M. was the son of Antony, who, as we set forth above, held the personatus of the same church immediately before, you shall not postpone imposing perpetual silence upon him concerning the same vicarage, with every contradiction and appeal ceasing.

Non potest filius esse vicarius illius ecclesiae, in qua pater proximus fuit rector.

Idem.

Michael presbyter de sancto Germano transmissa nobis conquestione monstravit, quod, quum ecclesiam sancti I. de Corona tuae dioecesis canonice sit adeptus, M. filius Antonii, qui proximo ante ipsius ecclesiae habuit personatum, ad se vicariam ipsius asserit pertinere. Quia igitur in ecclesia successiones in praelaturis et dignitatibus ecclesiasticis statutis canonicis damnantur, Fraternitati tuae per apostolica scripta mandamus, quatenus, veritate diligentius inquisita si constiterit tibi, ipsum M. fuisse filium Antonii, qui eiusdem ecclesiae, sicut praemisimus, habuit proximo personatum, omni contradictione et appellatione cessantibus, ei super eadem vicaria perpetuum silentium imponere non postponas.

Chapter XIV

Latin source headnote: One illegitimately begotten, even from a wife, cannot without dispensation be promoted to orders or benefices.

The same.

We have received the letters of your affection containing the vow and origin of the bearer of the present letters. Indeed, we have understood that H., begotten during priesthood, born and conceived of a lawful wife, moved by a laudable vow desired from childhood to minister to the Lord in the clerical office. But although paternal incontinence is known to be repelled in every way from the sons, and for the caution of priests their sons are removed from sacred orders according to the canonical

enactment, it is not expedient that we assent to the prayers of persons supplicating in such matters in such a way that we seem more easily to furnish to others some hope of obtaining similar things. But lest, because of the affection of his petition, when he has humbly approached the Apostolic See, he should grieve that he was altogether defrauded, by the present writing we signify to you that, provided he is otherwise found worthy, we permit him to be ordained as a cleric and promoted to an ecclesiastical benefice from which he can suitably be supported.

> Illegitime genitus, etiam de uxore, sine dispensatione ad ordines vel beneficia promoveri non potest.
>
> Idem.
>
> Literas dilectionis vestrae accepimus, votum latoris praesentium et eius originem continentes. Intelleximus siquidem, quod H. in sacerdotio genitus, de uxore legitima natus et conceptus, voto laudabili affectavit a pueritia ministrare Domino in officio clericali. Verum licet a filiis paterna incontinentia modis omnibus propellenda noscatur, et propter cautelam presbyterorum filii a sacris ordinibus iuxta sanctionem canonicam removentur, non expedit, ut super huiusmodi ita supplicantium precibus annuamus, quod videamur aliis impetrandi similia spem aliquam facilius impertiri. Sed ut suae postulationis affectu, quum ad sedem apostolicam humiliter accesserit, ex toto defraudari se non doleat, praesenti scripto vobis significamus, quod, si tamen aliter dignus inventus fuerit, permittimus ipsum ordinari in clericum, et ad ecclesiasticum beneficium, unde commode sustentari valeat, promoveri.

Chapter XV

Latin source headnote: An illegitimate person ought not to be prebended in his father's church.

Innocent III.

Since you ought to love the beauty of the house of God [and the place of the tabernacle of his glory, you must with careful solicitude take precautions lest in the churches committed to you those things be rashly presumed that seem either to extinguish in them the lamp of religion or to stain the purity of the Lord's ministers. For you should know that it has reached our hearing that certain persons established in your dioceses, publicly contracting with women, do not fear to assume ecclesiastical dignities; and that certain canons of churches, whose loins according to the word of evangelical truth ought to be girded and in whose hands the lamps of good work ought to burn, have rotted to such a degree in the filth of luxury that they are not even willing to veil their ignominy and shame. Rather, they draw with them to the ministry of the altar, of which they render themselves unworthy, sons received from an infamous generation—as though their incontinence were not known sufficiently to the reproach of the clerical order unless testimony speaking against them from the sons brought forth in public were proved by continual display.

And since in churches in which clerics of this kind have a place many things are enormously attempted, while in those churches the leavened kinship of fathers and sons, and even of nephews and relatives by affinity, ministers in a disorderly manner—because, with carnal love prevailing, spiritual reverence has grown cold among them, whence not one refrains on account of another from doing anything through their insolence—] sometimes games, etc. (cf. c. 12, On the Life and Uprightness of Clerics, III.1.)

You shall also not permit prebends to be conferred upon the sons of canons in the same churches of which their fathers are canons, since it is indecorous that in the office of the altar an illegitimate son minister to an unchaste father, in which the only-begotten Son of God is offered as a victim to the

eternal Father for the salvation of the human race. But the aforementioned, etc. (cf. c. 12, On the Life and Uprightness of Clerics, III.1.) [Given at Rome, at Saint Peter's, on the sixth day before the Ides of January, in the ninth year, 1207.]

> Illegitimus in ecclesia paterna praebendari non debet.
>
> Innocentius III.
>
> Quum decorem domus Dei [et locum tabernaculi gloriae suae diligere vos oporteat, accurata vobis est sollicitudine praecavendum, ne in commissis vobis ecclesiis illa temere praesumantur, quae vel in eis lampadem religionis exstinguere, vel munditiam videantur ministrorum Domini maculare. Ad nostram siquidem noveritis audientiam pervenisse, quod quidam in vestris dioecesibus constituti publice cum mulieribus contrahentes, ecclesiasticas non verentur suscipere dignitates, et nonnullarum ecclesiarum canonici, quorum lumbos iuxta verbum evangelicae veritatis deceret esse praecinctos, ac in eorum manibus lucernas bonae operationis ardere, usque adeo luxuriae sordibus putruerunt, quod nec etiam ignominiam suam velint turpitudinemque velare, quin immo filios ex infami generatione susceptos ad ministerium altaris, quo se reddunt indignos, indignius secum trahunt, ac si non satis in opprobrium ordinis clericalis eorum incontinentia foret cognita, nisi natorum in publicum deductorum loquentiumqne testimonium contra ipsos, esset ostensione sedula comprobata. Quumque in ecclesiis, in quibus huiusmodi clerici locum habent, multa enormiter attententur, dum in eisdem fermentata patrum et filiorum, nepotum etiam et affinium parentela inordinate ministrat, quia videlicet, amore praedominante carnali, reverentia spiritualis tepuit inter ipsos, unde nequaquam unus quodlibet facere propter alium praetermittit per insolentiam eorundem,] interdum ludi etc. (cf. c. 12. de vita et hon. cler. III. 1.) Filiis quoque canonicorum praebendas in eisdem ecclesiis conferri non sinatis, quarum sunt canonici patres eorum, quum indecorum sit, ut in altaris officio illegitimus filius impudico patri ministret, in quo unigenitus Dei filius aeterno patri pro salute humani generis victimatur. Praelibatam vero etc. (cf. c. 12. de vita et hon. cler. III. 1.) [Dat. Rom. ap. S. Petr. VI. Id. Ian. Ao. IX. 1207.]

Chapter XVI

Latin source headnote: If an illegitimate person, especially a spurious son, is instituted in a church in which his father is instituted, the institution is not valid, and the one instituting is to be suspended from his benefices.

The same, in the General Council.

To abolish the worst corruption that has taken root in many churches, we firmly prohibit the sons of canons, especially spurious sons, from becoming canons in secular churches in which their fathers are instituted; and if something has been presumed to the contrary, we decree that it is not valid. But those who presume to make such persons canons, as has been said, shall be suspended from their benefices.

> Si illegitimus, maxime filius spurius, instituitur in ecclesia, in qua institutus est pater, institutio non valet, et instituens a suis beneficiis suspendatur.
>
> Idem in concilio generali.
>
> Ad abolendam pessimam, quae in pluribus inolevit ecclesiis, curruptelam, firmiter inhibemus, ne canonicorum filii, maxime spurii, canonici fiant in saecularibus ecclesiis, in quibus instituti sunt patres eorum, et si fuerit contra praesumptum, decernimus non valere. Qui vero tales, ut dictum est, canonicare praesumpserint, a suis beneficiis suspendantur.

Chapter XVII

Latin source headnote: No one other than the Pope dispenses so that a son may immediately succeed in his father's church.

Honorius III.

Our beloved son G., Provost of the church of Saint Mary in Bruges, showed by a petition transmitted to us that Virgil, a priest of the diocese of Tournai, holds to the scandal of many a certain church having the care of souls, which his father held with no one intervening, contrary to the statutes both of the Lateran Council and of the General Council. The same provost diligently admonished him to resign it; but Virgil, asserting that H. of good memory, Archbishop of Reims and then legate of the Apostolic See, dispensed with him, contradicts the doing of this, although a dispensation was not granted to him by the Roman Pontiff.

Wherefore, with the assent of the procurators of both parties, we command your discretion that, after the parties have been summoned and the matters set forth on each side heard, notwithstanding any dispensation that did not emanate from the Apostolic See, you establish what is canonical, appeal being set aside.

> Alius quam Papa non dispensat, ut filius in ecclesia paterna immediate succedat.
>
> Honorius III.
>
> Dilectus filius G. praepositus ecclesiae sanctae Mariae in Brugis transmissa nobis petitione monstravit, quod, quum Virgilius presbyter Tornacensis dioecesis quandam ecclesiam, curam animarum habentem, quam nullo medio habuit pater eius, tam contra Lateranensis quam generalis concilii statuta obtineat in scandalum plurimorum, idem ipsum monuit diligenter, ut resignaret eandem; sed idem asserens, quod bonae memoriae H. Remensis archiepiscopus, tunc apostolicae sedis legatus, dispensavit cum eo, id efficere contradicit, quamquam cum eo non fuerit per Romanum Pontificem dispensatum. Quocirca discretioni vestrae de utriusque partis procuratorum assensu mandamus, quatenus, partibus convocatis, et auditis hinc inde propositis, non obstante dispensatione aliqua, quae a sede apostolica non manaverit, quod canonicum fuerit appellatione postposita statuatis.

Chapter XVIII

Latin source headnote: An illegitimate person cannot without the Pope's dispensation be promoted to a dignity, personatus, or benefice having the care of souls.

Gregory IX, to the Archbishop of Tours.

The uprightness of the Church is excessively deformed in your province by the fact that the sons of priests and others not lawfully born are promoted without a dispensation of the Apostolic See to dignities and personatus, and to other benefices having the care of souls. Wherefore we command that, after the aforesaid persons have been altogether removed from the personatus, dignities, and benefices of this kind, you cause them to be conferred upon suitable persons by those to whom you know their collation belongs by law. And we more strictly prohibit this from being presumed hereafter.

> Illegitimus absque dispensatione Papae ad dignitatem, vel personatum, vel beneficium curatum promoveri non potest.
>
> Gregorius IX. Turonensi Archiepiscopo.

> Nimis in tua provincia ecclesiae deformatur honestas ex eo, quod filii sacerdotum et alii non legitime nati ad dignitates et personatus, et alia beneficia curam animarum habentia sine dispensatione sedis apostolicae promoventur. Quocirca mandamus, quatenus praedictis personis a personatibus, et dignitatibus, et huiusmodi beneficiis prorsus amotis, ea personis idoneis conferri facias per illos, ad quos collationem ipsorum de iure noveris pertinere. Et ne id de cetero praesumatur, districtius inhibemus.

Title XVIII: On Slaves Not to Be Ordained and Their Manumission

Chapter I

Latin source headnote: A slave ought not to be ordained before full manumission.

From the Council of Toledo.

Laymen are furthermore to be instructed so that they know that they can in no way manumit in another place their own slaves whom they have decided are to be gathered into the Lord's camp, except in the sacrosanct church according to the order indicated above. For how can clerics obtain liberty outside the church, who are strangers to worldly law and who are forbidden to proceed to secular judgment? How are they absolved from the yoke of servitude by secular judgment?

But perhaps someone will say: one is not permitted to become a cleric unless, before clerical status, he obtains the dignity of free birth. He says what is truly true. And therefore, what can be invalidated or disparaged ought to be guarded against. Moreover, not only those who are to be promoted to clerical order are to be manumitted in the church, but also those whom anyone wishes to emancipate for the remedy of his soul, because it is so written in the pact of the Franks.

> **DE SERVIS NON ORDINANDIS ET EORUM MANUMISSIONE.**
>
> Servus ante plenam manumissionem ordinari non debet.
>
> Ex concilio Toletano.
>
> Instruendi sunt praeterea laici, ut sciant, quod nullatenus alio loco manumittere proprios possunt servos, quos dominicis castris adgregari decreverunt, nisi in sacrosancta ecclesia ordine supra notato. Quomodo enim clerici extra ecclesiam libertatem consequi possunt, qui a lege mundana extranei sunt, et quibus interdicitur, ne ad saeculare iudicium procedant, quomodo saeculari iudicio a iugo servitutis absolvuntur? Sed Forte dicet, aliquis: clericus fieri non permittitur, nisi ante clericatum ingenuitatis dignitate potiatur. Revera verum dicit. Et ideo quod infirmari vel vituperari potest praecaveri debet. Non solum autem qui ad clericatus ordinem promovendi sunt in ecclesia manumittendi sunt, verum etiam ii, quos quisque pro remedio animae suae emancipari vult, quia sic scriptum est in pacto Francorum.

Chapter II

Latin source headnote: A slave ordained without his master's permission is deposed and restored to his master.

From the same council.

Concerning the ordination of slaves, who everywhere are indiscriminately promoted to ecclesiastical grades, it pleased everyone that agreement with the sacred canons [ought to be made, and] it was established that henceforth no bishop should presume to promote them to sacred orders unless they

first obtain liberty from their own masters. And if any slave, fleeing his master or lying hidden, or employing witnesses hired by payment or corrupted, or through any cunning or fraud, reaches ecclesiastical grades, it is decreed that he be deposed and his master receive him.

But if a grandfather or father, migrating from one country to another, begets a son in the same province, and that son is reared there and promoted to ecclesiastical grades while ignorant whether he is a slave, and his master, afterwards coming, acquires him by the laws, it is enacted that, if his master wills to give him liberty, he shall remain in his grade. But if his master wills to draw him away from the Lord's camp by the chain of servitude, he shall lose his grade, because according to the sacred canons a person remaining of lowly condition cannot discharge the dignity of the priesthood.

> Servus sine licentia domini ordinatus deponitur, et domino restituitur.
>
> Ex eodem.
>
> De servorum ordinatione, qui passim ad gradus ecclesiasticos indiscrete promoventur, placuit omnibus cum sacris canonibus concordare [debere, et] Statutum est, ut nullus episcoporum deinceps ad sacros ordines eos promovere praesumat, nisi prius a dominis propriis libertatem fuerint consecuti. Et si quilibet servus fugiens dominum suum, aut latitans, aut adhibitis testibus munere conductis vel corruptis, aut qualibet calliditate vel fraude ad gradus pervenerit ecclesiasticos, decretum est, ut deponatur, et eius dominus eum recipiat. Si vero avus vel pater ab alia patria in aliam migrans, in eadem provincia filium genuerit, et ipse filius ibidem educatus et ad gradus ecclesiasticos promotus fuerit, et utrum servus sit ignoraverit, et postea veniens dominus illius legibus eum acquisierit, sancitum est, ut si dominus eius illi libertatem dare voluerit, in gradu suo permaneat. Si vero eum catena servitutis a castris dominis abstrahere voluerit, gradum amittat, quia iuxta sacros canones vilis persona manens sacerdotii dignitate fungi non potest.

Chapter III

Latin source headnote: A slave manumitted by the church can be ordained, and what he acquires after his death will belong to the church that manumitted him; if he accuses it or testifies against it, he is deprived of liberty and order.

From the same council.

It shall be permitted to constitute servants of the church as priests and deacons throughout the parishes, [provided nevertheless that rectitude of life and probity of morals commend them], in such a way that they first receive through manumission the status of liberty, [and thereafter succeed to ecclesiastical honors. For it is irreligious for those who receive the dignity of sacred order to remain bound by servitude.]

§ 1. But whatever shall have been granted to such persons through liberty, or become due by succession, or been conferred [by] anyone [in any] manner, it shall not be permitted to them to transmit anything from it to outside persons; rather, after their death all things ought to pertain to the right of the church by which they were manumitted.

§ 2. To these persons, as [also] to the other freedmen of the church, access to accusing or testifying against the church shall be closed. If they aspire to do this, let them lack not only the benefit of liberty but also [also] the grade of honor that they merited not by dignity of nature but by necessity of the time.

Servus ab ecclesia manumissus ordinari potest, et quod acquirit post suum obitum erit ecclesiae manumittentis; quam si accusat, vel contra eam testificatur libertate et ordine privetur.

Ex eodem.

De famulis ecclesiae constituere presbyteros et diaconos per parochias liceat, [quos tamen vitae rectitudo et probitas morum commendat,] ita tamen, ut antea manumissi statum recipiant libertatis, [et denuo ad ecclesiasticos honores succedant. Irreligiosum est enim, obligatos exsistere servitute, qui sacri ordinis suscipiunt dignitatem.] § 1. Quicquid autem talibus aut per libertatem concessum, aut successione exstiterit debitum, aut [a] quolibet [quoquo] modo collatum, eis quippiam inde in personas extraneas transmittere non licebit, sed omnia ad ius ecclesiae, a qua manumissi sunt, post eorum obitum debeant pertinere. § 2. Quibus, sicut [et] ceteris ecclesiae libertis, accusandi vel testificandi adversus ecclesiam aditus praecludatur, ad quod si adspiraverint non solum libertatis beneficio careant, sed etiam [et] honoris gradu, quem non dignitate naturae, sed necessitate temporis meruerunt.

Chapter IV

Latin source headnote: A master can retain spiritual services in a slave whom he manumits.

From the Council at Alichi.

Let no cleric be promoted to the grade of priesthood except as is contained in the canons. For if, from love of God, anyone has chosen one of his slaves, taught him letters, endowed him with liberty, and through intercession with the bishop caused him to be ordained priest, [and according to the Apostles gave him food and clothing], but that man afterwards, raised up into pride, refuses to observe the canonical hours and sing psalms for his master and to obey him justly, saying that he is free, and is unwilling to do so and as though free becomes the man of whomever he wishes, this holy synod anathematizes him and judges that he is to be barred from holy communion until he comes to his senses and obeys his master according to the canonical precepts.

But if with an obstinate mind he also scorns this, having been accused before the bishop who ordained him, let him be degraded and become the slave of that man—that is, of his own master—as he was born. But whoever keeps such a man with himself and, after he has heard the aforesaid matter concerning him, does not return him to his master or cast him away from himself, whether bishop, count, cleric, or layman, bound by fellowship in his anathema, shall undergo the penalty of excommunication.

Dominus in servo, quem manumittit, potest spirituales operas retinere.

Ex concilio apud Alichi.

Nullus clericus ad gradum presbyterii promoveatur, nisi ut scriptum in canonibus habetur. Si enim propter Dei dilectionem quis de servis suis quemquam elegerit, et docuerit literas, et donaverit libertati, et per intercessionem erga episcopum ipsum in presbyterum fecerit ordinari, [et secundum Apostolos victum et vestitum ei donaverit,] ille autem postea in superbiam elatus, domino suo canonicas horas observare et psallere renuerit, et eis iuste obedire, dicens, se liberum esse, noluerit, et quasi libere cuius vult homo fiat: hoc sancta synodus anathematizat, et illum a sancta communione arceri iudicat, donec resipiscat, et domino suo obediat secundum canonica praecepta. Sin autem obstinato animo et hoc contempserit, accusatus apud episcopum, qui ordinaverit eum, degradetur, et fiat servus illius, id est domini sui, sicut natus fuerit. Quisquis vero talem secum habuerit, et postquam rem illius praedictam audierit, et domino suo non reddiderit, vel a se non proiecerit, sive episcopus, sive comes, sive clericus, sive laicus, anathematis illius societate innodatus poenam excommunicationis ducet.

Chapter V

Latin source headnote: Spurious sons or slaves ought not to be ordained.

Alexander III, to the Archbishop of Tours.

Your fraternity consulted us whether it is permitted to you to promote spurious sons and slaves to orders. Concerning this, indeed, we respond thus to your consultation: you ought to ordain neither spurious sons nor slaves; and, if you remember, it was said to you at your consecration: "See that you do not presume to promote anyone of servile condition to orders."

> Spurii vel servi ordinari non debent.
>
> Alexander III. Archiepiscopo Turonensi.
>
> Consuluit nos tua fraternitas, utrum tibi liceat spurios et servos ad ordines promovere; super quo utique Consultationi tuae taliter respondemus, quod neque spurios, neque servos ordinare debes, et, si memor es, in consecratione tibi dictum fuit: "Vide, ne quemlibet servilis conditionis ad ordines promovere praesumas."

Chapter VI

Latin source headnote: One manumitted by a church so that he may become a cleric and perpetually serve that church in divine things cannot transfer himself to another church; it is otherwise if he was manumitted purely. Or thus: it is otherwise if he was manumitted so that he might serve. Johannes Andreae.

Innocent III, to the Bishop of Varia.

The more willingly [we respond to your inquiries, the more devoutly you venerate the Apostolic See]. (*And below:*) You added another question: whether the sons of those who are held to a church in servile condition, delivered by their parents to the clerical military service with the acquiescence of their masters so that they ought to serve God in the same church to which they belong, obtaining liberty on that account, can after a time leave it and transfer themselves to another.

On this point we believe that a distinction must be made: whether they were manumitted under this tenor and bound to the clerical order, that for as long as they lived they ought to furnish service to the church that manumitted them in the services of divine things, in which case permission to transfer themselves to another is to be denied to them; or whether they were manumitted absolutely and thus possess liberty to pass to another. [Given at Viterbo, on the fifth day before the Ides of June, in the year 1207.]

> Manumissus ab ecclesia, ut fiat clericus, et ipsi ecclesiae perpetuo serviat in divinis, ad aliam ecclesiam se transferre non potest; secus si pure fuerit manumissus. Vel sic: secus si fuerit manumissus, ut serviat. Io. Andr.
>
> Innocentius III. Variensi Episcopo.
>
> Eo libentius [tuis inquisitionibus respondemus, quo devotius sedem apostolicam veneraris] (Et infra:) Adiecisti aliam quaestionem, an illorum filii, qui ecclesiae servili conditione tenentur, traditi a parentibus militiae clericali cum suorum conniventia dominorum, ut Deo in eadem cuius sunt, ecclesia debeant deservire, assequentes propterea libertatem, post tempus, ea relicta, possint ad aliam se transferre? In quo capitulo credimus distinguendum, utrum eo tenore fuerint manumissi et obligati ordini clericali, quod manumittenti ecclesiae, dum vixerint, deberent impendere famulatum in obsequiis

> divinorum, et tunc transferendi se ad aliam est eis licentia deneganda; vel manumissi exstiterint absolute, sicque libertatem habeant ad aliam transeundi. [Datum Viterbii V. Id. Iun. Ao. 1207.]

Chapter VII

Latin source headnote: The law concerning a slave made a deacon ought also to be understood concerning a subdeacon.

The same.

We wonder not a little [at your prudence that, although the consultation directed by you to us, if you take pains to inspect the canons and laws, is thought to contain almost no doubt, you took care to consult our apostolate concerning what is certain], since it is certain in the constitutions of the ancients when slaves ordained to ecclesiastical grades ought or ought not to be recalled into servitude. [Hence, because we believe that you are not ignorant of the decrees, we will your fraternity to do nothing else on this point except what is found in their enactments.]

Concerning the order of subdeacon, [nevertheless], because no express mention of it is made in the statutes of the Fathers, it seems to us that it too enjoys the same privilege as the grade of deacon. For although it was not regarded as a sacred order in the primitive Church, nevertheless, from the constitution of Gregory and Urban II, it is by no means doubted in modern times to be a sacred grade. [Given at the Lateran in the same year.]

> Ius, quod est de servo facto diacono, etiam de subdiacono debet intelligi.
>
> Idem.
>
> Miramur non modicum [de tua prudentia, quod, quum ad nos tua consultatio destinata, si canones et leges studeas intueri, nihil fere dubitationis continere putetur, super hoc, quod certum est, apostolatum nostrum consulere curasti,] quum certum sit in constitutionibus antiquorum, quando servi in gradus ecclesiasticos ordinati debeant in servitutem vel non debeant revocari. [Unde, quia te credimus non ignorare decreta, nil aliud fraternitatem tuam in hoc articulo facere volumus, nisi quod in eorum sanctionibus invenitur.] De subdiaconali [tamen] ordine, quia de eo non fit mentio in Patrum statutis expresse, videtur nobis, quod et is cum diaconali gradu privilegio gaudet eodem. Nam licet sacer ordo non reputaretur in ecclesia primitiva, tamen a constitutione Gregorii atque Urbani secundum moderna tempora sacer gradus esse minime dubitatur. [Datum Laterani in eodem anno.]

Chapter VIII

Latin source headnote: One born of a father who is a slave and a free mother is free and is lawfully promoted.

Gregory IX, to the Archbishop of Naples.

Our beloved son G., a deacon, set forth that I., a knight, on the occasion that he asserts the deacon's father to be his man, presumes to impede him from being promoted as priest, although his mother, whose condition he ought to follow, is known to be free. Wherefore we command that, if the foregoing is established for you, you restrain the same knight from continuing an impediment of this kind.

> Natus ex patre servo et libera matre liber est, et licite promovetur.
>
> Gregorius IX. Archiepiscopo Neapolitano.

Dilectus filius G. diaconus proposuit, quod I. miles ea occasione, quod patrem ipsius hominem suum esse proponit, licet mater sua, cuius debet imitari conditionem, libera esse noscatur, ne promoveatur in presbyterum, impedire praesumit. Quocirca mandamus, quatenus, si tibi constiterit de praemissis, eundem militem ab huiusmodi impedimento cessare compescas.

Title XIX: On Whether Those Bound to Render Accounts Are to Be Ordained

Sole Chapter

Latin source headnote: One bound to render accounts can be ordained after laying aside the burden and rendering an account, but not before.

From the Council of Carthage.

Magnus, Bishop of Augusta, said: "What seems good to your affection? Ought procurators, agents, executors, or guardians of wards to be ordained?" Bishop Gratus said: "If, after their burdens have been laid aside and their accounts rendered, the acts of their life have been approved in all things, they ought, if they have been postulated, to be furnished with the honor, with praise to God. For if, before freedom from their businesses or offices, they have been ordained by someone without consideration, the Church is defamed." Everyone said: "Rightly, indeed, has your holiness established this, and therefore such is our judgment."

DE OBLIGATIS AD RATIOCINIA ORDINANDIS, VEL NON.

Obligatus ratiociniis, deposito onere et reddita ratione, ordinari potest; prius vero non.

Ex concilio Carthaginensi.

Magnus episcopus Augustensis dixit: Quid dilectioni vestrae videtur, procuratores, et actores, et exsecutores seu curatores pupillorum si debeant ordinari? Gratus episcopus dixit: Si post deposita onera et reddita ratiocinia actus vitae ipsorum fuerint comprobati in omnibus, debent et cum laude Dei, si postulati fuerint, honore munerari. Si enim ante libertatem negotiorum vel officiorum ab aliquo sine consideratione fuerint ordinati, ecclesia infamatur. Universi dixerunt: Recte quoque, statuit sanctitas vestra, ideoque ita est nostra sententia.

Title XX: On Whether Those Maimed in Body Are to Be Ordained

Chapter I

Latin source headnote: A priest who lost part of a finger in a duel can, by dispensation of his bishop, minister in his order.

Alexander III.

But concerning the priest of Campania who voluntarily offered a duel and accepted it when offered, and lost part of a finger in it, as formerly, so also now, we respond to your prudence that, since he, as we ourselves also see, has not lost so much of the finger that he cannot solemnly celebrate without scandal, after penance has been performed you can act mercifully with him and permit him to minister in his order, although his excess was very grave. [But the priest, etc.; cf. c. 7, On Homicide, V.12.]

DE CORPORE VITIATIS ORDINANDIS VEL NON.

Presbyter, qui in duello digiti partem amisit, ex dispensatione sui episcopi potest in suo ordine ministrare.

Alexander III.

De presbytero autem Campaniae, qui duellum sponte obtulit, et oblatum suscepit, et in eo partem digiti amisit, sicut olim, ita et nunc prudentiae tuae respondemus, quod, quum ipse, sicut etiam nos videmus, non perdiderit tantum de digito, quin ipse sine scandalo possit solenniter celebrare, satis potes post peractam poenitentiam cum eo misericorditer agere, et permittere ipsum in suo ordine ministrare, licet eius excessus gravis admodum exstitisset. [Presbyter autem etc. cf. c. 7. de hom. V. 12.]

Chapter II

Latin source headnote: One having a blemish in his eye that does not cause great deformity can be promoted even to the episcopate.

The same, to the Bishop-Elect of Chichester.

When a question had been raised in the presence of us and our brothers concerning your election and that of others who were elected in certain English churches, and certain matters were objected against each of you, it was objected against you that you have a blemish in your eye and that you were the son of a canon. Hence we gave a mandate to the Archbishop of Canterbury, legate of the Apostolic See, that, because you are said to be the son of a canon, he should proceed in your promotion from abundant dispensation. But concerning the blemish that you are said to have in your eye, we commanded the aforesaid archbishop that, with the counsel of his suffragans, and especially of our venerable brothers the Bishops of Worcester and Exeter, he execute what should seem good to him as a result.

You, therefore, brother, shall take pains humbly and devoutly to request the same archbishop concerning these matters. In this, from the greatest dispensation, we have taken care solicitously to provide for you in this matter, inasmuch as we love your person with sincere charity and gladly attend, insofar as we can according to God, to your advantage and honor.

Habens in oculo maculam, quae non inducit magnam deformitatem, etiam ad episcopatum poterit promoveri.

Idem Cisterciensi Electo.

Quum de tua et aliorum electione, qui sunt in quibusdam ecclesiis Anglicanis electi, in praesentia nostra et fratrum nostrorum quaestio mota fuisset, et singulis vestris quaedam obiicerentur: tibi, quod in oculo maculam habeas, et quod filius canonici fueris, est obiectum. Unde Cantuariensi archiepiscopo apostolicae sedis legato dedimus in mandatis, ut pro eo, quod canonici filius diceris, in promotione tua ex multa dispensatione procedat. De macula vero, quam in oculo habere diceris, hoc archiepiscopo praedicto mandavimus, ut cum consilio suffraganeorum suorum, et praesertim venerabilium fratrum nostrorum Wigorniensis et Exonensis episcoporum, quod exinde sibi visum fuerit exsequatur. Tu itaque eundem archiepiscopum, frater, requirere super his studeas humiliter et devote: in quo tibi ex maxima dispensatione in hac parte sollicite curavimus providere, utpote qui personam tuam sincera caritate diligimus, et libenter, quantum secundum Deum possumus, ad tuum intendimus commodum et honorem.

Chapter III

Latin source headnote: One castrated in his cradle is lawfully promoted.

Clement III, to the Bishop of Varia.

On behalf of Bartholomew, a monk and deacon, a petition was presented to our apostolate that, when he had been castrated in his cradle, afterwards, devoutly serving God under a rule and an abbot, he was promoted to the order of diaconate. Hence he humbly sought that the faculty be granted to him by the Apostolic See that it be lawful for him to be ordained priest.

Indeed, since according to the statutes of the Council of Nicaea those who, while healthy, cut themselves off or desired that they be cut off by others are prohibited from entering the clerical order and, even if they are in the clergy, ought to cease, we do not believe that any impediment is brought against him so that he cannot be promoted, since he was castrated in his cradle. For he does not seem to have desired this at a time when he did not possess judgment of mind, especially since it is manifestly enacted in the canons of the Apostles that a eunuch, if he was made so through the snares of men, or was born so, or even had his male parts cut off in persecution, can, if he is worthy, be promoted as bishop. Therefore, after you have ascertained the substance of the truth, if you know that truth is present in his prayers and he is found otherwise worthy, especially since he has persevered for a long time in the monastic order, by the authority of the present letters we grant permission to promote him as priest.

> Sectus in cunabulis, licite promovetur.
>
> Clemens III. Variensi Episcopo.
>
> Ex parte Bartholomaei monachi et diaconi petitorium fuit nostro apostolatui praesentatum, quod, quum ipse in cunabulis sectus fuerit, postmodum sub regula et abbate devote Deo militans in diaconatus ordinem est promotus, unde suppliciter petiit facultatem sibi a sede apostolica indulgeri, ut sit ei licitum in presbyterum ordinari. Sane quum secundum statuta Nicaeni concilii illi ad clericatus ordinem prohibeantur accedere, et si etiam in clero fuerint, cessare debeant, qui se ipsos sani absciderint, vel affectaverint, ut ab aliis abscindantur, non credimus ei aliquod impedimentum afferre, quo minus possit provehi, qui in cunabulis sectus fuit; quia non videtur hoc eo tempore affectasse, quo iudicium animi non habebat, praesertim quum in canonibus Apostolorum sit manifeste sancitum, quod eunuchus, si per insidias hominum factus, vel ita natus sit, aut etiam in persecutione sint ei amputata virilia, et dignus est, possit in episcopum promoveri. Cognoscenti itaque de substantia veritatis, si precibus eius noveris veritatem inesse, et alias dignus inveniatur, maxime quum diu in ordine perseveraverit monachali, ipsum in presbyterum promovendi licentiam auctoritate praesentium indulgemus.

Chapter IV

Latin source headnote: A priest who without cause caused his male parts to be cut off, believing that he thereby merited, will, by dispensation of the bishop, be able to exercise his office apart from the ministry of the altar.

The same, to the Archbishop of Ravenna.

R., Archpriest of Saint Stephen of Longasco, signified to us that B., a priest, believing that he was furnishing service to God, caused his male parts to be amputated. But since the same archpriest is burdened with old age and is unable to do without the aforesaid priest, he humbly supplicated us

that we ought to grant the priest permission to minister in those things that pertain to a priest apart from the Mass. Wherefore we command that you diligently inquire into the truth and, if you find the already-mentioned priest otherwise worthy of God, relying upon our authority and your own, grant him the priestly office without any ministry of the altar, as you shall see to be expedient.

> Sacerdos, qui sine causa virilia sibi fecit abscindi, credens inde mereri de dispensatione episcopi suum officium, praeter altaris ministerium, poterit exercere.
>
> Idem Ravennati Archiepiscopo.
>
> Significavit nobis R. archipresbyter sancti Stephani de Longasco, quod B. presbyter, credens se obsequium praestare Deo, fecit sibi virilia amputari. Sed quum idem archipresbyter sit senectute gravatus, nec relinquere valeat presbyterum memoratum, nobis humiliter supplicavit, ut ei concedere debeamus, ea, quae praeter missam ad sacerdotem pertinent, ministrare. Quocirca mandamus, quatenus inquiras diligenter veritatem, et, si iam dictum presbyterum alias Deo dignum inveneris, ei sacerdotale officium absque omni altaris ministerio, auctoritate nostra fretus et tua, prout videris expedire, concedas.

Chapter V

Latin source headnote: A priest who for a just cause caused his male parts to be cut off can exercise the priestly office as before.

Innocent III.

On behalf of our beloved son M., a priest, it was set forth in our hearing that, when he felt the danger of leprosy threatening him, on the counsel of a physician he caused his male parts to be cut off so that he could be freed from so grave an affliction of illness, and he humbly sought from us that we provide for him concerning execution of his office. Therefore, because the canons of the holy Fathers do not prohibit him from the ministry of the sacred altar, we command your fraternity by apostolic writings that, if it is so and the aforesaid M. is otherwise suitable to execute the office of his ministry, relying upon apostolic authority you grant him free faculty to do so, notwithstanding any contradiction or appeal. [Given at the Lateran, on the fourth day before the Ides of February, 1198.]

> Sacerdos, qui ex iusta causa fecit sibi virilia abscindi, potest, ut prius, sacerdotale officium exercere.
>
> Innocentius III.
>
> Ex parte dilecti filii M. presbyteri fuit in audientia nostra propositum, quod, quum sibi sentiret leprae periculum imminere, de consilio medici virilia fecit sibi abscindi, ut posset a tam gravi infirmitatis vitio liberari, et ut provideremus ei super exsecutione sui officii, a nobis humiliter postulavit. Quoniam igitur canones sanctorum Patrum hunc a sacri altaris ministratione non prohibent, fraternitati tuae per apostolica scripta mandamus, quatenus, si est ita, et memoratus M. est alias idoneus, ut sui ministerii officium exsequatur, nullius contradictione vel appellatione obstante, auctoritate fretus apostolica liberam ei tribuas facultatem. [Datum Laterani IV. Id. Febr. 1198.]

Chapter VI

Latin source headnote: One maimed in a hand, if promoted as abbot, is deposed from the abbacy.

The same, to the Bishop of Mileto.

Appearing in our presence, you explained to us that I., your former predecessor, promoted H. as abbot, not knowing that he was maimed in one hand. But because the abbot himself is known to lack his left hand, you wished to be taught by our response what is to be done concerning this. We therefore respond thus to your fraternity: since, because of so enormous a defect, he cannot be promoted to sacred orders, and he fraudulently kept silent about it at his promotion, he is not undeservedly to be removed from the office of the abbacy. [Given at Rome, at Saint Peter's, on the fifth day before the Kalends of July, 1198.]

> Mutilatus manu, si promotus fuerit in abbatem, ab abbatia deponitur.
>
> Idem Militensi Episcopo.
>
> Exposuisti nobis in nostra praesentia constitutus, quod I. quondam praedecessor tuus H. in abbatem promovit, nesciens, quod ipse esset manu altera mutilatus. Quia vero abbas ipse noscitur sinistra carere, quid super hoc agendum sit, nostra voluisti responsione doceri. Nos igitur fraternitati tuae taliter respondemus quod, quum pro tam enormi defectu ad sacros non possit ordines promoveri, et ipse in promotione sua id tacuerit fraudulenter, ab abbatiae officio est non immerito amovendus. [Dat. Romae ap. S. Petr. V. Kal. Iul. 1198.]

Chapter VII

Latin source headnote: One lacking the nail of his thumb, provided that he is strong in the thumb, is lawfully promoted to the priesthood.

Honorius III, to the Bishop of Angoulême.

Thomas, a monk of Saint Amantius of Brixia, set forth before us that, when he was in his boyhood years, a certain iron bar, falling by chance upon the thumb of his right hand, tore the nail from it. But since, as he asserts, he desires to serve the Lord in the priestly office, he humbly supplicated us that we command you, who are his diocesan bishop, to promote him as priest. Wherefore we command your fraternity that, if he is capable in that thumb of breaking the Eucharist and no other canonical impediment stands in the way, you shall not omit because of a deformity of this kind to promote him to the order of priest.

> Carens ungula pollicis, dummodo sit fortis in pollice, licite ad sacerdotium promovetur.
>
> Honorius III. Episcopo Engolismensi.
>
> Thomas Monachus sancti Amantii de Brixia proposuit coram nobis, quod, quum in annis puerilibus esset constitutus, quaedam barra ferrea super dextrae suae pollicem fortuito casu cadens, ungulam avulsit ab eo. Quum autem desideret, sicut asserit, in sacerdotali officio Domino famulari, nobis humiliter supplicavit, ut per te, qui eius dioecesanus exsistis, promoveri eum in sacerdotem mandaremus. Quocirca fraternitati tuae mandamus, quatenus, si ad frangendum eucharistiam sit in pollice ipso potens, et aliud canonicum non obsistat, propter deformitatem huiusmodi non dimittas, quin eum ad ordinem promoveas sacerdotis.

Title XXI: On Bigamists Not to Be Ordained

Chapter I

Latin source headnote: It is brief.

From the Council of Orléans.

Let bigamists, penitents, or husbands of repudiated women not ascend to the priesthood.

> **DE BIGAMIS NON ORDINANDIS.**
>
> Breve est.
>
> Ex Concilio Aurelianensi.
>
> Ut bigami, vel poenitentes, vel repudiatarum mariti, ad sacerdotium non ascendant.

Chapter II

Latin source headnote: No dispensation is granted to a bigamist who has been ordained to sacred orders, and the one ordaining will be deprived of the power of ordaining unless a dispensation is granted to him.

Lucius III, to the Archbishop of Spalato.

Concerning the matter on which your fraternity asked us what is to be done about bigamists, we respond thus to your inquiry: those who ordain them are to be deprived of the power and office of ordaining, and those ordained, if they were promoted to sacred orders, are to be deprived of their orders for this reason, because it is not permitted to dispense contrary to the Apostle with bigamists so that they may be promoted to sacred orders or, if promoted, may remain in them in any way. But a dispensation can be employed with the one ordaining so that he is not deprived of the power and office of ordaining. [Concerning one simoniacally, etc.; cf. c. 22, On Simony, V.2.]

> Cum bigamo, qui ordinatus est ad sacros, non dispensatur, et ordinator privabitur potestate ordinandi, nisi cum eo fuerit dispensatum.
>
> Lucius III. Spal. Archiepiscopo.
>
> Super eo, quod a nobis tua fraternitas quid faciendum sit de bigamis requisivit, inquisitioni tuae taliter respondemus, quod ordinatores eorum potestate et officio ordinandi, et ordinati, si ad sacros ordines fuerint promoti, ordinibus eis ideo sunt privandi, quia in bigamis contra Apostolum dispensare non licet, ut debeant ad sacros ordines promoveri, vel in eis, si promoti fuerint, possint aliquatenus remanere. In ordinatore autem potest dispensatio adhiberi, ut ordinandi potestate et officio non privetur. [De simoniace etc. cf. c. 22. de sim. V. 2.]

Chapter III

Latin source headnote: A bigamist is not ordained, whether his wife is living or dead.

Celestine III.

Concerning bigamist priests [however] and husbands of widows, we enact altogether the same: that they ought not to be admitted to the celebration of divine things whether their wives are living or dead, especially since this is alien to the doctrine of the Apostle and the institutions of the Church.

> Bigamus, uxore vivente, vel mortua, non ordinatur.
>
> Coelestinus III.
>
> De bigamis [autem] presbyteris et viduarum maritis idem sancimus omnino, ut nec viventibus uxoribus, nec defunctis, ad divinorum debeant celebrationem admitti, maxime quum a doctrina sit Apostoli et institutionibus ecclesiae alienum.

Chapter IV

Latin source headnote: One who, after his wife's death, was promoted to sacred orders and then contracted de facto with a second woman and knew her carnally incurs the penalty of bigamy, although he is not a bigamist.

Innocent III, to the Bishop of Regensburg.

Recently by us—(*And below:* [cf. c. 29, On the Sentence of Excommunication, V.39.]) The third and final point of the inquiry seemed to contain no small question, because in contracting marriages it is not the effect of law but the purpose of the mind that is regarded; hence infamy accompanies the one who has two wives at the same time. This seems in part to be referred to the deed, just as what is read in the canon concerning a priest who is held by unlawful nuptials; by the same censure such persons seem to be reckoned among bigamists.

On the other side, however, it stands in the way that truth is to be preferred to opinion, and that according to the foregoing one who had no wife would have to be reckoned a bigamist, which would occur if someone contracted de facto with different women to whom by law he could not be joined matrimonially. We, however, respond to you in this question that, since it is not permitted to dispense with clerics of this kind as with bigamists—clerics who, insofar as it lay in them, matrimonially joined second women to themselves—although in truth they are not bigamists, this is not because of a defect of the sacrament but because of the disposition of intention with the deed following upon it. [Given at the Lateran, on the seventeenth day before the Kalends of June, 1199.]

> Qui mortua uxore promotus ad sacros, cum secunda de facto contraxit, et cognovit, bigamiae poenam incurrit, licet non sit bigamus.
>
> Innocentius III. Ratispa Episcopo.
>
> Nuper a nobis (Et infra: [cf. c. 29. de sent. exc. V. 39.]) Tertius et ultimus inquisitionis articulus videbatur habere non modicum quaestionis, quoniam, quum in matrimoniis contrahendis non iuris effectus, sed animi destinatio attendatur, unde illum comitatur infamia, qui duas simul habet uxores, quod partim ad factum convenit retorqueri, sicut et quod in canone legitur de presbytero, qui non legalibus nuptiis detinetur, eadem censura tales videntur inter bigamos reputandi, licet obviet ex adverso, quod opinioni sit veritas praeferenda, et quod iuxta praemissa qui nullam uxorem habuit foret bigamus reputandus, quod contingeret, si quis de facto contraheret cum diversis, quibus de iure non posset matrimonialiter copulari. Nos autem in hac quaestione tibi respondemus, quod, quum huiuscemodi clericis, qui, quantum in ipsis fuit, secundas mulieres sibi matrimonialiter coniunxerunt, tanquam cum bigamis non liceat dispensari, licet in veritate bigami non exsistant, non propter sacramenti defectum, sed propter affectum intentionis cum opere subsecuto. [Dat. Lat. XVII. Kal. Iun. 1199.]

Chapter V

Latin source headnote: One who contracted with a virgin, although she had previously been espoused by another, is not judged a bigamist.

The same, to the Bishop of Metz.

The debt of the pastoral office—(*And below:* [cf. c. 4, On Baptism, III.42.]) The second point of your doubt contained the question whether one who matrimonially joined to himself a woman who had been led home by another man but not known carnally by him can be promoted to the priesthood.

Although one who has taken as wife a woman left by another, whether she had been known carnally by him or remained unknown, seems to have taken a widow as wife, inasmuch as her husband was dead when he married her—just as he seems to be a bigamist who lawfully contracted with two wives, whether he knew neither carnally or only one of them, because he was the husband of two wives—we nevertheless have decided to respond thus to your fraternity.

There are two things in marriage, namely the consent of minds and the mingling of bodies. One of them signifies charity, which consists in spirit between God and the just soul, to which pertains what the Apostle says: "He who cleaves to God is one spirit with him." The other signifies the conformity that consists in flesh between Christ and the holy Church, to which pertains what the Evangelist testifies: "The Word was made flesh and dwelt among us." Therefore, that marriage which has not been consummated by the mingling of bodies does not pertain to signifying that marriage which was contracted between Christ and the Church through the mystery of the incarnation. Thus Paul, expounding what the first-formed man had said—"This now is bone of my bones and flesh of my flesh, and for this reason a man shall leave father and mother and shall cleave to his wife, and the two shall be in one flesh"—immediately adds: "But I say that this is a great sacrament in Christ and the Church."

Therefore, since because of a defect of the sacrament it is prohibited that a bigamist or husband of a widow presume to be promoted to sacred orders—because neither is she the one woman of one man, nor is he the one man of one woman—certainly, where the mingling of bodies is lacking between spouses of this kind, the seal of this sacrament is not lacking. Hence, one who married a woman who had been married by another man but by no means known carnally by him, because neither she nor he divided their flesh among several persons, ought not on this account to be impeded from being promoted to the priesthood. [Given at Faenza, on the fifth day before the Kalends of September, in the ninth year, 1206.]

Textual note: The source prints *non deest huiusmodi signaculum sacramenti* ("the seal of this sacrament is not lacking"), although the immediately preceding argument may appear to call for the opposite. The printed reading, also present in the Friedberg-derived reference, is retained.

> Qui contraxit cum virgine, licet prius ab alio fuerit desponsata, bigamus non censetur.
>
> Idem Metensi Episcopo.
>
> Debitum pastoralis officii (Et infra: [cf. c. 4. de bapt. III. 42.]) Secundus autem tuae dubitationis articulus continebat, an is, qui mulierem ab alio viro traductam, sed non cognitam, sibi matrimonialiter copulavit, valeat ad sacerdotium promoveri? Licet autem is, qui relictam ab alio duxit in coniugem, sive cognita fuerit ab illo, sive incognita manserit, videatur duxisse viduam in uxorem, utpote cuius vir erat mortuus, quando duxit eandem, sicut et ille bigamus esse videtur, qui cum duabus legitime contraxit uxoribus, sive neutram, sive alteram tantum cognoverit, quia vir exstitit duarum uxorum: nos tamen Fraternitati tuae ita duximus respondendum, quod, quum duo sint in coniugio, videlicet consensus animorum et commixtio corporum, quorum alterum significat caritatem, quae consistit in spiritu inter Deum et iustam animam, ad quod pertinet illud, quod dicit Apostolus: "Qui adhaeret Deo, unus spiritus est cum eo;" reliquum vero designat conformitatem, quae consistit in carne inter Christum et sanctam ecclesiam, ad quod pertinet illud, quod Evangelista testatur: "Verbum caro factum est, et habitavit in nobis," profecto coniugium illud, quod non est commixtione corporum consummatum, non pertinet ad illud coniugium designandum, quod inter Christum et ecclesiam per incarnationis mysterium est contractum, iuxta quod Paulus exponens illud, quod dixerat Protoplastus; "Hoc nunc os ex ossibus

meis, et caro de carne mea, et propter hoc relinquet homo patrem et matrem, et adhaerebit uxori suae, et erunt duo in carne una," statim subiungit: "Hoc autem dico magnum sacramentum in Christo et ecclesia." Quum ergo propter sacramenti defectum inhibitum sit, ne bigamus aut maritus viduae praesumat ad sacros ordines promoveri, quoniam nec illa est unica unici, nec iste unus unius: profecto, ubi deficit inter huiusmodi coniuges commixtio corporum, non deest huiusmodi signaculum sacramenti. Unde is, qui mulierem ab alio viro ductam, sed minime cognitam, duxit uxorem, quia nec illa, nec ipse carnem suam divisit in plures, propter hoc impediri non debet, quin possit ad sacerdotium promoveri. [Dat. Faventini V. Kal. Sept. Ao. IX. 1206.]

Chapter VI

Latin source headnote: One who has had several concubines is not for that reason a bigamist.

The same, to the Archbishop of Lyon, legate of the Apostolic See.

Because human understanding frequently fails concerning the least [and the greatest matters, it belongs to a prudent man to inquire where a scruple of doubt occurs]. Indeed, you sought to be taught by the Apostolic See whether priests successively having several concubines are to be judged bigamists, [so that you cannot dispense with them as irregular persons concerning execution of their office]. (*And below:*) To this we have decided to respond [thus]: since the aforesaid priests, whether at one or at different times, had several concubines, they did not incur the irregularity of bigamy. You will be able to dispense with them, as men marked by simple fornication, concerning execution of the priestly office, [if they take care to live continently. Concerning priests, etc. Given at Segni, on the fifth day before the Nones of October, in the sixteenth year of our pontificate, 1213.]

Qui plures habuit concubinas, ex eo bigamus non est.

Idem Lugd. Archiepiscopo, apostolicae sedis Legato.

Quia circa minima et maxima frequenter humanus deficit intellectus, [prudentis est, quaerere, ubi scrupulus dubitationis occurrit.] Sane postulasti per sedem apostolicam edoceri, si presbyteri successive plures concubinas habentes, bigami censeantur, [ut cum eis tanquam irregularibus quoad exsecutionem sui officii nequeas dispensare?] (Et infra:) Ad quod [sic] duximus respondendum, quod, quum sacerdotes praedicti, sive uno, sive disersis temporibus plures habuerint concubinas, irregularitatem non incurrerint bigamiae, cum eis tanquam simplici fornicatione notatis quoad exsecutionem sacerdotalis officii poteris dispensare, [si vivere curaverint continenter. De presbyterorum etc. Dat. Signiae V. Non. Oct. Pont. nostr. Ao. XVI. 1213.]

Chapter VII

Latin source headnote: A subdeacon who contracted with a widow and knew her carnally incurs the penalty of bigamy, although he is not a bigamist.

The same.

It was by us—(*And below:*) But the man who, constituted in the order of subdiaconate, took a widow as wife only de facto, because by law he could not do so, certainly did not become a bigamist. Nor can he in truth be called the husband of a widow, since no marital bond was contracted between him and her. Nevertheless, contrary to the doctrine of the Apostle, it is not permitted to dispense with him as though with the husband of a widow, not because of a defect of the sacrament but because of the disposition of intention with the deed following upon it.

Subdiaconus, qui cum vidua contraxit, et eam cognovit, bigamiae poenam incurrit, licet bigamus non sit.

Idem.

A nobis fuit (Et infra:) Ille autem, qui in subdiaconatus ordine constitutus de facto tantum, quia de iure non potuit, duxit viduam in uxorem, perfecto bigamus non exstitit. Sed nec viduae potest in veritate dici maritus, quum inter ipsum et illam non fuerit vinculum maritale contractum. Cum eo tamen contra doctrinam Apostoli, tanquam cum marito viduae, dispensare non licet, non propter sacramenti defectum, sed propter affectum intentionis cum opere subsecuto.

Title XXII: On Foreign Clerics

Chapter I

Latin source headnote: Those from overseas and very remote places ought to prove their ordination through the seals of five bishops.

Alexander III, to the Bishop of Le Mans.

Your fraternity decided to consult us concerning what is to be done about clerics who, ordained in remote regions, display letters of those by whom they claim hands were imposed upon them, when it remains uncertain whether the seals that they present are those of bishops. We therefore respond to your consultation by notice of the present letters that it is safer for the statutes of the ancient Fathers to be observed in these matters than for anything new to be established.

It was established concerning those from overseas that they be fortified by the testimony of at least five bishops concerning their ordination, which we believe is also to be observed concerning others if they are similarly unknown, yet in such a way that they are held under suspension for some time, during which those seeing them may be more fully instructed concerning their conduct. Inquiry also ought to be made concerning the lower orders, because it could happen that, with some omitted, they made a leap. These matters having been completed, if they are found worthy, a dispensation can be made concerning them. [But concerning that, etc.; cf. c. 15, On the Office of a Delegate, I.29.]

DE CLERICIS PEREGRINIS.

Ultramarini et valde remoti ordinationem suam probare debent per quinque episcoporum sigilla.

Alexander III. Cenomanensi Episcopo.

Tua nos duxit fraternitas consulendos, quid sit agendum de clericis, qui in remotis regionibus ordinati literas eorum ostendunt, a quibus sibi proponunt manus impositas, et utrum episcoporum sigilla sint, quae repraesentant, incertum exsistit. Tuae igitur consultationi significatione praesentium respondemus, tutius esse, ut in his statuta Patrum veterum observentur, quam novum aliquid statuatur. Statutum autem est de transmarinis, ut ad minus quinque episcoporum super ordinatione sua testimonio muniantur, quod in aliis, si similiter sunt incogniti, credimus observandum, ita tamen ut in suspensione aliquanto tempore habeantur in quo videntes plenius de actibus instruantur ipsorum. Sed et de inferioribus ordinibus inquiri oportet, quia posset contingere, ut aliquibus praetermissis saltum fecissent. His autem peractis, si digni inventi fuerint, circa eos poterit dispensari. [Super eo vero etc. cf. c. 15. de off. deleg. I. 29.]

Chapter II

Latin source headnote: A foreign cleric who swears that he was ordained, unless he proves it otherwise, will neither be received in that order nor promoted to higher orders.

Innocent III, to the Patriarch of Constantinople.

Among four—(*And below:* [cf. c. 8, On Greater Authority and Obedience, I.33.]) Your fraternity again consulted us whether you ought to promote to higher orders clerics coming to you without letters from those who ordained them and offering to furnish a corporal oath that they are constituted in any one of the ecclesiastical orders. We therefore respond thus to your inquiry: unless their canonical ordination is established for you through suitable arguments, you ought neither to receive them in those orders nor to promote them to greater orders, especially before their conduct has been approved. [To be taught also, etc. Given at Ferentino, on the fourth day before the Nones of August, in the ninth year, 1206.]

> Clericus peregrinus, qui iurat se ordinatum, nisi aliter probet, in illo ordine non suscipietur, nec ad superiores promovebitur.
>
> Innocentius III. Constantinopolitano Patriarchae.
>
> Inter quatuor (Et infra: [cf. c. 8. de maior. et obed. I. 33.]) Consuluit nos iterum tua fraternitas, utrum clericos ad te sine suorum ordinatorum literis venientes, et offerentes praestare corporaliter iuramentum, quod sint in quovis ecclesiasticorum ordinum constituti, debeas ad superiores ordines promovere. Nos igitur Inquisitioni tuae taliter respondemus, quod, nisi de ipsorum ordinatione canonica per idonea tibi constiterit argumenta, eos nec in illis suscipere, nec ad maiores debes ordines promovere, praesertim antequam conversatio eorum fuerit approbata. [Edoceri quoque etc. Dat. Ferentini IV. Non. Aug. Ao. IX. 1206.]

Chapter III

Latin source headnote: A foreigner whose ordination is not established is not permitted to celebrate in public, but may do so in secret.

The same, to the Patriarch of Jerusalem.

The discretion of your fraternity sought to be taught by the Apostolic See whether you ought to permit those clerics who come to the regions of Jerusalem without letters commendatory to celebrate divine things, since most of them, whose canonical ordination is not established, as soon as they come presume to celebrate without seeking permission. But we, commending your solicitude in the Lord, respond concerning the first point that, unless their canonical ordination is lawfully established for you either through letters or through witnesses, you ought not to permit those who are altogether unknown to celebrate among your peoples; but if perhaps any of them should wish from devotion to celebrate secretly, you will be able to tolerate it. [Concerning the second, etc.; cf. c. 3, On Apostates, V.9. Given at Rome, at Saint Peter's, on the second day before the Kalends of February, in the ninth year, 1207.]

> Peregrinus, de cuius ordinatione non constat, non permittitur celebrare in publico, sed in occulto sic.
>
> Idem Patriarchae Hierosolymitano.
>
> Tuae fraternitatis discretio postulavit per sedem apostolicam edoceri, Utrum clericos illos, qui ad partes Hierosolymitanas sine commendatitiis literis veniunt, permittere debeas celebrare divina, quum

> plerique illorum, de quorum canonica ordinatione non constat, statim ut veniunt, praesumunt, non expetita licentia, celebrare? Nos autem tuam in Domino sollicitudinem commendantes super primo articulo Respondemus, quod, nisi legitime tibi constiterit, sive per literas sive per testes, de illorum ordinatione canonica, qui penitus sunt ignoti, non debes ipsos permittere in tuis plebibus celebrare; sed si forsitan eorum aliqui secreto ex devotione celebrare voluerint, poteris sustinere. [Super secundo etc. cf. c. 3. de apostatis V. 9. Dat. Romae ap. S. Petrum II. Kal. Febr. Ao. IX. 1207.]

Chapter IV

Latin source headnote: Inferior prelates cannot institute foreigners in their churches without the consent of the diocesan bishops.

Honorius III, to the Bishop of Reginus.

Through your report we learned that certain prelates of churches under your jurisdiction do not fear to institute clerics from other bishoprics in churches committed to them without your knowledge and assent. Therefore, considering that this is permitted to them for no reason, since it is contrary to honor and alien to the institutions of the holy Fathers, after the example of Pope Alexander of happy memory, our predecessor, we respond thus to your inquiry: if any clerics from other bishoprics have been, or shall in the future be, instituted in churches under your jurisdiction without your knowledge and assent, you are permitted by our authority, appeal being set aside, to remove them from there, unless by dispensation you decide that some of them are to be left in those churches.

> Inferiores praelati sine dioecesanorum consensu, in ecclesiis suis peregrinos non possunt instituere.
>
> Honorius III. Regino Episcopo.
>
> Te nobis proponente didicimus, quod quidam praelati ecclesiarum tuae iurisdictionis in ecclesiis sibi commissis sine conscientia tua et assensu clericos de alienis episcopatibus instituere non verentur. Attendentes igitur, id eis nulla ratione licere, quum sit honestati contrarium et a sanctorum Patrum institutionibus alienum, ad exemplar felicis recordationis Alexandri Papae praedecessoris nostri inquisitioni tuae taliter respondemus, quod, si qui clerici de alienis episcopatibus in ecclesiis tuae iurisdictionis sine conscientia et assensu tuo sunt vel fuerint in posterum instituti, tibi licet eos exinde auctoritate nostra appellatione postposita removere, nisi aliquos ex iis ex dispensatione in eisdem ecclesiis duxeris dimittendos.

Title XXIII: On the Office of the Archdeacon

Chapter I

Latin source headnote: It sets forth what pertains to the office of the archdeacon.

From the Book of the Roman Order.

Let the archdeacon know that after the bishop he is the bishop's vicar in all things, and that all care in the clergy pertains to him, both of those placed in the city and of those known to dwell throughout the parishes, whether concerning their conduct, the honor and restoration of churches, the teaching of ecclesiastical persons, or zeal for other matters; and he will render an account before God for those who transgress. And every third year, if the bishop cannot do so, let him travel throughout the entire parish and, in the stead of his bishop, correct and amend all things that need amendment.

> **DE OFFICIO ARCHIDIACONI.**

Ponit quae spectant ad officium archidiaconi.

Ex libro Romani ordinis.

Ut archidiaconus post episcopum sciat se vicarium esse eius in omnibus, et omnem curam in clero, tam in urbe positorum, quam eorum, qui per parochias habitare noscuntur, ad se pertinere; sive de eorum conversatione, sive de honore et restauratione ecclesiarum, sive doctrina ecclesiasticorum vel ceterarum rerum studio, et delinquentium rationem coram Deo redditurus est. Et ut de tertio in tertium anum, si episcopus non potest, parochiam universam circumeat, et cuncta, quae emendatione indigent, ad vicem sui episcopi corrigat et emendet.

Chapter II

Latin source headnote: It is not summarized, but sets forth certain things that pertain to the office of the archdeacon.

From the Council of Toledo.

The office of the archdeacon is to read the Gospel when he wishes, or to command one of the deacons to do so; and, when the bishop sings Mass, at his command the Levites shall clothe themselves in sacred vestments, in the manner in which they are to proceed to Mass with the pontiff. He himself ought to deliberate, order, and execute every complaint or cause or matter of justice of priests, deacons, or subdeacons. Therefore, as a vigorous, provident, and cautious man acting in place of his bishop, he shall have care of the entire bishopric, and:

§ 1. Providing for every ecclesiastical office, he ought to assign the readings or responsories in the cathedral church and to hear them, to such a degree that no one reads or sings the Gospel, Epistle, responsories, or any reading in the church until he first reads or sings it before the archdeacon and is heard by him.

§ 2. He shall also order the acolytes—which of them ought to carry the candlesticks, which the thurible, and which of the minors ought to perform any offices in the church.

Non summatur, sed ponit quaedam, quae spectant ad officium archidiaconi.

Ex concilio Toletano.

Officium vero archidiaconi est, evangelium quando voluerit legere, vel alicui de diaconis praecipere, et quando episcopus missam canit, ad iussionem illius induant se Levitae vestimentis sacris, qualiter cum pontifice ad missam procedant; omnem querimoniam seu causam vel iustitiam presbyterorum, vel diaconorum, vel subdiaconorum ipse debet deliberare, ordinare et facere. Ideo vero strenuus, providus, cautus, vicem sui episcopi agens, episcopii totius curam habeat, et § 1. Omne ecclesiasticum officium providendo, lectiones aut responsoria in matrice ecclesia dare debet, et auscultare, in tantum, ut nullus evangelium, aut epistolam, aut responsoria, vel quamlibet in ecclesia lectionem legat vel cantet, donec ante ipsum legat vel cantet, et auscultetur ab ipso. § 2. Acolythos quoque ipse ordinet, quis eorum candelabra, quis thuribulum deferre quisve minorum in ecclesia aliqua officia agere debeat.

Chapter III

Latin source headnote: Custody of the vessels of the church pertains to the archdeacon.

Gregory III, to the Archdeacon of Salona.

We grieved when we learned the things that you and your bishop directed in writings to us against one another, because charity recognizes nothing between you. Nevertheless, we command you to administer in the office of your order; and if there, with grace prevailing, the cause of your scandal can be terminated, we believe much to have been gained for your soul. But if discord has so armed its parties between you that your will is to remain in the swelling of scandal, you shall come without distinction to our hearing, and your bishop shall direct for himself whatever instructed person he chooses, so that, after all things have been weighed with subtle reasoning, we ought to establish what shall seem good to the parties.

We will you to know, however, that we will inquire strictly from you because neither the things of your own church nor the treasures collected from different churches are preserved with all solicitude and fidelity. But if anything of them has perished through negligence or anyone's fraud, you are bound by guilt in this, for through the order of the archdeaconry you are more strictly deputed to the custody of that church.

> Custodia vasorum ecclesiae spectat ad archidiaconum.
>
> Gregorius III. Archidiacono Salonitano.
>
> Ea, quae nobis contra vos tu et episcopus tuus direxistis scripta, doluimus agnoscentes eo, quod inter vos nihil caritas recognoscit. Verumtamen te in officio ordinis tui administrare praecipimus, et, si illic potest superante gratia causa vestri scandali definire, multum credimus vestrae animae acquisivisse. Sin vero ita inter vos discordia partes suas armavit, ut in tumore scandali voluntas vestra debeat remanere, tu ad nostram audientiam indifferenter occurre, et episcopus tuus pro se dirigat quam elegerit personam instructam, ut omnia subtili ratione perpensa constituere quae visa fuerint partibus debeamus. Scire vero te volumus, quod a te districte quaesituri sumus, quia vel propriae ecclesiae, vel ea, quae de diversis ecclesiis cimilia sunt collecta, non sub omni sollicitudine et fide servantur. Quod si quid ex eis vel negligentia, vel cuiusquam fraude deperiit, tu in hoc reatu adstringeris, qui per archidiaconatus ordinem custodiae eiusdem ecclesiae arctius deputaris.

Chapter IV

Latin source headnote: An archdeacon does not commit the care of souls without the bishop's mandate; that is, he does not possess an institution capable of authorization.

Alexander III, to the Archdeacon of Ely.

Since it is sufficiently absurd and alien to the institutions of the holy Fathers that an archdeacon by his own authority should commit the care of churches to anyone, we bear it exceedingly ill that you commit the care of souls to persons without the mandate of your bishop. Therefore, because you ought not, with a view to any custom, to contravene the constitutions of the holy Fathers and claim what does not pertain to your office, we command that hereafter you not presume to commit the care of souls to anyone without the permission and mandate of your bishop.

> Archidiaconus sine mandato episcopi non committit curam animarum, id est, non habet institutionem auctorizabilem.
>
> Alexander III. Eliensi Archidiacono.
>
> Quum satis sit absurdum et a sanctorum Patrum institutionibus alienum, ut archidiaconus auctoritate propria debeat cuilibet curam ecclesiarum committere, aegre nimis ferimus, quod tu sine mandato episcopi tui personis animarum curam committis. Quoniam igitur obtentu alicuius consuetudinis non

debes contra sanctorum Patrum constitutiones venire, et quod ad tuum non spectat officium vendicare, ideo mandamus, ut nemini de cetero sine licentia et mandato episcopi tui curam praesumas committere animarum.

Chapter V

Latin source headnote: By common law an archdeacon cannot excommunicate. Antonius de Butrio.

The same, to the Bishop of Worcester.

By ecclesiastical institution it does not seem to be permitted to archdeacons to promulgate a sentence against anyone unless the authority and consent of the bishops have acceded.

Archidiaconus de iure communi non potest excommunicare. Ant. de But.

Idem Vigoriensi Episcopo.

Archidiaconis non videtur de ecclesiastica institutione licere, nisi auctoritas episcoporum et consensus accesserit, in aliquos sententiam promulgare.

Chapter VI

Latin source headnote: An archdeacon visits his province, that is, his parish, once a year unless necessity requires more. This is what it says.

The same, to the Bishop of Coventry and the Abbot of Chester.

We command that you prohibit R., Archdeacon of Chester, from presuming to fine with a pecuniary penalty clerics or laymen who are to be punished for their excesses; to extort anything from any man or woman in an ordeal by fire or water; to suspend persons or place churches under interdict for an annual and undue exaction of money; or to approach the churches of his archdeaconry for visitation except once a year, unless perhaps such a cause has arisen on account of which it is fitting that he visit the aforesaid churches more often. And then let him do so with such moderation of men and mounts that those who dwell in them ought not deservedly to complain as a result.

But if he presumes to contravene your prohibition, you shall strike him with ecclesiastical severity, with every occasion and appeal ceasing, and shall cause the sentence itself to be inviolably observed until worthy satisfaction, so that we are not compelled to avenge this more harshly upon you and them.

Archidiaconus semel in anno, nisi necessitas exigat plus, visitat suam provinciam, id est paroeciam. Hoc dicit.

Idem Episcopo Conventrensi et Abbati Cestrensi.

Mandamus, quatenus prohibeatis R. Cestrensi archidiacono, ne clericos sive laicos, qui pro suis excessibus puniendi sunt, poena pecuniaria mulctare, sive in examinatione ignis vel aquae a quolibet viro vel muliere extorquere praesumat, aut pro annua et indebita exactione pecuniae personas suspendere, vel ecclesias interdicere, neque ad ecclesias sui archidiaconatus visitandas nisi semel in anno accedat, nisi forte talis causa emerserit, propter quam ipsum oporteat praefatas ecclesias saepius visitare. Et tunc cum ea moderantia hominum et equitaturarum, quod qui in eis morantur, exinde non debeant merito querelari. Si autem contra inhibitionem vestram venire praesumserit, ecclesiastica severitate percellatis, omni occasione et appellatione cessantibus, et sententiam ipsam usque ad dignam

satisfactionem faciatis inviolabiliter observari, ita quod in vos et illos hoc non cogamur durius, vindicare.

Chapter VII

Latin source headnote: It says first what the office of the archdeacon is and in what respect the bishop is relieved through it. Second, it says that rural deans are to be elected and removed by the bishop and archdeacon if they jointly discharge the functions of both.

Innocent III.

To these things we do not say—(*And below:*)

§ 1. Indeed, the devotion of your fraternity consulted us as to what ought to pertain to the office of the archdeacon and in what matters the care of episcopal solicitude ought to be relieved through him. We, insofar as we can, respond that, according to the statutes of blessed Isidore, the archdeacon commands subdeacons and Levites; the solicitude and ordering of parishes pertain to him, and he ought to hear the disputes of individuals.

§ 2. Archpriests, moreover, who are called deans by many, should know that they are subject to his jurisdiction.

§ 3. According to the constitution of the Roman Order, he is found to be the greatest after the bishop and the vicar of the bishop himself, furnishing all solicitude and care, both toward clerics and toward their churches, as well as he can according to God, since he will render an account concerning these matters in the judgment of the strict examination.

§ 4. Likewise, in a certain letter of blessed Pope Clement, our predecessor, the archdeacon is called the eye of the bishop, so that, looking throughout the bishopric in the bishop's place, he may correct and amend the things that he sees are to be corrected, unless the affairs are so arduous that they cannot be terminated without the presence of his superior.

§ 5. In a certain constitution of ours, however, we remember that on another occasion we expressed that corporal institution concerning both benefices and dignities ought to pertain to him, as well as the examination of clerics if they are to be promoted to sacred orders. And we believe that this same thing is to be observed in collations of benefices, so that those who are to be placed over ecclesiastical benefices are first examined by their archdeacon and afterwards presented through him to the bishop.

§ 6. Subsequently you then asked whether rural deans, who are appointed for a time, ought to be instituted or removed, if they are to be removed, at your mandate alone, or that of the archdeacon, or even that of both. To this we respond briefly that, since according to the authority of the imperial enactment what touches all ought to be approved by all, and since the dean exercises their common office, he is to be elected, or even removed, jointly.

Dicit primo, quod sit officium archidiaconi, et in quo per illud relevetur episcopus. Et secundo dicit, decanos rurales per episcopum et archidiaconum eligendos et amovendos, si illorum vices communiter gerant.

Innocentius III.

Ad haec non dicimus (Et infra:) § 1. Sane consuluit nos tuae fraternitatis devotio, quid ad officium archidiaconi debeat pertinere, et in quibus per ipsum cura episcopalis sollicitudinis debeat relevari. Et nos, prout possumus, respondemus, quod archidiaconus secundum statuta B. Isidori imperat subdiaconibus et Levitis; parochiarum sollicitudo et earum ordinatio ad ipsum pertinet, et audire debet iurgia singulorum. § 2. Archipresbyteri autem, qui a pluribus decani nuncupantur, eius iurisdictioni se noverint subiacere. § 3. Secundum vero Romani ordinis constitutionem maior post episcopum et ipsius episcopi vicarius reperitur, omnem sollicitudinem et curam tam in clericis quam in ecclesiis eorum, prout melius secundum Deum poterit, impendendo, quum super his sit redditurus rationem in districti examinis iudicio. § 4. Item in epistola B. Clementis Papae praedecessoris nostri oculus episcopi archidiaconus appellatur, ut loco episcopi per episcopatum prospiciens, quae corrigenda viderit corrigat et emendet, nisi adeo fuerint ardua negotia, quod absque maioris sui praesentia nequeant terminari. § 5. In quadam vero nostra constitutione iam alia vice nos meminimus expressisse, quod institutio corporalis tam super beneficiis quam etiam dignitatibus ad ipsum debeat pertinere, examinatio etiam clericorum, si fuerint ad sacros ordines promovendi; et hoc idem in collationibus beneficiorum credimus observandum, ut qui beneficiis ecclesiasticis praeficiendi fuerint a suo prius examinentur archidiacono, et per ipsum postmodum episcopo praesententur. § 6. Subsequenter postea quaesivisti, utrum decani rurales, qui pro tempore statuuntur, ad mandatum tuum solum, vel archidiaconi, vel etiam utriusque institui debeant vel destitui, si fuerint amovendi. Ad hoc breviter respondemus, quod, quum iuxta imperialis sanctionis auctoritatem ab omnibus quod omnes tangit approbari debeat, et quum commune eorum decanus officium exerceat, communiter est eligendus, vel etiam amovendus.

Chapter VIII

Latin source headnote: An archdeacon does not give letters commendatory for orders.

The same.

You signified—(*And below:*) You shall forbid your archdeacon from granting his letters to those to be promoted without your knowledge and authority, and shall also strictly prohibit them from daring to hasten to orders in such a manner. If they presume to contravene your prohibition, you shall entirely forbid them execution of the orders received. [Given at the Lateran, on the fifteenth day before the Kalends of October, 1199.]

Archidiaconus non dat commendatitias ad ordines.

Idem.

Significasti (Et infra:) Interdicas autem archidiacono tuo, ne sine conscientia tua et auctoritate literas suas promovendis concedat, et eis etiam districte prohibeas, ne ad ordines taliter audeant convolare. Qui si contra prohibitionem tuam venire praesumpserint, exsecutionem eis ordinum susceptorum totaliter interdicas. [Dat. Lat. XV. Kal. Oct. 1199.]

Chapter IX

Latin source headnote: An archdeacon examines and presents those to be ordained and places prelates in their seat.

The same.

So that our—(*And below:*) [(cf. c. un., That the Benefices of a Church, III.12.) But because the excesses of greater persons ought to be punished with greater severity, since according to the oracle of divine law, "if the priest who is anointed sins, he will cause the people to transgress," with the

common counsel of our brothers we invalidated what you dishonorably presumed concerning the retention of revenues. And, as a penalty for presumption of this kind, so that you may be punished in that in which you had sinned, we have decreed that you are to be suspended from the collation of the dignity or ecclesiastical benefice that shall first become vacant for your grant in your church.

But because, with divine scripture teaching, we have learned that a wise man is better than a strong man, and one who rules his spirit than one who takes cities, however much we have willed or would will—if we could with justice preserved, contrary to which we judge that we cannot act, since we are constituted in the seat of justice—that the aforesaid chancery be conferred upon our aforesaid subdeacon, nevertheless we have not found the often-mentioned H. de Lamp. so blameworthy that, with justice requiring it, we can deprive him of that chancery. For, although his relatives transgressed through simplicity, nevertheless giving or even promising nothing for it, he himself received investiture of the chancery as a true canon and one against whom, by reason of the canonry, no defect could be opposed by law, without any pact or agreement.]

Nor was it [even] sufficiently proved that the chancellor by virtue of his office exercises the spiritual functions mentioned, since rather by common law they pertain to the office of the archdeacon, namely, to present those to be ordained to the bishop and to examine them, and to place abbots and abbesses in their seat. [Since it has been proved that these, etc. Given at Perugia, on the ninth day before the Kalends of October, 1198.]

> Archidiaconus examinat et praesentat ordinandos, et ponit praelatos in sede.
>
> Idem.
>
> Ut nostrum (Et infra:) [(cf. c. un. ut. eccl. ben. III. 12.) Quia vero maiorum excessus maiori debent severitate puniri, quum iuxta divinae legis oraculum sacerdos, si unctus est, peccaverit, faciet delinquere populum, quod inhoneste super retentione proventuum praesumpsisti de communi fratrum nostrorum consilio irritavimus, et in poenam praesumptionis huiusmodi, ut in eo puniaris, in quo peccaveras, a collatione dignitatis vel ecclesiastici beneficii, quod ad tuam donationem in tua primo vacabit ecclesia, censuimus suspendendum. Ceterum quia divina docente scriptura didicimus, quod melior est sapiens viro forti, et qui dominatur animo expugnatore urbium, quantumcunque voluerimus aut vellemus, si salva possemus iustitia (contra quam non iudicamus nos posse, quum simus in sede iustitiae constituti), praefatam cancellariam praedicto subdiacono nostro conferri, saepedictum tamen H. de Lamp. non invenimus ita culpabilem, ut eum exigente iustitia ipsa cancellaria privare possimus, quum, etsi parentes eius simplicitate deliquerint, nihil tamen pro ea dantes aut etiam promittentes, ipse tamen investituram cancellariae sicut verus canonicus, et cui ratione canonicatus non poterat opponi de iure defectus, sine pactione qualibet et conventione recepit.] Nec [etiam] fuit sufficienter probatum, quod cancellarius ex officio suo exerceat spiritualia memorata, quum ea potius de iure communi ad archidiaconi spectent officium, repraesentare videlicet ordinandos episcopo, et illos examinare, ponere abbates et abbatissas in sede. [Quae quum probatum sit etc. Dat. Perusii IX. Kal. Oct. 1198.]

Chapter X

Latin source headnote: Archdeacons have no jurisdiction in monasteries except insofar as general or special custom grants it to them.

Honorius III, to the Abbot of Arimanum in the diocese of Troyes, and to the Archdeacon and Dean of Saint Stephen of Troyes.

To our beloved son—(*And below:*) At the petition of the Archdeacon of Sens, who complained that the abbot and convent of the monastery of Saint-Pierre-le-Vif at Sens contrary to justice denied him the annual procuration and certain other things pertaining to him by reason of his archdeaconry, we gave a mandate to the Abbot of Saint-Crépin and his colleagues that they should hear a cause of this kind and terminate it with the due conclusion.

Before them the aforesaid archdeacon sought that, since the same monastery is situated within the bounds of his archdeaconry, the aforesaid abbot and monks should obey him in those things that pertain to jurisdiction, correction, reconciliation, and visitation, which he said belong to archidiaconal right: namely, that they should answer complainants before him, stand to law, and observe his just sentences; and, when cited, should also come into his presence to hear and observe, with their rule and the due obedience of their abbot preserved, his honorable and holy mandates according to God concerning correction of excesses and other matters that archdeacons are accustomed and reasonably able to enjoin.

He sought, moreover, that hereafter, with him passed over, they not cause any persons from the bailiwick of Sens to be convened before the official of the Archbishop of Sens, asserting that they ought first to be convened under him before the aforesaid official, only the special causes of the archbishop himself and of his men and household excepted.

Therefore, issue having been lawfully joined concerning the foregoing before the aforesaid judges and the matters set forth on each side having been heard by them, with the assent of both parties the same judges remitted the cause itself to apostolic examination. Thus, with the abbot and archdeacon themselves appearing in our presence, we, considering that their customs concerning the jurisdiction of archdeacons are diverse, could not reach a final proceeding in a question of this kind, since in this case we did not know the custom that the Archdeacon of Sens employs in the abbeys at Sens of the order of the aforesaid monastery.

But, willing that the due end be imposed upon the same question, with the assent of the abbot himself and the procurator of the other party, we have decided to commit the cause itself to you. Therefore, we command your discretion that you solicitously inquire into the truth concerning these matters through the senior canons of the church of Sens, who ought to possess fuller knowledge of a custom of this kind. Unless within three months after the edict of the first citation it is established for you through them that the aforesaid archdeacon or his predecessors, by a custom peacefully acquired in this manner, have until now possessed some jurisdiction in the monastery itself or in abbeys of this kind, you shall altogether absolve the aforesaid monastery from his claim, imposing perpetual silence upon the archdeacon himself concerning this.

But if it is established for you through the same canons that the archdeacon himself or his predecessors, by a custom acquired in this manner, have until now possessed some jurisdiction in that monastery or in other abbeys of this kind, you shall award him only that same jurisdiction in the aforesaid monastery which it is established that he or his predecessors possessed in the monastery itself or in the same abbeys, imposing perpetual silence upon him concerning the other matters, and proceeding in all the foregoing with the obstacle of appeal removed.

> Archidiaconi in monasteriis iurisdictionem non habent, nisi quantum tribuit eis generalis vel specialis consuetudo.

Honorius III. Abbati Arimanensi Trecensis dioecesis, et Archidiacono et Decano S. Stephani Trecensis.

Dilecto filio (Et infra:) Ad petitionem archidiaconi Senonensis conquerentis, quod abbas et conventus monasterii sancti Petri Vivi Senonensis procurationem annuam et quaedam alia ratione sui archidiaconatus ad ipsum spectantia exhiberi sibi contra iustitiam denegabant, abbati sancti Crispini et collegis eius dedimus in mandatis, ut audirent causam huiusmodi et fine debito terminarent. Coram quibus petiit praedictus archidiaconus, ut, quum idem monasterium infra metas sui archidiaconatus sit situm, praefati abbas et monachi sibi obedirent in his, quae pertinent ad iurisdictionem, correctionem, reconciliationem et visitationem, ad ius, ut dicebat, archidiaconale spectantes, videlicet, ut coram se conquerentibus responderent, ac starent iuri, et iustas eius sententias observarent; citati etiam venirent ad eius praesentiam, et eius mandata honesta et sancta secundum Deum, de correctione excessuum, et aliis, quae archidiaconi solent et possunt rationabiliter iniungere, audituri et salva sua regula et abbatis sui debita obedientia servaturi. Petiit insuper, ne de cetero facerent aliquos de Senonensi baillivia eo praetermisso coram officiali Senonensis archiepiscopi conveniri, asserens, illos prius debere conveniri sub ipso, quam coram officiali praedicto, specialibus ipsius archiepiscopi et hominum, ac familiae suae causis duntaxat exceptis. Lite igitur super praemissis coram praefatis iudicibus legitime contestata, et auditis ab eisdem hinc inde propositis, iidem iudices de utriusque partis assensu causam ipsam ad examen apostolicum remiserunt. Ipsis ergo abbate et archidiacono in nostra praesentia constitutis, nos attendentes, eorum consuetudines esse super archidiaconorum iurisdictione diversas, quum in hoc casu nesciremus consuetudinem, qua in abbatiis Senonensibus ordinis praefati monasterii utitur archidiaconus Senonensis, finalem habere nequivimus in huiusmodi questione processum. Volentes autem, ut eidem quaestioni finis debitus imponatur, causam ipsam vobis de ipsius abbatis et procuratoris alterius partis assensu duximus committendam. Ideoque discretioni vestrae mandamus, quatenus per maiores ecclesiae Senonensis canonicos, qui habere debent de huiusmodi consuetudine notitiam pleniorem, super his sollicite veritatem inquiratis, et, nisi vobis infra tres menses post primae citationis edictum constiterit per eosdem, praefatum archidiaconum vel praedecessores ipsius de pacifica sic obtenta consuetudine iurisdictionem aliquam in ipso monasterio, vel in huiusmodi abbatiis hactenus habuisse, praefatum monasterium ab eius impetitione penitus absolvatis, perpetuum super hoc ipsi archidiacono silentium imponentes. Si vero vobis constiterit per canonicos eosdem, ipsum archidiaconum vel eius praedecessores de sic obtenta consuetudine hactenus habuisse iurisdictionem aliquam in ipso monasterio, vel in aliis huiusmodi abbatiis, eandem iurisdictionem duntaxat adiudicantes eidem, in monasterio supradicto quam ipsum vel praedecessores suos in monasterio ipso vel in eisdem abbatiis habuisse constiterit, super aliis perpetuum ei silentium imponatis, in praedictis omnibus sublato appellationis obstaculo processuri.

Title XXIV: On the Office of the Archpriest

Chapter I

Latin source headnote: The archpriest of a city is subject to the archdeacon and principally presides over priests and priestly offices.

From the Council of Toledo.

Let the archpriest know that he is subject to the archdeacon and is to obey his precepts as those of his bishop; and, as pertains specially to his ministry, that he is to exercise care of souls over all priests placed in the priestly order, stand continually in the church, and, in the absence of his bishop, celebrate in his stead the solemnities of Masses and say the collect, or cause the person upon whom he himself enjoins it to do so.

DE OFFICIO ARCHIPRESBYTERI.

Archipresbyter civitatis subest archidiacono, et principaliter praeest presbyteris et presbyteralibus officiis.

Ex concilio Toletano.

Ut archipresbyter sciat se subesse archidiacono, et eius praeceptis sicut sui episcopi obedire et, quod specialiter ad eius pertinet ministerium, super omnes presbyteros in ordine presbyterali positos curam agere animarum, et assidue in ecclesia stare, et in episcopi sui absentia ad vicem eius missarum solennia celebret, et collectam dicat, aut cui ipse iniunxerit.

Chapter II

Latin source headnote: To the same effect.

Pope Leo.

The ministry of the archpriest is constituted in this: that with diligent care he provide for the ministry of the cardinal priests, who ought to perform the solemn office in the communion of the body and blood of our Lord Jesus Christ, in such a way that he causes them in turn to assist one another so that, beginning from the sacrosanct Lord's day, they persevere unswervingly through all the canonical hours, so that the work of God may be performed worthily and holily by the one to whom it is committed, fearing the judgment of that wisest man where it is said: “Cursed is the man who performs the works of God negligently.”

§ 1. Let the archpriest also provide for the life of the cardinal priests, obeying the precepts of his bishop, lest at any time they withdraw or grow torpid in buffoonery, but let them remember that the lips of priests guard knowledge and that they seek the law from his mouth, who is the angel of the Lord of hosts.

§ 2. If the bishop is absent, excepting those things that are prohibited, let the archpriest provide for all things that ought to be performed in the ministry of priests, [that is]: to bless fonts, anoint the infirm with oil, reconcile an infirm penitent after consulting the bishop, and enjoin upon all other priests the penance that pertains to the purgation of souls.

§ 3. On the principal feasts let him either solemnly fulfill the celebration of Mass himself, or let the one to whom it is committed at the command of his mouth perform it reverently.

Ad idem.

Leo Papa.

Ministerium archipresbyteri in eo constituitur, ut diligenti cura provideat ministerium sacerdotum cardinalium, qui solenne debent agere officium in communicatione corporis et sanguinis Domini nostri Iesu Christi ita, ut vicissim eos sibimet succurrere faciat, quatenus a sacrosancto die dominico incipiendo, per omnes horas canonicas indeclinabiliter perseverent, ut opus Dei digne et sancte perficiatur ab eo, cui committitur, verens sententiam illius sapientissimi, ubi dicitur: "Maledictus homo, qui negligenter facit opera Dei." § 1. Provideat etiam archipresbyter vitam sacerdotum cardinalium, praeceptis sui obtemperando episcopi, ne aliquando cedant, aut scurrilitate torpeant, sed reminiscantur, quod labia sacerdotum custodiant scientiam, et legem requirunt ex ore eius, qui angelus Domini exercituum est. § 2. Si episcopus defuerit, exceptis his, quae prohibita sunt, archipresbyter provideat cuncta, quae in sacerdotum ministerio perfici debeant, [id est] fontes benedicere, infirmum oleo

perungere, poenitentem infirmum, consulto episcopo, reconciliare, poenitentiam cunctis aliis sacerdotibus, quae ad purgationem animarum pertinet, iniungere. § 3. In praecipuis festivitatibus aut ipse celebrationem missae solenniter impleat, aut ad oris sui iussionem, cui committitur, peragat veneranter.

Chapter III

Latin source headnote: It declares what the office of the city archpriest is. Antonius de Butrio.

The same.

It is established that the office of the city archpriest, when the prelate is absent there, is to begin the office in his stead, give priestly blessings in the church, sing Mass when he wishes, or command one of the priests to do so. But when the bishop sings Mass, he ought to instruct the priests to clothe themselves in sacred vestments and how they are to proceed to Mass. For he ought to command the custodian of the church that the Eucharist of Christ not be lacking in the sacristy for the infirm.

He ought to provide for the infirm and, in providing, to command the priests lest perhaps they die without confession or the strengthening of the body and blood of our Lord Jesus Christ; and, with all the priests, to receive the confessions of sins of those who come from outside, and thereafter through the provision of the pontiff he ought to employ great care toward them. All things for making Christians, baptizing infants, and bringing aid are also to be done by the priests at his command.

Declarat, quod sit officium archipresbyteri civitatensis. Ant. de But.

Idem.

Officium archipresbyteri de urbe constat, quando ibi praesul defuerit, vice eius officium inchoare, benedictiones presbyterales in ecclesia dare, missam, quando voluerit, cantare, vel cui de sacerdotibus iusserit. Quando vero episcopus missam canit, debet praecipere sacerdotibus, ut induant se vestibus sacris, et qualiter ad missam procedant. Debet enim praecipere custodi ecclesiae, ut in sacrario eucharistia Christi propter infirmos non desit. Debet infirmis providere, et providendo praecipere sacerdotibus, ne forte sine confessione, vel confirmatione corporis et sanguinis Domini nostri Iesu Christi moriantur; confessiones vero peccatorum eorum, qui a foris veniunt, recipere cum omnibus sacerdotibus, et exinde per provisionem pontificis magnam debet illis adhibere curam. Ad Christianos quoque faciendos, et baptizandos infantes, et ad succurrendum, omnia a sacerdotibus per iussionem illius fiant.

Chapter IV

Latin source headnote: A rural archpriest exercises care of the priests and laymen of his plebania; nevertheless, he can ordain nothing contrary to the bishop's decree.

The same, from the synod held at Ravenna.

Let each parish have an archpriest. On account of continual care toward the people of God, we will archpriests to preside over the individual parishes, who shall exercise solicitude not only for the unskilled common people but also guard with continual circumspection the life of those priests who dwell throughout the lesser titles, and shall report to their bishop with what industry each one exercises the divine work.

§ 1. Nor shall the bishop contend that the parish does not need an archpriest, as though he himself were able to govern it, because, even if he is very suitable, it is nevertheless fitting that he divide his burdens; and, just as he himself presides over the cathedral church, so let archpriests preside over the parishes, so that ecclesiastical solicitude wavers in nothing. Nevertheless, let them report all things to the bishop, nor presume to ordain anything contrary to his decree.

> Archipresbyter ruralis presbyterorum et laicorum plebaniae suae curam gerit: contra decretum tamen episcopi nihil ordinare potest.
>
> Idem ex synodo Ravennae habita.
>
> Ut singulae plebes archipresbyterum habeant; propter assiduam erga populum Dei curam, singulis plebibus archipresbyteros praeesse volumus, qui non solum imperiti vulgi sollicitudinem gerant, verum etiam eorum presbyterorum, qui per minores titulos habitant, vitam iugi circumspectione custodiant, et qua unusquisque industria divinum opus exerceat, episcopo suo renunciet. § 1. Nec contendat episcopus, non egere plebem archipresbytero, quasi ipse eam gubernare valeat, quia, etsi valde idoneus sit, decet tamen, ut sua onera partiatur, et sicut ipse matrici ecclesiae praeest, ita archipresbyteri praesint plebibus, ut in nullo titubet ecclesiastica sollicitudo. Cuncta tamen referant ad episcopum, nec aliquid contra eius decretum ordinare praesumant.

Title XXV: On the Office of the Primicerius

Sole Chapter

Latin source headnote: It sets forth those things that pertain to the office of the primicerius. Antonius de Butrio.

The same, from the Book of the Roman Order.

Let the primicerius know that he is under the archdeacon, as is the archpriest, and that it pertains specially to his care to preside over the teaching of deacons or the remaining persons placed in the order of ecclesiastical grades; that he himself is to apply himself to discipline and custody, since he will render an account before God for their souls; and that he himself is to give the deacons the readings that pertain to the night offices of clerics and to have zeal concerning each person, so that, in whatever matter he possesses a capable understanding, he may devote himself without any negligence [to it], or they may be instructed by one whom he commands.

> **DE OFFICIO PRIMICERII.**
>
> Ponit ea, quae spectant ad officium primicerii. Anton. de Butr.
>
> Idem ex libro Romani ordinis.
>
> Ut primicerius sciat, se esse sub archidiacono, sicut et archipresbyter, et ad eius curam specialiter pertinere, ut praesit in docendo diaconis, vel reliquis gradibus ecclesiasticis in ordine positis, ut ipse disciplinae et custodiae insistat, sicut pro animabus eorum coram Deo rationem est redditurus, et ut ipse diaconibus donet lectiones, quae ad nocturna officia clericorum pertinent, et de singulis studium habeat, ut in quacunque re capacem sensum habuerit, absque ulla vacet negligentia [ab eo] aut a quo ipse iusserit, instruantur.

Title XXVI: On the Office of the Sacristan

Sole Chapter

From the Council of Toledo.

Let the sacristan know that he is subject to the archdeacon, and that the custody of the sacred vessels, ecclesiastical vestments, and the whole ecclesiastical treasury pertains to his care, as do the things pertaining to lights, whether in wax or in oil, [or to the distribution of sacred chrism].

> **DE OFFICIO SACRISTAE.**
>
> Ex concilio Toletano.
>
> Ut sciat se sacrista subiectum archidiacono, et ad eius curam pertinere custodiam sacrorum vasorum, vestimentorum ecclesiasticorum seu totius thesauri ecclesiastici, nec non quae ad luminaria pertinent, sive in cera, sive in oleo, [sive ad distributionem sacri chrismatis.]

Title XXVII: On the Office of the Custodian

Chapter I

Latin source headnote: It sets forth what pertains to the office of the custodian. This is what it says.

From the Book of the Roman Order.

The custodian of the church, to whom the things belonging to the church are committed to be guarded, ought to obey the command of his archdeacon in all things. At the canonical hours the signals of the bells are to be sounded by him at the command of the archdeacon himself. Let him ceaselessly guard the palls or linens of the altar and all the utensils of the church. Let him be thoroughly vigilant in lighting and extinguishing the lamps and lanterns, lest the oil perish through their shining beyond measure or the church be darker through their shining too little; rather, let all things be done with discretion, which is known to be the mother of all virtues.

§ 1. But if the one to whom the church is delivered to be guarded is less suitable for performing this, let him be restrained by the archdeacon so that he correct himself. But if he remains untamed, let the archdeacon provide, by reporting it to the bishop, that the unfitting man be cast out and a suitable minister be appointed for the house of God, so that all things may be done to the praise and name of God, in such a way that God may be appeased in the church by those serving him.

> **DE OFFICIO CUSTODIS.**
>
> Ponit, quae spectant ad officium custodis. H. d.
>
> Ex libro Romani ordinis.
>
> Custos ecclesiae, cui ea, quae ecclesiae competunt, custodienda committuntur, oportet, ut sui archidiaconi iussioni in cunctis obediat, in canonicis horis signa tintinabulorum pulsanda, ipso archidiacono iubente, ab eo pulsentur, pallia vel linteamina altaris, seu cuncta utensilia ecclesiae indesinenter custodiat, lampades et laternas in accendendo, seu in exstinguendo pervigil exsistat, ne aut supra modum lucendo oleum depereat, aut minus lucendo obscurior sit ecclesia; sed omnia cum discretione agantur, quae noscitur omnium virtutum esse mater. § 1. Si vero is, cui ecclesia custodienda traditur, minus idoneus ad hoc peragendum exstiterit, ab archidiacono coerceatur, ut se emendit. Si autem indomitus permanserit, archidiaconus episcopo denunciando provideat, ut indecente eiecto aptus

> domui Dei constituatur minister, ut omnia in laudem et nomen Dei fiant, qualiter placari possit Deus in ecclesia ab observientibus sibi.

Chapter II

Latin source headnote: To the same effect.

From the Council of Toledo.

The custodian ought to be solicitous concerning every ornament of the church, its lights, and incense; he ought also at all times to have bread and wine prepared for Mass, to sound the signal at each canonical hour with the consent of the archdeacon, and, with the same man's consent while the bishop is absent, to divide among the brothers all offerings, alms, and tithes.

§ 1. Holy mother Church ought to stand upon these three columns of the church, as the holy synod enacted, so that such persons as appear better and holier may be ordained to this work, so that no negligence may appear to exist in the holy Church of God. Let these three—the archdeacon, archpriest, and custodian—joined together with one mind, perform their duties providently and perfectly, and let there be neither envy nor jealousy among them.

> Ad idem.
>
> Ex concilio Toletano.
>
> Custos vero sollicitus debet esse de omni ornamento ecclesiae, et luminariis sive incenso, nec non panem et vinum omni tempore praeparatum ad missam habere debet, et per singulas horas canonicas signum ex consensu archidiaconi sonare, et omnes oblationes seu eleemosynas, seu decimas, cum eiusdem tamen consensu absente episcopo, inter fratres dividat. § 1. In his tribus ecclesiae columnis, ut sancta sanxit synodus, consistere debet alma mater ecclesia, ut ad hoc opus tales ordinentur, quales plus meliores et sanctiores esse viderint, ut nulla negligentia in sancta Dei ecclesia esse videatur. Hi tres, archidiaconus, archipresbyter, custos, simul iuncti uno animo provide peragant et perfecte, et non sit invidia neque zelus inter illos.

Title XXVIII: On the Office of the Vicar

Chapter I

Latin source headnote: A vicar, if he afterwards obtains a benefice having the care of souls, will be deprived of the vicarage.

Alexander III, to the Bishop of Norwich and G., Archdeacon.

It has reached our hearing that G., a priest, presumes to vex and weary in many ways the monks of Ramsey and Thomas, his clerk, by seeking [his] vicarage of the church of Burnel, from which he withdrew twenty years ago, after obtaining a personatus in different churches. Therefore, because it is not canonical that one who has the care of souls in different churches should exist as vicar in churches belonging to others, we command your discretion by apostolic writings, under precept, that, after the truth of the matter has been more fully investigated, if it is so, you more strictly compel the aforesaid priest to desist from seeking the aforesaid vicarage, with appeal and occasion removed, notwithstanding any letters that he obtained from us through an envoy with the truth suppressed.

For things that proceed from the root of avarice and are contrary to the reason or enactment of the canons ought to be extirpated.

> **DE OFFICIO VICARII.**
>
> Vicarius, si beneficium curatum postea sit adeptus, vicaria privabitur.
>
> Alexander III. Episcopo Norvicensi et G. Archidiacono.
>
> Ad audientiam nostram pervenit, quod G. presbyter monachos de Rameseia et Thomam clericum suum petendo vicariam [suam] ecclesiae de Burnel, a qua viginti annis retrocessit, in diversis postea ecclesiis personatum adeptus, multipliciter vexare ac fatigare praesumit. Quia igitur non est canonicum, ut qui curam animarum in diversis habet ecclesiis vicarius in alienis exsistat, discretioni vestrae per apostolica scripta praecipiendo mandamus, quatenus, rei veritate plenius inquisita, si ita est, praedictum presbyterum a petitione supradictae vicariae desistere appellatione et occasione remotis districtius compellatis, non obstantibus literis si quas tacita veritate per nuntium a nobis impetravit. Exstirpari etenim debent, quae de avaritae radice procedunt, et canonum contraria sunt rationi vel sanctioni.

Chapter II

Latin source headnote: One person cannot have several vicarages.

The same, to the Bishop of Ely.

You shall provide [however] more attentively that you do not permit anyone to have several vicarages in your bishopric, because, since vicars are bound to serve personae and churches, it is alien to the order of law that anyone have more than one vicarage.

> Plures vicarias quis habere non potest.
>
> Idem Eliensi Episcopo.
>
> Provideas [autem] attentius, ne in episcopatu tuo patiaris aliquem plures vicarias habere, quia, quum vicarii teneantur personis et ecclesiis deservire, alienum est ab ordine iuris, ut vicariam quis habeat praeter unam.

Chapter III

Latin source headnote: A perpetual vicar instituted by the bishop cannot be removed by the rector or defrauded of his portion.

The same, to the Bishop of Winchester.

In addition, if the persona of any church, with the assent and authority of the diocesan bishop, has assigned a certain portion to a vicar whom he instituted in the same church, the one who, after that persona has died, is substituted into the personatus of that church cannot remove the same vicar from the church or diminish the portion assigned to him, unless he commits something on account of which he is to be condemned by a judge in respect of the vicarage or benefice.

> Perpetuus vicarius per episcopum institutus per rectorem removeri, vel portione sua fraudari non potest.
>
> Idem Vintoniensi Episcopo.
>
> Ad haec si persona alicuius ecclesiae vicario, quem in eadem ecclesia instituit, de assensu et auctoritate dioecesani episcopi certam assignaverit portionem, is, qui persona illa defuncta in personatum illius

substituitur ecclesiae, non potest eundem vicarium ab ecclesia removere, vel assignatam sibi minuere portionem, nisi aliquid committat, propter quod per iudicem in vicaria sit vel beneficio condemnandus.

Chapter IV

Latin source headnote: A vicar cannot substitute a vicar.

The same, to the Bishop of Norwich.

Do not permit clerics [whether] constituted in the priesthood or in other lower orders to substitute others for themselves in the vicarages of churches that they have obtained, since this is sufficiently discordant and absurd, and contrary to all reason.

Vicarius non potest substituere vicarium.

Idem Norwicensi Episcopo.

Clericos [autem vel] in presbyteratu, vel in aliis inferioribus ordinibus constitutos, in vicariis ecclesiarum, quas adepti sunt, alios sibi substituere non permittas, quum id satis sit absonum et absurdum, et omni rationi contrarium.

Chapter V

Latin source headnote: The Pope's vicar has jurisdiction in the City, not outside the City.

Innocent III, to the Abbot of Saint Eugenius and the Plebane of Saint Peter.

Our venerable brother [the Bishop of Volterra caused it to be shown to us by his representation that, when the clerics of the parish of Petiole had sworn to him that they would elect a provost according to the will of laymen, and, after the election had been celebrated in this manner, had presented the elect to him, he not only refused to confirm the election itself but also bound with the bond of excommunication both the consuls and the other laymen who had driven the aforesaid clerics to this and the clerics themselves, for these and other matters in which they had been disobedient to him. And he obtained our writings to be directed to our venerable brothers the Archbishop of Pisa and the Bishop of Lucca, that, as the sentence had been reasonably promulgated, they should cause it to be firmly observed, appeal being removed, until suitable satisfaction.

But the opposing party obtained letters of our vicar, our venerable brother P., Bishop of Porto, to the same Bishop of Lucca and our beloved son P., cardinal-priest of the title of the Basilica of the Twelve Apostles; on the occasion of those letters they absolved the said laymen and clerics, promulgating a sentence against the aforementioned Bishop of Volterra, from which the same bishop, although he believed it to be null for many reasons, nevertheless from superabundance appealed to our hearing.]

We therefore, judging the vicar's letters to have been obtained through surreption, because the jurisdiction of a vicar whom the Roman Pontiff left in the City does not extend outside it unless this has specially been granted to him—especially when he dwells in his special province, namely between the province of Capua and that of Pisa—command your discretion by apostolic writings that you revoke as void whatever was done on the occasion of the letters, and cause the aforesaid sentence of excommunication, as it was reasonably given, to be firmly observed with the obstacle of appeal removed.

Vicarius Papae in urbe iurisdictionem habet, non extra urbem.

Innocentius III. Abbati S. Eugenii et Plebano S. Petri.

Sua nobis venerabilis frater noster [Wulteranus episcopus fecit insinuatione monstrari, quod, quum clerici plebis de Petiole iurassent sibi praepositum ad laicorum eligere voluntatem, et electione taliter celebrata sibi praesentassent electum, ipse non solum electionem ipsius renuit confirmare, verum etiam tam consules et alios laicos, qui ad hoc impulerant clericos supradictos, quam ipsos clericos, pro his et aliis, in quibus eidem inobedientes exstiterant, excommunicationis vinculo innodavit, et ad venerabilem fratrem nostrum archiepiscopum Pisanum, et Lucanum episcopum destinari obtinuit scripta nostra, ut sententiam, sicut fuerat rationabiliter promulgata, facerent appellatione remota usque ad satisfactionem congruam firmiter observari. Pars autem adversa venerabilis fratris nostri P. Portuensis episcopi vicarii nostri, ad eundem Lucanum episcopum et dilectum filium P. tit. basilicae XII. Apostolorum presbyterum cardinalem literas impetravit, qui occasione illarum dictos laicos et clericos absolverunt, contra memoratum Wulteranum episcopum sententiam promulgantes, a qua idem episcopus, licet ipsam multiplici ratione crediderit esse nullam, ex abundanti tamen nostram audientiam appellavit.] Nos igitur vicarii literas aestimantes per surreptionem obtentas, quoniam iurisdictio vicarii, quem Romanus Pontifex in Urbe reliquit, non extenditur extra illam, nisi ei specialiter sit concessum, praesertim quum ipse moratur in sua provincia speciali, videlicet inter Capuanam provinciam et Pisanam; discretioni vestrae per apostolica scripta mandamus, quatenus, quicquid occasione literarum actum est, in irritum revocetis, praefatam excommunicationis sententiam sicut rationabiliter lata est, faciatis remoto appellationis obstaculo, firmiter observari.

Chapter VI

Latin source headnote: Ordinary vicars are compelled to serve churches through withdrawal of revenues and vicarages.

Honorius III, to the Bishop of Worcester.

It was set forth before us on your part that certain persons in churches in which they obtain perpetual vicarages scorn to make due residence and to be promoted as priests. Therefore, unwilling, as indeed we ought not, to tolerate with equanimity an abuse of this kind, we command your fraternity that, appeal being removed, through withdrawal of revenues or of the vicarages themselves you compel the perpetual vicars to reside, as they are bound, in the churches in which they obtain vicarages, and to cause themselves to be promoted as priests, as their cure requires.

Compelluntur vicarii ordinarii ecclesiis deservire per subtractionem proventuum et vicariarum.

Honorius III. Vigorensi Episcopo.

Ex parte tua fuit propositum coram nobis, quod quidam in ecclesiis, quibus perpetuas obtinent vicarias, debitam residentiam facere, ac in presbyteros promoveri contemnunt. Nolentes igitur abusum huiusmodi, sicuti nec debemus, aequanimiter sustinere, fraternitati tuae mandamus, quatenus perpetuos vicarios, ut in ecclesiis, in quibus vicarias obtinent, resideant, ut tenentur, et se in presbyteros, ut eorum cura exigit, faciant promoveri, per subtractionem proventuum vel ipsarum vicariarum appellatione remota compellas.

Title XXIX: On the Office and Power of a Delegated Judge

Chapter I

Latin source headnote: A delegate of the Pope has power not only over the parties but also over others who impede his jurisdiction.

Alexander III, to the Bishop of London.

Because it was asked of us on your part what is to be done concerning powerful persons who, when we command justice to be furnished to someone concerning those whom they love or wish to protect, compel the complainants to be silent through their threats or terrors, and thus our mandate is eluded, we respond thus to you: just as those acting and those consenting are punished with equal penalty by the testimony of scripture, so you will be able by ecclesiastical constraint to restrain both those who are drawn into the cause and their principal supporters, if you manifestly know that they impede justice.

> **DE OFFICIO ET POTESTATE IUDICIS DELEGATI.**
>
> Delegatus Papae potestatem habet non solum in partes, sed etiam in alios, qui suam iurisdictionem impediunt.
>
> Alexander III. Londonensi Episcopo.
>
> Quia quaesitum est a nobis ex parte tua, quid faciendum sit de potestatibus, quae, quum praecipimus alicui iustitiam exhiberi de his, quos diligunt, aut tueri volunt, minis aut terroribus suis conquerentes silere compellunt, et sic mandatum nostrum eluditur, sic tibi respondemus, quod, sicut agentes et consentientes pari poena scripturae testimonio puniuntur, sic tam eos, qui trahuntur in causam, quam principales eorum fautores, si eos manifeste cognoveris iustitiam impedire, districtione ecclesiastica poteris coercere.

Chapter II

Latin source headnote: When different letters under the same date and contrary form are obtained and presented by different persons to the same judges, execution of both is suspended until the Pope is consulted.

The same, to the Bishop of Bologna.

Indeed, if letters are first obtained from us concerning some cause and other letters are afterwards opposed, with no mention made of the earlier letters, if this becomes known to the judges, until they consult the Roman Pontiff and thereby learn his will more fully, they shall altogether suspend execution of both letters, lest through the diversity of the letters the conclusions of causes be impeded. Likewise, when, etc. [cf. c. 9, On Sentences and Res Judicata, II.27.]

> Quum diversae literae sub eadem data et forma contraria impetrantur, et praesentantur a diversis ad eosdem iudices, supersedetur utrisque, donec consulatur Papa.
>
> Idem Bononiensi Episcopo.
>
> Sane si a nobis super aliqua causa literae prius impetrantur, et aliae postea, non facta mentione priorum literarum, literae opponuntur, si iudicibus innotuerit, donec Romanum Pontificem consulant, et suam exinde cognoscant plenius voluntatem, exsecutioni literarum penitus supersedeant utrarumque, ne pro varietate literarum causarum fines valeant impediri. Item quum etc. [cf. c. 9. de sent. et re iud. II. 27.]

Chapter III

Latin source headnote: A delegate of the Pope who is impeded can subdelegate a cause that can suitably be terminated without him.

The same, to the Bishop of London.

If, because of your weakness or any other grave cause or necessity, you cannot be present to conduct causes that are committed to you by the Apostolic See, let it be free to you to commit your functions to discreet and suitable persons, yet in such a way that, if the matter is of such importance, they ought to consult you—unless perhaps the causes are so grave that they cannot suitably be terminated without your presence.

> Delegatus Papae impeditus subdelegare potest causam, quae sine ipso commode terminari potest.
>
> Idem Episcopo Londonensi.
>
> Si pro debilitate tua vel pro qualibet alia gravi causa vel necessitate tractandis causis, quae tibi a sede apostolica committuntur, interesse non poteris, liberum tibi sit personis discretis et idoneis vices tuas committere, ita tamen, quod, si res tanti est, te consulere debeant, nisi forte causae ita graves sint, quod sine praesentia tua non possint commode terminari.

Chapter IV

Latin source headnote: If a cause is committed to be decided before a certain day, unless the parties extend it, the jurisdiction expires through the lapse of the day. § 1. Where no certain penalty is established by law, the delegate imposes an arbitrary one. This is what it says.

The same, to V., Bishop-Elect of Chartres.

Concerning causes that are committed to be decided within a certain term, we will your knowledge to hold this: unless the day fixed by the Apostolic authority is extended by the common consent of the parties, when it has passed, the mandate expires.

§ 1. Upon those also who have neglected to come at your citation for causes committed to you, or to obey your judgment concerning them, if the business is such that a certain penalty for it is expressed in the canons, you shall inflict that penalty; otherwise, you shall take care to punish them according to your judgment in accordance with the quality of the offense and of the cause.

Textual note: A stray *ñ* separating the two parts of the source headnote was removed as a transcription artifact.

> Si causa committitur infra certum diem decidenda, nisi partes prorogent, per lapsum diei exspirat iurisdictio. § 1. Ubi certa poena per ius statuta non est, delegatus imponit arbitrariam. Hoc dicit.
>
> Idem V. Carnotensi Electo.
>
> De causis, quae infra certum terminum decidendae committuntur, hoc tuam volumus cognitionem tenere, quod, nisi dies ab Apostolico praefixus de communi consensu partium prorogetur, eo transacto, mandatum exspirat. § 1. Illis etiam, qui pro causis tibi commissis ad citationem tuam venire, aut tuo super his parere iudicio neglexerint, si tale fuerit negotium, quod certa exinde poena in canonibus exprimatur, eandem infligas; alioquin ipsos pro delicti qualitate et causae secundum tuum arbitrium punire procures.

Chapter V

Latin source headnote: Through a simple commission of a cause, a delegate can cite, punish the contumacious, and do the remaining things that pertain to the cause.

The same, to the Archbishop of Sens.

Furthermore, concerning the matter on which you wished to consult us—whether a delegated, non-ordinary judge without letters of commission is permitted to compel a contumacious person to come, or to condemn him if he does not come—let it become known to you by the authority of the present letters that, after a cause has been delegated to him, even simply, by our authority he can sufficiently compel the parties and also restrain the contumacious with ecclesiastical severity, even if the letters of commission do not contain this or the parties do not possess our mandate that they should appear. For from the fact that the cause is committed to him, he receives full power over all those matters that are known to pertain to the cause itself.

> Per simplicem commissionem causae potest delegatus citare, contumacem punire, et reliqua facere, quae spectant ad causam.
>
> Idem Archiepiscopo Senonensi.
>
> Praeterea super hoc, quod nos consulere voluisti, utrum liceat iudici delegato non ordinario, sine literis commissoriis cogere contumacem, ut veniat, aut damnare si non veniat? hoc tibi auctoritate praesentium innotescat, quod, postquam ei causa, licet simpliciter, delegatur, satis potest nostra auctoritate partes compellere, et etiam contumaces severitate ecclesiastica coercere, etiamsi literae commissionis id non contineant, aut partes mandatum nostrum non habeant, ut accedant; quia ex eo, quod causa sibi committitur, super his omnibus, quae ad causam ipsam spectare noscuntur, plenariam recipit potestatem.

Chapter VI

Latin source headnote: If a cause has been committed to several persons, even simply, each one can subdelegate. This is what it says, and it is alleged daily.

The same, to the Bishop of Winchester.

Although we are entangled by a multiplicity of affairs and occupied with grave and diverse solicitudes, nevertheless, beyond the common duty, the charity and affection of your fraternity, by which we love your person, compels us to respond to your consultations, lest we seem to leave undiscussed the matters that your discretion wished to present to us to be resolved.

Therefore, let it become known to your solicitude that a judge delegated by us can delegate to others, [to one or several], a cause committed to him: either the entire cause to be heard and terminated; or so that they may hear the allegations and reasons and receive the attestations, reserving the sentence to himself; or so that they may do only some one of these things according to the will and good pleasure of the one delegating. Nevertheless, he cannot delegate the same cause to another with appeal set aside, even if it was committed to him with appeal removed.

But if a cause is committed to two persons, even if it is not added that one may proceed in it without the other, nevertheless either of them can commit his functions in this matter either to his co-judge or to another. [But, etc.; cf. c. 3, On Rescripts, I.3.]

Si causa pluribus etiam simpliciter est commissa, quilibet subdelegare potest. H. d. et quotidie allegatur.

Idem Vintoniensi Episcopo.

Quamvis simus multiplicitate negotiorum impliciti, et gravibus diversisque sollicitudinibus occupati, nos tamen cogit praeter debitum commune tuae fraternitatis caritas et dilectio, qua personam tuam diligimus, tuis consultationibus respondere, ne videamur indiscussa relinquere quae nobis enodanda tua voluit discretio praesentare. Innotescat itaque sollicitudini tuae, quod iudex a nobis delegatus causam sibi commissam potest aliis, [uni vel pluribus,] delegare, aut totam audiendam et terminandam, aut etiam, ut audiant allegationes et rationes et attestationes recipiant, et sententiam sibi servent, vel ut horum aliquid tantummodo faciant iuxta voluntatem et beneplacitum delegantis; quanquam non possit eandem causam alii appellatione postposita delegare, etsi sibi sit appellatione remota commissa. Si vero duobus causa committitur; etiam si non apponatur, ut unus sine altero procedat in ea, nihilominus unus ex ipsis, sive suo coniudici sive alii, vices suas potest committere in hac parte. [Ceterum etc. cf. c. 3. de resc. I. 3.]

Chapter VII

Latin source headnote: A delegate of the Pope executes his own sentence when the one to whom he had committed its execution cannot or will not execute it.

The same, to the Bishop of Norwich.

You signified to us through your letters that sometimes a sentence concerning some cause is rendered in vain by a delegated judge when the ordinary judge is unwilling to commit it to execution at his mandate, or cannot bring it to effect because others resist. Concerning this, however, we respond thus to your consultation: if the ordinary judge at the mandate of a judge delegated by us either will not or, because others resist, cannot bring the sentence given by him to effect, the delegated judge can commit it to execution by our authority committed to him; and if any persons resist him, he can restrain them by ecclesiastical sentence. [If at any time, etc.; cf. the following chapter.]

Delegatus Papae exsequitur sententiam suam, quam exsequi non potest aut non vult is, cui eam commiserat exsequendam.

Idem Norvicensi Episcopo.

Significasti nobis per literas tuas, quod interdum a iudice delegato frustra super aliqua causa fertur sententia, quum ordinarius iudex eam ad mandatum ipsius, nolit exsecutioni mandare, aut aliis resistentibus effectui mancipare non possit. Super hoc autem Consultationi tuae taliter respondemus, quod, si iudex ordinarius ad mandatum iudicis delegati a nobis aut non vult, aut non potest aliis resistentibus sententiam ab eo latam effectui mancipare, delegatus iudex eam auctoritate nostra sibi commissam potest exsecutioni mandare, et, si qui sibi restiterint, eos sententia ecclesiastica coercere. [Si quando etc. cf. c. sequ.]

Chapter VIII

Latin source headnote: If the ordinary knows that one whom a delegate of the Pope orders to be inducted into possession was not canonically instituted, he shall not resist violently, but shall insist with prayers that the delegate defer until the Pope is consulted.

The same.

But if at any time clerics before a delegated judge draw prelates of churches into a cause concerning the churches that they hold, and before the same judge obtain the churches through a settlement or in another manner, in which it is certain that they had no canonical institution whatever, nor even corporal possession, the ordinary judge ought not violently to resist the mandate of the delegated judge, but ought to insist before him that he defer putting them into possession until the truth of the matter becomes known to us.

> Si ordinarius scit, eum non canonice institutum, quem delegatus Papae mandat in possessionem induci, non resistet violenter, sed precibus instabit, ut differat, donec Papa consulatur.
>
> Idem.
>
> Si quando vero clerici coram iudice delegato praelatos ecclesiarum super ecclesiis, quas tenent, in causam traxerint, et coram eodem iudice transactione vel alio modo ecclesias obtinuerint, in quibus certum sit, eos institutionem canonicam nullatenus habuisse, nec possessionem etiam corporalem, ordinarius iudex non debet iudicis delegati mandato resistere violenter, sed apud ipsum instare debet, ut differat eos in possessionem mittere, donec nobis rei veritas innotescat.

Chapter IX

Latin source headnote: After a definitive sentence has been committed to execution, the jurisdiction of the delegate expires.

The same, to the Bishop of Brescia.

In the letters that your fraternity directed to us you inserted certain questions concerning which you sought that a solution be furnished to you by us. One of these, indeed, is this: until what time can a delegated judge interpose his functions so that the adjudged matter or settlement is observed? Concerning this we respond thus to your consultation: from the time when the delegated judge personally, or through another if he could, committed the sentence to execution or ordered that it be committed, his authority and jurisdiction ceases, because he has once discharged his office.

> Post diffinitivam exsecutioni mandatam exspirat delegati iurisdictio.
>
> Idem Brixiensi Episcopo.
>
> In literis, quas tua nobis destinavit fraternitas, quaestiones quasdam inseruisti, super quibus solutionem tibi a nobis postulasti exhiberi, quarum siquidem una est, scilicet usque ad quod tempus iudex delegatus partes suas possit interponere, ut stetur rei iudicatae vel transactioni? Super quo utique Consultationi tuae taliter respondemus, quod ex quo iudex delegatus per se, vel per alium, si potuerit, sententiam exsecutioni mandavit vel mandari praecepit, eius auctoritas et iurisdictio cessat, quia semel est officio suo functus.

Chapter X

Latin source headnote: When the defendant is absent but not through contumacy, a delegate appointed even for a fixed day shall not restore the plaintiff, although the plaintiff wishes to prove possession and ejectment.

The same, to the Abbot of Saint-Aubin.

By the ministry of the service undertaken, we are compelled to respond to the consultations of individuals, so that, if anything of doubt or question arises in anyone's mind, it may be resolved by

the Roman Church, which by the Lord's disposition merited to obtain primacy among the others.

It was asked of us whether, if someone asserting that he was despoiled of a church or any possession without judgment and reasonable cause obtained letters from us to judges that possession should be restored to him within a certain time if it were established for the judge that he was so despoiled, possession ought to be restored to him when the one who holds the church or possession that he reclaims had, before any mention was made of the letters themselves, absented himself for the sake of studies, pilgrimage, or another cause of this kind, and cannot exhibit his presence to the judge within the fixed time.

Concerning this we respond thus to your inquiry: he neither can nor ought to have restitution, although he is prepared before the delegated judge to prove his possession and ejectment by suitable witnesses, unless the one who possesses had absented himself through contumacy. But if the judge extends the term until the return of the one who possesses, his jurisdiction expires, because without the consent of both parties it is not permitted to a judge in any way to extend a term fixed by the one delegating. [Furthermore, etc.; cf. c. 19, On the Right of Patronage, III.38.]

> Reo absente non per contumaciam, delegatus datus etiam ad diem, non restituet actorem, licet possessionem et deiectionem probare volentem.
>
> Idem Abbati sancti Albini.
>
> Consultationibus singalorum ex ministerio susceptae servitutis cogimur respondere, ut, si quid dubietatis vel quaestionis in mente alicuius emerserit, ab ecclesia Romana solvatur, quae inter alias disponente Domino meruit obtinere principatum. Quaesitum est a nobis siquidem, utrum, si aliquis ecclesia vel possessione qualibet se asseverans absque iudicio et causa rationabili spoliatum, et a nobis ad iudices literas obtinuerit, ut infra certum tempus restituatur sibi possessio, si constiterit iudici, eum esse taliter spoliatum, possessio debeat ei restitui, quum is, qui tenet ecclesiam vel possessionem, quam ipse requirit, antequam de literis ipsis aliqua mentio fieret, studiorum vel peregrinationis, vel alia huiusmodi causa se absentaverit, nec infra tempus praefixum iudici possit suam praesentiam exhibere? Super quo utique inquisitioni tuae taliter respondemus, quod nec potest, nec debet restitutionem habere, quamvis paratus sit coram iudice delegato testibus idoneis possessionem et deiectionem suam probare, nisi is, qui possidet, se per contumaciam absentasset. Si autem iudex usque ad reditum eius qui possidet, terminum prorogaverit, exspirat iurisdictio sua, quia sine consensu utriusque non licet iudici terminum prorogare aliquatenus praefixum a delegante. [De cetero etc. cf. c. 19. de iure patr. III. 38.]

Chapter XI

Latin source headnote: A delegate of the Pope has jurisdiction in the cause committed to him over an ordinary and any greater person.

The same, to the Bishop of Chartres.

Indeed, because you first wished to consult us how a judge delegated by us ought to compel a bishop who is not subject to him to do or give something when, by our mandate, he undertakes to terminate a cause that is pending between the bishop and a cleric or layman, we have decided to respond thus to your question: a judge delegated by us performs our functions, and hence in that cause he is superior to and greater than those whose cause he undertook to terminate.

Therefore, if a bishop or another person who is not of his jurisdiction should be rebellious or contumacious in a cause that we delegate to him, according to the quality or quantity of the deed he will be able to be compelled by the delegated judge with a sentence either of interdict or suspension, in such a way that the judge, proceeding temperately according to the quality of the business, forbids the bishop either entry into the church or the priestly office, or even subjects to interdict that bishop's land which pertains specially to his jurisdiction. [Concerning witnesses, etc.; cf. c. 5, On Compelling Witnesses (2, 14), in Compilation I.]

> Delegatus Papae in causa sibi commissa iurisdictionem habet super ordinarium et quemcunque maiorem.
>
> Idem Carnotensi Episcopo.
>
> Sane quia nos inprimis consulere voluisti, qualiter a nobis iudex delegatus episcopum, qui ei non subest, ad aliquid faciendum vel dandum compellere debeat, quum causam, quae inter episcopum et clericum vel laicum vertitur, de mandato nostro suscipit terminandam, id Tuae quaestioni duximus respondendum, quod iudex a nobis delegatus vices nostras gerit, unde in causa illa superior est, et maior illis, quorum causam suscepit terminandam. Ideoque, si episcopus vel alia persona, quae non sit de iurisdictione illius, in causa, quam ei delegamus, rebellis aut contumax fuerit, secundum qualitatem vel quantitatem facti poterit vel interdicti vel suspensionis sententia a iudice delegato compelli ita, quod iudex, secundum negotii qualitatem temperate procedens, episcopo vel ingressum ecclesiae, vel sacerdotale officium interdicat, aut etiam terram illius, quae ad iurisdictionem suam pertinet specialiter, interdicto supponat. [De testibus etc. cf. c. 5. de test. cog. (2, 14.) in Comp. I.]

Chapter XII

Latin source headnote: If the first man obtained the first dignity to become vacant in a church, and a second obtained a certain dignity of that church when it became vacant, and it afterwards becomes vacant, it is owed to the first and not the second. This is what it says, and it is a notable decision.

The same, to the Archbishop of York and the Bishop of Coventry.

On behalf of N., a chaplain, it became known to us that, when he obtained our letters to you, brother of Coventry, that you should assign him the archdeaconry that should first happen to become vacant in your church, R., his adversary, obtained other letters, as is said, to you, brother of York, with no mention of the earlier ones, that, if his maternal uncle wished altogether to relinquish the archdeaconry that he held in the same church, you should cause it to be assigned to him.

Therefore, because, if we had remembered that we had directed our letters for the aforesaid N., as we have said, we would in no way have written for his adversary, and being unwilling that our letters that we sent for the same N. lack effect on this occasion, we command your fraternity by apostolic writings, under precept, that you assign to the aforesaid N. the archdeaconry of that church, if it is vacant, notwithstanding the later letters.

> Si primus impetravit primam dignitatem in ecclesia vacaturam, secundus impetravit certam dignitatem ipsius ecclesiae, quum vacaret, et illa postmodum vacat, debetur primo, et non secundo. H. d. et est notabilis decisio.
>
> Idem Eboracensi Archiepiscopo et Episcopo Conventrensi.
>
> Ex parte N. capellani nobis innotuit, quod, quum ad te, frater Conventrensis, nostras literas impetraverit, ut ei archidiaconatum, quem in ecclesia tua primo vacare contingeret, assignares, R.

adversarius eius alias ad te, frater Eboracensis, literas, sicut dicitur, impetravit, nulla de prioribus habita mentione, ut, si avunculus suus archidiaconatum, quem habebat in ecclesia eadem, vellet omnino dimittere, ipsum ei faceres assignari. Quoniam igitur, si memores fuissemus, nos pro praedicto N. literas nostras, sicut praediximus, direxisse, pro adversario eius nullatenus scripsissemus, nolentes literas nostras, quas pro eodem N. misimus, occasione hac effectu carere, fraternitati vestrae per apostolica scripta praecipiendo, mandamus, quatenus praefato N. archidiaconatum ipsius ecclesiae, si vacat, non obstantibus posterioribus literis assignetis.

Chapter XIII

Latin source headnote: Where a contrary will of the Pope does not appear, a delegate ought to preserve the form of law and admit reasonable exceptions. Johannes Andreae.

The same, to the Archbishop of York.

On your part it has been asked of us whether, when we commit some cause under a certain form, the delegated judges ought so to follow the form committed to them that they do not admit reasonable exceptions. Upon this we answer your question in this manner: even if at times it is expedient for a delegated judge to preserve the form prescribed to him, he nevertheless ought to admit reasonable exceptions and proceed in the cause according to the equity of law, unless it is expressed in our letters that no exceptions ought to be admitted. We believe that neither we nor our predecessors have ever expressed this.

Ubi contraria voluntas Papae non apparet, delegatus iuris formam servare debet, et rationabiles exceptiones admittere. Ioan. Andr.

Idem Eboracensi Archiepiscopo.

Ex parte tua quaesitum est a nobis, utrum, quum causam aliquam sub certa forma committimus, iudices delegati ita formam sibi commissam debeant sequi, quod rationabiles exceptiones non admittant? Super quo Quaestioni tuae taliter respondemus, quod, et si quando iudici delegato expediat formam sibi statutam servare, debet tamen rationabiles exceptiones admittere, et in causa iuxta iuris aequitatem procedere, nisi exprimatur in literis nostris, quod nullae debeant exceptiones admitti. Quod nec nos, nec antecessores nostros credimus unquam expressisse.

Chapter XIV

Latin source headnote: A delegation made to a dignity, without a proper name being expressed, passes to the successor.

The same, to the Abbot and Convent of Marmoutier.

Since the Abbot of Leicester, who, after first receiving our mandate, fixed a day for the parties to act, having first taken the counsel of prudent men, joined to himself in cognizance of the cause the newly substituted Abbot of Winchester in place of the judge who had previously died, after our mandate had been presented to him, because the commission of the letters emanated from us under the express names of places and not of persons, we therefore hold their sentence ratified and firm, insofar as it is just.

Delegatio facta dignitati, non expresso nomine proprio, transit ad successorem.

Idem Abbati et Conventui maioris monasterii.

Quoniam abbas Leicestriae, qui prius suscepto mandato nostro partibus diem ad agendum praefixit, praehabito consilio prudentum, abbatem Vincestriae de novo substitutum iudici praemortuo, illi mandato nostro porrecto, quia sub expressis nominibus locorum et non personarum commissio literarum a nobis emanavit, sibi socium in causae cognitione adiunxit, ideo nos sententiam illorum, sicut est iusta, ratam et firmam habemus.

Chapter XV

Latin source headnote: If the Pope delegates a question concerning the right of presentation, appeal having been removed, and under this form, that the delegate should ordain the church upon the presentation of the one to whom he shall see that it pertains, through this he does not have power to institute, but to pronounce judgment, and the one to whom it pertains shall institute; and, if his right is impaired, he lawfully appeals.

The same.

Concerning what, moreover, you wished to add, namely, if, after a question has arisen among certain persons concerning the presentation of a priest, it should happen that the cause is delegated to someone under this form—that, if it should be established that the right in question pertains to either party, upon that party's presentation he should ordain the church with a suitable person, appeal having been removed—whether it is lawful for the delegated judge, without the diocesan bishop's knowledge, or when the archdeacon or archpriest protests, to put the cleric presented to him into possession of the church, especially if the person presented was unknown or less suitable; and whether, if the archpriest, archdeacon, or bishop to whom institution pertains should appeal, deference is to be given to their appeals: concerning this we wish your discretion to hold that, although we commit to someone for determination, appeal having been removed, the question that is disputed concerning presentation, it is nevertheless not our intention to generate prejudice to the diocesan bishop, archdeacon, or archpriest. Therefore, the one who is to be presented must be presented to him by whom he is to be instituted. And their appeal shall hold if, seeing their right impaired, they should decide to appeal, because the remedy of appeal has been removed not from them, but from the parties between whom the cause was committed. [But concerning churches, etc., cf. c. 9, On Census, III. 39.]

Si quaestionem de iure praesentandi Papa delegat appellatione remota, et sub ea forma, ut delegatus ad praesentationem eius, ad quem viderit pertinere, ordinet ecclesiam, per hoc non habet instituere, sed pronunciare, et is, ad quem pertinet, instituet; et si iuri suo detrahitur, licite appellat.

Idem.

Super eo vero, quod subiungere voluisti, si, de praesentatione presbyteri inter aliquos quaestione suborta, causam contigerit delegari alicui sub hac forma, ut, si constiterit ius, de quo agitur, ad partem alterutram pertinere, ad praesentationem eiusdem de persona idonea ordinet ecclesiam appellatione remota, an liceat delegato iudici, inscio dioecesano episcopo, vel archidiacono vel archipresbytero reclamante, praesentatum sibi clericum in possessionem ecclesiae mittere, praesertim si ignotus fuerit praesentatus, aut minus idoneus, et an, si archipresbyter, vel archidiaconus, vel episcopus, ad quem institutio pertinet, appellaverit, eorum sit appellationibus deferendum, hoc tuam volumus discretionem tenere, quod, licet quaestionem, quae de praesentatione vertitur, appellatione remota committamus alicui terminandam, non tamen est nostrae intentionis dioecesano episcopo, archidiacono vel archipresbytero, praeiudicium generare. Ideoque praesentandus est illi, qui instituendus fuerit. Et

tenebit eorum appellatio, si videntes iuri suo detrahi duxerint appellandum, quia non illis, sed partibus, inter quas causa commissa est, appellationis remedium est sublatum. [Ecclesiis autem etc. cf. c. 9. de cens. III. 39.]

Chapter XVI

Latin source headnote: If a cause is delegated simply to two persons, the sentence of one does not hold.

The same.

We remember having committed to our venerable brothers, the Bishops of Fréjus and Gap, the matrimonial cause that is known to be conducted between the woman I. and Blanchacius. When they had indeed convened together and, as we have learned, had ordered that woman to be restored to the man, the man so afflicted the woman with torments and lashes that, unwilling and coerced, she confessed a relationship of kinship between herself and her husband. And so it happened that at the judgment of one of them he put away the same woman, who is said to have borne him five sons and to have remained with him for fourteen years without any question.

Hence, because matrimony is proved to be so great a sacrament in the Church of God that it ought not to be dissolved without a reasonable and evident cause, especially since it was instituted not by man but by God, we command your discretion by apostolic writings that you diligently and subtly inquire into the truth of this matter; and, if you find that the aforesaid B. separated the said I. from himself solely at the judgment of one of the aforesaid bishops, because, when a cause is committed to two persons, the sentence of one does not hold, after prior admonition you are to compel him, appeal having been removed, to receive the same woman kindly as his wife and to treat her with marital affection. But if perchance he should disdain to do this, appeal ceasing, you are to bind him and the woman brought in over her with the bond of excommunication. If, nevertheless, any persons should appear who, after she has been received back by him, wish and are lawfully able to challenge their marriage, after the parties have been summoned before you, you are to hear the cause and terminate it with a canonical end, appeal having been removed, employing that maturity and circumspection which it is fitting to employ in the whole business.

Textual note: The Latin Library transcription's *sit institutam* has been corrected to Friedberg's printed *sit institutum*; the neuter participle agrees with *matrimonium*.

Si causa simpliciter est delegata duobus, sententia unius non tenet.

Idem.

Causam matrimonii, quae inter I. mulierem, et Blanchacium agitari dignoscitur, venerabilibus fratribus nostris Furolienensi et Vapicenensi episcopis nos meminimus commisisse, quibus utique in unum convenientibus et eam mulierem, sicut accepimus, viro restitui mandantibus, vir mulierem cruciatibus et flagellis adeo affecit, quod invita et coacta inter se et virum suum confessa est parentelam. Sicque factum est, quod ad iudicium unius eorum dimisit eandem, quae quinque filios ex eo dicitur genuisse, et XIV. annis secum sine aliqua quaestione permansisse. Unde quoniam matrimonium in ecclesia Dei adeo magnum sacramentum comprobatur, quod sine rationabili et evidenti causa dissolvi non debet, praesertim quum non ab homine, sed a Deo sit institutum, Discretioni vestrae per apostolica scripta mandamus, quatenus huius rei veritatem diligenter et subtiliter inquiratis, et, si inveneritis, quod praefatus B. dictam I. ad iudicium solummodo alterius praedictorum episcoporum a se separasset, quia,

quum causa duobus committitur, sententia unius non tenet, ipsum, ut eandem mulierem sicut uxorem suam appellatione remota benigne recipiat et maritali affectione pertractet, monitione praemissa cogatis. Quod si facere forte contempserit, eum et superinductam appellatione cessante excommunicationis vinculo adstringatis. Si qui tamen apparuerint, qui, postquam ab eo recepta fuerit, matrimonium ipsorum velint et legitime possint impetere, partibus ante vos convocatis causam audiatis, et eam appellatione remota fine canonico terminetis, illa maturitate et circumspectione adhibita, quae in toto negotio convenit adhiberi.

Chapter XVII

Latin source headnote: A delegate who is the lord of the impetrant can be recused.

The same, to the Bishops of Oxford and Winchester and the Abbot of Hereford.

We committed under a certain form to you, brother bishops, and to our venerable brother the Bishop of London, for termination, the cause that is disputed between the noblemen F. and R. of Ardenna, formerly the son of Agatha, concerning the birth-status of Agatha. But because the same F. of Ardenna held the aforesaid Bishop of London entirely suspect, for the reason that he is the lord of the aforesaid R., we decided that he should be removed and that you, son abbot, should be substituted in his place. Therefore, by apostolic writings we command and enjoin you that you subtly inquire into the truth of the matter concerning the birth-status of the aforesaid A., and if, etc. [Cf. c. 4, Who Are Legitimate Children, IV. 17; c. 3, On Fraud and Contumacy, II. 14.]

Textual note: Both the web transcription and Friedberg's printed text read *ispsum*, an evident typographical error for *ipsum*; the translation renders the intended pronoun.

Delegatus, qui est dominus impetrantis, recusari potest.

Idem Oxonensi et Vintoniensi Episcopis et Abbati Herfordensi.

Causam, quae inter nobiles viros F. et R. de Ardenna, quondam filium Agathae, de nativitate Agathae vertitur, vobis, fratres episcopi, et venerabili fratri nostro Londonensi episcopo sub certa forma commisimus terminandam. Verum quoniam idem F. de Ardenna praefatum Londonensem episcopum omnino habebat suspectum, pro eo, quod dominus est praedicti R., ispsum amovendum, et te, fili abbas, loco ipsius duximus subrogandum. Per apostolica itaque scripta vobis mandamus atque praecipimus, quatenus de nativitate praedictae A. rei veritatem subtiliter inquiratis, et si etc. [cf. c. 4. qui filii IV. 17., c. 3. de dol. et cont. II. 14.]

Chapter XVIII

Latin source headnote: From the subdelegate of a papal delegate who did not subdelegate the whole matter, appeal ought to be made not to the Pope but to the delegate himself.

The same.

When, by consulting us, you seek to be taught whether it pertains to you to confirm the sentence that judges delegated by us have rendered in causes in your province, although nothing concerning the causes [themselves] was conducted in your presence, we answer your consultation by the present letters that you are not bound to confirm that sentence unless you wish to do so. But know that this is incumbent upon you by duty of office: if the sentence cannot be put into execution at the mandate of those judges, you are to furnish them aid and favor; and you will be able to confirm it if you know that it was rendered reasonably.

Likewise, if, concerning a cause that is committed to you by our delegation, an appeal has been interposed by one or more ecclesiastical persons to whom, so that [meanwhile] you may spare the parties' labors and expenses, you commit cognizance of that cause and examination of the witnesses while reserving the sentence to yourself, you are not bound, in view of an appeal of this kind, to leave the cause itself undetermined.

> A subdelegato delegati Papae, qui subdelegavit non in totum, non ad Papam, sed ad ipsum delegatum appellari debet.
>
> Idem.
>
> Quum te consulente postulas edoceri, utrum ad te pertineat, sententiam in causis, quam iudices in tua provincia delegati a nobis protulerunt, confirmare, licet de causis [ipsis] nil in tua praesentia sit tractatum, consultationi tuae praesentibus literis respondemus, quod sententiam ipsam non teneris, nisi volueris, confirmare; sed id tibi ex officii debito noveris imminere, ut, si ad mandatum illorum iudicum sententia non possit exsecutioni mandari, eis praestes auxilium et favorem, et ipsam, si noveris eam rationabiliter latam, poteris confirmare. Item Si super causa, quae tibi ex nostra delegatione committitur, a personis ecclesiasticis, una vel pluribus, quibus ut [interim] parcas laboribus partium et expensis, cognitionem ipsius causae et testium examinationem sententia tibi reservata committis, appellatio fuerit interposita, huiusmodi appellationis intuitu causam ipsam indiffinitam relinquere non teneris.

Chapter XIX

Latin source headnote: The jurisdiction of a delegate before whom the issue had been joined does not expire upon the death of the delegator.

Lucius III, to the Archbishop of Canterbury and his Suffragans.

It has been reported [on your part that, although the remedy of appeal had been removed in commissions made by Alexander III, our predecessor of holy memory, nevertheless one of the parties alleges that the mandate expired upon the death of the mandator, whether or not the issue had been joined, and therefore, all business having been postponed, you await an apostolic mandate in suspense.] We therefore answer your consultation [by the authority of these presents] that, if the issue had been joined before the death of our predecessor, the mandate in no way expired upon the death of the mandator. But if he died before the joinder of issue, the judges whom he had delegated are not to proceed in that case by virtue of a delegation of this kind. Therefore, appeal ceasing, it will be possible to proceed in that case in which, before the mandator's death, the issue had been joined through statement and answer. But where the mandator's death preceded joinder of issue, the proceeding is to stop altogether, whether or not an obstacle of appeal had been interposed. Given at Verona, on the sixth day before the Kalends of July.

> Morte delegantis non exspirat iurisdictio delegati, coram quo lis erat contestata.
>
> Lucius III. Cantuariensi Archiepiscopo et eius Suffraganeis.
>
> Relatum est [ex parte vestra, quod licet in commissionibus a sanctae recordationis Alexandro P. III. praedecessore nostro factis fuerit appellationis remedium remotum, altera tamen partium, sive lis fuerit contestata sive non, exspirasse mandatum morte mandatoris allegat, ideoque negotiis omnibus postpositis in suspenso mandatum apostolicum exspectatis.] Nos itaque consultationi vestrae [praesentium auctoritate] respondemus, quod, si lis fuerit ante praedecessoris nostri obitum contestata,

mandatum morte mandatoris nullatenus exspiravit. Si vero ante litis contestationem decessit, non est in eo casu a iudicibus, quos delegaverat, ex delegatione huiusmodi procedendum. Poterit ergo in eo casu appellatione cessante procedi, in quo ante mortem mandatoris lis fuerit per narrationem et responsionem contestata. Ubi autem mors mandatoris litis contestationem praecessit, penitus subsistat, sive fuerit, sive non fuerit appellationis obstaculum interiectum. Datum Veronae VI. Kal. Iul.

Chapter XX

Latin source headnote: If the delegate cited the party before the death of the delegator, his jurisdiction has been perpetuated. And one who pursues the suit before the judge from whom he appealed renounces the appeal.

Urban III.

We consider it pleasing and acceptable that you expend due care upon the business committed to your discretion and, in matters that cause doubt, in keeping with the gravity of your office, seek the judgment of the Apostolic See. Indeed, your devotion has consulted us whether, when an edict of citation was issued before the death of the delegator but the issue was joined after the death of the [delegator], the delegated judge ought nevertheless to proceed in the cause; and whether one is understood to have renounced an appeal who, after it had been interposed, sought adjournments for producing witnesses and then, renouncing production and pleading, sought to have the attestations solemnly published, just as you assert that all this happened under your examination around the death of Pope Lucius, our predecessor of good memory, who had delegated you as judges.

We answer your inquiry in this manner: because in the former case, once the citation had been made, the business was, as it were, begun, and especially if the delegate is not certain of the death of the delegator, there can and ought to be proceeding in the cause, and whatever, with justice as guide, shall have been definitively determined through judicial procedure shall hold. But in the second case there appears to have been a withdrawal from the appeal, if it should be established that the one who appealed proceeded in accordance with the matters set forth above.

Si delegatus citavit ante mortem delegantis, perpetuata est eius iurisdictio. Et appellationi renunciat qui coram iudice, a quo appellavit, litem prosequitur.

Urban III.

Gratum gerimus et acceptum, quod in negotiis vestrae discretioni commissis debitam curam impenditis, et in his, quae dubitationem faciunt, pro gravitate vestri officii censuram sedis apostolicae postulatis. Sane consuluit nos devotio vestra, an ante obitum delegantis, proposito citationis edicto, lite vero post mortem [delegantis] contestata, nihilominus debeat in causa procedere iudex delegatus; et utrum is intelligatur appellationi renunciasse, qui ea interposita ad producendos testes inducias postulavit, et demum productioni et allegationi renuncians, attestationes petiit solenniter publicari, sicut hoc totum circa decessum bonae memoriae praedecessoris nostri Lucii Papae, qui vos iudices delegaverat, sub examine vestro asseritis contigisse. Nos autem inquisitioni tuae taliter respondemus, quod, quum in casu priori citatione facta negotium sit quasi coeptum, et maxime, si delegatus non sit certus de obitu delegantis, potest et debet in causa procedi, tenebitque quod iustitia fuerit praevia iudiciali tramite diffinitum. In secundo vero casu videtur ab appellatione recessum, si secundum ea, quae praemissa sunt, eum, qui appellaverit, constiterit processisse.

Chapter XXI

Latin source headnote: If a cause is committed to three delegates with the clause, "but if not all, etc.," before the incapacity of the third becomes apparent, two cannot proceed, and, if they proceed, they do nothing. This is what it says, as far as § We add. § 1. The clause, "if not all of you are able," includes will under incapacity with respect to perfecting the jurisdiction of the co-judges. The same applies to two appointed with the clause, "but if both." This is what it says, as far as § The sixth. § 2. If the defendant before the delegate objects against the plaintiff that he is excommunicated, but does not prove it within the due time, the plaintiff is heard. But if he proves it, the delegate shall absolve the plaintiff if he was excommunicated on account of the cause committed to him. If on account of another cause, he shall remit him to his excommunicator. If the latter does not wish to absolve him, the Pope's delegate shall absolve him, unless it is among the cases reserved to the Pope. This is what it says. § 3. One absolved by the delegate concerning the cause for which he had been excommunicated shall appear, or answer concerning that cause, before the excommunicator, unless it has been delegated to another; and, if the excommunicator has maliciously delayed, the delegate who absolved him shall take cognizance. This is what it says.

Celestine III.

Your prudence: (*And below:* [cf. c. sole, On the Amendment of the Pleading, II. 4.]) In the fifth place, moreover, you entreat to be informed whether, when a cause is committed to three or more persons in such a way that, if all are unable to take part, two shall nevertheless execute it, if the defendant has been summoned by only two, he is necessarily bound to come; and, if he has been cited by only two or by more, [and] has appeared before two, while the third or another beyond him neither comes in person nor excuses himself by letter, as is customarily done, whether the two present can proceed in the cause, define it, and terminate it by the reckoning of a sentence.

In this case we answer in this manner: when any one of the delegated judges has not shown through a reliable messenger or an excuse sent in writing that he is unable to take part, or it cannot otherwise be canonically established concerning the same, the remaining judges ought not to proceed to cognizance of the cause. But if they proceed, they shall be reckoned to have done nothing. This indeed was the ancient provision of the Apostolic See, that it would more willingly delegate recognitions [and decisions] of causes of this kind to two persons than to one, and to three than to two, since, as the sacred canons attest, a judgment that is confirmed by the opinions of several persons is complete. For anyone who should presume to judge outside the form of the rescript received would be proved to exceed the bounds of the mandate.

§ 1. We add also that, where it has been set down in the commission that, if all are unable to take part, two shall nevertheless execute it, even if one of them, although he is able, is unwilling to take part, the two are nevertheless to proceed in the cause, although that third person is to be most gravely reproved because he evades or disdains to execute the apostolic mandate. We say that precisely the same is to be observed also in a cause that is committed to two persons with this added: that, if both are unable to take part, the one shall nevertheless execute it.

§ 2. The sixth question proposed to us on your part contained this: when a cause is committed to certain judges, and it sometimes happens that the defendant objects against the plaintiff that he cannot stand in judgment, inasmuch as he is bound by the bond of excommunication, if the

defendant is unwilling, or is unable, immediately to prove him excommunicated, whether the plaintiff ought nevertheless to be heard until the truth of the matter that is objected has been disclosed and unraveled. We remove this doubt in this manner: if the one who objects to something of this kind does not immediately, or within a competent term, prove lawfully what he contends, the plaintiff ought to be permitted to be heard without any impediment. But if, either from the plaintiff's confession or in any other manner, it should be lawfully established that the plaintiff is bound by the bond of excommunication, he can lawfully be absolved by the delegated judges according to the form of the Church, [provided] that, if he was excommunicated by an ordinary or delegated judge on account of another just and evident cause, he ought to be remitted to the excommunicator to be absolved. But if the latter has employed malice, the delegated judges are freely to execute this according to ecclesiastical rite, provided that the kind of excommunication is not of that [offense] whose absolution is reserved solely to the Apostolic See; for it is established law that, to delegated judges to whom the principal matter is committed, the accessory matter is also committed.

§ 3. But if he has been absolved by these judges—after, namely, furnishing an oath that he will stand by the mandate of the Church—you ask again [to be taught] whether he is bound to answer concerning the same cause for which he had been excommunicated before the same delegated judges or before the ordinary by whom he had been excommunicated, and by whose judgment or mandate he ought to stand. In this case we answer thus: he ought to stand before the excommunicators themselves concerning that cause for which he had been excommunicated and to observe their mandate, unless that business has been specially delegated to other judges by the Apostolic See. But if the excommunicators have maliciously delayed, then the delegates shall exercise in the accessory matter the same jurisdiction as in the principal matter. [Given at the Lateran, on the fifteenth day before the Kalends of July, in the third year of our pontificate, 1193.]

Textual note: Three stray ñ characters in the Latin Library transcription, occurring between the divisions of the headnote, have been removed; they are not part of the Latin text. The transcription's *ordinano* has also been corrected to Friedberg's printed *ordinario*.

> Si causa committitur tribus delegatis cum clausula: "quod si non omnes etc.," priusquam appareat de impotentia tertii, duo procedere non possunt, et, si procedunt, nihil agunt. Hoc dicit, usque ad § Adiicimus. § 1. Clausula: "si non omnes poteritis," sub impotentia includit voluntatem quoad purificandam iurisdictionem coniudicum. Idem in duobus datis cum clausula: "quod si ambo." H. d. usque ad § Sexta. § 2. Si reus coram delegato obiicit excommunicationem actori, quam non probat infra tempus debitum, auditur actor. Si vero probat, delegatus absolvet actorem, si excommunicatus est propter causam sibi commissam. Si propter aliam, ad excommunicatorem suum illum remittet. Qui si non vult eum absolvere, delegatus Papae eum absolvet, nisi sit de casibus Papae reservatis. Hoc dicit. § 3. Absolutus a delegato super causa, pro qua fuerat excommunicatus, coram excommunicatore parebit, seu respondebit super illa causa, nisi sit alteri delegata, et, si excommunicator malitiose distulerit, delegatus, qui absolvit, cognoscet. Hoc dic.
>
> Coelestinus III.
>
> Prudentiam tuam: (Et infra: [cf. c. un. de mut. pet. II. 4.]) Quinto insuper loco supplicas informari, utrum, quum tribus vel pluribus causa committitur ita, quod si omnes interesse nequiverint, duo eam nihilominus exsequantur, si reus a duobus tantum fuerit convocatus, venire necessario teneatur; et si citatus fuerit a duobus tantum seu a pluribus, [et] coram duobus comparuerit, tertio aut ulteriori nec veniente per se, vel per literas, ut solet fieri excusante, an duo praesentes in causa possint procedere, et

eam definire et sententiae calculo terminare? In hoc casu taliter respondemus, quod, quum aliquis delegatorum iudicium per certum nuncium vel excusatorem literatorie destinatum non ostenderit, se interesse non posse, vel alias de eodem canonice constare non poterit, residui procedere ad causae cognitionem non debent. Quodsi processerint, nihil reputabuntur egisse; illa quippe fuit antiqua sedis apostolicae provisio, ut huiusmodi causarum recognitiones [et decisiones] duobus quam uni, tribus quam duobus libentius delegaret, quum, sicut sacri canones attestantur, integrum sit iudicium, quod plurimorum sententiis confirmatur. Mandati siquidem excedere fines probaretur, si quis citra formam rescripti accepti praesumeret iudicare. § 1. Adiicimus etiam, quod, ubi fuerit in commissione appositum, ut, si omnes interesse nequiverint, duo eam nihilominus exsequantur, et si aliquis ex ipsis, quum possit, noluerit interesse, duo nihilominus in causa procedant, licet ille tertius gravissime sit arguendus pro eo, quod mandatum apostolicum exsequi subterfugiat aut contemnat. Idem quoque per omnia dicimus observandum in causa, quae committitur duobus, eo apposito, ut, si ambo interesse nequiverint, alter nihilominus exsequatur. § 2. Sexta nobis proposita ex parte tua quaestio continebat, quod, quum aliquibus iudicibus causa committitur, et quandoque contingit, quod reus actori obiicit, quod stare non potest in iudicio, utpote vinculo excommunicationis adstrictus, si reus non velit statim eum probare excommunicatum, sive non possit, an actor nihilominus audiri debeat, donec super eo, quod obiicitur, rei veritas fuerit patefacta et enodata? Hanc dubitationem taliter removemus, quod, si ille, qui tale quid obiicit, statim vel infra terminum competentem non probaverit legitime quod intendit, actor permitti debet, ut sine offendiculo quolibet audiatur. Ceterum, si vel ex confessione actoris, vel alio quolibet modo legitime constiterit esse actorem vinculo excommunicationis adstrictum, a iudicibus delegatis legitime secundum formam ecclesiae valet absolvi, ita [tamen] ut, si propter aliam iustam causam et evidentem ab ordinario iudice vel delegato excommunicatus fuerit, ad excommunicatorem debet absolvendus remitti. Qui si malitiam adhibuerit, delegati iudices id ritu ecclesiastico libere exsequantur, dummodo non sit tale genus excommunicationis illius [criminis] cuius duntaxat absolutio sedi apostolicae reservetur; explorati quidem iuris exsistit, ut delegatis iudicibus, quibus principale committitur, et accessorium committatur. § 3. Si vero ab his fuerit, praestito scilicet iuramento, quod stabit mandato ecclesiae, absolutus, rursus interrogas [edoceri] an coram eisdem delegatis iudicibus, vel coram ordinario, a quo excommunicatus exstitit, teneatur super eadem causa, pro qua excommunicatus fuerat, respondere, et quorum debeat iudicio vel mandato stare? In quo quidem casu taliter respondemus, quod coram ipsis excommunicatoribus super illa causa, pro qua fuerat excommunicatus, stare debet, et eorum servare mandatum, nisi specialiter fuerit illud negotium aliis iudicibus a sede apostolica delegatum. Quod si excommunicatores malitiose distulerint, tunc delegati eandem iurisdictionem, quam in principali, et in accessorio exercebunt. [Dat. Lat. XV. Kal. Iul. Pont. nost. Ao. III. 1193.]

Chapter XXII

Latin source headnote: If a cause is simply delegated to three persons, two cannot proceed without the subdelegation of the third. But if they have done so, appeal can be taken from them. The same applies if they were appointed with the clause, "but if not all." For the proceeding of two without the third having been consulted is not valid. This is what it says, encompassing both understandings.

Innocent III, to the Archbishop of Reggio and the Bishop of Cefalù.

When the cause that is disputed between our venerable brothers, the Archbishops of Monreale and Rossano, concerning certain tithes had been committed by us to our venerable brothers, the Archbishops of Palermo and Capua, and to you, brother of Reggio, to be terminated with a due end, the aforesaid Archbishop of Monreale, as we learned from his letters, came in response to the first

citation of the aforesaid Archbishops of Palermo and Capua. Established in their presence, he proposed by way of exception that, for two reasons, he ought not to stand before their judgment: first, namely, because the cause itself had been delegated to three judges, and he had been summoned to judgment by only those two, while you, brother of Reggio, although present, were unconsulted and unaware and had not committed your authority to them concerning this; and also because, before their citation and knowledge of the letters, he had sent his messenger to the Apostolic See for the same cause, in which matter he affirmed that a decretal of Pope Alexander III, our predecessor of happy memory, supported him more plainly. But the same archbishops, unwilling to admit his exceptions, rendered an interlocutory sentence against him that he should answer; on account of this, the same archbishop, feeling himself aggrieved, appealed to the Apostolic See.

We therefore commit the inquiry into the aforesaid matters and their canonical decision to the examination of your discretion, and by apostolic writings command your fraternity that, after those who ought to be summoned have been summoned before you and the truth concerning the foregoing has been more diligently inquired into, if it should be established to you that the aforesaid archbishops in no way admitted the aforesaid exceptions, notwithstanding what was done by them, you are to cause the tithes themselves—of which the aforesaid Archbishop of Monreale asserts that he was despoiled after his messenger had approached the Apostolic See on account of this, especially since he asserts that the same tithes were confirmed by the Apostolic See both to himself and to his church—to be restored with the fruits received from them, every obstacle of contradiction and appeal having been removed, whether it was done through lay power or even through the same judges; and afterwards you are to hear whatever question remains, insofar as you are able by law, and, appeal having been removed, decide it with a due end. [Given at the Lateran, on the Kalends of November, 1198.]

> Si causa simpliciter delegatur tribus, duo sine subdelegatione tertii procedere non possunt. Quod si fecerint, ab eis poterit appellari. Idem, si sunt dati cum clausula: "quod si non omnes." Non enim valet processus duorum tertio inconsulto. Hoc dicit comprehendendo utrumque intellectum.
>
> Innocentius III. Rheginensi Archiepiscopo et Episcopo Cephadulensi.
>
> Quum causa, quae vertitur inter venerabiles fratres nostros Montis regalis et Rossanensem archiepiscopos super quibusdam decimis, venerabilibus fratribus nostris Panormitano et Capuano archiepiscopis, et tibi, frater Rheginensis, commissa fuisset a nobis fine debito terminanda, praedictus archiepiscopus Montis regalis, sicut ex literis eius accepimus, ad primam praedictorum Panormitani et Capuani archiepiscoporum citationem accessit. In quorum praesentia constitutus excipiendo proposuit, quod pro duabus causis eorum non deberet stare iudicio, tum videlicet, quia ipsa causa tribus fuerat iudicibus delegata, et idem ab illis duobus tantum, te, frater Rheginensis, praesente inconsulto et inscio, nec vices tuas eis super hoc committente, ad iudicium fuerat evocatus, tum etiam, quia ante ipsorum citationem et notitiam literarum, pro eadem causa nuncium suum ad apostolicam sedem transmiserat, in quo decretalem felicis memoriae Alexandri Papae III. praedecessoris nostri sibi affirmabat apertius suffragari. At vero iidem archiepiscopi exceptiones ipsius nolentes admittere, contra eum, ut responderet, interlocutoriam sententiam protulerunt, propter quod idem archiepiscopus, sentiens se gravari, ad sedem apostolicam appellavit. Nos igitur praedictorum inquisitionem et decisionem canonicam vestrae discretionis examini committentes, Fraternitati vestrae per apostolica scripta mandamus, quatenus, vocatis ad praesentiam vestram, qui fuerint evocandi, et inquisita super praemissis diligentius veritate, si vobis constiterit, praedictos archiepiscopos exceptiones praedictas nullatenus admisisse, non obstante eo, quod per ipsos factum est, decimas ipsas, quibus praedictus

Montis regalis archiepiscopus se, postquam nuncius suus propter hoc ad sedem apostolicam accesserat, asserit spoliatum, praecipue quum easdem tam sibi, quam ecclesiae suae a sede apostolica fuisse asserat confirmatas, sive per laicalem potentiam, sive etiam per eosdem iudices factum sit, cum fructibus inde perceptis sublato cuiuslibet contradictionis et appellationis obstaculo restitui faciatis, audientes postmodum, quantum de iure poteritis, quicquid fuerit quaestionis, et appellatione remota fine debito decidentes. [Dat. Lat. Kal. Nov. 1198.]

Chapter XXIII

Latin source headnote: If two persons are delegated with the clause, "but if both, etc.," when one has been recused the other can proceed alone, nor does the proceeding hold if he proceeds with the person recused.

The same, to the Convent of Conches.

When a question concerning the abbacy of your monastery had been conducted for a rather long time between you and S., formerly your abbot, [the parties at length approaching our presence, we appointed our beloved son H., cardinal-deacon of Saint Eustachius, as auditor. In his presence it was alleged on behalf of S. in this manner: when our beloved son I., cardinal-priest of the title of Saint Pudentiana and at that time legate of the Apostolic See, had entered Normandy and had held a diligent inquiry with the abbot and brothers concerning the condition of that abbey, he found nothing there worthy of reproof, as appears evidently from the letters of Pope C., our predecessor of good memory, in which that cardinal's declaration is inserted.

But after he later departed from the monastery, his letters were fraudulently obtained to our beloved sons, the Abbot of Troarn and the Prior of Saint Barbara, concerning an inquiry to be made into the abbot and the whole monastery, with no power given to the investigators to make any determination against the abbot, as is evidently gathered from the testimony of the same cardinal. Therefore, when the aforesaid investigators approached the aforementioned monastery and wished to exceed the bounds of the mandate in conducting the inquiry without preserving the order of law, the same abbot appealed to the Apostolic See before the inquiry took effect. And although he had begun his journey to come to the Roman Church, the said investigators, deferring neither to the appeal reasonably interposed nor to his absence or any excuses, promulgated against him, contrary to the order of law, a sentence of removal, although the power of pronouncing judgment had not been granted to them, as is plainly declared from the letters of many prelates.

Therefore, when the aforementioned abbot approached the presence of our said predecessor and made him more certain concerning his irregular removal, our predecessor, having annulled all things that had been ordained contrary to the order of law by the said investigators, restored the same abbot by his sentence, committing only its execution to our venerable brother the bishop and our beloved sons L. and H., the Archdeacons of Évreux. But after a day had been assigned to the parties by the bishop alone and both parties came at the term, although the abbot expected that restoration would be made to him according to the tenor of the apostolic mandate, he was unable to obtain it. On the contrary, the bishop labored by prayers, threats, and terrors to induce him to submit to that bishop as arbitrator—not concerning the making of restitution, which was the principal business, but only concerning the deferral of its execution. And because the adverse party had approached that place with arms and a multitude of armed men, it happened that, as stated above, he submitted to the said

bishop as arbitrator, faith being pledged in his hand and the letters of restitution being deposited with him, not to be delivered to the adverse party but to be diligently preserved and returned to him at an opportune time. But the bishop himself, not fearing to act contrary to what he had promised, returned the aforesaid letters to the abbot's adversaries.

And thus, with the arbitration violated alike on the part of the bishop himself and of the adversaries, monks approaching the presence of Melior of good memory, cardinal-priest of the title of Saints John and Paul and at that time legate of the Apostolic See, obtained letters of commission to I., formerly Dean of Rouen, concerning the grievance of the arbitration. At his first citation a monk sent by the said abbot was captured by the adversaries and consigned to iron chains; but when the same abbot came at the second citation, he was compelled by pressure to submit to the dean as arbitrator, not concerning the abbacy, regarding which no question was disputed before him, but for the diminution of certain revenues in grain. But because the other party did not preserve its pledged faith concerning observance of the arbitration, as had been agreed, the said S. was again compelled to labor to the Apostolic See, where at length, concerning both the principal question and even the incidental question,] our letters regarding it had been directed to the Bishop of Lisieux and the Abbot of Bec, [that they should strive to elicit the truth concerning the matters that had been intimated to us and should determine what they should see was reasonably to be determined according to God, the order of law being observed in all respects, in such a way that either one should fulfill the apostolic mandate without the other if the other was unwilling or even unable to be present. Mention was made in those letters concerning the pledge of faith violently extorted, as the same S. asserted, and that it concerned not abjuring the monastery but only deferring restitution, as has been said, lest, if these matters were omitted, the commission should appear to have been obtained with the truth suppressed.

But when the parties were established before the delegated judges, the party of the man whom he called an intruder said that the aforesaid bishop was suspect to him for two reasons: both because he had a certain cause against the aforementioned monastery concerning a church, and also because he had not admitted that man, upon his return from the Roman Curia, to the kiss of peace. Hence he was unwilling to stand to law either before them or before either one of them, although he said nothing against the abbot; instead, appealing frivolously, he contumaciously absented himself. But the said executors, by no means deferring to the appeal, which was no appeal at all, having taken the counsel of many prudent men, put into execution the sentence rendered by our said predecessor, restoring the abbacy to the aforesaid S. and imposing perpetual silence upon the aforesaid intruder.

And when the diocesan bishop, although frequently required at their command on the part of the Apostolic See, refused to induct S. himself into corporal possession, they committed its execution to certain deacons. These not only were not admitted, but, afflicted with blows by the monks and their supporters, were consigned to confinement in prison. On this account, a sentence of excommunication was promulgated by the delegates against the intruder, the monks, and their supporters, according to the tenor of the apostolic mandate. But the intruder and monks did not on this account cease to celebrate divine offices; after that intruder had died, they even presumed to elect another excommunicated man, as is evidently perceived from the delegates' letters.

And when not even thus could they be led back to the fruit of a better life, the oft-mentioned S. began a journey to come to the Apostolic See. But messengers of the monks, anticipating him,

fraudulently obtained letters concerning the conferral of the gift of benediction upon the one whom they had elected, which they sent to their region more hastily than they ought. The said S. therefore sought that those monks—who presumed to cut out the tongue and tear out the eyes of one of his predecessors, attacked another while he sat at table with swords and clubs, and left another alone in the church prepared to celebrate Mass—be punished with fitting chastisement; that possession of the abbacy be fully restored to him, as had been determined by our said predecessor and afterwards ordained by the delegated judges; and that the intruder who had been assumed after a sentence of excommunication had been rendered against him be condemned by perpetual silence.

But, on the contrary, it was proposed on your behalf in this manner: when the aforesaid Cardinal I. was exercising the office of legate in those regions and committed to the aforesaid Abbot of Troarn and Prior of Saint Barbara for termination the cause itself concerning both the waste committed by S. himself and his incontinence, after ascertaining the truth and observing the order of law in every respect, they rendered against him a sentence of deposition, which was afterwards confirmed by our said predecessor. But S. himself intimated to the same predecessor of ours that he had been unjustly despoiled of that abbacy, the aforesaid cardinal likewise asserting that it had not been his intention that the delegated judges should proceed to the abbot's deposition, although this too had been committed to them, as is found in their letters. Hence, our oft-mentioned predecessor did not restore him in the absence of the other party, but ordered that he be restored by the aforementioned bishop and archdeacons, because it had been concealed from them that the aforesaid cardinal had also granted to the said abbot and prior the power of deposing him.

Therefore, when the parties convened on the day and at the place assigned to them by the delegates of the Apostolic See, the said S., with faith pledged, affirmed in the bishop's hand that he would stand by his arbitration concerning that cause. The bishop diligently admonished the parties to direct themselves toward the things that belong to peace, and such a settlement was made between them that the said S. would withdraw from the abbacy in perpetuity. The delegated judges held that withdrawal ratified, and the same S., as is contained in the delegates' letters, affirmed by oath that he would firmly observe it. And although he had obtained duplicate letters of entirely the same content concerning his restoration, after the settlement was made—which our oft-mentioned predecessor later confirmed—he surrendered one and fraudulently retained the other.

But, after the passage of time, when the settlement had been observed by him for a while, he caused the same cause to be committed, through the aforementioned Cardinal Melior, to the former Dean of Rouen. In the presence of the dean and of our venerable brother the Archbishop of Rouen, the first settlement was renewed, and there the aforesaid S. again abjured the abbacy and corporally furnished an oath that he would henceforth observe the settlement itself, as is contained in the letters of the Archbishop of Rouen himself and could be proved by many witnesses. These things were done before the Dean of Rouen chiefly for this reason: the priory that S. himself was to obtain was situated in the diocese of Rouen. When he had held it for two years and, by living dishonorably, had consumed almost everything, he violently extended his grasp to other goods of the monastery.

And finally, approaching our presence and expressing certain of the foregoing matters but keeping others silent, he carried back our letters to the aforesaid Bishop of Lisieux and the Abbot of Val-Richer, that they should diligently inquire into the truth of all matters and determine what justice demanded. But when they had cited the parties before them, although the bishop was suspect to the

other party for the aforementioned reasons and because he answered Abbot R. that, if he could, he would harm him, and although he had been recused by that party and the latter wished to prove this before the co-judge who was not suspect or before arbiters chosen by the parties, the said Abbot of Val-Richer was unwilling to admit this. An appeal was afterwards taken from those two before entry into the cause; they nevertheless decreed by sentence that S. himself was to be restored, imposing perpetual silence upon his adversary concerning the abbacy.

Therefore, when the aforesaid cardinal had prudently and faithfully reported the foregoing and certain other matters to us and our brothers, because it was established to us through the letters of the aforesaid judges, the bishop and Archdeacon of Évreux, to whom the cause concerning the restoration of S. himself had been committed by our said predecessor, that with the assent of both parties a settlement had been made under this tenor: that the Priory of Saint Stephen, with all its appurtenances, and certain other things were granted to him to possess for as long as he lived; that he withdrew from the suit by his spontaneous will; and that he surrendered his instruments into the hands of those judges after breaking the seal that he had used; and because we evidently perceive from the letters of the aforementioned Archbishop of Rouen that he abjured the aforementioned abbacy, we, being unwilling that through us, who punish perjuries, a way be opened to perjuries, since by receiving a settlement of this kind he also renounced the abbacy, with the counsel of our brothers communicated, absolve you and your monastery from the legal attack of S. himself, imposing perpetual silence upon him concerning that question. What was done by the last delegates does not stand in the way, since from these matters it appears evidently that, to say nothing of the others, if the foregoing matters were established to them, they proceeded less than lawfully by restoring one who had no right to seek anything back. And]

Although the abbot alone, before appeal was taken from him, could have proceeded according to the form of our letters, nevertheless, by the fact that he held an interlocutory conference with the bishop himself, he consequently confessed that the appeal earlier interposed from the same bishop had not held and that, by law, he could not fulfill the apostolic mandate without him when he was able but unwilling to take part in the business. Nor was it his intention to decide anything without his co-judge; and with one who had already ceased to be a judge he was unable lawfully to determine anything concerning the aforesaid business. Thus, their will and power were mutually opposed: since he was unwilling to do what he was able to do, and was unable to fulfill what he wished to do, what had been done by the two could not by law obtain effect. Therefore let no one, etc. Given at the Lateran, on the Ides of April. [1199.]

Textual note: Two evident transcription errors in the Latin Library text have been corrected against Friedberg's printed page: *frustratonrie … absentavi* to *frustratorie … absentavit*, and *mundaverunt* to *mandaverunt*. The ungrammatical *episcopos*—which also appears in Friedberg's printed text—has been corrected to *episcopus* as required by the singular verb *esset*. The edition's reading *Lesionensem* has been rendered "of Lisieux"; Friedberg's apparatus records *Lexoviensem* among the variants, and the same bishop is called *Lexoviensis* later in the chapter.

> Si duo sunt delegati cum clausula: "quod si ambo etc.," uno recusato alter solus procedere potest, nec tenet processus, si cum recusato procedat.
>
> Idem Conventui de Conchis.

Quum super abbatia monasterii vestri inter vos et S. quondam abbatem vestrum fuisset quaestio diutius agitata, [partibus tandem ad nostram praesentiam accedentibus dilectum filium nostrum H. sancti Eustachii diaconum cardinalem dedimus auditorem, in cuius praesentia pro ipso S. taliter fuit allegatum, quod, quum dilectus filius noster I. tit. S. Pudentianae presbyter cardinalis, tunc apostolicae sedis legatus, intrasset Normanniam, et super statu ipsius abbatiae cum abbate ac fratribus inquisitionem habuerit diligentem, nihil reprehensione dignum invenit ibidem; sicut ex literis bonae memoriae C. Papae praedecessoris nostri evidenter apparet, quibus ipsius cardinalis confessio est inserta. Eo vero postmodum ab ipso monasterio recedente, literae ipsius ad dilectos filios Troarnensem abbatem et priorem S. Barbarae fraudulenter obtentae fuerunt super inquisitione abbatis et totius monasterii facienda, nulla data inquisitoribus potestate in abbatem aliquid statuendi, quemadmodum ex testimonio eiusdem cardinalis colligitur evidenter. Praedictis ergo inquisitoribus accedentibus ad monasterium memoratum, et volentibus fines mandati excedere in facienda inquisitione iuris ordine non servato, idem abbas, antequam inquisitio sortiretur effectum, sedem apostolicam appellavit, et quamvis iter arripuisset ad Romanam ecclesiam veniendi, dicti tamen inquisitores, nec appellationi rationabiliter interpositae, neque ipsius absentiae vel excusationibus aliquibus deferentes, destitutionis in eum sententiam contra iuris ordinem promulgarunt, licet non pronunciandi potestas eis esset concessa, sicut ex multorum praelatorum literis liquido declaratur. Memorato igitur abbate ad dicti praedecessoris nostri praesentiam accedente, postquam de inordinata destitutione sua eum reddidit certiorem, omnibus irritatis quae contra iuris ordinem a dictis inquisitoribus fuerant ordinata, eundem abbatem sententia sua restituit, exsecutione sola venerabili fratri nostro episcopo et dilectis filiis L. et H. archidiaconis Ebroicensibus demandata. Die vero a solo episcopo partibus assignata, et ad terminum utraque partium veniente, quum exspectaret abbas restitutionem fieri sibi secundum apostolici mandati tenorem, eam non potuit obtinere; quin potius precibus, minis et terroribus eum episcopus inducere laboravit, ut in ipsum, non super restitutione facienda, quod erat principale negotium, compromitteret, sed super exsecutione tantummodo differenda. Et quoniam pars adversa cum armis illuc accesserat et multitudine armatorum, factum est, quod in dictum episcopum, sicut praemissum est, compromisit, fide in manu ipsius praestita, et restitutionis literis depositis apud eum, non tradendis parti adversae, sed diligenter servandis, et restituendis sibi tempore opportuno. Ipse vero episcopus contra id, quod promiserat, venire non metuens, adversariis abbatis literas restituit memoratas, sicque compromisso ex parte ipsius episcopi et adversariorum pariter violato, monachi bonae memoriae Melioris tit. SS. Iohannis et Pauli presbyteri cardinalis, tunc apostolicae sedis legati, praesentiam adeuntes, ad I. quondam Rothomagensem decanum super gravamine compromissi commissionis literas impetrarunt, ad cuius primam citationem monachus a dicto abbate transmissus captus fuit ab adversariis, et vinculis ferreis mancipatus; ad secundam vero citationem idem abbas accedens, per impressionem coactus fuit compromittere in decanum, non super abbatia, de qua sub eo nulla quaestio vertebatur, sed pro quibusdam bladi reditibus minuendis. Parte autem altera super compromisso servando fidem, sicut convenerat, non servante, dictum S. iterum oportuit ad sedem apostolicam laborare, ubi a nobis tam super principali quam incidenti etiam quaestione] demum super ea ad Lesionensem episcopum et abbatem de Becco nostrae fuerant literae destinatae, [ut super his, quae nobis fuerant intimata, studerent elicere veritatem, et statuerent quod secundum Deum viderent rationabiliter statuendum, iuris ordine per omnia observato, ita quod alter sine altero adesse nolente vel etiam non valente mandatum apostolicum adimpleret, mentione facta in literis ipsis de fide violenter, sicut idem S. asserebat, extorta, et non super monasterio abiurando, sed restitutione, ut dictum est, tantummodo differenda: ne, his omissis, tacita veritate commissio videretur obtenta. Partibus vero coram delegatis iudicibus constitutis, pars illius, quem dixit intrusum, praefatum episcopum duabus de causis sibi dixit esse suspectum; tum quia super ecclesia quandam causam habebat cum monasterio memorato; tum etiam, quia ipsum a Romana curia redeuntem ad pacis osculum non admisit, unde neque coram illis,

neque coram illorum altero iuri stare voluit, quamvis nihil diceret in abbatem, sed appellans frustratorie se contumaciter absentavit. Verum dicti exsecutores appellationi, quae nulla fuerat, minime deferentes, habito multorum prudentium virorum consilio, sententiam a dicto praedecessore nostro prolatam exsecutioni mandarunt, restituentes praedicto S. abbatiam, et praefato intruso perpetuum silentium imponentes. Quumque ad eorum ex parte apostolica iussionem dioecesanus episcopus saepius requisitus ipsum S. in corporalem possessionem inducere recusaret, id exsequendum quibusdam diaconibus mandaverunt, qui nedum quod admissi fuerunt, verum per monachos et fautores eorum afflicti verberibus, carcerali sunt custodiae mancipati. Quapropter in intrusum, monachos et fautores eorum a delegatis fuit secundum apostolici mandati tenorem excommunicationis sententia promulgata. Sed ob hoc intrusus et monachi non dimiserunt divina officia celebrare; qui etiam ipso intruso defuncto alium excommunicatum eligere praesumpserunt, sicut ex delegatorum literis perpenditur evidenter. Quumque nec sic possent ad frugem melioris vitae reduci, saepedictus S. iter arripuit ad sedem apostolicam veniendi. Sed praevenientes eum nuncii monachorum, de benedictionis munere illi quem elegerant impendendo fraudulenter literas impetrarunt, quas ad partes suas miserunt festinantius quam deberent. Petebat itaque dictus S. monachos ipsos (qui cuidam praedecessorum suorum amputare linguam et oculos eruere praesumpserunt, in alium sedentem ad mensam cum gladiis et fustibus impetum facientes, alium solum in ecclesia dimittentes missam celebrare paratum) animadversione condigna puniri, et possessionem abbatiae plenarie sibi restitui, sicut a dicto praedecessore nostro statutum fuerat et a delegatis postea iudicibus ordinatum, intruso, qui post latam in eum sententiam excommunicationis assumptus fuerat, per silentium perpetuum condemnato. Ceterum pro vobis ita fuit propositum ex adverso, quod, quum praefatus I. cardinalis in partibus illis legationis officio fungeretur, et causam ipsam super dilapidatione ipsius S. et incontinentia pariter praefatis abbati Troarnensi et priori sanctae Barbarae commiserit terminandam, ipsi cognita veritate, et ordine iuris per omnia observato, in eum depositionis sententiam protulerunt, quae a dicto praedecessore nostro fuit postea confirmata. Ipse autem S. eidem praedecessori nostro, quod abbatia ipsa iniuste spoliatus fuerit, intimavit; praefato cardinali etiam asserente, non fuisse intentionis suae, quod ad depositionem abbatis procederent iudices delegati, quamvis et hoc esset eis commissum, sicut in eorundem literis reperitur. Unde saepedictus praedecessor noster eum non restituit altera parte absente, sed restituendum mandavit episcopo et archidiacono memoratis, quia tacitum eis fuerat, quod praefatus cardinalis dictis abbati et priori deponendi etiam concesserit facultatem. Convenientibus igitur partibus ad diem et locum sibi a delegatis sedis apostolicae assignatum, dictus S. in manu episcopi, quod eius super causa ipsa staret arbitrio, fide data firmavit, qui partes ipsas, ut ad ea, quae pacis sunt, intenderent, monuit diligenter; inter quas talis compositio intercessit, ut dictus S. in perpetuum cederet abbatiae. Quam cessionem ratam delegati iudices habuerunt, et idem S. (sicut in delegatorum literis continetur) iuramento firmavit, se illam firmiter servaturum. Et quum super restitutione sua duplices literas eiusdem prorsus continentiae impetrasset, facta compositione, quam saepedictus praedecessor noster postea confirmavit, alteras resignavit, alteras retinuit fraudulenter. Processu vero temporis compositione ab eo aliquamdiu observata, per iam dictum Meliorem cardinalem quondam Rothomagensi decano eandem fecit causam committi, fuitque in eius praesentia et venerabilis fratris nostri Rothomagensis archiepiscopi prima compositio innovata, ubi praefatus S. abbatiam denuo abiuravit, et quod compositionem ipsam deinceps observaret, corporaliter praestitit iuramentum, sicut in ipsius Rothomagensis archiepiscopi literis continetur, et multis posset testibus approbari. Fuerunt autem ista coram Rothomagensi facta ea praecipue ratione, quoniam prioratus, quem ipse S. debuit obtinere, in Rothomagensi erat dioecesi constitutus, quem quum per biennium detinens, inhoneste vivendo fere omnia consumpsisset, ad alia bona monasterii se violenter extendit. Et tandem ad praesentiam nostram accedens, et quaedam de praemissis exprimens, alia vero reticens, ad praefatos Lexoviensem episcopum et abbatem Vallis Richerii nostras literas reportavit, ut diligenter inquirerent de omnibus veritatem, et

statuerent quod iustitia postularet. Ipsi vero partibus ad se citatis, quamvis episcopus pro memoratis causis, et quoniam R. abbati respondit, quod, si posset, sibi noceret, esset alteri parti suspectus, et ab eo fuerit recusatus, velletque coram coniudice, qui suspectus non erat, vel coram arbitris electis a partibus id probare, dicto abbate Vallis Richerii admittere hoc nolente, ante ingressum causae fuit ab illis duobus postmodum appellatum, ipsi nihilominus eundem S. restituendum sententialiter decreverunt, adversario eius super abbatia perpetuum silentium imponentes. Quum igitur quae praemissa sunt et alia quaedam praedictus cardinalis nobis et fratribus nostris prudenter et fideliter retulisset, quia constitit nobis per literas iudicum praedictorum episcopi et archidiaconi Ebroicensis, quibus super restitutione ipsius S. a dicto praedecessore nostro fuerat causa commissa, de utriusque partis assensu compositionem sub eo tenore factam fuisse, quod prioratus S. Stephani cum omnibus pertinentiis suis et alia quaedam sibi concessa fuerunt, dum viveret, possidenda, et ipse a lite spontanea voluntate recessit, et instrumenta sua fracto sigillo, quo usus fuerat, in manibus eorundem iudicum resignavit, et quod abbatiam abiuraverit memoratam, ex literis iam dicti Rothomagensis archiepiscopi perpendimus evidenter: nolentes per nos, qui punimus periuria, viam periuriis aperiri, quum et ipse recipiendo compositionem huiusmodi renunciaverit abbatiae, communicato fratrum nostrorum consilio ab impetitione ipsius S. vos et monasterium vestrum absolvimus, perpetuum ei super quaestione ipsa silentium imponentes; non obstante quod factum est ab ultimis delegatis, quum ex his appareat evidenter, ipsos, (ut de aliis taceamus) si eis de praemissis constitit, minus legitime processisse, restituentes illum, qui non habebat ius aliquod repetendi. Et] Quamvis solus abbas, antequam appellaretur ab eo, iuxta formam literarum nostrarum procedere potuisset, quia tamen pro eo, quod cum ipso episcopo interlocutus est, appellationem prius ab eodem episcopo interpositam non tenuisse, de iure sine ipso, quum posset et nollet negotio interesse, per consequentiam confessus est, se non posse mandatum apostolicum adimplere, nec suae intentionis exstitit, ut sine coniudice suo aliquid diffiniret, et cum eo, qui iam iudex esse desierat, aliquid super praedicto negotio rite disponere non valebat, voluntate ac potestate sibi mutuo adversantibus, quum noluerit quod potuerit, et quod voluerit adimplere nequiverit, quod a duobus factum fuerat effectum non potuit de iure obtinere. Nulli ergo etc. Dat. Lat. Id. Apr. [1199.]

Chapter XXIV

Latin source headnote: If the delegate's jurisdiction expires at the peremptory term that he assigned to the parties, after a suitable hour of the peremptory day the judge shall not wait for the contumacious party. If it does not expire, he can wait until the next day and cite again, if he wishes.

The same, to the Archbishop of Toledo.

Your fraternity has consulted us whether, when you cite the parties peremptorily for the reception of witnesses, publication of their depositions, or rendition of a sentence, and one of them contumaciously absents itself on the appointed day, you are to proceed in the business at least around the final part of the day or instead wait until the following day; and, if you have waited, whether the contumacious party is to be cited again, since there was no proceeding on the day assigned to the parties.

We, however, believe that a distinction must be made whether the jurisdiction endures after the peremptory term or expires at it. If it endures, equity so counseling, you will be able to wait until the next day, nor, once the peremptory term has elapsed, is the contumacious party to be cited, unless the kindness of the judge grants it this favor. But if it expires, unless the parties—especially when they know this—have presented themselves to you at an hour when you can suitably proceed to

execute that for which you lawfully assigned them a peremptory term, from then on you will be able to execute what you intend, lest judicial instance vanish in vain.

But lest ecclesiastical judgment be exercised in darkness, because according to the testimony of the Truth, "he who does evil hates the light," although, according to custom and lawful constitutions in the Roman manner, the day begins from the middle of the night and ends in the middle of the following night, whence legal authority has decreed that what is done in two half-nights is to be held just as if it were done in any part of the daylight, we nevertheless understand that hour for proceeding to be suitable from which you can complete before the darkness of night what is incumbent upon you. Moreover, in assigning a peremptory term, a discreet judge ought not so to constrict his jurisdiction unless necessity requires it.

> Si iurisdictio delegati exspirat in termino peremptorio, quem partibus assignavit, post congruam horam peremptorii iudex non exspectabit contumacem. Si non exspirat, potest exspectare in diem alteram, et iterum citare, si vult.
>
> Idem Archiepiscopo Toletano.
>
> Consuluit nos tua fraternitas, utrum, quum ad recipiendos testes depositiones publicandas eorum, vel sententiam proferendam peremptorie citas partes, et earum altera se absentat contumaciter die data, an circa ultimam saltem partem diei tibi sit in negotio procedendum, vel in diem exspectandum potius subsequentem; et, si exspectaveris, utrum contumax iterum sit citandus, quum non fuerit die partibus assignata processum? Nos autem credimus, distinguendum, utrum iurisdictio duret post terminum peremptorium, an exspiret in illo. Si durat, in diem alteram aequitate suadente poteris exspectare, nec erit pars contumax peremptorio elapso citanda, nisi gratiam fecerit ei benignitas iudicantis. Si autem exspiret, nisi partes, maxime quum id noverint, se tibi praesentaverint ea hora, qua congrue possis procedere ad exsequendum id, propter quod eis legitime terminum peremptorium assignasti, ex tunc exsequi poteris quod intendis, ne frustra iudicialis instantia evanescat. Ne vero iudicium ecclesiasticum exerceatur in tenebris, quia iuxta testimonium Veritatis qui male agit odit lucem, licet etiam secundum consuetudinem et constitutiones legitimas more Romano dies a medietate noctis incipiat, et in medio noctis desinat subsequentis, unde quod in duabus dimidiatis noctibus agitur, perinde sanxit habendum legalis auctoritas, ac si qualibet parte lucis agatur, nos tamen eam procedendi horam congruam intelligimus, ex qua possis ante noctis tenebras perficere, quod incumbit. Porro discretus iudex in assignatione peremptorii non debet iurisdictionem suam nisi necessitas exigat, adeo coarctare.

Chapter XXV

Latin source headnote: For a new cause a delegate is removed, even after joinder of issue, and another is substituted.

The same, to the Abbot of Bordellia and the Prior of the Holy Sepulcher.

By the intimation of our beloved son R., rector of the church of Saint Saldatus, it has reached our hearing that, when he had formerly obtained from us that the cause disputed concerning parochial right between himself and T., rector of the chapel of Saint John of Glovernia in the diocese of Worcester, be delegated to our venerable brother the Bishop of Worcester and his co-judges, afterwards, although there had been proceeding in the same question, in the course of time before the reckoning of a definitive sentence was reached, the same bishop admitted the said R. among his familiars. Without that bishop, according to what was commanded in our letters, the other co-judges

were unable to proceed in the cause; and one of those co-judges is an official of the aforesaid bishop, on account of which he could be held suspect by the adverse party.

Hence, since for a cause of this kind both the bishop and the aforesaid official—inasmuch as the same R. had sought them as judges and later became their familiar—could deservedly be recused by the adverse party, R. sought that decision of the cause itself be committed to your discretion. Therefore, by apostolic writings we command your discretion that, if it is so, unless after he became the bishop's familiar he consented to litigate before him, you are to proceed in that cause according to the contents of the former letters, reason leading the way and the obstacle of appeal having been removed; otherwise, the parties are to return to the examination of the former judges. [But if not all, etc. Given on the sixth day before the Kalends of February, 1206.]

> Ex nova causa removetur delegatus, etiam post litem contestatam, et alius subrogatur.
>
> Idem Abbati de Bordellia et Priori sancti Sepulcri.
>
> Insinuante dilecto filio R. rectore ecclesiae sancti Saldati ad audientiam nostram pervenit, quod, quum olim causam, quae super iure parochiali inter ipsum et T. rectorem capellae sancti Ioannis de Glovernia Vigorniensis dioecesis vertebatur, venerabili fratri nostro Vigoriensi episcopo et coniudicibus suis a nobis obtinuerit delegari, postmodum, licet fuerit in eadem quaestione processum, tractu temporis ante, quam ad diffinitivae sententiae calculum veniretur, idem episcopus dictum R. in suum, familiarem admisit, sine quo alii coniudices, secundum quod in nostris literis mandabatur, in causa procedere non valebant, et alter ipsorum coniudicum officialis est episcopi supradicti, propter quod adversae parti poterat suspectus haberi. Unde, quum ex causa huiusmodi tam episcopus quam officialis praedictus, utpote quos idem R. in iudices postularat, et ipse familiaris eorum postmodum est effectus, ab adversa parte possent merito recusari, decisionem ipsius causae vestrae petiit discretioni committi. Quocirca discretioni vestrae per apostolica scripta mandamus, quatenus, si est ita, nisi postquam familiaris eius est effectus, litigare consenserit coram illo, in causa ipsa, secundum priorum continentiam literarum, ratione praevia, remoto appellationis obstaculo procedatis; alioquin partes ad priorum iudicum revertantur examen. [Quodsi non omnes etc. Dat. VI. Kal. Febr. 1206.]

Chapter XXVI

Latin source headnote: A papal delegate can execute his sentence for as much as a full year. This is what it says, and it is an exceptional case.

The same, to the Prior of Saint Fridianus.

To one asking what is meant by ecclesiastical censure—(*And below:* [cf. c. 20, On the Signification of Words, V. 40.])—if a delegate appointed by us excommunicates one who disdains to obey a matter adjudged, although it appears to some that he has discharged his office, so that he has no further proceeding by virtue of the jurisdiction delegated to him, while others say that his jurisdiction endures until the sentence is obeyed, so that meanwhile he can absolve one who is willing to obey: we, nevertheless, walking along the path of equity, establish by authority of these presents that a delegate appointed by us can exercise the jurisdiction committed to him for executing the sentence not only for the four-month period that is conceded by law to a defendant for paying a debt, but for as much as a full year, just as is observed in the case of one who is found contumacious before joinder of issue.

Delegatus Papae sententiam suam exsequi potest usque ad integrum annum. H. d. et est casus singularis.

Idem Priori sancti Fridiani.

Quaerenti quid per censuram ecclesiasticam (Et infra: [cf. c. 20. de verb. sign. V. 40.]) Si vero delegatus a nobis excommunicet illum, qui rei iudicatae parere contemnit, licet aliquibus videatur, quod suo sit functus officio, ut ulterius non habeat ex delegata sibi iurisdictione processum, alii autem dicant, quod iurisdictio eius duret donec sententiae pareatur, ut interim absolvere possit parere volentem: nos tamen per aequitatis semitam incedentes praesentium auctoritate statuimus, ut delegatus a nobis non solum usque ad quadrimestre tempus, quod ad solvendum debitum a lege reo conceditur, sed usque ad integrum annum iurisdictionem sibi commissam ad exsequendum sententiam valeat exercere, sicut observatur in illo, qui ante litis contestationem contumax invenitur.

Chapter XXVII

Latin source headnote: A papal delegate can subdelegate the beginning, middle, and end of a cause jointly and separately. This is what it says, as far as § But. § 1. Appeal can be taken from a subdelegate having jurisdiction; it is otherwise if he lacks jurisdiction, unless he exceeds the manner prescribed. For then he can be recused, unless he was appointed with the parties' consent. The Abbot. § 2. From a subdelegate not appointed for the whole matter, appeal is taken to the subdelegator, but not to the original delegator; it is otherwise if he was appointed for the whole. This is what it says, as far as § But him. § 3. An auditor appointed without the parties' consent can be recused as suspect, but not without cause. The Abbot. § 4. If one of two delegates of the prince, with the clause "appeal having been removed," subdelegates to the other who accepts, the one accepting cannot subdelegate or proceed with appeal removed, although he could do so before acceptance. And, if appeal is to be taken from him, it shall be taken to the Pope, even if he was subdelegated not for the whole matter. This is what it says according to the truer understanding. § 5. If a papal delegate subdelegates not for the whole matter, a party cannot appeal from the subdelegate on the ground that he was appointed without the party's consent; he can nevertheless be recused by showing a just cause before the delegate, and then the delegate shall decide. From the delegate, even if he should refuse to admit the recusal, appeal is taken to the Pope. This is what it says.

The same, to the Archbishop of Canterbury.

Concerning the articles of the questions about which you wished to consult us, we answer your fraternity in this manner: by our constitution no derogation whatever is made from the consultation of Pope Alexander III, our predecessor of good memory; rather, the latter is explained by the former, or indeed in the former those things that had been omitted in the latter are more truly supplied. For he answered that, if, concerning a cause that is committed to someone by apostolic delegation, an appeal has been interposed from one or more ecclesiastical persons to whom the delegate, so that he may spare the parties' labors and expenses, commits cognizance of that cause and examination of the witnesses while reserving the sentence to himself, he is not bound in view of an appeal of this kind to leave the cause undefined.

We, however, establish that, although one to whom a cause is committed with appeal removed cannot delegate it to others without the obstacle of appeal, nevertheless, if a delegate appointed by us or any judge should appoint someone not so much as a cognizor as an executor for some certain article, appeal is not permitted from him unless he exceeds the manner prescribed, provided that he

is appointed or received with the parties' consent. But if a delegate appointed by us should decide to commit to him either the beginning of the suit or the end of the cause, to say nothing of the whole business, appeal may lawfully be taken from him as from a judge, since issue ought both to be joined before a judge and a cause to be decided by a judge.

Therefore, it was our intention—as can also be plainly perceived from the tenor of the aforesaid constitution—that, so that judicial authority may be exercised more freely, a delegate appointed by us may lawfully delegate to another the beginning, end, and middle of the cause committed to him, not only jointly but also separately. It does not stand in the way that it is said that a judge ought to take cognizance personally at the beginning, middle, and end, since, before he renders sentence, he ought diligently to investigate all things that were done in the judgment.

§ 1. But when he commits the whole cause, or its beginning or end, to someone, appeal can lawfully be taken from that person as from a judge. But when he commits only the middle to someone, appeal cannot be taken from that person as from an auditor, unless he exceeds the bounds of the mandate or is deservedly suspect. Hence, lest he be capable of recusal, we providently establish that he be appointed or received with the parties' consent.

§ 2. Moreover, when a delegate appointed by us transfers his entire jurisdiction to another, if there is to be an appeal, it will have to be taken not to him but to us. But when he reserves some of the jurisdiction to himself, if the cause was committed to him with appeal removed, appeal can by law be taken not to us but to him. Hence, if perchance appeal were taken from one to whom the middle of a cause is committed—whether he is called a cognizor or executor or, what is better, an auditor—on the ground that he either exceeds the bounds of the mandate or is deservedly suspect, nevertheless the delegate appointed by us will still be able, according to the aforesaid consultation, to decide the cause, so that the parties' labors and expenses may be spared.

§ 3. But neither party will be able to recuse the one whom a delegate appointed by us has appointed as auditor unless it shows before him a just cause for recusal.

§ 4. But if two persons have been delegated by the prince and one commits his authority to the other, the latter cannot and ought not to proceed with appeal removed or delegate the cause to another, although it is expressly contained in the commission made to the two that, with appeal removed, either can proceed without the other if both cannot take part together; for what he can do solely by the jurisdiction delegated to him by the prince, he cannot do with jurisdiction committed to him by a co-delegate. Hence, if appeal has been taken from him, although it has appeared to some that appeal can be taken also to the co-delegate, it nevertheless appears to us that appeal is to be taken only to the original delegator, for the reason assigned above.

§ 5. Therefore, the appeal of the one concerning whom your fraternity wrote to us—if, on the occasion of our constitution, he appealed to our hearing on the ground that a delegate appointed by us, reserving the definitive sentence to himself, committed the hearing of the cause to certain persons who were neither appointed nor received with the parties' consent—ought not to have impeded the auditors from proceeding unless he showed a just cause for recusing them, or was prepared to show it before the delegated judge. Even if they had been deservedly recused as suspect, the delegate appointed by us could nevertheless have judicially dispatched the cause itself, with the subterfuge of appeal removed. But if the delegate was unwilling to admit a just cause for recusal and

compelled him to litigate before suspect persons, he could lawfully appeal from such a grievance to our hearing, and whatever was presumed to be done after an appeal of this kind ought to be adjudged null and void. [Given at the Lateran, on the sixth day before the Kalends of April, 1204.]

Textual note: Five stray ñ characters separating divisions of the Latin source headnote have been removed as transcription artifacts.

> Delegatus Papae potest principium, medium et finem causae coniunctim et divisim subdelegare. H. d. usque ad § Verum. § 1. A subdelegato cum iurisdictione appellari potest; secus si sine iurisdictione, nisi modum excedat. Tunc enim potest recusari, nisi datus sit de partium consensu. Abbas. § 2. A subdelegato non in totum appellatur ad subdelegantem, non autem ad primum delegantem; secus si in totum. H. d. usque ad § Quem vero. § 3. Auditor datus sine partium consensu, recusari potest ut suspectus, non tamen sine causa. Abbas. § 4. Si unus ex duobus delegatis principis cum clausula: "appellatione remota" subdelegat alteri acceptanti, non potest acceptans subdelegare, nec appellatione remota procedere, quod tamen ante acceptationem poterat. Et si ab isto fuerit appellandum, appellabitur ad Papam; etiamsi fuerit subdelegatus non in totum. Hoc dicit secundum veriorem intellectum. § 5. Si delegatus Papae subdelegat non in totum, pars a subdelegato non poterit appellare, ex eo, quod datus sit sine suo consensu; potest tamen recusari in ostendendo causam iustam coram delegato, et tunc delegatus diffiniet; a quo, etiamsi voluerit recusationem admittere, appellatur ad Papam. H. d.
>
> Idem Cantuariensi Archiepiscopo.
>
> Super quaestionum articulis, de quibus nos consulere voluisti fraternitati tuae taliter respondemus, quod per constitutionem nostram consultationi bonae memoriae Alexandri Papae III. praedecessoris nostri nullatenus derogatur, sed illa per istam exponitur, immo in ista verius quae in illa fuerant praetermissa supplentur. Ipse namque respondit, quod, si super causa, quae alicui ex apostolica delegatione committitur, a personis ecclesiasticis una vel pluribus, quibus delegatus, ut parcat laboribus partium et expensis, causae cognitionem ipsius et testium examinationes sententia sibi reservata committit, appellatio fuerit interposita, huiusmodi appellationis intuitu causam indefinitam relinquere non tenetur. Nos autem statuimus, quod, licet is, cui causa committitur remota appellatione, non possit eam aliis sine provocationis obstaculo delegare, si tamen delegatus a nobis vel iudex quicunque non tam cognitorem, quam exsecutorem ad aliquem certum articulum quempiam deputaverit, ab eo, nisi modum excedat, non liceat appellari, dummodo de partium deputetur vel recipiatur assensu. Quod si delegatus a nobis vel litis exordium, vel causae finem, nedum totum negotium ei duxerit committendum, ab ipso tanquam a iudice licite provocetur, quum et lis ante iudicem debeat contestari, et causa per iudicem diffiniri. Intentionis igitur nostrae fuit, sicut et tenore constitutionis praemissae potest liquido deprehendi, quod et, ut iudicialis auctoritas liberius valeat exerceri, delegatus a nobis licite possit et principium, et finem, et medium causae sibi commissae, non solum coniunctim, sed etiam divisim alii delegare, non obstante, quod dicitur, quod iudex debet cognoscere per se ipsum in principio, et in medio, et in fine, quum ante, quam ferat sententiam, universa, quae acta sunt in iudicio, investigare debeat diligenter. § 1. Verum quum totam causam committit alicui, vel principium aut finem ipsius, ab eo tanquam a iudice potest licite provocari. Quum autem alicui medium tantum committit, ab ipso tanquam ab auditore provocari non potest, nisi mandati fines excedat, vel merito sit suspectus. Unde ne valeat recusari, provide statuimus, ut de partium detur vel recipiatur assensu. § 2. Porro quum delegatus a nobis iurisdictionem suam in alium transfert totam, si fuerit appellandum, non ad eum, sed ad nos appellari debebit. Quum autem sibi aliquid de iurisdictione reservat, si causa sit ei appellatione remota commissa, non ad nos, sed ad eum poterit de iure appellari. Unde si forsan appellaretur ab eo, cui medium causae committitur, sive cognitor aut exsecutor dicatur, vel, quod melius est, auditor, pro

eo, quod vel mandati fines excedat, vel merito sit suspectus, nihilominus tamen delegatus a nobis iuxta consultationem praemissam causam poterit diffinire, ut parcatur laboribus partium et expensis. § 3. Eum vero, Quem delegatus a nobis deputaverit auditorem, neutra partium poterit recusare, nisi coram eo iustam recusationis causam ostendat. § 4. Si vero duo sunt a principe delegati, et unus committit vices suas alteri, ille non potest, nec debet appellatione remota procedere, nec causam alii delegare, quamvis in commissione facta duobus contineatur expressim, ut appellatione remota alter possit procedere sine reliquo, si non possunt ambo pariter interesse, quia, quod potest ex sola iurisdictione sibi a principe delegata, non potest cum iurisdictione sibi a condelegato commissa. Unde si ab eo fuerit appellatum licet aliquibus visum fuerit, quod ad condelegatum etiam valeat appellari, nobis tamen videtur, quod ad primum duntaxat appellandum est delegantem, propter rationem superius assignatam. § 5. Eius ergo appellatio, de quo tua fraternitas nobis scripsit, si nostrae constitutionis occasione ad nostram audientiam appellavit, pro eo, quod delegatus a nobis, reservata sibi diffinitiva sententia, audientiam causae commisit quibusdam, qui de partium assensu nec dati sunt nec recepti, nisi contra eos iustam recusationis causam ostenderit, vel paratus fuerit ostendere coram iudice delegato, non debuit impedire, quo minus procederent auditores. Qui etiam si tanquam suspecti fuissent merito recusati, delegatus tamen a nobis nihilominus potuisset, sublato appellationis diffugio, causam ipsam iudicialiter expedire. Quod si iustam recusationis causam noluit admittere delegatus, sed coram suspectis eum litigare cogebat, a tali gravamine licite potuit ad nostram audientiam appellare, quodque post appellationem huiusmodi est praesumptum iudicari debet irritum et inane. [Dat. Lat. VI. Kal. Apr. 1204.]

Chapter XXVIII

Latin source headnote: A papal delegate, unless he is maliciously relieving himself, compels a subdelegate to accept the subdelegation; nevertheless, in coercing him, he shall defer to his dignity and person. This is what it says, as far as § Likewise, when the whole. § 1. Just as a papal delegate can commit the whole cause, so he can commit the citation and punish one who disdains to accept it. This is what the Abbot says. § 2. If the Pope knowingly committed an appeal interposed from his delegate appointed with the clause "appeal having been removed," the jurisdiction of the first delegate is meanwhile suspended with respect to execution. This is what it says according to the true understanding. § 3. An ordinary executes a sentence at the mandate of a delegate even if he knows it to be unjust. The Abbot. § 4. A delegate who is impeded from proceeding on the appointed day shall punish the party who procured this and, with respect to that day, shall commit the cause with appeal removed, in odium of the procuring party, unless the parties extend the business. The Sicilian Abbot.

The same, to the Bishop of Ely.

The diligence and solicitude of the pastoral office that you exercise concerning execution of our mandates, and the zeal of your rectitude, invite us—even though we are hindered by the manifold occupations of business—to withdraw ourselves from them for the hour in which, intending to answer, we may attend to your consultations. For the discretion of your fraternity has consulted us whether, if a person delegated by the prince should wish to delegate to another a cause committed to him, he can constrain one unwilling to receive the delegation to receive it. We have decided, with the counsel of our brothers, to answer your consultation in this manner: since jurisdiction to appoint a judge is conceded by law to a person delegated by the prince, provided that he does not maliciously seek to relieve himself, he can compel one who resists, because that jurisdiction would appear to be of no moment if it had no coercion. Nevertheless, the aforesaid delegate ought solicitously to provide

that, if necessity requiring, he should decide to delegate the business to superior persons, in applying coercion he defer to their dignity and person.

§ 1. Likewise, you subsequently also asked whether a delegate, when he sees it to be expedient, can enjoin whomever he wishes to cite the parties to his presence, and inflict a penalty upon them for contempt if they disdain to obey. To this we answer your fraternity briefly that, since the delegate can commit the whole business to another, as was expressed above, after prior discretion he can entrust the office of citation to anyone and deservedly punish one who shows contempt. [On your part, etc. (cf. c. 11, On the Office of an Ordinary Judge, I. 31.)] (*And below:*)

§ 2. Moreover, you sought to be taught through the Apostolic See whether, when appeal has been taken from a sentence rendered by authority of our letters in which appeal is prohibited, and letters to other judges have emanated after the appeal, execution of the sentence rendered by the first delegates ought to be delayed at the mandate of the later judges, so that the first judges execute it neither personally nor through others. We answer your inquiry in this manner: when we knowingly commit the cause of appeal to other judges for cognizance, we appear to receive the appeal and revoke the jurisdiction of the former judges, so that execution of the sentence is meanwhile suspended until the merits of the appeal have been more fully discussed. [Moreover, etc. (cf. c. 14, On Rescripts, I. 3.)] (*And below:*)

§ 3. But because it often happens that execution of a sentence is entrusted to the ordinary, you asked whether, if the ordinary knows it to be unjust, he ought to put it into execution or rather should stop. Therefore, considering that not cognizance but only execution is entrusted to him, we answer your inquiry in this manner: because the ordinary is bound to comply with the delegate, even if he knows that sentence to be unjust, he is nevertheless bound to execute it, unless he can bring it about before the delegate that the latter absolve him from this burden. [To be taught, etc. (cf. c. 11, On the Office of an Ordinary Judge, I. 31.)] (*And below:*)

§ 4. But since it often happens that, on the day that a judge delegated by us has assigned to the parties, through the procurement of one of them so that the business may be prolonged, the judge himself is summoned away by the king or archbishop, we, wishing to meet the maliciousness of the perverse, decree that, if it is established to the delegate that this was procured by the malice of some party, he is to punish that party with fitting chastisement and, lest it carry away any gain from a fraud of this kind, commit the business to be heard for that day to a person suspect to neither party, who is to proceed in it with appeal removed, unless perchance the parties consent that the business be prolonged. [Moreover, etc. (cf. c. 1, On Sacraments Not to Be Repeated, I. 16.) Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.]

Textual note: Four stray ñ characters separating divisions of the Latin source headnote have been removed as transcription artifacts.

> Delegatus Papae, nisi malitiose se exoneret, subdelegatum compellit ad suscipiendam subdelegationem; in coactione tamen deferet suae dignitati et personae. H. d. usque ad § Item quum totum. § 1. Delegatus Papae, sicut potest committere totam causam, ita potest citationem, et punire contemnentem acceptare. Hoc dicit Abbas. § 2. Si Papa scienter commisit appellationem interpositam a suo delegato dato cum clausula: "appellatione remota," iurisdictio primi delegati est interim suspensa quoad exsecutionem. Hoc dicit secundum verum intellectum. § 3. Ordinarius ad mandatum delegati exsequitur sententiam, etiamsi sciat eam iniustam. Abbas. § 4. Delegatus, qui impeditur die statuta

procedere, partem hoc procurantem puniet, et quantum ad diem illam causam committet appellatione remota, in odium procurantis, nisi partes negotium prorogent. Abbas Sicul.

Idem Episcopo Heliensi.

Pastoralis officii diligentia et sollicitudo, quam geris circa exsecutionem mandatorum nostrorum, et zelus tuae rectitudinis nos invitant, ut, quamvis simus multiplicibus negotiorum occupationibus praepediti, eis tamen ad horam subtrahamus nos ipsos, in qua tuis intendamus consultationibus responsuri. Consuluit etenim nos tuae fraternitatis discretio, utrum, si delegatus a principe causam sibi commissam alii delegare voluerit, nolentem delegationem suscipere ad ipsam suscipiendam valeat coarctare. Consultationi tuae de fratrum nostrorum consilio taliter duximus respondendum, quod, quum delegato a principe iurisdictio dandi iudicem sit a lege concessa, dummodo ipse exonerare se ipsum malitiose non quaerat, potest compellere renitentem, eo, quod iurisdictio illa nullius videretur esse momenti, si coercitionem aliquam non haberet. Delegatus praedictus tamen debet sollicite providere, ut, si personis superioribus, exigente necessitate, negotium duxerit delegandum, in coactionibus inferendis dignitati deferat et personae. § 1. Item Subsequenter etiam quaesivisti, utrum cui voluerit delegatus, quum viderit expedire, possit iniungere, ut ad suam praesentiam citet partes, et eis, si obedire contempserint, poenam infligere pro contemptu. Ad quod tuae fraternitati breviter respondemus, quod, quum totum negotium alii possit committere delegatus, sicut superius est expressum, citationis officium potest cuilibet discretione praevia demandare, ac punire merito contemptorem. [Ex parte tua etc. (cf. c. 11. de off. iud. ord. I. 31.)] (Et infra:) § 2. Praeterea postulasti per sedem apostolicam edoceri, si, quum a sententia lata auctoritate literarum nostrarum, in quibus appellatio est inhibita, fuerit appellatum, et literae post appellationem ad iudices alios emanaverint, an ad mandatum posteriorum iudicum exsecutio sententiae, a prioribus delegata, debeat retardari, ut priores iudices ipsam neque per se, neque per alios exsequantur? Nos autem inquisitioni tuae taliter respondemus, quod, quum nos appellationis causam ex certa scientia iudicibus aliis committimus cognoscendam, appellationem videmur recipere, ac iurisdictionem priorum iudicum revocare, ut interim executio sententiae suspendatur, donec appellationis merita plenius sint discussa. [Praeterea etc. (cf. c. 14. de rescr. I. 3.)] (Et infra:) § 3. Quia vero saepe contingit, quod exsecutio sententiae ordinario demandatur, quaesivisti, an si ordinarius ipsam iniustam esse cognoverit, debeat eam exsecutioni mandare, an sit ei potius subsistendum? Attendentes itaque, quod non cognitio, sed exsecutio tantum demandatur eidem, inquisitioni tuae taliter respondemus, quod, quum ordinarius teneatur obsequi delegato, etsi sciat sententiam illam iniustam, exsequi nihilominus tenetur eandem, nisi apud eum efficere possit, ut ab hoc onere ipsum absolvat. [Edoceri etc. (cf. c. 11. de off. iud. ord. I. 31.)] (Et infra:) § 4. Quum autem saepe contingat, ad diem, quem iudex delegatus a nobis partibus assignavit, earum altera procurante, ut negotium prorogetur, iudicem ipsum a rege vel archiepiscopo evocari: nos, perversorum volentes malignitatibus obviare, decernimus, ut, si delegato constiterit, hoc fuisse alicuius partis malitia procuratum, ipsam puniat animadversione condigna, et, ne aliquod lucrum ex huiusmodi fraude reportet, personae neutri parti suspectae, quantum ad diem illum, committat ipsum negotium audiendum, quae in ipso appellatione remota procedat, nisi forte partes consenserint negotium prorogari. [Praeterea etc. (cf. c. 1. de sacr. non it. I. 16.) Dat. Rom. ap. S. Petr. XIV. Kal. Ian. 1204.]

Chapter XXIX

Latin source headnote: A subdelegate from a papal delegate who does not have jurisdiction can coerce one who impedes him. This is what it says, encompassing both understandings.

The same, to the Abbot of Saint Hilary and Master G., Canon of Treviso.

We learned from the letters of our venerable brother the Patriarch of Grado that, when our beloved sons, the primicerius of Grado and the pleban of Saint Sophia of Venice—to whom the cause that is known to be conducted between the clerics of Saint Justina and the priest Albert concerning the fact that the same priest asserted himself to be a cleric of that church had been delegated by us—had ordered the same patriarch to declare that the aforementioned clerics were not bound by the bond of anathema, although they had been denounced as lying under a sentence of excommunication by the Archpriest of Padua, by whom a certain rescript had been obtained from us concerning the same business in which, as is asserted, no mention was made of the former letters, because they would not receive the said priest as associate and brother, the patriarch himself was unwilling to obey those judges in this matter, who were exercising our authority. This was especially so since our venerable brother the Bishop of Castello, although required, did not decide to obey them concerning this. The patriarch announced by his letters to the clerics of Santa Maria Formosa the mandate of the aforesaid judges, which our beloved son the Archdeacon of Castello, pleban of the same church, did not permit to be read publicly before the people.

[And when, after a few days had elapsed concerning this, the same archdeacon had been kindly required by the same patriarch at the monastery of Saint Nicholas, suddenly stirred to anger he assailed the same patriarch with grave verbal injuries in the presence of many.] The patriarch, considering that by such a great excess of injuries the archdeacon had gravely offended not only him but also the church of Grado, or rather us ourselves, subjected both the archdeacon himself and the aforesaid church to ecclesiastical interdict, [especially for this reason: because from ancient custom, as is said, it has been established that letters directed by the Patriarchs of Grado throughout the patriarchate of Grado are admitted without distinction by all.

But, at the insistence of the clerics and parishioners of the aforesaid church, the patriarch relaxed the sentence of interdict with respect to that church, enjoining the same clerics under penalty of excommunication not to presume to participate with the archdeacon in divine offices. But when the aforementioned patriarch, together with the aforesaid bishop, had approached the monastery of the Holy Cross for celebrating the funeral rites of a certain person, and the archdeacon wished to involve himself in the divine offices, the patriarch withdrew to one side to avoid scandal. On account of this the archdeacon began to burden him with grave verbal injuries. Likewise, although the same archdeacon had ceased from divine offices for the space of one day, afterwards, while under interdict, he was not ashamed to celebrate publicly.

In addition, the patriarch laid a grave complaint against the oft-mentioned bishop: although the latter is bound to show obedience and reverence to him and the church of Grado, and although he had commanded him to hold the aforesaid archdeacon as under interdict and the clerics of Saint Mary as excommunicated, and to cause the sentences of excommunication and interdict rendered by him to be inviolably observed throughout the diocese of Castello, the same bishop, to the injury of the patriarch, permitted the archdeacon to minister freely in the church of Castello and commanded the clerics of his diocese under penalty of fealty to announce publicly throughout their churches that the archdeacon and the aforesaid clerics lay under neither a sentence of interdict nor of excommunication. Hence the same patriarch humbly entreated us to take care to punish such great injury and excess, and what had been attempted not only against him but rather against the Apostolic

See by both the bishop and the archdeacon, in such a way that material for committing similar things would be cut away from others.

But the said bishop intimated to us by his letters that, when the patriarch declared that the clerics of Saint Justina were not bound by the bond of anathema—whom the same bishop had earlier declared excommunicated by mandate of the Archpriest of Padua, a judge delegated by us, as is asserted—and a contention arose on an occasion of this kind between the patriarch and the archdeacon, the patriarch, from a certain disturbance, placed the archdeacon under interdict. When the latter fled to the benefit of appeal, the patriarch promulgated a sentence of interdict against the oft-mentioned church, and was unwilling to receive the satisfaction offered by the archdeacon concerning this unless the archdeacon affirmed by an interposed oath that he would obey the patriarch's mandates. The same bishop added also that, fearing lest the patriarch break out into anything that would tend to the prejudice or grievance of the bishop himself, his church, or his clerics, he appealed to the Apostolic See, solicitously entreating us to take care to restrain the patriarch from undue molestation of himself and his church and of the clerics and churches of his diocese.]

Therefore, when there had been litigation for some time concerning the foregoing and other matters between the proctors of each party before our beloved son the cardinal-deacon of the title of Saints Cosmas and Damian, whom we had appointed auditor for them, and he had faithfully reported to us what he heard, because it could not be established to us whether, by the letters said to have been impetrated to the Archpriest of Padua—which were not shown to us—the letters obtained to the aforesaid primicerius and pleban had been revoked, we decided to commit the cause itself to your examination.

By apostolic writings we command that, after the truth concerning the foregoing has been more fully inquired into, unless it should be established to you that the letters said to have been impetrated in the second place to the aforesaid Archpriest of Padua made express mention of the earlier letters obtained to the oft-mentioned primicerius of Grado and pleban of Saint Sophia, so that through the second letters the first letters appear to have been revoked, because it is not doubtful that the first judges had jurisdiction by authority of our letters—which they were afterwards able to entrust to the patriarch with respect to execution of their sentence, from which the same patriarch had also received coercive power, since jurisdiction so entrusted would appear illusory if a subdelegate of this kind had no coercive power—you are to cause the sentence of interdict promulgated by the same patriarch against the Archdeacon of Castello, for the reason that, impeding the execution of that patriarch, he did not permit the latter's letters announcing the mandate of the aforesaid judges to be read publicly, to be inviolably observed, with the obstacle of appeal removed, until sufficient satisfaction has been made to the same patriarch for the injuries inflicted.

But if it should be established that the first letters were lawfully revoked by the second, since it appears that the first judges had no jurisdiction at all and thus it is consequently established that the patriarch himself received no jurisdiction or coercive power from them, you are to declare null and void the aforesaid sentence of interdict rendered by the same patriarch. [Nevertheless, etc. Given at Rome at Saint Peter's, on the eleventh day before the Kalends of January, in the tenth year, 1207.]

Textual note: The Latin Library headnote's *iurisdictionent* has been corrected to *iurisdictionem*; the former is not a Latin form.

Subdelegatus a delegato Papae iurisdictionem non habente potest coercere impedientem. Hoc dicit comprehendendo utrumque intellectum.

Idem Abbati sancti Hilarii et Magistro G. Canonico Trevisino.

Ex literis venerabilis fratris nostri patriarchae Grandensis accepimus, quod, quum dilecti filii Grandensis primicerius et plebanus S. Sophiae de Venetiis, quibus causa, quae inter clericos sanctae Iustinae ac Albertum presbyterum super eo, quod idem presbyter clericum se ipsius ecclesiae asserebat, agitari dignoscitur, a nobis fuerat delegata, mandassent eisdem, ut memoratos clericos, qui per archipresbyterum Paduanum, ad quem fuerat super eodem negotio quoddam a nobis rescriptum obtentum, in quo, sicut asseritur, de prioribus literis mentio non fiebat, denunciati fuerant excommunicationis sententiae subiacere, nisi dictum presbyterum in socium reciperent et in fratrem, idem patriarcha denunciaret anathematis vinculo non ligatos: ipse nolens eisdem iudicibus in hac parte parere, qui nostra fungebantur auctoritate, maxime quum venerabilis frater noster Castellanensis episcopus ipsis super hoc parendum non duxerit requisitus, clericis sanctae Mariae formosae mandatum supradictorum iudicum per suas literas nunciavit, quas dilectus filius archidiaconus Castellanensis, plebanus eiusdem ecclesiae, legi publice coram populo non permisit. [Quumque super hoc paucis diebus elapsis apud S. Nicolai monasterium ab eodem patriarcha benigne fuisset idem archidiaconus requisitus, in iram subito concitatus eundem patriarcham gravibus verborum iniuriis multis praesentibus lacessivit.] Qui considerans, archidiaconum ipsum per tantum iniuriarum excessum non se tantummodo, sed etiam Gradensem ecclesiam, immo nos ipsos graviter offendisse, tam ipsum archidiaconum, quam praedictam ecclesiam ecclesiastico supposuit interdicto, [ea praecipue ratione, quoniam ex antiqua consuetudine, sicut dicitur, est obtentum, ut literae, quae per patriarchatum Gradensem a patriarchis Gradensibus diriguntur, indifferenter ab omnibus admittantur. Verum ad instantiam clericorum et parochianorum ecclesiae supradictae quoad ipsam ecclesiam patriarcha interdicti sententiam relaxavit, sub excommunicationis poena clericis eisdem iniungens, ne archidiacono participare praesumerent in divinis. Quum autem patriarcha iam dictus cum praefato episcopo ad monasterium S. Crucis pro celebrandis cuiusdam exsequiis accessisset, et archidiaconus se vellet divinis officiis immiscere, patriarcha pro vitando scandalo secessit in partem; propter quod archidiaconus ipsum coepit gravibus verborum iniuriis aggravare. Idem quoque archidiaconus licet a divinis per unius diei spatium cessavisset, postmodum tamen celebrare publice non erubuit interdictus. Ad haec de saepe dicto episcopo patriarcha gravem deposuit quaestionem, quod, quum sibi et Gradensi ecclesiae obedientiam teneatur et reverentiam exhibere, quanquam ei mandaverit, ut praefatum archidiaconum pro interdicto, et clericos S. Mariae pro excommunicatis haberet, et faceret excommunicationis et interdicti sententias ab ipso prolatas per Castellanensem dioecesim inviolabiliter observari, idem episcopus in iniuriam patriarchae permittens archidiaconum in ecclesia Castellanensi libere ministrare, clericis suae dioecesis sub fidelitatis poena praecipiendo mandavit, ut per ecclesias suas archidiaconum et clericos supradictos nec interdicti nec excommunicationis sententiae subiacere publice nunciarent. Unde idem patriarcha nobis humiliter supplicavit, ut tantam iniuriam et excessum, nec non in ipsum, sed potius contra sedem apostolicam tam ab episcopo quam archidiacono attentatum castigare taliter curaremus, ut resecaretur in aliis materia similia committendi. Dictus vero episcopus per suas nobis literas intimavit, quod quum patriarcha denunciasset clericos S. Iustinae anathematis vinculo non teneri, quos idem episcopus prius excommunicatos denunciaverat, de mandato archipresbyteri Paduani, a nobis, sicut asseritur, iudicis delegati, occasione huiusmodi inter patriarcham et archidiaconum contentione suborta, patriarcha ex commotione quadam archidiaconum interdixit, quo ad appellationis beneficium convolante, patriarcha in saepedictam ecclesiam interdicti sententiam promulgavit, nec satisfactionem oblatam ab archidiacono super hoc recipere voluit, nisi archidiaconus, ut ipsius pareret mandatis, interposito iuramento firmaret. Adiecit etiam idem episcopus, quod ipse

timens, ne prorumperet ad aliquid patriarcha, quod ad ipsius episcopi vel ecclesiae seu clericorum suorum praeiudicium cederet vel gravamen, ad sedem apostolicam appellavit, nobis sollicite supplicando, ut patriarcham a sui et ecclesiae suae ac clericorum et ecclesiarum suae dioecesis molestatione indebita compescere curaremus.] Quum igitur super praemissis et aliis inter utriusque partis procuratores fuisset coram dilecto filio tit. SS. Cosmae et Damiani diacono cardinali, quem auditorem dederamus eisdem, aliquamdiu litigatum, et ipse nobis quae audierat fideliter retulisset, quia nobis constare non potuit, an per literas, quae ad Paduanum archipresbyterum impetratae dicuntur, quum nobis ostensae non fuerint, revocatae fuerint literae ad praedictos primicerium et plebanum obtentae, causam ipsam vestro examini duximus committendam, per apostolica scripta Mandamus, quatenus, inquisita super praemissis plenius veritate, nisi vobis constiterit, quod literae, quae secundo loco ad praedictum archipresbyterum Paduanum impetratae dicuntur, de prioribus literis ad saepe dictos primicerium Grandensem et plebanum sanctae Sophiae obtentis expressam fecerint mentionem, ut per secundas primae appareant literae revocatae, quum primos iudices auctoritate literarum nostrarum iurisdictionem non sit dubium habuisse, quam potuerunt postmodum patriarchae quoad exsecutionem suae sententiae demandare, ex qua coercitionem etiam idem patriarcha receperat, quum huiusmodi demandata iurisdictio delusoria videretur, si subdelegatus huiusmodi coercitionem aliquam non haberet, interdicti sententiam ab eodem patriarcha in Castellanensem archidiaconum promulgatam, pro eo, quod ipse eiusdem patriarchae exsecutionem impediens, eius literas, quibus mandatum praedictorum iudicum nunciabat, legi in publicum non permisit, tamdiu faciatis sublato appellationis obstaculo inviolabiliter observari, donec eidem patriarchae de iniuriis irrogatis sufficienter fuerit satisfactum. Si vero constiterit primas literas per secundas legitime revocatas, quum appareat, primos iudices iurisdictionem nullam penitus habuisse, et ita constet per consequentiam, patriarcham ipsum non recepisse iurisdictionem vel coercitionem aliquam ab eisdem, praedictam interdicti sententiam ab eodem patriarcha prolatam denuncietis irritam et inanem. [Nihilominus etc. Dat. Rom. ap. S. Petr. XI. Kal. Ian. Ao. X. 1207.]

Chapter XXX

Latin source headnote: The jurisdiction of a delegate expires upon the death of the mandator while the matter is untouched.

The same, to the Bishop of Poitiers.

Although the abundant multitude of business flowing in from every direction does not cease to impel our mind toward various cares, your fraternity, whom we embrace in the Lord with sincere charity, nevertheless compelled us to set aside for a time the solicitude that, by debt of pastoral office, we were exercising in the execution of other matters, and to make your doubt certain by an apostolic answer.

Therefore, since you decided to ask of us whether, if we delegate some cause to three judges, causing that clause to be placed in our letters, “but if not all of you are able to take part in executing these things, two of you shall nevertheless execute it,” and one, after he has committed his authority to one of the others, has been removed from their midst, while the third is deservedly recused as suspect, the surviving colleague can decide the business in his own name and that of the deceased, we answer your inquiry in this manner: if, while his colleague was alive, he did not begin to use the jurisdiction delegated to him by that colleague, because a mandate of this kind expired upon the mandator's death while the matter was untouched, he does not alone have the office of judging. But

if, before the other's death, he began to use the jurisdiction thus entrusted, he will be able to fulfill both his own authority and that of the other.

> Iurisdictio delegati re integra morte mandantis exspirat.
>
> Idem Episcopo Pictaviensi.
>
> Licet undique confluentium negotiorum multiplicitas copiosa nostrum animum ad varias curas impellere non desistat, fraternitas tamen tua, quam sincera complectimur in Domino caritate, sollicitudinem ad tempus deponere compulit, quam in exsequendis aliis ex debito pastoralis officii gerebamus, atque tuam dubitationem apostolico certificare responso. Quum igitur a nobis duxeris requirendum, si causam aliquam tribus iudicibus delegamus, apponi in literis nostris illam clausulam facientes: "quod si non omnes his exsequendis poteritis interesse, duo vestrum nihilominus eam exsequantur," et unus, postquam commiserit cuidam ex aliis vices suas, de medio sit sublatus, tertius ut suspectus merito recusetur, an collega superstes suo nomine ac defuncti possit negotium definire: inquisitioni tuae taliter respondemus, quod, si iurisdictione a suo sibi collega delegata eo vivente uti non coeperit, quia mandatum huiusmodi re integra morte mandatoris exspiravit, non habet solus officium iudicandi; si vero ante mortem illius iurisdictione uti coeperit taliter demandata, vices suas et illius poterit adimplere.

Chapter XXXI

Latin source headnote: No one is believed to be a delegate unless he proves the delegation.

The same, to the Bishop of Bayeux.

Since one learned in law—(*And below:* [cf. c. 33, On Election, I. 6.])—moreover, you asked: when it is commanded to you by someone under this form, "By the authority that I exercise, I enjoin you to denounce such a person as lying under a sentence of excommunication," and, while you hesitate concerning the apostolic mandate, no proof of it is furnished to you by anyone, whether you are bound to execute a mandate of this kind. Concerning this we give you the following answer: unless you are certain of the mandate of the Apostolic See, you are not compelled to execute what is commanded. [It happens, etc. Given at the Lateran, on the tenth day before the Kalends of September, in the eleventh year of our pontificate, 1208.]

> Non creditur quis delegatus, nisi delegationem probet.
>
> Idem Episcopo Baiocensi.
>
> Quum in iure peritus (Et infra: [cf. c. 33. de elect. I. 6.]) Praeterea quaesivisti, quum tibi ab aliquo sub hac forma mandatur: "auctoritate, qua fungor, iniungo, ut talem denuncies excommunicationis sententiae subiacere," ac tibi super mandato apostolico haesitanti ab aliquo non sit facta fides, an mandatum huiusmodi exsequi tenearis? Super quo tibi huiusmodi damus responsum, quod, nisi de mandato sedis apostolicae certus exstiteris, exsequi non cogeris quod mandatur. [Contingit etc. Dat. Lat. X. Kal. Sept. Pont. nostr. Ao. XI. 1208.]

Chapter XXXII

Latin source headnote: Jurisdiction cannot be extended from one matter to another through a proctor who does not have a mandate concerning the latter matter.

The same, to the Bishops of Paris and Troyes and the Abbot of Saint Geneviève.

When formerly our beloved sons, the Abbot and Convent of Vézelay, showed us by their complaint that the nobleman Peter, Count of Auxerre, was endeavoring to construct a certain pond, mill, and house on their land to their prejudice and grievance, we committed the cause itself to our venerable brother the Bishop of Nevers and our beloved son the Treasurer of Nevers. By their letters we learned that, after issue had been joined concerning the church's petitions, witnesses had been received on both sides, the attestations had been published, and afterwards there had been disputation between the parties concerning the witnesses' statements, the count's party finally proposed before them that they ought not to take cognizance of the damage done to the woods and other things, concerning which the witnesses appeared to depose, since there was no mention of damages in our rescript, [adding that the things concerning which the question was conducted were from the fief of the nobleman the Duke of Burgundy, as the same duke acknowledged in his open letters, and therefore recourse concerning them was to be made to the lord of the fief rather than to the said judges.]

To this it was answered on the other side that [even if not expressly, nevertheless tacit mention of the damage done was contained in our letters, since the word "grievance" was inserted in those letters. On that account they could take cognizance of them at least as accessories or appendages of the principal business. Likewise,] since issue had been solemnly joined concerning all the articles about which the witnesses had deposed, the judges were bound to take cognizance of them and pronounce judgment. [But it also asserted that the count was not to be heard concerning the exception of the fief, which was objected far too late, namely after publication of the witnesses.]

To these things the count's party replied that, even if issue concerning the damages had been joined by his proctor, nevertheless prejudice could not be generated against him from this, since the proctor had not been appointed for this but only for that cause expressed in the letters of commission, namely concerning the castle, pond, and mill. To this the other party answered that the count could no longer challenge the proctor's act, which he had by no means decided to revoke until after publication of the witnesses. But the judges, having taken the counsel of discreet men concerning the matters proposed on each side, pronounced interlocutorily that cognizance concerning the damage done by the count pertained to them. Hearing this, the count fled to the benefit of appeal. Hence the judges, after summoning him and when he appeared neither personally nor through a suitable respondent, bound him with the bond of excommunication, [but, when he persisted in contumacy, they remitted the same cause, with the attestations faithfully placed under seal, to our presence.

Moreover, when the proctors of both parties were established at the Apostolic See on account of this, the monastery's proctor proposed before us that, since the town of Vetenedum is common to the monasteries of Vézelay and Saint Germain of Auxerre, in such a way that they have terrage, pannage, lodging dues, rent, thirds, lods, sales dues, and retention in it, the aforesaid count—who had been accustomed to receive nothing other than two denarii annually from each peasant in the name of custody or safeguard—now, usurping jurisdiction over it for himself contrary to justice, extorts five solidi from every villager. In a certain place in the same town, after prohibition had been made both to him and to the Hospitallers, who held that place within the monastery's censual tenure, having received it from them by exchange, he was building a castle, pond, and mill to their prejudice and grievance, with grave damage done to woods, stones, and other things. On this account the same proctor sought that the aforesaid buildings, inasmuch as they were constructed after prohibition and denunciation, be demolished; that the aforesaid count be compelled to cease from molestation of the

monastery of Vézelay concerning this; and that he furnish the same monastery suitable compensation for the damage done.

But the count's proctor alleged that, because homicides and robberies were very often perpetrated in the aforesaid place of Vetenedum, which was subject to his jurisdiction, wishing to meet so many and such great dangers, he constructed for the security of travelers a certain house on ground that he had received from the Hospitallers by exchange, where he had learned that a fortified house had formerly stood, with a certain pond and mill built there for the use of the guards of that house. But the aforesaid abbot and convent, falsely saying that they were heavily burdened concerning this, impetrated letters to the aforesaid judges; and although the said count offered to them in the judges' presence that, if they proved that they had sustained any damage on account of those buildings, he would repair that damage to them not only singly but doubly, they utterly rejected both this statement and also other forms of peace.

But when there had been proceeding by the judges in the same cause as far as publication of the witnesses, because, after the attestations had been published, it appeared that they had deposed concerning many articles on which issue had not been joined, the count's party alleged that the judges were unable to take cognizance of them. Hence, when the judges pronounced interlocutorily that they could take cognizance of and pronounce judgment concerning the damage done, challenge was made to our hearing.

But we, having heard these and other things that the proctors took care to propose, and having diligently inspected the attestations of both parties, understood that it had been proved for the monastery that, in the aforesaid town, terrage, pannage, lodging dues, rents, thirds, lods, sales dues, and retentions pertained to the aforesaid monasteries, and that the aforesaid pond and causeway had been constructed partly on the property of the monastery of Vézelay and partly within the censual tenure of it and Saint Germain. Likewise, that a prohibition had been made to the Hospitallers, who paid an annual rent to the monasteries for the aforesaid place, not to transfer that place—namely, the monasteries' censual tenure—to the count, and to the count not to receive that censual tenure.

But it appeared to have been proved for the count's party that jurisdiction over the wood with respect to fortifications is his; that, without injury to anyone, the said count can concede the wood itself for the lodging of the people of that town; and that the count himself has jurisdiction in the town and had been accustomed to receive two denarii from each house of the town for safeguard. Likewise, that the fortification itself was founded in the Hospitallers' meadows, and that whoever has something at rent can, with the rent preserved, concede it to whom he wishes. Again, that a fortified house enclosed by palisades and ditches had formerly existed in the same town.]

But because, before issue had been joined, cognizance concerning the damage done in no way pertained to the said judges, since there was no mention of it in the rescript, nor could jurisdiction be extended to them, since a proctor is understood to be constituted only for the matters that are found expressed in the letters of commission, and because, after the attestations had been published, the count understood that deposition had been made concerning these matters and immediately contradicted it, we pronounced that the same judges had [immediately] pronounced interlocutorily with less than justice, and that the oft-mentioned count, who on this account fled to the benefit of appeal, had not been bound by the sentence of excommunication. [But, etc. Given at the Lateran, in the eleventh year, 1209.]

Per procuratorem non habentem mandatum de re ad rem iurisdictio prorogari non potest.

Idem Parisiensi et Trecensi Episcopis et Abbati sanctae Genovefae.

Quum olim dilectus filius abbas et conventus Vergiliacensis sua nobis conquestione monstrassent, quod nobilis vir Petrus comes Altissiodorensis quoddam stagnum, molendinum et domum in terra eorum construere nitebatur in ipsorum praeiudicium et gravamen, venerabili fratri nostro episcopo et dilecto filio thesaurario Nivernensi commisimus causam ipsam. Per quorum literas accepimus, quod lite super petitionibus ecclesiae contestata, receptis utrinque testibus, et attestationibus publicatis, quum super dictis testium inter partes fuisset postmodum disputatum, tandem pars comitis proposuit coram eis, quod de damnis in nemoribus et rebus aliis datis, super quibus testes deponere videbantur, cognoscere non debebant, quum in rescripto nostro nulla de damnis mentio haberetur, [adiiciens, quod res illae, super quibus quaestio agebatur, de feudo erant nobilis viri ducis Burgundiae, sicut idem dux in patentibus literis fatebatur, et ideo super illis ad dominum feudi potius quam ad dictos fuerat iudices recurrendum.] Ad quod fuit ex adverso responsum, quod, [si non expresse, tacite tamen de damnis datis in nostris literis mentio habebatur, quum nomen gravaminis esset literis ipsis insertum. Propter quod de ipsis cognoscere poterant saltem tanquam de accessoriis seu appendiciis negotii principalis. Item,] quum super omnibus articulis, de quibus testes deposuerant, lis fuisset solenniter contestata, de ipsis cognoscere ac pronunciare iudices tenebantur. [Sed et super exceptione feudi sero nimis, utpote post testium publicationem obiecta, audiendum non esse comitem asserebat.] Ad haec pars comitis replicavit, quod, etsi super damnis a procuratore suo lis fuerit contestata, ei tamen ex hoc non poterat praeiudicium generari, quum ad hoc procurator datus non fuerit, sed ad illam duntaxat causam, quae fuerat in literis commissionis expressa, super castro videlicet, stagno et molendino; ad hoc parte altera respondente, quod procuratoris factum comes ulterius impugnare non poterat, quod usque post publicationem testium minime duxerat revocandum. Iudices autem, super hinc inde propositis habito consilio discretorum, interlocuti sunt, quod super damnis datis a comite ad eos cognitio pertinebat. Quo audito comes ad appellationis beneficium convolavit. Unde ipsum iudices evocatum, et nec per se, nec per responsalem idoneum comparentem, excommunicationis vinculo adstrinxerunt, [eo tamen in contumacia perdurante, causam eandem cum attestationibus fideliter consignatis ad nostram praesentiam remiserunt. Porro procuratoribus utriusque partis propter hoc apud sedem apostolicam constitutis, procurator monasterii proposuit coram nobis, quod, quum villa de Vetenedo Virziliacensi et S. Germani Antissiodorensis monasteriis sit communis, ita quod terragium, spanagium, albergariam, censum, tertias, laudas, vendas et retentionem habeant in eadem, praedictus comes; qui nihil aliud quam duos denarios annuatim a quolibet rustico custodiae seu salvamenti nomine percipere consuevit, nunc in ipsa iurisdictionem sibi contra iustitiam usurpando, ab unoquoque villano V. solidos extorquet, in quodam loco eiusdem villae post inhibitionem tam sibi quam Hospitalariis factam, qui locum ipsum in censiva monasterii obtinebant, ab eis per commutationem recepto, castrum, stagnum et molendinum aedificando in ipsorum praeiudicium et gravamen, in nemoribus, lapidibus et rebus aliis gravibus damnis datis. Propter quod aedificia supradicta, utpote post inhibitionem et nunciationem exstructa, idem procurator petiit demoliri, et compelli comitem supradictum a Virziliacensis monasterii super hoc molestatione cessare, super damnis datis eidem compensationem congruam exhibendo. Procurator vero comitis allegavit, quod, quum in praedicto loco de Vetenedo suae iurisdictioni subiecto perpetrarentur saepissime homicidia et rapinae, ipse volens tot et tantis obviare periculis, quandam domum in solo, quod ab Hospitalariis per commutationem acceperat, ubi domum fortem olim exstitisse didicerat, ad transeuntium securitatem construxit, quodam stagno et molendino ad opus custodum ipsius domus aedificatis ibidem. Verum abbas et conventus praedicti falso dicentes se super hoc praegravari, literas ad praedictos iudices impetrarunt, et, quum ipsis in praesentia iudicum obtulerit dictus comes, quod, si qua damna probarent se ob illa aedificia pertulisse, non solum in simplum, sed duplum ipsis damna

eadem resarciret, ipsi tam hoc verbum quam etiam alias pacis species penitus respuerunt. Quum autem per iudices fuerit in eadem causa usque ad testium publicationem processum, quoniam attestationibus publicatis apparuit, eos super multis deposuisse articulis, super quibus lis contestata non fuerat, pars comitis allegavit, quod iudices super illis cognoscere non valebant. Unde, iudicibus se de damnis datis cognoscere ac pronunciare posse interloquentibus, ad nostram fuit audientiam provocatum. Nos autem auditis iis et aliis, quae procuratores proponere curaverunt, et attestationibus utriusque partis diligenter inspectis, intelleximus pro monasterio esse probatum, in supradicta villa terragium, spanagium, albergariam, census, tertias, laudas, vendas ac retentiones ad praedicta monasteria pertinere, ac stagnum et calceria supradicta partim in proprietate Virziliacensis coenobii, et partim in ipsius et S. Germani censiva fuisse constructa. Item, quod Hospitalariis, qui pro praedicto loco annuum censum monasteriis exsolvebant, ne locum ipsum, censivam videlicet monasteriorum, transferrent in comitem, et comiti, ne censivam ipsam reciperet, prohibitio facta fuit. Pro parte vero comitis videbatur esse probatum, quod iustitia nemoris super fortalitia est ipsius, et quod absque cuiusquam iniuria dictus comes ad albergagium hominum ipsius villae potest concedere nemus ipsum, quodque comes ipse iustitiam habet in villa, et pro salvamento de qualibet domo villae duos denarios recipere consuevit. Item, quod in pratis Hospitalariorum est fortalitia ipsa fundata, et quod quicunque aliquid habet ad censum, illud salvo censu potest concedere cui vult. Rursus, quod in eadem villa olim fuerat dormis fortis clausa palitiis et fossatis.] Quia vero super damnis datis, antequam lis fuerit contestata, nequaquam ad dictos iudices cognitio pertinebat, quum in rescripto nulla de illis mentio haberetur, nec ad ipsos potuerit iurisdictio prorogari, quum procurator ad illa solummodo intelligatur constitutus, quae in commissionis literis inveniuntur expressa, et, postquam comes publicatis attestationibus intellexit, super his fuisse depositum, protinus contradixit, nos eosdem iudices [protinus] pronunciavimus minus iuste interlocutos fuisse, ac saepedictum comitem, qui ob hoc ad appellationis beneficium convolavit, excommunicationis sententia non fuisse ligatum. [Ceterum etc. Dat. Later. Ao. XI. 1209.]

Chapter XXXIII

Latin source headnote: One who opened the acts of a cause containing the report of delegated judges by violating their seals is not afterwards heard against those acts.

The same, to the Archbishop of Sens.

When it formerly reached our hearing that our beloved sons Master S. and B. had exchanged an archdeaconry and provostship with one another, [(*And below:*) [cf. c. 7, On the Exchange of Things, III. 19.] Therefore, because the truth concerning the act of B. himself could not be established to us, we decided to commit the cause concerning this under a certain form to our venerable brothers, the Bishops of Langres and Chalon. Therefore, wishing to proceed in execution of our mandate, after summoning the parties to their presence, they received the witnesses produced on both sides, heard the parties' confessions, and published the witnesses' depositions. And because, on account of a certain article that appeared doubtful to them, they proposed to remit the cause to us after it had been instructed, reducing all the acts to writing they enclosed them under their own seals and assigned them to the parties to be faithfully presented to us.]

But the aforesaid B., not deferring to our delegates, or rather to the delegator, violated their seals and was not ashamed to open the writings that were to have been presented to us. Afterwards, established in our presence while his adversary was present, he proposed before us in his own excuse that the judges had proceeded perversely against him, since they had reduced the acts to writing less

than faithfully. Hence, fearing lest he was carrying the letters of Uriah, he opened their writings and discovered what he had suspected.

Indeed, if he had better observed what was expedient, he either would not have received the suspect writings or, having received them, would have faithfully presented them to us and shown before us the cause for his proposed suspicion. Moreover, since he did not complain about the judge whom we granted him on our own motion, but rather about the one whom he himself had decided to choose, and the judges had sent their letters to us through him, likewise complaining about him, we decided that faith was not to be given to his words. But, so that he might at least be punished in that in which he had sinned, we were unwilling—as indeed we ought not—to hear him against the judges' acts that he had rashly violated, lest his fraud appear to have brought him protection. [Since, etc. (c. 7, On the Exchange of Things, III. 19.) Given at the Lateran, on the Ides of January, in the fifth year, 1203.]

> Qui acta causae relationis iudicum delegatorum sigilla violando aperuit, non auditur postmodum contra illa.
>
> Idem Senonensi Archiepiscopo.
>
> Quum olim ad nostram audientiam pervenisset, quod dilecti filii magister S. et B. archidiaconatum et praeposituram adinvicem commutassent [(Et infra:) [cf. c. 7. de rer. permut. III. 19.] Quia ergo super facto ipsius B. nobis non poterat de veritate constare, causam super hoc venerabilibus fratribus nostris Lingonensi et Cabilonensi episcopis sub certa forma duximus committendam. Ipsi ergo in mandati nostri exsecutione procedere cupientes, partibus ad suam praesentiam convocatis, receperunt testes utrinque productos, audierunt confessiones partium et depositiones testium publicarunt. Quumque propter quendam articulum, qui eis dubitabilis videbatur, causam ad nos remittere proposuissent instructam, gesta omnia redigentes in scriptis sub sigillis propriis incluserunt, et assignarunt partibus nobis fideliter praesentanda.] Verum supra dictus B. delegatis nostris non deferens, immo verius deleganti, sigilla violavit illorum, et scripta, quae nobis fuerant praesentanda, non erubuit aperire. Qui postmodum in nostra praesentia constitutus, adversario suo praesente, in excusationem suam proposuit coram nobis, quod iudices perperam processerant contra ipsum, quum acta in scriptis minus fideliter redegissent. Unde timens, ne literas portaret Uriae, illorum scripta aperuit, et quod suspicatus fuerat adinvenit. Sane, si, quod expediret, melius notavisset, vel non recepisset scripta suspecta, vel recepta nobis fideliter praesentasset, et ostendisset causam suspicionis propositae coram nobis, praeterea quum non conquereretur de iudice, quem ei proprio motu concessimus, sed de illo potius, quem ipse duxerat eligendum, et iudices suas nobis per eum literas destinassent, de ipso pariter conquerentes, verbis ipsius fidem non duximus adhibendam; sed ut in eo saltem puniretur, in quo peccaverat, contra acta iudicum, quae temere violarat, ipsum, sicut nec debuimus, noluimus exaudire, ne videretur dolus suus ei patrocinium attulisse. [Quum etc. (c. 7. de rer. permut. III. 19.) Dat. Lat. Id. Ian. Ao. V. 1203.]

Chapter XXXIV

Latin source headnote: A delegate is not bound to admit a colleague joined to him through surreptitious letters, nor the latter's subdelegate. This is what it says according to one understanding. Or thus: a delegate is not bound to admit the subdelegate of an impeded colleague if the rescript contains the clause “but if both, etc.” This is what it says according to another understanding.

The same, to the Abbot and Chaplain of Saint Mary of Bologna.

Established before our beloved son M., cardinal-deacon of Saint Theodore, whom we granted as auditor to you and to our beloved son H., messenger and cleric of Saint Agatha, your adversary—who had approached the Apostolic See with the instruments of that church but without letters of ratification, although he had given security for ratification by a surety—you took care to propose that, when formerly a certain man in the parish of Saint Mary, after an appeal had been interposed to the Apostolic See, constructed a house and church in honor of blessed Agatha, Pope Alexander of good memory, our predecessor, committed the cause concerning this to T., Abbot of Saint Stephen, and T., Prior of Saint Victor, to be terminated with a due end. After hearing what had been proposed on each side and diligently inspecting the parties' arguments, they rendered a definitive sentence for the church of Saint Mary, which was afterwards confirmed by our predecessors Lucius, Gregory, and Clement of happy memory.

But the chaplain of Saint Agatha disdained to obey the sentence, received the parishioners of Saint Mary to ecclesiastical sacraments, and, while suspended, presumed to celebrate divine offices. And when the parties had disputed the same cause before our venerable brother H., Bishop of Ferrara, for almost a year, with witnesses produced before him, the party of the church of Saint Agatha, suppressing the truth of these matters, obtained that our beloved son Master L., a canon of Bologna, be joined to the same bishop in decision of the cause. When he was unable to take part in the cause, the aforesaid bishop—to whom by subsequent letters impetrated for the third time it was commanded that, if both were unable to take part in executing the apostolic mandates, he should nevertheless fulfill them—after the attestations had been published and the arguments more fully understood, confirmed the aforesaid sentence, enjoining the chaplain of Saint Agatha under penalty of excommunication that he receive none of your parishioners dwelling within certain bounds to divine offices or ecclesiastical sacraments.

To this the said Hugolinus answered on the other side that formerly the Archpriest of Pastino impetrated an indulgence from our aforesaid predecessor Alexander that he might newly found a church in the village of Castellio, in which the multitude of people had grown exceedingly. Hence the Bishop of Bologna at that time, by mandate of our same predecessor, both marked the site and blessed the foundation stone and placed it in the foundation according to custom; and thus for twenty years he justly possessed the chapel constructed in the same place together with the whole parish that the church of Pastino has to this day. Pope Celestine of happy memory, our predecessor, confirmed it to them by his letters, and we received under our protection the chapel made censual to us by the same archpriest.

Hence, formerly a certain regular canon appointed by the Archpriest of Pastino to celebrate divine offices in that chapel, without authority of the archpriest and chapter of Pastino, appeared before the aforesaid Abbot of Saint Stephen and Prior of Saint Victor after being cited by them, but did not undergo judgment before them. On the contrary, from them as reasonably suspect—because they had wished to claim the aforesaid parish for themselves—he decided to appeal to our hearing. But the same judges, not hesitating to exceed the bounds of the mandate, rendered a sentence concerning both the new and the old population, although according to the tenor of the letters directed to them they could have judged only concerning the old.

But afterwards the aforementioned canon, appearing before the Bishop of Ferrara against the will, or rather prohibition, of his archpriest, litigated for a while before him; but at last, discovering that all

the bishop's familiars were adverse to him, he caused the aforesaid master to be joined to him. The messenger of the church of Saint Agatha, however, proposed among other things that, when the said Master L. had delegated his authority to another, the bishop refused to admit the subdelegate, but, after appeal had lawfully been interposed to us, proceeded alone in cognizance of the cause.

Hence, against the first sentence they alleged that nothing concerning the commission impetrated to the first judges reached the archpriest's knowledge; that the judges proceeded after an appeal had been lawfully interposed; and that the bounds of the mandate were exceeded in the proceeding. But against the second they similarly proposed that the regular canon who litigated before the Bishop of Ferrara not only had not been appointed proctor for that cause, but had even presumed to involve himself in the suit contrary to the archpriest's prohibition; that the Bishop of Ferrara had proceeded alone, although the cause had not been delegated to him alone and his colleague, even if unable to take part in the cause, had nevertheless committed his authority to another; and that, after appeal had also been interposed to us, the same man of Ferrara promulgated a sentence for the church of Saint Mary.

But to these things the other party replied that the foregoing could not stand, since it ought not to be believed that the adverse party appealed from those judges when it neither knew nor had heard that letters of commission had emanated to them. Furthermore, since the obstacle of appeal had been closed to the parties in the letters of commission, no deference was to be given to the appeal afterwards interposed. Moreover, since, as the adversary confessed at law, although the party of the one who impetrated the letters in order to pursue the appeal nevertheless did not use them, it ought to be held the same as if the appeal had not been pursued. Hence the sentence had already passed into the authority of a matter adjudged, even if it had been rendered contrary to the litigant's right. And since neither the letters of commission obtained to the first judges were presented at law nor was it otherwise lawfully demonstrated that the judges exceeded the form of the mandate, presumption is rather to be made for the sentence.

What is said on the other side—that that canon was not a proctor—does no harm, since by joining issue before the Bishop of Ferrara he was made master of the suit, having been a general proctor of the church from its foundation, and thus acted and contracted as if he truly were lord of the chapel. This is especially so because he was drawn into the cause not so much in the church's name as in his own, inasmuch as he received to divine offices the parishioners adjudged to the church of Saint Mary and furnished them ecclesiastical sacraments. Furthermore, since it had reached the archpriest's knowledge that the cause itself had been delegated to the Bishop of Ferrara, if he was unwilling to undergo judgment through that canon, he ought to have sent another to conduct the cause. Since he did not do so, it is to be imputed to his negligence, or rather to his malice, since he thus endeavored to enervate our commission.

But, to the contrary, it was answered that the Bishop of Ferrara could proceed alone, since issue had first been joined before him and witnesses produced for the cause, and it had been inserted in the letters of the final commission that, if both were unable to take part in executing the apostolic mandates, the aforesaid bishop should nevertheless take care to execute them. This is understood not as "if they were unable to take part personally or through others," because that would happen rarely or never, but "if he could not take part personally." Therefore, no deference whatever was to be given to the appeal interposed for the aforesaid reasons, since they were not sufficient causes.

The same cardinal, therefore, having heard these and other things proposed on each side, by apostolic mandate confirmed the sentence rendered by the same Bishop of Ferrara and decided that perpetual silence concerning this was to be imposed upon the adverse party. We therefore confirm by apostolic authority what was done by him and fortify it with the protection of the present writing.

> Delegatus non tenetur admittere collegam sibi adiunctum per literas subreptitias, nec ipsius subdelegatum. Hoc dicit secundum unum intellectum. Vel sic: Delegatus subdelegatum collegae impediti non tenetur admittere, si in rescripto est clausula: "quod si ambo, etc." Hoc dicit secundum alium intellectum.
>
> Idem Abbati et Capellano sanctae Mariae Bononiensis.
>
> Coram dilecto filio nostro M. sancti Theodori diacono cardinali, quem tibi et dilecto filio H. nuncio, et clerico sanctae Agathae adversario tuo, qui cum instrumentis eiusdem ecclesiae, sed absque literis de ratihabitione, ad apostolicam sedem accesserat, sed de rato caverat sub fideiussoria cautione, concessimus auditorem, constitutus proponere curavisti, quod, quum olim quidam in parochia sanctae Mariae, post appellationem interpositam ad apostolicam sedem, in honorem beatae Agathae domum et ecclesiam construxisset, bonae memoriae Alexander Papa praedecessor noster causam super hoc T. abbati sancti Stephani, et T. priori sancti Victoris commisit fine debito terminandam; qui auditis quae fuerant hinc inde proposita, et rationibus partium diligenter inspectis, pro ecclesia S. Mariae diffinitivam sententiam protulerunt, quae per felicis recordationis Lucium, Gregorium et Clementem praedecessores nostros fuit postmodum confirmata. Verum capellanus sanctae Agathae sententiae parere contempsit, et parochianos sanctae Mariae ad ecclesiastica sacramenta recepit, et suspensus divina praesumpsit officia celebrare. Quumque super eadem causa coram venerabili fratre nostro H. Ferrariensi episcopo fere per annum disceptatum fuisset a partibus, productis testibus coram eo, pars ecclesiae sanctae Agathae, horum veritate suppressa, dilectum filium magistrum L. Bononiensem canonicum obtinuit eidem episcopo in causae decisione adiungi. Qui quum causae interesse non posset, praedictus episcopus, cui per sequentes literas impetratas tertio mandabatur, ut, si ambo interesse non possent mandatis apostolicis exsequendis, ea ipse nihilominus adimpleret, attestationibus publicatis et rationibus plenius intellectis sententiam praedictam confirmavit, capellano S. Agathae sub poena excommunicationis iniungens, ut nullum parochianorum tuorum infra certos terminos commorantium ad officia divina vel ecclesiastica reciperet sacramenta. Ad hoc dictus Hugolinus ex adverso respondit, quod olim archipresbyter de Pastino a praedicto Alexandro praedecessore nostro indulgentiam impetravit, ut in vico Castellionis, in quo superexcreverat populi multitudo, ecclesiam de novo fundaret. Unde tunc Bononiensis episcopus de mandato eiusdem praedecessoris nostri et locum signavit, et primarium lapidem benedixit, et in fundamento secundum consuetudinem collocavit, et sic capellam in eodem loco constructam cum tota parochia, quam usque hodie habet ecclesia de Pastino, per XX. annos iuste possedit, quam felicis recordationis Coelestinus Papa praedecessor noster eis suis literis confirmavit, et nos sub nostra protectione recepimus constitutam nobis ab eodem archipresbytero censualem. Unde olim quidam canonicus regularis ab archipresbytero de Pastino, ut divina in eadem celebraret officia deputatus, praeter auctoritatem archipresbyteri et capituli de Pastino coram praedicto abbate S. Stephani et priore S. Victoris ab illis citatus apparuit, sed coram eis iudicium non subivit. Immo ab ipsis tanquam de ratione suspectis, quia praedictam sibi voluerant parochiam vindicare, ad nostram duxit audientiam appellandum. Iidem autem iudices non dubitantes mandati fines excedere, tam super novo quam veteri populo sententiam protulerunt, quum secundum tenorem literarum directarum ad eos non potuissent nisi de veteri iudicare. Postmodum vero memoratus canonicus contra voluntatem, immo prohibitionem archipresbyteri sui coram Ferrariensi episcopo comparens, sub eo aliquantulum litigavit; sed tandem comperto, quod universi familiares eius ei essent adversi, praedictum magistrum ei fecit adiungi. Nuncius vero ecclesiae sanctae Agathae inter alia proposuit,

quod, quum dictus magister L. vices suas alii delegasset, episcopus admittere noluit subdelegatum; sed post appellationem ad nos legitime interpositam solus in causae cognitione processit. Unde contra primam sententiam allegabat, quod de commissione ad primos iudices impetrata ad archipresbyteri notitiam nil pervenit, quod iudices post appellationem legitime interpositam processerunt, et quia fines mandati fuerunt in processu transgressi. Contra secundam vero similiter proponebant, quod canonicus regularis, qui coram Ferrariensi episcopo litigavit, non solum non fuerat procurator datus ad eam, sed etiam contra prohibitionem archipresbyteri liti se praesumpserat immiscere; quod Ferrariensis episcopus solus processerat, quum non ei soli causa fuerat delegata, et collega eius, etsi causae nequiverit interesse, alii tamen commiserit vices suas, et post appellationem etiam ad nos interpositam idem Ferrariensis pro ecclesia S. Mariae sententiam promulgavit. Ad haec autem pars altera replicabat, quod praedicta stare non poterant, quum credi non debeat, quod a iudicibus illis pars appellaverit adversa, ad quos nec sciverat, nec audierat commissionis literas emanasse. Praeterea quum in literis commissionis appellationis fuisset obstaculum partibus interclusum, appellationi postmodum interpositae non fuerat deferendum. Insuper, quum, sicut adversarius fuit in iure confessus, et si pars eius, qui, ut prosequeretur appellationem, literas impetraret, non tamen illis fuerit usa, pro eodem haberi debebat, ac si non fuerit prosecuta. Unde sententia iam transierat in rei iudicatae auctoritatem, etiamsi contra ius litigantis prolata fuisset. Quum autem nec literae commissionis ad iudices primos obtentae praesententur in iure, nec aliter legitime demonstretur formam mandati iudices excessisse, pro sententia potius est praesumendum. Quod dicitur ex adverso, quod canonicus ille non fuerit procurator, non nocet, quum ipse litem coram Ferrariensi episcopo contestando factus fuerit dominus litis, qui generalis ab ipsius fundatione ecclesiae procurator fuerat, et sic agebat et contrahebat, ac si vere capellae dominus exstitisset, praesertim quum in causam non tam ecclesiae nomine, quam proprio traheretur, utpote qui parochianos adiudicatos ecclesiae S. Mariae ad divina recipiebat officia, et exhibebat eis ecclesiastica sacramenta. Praeterea, quum ad archipresbyteri notitiam pervenisset, causam ipsam fuisse Ferrariensi episcopo delegatam, si per canonicum illum nolebat subire iudicium, ad causam agendam debuerat alium destinare. Quod quum non fecerit, eius est negligentiae imputandum, immo malitiae potius, qui sic commissionem nostram nisus fuerit enervare. Sed econtra fuit responsum, quod Ferrariensis episcopus solus procedere potuit, quum primum coram eo lis fuerit contestata et testes ad causam producti, et in ultimae commissionis literis fuisset insertum, quod, si ambo interesse non possent exsequendis mandatis apostolicis, praedictus episcopus ea nihilominus exsequi procuraret. Quod non intelligitur, ut, si per se, vel per alios interesse non possent, quia id raro vel nunquam contingeret, sed si non posset personaliter interesse. Appellationi ergo interpositae ob causas praedictas, quum causae sufficientes non essent, aliquatenus non erat deferendum. Idem igitur cardinalis, auditis his et aliis, quae fuerunt hinc inde proposita, latam ab eodem Ferrariensi episcopo sententiam de mandato apostolico confirmavit, et adversae parti super hoc perpetuum silentium duxit imponendum. Nos ergo quod ab eo factum est auctoritate apostolica confirmamus, et praesentis scripti patrocinio communimus.

Chapter XXXV

Latin source headnote: A place to which the defendant cannot safely come, and a canon delegated in the cause of a fellow canon, can be recused.

The same, to the Provost of Saint Dominic, our Subdeacon.

Since R., a canon of Genoa, obtained that the pecuniary cause disputed between himself on the one side and P., a citizen of Genoa, on the other be delegated to you, and the same citizen, on account of many grave hostilities in his city, is unable to appear in your presence, as became known to us from

the intimation of himself and our beloved sons, the consuls of Genoa, by apostolic writings we command your discretion that you leave to the aforesaid R. an option of this kind: with the canons of Genoa excepted, whom the adverse party deservedly holds suspect because they are his associates, he is to choose a judge in the city or diocese of Genoa—in which, as we hold for certain, there are many provident men—before whom the question is to be terminated. By our authority you are strictly to command that judge to take care to terminate that cause with a due end, appeal having been removed, according to the tenor of the rescript obtained from you.

> Locus, ad quem reus secure accedere non potest, et canonicus in causa concanonici delegatus, recusari poterit.
>
> Idem Praeposito S. Dominici Subdiacono nostro.
>
> Quum R. canonicus Ianuensis causam pecuniariam, quae inter ipsum ex una parte, ac P. civem Ianuensem ex altera vertitur, tibi obtinuerit delegari, et idem civis, propter multas et graves inimicitias civitatis suae in tua nequeat praesentia comparere, sicut ex ipsius et dilectorum filiorum consulum Ianuensium insinuatione nobis innotuit: discretioni tuae per apostolica scripta mandamus, quatenus supradicto R. huiusmodi optionem relinquas, ut exceptis canonicis Ianuensibus, quos, quum sint eius socii, merito habet pars adversa suspectos, in civitate vel dioecesi Ianuensi, in qua sunt multi, sicut pro certo tenemus, viri providi, iudicem eligat, coram quo quaestio terminetur, cui auctoritate nostra districte praecipias, ut eandem causam iuxta rescripti a te obtenti tenorem appellatione remota fine debito terminare procuret.

Chapter XXXVI

Latin source headnote: If a delegated judge is commanded to absolve one who says that he was unjustly excommunicated, he ought to absolve him before proof. But if he says that the excommunication is null, the judge shall admit proof of nullity before pronouncement.

The same, to the Archbishop of Rouen.

Since it sometimes happens that laymen—(*And below:* cf. c. 24, On Rescripts, I. 3.)—moreover, we were asked: when someone complains that a sentence of excommunication was promulgated against him by his bishop after an appeal was lawfully interposed to us, or was otherwise promulgated unjustly, and by our letters we give our judges a mandate that, if it is so, either they confer upon him the benefit of absolution according to the form of the Church or declare that sentence null, and the bishop is prepared to prove that he rendered a sentence of this kind against him before he uttered the voice of appeal, or otherwise justly, whether, without the proofs having been admitted, it is lawful for the judges to absolve the excommunicated person or declare the sentence null.

To this we answer you in this manner: concerning the aforesaid case, if we remember well, we have not been accustomed to write to judges under the form prescribed above, but under this one: namely, that, if they find that the sentence of excommunication was rendered after an appeal was lawfully interposed to us, declaring it to be entirely null, they are to hear whatever question remains; otherwise, having received security according to the form of the Church, they are to confer the benefit of absolution upon the complainant and, after enjoining upon him what is to be enjoined by law, hear the cause and take care to terminate it with a due end.

But if perchance it should appear that we have at times written in the aforesaid case under the form previously noted, in the one of the aforesaid cases—namely, when someone complains that he was

bound by excommunication after an appeal was lawfully interposed to us—the proofs of both parties are always to be admitted before proceeding to decree anything concerning this. By these it will finally appear whether the complainant requires absolution or instead is to be declared not bound.

But in the case in which someone asserts that he was unjustly excommunicated, his proof is scarcely or never to be admitted before he has been absolved, except only when he asserts that an intolerable error was patently expressed in the sentence of excommunication; to prove this he is admitted before he obtains the grace of absolution. But if he proposes simply that he was unjustly excommunicated and the bishop seeks that his proofs be admitted to prove that he justly excommunicated him, the bishop is in no way to be heard before that person's absolution, since, even if it were established for certain that a sentence of excommunication was reasonably promulgated against him, absolution would nevertheless have to be conferred according to the form of the Church upon one humbly seeking it. And therefore, in this case, we believe that he is to be absolved immediately according to the form of the Church, so that only then, when the proofs of both parties have been admitted, it may be decreed whether he was justly or unjustly bound. [Given at the Lateran, on the Kalends of September, in the thirteenth year, 1210.]

> Si mandatur iudici delegato, ut illum absolvat, qui dicit se iniuste excommunicatum, ante probationem illum absolvere debet. Si autem dicat excommunicationem nullam, probationem nullitatis ante pronunciationem admittet.
>
> Idem Rothomagensi Archiepiscopo.
>
> Quum contingat interdum, quod laici (Et infra: cf. c. 24. de rescr. I. 3.) Insuper requisiti sumus, quum quis conqueritur in se a suo episcopo post appellationem ad nos legitime interpositam, vel alias iniuste excommunicationis sententiam promulgatam, et nos iudicibus damus nostris literis in mandatis, ut, si est ita, vel iuxta formam ecclesiae absolutionis beneficium illi impendant, vel eandem sententiam denuncient esse nullam, ac episcopus paratus sit probare, se in illum, antequam vocem appellationis emitteret, vel alias iuste huiusmodi sententiam protulisse, an probationibus non admissis liceat iudicibus excommunicatum absolvere, vel denunciare sententiam esse nullam? Ad quod tibi taliter respondemus, quod super iam dicto casu non consuevimus, si bene meminimus, sub praescripta forma iudicibus scribere, sed sub ista, ut videlicet, si excommunicationis sententiam post appellationem ad nos legitime interpositam invenerint esse latam, ipsam denunciantes penitus nullam esse, audiant, si quid fuerit quaestionis; alioquin recepta iuxta formam ecclesiae cautione impendant absolutionis beneficium conquerenti, et iniuncto sibi quod de iure fuerit iniungendum, audiant causam, et eandem fine debito terminare procurent. Sed si forsan appareat, nos in iam dicto casu sub praenotata quandoque forma scripsisse, in altero utique casuum praedictorum, quum quis videlicet conqueritur, se post appellationem ad nos legitime interpositam excommunicatione fuisse innodatum, semper utriusque partis probationes sunt admittendae, antequam ad decernendum super hoc aliquid procedatur, per quas denique apparebit, an absolutione indigeat conquerens, vel denunciandus sit potius non ligatus. In eo vero casu, quum videlicet excommunicatum quis se asserit iniuste, vix vel nunquam est eius, antequam absolutus fuerit, probatio admittenda, nisi tunc tantum, quum asserit in excommunicationis sententia intolerabilem errorem fuisse patenter expressum, ad quod probandum admittitur antequam absolutionis gratiam consequatur. Verum si proponat, se simpliciter excommunicatum iniuste, ac episcopus ad probandum, quod iuste ipsum excommunicavit, suas postulet probationes admitti, non est ante absolutionem ipsius aliquatenus audiendus, quum, etsi pro certo constaret, rationabiliter in illum excommunicationis sententiam promulgatam, nihilominus esset ei absolutio secundum formam ecclesiae impendenda humiliter postulanti. Et ideo in hoc casu illum credimus iuxta formam ecclesiae

protinus absolvendum, ut sic demum, probationibus utriusque partis admissis, utrum iuste vel iniuste ligatus fuerit, decernatur. [Dat. Lat. Kal. Sept. Ao. XIII. 1210.]

Chapter XXXVII

Latin source headnote: If the subdelegate of a papal delegate has begun to use the jurisdiction, he cannot be removed by the delegate; and, if he has acted contrary to the mandate or exceeded the form of the rescript, the proceeding is null.

Honorius III, to the Archbishops of Messina and Reggio.

By our letters we gave a mandate to our venerable brother the Archbishop of Cosenza that he cause our venerable brother the Bishop of Cefalù to be restored to his episcopate and to the other things of which he had been unduly despoiled. When the latter had been fully restored and had obtained corporal and peaceable possession, if he saw that the same bishop was deservedly suspect of waste, as had been suggested to us, he was providently to join to him a provident and honorable man as coadjutor, without whose counsel he should do none of those things that pertain to temporal administration, until, the truth having been discovered, we should decide that provision be made otherwise; meanwhile, by our authority, he was strictly to prohibit every kind of alienation to each of them.

Moreover, the same archbishop, burdened by bodily infirmity, committed his authority in a business of this kind first to the Abbot of the Holy Spirit of Palermo, and then to the Treasurer of Cosenza. With the counsel of our brothers, as justice required, we quashed their proceedings that were exhibited to us: namely, because the abbot, contrary to the tenor of our mandate, proceeded to inquire whether the bishop was suspect of waste when the latter had not been restored; and the archbishop himself, when he had already discharged his office by committing his authority in its entirety to the said abbot, could not entrust a business of this kind to the said treasurer.

Si subdelegatus delegati Papae iurisdictione uti coeperit, a delegato removeri non potest; et si fecerit contra mandatum, sive excesserit formam rescripti, processus est nullus.

Honorius III. Messanensi et Reginensi Archiepiscopis.

Venerabili fratri nostro archiepiscopo Cusentino nostris dedimus literis in mandatis, ut venerabilem fratrem nostrum Cephaludensem episcopum restitui faceret ad episcopatum, et ad alia, quibus fuerat indebite spoliatus; quo restituto plenarie, et corporalem ac pacificam possessionem adepto, si videret, quod idem, episcopus merito esset, prout nobis suggestum fuerat, de dilapidatione suspectus, virum providum et honestum provideret coadiutorem eidem adiungere, sine cuius consilio nihil eorum faceret, quae ad administrationem pertinent temporalem, quoadusque veritate comperta duceremus aliter providendum, interim omne alienationis genus eorum utrique auctoritate nostra districtius interdicens. Porro idem archiepiscopus corporis infirmitate gravatus, commisit in huiusmodi negotio vices suas primo abbati sancti Spiritus de Panormo, ac demum thesaurario Cusentino. Quorum processus nobis exhibitos de fratrum nostrorum consilio cassavimus iustitia exigente, quia videlicet abbas contra mandati nostri tenorem ad inquirendum, utrum de dilapidatione suspectus esset episcopus, eo non restituto processit, et archiepiscopus ipse, quum iam suo functus esset officio dicto abbati committendo in integrum vices suas, huiusmodi negotium dicto thesaurario non potuit demandare.

Chapter XXXVIII

Latin source headnote: If a delegate has pronounced that he has no jurisdiction, he does not reassume it even with the parties' consent.

Gregory IX, to S., Precentor, and Master N., Canon of Amiens.

Know that, by the signification of the woman M. and F., her son, we have learned that, when the noblewoman I., a widow, falsely representing herself as poor, impetrated our letters against them to judges concerning lands and other things, they took care to propose before the judges by way of exception that, because the said letters had been impetrated by the suggestion of a falsehood—since the aforesaid Juliana, who is noble and rich, called herself poor in them—they ought not by law to be convened before them through such letters unless the lord under whose jurisdiction they stand, and before whom they were prepared to furnish to her the fullness of justice, had first been requested. Hence the said judges pronounced interlocutorily that they ought not to proceed by those letters. (*And below:*)

Finally, the parties submitted to certain persons as arbiters in such a manner that, if they did not decide the cause within the term expressed in the submission, the parties would return to the examination of the same judges. But when the arbiters neglected to terminate the cause within the term, the said judges reassumed jurisdiction through the form of that submission. Feeling themselves aggrieved by them, because they compelled them to litigate concerning those matters from which they had been absolved by them, those persons appealed to our hearing. Therefore we command that, if it is so, you revoke as null, etc.

> Si delegatus pronunciaverit, se iurisdictionem non habere, ipsam etiam de consensu partium non reassumit.
>
> Gregorius IX. S. Praecentori et Magistro N. canonico Ambianensibus.
>
> Significantibus M. muliere et F. nato eius nos noveritis accepisse, quod, quum nobilis mulier I. vidua, mentiens se pauperem, contra eos super terris et rebus aliis ad iudices nostras literas impetrasset, iidem coram eis excipiendo proponere curaverunt, quod, quum dictae literae suggesto mendacio impetratae fuissent, quum praedicta Iuliana, quae nobilis est et dives, pauperem se dixisset in eis, coram ipsis, nisi requisito prius domino, sub cuius iurisdictione ipsi consistunt, et coram quo parati erant eidem exhibere iustitiae complementum, non debebant de iure per tales literas conveniri, unde dicti iudices interloquendo pronunciarunt, se per easdem literas procedere non debere. (Et infra:) Demum fuit a partibus in quosdam tanquam in arbitros taliter compromissum, quod, si infra terminum in compromisso expressum causam non deciderent, partes ad eorundem iudicum redirent examen. Verum arbitris causam infra terminum negligentibus terminare, dicti iudices iurisdictionem per formam compromissi huiusmodi resumpserunt, a quibus iidem se sentientes gravari, quod super his, super quibus ab eis fuerant absoluti, litigare compellebant eosdem, ad nostram audientiam appellarunt. Ideoque mandamus, quatenus, si est ita, revocetis in irritum, etc.

Chapter XXXIX

Latin source headnote: Arbiters chosen for a cause of recusal assign the parties a term for proving the cause of suspicion, and the recused judge compels the arbiters to terminate the cause.

The same.

When a cause of suspicion has been assigned against a judge, not the judge himself, who perhaps, if challenged, would cause harm, but rather the arbiters before whom the proof is to be made, and to whom all things that contribute to this article are known to pertain, can assign a term for this. By the judge himself also—to whom, just as jurisdiction, so also the other things without which the cause cannot be concluded are understood to have been committed—the same arbiters are to be compelled, if they are in disagreement, to unite in one opinion or concordantly call in a third person with whom two or either one of them may do this, lest on an occasion of this kind the principal business be prolonged beyond what is due.

> Arbitri electi ad causam recusationis, assignant partibus terminum ad probandam causam suspicionis, et iudex recusatus compellit arbitros ad causam finiendam.
>
> Idem.
>
> Suspicionis causa contra iudicem assignata, non ipse qui forsan provocatus obesset, sed arbitri potius, coram quibus probatio est facienda, et ad quos omnia, quae ad hunc articulum faciunt, pertinere noscuntur, possunt ad hoc terminum assignare. Ab ipso quoque iudice, cui sicut iurisdictio, sic et cetera, sine quibus explicari causa non potest, intelliguntur esse commissa, iidem ut conveniant, si discordes fuerint, in unam sententiam, vel tertium concorditer advocent, cum quo duo vel alter eorum id faciat, sunt cogendi, ne huiusmodi occasione principale negotium plus debito prorogetur.

Chapter XL

Latin source headnote: Delegated jurisdiction cannot be extended to persons not expressed in the rescript, even with their consent.

The same, to the Abbot of Saint Geneviève.

When P. and G., through apostolic letters, complained before you concerning the Bishop of London that he had not repaid at the promised place and term a loan granted by them, while the judgment was pending the layman I., who was bound to the same merchants for a certain sum, wished, as he asserts, to extend your jurisdiction over himself, so that, if he did not pay the aforesaid sum within the appointed term, you would promulgate sentences of excommunication and interdict against his person and land. We decree that the sentences rendered by you on an occasion of this kind are not valid, since, even if you are said otherwise to preside over a jurisdiction, because you had no jurisdiction over the said I., no extension of jurisdiction is known to have existed, since delegated jurisdiction of this kind cannot be extended to other persons.

> Delegata iurisdictio ad personas, non expressas in rescripto, etiam de ipsarum consensu prorogari non potest.
>
> Idem Abbati sanctae Genovefae.
>
> P. et G. per literas apostolicas conquerentibus coram te de episcopo Londonensi, quod concessum ab eis mutuum promisso loco et termino non persolvit, pendente iudicio I. laicus, qui in quantitate quadam eisdem mercatoribus tenebatur, in se tuam iurisdictionem, sicut asserit, voluit prorogare, ut, si infra terminum constitutum praedictam non solveret quantitatem, excommunicationis et interdicti sententias in personam et terram eius promulgares. Quas huiusmodi occasione a te latas decernimus non valere, quum, etsi alias iurisdictioni praeesse dicaris, quia in dictum I. nullam iurisdictionem habebas, iurisdictionis prorogatio nulla noscitur exstitisse, quum huiusmodi delegata iurisdictio ad alias personas nequeat prorogari.

Chapter XLI

Latin source headnote: One older than twenty years can be appointed a delegate by anyone; the same applies to one older than eighteen, provided that the parties' consent intervenes. But one younger than eighteen cannot be appointed except by the prince.

The same.

Since you had completed your twentieth year, you could be appointed a delegate at an age of this kind. But, when someone is established below that age, a delegation made by anyone other than the prince would not hold unless the parties knowingly consented to one who had passed his eighteenth year.

> Maior XX. annis potest a quocunque dari delegatus; idem in maiori XVIII., dummodo interveniat consensus partium. Minor vero XVIII. non potest dari, nisi a principe.
>
> Idem.
>
> Quum vigesimum annum peregeris, dari potuisti in aetate huiusmodi delegatus. Ceterum constituto infra aetatem eandem, nisi partes scienter consentirent in eum, qui annum XVIII. transscendisset, facta delegatio ab alio, quam a principe, non teneret.

Chapter XLII

Latin source headnote: The power of several delegates or arbiters appointed simply expires through the death of one.

The same.

When one of the delegates or arbiters, as you propose, was removed from human affairs, their office expired, unless something else had been expressed in the delegation or submission to arbitration.

> Potestas plurium delegatorum vel arbitrorum simpliciter datorum exspirat per mortem unius.
>
> Idem.
>
> Uno delegatorum vel arbitrorum, sicut proponis, rebus humanis exempto, eorum officium exspiravit, nisi aliud in delegatione aut compromisso fuisset expressum.

Chapter XLIII

Latin source headnote: A papal delegate can subdelegate, although he was appointed by virtue of office, or with the parties' consent, or with a clause of preselection, namely, "but if not all, you with another are to execute it, etc." This is what it says, as far as § But he. § 1. One to whom a business is committed for personal execution can delegate it to another if the parties consent. It is otherwise in the cases expressed here. This is what it says, as far as § But. § 2. One to whom a bare ministry is committed for execution cannot commit his authority to another; it is otherwise for a legate of the Apostolic See. And it is a notable text and is much alleged. The Sicilian Abbot.

The same.

Since the Apostolic See intends to provide for business and not for the persons to whom the same business is committed, if a third judge, although appointed by us by virtue of our office or with the parties' assent as a common judge for them, delegates his authority to another, because this is conceded by law to one delegated by the prince, his delegation will be valid. The same is also to be

said when a bishop is commanded to execute the apostolic mandate with one of his other co-judges, and then the remaining two will be unable to proceed without a subdelegate from the bishop.

§ 1. But one who is enjoined to execute a business personally can delegate it to others, provided that the parties consent, except if we were to command that an inquiry be made or that provision be made for churches concerning prelates or other ministers, since in all these cases we appear to choose the diligence and faith of the person to whom we commit such things.

§ 2. But, with the authority of the legates of the Apostolic See preserved, let it be lawful for no one to whom it has been committed to preach the cross, to excommunicate or absolve certain persons, to dispense with irregular persons, or to enjoin penances, hereafter to entrust these things to others, because in this matter not jurisdiction but rather a certain ministry is committed to him.

Textual note: Two stray ñ characters separating divisions of the Latin source headnote have been removed as transcription artifacts.

> Delegatus Papae subdelegare potest, licet datus sit ex officio, vel de partium consensu, vel cum clausula praeelectionis, videlicet: "quod si non omnes, tu cum alio exsequaris, etc." Hoc dicit usque ad § Is autem. § 1. Is, cui committitur negotium, ut personaliter exsequatur, potest, si partes consentiunt, alteri subdelegare. Fallit in casibus hic expressis. Hoc dicit usque ad § Ceterum. § 2. Is, cui committitur nudum ministerium exsequendum, non potest vices suas alteri committere; fallit in legato sedis apostolicae. Et est textus notabilis, et multum allegatur. Abb. Siculus.
>
> Idem.
>
> Quoniam apostolica sedes intendit providere negotiis, et non personis, quibus eadem committuntur, si iudex tertius, licet ex officio nostro, vel de assensu partium pro communi a nobis datus eisdem, alii delegaverit vices suas, quum delegato a principe id concedatur a iure, delegatio valebit ipsius. Idem quoque dicendum est, quum mandatur episcopo, ut cum altero suorum coniudicum mandatum apostolicum exsequatur, et tunc sine subdelegato ab ipso episcopo reliqui duo procedere non valebunt. § 1. Is autem, cui iniungitur, ut personaliter negotium exsequatur, potest, dummodo partes consentiant, hoc aliis delegare, praeterquam si inquisitionem fieri, vel ecclesiis de praelatis vel aliis ministris provideri mandaremus, quum in his omnibus casibus industriam et fidem personae, cui talia committimus, eligere videamur. § 2. Ceterum, salva legatorum sedis apostolicae auctoritate, nulli, cui commissum fuerit praedicare crucem, excommunicare vel absolvere aliquos, dispensare cum irregularibus, vel iniungere poenitentias, liceat haec de cetero aliis demandare, quia non sibi iurisdictio, sed certum ministerium potius committitur in hac parte.

Title XXX: On the Office of a Legate

Chapter I

Latin source headnote: A papal legate can be approached even through a simple complaint.

Alexander III, to all the Suffragans of the Church of Canterbury.

Since you are not unaware that our venerable brother the Archbishop of Canterbury presides over you not only by metropolitan right but also by right of legation, it is sufficiently astonishing that certain of you, as we have heard, presume to assert that the same archbishop ought to hear no cause from your bishoprics by either metropolitan or legatine right unless it is brought to him through appeal. Indeed, although perhaps the same archbishop ought not by metropolitan right to hear causes

from your bishoprics unless they are brought to him through appeal, nevertheless, by reason of the legation, he can and ought to hear all causes from those bishoprics that reach his hearing through appeal or the complaint of certain persons, inasmuch as he is proved to exercise our authority in his province. Therefore, we command and enjoin that you leave to his judgment the causes that are brought from your bishoprics to the same archbishop, and that you not attempt to deter or impede any cleric or layman of your jurisdiction from being able, if he wishes, to transfer a cause to the aforesaid archbishop.

> **DE OFFICIO LEGATI.**
>
> Legatus Papa etiam per simplicem querelam adiri potest.
>
> Alexander III. universis Suffraganeis Cantuariensis ecclesiae.
>
> Quum non ignoretis, venerabilem fratrem nostrum Cantuariensem archiepiscopum vobis non solum metropolitico, sed etiam legationis iure praeesse, mirabile satis est, quod quidam vestrum, sicut audivimus, asseverare praesumunt, quod idem archiepiscopus nullam causam de episcopatibus vestris sive metropoleos sive legationis iure debeat audire, nisi per appellationem ad ipsum deferatur. Sane licet forte idem archiepiscopus metropolitico iure audire non debeat causas de episcopatibus vestris, nisi per appellationem deferantur ad eum, legationis tamen obtentu universas causas de ipsis episcopatibus, quae per appellationem vel querimoniam aliquorum perveniunt ad suam audientiam, audire potest et debet, sicut qui in provincia sua vices nostras gerere comprobatur. Mandamus itaque et praecipimus, ut causas quae de episcopatibus vestris ad eundem archiepiscopum proferuntur, eius iudicio relinquatis nec quemlibet clericum vel laicum vestrae iurisdictionis deterrere vel impedire tentetis, quominus causam ad praefatum Archiepiscopum, si voluerit, possit transferre.

Chapter II

Latin source headnote: A legate cannot intrude himself into a cause specially delegated by the Pope.

Celestine III.

You have been zealous to ask us whether another who is a general legate in the province can take cognizance of a cause that we delegate to someone, either before cognizance or afterwards, or thus impede the proceeding of our commission that we transmit to a delegated judge. Wishing, therefore, to cut this doubt from your mind, we answer that, since a special mandate derogates from a general one, a legate neither ought nor can impede a commission specially made to another or to others. Hence, even if a sentence has already been promulgated according to the expressed form of our mandate, the legate himself will not be able to annul it in any manner unless he has received a special mandate concerning this. Nevertheless, if it was rendered reasonably, he will be able to confirm it and put it into execution.

> De causa specialiter delegata a Papa legatus se intromittere non potest.
>
> Coelestinus III.
>
> Studuisti a nobis quaerere utrum de causa, quam alicui delegamus, alius, qui sit generalis in provincia legatus, vel ante cognitionem, vel postea cognoscere valeat, vel commissionis nostrae processum, quem iudici delegato transmittimus, taliter impedire. Hanc itaque dubitationem de animo tuo amputare volentes Respondemus, quod, quum mandatum speciale derogat generali, legatus commissionem alii vel aliis factam specialiter impedire non debet nec potest, unde, et si secundum formam expressam mandati nostri sententia iam fuerit promulgata, non poterit ipse legatus, nisi super hoc mandatum

speciale receperit, eam quomodolibet irritare. Ipsam tamen, si rationabiliter lata fuerit, confirmare valebit et exsecutioni mandare.

Chapter III

Latin source headnote: Even a legate *a latere*, by virtue of a general legation, cannot transfer bishops, subject one cathedral church to another, grant another the right of primacy, unite two bishoprics, or divide one; nevertheless, he can absolve persons excommunicated on account of laying hands upon clerics. This is what it says together with the following chapter.

Innocent III, to the Cardinal-Priest of the Title of Saint Lawrence in Lucina, Legate of the Apostolic See.

Unless that special affection that we have had and have toward your person tempered the just—indeed, most just—movement of our mind, you would learn through instructive punishment how greatly you have transgressed against your own person and how greatly you have offended against the Roman Church, your mother. Although she nourished and exalted you, you appear utterly to have spurned her, since, spurning canonical sanctions and general custom, on your own motion you presumed to do what had neither been done nor heard of: without our special mandate, you transferred in fact—because by law you could not—our venerable brother the Bishop of Troia, chancellor of the kingdom of Sicily, from the church of Troia to that of Palermo. [Indeed, etc.; cf. c. 3, On the Use and Authority of the Pallium, I. 8.]

Textual note: The Latin Library transcription's *quantumcunquae* has been corrected to *quantumque*, the reading required by the parallel construction and printed by Friedberg.

> Legatus etiam de latere ex generali legatione non potest transferre episcopos, vel unam ecclesiam cathedralem alteri subiicere, et alteri concedere ius primatiae, vel duos episcopatus unire, vel unum dividere; excommunicatos tamen propter manuum iniectionem in clericos absolvere potest. Hoc dicit cum c. seq.
>
> Innocentius III. tit. sancti Laurentii in Lucina Presbytero cardinali, sedis apostolicae Legato.
>
> Nisi specialis illa dilectio, quam ad personam tuam habuimus et habemus, iustum, immo iustissimum motum animi nostri temperaret, poena docente cognosceres, quantum in personam tuam excesseris, quantumque in Romanam ecclesiam deliqueris, matrem tuam, quae quum te nutriverit et exaltaverit, tu eam penitus sprevisse videris, qui spretis canonicis sanctionibus et consuetudine generali, motu proprio praesumpsisti, quod nec factum fuit, nec auditum, venerabilem fratrem nostrum Troianum episcopum regni Siciliae cancellarium praeter speciale mandatum nostrum de Troiana ecclesia ad Panormitanam de facto, quia de iure non potuisti, transferre. [Sane etc. cf. c. 3. de usu et auct. pall. I. 8.]

Chapter IV

Latin source headnote: This was summarized above in the preceding chapter.

The same, to the same.

That we are unwilling to hold ratified the transfer of the pontiff from the bishopric of Troia to the metropolis of Palermo made by you was induced in us not by a zeal of bitterness but of rectitude. For, although a general legation in the kingdom of Sicily was committed to you, nevertheless, without our special mandate you ought not to have extended your hands to those things that, as a sign of singular privilege, are reserved only to the Supreme Pontiff. Yet even if certain of those things that were often

granted to legates by special concession—namely, the absolution of those who, on account of sacrilegious laying of hands upon clerics, fall under the canon of the promulgated sentence—appear already to be lawful for legates by virtue of the office of legation itself, do you think that, because we committed our authority to you to be executed as legate, you could subject the church of Palermo to Messina, so that you might set the latter over the former by granting to it the privilege of primacy? Do you think that, from the same cause, it is lawful for you to unite two bishoprics or divide one without special license?

Therefore, do not reckon that it was done in hatred of him or to your injury, but so that the privilege of Peter may remain unshaken, since Pope Alexander of happy memory, our predecessor, did something nearly similar by resisting the presumption of a legate whom he had sent into Spain when the legate wished to attempt something similar. [But concerning, etc.; cf. c. 11, On the Times of Ordination, I. 11.]

> Summatum fuit supra in cap. praecedenti.
>
> Idem eidem.
>
> Quod translationem pontificis de Troiano episcopatu ad Panormitanam metropolim a te factam nolumus ratam habere, zelus utique non amaritudinis, sed rectitudinis nos induxit, quia, Licet in regno Siciliae generalis sit tibi commissa legatio, ad ea tamen sine speciali mandato nostro non debuisti manus extendere, quae in signum privilegii singularis sunt tantum summo Pontifici reservata. Tamen Et si quaedam ex his, quae de speciali concessione saepe fuere legatis indulta, ut illorum videlicet absolutio, qui propter sacrilegas manuum iniectiones in clericos, incidunt in canonem promulgatae sententiae, videantur ex ipso legationis officio iam licere legatis, an existimas, quia vices nostras tanquam legato tibi commisimus exsequendas, quod Panormitanam ecclesiam posses subiicere Messanensi, ut illam praeficeres isti, concesso sibi privilegio primatiae? An putas, ex eadem causa tibi licere, duos episcopatus unire, vel unum dividere sine licentia speciali? Non ergo in eius odium, vel ad iniuriam tui reputes esse factum, sed ut privilegium Petri maneat inconcussum, quum et felicis memoriae Alexander Papa, praedecessor noster, quasi simile fecerit, obviando praesumptioni legati, quem in Hispaniam destinarat, volenti simile attentare. [Super eo vero etc. cf. c. 11. de temp. ord. I. 11.]

Chapter V

Latin source headnote: From the point at which a legate has referred a cause to the Pope, he ceases to be its judge.

The same, to the Bishop of Bologna and M., Chaplain, our Subdeacon.

Although the canons of Trani had dissented at the beginning, nevertheless all at last unanimously consented, electing our beloved son G., brother of the Abbot of Cassino, as archbishop. Our venerable brother the Bishop of Porto, at that time legate of the Apostolic See, ordered his election to be examined and caused the examination reduced to writing to be secured with the seals of our beloved sons the archdeacon and Master Petrarcha, and also with his own seal, to be transmitted to the Apostolic See. He also sent us his letters of entreaty for the said brother of the Abbot of Cassino. Three of the canons of the church of Trani, sent by the whole chapter, humbly presented them to us together with the decree of election strengthened by the subscriptions of all the canons, and also the letters of the suffragans and the people, seeking that the canonical election celebrated concerning a suitable person be confirmed by apostolic authority.

But, for greater caution, we received from the aforesaid canons an oath, not exacted by us but offered by them, and diligently examined the fact of the election, as is both customary and lawful. Meanwhile, the messenger of the aforesaid Abbot of Cassino presented us his letters containing a grave complaint against the aforementioned legate: after he had examined the election and transferred it to the examination of our deliberation, when the messengers had already been directed, he again presumed, with excessive malice, to examine the same election. Hence he sought that the fact itself be diligently inquired into by suitable men free from suspicion.

And when the aforesaid bishop later arrived and we learned from him the things that had been done, with the common counsel of our brothers, we adjudged the second examination null and void, as having been made by one who was not its judge after the business had been transferred to our examination. [Nevertheless, because, etc. Given at the Lateran, on the eighth day before the Kalends of July, 1202.]

> Ex quo legatus retulit causam Papae, illius desinit esse iudex.
>
> Idem Bononiensi Episcopo et M. Capellano, Subdiacono nostro.
>
> Licet Tranenses canonici ab initio dissensissent, tandem tamen omnes unanimiter consenserunt, dilectum filium G. fratrem Cassinensis abbatis in archiepiscopum eligentes, cuius electionem venerabilis frater noster Portuensis episcopus, tunc apostolicae sedis legatus, examinari praecepit, et examinationem redactam in scriptis fecit sigillis dilectorum filiorum archidiaconi et magistri Petrarchae muniri, cum suo quoque sigillo ad sedem apostolicam transmittendam. Literas quoque suas nobis pro dicto fratre Cassinensis abbatis deprecatorias destinavit, quas cum decreto electionis omnium canonicorum subscriptionibus roborato, nec non et literis suffraganeorum et populi, tres de canonicis Tranensis ecclesiae, ab universo capitulo destinati, nobis humiliter praesentarunt, petentes electionem canonicam de persona idonea celebratam auctoritate apostolica confirmari. Nos autem ad maiorem cautelam a praedictis canonicis in iuramentum recepimus, non a nobis exactum, sed ab ipsis oblatum, et factum electionis, sicut est et moris et iuris, examinavimus diligenter. Interim vero Nuncius praefati Cassinensis abbatis suas nobis literas praesentavit, gravem contra iam dictum legatum querimoniam continentes, quod, postquam electionem examinaverat, et eam ad nostrae deliberationis examen transtulerat, nunciis iam directis, iterum electionem eandem malitiose nimis examinare praesumpsit. Unde petebat per viros idoneos suspicione carentes de ipso facto diligenter inquiri. Quumque praefatus supervenisset episcopus, et ea, quae gesta sunt, intellexissemus ab ipso, De communi consilio fratrum nostrorum examinationem secundam, tanquam a non suo iudice factam, postquam negotium ad nostrum fuerat translatum examen, censuimus irritam et inanem. [Quia tamen etc. Dat. Lat. VIII. Kal. Iul. 1202.]

Chapter VI

Latin source headnote: A legate *a latere* confers a vacant benefice, although it pertains to the presentation of some cleric. This is what it says, and it is a notable case.

The same, to the Abbots of Saint P. and Saint Leo, and R., Archdeacon of Toul.

Our beloved son R., a canon of Metz, humbly intimated to us that, when our venerable brother the Bishop of Palestrina, legate of the Apostolic See, liberally conferred upon him the church of Saint Trudo upon its own pastor's resignation made into the legate's hands, our beloved son B., Archdeacon of Metz, to whom presentation to that church pertained, asserting that it could not be conferred by

the legate without his having been consulted, less than reasonably opposing himself to the grant, presumes unduly to molest the canon himself concerning the same church.

Therefore, since the prelate has more right in conferral than the patron in presentation, nor is prejudice done to the prelate if at times a church is granted by a legate of the Apostolic See without his having been consulted, by apostolic writings we command your discretion that, after prior admonition, by ecclesiastical censure and with appeal removed, you compel the said archdeacon to desist from his undue molestation concerning this. [No letters, etc. Given at Anagni, on the tenth day before the Kalends of March, in the sixth year, 1204.]

> Legatus de latere confert beneficium vacans, licet illud spectet ad praesentationem alicuius clerici. Hoc dicit et est casus notabilis.
>
> Idem sancti P. et sancti Leonis Abbatibus, et R. archidiacono Tullensibus.
>
> Dilectus filius R. Metensis canonicus nobis humiliter intimavit, quod, quum venerabilis frater noster Praenestinus episcopus, apostolicae sedis legatus, ecclesiam sancti Trudonis ad resignationem proprii pastoris in manibus eius factam liberaliter contulisset eidem, dilectus filius B. Metensis archidiaconus, ad quem illius ecclesiae praesentatio pertinebat, asserens, quod eodem inconsulto conferri non potuit a legato, donationi eius minus rationabiliter se opponens, canonicum ipsum super eadem ecclesia indebite molestare praesumit. Quum igitur plus iuris habeat in concessione praelatus, quam in praesentatione patronus, nec praeiudicetur praelato, si quando per apostolicae sedis legatum eo inconsulto ecclesia concedatur, discretioni vestrae per apostolica scripta mandamus quatenus dictum archidiaconum, ut ab eius super hoc indebita molestatione desistat, monitione praemissa per censuram ecclesiasticam appellatione remota cogatis. [Nullis literis etc. Dat. Anagniae X. Kal. Mart. Ao. VI. 1204.]

Chapter VII

Latin source headnote: A legate appointed for several places can exercise his jurisdiction in any one of the said places in such a way that he can conclude in one place what was done in another. This is what Panormitanus says.

The same, to the Illustrious King of the French.

He who is ignorant of nothing knows that to the royal sublimity—(*And below:*)—on your part we received a complaint, namely, that, although the legate was suspect to you for a certain reason, after an appeal was interposed to us he promulgated a sentence of interdict against your land outside the boundaries of the kingdom of the French. They also promised and offered to swear upon your soul that you would stand to law concerning this business before our legates and delegates, and that on account of a business of this kind you had been cited neither by us nor by another on our behalf to obey the law, you seeking that the aforesaid sentence be relaxed upon receipt of security of this kind. But to the things that they had objected against the cardinal, we have answered both them and your magnificence: although he had departed from the boundaries of the kingdom of the French, nevertheless he had not yet left the limits of his legation, since he had received from us the solicitude of legation enjoined upon him not only in the kingdom of the French but in the provinces of Vienne, Lyon, and Besançon.

> Legatus in pluribus locis potest in quolibet dictorum locorum iurisdictionem suam exercere ita, quod facta unius loci potest in alio explicare. Hoc dicit Panorm.
>
> Idem illustri Regi Francorum.

> Novit ille, qui nihil ignorat, quod regiae sublimitati (Et infra:) Ex parte tua querimoniam accepimus, videlicet quod, quum tibi legatus esset certa ratione suspectus, post appellationem ad nos interpositam extra fines regni Francorum in terram tuam interdicti sententiam promulgavit. Qui etiam in animam tuam promiserunt et obtulerunt iurare, quod tu coram legatis et delegatis nostris super hoc negotio stabis iuri, et quod propter huiusmodi negotium nec per nos, nec per alium fueris ex parte nostra citatus, ut iuri pareres, praedictam petens sententiam recepta huiusmodi cautione relaxari. Ceterum ad ea, quae contra cardinalem obiecerant, et eis respondimus, et Tuae magnificentiae respondemus, quod etsi fines regni Francorum exierat, nondum tamen fuerat terminos suae legationis egressus, quum non solum in regno Francorum, sed in Viennensi, Lugdunensi et Bisuntinensi provinciis iniunctam sibi a nobis legationis sollicitudinem suscepisset.

Chapter VIII

Latin source headnote: When a legate *a latere* is present, a lesser legate ought to relinquish execution of his office.

Gregory IX, to the Patriarch of Jerusalem.

Wishing—(*And below:*)—we have decided that the office of legation in your province should be committed to your fraternity, in such a way, nevertheless, that, if it should happen that a legate *a latere* is sent to those regions, for reverence of the Apostolic See you are entirely to relinquish execution of that office for as long as that legate is there.

> Praesente legato de latere minor legatus exsecutionem officii sui dimittere debet.
>
> Gregorius IX. Patriarchae Hierosolymitano.
>
> Volentes (Et infra:) Fraternitati tuae legationis officium in provincia tua duximus committendum, ita tamen, quod, si legatum ad partes illas de latere nostro contigerit destinari, exsecutionem ipsius officii, quamdiu legatus ipse ibi fuerit, pro sedis apostolicae reverentia omnino dimittas.

Chapter IX

Latin source headnote: A legate not *a latere* but by reason of his person cannot, outside the province decreed to him, absolve persons excommunicated for laying hands upon clerics; nor can he do so even within the province if such excommunicated persons come there from elsewhere. But a legate by reason of dignity absolves no such persons. This is what it says according to the common understanding.

The same.

Legates of the Roman Church who are not sent *a latere* cannot impart the benefit of absolution to persons excommunicated for violent laying on of hands outside the province committed to them, or within it if those who laid hands in this manner should happen to come there from elsewhere. Nor can those who, under pretext of their churches, claim the dignity of legation for themselves impart it even to subjects situated within their province, unless by special grace something more is granted by the Apostolic See to the former and the latter.

> Legatus, non de latere sed ratione personae, extra provinciam sibi decretam absolvere nequit excommunicatos pro iniectione manuum in clericos, nec etiam in provincia, si tales excommunicati aliunde veniant. Legatus vero ratione dignitatis nullos tales absolvit. H. d. secundum communem intellectum.

> Idem.
>
> Excommunicatis pro iniectione manuum violenta ecclesiae Romanae legati, qui de ipsius latere non mittuntur, extra provinciam sibi commissam, vel ibidem, si huiusmodi manuum iniectores illuc contingat aliunde accedere, et qui ecclesiarum suarum praetextu legationibus sibi vendicant dignitatem, etiam subditis, quamvis in provincia sua exsistentes, beneficium absolutionis impertiri non possunt, nisi de speciali gratia illis et istis amplius a sede apostolica concedatur.

Chapter X

Latin source headnote: A legate's statutes endure even after the legation has ended; nevertheless, the jurisdiction of his delegate ends if citation did not precede.

The same.

We wish it to be doubtful to no one that statutes issued by legates of the Apostolic See in the province committed to them endure as perpetual, although they afterwards departed from it. It is otherwise, however, if they decided to delegate causes to certain persons, since the jurisdiction of the latter expires if their citation did not precede the legates' departure.

> Durant legati statuta etiam legatione finita, finitur tamen sui delegati iurisdictio, si citatio non praecessit.
>
> Idem.
>
> Nemini dubium esse volumus, quin legatorum sedis apostolicae statuta edita in provincia sibi commissa durent tanquam perpetua, licet eandem postmodum sint egressi; secus autem, si causas duxerint aliquibus delegandas, quum iurisdictio istorum exspiret, si ante illorum discessum horum citatio non praecessit.

Title XXXI: On the Office of an Ordinary Judge

Chapter I

Latin source headnote: Bishops can inquire into and punish crimes in their dioceses and, when there is need, invoke the secular arm.

From the Synod of Pope John.

A pernicious [custom has grown up: a public judge or minister sells, as though matters for inquiry, the sins of the people that are to be inquired into by the bishops, to whom solicitude for souls is committed; and on that occasion a criminal life is freely increased. If they find adulterous women on the property of a church or cleric, they defame, seize, and tear them until their lords or parents redeem them, on account of which their blood relatives fall into no slight poverty; and in this order, after the sale, they do not fear to fornicate more freely, saying that nothing pertains to the bishop concerning one who is known to have been examined and redeemed by the public authority—which manifestly has grown up in an entirely irregular manner.]

Therefore, let the bishops of the individual cities have in their dioceses free power to inquire into, avenge, and adjudicate adulteries and crimes according to what the canons decree, without impediment from anyone. And when there is need, let them summon public assistance [to repress

rebels and contemners], not for doing prejudice but rather for pursuing those things that are pleasing to God [and accord with the salvation of souls].

> **DE OFFICIO IUDICIS ORDINARII.**
>
> Episcopi in suis dioecesibus possunt crimina inquirere et punire, et, quum opus fuerit, invocare brachium saeculare.
>
> Ex synodo Ioannis Papae.
>
> Perniciosa [inolevit consuetudo, ut iudex publicus vel minister peccata populi, quae ab episcopis sunt inquirenda, quibus animarum sollicitudo commissa est, quasi inquirenda vendant, et ea occasione licenter scelesta vita augmentetur, et, si in proprietate ecclesiae vel clerici feminas inveniant adulteras, infamant, comprehendunt, dilaniant donec domini earum vel parentes eas redimant, pro quo consanguinei earum in modicam deveniunt paupertatem, et eo ordine liberius post venditionem fornicari non metuunt, dicentes nihil pertinere ad episcopum, quae a publico examinata dignoscitur et redempta, quod omnino irregulariter inolevisse manifestum est.] Habeant igitur episcopi singularum urbium in suis dioecesibus, liberam potestatem adulteria et scelera inquirere, ulcisci et iudicare, secundum quod canones censent, absque impedimento alicuius. Et quum opus fuerit, [ad comprimendos rebelles et contemptores] publicum convocent auxilium non ad praeiudicandum, sed potius ad ea, quae Deo sunt placita [et saluti animarum conveniunt,] prosequendum.

Chapter II

Latin source headnote: An ordinary who knows—not as judge or man, but as God—that a subject is guilty of a crime can reproach or punish him indeterminately, but not by name.

Pope Eugenius.

If a priest knows for certain that someone is guilty of some crime, or if he has confessed and is unwilling to amend, unless someone can prove it by judicial order, he ought not to reproach him by name but indeterminately, as Christ said: "One of you is about to betray me." But if the one to whom damage was inflicted should seek justice, he can excommunicate the author of the damage, even though he confessed to him. Nevertheless, he cannot remove him from communion by name, although he knows him to be guilty, because he knows it not as judge but as God. But he ought to admonish him not to intrude himself, because not even Christ removed Judas from communion.

> Ordinarius, qui scit, non ut iudex vel homo, sed ut Deus, subditum esse criminis reum, indeterminate poterit, sed non nominatim, eum arguere vel punire.
>
> Eugenius Papa.
>
> Si sacerdos sciat pro certo, aliquem, esse reum alicuius criminis, vel si confessus fuerit, et emendare noluerit, nisi iudiciario ordine quis probare possit, non debet eum arguere nominatim, sed indeterminate, sicut dixit Christus: "Unus vestrum me traditurus est." Sed si ille, cui damnum illatum est, petierit iustitiam, potest excommunicare auctorem damni, licet etiam ei confessus sit. Sed tamen non nominatim potest eum removere a communione, licet sciat eum esse reum, quia non ut iudex scit, sed ut Deus. Sed debet eum admonere, ne se ingerat, quia nec Christus Iudam a communione removit.

Chapter III

Latin source headnote: If an ordinary subject to a bishop renders a just ecclesiastical censure against one subject to him, the bishop ought to preserve it and ought not to relax it without

satisfaction and the knowledge of the person who rendered it.

Alexander III, to the Bishop of Florence.

When an ecclesiastical sentence is promulgated against certain malefactors by prelates of churches, it ought to stand ratified and firm and to be observed inviolably until fitting satisfaction. Therefore, by apostolic writings we [by way of precept] command your discretion that, whenever our beloved son Lan., pleban of Saint P. of Lucar, has reasonably rendered a sentence of interdict or excommunication against his clerical or lay parishioners, you are to cause it to be inviolably observed and not relax it without suitable satisfaction and without the knowledge of the same pleban.

> Si ordinarius subiectus episcopo profert in sibi subiectum iustam censuram ecclesiasticam, episcopus illam servare debet, et illam sine satisfactione et conscientia proferentis relaxare non debet.
>
> Alexander III. Florentino Episcopo.
>
> Quum ab ecclesiarum praelatis ecclesiastica sententia in malefactores aliquos promulgatur, rata debet et firma consistere, et usque ad condignam satisfactionem inviolabiliter observari. Quapropter discretioni vestrae per apostolica scripta [praecipiendo] mandamus, quatenus, si quando dilectus filius noster Lan., plebanus sancti P. de Lucar, in clericos vel laicos parochianos suos interdicti vel excommunicationis sententiam rationabiliter tulerit, ipsam facias inviolabiliter observari, et eam sine congrua satisfactione et absque eiusdem plebani conscientia non relaxes.

Chapter IV

Latin source headnote: If the ordering of a vacant church, even one subject to patronage, is deferred for a just cause, a steward is to be placed there by the bishop.

The same, to the Archbishop of Canterbury and his Suffragans.

Since it is often necessary for you to defer the ordering of churches for the reason that at times persons less suitable are presented to you, or that at times, for another cause, a root of dissension has emerged between you and those presenting the persons, we must provide that meanwhile, on occasion of this dissension and scandal, the fruits of those churches not perish or grave losses befall them in spiritual things. Hence it is that by apostolic writings we command your fraternity by way of precept that, whenever in those vacant churches in which an ecclesiastical person does not have the presentation you are unable by law to institute persons in them, either because persons less suitable are presented to you or for another cause, with [contradiction and] appeal removed, you are to place stewards who ought to receive the fruits of the churches and either expend them for the utility of the churches or faithfully reserve them for the future persons.

Textual note: The Latin Library transcription's ungrammatical *ex iuxta causa* has been corrected to *ex iusta causa*.

> Si ordinatio vacantis ecclesiae etiam patronatae ex iusta causa differtur, est ibi per episcopum oeconomus ponendus.
>
> Idem Cantuariensi Archiepiscopo et eius Suffraganeis.
>
> Quum vos plerumque oporteat ordinationem ecclesiarum differre pro eo, quod quandoque personae vobis minus idoneae praesentantur, aut interdum inter vos et praesentatores personarum alia de causa radix dissensionis emerserit providendum nobis est, ne occasione huius dissensionis et scandali interim fructus illarum depereant, aut eis in spiritualibus gravia proveniant detrimenta. Inde est, quod

fraternitati vestrae per apostolica scripta praecipiendo mandamus, quatenus, si quando in illis vacantibus ecclesiis, in quibus ecclesiastica persona praesentationem non habet, vel quia personae minus idoneae vobis praesentantur, vel alia de causa, de iure personas non potueritis in eis instituere, [contradictione et] appellatione remota ponatis oeconomos, qui debeant ecclesiarum fructus percipere, et eos aut in ecclesiarum utilitatem expendere, aut futuris personis fideliter reservare.

Chapter V

Latin source headnote: If it is established to the ordinary that one absolved by the Pope suppressed the true cause for which he had been excommunicated, he ought to remit him to the Pope. But if it is not established to him, although there is nevertheless a pressing suspicion against the person, he ought to compel him to purge himself.

The same, to the Archbishop of Canterbury.

On your part it has been proposed to us by constant assertion that at times certain persons excommunicated for particular causes visit the Apostolic See and, keeping silent the causes for which they are bound by the bond of excommunication, carry back letters concerning their absolution containing that they approached the Apostolic See and, after their confessions had been heard, merited the benefit of absolution. Hence, because you wished to consult us whether the absolution holds of those who, after concealing the excesses for which they had been excommunicated, merited the benefit of absolution through the Apostolic See while putting forward another cause for their excommunication, we answer your consultation in this manner: if it should be established to you that it is so, you ought by ecclesiastical censure to compel them to return to the Apostolic See with your letters containing the truth of the matter. But if this is not established to you and you hold them suspect of not having confessed the truth, you ought to compel them concerning this to furnish purgation before you that they confessed the truth.

Si constat ordinario, quod absolutus a Papa suppressit veram causam, quare fuerat excommunicatus, debet illum remittere ad Papam. Si vero sibi non constat, est tamen sibi urgens suspicio contra eum, debet cogere eum se purgare.

Idem Cantuariensi Archiepiscopo.

Ex parte tua nobis est constanti assertione propositum, quod interdum quidam pro certis causis excommunicati sedem apostolicam visitant, et reticentes causas, pro quibus sunt vinculo excommunicationis adstricti, de absolutione sua literas deferunt, continentes, eos ad sedem apostolicam accessisse, et auditis confessionibus suis absolutionis beneficium meruisse. Unde Quia nos consulere voluisti, utrum illorum absolutio teneat, qui, occultatis excessibus, pro quibus excommunicati fuerant, absolutionis beneficium per sedem apostolicam meruerunt, suae excommunicationis causam aliam praetendentes, tuae consultationi taliter respondemus, quod, si ita tibi constiterit, debes eos ecclesiastica censura compellere, cum literis tuis rei veritatem continentibus ad sedem apostolicam redire. Si vero id tibi non constiterit, et eos suspectos habueris, quod confessi non fuerint veritatem, ipsos compellere debes exinde coram te, quod veritatem confessi fuerint, purgationem praestare.

Chapter VI

Latin source headnote: If, through the sloth or malice of a papal delegate, someone perseveres in sin, the ordinary of the place can supply what is lacking, notwithstanding that the cause was committed to a delegate. This is what it says, and it is a notable and exceptional case.

Celestine III.

Your fraternity signified to us that certain of your parishioners, when they are marked by excommunication for an illicit union of consanguinity or affinity, impetrate letters of commission from the Apostolic See to judges farther away. When they have been absolved from excommunication by these letters, because the said delegates neither approach the place where witnesses to the consanguinity or affinity can be produced nor send anyone to receive them, they remain in the aforesaid union of a nefarious conjunction, and the cause does not obtain its due effect.

Hence you sought from us what is to be done by you in such a circumstance. Therefore, because through the malice or sloth of a delegated judge no one ought to find support for remaining in the union of an iniquitous conjunction, in this consultation we give your fraternity this answer: as often as it should happen that the things we have stated above occur in your diocese, you can lawfully recall those so absolved into the former sentence of excommunication and hold them bound by that sentence until the cause begins to have lawful progress in reception of the witnesses and in other matters, or you receive another mandate concerning this from the Apostolic See. [But, etc.; cf. c. 6, On Compelling Witnesses, II. 21.]

> Si ex desidia vel malitia delegati Papae quis perseverat in peccato, ordinarius loci potest supplere, non obstante, quod causa fuerit delegato commissa. Hoc dicit et est casus notabilis et singularis.
>
> Coelestinus III.
>
> Significavit nobis tua fraternitas, quod quidam de parochianis tuis, quum pro illicita consanguinitatis et affinitatis copula excommunicatione notantur, ad iudices remotiores ab apostolica sede literas impetrant commissionis. Per quas, quum ab excommunicatione fuerint absoluti, quia dicti delegati ad locum, ubi testes consanguinitatis vel affinitatis produci valeant, non accedunt, nec aliquos pro eorum receptione transmittunt, in praenominata nefariae coniunctionis copula remanent, et causa debitum non sortitur effectum. Unde postulasti a nobis, quid sit tibi in tali articulo faciendum. Quum itaque pro malitia vel desidia iudicis delegati non debeat quis ad remanendum in copula coniunctionis iniquae suffragium invenire, tale damus tuae fraternitati in hac consultatione responsum, quod, quotiens ea, quae praediximus, in tua dioecesi evenire contigerit, licite potes taliter absolutos in pristinam excommunicationis sententiam revocare, ipsosque tam diu eadem sententia tenere ligatos, donec causa in receptione testium et in aliis legitimum incipiat habere progressum, vel aliud exinde suscipias ab apostolica sede mandatum. [Ceterum etc. cf. c. 6. de test. cog. II. 21.]

Chapter VII

Latin source headnote: An ordinary supplies for the negligence of an abbot who does not recall a wandering monk.

Innocent III, to the Archbishop of Auch.

The more studiously the devotion of religious men adheres to divine mandates and intends to please its Creator through works of holy conduct, the more the enemy of the human race labors for their seduction by the maliciousness of his fraud, furnishes them in various ways with material for transgressing, and endeavors to ensnare their souls with an inextricable snare. Indeed, know that it has reached our hearing that monks, canons, and other regulars of your province, although they ought rather to keep watch in the cloister in divine services according to regular statutes, after gathering money from obediences and revenues whose care they administered, abhorring the cloister,

do not fear to run about through the courts of princes and powerful men. With their gifts they acquire their favor and grace for themselves; relying upon their familiarity, they stir up grave dissensions in their convent and, scorning the humility of the others in a spirit of arrogance, exist as disobedient and contumacious toward the mandates of their prelates and immerse themselves in the solicitudes of secular business contrary to their prohibition.

Therefore, because the order of religion is not a little enervated on account of this, by apostolic writings we command your fraternity that, whoever you find to be such persons, unless at your admonition they return to soundness—so that they resign their own property without difficulty into the hands of their prelates, to be converted to the utility of the house according to the abbot's counsel, and observe the regular life—if their prelates, after your admonition, negligently omit to execute this, you are to compel those regulars through suspension from office and benefice, with appeal removed. [Given at the Lateran, on the fourteenth day before the Kalends of April, 1198.]

> Ordinarius supplet negligentiam abbatis, non revocantis monachum vagabundum.
>
> Innocentius III. Ausitano Archiepiscopo.
>
> Quanto devotio religiosorum virorum studiosius mandatis divinis inhaeret, et creatori suo placere per opera sanctae conversationis intendit, tanto humani generis inimicus ad seductionem eorum suae fraudis malignitate laborat, et variis modis eis praestat materiam excedendi, et animas eorum inextricabili laqueo nititur irretire. Ad audientiam siquidem nostram noveris pervenisse, quod monachi, canonici et alii regulares tuae provinciae, quum deberent potius in claustro iuxta regularia constituta divinis obsequiis vigilare, de obedientiis et reditibus, quorum curam gesserunt, pecunia congregata, claustrum abhorrentes, per curias principum et potentum discurrere non verentur, et muneribus suis illorum sibi favorem et gratiam acquirunt, ac de eorum familiaritate confisi in conventu suo graves dissensiones commovent et ceterorum humilitatem in spiritu arrogantiae contemnentes mandatis praelatorum suorum inobedientes et contumaces exsistunt, et contra illorum prohibitionem saecularium negotiorum sollicitudinibus se immergunt. Quoniam igitur propter hoc ordo religionis non modicum enervatur: fraternitati tuae per apostolica scripta Mandamus, quatenus, quoscunque tales inveneris, nisi ad commonitionem tuam resipuerint, ut proprium suum in manibus praelatorum suorum sine difficultate resignent, convertendum in utilitatem domus secundum abbatis consilium, et regularem vitam observent, si praelati eorum post tuam commonitionem id exsequi negligenter omiserint, per suspensionem officii et beneficii appellatione remota compellas. [Dat. Lat. XIV. Kal. Apr. 1198.]

Chapter VIII

Latin source headnote: One excommunicated by one bishop is to be avoided by others. And an archbishop approached by complaint shall not absolve unless he first remits the person.

The same, to the Archbishop of Rouen and his Suffragans.

For repressing the malice of the perverse, certain penalties have been established in the canons. Just as you wish those rendered by you at times against subjects to be inviolably observed, so you ought inviolably to observe those rendered by others. Therefore, by apostolic writings we command that the sentences that our venerable brother the Bishop of Lisieux should decide canonically to promulgate against his subjects, both you yourselves are to preserve and you are to cause them to be inviolably observed by your subjects.

§ 1. But you, brother archbishop, since a sentence of excommunication is not suspended through the objection of an appeal, if anyone excommunicated by a bishop has complained to you concerning an unjust excommunication, are to remit him to that bishop to be absolved according to the form of the Church, deferring to him as a fellow bishop. But if perchance he is unwilling to absolve him, after receiving sworn security you will be able to furnish him the gift of absolution, in such a way, nevertheless, that, unless it should be lawfully established to you that he was excommunicated contrary to justice, by debt of his oath you are to command him to make competent satisfaction to the same bishop concerning that for which he was marked by excommunication. But if perchance he should disdain to do this, do not omit to return him to the sentence of excommunication, with appeal removed. [Given, etc., on the Kalends of June, 1198.]

> Ab uno episcopo excommunicatus ab aliis est vitandus. Et archiepiscopus per querelam aditus, non absolvet, nisi primo remittat.
>
> Idem Rothomagensi Archiepiscopo et eius Suffraganeis.
>
> Ad reprimendam malitiam perversorum poenae certae sunt in canonibus constitutae, quas, sicut latas a vobis interdum in subditos vultis inviolabiliter observari, ita latas ab aliis debetis inviolabiliter observare. Ideoque per apostolica scripta mandamus, quatenus sententias, quas venerabilis frater noster Lexoniensis episcopus duxerit in subditos suos canonice promulgandas, et vos ipsi servetis, et eas a vestris subditis faciatis inviolabiliter observari. § 1. Tu vero, frater archiepiscope, quum excommunicationis sententia per appellationis non suspendatur obiectum, si quis excommunicatus ab episcopo de iniusta tibi fuerit excommunicatione conquestus, ad ipsum, ei quasi coepiscopo deferens, absolvendum secundum ecclesiae formam remittas. Qui si forte noluerit ipsum absolvere, tu recepta cautione iuratoria absolutionis munus ei poteris exhibere, ita tamen, quod, nisi legitime tibi constiterit, eum contra iustitiam excommunicatum fuisse, ex debito sibi iuramenti praecipias, ut super eo, de quo fuerit excommunicatione notatus, eidem episcopo satisfaciat competenter. Quod si facere forte contempserit, eum in excommunicationis sententiam appellatione remota reducere non omittas. [Dat. etc. Kal. Iun. 1198.]

Chapter IX

Latin source headnote: A patriarch does not take cognizance of the causes of the subjects of archbishops and bishops under him except through lawful appeal or by force of custom or privilege.

The same, to the Archbishop of Tours.

Two things together—namely, a consultation and a complaint—were contained in a single petition of your fraternity. Through it you complained concerning our venerable brother the Patriarch of Jerusalem that your clerics were being unjustly aggrieved together with you, since, spurning your judgment, before which they are prepared to furnish the fullness of justice to those lodging a complaint concerning them, he compels them to answer before himself, although the cause is by no means brought to him through appeal; and you sought to be taught by our letters whether they can by law be compelled to this.

Wishing, therefore, to provide for you concerning the aforesaid grievances, we answer your consultation in this manner: since it is defined in the canons that primates or patriarchs have no right beyond others except insofar as the sacred canons concede or ancient custom conferred upon them from antiquity, so that the churches' privileges are preserved according to the Nicene rules—unless the Apostolic See should decree that some church or its rector be honored with some special

privilege—we answer with the counsel of our brothers that, for as long as your clerics are willing to stand to law before you, they ought not to be compelled to undergo the judgment of that patriarch unless the cause should perhaps be brought to his hearing through appeal, or unless, which we do not believe, something concerning this has been granted to him by the Apostolic See. [Given at the Lateran, on the Nones of January, 1199.]

> De causis subditorum archiepiscoporum et episcoporum suorum patriarcha non cognoscit, nisi per appellationem legitimam, aut vigore consuetudinis seu privilegii.
>
> Idem Turonensi Archiepiscopo.
>
> Duo simul consultationem scilicet et querimoniam, unica tuae fraternitatis petitio continebat, per quam a venerabili fratre nostro Hierosolymitano patriarcha conquerebaris, clericos tuos tecum iniuste gravari, qui eos, spreto tuo iudicio, coram quo parati sunt de se querimoniam deponentibus iustitiam exhibere, licet ad eum per appellationem causa minime deferatur, coram se respondere compellit, et utrum ad id possint de iure compelli, per nostras postulabas literas edoceri. Volentes igitur tibi super gravaminibus providere praedictis, Consultationi tuae taliter respondemus, quod, quum sit in canonibus diffinitum, primates vel patriarchas nihil iuris prae ceteris habere, nisi quantum sacri canones concedunt, vel prisca illis consuetudo contulit ab antiquo, ita, ut secundum Nicaenas regulas sua privilegia serventur ecclesiis, praeterquam si apostolica sedes aliquam ecclesiam vel rectorem ipsius quolibet speciali privilegio decreverit honorare, de fratrum nostrorum consilio respondemus, quod, quamdiu clerici tui coram te voluerint stare iuri, compelli non debent iudicium eiusdem patriarchae subire, nisi causa forsitan per appellationem ad eius audientiam perferatur, aut, quod non credimus, ei aliquid super hoc a sede apostolica sit indultum. [Dat. Lat. Non. Ian. 1199.]

Chapter X

Latin source headnote: An impeded archbishop can commit the consecration of his suffragan to another, and the one to be consecrated is bound to receive the gift of consecration from that commissioner.

The same, to the Archbishop of Tours.

That you consult the Apostolic See concerning those things that are doubtful to you we consider pleasing and acceptable, and your fraternity consequently appears deservedly commendable, since the law of the divine constitution has placed that see as mistress of the whole terrestrial world, so that the reason for whatever is doubted by anyone may at last be sought from it. You indeed consulted us whether, if perhaps, detained by some infirmity or another just cause, you were unable to consecrate one of your suffragans, it would be lawful for you to commit your authority to one of your fellow bishops; and whether an elect who was pressing for consecration ought lawfully to be consecrated by him to whom you had thus committed your authority.

In this we answer your consultation in this manner: when placed in such a circumstance, it is lawful for you to commit your authority, as has been said, and the one to be consecrated ought to receive the gift of consecration from him to whom you decide to commit it, provided that he is held to be Catholic and no impediment from the withdrawal of the grace of the Apostolic See stands in his way. [Given at the Lateran, on the sixteenth day before the Kalends of June, 1199.]

> Archiepiscopus impeditus potest consecrationem sui suffraganei alteri committere, et consecrandus tenetur ab illo commissario munus consecrationis recipere.

Idem Turonensi Archiepiscopo.

Quod sedem apostolicam consulis super his, quae tibi dubia exsistunt, gratum gerimus et acceptum, et tua exinde fraternitas merito videtur commendanda, quum lex divinae constitutionis eandem sedem totius posuerit orbis terrarum magistram, ut quicquid dubitatur ab aliquo, ab ea tandem eiusdem ratio requiratur. Nos siquidem consuluisti, utrum, si forte aliqua infirmitate vel alia iusta causa detentus aliquem suffraganeorum tuorum consecrare non posses, alicui coepiscoporum tuorum vices tuas committere licitum tibi esset, et utrum electus, qui pro consecratione instaret, ab eo, cui vices tuas taliter commisisses, deberet licite consecrari? In quo Consultationi tuae taliter respondemus, quod in tali articulo constituto et tuas vices, ut dictum est, tibi committere licet, et consecrandus munus debet ab eo consecrationis accipere, cui eas duxeris committendas, dummodo catholicus habeatur, et impedimentum ei ex subtractione gratiae apostolicae sedis non obsistat. [Dat. Lat. XVI. Kal. Iun. 1199.]

Chapter XI

Latin source headnote: An archbishop can commit to subjects of his suffragan a cause brought to him through appeal, but cannot compel them to receive it. This is what it says, as far as § Moreover. § 1. When a papal delegate who excommunicated the defendant or inducted the plaintiff into possession has died, if his successor succeeds in the delegation, he will be able to absolve and restore possession; otherwise, the Pope alone shall restore and absolve, except at the moment of death. Nevertheless, lest the annual prescription run, the defendant shall furnish security before the ordinary, or public persons, that he will stand to law. This is what it says.

The same, to the Bishop of Ely.

Of the pastoral office—(*And below:* cf. c. 28, On the Office of a Delegated Judge, I. 29.)—on your part it was moreover asked whether, if some cause has been brought to an archbishop through appeal, he can by right of ordinary power delegate it to a subject of his suffragan or punish the same person if he refuses to receive the delegated cause. To this we answer that an archbishop cannot compel him against his will to receive a delegation of this kind, since, except in certain articles, he has no power over him, although his bishop is subject to the archbishop by metropolitan law. [Moreover, etc.; cf. c. 28, On the Office of a Delegated Judge, I. 29.]

§ 1. Moreover, you sought to be taught whether, without a special mandate of the Apostolic See, it is lawful for anyone, when the delegate who bound the defendant with the bond of excommunication for manifest contumacy or inducted the claimant into possession of the things sought for the purpose of preserving the property has been removed from human affairs, to impart the benefit of absolution to that person when he wishes to obey the law and to restore possession within a year, sufficient security first having been received. To this we say that, since a delegate, with respect to that matter, is greater than the ordinary, one excommunicated by a delegate of this kind cannot obtain the grace of absolution through another without a mandate of the Supreme Pontiff, except at the moment of death, unless perhaps that delegate was of such a kind that another succeeds him in burden and honor. Nor will he be able to recover lost possession through anyone other than the Supreme Pontiff.

Nevertheless, lest the other become a true possessor after a year, he can offer and furnish security that he will obey the law—before the ordinary or, if he is unable to have access to him, before public and honorable persons—as though interrupting the annual prescription, so that after the year he may

thus merit to recover possession through the Apostolic See. [You asked, etc.; cf. c. 53, On Appeals, II. 28. Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.]

Textual note: A stray ñ character between the two divisions of the Latin source headnote has been removed as a transcription artifact.

> Archiepiscopus causam ad se per appellationem delatam subditis suffraganei committere potest, non tamen ad ipsam suscipiendam compellere potest. H. d. usque ad § Praeterea. § 1. Mortuo delegato Papae, qui excommunicavit reum, vel actorem in possessionem induxit, si eius successor in delegatione succedit, absolvere et restituere possessionem poterit, alias solus Papa restituet et absolvet, praeterquam in mortis articulo; ne tamen currat annalis praescriptio, reus coram ordinario, vel publicis personis de stando iuri cautionem praestabit. Hoc dicit.
>
> Idem Episcopo Heliensi.
>
> Pastoralis officii (Et infra: cf. c. 28. de off. iud. del. I. 29.) Ex parte tua fuit insuper quaesitum, utrum, si aliqua causa fuerit ad archiepiscopum per appellationem delata, possit eandem iure ordinariae potestatis suffraganei sui subdito delegare, vel animadvertere in eundem, si causam renuerit suscipere delegatam? Ad quod utique respondemus, quod archiepiscopus ipsum ad suscipiendam delegationem huiusmodi compellere nequit invitum, quum in eum, exceptis quibusdam articulis, nullam habeat potestatem, licet episcopus suus eidem sit metropolitana lege subiectus. [Praeterea etc. cf. c. 28. de off. iud. del. I. 29.] § 1. Edoceri Praeterea postulasti, an alicui liceat sine speciali mandato apostolicae sedis, delegato, qui reum propter contumaciam manifestam excommunicationis vinculo innodavit, vel petitorem causa rei servandae in possessionem petitorum induxit, rebus humanis exempto, eidem volenti iuri parere absolutionis beneficium impertiri, et possessionem restituere infra annum, sufficienti recepta primitus cautione? Ad quod utique dicimus, quod, quum delegatus, quantum ad illud sit maior ordinario, sine mandato summi Pontificis excommunicatus ab huiusmodi delegato non potest per alium, praeterquam in mortis articulo, absolutionis gratiam obtinere, nisi forsan delegatus talis exstiterit, cui alius succedat in onere et honore. Nec per alium, quam per summum Pontificem recuperare poterit possessionem amissam. Verumtamen, ne alius post annum verus efficiatur possessor, coram ordinario, vel si eius copiam habere nequiverit, coram publicis et honestis personis, ut quasi praescriptionem interrumpat annalem, offere ac praestare, quod iuri parebit, poterit cautionem, ut sic post annum recuperare possessionem per sedem apostolicam mereatur [Quaesivisti etc. cf. c. 53. de app. II. 28. Dat. Rom. ap. S. Petr. XIV. Kal. Ian. 1204.]

Chapter XII

Latin source headnote: Through a rescript by which the Pope commands an ordinary to correct his subjects, the Pope does not thereby make him a delegate; therefore, appeal can be taken from him to the next superior, just as if the Pope had made no mandate. This is what it says.

The same, to the Archbishop of Sens.

Although in correcting excesses according to canonical sanctions the subterfuge of appeal is closed, and therefore our venerable brother the Bishop of Paris received from us a mandate that, with respect both to monks and other religious men and also to secular clerics subject to his jurisdiction who are said to commit many grave crimes that tend not only to the loss of souls but also to the scandal of many, he inquire into and correct, with appeal removed, the things he sees are to be corrected, establishing for their reformation what is regular and honorable, nevertheless, because it neither was nor ought to have been our intention to derogate from your jurisdiction through a mandate of this

kind, by authority of these presents we have decided to declare that, if perchance in inquiries to be made by the same bishop not as delegate but as ordinary some case should emerge in which it is lawful to appeal to the metropolitan see, we are unwilling, on occasion of the aforesaid mandate, to derogate in any way from your authority so as to prevent appeal from being taken to you as metropolitan.

You, however, are neither personally to impede nor to cause impediment through others to the same bishop's executing the debt of his office in correcting the excesses of his subjects; and if perchance appeal has been taken to you in a permitted case, you are to proceed prudently and justly in the cause of appeal. [Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, in the tenth year, 1207.]

> Papa per rescriptum, quo mandat ordinario, ut subditos suos corrigat, non facit ex hoc ipsum delegatum, ideo ab eo poterit appellari ad proximum superiorem, sicut, si Papa nullum mandatum fecisset. Hoc dicit.
>
> Idem Archiepiscopo Senonensi.
>
> Licet in corrigendis excessibus iuxta canonicas sanctiones appellationis sit diffugium interclusum, et ideo venerabilis frater noster Parisiensis episcopus a nobis receperit in mandatis, ut tam circa monachos et alios viros religiosos, quam etiam clericos saeculares suae iurisdictioni subiectos, qui multa et gravia crimina committere proponunt, quae cedunt non solum in animarum dispendium, sed etiam in scandalum plurimorum, inquirat et corrigat appellatione remota quae viderit corrigenda, statuens ad reformationem eorum quod regulare fuerit et honestum; quia tamen intentionis nostrae nec fuit, nec esse debuit, iurisdictioni tuae per mandatum huiusmodi derogare: praesentium auctoritate duximus declarandum, quod, si forsitan in inquisitionibus ab eodem episcopo, non tanquam delegato, sed tanquam ordinario faciendis, aliquis casus emerserit, in quo licitum sit ad sedem metropolitanam appellare, praedicti occasione mandati auctoritati tuae, quo minus ad te tanquam ad metropolitanum appellari valeat, nolumus aliquatenus derogare. Tu tamen nec impedias per te ipsum, nec per alios facias impediri, quominus idem episcopus in corrigendis excessibus subditorum officii sui debitum exsequatur, etsi forsan in casu concesso ad te fuerit appellatum, in appellationis causa prudenter et iuste procedas. [Dat. Rom. ap. S. Petr. XIV. Kal. Ian. Ao. X. 1207.]

Chapter XIII

Latin source headnote: Prelates correct and reform subjects, with appeal removed and notwithstanding custom. Nevertheless, if a chapter has been accustomed to correct the excesses of canons, and does not do so within a term to be fixed by the bishop, the bishop himself shall do this. This is what it says, as far as § But. § 1. If canons, without a manifest and reasonable cause, especially in contempt of the bishop, cease from divine offices, the bishop shall not observe the cessation, and the metropolitan shall take cognizance in place of the Pope. This is what it says. § 2. A prelate ought, in imposing a penalty, to guard against monetary gain and every other grievance. This is what it says, as far as the end.

The same, in the General Council.

By an inviolable constitution we sanction that prelates of churches prudently and diligently attend to correcting the excesses of subjects, especially clerics, and reforming their morals, lest their blood be required from the prelates' hands. But so that they can freely exercise the office of correction and reformation, we decree that no custom or appeal can impede their execution, unless they exceed the

form to be observed in such matters. Nevertheless, the excesses of canons of a cathedral church that have been accustomed to be corrected by the chapter are to be corrected by it, in those churches that have hitherto had such a custom, at the bishop's admonition or command, within a competent term to be fixed by him. Otherwise, from then on, the bishop, having God before his eyes, [all contradiction ceasing], is not to postpone correcting them by ecclesiastical censure as the care of souls requires. [And he is not to omit correcting their other excesses as the cause of souls requires, with due order nevertheless observed in all things.]

§ 1. But if the canons, without a manifest and reasonable cause, especially in contempt of the bishop, should cease from divine offices, the bishop, if he wishes, is nevertheless to celebrate in the cathedral church; and the metropolitan, at his complaint, as delegated by us concerning this, having ascertained the truth, is so to chastise them by ecclesiastical censure that through fear of punishment they do not presume to do such things hereafter.

§ 2. Therefore, let prelates of churches diligently provide that they do not convert this salutary statute to monetary gain or another grievance, but studiously and faithfully execute it if they wish to escape canonical vengeance, since, with the Lord as author, the Apostolic See will watch most attentively concerning these matters.

Textual note: Two stray ñ characters separating divisions of the Latin source headnote have been removed as transcription artifacts.

> Praelati subditos corrigunt et reformant, appellatione remota, vel consuetudine non obstante. Si tamen capitulum consuevit corrigere excessus canonicorum, si infra terminum ab episcopo praefigendum non facit, ipse episcopus hoc faciet. Hoc dicit usque ad § Ceterum. § 1. Si canonici sine manifesta et rationabili causa, maxime in contemptum episcopi, cessant a divinis, episcopus cessationem non servabit, et metropolitanus vice Papae cognoscet. Hoc dicit. § 2. Praelatus in impositione poenae cavere debet a quaestu pecuniae, et ab omni alio gravamine. H. d. usque ad finem.
>
> Idem in concilio generali.
>
> Irrefragabili constitutione sancimus, ut ecclesiarum praelati ad corrigendum subditorum excessus, maxime clericorum, et reformandos mores prudenter ac diligenter intendant, ne sanguis eorum de suis manibus requiratur. Ut autem correctionis et reformationis officium libere valeant exercere, decernimus, ut exsecutionem ipsorum nulla consuetudo vel appellatio valeat impedire, nisi formam in talibus excesserint observandam. Excessus tamen canonicorum cathedralis ecclesiae, qui consueverunt corrigi per capitulum, per ipsum in illis ecclesiis, qui talem hactenus consuetudinem habuerunt, ad commonitionem vel iussionem episcopi corrigantur infra terminum competentem ab eo praefigendum, alioquin ex tunc episcopus Deum habens prae oculis, [omni contradictione cessante] ipsos, ut animarum cura requirit, per censuram ecclesiasticam corrigere non postponat. [Sed et alios eorum excessus corrigere non omittat, prout animarum causa requirit, debito tamen in omnibus ordine observato.] § 1. Ceterum si canonici absque manifesta et rationabili causa, maxime in contemptum episcopi, cessaverint a divinis, episcopus, si voluerit, nihilominus celebret in ecclesia cathedrali, et metropolitanus ad querelam ipsius, tanquam super hoc delegatus a nobis, taliter eos per censuram ecclesiasticam cognita veritate castiget, quod metu poenae talia de cetero non praesumant. § 2. Provideant itaque diligenter ecclesiarum praelati, ut hoc salutare statutum ad quaestum pecuniae vel gravamen aliud non convertant, sed istud studiose ac fideliter exsequantur, si canonicam velint effugere ultionem, quoniam super his sedes apostolica auctore Domino attentissime vigilabit.

Chapter XIV

Latin source headnote: When within a city or diocese there are peoples of diverse languages, the bishop ought to provide for them through suitable men who celebrate offices for them and minister sacraments according to the diversity of languages. And if necessity is pressing, he shall constitute for himself a vicar-bishop of that language; nevertheless, the same diocese ought not on this account to have two bishops.

The same, in the same Council.

Since in very many regions within the same city and diocese peoples of diverse languages, having diverse rites and customs under one faith, are intermingled, we strictly command that the pontiffs of cities or dioceses of this kind provide suitable men who, according to the diversity of rites and languages, celebrate divine offices for them and minister ecclesiastical sacraments, instructing them alike by word and example. But we altogether prohibit one and the same city or diocese from having diverse pontiffs, like one body having diverse heads, as though a monster. But if, on account of the aforesaid causes, pressing necessity should demand it, the pontiff of the place, with provident deliberation, is to constitute for himself in the aforesaid matters a Catholic prelate conformed to those nations as vicar, who is to be obedient and subject to him in all things. Hence, if anyone should intrude himself otherwise, let him know himself struck by the sword of excommunication; and, if he does not thus return to soundness, he is to be deposed from every ecclesiastical ministry, with the secular arm employed, if necessary, to repel such great insolence.

Textual note: The Latin Library headnote's *duos episcopus* has been corrected to the grammatically required *duos episcopos*.

> Quum in civitate vel dioecesi sunt populi diversarum linguarum; episcopus debet providere eis per viros idoneos, qui secundum varietatem linguarum officia eis celebrent, et sacramenta ministrent. Et si urgens est necessitas, constituet sibi vicarium pontificem illius linguae; non tamen propter hoc eadem dioecesis debet habere duos episcopos.
>
> Idem in eodem.
>
> Quoniam in plerisque partibus infra eandem civitatem atque dioecesim permixti sunt populi diversarum linguarum, habentes sub una fide varios ritus et mores, districte praecipimus, ut pontifices huiusmodi civitatum sive dioecesum provideant viros idoneos, qui secundum diversitates rituum et linguarum divina illis officia celebrent et ecclesiastica sacramenta ministrent, instruendo eos verbo pariter et exemplo. Prohibemus autem omnino, ne una eademque civitas sive dioecesis diversos pontifices habeat, tanquam unum corpus diversa capita, quasi monstrum. Sed si propter praedictas causas urgens necessitas postulaverit, pontifex loci catholicum praesulem nationibus illis conformem provida deliberatione constituat sibi vicarium in praedictis, qui ei per omnia sit obediens et subiectus. Unde, si quis aliter se ingesserit, excommunicationis se noverit mucrone percussum, et, si nec sic resipuerit, ab omni ministerio ecclesiastico deponendum, adhibito, si necesse fuerit, brachio saeculari ad tantam insolentiam repellendam.

Chapter XV

Latin source headnote: Bishops who cannot act personally are bound to take suitable men who supply their place with respect to preaching, visitations, and hearing confessions; and, so that

bishops can find such men, it commands that such persons be instituted in cathedral and collegiate churches.

The same, in the same Council.

Among the other things that pertain to the salvation of the Christian people, the nourishment of the word of God is known to be most necessary for them, because, just as the body is nourished by material food, so the soul is nourished by spiritual food, because "man lives not by bread alone, but by every word that proceeds from the mouth of God." Hence, since it often happens that bishops, on account of their manifold occupations, bodily infirmities, hostile incursions, or other occasions—not to say a defect of knowledge, which is altogether to be reproved in them and is hereafter not to be tolerated—are insufficient personally to minister the word of God to the people, especially throughout large and extensive dioceses, we sanction by a general constitution that bishops take suitable men, powerful in work and speech, to execute the office of holy preaching beneficially. When those bishops are unable to act personally, these men, solicitously visiting in their place the congregations committed to them, are to edify them by word and example; and the bishops themselves, when those men are in need, are suitably to minister necessities to them, lest through a lack of necessities they be compelled to desist from what they began.

Hence we command that suitable men be ordained in cathedral as well as other conventual churches, whom bishops can have as coadjutors and fellow workers not only in the office of preaching but also in hearing confessions, enjoining penances, and the other things that pertain to the salvation of souls. But if anyone should neglect to fulfill this, let him lie under strict vengeance.

> Episcopi, qui per se non possunt, tenentur assumere idoneos, qui suppleant suo loco quoad praedicationes, visitationes et confessionum auditiones; et ut possint episcopi reperire tales, praecipit in ecclesiis cathedralibus et collegiatis tales institui.
>
> Idem in eodem.
>
> Inter cetera, quae ad salutem spectant populi Christiani, pabulum verbi Dei permaxime sibi noscitur esse necessarium, quia, sicut corpus materiali, sic anima spirituali cibo nutritur, eo, quod non in solo pane vivit homo, sed in omni verbo, quod procedit de ore Dei. Unde, quum saepe contingat, quod episcopi propter suas occupationes multiplices, vel invaletudines corporales, aut hostiles incursus, seu occasiones alias, ne dicamus defectum scientiae, quod in eis reprobandum est omnino, nec de cetero tolerandum, per se ipsos non sufficiunt ministrare populo verbum Dei, maxime per amplas dioeceses et diffusas: generali constitutione sancimus, ut episcopi viros idoneos ad sanctae praedicationis officium salubriter exsequendum assumant, potentes in opere et sermone, qui plebes sibi commissas vice ipsorum, quum per se iidem nequiverint, sollicite visitantes, eas verbo aedificent et exemplo, quibus ipsi, quum indiguerint, congrue necessaria subministrent, ne pro necessariorum defectu compellantur desistere ab incepto. Unde praecipimus, tam in cathedralibus quam in aliis conventualibus ecclesiis viros idoneos ordinari, quos episcopi possint coadiutores et cooperatores habere, non solum in praedicationis officio, verum etiam in audiendis confessionibus et poenitentiis iniungendis, ac ceteris, quae ad salutem pertinent animarum. Si quis autem hoc adimplere neglexerit, districtae subiaceat ultioni.

Chapter XVI

Latin source headnote: A bishop ought to be content with episcopal rights in the churches of his diocese, and it declares what the episcopal rights are.

Honorius III, to the Bishop of Assisi.

By the complaint of the steward of the monastery of Saint Benedict of Mount Subasio it became known to us that you, not content with the episcopal rights that you ought to have in the churches or chapels of that monastery, exact procuration from certain of them, which, he proposed, were by no means sufficient to furnish procuration. He sought that, being content with your right, you desist from molestation of the said churches concerning the other matters, seeking also, for cutting away every material for litigation in the future, that you specify what things belong to you in them by reason of episcopal right. After certain of these episcopal rights had been specified, issue was lawfully joined on each side concerning the aforesaid matters.

But we, having inspected the proofs received on both sides and more fully understood the matters proposed by each party, decreed that in the churches or chapels of your diocese pertaining to that monastery you are to have canonical obedience, subjection, and reverence; institution and destitution; correction and reformation; ecclesiastical censure; jurisdiction also over all causes that by law pertain to the ecclesiastical forum; penances and conferral of all sacraments that are to be received from a bishop; a synod; two solidi of Lucchese money in the name of synodaticum or cathedraticum; a fourth of tithes and mortuary dues; and also annual visitation—in such a way that, when you approach to visit them, you exact from them in the name of procuration no more than, after their resources have been weighed, they can moderately furnish, lest they be burdened in any way in procurations beyond the other chapels of the same diocese. And we entirely relieve the church of Saint Paul of Assisi from the burden of procuration.

But you, being content with these rights in the aforesaid churches, are to exact no more from them beyond moderate aid, which, according to the form of the Lateran Council, if a manifest and reasonable cause exists, is to be sought with charity, just as we sustain it from the other churches of the same diocese for the necessity of the time.

> Episcopus in ecclesiis dioecesis suae debet esse contentus iuribus episcopalibus, et quae sint iura episcopalia declarat.
>
> Honorius III. Episcopo Assisinatino.
>
> Conquerente oeconomo monasterii sancti Benedicti montis Subasii nobis innotuit, quod tu iuribus episcopalibus non contentus, quae in ecclesiis seu capellis eiusdem monasterii debes habere, a quibusdam earum procurationem exigis, quas ad dandam procurationem minime sufficere proponebat, petens, ut iure tuo contentus exsistens a molestatione dictarum ecclesiarum super ceteris desisteres, postulans etiam ad omnem litis materiam in posterum amputandam, ut specificares, quae tibi ratione iuris episcopalis competerent in eisdem, quorum quibusdam iuribus episcopalibus specificatis hinc inde lis fuit super praemissis legitime contestata. Nos autem, inspectis probationibus utrinque receptis, et quae ab utraque parte fuere proposita plenius intellectis, decrevimus, ut in ecclesiis seu capellis tuae dioecesis, ad monasterium ipsum spectantibus, habeas canonicam obedientiam, subiectionem et reverentiam, institutionem et destitutionem, correctionem et reformationem, ac censuram ecclesiasticam, iurisdictionem quoque causarum omnium ad forum ecclesiasticum de iure spectantium, poenitentias et sacramentorum omnium, quae ab episcopo sunt recipienda, collationem, synodum et synodatici seu cathedratici nomine duos solidos Lucensis monetae, quartam decimationum et mortuariorum, visitationem quoque annuam, ita, quod, quum ad eas visitandas accesseris, non amplius procurationis nomine requiras ab eis, nisi quantum, pensatis facultatibus earundem, moderate poterunt exhibere, ne plus ceteris capellis eiusdem dioecesis in procurationibus ullatenus onerentur, et ecclesiam

S. Pauli de Assisia a procurationis onere penitus relevamus. Tu autem his iuribus in praefatis ecclesiis contentus exsistens, non amplius ab eis exigas praeter moderatum auxilium, quod iuxta formam Lateranensis concilii, si manifesta et rationabilis causa exstiterit, cum caritate postulandum, sicut ab aliis ecclesiis eiusdem dioecesis pro necessitate temporis sustinemus.

Chapter XVII

Latin source headnote: A bishop visiting a monastery is not to introduce secular persons, but two or three of his canons together with certain religious persons.

The same, to the Abbot and Convent of Saint Remigius.

So that, according to the edict of that supreme shepherd after Christ, a shepherd is known to have been made a pattern of the flock from the heart, he ought beneficially to visit it not from lust for domination but from love of ruling rightly, so reproving the excesses of delinquents insofar as he can that he does not reveal them, so rebuking that he does not confound them; because, since according to the wise man's edict a friend is to be reproved in secret, he appears to violate the law of friendship if, to the contrary, he reproaches him publicly with upbraiding.

Therefore, considering that it is indecent for secular persons to be present when our venerable brother the Archbishop of Reims exercises the office of visitation in your monastery—persons through whom material for dissipation could arise in the cloister, since they are by no means well introduced among cloistered persons—by authority of these presents we firmly prohibit him hereafter from introducing any secular persons with him into the chapter during the time of visitation, except two or three canons of his church in decent habit, with other men, religious persons whom he sees to be expedient, joined to them.

Episcopus visitans monasterium non introducat saeculares, sed duos aut tres canonicos suos cum aliquibus religiosis.

Idem Abbati et Conventui sancti Remigii.

Ut iuxta illius supremi post Christum pastoris edictum pastor forma factus gregis ex animo dignoscitur, non dominandi libidine, sed amore recte regendi debet illum salubriter visitare, sic excessus delinquentium quantum potest corripiens, ne revelet, sic increpans, ne confundat: quia, quum iuxta sapientis edictum secreto sit arguendus amicus, amicitiae legem violare videtur, si econtra palam arguat exprobrando. Attendentes igitur, quod indecens est, ut venerabili fratri nostro Remensi archiepiscopo in monasterio vestro visitationis officium exercente saeculares intersint, per quos possit in claustro dissolutionis materia provenire, quum nequaquam bene in claustralibus inducantur: auctoritate praesentium firmiter inhibemus, ut nullos de cetero saeculares in capitulum, nisi duos vel tres de canonicis ecclesiae suae in decenti habitu, viris aliis, quos expedire viderit, religiosis adiunctis, secum visitationis tempore introducat.

Chapter XVIII

Latin source headnote: Diocesan law and the law of jurisdiction are distinct; hence, a matter adjudged under one does not stand in the way of one acting under the other.

The same, to the Bishop of Bayeux and the Archdeacon of Rouen.

Our beloved son the abbot of the monastery of Rothomagensis in the diocese of Vannes explained before us that a third part of the amercements that the men of five parishes assigned to the uses of

his convent are compelled to pay for their excesses has pertained to his monastery from antiquity; and that, when an ecclesiastical question has arisen among those men, citation pertains to the same abbot, while examination and decision of the question pertain in common to our venerable brother the Bishop of Vannes and the abbot himself.

And when Pope Innocent of happy memory, our predecessor, after the same abbot complained that the aforesaid bishop was troubling him concerning this, gave you a mandate with the parties' assent that, after summoning the parties and hearing the matters proposed on each side, you remit the cause to him sufficiently instructed, the said bishop impeded your proceeding for a rather long time on occasion of a certain sentence rendered for him concerning certain churches with respect to diocesan law. Hence the aforesaid abbot humbly entreated us that, since citation, examination and decision of causes, and amercements are known to pertain to the law of jurisdiction, we not permit the proceeding of the business to be further impeded under pretext of the aforementioned sentence. Therefore, since the aforesaid matters belong to the law of jurisdiction, we command your discretion that, notwithstanding a sentence of this kind, you proceed in the business itself according to the form handed down to you.

> Lex dioecesana et lex iurisdictionis sunt diversae, unde res iudicata in una non obstat agenti in alia.
>
> Idem Episcopo Baiocensi et Archidiacono Rothomagensi.
>
> Dilectus filius abbas monasterii Rothomagensis Venetensis dioecesis coram nobis exposuit, quod tertia pars emendarum, quas homines quinque parochiarum, quae sui conventus sunt usibus deputatae, pro suis excessibus solvere compelluntur, ad suum spectat monasterium ab antiquo, et quod inter ipsos homines orta ecclesiastica quaestione citatio ad eundem, sed examinatio et decisio quaestionis ad venerabilem fratrem nostrum Venetensem episcopum et ipsum abbatem pertinent in communi. Quumque felicis memoriae Innocentius Papa praedecessor noster, conquerente ipso abbate, quod praefatus episcopus super hoc inquietabat eundem, vobis de assensu partium dederit in mandatis, ut, vocatis partibus et auditis hinc inde propositis, causam remitteretis ad eum sufficienter instructam, dictus episcopus processum vestrum diutius impedivit occasione cuiusdam sententiae, quae super quibusdam ecclesiis quoad legem dioecesanam promulgata exstitit pro eodem. Unde praefatus abbas nobis humiliter supplicavit, ut quum citatio, causarum examinatio et decisio, ac emendae ad legem iurisdictionis pertinere noscantur, non sineremus sententiae memoratae praetextu negotii processum ulterius impediri. Quum igitur praedicta de lege iurisdictionis exsistant, discretioni vestrae mandamus, quatenus huiusmodi sententia non obstante procedatis in negotio ipso iuxta traditam vobis formam.

Chapter XIX

Latin source headnote: Through a rescript by which the Pope commands an ordinary to correct the clerics of his diocese, jurisdiction over exempt persons is not given to him.

Gregory IX, to the Bishop of Sovana.

We consider it grave [and unworthy] that, although you have no ordinary or even delegated jurisdiction over the church of Saint Mary of Orbetello and certain other churches existing in your diocese and pertaining to the monastery of Saint Anastasius in the City, on occasion of our letters that we transmitted to you concerning correction of clerics, you promulgated sentences of interdict against those churches and of suspension against their clerics, although the abbot of the same monastery is prepared to correct them, [as pertains to him; but because we ought the less to sustain injuries to that monastery insofar as, specially pertaining to us, it regards us after God as its principal

helpers, then by apostolic writings firmly commanding your fraternity] we command that, if it is so, prudently correcting personally the things that you less than providently attempted, you relax the aforesaid sentences [within eight days after receipt of these presents] without [any] difficulty. [Otherwise, by our letters we give a mandate to our beloved sons the Abbots of Saint Justus and Albaren., and the Archpriest of Saint John of Montalto, of the dioceses of Tuscania, Sovana, and Castro, that from then on they take care to relax the same sentences by our authority.]

Textual note: The web transcription's *Suanensis est Castrensis* has been corrected to *Suanensis et Castrensis*; the three adjectival place-names modify *dioecesis* distributively.

> Per rescriptum, quo Papa mandat ordinario, ut corrigat clericos suae dioecesis, non datur ei iurisdictio super exemptos.
>
> Gregorius IX. Episcopo Suanensi.
>
> Grave gerimus [et indignum], quod quum in ecclesiam sanctae Mariae de Orbitello, et quasdam alias ecclesias in tua dioecesi exsistentes, ad monasterium sancti Anastasii de Urbe spectantes, nullam iurisdictionem habeas ordinariam aut etiam delegatam, occasione literarum nostrarum, quas super correctione clericorum tibi transmisimus, in eas interdicti, ac in clericos earundem suspensionis sententias promulgasti, quanquam abbas eiusdem monasterii eos corrigere sit paratus, [prout pertinet ad eundem; quia vero eo minus debemus iniurias ipsius monasterii sustinere, quo specialiter ad nos spectans, nos post Deum operat praecipuos adiutores, fraternitati tunc per apostolica scripta firmiter praecipiendo] Mandamus, quatenus, si est ita, prudenter corrigens per te ipsum quae minus provide attentasti, praedictas sententias [infra octo dies post susceptionem praesentium] sine [qualibet] difficultate relaxes [Alioquin dilectis filiis s. Iusti et Albaren. Abbatibus et archipresbytero S. Ioannis Montis alti Tuscanensis, Suanensis et Castrensis dioecesis nostris damus literis in mandatis ut ipsi ex tunc easdem sententias auctoritate nostra studeant relaxare].

Chapter XX

Latin source headnote: An ordinary who has power to absolve from excommunication can entrust absolution to others.

The same.

It is lawful for those to whom, by virtue of office in certain cases, it pertains to absolve persons who fall under the canon of the promulgated sentence for violent laying on of hands to commit absolution of this kind to others when they see it to be expedient.

> Ordinarius, cui competit absolvere ab excommunicatione, potest aliis absolutionem demandare.
>
> Idem.
>
> His, quibus ex officio in certis casibus competit illos absolvere qui pro violenta manuum iniectione incidunt in canonem sententiae promulgatae, licet aliis huiusmodi absolutionem committere, quum viderint expedire.

Title XXXII: On the Office of a Judge

Chapter I

Latin source headnote: It pertains to the office even of a delegated judge to provide an advocate for a party that cannot have one; and he will be able to appoint a member of his household.

Honorius III, to the Archbishop of Saint Leonard and the Abbot of Salerno.

We learned from your letters that, when we decided to commit to you the cause disputed concerning certain possessions of the monastery of Saint Peter of Amalfi between our beloved sons the Abbot and Convent of Fossanova on one side and the Abbot and Convent of the monastery of Cava in the diocese of Salerno on the other—possessions that brother Sylvester of good memory, a monk of Fossanova, when he had visited the same monastery of Saint Peter, sold to the same Abbot and Convent of Cava to the prejudice and grievance of that monastery of Saint Peter—after the parties had been established in your presence, the party of the aforesaid monastery of Saint Peter proposed that it could not have anyone from the city of Salerno as advocate and implored your office concerning this. You, brother archbishop, provided for it Master R. Capuda, Treasurer of Acqui and your cleric, to furnish protection in that cause. But Brother Stephen, Prior of Saint Mary de Dompno, a monk of Cava, proposed for his monastery that this had been done to its prejudice because the said R. was your cleric and member of your household.

We, therefore, being unwilling that decision of the business be impeded by frivolous exceptions, decided to remit the cause itself to you. By apostolic writings we command that, notwithstanding this, granting them the aforesaid advocate, you are to proceed in the business itself, with the obstacle of appeal removed, without the loss of delay, reason leading the way, according to the contents of the former letters. And because the Abbot and Convent of Cava are said maliciously to conceal the instruments of the monastery of Saint Peter that the said S. delivered to them at the time of that sale, after prior admonition you are to compel them by ecclesiastical censure, as shall be just and with appeal set aside, to exhibit them to you.

> **DE OFFICIO IUDICIS.**
>
> Ad officium iudicis etiam delegati spectat providere advocatum parti, quae non potest habere; et poterit dare domesticum.
>
> Honorius III. Archiepiscopo sancti Leonardi et Abbati Salernitano.
>
> Ex literis vestris accepimus, quod, quum causam, quae inter dilectos filios abbatem et conventum Fossae novae ex parte una, et abbatem et conventum monasterii Cavensis Salernitanae dioecesis ex altera super quibusdam possessionibus monasterii sancti Petri de Almaphia vertebatur, quas bonae memoriae frater Silvester monachus Fossae novae, quum idem S. Petri monasterium visitasset, eisdem abbati et conventui Cavensi vendidit in eiusdem monasterii S. Petri praeiudicium et gravamen, vobis duximus committendam, quia partibus in vestra praesentia constitutis pars praedicti monasterii S. Petri proposuit, quod aliquem de civitate Salernitana habere non poterat advocatum, vestrum super hoc implorando officium, tu, frater archiepiscope, eidem de magistro R. Capuda, Aquensi thesaurario, clerico tuo, ad exhibendum in causa ipsa patrocinium providisti. Verum frater Stephanus prior S. Mariae de Dompno Cavensis monachus pro monasterio suo proposuit, in praeiudicium eiusdem monasterii factum esse eo, quod dictus R. clericus et domesticus tuus erat. Nos igitur decisionem negotii nolentes frivolis exceptionibus impediri, causam ipsam ad vos duximus remittendam; per apostolica vobis scripta Mandamus, quatenus, hoc non obstante, eisdem concedentes advocatum praedictum et, in negotio ipso, sublato appellationis obstaculo, sine morae dispendio ratione praevia procedatis iuxta priorum continentiam literarum et quoniam instrumenta S. Petri monasterii quae ipsis dictus S. venditionis eiusdem tempore tradidit abbas et conventus Cavensis malitiose occultare dicuntur, ipsos ut ea vobis exhibeant monitione praemissa per censuram ecclesiasticam sicut iustum fuerit, appellatione postposita compellatis.

Chapter II

Latin source headnote: When the noble office of the judge is invoked, joinder of issue occurs; it is otherwise with the mercenary office.

Gregory IX.

The office of a judge, wherever it is proposed in place of an action—as when restitution *in integrum* is principally sought—requires joinder of issue; in other cases, recourse can be had to it without joinder of issue before and after entry into the cause.

> Quum imploratur officium nobile, fit litis contestatio; secus in mercenario.
>
> Gregorius IX.
>
> Iudicis officium, ubicunque pro actione proponitur, veluti quum restitutio in integrum principaliter postulatur, litis contestationem exposcit; alias ante et post ingressum causae potest ad hoc sine litis contestatione haberi recursus.

Title XXXIII: On Superiority and Obedience

Chapter I

Latin source headnote: The one ordained first, other things being equal, is to be held first and greater.

Gregory, to Augustine, Bishop of the English.

Since it is certain [that ineffable rewards of the eternal kingdom are reserved for those laboring for almighty God, it is nevertheless necessary for us to bestow upon them benefits of good things, so that from remuneration they may be able to labor more abundantly in zeal for spiritual work. And because the new church of the English, by the Lord's bestowal and your labor, has been brought to the grace of almighty God, we grant you in it the use of the pallium solely for conducting the solemnities of Mass, in such a way that you ordain twelve bishops throughout the individual places, who are to be subject to your rule, so that hereafter the bishop of the city of London ought always to be consecrated by his own synod and receive the pallium of honor from this holy and apostolic see, in which, with God as author, I serve.

But we wish you to send to the city of York a bishop whom you yourself shall judge ought to be ordained, in such a way that, if that city together with the neighboring places receives the word of God, he also is to ordain twelve bishops, so that he may enjoy metropolitan honor; for, if life accompanies him, with the Lord's favor we also arrange to bestow the pallium upon him. We nevertheless wish him to lie under the disposition of your fraternity. But after your death, he is so to preside over the bishops whom he shall ordain that he is in no way subject to the rule of the Bishop of London.]

But hereafter let this be the distinction of honor between the bishops of the cities of London and York: that one is to be held first and greater who was first ordained by the counsel of the community and harmonious action. [But your, etc. Given on the tenth day before the Kalends of July, in the nineteenth year of the reign of our lord the most pious Augustus Maurice Tiberius, the eighteenth year after the consulship of the same lord, the fourth indiction, 601.]

DE MAIORITATE ET OBEDIENTIA.

Prius ordinatus, ceteris paribus, prior et maior habendus est.

Gregorius Augustino Anglorum Episcopo.

Quum certum [sit, pro omnipotenti Deo laborantibus ineffabilia aeterni regni praemia reservari, nobis tamen eis necesse est bonorum beneficia tribuere, ut in spiritualis operis studio ex remuneratione valeant multiplicius insudare. Et quia nova Anglorum ecclesia ad omnipotentis Dei gratiam eodem Domino largiente et te laborante perducta est, usum tibi pallii in ea ad sola missarum solennia agenda concedimus ita, ut per loca singula duodecim episcopos ordines, qui tuae ditioni subiaceant, quatenus Londoniensis civitatis episcopus semper in posterum a synodo propria debeat consecrari, atque honoris pallium ab hac sancta et apostolica, cui auctore Deo inservio, sede percipiat. Ad Eboracam vero civitatem te volumus episcopum mittere, quem ipse iudicaveris ordinandum, ita, ut si eadem civitas cum finitimis locis verbum Dei receperit, ipse quoque duodecim episcopos ordinet, ut metropolitani honore perfruatur, quia ei quoque, si vita comes fuerit, pallium tribuere Domino favente disponimus; quem tamen tuae fraternitatis volumus dispositioni subiacere. Post obitum vero tuum ita episcopis, quos ordinaverit, praesit, ut Londoniensis episcopi nullo modo ditioni subiaceat.] Sit vero inter Londoniae et Eboracae civitatis episcopos in posterum honoris ista distinctio, ut ipse prior et maior habeatur, qui prius communitatis consilio et concordi fuerit actione ordinatus. [Tua vero etc. Dat. die X. Kal. Iul., imperante domino nostro Mauricio Tiberio piissimo Augusto Ao. XIX. post consulatum eiusdem domini Ao. XVIII., Ind. IV. 601.]

Chapter II

Latin source headnote: One who comes against the decree or constitution of a bishop ought to be excommunicated.

The same.

If anyone should come against a bishop's decree, let him be cast out from the Church. In the Book of Kings it is read: “He who does not obey the prince shall die by death.” And in the Council of Agde, that he is to be anathematized.

Veniens contra decretum vel constitutionem episcopi debet excommunicari.

Idem.

Si quis venerit contra decretum episcopi, ab ecclesia abiiciatur. In libro Regum legitur: "Qui non obedierit principi, morte moriatur." Et in concilio Agathensi, quod anathematizetur.

Chapter III

Latin source headnote: A cleric lacking administration is not bound to an oath of obedience or to make a writing concerning it.

Pope Leo.

It was [also] read in your letters, [which the same deacons brought,] that brother Atticus [had come to Thessalonica, and that he had also signified his consent by a written profession, so that nothing else could be understood by us concerning him than that what he came to do was of his own choice and spontaneous devotion, and that] he had composed a little charter concerning the pledge of obedience, in which a sign of injury was disclosed. For it had not been necessary that one be bound

by writing who was already proving his obedience by the very duty of his voluntary coming. [Hence with lamentations, etc.]

> Clericus administratione carens non tenetur ad iuramentum obedientiae, vel ad faciendam scripturam super ea.
>
> Leo Papa.
>
> Legebatur [quoque] in literis tuis, [quas iidem diaconi detulerunt,] quod frater Atticus [Thessalonicam venisset, quodque consensum suum etiam scripturae professione signasset, ut de illo non aliud a nobis posset intelligi, quam proprii arbitrii et spontaneae devotionis fuisse, quod venerat, quodque] chartulam de obedientiae sponsione conscripserat, in qua signum prodebatur iniuriae. Non enim necessarium fuerat, ut obligaretur scripto, qui obedientiam suam ipso iam voluntarii adventus officio comprobabat. [Unde deplorationibus etc.]

Chapter IV

Latin source headnote: Everyone from a diocese is to obey the bishop.

Pope Clement III.

Blessed Peter commanded all princes of the earth and other men to obey bishops, [to submit their heads, and to exist as their helpers,] [so that all, etc.]

> Ab omnibus de dioecesi obediendum est episcopo.
>
> Clemens Papa III.
>
> Omnes principes terrae et ceteros homines episcopis obedire, [et capita sua submittere, eorumque adiutores exsistere,] beatus Petrus praecipiebat, [ut omnes etc.]

Chapter V

Latin source headnote: One who does not obey canonical statutes incurs the mark of disobedience, that is, infamy.

Innocent III, to the Chapter of Würzburg.

That which the Lord in blessed Peter—(*And below:* [cf. c. 5, On an Excommunicated Cleric, V. 27.])—but he asserted that he had held the fortifications and fortified towns of the church of Würzburg for its utility, lest, if they had perhaps come into alien hands, there would afterwards be no one to liberate them. But since spiritual things are more worthy than temporal things, and obedience is better than sacrifice, and to hearken more than to offer the fat of rams, the Bishop of Hildesheim ought not, for the temporal advantage of the church of Würzburg, to have incurred the mark of disobedience and contradicted apostolic commands. [On the fifth day before the Ides of April, in the second year, 1200.]

> Non obediens canonicis institutis incurrit inobedientiae notam, id est infamiam.
>
> Innocentius III. Capitulo Herbipolensi.
>
> Illud Dominus in beato Petro (Et infra: [cf. c. 5. de cler. exc. V. 27.]) Munitiones autem et oppida Herbipolensis ecclesiae in utilitatem ipsius se asseruit tenuisse, ne, si ad alienas manus forsitan devenissent, non esset qui ea postmodum liberaret. Sed Quum spiritualia sint temporalibus digniora, et obedientia melior sit quam victima, et auscultare magis quam adipem arietum offerre, non debuerat

Hildesemensis episcopus pro temporali commodo Herbipolensis ecclesiae inobedientiae notam incurrere, et, apostolicis iussionibus contraire. [V. Id. April. ao. II. 1200.]

Chapter VI

Latin source headnote: The empire does not preside over the priesthood, but is subject to it and is bound to obey it. Or thus: a bishop ought not to be subject to princes, but to preside over them. This is what it says, and it is much capable of being alleged.

The same, to the Most Illustrious Emperor of Constantinople.

With the affection of accustomed kindness we received the letters that the imperial excellence sent to us through our beloved son the Archdeacon of Dyrrachium, a provident and faithful man. Through them we understood that the letters that we transmitted to you through our beloved son I., our chaplain and at that time legate of the Apostolic See, had been presented to your empire and read through.

§ 1. But the imperial sublimity marveled, as you conveyed to us through the same letters, that in our letters we endeavored to rebuke you somewhat, although we remember that what we wrote was written not with a mind to rebuke but rather with the affection of admonishing. But the occasion, not the cause, for this wonder of yours was furnished, as we gathered from the same letters, by your reading that blessed Peter, prince of the Apostles, wrote thus: "Be subject to every human creature for God's sake, whether to the king as preeminent, or to governors as sent by him for the vengeance of malefactors, but the praise of the good."

For the imperial loftiness, wishing through these and other things that it introduced to prefer the empire to the priesthood in dignity and power—concerning which we wonder more reasonably—wished to draw a threefold argument from the aforesaid authority: the first from what is read, "be subject"; the second from what follows, "to the king as preeminent"; the third from what is subsequently added, "for the vengeance of malefactors, but the praise of the good." From the first it presumed that the priesthood is subject; from the second, that the empire is preeminent; from the third, that the emperor received jurisdiction over priests as well as laymen, or indeed even the power of the sword. For since certain priests are good and certain of them exist as malefactors, the one who, according to the Apostle, bears the sword for the vengeance of malefactors but the praise of the good can avenge presumed excesses against offending priests with the avenging sword, since the Apostle does not distinguish between priests and others.

§ 2. But if you had more diligently attended both to the person speaking, those to whom he spoke, and the force of the utterance, you would not thus have expressed the writer's meaning. For the Apostle was writing to his subjects and urging them to the merit of humility. For if, through what he said—"be subject"—he wished to impose the yoke of subjection upon priests and confer the authority of prelacy upon those to whom he admonished them to be subject, it would follow from this that any slave had also received command over priests, since it is said, "to every human creature."

But what follows, "to the king as preeminent," we do not deny that the emperor excels in temporal things only those who receive temporal things from him. But the Pontiff excels in spiritual things, which are more worthy than temporal things by as much as the soul is preferred to the body. Nor was

it said simply, “be subject,” but “for God's sake” was added; nor was it written without qualification, “to the preeminent king,” but “as” was interposed, perhaps not without cause. But what follows, “for the vengeance of malefactors, but the praise of the good,” is not to be understood as meaning that the king or emperor received the power of the sword over all, both good and evil, but only over those who, using the sword, are committed to his jurisdiction, according to what the Truth says: “All who take the sword shall perish by the sword.” For no one can or ought to judge another's servant, since, according to the Apostle, a servant stands or falls to his own lord.

For this you also introduced that, although Moses and Aaron were brothers according to the flesh, nevertheless Moses, prince of the people, presided over Aaron by the power of the priesthood, and Jesus his successor received command over priests. King David also was preeminent over the pontiff Abiathar. But although Moses was leader of the people, he was also a priest: he anointed Aaron as priest, and the Prophet, recognizing the priesthood in him, says: “Moses and Aaron among his priests.” But what you wrote concerning Jesus—that is, Joshua—for commending his prelacy ought to be understood more according to the spirit than the letter, because, according to the Apostle, the letter kills but the spirit gives life, for the reason that he expressed the figure of the true Jesus, who led his people into the land of promise. David also, although he held the royal diadem, commanded the priest Abiathar not so much by royal dignity as by prophetic authority. But whatever may once have been the case in the Old Testament, now it is otherwise in the New, since Christ was made a priest forever according to the order of Melchizedek. He offered himself to God the Father as a victim upon the altar of the cross not as king but as priest, through which he redeemed the human race, especially with respect to the one who is successor of the Apostle Peter and vicar of Jesus Christ.

§ 3. But you could rather have understood the prerogative of the priesthood from what was said: not by anyone, but by God; not to a king, but to a priest; not to one descending from royal stock, but from priestly lineage—namely, concerning the priests who were in Anathoth: “Behold, I have established you over nations and kingdoms, that you may uproot and destroy, build and plant.” It was also said in the divine law: “You shall not disparage gods, and you shall not curse the prince of your people,” which law, placing priests before kings, called the former gods and the latter princes.

§ 4. Furthermore, you ought to have known that God made two great lights in the firmament of heaven: the greater light to preside over the day and the lesser light to preside over the night; each great, but one greater. For by the name of heaven the Church is designated, according to what the Truth says: “The kingdom of heaven is like a man who was the father of a household, who in the early morning hired workers into his vineyard.” But by day the spiritual is understood and by night the carnal, according to the prophetic testimony: “Day pours out the word to day, and night announces knowledge to night.” Therefore, for the firmament of heaven—that is, of the universal Church—God made two great lights, that is, he instituted two great dignities, which are pontifical authority and royal power. But the one that presides over days, that is, spiritual things, is greater; the one that presides over [nights, that is,] carnal things is lesser, so that the difference between pontiffs and kings may be known to be as great as that between the sun and moon.

But if the imperial loftiness prudently attended to these things, it would not cause or permit our venerable brother the Patriarch of Constantinople—a great and honorable member of the Church—to sit at the footstool of its feet on the left side, when other kings and princes, as they ought, reverently rise for their archbishops and bishops and assign them an honorable seat beside themselves. For we

believe that your discretion is not ignorant of how much honor the most pious Constantine showed to priests.

§ 5. But although we wrote not by way of rebuke, we could nevertheless reasonably have rebuked, since blessed Paul the Apostle, instructing a bishop, is read to have written to Timothy: “Preach the word; be urgent in season, out of season; reprove, entreat, rebuke in all patience and doctrine.” For our mouth ought not to be bound, but ought to be open to all, lest according to the prophetic word we be mute dogs unable to bark. Hence our correction ought not to have been troublesome to you, but rather acceptable, because a father corrects the son whom he loves, and God reproves and chastises those whom he loves. Therefore, we execute the debt of the pastoral office when we entreat, reprove, and rebuke, and endeavor to induce not only others but emperors and kings, in season and out of season, to those things that are pleasing to the divine will.

§ 6. But the sheep of Christ are committed to us in blessed Peter, the Lord saying, “Feed my sheep,” not distinguishing between these sheep and others, so that he showed that one who did not recognize Peter and his successors as teachers and shepherds was alien to his sheepfold. Let us omit as most well known that which the Lord said to Peter, and in Peter said to his successors: “Whatever you bind upon earth shall be bound also in the heavens, etc.,” excepting nothing, since he said, “whatever.”

But we are unwilling to dwell longer upon these things, lest we appear either to contend or to delight in matters of this kind, since, if it is expedient to glory, one ought to glory not in honor but in burden, not in greatness but rather in solicitude, since the Apostle also glories in infirmities. We know that it is written: “Everyone who exalts himself shall be humbled, and he who humbles himself shall be exalted”; and again: “The greater you are, humble yourself in all things”; and elsewhere: “God resists the proud but gives grace to the humble.” On this account we place our exaltation in humility and reckon our humility our greatest exaltation. Hence we also write and confess that we are servants not only of God but also of the servants of God, and according to the Apostle we are debtors to the wise as well as the unwise.

§ 7. But whether we decided through our letters to invite the imperial excellence to what is good and useful, whether we suggested to you just and honorable things, let your solicitude discern, since we remember inviting you only to aid directed to the utility of the Church and land of Jerusalem. [Therefore may he inspire, etc.]

> Imperium non praeest sacerdotio, sed subest, et ei obedire tenetur. Vel sic: Episcopus non debet subesse principibus, sed praeesse. H. d. et est multum allegabile.
>
> Idem illustrissimo Constantinopolitano Imperatori.
>
> Solitae benignitatis affectu recepimus literas, quas per dilectum filium archidiaconum Durachii, virum providum et fidelem, imperialis nobis excellentia destinavit, per quas intelleximus, quod literae, quas per dilectum filium I. capellanum nostrum, tunc apostolicae sedis legatum, tibi transmisimus, imperio tuo praesentatae fuerant et perlectae. § 1. Mirata est autem imperialis sublimitas, sicut per easdem nobis literas destinasti, quod te nisi fuimus in nostris literis aliquantulum increpare, licet non increpandi animo, sed affectu potius commonendi quod scripsimus meminerimus nos scripsisse. Huic autem tuae admirationi non causam, sed occasionem praebuit, sicut ex eisdem coniecimus literis, quod legisti, beatum Petrum Apostolorum principem sic scripsisse: "Subditi estote omni humanae creaturae propter Deum, sive regi, tanquam praecellenti, sive ducibus, tanquam ab eo missis, ad vindictam

malefactorum, laudem vero bonorum." Volens enim, de quo nos rationabilius admiramur, imperatoria celsitudo per haec et alia, quae induxit, imperium sacerdotio dignitate ac potestate praeferre, ex auctoritate praemissa triplex trahere voluit argumentum, primum ex eo, quod legitur: "subditi estote;" secundum ex eo, quod sequitur: "regi tanquam praecellenti;" tertium ex eo, quod est adiectum subsequenter: "ad vindictam malefactorum, laudem vero bonorum;" per primum subesse sacerdotium, per secundum imperium praeeminere, per tertium imperatorem tam in sacerdotes quam laicos iurisdictionem, immo etiam gladii potestatem accepisse praesumens. Quum enim et boni quidam sint sacerdotes, et quidam eorum malefactores exsistant, is, qui secundum Apostolum gladium portat ad vindictam malefactorum, laudem vero bonorum, in malefacientes presbyteros excessus praesumptos potest ultore gladio vindicare, quum inter presbyteros et alios Apostolus non distinguat. § 2. Verum si et personam loquentis, et eorum, ad quos loquebatur, ac vim locutionis diligentius attendisses, scribentis non expressisses taliter intellectum. Scribebat enim Apostolus subditis suis, et eos ad humilitatis meritum provocabat. Nam si per hoc, quod dixit: "subditi estote," sacerdotibus voluit imponere iugum subiectionis, et eis praelationis auctoritatem afferre, quibus eos subiectos esse monebat, sequeretur ex hoc, quod etiam servus quilibet in sacerdotes imperium accepisset, quum dicatur: "omni humanae creaturae." Quod autem sequitur, "regi tanquam praecellenti," non negamus, quin praecellat imperator in temporalibus illos duntaxat, qui ab eo suscipiunt temporalia. Sed Pontifex in spiritualibus antecellit, quae tanto sunt temporalibus digniora, quanto anima praefertur corpori, licet non simpliciter dictum fuerit: "subditi estote," sed additum fuerit: "propter Deum," nec pure sit subscriptum: "regi praecellenti," sed interpositum forsitan fuit non sine causa, "tanquam." Quod autem sequitur: "ad vindictam malefactorum, laudem vero bonorum," intelligendum non est, quod rex vel imperator super omnes et bonos et malos gladii acceperit potestatem, sed in eos solummodo, qui utentes gladio eius sunt iurisdictioni commissi, iuxta quod Veritas ait: "Omnes, qui acceperint gladium, gladio peribunt." Non enim potest aut debet quisquam servum alterius iudicare, quum servus domino suo secundum Apostolum stet aut cadat. Ad id etiam induxisti, quod, licet Moyses et Aaron secundum carnem fratres exstiterint, Moyses tamen princeps populi, et Aaron sacerdotii potestate praeerat, et Iesus successor ipsius imperium in sacerdotes accepit. David quoque rex Abiathar pontifici praeeminebat. Ceterum licet Moyses dux populi fuerit, fuit etiam et sacerdos, qui Aaron in sacerdotem unxit, et cui Propheta sacerdotium recognoscens: "Moyses" inquit "et Aaron in sacerdotibus eius." Quod vero de Iesu, id est Iosue, ad commendandam praelationem eius scripsisti, magis secundum spiritum, quam literam debet intelligi, quia secundum Apostolum litera occidit, spiritus autem vivificat, pro eo, quod ipse veri Iesu figuram expressit, qui populum suum in terram promissionis induxit. David etiam quamvis diadema regium obtineret, Abiathar sacerdoti non tam ex dignitate regia, quam auctoritate prophetica imperabat. Verum quicquid olim fuerit in veteri testamento, nunc aliud est in novo, ex quo Christus factus est sacerdos in aeternum secundum ordinem Melchisedech, qui se non ut rex, sed ut sacerdos in ara crucis hostiam obtulit Deo Patri, per quam genus redemit humanum, circa illum praecipue, qui successor est Apostoli Petri et vicarius Iesu Christi. § 3. Potuisses autem praerogativam sacerdotii ex eo potius intelligere, quod dictum est: non a quolibet, sed a Deo; non regi, sed sacerdoti; non de regia stirpe, sed de sacerdotali prosapia descendenti, de sacerdotibus videlicet, qui erant in Anathot: "Ecce constitui te super gentes et regna, ut evellas et dissipes, aedifices et plantes" Dictum est etiam in divina lege: "Diis non detrahes, et principem populi tui non maledices" quae sacerdotes regibus anteponens istos Deos et alios principes appellavit. § 4. Praeterea nosse debueras, quod fecit Deus duo magna luminaria in firmamento coeli; luminare maius, ut praeesset diei, et luminare minus, ut praeesset nocti; utrumque magnum, sed alterum maius, quia nomine coeli designatur ecclesia, iuxta quod Veritas ait: "Simile est regnum coelorum homini patri familias, qui summo mane conduxit operarios in vineam suam." Per diem vero spiritualis accipitur, per noctem carnalis secundum propheticum testimonium: "dies diei eructat verbum, et nox nocti indicat scientiam." Ad firmamentum

igitur coeli, hoc est universalis ecclesiae, fecit Deus duo magna luminaria, id est, duas magnas instituit dignitates, quae sunt pontificalis auctoritas, et regalis potestas. Sed illa, quae praeest diebus, id est spiritualibus, maior est; quae vero [noctibus, id est] carnalibus, minor, ut, quanta est inter solem et lunam, tanta inter pontifices et reges differentia cognoscatur. Haec autem si prudenter attenderet imperatoria celsitudo, non faceret aut permitteret venerabilem fratrem nostrum Constantinopolitanum patriarcham, magnum quidem et honorabile membrum ecclesiae, iuxta scabellum pedum suorum in sinistra parte sedere, quum alii reges et principes archiepiscopis et episcopis suis, sicut debent, reverenter assurgant, et eis iuxta se venerabilem sedem assignent. Nam et piissimus Constantinus quantum honoris exhibuerit sacerdotibus, tua sicut credimus, discretio non ignorat. § 5. Nos autem etsi non increpando scripserimus, potuissemus tamen rationabiliter increpare, quum B. Paulus Apostolus episcopum instruens ad Timotheum scripisse legatur. "Praedica verbum, insta opportune, importune, argue, obsecra, increpa in omni patientia et doctrina." Non enim os nostrum debet esse ligatum, sed patere debet ad omnes, ne secundum propheticum verbum simus canes muti, non valentes latrare. Unde correctio nostra tibi non debuit esse molesta, sed magis accepta, quia pater filium, quem diligit, corripit, et Deus quos amat arguit et castigat. Debitum igitur pastoralis officii exsequimur, quum obsecramus, arguimus, increpamus, et non solum alios, sed imperatores et reges opportune et importune ad ea studemus inducere, quae divinae sunt placita voluntati. § 6. Nobis autem in B. Petro sunt oves Christi commissae; dicente Domino: "Pasce oves meas," non distinguens inter has oves et alias, ut alienum a suo demonstraret ovili, qui Petrum et successores ipsius magistros non recognosceret et pastores; ut illud tanquam notissimum omittamus, quod Dominus dixit ad Petrum, et in Petro dixit ad successores ipsius: "Quodcunque ligaveris super terram, erit ligatum et in coelis etc.," nihil excipiens, qui dixit: "quodcunque." Verum his diutius insistere nolumus, ne vel contendere videamur, vel in huiusmodi delectari, quum, si gloriari expediat, non in honore, sed in onere, non in magnitudine, sed in sollicitudine sit potius gloriandum, quum et Apostolus in infirmitatibus glorietur. Novimus esse scriptum: "Omnis qui se exaltat, humiliabitur, et qui se humiliat, exaltabitur;" et iterum: "Quanto maior es, humilia te in omnibus;" et alibi: "Deus superbis resistit, humilibus autem dat gratiam." Propter quod exaltationem nostram in humilitate ponimus, et humilitatem nostram exaltationem maximam reputamus. Unde etiam servos non solum Dei, sed etiam servorum Dei nos esse scribimus et fatemur, et tam sapientibus quam insipientibus secundum Apostolum sumus debitores. § 7. Utrum autem imperatoriam excellentiam ad bonum et utile per literas nostras duxerimus invitandam, utrum tibi iusta suggesserimus et honesta, tua sollicitudo discernat, quum non nisi ad utilitatem ecclesiae et terrae Hierosolymitanae subsidium nos te meminerimus invitasse. [Inspiret igitur etc.]

Chapter VII

Latin source headnote: One ordained by the Pope is not thereby exempted from the jurisdiction of his bishop.

The same, to the Bishop of Florence.

Through your letters you intimated to us that, when certain subdeacons of the Roman Church obtain prelacies in your diocese for which they are bound to show you obedience, if at any time justice requiring, it should happen that you exercise ecclesiastical discipline against them, alleging the privilege of the subdiaconate they assert that they are not bound by it, as though through an office of the subdiaconate of this kind they were exempted from the obedience that they owe you by reason of the benefice obtained. Concerning this you sought to be taught through the oracle of the Apostolic See whether anyone, through the order of subdiaconate received from the Roman Pontiff, is

withdrawn from the reverence due to you. To this we answer you briefly that, although it is fitting that among the others subject to you [special] deference be shown by you, insofar as is appropriate, to those whom apostolic kindness has honored by conferral of that order, nevertheless, through it they are by no means absolved from the obedience that they otherwise owe you. [Given at Rome at Saint Peter's, on the seventh day before the Ides of April, in the ninth year, 1206.]

> Ordinatus per Papam non per hoc eximitur a iurisdictione sui episcopi.
>
> Idem episcopo Florentino.
>
> Per tuas nobis literas intimasti, quod, quum aliqui ecclesiae Romanae subdiaconi praelationes in tua dioecesi assequuntur, pro quibus tibi tenentur obedientiam exhibere, si quando exigente iustitia te contigerit exercere in ipsos ecclesiasticam disciplinam, illi subdiaconatus privilegium allegantes, ea se asserunt non teneri, ac si per huiusmodi subdiaconatus officium ab obedientia, qua tibi tenentur, ratione obtenti beneficii sint exempti. Super quo Postulasti per sedis apostolicae oraculum edoceri, utrum quis per ordinem subdiaconatus, a Romano Pontifice susceptum, a debita tibi reverentia subtrahatur? Ad quod tibi breviter respondemus, quod, etsi decens sit, ut illis [specialiter], quantum convenit, a te inter alios tibi subditos deferatur, quos benignitas apostolica collatione ipsius ordinis honoravit, per eam tamen ab obedientia, quam alias tibi debent, minime absolvuntur. [Dat. Romae ap. S. Petrum VII. Id. Apr. Ao. IX. 1206.]

Chapter VIII

Latin source headnote: When obedience or subjection is at issue, nothing ought to be attempted to the prejudice of the defendant or a possessor who was not cited.

The same, to the Patriarch of Constantinople.

Among the four living creatures that are described in the midst of the throne and around it, the face of an eagle is mentioned by Ezekiel above the four of them, because among the four patriarchal churches—Antioch, Alexandria, Jerusalem, and Constantinople—which are signified by the aforesaid living creatures and which the Apostolic See, having them in its midst, embraces as special daughters, while they are around it like obedient handmaids, Constantinople itself is preeminent after the Apostolic See in excellence of dignity. We aspire to its exaltation the more gladly insofar as, embracing it more closely as a more honorable member of the sacrosanct Roman Church, we know in these times that it needs its aid more greatly, and we arrange more gladly to advance your petitions, since by the Lord's disposition you are known to preside over it, when honorableness does not oppose them and prejudice is not generated against others. For an action of injuries ought not to arise from us, from whom rights are derived to others as from a fountain.

Therefore, although we wish, insofar as we can with God, to defer to your honor and commit your prayers to effect, we nevertheless were unable to hear that petition by which you sought from us that we deign by apostolic authority to annul grants of churches and benefices made by our beloved son P., cardinal-priest of the title of Saint Marcellus and legate of the Apostolic See, when you were present and entirely unconsulted, since he conferred an excessive multitude of churches and delivered them to be possessed by perpetual right without your consent and that of the chapter of the greater church, etc.

Therefore, although on account of the foregoing we were unable to hear your petition according to your desire, nevertheless, wishing to defer to your honor insofar as we can with our honorableness,

we have decided to grant your fraternity that those who possess those churches or benefices show you due and devoted obedience, unless perhaps any of those churches had been lawfully exempted from the patriarch's jurisdiction before the capture of the royal city.

But for a twofold reason we decided not to admit the subsequent petition concerning the churches that you sought to be subjected to you, which did not answer to the Patriarch of Constantinople before the city of Constantinople was captured. For the rationale of law demands that we ordain nothing concerning them to the prejudice of those to whom the same churches are subject, since they have been neither cited nor convicted, nor absent themselves through contumacy. [Providence also dissuaded this from being done at present, lest the Pisans, Venetians, and very many others who have churches of this kind at Constantinople be provoked against the empire at this time, since they are rather to be enticed by blandishments until it is strengthened with immovable solidity. But if you should decide to pursue your right against them at an opportune time, with the Lord as author, we shall cause the fullness of justice concerning them to be furnished to you.]

But concerning the obedience that you similarly sought us to cause to be furnished to you by the archbishop and bishops of the kingdom of Cyprus, we decided to answer you nearly the same as in the preceding petition, since they too had been exempted before your promotion—namely, when the church of Constantinople was disobedient and rebellious—and we ought not to have changed anything concerning their condition in their absence. Nevertheless, we shall not deny you justice when you should decide to seek it. [On your part, etc. Given at Ferentino, on the fourth day before the Nones of August, in the ninth year, 1206.]

> Quando de obedientia vel subiectione agitur, nihil attentari debet in praeiudicium rei, vel possessoris non citati.
>
> Idem Constantinopolitano Patriarchae.
>
> Inter quatuor animalia quae in medio sedis et circuitu eius describuntur, facies aquilae ab Ezechiele desuper ipsorum quatuor memoratur, quia inter quatuor patriarchales ecclesias, Antiochenam, Alexandrinam, Hierosolymitanam, Constantinopolitanam, quae per animalia supradicta signantur, quas apostolica sedes in medio habens quasi filias amplectitur speciales, cui eaedem sunt in circuitu quasi famulae obsequentes, ipsa Constantinopolitana post apostolicam sedem excellentia praeeminet dignitatis, ad cuius exaltationem tanto libentius adspiramus, quanto ipsam tanquam honorabilius membrum sacrosanctae Romanae ecclesiae arctius amplexantes, ipsius auxilio temporibus istis eandem amplius noscimus indigere, ac tuas, qui eidem Domino disponente praeesse dignosceris, petitiones libentius promovere disponimus, quibus non repugnat honestas, nec aliis praeiudicium generatur, quum a nobis iniuriarum actio non debeat exoriri, a quibus iura tanquam a fonte ad ceteros derivantur. Licet igitur, in quantum cum Deo possumus, tuo velimus honori deferre, ac tuas preces effectui mancipare, petitionem tamen illam nequivimus exaudire, qua postulasti a nobis, ut donationes ecclesiarum et beneficiorum, a dilecto filio P. tit. S. Marcelli presbytero cardinali apostolicae sedis legato factas te praesente ac penitus inconsulto, quum nimiam multitudinem ecclesiarum contulerit, easque iure perpetuo absque tuo consensu et capituli maioris ecclesiae tradiderit possidendas, dignaremur auctoritate apostolica irritare etc. Quamvis ergo tuam propter praemissa petitionem iuxta tuum desiderium nequivimus exaudire, tuo tamen, quantum cum nostra possumus honestate, volentes honori deferre, fraternitati tuae duximus concedendum, ut ii, qui ecclesias illas seu beneficia possident, obedientiam tibi debitam exhibeant et devotam, nisi forte aliqua illarum ecclesiarum ante captionem regiae civitatis a iurisdictione patriarchae legitime fuisset exempta. Subsequentem vero Petitionem

contra ecclesias, quas tibi subiici postulabas, quae prius, quam Constantinopolis civitas caperetur, Constantinopolitano patriarchae minime respondebant, duplici ratione non duximus admittendam. Iuris namque ratio postulat, ut in eorum praeiudicium, quibus eaedem ecclesiae sunt subiectae nihil ordinemus de ipsis, quum nec citati sint, nec convicti, nec per contumaciam se absentent. [Id etiam modo fieri providentia dissuasit, ne Pisani ac Veneti aliique quamplures, apud Constantinopolim huiusmodi habentes ecclesias, contra imperium provocarentur hoc tempore, qui sunt alliciendi potius blandimentis donec illud soliditate immobili roboretur. Quod si ius tuum contra illos prosequendum duxeris tempore opportuno, faciemus auctore Domino super ipsis iustitiae tibi plenitudinem exhiberi.] Super obedientia vero, quam ut tibi impendi faceremus ab archiepiscopo et episcopis regni Cypri similiter postulasti, fere idem, quod in praecedenti petitione, tibi duximus respondendum, quum et ipsi ante tuam promotionem fuerint exempti, quando videlicet Constantinopolitana ecclesia erat inobediens et rebellis, et in eorum absentia circa statum ipsorum non debuerimus aliquid immutare. Iustitiam tamen non negabimus tibi, quum eam duxeris postulandam. [Ex parte tua etc. Dat. Ferentini IV. Non. Aug. Ao. IX. 1206.]

Chapter IX

Latin source headnote: Abbots and priests who are diocesan subjects of a bishop can be compelled by ecclesiastical censure to come to his synod and obey him.

The same.

As to what concerning these things—(*And below:* cf. c. 5, On Consanguinity and Affinity, IV. 14.)—likewise, you are to compel by ecclesiastical censures the abbots and priests subject to you by diocesan law, who disdain [when summoned] to come to your synod, to come to that synod and show you due obedience and reverence, provided that in the synod itself you do not decide that anything should be established that might oppose canonical statutes. [To the chaplains, etc. Given at the Lateran, on the second day before the Kalends of January, 1199.]

Abbates et sacerdotes, qui sunt dioecesani episcopi, ad eius synodum venire et sibi obedire compelli possunt per censuram ecclesiasticam.

Idem.

Quod super his: (Et infra: cf. c. 5. de cons. et aff. IV. 14.) Similiter etiam Abbates et sacerdotes dioecesana tibi lege subditos, qui ad tuam synodum venire contemnunt [vocati], dummodo in ipsa synodo non ducas aliquid statuendum, quod forte canonicis obviet institutis, per censuras ecclesiasticas ad synodum ipsam venire compellas, et debitam tibi obedientiam et reverentiam exhibere. [Capellanis etc. Dat. Lat. II. Kal. Ian. 1199.]

Chapter X

Latin source headnote: Regular canons disobedient to their prior can be excommunicated by him and, if they are incorrigible, ought to be expelled from the fellowship of the brothers.

The same, to the Abbots of Saint Stephen and Saint Proculus of Bologna.

When in the churches of Saint Victor and Saint John of the Mount—(*And below:*)—we, therefore, attending with diligent solicitude to the reformation of those churches, which, as their sins require, have both been diminished in temporal things and manifoldly collapsed in spiritual things, gave all the canons a firm mandate that they obey their prior in those things that pertain to him. And when all, with only four excepted, harmoniously answered that they wished to obey his admonitions and

precepts, the aforesaid four, raising themselves in pride against the prior, although they had corporally furnished an oath concerning the obedience to be shown to their prior, nevertheless, forgetful of the oath furnished and the strict precept, resisted their prior in all things. And when for their contumacy they could not be recalled to due obedience, with justice dictating, the said prior promulgated a sentence of excommunication against them.

Therefore, when the aforesaid canons approached the Apostolic See, having been made more certain of their contumacy through authentic writings from the testimony of many prelates, after receiving from them corporally an oath according to the form of the Church, we caused the benefit of absolution to be imparted to them, commanding them under debt of the oath that, returning to their cloister from which they had departed, they devotedly and humbly obey their prior according to God.

Therefore, being unwilling that the same canons hereafter wander with such unbridled liberty, by apostolic writings we command your discretion that, relying upon our authority and with the subterfuge of any appeal removed, by ecclesiastical censures you compel the aforesaid canons to return to obedience to their prior; and, lest they be able to glory in their contumacy or malice, compel them, if you see it expedient, humbly to take care to furnish the oath concerning obedience to the prior's mandates that, when seeking the benefit of absolution, they had proudly refused. Otherwise, you are entirely to exclude them from the fellowship of their brothers.

> Canonici regulares inobedientes priori suo per ipsum excommunicari possunt, et, si fuerint incorrigibiles, de fratrum consortio expelli debent.
>
> Idem sancti Stephani et sancti Proculi abbatibus Bononiensibus.
>
> Quum in ecclesiis sancti Victoris et S. Ioannis de Monte (Et infra:) Nos igitur ad reformationem earundem ecclesiarum, quae peccatis exigentibus et in temporalibus deminutae, et in spiritualibus sunt multipliciter collapsae, diligenti sollicitudine intendentes, universis canonicis dedimus firmiter in mandatis, ut priori suo in his, quae ad eum pertinent, obedirent. Quumque omnes, quatuor duntaxat exceptis, se obedire velle eius monitis et praeceptis concorditer respondissent, praedicti quatuor se contra priorem in superbiam erigentes, licet de obedientia suo priori praestanda praestitissent corporaliter iuramentum, tamen exhibiti iuramenti et districtae praeceptionis immemores, suo priori per omnia restiterunt, et, quum pro contumacia sua nequivissent ad debitam obedientiam revocari, dictus prior in eos dictante iustitia excommunicationis sententiam promulgavit. Quum igitur praefati canonici ad apostolicam sedem accessissent, per scripturas authenticas ex multorum testimonio praelatorum effecti de ipsorum contumacia certiores, recepto secundum formam ecclesiae ab eisdem corporaliter iuramento, ipsis fecimus absolutionis beneficium impendi, praecipientes eis sub debito iuramenti, ut ad suum claustrum, de quo exierant, redeuntes, priori suo secundum Deum devote ac humiliter obedirent. Ideoque nolentes, quod iidem canonici tam effrenata deinceps libertate vagentur, discretioni vestrae per apostolica scripta mandamus, quatenus nostra freti auctoritate praefatos canonicos, ut ad prioris sui obedientiam revertantur, sublato cuiusvis appellationis diffugio per censuras ecclesiasticas compellatis, et, ne de sua possint contumacia vel malitia gloriari, cogatis eos, si videritis expedire, ut iuramentum, quod de parendo mandatis prioris pro absolutionis beneficio impetrando superbe negaverant, humiliter praestare procurent; alioquin eos de fratrum ipsorum consortio penitus excludatis.

Chapter XI

Latin source headnote: The priests and clerics of chapels subject to a cardinalitial title owe the cardinal obedience and the other things discussed here. And, when the title is vacant, the chapter of that church succeeds, unless something is excepted for the good of peace.

Honorius III, to G., Cardinal-Priest, and the Chapter of Saint Lawrence in Damaso.

Having diligently heard the matters proposed before us for the church of Saint Lawrence in Damaso on one side and the chapels subject to it on the other concerning scrutiny, baptism, manual obedience, correction, interdict, excommunication, and other articles, by sentence we decreed that the priests and clerics of those chapels are to show manual obedience, reverence, and every honor to the cardinal who is now in that church and to those who shall be there over time; are to convene at that church at the customary times for celebrating scrutiny, baptism, and chapter; are humbly to receive correction from the cardinal himself; and are inviolably to observe sentences of excommunication, interdict, or suspension that he renders against them and their churches. But when that church is vacant of a cardinal, the aforementioned chaplains and clerics are nevertheless reverently to show all the aforesaid things to that church, with only that excepted which, for the good of peace, we reserve to our providence concerning their correction, excommunication, and suspension.

> Presbyteri et clerici capellarum subditarum titulo cardinalatus debent cardinali obedientiam et reliqua, de quibus hic. Et vacante titulo succedit capitulum illius ecclesiae, nisi pro bono pacis aliquid sit exemptum.
>
> Honorius III. G. Presbytero cardinali, et Capitulo sancti Laurentii in Damaso.
>
> His, quae pro ecclesia S. Laurentii in Damaso ex parte una et capellis sibi subiectis ex altera super scrutinio, baptismo manuali obedientia, correctione, interdicio et excommunicatione aliisque articulis fuere coram nobis proposita, diligenter auditis, sententiando decrevimus, ut earundem capellarum presbyteri et clerici cardinali, qui nunc est in ipsa ecclesia, et qui fuerint per tempora, manualem obedientiam et reverentiam et honorificentiam omnem exhibeant, et ad ecclesiam ipsam pro scrutinio, baptismo et capitulo celebrandis conveniant temporibus consuetis, correctionem ipsius cardinalis recipientes humiliter, et excommunicationis, interdicti vel suspensionis sententias, quas tulerit in eos et ecclesias eorundem, inviolabiliter observantes. Quando autem ecclesia ipsa cardinali vacabit, capellani et clerici memorati nihilominus eidem ecclesiae reverenter exhibeant omnia supradicta, eo duntaxat excepto, quod de correctione, excommunicatione et suspensione ipsorum pro bono pacis nostrae providentiae reservamus.

Chapter XII

Latin source headnote: Although an abbess cannot excommunicate subjects, they are nevertheless bound to obey her.

The same, to the Abbot of Saint Michael in the Diocese of Abradensis.

Our beloved daughter in Christ, the Abbess of Bubrigen., showed by a petition transmitted to us that, when she often suspends her canonesses and the clerics subject to her jurisdiction from office and benefice on account of their disobedience and faults, the same persons, relying upon the fact that the abbess cannot excommunicate them, do not observe a suspension of this kind, on account of which their excesses remain uncorrected. Therefore, we command your discretion that, after prior

admonition, by ecclesiastical censure and with appeal removed, you compel the said canonesses and clerics to show the aforesaid abbess due obedience and reverence and to observe her salutary admonitions and mandates. [Given at Alatri, on the second day of the month of June, in the sixth year of our pontificate, 1222.]

> Licet abbatissa subditos excommunicare non possit, ipsi tamen sibi obedire tenentur.
>
> Idem Abbati S. Michaelis Abradensis dioecesis.
>
> Dilecta in Christo filia abbatissa de Bubrigen. transmissa nobis petitione monstravit, quod, quum ipsa plerumque canonicas suas et clericos suae iurisdictioni subiectos propter inobedientias et culpas eorum officio beneficioque suspendat iidem confisi ex eo, quod eadem abbatissa excommunicare eos non potest, suspensionem huiusmodi non observant, propter quod ipsorum excessus remanent incorrecti. Quocirca discretioni tuae mandamus, quatenus dictas canonicas et clericos, ut abbatissae praefatae obedientiam et reverentiam debitam impendentes, eius salubria monita et mandata observent, monitione praemissa ecclesiastica censura appellatione remota compellas. [Dat. Allatii II. Mens. Iun. Pont. nostr. Ao. VI. 1222.]

Chapter XIII

Latin source headnote: If a metropolitan exacts an oath from a suffragan beyond the form established by the canon, the suffragan is not bound with respect to what is beyond it.

Gregory IX, to the Patriarch of Grado.

Our beloved sons the Archdeacon and Chapter of Castello brought their complaint to us that, when you exacted from the Bishop of Castello an oath beyond the canonical form that other suffragans have been accustomed to furnish to their metropolitans, they, perceiving that prejudice was generated against their church from this, appealed to the Apostolic See. (*And below:*) Therefore, since it is not fitting that you do to another what you would not wish to be done to you by another, we command that, being content with the canonical form that we receive from our fellow bishops immediately subject to us, under pretext of the oath furnished you exact nothing more from the Bishop of Castello on the ground of any custom, knowing that we have absolved the same bishop from an oath of this kind with respect to the other articles, or rather declared that he is not bound.

> Si metropolitanus a suffraganeo iuramentum exigit ultra formam statutam a canone, in eo, quod est ultra, suffraganeus non tenetur.
>
> Gregorius IX. Patriarchae Grandensi.
>
> Dilecti filii archidiaconus et capitulum Castellanum suam ad nos querimoniam detulerunt, quod, quum a Castellano episcopo exigeres iuramentum praeter formam canonicam, quam ceteri suffraganei metropolitanis suis consuevere praestare, iidem conspicientes ex hoc ecclesiae suae praeiudicium generari, ad sedem apostolicam appellarunt. (Et infra:) Quum igitur non deceat alii te fecisse quod ab alio fieri tibi nolles, mandamus, quatenus contentus forma canonica, quam nos a coepiscopis nostris nobis immediate subiectis recipimus, nil amplius a Castellano episcopo obtentu alicuius consuetudinis exigas praetextu praestiti iuramenti, sciens, nos eundem episcopum ab huiusmodi iuramento quoad alios articulos absolvisse, vel denunciasse potius non teneri.

Chapter XIV

Latin source headnote: When a bishopric is vacant, the chapter confirms and invalidates elections.

The same, to the Prior of the Friars Preachers and the Archdeacon of Reggio.

When formerly the cause—(*And below:*)—therefore, we command that, although the convent of the monastery of Saint Savior of Messina is by law deprived on this occasion of the power of electing, nevertheless by grace you are to give them by our authority free faculty to elect or postulate, commanding the same persons that, because the church of Messina is presently vacant, they present their election to the Chapter of Messina to be confirmed as shall be lawful, or even invalidated.

> Vacante episcopatu capitulum confirmat et infirmat electiones.
>
> Idem Priori fratrum Praedicatorum et archidiacono Rheginensi.
>
> Quum olim causa (Et infra:) Quocirca mandamus, quatenus, licet conventus monasterii sancti Salvatoris Messanensis sint ipso iure hac vice eligendi potestate privati, de gratia tamen eligendi seu postulandi detis ipsis auctoritate nostra liberam facultatem, mandantes eisdem, ut quum ecclesia Messanensis vacet ad praesens, electionem suam confirmandam, prout de iure fuerit, vel etiam infirmandam praesentent capitulo Messanensi.

Chapter XV

Latin source headnote: One who is greater in order, although received later in the church, is preferred in place and portion. This is what it says according to the true reading.

The same, to the Archpriest of Saint Mary Major in the City.

We establish that priests obtain the first place, deacons the second, subdeacons the third, and so on with the rest in order, even if they are admitted later. And we wish one who is greater in order, even if received afterwards, to be superior in receiving a portion, and those of lesser orders to perform the customary services.

> Qui maior est ordine, licet in ecclesia posterius receptus, in loco et portione praefertur. H. d. secundum veram lecturam.
>
> Idem Archipresbytero sanctae Mariae maioris de Urbe.
>
> Statuimus, ut presbyteri primum locum, diaconi secundum, subdiaconi tertium, et sic de reliquis obtineant ordinatim, etiamsi posterius admittantur. Et qui maior est ordine, etiamsi postea sit receptus, in portione percipienda esse volumus potiorem, ac minores facere servitia consueta.

Chapter XVI

Latin source headnote: If a church situated within some archdeaconry is erected as a cathedral, it is exempted from the jurisdiction of the archdeaconry.

The same, to the Archbishop of Kalocsa.

Since an inferior cannot absolve or bind a superior, but a superior regularly binds and absolves an inferior, and it appears sufficiently [unworthy and] discordant that [the greater be subject to the lesser and] a son have power over a parent, we marvel [not a little and are moved] that, when you erected the monastery of Cheur, situated in the archdeaconry of Firmiensis in your diocese, as a cathedral church, [consecrating our venerable brother the Bishop of Sirmium as bishop to the title of that church], the Archdeacon of Firmiensis broke out into such great audacity of temerity that he presumes to exercise jurisdiction over the bishop consecrated there and his church. [Therefore, the same bishop humbly entreated us that, since, while the same archdeacon exercises jurisdiction of this

kind over him and the said church, he in a certain manner does not exist as bishop in that church, we deign beneficially to provide for him concerning this. We, therefore, compassionating the same bishop and church with paternal affection and entirely exempting them, with all their rights and appurtenances, from the jurisdiction of that archdeacon,] command that you take care strictly to prohibit the aforesaid archdeacon [on our behalf from presuming hereafter to exercise any jurisdiction over them], from whose jurisdiction we declare the said bishop exempted. You are to take care strictly to prohibit this, provided [prudently] that, if the rights of the Archdeacon of Firmiensis are harmed by this, you make suitable recompense to him within your diocese, where you see it expedient, without prejudice to another's right. [Contradictors, etc. Given at Rieti, on the twelfth day before the Kalends of April, in the fifth year, 1232.]

Textual note: The Latin Library transcription's *provisio* has been corrected to *proviso*, as required by the sentence's construction.

> Si ecclesia sita in aliquo archidiaconatu erigitur in cathedralem, a iurisdictione archidiaconatus eximitur.
>
> Idem Archiepiscopo Colocensi.
>
> Quum inferior superiorem solvere nequeat vel ligare, sed superior inferiorem liget regulariter et absolvat, et satis [indignum et] absonum videatur, ut [maior subditus sit minori et] filius potestatem habeat in parentem, miramur [non modicum et movemur], quod quum tu monasterium de Cheur constitutum in Firmiensi archidiaconatu tuae dioecesis ecclesiam erexeris cathedralem, [venerabilem fratrem nostrum Sirmiensem episcopum ad titulum ipsius ecclesiae in episcopum consecrando], archidiaconus Firminensis in tantam prorupit temeritatis audaciam, ut in episcopum ibi consecratum et ecclesiam suam iurisdictionem exercere praesumat. [Quare idem episcopus nobis humiliter supplicavit ut quum eodem archidiacono in ipsum et dictam ecclesiam iurisdictionem huiusmodi exercente, ipse in eadem ecclesia episcopus quoddammodo non exsistat, provideri sibi super hoc salubriter dignaremur. Nos igitur eiusdem episcopi et ecclesiae paterno compatientes affectu, ipsos cum omnibus iuribus et pertinentiis eorundem, a iurisdictione ipsius archidiaconi penitus eximentes] Mandamus, quatenus praefato archidiacono [ne in eis iurisdictionem aliquam de cetero exercere praesumat, ex parte nostra districte studeas inhibere], a cuius iurisdictione dictum episcopum denunciamus exemptum, id districte studeas inhibere; proviso [prudenter] ut, si ex hoc archidiaconi Firmiensis iura laeduntur, in dioecesi tua, ubi expedire videris, absque alieni iuris praeiudicio recompensationem illi facias congruentem. [Contradictores etc. Dat. Reat. XII. Kal. April. ao. V. 1232.]

Chapter XVII

Latin source headnote: A single person whose interest is involved will be able to impede a settlement concerning the right of primacy.

The same, to the Archdeacon of Limoges and the Prior of Saint Radegund of Poitiers.

The humble teacher of doctrine—(*And below:*)—we command that you seek the assent of the prelates of the province of Bordeaux present in it, of its cathedral chapters, and also of the Chapter of Bourges concerning the provision that we decided should be made between the Archbishops of Bourges and Bordeaux in the cause of primacy. When this has been obtained, you are solemnly to publish our provision. But if any should be unwilling to furnish consent, suspending the aforesaid publication, you are strictly to command them, if they are prelates, to present themselves personally to our sight, or, if others, through suitable proctors, to prosecute before us the right, if any, that they contend they have, and to make satisfaction to the other party in expenses if they succumb.

Compositionem super iure primatiae unus solus, cuius interest, poterit impedire.

Idem Lemovicensi Archidiacono et Priori sanctae Radegundis Pictaviensis.

Humilis doctrina magistra (Et infra:) Mandamus, quatenus praelatorum Burdegalensis provinciae in ea praesentium, et cathedralium capitulorum eiusdem, nec non Bituricensis capituli super provisione, quam inter Bituricensem et Burdegalensem archiepiscopos in causa primatiae duximus faciendam, requiratis assensum, quo habito providentiam nostram solenniter publicetis. Si qui vero consensum praestare noluerint, vos supersedentes publicationi praedictae, districte praecipiatis eisdem, ut personaliter, si praelati fuerint, vel si alii, per procuratores idoneos, nostro se conspectui repraesentent, prosecuturi coram nobis ius, si quod habere contendunt, et satisfacturi parti alteri, si succubuerint, in expensis.

Title XXXIV: On Truce and Peace

Chapter I

Latin source headnote: It establishes the times of truces and the penalties of those violating them.

Alexander III, in the Lateran Council.

We command that truces be inviolably observed by all from the fourth day of the week after sunset until the second day of the week at sunrise, [and] from the Advent of the Lord until the octave of Epiphany, and from Septuagesima until the octave of Easter.

§ 1. But if anyone should presume to break the truces and, after a third admonition, should not make satisfaction, let his bishop declare a sentence of excommunication against him and announce it in writing to the neighboring bishops. Let none of them receive the excommunicated person into communion; rather, let each confirm the written sentence. But if anyone should presume to violate these things, let him lie under peril of his order.

§ 2. And because a threefold cord is broken with difficulty, we command that bishops, having regard only for God and the salvation of the people, with all trepidation set aside, furnish one another mutual counsel and aid for firmly maintaining peace, and not omit this for anyone's love or hatred. But if anyone should be found timid in this work of God, let him incur loss of his own dignity.

DE TREUGA ET PACE.

Statuit tempora treugarum et poenas violantium.

Alexander III. in concilio Lateranensi.

Treugas a quarta feria post occasum solis usque ad secundam feriam in ortu solis, [et] ab Adventu Domini usque ad octavas Epiphaniae, et a Septuagesima usque ad octavas Paschae ab omnibus inviolabiliter observari praecipimus. § 1. Si quis autem treugas frangere praesumpserit, post tertiam admonitionem si non satisfecerit, suus episcopus sententiam excommunicationis dictet in eum, et scriptam vicinis episcopis annunciet, quorum nullus excommunicatum in communione recipiat, immo scriptam sententiam quisque confirmet. Si quis autem haec violare praesumpserit, ordinis sui periculo subiaceat. § 2. Et quoniam funiculus triplex difficile rumpitur, praecipimus, ut episcopi ad solum Deum et ad salutem populi habentes respectum, omni trepidatione seposita ad pacem firmiter tenendam mutuum sibi consilium et auxilium praebeant, neque hoc alicuius amore vel odio praetermittant. Quod si quis in hoc Dei opere trepidus inventus fuerit, damnum propriae dignitatis incurrat.

Chapter II

Latin source headnote: The persons enumerated here enjoy full security in time of war.

The same.

Moreover, we renew that priests, [clerics], monks, lay brothers, pilgrims, merchants, peasants going and returning and engaged in agriculture, and the animals with which they plow and that carry seed to the field, enjoy suitable security. Nor anyone, etc. (cf. c. 10, On Census, III. 39.)

> Personae hic enumeratae plena securitate gaudent tempore guerrae.
>
> Idem.
>
> Innovamus autem, ut presbyteri, [clerici], monachi, conversi, peregrini, mercatores, rustici, euntes et redeuntes, et in agricultura exsistentes, et animalia, quibus arant et quae semina portant ad agrum, congrua securitate laetentur. Nec quisquam etc. (cf. c. 10. de cens. III. 39.)

Title XXXV: On Agreements

Chapter I

Latin source headnote: Agreements, however bare, are to be observed.

From the African Council.

Antigonus, Bishop of Madauros, said: I suffer grave injury, and I believe that your holiness grieves at my insult and reckons it a common injury. When Optantius presented himself, he entered into an agreement with me, and we divided [the congregations; our handwritten instruments and documents are held. Contrary to this agreement he goes about the congregations assigned to me and usurps the peoples, so that they call him father and me stepfather. Bishop Gratus said: This deed is to be grieved at,] so that he may entice to himself there the souls of unlearned peoples contrary to discipline, contrary to evangelical tradition, contrary to the covenants of peace. For if anyone reckoned that this could happen to him, surely no one would ever have sinned against a brother. Hence, either let agreements entered into obtain their firmness, or let the person convened, if he does not restrain himself, experience ecclesiastical discipline. All said: Let peace be preserved; let agreements be kept.

> **DE PACTIS.**
>
> Pacta quantumcunque nuda servanda sunt.
>
> Ex concilio Africano.
>
> Antigonus episcopus Madaurensis dixit: Gravem iniuriam patior, et credo, dolere sanctitatem vestram contumeliam meam et computare communem iniuriam. Optantius quum se repraesentaret, pactum mecum habuit et divisimus [plebes; manuscriptiones nostrae tenentur et pittacia. Contra hoc pactum circuit plebes mihi attributas, et usurpat populos, ut illum patrem, me vitricum nominent. Gratus episcopus dixit: Factum hoc dolendum est,] ut in se illiciat populorum imperitorum animas contra disciplinam, contra evangelicam traditionem, contra pacis placita. Nam si id sibi posse contingere arbitraretur, nunquam profecto in fratrem aliquis deliquisset. Unde Aut inita pacta suam obtineant firmitatem, aut conventus, si se non cohibuerit, ecclesiasticam sentiat disciplinam. Dixerunt universi: Pax servetur, pacta custodiantur.

Chapter II

Latin source headnote: An invalid agreement is validated through the superior's consent.

Gregory.

Whenever our assent is awaited in certain agreements, lest the matters conducted come into doubt, ratification ought to solidify them for the security of the parties. [Accordingly, etc.]

> Conventio invalida per consensum superioris validatur.
>
> Gregorius.
>
> Quoties in conventionibus quibusdam noster exspectatur assensus, ne in dubium veniant quae geruntur, ratihabitio eas debet pro securitate partium solidare. [Proinde etc.]

Chapter III

Latin source headnote: A judge ought to act studiously so that promises are fulfilled.

The same.

In what manner in Sardinia [lesser or poor persons are oppressed by those who are greater there is attested by the letters of our most reverend brother Dominicus, Bishop of Carthage, and of our most eminent son Innocentius, prefect. So that you may know the matters written to us, we have provided that copies of their letters be transmitted to you. And therefore, because the things that are to be sought are offered,] action is to be taken studiously so that the things that are promised are completed in deed.

Textual note: The Latin Library transcription's *qiu* has been corrected to *qui*.

> Iudex debet studiose agere, ut promissa adimpleantur.
>
> Idem.
>
> Qualiter in Sardinia [minores vel pauperes ab eis, qui illic maiores sunt, opprimantur, reverendissimi fratris nostri Dominici Carthaginensis episcopi atque eminentissimi filii nostri Innocentii praefecti epistolae testantur, a quibus, ut quae nobis scripta sunt noveritis, ipsarum vobis epistolarum exemplaria praevidimus transmittenda. Et ideo quia ea, quae petenda sunt, offeruntur,] Studiose agendum est, ut ea, quae promittuntur, opere compleantur.

Chapter IV

Latin source headnote: An agreement by which an ecclesiastical benefice is to be resigned for money is not valid.

Alexander III, to the Bishops of Exeter and Worcester.

When formerly the cleric S., proctor of the Prior and monks of Acra, and the cleric P., for the cause disputed between those monks and the aforesaid P. and his brother—on whose behalf he said that he acted—concerning the church of S. and chapel of L., approached our presence together, they agreed between themselves, though not with us as intermediary, that three marks of silver would be paid to P. for the expenses he had made, and that P. would withdraw from the suit and entirely cease from molestation of the monks. And when they brought this settlement to our hearing and sought that it be confirmed by apostolic authority, we decided not to admit it because it appeared to contain a depraved species of illicit agreement.

But we admonished the aforesaid P. that, both for himself and his brother, he leave the monks in peace and entirely renounce that suit. He, therefore, acquiescing in our admonitions and entirely renouncing that suit for himself and his brother, surrendered into our hands the authentic instruments that he had concerning this. Sending them, namely, to the aforesaid prior and monks, we commanded that, since the aforesaid P. acquiesced in our admonitions concerning this, they too attend to our benign prayers and take care to provide P. and his brother with some benefice from which, by apostolic intercession, they might receive a greater gain than ought to have come to them from that illicit agreement.

But because, as we have learned, the oft-mentioned prior and brothers were unwilling to acquiesce, we, compassionating with paternal piety the labors of those clerics, by apostolic writings command you by way of precept that you admonish the prior and monks to confer and assign a decent and competent benefice to the aforesaid P. and his brother. Otherwise, if it is established to you, as they themselves assert, that the oft-mentioned clerics were violently ejected unjustly and without judicial order from the aforesaid church of Sintonia and chapel of Lintona, you are to cause them to be restored to them, notwithstanding the letters of our confirmation that the aforesaid prior and monks are known to have impetrated from us.

Textual note: The Latin Library transcription's *acqiuevit* has been corrected to *acquievit*.

> Non valet pactum, per quod beneficium ecclesiasticum debet pecunia resignari.
>
> Alexander III. Exonensi et Wigornensi episcopis.
>
> Quum pridem S. clericus procurator prioris et monachorum de Acra, et P. clericus pro causa, quae inter eos monachos et praedictum P. ac fratrem eius, pro cuius parte vicem se gerere dicebat, super ecclesia de S. et capella de L. vertebatur, ad nostram praesentiam pariter accessissent, ita inter se, non tamen nobis mediantibus, convenerunt, quod eidem P. pro expensis, quas fecerat, tres marchae argenti solverentur, et idem P. liti cederet, et a monachorum penitus infestatione cessaret. Quumque compositionem istam ad nostram pertulissent audientiam, eamque auctoritate apostolica peterent confirmari, nos eam non duximus admittendam pro eo, quod videbatur pravam illicitae pactionis speciem continere. Monuimus autem praedictum P., ut ipse tam pro se, quam pro fratre suo monachos in pace dimitteret, et eidem liti omnino abrenunciaret. Ille igitur nostris monitis acquiescens, et eidem liti pro se ac pro fratre suo penitus renuncians, authentica instrumenta, quae super hoc habebat in nostris manibus resignavit, quae nos priori et monachis praedictis scilicet destinantes, mandavimus, ut, ex quo praedictus P. nostris super hoc monitis acquievit, ipsi quoque benignis nostris precibus intenderent, et eidem P. et fratri eius in aliquo studerent beneficio providere, de quo maius lucrum valeant apostolica intercessione percipere, quam eis deberet ex illa pactione illicita provenire. Ceterum quia saepe dicti prior et fratres sicut accepimus, acquiescere noluerunt, nos eorundem clericorum laboribus paterna pietate compatientes vobis per apostolica scripta praecipiendo mandamus, quatenus priorem et monachos moneatis eosdem, ut praefato P. et fratri eius decens et competens beneficium conferant et assignent; alioquin, si vobis constiterit, saepe dictos clericos, prout ipsi asseverant, a praenominata ecclesia de Sintonia et capella de Lintona iniuste et absque ordine iudiciario violenter fuisse eiectos, ipsas eisdem restitui faciatis, non obstantibus literis nostrae confirmationis, quas praedicti prior et monachi a nobis impetrasse noscuntur.

Chapter V

The same, to the Archbishop of York.

We have learned that certain churches have been granted to clerics under such a tenor that, after their deaths, others named individually should succeed them. But because this is iniquitous and hostile to the sacred canons, and therefore ought not to be tolerated in any way, by apostolic writings we command your fraternity by way of precept that, with contradiction and appeal ceasing, you prohibit successions of this kind as detestable and iniquitous, and decree that they are altogether frivolous and empty.

> Idem Archiepiscopo Eboracensi.
>
> Accepimus, quod quaedam ecclesiae clericis sint tali tenore concessae, quod post eorum obitum alii nominatim succedant. Verum quoniam hoc iniquum est et sacris canonibus inimicum, et ideo non debet aliquatenus tolerari, fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus huiusmodi successiones tam detestabiles et iniquas contradictione et appellatione cessante prohibeas, et omnino frivolas et inanes esse decernas.

Chapter VI

Latin source headnote: One who obtained a church through an agreement to increase its pension ought to be deprived of it and otherwise canonically punished.

The same, to the Archbishop of Canterbury and his Suffragans.

Since clerics of your jurisdiction, as we have learned, when persons of churches die, make agreements to pay pensions greater than usual from those churches so that they can more easily obtain the same churches, we wish diligent care and solicitude to be employed for extirpating so detestable a vice. Hence it is that by apostolic writings we command your fraternity by way of precept that, publicly and strictly prohibiting all your clerics from presuming to attempt this, if they should presume to come against your prohibition, with appeal ceasing you are as quickly as possible to despoil them of churches thus obtained, otherwise punishing them with ecclesiastical severity for the excess of so great a presumption. In addition, etc. (cf. c. 11, On Census, III. 39.)

Textual note: The Latin Library transcription's *adhihere* has been corrected to *adhibere*.

> Qui per pactum augendae pensionis consecutus est ecclesiam, debet ea privari, et alias canonice puniri.
>
> Idem Cantuariensi Archiepiscopo et eius Suffraganeis.
>
> Quum clerici vestrae iurisdictionis, sicut accepimus, decedentibus ecclesiarum personis paciscantur ex ipsis ecclesiis maiores solito solvere pensiones, ut facilius possint easdem ecclesias adipisci, nos quidem ad tam detestabile vitium exstirpandum attentam volumus curam et sollicitudinem adhibere. Inde est, quod fraternitati vestrae per apostolica scripta praecipiendo mandamus, quatenus clericis omnibus vestris, ne id attentare praesumant, publice districtius prohibentes, si quidem contra prohibitionem vestram venire praesumpserint, appellatione cessante eos taliter adeptis ecclesiis quantocius spolietis, alias pro tantae praesumptionis excessu severitate ecclesiastica punientes eosdem. Adhaec etc. (cf. c. 11. de cens. III. 39.)

Chapter VII

Latin source headnote: If a church, when leasing its property or granting it in fief, adds an agreement to the prejudice of the parochial right of another church, it does not hold, and it is compelled to return to that church whatever it received on this occasion.

Innocent III, in the General Council.

Very many regular and sometimes secular clerics, as we have learned, when they lease houses or grant fiefs, add an agreement to the prejudice of parochial churches that the lessees and feudatories pay tithes to them and choose burial among them. But since this proceeds from the root of avarice, we entirely reprove an agreement of this kind, establishing that whatever was received on occasion of such an agreement be returned to the parochial church.

Textual note: The Latin Library headnote's *eeclesia* has been corrected to *ecclesia*.

> Si ecclesia rem suam locando vel in feudum concedendo apponit pactum in praeiudicium iuris parochialis alterius ecclesiae, non tenet, et quicquid hac occasione perceperit reddere cogitur illi ecclesiae.
>
> Innocentius III. in concilio generali.
>
> Plerique, sicut accepimus, regulares clerici et saeculares interdum, quum vel domos locant, vel feuda concedunt, in praeiudicium parochialium ecclesiarum pactum adiiciunt, ut conductores et feudatarii decimas eis solvant, et apud eosdem eligant sepulturam. Quum autem id de avaritiae radice procedat, pactum huiusmodi penitus reprobamus, statuentes, ut quicquid fuerit occasione huiusmodi pacti perceptum ecclesiae parochiali reddatur.

Chapter VIII

Latin source headnote: An agreement concerning spiritual things, or one that induces sin, or one that is base, concerning a base thing, or impossible by law or fact, is not valid.

Gregory IX.

The agreements made by you, as we have heard, for obtaining certain spiritual things are of no effect at all, since in matters of this kind every pact and every agreement ought altogether to cease. The same is also to be said concerning others that, if observed, tend toward loss of the soul. For even according to lawful sanctions, a base agreement, or one concerning a base thing or something impossible by law or fact, induces no obligation.

> Non valet pactio in spiritualibus, vel quae peccatum inducit, vel turpis, seu de re turpi, vel impossibilis de iure vel de facto.
>
> Gregorius IX.
>
> Pactiones factae a vobis, ut audivimus, pro quibusdam spiritualibus obtinendis, quum in huiusmodi omnis pactio omnisque conventio debeat omnino cessare, nullius penitus sunt momenti. Quod etiam de aliis est dicendum, quae observatae vergunt in animae detrimentum. Nam etiam iuxta legitimas sanctiones pactum turpe, vel rei turpis aut impossibilis de iure vel de facto, nullam obligationem inducit.

Title XXXVI: On Settlements

Chapter I

Latin source headnote: Instruments and other contrary rights of the parties are taken away by a settlement.

Gregory I, to A., Subdeacon, and Dom., Abbot.

Just as it is grave [and full of reproach that a controversy arisen among persons serving almighty God concerning secular business remain for a long time, so it is praiseworthy and fitting to religious zeal to prefer peace pleasing to God to earthly advantages and, from transitory things, to purchase gains of charity that will always remain. And therefore, because a long contention was drawn out concerning the possessions of Faianum, Nasonianum, and Libinianum, situated in the province of Sicily in the territory of Palermo, between the provosts of the monastery of Saints Maximus and Agatha, which is called Lucuscanum, and, on the other side, the administrators of the hospice established in this city of Rome that is called that of Valerius, but now, with agreements intervening, a salutary decision has proceeded, with God as author, between you, Antonius our subdeacon and provost of the aforementioned hospice, and, on the other side, our most beloved son Dometius, abbot and priest of the aforesaid monastery, it is necessary that every occasion of discord be capable of being forestalled and that the acts conducted be confirmed by intervening authority.]

Accordingly, after the salutary decision made concerning your controversy, we decreed that all instruments, or whatever else exists that could in any manner, whether from prescription of time or otherwise, bring the parties aid from law or any privilege [if, which may it not happen, they wished to come against one another], are to be, just as [also] you seek, void and quashed of every force, and that the page alone of the agreements now made between you obtain valid and perpetual strength. If perchance through carelessness or inexperience something of less firmness has been inserted into it, let it receive the fullest force of cognizance from this authority of ours, [nor to remain, etc. In the month of January, the second indiction, 598.]

Textual note: The Latin Library transcription's *qiua* has been corrected to *quia*.

> **DE TRANSACTIONIBUS.**
>
> Instrumenta et alia iura partium contraria transactione tolluntur.
>
> Gregorius I. A. Subdiacono et Dom. Abbati.
>
> Sicut grave [et plenum vituperationis est, inter personas omnipotenti Deo militantes de saecularibus negotiis ortam diu controversiam permanere, ita laudabile et studio est religioso conveniens, terrenis gratam Deo pacem praeferre compendiis, et ex rebus transitoriis mansura semper caritatis lucra mercari. Et ideo, quia de possessionibus Faiano, Nasoniano et Libiniano, positis in provincia Sicilia territorio Panormitano, de quibus inter praepositos monasterii sanctorum Maximi et Agathae, quod Lucuscanum dicitur, et e diverso administratores xenodochii in hac urbe Roma constituti, quod Valerii nuncupatur, longa se traxit contentio, nunc vero inter te Antonium subdiaconum nostrum memorati xenodochii praepositum, et e diverso dilectissimum filium nostrum Dometium abbatem atque presbyterum praedicti monasterii pactis intervenientibus salubris processit Deo auctore decisio, necesse est, ut omnis discordiae possit occasio praeveniri, et quae gesta sunt interveniente auctoritate firmari.] Proinde Post salubrem decisionem de controversia vestra factam decrevimus, ut omnia instrumenta, vel quicquid aliud est, quod partibus, [quod absit, ad invicem contra se venire cupientibus] quoquo modo, vel ex temporis praescriptione seu aliter opem de lege aut quocunque privilegio ferre poterat, sit, sicut [et] vos poscitis, vacuum et omni virtute cassatum, et sola pactorum inter vos nunc habitorum pagina validum perpetuumque robur obtineat. Cui si quid forte incuria vel imperitia minus firmitatis insertum est, vires plenissimae notionis ex hac nostra auctoritate suscipiat, [nec superesse etc. Mense Ianuar. Ind. II. 598.]

Chapter II

Latin source headnote: A settlement concerning tithes made with the superior's assent holds.

Alexander III.

We establish that, if a settlement concerning tithes has been made between you and some ecclesiastical person with the assent of his bishop or archbishop, it is to remain ratified and unshaken in perpetuity.

> Tenet compositio super decimis facta cum assensu superioris.
>
> Alexander III.
>
> Statuimus, ut, si super decimis inter vos et aliquam personam ecclesiasticam de assensu episcopi vel archiepiscopi sui compositio facta fuerit, rata perpetuis temporibus et inconcussa persistat.

Chapter III

Latin source headnote: If a chapter consented to a settlement that a prelate made in the name of the church, it cannot afterwards dissent.

The same, to the Bishop of Dulmensis.

It happens at times that, although an abbot or prior of some conventual church makes a settlement with an ecclesiastical or secular person concerning matters disputed between them before a delegated or ordinary judge, after letters of ratification from his chapter have been shown, the chapter itself nevertheless endeavors to revoke the same settlement. Hence, because you wished to consult us concerning this, we answer you that, if the abbot or prior had letters of ratification from his chapter, the chapter will not be able to revoke the settlement that he made, if it was observed for some years, as though it had not consented to it.

> Si capitulum consensit transactioni, quam fecit praelatus nomine ecclesiae, ulterius dissentire non potest.
>
> Idem Dulmensi Episcopo.
>
> Contingit interdum, quod, licet abbas vel prior alicuius conventualis ecclesiae cum ecclesiastica vel saeculari persona super his, de quibus inter eos controversia vertitur coram delegato vel ordinario iudice transigat, literis capituli sui de ratihabitione monstratis, ipsum capitulum tamen eandem transactionem nititur revocare. Unde quia nos super hoc consulere voluisti, tibi respondemus, quod, si abbas vel prior a capitulo suo de ratihabitione literas habuerit, transactionem, quam fecit, si fuerit aliquot annis servata, capitulum, ac si non consenserit in eam, non poterit revocare.

Chapter IV

Latin source headnote: A settlement cannot be made concerning an ecclesiastical benefice, even with the interposition of an oath.

The same, to the Abbot of Strat. and the Prior of Saint Eusebius.

Established in our presence, the cleric G. showed us by his assertion that, when a controversy arose between himself and the cleric A. concerning the chapel of Stratis, it was finally quieted through a settlement; and, although the settlement itself had been confirmed on each side by pledged faith, the aforesaid A. nevertheless refuses to observe it. Therefore, because settlements of this kind sometimes

contain the appearance of simony, and according to the Apostle it is fitting for us to abstain not only from evil but even from the appearance of evil, by apostolic writings we command your devotion by way of precept that, when you have been required on account of this, you summon the parties before your presence and, after the settlement has been revoked as null, hear the cause more diligently, etc.

> Super ecclesiastico beneficio transigi non potest etiam cum iuramenti interpositione.
>
> Idem Abbati de Strat. et Priori sancti Eusebii.
>
> Constitutus in nostra praesentia G. clericus sua nobis assertione monstravit, quod, quum inter ipsum, et A. clericum super capella de Stratis controversia emersisset, tandem per transactionem sopita fuit, et, licet transactio ipsa hinc inde fide praestita firmata fuisset, eam tamen praefatus A. servare recusat. Quia igitur huiusmodi transactiones speciem nonnunquam continent simoniae, et non solum a malo, sed etiam a specie mali secundum Apostolum nos convenit abstinere, devotioni vestrae per apostolica scripta praecipiendo mandamus, quatenus, quum propter hoc fueritis requisiti, partes ante vestram praesentiam convocetis, et, revocata transactione in irritum, causam diligentius audiatis etc.

Chapter V

Latin source headnote: Through a settlement made without the bishop's authority, the prelate, but not the church, can be made censual.

The same, to the Bishop of Chartres.

Hereafter, know that, when someone who is afterwards to have some right in the church at issue, after impetrating letters to an extraordinary judge, settles with his adversary, if the settlement is not contrary to law, it is not to be reproved in any way by the bishop of the place. But a payment made under this pretext without episcopal authority by the church over which he presides does not exceed the life of the one who made the payment.

> Per transactionem factam sine auctoritate episcopi potest praelatus, sed non ecclesia constitui censualis.
>
> Idem Carnotensi Episcopo.
>
> De cetero noveris, quod, quum aliquis ad extraordinarium iudicem literis impetratis cum adversario suo componit, postmodum in ecclesia, de qua agitur, ius aliquod habiturus, si compositio non est iuri contraria, non est a loci episcopo aliquatenus reprobanda; sed census absque episcopali auctoritate cui praeest ecclesiae sub hoc praetextu solutus, vitam eius, qui solverit, non excedit.

Chapter VI

Latin source headnote: If a benefice that is held through a settlement is impetrated as vacant by one who was mediator of the settlement, the impetration is not valid. This is what it says with respect to the title.

The same, to the Archbishop of York and the Bishop of Worcester.

We learned from your letters that, when formerly a settlement had long since been made between the clerics R. and A. concerning the church of Vult. and the chapel of Torhec pertaining to that church, before you, brother bishop, who had been delegated as judge, by the authority of G., who at that time was protecting A. in the cause and had been inscribed as a witness, afterwards the same G., coming to our presence and falsely representing himself as a cleric when he had not yet been tonsured as a cleric, impetrated our letters to the Bishop of Durham and the Dean of York, if we remember well,

concerning the same church and chapel, with the settlement itself kept silent. But when the same G. and the responsals of the aforesaid R. were finally established in our presence, we, learning the truth concerning these matters from your letters and also considering how the aforesaid G. did not deny that he had taken part in the settlement and had not yet been tonsured when he obtained those letters, decided by apostolic authority to impose silence upon him concerning the aforesaid church and chapel.

> Si beneficium, quod per transactionem habetur, impetratur ut vacans, ab eo, qui fuit transactionis mediator, non valet impetratio. H. d. quoad titulum.
>
> Idem Eboracensi Archiepiscopo et Wigorensi Episcopo.
>
> Ex literis vestris accepimus, quod, quum olim inter R. et A. clericos super ecclesia de Vult. et capella de Torhec ad eandem ecclesiam pertinente coram te, frater episcope, qui iudex fueras delegatus, auctoritate G., qui tunc eidem A. patrocinabatur in causa, et testis inscriptus fuerat, transactio iam pridem facta fuisset, postmodum idem G. veniens ad praesentiam nostram, et se mentiens clericum, quum nondum esset in clericum tonsuratus, ad Dunelmensem episcopum et decanum Eboracensem, si bene meminimus, super eadem ecclesia et capella tacito de transactione ipsa literas nostras impetravit. Quum autem idem G. et responsales praedicti R. in nostra demum praesentia fuissent constituti, nos ex literis vestris veritatem super his cognoscentes, et attendentes etiam, quomodo praefatus G. non inficiaretur, se transactioni interfuisse, et nondum fuisse tonsuratum, quum literas istas obtinuit, ei super praedicta ecclesia et capella auctoritate apostolica silentium duximus imponendum.

Chapter VII

Latin source headnote: A settlement cannot be made concerning an ecclesiastical benefice, but an amicable composition can be made. This is what it says, and it is daily alleged.

The same.

Concerning what you asked—whether a settlement can be made regarding an ecclesiastical benefice brought into litigation—we give the following answer, just as long ago, if we remember well, we gave an answer not dissimilar to another asking: according to the form ascribed by the canons to other settlements, a settlement cannot be made concerning a sacred thing in litigation. For we believe that sacred things being possessed in return for something given, retained, or promised has the appearance of simony. But otherwise, if the litigants compose matters between themselves freely and amicably, we by no means say that this opposes the sacred canons.

> Super ecclesiastico beneficio non potest transigi, sed amicabiliter componi. H. d. et quotidie allegatur.
>
> Idem.
>
> Super eo, quod quaesivisti, utrum de ecclesiastico beneficio in litigium deducto possit fieri transactio, tale damus, sicut iam pridem, si bene meminimus, alii non absimile quaerenti dedimus responsum, quod secundum formam a canonibus in aliis transactionibus adscriptam transigi super re sacra litigiosa non potest. Etenim res sacrae, ut possideantur aliquo dato, vel retento sive promisso, speciem credimus habere simoniae. Alias autem, si gratis et amicabiliter inter se litigantes componant, sacris canonibus nequaquam dicimus obviare.

Chapter VIII

Latin source headnote: A settlement made concerning the things of a church by a prelate without the superior's consent does not bind his successor.

The same, to the Abbot of Straphor and the Prior of Phe.

Coming to the clemency of the Apostolic See, our beloved son Master G. of Favill. showed us by his intimation that the monks of Marmoutier cultivate lands in the parish of Saint M. of Marchia, and their tenants receive from that church all ecclesiastical sacraments, both necessary and voluntary, and nevertheless they refuse to pay to that church the tithes established by the canons. But they pay it a third part of the crops and presume to retain two parts for themselves; and of the other minor tithes, such as the offspring of animals and fruits of gardens, they are not ashamed to furnish nothing at all.

But they reckon that they can protect themselves in this by pretext of a certain settlement made between the aforesaid monks and a certain priest, predecessor of the aforementioned G., namely, in such a way that from two ploughlands of land that the monks hold in their demesne, they pay only a third part of the tithes [of the crops], retaining the rest for themselves. Thus it happens that, taking from this an occasion for acting maliciously, the monks convert into their demesne, more astutely than providently, estates devolved to them from a failure of cultivators, and aggregate four or perhaps more ploughlands to the two, furnishing tithes from them no differently than they would have furnished from the two, although according to the tenor of the settlement they would be bound to pay complete tithes from them.

Therefore, since it is fitting for us to provide for churches lest their rights appear to perish for anyone, by apostolic writings we command your fraternity that, when you have been required concerning this, after both parties have been summoned before your presence, you inquire more diligently into the truth of the matter. Unless the aforesaid monks plainly produce before you a privilege granted to them concerning this by [the clemency of] the Apostolic See, or unless the aforesaid monks show that the prescribed settlement was confirmed by apostolic authority, since otherwise it appears to have been made between persons [thus] rather than between churches, and since we do not permit agreements conducted among some to harm others, with every delay and appeal removed, you are to compel them and [their] cultivators with every strictness to furnish perpetually every year to the church of Saint Mary of Marturen. all the tithes [in their entirety] arising from any things whatsoever, completely and without [any] diminution, and [also] to restore to the same church a just valuation of those tithes that they had unlawfully retained.

But if, according to the matters proposed to us, it should appear to your discretion in judgment that the aforesaid monks can justly be pressed only to furnishing a third part of the tithes, then, with appeal removed, by apostolic authority you are to compel the oft-mentioned monks to furnish to the aforementioned church the third part as tithes of all things that the canons have decreed are to be tithed.

> Transactio facta de rebus ecclesiae per praelatum sine superioris consensu non obligat successorem.
>
> Idem Abbati de Straphor, et Priori de Phe.
>
> Veniens ad apostolicae sedis clementiam dilectus filius magister G. de Favill. sua nobis insinuatione monstravit, quod monachi maioris monasterii terras in parochia sanctae M. de Marchia excolunt, et ab eadem ecclesia coloni eorum omnia ecclesiastica tam necessaria quam voluntaria suscipiunt sacramenta,

et tamen eidem ecclesiae suas a canonibus constitutas decimas solvere contradicunt. Sed de frugibus tertiam partem solvunt ei, et duas sibi retinere praesumunt, de reliquis autem minutis decimis, utpote nutrimentis animalium et fructibus hortorum, nil penitus praestare non erubescunt. Arbitrantur autem, ad hoc se posse tueri cuiusdam transactionis praetextu inter praefatos monachos, et quendam sacerdotem memorati G. praedecessorem factae ita videlicet, ut de duabus carruatis terrae, quas in dominio suo monachi tenent, tertiam tantum decimarum partem [frugum] exsolvant, reliquas sibi retinendo. Quo fit, ut, inde occasionem sumentes malignandi, praedia ex agricolarum defectu ad eos devoluta monachi in suum magis astute quam provide dominium convertant, et quatuor vel forte plures carrucatas duabus aggregant, non aliter decimas praestantes de illis, quam de duabus praestitissent, quum secundum compositionis tenorem integras de illis decimationes solvere tenerentur. Quoniam igitur nos convenit ecclesiis providere, ne sua cuilibet videantur iura deperire, fraternitati vestrae per apostolica scripta Mandamus, quatenus, quum exinde fueritis requisiti, utraque parte ante praesentiam vestram convocata, rei veritatem diligentius inquiratis, et, nisi privilegium [clementia] apostolicae sedis sibi super hoc indultum coram vobis praefati monachi palam produxerint, vel nisi praefati monachi transactionem praescriptam auctoritate apostolica confirmatam esse docuerint, quum alias inter personas [ita] facta potius quam inter ecclesias videatur, nec pacta inter alios acta aliis obesse patiamur, omni dilatione et appellatione remota ipsos et agricolas [eorum] decimationes [universas] ex quibuslibet rebus provenientes ex integro, absque [omni] diminutione ecclesiae S. Mariae de Marturen. iugi praestatione singulis annis praestare, et [etiam] illarum, quas illicite detinuerant, iustam aestimationem restituere eidem ecclesiae cum omni districtione compellatis. Quodsi discretioni vestrae, secundum ea quae proponuntur nobis, in iudicio visum fuerit, praefatos monachos, non nisi ad tertiae partis decimationum praestationem, secundum iustitiam urgeri posse; tunc omnium eorum, quae canones decimanda decreverint, appellatione remota, saepedictos monachos tertiam partem ecclesiae iam dictae, auctoritate apostolica decimas praestare cogatis.

Chapter IX

Latin source headnote: Just as a settlement cannot be made concerning the right of presentation, so one cannot be made concerning what is annexed to it, so that a person withdraws from litigation when some temporal thing intervenes.

Lucius III, to the Bishop of Ormensis.

Moreover, you asked whether, when a question has arisen between laymen and religious men concerning presentation to some church, a settlement is made between them in such a way that the layman obtains the presentation but the religious men receive a new or greater portion in the church in which they had previously been accustomed to have none or a lesser one, a settlement of this kind holds. Therefore, since the agreement itself deservedly appears simoniacal, we answer that it does not hold by law, nor ought the religious men to obtain any advantage from it.

Sicut super iure praesentandi, ita super annexo non potest transigi, ut recedatur a lite interveniente aliqua temporalitate.

Lucius III. Ormensi Episcopo.

Praeterea, quando inter laicos et viros religiosos de praesentatione alicuius ecclesiae quaestione suborta transigitur inter eos ita, quod praesentationem laicus obtineat, religiosi vero novam vel maiorem percipiant in ecclesia, in qua prius nullam vel minorem habere consueverant portionem, an huiusmodi transactio teneat, quaesivisti. Quum igitur ipsa pactio simoniaca merito videatur, respondemus, quod de iure non tenet, nec ex ea religiosi ullum debent commodum obtinere.

Chapter X

Latin source headnote: It is not lawful to make a settlement concerning spiritual subjection.

Celestine III.

Moreover, in the fourth place this question arose: a certain cell wished to be exempted from the subjection by which it was bound to the mother house. And when the cause was proceeding in due contest, the brothers of that cell, confessing at law that they had formerly been subject to that house, reported that a question had long ago been moved concerning this subjection and quieted by a settlement—namely, to the extent that, by rendering a certain annual payment to the mother church, the brothers of the aforementioned little cell were entirely exempted from subjection to the principal house.

But, on the other side, the prior of the greater house alleged two things together: first, that, since they had confessed that they had long been subject to that house and had not been exempted before that settlement, it was established that they had been rebels by the very fact that, before the settlement and exception, they contended that they had been withdrawn from its jurisdiction, nor could the subsequent settlement release them from so great a crime of disobedience. The prior also consequently proposed for the greater church that it was not lawful to make a settlement concerning spiritual subjection contrary to the vow of profession. We answer, therefore, that a sentence ought to proceed against them from the aforesaid confession of the brothers of the cell, especially since that settlement—although it could not be clearly established to us concerning what the cell was determinately bound to render—is thought to have contained simoniacal iniquity.

> Super spirituali subiectione non licet transigi.
>
> Coelestinus III.
>
> Praeterea quarto loco quaestio talis accessit, quod quaedam cella eximi voluit a subiectione, qua matrici domui tenebatur. Quumque causa debito Marte percurreret, fratres illius cellae, se confitentes in iure illi domui quondam fuisse subiectos, referebant quaestionem olim de hac subiectione fuisse motam, et transactione sopitam, videlicet eatenus, ut quendam annuum censum ecclesiae matrici reddendo fratres memoratae cellulae penitus essent a subiectione principalis domus exempti. Ceterum ex adverso prior maioris domus duo pariter allegabat, unum scilicet quod, ex quo confessi fuerant, se dudum illi domui fuisse subiectos, et non ante transactionem illam exemptos, constabat, illos fuisse rebelles eo ipso, quod ante transactionem et exceptionem se contendebant ab eiusdem iurisdictione esse subtractos, nec transactio subsequens eos poterat a tanto crimine inobedientiae relaxare. Alterum quoque Prior consequenter pro maiori ecclesia proponebat, quod de spirituali subiectione contra votum professionis transigere non liceret. Respondemus igitur, quod ex praedicta fratrum de cella confessione contra eos sententia procedere debeat, praesertim quum illa transactio, licet nobis de illo, quod cella determinate reddere tenebatur, clare constare nequiverit, iniquitatem simoniacam continuisse putetur.

Chapter XI

Latin source headnote: A judge can and ought to interpose himself for making a settlement between the parties, except in cases in which the laws do not admit this, as concerning matrimony. This is what it says.

Honorius III, to I., Cardinal-Priest of the Title of Saint Praxedes.

On your part it was proposed before us that certain Greeks furtively received sacred orders from bishops not their own; certain excommunicated persons also celebrate in churches under interdict and, adhering pertinaciously to Greek rites, are willing in no respect to obey Latin prelates. Furthermore, certain Greek and Latin bishops perform consecrations in the bishoprics of others and receive tithes in them to the prejudice and grievance of the bishops of those places, although the bishops of the Greeks had been accustomed neither to receive tithes nor to celebrate consecrations of this kind. In addition, Greek laymen do not fear to put away their wives according to the movement of their own will and bring in others over them, and to work on Sundays and feast days just as on ordinary days.

Moreover, certain barons and knights, both Latin and Greek, detaining contrary to justice abbeys and other churches together with their men and other goods, do not pay tithes and defend in their error others who refuse to pay; and, if a sentence of excommunication is rendered against them for these or other excesses, they hold it cheap, to the peril of their souls and scandal of others. Hence you desire to be taught by us what is to be done by you in all the aforesaid matters and how the Archdeacon of Neoportensis is to be punished, who did not fear in fact to grant to certain persons license to go with merchandise to Alexandria contrary to the statute of the General Council.

We therefore answer your discretion briefly that, since canonical and civil laws have been issued concerning almost all the articles noted above, you are to proceed in these matters, when necessary, according to canonical and lawful sanctions. You will also be able to interpose your part toward composing matters and at times detract something from severity, insofar as, after the condition of the empire and the multitude of transgressors have been weighed with provident deliberation, you see it to be expedient—except, of course, in cases that do not admit the remedy of composition or dispensation, such as the sacrament of marriage. Since it exists not only among Latins and Greeks but also among believers and unbelievers, it will not be lawful to depart from canonical severity concerning it.

But in those matters concerning which no law is found expressed, you are to proceed with equity preserved, always inclining toward the more humane part, especially on account of the still weak condition of the empire, according as you see persons and causes, places and times demand.

> Iudex potest et debet se interponere pro transactione inter partes facienda, praeterquam in casibus, in quibus iura hoc non admittunt, ut super matrimonio. H. d.
>
> Honorius III. I. tituli sanctae Praxedis Presbytero cardinali.
>
> Ex parte tua fuit propositum coram nobis, quod nonnulli Graeci furtive sacros ordines a non suis episcopis receperunt, quidam etiam excommunicati celebrant in ecclesiis interdictis, et Graecis ritibus pertinaciter inhaerentes in nullo volunt obedire praelatis Latinis. Praeterea quidam Graeci et Latini episcopi consecrationes faciunt in episcopatibus alienis, et decimas percipiunt in eisdem in episcoporum eorundem locorum praeiudicium et gravamen, licet episcopi Graecorum nec percipere decimas, nec consecrationes huiusmodi consueverint celebrare. Ad hoc laici Graeci uxores suas secundum motum propriae voluntatis dimittere et alias superducere non verentur, ac operari dominicis et festivis diebus quemadmodum in profestis. Porro quidam barones et milites tam Latini quam Graeci abbatias et ecclesias alias cum hominibus et bonis aliis earundem contra iustitiam detinentes, decimas non exsolvunt, et alios solvere recusantes in suo errore defendunt, et, si pro his aut aliis excessibus feratur excommunicationis sententia in eosdem, eam in animarum suarum periculum et aliorum scandalum

vilipendunt. Unde a nobis desideras edoceri, quid tibi agendum sit in omnibus supradictis, et qualiter puniendus sit Neoportensis archidiaconus, qui quibusdam eundi cum mercibus in Alexandriam contra statutum concilii generalis licentiam de facto tribuere non expavit. Nos ergo discretioni tuae breviter respondemus, ut, quum iura canonica et civilia edita sint super omnibus fere articulis praenotatis, procedas in his, quum necesse fuerit, secundum canonicas et legitimas sanctiones. Poteris etiam ad componendum interponere partes tuas, et interdum aliquid severitati detrahere, prout, statu imperii et excedentium multitudine provida deliberatione pensatis, videris expedire: exceptis nimirum casibus, qui compositionis sive dispensationis remedium non admittunt, utpote coniugii sacramentum, quod, quum non solum apud Latinos et Graecos, sed etiam apud fideles et infideles exsistat, a severitate canonica circa illud recedere non licebit. In his vero, super quibus ius non invenitur expressum, procedas, aequitate servata, semper in humaniorem partem maxime propter statum imperii adhuc debilem declinando, secundum quod personas et causas, loca et tempora videris postulare.

Title XXXVII: On Pleading

Chapter I

Latin source headnote: A cleric in sacred orders, or one in minor orders who has a benefice, ought not to plead in a secular forum except for himself, his church, or miserable persons.

From the Lateran Council.

Clerics in the subdiaconate and above, [and] also in minor orders if they are sustained by ecclesiastical stipends, are not to presume to become advocates in secular business before a secular judge, unless they are pursuing their own cause or that of their church, or perhaps acting for miserable persons who cannot administer their own causes. [But neither procurations, etc.]

DE POSTULANDO.

Clericus in sacris vel minoribus beneficiatus in saeculari foro postulare non debet, nisi pro se, vel sua ecclesia, vel miserabilibus personis.

Ex concilio Lateranensi.

Clerici in subdiaconatu, et supra, [et] in ordinibus quoque minoribus, si stipendiis ecclesiasticis sustententur, coram saeculari iudice advocati in negotiis saecularibus fieri non praesumant, nisi propriam causam vel ecclesiae suae fuerint prosecuti, aut pro miserabilibus forte personis, quae proprias causas administrare non possunt. [Sed nec procurationes etc.]

Chapter II

Latin source headnote: Regular canons, like monks, cannot plead except for the utility of the church or their monastery and at the abbot's command.

Innocent III, to the Archbishop of Compostela.

On your part it was proposed before us that certain regular canons, perhaps so that they may be able to demonstrate themselves learned in law and have material for wandering outside the cloister, presume to exercise the office of advocate not only in ecclesiastical but also in forensic causes. And when it is objected against them that, according to canonical sanctions, they ought not to be undertakers or executors even of forensic or ecclesiastical business unless perhaps the utility of the monastery demands it, with the abbot nevertheless commanding, they propose, to excuse their

insolence, that the chapter through which the aforesaid things appear to be prohibited manifestly speaks concerning monks, not regular canons. Hence you wished to consult us whether such persons are to be admitted to advocacy. To this we answer your consultation in this manner: we believe that, with respect to the aforesaid matters, the same judgment concerning regular canons as concerning monks is to be observed, although monks are specially expressed in the canon. [Given at Rome at Saint Peter's, on the Ides of March, in the ninth year, 1206.]

> Canonici regulares postulare non possunt, sicut monachi, nisi pro utilitate ecclesiae, vel sui monasterii, et praecepto abbatis.
>
> Innocentius III. Compostellano Archiepiscopo.
>
> Ex parte tua coram nobis fuit propositum, quod quidam canonici regulares, ut se forte peritos in iure valeant demonstrare, ac extra claustrum materiam habeant evagandi, non solum in ecclesiasticis, verum etiam in forensibus causis praesumunt advocati officium exercere. Quumque obiicitur eis, quod iuxta canonicas sanctiones non debent esse forensis vel ecclesiastici negotii susceptores vel exsecutores etiam, nisi forte id monasterii exposcat utilitas, abbate nihilominus imperante, ipsi ad suam proponunt insolertiam excusandam, quod capitulum illud, per quod praedicta prohiberi videntur, de monachis, non de canonicis regularibus loquitur manifeste. Unde nos consulere voluisti, utrum tales sint ad patrocinium admittendi. Ad quod consultationi tuae taliter, respondemus, quod idem iudicium de canonicis regularibus, quod et de monachis, quantum ad supradicta credimus observandum, licet de monachis in canone specialiter sit expressum. [Dat. Rom. ap. S. Petr. Id. Mart. Ao. IX. 1206.]

Chapter III

Latin source headnote: It summarizes itself.

Gregory IX.

Since it is the office of a priest to harm no one but to wish to benefit everyone, it is lawful for him to plead only for himself, his church, or, if necessity presses, persons connected to him or miserable persons. (*And below:*) But a cleric who presumes to be advocate or proctor for outsiders against the church from which he obtains a benefice can, as an ungrateful person, especially if he is a cleric of the same church, be despoiled of a benefice of this kind.

> Se summat.
>
> Gregorius IX.
>
> Quum sacerdotis sit officium nulli nocere, omnibus autem velle prodesse, non nisi pro se ipso, vel ecclesia sua, vel, si necessitas immineat, pro personis coniunctis aut miserabilibus sibi licitum est postulare. (Et infra:) Clericus autem, qui contra ecclesiam, a qua beneficium obtinet, pro extraneis advocatus vel procurator esse praesumit, tanquam ingratus potest, maxime si clericus sit eiusdem ecclesiae, beneficio huiusmodi spoliari.

Title XXXVIII: On Proctors

Chapter I

Latin source headnote: No one is heard as another's proctor unless he has a mandate lawfully made.

Gregory the Great to Maximus, Bishop of Salona.

We had indeed caused other [writings to be sent to your fraternity before, but at the time when we wished to release your men whom you sent to us.] We have learned that you wrote to certain of our men that you had not then sent the aforesaid men for the case, and therefore that the things done with them ought not to stand; but Thomas also [the defender of your church] stated that this had been said to him orally by you. For this reason we have now judged that not even the bearers of the present letters ought to be trusted, lest the same thing likewise be said concerning them afterward. Therefore, because this has forewarned us that we ought to be more cautious, if you wish to plead the case, send [henceforth] a person instructed in it, with a mandate lawfully made, confirmed by your subscriptions and those of the priests or deacons and witnesses, and with the proceedings recorded according to custom, so that whatever has been transacted with him may stand in law. [For we not only, etc.]

> **DE PROCURATORIBUS.**
>
> Non auditur quis tanquam alterius procurator, nisi habeat mandatum legitime factum.
>
> Gregorius Maximo Salonensi Episcopo.
>
> Alia quidem [scripta ad fraternitatem tuam antea feceramus, sed tempore, quo homines tuos, quos ad nos misisti, relaxare voluimus.] Scripsisse te quibusdam nostris comperimus, quod praedictos viros tunc ad causam non miseris, et ideo ea, quae cum ipsis facta sunt, subsistere non debere; sed et Thomas [ecclesiae tuae defensor] sibi hoc verbo a te dictum perhibuit, ex qua re iam nec praesentium portitoribus iudicavimus esse credendum, ne de ipsis quoque post haec similiter diceretur. Quia ergo hoc cautiores nos esse debere praemonuit, si causam vultis dicere, instructam [de cetero] personam cum mandato legaliter facto, tuis et presbyterorum seu diaconorum testiumque subscriptionibus roborato, gestisque ex more indicto transmitte, ut quicquid cum ea actum fuerit iure subsistat. [Nam nos non solum etc.]

Chapter II

Latin source headnote: A sentence, even one condemning a person in costs, pronounced against an absentee lawfully excused through a messenger for a probable cause, is invalid. This states the rule according to its true meaning.

Alexander III.

We have received the complaint of the cleric A. that, although our venerable brother the Bishop of Worcester had undertaken, by our mandate, to terminate with the due conclusion the case which is pending between him and the Bishop of Salisbury concerning the church of Bribec., nevertheless, because that cleric could not present himself to him on the appointed date, inasmuch as he was detained by illness—as he was prepared to prove through a certain priest and deacon whom he had sent into the presence of that bishop—the bishop condemned the same A. to restore the expenses which R., Archdeacon of Lisieux, had incurred by coming then for that case on that date. We therefore command and enjoin upon your discretion that, if the aforesaid bishop has not absolved the same A. from the aforesaid sentence in accordance with our mandate, you, after inquiring more diligently into the truth of the matter, if it is established to you that the Bishop of Worcester condemned the aforesaid A. to restore the expenses for no other reasonable cause than merely because, while detained by illness, he did not come into his presence on the appointed date—since no one can be compelled, unless he wishes, to appoint a proctor in serious cases, and since he sent a

priest and a deacon to prove his illness—are not to delay in absolving him from the same sentence by our authority, the remedy of appeal being removed.

> Non valet sententia, etiam expensarum condemnatoria, lata contra absentem, ex probabili causa legitime per nuncium excusatum. H. d. quantum ad verum intellectum.
>
> Alexander III.
>
> Querelam A. clerici accepimus, quod, quum venerabilis frater noster Wigorniensis episcopus causam, quae vertitur inter ipsum et Salesberiensem episcopum super ecclesia de Bribec., de mandato nostro suscepisset fine debito terminandam, tandem, quia idem clericus termino constituto suam ei exhibere praesentiam non potuit pro eo, quod erat infirmitate detentus, sicut per quendam presbyterum et diaconum, quos ad praesentiam ipsius episcopi miserat, paratus erat probare, eundem A. in restitutione expensarum, quas R. Lexoviensis archidiaconus pro ipsa causa ad diem ipsum tunc veniendo fecerat, condemnavit. Mandamus itaque discretioni vestrae atque praecipimus, quatenus, si praefatus episcopus eundem A. iuxta mandatum nostrum a praescripta sententia non absolverit, vos, rei veritate diligentius inquisita, si vobis constiterit, quod Vigorensis episcopus praefatum A. in restitutione expensarum pro nulla alia rationabili causa condemnaverit, nisi pro eo tantum, quod in termino constituto ad eius praesentiam non accessit infirmitate detentus, quum non possit quis cogi, nisi velit, in gravibus causis procuratorem constituere, et quum ipse ad probandum infirmitatem suam presbyterum et diaconum destinaverit, auctoritate nostra sublato appellationis remedio eum absolvere ab eadem sententia minime differatis.

Chapter III

Latin source headnote: A sentence pronounced with a proctor who has been revoked and informed of this does not prejudice the principal. This states the rule according to the common understanding.

Clement III.

Textual note: The Latin Library transcription's *quadum* and *quibusdum* have been corrected to *quadam* and *quibusdam*.

We have received from the representation of our beloved son I., Archdeacon of Séez, that, when a controversy had arisen between him and Master G. de Sang. concerning a certain prebend of the church of Lisieux which is called de Pomeria, G. of Tortona, presenting himself as a proctor of that archdeacon appointed for that case, opposed the same master, who had come to the Apostolic See on this account, with certain letters of ratification, as he said. But when some progress had been made in cognizance of the case, although the aforesaid G. had been expressly forbidden by that same archdeacon, his principal, in the presence and with the assistance of two clerics, to undertake cognizance of the case and to use his letters in court for undertaking the trial, he nevertheless proceeded in that case and, as is said, received an adverse sentence. But because one of the aforesaid clerics is said to have died, [we nevertheless,] considering that the same G. ought not to have proceeded, contrary to the prohibition of the archdeacon himself, to undertake the trial of his case, command your discretion by apostolic writings that, if, as the account stated, the foregoing is established by the oath of the archdeacon himself and of the surviving cleric—namely, that the same archdeacon expressly forbade the said proctor to undertake the determination of that controversy or in any way to use his letters of ratification in court for undertaking the trial—you, notwithstanding the sentence pronounced against him, are to cause possession of the aforesaid prebend, together with the fruits received from it, by whomsoever it may be detained, to be restored by our authority to that

archdeacon, provided that no other canonical obstacle stands against his restitution, the obstacle of contradiction and appeal being removed. Once restitution has been made, if the archdeacon himself can prove his canonical institution, you are to decree, as shall be just, that it remain ratified and inviolate, appeal being set aside.

> Sententia lata cum procuratore revocato et de hoc certificato non praeiudicat domino. H. d. secundum communem intellectum.
>
> Clemens III.
>
> Ex insinuatione dilecti filii nostri I. archidiaconi Sagiensis accepimus, quod, quum inter ipsum et magistrum G. de Sang. super quadam praebenda Lexonensis ecclesiae, quae de Pomeria dicitur, controversia mota fuisset, eidem magistro propter hoc ad sedem apostolicam accedenti G. de Tortona, procuratorem ipsius archidiaconi se gerens ad illam causam constitutum, cum quibusdam literis de ratihabitione, prout dicebat, se opposuit. Quum autem aliquantulum in causae cognitione processum fuisset, Licet praedicto G. ab eodem archidiacono procuratori suo, duobus clericis praesentibus et assistentibus expresse fuisset inhibitum, ne causae cognitionem susciperet, et ne ad iudicium suscipiendum in iure suis literis uteretur, ipse nihilominus in ipsa causa procedens, sententiam, sicut dicitur, contrariam reportavit. Ceterum, quia alter de praedictis clericis dicitur obiisse, [nos tamen] attendentes, quod idem G. contra ipsius archidiaconi prohibitionem in suscipiendo iudicio ipsius causae procedere non debuerit, discretioni vestrae per apostolica scripta mandamus, quatenus, si, sicut ratio dicta, per ipsius archidiaconi et superstitis illius clerici iuramentum constiterit de praemissis, eundem archidiaconum expresse prohibuisse, ne dictus procurator illius controversiae diffinitionem susciperet, et ne in iure ad suscipiendum iudicium suis literis de ratihabitione aliquatenus uteretur, sententia contra eum lata nequaquam obstante, praedictae praebendae possessionem cum fructibus inde perceptis, a quocunque detineatur, archidiacono eidem, sublato contradictionis et appellationis obstaculo, si eius restitutioni aliud canonicum non obsistat, auctoritate nostra restitui faciatis eidem. Restitutione vero facta, si archidiaconus ipse suam canonicam institutionem probare potuerit, ipsam ratam et inviolabilem permanere, sicut iustum fuerit, appellatione postposita decernatis.

Chapter IV

Latin source headnote: A rescript obtained concerning subsequent judicial proceedings by a proctor who has been revoked and informed of this is invalid, as is a proceeding or sentence issued through him, if the revocation reached the opponent. This states the rule according to the gloss.

Innocent III to the Bishops of Chalon and Catalaun.

Our venerable brother the Bishop of Toul, appearing in our presence, has tearfully complained that, when formerly, in order to conduct the case pending between himself and the dean of Toul of good memory concerning dilapidation, excommunication, perjury, and certain other crimes, he appointed the priests T. and G. as proctors and arranged for them to be sent to the Apostolic See, after he subsequently began to waver concerning their fidelity, he revoked within a short space of time the mandate which he had given them. But they, although they had received the letters revoking the mandate, nevertheless proceeded in the business and, presenting themselves as proctors, entered into litigation with [his] adversary, namely Geoffrey, Archdeacon of Toul; thereafter, together with him, they obtained our letters to our beloved son G., Archdeacon of Paris, and his colleagues, to the prejudice of that bishop.

Although their citation had not been presented to that bishop, nevertheless, when it had come to his knowledge that the case pending between them and the said dean and archdeacon had been committed to them, he hastened into their presence. And when the aforesaid bishop, after much insistence, had obtained a copy of our rescript and was carefully examining its tenor with prudent men, greatly wondering that the above-mentioned priests had obtained letters of this kind as proctors, and requested an adjournment from those judges in order to prove that they were false proctors, they, regarding the exception interposed as useless and superfluous, refused to grant him a delay for proving it. For this reason that bishop had recourse to the benefit of appeal and withdrew from the presence of those judges while appealing. But they, paying no deference to the appeal, presumed to proceed in that business and also, although issue had not been joined and the order of law had been passed over, to receive witnesses against that bishop, [and,] removing him from the church of Toul by sentence, [contrary to the form of our mandate, granted the chapter of Toul free power to elect a pontiff for itself. But when the said bishop and P. the archdeacon had recently come into our presence on this account and had litigated before us for some time concerning the proceedings of those judges, that bishop produced thirteen witnesses—certain abbots and monks of the Black and White Orders and certain secular clerics. When they had been diligently examined, it appeared clearly from their depositions that, when the above-mentioned bishop requested an adjournment to prove the aforesaid exception, the aforementioned judges denied it to him, and that, although that bishop appealed to the Apostolic See on this account, they nevertheless proceeded in the business after the appeal had been interposed to us.]

We, however, although we could scarcely give credence to the assertion that the often-mentioned judges, being learned, provident, and honourable men, had proceeded in the manner stated—especially since, in the report which they transmitted into our presence, they made no mention of an exception of this kind having been interposed—nevertheless, because the bishop gave us full proof concerning the things alleged through religious, provident, and honourable men, of whom it is not likely that, forgetful of their salvation and in contempt of the sanctity of their oath, they bore false witness; considering also that the exception of a false proctor may be raised not only before sentence but even afterward, in accordance with canonical and lawful enactments, since, when it has been proved, the trial is regarded as null and the controversy as of no moment, we have judged that the proceeding of the aforesaid judges must be annulled by sentence, with the counsel of our brothers, [restoring the business to that state, etc. Given at Rome, at Saint Peter's, on the Kalends of February, in the ninth year, 1207.]

> Rescriptum super consecutivis iudiciis impetratum a procuratore revocato, et de hoc certificato, non valet, nec processus vel sententia lata per ipsum, si revocatio pervenit ad adversarium. H. d. secundum glossam.
>
> Innocentius III. Cabilonensi et Catalanensi Episcopis.
>
> In nostra praesentia constitutus venerabilis frater noster Tullensis episcopus lacrimabiliter est conquestus, quod, quum olim ad procurandam causam, quae inter ipsum et bonae memoriae decanum Tullensem super dilapidatione, excommunicatione et periurio, ac quibusdam aliis criminibus vertebatur, T. et G. presbyteros procuratores instituens, ipsos ad sedem apostolicam duxerit destinandos, quum de ipsorum fide postmodum titubasset, mandatum, quod eis dederat, infra modicum temporis spatium revocavit, sed ipsi, licet mandati literas revocatorias recepissent, nihilominus in negotio processerunt, et pro procuratoribus se gerentes, cum adversario [suo], Ioffrido scilicet, archidiacono Tullensi, sunt

ingressi iudicium, cum eo, demum ad dilectum filium G. Parisiensem archidiaconum et collegas suos in eiusdem praeiudicium nostras literas impetrarunt. Quorum citatio licet eidem episcopo minime fuerit praesentata, quum tamen ad eius notitiam devenisset, quod eisdem erat causa commissa, quae inter ipsos et dictos decanum et archidiaconum vertebatur, ad eorum praesentiam properavit. Quumque praedictus episcopus per multam instantiam nostri rescripti copiam habuisset, et eiusdem tenorem cum viris prudentibus inspiceret diligenter, admirans plurimum, quod supradicti presbyteri tanquam procuratores huiusmodi literas impetrarant, ad probandum, quod falsi procuratores fuerunt, ab ipsis iudicibus inducias postulasset, ipsi exceptionem oppositam inutilem et supervacuam reputantes, ad probationem ipsius dilationem concedere noluerunt, propter quod idem episcopus ad appellationis beneficium convolavit, et ab ipsorum iudicum praesentia recessit appellans. Sed iidem appellationi minime deferentes, in negotio ipso procedere, ac nihilominus lite non contestata et iuris ordine praetermisso testes contra eum episcopum recipere praesumpserunt, [et,] ipsum a Tullensi ecclesia per sententiam removendo [praeter formam mandati nostri Tullensi capitulo concesserunt eligendi sibi pontificem liberam facultatem. Quum autem dicti episcopus et P. archidiaconus propter hoc ad nostram nuper praesentiam accessissent, et super ipsorum processu iudicum coram nobis aliquamdiu litigassent, idem episcopus XIII. testes, quosdam abbates et monachos nigri et albi ordinis, et quosdam clericos saeculares induxit, quibus diligenter examinatis, ex ipsorum depositionibus apparuit evidenter, quod quum supradictus episcopus ad probandam exceptionem praescriptam petiisset inducias, ipsas praetaxati iudices negaverunt eidem, et quod, licet idem episcopus propter hoc ad sedem apostolicam provocasset, ipsi tamen in negotio post appellationem ad nos interpositam processerunt.] Nos vero, licet vix fidem adhibere potuerimus, quod saepe dicti iudices, utpote viri literati, providi et honesti, taliter, ut dictum est, processissent, maxime quum in sua relatione, quam ad nostram praesentiam transmisere, de huiusmodi exceptione proposita nullam fecerint mentionem, quia tamen episcopus per viros religiosos, providos et honestos, de quibus non est verisimile, quod suae salutis obliti ac iuramenti religione contempta falsum testimonium tulerint, nobis fecit super iis, quae sunt proposita, plenam fidem, attendentes etiam, quod falsi procuratoris exceptio non solum ante sententiam, verum etiam postea potest obiici iuxta canonicas et legitimas sanctiones, utpote qua probata iudicium nullum et nullius momenti controversiae reputantur de consilio fratrum nostrorum processum supradictorum iudicum sententialiter duximus irritandum, [in eum statum negotium reducentes etc. Dat. Rom. ap. S. Petr. Kal. Febr. Ao. IX. 1207.]

Chapter V

Latin source headnote: If proceedings for adultery are brought before a secular judge for the legal penalty, a proctor does not intervene; it is otherwise if they are brought before an ecclesiastical judge for separation.

The same to the Bishop of Brescia.

Textual note: The Latin Library transcription's *ecclestiastico* has been corrected to *ecclesiastico*.

Of your fraternity (*And below:* [cf. c. 10, On Him Who Has Known His Consanguineous Wife, IV.13.]) We respond to your consultation in this way: if a husband accuses his wife of the crime of adultery before a secular judge so that the lawful penalty may be inflicted, because he must then undertake the bond of formal inscription and bind himself to the penalty of retaliation, he must accuse her in person, being personally present, and not through a proctor. But if a husband wishes to accuse his wife of adultery before an ecclesiastical judge so that he may withdraw from cohabitation with her, because then, even if perhaps he must make a formal inscription in order to designate in writing the

name, place, and time and all the things comprised in the civil law, he nevertheless ought not in any way to bind himself to retaliation—lest perhaps, even when he has failed in proof, he attain the effect of his intention—it can be permitted, if necessity shall demand it, that he accuse through a proctor, since an accusation of this kind, even though it is made concerning a crime, is nevertheless not criminal but is, as it were, mixed between civil and criminal, although proceedings are conducted more securely in the presence of the principal persons. [You asked, etc. (cf. c. 25, On Betrothals, IV.1). Given at Rome, etc., 1206.]

> Si agitur de adulterio coram iudice saeculari ad poenam legalem, non intervenit procurator; secus si coram ecclesiastico ad separationem.
>
> Idem Brixiensi Episcopo.
>
> Tuae fraternitatis (Et infra: [cf. c. 10. de eo, qui cogn. IV. 13.]) Consultationi tuae taliter respondemus, quod, si vir accuset uxorem de crimine adulterii coram iudice saeculari ad poenam legitimam infligendam, quia tunc inscriptionis vinculum debet arripere, seque ad poenam talionis adstringere, non per procuratorem, sed per se ipsum praesentem oportet praesentialiter accusare. Si vero vir accusare velit uxorem de adulterio coram ecclesiastico iudice, ut ab eius cohabitatione discedat, quia tunc, etsi forsan oporteat eum inscribere, ut designet in scriptis nomen, locum et tempus, et omnia, quae comprehenduntur in lege civili, ad talionem tamen non debet se aliquatenus obligare, ne forte, quum etiam in probatione defecerit, intentionis suae consequatur effectum, sustineri potest, si necessitas id postulaverit, ut per procuratorem accuset, quoniam huiusmodi accusatio, etsi de crimine fiat, non est tamen criminalis, sed quasi mixta inter civilem et criminalem, quanquam in praesentia principalium personarum securius procedatur. [Postulasti etc. (cf. c. 25. de spons. IV. 1.) Dat. Rom. etc. 1206.]

Chapter VI

Latin source headnote: One who has conducted a case by mandate of the principal recovers from him the expenses incurred on that account.

The same.

Textual note: The Latin Library transcription's *minoris vel sanioris partis* has been corrected from Friedberg's *maioris vel sanioris partis* ("the greater or sounder part").

When the proctors of both parties had come into our presence for the case pending between our beloved sons G. and F., archdeacons of the church of Chalon, [we granted them our beloved son G., Cardinal Deacon of Saint Adrian, as auditor. Before him the proctor of the Archdeacon F. alleged that, when he formerly came to the Apostolic See on account of various burdens which his adversaries were inflicting upon the church of Chalon, he obtained letters to our beloved sons the Abbot of Saint Martin, the cantor of Autun, and the Archdeacon of Flavigny, that they should compel the said Archdeacon G. by canonical coercion to cease from molesting the church of Chalon and the men of a certain obedience belonging to it, which is called Potestas Boiaci, and should compel him to render due satisfaction to that church for the injuries inflicted. And when the judges wished to proceed in the case according to the apostolic mandate, the adverse party appealed to the Apostolic See in order to evade the trial. He added also] that he had obtained letters of confirmation from Pope Celestine of good memory, our predecessor, concerning certain statutes of [that] church established with the common assent of the chapter, through the nonobservance of which the church [itself] was being defrauded of its due service. [Although that predecessor of ours had, at the request of that

archdeacon, commanded our venerable brother the Bishop of Autun to cause them to be observed, he nevertheless sent his letters to the chapter of Chalon only once concerning their observance and proceeded no further in the matter.] That proctor therefore sought, on behalf of the aforesaid archdeacon, that the [former] case be committed, that the aforesaid statutes be confirmed, and that those things which he had been compelled to expend for the utility of that church be restored to him.

[But the proctor of the other party answered to the contrary that, when the said Archdeacon F., etc. (cf. c. 27, On the Sentence of Excommunication, V.39). But he, coming to the Apostolic See, confessed that he had laid violent hands upon a cleric; suppressing, however, the fact that he had violated the immunity of a church, he obtained letters concerning his absolution. Nevertheless he remained under excommunication, since he had kept silent about one of the causes for which he had been excommunicated. Hence he said that he could neither stand in court nor appoint a proctor, especially since the man to whom he had entrusted the conduct of his case was held bound by the same sentence for a similar offence. He also alleged that the things which he had obtained from the Apostolic See while placed under excommunication lacked force. Although, for this reason, the said Archdeacon G. was not bound to answer him unless he had first obtained the benefit of absolution, nevertheless he had presented himself before the said judges and had shown through the letters of our venerable brother the bishop and our beloved son the dean of that church that neither he had any dispute against that church nor the church against him, and that the letters which his adversary had obtained from the Apostolic See had not been obtained with the will of the chapter. Therefore, when the next day assigned to them arrived, and the parties were asked whether, despite the chapter's opposition, the said Archdeacon F. should be admitted on behalf of the church of Chalon against the same Archdeacon G., G. himself appealed to the Apostolic See because of his suspicion of the judges. But to the allegations concerning observance of the customs of the church, he answered that, when the aforesaid bishop had commanded the said dean and chapter to observe the aforesaid customs, they answered that they would observe them more willingly were the poverty of the church not an impediment, adding that they should report the condition of the church of Chalon to the Apostolic See by their letters. From these matters he therefore concluded both that the expenses incurred by the said Archdeacon F. ought not to be restored to him, since he had come to the Apostolic See rather in order to be released from the bond of excommunication, and that he ought not to be heard concerning confirmation of the customs of the church, since he could not show letters of procuration, but rather the proctor himself had been appointed by the chapter. For this reason he urgently sought that the governance of the church be committed to the said bishop and dean in such a way that whatever they should establish with the greater and sounder part of the chapter, both concerning the institution of canons and concerning other matters pertaining to the governance of that church, should be inviolably observed notwithstanding the contradiction of a few, and notwithstanding the letters sent to the said Bishop of Autun concerning observance of the aforesaid customs. He sought also that the said Archdeacon F. be declared excommunicated, since he had neither satisfied the person injured nor made any mention of the violation of the immunity of the church. But on behalf of the aforesaid Archdeacon F. it was answered to the objections in this way: although he had been accused concerning the violent laying-on of hands, only entry into the church had been forbidden him; but afterward, coming to the Apostolic See, he had been absolved without any contradiction.]

We therefore, committing that case to your examination, command your discretion by apostolic writings that [if to you, etc. (cf. c. 27, On the Sentence of Excommunication, V.39).] As [for] the

aforesaid statutes, if you find that they were made without any depravity with the assent of the greater or sounder part of the chapter, and the means of the church permit it, you are to cause them to be inviolably observed. [In other matters you are to commit the governance of the church by apostolic authority to the aforesaid bishop and dean, so that whatever they, together with the greater part of the chapter, canonically judge ought to be established, both concerning the institution of canons and concerning other matters, shall have firm effect notwithstanding the contradiction or appeal of a few.] But you are to cause the expenses to be restored to the aforesaid archdeacon if he can lawfully prove that he undertook the advancement of the aforesaid business by mandate of the chapter and came to the Apostolic See on that account. [Let no one by letters, etc. Given, etc., 1198.]

Qui de mandato domini causam procuravit, ab eo repetit expensas propter hoc factas.

Idem.

Quum pro causa, quae inter dilectos filios G. et F. Gabilonensis ecclesiae archidiaconos vertebatur, procuratores utriusque partis ad nostram praesentiam accessissent, [nos eis dilectum filium nostrum G. S. Adriani diaconum cardinalem concessimus auditorem, coram quo ipsius F. archidiaconi procurator proposuit, quod, quum olim pro variis gravaminibus, quae adversarii eius Cabilonensi ecclesiae inferebant, ad sedem apostolicam accessisset, ad dilectos filios abbatem S. Martini, cantorem Eduensem, archidiaconum Flaviniacensem literas impetravit, ut dictum G. archidiaconum canonica districtione compellerent, ut ab Cabilonensis ecclesiae et hominum cuiusdam obedientiae eius, quae Potestas Boiaci dicitur, molestatione cessaret, et de iniuriis illatis ipsum eidem ecclesiae satisfactionem cogerent debitam exhibere. Quumque iudices secundum mandatum apostolicum vellent in causa procedere, pars adversa, ut iudicium declinaret, sedem apostolicam appellavit. Adiecit etiam], quod a bonae memoriae Coelestino Papa praedecessore nostro confirmationis literas impetrarat super quibusdam institutionibus [eiusdem] ecclesiae de communi assensu capituli constitutis, ex quarum inobservantia ecclesia [ipsa] debito servitio fraudabatur. [Licet autem idem praedecessor noster venerabili fratri nostro Eduensi episcopo ad eiusdem archidiaconi postulationem mandasset, ut eas faceret observari, ipse tamen semel solummodo Cabilonensi capitulo pro his servandis suas literas destinavit, nec super hoc ultra processit.] Petebat itaque procurator ipse pro archidiacono memorato [priorem] causam committi, confirmari constitutiones praedictas, et ea sibi restitui, quae ad utilitatem eiusdem ecclesiae coactus fuerat expendisse. [Ceterum procurator partis alterius ex adverso respondit, quod, quum dictus F. archidiaconus etc. (cf. c. 27. de sent. exc. V. 39.) Ipse vero ad apostolicam sedem accedens, confessus est, quod in clericum manus iniecerat violentas; supprimens autem, quod immunitatem violasset ecclesiae, super absolutione sua literas impetravit; sed nihilominus in excommunicatione remansit, quum alteram causarum, pro quibus excommunicatus fuerat, tacuisset. Unde ipsum nec in iure stare posse dicebat, nec procuratorem constituere; praesertim quum is, cui causae suae procurationem commiserat, ob excessum similem eadem innodatus sententia teneretur. Ea etiam carere viribus allegabat, quae in excommunicatione positus a sede apostolica impetrarat. Licet autem per hoc dictus G. archidiaconus ei non teneretur, nisi obtento prius absolutionis beneficio, respondere, nihilominus tamen se dictorum iudicum conspectui praesentarat, et per literas venerabilis fratris episcopi et dilecti filii decani ipsius ecclesiae ostenderat, quod nec ipse adversus eandem ecclesiam, nec ecclesia adversus eum haberet aliquam quaestionem, et literae, quas adversarius eius obtinuerat ab apostolica sede, impetratae non fuerant de capituli voluntate. Accedente igitur die altera, quae ipsis fuerat assignata, quum super eo quaereretur a partibus, utrum renitente capitulo dictus F. archidiaconus esset pro Cabilonensi ecclesia contra eundem G. archidiaconum admittendus, ipse G. propter suspicionem iudicum ad sedem apostolicam appellavit. Ad ea vero, quae super servandis consuetudinibus ecclesiae proposita fuerant, sic respondit, quod, quum memoratus episcopus dictis

decano et capitulo mandavisset memoratas consuetudines observari, responderunt, se ipsas libentius servaturos, nisi paupertas ecclesiae impediret, adiicientes, ut statum Cabilonensis ecclesiae per suas literas sedi apostolicae nunciarent. Ex his igitur concludebat, nec expensas, quas dictus F. archidiaconus fecerat, ipsi debere restitui, quum potius, ut ab excommunicationis vinculo solveretur, ad sedem apostolicam assessisset, nec eum esse super confirmandis ecclesiae consuetudinibus audiendum, cuius non poterat literas procurationis ostendere, immo ipse procurator esset a capitulo institutus. Propter quod cum instantia postulabat ordinationem ecclesiae dictis episcopo et decano committi ita, quod quicquid de maiori et saniori parte capituli tam super instituendis canonicis quam super aliis ad ordinationem eiusdem ecclesiae pertinentibus constituerent, non obstante contradictione paucorum, inviolabiliter servaretur, nec obstantibus literis super servandis praedictis consuetudinibus ad dictum Eduensem episcopum destinatis. Petebat etiam dictum F. archidiaconum excommunicatum denunciari, quum nec satisfecisset passo iniuriam, et de violatione immunitatis ecclesiae non fecisset aliquam mentionem. Ex parte vero praedicti F. archidiaconi taliter fuit ad obiecta responsum, quod licet super violenta manuum iniectione accusatus fuisset, ei fuit ecclesiae solummodo introitus interdictus; sed postmodum ad apostolicam sedem accedens sine contradictione qualibet fuerat absolutus.] Nos igitur causam ipsam vestro examini committentes Discretioni vestrae per apostolica scripta mandamus, quatenus, [si vobis etc. (cf. c. 27. de sent. exc. V. 39.)] Praedictas [vero] constitutiones, si eas de assensu capituli maioris vel sanioris partis sine pravitate qualibet inveneritis esse factas, et possibilitas ecclesiae patitur, faciatis inviolabiliter observari. [In aliis ordinationem ecclesiae praedictis episcopo et decano auctoritate apostolica committatis ita, ut quae cum maiori parte capituli tam super canonicis instituendis quam super aliis canonice duxerint statuenda, non obstante contradictione vel appellatione paucorum, obtineat firmitatem] expensas vero ante dicto archidiacono restitui faciatis, si legitime probare potuerit, se de mandato capituli suscepisse praedicta negotia promovenda, et propter hoc ad sedem apostolicam accessisse. [Nullus literis etc. Datum etc. 1198.]

Chapter VII

Latin source headnote: A university of scholars also can appoint a proctor to sue and defend.

The same to the Scholars of Paris.

Because in cases brought against you and on your behalf your university sometimes cannot conveniently be present to sue and answer, you have petitioned us that, with our permission, you might be allowed to appoint a proctor for this. Therefore, although by the common law you are able to do this, nevertheless, by authority of the present letters, we grant you the power of appointing a proctor in these matters.

Universitas etiam scholarium potest ad agendum et defendendum procuratorem constituere.

Idem Scholaribus Parisiensibus.

Quia in causis, quae contra vos et pro vobis moventur, interdum vestra universitas ad agendum et respondendum commode interesse non potest, postulastis a nobis, ut procuratorem instituere super hoc vobis de nostra permissione liceret. Licet igitur de iure communi hoc facere valeatis, instituendi tamen procuratorem super his auctoritate praesentium vobis concedimus facultatem.

Chapter VIII

Latin source headnote: If one cited for the whole case appoints a proctor whom he afterward revokes, proceedings may nevertheless be taken against him, insofar as the state of the case permits, without another citation. This states the rule as to its meaning.

Honorius III to the Bishop of Idanha.

Textual note: The Latin Library transcription's *proccessibus* and *limitatone* have been corrected to Friedberg's *processibus* and *limitatione*.

After the things alleged before us by the proctors of the parties concerning the proceedings of John, canon of Coimbra, Bartholomew, canon of Idanha, and the Dean of Ciudad Rodrigo and their co-judges, our delegates, in the case pending between you and our venerable brother the Bishop of Coimbra concerning the boundary of the dioceses and other matters, had been heard and understood, you should know that, with the assent of our brothers, we adjudged those proceedings and whatever followed from them or because of them void, notwithstanding the letters which the aforesaid Bishop of Coimbra sent concerning revocation of the mandate of his proctor, since before letters of this kind reached him the matter had been concluded on both sides concerning those proceedings. But we judged that the aforesaid Bishop of Coimbra—who had caused the entire business to be called up for examination by the Apostolic See and afterward, not without contempt of us and loss to you, revoked the mandate given to his proctor—was to be condemned to you for the expenses which you incurred from the time when the revocatory letters reached his proctor and which you will also incur until the day on which that bishop presents himself before us, either in person or through a suitable proctor, to proceed lawfully in the principal business and in matters connected with it. Therefore, lest there be any doubt concerning these matters, we have judged that these letters should be granted.

> Si citatus ad totam causam constituit procuratorem, quem postea revocat, potest nihilominus contra eum procedi, in quantum status causae patitur, sine alia citatione. H. d. quoad intellectum.
>
> Honorius III. Episcopo Egitanensi.
>
> Auditis et intellectis quae super Ioannis Colimbriensis et Bartholomaei Egitanensis canonicorum, nec non et decani Civitatensis suorumque coniudicum delegatorum nostrorum processibus in causa, quae inter te et venerabilem fratrem nostrum Colimbriensem episcopum super limitatione dioecesium ac rebus aliis vertitur, a procuratoribus partium fuere proposita coram nobis, processus ipsos, et quaecunque secuta sunt ex eis vel ob eos, noveris nos de consensu fratrum nostrorum irrita iudicasse, non obstantibus literis, quas de revocatione mandati procuratori suo praedictus Colubriensis episcopus destinavit, quum, antequam ad illum literae huiusmodi pervenirent, fuisset super eisdem processibus hinc inde conclusum. Ceterum memoratum Colubriensem episcopum, qui procuraverat totum negotium ad examen sedis apostolicae advocari, et postmodum mandatum factum procuratori non sine nostro contemptu et tuo dispendio revocavit, condemnandum tibi duximus in expensis, quas fecisti a tempore, quo ad procuratorem ipsius revocatoriae literae pervenerunt, et facies etiam usque ad diem, quo per se idem episcopus vel per procuratorem idoneum se nostro conspectui praesentabit, in principali negotio et contingentibus ipsum legitime processurus. Ne igitur super his possit aliquatenus dubitari has literas duximus concedendas.

Chapter IX

Latin source headnote: A bishop's proctor sues and defends the causes of the bishopric, although he was not appointed under the name of syndic or agent.

The same to M. and R., Canons of Modena.

Your petition presented to us contained that, when our venerable brother the Bishop of Modena, being about to depart for Livonia, appointed you as his general vicars and proctors, whenever you

wish to sue the detainers of the goods of the bishop of Modena or to answer those suing against him, it is frequently objected that you cannot do this because it is not expressed in the instrument of the vicariate or procuration of this kind that the bishop himself appointed you as syndics or agents. You therefore humbly petitioned that, since the utility of the aforesaid bishopric is frequently impeded through exceptions of this kind, we would deign to make salutary provision in this matter. We therefore, knowing clearly from the tenor of that instrument that the intention of the bishop himself was to give you free power to sue and answer on behalf of the bishop himself, wholly reject an exception of this kind.

> Procurator episcopi causas episcopatus agit et defendit, licet non fuerit datus sub nomine syndici vel actoris.
>
> Idem M. et R. Canonicis Mutinensibus.
>
> Petitio vestra nobis exhibita continebat, quod quum venerabilis frater noster Mutinensis episcopus in Livoniam profecturus vos vicarios suos et procuratores constituerit generales, vobis volentibus agere contra detentores bonorum episcopi Mutinensis vel contra illum agentibus respondere, frequenter opponitur, quod hoc facere non potestis, pro eo, quod in instrumento vicariae sive procurationis huiusmodi non exprimitur, quod episcopus ipse constituerit vos syndicos vel actores. Quare humiliter postulastis, ut, quum per exceptiones huiusmodi frequenter impediatur utilitas episcopii supradicti, super hoc providere salubriter dignaremur. Nos igitur ex tenore ipsius instrumenti liquido cognoscentes, quod intentio fuerit ipsius episcopi dare vobis agendi et respondendi pro ipso episcopo liberam potestatem, exceptionem huiusmodi penitus reprobamus.

Chapter X

Latin source headnote: A judge ought to ensure, especially in a matrimonial case, that one appointing a proctor enjoys full liberty.

Gregory IX to the nobleman Ubaldo, a citizen of Pisa.

Coming to the Apostolic See (*And below:*) We command that you restore the noblewoman D., who is held under your power, to full liberty, causing her to be conducted safely to the castle of Massa in the diocese of Lucca, so that, being free there, she may freely appoint a proctor who may pursue her justice before us. You, therefore, are to send into our presence a suitable proctor concerning the betrothal which is alleged to have been contracted between your daughter and the son of that noblewoman, who is to have full power to sue and answer.

> Providere debet iudex, maxime in causa matrimoniali, quod constituens procuratorem gaudeat plena libertate.
>
> Gregorius IX. nobili viro Ubaldo Civi Pisano.
>
> Accedens ad apostolicam sedem (Et infra:) Mandamus, quatenus D. nobilem mulierem, quae sub tua potestate tenetur, plenae restituas libertati, faciens ipsam ad castrum de Massa Lucanae dioecesis secure perduci, ut existens ibi libera procuratorem libere ordinare valeat, qui suam coram nobis iustitiam prosequatur. Tu ergo super sponsalibus, quae inter natam tuam et filium eiusdem nobilis contracta proponuntur, procuratorem idoneum ad praesentiam nostram mittas, qui ad agendum et respondendum plenam habeat potestatem.

Chapter XI

Latin source headnote: If a general proctor is denied an adjournment for consulting his principal, who is absent for a probable cause, the proctor can appeal.

The same to the Archbishop of Canterbury.

Our beloved son Master L., rector of the church of Auna, showed in a petition transmitted to us that, when the priest R. obtained our letters to judges against him concerning that same church while he was staying at Bologna for the purpose of study, and the same rector had been cited by authority of those letters by the judges themselves, his general proctor for transacting all his business appealed to our hearing on his behalf because they refused to grant him a suitable period within which he might consult the rector himself as to whether he ought to contest or yield the claim. Therefore we command that, if it is so, after revoking as void, etc.

> Si procuratori generali denegantur induciae ad consulendum dominum, ex causa probabili absentem, poterit procurator appellare.
>
> Idem Cantuariensi Archiepiscopo.
>
> Dilectus filius magister L. rector ecclesiae de Auna transmissa nobis petitione monstravit, quod, quum R. presbyter contra ipsum, causa studii Bononiae commorantem, super eadem ecclesia ad iudices nostras literas impetrasset, earum auctoritate a iudicibus ipsis eodem rectore citato, procurator ipsius generalis ad omnia eius tractanda negotia, pro eo, quod competentem terminum, infra quem rectorem ipsum consuleret, utrum deberet contendere vel cedere quaestioni, sibi concedere denegabant, pro eodem nostram audientiam appellavit. Quocirca mandamus, quatenus, si est ita, revocato in irritum, etc.

Chapter XII

Latin source headnote: If a defendant withdraws from court, leaving a proctor only for suing, he is contumacious and is condemned in costs.

The same to the Bishop of Lisieux.

When H., Prior of Séez, and the layman T. had appeared in our presence, we granted them our beloved son O., our subdeacon, as auditor concerning the case pending between them over a certain sum of money. (*And below:*) Because the prior, after receiving the libel concerning the money in which the said T. said that he was bound to him in his wife's name, withdrew without leave, leaving a certain proctor merely to sue, and because the auditor himself did not see that person to be sufficient under the procuratorial mandate given to him to defend the prior, regarding the prior as contumacious on this account, after making a prior assessment he condemned him to the aforesaid T. in one mark sterling for expenses. (*And below:*) But we, desiring to put an end to the litigation and approving what is known to have been done by the aforesaid auditor, command that, when the parties have been summoned, etc.

> Si reus recedit a iudicio, dimisso procuratore solummodo ad agendum, contumax est, et condemnatur in expensis.
>
> Idem Episcopo Lexonensi.
>
> Constitutis in praesentia nostra H. priore Sagiensi et T. laico dilectum filium O. subdiaconum nostrum super causa, quae inter ipsos super quadam summa pecuniae vertitur, concessimus auditorem (Et

infra:) Quia prior super ipsa pecunia, in qua dictus T. eum sibi suae uxoris nomine teneri dicebat, recepto libello illicentiatus recessit, quendam procuratorem dimittens solummodo ad agendum, quem, quum auditor ipse per mandatum procuratorium sibi datum ad defendendum priorem sufficientem non viderit, eum ex hoc reputans contumacem, ipsum praefato T. in unam marcham sterlingorum condemnavit taxatione praehabita in expensis. (Et infra:) Nos autem finem litibus imponere cupientes, et quod ab auditore praefato factum esse dignoscitur approbantes, mandamus, quatenus partibus convocatis, etc.

Chapter XIII

Latin source headnote: A judicial proceeding conducted with a revoked proctor stands if the judge and the adversary were ignorant of the revocation. This states the rule according to the common and true understanding.

The same.

When the mandate of a proctor has been revoked by the principal after joinder of issue, if this was done without the knowledge of the judge or the adversary, the judicial proceeding which that person afterward conducted as though he were proctor ought to be ratified.

Tenet iudicium agitatum cum procuratore revocato, si revocationem iudex et adversarius ignoraverunt. H. d. secundum communem intellectum et verum.

Idem.

Mandato procuratoris post litem contestatam a domino revocato, si hoc ignorante iudice vel adversario factum fuerit, iudicium, quod idem quasi procurator postmodum expertus est, ratum esse debebit.

Chapter XIV

Latin source headnote: A son under paternal power can be a proctor in court, even for future litigation; and a proctor appointed jointly with several others, each for the whole, is preferred if he has first taken charge of the business; it is otherwise if he was appointed at a different time. Likewise, a proctor ought to appeal from a sentence unless he is excused by a cause; in that case he ought to notify the principal of the sentence, but he is not bound to prosecute the appeal.

The same.

The judge did not proceed unjustly when he admitted as proctor a son under paternal power, although appointed for future controversies, who, although appointed at the same time as others, nevertheless first undertook the office of procuration. This could not have occurred in the case of proctors appointed at different times, since upon the appointment of the later one, the procuration of the former would have been revoked. He also could and ought to have appealed to our hearing from the sentence insofar as it was pronounced against him, or, if a just cause excused him, at least to have notified the principal so that he might have recourse to the benefit of appeal, although the proctor was not bound to prosecute the appeal against his will.

Filius familias potest esse procurator in iudicio, etiam ad futuras lites; et procurator datus cum pluribus simul in solidum praefertur, si praeoccupavit negotium; secus, si diverso tempore fuit datus. Item procurator appellare debet a sententia, nisi ex causa excusetur; quo casu debet domino nunciare de sententia; appellationem tamen prosequi non tenetur.

Idem.

> Non iniuste iudex processit, qui filiumfamilias in procuratorem admisit, quamvis ad futuras controversias constitutum, qui, licet simul cum aliis datus fuerit, prius tamen procurationis officium occupavit. Quod fieri nequivisset in procuratoribus diversis temporibus constitutis, quoniam dato posteriori prioris esset procuratio revocata. Potuit quoque is et debuit a sententia in eo, quod lata exstitit contra ipsum, nostram audientiam appellare, vel, si iusta causa excusabat eundem, saltem domino contestari, ut ad appellationis beneficium convolaret, licet appellationem prosequi non teneretur invitus.

Chapter XV

Latin source headnote: The proctor of a community whose magistrates and sworn officers are excommunicated is not excluded from obtaining a rescript, unless they are named in the instrument of procuration, or it was made by their authority, or they were knowingly admitted to it. This states the rule and is a noteworthy and subtle decision.

The same.

We were consulted whether a proctor appointed by some community to obtain a rescript ought to be excluded from obtaining it on the ground that the magistrates and sworn officers through whom that community was governed were bound by a sentence of excommunication at the time when the office of procuration was enjoined. We answer in this way: unless those persons were named in the letters of procuration, or the appointment of the proctor was otherwise made by their authority, or the community, knowing them to be such, appointed that proctor together with them, a proctor of this kind is not to be excluded.

> Procurator universitatis, cuius maiores et iurati sunt excommunicati, non repellitur ab impetrando; nisi illi in procuratorio sint expressi, vel eorum auctoritate factum sit, vel ad id scienter sint admissi. H. d. et est decisio notabilis et subtilis.
>
> Idem.
>
> Consulti sumus an constitutus ad impetrandum a communitate aliqua procurator ab impetrando deberet excludi pro eo, quod maiores et iurati, per quos eadem communitas regebatur, tempore, quo iniunctum fuit procurationis officium, erant excommunicationis sententia innodati. Taliter respondemus, quod, nisi essent illi in literis procurationis expressi, vel alias eorum auctoritate procuratoris institutio facta fuisset, aut sciens, eos esse tales, ipsa communitas una cum eis constituisset eundem, non est procurator huiusmodi repellendus.

Title XXXIX: On the Syndic

Chapter I

Latin source headnote: Religious ought to have a syndic who sues and defends the monastery's cases, even, if necessary, with a salary fixed for him.

Pope Gregory to the Subdeacon, Defender of Sicily.

Just as it ought to belong to our solicitude to remove monks from forensic litigation [so that they may attend piously and diligently to the divine ministries], so it is necessary for us to order by our provision how their business ought to be arranged, [lest the mind, distracted by the cares of various cases, waste away and, enervated, grow sluggish in celebrating its accustomed work. John, the abbot

who bears the present letters, asserts that he has very many affairs of his monastery.] For this reason we command you that you ought to speak with Faustus, [who had been chancellor of the magnificent Roman, the former praetor,] and, if he is willing, upon the fixing of a salary you ought to entrust to him generally the affairs of that monastery. For it is expedient that the servants of God should, at a small cost, be free from the tumult of lawsuits.

DE SYNDICO.

Religiosi debent habere syndicum, qui causas monasterii agat, et defendat, etiam, si oportuerit, constituto illi salario.

Gregorius Papa Subdiacono Defensori Siciliae.

Sicut studii nostri esse debet a litigiis forensibus monachos submovere, [ut divinis ministeriis pie ac sollerter invigilent:] ita necesse est nostra provisione, quemadmodum negotia eorum disponi debeant, ordinare, [ne distenta mens per varias causarum curas defluat, et ad celebrandum opus consuetum enervata torpescat. Praesentium itaque lator abbas Ioannes plurima se monasterii sui asserit habere negotia.] Pro qua re tibi praecipimus, quatenus cum Fausto, [qui Romani viri magnifici ex praetore cancellarius fuerat,] loqui debeas, cui, si voluerit, constituto salario, monasterii ipsius generaliter debeas negotia commendare. Expedit enim pro parvo incommodo a strepitu causarum servos Dei esse quietos.

Title XL: On Things Done by Force or Because of Fear

Chapter I

Latin source headnote: If anyone professes religious life through fear of death and afterward does not ratify it, she can leave and contract marriage; it is otherwise if she had freely consented either at the beginning or afterward.

Alexander III to the Bishop of Huesca and the Prior of Saint Mary of Zaragoza.

It has been brought to our hearing that, when a certain noble and powerful man named Atorelia held his wife M. in suspicion, his knights, taking her to a certain wood at his command, wished to kill her with a drawn sword; but at last, moved by pity, they spared her upon this condition, that she should assume the monastic habit in the monastery of Colobris. When her husband heard this, because her life had been spared, he bore it very ill, but nevertheless afterward acquiesced. And thus it happened that he brought two bishops, those of Zaragoza and Tarazona, to that monastery so that they might bless her and impose the veil upon her. But the bishops, ignorant of the affair, having been sent by the husband to impose the veil upon her, and regarding the change in her life as suspicious because she was young and had a little son, met with her separately. She disclosed the affair to them in order, stating that she was entering the monastery from fear of death and not with a good intention, and added nevertheless that she would leave it whenever she could. But the bishops, then fearing for her death and unwilling to disclose what they had heard from her, one of the bishops—namely, that of Tarazona—in order that he might appear to satisfy the tyranny of that husband, pretended to impose the veil upon the woman. At last, however, when the husband had been removed from their midst, the aforesaid woman, leaving the monastery, took another husband. At the insistence of the sisters, the Bishop of Calahorra bound them with the bond of excommunication and placed all his land under

interdict, being wholly ignorant of how the matter had proceeded; our venerable brother the Archbishop of Tarragona afterward confirmed that sentence.

We therefore, trusting in your prudence and probity, have judged that this case should be committed to your experience and terminated with a due conclusion. Accordingly, by apostolic writings we command your discretion, by way of precept, that you absolve the aforesaid woman and man from the bond of excommunication, after receiving an oath that they ought to abide by your mandate; then, summoning both the woman and the prioress and nuns of the aforesaid monastery before you, you are to hear the case most diligently and terminate it with a canonical conclusion. But if it is lawfully proved that the aforesaid woman did not enter religious life through fear of death, or that she afterward ratified what she had done, you are to compel her by ecclesiastical censure to return to the monastery and resume the habit which she laid aside. [Given at Benevento.]

> **DE HIS, QUAE VI METUSVE CAUSA FIUNT.**
>
> Si quis timore mortis, postea ratum non habens, religionem profitetur, exire, et matrimonium contrahere potest; secus si a principio vel ex post facto libere consensisset.
>
> Alexander III. Oscensi Episcopo, et Priori sanctae Mariae Caesaraugustanae.
>
> Perlatum est ad audientiam nostram, quod, quum quidam vir nobilis et potens Atorelia nomine M. uxorem suam suspectam haberet, milites sui, eius praecepto eam ad quandam silvam ducentes, evaginato gladio occidere voluerunt; sed tandem pietate ducti sub tali conditione pepercerunt eidem, quod in monasterio de Colobris habitum susciperet monachalem. Quo audito maritus eius, quia reservata erat ad vitam, grave plurimum tulit, sed tamen postmodum acquievit. Sicque factum est, quod duos episcopos Caesaraugustanum et Turiasonensem, ut eam benedicerent et illi velum imponerent, ad monasterium ipsum adduxit. Episcopi vero rem ignorantes, missi a viro, ut ei velum imponerent, et, quia iuvenis erat, et filium parvulum habebat, mutationem vitae suae suspectam habentes, seorsum convenerunt eandem, quae utique ipsis rem per ordinem patefaciens, quod mortis timore et non bono animo monasterium intrabat, proposuit, et quod inde, quandocunque posset, exiret, nihilominus adiecit. Sed tunc episcopis de morte ipsius timentibus, et, quod ab ea audierant propalare nolentibus, alter episcoporum Turiasonensis scilicet, ut viri illius tyrannidi satisfacere videretur, mulieri velum imponere simulavit, tandem autem viro de medio sublato, praedicta mulier de monasterio exiens, alium maritum accepit, quos Calaguritanensis episcopus ad instantiam sororum vinculo excommunicationis adstrinxit, et totam terram eius interdixit, ignorans penitus, quomodo res processisset, quam utique sententiam venerabilis frater noster Tarraconensis archiepiscopus postmodum confirmavit. Nos igitur de prudentia et honestate vestra confidentes, causam ipsam experientiae vestrae duximus committendam, et fine debito terminandam. Ideoque discretioni vestrae per apostolica scripta praecipiendo mandamus, quatenus praedictam mulierem et virum, recepto sacramento, quod vestro debeant stare mandato, ab excommunicationis vinculo absolvatis; deinde tam mulierem, quam priorissam et moniales praescripti monasterii ante vestram praesentiam convocantes, causam diligentissime audiatis, et fine canonico terminetis. Quod si legitime probatum fuerit, non timore mortis praedictam mulierem religionem intrasse, aut quod fecit postmodum ratum habuisse, ipsam ad monasterium redire, et habitum depositum reassumere censura ecclesiastica compellatis. [Dat. Beneventi].

Chapter II

Latin source headnote: One who renounces his benefice through fear of losing his patrimony can reclaim it.

The same to the Bishop of Worcester.

The Abbot of Saint Edmund, from whom R., the bearer of the present letters, is known to hold his patrimony, sent his knights and burgesses to his house, as we have received, so that they should expel him from his house and all his possession unless he utterly abjured his church. When the same R., compelled in this way, had done so, the abbot granted the aforesaid church to another. Therefore, because things done through fear and force ought by law to be revoked as void, we command your fraternity by apostolic writings that you restore all things with their integrity to the aforesaid R., [if it is established to be so].

> Qui per metum amissionis patrimonii suo beneficio renunciat illud repetere potest.
>
> Idem Episcopo Vigorniensi.
>
> Abbas sancti Cadmundi, a quo R. praesentium lator patrimonium suum tenere dignoscitur, milites suos et burgenses ad domum eius, sicut accepimus, destinavit, qui eum a domo et universa possessione sua expellerent, nisi ecclesiam suam penitus abiuraret. Quod quum idem R. tali modo coactus fecisset, abbas alii concessit supradictam ecclesiam. Unde, quia quae metu et vi fiunt de iure debent in irritum revocari, fraternitati tuae per apostolica scripta mandamus, quatenus praedicto R., [si ita constiterit], cum integritate restituas universa.

Chapter III

Latin source headnote: One who, from terror of laymen, renounces an election made of himself can be placed over the governance to which he had been elected, if the renunciation was not confirmed by oath or pledged faith.

Clement III.

It has reached our ears, as you have reported, that a certain man elected as pleban of a certain church which pertains to your disposition renounced, from terror of the laymen, the election which had been unanimously celebrated concerning him by the clerics, with one exception; but the one who dissented emitted a declaration of appeal to the Apostolic See before the election. You therefore wished to consult whether a renunciation made from terror of laymen prevents the person who had previously been elected from being assumed to the governance of the aforesaid church, and whether the appeal of the one who swore that he would not elect and appealed lest others elect has force. Let it therefore become known to your discretion through the present letters that a renunciation made from terror of laymen, unless perhaps it was confirmed by an oath or by pledged faith, does not prevent the one who renounced the church from being placed over that same church to whose governance he had previously been elected. Nor, because of the contradiction or appeal of one who publicly confessed that he swore he would not elect, is the election canonically celebrated by the others to be annulled. [Concerning this, etc. (cf. c. 12, On Election, I.6).]

> Qui terrore laicorum electioni de se factae renunciat, si renunciatio iuramento vel fide firmata non sit, regimini, ad quod electus erat, praefici poterit.
>
> Clemens III.
>
> Ad aures nostras te significante pervenit, quod electus quidam in plebanum cuiusdam ecclesiae, quae ad tuam dispositionem pertinet, ad terrorem laicorum renunciavit electioni, quae de ipso fuerat a clericis, uno excepto, unanimiter celebrata; is autem, qui dissensit, ante electionem ad sedem apostolicam appellationis vocem emisit. Ideoque consulere voluisti, si renunciatio facta ad terrorem laicorum

impediat, quo minus ad regimen praedictae ecclesiae is, qui fuerit prius electus, possit assumi, et si eius appellatio valeat, qui, non electurum iuravit, et ne alii eligerent, appellavit. Tuae igitur discretioni literis praesentibus innotescat, quod renunciatio facta ad terrorem laicorum, nisi forte iuramento vel fide interposita sit confirmata, non impedit, quo minus is, qui renunciavit ecclesiae, ad cuius regimen prius erat electus, praeficiatur eidem. Pro contradictione autem vel appellatione eius, qui se non electurum publice confessus est iurasse non est electio ab aliis celebrata canonice irritanda. [Super eo etc. (cf. c. 12. de elect. I. 6.)]

Chapter IV

Latin source headnote: One who, through fear which could have befallen a steadfast man, swore to renounce his benefice and renounced it can reclaim it.

Innocent III to the Dean and Subdeacon of Lincoln.

It has reached our hearing, as our beloved son the Master of Chevell. has reported, that, when he had canonically obtained the church of Chevell. by authority of the Apostolic See and had possessed it peacefully for some time, at last, compelled by the gravest fear of the king to swear that he would resign it, he resigned it into the hands of those to whom this pertained. But because things done by reason of force or fear ought to lack the strength of firmness, we command your discretion by apostolic writings that, if it is established to you that the same master was compelled to make the resignation by such fear as could and ought to befall a steadfast man, notwithstanding the aforesaid oath, by which he was bound only to resign and not to refrain from reclaiming, you are to cause the aforesaid church to be restored to him by ecclesiastical censure, the obstacle of any appeal being removed. [Let no letters, etc. Given at the Lateran, on the Nones of February, 1200.]

Qui per metum, qui cadere potuit in constantem virum, beneficio suo renunciare iuravit, et renunciavit, illud repetere poterit.

Innocentius III. Decano et Subdiacono Linconensibus.

Ad audientiam nostram dilecto filio magistro de Chevell. significante pervenit, quod, quum ecclesiam de Chevell. auctoritate sedis apostolicae canonice fuisset adeptus, et aliquamdiu pacifice possedisset, gravissimo tandem metu regis, quod eam resignaret iurare coactus, eam in eorum, ad quos pertinebat, manibus resignavit. Quia vero quae vi metusve causa fiunt carere debent robore firmitatis, discretioni vestrae per apostolica scripta mandamus, quatenus, si eundem magistrum ad resignationem faciendam constiterit vobis per talem metum fuisse coactum, qui potuerit et debuerit cadere in virum constantem, non obstante iuramento praedicto, quo non ad repetendum, sed ad resignandum solummodo tenebatur, praefatam ecclesiam ei per censuram ecclesiasticam sublato cuiuslibet appellationis obstaculo restitui faciatis. [Nullis literis etc. Dat. Lat. Non. Febr. 1200.]

Chapter V

Latin source headnote: A person absolutely compelled to communicate with an excommunicated person is not excommunicated; it is otherwise if the compulsion was conditional.

The same to the Archbishop of Vidron.

By the sacred canons (*And below:*) We distinguish whether one who communicates with excommunicated persons against his will is constrained by compulsion or induced by fear. In the first case, indeed, we do not believe such a person to be held by excommunication, since he is proved to

suffer rather than to act. But in the second case, although fear diminishes the fault, nevertheless, because it does not wholly exclude it—since no one ought to incur mortal sin for any fear—we believe such a person to be stained with the taint of excommunication. [Although, etc. (cf. c. 38, On the Sentence of Excommunication, V.39).]

> Excommunicatus non est qui absolute coactus excommunicato communicat; secus si coactio fuit conditionalis.
>
> Idem Vidronensi Archiepiscopo.
>
> Sacris est canonibus (Et infra:) Distinguimus autem utrum is, qui communicat excommunicatis invitus, sit per coactionem adstrictus aut per metum inductus. In primo siquidem casu talem non credimus excommunicatione teneri, quum magis pati, quam agere convincatur. In secundo vero licet metus attenuet culpam, quia tamen non eam prorsus excludit, quum pro nullo metu debeat quis mortale peccatum incurrere, talem excommunicationis labe credimus inquinari. [Licet autem etc. (cf. c. 38. de sent. exc. V. 39.)]

Chapter VI

Latin source headnote: Relief is not given to one who suffered fear if it was not such as could have befallen a steadfast man.

The same to the Bishops of Marseille and Agde.

Textual note: The Latin Library transcription's *cum venerabili fratri* has been corrected to the grammatically required *cum venerabili fratre*.

When our beloved son [the Abbot of Floreia had recently come into our presence, he carefully explained to us—and the letters of the Abbot of the Islands and certain others contained the same thing—that Cistercian brothers had once dwelt in the Islands of Hyères; but, after they had been led into captivity by pagans, since the place was near the sea, certain canons regular transferred themselves there. Although they had now worn the habit of canons regular for thirty years, they nevertheless performed works contrary to regular life; but, returning to themselves by the Lord's inspiration, they wished the monastic order to be planted there according to the institutions of the Cistercians. The diocesan bishop also desired this. Hence, at the insistence of that abbot, we gave a mandate to our venerable brother the Archbishop of Arles that, if the desires of the diocesan bishop and those brothers agreed upon this same thing, he should establish Cistercian monks on the aforesaid island, doing concerning the canons what he believed expedient according to canonical propriety.

Having obtained these letters, therefore, that Abbot of Floreia, returning to his own region, before delivering them to the said archbishop, went with our venerable brother the Bishop of Toulon to the aforesaid place, and they obtained the assent and favour of all the brothers dwelling there to such a degree that the Abbot of the Islands delivered the keys of the house and himself into the hands of the other abbot, making profession, together with certain of the canons, that the Cistercian order would thereafter be observed. Certain of the canons also confirmed this in the hands of that Abbot of Floreia by an oath given, giving him a kiss that they would remain in that order to the end; others promised by sworn security that they would not thereafter, by themselves or by others, act against what had been done; the rest swore that, concerning provision for them, they would abide by the

decision of the aforesaid bishop and of the nobleman G. de Fossa, the sacristan, who was absent, his assent having been proved by witnesses. He later confessed this upon returning.

Thereafter that bishop and the Abbot of Floreia informed the said Archbishop of Arles by their letters that the diocesan bishop and the aforesaid canons unanimously desired the transfer of Cistercian brothers there. Accepting this, the aforesaid archbishop confirmed what they had done by the apostolic authority which he exercised, committing his functions to them in this matter so that, in his place, they might bring to completion what they had well begun concerning establishment of the Cistercian order there. Obeying his mandates humbly and devoutly, they took care to bring the things enjoined upon them to completion, giving a mandate to the general chapter of the Cistercians that it should take care to establish its order in the aforesaid place. It was therefore sought on behalf of the already-mentioned Abbot of Floreia that the transfer made be held ratified by us and confirmed by authority of the Apostolic See, and also that all transgressors and opponents who, contrary to the vows and oaths given, were striving to impede what had been done by those persons be struck with a canonical penalty.

But F. the sacristan, P. Warardi, and P. Guil. represented the course of the business differently before our venerable brother P., Bishop of Porto, whom we gave as auditor to them and to the other party. For when the case had been delegated by us to the aforesaid Archbishop of Arles under the form which we have set forth above, the aforesaid abbot, coming to the place with the Bishop of Toulon before presenting our letters to the archbishop—who, according to their tenor, ought to have inquired diligently into each particular—on his own initiative occupied the island with an accompanying multitude, steadfastly affirming that the same place had been assigned to him by us purely and simply, whether they wished it or not. And when they felt themselves aggrieved in these matters, with their abbot denying them all aid—who was said to have conceived hatred and ingratitude against certain of the canons (whence, to their loss, he did not fear to place armed men upon the fortification, the ladder being removed from it lest the canons have the means to ascend)—they appealed to the Apostolic See.

But the said abbots, nevertheless not desisting from the violence begun, when they could not corrupt certain of them by a promise of money, wished to compel them by violence to abide by the mandates of the Bishop of Toulon in these matters. And when they could not obtain even the adjournment of fifteen days which certain of them had requested for full deliberation, they were compelled to swear that they would obey the mandate of the said bishop and of G. de Fossa, a layman who had threatened them with a fall from a steep rock, concerning the aforesaid questions. Others promised into the abbot's hand, reserving a year's probation for themselves, that they would observe the Cistercian rule. But certain others neither swore nor wished to make any promise.

Thus, with the truth of these things concealed, the aforesaid bishop and Abbot of Floreia suggested to the said archbishop that the diocesan bishop and all the canons of the place agreed unanimously concerning the establishment of the Cistercians, and his confirmation was obtained in this way. But when, after a few days had elapsed, the aforesaid canons informed the archbishop of all that had been done, sympathizing with them, he revoked what had been done to their prejudice, restoring them to all the things which they had at the time when the letters were obtained; although afterward, passing over the order of law, he sequestered their possession, striking all opponents with the sword of

excommunication. And when, with the canons pressing for restitution, he had heard the confessions and attestations of both parties, he judged that the business itself should be remitted to us.

Therefore, when the parties had appeared at the Apostolic See, the often-mentioned despoiled canons accused the Abbot of Floreia in many ways. First, because he had endeavoured to obtain letters from us by suppression of the truth and assertion of falsehood. For it had been suppressed in them that the church of the Islands of Hyères belonged to the Roman Church alone, as its privileges—the transcripts of which the aforesaid archbishop sent to us—clearly indicate. The suggestion of falsehood is perceived from the fact that all the canons, together with the diocesan bishop, desired the transfer of the order, although their opposition clearly proved the matter to be otherwise. Nor was the often-mentioned Bishop of Toulon their diocesan, since they belonged immediately to the Roman Church; hence his assent in this matter was to be regarded as altogether nothing. Second, because through force and fraud he both seduced and compelled them, so that some of them emitted a vow and others gave oaths.]

We therefore, having more fully understood the arguments and allegations of the parties through the already-mentioned Bishop of Porto, who presented them to us in writing, because it was established to us concerning the vow emitted and the oath given by the canons of the Islands that they would observe the rule of the Cistercians or that they would in no way impede the transfer of that church to their order, and since observance of either does not tend toward loss of eternal salvation, unwilling to open a way to perjuries, notwithstanding the violence which was alleged to have been inflicted—since it involved neither fear of death nor torment of the body, and therefore ought not to have befallen steadfast persons—and notwithstanding the fraud by which they alleged that they had been seduced—since such fraud ought to be imputed not so much to circumvention by the aforesaid Cistercians as to their own foolishness—we have judged, with the counsel of our brothers, that silence must by sentence be imposed upon them concerning the restitution sought. [But because, etc. Given at the Lateran, on the fourth day before the Ides of June, 1199.]

> Metum passo non subvenitur, si non fuit talis, qui cadere potuit in constantem virum.
>
> Idem Marsiliensi et Agathensi Episcopis.
>
> Quum dilectus filius [abbas de Floreia nuper ad nostram praesentiam accessisset, nobis exposuit diligenter, et hoc ipsum abbatis Insularum et aliorum quorundam literae continebant, quod in insulis Arearum fratres Cistercienses quondum fuerant commorati; sed eis in captivitatem paganorum deductis, quoniam locus mari erat vicinus, illuc se quidam regulares canonici transtulerunt, qui, licet iam per annos triginta canonicorum regularium habitum portavissent, opera tamen contraria regularibus faciebant; sed ad se Domino inspirante reversi, monasticum ordinem ibidem plantari volebant secundum Cisterciensium instituta. Quod etiam dioecesanus episcopus affectabat. Unde nos ad abbatis ipsius instantiam venerabili fratri nostro Arelatensi archiepiscopo dedimus in mandatis, ut, si dioecesani episcopi et eorundem fratrum in id ipsum desideria convenirent, Cistercienses monachos institueret in insula memorata, facturus de canonicis quod crederet expedire secundum canonicam honestatem. His igitur literis impetratis, idem abbas de Floreia reversus ad propria, prius, quam eas ad dictum archiepiscopum detulisset, cum venerabili fratre nostro Tolonensi episcopo ad locum memoratum accessit, et omnium fratrum ibidem manentium in tantum obtinuerunt assensum pariter et favorem, quod abbas insularum claves domus et se ipsum in manibus alterius abbatis tradidit, professione facta cum quibusdam ex canonicis de Cisterciensi ordine in posterum observando. Quod et quidam canonicorum in manibus eiusdem abbatis de Floreia sacramento praestito firmaverunt, osculo

dato eidem, quod usque in finem in eodem ordine permanerent; aliis promittentibus per iuratoriam cautionem, quod per se vel alios contra factum istud de cetero non venirent; iurantibus reliquis quod super provisione sua starent arbitrio episcopi memorati, et nobilis viri G. de Fossa Sacristae, qui aberat, assensu probato per testes. Quod postmodum rediens est confessus. Consequenter vero idem episcopus et abbas de Floreia dicto archiepiscopo Arelatensi per suas literas intimarunt, quod dioecesanus episcopus et canonici memorati translationem Cisterciensium fratrum illuc fieri unanimiter appetebant, quod acceptans archiepiscopus memoratus, factum eorum auctoritate, qua fungebatur, apostolica confirmavit, vices suas eis in hac parte committens, ut quae bene inceperant de instituendo ibi ordine Cisterciensi, vice ipsius perducerent ad effectum. Cuius mandatis parentes humiliter et devote, quae ipsis iniuncta fuerant curaverunt ducere ad effectum, dantes generali Cisterciensi capitulo in mandatis, ut in praedicto loco suum ordinem instituere procurarent. Petebatur itaque pro iam dicto abbate de Floreia translationem factam ratam a nobis haberi, et auctoritate sedis apostolicae confirmari, transgressores etiam et contradictores omnes, qui contra vota et iuramenta praestita nitebantur quod ab iis factum fuerat impedire, canonica poena percelli. Ceterum F. Sacrista, P. Warardi, et P. Guil. coram venerabili fratre nostro P. Portuensi episcopo, quem ipsis et parti alteri dedimus auditorem, processum negotii aliter proponebant. Quum enim praedicto Arelatensi archiepiscopo causa fuerit a nobis sub forma, quam praemisimus, delegata, praefatus, abbas accedens ad locum cum episcopo Tolonensi prius, quam literas nostras archiepiscopo praesentasset, qui iuxta tenorem ipsarum de singulis debebat inquirere diligenter, motu proprio cum socia multitudine insulam occupavit, constanter affirmans, quod eis volentibus vel nolentibus locus idem pure ac simpliciter a nobis sibi fuerat assignatus. Quumque se in his gravari sentirent, abbate ipsorum eis omne auxilium denegante, qui contra quosdam de canonicis odium dicebatur et ingratitudinem concepisse, (unde in ipsorum dispendium super munitione armatos ponere non expavit, amota inde scala, ne facultas esset canonicis ascendendi) sedem apostolicam appellarunt. Sed dicti abbates nihilo minus ab incepta violentia desistentes, quum quosdam ex ipsis non possent corrumpere pecuniae sponsione, quod super his starent mandatis episcopi Tolonensis, per violentiam cogere voluerunt. Quum autem nec quindecim dierum possent inducias obtinere, quas quidam ex ipsis ad deliberandum plenarie postularant, iurare compulsi fuerunt mandato dicti episcopi et G. de Fossa laici, qui eis arduae rupis praecipitium fuerat comminatus, se super praemissis quaestionibus parituros. Alii promiserunt in manu abbatis, probatione sibi annua reservata, quod regulam Cisterciensem observarent. Aliqui vero nec iuraverunt, nec promissionem aliquam facere voluerunt. Horum ergo tacita veritate, nominati episcopus et abbas de Floreia dicto archiepiscopo suggesserunt, quod dioecesanus episcopus et omnes loci canonici super institutione Cisterciensium unanimiter concordabant, et ita fuit eius confirmatio impetrata. Sed quum paucis diebus elapsis praefati canonici archiepiscopo cuncta, quae gesta fuerant, intimassent, ipse quod in praeiudicium eorum factum fuerat, ipsis compatiens, revocavit, restituens eos ad omnia, quae habuerant tempore illo, quo literae fuerant impetratae; licet postmodum possessionem eorum praetermisso iuris ordine sequestrarit, contradictores omnes excommunicationis gladio percellendo. Et quum, canonicis ad restitutionem instantibus, confessiones et attestationes utriusque partis audisset, ad nos duxit ipsum negotium remittendum. Partibus itaque apud sedem apostolicam constitutis, canonici spoliati saepedicti abbatem de Floreia multipliciter arguebant. Primo, quod literas a nobis per veritatis suppressionem et expressionem falsitatis studuerat impetrare. Suppressum enim fuerat in illis, quod ecclesia de insulis Arearum ad Romanam ecclesiam solummodo pertineret; sicut ipsius privilegia, quorum ad nos transscripta praefatus archiepiscopus destinavit, indicant evidenter. Falsitatis vero suggestio inde perpenditur, quod omnes canonici translationem ordinis cum dioecesano episcopo pariter affectabant, quod aliter esse ipsorum contradictio liquido arguebat. Sed neque saepe dictus Tolonensis episcopus dioecesanus erat ipsorum, qui nullo mediante ad Romanam ecclesiam pertinebant; unde ipsius consensus in hac parte pro nullo erat penitus reputandus. Secundo, quod per vim et dolum eos seduxit

pariter et coegit, ut quidam eorum votum emitterent, alii iuramenta praestarent.] Nos ergo rationibus et allegationibus partium per iam dictum episcopum Portuensem, qui eas in scriptis nobis exhibuit, plenius intellectis, Quia constitit nobis de voto emisso, et de praestito iuramento a canonicis Insularum, quod regulam Cisterciensium observarent, vel quod translationem ipsius ecclesiae ad ordinem illorum nullatenus impedirent, quum utrumque servatum non vergat in dispendium salutis aeternae, nolentes viam periuriis aperire, non obstante violentia, quae proponebatur illata, quum neque metum mortis, neque cruciatum corporis contineret, et ideo non debuerat cadere in constantes, nec obstante dolo, quo se proponebant fuisse seductos quum talis dolus non tam ad circumventionem praedictorum Cisterciensium, quam ad fatuitatem eorum debeat retorqueri, super restitutione petita silentium eis de consilio fratrum nostrorum duximus sententialiter imponendum. [Verum quoniam etc. Dat. Lat. IV. Id. Iun. 1199.]

Chapter VII

Latin source headnote: When violence has been proved through witnesses, the things lost are proved by oath. And, after the judge has first assessed the value of the things lost and the claimant's oath has followed, condemnation is made.

Gregory IX.

Concerning the fact that your adversary complained that he had been despoiled by you through violence, you judge that proceedings were taken unjustly against you, since he proved the individual things which he lost only by his own oath. But after the violence was established through witnesses, and the things lost through his oath, the judge, after making an assessment according to the quality of the persons and the business, could reasonably condemn you in the valuation of the things lost as declared by the adversary's oath.

Probata violentia per testes res amissae probantur per iuramentum. Et super valore rerum amissarum taxatione iudicis praemissa, et secuto petentis iuramento fit condemnatio.

Gregorius IX.

Super eo, quod adversarius vester se conquerebatur a vobis per violentiam spoliatum, arbitramini, contra vos fuisse iniuste processum, quum non nisi proprio iuramento probaverit singula, quae amisit. Verum, postquam de violentia per testes, et de amissis rebus per ipsius constitit sacramentum, potuit iudex, taxatione ab ipso facta, pro personarum ac negotii qualitate vos in aestimatione rerum amissarum iuramento adversarii declarata rationabiliter condemnare.

Title XLI: On Restitution to the Former Condition

Chapter I

Latin source headnote: If a church was enormously injured in a contract of sale or lease, it can seek restitution to the former condition against such a contract; the buyer or tenant, however, ought not to be defrauded of his price or of expenses incurred by him.

Alexander III to the Bishop of Alfano.

Your fraternity has asked us what ought to be done concerning possessions granted to laymen for a small rent. You should therefore know that, if the church has been injured and its loss is manifestly apparent, since it is not lawful for the bishop to make the condition of that church worse, and the

church, by the law of a minor, ought always to be preserved unharmed, whatever is established to have been granted to its detriment ought to revert to its right and ownership. Provision must nevertheless be made that, if perhaps the tenants have improved those possessions by their expense and labour, they ought not to be defrauded of the expenses which they incurred in good faith.

> **DE IN INTEGRUM RESTITUTIONE.**
>
> Si in contractu venditionis vel locationis ecclesia fuit enormiter laesa, potest adversus talem contractum petere restitutionem in integrum; emptor tamen sive conductor non debet fraudari in pretio suo, vel in sumptibus per eum factis.
>
> Alexander III. Alphanensi Episcopo.
>
> Requisivit a nobis tua fraternitas, quid agendum sit de possessionibus laicis sub modico censu concessis? Noveris itaque, quod, si ecclesia laesa est, et manifeste apparet detrimentum ipsius, quum episcopo eiusdem ecclesiae conditionem facere deteriorem non liceat, et ecclesia iure minoris debeat semper illaesa servari, quae in damnum eius data constiterit ad ipsius convenit ius proprietatemque redire. Providendum est tamen, ne, si forte coloni possessiones illas expensis ac labore suo reddiderint meliores, sumptibus, quos bona fide fecerunt, debeant defraudari.

Chapter II

Latin source headnote: A church injured through the negligence of a proctor who did not produce the church's rights is restored.

Innocent III to the Abbots of Saint George and Saint Sergius.

When our beloved sons the elect and monks of Redon came to the Apostolic See for themselves and their monastery, and our beloved son Master A. came for our venerable brother the Bishop of Vannes, we gave them our beloved son G., Cardinal Deacon of Saint George at the Golden Veil, as auditor. Before him that master alleged on behalf of the bishop that, since the monastery of Redon was situated in the diocese of Vannes and subject to the church of Vannes, the aforesaid bishop had hitherto enjoyed undisturbed possession of the subjection. But when, on the occasion of a certain election which had been held there, the parties by common assent obtained letters of commission concerning these and many other matters to our venerable brother the Bishop of Nantes and his colleagues, our beloved sons the Abbots of Mallen. and Granont, two of them, after granting adjournments at the monks' insistence, at last came to the monastery. The intruder, foreseeing their arrival, renounced the election of this kind and absented himself from the monastery.

But the judges, by apostolic authority, enjoined upon the monks that they elect a syndic or proctor who would both act advisedly and answer effectively in the monastery's cases, strictly forbidding them to elect anyone as abbot until fuller cognizance had been taken of the right which the bishop said that he had in the election of the abbot. Yet the monks, although they had elected a proctor at the judges' mandate, nevertheless, being excommunicated, presumed, contrary to their prohibition, to elect an abbot in a monastery under interdict. The bishop sought the invalidation of his election and his own restitution to the possession of which the monks had despoiled him. Then the judges, after hearing and more fully understanding everything which the parties wished to allege, after the multiple delays granted to the parties for producing both witnesses and instruments, with the witnesses received and the attestations published, pronounced a definitive sentence for that bishop

concerning the aforesaid articles, quashing that election by reliance upon apostolic authority. The said master urgently sought that this sentence be confirmed by us.

To this it was answered to the contrary, among other things, that the said bishop and the Abbot of Malegio, while the Abbot of Gnanter was absent—who had been chosen by them as judge, though he had neither announced the causes of his absence nor mandated that the others proceed in the case without him—although it had been alleged by the proctor on behalf of the monks that the monastery itself belonged immediately to the Roman Church and was tributary to the Apostolic See, nevertheless began to proceed too vehemently against them. (*And below:*) We therefore, having heard through that cardinal the things alleged on both sides before him, and having inspected the privileges of our predecessors Leo, Gregory, and Clement, which indicate that monastery to pertain to the right and ownership of the Apostolic See, and understanding that, although the monastery's proctor negligently omitted to exhibit those privileges before the aforesaid judges, he nevertheless protested not so much his own right as ours—namely, that the monastery itself belonged immediately to the Roman Church—lest his negligence redound to the loss both of us and of the monastery, we restored the monks of Redon to a hearing. (*And below:*) But we have judged that the election said to have been made concordantly by the monks while the controversy upon which it depends was pending should neither be confirmed nor invalidated.

> Restituitur ecclesia laesa propter negligentiam procuratoris, qui iura ecclesiae non produxit.
>
> Innocentius III. sancti Georgii et sancti Sergii Abbatibus.
>
> Quum venissent ad apostolicam sedem dilecti filii electus et monachi Rothonenses pro se ac pro monasterio suo, ac dilectus filius magister A. pro venerabili fratre nostro episcopo Venetensi, eis dilectum filium nostrum G. sancti Georgii ad Velum aureum diaconum cardinalem dedimus auditorem. Coram quo idem magister pro episcopi parte proposuit, quod, quum monasterium Rothonense esset situm in dioecesi Venetensi et ecclesiae Venetensi subiectum, praedictus episcopus possessione subiectionis usus est hactenus inconcusse. Sed quum occasione cuiusdam electionis, quae ibidem facta fuerat, partes de communi assensu ad venerabilem fratrem nostrum Natensem episcopum et eius collegas dilectos filios de Mallen. et de Granont abbates super his et multis aliis commissionis literas impetrassent, duo eorum, assignatis induciis ad instantiam monachorum, tandem ad monasterium accesserunt, quorum adventum intrusus praesentiens, renunciavit huiusmodi electioni, et se a monasterio absentavit. Sed iudices auctoritate apostolica monachis iniunxerunt, ut syndicum vel procuratorem eligerent, qui in causis monasterii et consulte ageret, et utiliter responderet, districtius inhibentes eisdem, ne aliquem eligerent in abbatem, donec plenius cognosceretur de iure, quod episcopus se habere in abbatis electione dicebat. Monachi vero; etsi procuratorem ad mandatum iudicum elegissent, abbatem tamen in monasterio interdicto excommunicati nihilominus contra inhibitionem eorum eligere praesumpserunt, cuius electionem episcopus petiit infirmari, et se ad possessionem restitui, qua eum monachi spoliarant. Deinde vero iudices, auditis quaecunque partes proponere voluerunt et plenius intellectis, post dilationes multiplices tam ad testes quam ad instrumenta partibus producenda concessas, receptis testibus et attestationibus publicatis, pro eodem episcopo super praemissis articulis diffinitivam sententiam protulerunt, electionem apostolica freti auctoritate cassantes eandem, quam sententiam dictus magister a nobis cum instantia petiit confirmari. Ad hoc fuit inter alia ex adverso responsum, quod dictus episcopus et abbas de Malegio, absente abbate de Gnanter, qui in iudicem fuerat ab ipsis electus, quum nec absentiae suae causas, vel quod alii in causa sine eo procederent, mandavisset, licet per procuratorem ex parte monachorum fuisset propositum, quod monasterium ipsum ad Romanam ecclesiam nullo medio pertineret, et esset sedi

apostolicae censuale, dicti tamen iudices contra eos procedere nimis animose coeperunt. (Et infra:) Nos igitur auditis per cardinalem eundem, quae fuerant hinc inde proposita coram eo, et inspectis privilegiis praedecessorum nostrorum Leonis, Gregorii et Clementis, quae monasterium illud ad ius et proprietatem indicant sedis apostolicae pertinere, intelligentes, quod monasterii procurator, etsi eadem privilegia coram praedictis iudicibus exhibere omiserit negligenter, ius tamen non tam suum, quam nostrum fuerit protestatus, videlicet, quod monasterium ipsum ad Romanam ecclesiam nullo medio pertineret, ne ipsius negligentia in damnum tam nostrum, quam monasterii redundaret, ad audientiam restituimus monachos Rothonenses. (Et infra:) Electionem autem a monachis, sicut dicitur, concorditer factam, pendente controversia, ex qua pendet, nec confirmandam duximus, nec etiam infirmandam.

Chapter III

Latin source headnote: A church injured by omission of necessary proof can seek restitution to the former condition, notwithstanding the legal term precluding proof. And it can seek restitution not only against a private person but also against a church. This states the rule.

The same to the Bishops of Ely and Florence.

Having heard and understood the merits of the case in the question pending between our venerable brother the Bishop of Worcester and our beloved son the Abbot of Evesham concerning the churches situated in the vale of Evesham, which the bishop asserted to pertain to him by diocesan law, while the abbot asserted them to be wholly exempt from his jurisdiction, we clearly recognized that those churches were not withdrawn from episcopal jurisdiction by the privileges of the Roman Pontiffs, unless perhaps the vale of Evesham is that place which was endowed with liberty by two kings, namely Roe and Offa, and which Pope Celestine of good memory endowed with liberty, as is contained in his privileges. But they are proved by witnesses to have been possessed with full right by the abbots of Evesham for so long a time that the episcopal right seems to have been lawfully prescribed in them, unless perhaps the church of Worcester was vacant in the meantime for so great a space of time that, with the period of vacancy subtracted, the prescription was by no means completed. (*And below:*) Although, however, the case has been concluded on both sides, nevertheless, because each party omitted proof which it asserts to be necessary, we, considering that each church enjoys the law of a minor, after weighing equity, have restored each against the other for proving the omitted ground, lest either party be injured by serious loss because of negligence of this kind.

Ecclesia laesa in probatione necessaria omissa potest petere restitutionem in integrum, non obstante termino iuris probationis exclusivo. Et restitutionem petere potest, non solum contra privatum, sed etiam contra ecclesiam. H. d.

Idem Heliensi et Florensi Episcopis.

Auditis et intellectis causae meritis in quaestione, quae vertitur inter venerabilem fratrem nostrum Vigoriensem episcopum et dilectum filium abbatem de Evescam super ecclesiis in valle de Evescam constitutis, quas episcopus asseruit ad se dioecesana lege spectare, abbas autem eas esse ab eius iurisdictione prorsus exemptas, cognovimus evidenter, ecclesias illas per privilegia Romanorum Pontificum non esse ab episcopali iurisdictione subtractas, nisi forte vallis de Evescam sit ille locus, qui fuit a duobus regibus, Roe videlicet et Offa libertati donatus, et quem bonae memoriae Coelestinus Papa libertati donavit, sicut in ipsius privilegiis continetur. Verum tanto tempore probantur per testes ab abbatibus de Evescam pleno iure possessae, ut videatur in eis ius episcopale legitime praescripsisse, nisi forte per tantum temporis spatium Vigoriensis ecclesia interim vacavisset, ut tempore vacationis

subducto praescriptio minime sit completa. (Et infra:) Licet autem utrinque sit in causa conclusum, quia tamen utraque pars necessariam, ut asserit, probationem omisit, nos attendentes, quod utraque ecclesia fungatur iure minoris, aequitate pensata utramque restituimus contra reliquam ad probandam rationem omissam, ne alterutra pars propter huiusmodi negligentiam gravi iactura laedatur.

Chapter IV

Latin source headnote: Restitution is to be granted for a just cause even to one of full age, provided that a just cause for seeking it is proved; but if it is not proved fully or half-fully, restitution is granted in a favourable cause. This states the rule.

The same to the Prior of Saint Mary at the Prisons and L., Canon of Saint Mary of Mandria.

We learned from the letters of our beloved son the Abbot of Calven. that, when our beloved sons the archpriests Ramisane and Grimol., by our delegation, had pronounced a sentence of separation between the man I. and the woman L., and, upon an appeal being interposed, we judged that cognizance of the sentence should be committed to that abbot and the Archpriest of Padua, the obstacle of any appeal being removed, that archpriest, who could not be present for executing these matters, committed his functions to his co-judge. And when the abbot had assigned a peremptory term to the parties, because the woman's party did not come at the peremptory term, the abbot himself, to whom the other co-judge had committed his functions, after diligently inspecting the allegations of the husband, confirmed the sentence pronounced by the aforesaid judges.

But after eight days, the girl's father, coming to him and learning that he had pronounced the sentence, affirmed by his own oath that a certain man, coming to him and his daughter, fraudulently presented them with false letters in that abbot's name. By these he was instructed that, because the judge could not come on the day which he had assigned, he should present himself before him eight days after the appointed term; and afterward he appealed to the Apostolic See and also supplicated. Although the fraud perpetrated in this manner is not fully established through an oath of this kind, nevertheless, in favour of marriage, from canonical benignity we have admitted the woman's supplication against the alleged fraud and restored her, as one petitioning on behalf of the marriage, to a hearing. We therefore command your discretion by apostolic writings that, taking cognizance of the cause of the former appeal according to judicial order, you are to confirm or invalidate, as shall be just, the sentence promulgated by the first judges, appeal being removed, causing what you decree to be observed by ecclesiastical censure.

Restitutio ex iusta causa etiam maiori est concedenda, dummodo iusta causa petendi probetur; si autem non probatur plene vel semiplene conceditur restitutio in causa favorabili. H. d.

Idem Priori sanctae Mariae ad Carceres, et L. Canonico sanctae Mariae de Mandria.

Ex literis dilecti filii abbatis de Calven. didicimus, quod, quum dilecti filii Ramisane et Grimol. archipresbyteri inter I. virum et L. mulierem ex delegatione nostra sententiam divortii protulissent, et appellatione interposita cognitionem sententiae ipsi abbati et archipresbytero Paduano sublato cuiusvis appellationis obstaculo duxerimus committendam, archipresbyter ipse, qui non poterat his exsequendis interesse, commisit suo coniudici vices suas. Quumque abbas partibus peremptorium terminum assignasset, quia pars mulieris ad peremptorium terminum non accesserat, abbas ipse, cui alter coniudex commiserat vices suas, allegationibus viri diligenter inspectis latam a iudicibus praedictis confirmavit sententiam. Sed post octo dies pater puellae accedens ad ipsum, intellecto, quod sententiam protulisset, firmavit proprio iuramento, quod quidam ad eum et filiam eius accedens fraudulenter sub

ipsius abbatis nomine falsas eis literas praesentavit, quibus mandabatur eidem, ut, quia iudex ad diem, quam assignaverat, venire non poterat, post octo dies a termino constituto ipsius se conspectui praesentaret; et postmodum appellavit ad sedem apostolicam, et etiam supplicavit. Licet autem de fraude taliter perpetrata per huiusmodi iuramentum non constet ad plenum, in favorem tamen matrimonii de benignitate canonica contra fraudem propositam supplicationem mulieris admisimus, et ad audientiam restituimus eam pro matrimonio postulantem. Ideoque discretioni vestrae per apostolica scripta mandamus, quatenus de causa prioris appellationis ordine iudiciario cognoscentes, confirmetis vel infirmetis, sicut iustum fuerit, appellatione remota sententiam a primis iudicibus promulgatam facientes quod decreveritis per censuram ecclesiasticam observari.

Chapter V

Latin source headnote: A church is restored even against a sentence of the Pope. This is the first point. And the cause of restitution to the former condition ought to be tried with the parties present. This is the second point. It states these two things as regards the title.

The same to the Bishop and Chapter of Huesca.

Both from the letters of Pope Celestine of good memory, our predecessor, and from the things which in his time were transacted at the Apostolic See in your presence, brother bishop, and that of our venerable brother the Bishop of Lleida, we have understood the grave complaint of the church of Lleida, which complained both formerly and even now that it had been enormously injured by a sentence pronounced concerning certain churches by Pope Eugenius of happy memory, our predecessor. Hence, when that same Celestine, our predecessor, during the time of Pope Anastasius of pious memory, our predecessor and the immediate successor of Eugenius, while still placed in a lesser office, exercised the office of legation in the regions of Spain, he began, by delegation from Anastasius, to take cognizance of the aforesaid controversy. Alexander, the successor of Anastasius, also committed that same case to him when he again exercised the office of legation in those same regions; and he would also have terminated it with a due conclusion had an appeal not been made from him on behalf of the church of Huesca. Celestine himself frequently attested to all these things both in his letters and orally before us and our brothers.

That same Celestine, when promoted to the summit of the supreme pontificate, also committed the said controversy to our beloved son G., Cardinal Deacon of Saint Angelo, then legate of the Apostolic See, under this tenor: that, after diligently inspecting the privileges of the church of Lleida and hearing the arguments and allegations of the parties, notwithstanding the aforesaid sentence or any rescripts obtained at any time from the Apostolic See or from anyone else, whether on occasion of that sentence or in another manner, to the prejudice of the right of the church of Lleida, with all contradiction and appeal ceasing and removed both concerning the principal question and concerning an incidental one, he should pronounce definitive sentence and, committing it to execution without any difficulty, cause it to be firmly observed by ecclesiastical censure.

But because the apostolic mandate in this matter was not fulfilled by that legate or by others to whom the same case was committed under the same tenor, although the witnesses produced on behalf of the Bishop of Lleida were received, our beloved son Master A., canon of Lleida, coming into our presence, repeated the foregoing complaint in the name of the church of Lleida, urgently entreating and petitioning that through our office the already-mentioned sentence be reformed for the better and the church of Lleida be restored against it.

We therefore deliberated diligently upon that supplication with our brothers and other prudent men learned in both laws, namely canon and civil law. Some firmly asserted that, since the aforesaid C., our predecessor, appeared to have granted the benefit of restitution to the church of Lleida against the already-mentioned sentence, when, notwithstanding that sentence, he judged that the business should be committed, we also ought to admit the supplication of that church, especially because canon and civil laws agreed together in this. For by the canonical statutes it is not denied that a sentence of the Roman See can be changed for the better when either something has been obtained surreptitiously or it has decreed, by way of dispensation, to order something in consideration of ages and times or grave necessities; and according to the civil laws, princes also have permitted restitution to the former condition to be examined in their audience even against matters twice adjudged.

We perceived also, from the date of the sentence found in the register of the already-mentioned Pope Eugenius, our predecessor, that that sentence was promulgated in the first month of his pontificate, when he seemed not yet to have been fully instructed concerning the merits of that case, relying chiefly on this reason: that the privilege of Urban II produced on your behalf had been subjected to falsification. Yet, by examining its tenor closely in his register, we found it whole and altogether uncorrupted.

But although we wish the rights of the church of Lleida to be preserved unharmed, nevertheless, because we also wish to sustain your church in its justice, at last our deliberation settled upon this: whether restitution against the foregoing sentence was given or ought to be given is to be determined with the parties present, by whose assertions the merits of the causes are disclosed, in accordance with lawful enactments, so that, when we have omitted nothing among the contingent matters, neither party may have anything which it can rightly impute to us.

Therefore we command your discretion by apostolic writings that, by the feast of Blessed Luke next to come, you are to present yourselves before us either in your own persons or through a sufficient and suitable representative, to show, if you can, that the aforesaid sentence ought not to be reconsidered; or, if perhaps justice requires that it be reconsidered, you are to appear, either by yourselves or through a suitable representative, sufficiently instructed so that proceedings may be taken canonically in the principal business. You are to know for certain that, since we desire to put an end to lawsuits and, because of the great distance of the places, recourse cannot often be had to us in the foregoing question without great labours and expenses, if by the aforesaid term, which we assign to you as peremptory, you contemptuously fail to fulfil the things enjoined upon you, we shall nevertheless proceed in that business insofar as we shall be able by law.

But we wonder not a little and are disturbed that you, brother bishop, are said to have obtained confirmation of that sentence and revocation, as though surreptitiously obtained, of all the things which our often-mentioned predecessor C. did for the church of Lleida, since we can scarcely suspect concerning him that he suddenly acted contrary to his writings and assertions—which he frequently presented orally before us and our other brothers—unless he was circumvented.

> Etiam contra sententiam Papae restituitur ecclesia. Hoc primo. Et causa restitutionis in integrum debet praesentibus partibus tractari. Hoc secundo. Haec duo dicit quoad titulum.
>
> Idem Episcopo et Capitulo Oscensi.

Tum ex literis bonae memoriae Coelestini Papae praedecessoris nostri, tum ex iis, quae ipsius temporibus in tua praesentia frater episcope et venerabilis fratris nostri Ilerdensis episcopi apud apostolicam sedem gesta fuerunt, gravem Ilerdensis ecclesiae intelleximus quaestionem per sententiam felicis recordationis Eugenii Papae praedecessoris nostri super ecclesiis quibusdam prolatam, se laesam enormiter et olim et nunc etiam conquerentis. Unde quum idem Coelestinus praedecessor noster tempore piae recordationis Anastasii Papae praedecessoris nostri proximi successoris eiusdem Eugenii in minori adhuc officio constitutus in partibus Hispaniae legationis officio fungeretur, et ex delegatione ipsius cognoscere coepit de controversia memorata, cui etiam Alexander successor ipsius Anastasii, officio legationis denuo in partibus eisdem fungenti, causam commisit eandem, quam etiam fine debito terminasset, nisi ab eo fuisset ex parte Oscensis ecclesiae provocatum; quae quidem omnia in suis literis ipse et viva voce coram nobis et fratribus nostris est saepius protestatus; idem quoque Coelestinus, ad apicem summi Pontificatus promotus, dilecto filio nostro G. sancti Angeli diacono cardinali tunc apostolicae sedis legato dictam controversiam sub eo tenore commisit, ut, inspectis diligenter Ilerdensis ecclesiae privilegiis, auditis etiam partium rationibus et allegationibus, memorata sententia non obstante, vel quibuscunque rescriptis, tam occasione illius sententiae, quam alio modo in praeiudicium iuris Ilerdensis ecclesiae quondam a sede apostolica vel a quocunque impetratis, omni contradictione et appellatione cessantibus, tam super principali quam super incidenti quaestione remotis, diffinitivam proferret sententiam, eamque sine difficultate qualibet exsecutioni mandando faceret per censuram ecclesiasticam firmiter observari. Verum quoniam per ipsum legatum, aut per alios, quibus sub eodem tenore causa eadem commissa exstitit, licet testes producti ex parte Ilerdensis episcopi recepti fuerint, mandatum tamen apostolicum in hac parte non exstitit adimpletum, dilectus filius magister A. canonicus Ilerdensis ad praesentiam nostram accedens, praemissam querelam nomine Ilerdensis ecclesiae replicavit, obnixe deposcens postulavit per officium nostrum iam dictam sententiam in melius reformari, et contra eam restitui ecclesiam Ilerdensem. Nos igitur cum fratribus nostris et aliis viris prudentibus et in utroque iure peritis, canonico videlicet et civili, super ipsa supplicatione deliberavimus diligenter, nonnullis firmiter asserentibus, quod, quum praedictus C. praedecessor noster contra iam dictam sententiam visus fuerit Ilerdensi ecclesiae restitutionis beneficium indulsisse, quum, ea non obstante duxerit negotium committendum, et nos supplicationem eiusdem ecclesiae admittere debebamus, praesertim quia in hoc canonica et civilia iura pariter concordarent. Nam et per statuta canonica sententia Romanae sedis non negatur posse in melius commutari, quum aut surreptum aliquid fuerit, aut ipsa pro consideratione aetatum et temporum seu gravium necessitatum dispensative quicquam ordinare decrevit, et secundum iura civilia principes etiam contra res bis iudicatas in auditorio suo examinari restitutionem in integrum permiserunt. Perspeximus quoque ex data sententiae in registro iam dicti Eugenii Papae praedecessoris nostri repertae, quod sententia illa primo mense sui pontificatus fuerit promulgata, quando non plene de meritis ipsius causae fuisse videbatur instructus, illa nitens praecipue ratione, quod privilegium Urbani secundi ex parte vestra productum subiectum fuerat falsitati, cuius tenorem nos in registro ipsius subtiliter intuendo integrum invenimus et penitus incorruptum. Ceterum licet iura Ilerdensis ecclesiae illaesa servare velimus, quia tamen et ecclesiam vestram in sua volumus iustitia confovere: Tandem deliberatio nostra in hoc resedit ut, an data sit restitutio, an danda contra praemissam sententiam, partibus praesentibus decernatur, quarum assertione merita causarum panduntur, iuxta legitimas sanctiones, ut, quum nihil de contingentibus omiserimus, neutra partium habeat quod nobis merito valeat imputare. Quocirca discretioni vestrae per apostolica scripta mandamus, quatenus usque ad festum B. Lucae proximo venturum vel in propriis personis, vel per sufficientem et idoneum responsalem nostro vos conspectui praesentetis, quod ante dicta sententia retractari non debeat, si poteritis, ostensuri; vel, si forte exigente iustitia fuerit retractanda, vel per vos, vel per responsalem idoneum appareatis sufficienter instructi, ut in principali negotio canonice procedatur, pro certo sciturus, quod, quum finem litibus imponere cupiamus, et in

quaestione praemissa propter multam locorum distantiam non possit ad nos sine magnis laboribus et expensis saepius haberi recursus, si ad praemissum terminum, quem vobis peremptorium assignamus, iniuncta vobis contempseritis adimplere, nos nihilominus in ipso negotio, quantum de iure poterimus, procedemus. Miramur autem non modicum et movemur, quod confirmationem eiusdem sententiae et revocationem omnium, quae saepedictus praedecessor noster C. egit pro ecclesia Ilerdensi, tanquam subrepta fuerint, tu frater episcope, diceris impetrasse, quum vix de ipso possumus suspicari, ut contra scripturas et assertiones suas, quas frequenter coram nobis, et aliis fratribus nostris viva voce proposuit, subito venerit, nisi fuerit circumventus.

Chapter VI

Latin source headnote: A petition for restitution to the former condition against a sentence regularly suspends execution of the sentence pending the outcome of that cause of restitution. This fails if there is a presumption of malice against the person seeking restitution, namely that he seeks it in order to delay execution; in that case execution takes place after security has been given for restoration if the person seeking restitution prevails in the cause. This states the rule according to its meaning when joined with the penultimate gloss; and in this final point this text is very exceptional with respect to both laws.

The same.

Textual note: The Latin Library transcription's *speciantibus* has been corrected to Friedberg's *spectantibus*.

When a question concerning various articles had arisen between our venerable brother the Bishop of Burgos and the monastery of Oña, [and when our venerable brother the Bishop of Segovia and our beloved son T., Bishop-elect of Palencia, to whom the said case had been committed by our authority, had remitted it, sufficiently instructed, into our presence, we granted a free and benign hearing to that bishop and to the monk L., proctor of the monastery, who had come to the Apostolic See on this account. When they began to litigate principally concerning the status of the aforesaid monastery, which the said bishop alleged to pertain to him by the common law, as it was situated in his diocese —and he affirmed that the church of Burgos had enjoyed the exercise of this right throughout long-past times—while it was said on behalf of the monastery that it had from antiquity been endowed with liberty by secular princes and Roman Pontiffs and had enjoyed full liberty for a very long time, we, after hearing the allegations on both sides, at last, with the will of the parties, judged that a settlement should be providently made between them, as is contained more fully in our other letters drawn up concerning this matter.

But afterward, when the parties prosecuted the question concerning the subjection and liberty of the members of that place—namely its monasteries, chapels, cells, and priories—the said bishop specially claimed for himself four things in the aforesaid places. He said that these pertained to him by the common law, the exercise of which right he had enjoyed from antiquity, asserting that the clerics of those places were bound to attend the synods of the bishops, archdeacons, and archpriests of Burgos, to observe sentences of excommunication or interdict promulgated by them, to furnish annual procurations, and to pay individual gold pieces to a newly installed Bishop of Burgos. To strengthen his own claim, he alleged, concerning the first three articles, the common law—according to which he said that the said clerics, like the others of his diocese, were bound to the aforesaid things—and the

free exercise of that right from antiquity, and, concerning the fourth, an ancient and approved custom. He said that proof concerning all these things had been furnished through depositions of witnesses. But the other party alleged to the contrary that the members of the above-mentioned monastery, like the monastery itself, had from antiquity been endowed with liberty by privileges of secular princes and the Roman Pontiffs Urban II, Paschal II, Eugenius III, and Alexander III, and had enjoyed liberty of this kind throughout long-past times, as it said was manifestly established through those privileges exhibited before us, the instrument of Victor, formerly Bishop of Burgos, and the depositions of its own witnesses.]

We therefore, having heard and understood the things which each party alleged before us, condemned the monastery of Oña concerning the four aforementioned articles, with the counsel of our brothers, as justice required. But after sentence had been pronounced, the monastery's proctor, in the name of the monastery, sought restitution to the former condition in order to prove prescription both concerning the four aforementioned articles and concerning certain tithes acquired by the monastery through a settlement and sought on behalf of its churches and tenants. We wished to terminate the controversy concerning these tithes by the decision of a sentence, and the case concerning them had been concluded before the above-mentioned judges. And when there had been litigation before us for some time concerning this, we, after prior deliberation, judged that restitution to the former condition for proving prescription should be granted to that proctor in the name of the monastery, both concerning the four aforementioned articles and concerning the controversy over the tithes, [giving a mandate by our letters to you, brother Bishop of Zamora, and to our beloved sons Masters Maurice, Archdeacon of Toledo, and Michael, canon of Segovia, that you receive the witnesses whom the monastery's party shall judge should be produced to prove lawful prescription concerning the four often-mentioned articles and the issue of the tithes, or whom the bishop shall judge should be produced to prove interruption; and, if it proceeds with the will of the parties, you are to terminate the case itself with a due conclusion, appeal being removed; otherwise, you are to remit it to us sufficiently instructed, fixing for the parties a suitable term on which they are to present themselves again before us to receive sentence, with the Lord's favour.]

But lest, through contrived malice, as seemed from several [certain] presumptions, it happen that the effect of the sentence be impeded to the bishop's loss, and lest the monastery incur loss through execution of the sentence because of various suspicions, we, after weighing equity, judged that provision should be made by law so that, before all else, the above-mentioned sentence pronounced by us be committed to execution [by you]. (*And below:*) We nevertheless will and command that you receive suitable security from the bishop himself that, if the monastery prevails in that case [by sentence], he will restore to the aforesaid monastery all the things which in the meantime he shall have received on occasion of that sentence. [Given at the Lateran, on the eighth day before the Kalends of May, in the thirteenth year of our pontificate, 1210.]

> Petitio restitutionis in integrum contra sententiam suspendit regulariter exsecutionem sententiae in eventu istius causae restitutionis; fallit, si contra petentem restitutionem est praesumptio malitiae, quod causa differendi exsecutionem hoc petat; quo casu exsecutio fit praestita cautione de restituendo, si petens restitutionem obtinebit in causa. H. d. secundum mentem iuncta gloss. pen. et in hoc ultimo est iste textus valde singularis respectu utriusque iuris.
>
> Idem.

Suscitata super diversis articulis inter venerabilem fratrem nostrum Burgensem episcopum et Oviense monasterium quaestione, [quum venerabilis frater noster Segobiensis episcopus et dilectus filius T. Palentinus electus, quibus auctoritate nostra dicta fuit causa commissa, eam sufficienter instructam ad nostram praesentiam remisissent, nos eidem episcopo et L. monacho monasterii procuratori, qui propter hoc ad sedem apostolicam venerant, audientiam concessimus liberam et benignam, Qui quum coepissent principaliter litigare super statu monasterii memorati, quod ad se de iure communi spectare dictus episcopus proponebat, utpote in sua dioecesi constitutum, cuius iuris usum Burgensem ecclesiam longis retroactis temporibus habuisse firmabat, et ex parte monasterii diceretur illud per principes saeculares et Romanos Pontifices ab antiquo libertate donatum, et ipsum longissimo tempore usum fuisse plenaria libertate, nos auditis utrinque propositis, de voluntate partium demum ex providentia inter eas duximus componendum, prout in aliis nostris literis super hoc confectis plenius continetur. Postmodum vero partibus super subiectione ac libertate membrorum eiusdem loci, monasteriorum videlicet, capellarum, cellarum et prioratuum, persequentibus quaestionem, quatuor sibi dictus episcopus in praefatis locis ad se de iure communi spectantibus, ut dicebat, cuius iuris usum habuerat ab antiquo, specialiter vendicabat, eorundem locorum clericos asserendo teneri ad episcoporum, archidiaconorum et archipresbyterorum Burgensium accedere synodos, excommunicationis vel interdicti servare sententias promulgatas ab eis, procurationes annuas exhibere, ac singulos aureos solvere Burgensi episcopo noviter substituto; ad intentionem propriam roborandam super primis tribus articulis ius commune, secundum quod dictos clericos, sicut et alios suae dioecesis, ad praedicta teneri dicebat, ac iuris ipsius usum liberum ab antiquo, et super quarto antiquam et approbatam consuetudinem allegando. De quibus omnibus per depositiones testium fidem factam esse dicebat. Verum pars altera proposuit ex adverso, supradicti monasterii membra, sicut et ipsum coenobium, ab antiquo fuisse saecularium principum et Romanorum Pontificum Urbani II., Paschalis II., Eugenii III. et Alexandri III. privilegiis libertate donata, et longis retroactis temporibus huiusmodi fuisse libertate gavisa; sicut per ipsa privilegia exhibita coram nobis, ac instrumentum Victoris quondam Burgensis episcopi, et suorum depositiones testium manifeste constare dicebat.] Nos igitur auditis et intellectis quae utraque pars proposuit coram nobis, super quatuor articulis praenotatis monasterium Oviense de consilio fratrum nostrorum iustitia condemnavimus exigente. Sententia vero lata procurator monasterii ad probandam praescriptionem factam tam super quatuor articulis praenotatis, quam etiam super quibusdam decimis per transactionem acquisitis a monasterio, ecclesiis et colonis ipsius ex parte petitis, quarum controversiam volebamus sententiae calculo terminare, et in qua fuerat coram iudicibus supra dictis conclusum, restitutionem in integrum nomine monasterii postulavit, et quum super hoc coram nobis fuisset aliquamdiu litigatum, nos, deliberatione praehabita, restitutionem in integrum ad praescriptionem probandam tam super quatuor articulis praenotatis, quam etiam super controversia decimarum eidem procuratori nomine monasterii duximus indulgendam, [tibi, frater Zamorensis, et dilectis filiis magistris Mauricio archidiacono Toletano et Michaeli canonico Segobiensi dantes nostris literis in mandatis, ut recipiatis testes, quos pars monasterii ad probandam praescriptionem legitimam super quatuor articulis saepedictis, et super capitulo decimarum, vel etiam episcopus ad interruptionem probandam duxerit producendos; et si de partium voluntate processerit, causam ipsam appellatione remota fine debito terminetis; alioquin remittatis eandem ad nos sufficienter instructam, praefigentes partibus terminum competentem, quo nostro se conspectui repraesentarent, sententiam dante Domino recepturae.] Ne vero per excogitatam malitiam, sicut ex [quibusdam] praesumptionibus pluribus videbatur, effectum sententiae in damnum episcopi contingeret impediri, neve monasterium per exsecutionem sententiae propter diversas suspiciones incurreret detrimentum, nos, aequitate pensata, iure duximus providendum, ut ante omnia supradicta sententia a nobis prolata [per vos] exsecutioni mandetur. (Et infra:) Volumus nihilominus et mandamus, ut ab ipso episcopo recipiatis idoneam cautionem, quod, si monasterium in causa ipsa [per sententiam] praevaluerit, universa, quae medio

tempore sententiae ipsius occasione perceperit, monasterio restituat memorato. [Dat. Lat. VIII. Kal. Maii Pont. nostr. Ao. XIII. 1210].

Chapter VII

Latin source headnote: After a peremptory term a church is not heard under the common law; it is heard, however, through the benefit of restitution to the former condition.

Honorius III to the Archbishop and Chapter of Braga.

When issue had solemnly been joined before Pope I. of happy memory, our predecessor, between our venerable brother the Archbishop of Toledo and you, brother archbishop, concerning the primacy, a peremptory term was assigned. (*And below:*) But after the appointed term had elapsed, following no slight wait, your proctors appeared; but because, as they said, they had not brought the depositions of the witnesses and other documentary supports, they urgently requested a delay. But after we had ruled against them concerning the delay sought, at last they petitioned that a delay be granted to the church of Braga for instruction of the case through the aid of restitution to the former condition, exhibiting a special mandate from you concerning this. We, with the counsel of our brothers, have judged that this should be granted to you through the benefit of restitution until the octave of Pentecost next to come.

> Post peremptorium non auditur ecclesia de iure communi; auditur tamen per beneficium restitutionis in integrum.
>
> Honorius III. Archiepiscopo et Capitulo Bracharensi.
>
> Coram felicis memoriae I. Papa praedecessore nostro lite inter venerabilem fratrem nostrum archiepiscopum Toletanum et te, frater archiepiscope, super primatia solenniter contestata, fuit peremptorius terminus assignatus (Et infra:) Verum, elapso termino constituto, post exspectationem non modicam comparuerunt procuratores vestri; sed, quia, ut dicebant, non attulerant depositiones testium et alia munimenta, dilationem cum instantia postularunt. Postquam vero contra eos interlocuti fuimus super dilatione petita, tandem indulgeri ecclesiae Bracharensi dilationem propter instructionem causae per auxilium restitutionis in integrum postularunt, exhibentes super hoc ex parte vestra speciale mandatum. Nos autem de fratrum nostrorum consilio usque ad octavas Pentecostes proxime futuras per restitutionis beneficium id vobis duximus indulgendum.

Chapter VIII

Latin source headnote: A minor is restored concerning what he contracted or omitted if he proves that he was thereby injured and is within the periods for seeking restitution.

Gregory IX.

Master William, appearing in our presence for himself and his brother I., canon of Parros., showed in a petition presented to us that, when they were of minor age and their mother, whose successors they are, had been removed from human affairs, the late William, their father, sold to certain persons, for a certain quantity of money, certain possessions common to both; and, so that a sale of this kind might have the strength of firmness, he emancipated them and caused them to consent to the contract. Therefore he supplicated that we command either that the same sale be declared null, or—since they still remain within the time granted for obtaining the benefit of restitution to the former condition, and under an approved custom of the municipality of Parros. the right of offering the price

to the buyers concerning the other share belonged to them as the nearer persons within a year and a day from the time of the contract, which they have hitherto omitted—we would deign, through the same benefit, to give them relief concerning both matters, since they are known to have been injured not slightly in this and are prepared to offer the price to the buyers of that share or their successors. Therefore we command that, if you find the foregoing to rest upon the truth, you take care either to declare the aforesaid sale null as regards the share devolving upon them from the maternal succession, if the due legal solemnity was omitted in it; or, if perhaps it intervened and it is established that they were injured, you are to endeavour by our authority to restore them to the former condition both concerning that share and concerning the remaining share, provided nevertheless that they shall judge that what they offer ought to be done.

> Restituitur minor in eo, quod contraxit vel omisit, si probat exinde se laesum et sit infra tempora restitutionis petendae.
>
> Gregorius IX.
>
> Constitutus in nostra praesentia magister Guill. pro se ac fratre suo I. canonico Parrosinensi exhibita nobis petitione monstravit, quod eis in minori constitutis aetate, ac eorum matre, cuius successores exsistunt, rebus humanis exempta, quondam Guil. pater ipsorum quasdam possessiones utrique communes quibusdam vendidit pro quadam pecuniae quantitate, ac, ut huiusmodi venditio robur firmitatis haberet, emancipavit eosdem, et fecit eos contractui consentire. Quare supplicavit, ut vel venditionem eandem mandaremus nunciari nullam, vel, quum adhuc exsistant infra tempus ad obtinendum beneficium in integrum restitutionis indultum, et infra annum et diem a tempore contractus ipsis tanquam proximioribus competeret super alia portione ius offerendi emptoribus pretium iuxta municipii Parrosinensis consuetudinem approbatam, quod hactenus omiserunt, dignaremur eis super utroque, quum in hoc non modicum laesi noscantur, et emptoribus portionis eiusdem vel eorum successoribus pretium sint offerre parati, per idem beneficium subvenire. Quocirca mandamus, quatenus, si praemissa inveneritis veritate subnixa, vel venditionem praedictam quoad partem ex successione materna ipsos contingentem nullam nunciare curetis, si in ea debita iuris solennitas est omissa, vel si forsitan intervenerit, et eos laesos esse constiterit, tam super ea, quam super residua portione, dum tamen quod offerunt duxerint faciendum, auctoritate nostra in integrum restituere studeatis.

Chapter IX

Latin source headnote: Restitution to the former condition is to be sought from an ordinary who possesses administrative authority, or from one delegated by him, whether this cause was specially delegated or arises incidentally in a cause generally committed to him. It ought not, however, to be sought from an ordinary who does not possess administrative authority or from his delegate, unless it arises incidentally in a cause. An arbitrator does not take cognizance of a cause of restitution and cannot be assumed in major causes.

The same.

A cause of restitution to the former condition can be tried and concluded before ordinary judges possessing administrative authority or persons delegated by them, whether this has been specially mandated to those delegates or a question of this kind happens to arise in the business committed to them. But persons delegated by ordinaries who do not possess administrative authority, but only the faculty of judging, or arbitrators, cannot take cognizance of this cause unless it has arisen incidentally

before them. In a matrimonial, status, or criminal cause also, since they require higher judges, an arbitrator cannot be assumed.

> Restitutio in integrum postulanda est ab ordinario administrationem habente, vel a delegato ab eo, sive haec causa sit specialiter delegata, sive incidat in causa generaliter sibi commissa. Ab ordinario vero administrationem non habente vel a delegato peti non debet, nisi veniat incidenter in causa. Arbiter autem de causa restitutionis non cognoscit, nec potest assumi in maioribus causis.
>
> Idem.
>
> Causa restitutionis in integrum coram iudicibus ordinariis administrationem habentibus vel delegatis ab eis tractari poterit et finiri, sive hoc ipsis delegatis specialiter demandatum fuerit, sive in commisso eis negotio contingat incidere huiusmodi quaestionem. Delegati vero ab ordinariis, qui administrationem non habent, sed tantummodo facultatem iudicandi, seu arbitri de hac causa cognoscere nequeunt, nisi coram eis mota fuerit incidenter. In matrimoniali quoque, liberali vel criminali causa, quum maiores iudices exigant, arbiter nequit assumi.

Chapter X

Latin source headnote: Restitution denied to a church is not thereafter granted to it unless for a new cause; it is nevertheless restored for appealing from the sentence of denial.

The same.

When the benefit of restitution to the former condition has been denied to your church in another trial, it appears that restitution can be denied to that same church, except for an omitted appeal, unless it is to be admitted to a benefit of this kind because of new defences.

> Restitutio denegata ecclesiae ulterius sibi non conceditur, nisi ex nova causa; restituitur tamen ad appellandum a sententia denegationis.
>
> Idem.
>
> Beneficio restitutionis in integrum ecclesiae tuae in alio iudicio denegato, restitutio, praeterquam ad appellationem omissam, videtur eidem ecclesiae posse negari, nisi novis defensionibus ad huiusmodi sit beneficium admittenda.

Title XLII: On Alienation Made for the Purpose of Changing the Court

Chapter I

Latin source headnote: One to whom a thing has been alienated for the purpose of changing the court is sued by a rescript obtained against the alienator.

Alexander III.

We have heard from the certain report of some persons that, when certain ecclesiastical men of your province obtain letters of commission from us for prosecuting their justice, their adversaries, in order to elude our mandate, before our letters reach the judges, or even afterward, before they are cited by them, break forth into a declaration of appeal, or, making an exchange, maliciously introduce certain persons into possession of the things concerning which the controversies are pending. We therefore, wishing with pastoral solicitude to make provision against the aforesaid cunning and craftiness, command your discretion by apostolic writings, by way of precept, that if the adversaries of those

between whom and that person a controversy concerning the church has [for a long time] been conducted shall have appealed in this way to nullify our mandate, or shall have made an exchange concerning the possession about which the controversy is pending, or shall have judged that they should maliciously absent themselves, you are, appeal ceasing, to compel those who have thrust themselves into possession of the aforesaid [church] to obey the equity of law under your examination.

> **DE ALIENATIONE IUDICII MUTANDI CAUSA FACTA.**
>
> Is, in quem facta est alienatio rei causa mutandi iudicii, convenitur per rescriptum impetratum contra alienantem.
>
> Alexander III.
>
> Ex quorundam certa relatione audivimus, quod, quum aliqui viri ecclesiastici de provincia vestra pro prosequenda sua iustitia literas commissionis a nobis impetrant, adversarii eorum, ut mandatum nostrum eludant, antequam literae nostrae ad iudices perveniant, vel etiam postea, priusquam illi citentur ab eis, in vocem appellationis prorumpunt, aut commutationem facientes aliquos in possessionem eorum, de quibus controversiae vertuntur, malitiose inducunt. Nos igitur contra praedictam calliditatem et versutiam pastorali sollicitudine providere volentes, discretioni vestrae per apostolica scripta praecipiendo mandamus, quatenus, si adversarii eorum, inter quos et ipsum super ecclesia controversia est [diutius] agitata pro evacuando nostro mandato taliter appellaverint, aut de possessione, de qua controversia vertitur, commutationem fecerint, vel se malitiose duxerint absentandos, eos qui in possessione praedictae [ecclesiae] se ingesserint, appellatione cessante cogatis sub vestro examine iuris aequitati parere.

Chapter II

Latin source headnote: A cleric ought not to receive an assignment from a layman for the purpose of changing the court.

Gregory IX to the Abbot of Saint Nicholas and the Dean of Furnes in the Diocese of Thérouanne.

It was alleged on behalf of the aldermen of Ypres that, when questions arise among the laymen of that place which are to be settled by secular judgment, certain clerics cause rights of action to be assigned to themselves, by gift or for a price, by some of those laymen, so that they may draw the adversaries to the ecclesiastical forum and obtain plunder from commerce of this kind. (*And below:*) Therefore, since lawful enactments prohibit assignments and purchases of lawsuits in such a way that they visit loss of the case upon those who presume in this manner to summon the patronage of more powerful persons for themselves, and since they are also odious because they appear to proceed from the fountain of cupidity, we command that you restrain the aforesaid clerics from presumption of this kind by ecclesiastical censure.

> Clericus causa mutandi iudicium, non debet recipere cessionem a laico.
>
> Gregorius IX. Abbati S. Nicolai et decano Furnensi Morinensis dioecesis.
>
> Ex parte scabinorum Hipretis fuit propositum, quod inter laicos eiusdem loci quaestionibus emergentibus, dirimendis per iudicium saeculare, quidam clerici sibi dono vel pretio ab aliquibus laicorum ipsorum cedi faciunt actiones, ut adversarios ad ecclesiasticum forum trahant, et praedam ex huiusmodi commercio assequantur. (Et infra:) Quum igitur cessiones et emptiones litium legitimae

prohibeant sanctiones ita, quod iactura causae afficiant illos, qui sibi potentiorum patrocinium taliter advocare praesumunt, et ex eo sint etiam odiosae, quod ex fonte cupiditatis videntur procedere, mandamus, quatenus clericos memoratos a praesumptione huiusmodi per censuram ecclesiasticam compescatis.

Title XLIII: On Arbitrators

Chapter I

Latin source headnote: Arbitrators are to be chosen in an odd number, and, when they disagree, the sentence of the greater part stands.

From the African Council.

Certainly (*And below:* [cf. c. 3, On the Competent Forum, II.2.]) But if, by the common agreement of the bishops between whom the case is pending, they choose arbitrators, let either one or three be chosen, so that, if they choose three, they are to follow the sentence either of all or of two.

DE ARBITRIS.

Arbitri sunt in dispari numero assumendi, et, eis discordantibus, statur sententiae maioris partis.

Ex concilio Africano.

Sane (Et infra: [cf. c. 3. de for. comp. II. 2.]) Si autem ex communi placito episcoporum, inter quos causa versatur, arbitros elegerint, aut unus eligatur aut tres, ut, si tres elegerint, aut omnium sequantur sententiam, aut duorum.

Chapter II

Latin source headnote: An arbitral award or arbitral decision containing a sin which cannot be remitted by the parties is null.

Alexander III to the Archbishop of York.

Textual note: The source's evident typographical *prebyterum* has been corrected to *presbyterum*.

Not without great necessity and danger to his body, the priest A., bearer of the present letters, wearied by the journey to the Apostolic See, alleged to us in a manifold complaint that, when he had been instituted as chaplain in the church of Saint Alfrid of N. by the hand of R., archdeacon and canon of Suella, the person of that church, after the death of that same R., M., his nephew, who succeeded him in the already-mentioned church, again appointed that priest as chaplain there for greater security. During their times, he asserts that he held the chaplaincy of that church peacefully for thirty years and more.

But at last the same M., wishing to remove that priest from the same church, began to make undue exactions upon him, and a certain man of his, coming out near his house, laid violent hands upon him; and that same M. himself endeavoured to circumvent him so that he should not delay in yielding the aforesaid chaplaincy in return for five marks of silver, which that same M. also promised that he would pay him annually in the name of a pension. But when the aforesaid priest was unwilling to execute his will, the aforesaid M. is said to have done so much that, after many injuries and burdens had been inflicted upon him and all his other things had been seized, he was despoiled of office and benefice.

And when that priest, still living in exile outside your province, could not obtain justice concerning his benefice through you, at last, because, as he asserts, he was pressed by many necessities and could no longer endure his poverty, an oath was extorted from him through the craft and fraud of M. himself, that he would accept and observe the award of two clerics concerning the matter. Favouring the already-mentioned M., they commanded that priest that he should receive only five marks from him and yield the entire claim. Therefore, because it is in no way fitting for you to permit what they wrongly awarded to be left uncorrected, we command your fraternity by apostolic writings that you earnestly admonish and induce the aforesaid clerics so that, if they recognize that they made so wicked an award in this matter, you are wholly to absolve the already-mentioned priest from observance of the oath by our authority; or, if you know the award itself to rest upon equity, you are to compel both parties to its observance, appeal being removed.

> Nullum est arbitrium seu arbitramentum continens peccatum per partes non remissibile.
>
> Alexander III. Eboracensi Archiepiscopo.
>
> Non sine multa necessitate et discrimine corporis sui A. presbyter praesentium lator ad sedem apostolicam fatigatus multiplici nobis querela proposuit, quod, quum in ecclesia sancti Alphridi de N. per manum R. archidiaconi et canonici de Suella personae illius ecclesiae capellanus institutus fuisset, eodem R. mortuo, M. nepos eius, qui sibi in ecclesia iam dicta successit, eundem presbyterum ad maiorem securitatem capellanum ibidem iterum ordinavit, quorum temporibus XXX. annis et ultra capellaniam eiusdem ecclesiae pacifice se asserit tenuisse. Tandem vero idem M. ab eadem ecclesia volens ipsum presbyterum removere, in eum coepit indebitas exactiones exercere, et quidam eius homo circa domum suam egressus violentas manus in eum iniecit, et ipse idem M. nisus est eum circumvenire, ut pro quinque marchis argenti, quas etiam idem M. ei promittebat annuatim nomine pensionis soluturum, praescriptae capellaniae cedere non differret. Praefato vero presbytero nolente eius exsequi voluntatem, praedictus M. tantum dicitur fecisse, quod post multas iniurias et gravamina sibi illata, occupatis omnibus aliis rebus, ab officio et beneficio est spoliatus. Quum autem idem presbyter per te adhuc extra provinciam tuam exsulans de suo beneficio non posset iustitiam obtinere, tandem quia, sicut asserit, multis necessitatibus arctabatur, nec suam ulterius inopiam potuit sustinere, per dolum et fraudem ipsius M. ab eo est sacramentum extortum, ut arbitrium clericorum duorum exinde susciperet et servaret, qui iam dicto M. faventes eidem presbytero praeceperunt, ut quinque marchas ab eodem tantum susciperet, et toti cederet quaestioni. Quoniam igitur non decet te aliquatenus sustinere, ut quod perperam arbitrati sunt debeat incorrectum relinqui, fraternitati tuae per apostolica scripta mandamus, quatenus praefatos clericos moneas studiosius et inducas, ut, si se cognoverint praefati clerici in hac parte tam nequiter arbitratos fuisse iam dictum presbyterum ab observantia iuramenti auctoritate nostra prorsus absolvas, vel, si arbitrium ipsum noveris aequitate subnixum, ad observantiam ipsius utramque partem appellatione remota compellas.

Chapter III

Latin source headnote: An arbitrator chosen in a cleric's patrimonial cause cannot adjudge property of the church to be possessed, even for the life of the cleric. It says this, and it is a noteworthy case.

The same to the Bishop of Exeter.

It has reached us that, when the cleric W. of Calestin was of minor age, G. of Cal. took the sister of the same cleric G. as wife, and the same G. affirmed by the pledging of faith that he would give five shillings sterling to him annually. Hence, when afterward a controversy had arisen between them

concerning the same five shillings, they submitted to four persons, who made an award between them in such a way that the same G. would receive annually, in place of the aforesaid five shillings, the tithes belonging to him and to his peasants which the aforesaid G. is known to have in the parish of Cal. Therefore, because an award of this kind could hereafter prove pernicious to the church of the already-mentioned place, and neither the aforesaid W. nor those persons to whom the matter had been submitted ought in any way to have done this to the damage of the church, we command your fraternity by apostolic writings that you diligently inquire into the truth of the matter and, if you find it to be so, you are diligently to admonish the above-named G., and compel him by ecclesiastical coercion, to leave the aforesaid tithes entirely free to the church of which he is a parishioner, every pretext and appeal being removed, and not presume to claim anything further for himself on an occasion of this kind. But you are to admonish the above-mentioned cleric that he should endeavour to reach an amicable and peaceful agreement with the same G.

> Arbiter assumptus in patrimoniali causa clerici non potest adiudicare rem ecclesiae possidendam, etiam ad vitam clerici. Hoc dicit, et est casus notabilis.
>
> Idem Exoniensi Episcopo.
>
> Pervenit ad nos, quod quum W. clericus de Calestin in minori esset aetate constitutus, G. de Cal. sororem eiusdem G. clerici duxisset in uxorem, et idem G. fidei interpositione firmavit, quod V. solidos sterlingorum annuatim daret eidem. Unde, quum postea super eisdem V. solidis inter ipsos controversia mota fuisset, in quatuor compromisere personas, quae utique inter se taliter arbitratae fuerunt, quod idem G. decimas proprias, et rusticorum suorum, quas in parochia de Cal. praefatus G. habere dignoscitur, pro V. praetaxatis solidis perciperet annuatim. Unde quoniam huiusmodi arbitrium ecclesiae iam dicti loci posset in posterum perniciosum exsistere, nec memoratus W. aut personae illae, in quibus compromissum fuerat, id ullatenus in ecclesiae damnum facere debuissent, fraternitati tuae per apostolica scripta mandamus, quatenus rei veritatem diligenter inquiras, et si ita esse inveneris, praenominatum G. diligenter commoneas, et ecclesiastica districtione compellas, ut ecclesiae, cuius est parochianus, praelibatas decimas omni occasione et appellatione remota liberas omnino dimittat, nec sibi occasione huiusmodi aliquid ulterius vendicare praesumat. Clericum vero supra dictum moneas, ut cum eodem G. amicabiliter pacificeque studeat convenire.

Chapter IV

Latin source headnote: A submission cannot be made to an individual woman as arbitress; it is otherwise if a woman otherwise possesses jurisdiction by the common law or by custom. For then a valid submission can be made to her even concerning the temporal things of a church. This states the rule clearly.

Innocent III to the Chancellor and Master Loth., Canon of Paris.

Textual note: The source's evident typographical *comtemptores* has been corrected to *contemptores*.

Our beloved sons the Abbot and Convent of Scarduna of the Cistercian Order showed us in their complaint that, when a question was pending between them on the one side and our beloved sons the Hospitallers of Ceresiers in the diocese of Sens on the other concerning the right of use in a certain wood at Oscha, which is called Fagetum, and the territory of the valley of Morini, a submission was made on both sides to our dearest daughter in Christ, A., the illustrious Queen of the French. After hearing the allegations on both sides and more fully understanding the merits of the case, with the counsel of very many bishops and other prudent men, she judged that the award

should be promulgated by definitive sentence, and caused it, reduced to writing, to be confirmed by her own seal and the seals of the bishops who were present. The Hospitallers do not fear rashly to act against her sentence.

Although, according to a rule of the civil law, women are removed from public offices of this kind, and it is said elsewhere that, even though they are of the highest reputation and most excellently established, if they undertake an arbitration themselves, or if patronesses interpose a hearing among their freedmen, they are to be excluded from every judicial examination, so that from their pronouncement no penalty may be had against those who rightly contemn them, and no exception based on the agreement; nevertheless, because according to an approved custom which is observed as law in the regions of Gaul, pre-eminent women of this kind are known to possess ordinary jurisdiction over their subjects, we command your discretion by apostolic writings that you take care to admonish and induce the aforesaid Hospitallers to observe that award—especially since it was reinforced by the presence and counsel of bishops—as it was providently pronounced without depravity and willingly received by each party, and, if necessary, you are to compel them to this by the penalty established in the submission, appeal being set aside. [But the witnesses, etc. Given at the Lateran, on the second day before the Nones of November, in the fifth year of our pontificate, 1202.]

> In mulierem singularem tanquam in arbitratricem compromitti non potest; secus si mulier habet alias iurisdictionem de iure communi vel consuetudine. Nam tunc etiam super rebus temporalibus ecclesiae potest in eam valide compromitti. H. d. clare.
>
> Innocentius III. Cancellario et Magistro Loth. Canonico Parisiensi.
>
> Dilecti filii abbas et conventus de Scarduna Cisterciensis ordinis sua nobis querela monstrarunt, quod, quum inter eos ex una parte, ac dilectos filios Hospitalarios de Ceresiers Senonensis dioecesis ex altera super usuario cuiusdam nemoris in Oscha, quod dicitur Fagetum, et territorio vallis Morini quaestio verteretur, in carissimam in Christo filiam A. reginam Francorum illustrem fuit compromissum utrinque, quae, auditis hinc inde propositis, et causae meritis plenius intellectis, de plurimorum episcoporum et aliorum virorum prudentum consilio arbitrium duxit per diffinitivam sententiam promulgandum, et redactum in scripto proprio et episcoporum, qui interfuerunt, fecit firmari sigillis; contra cuius sententiam Hospitalarii temere venire non timent. Quamvis autem secundum regulam iuris civilis feminae a huiusmodi publicis officiis sint remotae, et alibi dicatur, quod, licet summae opinionis et optime constitutae exsistant, si arbitrium in se susceperint, vel si patronae inter libertos suos interposuerint audientiam, ab omni sint iudiciali examine separandae, ut ex earum prolatione nulla poena adversus iustos earum contemptores, nullaque pacti exceptio habeatur; quia tamen iuxta consuetudinem approbatam, quae pro lege servatur, in partibus Gallicanis huiusmodi feminae praecellentes in subditos suos ordinariam iurisdictionem habere noscuntur, discretioni vestrae per apostolica scripta mandamus, quatenus praefatos Hospitalarios, ut arbitrium ipsum, praesertim quum episcoporum fuerit praesentia et consilio roboratum, sicut sine pravitate provide latum est, et ab utraque parte sponte receptum, observent, monere ac inducere procuretis, eos ad hoc, si necesse fuerit, per poenam in compromisso statutam appellatione postposita compellatis. [Testes autem etc. Dat. Lat. II. Non. Nov. Pont. nostr. Ao. V. 1202.]

Chapter V

Latin source headnote: An exempt church cannot make a submission to arbitration to the prejudice of its exemption. This states the rule, and clearly.

The same to the Abbot and Convent of Pigravia.

When, in the time of Pope C. of good memory, our predecessor, you, son abbot, had come to the Roman curia, you merited to obtain a privilege and other writings from the Apostolic See, [and, as we have received from you, when you had returned to your own region, you caused the said privilege and other writings to be faithfully recited in the presence of your brothers and certain canons of Merseburg who had come there in defence of certain monks. When our venerable brother the Bishop of Merseburg learned this, he announced and wrote to the emperor that you had come to the Roman Church against the honour of the empire and had obtained a privilege to its prejudice. Moved by this, the emperor summoned you to his court and ordered the privilege to be presented to him; having received it, he afterward refused to return it to you. And while you felt yourself aggrieved in these and other matters through the bishop, after interposing an appeal you visited the Apostolic See. When letters of commission had been obtained from it through messengers, the judges cited the parties, intending to proceed in that case according to the form of the apostolic mandate. But while these things were being done, our venerable brother the Archbishop of Magdeburg, at the petition of the aforesaid bishop and by imperial mandate, removed you, suspended from office and benefice, from the administration of the monastery and assigned its care to two knights.]

Hence, fearing that danger would come upon the abbey, since danger also threatened you, concerning the controversies pending between you and the Bishop of Merseburg and certain of your monks, with faith pledged on both sides into the archbishop's hands, you promised that you would observe the award of the Archbishop of Magdeburg. And thus it happened that the archbishop himself, associating with himself both clerics and laymen, [among whom was also the imperial seneschal,] promulgated an award under a certain form.

[After these things, coming again to Rome, you took care diligently to explain to that same predecessor of ours the things which had been done. We ourselves, when we were placed in a lesser office, and our beloved sons I., Cardinal Priest of the title of Saint Stephen on the Caelian Hill, and I., Cardinal Priest of the title of Saint Prisca, were appointed auditors for you and your adversary, the custodian of Merseburg, proctor of the said bishop. At last, after hearing the things which the parties judged should be alleged, with the parties' assent the case was committed under a certain form to delegated judges, namely, that they should inquire diligently into everything, except that they should reserve entirely for examination by the Apostolic See the investigation of the liberty of that monastery together with two chapels.

Therefore, when the delegated judges had summoned the parties into their presence by apostolic authority, the aforesaid bishop alleged that those delegates were suspect to him and assigned multiple causes of suspicion. Thereafter also, wishing to evade their judgment, he appealed to the Apostolic See; but, having afterward returned before them, he gave the oath against calumny, produced witnesses, and requested and obtained adjournments. Therefore those judges, proceeding in the case, after hearing the arguments of both parties and understanding them more fully, sent all the proceedings, strengthened by the protection of their seals, to the Apostolic See, imposing a term upon the parties on which they were to present themselves personally before the apostolic presence to receive sentence.

You came to that term personally, while the bishop sent on his behalf our beloved sons H., canon of Merseburg, and B., scholasticus of Saint Nicholas of Merseburg, as representatives. They said that the

proceedings which the delegates had transmitted ought neither to be published nor any faith at all be given to them, since they had been received and recorded both by suspect judges and after an appeal had lawfully been interposed. Your party petitioned to the contrary, especially because, as it firmly asserted, the aforesaid messengers did not have capacity to stand in court, since they were excommunicated, and it had been enjoined upon the bishop under penalty of suspension that he should come in his own person to conduct the case. Since he had not done so, he had incurred the penalty of suspension. The aforesaid messengers alleged that, because of illness and old age, he could not come personally to the Roman Church, denying the other things which had been objected against them.

On behalf of the bishop they represented the affair in this way: since you had received the abbey and the priesthood from him as from your prelate, as you had confessed in court, because of your depraved manner of life you began to be sued by the monks concerning many enormities. The bishop frequently restored peace and concord among them, admonishing you to pass to the fruit of a better life. But when, because of the things which you continually did, the brothers now had no hope at all of your correction, they alleged against you in synod concerning dilapidation that you voluptuously consumed the goods of the monastery assigned for the uses of the poor, that because of a lack of necessities religious life was wholly perishing there, and they also assailed you concerning sacrilege, simony, and many other crimes, sometimes before the bishop and sometimes in the presence of the cardinal. The bishop endured you for so long that he was said to deny justice to the monks.

When afterward you had been cited by the bishop, you sent a messenger who appealed concerning every grievance which could be inflicted upon you by a sentence of the archbishop. But when neither you nor a messenger came to the archbishop, the archbishop himself judged that no deference at all should be paid to an appeal made so generally to the prejudice of the church. Therefore the bishop, having taken the counsel of prudent men, cited you again and suspended you from office and benefice. Meanwhile our beloved son I., Cardinal Priest of the title of Saint Stephen on the Caelian Hill, then legate of the Apostolic See, arrived and came to the said abbey in order to compose matters between you and the aforesaid monks. But while you were hiding in neighbouring villages and Master Ulric was making allegations, the said cardinal confirmed the sentence of suspension pronounced against you.

Thus, coming secretly to Rome, with the truth concealed you obtained letters of commission and, under the appearance of renewal, a privilege which you had never possessed before. And when the delegated judges were suspect to the bishop and the monks, from whom they could not obtain even one day's adjournment, after an appeal had been interposed by the bishop's messengers, immediately when the surreptitious privilege was read, the parties transmitted their messengers to the Apostolic See. With their assent the case was at last committed to other judges under a certain form, as is contained in the letters of commission. But when not all of them could take part in the examination of the case because of the excessive distance, our beloved son the Abbot of Goizoche, together with our venerable brothers the said archbishop and the Bishops of Bamberg and Meissen and very many prelates of churches, restored peace and concord between the bishop, you, and the monks.

But, coming secretly again to the Roman Church and alleging many things against the monks and the bishop, you obtained letters of commission to two of those judges whom we said above were suspect to the bishop and from whom that bishop had recently appealed through messengers. When they

would not admit the bishop's just exceptions, which he wished to prove immediately, he appealed to the Apostolic See. But while they nevertheless proceeded in the case, he came to them against his will, fearing that his justice would perish. When, after other things which the judges had done on their own initiative, they fixed a term for publication of the attestations, when the parties came only one of the judges appeared, together with a messenger of the other, who neither had letters for the others nor wished to give security that his principal had committed his functions to the judge present. Thus it happened that the Provost of Naumburg alone, although three seals were affixed, recorded the proceedings which were sent to the Apostolic See. Hence they said that no faith at all ought to be given to them, both because the instrument containing the report of those judges was defective on its face and because it was issued by one whom they say was bound by many bonds of excommunication.

But you firmly asserted that almost all the foregoing allegations made on behalf of the bishop lacked truth. Because, however, the aforesaid bishop, in that he gave the oath against calumny, sought adjournments from the delegates, and produced witnesses before them, appears to have renounced the appeal and consented to their examination, we, after taking the counsel of our brothers, ruled upon the aforesaid incidental question that the things transacted before the aforesaid judges ought to be published, so that our sentence might at last be framed according to their tenor.]

We therefore gave to you and the proctors of the aforesaid bishop our venerable brother O., Bishop of Ostia, and our beloved son P., Cardinal Priest of the title of Saint Cecilia, as auditors. And when they had faithfully reported to us and our brothers the things alleged and shown on both sides, because it was lawfully established both through confessions and through attestations that, with faith given on both sides, a submission was made to the aforesaid archbishop and also to certain others, we, with the counsel of our brothers, decree that the award pronounced by him is to be observed, excepting only those articles expressed in the award which are contrary to the liberty of that monastery and its two chapels. For, even if you wished it voluntarily, you nevertheless could not by law, without the permission of the Roman Pontiff, renounce privileges or indulgences of liberty which indicate that monastery to pertain to the right and ownership of the Roman Church, especially since in the last letters of commission it is expressly contained that our [often-mentioned] predecessor willed that no prejudice should be generated for you or your successors, or even for the monastery and two chapels of Pigravia, from the renunciation which you made concerning the privilege and other writings. [Given at Rome, at Saint Peter's, on the third day before the Ides of July, 1198.]

> Ecclesia exempta non potest in praeiudicium exemptionis compromittere. H. d. et clare.
>
> Idem Abbati et Conventui de Pigravia.
>
> Quum tempore bonae memoriae C. Papae praedecessoris nostri tu, fili abbas, ad Romanam curiam accessisses, privilegium et alia scripta meruisti a sede apostolica obtinere, [et, sicut a te accepimus, quum reversus fuisses ad propria, privilegium dictum et alia scripta in praesentia fratrum tuorum et quorundam canonicorum Mersburgensium, qui in defensionem quorundam monachorum illuc venerant, fecisti fideliter recitari. Quod intelligens venerabilis frater noster Mersburgensis episcopus, nunciavit et scripsit imperatori, te contra honorem imperii ad Romanam ecclesiam accessisse, et privilegium in eius praeiudicium impetrasse. Unde motus imperator curiam tibi indixit, et privilegium sibi praesentari praecepit, quod receptum noluit tibi postmodum resignare. Et dum in his et aliis te per episcopum gravari sentires, appellatione interposita sedem apostolicam visitasti, a qua per nuncios commissionis literis impetratis, partes iudices citaverunt, in causa ipsa iuxta formam mandati apostolici

processuri. Verum dum haec agerentur, venerabilis frater noster Magdeburgensis archiepiscopus ad petitionem episcopi memorati de mandato imperiali te, ab officio beneficioque suspensum, a monasterii administratione removit, et curam eis duobus militibus assignavit.] Unde timens abbatiae periculum provenire, quum et tibi periculum immineret, Super controversiis, quae inter te et Mersburgensem episcopum, et quosdam tuos monachos vertebantur te promisisti arbitrium Magdeburgensis archiepiscopi fide in manibus eius hinc inde praestita servaturum, sicque factum est, ut ipse archiepiscopus, adiunctis sibi tam clericis quam laicis, [inter quos erat et dapifer imperialis,] sub certa forma arbitrium promulgaverit. [Posthaec iterum Romam veniens quae facta fuerant eidem praedecessori nostro diligenter exponere procurasti, cui et adversario tuo custodi Mersburgensi procuratori dicti episcopi nos ipsi, quum essemus in minori officio constituti, et dilecti filii I. tit. S. Stephani in Coelio Monte, et I. tit. S. Priscae presbyteri cardinales deputati fuimus auditores, et tandem, auditis quae partes duxerant proponenda, sub certa forma de consensu partium causa commissa fuit iudicibus delegatis, videlicet, ut de omnibus diligenter inquirerent, excepto, quod indagationem libertatis eiusdem monasterii cum duabus capellis apostolicae sedis examini per omnia reservarent. Quum itaque iudices delegati partes ad suam praesentiam auctoritate apostolica evocassent, memoratus episcopus delegatos ipsos suspectos sibi proposuit et causas suspicionis multiplices assignavit. Consequenter etiam eorum volens iudicium declinare, sedem apostolicam appellavit, sed reversus postmodum coram eisdem sacramentum calumniae praestitit, testes produxit, petitis dilationibus et obtentis. Ipsi ergo iudices procedentes in causa, auditis utriusque partis rationibus et plenius intellectis, gesta omnia sigillorum suorum munimine roborata ad sedem apostolicam destinarunt, terminum partibus imponentes, quo recepturae sententiam apostolico se conspectui personaliter praesentarent. Ad quem tu personaliter accedens, episcopus pro se misit dilectos filios H. Mersburgensem canonicum et B. S. Nicolai Mersburgensis scholasticum responsales; qui gesta, quae delegati transmiserant, nec publicari debere dicebant, nec fidem eis penitus adhibendam, quum et a suspectis iudicibus, et post appellationem legitime interpositam recepta fuerint et descripta; parte tua contrarium postulante, praesertim quia, ut firmiter asserebat, nuncii memorati personam standi iudicio non habebant, quum excommunicati essent, et episcopo fuisset sub poena suspensionis iniunctum, ut ad causam agendam in propria persona veniret; quod quum non fecerit, poenam suspensionis incurrit, quem praedicti nuncii propter aegritudinem et senectutem personaliter ad Romanam ecclesiam non posse accedere proponebant, alia, quae ipsis obiecta fuerant, denegantes. Qui pro ipso episcopo factum taliter proponebant, quod quum ab eo, tanquam a tuo praelato, abbatiam et sacerdotium percepisses, sicut fueras in iure confessus, propter pravam conversationem tuam super multis enormitatibus coepisti a monachis conveniri, inter quos episcopus pacem et concordiam saepius reformavit, monens te, ut ad frugem melioris vitae transires. Quum autem fratres per ea, quae iugiter faciebas, de tua emendatione nullatenus iam sperarent, contra te proposuerunt in synodo de dilapidatione, quod res monasterii pauperum usibus deputatas voluptuose consumeres, et pro defectu necessariorum religio ibi penitus deperiret, te etiam de sacrilegio, simonia, aliisque multis criminibus impetebant, interdum coram episcopo, quandoque in praesentia cardinalis, quem episcopus tamdiu sustinuit, quod monachis denegare iustitiam dicebatur. Citatus exinde ab episcopo, nuncium misisti super omni gravamine, quod tibi possit inferri per sententiam archiepiscopi, provocantem. Quum autem neque per te neque per nuncium ad archiepiscopum accessisses, ipse archiepiscopus appellationi tam generaliter factae in praeiudicium ecclesiae iudicavit nullatenus deferendum. Episcopus itaque, habito prudentum consilio, citatum denuo te ab officio beneficioque suspendit. Interim superveniens dilectus filius noster I. tit. sancti Stephani in Coelio monte presbyter cardinalis, tunc apostolicae sedis legatus, ad dictam abbatiam accessit, ut componeret inter te et monachos memoratos. Sed te in villis proximis latitante, et magistro Ulrico allegante, dictus cardinalis latam in te suspensionis sententiam confirmavit. Sic ergo latenter Romam veniens, commissionis literas veritate tacita, et sub specie renovationis privilegium, quod

nunquam ante habueras, impetrasti. Quumque iudices delegati episcopo suspecti essent et monachis, a quibus nec unius diei poterant inducias obtinere, appellatione interposita ab episcopi nunciis, statim, quum privilegium subreptitium legeretur, partes nuncios suos ad sedem apostolicam transmiserunt, de quorum assensu causa tandem fuit aliis iudicibus sub certa forma commissa, sicut in commissionis literis continetur. Sed quum non omnes possent examinationi causae propter nimiam distantiam interesse, dilectus filius abbas de Goizoche, una cum venerabilibus fratribus nostris dicto archiepiscopo, Babenbergensi et Misnensi episcopis, et quam plurimis ecclesiarum praelatis, inter episcopum, te et monachos pacem et concordiam reformavit. Iterum autem ad Romanam ecclesiam latenter accedens, et proponens multa contra monachos et episcopum, ad duos iudicum illorum, quos superius episcopo diximus esse suspectos, et a quibus nuper ipse episcopus per nuncios appellaverat, commissorias literas impetrasti. Qui quum iustas exceptiones episcopi non admitterent, quas in continenti probare volebat, sedem apostolicam appellavit. Sed ipsis in causa nihilominus procedentibus, invitus accessit ad eos, timens, ne sua iustitia deperiret. Quum autem post alia, quae iudices ipsi proprio motu fecerant, terminum publicandis attestationibus praefixissent, venientibus partibus unus tantum comparuit de iudicibus cum alterius nuncio, qui nec habebat ad alios literas, nec cavere volebat, quod dominus suus vices suas praesenti iudici commisisset. Sicque factum est, quod solus Numburgensis praepositus, licet tribus sigillis appositis, gesta descripserit, quae fuerant ad sedem apostolicam destinata; unde dicebant fidem eis nullatenus adhibendam, et quia ipsum instrumentum relationis ipsorum iudicum fuit in superficie vitiosum, et datum ab eo, quem plurimis dicunt excommunicationis vinculis innodatum. Verum praemissa fere omnia pro episcopi parte proposita, tu veritate destitui firmiter asserebas. Quia vero memoratus episcopus eo, quod iuramentum praestitit de calumnia, et a delegatis inducias postulavit, et testes coram eis produxit, appellationi renunciasse videtur, et eorum examini consensisse, nos habito fratrum consilio in praemissa incidenti quaestione interlocuti fuimus, quod deberent quae coram praedictis iudicibus gesta fuerant publicari, ut secundum tenorem ipsorum nostra tandem sententia formaretur.] Tibi igitur et procuratoribus episcopi supradicti venerabilem fratrem nostrum O. Hostiensem episcopum et dilectum filium P. tit. S. Caeciliae presbyterum cardinalem dedimus auditores; qui quum ea, quae fuerant hinc inde proposita et ostensa, nobis et fratribus nostris fideliter retulissent, Quia tam per confessiones, quam per attestationes legitime constitit, quod fide hinc inde data compromissum est in archiepiscopum memoratum et quorundam etiam aliorum, nos de consilio fratrum nostrorum arbitrium ab ipso prolatum decernimus observandum, illis duntaxat capitulis exceptis, quae contra libertatem ipsius monasterii et duarum capellarum eiusdem in arbitrio sunt expressa, quum, etsi sponte volueris de iure tamen nequiveris sine licentia Romani Pontificis renunciare privilegiis vel indulgentiis libertatis, quae monasterium illud indicant ad ius et proprietatem Romanae ecclesiae pertinere, praesertim quum in ultimae commissionis literis contineatur expressum quod [saepedictus] praedecessor noster super renuntiatione a te super privilegio et aliis scriptis facta nullum tibi vel successoribus tuis, aut etiam monasterio et duabus capellis de Pigavia praeiudicium voluit generari. [Dat. Romae ap. S. Petr. III. Id. Iul. 1198.]

Chapter VI

Latin source headnote: An arbitrator does not have power to judge beyond the matters comprised in the submission; therefore no counterclaim is made before him.

The same to the Bishop of Saint Andrews and the Abbot of Bechot.

When our beloved son [the abbot and canons of Cambuskenneth had, by authority of our letters, drawn our beloved sons the abbot and monks of Dunfermline in the diocese of Saint Andrews into a lawsuit before our venerable brother [name omitted], Bishop of Dublin, and our beloved sons [name

omitted], Abbot of Coupar, and [name omitted], Abbot of Scone, of the same diocese, concerning certain tithes pertaining to their church of Eccles and damages and injuries inflicted; and those monks had sued the same abbot and canons by our delegation before our beloved sons [name omitted], Prior of Holyrood, and [name omitted], Dean of Tyninghame, of the aforesaid diocese, and you, son official, concerning the chapel of Dunipace and the tithes pertaining to it, each party, after multiple allegations and altercations, made a submission to you, so that, proceeding in those matters according to the order of law, you would terminate those controversies, concerning both possession and ownership, by judgment or agreement, appeal being set aside. Confirming this by a corporal oath, they affirmed that whatever two of you together with you, brother bishop, should judge ought to be established concerning these things, if you all could not agree together, they would hold ratified and firmly observe, and that they would not impede the arbitral proceeding by fraud or malice.

Therefore, after hearing the allegations on both sides, receiving the witnesses, and publishing their depositions, because you were in doubt concerning four articles, you transmitted the instructed case into our presence, imploring an oracle of the Apostolic See concerning those four doubtful matters. The first question arose before you from the fact that, when the canons sued the monks concerning the aforesaid tithes, the monks wished to sue those canons concerning certain other tithes, although no submission had been made to you concerning them. For the monks' party asserted that, according to lawful enactments, one who is sued before someone can sue the same person before that same judge.] Hence you petitioned that whether there is a place for a counterclaim before arbitrators be explained through the Apostolic See. [But the second, etc. (cf. c. 9, On the Reliability of Instruments, II.23).] We therefore respond to your discretion concerning the first article in this way: although in a judicial proceeding the person who is sued before a judge can counterclaim against the claimant, nevertheless he cannot counterclaim before arbitrators, since arbitrators cannot judge except concerning only those things about which a submission was made to them. [As to the second, etc. (cf. c. 9, On the Reliability of Instruments, II.23). Given at the Lateran, on the thirteenth day before the Kalends of April, in the tenth year, 1207.]

Textual note: The Latin Library transcription represents five omitted personal names with Ö. Friedberg likewise prints blank-name markers; they are explicitly identified as omitted names above rather than conjecturally supplied. The transcription's *fruerit* has also been corrected to Friedberg's *fuerit*.

> Arbiter non habet potestatem iudicandi ultra comprehensa in compromisso; ideo coram eo non fit reconventio.
>
> Idem Episcopo S. Andreae et Abbati de Bechot.
>
> Quum dilectus filius [abbas et canonici de Kambuskinel dilectos filios abbatem et monachos de Dunfermelin dioecesis sancti Andreae coram venerabili fratre nostro ... Dublinensi episcopo et dilectis filiis ... de Cupro et ... de Soona abbatibus eiusdem dioecesis super quibusdam decimis ad ecclesiam suam de Egles spectantibus, et damnis et iniuriis irrogatis auctoritate literarum nostrarum traxissent in causam, et ipsi eosdem abbatem et canonicos ex delegatione nostra coram dilectis filiis ... priore sanctae crucis et ... decano de Tiningham praedictae dioecesis, ac te, fili officialis, super capella de Dunipast et decimis ad eandem spectantibus convenissent, utraque pars in vos post allegationes et altercationes multiplices compromisit, ut vos in negotiis ipsis secundum iuris ordinem procedentes, controversias ipsas tam super possessione quam proprietate appellatione postposita iudicio vel concordia finiretis; praestito corporaliter iuramento firmantes, quod quicquid super iis duo vestrum tecum, frater episcope,

si non possetis omnes pariter concordare, ducerent statuendum, ratum haberent et firmiter observarent, nec processum arbitrii dolo vel malitia impedirent. Vos igitur auditis hinc inde propositis, receptis testibus, et publicatis depositionibus eorundem, quia super quatuor articulis dubitastis, causam instructam ad nostram praesentiam transmisistis, super quatuor illis dubitabilibus apostolicae sedis oraculum implorantes. Ex eo siquidem coram vobis prima quaestio est exorta, quod, quum canonici monachos super praedictis decimis convenissent, monachi super quibusdam aliis decimis convenire volebant eosdem, licet de eis in vos non fuerit compromissum. Asserebat enim pars monachorum, quod secundum legitimas sanctiones is, qui coram aliquo convenitur, coram eodem convenire valet eundem.] Unde Utrum coram arbitris reconventioni sit locus, postulasti per sedem apostolicam explicari [Secunda vero etc. (cf. c. 9. de fide instr. II. 23.)] Nos igitur discretioni vestrae super primo articulo taliter respondemus, quod, licet in iudicio convenientem reconvenire valeat is, qui coram iudice convenitur, coram arbitris tamen reconvenire non potest, quum arbitri iudicare non valeant nisi de his tantum, super quibus in eos exstiterit compromissum. [Ad secundam etc. (cf. c. 9. de fide instr. II. 23.) Dat. Lat. XIII. Kal. Apr. Ao. X. 1207.]

Chapter VII

Latin source headnote: One who is bound by an award to elect with the counsel of certain persons is bound to seek their counsel in the deliberation concerning the election, but is not constrained to follow it.

The same to the Rector and Brothers of the Hospital of Saint Bartholomew of Lucca.

When formerly a question was pending concerning the election of a rector and brothers in your hospital between you and our beloved son the Prior of the church of Saint Bartholomew of Lucca, before the Prior of Saint Fridianus and the primicerius of Saint Martin of Lucca, judges delegated by the Apostolic See, and each party, making a submission to them, promised that it would observe their award, and those judges determined that a certain award should be pronounced, a doubt arose on both sides concerning the award pronounced by them, which you petitioned to be clarified through the Apostolic See. We therefore, having diligently inspected the public instrument containing the award, recognized that, according to the form of the award, the Prior of Saint Bartholomew of Lucca is bound to take counsel with the household of that hospital and to deliberate with it concerning finding a rector; but, whether the household agrees or disagrees with that prior, the same prior ought in either case to elect the rector. For this reason we say that, unless the prior has deliberated with the household of the hospital concerning finding a rector and has sought its counsel, he does not have power to elect the rector, and, if he elects him in another manner, his election ought to be regarded as void and empty. But, after counsel has been taken with the household concerning this and deliberation held concerning finding a rector, the prior himself can freely elect a rector, provided only that he is suitable, whether the household agrees or disagrees with him concerning the selection of the rector. [But lest, etc. Given at Sora, on the fourth day before the Nones of August, in the eleventh year of our pontificate, 1208.]

Qui per arbitrium tenetur eligere cum aliquorum consilio, tenetur illorum consilium in tractatu electionis requirere, sed sequi non adstringitur.

Idem Rectori et Fratribus hospitalis S. Bartholomaei Lucani.

Quum olim super eligendis in hospitali vestro rectore et fratribus inter vos et dilectum filium priorem ecclesiae sancti Bartholomaei Lucani coram priore S. Fridiani et primicerio S. Martini Lucanensis a sede

> apostolica iudicibus delegatis quaestio verteretur, et utraque pars in eos compromittens ipsorum arbitrium se promiserit servaturum ac ipsi iudices certum duxerint arbitrium proferendum, super prolato ab ipsis arbitrio utrinque dubitatio est exorta, quam petistis per sedem apostolicam declarari. Nos igitur publico instrumento arbitrium continente diligenter inspecto cognovimus, quod secundum formam arbitrii prior sancti Bartholomaei Lucani tenetur habere consilium cum familia hospitalis eiusdem et tractare cum ea de inveniendo rectore; sed sive concordet sive discordet familia cum ipso priore, idem prior eligere debet in utroque casu rectorem. Propter quod dicimus, quod nisi prior super inveniendo rectore tractaverit cum familia hospitalis, et ipsius consilium requisierit, non habet potestatem eligendi rectorem, et, si alio modo eum elegerit, eius electio haberi debet irrita et inanis. Verum, habito cum familia super hoc consilio et tractatu de inveniendo rectore, ipse prior libere potest rectorem eligere, duntaxat idoneum, sive concordet sive discordet familia cum ipso super inventione rectoris. [Ne vero etc. Dat. Sorae IV. Non Aug. Pontif. nostr. Ao. XI. 1208.]

Chapter VIII

Latin source headnote: A submission concerning spiritual matters cannot be made to a layman.

The same in the General Council.

It sometimes happens that, when to a claimant (*And below:* [cf. c. 9, On Fraud and Contumacy, II.14.]) For this purpose we generally prohibit a submission concerning spiritual matters from being made to a layman, because it is not fitting for a layman to arbitrate in such matters.

> De rebus spiritualibus in laicum compromitti non potest.
>
> Idem in concilio generali.
>
> Contingit interdum, quod, quum actori (Et infra: [cf. c. 9. de col. et cont. II. 14.]) Ad hoc generaliter prohibemus, ne super rebus spiritualibus compromittatur in laicum, quia non decet, ut laicus in talibus arbitretur.

Chapter IX

Latin source headnote: By authority even of a delegated judge, a submission concerning a spiritual cause can be made to a cleric and a layman; and, if the award has been accepted by the parties, it ought to be committed to execution by them, although the submission was made through a general proctor. But if the award was not approved and a penalty was added, an action lies for the penalty; otherwise, for the interest. This states the rule generally by adhering to the letter.

The same to the Archbishop of Pisa.

You informed us by your letters that, when you had received letters from us concerning execution of an award pronounced between the Hospitallers of Saint John and the pleban of Pescia concerning the hospital of Saint Allucius, when the parties had appeared in your presence, the Hospitallers sought execution of the award from you, asserting that it ought to be observed because the pleban's proctor voluntarily made a submission to the arbitrators after interposing an oath, since he said that he had received power to make a submission and settlement concerning that business. The pleban alleged to the contrary that he gave the aforesaid proctor a general mandate to conduct the case; nevertheless, he did not mandate him to make a submission or settlement concerning it without his special mandate; and, moreover, the aforesaid proctor had not been appointed with the assent of his canons. And therefore he said that the award was invalid, especially since the proctor had exceeded the limits

of the mandate and the award had been promulgated by one cleric and two laymen, although they had pronounced the award with the assent of our venerable brother the Archbishop of Genoa, to whom the case had been committed.

Hence, when doubt had arisen concerning these matters, you petitioned to be instructed by an oracle of the Apostolic See how you should proceed concerning that business. Concerning this we respond to your fraternity in this way: if the award was accepted on behalf of the pleban, it ought to be held ratified without distinction and thereby committed to execution according to the tenor of the apostolic mandate. But if it was not accepted, it matters whether or not a penalty was established for observing it. And indeed, if a penalty was added in the submission, an action can be brought for the penalty. But if no penalty was established, but a submission was made simply that the sentence would be obeyed, the proctor can be sued for the interest, because by his oath he could bind himself personally, but not the church. That it is said to have been pronounced by two laymen and one cleric appears in no way to stand in the way, since it was done by authority of the said archbishop, to whom the cause concerning which the submission is said to have been made had been delegated.

> Auctoritate iudicis etiam delegati potest de causa spirituali in clericum et laicum compromitti, et, si arbitrium est a partibus receptum, debet a partibus exsecutioni mandari, licet per generalem procuratorem factum fuerit compromissum. Si autem non fuit arbitrium approbatum, et poena fuit apposita, agitur ad poenam, alias ad interesse. H. d. generaliter inhaerendo literae.
>
> Idem Pisano Archiepiscopo.
>
> Per tuas nobis literas intimasti, quod, quum super exsecutione arbitrii, quod inter Hospitalarios sancti Ioannis et plebanum de Piscia super hospitali sancti Allucii latum erat, a nobis literas accepisses, partibus in tua praesentia constitutis, Hospitalarii a te exsecutionem arbitrii postulabant, asserentes, illud debere observari pro eo, quod procurator plebani sponte in arbitros iuramento interposito compromisit, quoniam dicebat, potestatem compromittendi et transigendi super eodem negotio recepisse. Plebanus proposuit ex adverso, quod ad causam tractandam praedicto procuratori dedit generale mandatum; non tamen ei mandavit, ut sine speciali mandato suo compromittere posset vel transigere super eo; et praeterea procurator iam dictus de assensu canonicorum suorum non fuerat institutus. Et ideo dicebat id arbitrium non valere, praesertim quum procurator fines mandati excesserit et arbitrium fuerit per unum clericum et duos laicos promulgatum, licet ipsi de assensu venerabilis fratris nostri Genuensis archiepiscopi, cui causa commissa fuerat, arbitrium protulissent. Unde, quum super his dubietas fuisset exorta, per apostolicae sedis oraculum edoceri petiisti, qualiter super negotio ipso tibi sit procedendum. Super quo fraternitati tuae taliter respondemus, quod, si ex parte plebani arbitrium receptum fuerit, indistincte ratum haberi debet, ac per hoc iuxta tenorem mandati apostolici exsecutioni mandari. Si vero receptum non fuerit, refert, utrum fuerit vel non fuerit de observando ipsum poena statuta. Et quidem si poena fuerit apposita in compromissione, agi potest ad poenam. At si nulla poena statuta fuerit sed simpliciter, quod staretur sententiae, fuerit compromissum, procurator ad interesse poterit conveniri, quia iuramento suo se ipsum personaliter, non ecclesiam poterat obligare. Quod autem a duobus laicis et uno clerico dicitur esse prolatum, nequaquam obviare videtur, quum auctoritate dicti archiepiscopi factum sit, cui causa de qua, dicitur compromissum, fuerat delegata.

Chapter X

Latin source headnote: If two persons elected in discord to the same prelacy make a submission to the ordinary, the submission expires upon the death of one of those making it; the ordinary

nevertheless proceeds by ordinary power concerning the right of the survivor before passage is made to another election. This states the rule.

Honorius III to the Archbishop of Cologne.

It was intimated to our ears on your behalf that, when the provostship of Saint Cunibert in Cologne was vacant, the canons of that church, disagreeing on the day fixed for the election concerning the appointment of a provost for themselves, divided their votes between two, namely H. of Jülich and C. of Lombardy. When afterward deliberation was held concerning an election of this kind and the parties had appeared in your presence, they at last took care, after pledging faith, to make a submission to you concerning this. After diligently inspecting and ascertaining the merits of the case, with their assent you fixed a day for pronouncing a definitive sentence. Meanwhile, however, after the aforesaid H., elected by one party, had been removed from their midst, you took care to forbid the above-mentioned canons to proceed to make another election while your sentence was pending; some of them nevertheless elected B. of Ahrberg, canon of Cologne. Therefore, on the day when the sentence ought to have been pronounced, when the parties had appeared in your presence and the aforesaid C. petitioned that you pronounce a definitive sentence, the said B., to the contrary, alleged that you ought not to proceed further.

Therefore, to you, who humbly petition to be instructed by us, we respond briefly that, although the arbitration was ended by the death of H. himself, nevertheless you ought first to have taken cognizance of the merits of the first election before a proceeding was made to the second. For if perhaps the said C., who survives, has a right in the election concerning which the submission to you was made, it is established that the second election is wholly invalid. [On the fourteenth day before the Kalends of July, in the second year, 1218.]

> Si per duos electos ad eandem praelaturam in discordia compromittitur in ordinarium, morte alterius compromittentium exspirat compromissum; ordinarius tamen ex potestate ordinaria procedit super iure superstitis, antequam fiat transitus ad aliam electionem. H. d.
>
> Honorius III. Archiepiscopo Coloniensi.
>
> Ex parte tua nostris est auribus intimatum, quod, vacante praepositura sancti Cuniberti in Colonia, canonici eiusdem ecclesiae electioni die praefixa de praeficiendo sibi praeposito discordantes vota sua diviserunt, in duos, quorum unum videlicet H. de Iuliaco, et C. de Lombardia. Quumque postmodum tractaretur super electione huiusmodi, et partes essent in tua praesentia constitutae, in te demum super hoc fide praestita compromittere curaverunt, qui causae meritis diligenter inspectis et cognitis ad proferendam diffinitivam sententiam diem ipsis consentientibus praefixisti. Interim vero praefato H. ab una parte electo sublato de medio, supradictis canonicis inhibere curasti, ne tua pendente sententia procederetur ab ipsis ad electionem aliam faciendam, quorum quidam nihilominus B. de Ahrberch Coloniensem canonicum elegerunt. Die igitur, quo sententia proferri debuit, in tua praesentia partibus constitutis, et praefato C., ut diffinitivam proferres sententiam, postulante, dictus B. e contrario allegavit, quod procedere ulterius non deberes. Quapropter tibi, edoceri a nobis humiliter postulanti, breviter respondemus, quod, licet arbitrium sit finitum per mortem ipsius H., prius tamen de primae electionis meritis debuisti cognoscere, quam processus fieret ad secundam. Nam si forte dictus C., qui est superstes, in electione ius habet, de qua compromissio facta fuit in te, electionem secundam constat penitus non valere [XIV. Kal. Iul. Ao. II. 1218.]

Chapter XI

Latin source headnote: An arbitrator chosen after a matter has been adjudged, concerning new disputes, cannot alter the sentence by his award, even if he received a mandate from the Pope to compose matters between the parties.

The same to the Bishop-elect and the Abbot of Saint Zeno and C., Canon of Verona.

The petition of our beloved son O., Bishop-elect of Feltre and Belluno, presented to us contained that, when the case which formerly was pending between his predecessor of good memory on the one side and the citizens of Treviso on the other concerning the district, jurisdiction, and other matters had been terminated by the sentence of our venerable brother the Bishop of Ostia, then legate of the Apostolic See, and the predecessor of that bishop-elect had for a long time peacefully possessed the things adjudged to him by that legate, nevertheless the bishop-elect himself, having at last obtained the assent of his chapters, to the prejudice of his churches made a submission with the other party to the nobleman the Duke of the Venetians as arbitrator concerning certain disputes which seemed to have arisen on both sides. Acting contrary to that same sentence confirmed by apostolic authority, the duke, with equity set aside, promulgated an iniquitous award against the aforesaid churches concerning matters adjudged by that legate.

Although we sent our letters to that duke that he ought to labour to compose matters between the parties, nevertheless, since it was not our intention to alter that sentence or to stir up the complaints quieted by it, we command your discretion [by apostolic writings] that, notwithstanding the aforesaid letters, you revoke as void whatever you find to have been done by the award of the above-named duke against the sentence of that legate, strictly forbidding him to proceed further in the submission, and compelling him by ecclesiastical censure, appeal being set aside, to restore the hostages and a certain castle given to him on occasion of that submission so that his award would be observed. [Given at Rieti, on the eighth day before the Ides of September, in the tenth year, 1225.]

> Arbiter post rem iudicatam super discordiis novis assumptus, non potest per suum arbitrium sententiam immutare, etiamsi de componendo inter partes mandatum acceperit a Papa.
>
> Idem Electo et Abbati sancti Zenonis et C. Canonico Veronensi.
>
> Exposita nobis dilecti filii O. Feltrensis et Belvensis electi petitio continebat, quod, quum causa, quae quondam inter bonae memoriae antecessorem suum ex parte una, et cives Tervisinos ex altera super districtu et iurisdictione ac rebus aliis vertebatur, per sententiam venerabilis fratris nostri Hostiensis episcopi tunc apostolicae sedis legati fuerit terminata, et ipsius antecessor electi adiudicata sibi per legatum eundem diu pacifice possedisset, ipse nihilominus, habito tandem capitulorum suorum assensu in praeiudicium ecclesiarum suarum tandem super quibusdam discordiis, quae hinc inde videbantur exortae, in nobilem virum ducem Venetorum tanquam in arbitrum cum parte altera compromisit, qui veniens contra eandem sententiam auctoritate apostolica confirmatam, super rebus iudicatis ab eodem legato adversus praedictas ecclesias aequitate postposita iniquum arbitrium promulgavit. Licet autem eidem duci literas nostras miserimus, ut ad componendum inter partes laborare deberet, quum tamen intentionis nostrae non fuerit immutare sententiam ipsam, vel sopitas per eam querimonias suscitare, discretioni vestrae [per apostolica scripta] mandamus, quatenus, praefatis literis non obstantibus, quicquid per praenominati ducis arbitrium contra ipsius legati sententiam inveneritis esse factum, in irritum revocetis, ei districtius inhibentes, ne ulterius in compromisso procedat, et eundem ad restitutionem obsidum et cuiusdam castri occasione illius compromissi sibi datorum, ut ipsius

arbitrium servaretur, per censuram ecclesiasticam appellatione postposita compellentes. [Dat. Reate VIII. Id. Sept. Ao. X. 1225.]

Chapter XII

Latin source headnote: A submission made to two or more persons, with this added—that in a case of disagreement a third is to be chosen by them or by others—is invalid. This states the rule.

Gregory IX to the Dean and Master P., Canon of Saint Peter in the Diocese of Arras.

It became known to us from the complaint of the layman William that, when the layman O. sued him concerning a certain sum of money before judges by apostolic authority, a submission was at last made by the parties to two arbitrators, but in such a way that, if those two disagreed with one another, the named judges would add a third, nevertheless retaining for themselves the power to compel the parties to observe the award to be promulgated by the said arbitrators. And when a third arbitrator chosen by the aforesaid judges, together with one of the two, condemned him to the other party, he, feeling himself aggrieved by the often-mentioned judges because they were compelling him to observe an award of this kind, appealed to our hearing; but they, in contempt of the appeal, pronounced a sentence of excommunication against him. We therefore command that, if it is so, since it has been established by legal provision that a submission concerning an uncertain person to be assumed into the arbitration does not bind, you are to declare that sentence of excommunication to be wholly null.

Textual note: The Latin Library transcription's *apellatione* has been corrected to *appellatione*.

Non valet compromissum factum in duos sive plures, hoc adiecto, ut in casu discordiae eligatur tertius per eosdem vel alios. H. d.

Gregorius IX. Decano et Magistro P. Canonico S. Petri Atrebatensis dioecesis.

Innotuit nobis Guilielmo laico conquerente, quod, quum O. laicus ipsum super quadam summa pecuniae coram iudicibus auctoritate apostolica convenisset, tandem fuit a partibus in duos arbitros compromissum, sic tamen, quod, si illi duo adinvicem discordarent, tertium adderent iudices nominati, retenta penes se compellendi partes ad observandum arbitrium per dictos arbitros promulgandum nihilominus potestate. Quumque tertius arbiter a iudicibus praedictis electus cum altero duorum ipsum parti alteri condemnasset, idem, ex eo sentiens se a saepedictis iudicibus gravari, quod ipsum ad observantiam huiusmodi arbitrii compellebant, nostram appellavit audientiam; sed ipsi appellatione contempta excommunicationis tulerunt sententiam in eundem. Ideoque mandamus, quatenus, si est ita, quum legali sit provisione statutum, ut compromissum de incerta persona in arbitrium assumenda non teneat, dictam excommunicationis sententiam denuncietis penitus nullam esse.

Chapter XIII

Latin source headnote: A submission made to one or more persons is valid so that they may decide the case by themselves or through others whom they themselves choose. This states the rule according to the understanding perceived by the gloss here and by Innocent in the preceding chapter, which pleases me. Panormitanus.

The same to the Abbess and Convent of Jouarre.

When it is sought from us (*And below:*) It was alleged on your behalf that, when formerly a question had arisen between you and the Archbishop of Sens because that archbishop, asserting that your

monastery was subject to him by metropolitan right, exacted procurations and other things from you, at last, when a submission had concordantly been made by the parties to R., Cardinal Deacon of Saint Angelo, then legate of the Apostolic See, and it had been promised under a certain penalty that they would obey without qualification his award or ordinance, or that of two mediators whom he should appoint concerning this, Master P., our chaplain, and I., Archdeacon of Sens, mediators appointed concerning this by that legate, terminated a cause of this kind by ordaining and deciding it. We therefore confirm by apostolic authority what was done concerning this by the aforesaid mediators.

> Valet compromissum factum in unum, vel in plures, ut ipsi per se causam definiant, vel per alios, quos ipsi elegerint. H. d. secundum intellectum, quem sensit gloss. hic, et Innocentius in capite praecedenti, qui placet mihi. Panorm.
>
> Idem Abbatissae et Conventui Iotrensi.
>
> Quum a nobis petitur (Et infra:) Ex parte vestra fuit propositum, quod, olim inter vos et Senonensem archiepiscopum quaestione suborta, super eo, quod idem archiepiscopus, asserens monasterium vestrum metropolitico iure sibi subesse, procurationes et res alias exigebat a vobis, tandem in R. sancti Angeli diaconum cardinalem, tunc apostolicae sedis legatum, a partibus concorditer compromisso, et promisso sub certa poena, quod arbitrio seu ordinationi eiusdem, vel duorum mediatorum, quos idem super hoc deputaret, praecise parerent, magister P. capellanus noster, et I. archidiaconus Senonensis mediatores ab eodem super hoc deputati legato, ordinando et diffiniendo causam huiusmodi terminaverunt. Nos igitur quod per praedictos mediatores super hoc actum est auctoritate apostolica confirmamus.

Chapter XIV

Latin source headnote: A submission is ended before sentence is pronounced by the death of either of those making the submission; hence it does not pass to their heirs unless provision concerning them was made in the submission. It says this by comprehending the meaning of the chapter.

The same.

A submission does not extend to the heirs of the person making it if provision concerning them is not made there.

> Compromissum ante sententiam latam finitur morte alterius compromittentium; unde non transit in heredes compromittentium, nisi de eis sit cautum in compromisso. Hoc dicit comprehendendo mentem capituli.
>
> Idem.
>
> Compromissum non extenditur in compromittentis heredes, si de ipsis non caveatur ibidem.

Book II

Compilation of the Decretals of Lord Pope Gregory IX

Book Two

> **DECRETALIUM D. GREGORII PAPAE IX. COMPILATIO**
> **LIBER SECUNDUS.**

Title I: On Judgments

Chapter I

Latin source headnote: A contumacious person can be excommunicated for failing to appear or to answer; he ought not, however, to be deprived of a benefice. This is what it says. Abbas Siculus.

From the African Council.

Concerning Quodvultdeus, Bishop of Centuria, whom, when his adversary had petitioned that he be brought before *our* council, and when he had been asked whether he wished to proceed against him *before the bishops*, he first promised this, but on the following day answered that this did not please him, and departed. It pleased *all the bishops* that no one should communicate with that *Quodvultdeus* until, satisfaction having first been made, he has been absolved. For no one can rightly be considered to have his bishopric taken from him before the conclusion of his case.

> **DE IUDICIIS.**
>
> Contumax in non comparendo vel non respondendo excommunicari potest; beneficio autem privari non debet. H. d. Abbas Siculus.
>
> Ex concilio Africano.
>
> De Quodvultdeo Centurensi episcopo, quem, quum adversarius ipsius eum petisset ad concilium *nostrum* introduci, interrogatus, an cum eo vellet *apud episcopos* experiri, primo id promiserat, et altera die respondit, hoc sibi non placere, atque discessit. Placuit *omnibus episcopis*, ut nullus eidem *Quodvultdeo* communicet, donec satisfactione praemissa fuerit absolutus. Nam adimi sibi episcopatum ante causae eius exitum nulli potest iure videri.

Chapter II

Latin source headnote: Laymen ought not to handle ecclesiastical affairs, but they are disposed of by the judgment of prelates. This is what it says. Abbas Siculus.

From the synod of Pope Eugene.

We decree *also* that laymen are not to presume to handle ecclesiastical affairs. But bishops, abbots, archbishops, and other prelates of churches are not to dispose of ecclesiastical affairs, especially those known to be spiritual, by the judgment of [*any*] laymen, nor because of their prohibition are they to cease exercising ecclesiastical justice.

> Laici ecclesiastica negotia tractare non debent, sed praelatorum iudicio disponuntur. Hoc dicit. Abbas. Sic.

Ex synodo Eugenii Papae.

Decernimus *etiam*, ut laici ecclesiastica tractare negotia non praesumant. Sed episcopi, abbates, archiepiscopi et alii ecclesiarum praelati de negotiis ecclesiasticis, maxime de illis, quae spiritualia esse noscuntur, [*aliquorum*] laicorum iudicio non disponant, nec propter eorum prohibitionem ecclesiasticam dimittant iustitiam exercere.

Chapter III

Latin source headnote: A cause concerning the right of patronage belongs to the judgment of the Church. This it says specifically and literally.

Alexander III, to the illustrious King of England.

In proportion as divine grace [*and highest providence have adorned you with the privilege of greater grace,*] so much the more ought you to love religious men with greater charity, and more readily to maintain and foster them in their rights. A cause concerning the right of patronage, however, is so joined and connected with spiritual causes that it can be decided only by ecclesiastical judgment *and terminated solely before an ecclesiastical judge*.

Causa iuris patronatus spectat ad iudicium ecclesiae. H. dicit specifice et ad literam.

Alexander III. illustri Regi Angliae.

Quanto *te* divina gratia [*summaque providentia maioris gratiae privilegio decoravit, tanto viros religiosos maiori debes caritate diligere, et in iustitiis suis manutenere propensius et fovere.*] Causa vero iuris patronatus ita coniuncta est et connexa spiritualibus causis, quod non nisi ecclesiastico iudicio valeat definiri, *et apud ecclesiasticum iudicem solummodo terminari*.

Chapter IV

Latin source headnote: A cleric convicted of or confessing a crime before a secular judge is not punished by his bishop on that account; but one convicted or confessing before him is punished with the due penalty, unless he dispenses with him, which he can do in adultery and lesser offenses; one deposed, however, is not immediately handed over to the secular court. This is what it says from the beginning to the end. Abbas Siculus. § 1. This section is summarized above at the beginning of the chapter; nevertheless, because it has separate and notable matter, state it otherwise: in adultery and lesser offenses a bishop can dispense with clerics after penance has been completed; but one deposed for his excesses is not indiscriminately handed over to the secular court. This is what it says. Abbas Siculus.

The same, to the Archbishop of Salerno.

But if clerics have been convicted of or have confessed a crime before a secular judge, they are not on that account to be condemned in any way by their own bishop. For just as a sentence rendered by one who is not their judge does not hold, so neither does a confession made before him. But if they have confessed their crimes in court before the bishop, or have been convicted by lawful proof, provided that the crimes are such that they ought to be suspended or deposed on account of them, they are not undeservedly to be suspended from their orders or perpetually removed from the ministry of the altar.

§ 2. Concerning adulteries, however, and other crimes that are lesser, a bishop can dispense with his clerics after penance has been completed, *so that they may serve in their orders*; but he ought not to hand over to a secular judge anyone deposed for his excesses, since he has discharged his own office and ought not crush that person with a double contrition. [*Moreover, if a cleric, etc.* (cf. c. 1, On Clerics Fighting in a Duel, V.14.)]

> Clericum convictum vel confessum de crimine coram iudice saeculari ex eo non punit episcopus; sed coram se convictum vel confessum punit poena debita, nisi cum illo dispenset, quod potest in adulterio et minoribus; depositum vero non statim tradit curiae saeculari. H. de usque ad fin. Abbas Siculus. §. 1. Summatus est iste §. supra in princ. c., tamen quia habet materiam separatam et notabilem, ideo dic aliter: In adulterio et minoribus potest cum clericis peracta poenitentia episcopus dispensare; depositum autem pro suis excessibus non tradit indifferenter curiae saeculari. H. d. Abbas Sicul.
>
> Idem Salernitano Archiepiscopo.
>
> At si clerici coram saeculari iudice convicti fuerint vel confessi de crimine, non sunt propter hoc a suo episcopo aliquatenus condemnandi. Sicut enim sententia a non suo iudice lata non tenet, ita nec facta confessio coram ipso. Si vero coram episcopo de criminibus in iure confessi sunt, seu legitima probatione convicti, dummodo sint talia crimina, propter quae suspendi debeant vel deponi, non immerito suspendendi sunt a suis ordinibus, vel ab altaris ministerio perpetuo removendi. 2. De adulteriis vero et aliis criminibus, quae sunt minora, potest episcopus cum suis clericis post peractam poenitentiam dispensare, *ut in ordinibus suis deserviant*; sed non debet quemlibet depositum pro suis excessibus, quum suo sit functus officio, nec duplici debeat ipsum contritione conterere, iudici tradere saeculari. [*Porro si clericus etc.* (*cf. c.* 1. *de cler. pugn. in duell. V.* 14.)]

Chapter V

Latin source headnote: A vassal is to be sued before the lord of the fief, even if the lord of the fief is an ecclesiastical person, provided that the claimant can obtain his justice there; otherwise the ordinary of the place can be approached. And according to this it is a notable case. Abbas Siculus.

The same.

Furthermore, because *sometimes, as we have learned*, a sentence of excommunication or interdict is promulgated, on the occasion of those possessions, against those who are known to hold possessions in fief from your church, we most strictly prohibit this as long as they are prepared to exhibit justice concerning these matters in your presence. *But if this has been presumed by anyone with rash daring, let it be lawful for you to revoke that sentence with the remedy of appeal removed. Therefore, let it be lawful for no person to violate this charter of our grant, etc.*

> Vasallus coram domino feudi conveniendus est, etiamsi dominus feudi sit ecclesiastica persona, dummodo ibi actor possit suam iustitiam consequi; alias loci ordinarius poterit adiri. Et secundum hoc est casus notabilis. Abbas Sicul.
>
> Idem.
>
> Ceterum quia *quandoque, sicut accepimus*, in eos, quos ab ecclesia tua constat possessiones tenere in feudum, occasione ipsarum excommunicationis seu interdicti sententia promulgatur, nos id districtius inhibemus, quamdiu parati fuerint super his in tua praesentia iustitiam exhibere. *Quod si fuerit a quoquam temerario ausu praesumptum, liceat tibi eandem sententiam sublato appellationis remedio revocare. Nulli ergo hominum fas sit, hanc paginam nostrae concessionis etc.*

Chapter VI

Latin source headnote: A party is not compelled to express the name of the action in the complaint; nevertheless, he ought to set forth the fact so clearly that the right of action may be gathered from it. This is what it says according to its meaning. Abbas Siculus.

The same, to the Bishop of Exeter and the Chapter of London.

Our beloved sons the prior and clerics of Guisborough transmitted to us a *very grave and difficult* complaint against the Archbishop of York, legate of the Apostolic See. [*And below:* (cf. c. 1, On Appeals, II.28.)] Take more attentive care not to inquire as subtly as many are accustomed to do what kind of action is being brought, but see to it that you investigate simply and plainly the fact itself and the truth of the matter according to the form of the canons and the institutions of the holy Fathers.

> Nomen actionis in libello exprimere para non cogitur; debet tamen factum ita clare proponere, ut ex eo ius agendi colligatur. Hoc dicit quoad intellectum. Abbas.
>
> Idem Exonensi Episcopo et Capitulo Londonensi.
>
> Dilecti filii *nostri* prior et clerici de Guiseburnen. contra Eboracensem archiepiscopum apostolicae sedis legatum gravem *admodum et difficilem nobis* querimoniam transmiserunt. [*Et infra:* (*cf. c.* 1. *de app. II.* 28.)] Provideatis attentius, ne ita subtiliter, sicut a multis fieri solet, cuiusmodi actio intentetur, inquiratis, sed simpliciter et pure factum ipsum, et rei veritatem secundum formam canonum et sanctorum Patrium instituta investigare curetis.

Chapter VII

Latin source headnote: An excommunicated person cannot stand in judgment except as a defendant.

The same, to the Bishop of Padua.

We understood *from your letters that, when the daughter of a certain nobleman, your parishioner, had contracted marriage with a certain man, and it was afterward discovered that this same man was held bound by the bond of excommunication for the killing of the Bishop of Vicenza of good memory, she raised a question in your presence. Hence,* because you petitioned us whether an excommunicated person can stand in judgment, we answer that he can be sued and ought to answer in judgment through another, lest he appear to obtain an advantage from his own malice *if by it he should be secure from their proceedings against him*.

> Excommunicatus in iudicio, nisi tanquam reus, stare non potest.
>
> Idem Paduano Episcopo.
>
> Intelleximus *ex literis tuis, quod, quum filia cuiusdam nobilis viri parochiani tui cum quodam viro matrimonium contraxisset, comperto postea, quod idem vir pro nece bonae memoriae Vicentini episcopi vinculo tenebatur excommunicationis adstrictus, in tua proposuit praesentia quaestionem. Unde* Quia postulasti a nobis, utrum excommunicatus in iudicio stare possit, respondemus, quod conveniri potest, et debet per alium in iudicio respondere, ne videatur de sua malitia commodum reportare, *si ex ea fuerit ab eorum impetitione securus*.

Chapter VIII

Latin source headnote: A cleric ought to be sued concerning every crime before an ecclesiastical judge, and a contrary custom is not valid.

Lucius III, to the Archbishop of Esztergom.

Clerics, *especially in criminal matters, can in no case be condemned by anyone other than an ecclesiastical judge, even if royal custom holds that thieves are to be judged by secular judges*. Since the emperor says that *even their* laws do not disdain to imitate the sacred canons, in which it is generally handed down that a cleric ought to be sued concerning every crime before an ecclesiastical judge, prejudice ought not to be generated against the canons in this respect by any custom.

> Clericus de omni crimine debet coram ecclesiastico iudice conveniri, nec valet consuetudo contraria.
>
> Lucius III. Strigonensi Archiepiscopo.
>
> Clerici *vero, maxime in criminalibus, in nullo casu possunt ab alio, quam ab ecclesiastico iudice condemnari, etiamsi consuetudo regia habeat, ut fures a iudicibus saecularibus iudicentur*. Quum imperator dicat quod *etiam* leges *eorum* non dedignantur sacros canones imitari, in quibus generaliter traditur, ut de omni crimine clericus debeat coram ecclesiastico iudice conveniri, non debet in hac parte canonibus ex aliqua consuetudine praeiudicium generari.

Chapter IX

Latin source headnote: A judge ought by virtue of his office to provide that the due solemnities are observed in judgments; when these are omitted, the judgment is rendered ineffectual. This is what it says. Abbas Siculus.

Clement III.

Hear the cause that is pending between the brothers of the monastery of Durham and the monks of Saint Albans *concerning the church of Cantinz., and terminate it with appeal removed*. Among other things, provide *this* especially: that the brothers of the monastery of Durham enter into the business with the authority and participation of their bishop, lest, if the brothers of Saint Albans prevail, that bishop, presenting himself as abbot of the monastery, be able to revive the settled suit.

> Iudex ex officio providere debet, ut debitae solennitates serventur in iudiciis, quibus omissis iudicium redditur frustratorium. H. d. Abbas Siculus.
>
> Clemens III.
>
> Causam, quae vertitur inter fratres Dulmensis monasterii et monachos sancti Albani *super ecclesia de Cantinz., audiatis et appellatione remota terminetis*. Provideas *illud* inter cetera *specialiter*, ut fratres Dulmensis monasterii cum auctoritate et accessu episcopi sui ingrediantur negotium, ne, si fratres sancti Albani obtineant, episcopus idem, abbatem monasterii se proponens, litem sopitam valeat suscitare.

Chapter X

Latin source headnote: An incorrigible deposed cleric is to be excommunicated and thereafter anathematized. And if he does not thus return to soundness, he is to be restrained by the secular judge. This is what it says. Abbas Siculus.

Celestine III.

Since not by man—(*And below:*) It was therefore asked of us on your behalf whether it is lawful for a king or any secular person to judge clerics of whatever order when they have been detected in theft, homicide, perjury, or any crimes whatsoever. We answer your consultation in this way: if a cleric

constituted in any order has been lawfully detected and convicted in theft, homicide, perjury, or another *mortal* crime, he is to be deposed by an ecclesiastical judge. If, after being deposed, he is incorrigible, he ought to be excommunicated, and thereafter, as his contumacy increases, struck with the sword of anathema. But afterward, if, descending into the depth of evils, he treats this with contempt, since the Church has nothing further that it can do, lest he be capable of causing the destruction of many more, he is to be restrained by the secular power in such a way that exile is assigned to him or another lawful penalty is inflicted.

> Clericus depositus incorrigibilis excommunicandus est et successive anathematizandus. Et si sic non resipuerit, per iudicem saecularem comprimendus est. H. d. Abbas Siculus.
>
> Coelestinus III.
>
> Quum non ab homine (*Et infra:*) A nobis *itaque* fuit ex parte tua quaesitum, utrum liceat regi vel alicui saeculari personae iudicare clericos cuiuscunque ordinis, sive in furto, sive in homicidio, vel periurio, seu quibuscunque fuerint criminibus deprehensi. Consultationi tuae taliter respondemus, quod, si clericus in quocunque ordine constitutus in furto, vel homicidio, vel periurio, seu alio *mortali* crimine fuerit deprehensus legitime atque convictus, ab ecclesiastico iudice deponendus est. Qui si depositus incorrigibilis fuerit, excommunicari debet, deinde contumacia crescente anathematis mucrone feriri. Postmodum vero, si in profundum malorum veniens contempserit, quum ecclesia non habeat ultra quid faciat, ne possit esse ultra perditio plurimorum, per saecularem comprimendus est potestatem ita, quod ei deputetur exsilium, vel alia legitima poena inferatur.

Chapter XI

Latin source headnote: By a rescript obtained against a violent possessor, one who knowingly succeeds to the wrongful condition is sued. This is what it says according to the common interpretation, which pleases me. Panormitanus.

The same.

Because V., who was said to have violently occupied the church of the cleric P., is dead, as we have learned, and R. afterward entered it, we command that, according to the form of the earlier letters, the business between R. and P. be terminated under the same judges, with reason as intermediary, just as it would have been between the same P. and the aforesaid V. if he were living.

> Per rescriptum impetratum contra violentum convenitur qui scienter succedit in vitium. H. d. secundum communem modum, qui mihi placet. Panorm.
>
> Idem.
>
> Quia V., qui violenter dicebatur ecclesiam P. clerici occupasse, defunctus est, ut accepimus, et R. eam postmodum est ingressus, praecipimus, ut secundum formam priorum literarum inter ipsos R. et P. sub eisdem iudicibus mediante ratione, sicut inter eundem P. et praefatum V., si viveret, negotium terminetur.

Chapter XII

Latin source headnote: The Pope alone, and not an inferior judge, takes cognizance of doubts concerning privileges of the Apostolic See.

Innocent III, to the Abbots of Saint Sergius and Saint George.

When they had come—(*And below:*) For since a cause concerning privileges of the Apostolic See is pending, we do not wish judgment concerning them to be given by others.

> Solus Papa cognoscit de dubiis privilegiorum apostolicae sedis, et non inferior.
>
> Innocentius III. S. Sergii et S. Georgii Abbatibus.
>
> Quum venissent (*Et infra:*) Quum *enim* super privilegiis sedis apostolicae causa vertatur, nolumus de ipsis per alios iudicari.

Chapter XIII

Latin source headnote: An ecclesiastical judge can proceed by way of evangelical or judicial denunciation against any sinner, even a layman, especially by reason of perjury or a broken peace.

The same, to the prelates established throughout France.

He who knows all things, *who is the searcher of hearts and knower of secrets, knows that we love our most illustrious son in Christ, Philip, the illustrious King of the French, from a pure heart, a good conscience, and unfeigned faith, and that we earnestly aspire to his honor, advancement, and increase, considering the exaltation of the kingdom of the French to be the exaltation of the Apostolic See, since this kingdom, blessed by God, has always remained in its devotion and, as we believe, will at no time depart from its devotion; for, although assaults are sometimes made from here and there by evil angels, nevertheless we, who are not ignorant of Satan's devices, shall endeavor to avoid his stratagems, believing that the same king will not permit himself to be seduced by his deceits*. Therefore, let no one think that we intend to disturb or diminish the jurisdiction *or power* of the illustrious King of the French, since he neither wishes nor ought *even* to impede our jurisdiction and power, *and since we do not suffice to fulfill our own jurisdiction, why would we wish to usurp another's?*

But since the Lord says in the Gospel: "If your brother sins against you, go and correct him between you and him alone. If he hears you, you will have gained your brother; but if he *does not* hear you, take with you *yet* one or two, so that every word may stand in the mouth of two or three witnesses. But if he does not hear *them*, tell the Church; and if he does not hear the Church, let him be to you as a gentile and a publican"; and since the King of England, *as he asserts*, is prepared sufficiently to show that the King of the French sins against him, that he himself proceeded concerning him in correction according to the evangelical rule, and that at last, because he made no progress in any way, he told the Church: how can we, who have been called by the heavenly disposition to the governance of the universal Church, fail to hearken to the divine mandate, so that we should not proceed according to its form, unless perhaps he should show before us or our legate a sufficient reason to the contrary?

For we do not intend to judge concerning the fief, judgment of which belongs to him—unless perhaps something has been taken away from the common law by a special privilege or a contrary custom—but to decide concerning sin, the censure of which belongs to us without doubt, and which we can and ought to exercise against anyone. Therefore the royal dignity ought not to consider it injurious to itself if it submits itself to apostolic judgment concerning this matter, since the illustrious Emperor Valentinian is read to have said to the suffragans of the church of Milan: "Take care to establish upon the pontifical seat such a man to whom even we, who govern the empire, may sincerely submit our heads, and whose admonitions, when we transgress as men, we may necessarily receive as the medicines of one who heals."

Nor should we omit that most humble provision which the Emperor Theodosius established and Charlemagne renewed, from whose lineage the same king is known to have descended: namely, "Whoever has a suit, whether he is claimant or defendant, whether at the beginning of the suit or after courses of time have elapsed, whether when the business is being argued or when sentence has already begun to be delivered, if he chooses the judgment of the bishop of the sacrosanct see, immediately and without any hesitation—even if the other party objects—let the matter be directed, with the statement of the litigants, to the judgment of the bishops."

For since we rely not upon a human constitution but rather upon divine *law*, because our power is not from man but from God, no one of sound mind is ignorant that it belongs to our office to correct every Christian concerning any mortal sin whatsoever and, if he treats correction with contempt, *to coerce him* through ecclesiastical severity. *That we ought and are able to correct is plain from both pages of the Testament, since the Lord cries through the Prophet: "Cry out, do not cease; exalt your voice like a trumpet, and announce their crimes to my people"; and he adds in the same place: "Unless you announce his impiety to the impious man, he will die in the iniquity which he has committed, but I will require his blood from your hand." The Apostle also admonishes us to correct the unruly, and elsewhere the same says: "Reprove, entreat, rebuke in all patience and doctrine." That we also can and ought to coerce is plain from what the Lord says to the Prophet, who was from the priests of Anathoth: "Behold, I have established you over nations and kingdoms, that you may uproot and destroy, scatter, build, and plant." It is certain, however, that every mortal sin is to be uprooted, destroyed, and scattered. Moreover, when the Lord handed the keys of the kingdom of heaven to blessed Peter, he said to him: "Whatever you bind upon earth will be bound also in heaven, and whatever you loose upon earth will be loosed also in heaven." But no one doubts that everyone sinning mortally is bound before God. Therefore, so that Peter may imitate the divine judgment, he ought to bind on earth those who are known to be bound in heaven.*

But perhaps it will be said that one must act in one way with kings and in another with others. Yet we know it is written in the divine law: "You shall judge the great as the small, and with you there shall be no acceptance of persons," *which blessed James testifies intervenes if you say to the one clothed in splendid apparel, "You sit well here," but to the poor man, "You stand there," or, "Sit beneath my footstool."* Although we can proceed in this manner concerning any criminal sin, so that we may call the sinner back from vice to virtue and from error to truth, *especially* nevertheless when the sin is against peace, which is the bond of charity, [*concerning which Christ specially commanded the Apostles: "Into whatever house you enter, first say: 'Peace to this house'; and if a son of peace is there, your peace will rest upon him. But whoever will not receive you or hear your words, go outside and shake the dust from your feet as testimony against them." For what is it for the Apostles to go outside from such persons except to deny them apostolic communion? What is it to shake the dust from their feet except to exercise ecclesiastical severity? For this is that dust which, when Moses scattered ashes from the furnace, became a plague of ulcers throughout all the land of Egypt. How grave a sentence of severity those who do not receive messengers of peace or hear their words are to suffer at the final judgment, Truth himself consequently shows, setting it forth not simply but with a certain affirmation: "Amen I say to you, it will be more tolerable for the land of Sodom and Gomorrah on the day of judgment than for that city"; understanding by the city its citizens, from whom he did not except kings themselves. Moreover, since according to lawful enactments another may use against a person whatever rule of law that person has established against another, and the wise man declares, "Submit to the law which you yourself have enacted," and since the same King of the French, against Richard of illustrious memory, formerly King of the English—who, that we may speak with due respect for the same king, was not of a worse condition, since we say this not to his confusion but for our excuse—used our office and benefit in war, how will he not admit against himself on another's behalf what he admitted for himself against that*

king?] *Surely there ought not to be with us weight and weight, measure and measure, each of which is abominable before God?*

Finally, since treaties of peace were reformed between those kings and confirmed on each side by an oath personally sworn, but were not observed until the appointed time, surely we shall be able to take cognizance of the sanctity of the oath—which without doubt belongs to the judgment of the Church—so that the broken treaties of peace may be restored? Therefore, lest we appear to foster such discord by dissimulation, *to dissemble the destruction of religious places, and to neglect the slaughter of the Christian people*, we have given in command to our beloved son the Abbot of Casamari, the aforesaid legate, that, unless the king himself either restores a solid peace with the aforesaid king, *or enters into suitable truces*, or at least humbly permits the same abbot and *our venerable brother* the Archbishop of Bourges summarily to take cognizance whether the complaint that the King of the English brings against him before the Church is just, or whether the exception that he caused to be expressed against him to us through his letters is lawful, the abbot is not to omit proceeding according to the form given to him by us.

Therefore, through apostolic writings we command all of you, and strictly enjoin you by virtue of obedience, that, after the same abbot has executed the apostolic mandate concerning this matter, you humbly receive his sentence—or rather, more truly, ours—observe it yourselves, and cause it to be observed by others, secure in the knowledge that, if you act otherwise, we shall punish your disobedience. [*Given at the Lateran, ..., in the seventh year of our pontificate,* 1204.]

Textual note: The Latin Library transcription represents the two blank elements in the dating clause with corrupt high-byte characters. The Friedberg-derived reference text prints ellipsis points in both places; these omissions are preserved above.

> Iudex ecclesiasticus potest per viam denunciationis evangelicae seu iudicialis procedere contra quemlibet peccatorem, etiam laicum, maxime ratione periurii vel pacis fractae.
>
> Idem Praelatis per Franciam constitutis.
>
> Novit ille, qui nihil ignorat, *qui scrutator est cordium ac conscius secretorum, quod clarissimum in Christo filium nostrum Philippum regem Francorum illustrem de corde puro et conscientia bona et fide non ficta diligimus, et ad honorem ac profectum et incrementum ipsius efficaciter adspiramus, exaltationem regni Francorum sublimationem sedis apostolicae reputantes, quum hoc regnum benedictum a Deo semper in ipsius devotione permanserit, et ab eius devotione nullo, sicut credimus, tempore sit discessurum; quia, licet interdum hinc inde fiant immissiones per angelos malos, nos tamen, qui satanae non ignoramus astutias, circumventiones ipsius studebimus evitare, credentes, quod idem rex illius seduci fallaciis non se permittet*. Non *ergo* putet aliquis, quod iurisdictionem *aut potestatem* illustris regis Francorum perturbare aut minuere intendamus, quum ipse iurisdictionem et potestatem nostram nec velit nec debeat *etiam* impedire, *quumque iurisdictionem propriam non sufficiamus explere, cur alienam usurpare vellemus?* Sed quum Dominus dicat in evangelio: si peccaverit in te frater tuus, vade et corripe eum inter te et ipsum solum. Si te audierit, lucratus eris fratrem tuum; si te *autem* non audierit, adhibe tecum *adhuc* unum vel duos, ut in ore duorum vel trium testium stet omne verbum. Quod si non audierit *eos*, dic ecclesiae; si autem ecclesiam non audierit, sit tibi sicut ethnicus et publicanus, et rex Angliae, *sicut asserit*, sit paratus sufficienter ostendere, quod rex Francorum peccat in ipsum, et ipse circa eum in correctione processit secundum regulam evangelicam, et tandem, quia nullo modo profecit, dixit ecclesiae: quomodo nos, qui sumus ad regimen universalis ecclesiae superna dispositione vocati, mandatum divinum possumus non exaudire, ut non procedamus secundum formam ipsius, nisi forsitan ipse coram nobis vel legato nostro sufficientem in contrarium rationem ostendat? Non enim intendimus

iudicare de feudo, cuius ad ipsum spectat iudicium, nisi forte iuri communi per speciale privilegium vel contrariam consuetudinem aliquid sit detractum, sed decernere de peccato, cuius ad nos pertinet sine dubitatione censura, quam in quemlibet exercere possumus et debemus. Non igitur iniuriosum sibi debet regia dignitas reputare, si super hoc apostolico iudicio se committat, quum Valentinianus inclitus imperator suffraganeis Mediolanensis ecclesiae dixisse legatur: Talem in pontificali sede constituere procuretis, cui et nos, qui gubernamus imperium, sincere nostra capita submittamus, et eius monita, quum tanquam homines deliquerimus, suscipiamus necessario velut medicamenta curantis. Nec sic illud humillimum omittamus, quod Theodosius statuit imperator, et Carolus, innovavit, de cuius genere rex ipse noscitur descendisse: Quicunque videlicet litem habens, sive petitor fuerit sive reus, sive in initio litis vel decursis temporum curriculis, sive quum negotium peroratur, sive quum iam coeperit promi sententia, si iudicium elegerit sacrosanctae sedis antistitis, illico sine aliqua dubitatione, etiamsi pars alia refragetur, ad episcoporum iudicium cum sermone litigantium dirigatur. Quum enim non humanae constitutioni, sed divinae *legi* potius innitamur, quia potestas nostra non est ex homine, sed ex Deo: nullus, qui sit sanae mentis, ignorat, quin ad officium nostrum spectet de quocunque mortali peccato corripere quemlibet Christianum, et, si correctionem contempserit, *ipsum* per districtionem ecclesiasticam coercere. *Quod enim debeamus corripere ac possimus, ex utraque patet pagina testamenti, quum clamet Dominus per Prophetam: Clama, ne cesses, quasi tuba exalta vocem tuam, et annuncia populo meo scelera eorum, et subiungat ibidem: Nisi annunciaveris impio impietatem suam, ipse in iniquitate, quam operatus est, morietur; sanguinem autem eius de manu tua requiram. Apostolus quoque nos monet corripere inquietos, et alibi dicit idem: Argue, obsecra, increpa in omni patientia et docirina. Quod autem possimus et debeamus etiam coercere, patet ex eo, quod inquit Dominus ad Prophetam, qui fuit de sacerdotibus Anathot: Ecce constitui te super gentes et regna, ut evellas et destruas, et dissipes, et aedifices, et plantes. Constat vero, quod evellendum, destruendum et dissipandum est omne mortale peccatum. Praeterea quum Dominus claves regni coelorum B. Petro tradidit, dixit ei: Quodcunque ligaveris super terram, erit ligatum et in coelis, et quodcunque solveris super terram, erit solutum et in coelis. Verum nullus dubitat, quin omnis mortaliter peccans apud Deum sit ligatus. Ut ergo Petrus divinum iudicium imitetur, ligare debet in terris quos ligatos esse constat in coelis*. Sed forsan dicetur, quod aliter cum regibus, et aliter cum aliis est agendum. Ceterum scriptum novimus in lege divina: Ita magnum iudicabis, ut parvum, nec erit apud te acceptio personarum, *quam B. Iacobus intervenire testatur, si dixeris ei, qui indutus est veste praeclara, tu sede hic bene; pauperi autem, tu sta illic, aut sede sub scabello pedum meorum. *Licet autem hoc modo procedere valeamus super quolibet criminali peccato, ut peccatorem revocemus a vitio ad virtutem, ab errore ad veritatem, praecipue *tamen* quum contra pacem peccatur, quae est vinculum caritatis, [*de qua Christus specialiter praecepit Apostolis: In quamcunque domum intraveritis, primum dicite: Pax huic domui, et si fuerit ibi filius pacis, requiescet super illum pax vestra. Quicunque autem non receperint vos, nec audierint sermones vestros, exeuntes foras excutite pulverem de pedibus vestris in testimoniun illis. Quid enim est a talibus exire foras Apostolos, nisi communionem eis apostolicam denegare? Quid est excutere pulverem de pedibus suis, nisi districtionem ecclesiasticam exercere? Hic est etenim pulvis ille, qui Moyse cinerem de camino spargente fuit ad plagam ulceris super omnem terram Aegypti. Quam gravis autem districtionis sententia in ultimo sint examine feriendi qui non recipiunt pacis nuncios, nec audiunt sermones eorum, per se ipsa veritas consequenter ostendit, non simpliciter, sed cum quadam affirmatione proponens: Amen dico vobis, tolerabilius erit terrae Sodomorum et Gomorheorum in die iudicii quam illi civitati; in civitate cives intelligens, a quibus non excepit ipsos reges. Porro quum secundum legitimas sanctiones quod quisque iuris in alterum statuit alius eo uti valeat contra illum, et sapiens protestetur: Patere legem, quam ipse tuleris, et rex ipse Francorum contra clarae memoriae R. quondam Anglorum regem, qui, ut salva ipsius regis pace loquamur, quia non ad confusionem eius, sed ad excusationem nostram hoc dicimus, non eo erat deterioris conditionis, in bello fuit officio et beneficio nostro usus, quomodo quod pro se adversus illum admisit contra se pro alio non admittet?*] *Numquid apud nos debet esse pondus et pondus, mensura et mensura, quorum utrumque est abominabile apud Deum?* Postremo quum inter reges ipsos reformata fuerint pacis foedera, et utrinque praestito proprio iuramento firmata, quae tamen usque ad tempus praetaxatum servata non fuerint,

numquid non poterimus de iuramenti religione cognoscere, quod ad iudicium ecclesiae non est dubium pertinere, ut rupta pacis foedera reformentur? Ne ergo tantam discordiam videamur sub dissimulatione fovere, *dissimulare religiosorum locorum excidium, et stragem negligere populi Christiani, dilecto filio abbati Casemarii* praedicto legato dedimus in praeceptis, ut, nisi rex ipse vel solidam pacem cum praedicto rege reformet, *vel treugas ineat competentes*, vel saltem humiliter patiatur, ut idem abbas et *venerabilis frater noster* archiepiscopus Bituricensis de plano cognoscant, utrum iusta sit querimonia, quam contra eum proponit coram ecclesia rex Anglorum, vel eius exceptio sit legitima, quam contra eum per suas nobis literas duxit exprimendam, iuxta formam sibi datam a nobis procedere non omittat. *Ideoque universitatibus vestris per apostolica scripta mandamus, et in virtute obedientiae districte praecipimus, quatenus postquam idem abbas super hoc mandatum fuerit apostolicum exsecutus, sententiam eius, imo nostram verius recipiatis humiliter et vos ipsi servetis et faciatis ab aliis observari, securi, quod si secus egeritis inobedientiam vestram puniemus. *[*Dat. Lat. ... Ao. VII.* 1204.]

Chapter XIV

Latin source headnote: A principal party ought to set forth the fact in judgment personally, not through an advocate, unless that party is without discretion.

The same, to the Bishop of Ely.

The pastoral office—(*And below: cf. c.* 28, On the Office of a Delegated Judge, I.29.) We establish, moreover, that the principal parties are to set forth the fact not through advocates but personally, unless perhaps they are so lacking in discretion that, with the judge's permission, their deficiency is supplied through others. [*But since, etc. Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January,* 1204.]

Principalis persona per se, non per advocatum debet factum proponere in iudicio, nisi sit indiscreta.

Idem Episcopo Heliensi.

Pastoralis (*Et infra: cf. c.* 28. *de off. iud. del. I.* 29.) Statuimus praeterea, ut principales personae non per advocatos, sed per se ipsas factum proponant, nisi forte sint adeo indiscretae, ut earum defectus de iudicis licentia per alios suppleatur. [*Quum autem etc. Dat. Rom. ap. S. Petr. XIV. Kal. Ian. *1204.]

Chapter XV

Latin source headnote: If the action and the claim are inept, or the claim alone, the defendant ought to be absolved from the pending judgment; nevertheless, the claimant will be heard again if he proceeds suitably. This is what it says according to its meaning.

The same, to the nobleman Matthew de Riparia.

Having examined the cause pending between you and the knights of Campania *concerning the church of Saint Angelo de Casaperota, having heard the proceedings, confessions, and attestations, and having investigated the instruments and allegations, we perceived clearly that the arbitral award which T., the vice-lord of Sabina, was said to have promulgated concerning that business had been pronounced contrary to the form of law and of the submission to arbitration. Hence, notwithstanding the confirmation of Pope Celestine, our predecessor of happy memory, who had confirmed it as providently rendered and received by each party, we decreed it null and void.*

We recognized, however, the *action* which you brought against the aforesaid knights concerning the right of patronage of that church to be incongruous and inept, because, although you introduced witnesses to prove that, when the aforesaid vice-lord A. received that church as though sequestered,

you possessed the right of patronage of that church, you could neither bring a vindication of the thing nor petition for its restitution. Hence we pronounced that your claim in this respect did not hold, absolving the same knights from it, yet in such a way that, if you wish to bring a congruous and suitable action, they shall nevertheless be bound to answer you. [*Therefore let no one, etc. Given at the Lateran, on the ninth day before the Kalends of April, in the tenth year of our pontificate,* 1207.]

Textual note: The Latin source prints *proiecto* in the sentence explaining why neither vindication nor restitution was available. The word is syntactically difficult and may stand for *profecto*; because it does not alter the stated legal consequence, it has not been represented by an additional English adverb.

> Si actio et intentio sunt ineptae, vel sola intentio, debet reus absolvi ab instantia iudicii; iterum tamen actor audietur, si apte egerit. H. d. quoad intellectum.
>
> Idem nobili viro Matthaeo de Riparia.
>
> Examinata causa, quae vertitur inter te et milites Campaniae *super ecclesia S. Angeli de Casaperota, actis confessionibus et attestationibus auditis, instrumentis et allegationibus indagatis, perpendimus evidenter, arbitrium, quod T. vicedominus Sabinensis dicebatur super eodem negotio promulgasse, contra formam iuris et compromissi fuisse dictatum. Unde, non obstante confirmatione felicis memoriae Coelestini Papae praedecessoris nostri, qui confirmaverat illud, sicut provide latum fuerat, et ab utraque parte receptum, decrevimus ipsum irritum et inane*. Actionem *autem*, quam super iure patronatus eiusdem ecclesiae contra praefatos milites intentabas, incongruentem cognovimus et ineptam, quia, quum testes induxeris ad probandum, quod, quando praefatus A. vicedominus ecclesiam eandem tanquam sequestratam accepit, tu ius patronatus ipsius ecclesiae possidebas, proiecto nec rei vindicationem intentare, nec ipsius restitutionem poteras postulare. Unde intentionem tuam in hac parte pronunciavimus non tenere, absolventes eosdem milites ab eadem, ita tamen, quod si congruentem et aptam intentare volueris actionem, respondere tibi nililominus teneantur. [*Nulli ergo etc. Dat. Later. IX. Kal. April. Ao. X.* 1207.]

Chapter XVI

Latin source headnote: The preceptors of the Temple can sue and defend on behalf of their houses; neither their religious state nor the fact that their origin is unknown stands in their way.

The same, to the Master and Brothers of the militia of the Temple established in Italy.

Since you *are appointed to the service of Jesus Christ, who, since he is just, loves justice, and whose countenance beholds equity, we are bound by paternal solicitude to guard against your losses, lest, because you apply yourselves to works of piety, you suffer injury in your justice.* We have *clearly* learned that certain judges, both secular and ecclesiastical, *in Italy* do not admit the preceptors whom you have in your houses to pursue their justice in causes, as though it were not lawful for those who have resolved to adhere to peaceful pursuits to undertake the care of contentious business. They allege for their exclusion that the origin of those men is not known to them, although, from whatever *places* they have come, called by divine grace, provided they execute the office of their order laudably, knowledge of their nation is required superfluously. Therefore, by apostolic authority we prohibit anyone from excluding those preceptors from suing or answering in the prosecution of causes on an occasion of this kind. [*Therefore let no one, etc. Given at Rome, at Saint Peter's, on the fourth day before the Ides of April, in the ninth year of our pontificate,* 1206.]

Textual note: The Latin Library and Friedberg-derived texts print the apparent typographical form *decrecreverunt*; the translation follows the evident sense of *decreverunt*, "have resolved."

Praeceptores templi pro domibus suis agere et defendere possunt; nec obstat eis religio, vel quod ignota sit eorum origo.

Idem Magistro et Fratribus militiae templi in Italia constitutis.

Quum deputati *sitis obsequio Iesu Christi, qui, quum iustus sit, iustitiam diligit et aequitatem conspicit vultus eius, indemnitatibus vestris paterna tenemur sollicitudine praecavere, ne pro eo, quod operibus pietatis intenditis, laesionem in vestra iustitia subeatis*. Accepimus *plane*, quod quidam tam saeculares quam ecclesiastici iudices *in Italia* illos, quos habetis in domibus vestris praeceptores, in causis ad prosequendam suam iustitiam non admittunt, tanquam licitum non sit eis super litigiosis negotiis curam agere, qui pacificis decrecreverunt studiis inhaerere, illud allegantes in repulsionem ipsorum, quod eorum ipsis generatio non est nota, qui undecunque *locorum* venerint, gratia divina vocati, dummodo laudabiliter exsequantur officium sui ordinis, ex superabundanti requiritur suae notio nationis. Ne quis igitur in prosecutione causarum praeceptores eosdem ab agendo vel respondendo sub occasione huiusmodi repellat, auctoritate apostolica inhibemus. [*Nulli ergo etc. Dat. Rom. ap. S. Petr. IV. Id. April. Ao. IX*. 1206.]

Chapter XVII

Latin source headnote: Prelates ought to do justice to laymen concerning clerics, notwithstanding a frustratory appeal; clerics nevertheless ought not to be drawn by laymen to a secular forum, even when their prelates are negligent.

The same, to the Bishop of Vercelli and the Abbot of Toleto.

In what manner and when—(*And below: cf. c.* 17, On Accusations and Denunciations, V.1.) You are to command the prelates on our behalf to cause full justice to be exhibited to laymen complaining against clerics, notwithstanding frustratory appeals which clerics frequently interpose to their grievance, lest, through a failure of justice, clerics be drawn by laymen to a secular judgment, which we prohibit altogether; *and you are to strive by every means that this not occur. Moreover, we wish your solicitude to remain vigilant against the deceits of heretics, admonishing and beseeching you in the Lord that you apply yourselves prudently and effectively to uprooting from the Lord's field the tares of heretical depravity.* [*Given on the fourth day before the Kalends of February,* 1206.]

Praelati debent laicis de clericis, appellatione frustratoria non obstante, iustitiam facere; ad saeculare tamen forum clerici a laicis trahi non debent, etiam data ipsorum praelatorum negligentia.

Idem Vercellensi Episcopo et Abbati de Toleto.

Qualiter et quando (*Et infra: cf. c.* 17. *de accus. et den. V.* 1.) Praecipiatis ex parte nostra praelatis, ut laicis de clericis conquerentibus plenam faciant iustitiam exhiberi, non obstantibus appellationibus frustratoriis, quas in eorum gravamen clerici frequenter opponunt, ne pro defectu iustitiae clerici trahantur a laicis ad iudicium saeculare, quod omnino fieri prohibemus, *et vos, ne fiat, omnimodis satagatis et ceterum adversus haerecticorum fallacias sollicitudinem vestram vigilare volumus, monentes et obsecrantes in Domino, quatenus ad exstirpandum de agro dominico lolium haereticae pravitatis prudenter et efficaciter intendatis*. [*Dat. IV. Kal. Febr. *1206.]

Chapter XVIII

Latin source headnote: A judge who, as a private person, has an almost similar cause to the one he has as judge is removed from judging. This is what it says.

The same.

We remember having committed to you, *sons T. and G., and* the Archdeacon of Paris the cause pending between *our beloved son* the Abbot and Convent of Vendôme *on one side* and the Archdeacon of Chartres *on the other* concerning certain procurations. *But the said abbot and convent, unwilling to answer the other party unless they first consulted us in accordance with the privileges of the Roman Pontiff granted to their monastery, sent our beloved son W., a monk of that monastery, to the Apostolic See for this reason, petitioning nevertheless that we deign to substitute you, son dean, in place of the aforesaid Archdeacon of Paris for the decision of that business.* But because, since an almost similar cause concerns that same archdeacon, he would appear excessively favorable to the other party, substituting you, son dean, in place of that archdeacon, *through apostolic writings we command your discretion* that, notwithstanding the earlier letters *obtained before the monk's arrival*, you proceed in the cause, reason leading the way.

> Iudex habens ut privatus paene consimilem causam, quam habet ut iudex, a iudicando removetur. H. d.
>
> Idem.
>
> Causam, quae inter *dilectum filium* abbatem et conventum Vindonensem *ex parte una*, et archidiaconum Carnotensem *ex altera* super quibusdam procurationibus vertitur, vobis, *filii T.* et *G. et* archidiacono Parisiensi meminimus commisisse. *Dictus vero abbas et conventus nolentes parti alteri respondere, nisi nos primo consulerent secundum privilegia Romani Pontificis, indulta monasterio eorundem, dilectum filium W. eiusdem monasterii monachum propter hoc ad sedem apostolicam transmiserunt, nihilominus supplicantes, quatenus te, fili decane, loco Parisiensis archidiaconi supra dicti subrogare ad decisionem ipsius negotii dignaremur*. Quia vero, quum eundem archidiaconum similis paene causa contingat, nimis favorabilis parti alteri videretur, nos te, fili decane, loco ipsius archidiaconi subrogantes, *discretioni vestrae per apostolica scripta* mandamus, quatenus, non obstantibus prioribus literis, *ante adventum monachi impetratis*, in causa ratione praevia procedatis.

Chapter XIX

Latin source headnote: If judges take cognizance of the principal matter and preliminary exceptions at the same time, or receive witnesses concerning the principal matter before issue has been joined, appeal is lawfully taken from them.

Honorius III, to the Archdeacon of Reims and the Dean of Brim in the diocese of Cologne.

A petition presented to us by *our beloved son* R., elect of Verdun, declared that, when the proctors of himself and of H. the archdeacon and certain canons of Verdun, his adversaries, had *formerly* approached our hearing concerning the fact of his election, *we, having heard the petition of the opposing party and the things proposed by it,* directed our letters under a certain form to our venerable brother the Bishop of Paris and his co-judges, containing among other things that, after summoning those who were to be summoned, they should inquire into the truth concerning the matters proposed and other things touching the business, *compelling the witnesses who happened to be named to give testimony according to the customary form, and fixing for the parties a suitable term on which they were to present themselves before us, personally or through suitable proctors, to receive a just sentence.*

Therefore, after the parties had been cited, no proceeding occurred on the first day. *And when ten persons from the opposing party appeared at the second term and were asked in court whether they would oppose the elect, seven of them being unwilling to answer, the remaining three offered themselves to act.* But when the same elect objected by way of exception that some of those who were proceeding against him were involved in conspiracy and others in excommunication, offering to prove this, the aforesaid judges ruled interlocutorily that they would inquire simultaneously into these matters and the principal

business, *concerning which it appeared to the same judges that inquiry should be made*. They refused, as though they were not judges but investigators, to admit the proofs of the same elect concerning his said exceptions; instead, perverting the order of law, they intended to inquire personally and simultaneously into the aforesaid exceptions and the principal business, and they proceeded even to the reception of witnesses although issue had not yet been joined concerning that business. For this reason the aforesaid elect appealed to our hearing, *humbly petitioning that, since the letters obtained for those judges import not an inquiry but a commission, as appears from their contents, we deign to revoke as void what was done by them after his appeal and to commit the cause to another.*

Therefore, because the business was delegated not by way of inquiry but of commission, *through apostolic writings we command your discretion* that, *meeting in a suitable place convenient for the parties*, if it is established that appeal was taken on account of the said grievances or any of them, after revoking as void whatever you find attempted after such an appeal, you proceed in the cause itself according to the contents of the earlier letters, *with appeal removed*, reason leading the way, *without the loss of delay*.

> Si iudices de principali et exceptionibus praeiudicialibus simul cognoscunt, vel super principali lite non contestata testes recipiunt, licite ab eis appellatur.
>
> Honorius III. Archidiacono Remensi et Decano Brimensi Coloniensis dioecesis.
>
> Exhibita nobis *dilecti filii* R. Virdunensis electi petitio declaravit, quod, quum super facto electionis suae *ipsius et* H. archidiaconi ac quorundam canonicorum Virdunensium adversariorum suorum procuratores ad nostram *olim* audientiam accessissent, *nos, audita petitione partis adversae, et quae proposita fuerunt ab ipsa, venerabili fratri nostro* Parisiensi episcopo et coniudicibus suis sub certa forma literas nostras direximus, inter alia continentes, ut, vocatis qui forent evocandi, super propositis et aliis negotium contingentibus inquirerent veritatem, *et testes, quos nominari contingeret iuxta consuetam formam, ad testimonium compellendo, et praefigendo partibus terminum competentem, quo per se vel per procuratores idoneos nostro se conspectui praesentarent, iustam sententiam recepturae. Partibus ergo citatis, non fuit processum in aliquo prima die, quumque decem de parte adversa secundo termino comparuissent, et fuissent, si electo se opponerent, in iure requisiti, septem eorum respondere nolentibus, ad agendum tres se residui obtulerunt*. Quum autem idem electus quibusdam ex his, qui contra eum agebant, conspirationem, et quibusdam excommunicationem in modum exceptionis obiiceret, se id offerens probaturum, praefati iudices interlocuti fuerunt, quod de his et principali negotio simul inquirerent, *a quibus videretur ipsis iudicibus inquirendum*, nolentes, quasi non iudices, sed inquisitores exsisterent, super dictis exceptionibus ipsius electi probationes admittere, sed pervertendo iuris ordinem de praemissis exceptionibus et principali negotio pariter per se inquirere intendentes, et procedentes etiam ad receptionem testium, lite nondum super eodem negotio contestata, quare praefatus electus nostram audientiam appellavit, *humiliter supplicans, ut, quum literae ad ipsos iudices obtentae non inquisitionem, sed commissionem sapiant, prout apparet ex continentia earundem, quod ab eis factum est post appellationem ipsius revocare in irritum, et causam alii comittere dignaremur*. Quia vero non in modum inquisitionis, sed commissionis negotium exstitit delegatum, *discretioni vestrae per apostolica scripta* mandamus, quatenus, *convenientes ad locum idoneum et partibus competentem*, si ex dictis gravaminibus vel aliquo ipsorum appellatum constiterit, revocato in irritum quicquid post appellationem huiusmodi inveneritis attentatum, in causa ipsa iuxta priorum continentiam literarum, *appellatione remota*, ratione praevia *sine morae dispendio* procedatis.

Chapter XX

Latin source headnote: Notwithstanding the passage of three years, a delegate can proceed in a cause committed to him.

The same, to Master Tancred, Canon of Bologna.

Our venerable brother the Archbishop of Ravenna proposed before us that, although the decision of the cause pending between him *on one side* and the community of Cervia *on the other* concerning jurisdiction over the city of Cervia and certain other articles had been prolonged for three years through their subterfuges and cavils, *and at last, after joinder of issue and various commissions, we commanded you to remit it to us sufficiently instructed*, the said people of Cervia, asserting that the pendency of the judgment had expired through the passage of three years, refused to answer under your examination. *Therefore, unwilling that the decision of the same cause be prolonged any further, by authority of the present writings* we command that, notwithstanding an exception of this kind, you proceed in that business, *with appeal removed and reason leading the way*, according to the form handed to you. [*Given at the Lateran, on the tenth day before the Kalends of May, in the eighth year of our pontificate,* 1224.]

> Lapsu triennii non obstante potest delegatus in causa sibi commissa procedere.
>
> Idem Magistro Tancredo Canonico Bononiensi.
>
> Venerabilis frater noster archiepiscopus Ravennas proposuit coram nobis, quod, quum decisio causae, quae inter ipsum *ex parte una*, et communitatem Cerviae *ex altera* super iurisdictionis civitatis Cerviae et quibusdam aliis articulis vertitur, sit per subterfugia et cavillationes eorum per triennium prorogata, *et tandem post litis contestationem et commissiones varias tibi dedimus in mandatis, ut eam ad nos remittas sufficienter instructam*, dicti Cervienses asserentes, instantiam iudicii per decursum triennii periisse, respondere sub tuo examine recusaverunt. *Nolentes igitur, ut eiusdem causae decisio ulterius prorogetur, praesentium tibi auctoritate* Mandamus, quatenus, exceptione huiusmodi non obstante, in negotio isto, *appellatione remota, ratione praevia* procedas iuxta traditam tibi formam. [*Dat. Later. X. Kal. Mai Ao. VIII.* 1224.]

Chapter XXI

Latin source headnote: A claimant who prevails in a possessory action before the judge of the thing is not bound to answer before that judge concerning ownership if he belongs entirely to another forum. This is what it says, and it is a notable case.

The same, to the Bishop and Masters T. and B. of Prato, residing at Bologna.

The Abbot and Convent of Saint Mary of Florence formerly signified to us that the Florentine podestà promulgated a definitive sentence in their favor against the community of the castle of Signa concerning possession, or quasi-possession, of the right of electing a rector there, which they said belonged to them. But afterward, *when that community was unwilling to receive the nobleman B. Vinci-Werra, whom they had elected rector of the aforesaid castle, the aforesaid podestà, although frequently requested, not only took no care to put his sentence into execution and compel the community itself to receive the said nobleman as rector, but did not even permit that community to be constrained to this by the faithful men of their monastery; rather,* the podestà *improperly* compelled the aforesaid abbot and convent to answer the aforesaid community in a secular judgment concerning ownership, or quasi-ownership, of the said right.

Hence, *through our letters* we enjoined upon you that, if it was so, *through ecclesiastical censures* you were to compel that community to admit as rector the person elected by the same monks; afterward you were to hear what the parties considered should be proposed concerning ownership, or quasi-ownership, of the said right, *and decide the cause as would be just, notwithstanding any statute contrary to ecclesiastical liberty, or the fact that the aforesaid abbot and convent were compelled to join issue concerning this matter in a secular judgment. Recently, however, we learned from the report of the abbot and convent that, when*

knowledge of the letters obtained from us concerning this matter had reached that community, its syndic, after exhibiting before the judge of the podestà the oath against calumny, caused the abbot to be cited to undergo a similar oath before him, so that by this the same abbot would be understood to have renounced the apostolic letters by the act itself, or, if he refused to do this, would be held as convicted. And when you had cited the aforesaid community to your presence frequently and peremptorily, its syndic declaring that he wished to propose dilatory exceptions, you established a term on which he was to do this or answer concerning the principal business.

But the other party, by way of exception, proposed among other things that it was not then bound by law to answer before you because the time was one of judicial vacation on account of the vintage. The syndic of the monastery answered that this was proposed maliciously so that, with the cause prolonged, the term of the elect's governance might elapse uselessly. *This appeared from the fact that the abbot was prohibited by a messenger of the podestà from suing the same community in judgment outside the Florentine district. For this reason the aforementioned abbot and convent humbly petitioned that we deign to oppose malices of this kind. Therefore we command your discretion that, absolving as a precaution, with the obstacle of appeal removed, both the same syndic and the monks of that monastery whose testimony he wished to use, if it should happen that excommunication is objected against them to impede the progress of the cause, lest under such a pretext they be capable of being excluded from suing or testifying,* notwithstanding this, you proceed in the business, *according to the form of the mandate received,* reason leading the way, *imposing the due end upon the cause without the loss of delay, so fulfilling the apostolic precept that we ought not to impute to you the difficulty which is known to threaten the said monastery on account of delay.* [*Given at Rieti, on the second day before the Kalends of November, in the tenth year of our pontificate,* 1225.]

> Actor obtinens in possessorio coram iudice rei, non tenetur coram eo iudice super proprietate respondere, si est prorsus alterius fori. H. d. et est casus notabilis.
>
> Idem Episcopo et Magistris T. et B. Praten. Bononiae commorantibus.
>
> Significaverunt nobis olim abbas et conventus sanctae Mariae de Florentia, quod Florentina potestas pro eis contra communitatem castri de Signa super possessione vel quasi iuris ibidem eligendi rectorem, quod ad se pertinere dicebant, diffinitivam sententiam promulgavit. Sed postmodum, *eadem communitate nolente recipere nobilem virum B. Vinci-Werra, quem iidem in rectorem elegerant castri praedicti, praefata potestas non solum non curavit sententiam suam exsecutioni mandare, ac communitatem ipsam compellere ad recipiendum dictum nobilem pro rectore saepius requisita; sed nec permisit communitatem eandem ad hoc a fidelibus eorum monasterii coarctari; quin potius* abbatem et conventum praefatos ipsa potestas *indigne* coegit communitati praedictae super proprietate vel quasi memorati iuris in saeculari iudicio respondere. Unde vobis *per literas nostras* iniunximus, ut, si ita esset, *per censuras ecclesiasticas* cogeretis communitatem eandem electum ab eisdem monachis in rectorem admittere; audituri postea quae partes super proprietate vel quasi dicti iuris ducerent proponenda, *et causam, sicut iustum exsisteret, decisuri, non obstante statuto quolibet contrario ecclesiasticae libertati, seu quod abbas et conventus praedicti compulsi sunt super hoc litem contestari in iudicio saeculari. Nuper autem, referentibus abbate et conventu, didicimus, quod, quum de literis a nobis super hoc obtentis ad ipsius communitatis notitiam pervenisset, syndicus eius, exhibito coram iudice potestatis calumniae iuramento, citari fecit abbatem, quod coram illo subiret simile iusiurandum, ut per hoc renunciare intelligeretur idem abbas apostolicis literis ipso facto, aut pro convicto, si hoc facere recusaret, haberetur. Quumque praefatam communitatem ad praesentiam vestram saepius et peremptorie citassetis, syndico eius se velle dilatorias exceptiones proponere protestanti, terminum, in quo id faceret, vel super principali responderet negotio, statuistis*. Verum pars altera inter alia excipiendo proposuit, se tunc coram vobis respondere de iure non teneri, quum tempus propter vindemias exsisteret feriatum, respondente syndico monasterii, hoc malitiose proponi, ut videlicet causa protracta tempus regiminis electi inutiliter elabatur. *Quod apparebat ex eo, quia per nuncium potestatis abbati*

fuit prohibitum, ne communitatem eandem extra Florentinum districtum in iudicio conveniret, quare praenominati abbas et conventus humiliter petierunt, ut obviare huiusmodi malitiis dignaremur. Quocirca discretioni vestrae Mandamus, quatenus *tam eundem syndicum, quam eiusdem monasterii monachos, quorum testimonio uti voluit, si excommunicationem contra eos ad impediendum causae processum opponi contingat, absolventes sublato appellationis obstaculo ad cautelam, ne tali praetextu valeant ab agendo vel testificante repelli*, hoc non obstante, in negotio, *iuxta recepti formam mandati*, ratione praevia procedatis, *causae finem debitum absque morae dispendio imponendo ita praeceptum apostolicum impleturi quod non debeamus vobis difficultatem quae dicto monasterio morae occasione imminere dignoscitur imputare*. [*Dat. Reate II. Kal. Nov. Ao. X.* 1225.]

Title II: On the Competent Forum

Chapter I

Latin source headnote: A cleric ought to be sued before his own bishop.

From the Council of Chalcedon.

If any cleric has a business against a cleric, let him not forsake his own bishop *and run to secular judgments*, but let the action first be ventilated before him; or *at least*, with the counsel of that *bishop*, they shall obtain judgment before others whom both parties choose. *But if anyone acts contrary to these things, he shall be subject to canonical corrections.*

DE FORO COMPETENTI.

Clericus coram suo episcopo conveniri debet.

Ex concilio Calcedonensi.

Si quis clericus adversus clericum negotium habeat, non deserat episcopum proprium, *et ad saecularia percurrat iudicia*, sed prius apud ipsum actio ventiletur, vel *certe* consilio eiusdem *episcopi* apud alios, quos utraque pars voluerit, iudicium obtinebunt. *Si quis autem praeter haec fecerit, canonicis correptionibus subiacebit*.

Chapter II

Latin source headnote: If a secular judge constrains or condemns a cleric on his own authority, he ought to be excommunicated.

From the Council of Paris.

Let no judge presume on his own authority to constrain or condemn a priest, a deacon, any cleric, or the lesser ministers of the Church without the permission of the pontiff. But if he does so, let him be separated from the Church of God, upon which he is known to inflict injury, until, recognizing his guilt, he makes amends.

Textual note: Both the Latin Library and Friedberg-derived e-texts print *Nullus iudicium* at the beginning of the decretal. The syntax and the source headnote require a personal subject; the translation therefore renders the evident sense "no judge."

Iudex saecularis, si clericum per se distringit vel condemnat, excommunicari debet.

Ex concilio Parisiensi.

Nullus iudicium neque presbyterum, neque diaconum aut clericum ullum, aut minores ecclesiae sine permissu pontificis per se distringere aut condemnare praesumat. Quod si fecerit, ab ecclesia Dei, cui

> iniuriam irrogare dignoscitur, tamdiu sit sequestratus, quousque reatum suum cognoscens emendet.

Chapter III

Latin source headnote: By reason of the thing concerning which the action is brought, a person obtains a forum where the thing is. It is commonly summarized thus.

From the African Council.

Certainly, if the bishops between whom a cause is pending are from different provinces, let the primate in whose province the place concerning which they contend is situated appoint the judges. *But if, etc.* (cf. c. 1, On Arbitrators, I.43.)

> Ratione rei, de qua agitur, sortitur quis forum ibi, ubi res est. Sic communiter summatur.
>
> Ex concilio Africano.
>
> Sane si episcopi, inter quos causa versatur, sint diversarum provinciarum, ille primas det iudices, in cuius provincia est locus, de quo contenditur. *Si autem etc.* (*cf. c.* 1. *de arb. I. *43.)

Chapter IV

Latin source headnote: A bishop recused as suspect, whose grounds for suspicion are notorious, can appoint a delegate who is not suspect to the parties, whose sentence he will be able personally to put into execution.

Gregory, to Boniface, Defender of Corsica.

If anyone has a cause against a cleric, let him approach the cleric's bishop. If the bishop is recused as suspect, let an executor [*or*] be appointed by him; or, if *even* this is rejected by the claimant, one is to be appointed by the same bishop who shall compel the parties to choose for themselves judges by mutual consent. Whatever is defined by them is by every means to be completed through the bishop's solicitude, the law having been observed, [*so that there may be no cause by which they can weary themselves with litigation. Given in the month of August, in the fourth indiction,* 601.]

> Episcopus ut suspectus recusatus, de cuius suspicione notorie constat, potest dare delegatum partibus non suspectum, cuius sententiam poterit per se exsecutioni mandare.
>
> Gregorius Bonifacio Defensori Corsicae.
>
> Si quis contra clericum causam habuerit, episcopum ipsius adeat, qui si ut suspectus fuerit recusatus, exsecutor [*vel*] ab eo deputetur, aut, si *et* hoc actor refugerit, ab eodem episcopo est deputandus, qui partes sibi mutuo consensu iudices compellat eligere, a quibus quicquid fuerit definitum ipsius sollicitudine servata lege modis omnibus compleatur, [*ut non sit unde se possint litigiis fatigare. Dat. mens. Aug. Ind. IV. *601.]

Chapter V

Latin source headnote: A layman can be sued before an ecclesiastical judge concerning a thing belonging to a church or cleric; but if he plausibly denies that the thing belongs to the church or cleric, he is sued before his own judge in order to decline ecclesiastical jurisdiction.

Alexander III.

If *a priest or* another *cleric* proceeds against a layman concerning his own things or those of the church, and the layman asserts that those things are not those *of the church, priest,* or cleric *who proceeds against him concerning them*, but are his own, *that layman* ought, by rigor of law, to be drawn *concerning this* before the judge of the forum, since a claimant ought *always* to follow the defendant's forum, although in many regions it is otherwise by custom.

> Super re ecclesiae vel clerici potest laicus coram ecclesiastico iudice conveniri; sed si probabiliter negat, rem esse ecclesiae vel clerici, ad iurisdictionem ecclesiasticam declinandam, convenitur coram suo iudice.
>
> Alexander III.
>
> Si *vero presbyter, vel* clericus *alius aliquem* laicum de rebus suis vel ecclesiae impetierit, et laicus res ipsas non *esse* ecclesiae *vel presbyteri* aut clerici, *qui eum exinde impetit*, sed suas proprias asseverat, *laicus ipse* debet de rigore iuris *super hoc* ad forensem iudicem trahi, quum actor *semper* forum rei sequi debeat, licet in plerisque partibus aliter de consuetudine habeatur.

Chapter VI

Latin source headnote: If a feudal question exists between a cleric and a layman, the lord of the fief shall take cognizance; but if he is negligent, a papal delegate shall take cognizance, even one appointed before the negligence. This is what it says according to the reading of the gloss.

The same.

From the representation transmitted to us by B., C., and W., knights of your church, we understood that, when R. de Cassaville had drawn them into a cause concerning a certain possession before *our venerable brother* the Bishop of Troyes, the nobleman de Campis, their lord, [*from whom they held the possessions,*] prohibited *them* under the obligation of fealty from answering concerning a secular fief in an ecclesiastical judgment. *Therefore the aforesaid bishop promulgated a sentence of excommunication against them as contumacious, etc.* (*And below:*) [*We command that you absolve the aforesaid knights from excommunication, contradiction and appeal ceasing, etc.*] (*And below:*) *Thereafter* you are to command that the cause be terminated through the lord of the fief; and if he has maliciously delayed *anything*, you are to impose the due end upon it, *with the obstacle of appeal removed*.

> Si quaestio feudalis est inter clericum et laicum, cognoscet dominus feudi; sed eo negligente cognoscet delegatus Papae, etiam ante negligentiam datus. H. d. secundum lecturam gloss.
>
> Idem.
>
> Ex transmissa nobis insinuatione B. C. et W. militum ecclesiae tuae intelleximus, quod, quum R. de Cassaville eos super quadam possessione coram *venerabili fratre nostro* Trecensi episcopo traxisset in causam, nobilis vir de Campis eorum dominus, [*a quo possessiones tenebant,*] sub debito fidelitatis *eis* inhibuit, ne de saeculari feudo in iudicio ecclesiastico responderent. *Itaque praefatus episcopus in eos velut in contumaces excommunicationis sententiam promulgavit etc.* (*Et infra:*) [*Mandamus, quatenus praefatos milites ab excommunicatione contradictione et appellatione cessante absolvas etc.*] (*Et infra:*) *Deinde* Per dominum feudi causam iubeas terminari, et, si ipse *aliquid* malitiose distulerit, tu ei *sublato appellationis obstaculo* debitum finem imponas.

Chapter VII

Latin source headnote: A feudal question ought to be terminated through the lord of the fief, whether secular or ecclesiastical, even if the vassals are clerics; and, if several lords are claimed, one cannot take cognizance—especially in the other's absence—whether the fief belongs to him. This is what it says according to the more notable reading.

The same.

But because a question was moved against the *same* provost concerning certain fiefs, we establish that, once a bishop has been consecrated in that church *who possesses full authority and power*, cognizance concerning those fiefs is to be taken under his judgment if they pertain to ecclesiastical cognizance; otherwise *the question itself* is to be left to the imperial pleasure, as shall be just.

> Per dominum feudi saecularem sive ecclesiasticum quaestio feudalis terminari debet, etiamsi vasalli sint clerici, et, si plures praetendantur domini, non potest unus cognoscere, maxime alio absente, an feudum ad eum pertineat. H. d. secundum lecturam magis notabilem.
>
> Idem.
>
> Verum quoniam de quibusdam feudis adversus *eundem* praepositum quaestio mota fuit, statuimus, ut, ex quo episcopus fuerit in *eadem* ecclesia consecratus, *qui plenam auctoritatem habeat et potestatem*, de feudis ipsis sub suo iudicio cognoscatur, si ad ecclesiasticam cognitionem pertineant; alioquin *ipsa quaestio* imperiali beneplacito, sicut iustum fuerit, relinquatur.

Chapter VIII

Latin source headnote: Malefactors against churches can be sued in either forum.

Lucius III.

Since it is a general rule that the claimant follows the defendant's forum, *it is fitting that plunderers first be sued before secular judges. But if they treat the exhibition of justice with contempt, or if the judges are negligent for any cause whatsoever, because they are to be judged sacrilegious by the Church, you will be able to exercise ecclesiastical censure against them concerning that crime.* But because secular judges are frequently remiss in exhibiting justice to ecclesiastical persons in judgment, *it has now been introduced by custom* in favor of the Church that the rectors of venerable places can sue their malefactors, who are to be judged sacrilegious, before whichever judge they prefer.

> Malefactores ecclesiarum in utroque foro conveniri possunt.
>
> Lucius III.
>
> Quum sit generale, ut actor forum rei sequatur, *conveniens est, ut apud iudices saeculares raptores prius conveniantur. Sed si iustitiam exhibere contempserint, aut iudices ex quaecunque causa fuerint negligentes, quia iudicandi sunt sacrilegi ab ecclesia, de crimine illo censurem poteris in eos ecclesiasticam exercere*. Verum quoniam saeculares iudices in exhibenda iustitia personis ecclesiasticis saepe in iudicio sunt remissi, *iam per consuetudinem* in favorem ecclesiae est introductum, ut malefactores suos, qui sacrilegi sunt censendi, venerabilium locorum rectores possint sub quo maluerint iudice convenire.

Chapter IX

Latin source headnote: The causes of clerics are terminated according to the laws, not according to the customs of laymen. Or thus: in a place under the temporal jurisdiction of the Church, the causes

of clerics are to be terminated according to canon law. This is what it says according to the gloss, and each summary admits of qualification.

Celestine III.

That to clerics—(*And below:*) *No bishop or cleric is to be drawn to secular judgments. For they have their own judges, and they have nothing in common with public laws. Pope Boniface, moreover, and Gelasius and many other of our predecessors, agreeing with the more ancient councils—as is clearly apparent to men skilled in both laws—issued the same provision in sacred constitutions. Therefore, induced by this reason, through apostolic writings* we command that, if clerics residing at Paris have any pecuniary causes against others, or others against them, you decide them *with appeal removed* according to canon law, *and do not permit custom to prevail over written law*.

> Causae clericorum secundum iura, non secundum consuetudines laicorum terminantur. Vel sic: in loco temporalis iurisdictionis ecclesiae causae clericorum sunt secundum ius canonicum terminandae. Hoc dicit secundum gl. et utrumque summarium recipit determinationem.
>
> Coelestinus III.
>
> Quod clericis (*Et infra:*) *Nullus episcoporum vel clericorum ad iudicia saecularia est trahendus. Habent enim illi suos iudices, nec quicquam est eis publicis commune cum legibus. Bonifacius vero Papa et Gelasius, et alii plures antecessorum nostrorum antiquioribus conciliis consonantes, sicut bene patet viris iuris utriusque peritis, id ipsum in sacris constitutionibus ediderunt. Hac igitur ratione inducti, per apostolica scripta* Mandamus, quatenus, si quas causas pecuniarias clerici Parisius commorantes habuerint contra aliquos, vel aliqui contra eos, ipsas *appellatione remota* iure canonico decidatis, *nec permittatis iuri scripto consuetudinem praevalere*.

Chapter X

Latin source headnote: A layman cannot sue a layman concerning a civil matter before an ecclesiastical judge unless secular justice is lacking or custom demands it.

Innocent III, to the Bishop of Vercelli.

Although, by reason of the *office of service we have assumed, we are debtors to all in justice, nevertheless it is fitting for us to provide for certain persons in their own right in such a way that we do not appear to do injury to others, and that—God forbid—matter of scandal is not taken from the source from which it ought to be stilled by provident consideration. You should know that we have learned from the representation of our beloved sons, the consuls and commune of Vercelli, that, although they wish to exhibit the fullness of justice to every complainant according to approved custom concerning each question moved against them before the consuls of justice, certain persons, in order to nullify their jurisdiction and weary them with labors and expenses, obtain apostolic letters concerning matters that do not touch ecclesiastical judgment. Thus, in addition to weakening the jurisdiction of the consuls, they compel them to labor in many ways. Therefore, wishing to consult their advantage in such a way that we do not allow the justice of others to perish, through apostolic writings* we command your fraternity that, whenever it should happen that *such* letters are obtained from the Apostolic See by laymen of Vercelli concerning matters, especially those that touch the secular forum, you decree them by our authority null and void, with the obstacle of appeal removed, provided that the *said* consuls and commune exhibit complete justice in secular judgment to those complaining against them.

Nevertheless, let it be lawful for those who have considered that they must contend in this way under the same consuls, if they feel themselves aggrieved in anything, to appeal to your hearing, as has

been observed hitherto, or to ours if they prefer—especially at this time when, the empire being vacant, those who are oppressed by superiors in their justice cannot have recourse to a secular judge. But if the consuls of justice have been recused as deservedly suspect, let the cause of suspicion be conducted before arbitrators elected in common; and if it is proved to be just, let recourse be had to you or to us for justice, as is expressed above. [*Given at Ferentino, on the second day before the Kalends of June, in the ninth year of our pontificate,* 1206.]

> Laicus laicum super re civili coram iudice ecclesiastico convenire non potest, nisi in defectu iustitiae saecularis, vel nisi consuetudo id exposcat.
>
> Innocentius III. Vercellensi Episcopo.
>
> Licet ex suscepto *servitutis officio simus omnibus in iustitia debitores, sic tamen in iure suo nos quibusdam convenit providere, ne aliis iniuriam facere videamur, et, quod absit, inde sumatur materia scandali, unde provida debet consideratione sedari. Ex insinuatione sane dilectorum filiorum consulum et communis Vercellensium nos noveris accepisse, quod, quum de singulis quaestionibus, quae motae fuerunt contra eos coram consulibus iustitiae, iuxta consuetudinem approbatam velint cuilibet conquerenti iustitiae plenitudinem exhibere, quidam, ut eorum iurisdictionem evacuent et fatigent eos laboribus et expensis, super rebus, quae iudicium ecclesiasticum non contingunt, literas apostolicas impetrant, et sic praeter iurisdictionem consulum, quam enervant, eos cogunt multipliciter laborare. Volentes igitur sic eorum utilitati consulere, ne patiamur aliorum iustitiam deperire, fraternitati tuae per apostolica scripta* Mandamus, quatenus, si quando a laicis Vercellensibus *tales* literas super rebus, praecipue quae forum saeculare contingunt, a sede apostolica contigerit impetrari, eas sublato appellationis obstaculo, decernas auctoritate nostra irritas et inanes, dummodo *dicti* consules et commune de se conquerentibus in iudicio saeculari exhibeant iustitiae complementum. Liceat tamen ipsis, qui sub eisdem consulibus taliter duxerint contendendum, si se in aliquo senserint praegravari, ad tuam, sicut hactenus servatum est, vel ad nostram, si maluerint, audientiam appellare, hoc praesertim tempore, quo vacante imperio ad iudicem saecularem recurrere nequeunt, qui a superioribus in sua iustitia opprimuntur. Si vero consules iustitiae tanquam merito suspecti fuerint recusati, coram arbitris communiter electis de causa suspicionis agatur, quae si probata fuerit esse iusta, ad te vel ad nos pro iustitia recurratur, sicut superius est expressum. [*Dat. Ferentini II. Kal. Iun. Ao. IX. *1206.]

Chapter XI

Latin source headnote: A widow cannot sue a layman before an ecclesiastical judge except concerning an ecclesiastical cause or in the absence of a secular judge.

The same, to the Archdeacon and Treasurer of Tours.

It was intimated to our ears from the tenor of the letters of *the nobleman G.*, Count of Brittany, that, when we had committed to you *and G. of good memory, master of the schools of Saint Martin,* the cause known to be conducted between the noblewoman F. and *the nobleman* I. de Meduano concerning her inheritance, to be terminated *with a due end*, the same count commanded that woman—since both she and the aforesaid I. belonged to his forum—to refer the *cause* to him, promising her that *in his court* he would cause the fullness of justice to be exhibited to her, *taking care nevertheless to intimate to you that a business of this kind ought to be terminated in his court. But you and the aforesaid woman, wholly unwilling to obey him, strive to proceed in the cause and less than reasonably to take his jurisdiction from him. Hence he humbly petitioned us to deign to remit the cause to him, to whom it specially belongs.*

Therefore, considering that we are debtors to widows in justice in such a way that we ought not to do injustice to others, *through apostolic writings we command your discretion* that, unless the cause is of a kind

known to pertain to an ecclesiastical judge, you take care to suspend action upon it, provided that she can obtain her justice through a secular judge; otherwise, notwithstanding his contradiction, you are to terminate the cause, *according to the form handed to you in other letters*, reason leading the way. [*Given at Rome, at Saint Peter's, on the Kalends of January, in the eighth year of our pontificate,* 1205.]

> Vidua laicum coram iudice ecclesiastice convenire non potest, nisi super causa ecclesiastica, vel in defectum iudicis saecularis.
>
> Idem Archidiacono et Thesaurario Turonensibus.
>
> Ex tenore literarum *nobilis viri G.* comitis Britanniae nostris est auribus intimatum, quod, quum causam, quae inter mulierem nobilem F. et *nobilem virum* I. de Meduano super hereditate sua noscitur agitari, vobis *et bonae memoriae G. magistro scholarum B. Martini* commiserimus *fine debito* terminandam, ipse comes eidem mulieri, quum tam ipsa quam praedictus I. essent de foro ipsius, mandavit, ut causam *ipsam* deferrent ad ipsum, promittens eidem, quod *in curia sua* faceret ei iustitiae plenitudinem exhiberi, *vobis nihilominus intimare procurans, quod in curia sua debebat huiusmodi negotium terminari. At vos et mulier supradicta ei nequaquam obtemperare volentes satagitis in causa procedere, et sibi suam minus rationabiliter iurisdictionem auferre, unde nobis humiliter supplicavit, ut causam ipsam ad eum, ad quem specialiter pertinet, remittere dignaremur*. Nos igitur attendentes, quod sic sumus viduis in iustitia debitores, quod aliis iniustitiam facere non debemus, *discretioni vestrae per apostolica scripta* mandamus, quatenus, nisi sit talis causa, quae ad ecclesiasticum iudicem pertinere noscatur, ei supersedere curetis, dummodo per iudicem saecularem suam possit iustitiam obtinere; alioquin, non obstante ipsius contradictione, causam ipsam *iuxta formam vobis in aliis literis traditam* ratione praevia terminetis. [*Dat. Romae ap. S. Petrum Kal. Ian. A. VIII.* 1205.]

Chapter XII

Latin source headnote: A cleric cannot constitute a layman as judge for himself, even if his own oath and the adversary's consent are added.

The same, to the Archbishop of Pisa.

If with diligence—*And below:* [cf. c. 17, On Prescriptions, II.26.] *Concerning this, however, we wonder greatly and are moved that, although we consider you a provident and discreet man, and although, according to the obligation of the pontifical office, the statutes of the holy Fathers ought not to be unknown to you, and you are known to have an abundance of jurists,* you asserted that until these times you had held, *and held as certain*, that it was lawful for *any* cleric to renounce his right, at least in temporal causes, and to constitute a layman as judge for himself—especially where the adversary's will was added—and *by this you tacitly imply that you were reasonably reproved because you answered that an oath interposed concerning this matter ought to be kept*, forgetful of *that* constitution by which it is provided that an agreement of private persons in no way derogates from public law.

Therefore, since this law was specially promulgated at the Councils of Milevis and Carthage—that clerics are not to draw clerics, after abandoning their own bishop, to public judgments, otherwise they lose the cause and are held outside communion; and that bishops as well as deacons, or any clerics, in a criminal or civil business, if they wish to clear themselves in public judgments after abandoning ecclesiastical judgment, even if sentence is rendered for them, lose their place, and this in a criminal action, but in a civil action lose what they have recovered if they prefer to retain their place—it is manifestly plain that they cannot agree voluntarily, any more than involuntarily, to undergo secular judgments. For this is not a personal benefit capable of being renounced, but one publicly [*and generally*] granted rather to the whole ecclesiastical college, which an agreement of

private persons cannot derogate. Nor could an oath lawfully be observed which is framed by unlawful agreements contrary to canonical statutes. [*Concerning the other matter, etc.* (cf. c. 17, On Prescriptions, II.26.) *Given at Rome, at Saint Peter's, on the second day before the Nones of May, in the ninth year of our pontificate,* 1206.]

> Clericus non potest constituere sibi iudicem laicum, etiamsi proprium iuramentum et adversarii consensus accedat.
>
> Idem Pisano Archiepiscopo.
>
> Si diligenti *Et infra:* [*cf. c.* 17. *de praescr. II.* 26.] *Super eo autem admiramur plurimum, et movemur, quod, quum te reputemus virum providum et discretum, et iuxta debitum pontificalis officii sanctorum Patrum statuta ignota tibi esse non debeant, et iurisperitorum copiam habere noscaris*, Asseruisti, te usque ad haec tempora tenuisse, *et habere pro certo*, quod licitum sit *cuilibet* clerico renunciare saltem in temporalibus causis iuri suo, et sibi laicum iudicem constituere, praesertim ubi adversarii voluntas accedit, ac *per hoc tacite te innuis rationabiliter redargutum pro eo, quod huiusmodi pacto* tenere iuramentum super hoc interpositum respondisti, immemor constitutionis *illius*, qua cavetur, pacto privatorum iuri publico minime derogari. Quum ergo hoc ius in Milevitanensi et Carthaginensi conciliis sit specialiter promulgatum, ne clerici clericos relicto suo pontifice ad iudicia publica pertrahant, alioquin causam perdant, et a communione habeantur extranei, et tam episcopi quam diaconi, seu quilibet clerici in criminali seu in civili negotio, si derelicto ecclesiastico iudicio publicis iudiciis se purgare voluerint, etiamsi pro eis sit lata sententia, locum suum amittant, et hoc in criminali actione, in civili vero perdant quod evicerint, si locum suum maluerint obtinere: manifeste patet, quod non solum inviti, sed etiam voluntarii pacisci non possunt, ut saecularia iudicia subeant, quum non sit beneficium hoc personale, cui renunciari valeat, sed potius toti collegio ecclesiastico publice [*et generaliter*] sit indultum, cui privatorum pactio derogare non potest. Nec iuramentum licite servari potuit, quod contra canonica statuta illicitis pactionibus informatur. [*Super alio etc.* (*cf. c.* 17. *de praescr. II.* 26.) *Dat. Rom. ap. S. Petr. II. Non. Maii Ao. IX. *1206.]

Chapter XIII

Latin source headnote: Clerics are to be sued concerning their excesses before their own bishop, not before those whom they serve, unless custom or privilege introduces otherwise.

The same, to the Bishop of Beauvais.

Since it sometimes happens—(*And below:* [cf. c. 28, On Oaths, II.24.]) You further petitioned whether, when certain clerics assigned to the service of the Chapter of Beauvais or of other clerics of your diocese are proceeded against concerning excesses, they are to be compelled to answer the complainants before you or rather before those whom they serve, since those persons contend that they have jurisdiction of this kind, although they cannot excommunicate the clerics or otherwise coerce them. Concerning this, *we answer your fraternity* in this way: the complainants ought to have recourse concerning such matters to you, as the *ordinary judge*, especially if the clerics are proceeded against concerning *crimes* which they are known to have committed in your diocese, unless perhaps those whom the offending clerics serve are able to claim jurisdiction of this kind for themselves by an indulgence or special custom. [*Given at the Lateran, on the sixteenth day before the Kalends of January, in the thirteenth year of our pontificate,* 1210.]

> Clerici super escessibus coram suo episcopo conveniri debent, non coram his, quibus serviunt, nisi consuetudo vel privilegium aliud inducat.
>
> Idem Belvacensi Episcopo.

Quum contingat interdum (*Et infra:* [*cf. c. *28. *de iureiur. II.* 24.]) Insuper postulasti, an, quum aliqui clerici deputati servitio capituli Belvacensis aut aliorum clericorum tuae dioecesis super excessibus impetuntur, sint cogendi coram te, vel potius coram illis, quibus serviunt, querelantibus respondere, quum illi sibi iurisdictionem huiusmodi vendicare contendant, licet illos excommunicare non valeant, vel alias etiam coercere. Super quo *fraternitati tuae* taliter respondemus, quod ad te, utpote ordinarium *iudicem*, de talibus debent conquerentes habere recursum, maxime si super his *criminibus* impetuntur, quae in tua noscuntur dioecesi commisisse; nisi forte hi, quibus delinquentes ipsi deserviunt, ex indulgentia vel consuetudine speciali iurisdictionem huiusmodi valeant sibi vindicare. [*Dat. Later. XVI. Kal. Ian. Ao. XIII.* - 1210.]

Chapter XIV

Latin source headnote: The bishop of the place of the delict condemns a cleric concerning the delict, but does not deprive him of a benefice situated elsewhere; rather, the bishop of the benefice will deprive him, as though executing the condemnation of the judge of the delict. This is what it says according to one interpretation. According to another interpretation, this is what it says: the bishop of the place of the delict condemns a cleric concerning the delict by depriving him of a benefice situated elsewhere; the real execution is carried out by the bishop of the benefice.

The same.

You petitioned to be instructed by the Apostolic See whether a priest who has a church in one diocese and resides in it, but has a domicile by reason of patrimony in another, and who commits an offense there, ought to be judged for the delict committed there by the one in whose diocese he has the patrimony, especially in causes that demand deprivation of his office or benefice. To this we answer briefly that sentence can be promulgated against him by the bishop in whose diocese he committed the offense. But as regards the benefice, the execution of a *sentence of this kind* is to be carried out by the one in whose diocese he holds it. *You asked, etc.* (cf. c. 21, On Homicide, V.12.) [*Given at the Lateran, on the third day before the Kalends of May, in the sixteenth year of our pontificate,* 1213.]

Episcopus delicti condemnat clericum de delicto; sed non privat beneficio alibi exsistente; sed episcopus beneficii privabit quasi exsequendo condemnationem iudicis delicti. H. d. secundum unum intellectum. Secundum alium intellectum h. d.: Episcopus delicti condemnat clericum de delicto, privando beneficio alibi sito; exsecutio realis fit ab episcopo beneficii.

Idem.

Postulasti per sedem apostolicam edoceri, utrum sacerdos habens ecclesiam in una dioecesi, et residens in eadem, domicilium vero patrimonii ratione in alia, ibi delinquens, ab eo, in cuius dioecesi habet patrimonium, pro delicto ibidem commisso debeat iudicari, praesertim in causis, quae officii sui seu beneficii privationem exposcunt? Ad quod breviter respondemus, quod per episcopum, in cuius dioecesi deliquit, sententia promulgari poterit in eundem. Sed ab eo, in cuius dioecesi beneficium obtinet, erit quoad illud *huiusmodi* exsecutio *sententiae* facienda. *Quaesivisti etc.* (*cf. c.* 21. *de homic. V.* 12.) [*Dat. Lat. III. Kal. Maii Pont. nostr. Ao. XVI. *1213.]

Chapter XV

Latin source headnote: A person deserving compassion can sue a layman before an ecclesiastical judge by the interdict *unde vi*, even if the thing taken away is said to be feudal.

Honorius III, to the Archbishop, Dean, and Archdeacon of Tours.

It was proposed *before us* on behalf of *our dearest daughter in Christ* B., formerly *illustrious* Queen of England, that, when by authority of Pope John of good memory, our predecessor, she had drawn before you into a cause *concerning this matter* the nobleman G. *de Guerchia*, holder of the castle of Segré, which belonged to her by reason of dower and of which she had been despoiled by him or his accomplices contrary to justice, the said nobleman proposed by way of exception that the apostolic letters were not valid because the castle of La Guerche, where his principal domicile was situated, was in the diocese of Rennes, which was more than two days' journeys distant from Tours; *hence, according to the statute of the general council, he could not be drawn there.*

But it was replied on the queen's behalf that the same nobleman could sufficiently be sued at Tours *according to the statute of the general council*, since he was situated not only in the diocese of Rennes but also in the diocese of Angers, because he had several castles and revenues there, and the castle concerning which the question was pending was in that same diocese, which was by no means more than twelve leagues distant from Tours. He also added that, because the said queen ought to have pursued her right before the lord of the fief, the apostolic letters were not valid, since they did not mention that the lord of the fief had been requested and had been negligent or remiss in exhibiting justice *to her*. He further submitted that those letters had been obtained by the expression of a falsehood, because it had been suggested that the castle belonged to that queen by reason of dower, although neither at the beginning nor during the marriage had it been assigned to her by her husband as a gift on account of marriage.

To this it was answered on behalf of the queen that a despoiled widow could sue the despoiler or holder of the thing before an ecclesiastical judge without first requesting the lord of the fief, since it belongs to that judge to defend widows. *Nor does it stand in the way that the castle had not been assigned to her by her husband, since King John of England of illustrious memory, the heir and successor of her husband, granted the aforesaid castle to her in exchange for other dower property, and she had long possessed it peacefully as dower. To these things it was replied on behalf of the nobleman that the aforesaid king had not been the heir of King Richard or the lord of Anjou, but rather the plunderer and invader of that castle, and thus could not transfer to the queen a right which he by no means possessed. To this the queen's party answered that an exception of this kind was not valid against the rescript and ought not to have a place in the possessory action which she was bringing against the said nobleman. Hence, lending your ears to frivolous exceptions of this kind, you have until now delayed proceeding in the principal business, to the queen's considerable grievance and loss.*

But we, wishing an end to be imposed upon lawsuits, *command your discretion* that, if it is established to you that the said nobleman has land and a dwelling in the diocese of Angers, in which he is sometimes accustomed to reside, that the same diocese is not more than two days' journeys distant from Tours, and that the thing in litigation is situated in that diocese, then, notwithstanding the other exceptions—which appear to have a place in the petitory action rather than in the possessory action which the queen was bringing against the same nobleman—you proceed in that business according to the contents of the earlier letters, *with the obstacle of every contradiction and appeal removed*, reason leading the way, *so fulfilling the apostolic precept that the same queen is not compelled through your failure to labor further in coming to us, and that you cannot be reproved for negligence.* [*Given at the Lateran, on the sixteenth day before the Kalends of February, in the first year of our pontificate,* 1217.]

> Miserabilis persona potest laicum interdicto unde vi coram iudice ecclesiastico convenire, etiamsi res subtracta dicatur feudalis.

Honorius III. Archiepiscopo, Decano et Archidiacono Turonensibus.

Ex parte *carissimae in Christo filiae* B. quondam Angliae reginae *illustris* fuit propositum *coram nobis*, quod, quum nobilem virum G. *de Guerchia* detentorem castri Segrey, ratione dotalitii pertinentis ad ipsam, quo per eum vel eius complices contra iustitiam fuerat spoliata, auctoritate bonae memoriae Ioannis Papae praedecessoris nostri coram vobis *super hoc* traxisset in causam, dictus nobilis excipiendo proposuit, quod literae apostolicae non valebant, pro eo, quod castrum Guargiae, ubi est eius domicilium principale, consistit in dioecesi Rodonensi, quae ultra duas diaetas a Turonis est remota, *unde illic trahi non poterat secundum statutum concilii generalis*. Verum replicatum fuit ex parte reginae, quod idem nobilis Turonis satis poterat *secundum statutum concilii generalis* conveniri, quum non solum in Rodonensi dioecesi, sed etiam in Andegavensi dioecesi exsistat, eo, quod et castra et reditus plures habet in ipsa, et castrum, de quo quaestio vertitur, in eadem est dioecesi, quae a Turonis nequaquam ultra XII. leucas distat. Idem quoque adiecit, quod, quum dicta regina ius suum coram domino feudi prosequi debuisset, literae apostolicae non valebant, quum non faciebant mentionem, quod dominus feudi fuerit requisitus, et ipse in exhibenda *sibi* iustitia exstiterit negligens vel remissus, subiiciens, quod eaedem literae falsitate expressa fuerant impetratae, eo, quod suggestum fuerat, castrum illud ad eandem reginam ratione dotalitii pertinere, quum nec ab initio, nec durante matrimonio a viro sibi fuerat in donationem propter nuptias assignatum. Ad hoc autem fuit ex parte ipsius reginae responsum, quod vidua spoliata irrequisito feudi domino spoliatorem seu detentorem rei coram ecclesiastico iudice poterat convenire, cuius interest viduas defensare. *Nec obest, quod sibi castrum illud a viro assignatum non fuerit, quum clarae memoriae I. rex Angliae, heres et successor viri sui, castrum praefatum in concambium pro aliis rebus dotalitiis eidem concessit, et ipsa illud diu pro dote pacifice possedisset. Ad haec autem fuit ex parte ipsius nobilis replicatum, quod praedictus rex heres non fuerat regis Richardi, nec dominus Andegavi, sed eiusdem castri raptor potius et invasor, et ita ius, quod ipse nequaquam habuit, transferre non potuit in reginam. Ad quod sic pars eiusdem reginae respondit, quod contra rescriptum exceptio huiusmodi non valebat, nec habere debebat locum in possessorio, quod eadem contra dictum nobilem intendebat. Unde vos aures huiusmodi exceptionibus frivolis adhibentes, in principali negotio procedere hactenus distulistis in eiusdem reginae gravamen non modicum et iacturam. Nos vero volentes, ut finis litibus imponatur, discretioni vestrae* Mandamus, quatenus, si vobis constiterit, dictum nobilem terram et mansionem habere in Andegavensi dioecesi, in qua interdum consuevit commorari, et ipsam dioecesim ultra duas a Turonis non distare diaetas, et in eadem litigiosam rem esse, non obstantibus exceptionibus aliis, quae in petitorio potius, quam in possessorio, quod regina contra eundem nobilem intentabat, locum habere videntur, in ipso negotio iuxta priorum continentiam literarum, *sublato cuiuslibet contradictionis et appellationis obstaculo*, ratione praevia procedatis, *praeceptum apostolicum taliter impleturi, quod eadem regina pro defectu vestro ad nos laborare ulterius non cogatur, nec vos possitis de negligentia reprehendi.* [*Dat. Later. XVI. Kal. Febr. A. I.* 1217.]

Chapter XVI

Latin source headnote: Laymen who usurp ecclesiastical rights are compelled by an ecclesiastical judge as sacrilegious persons.

Gregory IX, to Brother Palmerius, Canon of the Holy Trinity.

[Our venerable brother] the Bishop of Bologna complained to us that the podestà and commune of Bologna presume violently to usurp the temporal jurisdiction which belongs by full right to the church of Bologna in [Saint John in Persiceto, Unciola, Massumatico, Poggio, Duliolo, Castel del Vescovo, and] certain [other] castles and villages, and in the quasi-possession of which it is known to have been and to be. [*They caused a certain man who had perpetrated homicide at the said castle of Saint John to be exhibited to them by the rector of that castle so that he might be punished by them; they still hold him in chains*

and refuse to return him. Hence, through our letters we commanded them to desist from molesting the bishop, to restore the murderer to the bishop without any difficulty, and freely to permit him to exercise the aforesaid jurisdiction in the said places, while appearing before us by the feast of All Saints then next past to do and receive what the order of law dictated if they proposed that they possessed any jurisdiction in the said castles and villages. Treating this with contempt, as is said, although diligently admonished, they neither restored the aforesaid malefactor to him nor permitted the bishop freely to exercise this jurisdiction in those places, nor sent a suitable representative to us. Rather, heaping sin upon sin, after the messengers of both parties had approached the Apostolic See, the said podestà and commune sent certain persons on their behalf to investigate and punish a certain crime perpetrated in the territory of Duliolo, which belonged to the jurisdiction of that church, concerning which an inquiry had been made through the messengers of the said bishop and pledges and other securities had been accepted from the malefactors. For this reason the messengers of the same bishop humbly petitioned us that we ought to provide concerning these matters for the indemnity of the church of Bologna.]

But since it is very unjust [*and an enormous sacrilege*] that things conferred upon venerable churches for the remedy of sins, or left to them, or otherwise acquired by them in just ways, [*by faithful and Catholic men, by whom it is fitting that they be preserved,*] be applied to other uses, the invaders of those things are therefore deservedly, as sacrilegious persons, [*unless they restore them, through the rectors of the churches, since sacrilege is an ecclesiastical crime,*] to be subjected to anathema until suitable satisfaction. [*It is also known to have been introduced in favor of churches that the rectors of venerable places can sue their malefactors before whichever judge they prefer. But, an exception to the forum having been opposed through your messengers, it was urgently petitioned by them that, since a claimant regularly ought to follow the defendant's forum, we should leave a question of this kind to secular judgment.*]

[*Therefore, after diligent deliberation concerning these matters with our brothers, with paternal sweetness we admonish, entreat, and beseech them, adjuring them by the salvation of their souls and calling God to witness, that, since in this matter it is far more glorious to be conquered than to conquer, they not refuse to receive saving medicine, but, granting us these things by gratuitous liberality in hope of eternal reward, render due satisfaction to God and the Church concerning the aforesaid matters. For with solicitous affection we desire the salvation of the citizens of their city, devoted to the Roman Church, taking care to bind what is broken and bring back what is cast away, and desiring to recall them through our patience to penance. Therefore, unwilling to dissemble the affliction of the same church, to the peril of the said podestà and commune which is involved in it, lest we act contrary to the obligation of our office, knowing that we ought to obey God rather than men, through apostolic writings*] we command your discretion that, if the aforesaid matters are established to you, after [*your diligent*] admonition has first been given, you compel them through ecclesiastical censure, with appeal removed, to cease from conduct of this kind and to make satisfaction for past damages and injuries. [*The witnesses, etc. Given at the Lateran, on the sixth day before the Kalends of February, in the fourth year of our pontificate,* 1230.]

Textual note: The clause *Civitatis enim suorum ecclesiae Romanae devotae* is grammatically difficult in both e-texts. The translation follows the contextual sense, taking it to refer to the citizens and their city as devoted to the Roman Church.

> Laici usurpantes iura ecclesiastica velut sacrilegi per iudicem ecclesiasticum compelluntur.
>
> Gregorius IX. Fratri Palmerio Canonico S. Trinitatis.
>
> Conquestus est nobis [*venerabilis frater noster*] Bononiensis episcopus, quod potestas et commune Bononienses temporalem iurisdictionem, quae in [*S. Ioannis in Persiceto, Unciolae, Maximatici, Podii, Dulioli, Castri Episcopi et*] quibusdam [*aliis*] castris et villis ecclesiae Bononiensis competit pleno iure, et in cuius

quasi possessione fuisse ac esse dignoscitur, per violentiam usurpare praesumunt, [*quendam, qui apud dictum castrum S. Ioannis homicidium perpetravit, per eos puniendum a rectore castri eiusdem sibi exhiberi fecerunt, et adhuc tenent in vinculis, ipsum reddere denegantes, unde per literas nostras ipsi mandavimus, ut ab ipsius episcopi molestia desistentes, et eidem episcopo restituentes sine difficultate qualibet homicidam, libere ipsum permitterent in dictis locis uti iurisdictione praefata, comparituri coram nobis usque ad festum omnium sanctorum proximo praeteritum ad faciendum et recipiendum quod iuris ordo dictaret, si in dictis castris et villis proponerent iurisdictionem aliquam se habere. Qui hoc, sicut dicitur, contemnentes, nec restituerunt sibi malefactorem praefatum moniti diligenter, nec permiserunt episcopum libere uti hac iurisdictione in locis eisdem, neque ad nos responsalem idoneum destinarunt, sed peccatum peccato potius cumulantes, postquam utriusque partis nuncii ad sedem apostolicam accesserunt, dicti potestas et commune quosdam ex parte sua miserunt ad investigandum et puniendum quoddam maleficium patratum in terra Dulioli ad iurisdictionem ipsius ecclesiae pertinente, super quo inquisitio facta fuerat per dicti episcopi nuncios, et a malefactoribus pignorum cautiones et aliae securitates acceptae, quare nuncii eiusdem episcopi humiliter petierunt a nobis, ut super his deberemus indemnitati Bononiensis ecclesiae praecavere.*] Quum autem valde sit iniquum [*et ingens sacrilegium,*] ea, quae collata sunt pro remedio peccatorum venerabilibus ecclesiis, vel relicta, aut eis iustis modis aliis acquisita, [*a fidelibus et viris catholicis, a quibus servari ea convenit,*] aliis usibus applicari, propter quod merito invasores ipsarum rerum tanquam sacrilegi, [*nisi eas restituant, per ecclesiarum rectores, quum ecclesiasticum sit crimen sacrilegii*] sunt anathemati usque ad satisfactionem congruam supponendi. [*Ecclesiarum quoque favore noscitur introductum, ut malefactores suos venerabilium locorum rectores possint sub quo maluerunt iudice convenire. Sed fori exceptione per nuncios vestros opposita instanter petebatur ab ipsis, ut, quum regulariter actor forum rei sequi debeat, relinqueremus quaestionem huiusmodi iudicio saeculari. Super iis ergo deliberatione cum fratribus nostris habita diligenti, paterna dulcedine ipsos monemus, deposcimus et rogamus, obsecrantes per salutem animarum suarum et per Dominum obtestantes, quum in hoc longe magis sit vinci quam vincere gloriosum, non renuant salutarem recipere medicinam, sed nobis haec gratuita liberalitate sub spe mercedis aeternae donantes Deo et ecclesiae super praemissis debitam satisfactionem impendant. Civitatis enim suorum ecclesiae Romanae devotae sollicita desideramus affectione salutem, alligare curantes quod confractum est et reducere quod abiectum, et cupientes eosdem per patientiam nostram ad poenitentiam revocare. Nolentes itaque afflictionem eiusdem ecclesiae ad dictorum potestatis et communis periculum, quod versatur in ipsa, dissimulare, ne contra officii nostri debitum veniamus, scientes quod obedire Deo magis quam hominibus nos oportet, discretioni tuae per apostolica scripta*] Mandamus, quatenus si tibi constiterit de praemissis, [*tu diligenti*] monitione praemissa, per censuram ecclesiasticam cessare ipsos ab huiusmodi, et satisfacere de praeteritis damnis et iniuriis, appellatione remota compellas. [*Testes etc. Dat. Lat. VI. Kal. Febr. Pontif. nostr. Ao. IV. *1230.]

Chapter XVII

Latin source headnote: One privileged not to be bound to answer except in a certain place can be sued there, and also where he has his domicile, if he promises to answer or pay in another place. According to Johannes Andreae.

The same, to the Bishop of Durham.

Our beloved sons I. and A., Roman citizens, showed us by their petition that, when they had obtained letters for the Abbot of Saint Geneviève of Paris against R., your predecessor, concerning a certain sum of money, you caused it to be proposed that it has been granted by the Apostolic See to all Englishmen that they cannot be sued in pecuniary causes on this side of the sea, on account of which the same abbot did not proceed in the business. But because, even if such a privilege had been granted, it nevertheless would not benefit those who promised their adversaries to answer or pay in a certain place, since they can be sued both there and where they have their domicile, we command

that you satisfy them, as you are bound, concerning the money itself together with just and moderate expenses and suitable satisfaction for damages, with usury ceasing altogether. Otherwise, through our letters we command the same abbot to proceed without the loss of delay in the business committed to him according to the tenor of our prior mandate, notwithstanding the indulgence proposed on your behalf.

> Privilegiatus ut non teneatur respondere nisi in certo loco. Si in alio loco respondere vel solvere promittit, ibi poterit conveniri, et etiam ubi habet domicilium. Secundum Ioan. Andr.
>
> Idem Episcopo Dulmensi.
>
> Dilecti filii I. et A. cives Romani sua nobis petitione monstrarunt, quod, quum abbati S. Genovefae Parisiensis super quadam pecuniae summa contra R. praedecessorem tuum literas impetrassent, tu proponi fecisti, quod omnibus Anglicis est a sede apostolica indultum, ut super causis pecuniariis citra mare conveniri non possint, propter quod idem abbas in negotio non processit. Verum, quia, etsi fuisset privilegium tale concessum, non tamen prodesset illis, qui se certo loco respondere vel solvere adversariis promiserunt, quum ibi et ubi domicilium habent valeant conveniri: mandamus, quatenus eisdem de pecunia ipsa cum iustis et moderatis expensis, et congrua satisfactione damnorum, usuris omnino cessantibus, satisfacias, ut teneris. Alioquin eidem abbati nostris damus literis in mandatis, ut in commisso sibi negotio, proposita ex parte tua indulgentia non obstante, iuxta prioris mandati nostri tenorem sine dispendio morae procedat.

Chapter XVIII

Latin source headnote: Although laymen can prorogate the jurisdiction of one who is not their judge, clerics nevertheless cannot do so unless the consent of the diocesan bishop is added and the judge whose jurisdiction they wish to prorogate is an ecclesiastical person.

The same, to the Abbot of Troyes.

You signified to us that the cleric P., at the petition of the merchant C., subjected himself to your jurisdiction if he did not satisfy him concerning borrowed money by the term now elapsed. (*And below:*) We answer your inquiry in this way: although the consent of private persons can constitute as their own judge one who is known to preside over a jurisdiction, nevertheless clerics cannot consent to one who is not their judge unless perhaps he is an ecclesiastical person and the will of the diocesan bishop is added.

> Quanquam laici possunt iurisdictionem non sui iudicis prorogare, clerici tamen non possunt, nisi episcopi dioecesani consensus accedat, et iudex, cuius iurisdictionem prorogare volunt, sit ecclesiasticus.
>
> Idem Abbati Trecensi.
>
> Significasti nobis, quod P. clericus ad petitionem C. mercatoris se tuae iurisdictioni subiecit, si in termino nunc elapso de pecunia mutuata, non satisfecisset eidem (*Et infra:*) Inquisitioni tuae taliter respondemus, quod, licet privatorum consensus eum, qui iurisdictioni praeesse dignoscitur, suum possit iudicem constituere, clerici tamen in iudicem non suum, nisi forte sit persona ecclesiastica, et episcopi dioecesani voluntas accedat, consentire non possunt.

Chapter XIX

Latin source headnote: One lawfully cited is bound to prosecute the cause before the judge who cited him, notwithstanding that after the citation he changed his forum.

The same.

You proposed to us that a certain subject of yours, lawfully cited by you to a cause at the petition of a certain adversary of his, intends to decline your judgment because he afterward began to belong to another's jurisdiction. But we do not believe it doubtful to your prudence that in the aforesaid cause he has no right to recall the forum, since he has, as it were, already been forestalled by the other party.

> Legitime citatus tenetur coram iudice citante causam prosequi, non obstante, quod post citationem mutaverit forum.
>
> Idem.
>
> Proposuisti nobis, quod quidam subditus tuus ad petitionem cuiusdam adversarii sui a te legitime citatus ad causam, quia postmodum iurisdictionis alterius esse coepit, tuum intendit iudicium declinare. Porro tuae prudentiae dubium esse non credimus, quod is in praedicta causa ius revocandi forum non habet, quasi ab altero iam praeventus.

Chapter XX

Latin source headnote: Every cleric can be sued in the Roman curia, although otherwise he does not specifically obtain a forum there; nevertheless, for cause he has the right to be sent back home.

The same.

Although by reason of delict, contract, domicile, or the thing concerning which a cause is moved against a possessor—by which grounds a person regularly obtains a forum—your bishop had not been sued at the Apostolic See, nevertheless, because that same See is the mother and mistress of all churches, he could rightly be compelled to answer his adversaries there, unless he had come for another just and necessary cause; and if he had alleged that cause at the time, his right to be sent back home would have been preserved.

> Quisque clericus potest in curia Romana conveniri, licet alias specifice forum ibi non sortiatur; habet tamen ex causa ius revocandi domum.
>
> Idem.
>
> Licet ratione delicti, seu contractus, aut domicilii, sive rei, de qua contra possessorem causa movetur, quibus forum regulariter quis sortitur, episcopus vester apud sedem apostolicam conventus non fuerit, quia tamen omnium ecclesiarum mater est eadem et magistra, rite compelli potuit, ut ibi suis adversariis responderet, nisi pro alia iusta et necessaria causa venisset, quam si tunc allegasset, ius revocandi domum salvum fuisset eidem.

Title III: On the Offering of the Complaint

Chapter I

Latin source headnote: The claimant is bound to present the complaint in writing. Or thus: the judge ought not to admit a claimant to litigate unless he first offers the complaint in writing. This is

what it says in other words.

From the council at Saint-Médard.

Bishop Ignarus said: "Do you have a written complaint of protest or petition, *as ecclesiastical tradition requires?"* But they answered that they had no complaint at hand. Bishop Ignarus said: *"The authority of ecclesiastical laws [is such that in causes concerning transactions it always requires writing, to such an extent that one who approaches the sacred font is commanded to give his name; one who is advanced to the highest priesthood is elected by a decree confirmed by the hands of all. One ordained, moreover, is commanded to receive letters from those who ordained him. One who is also separated from ecclesiastical fellowship by any excess is either received or cast out by a written document. But one who is accused, excommunicated, or reconciled is commanded to be accused or reconciled through writing. And thus in other matters of this kind writing is required to such an extent that, as blessed Gregory writes in his memorandum to John the defender, taking from the Roman laws, a sentence pronounced without writing does not deserve even to have the name of a sentence."]*

"Therefore, brothers [*and sons,*] you must, according to ecclesiastical authority, declare your protest in the sequence of a written complaint and present it to the [*sacred*] synod, confirmed by your hands, so that an answer can then be made to you *fittingly and* canonically." And then those brothers, drawing up a written complaint [*and subscribing their names to it*], presented it to *Hincmar* [*the bishop, etc.*]

> **DE LIBELLI OBLATIONE.**
>
> Actor tenetur in scriptis libellum porrigere. Vel sic: Iudex non debet admittere actorem ad litigandum, nisi prius libellum in scriptis offerat. H. d. per alia verba.
>
> Ex concilio apud sanctum Medardum.
>
> Ignarus episcopus dixit: Habetis libellum reclamationis vel postulationis, *sicut ecclesiastica se habet traditio*? Illi [*autem*] responderunt, se prae manibus nullum habere libellum. Ignarus episcopus dixit: *Legum ecclesiasticarum [auctoritas talis est, ut in causis gestorum semper scripturam requirat, adeo, ut qui ad sacrum fontem accedit suum dare nomen praecipiatur; qui ad summum sacerdotium provehitur, decreto manibus omnium roborato eligitur. Ordinatus autem a suis ordinatoribus literas accipere iubetur. Qui etiam ab ecclesiastica societate quolibet excessu discinditur libellari scriptione aut recipitur aut deiicitur. Sed qui accusatur, vel excommunicatur, seu reconciliatur, per scripturam accusari vel reconciliari iubetur. Et sic in ceteris huiusmodi in tantum scriptura deposcitur, ut sicut B. Gregorius in commonitorio ad Ioannem defensorem ex Romanis legibus sumens scribit, sententia, quae sine scriptura profertur, nec nomen sententiae habere mereatur.*] *Quapropter, fratres* [*et filii,*] Oportet vos secundum ecclesiasticam auctoritatem reclamationem vestram libelli serie declarare, eamque vestris manibus roboratam synodo [*sacrae*] porrigere, ut tunc vobis *convenienter et* canonice valeat responderi. Et tunc ipsi fratres libellum conscribentes [*eique sua nomina subscribentes*] porrexerunt *Hincmaro* [*episcopo etc.*]

Chapter II

Latin source headnote: When a real action is brought, it is not sufficient that the thing be sought generally; rather, it ought to be specified in such a way that obscurity and equivocation are avoided.

Innocent III.

It was declared to our apostolate by the representation of the brothers T. and R. that, when a cause had been conducted before *our beloved sons the Abbot and Prior of Saint Bartholomew of Noyon*, judges delegated *by the Apostolic See*, between them on one side and V. *Turpis de Athechi and his sisters of the diocese of Soissons* on the other concerning a certain piece of land, after a complaint had been offered to

them, the same T. and R., since they had several lands, petitioned the judges that the land concerning which the question was pending be shown to them. When the others refused to do this *and were unwilling to define by sentence whether this ought to be granted to them, those brothers appealed from the manifest grievance* to our hearing. Therefore, *through apostolic writings we command your discretion* that, if it is so, *you*, after revoking to its due state whatever you learn to have been attempted after an appeal of this kind, etc.

> Quum agitur reali, non sufficit rem generaliter peti, sed debet ita specificari, ut evitetur obscuritas et aequivocatio.
>
> Innocentius III.
>
> Significantibus T. et R. fratribus nostro fuit apostolatui declaratum, quod, quum inter ipsos ex una parte, et V. *Turpem de Athechi et sorores eius dioecesis Suessionensis* ex altera super quadam terra coram *dilectis filiis abbate et priore sancti Bartholomaei Noviomensis* iudicibus *a sede apostolica* delegatis tracti fuissent in causam, oblato eis libello, ipsi T. et R., quum plures terras haberent, ut terra illa, super qua quaestio vertebatur, ostenderetur eisdem, a iudicibus postularunt. Quod quum ipsi facere denegarent, *nec utrum hoc deberet eis concedi, vellent per sententiam definire, iidem fratres a manifesto gravamine* ad nostram audientiam provocarunt. Quocirca *discretioni vestrae per apostolica scripta* mandamus, quatenus, si est ita, *vos*, revocato in statutum debitum, si quid post appellationem huiusmodi noveritis attentatum, etc.

Chapter III

Latin source headnote: A defendant is not bound to answer a complaint in a personal action if the ground of the claim is not expressed.

Gregory IX, to the Archpriest of Cittanova and M., Canon of Culm.

Our beloved sons, the brothers of the church of Saint Mary de Hispida, showed us by their petition that, when the Prior and Convent of Saint Mary ad Carceres sued them concerning a certain sum of money before the Prior of the Holy Trinity of Verona by apostolic authority, it was proposed on their behalf by way of exception that, since the said prior and convent were unwilling to express in the complaint presented for the action why the said money was owed to them, they were in no way bound to answer concerning it; and because the said judge refused to admit an exception of this kind, they appealed to our hearing. Therefore we command that, if it is so, after revoking as void, etc.

> Non tenetur reus respondere libello in actione personali, si non exprimitur causa petendi.
>
> Gregorius IX. Archipresbytero Civitatis novae et M. Canonico Culmensi.
>
> Dilecti filii fratres ecclesiae sanctae Mariae de Hispida sua nobis petitione monstrarunt, quod, quum prior et conventus sanctae Mariae ad Carceres ipsos super quadam pecuniae summa coram priore sanctae Trinitatis Veronensis auctoritate apostolica convenissent, ex parte ipsorum fuit excipiendo propositum, quod, quum dicti prior et conventus nollent exprimere in porrecto libello conventionali, quare sibi dicta pecunia deberetur, super hoc minime respondere tenebatur, et quia dictus iudex exceptionem huiusmodi admittere denegabat, nostram audientiam appellaverunt. Ideoque mandamus, quatenus, si est ita, revocato in irritum, etc.

Title IV: On Mutual Claims

Chapter I

Latin source headnote: A judge, even a delegated one, compels the claimant to answer the defendant in a cause of counterclaim, and he shall hear both causes together in successive order and terminate them by one sentence. This is what it says.

Alexander III, to the Bishop of Volterra and the Abbot of Spongia.

We learned from *your letters that our beloved sons the Abbot and Brothers of the monastery of Maturum are prepared to undergo your examination concerning the questions which the plebanus and clerics of Maturum propose against them if the latter ought immediately to answer concerning their questions. But* because the order of reason requires that the plebanus and clerics of Maturum ought to answer the abbot and brothers of the monastery of Maturum in your presence concerning the things which they propose against them, since they petition that justice be exhibited to them by those persons before you as delegates of the Apostolic See, *through apostolic writings we command your discretion, by way of precept,* that, after the action of the plebanus and clerics has been proposed and an answer made, admonition having first been given, you compel them immediately to answer the said abbot and brothers before you concerning their own questions; and that *you*, afterward hearing in turn the arguments *and allegations* of the parties *more diligently*, terminate the business of both by agreement or judgment.

> **DE MUTUIS PETITIONIBUS.**
>
> Iudex etiam delegatus compellit actorem ad respondendum reo in causa reconventionis, et utramque causam ordine successivo simul audiet et una sententia terminabit. H. d.
>
> Alexander III. Vulterano Episcopo et Abbati de Spongia.
>
> Ex literis *vestris accepimus, quod dilecti filii nostri abbas et fratres Maturensis monasterii super quaestionibus, quas plebanus et clerici Maturenses adversus eos proponunt, vestrum parati sunt subire examen, si illi in continenti deberent de suis quaestionibus respondere. Verum,* Quoniam rationis ordo exigit, ut plebanus et clerici Maturenses abbati et fratribus Maturensis monasterii de iis, quae adversus eos proponunt, non debeant in vestra praesentia respondere, quum sibi ex ipsis coram vobis a sede apostolica delegatis iustitiam postulant exhiberi, *discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus, actione plebani et clericorum proposita, et responsione facta, monitione praemissa compellatis eosdem, memoratis abbati et fratribus in continenti coram vobis super suis quaestionibus respondere, et *vos* vicissem postmodum rationes *et allegationes* partium *diligentius* audientes concordia vel iudicio utriusque negotium terminetis.

Chapter II

Latin source headnote: The manner of proceeding given by rescript in the cause of the original claim is understood to be repeated in the cause of the counterclaim.

Celestine III, to the Dean of Rouen.

We *follow your prudence with due thanksgiving of praise because, in the manner of a prudent man, you consider that the Apostolic See is to be consulted upon points of law concerning which you sometimes doubt,* [*to which, indeed, the ancient Fathers established that all difficult questions and causes should fittingly be referred.*] You consulted us whether, when a cause is committed with appeal removed and the defendant brings a counterclaim against the claimant before the same judge *or judges—which can lawfully be done under the*

constitution of both canon and civil law—and the claimant interposes the obstacle of appeal concerning the counterclaim, deference is to be shown to an appeal of this kind.

We hold that, since *in this case* the condition *or cause* of the claimant and defendant is the same, and each ought to be assessed by one and the same law concerning the remedy of appeal, *no deference is to be shown to an appeal interposed in this manner. For we have learned, by the testimony of Christ himself, who is Truth, that all things which people wish others to do to them they ought also to do to others. Nor does the jurist dissent from this sentence, because, besides the Authentic which begins "And consequently," in which this is expressly contained concerning the making of a counterclaim, it is established elsewhere that a person is to use the same law which he has determined should be established against another. Therefore,* just as the claimant desires justice to be done to him according to the mandator's rescript with appeal removed, in the same manner he ought to answer in justice the one bringing a counterclaim against him. [*Secondly you ask, etc.* (cf. c. 41, On Appeals, II.28.) *Given at the Lateran, on the fifteenth day before the Kalends of July, in the third year of our pontificate,* 1193.]

> Modus procedendi datus per rescriptun in causa conventionis intelligitur repetitus in causa reconventionis.
>
> Coelestinus III. Rothomagensi Decano.
>
> Prudentiam *tuam debita laudum prosequimur actione pro eo, quod more prudentis viri in articulis iuris, super quibus aliquando dubitas, sedem ducis apostolicam consulendam,* [*ad quam utique omnes difficiles quaestiones et causas antiqui Patres statuerunt decere referri.*] Sane consuluisti nos, utrum, quum causa appellatione remota committitur, et reus coram eodem iudice actorem reconvenerit *vel eisdem, quod quidem ex constitutione tam canonici quam forensis iuris licite fieri potest*, et actor super reconventione appellationis obstaculum interponit, an sit huiusmodi appellationi deferendum? Nos vero ita sentimus, quod, quum *in hoc casu* actoris et rei eadem sit conditio *vel causa*, et uno eodemque iure circa appellationis remedium debeat uterque censeri, *unde nec appellationi taliter interpositae deferendum esse iudicamus. Etenim ipso Christo, qui est veritas, attestante didicimus, quod omnia, quaecunque voluerint aliqui ut faciant eis homines, eadem et ipsi facere debeant. Nec iurisperitus ab hac sententia discrepat, quia praeter authenticam, quae incipit: Et consequenter, in quo id de facienda reconventione expresse habetur, et alibi statuitur, ut eodem iure quis utatur, quod duxerit in alium statuendum. Ideoque* Sicut desiderat actor, ut sibi iuxta mandatoris rescriptum iustitia fiat appellatione remota, eodem modo se reconvenienti debeat in sua iustitia respondere. [*Secundo requiris etc.* (*cf. c.* 41. *de app. II.* 28.) *Dat. Lat. XV. Kal. Iul. Pont. nostr. Ao. III.* 1193.]

Title V: On Joinder of Issue

Sole Chapter

Latin source headnote: Joinder of issue occurs not through positions and answers but through a petition proposed in court and the answer that follows it; when it is omitted, the proceedings are null.

Gregory IX, to the Abbot of Saint John in the Vineyards.

Formerly, matter for a question arose between the Bishop of Noyon on one side and the Chapter of the Church of Saint-Quentin on the other concerning certain injuries, sentences of excommunication, and certain other articles. (*And below:*) The judges, after certain positions had been made and answers given to them, and having also heard what the parties wished to propose before them, remitted that

cause to apostolic examination. Therefore, when the proctors of the parties had been established in our presence for this reason, although positions and answers had been made on each side before the aforesaid judges concerning several articles, nevertheless, because we did not find that joinder of issue had occurred—since joinder of issue occurs not through positions and answers to them, but through a petition proposed in court and the answer that follows it—we judged, with the counsel of our brothers, that their proceedings were to be declared void.

> **DE LITIS CONTESTATIONE.**
>
> Non per positiones et responsiones, sed per petitionem in iure propositam et responsionem secutam fit litis contestatio, qua omissa nullus est processus.
>
> Gregorius IX. Abbati S. Ioannis in Vineis.
>
> Olim inter episcopum Noviensem ex parte una, et capitulum ecclesiae sancti Quintini ex altera super quibusdam iniuriis, et excommunicationum sententiis et quibusdam aliis articulis orta materia quaestionis (*Et infra:*) Iudices factis quibusdam positionibus et responsionibus ad easdem, auditis etiam quae partes voluerunt proponere coram eis, causam eandem ad examen apostolicum remiserunt. Procuratoribus igitur partium propter hoc in nostra praesentia constitutis, quamvis positiones et responsiones hinc inde super pluribus articulis factae fuerint coram iudicibus memoratis, quia tamen litis contestationem non invenimus esse factam, quum non per positiones et responsiones ad eas, sed per petitionem in iure propositam et responsionem secutam litis contestatio fiat, processum ipsorum de fratrum nostrorum consilio irritum duximus nunciandum.

Title VI: That Before Issue Has Been Joined No Proceeding Is to Be Had to the Reception of Witnesses or to Definitive Sentence

Chapter I

Latin source headnote: If an action concerning adultery is brought for separation from bed, and before joinder of issue the defendant is contumacious, he can be excommunicated; but witnesses cannot be received, nor can the cause be decided.

Innocent III, to the Abbot of Saint Proculus and L. the Canon.

For this purpose God *established the governance of the whole Church in the Apostolic See,* [*so that, because according to Holy Scripture God made man upright, but man involved himself in infinite questions, difficult knots of questions may be referred to it to be dissolved by its upright judgment.*] *It came to the knowledge of our apostolate through the representation of your letters that,* when the cause pending between R. and B. his wife had been committed to you by apostolic authority, the proctor of the same R. was unwilling to answer the wife's complaint, by which she accused her husband of adultery for separation from bed and so that she might recover her dowry, until his advocate should come, and he sought adjournments.

When, by frequently seeking adjournments of this kind, he appeared to mock you, *you received the woman's witnesses after taking counsel*. At last the *proctor*, approaching your presence, said that he was prepared to answer; but on the appointed day, when it was believed that he would answer the complaint *mentioned above*, he first petitioned *on the husband's behalf* that the wife be restored, appealing lest it be done otherwise. But because the woman said that she held her husband suspect—*both because in his house she had been compelled to confess that she had committed adultery with several persons and because he publicly kept a prostitute*—and the same proctor neither gave security for the woman's safety

nor afterward took care to present himself before you, you endeavored *again* to receive the woman's witnesses, *and, after the attestations were published, diligently heard what was alleged in her name.*

But because, when you treated with jurists concerning the rendering of sentence, you found different counsels from different persons—some saying that simple deference was to be shown to the appeal, others that deference was not to be shown to it, and some also asserting that the appeal did not hold at all, since the woman was not to be restored to a husband held suspect unless sufficient security for her safety had been given—you wished to consult us, amid such variety, concerning how one was to proceed in this business. Therefore, *with the counsel of our brothers*, we answer your consultation in this way: although the judicial order is to be observed in other controversies and is not observed in every respect in matrimonial causes, nevertheless, because in the present business the action concerns not the bond of marriage but the crime of adultery, through which separation of the marriage, not union, is intended, and because witnesses were received and the attestations even published before issue was joined, whether or not deference should have been shown to the appeal, no proceeding is to be had to definitive sentence. The aforesaid R. could nevertheless have been bound by a sentence of excommunication on account of his own contumacy, or even that of his proctor if, knowing of it, he did not purge it. [*Given at Perugia, on the fifteenth day before the Kalends of October,* 1198.]

UT LITE NON CONTESTATA NON PROCEDATUR AD TESTIUM RECEPTIONEM VEL AD SENTENTIAM DIFFINITIVAM.

Si agatar de adulterio ad separationem tori, et ante litis contestationem reus est contumax, potest excommunicari; sed testes recipi non possunt, nec causa diffiniri.

Innocentius III. Abbati sancti Proculi et L. Canonico.

Ad hoc Deus *in apostolica sede constituit totius ecclesiae magistratum,* [*ut, quia secundum scripturam sanctam fecit Deus hominem rectum, sed ipse se infinitis miscuit quaestionibus, ad eam nodi quaestionum difficiles referantur, suo recto iudicio dissolvendi.*] *Ad apostolatus* [*quippe*] *nostri notitiam literarum vestrarum insinuatione pervenit, quod,* Quum causa, quae inter R. et B. uxorem eius vertitur, auctoritate apostolica vobis commissa fuisset, tandem procurator eiusdem R. libello uxoris, quo virum ad separationem tori, et ut dotem reciperet, de adulterio accusabat, noluit respondere, donec advocatus eius veniret inducias postulando. Qui quum huiusmodi inducias saepe petendo vobis illudere videretur, *vos testes mulieris habito consilio recepistis*; tandem *procurator* ad praesentiam vestram accedens, dixit, se respondere paratum; sed die statuto, quum crederetur responsurus libello, *de quo praemisimus*, restitutionem uxoris *ex parte viri* primo fieri postulavit, ne secus fieret appellando. Verum quia dicebat mulier, se virum habere suspectum, *tum quia in domo eius coacta fuerat se adulteratam cum pluribus confiteri, tum quia meretricem publice retinebat*, et idem procurator nec de mulieris impunitate cavere, nec vestro se curasset postmodum conspectui praesentare, vos testes mulieris *iterum* recipere studuistis, *et attestationibus publicatis diligenter audistis quae fuerunt ipsius nomine allegata. Quia vero, quum de ferenda sententia cum iuris prudentibus tractaretis, diversorum invenistis diversa consilia, quibusdam dicentibus appellationi simpliciter deferendum, aliis autem appellationi deferendum non esse; nonnullis etiam asserentibus, appellationem nullatenus tenuisse, quum mulier non sit viro restituenda suspecto, nisi, de impunitate sufficienti praestita cautione: vos in tanta varietate nos consulere voluistis, qualiter esset in hoc negotio procedendum? Nos igitur* Consultationi vestrae *de consilio fratrum nostrorum* taliter respondemus, quod, licet ordo iudiciarius in aliis controversiis sit servandus, et in matrimonialibus causis non usquequaque servetur, quia tamen in praesenti negotio non est actum de foedere matrimonii, sed de crimine adulterii, per quod ad separationem coniugii, non ad coniunctionem intenditur, quia lite non contestata testes fuerunt recepti, et attestationes etiam publicatae, sive deferendum sive non deferendum appellationi fuisset, non est ad diffinitivam sententiam procedendum.

> Potuit tamen praefatus R. propter suam contumaciam, vel etiam procuratoris, si sciens non purgavit eandem, excommunicationis sententia innodari. [*Dat. Perusii XV. Kal. Oct.* 1198.]

Chapter II

Latin source headnote: In a cause of restitution, sentence cannot be pronounced against a contumacious person before issue has been joined. This states the rule, comprehending every manner of summarizing it.

The same, to the Patriarch of Jerusalem and the Archbishop of Caesarea.

Approaching *our presence, our venerable brother the Bishop of Paphos presented to us letters of our venerable brothers the Bishops of Acre, Tiberias, and Beirut, containing the sentence which those bishops promulgated concerning the cause pending between our venerable brother the Archbishop of Tyre on one side and the plebanus of Saint Mark on the other. The aforesaid bishops asserted through their letters that, when they had undertaken by our mandate to terminate that cause, they summoned the parties to their presence. But the* [*aforesaid*] *plebanus was willing neither to receive their letters, in which the tenor of our mandate was expressed, nor to present himself before them; and, when cited a second time, although he had been willing to receive* [*neither their messenger*] *nor their letters, he appeared before them, alleging the causes of his earlier absence and, after inspecting the tenor of our letters and also petitioning for and receiving adjournments* [*from them*]*, departed with permission, promising that he would return to them on the appointed day.*

When the Archbishop of Tyre petitioned for the benefit of restitution in the presence of the delegated judges, the plebanus of Saint Mark of Venice, against whom he was proceeding, answered nothing to the objections but appealed to our hearing. And although he had frequently been admonished *by them* to obey the law, because his appeal did not hold—*since in our letters the obstacle of appeal had been closed to the parties, although he had been recalled to judgment through their messengers*—he nevertheless was unwilling to answer further or even to appear before them.

But the judges, *going to the city of Tyre*, when the *same* plebanus persisted in his contumacy, received the witnesses produced by the opposing party and, after the depositions had been reduced to writing, commanded the *plebanus* to approach them to object against the persons or statements of the witnesses. When he was unwilling to do this, they pronounced a sentence of excommunication against him, adjudged possession of the parochial right to the aforesaid archbishop, restored him in full *so far as lay in them*, and, *by authority of the Apostolic See*, strictly prohibited anyone from presuming to disturb the possession restored to the church of Tyre, *to contravene the apostolic institution, or to exercise parochial right at Tyre as plebanus of Saint Mark or as any other person.*

[*Moreover, they pronounced a sentence of excommunication against all those who thereafter consented to the subtraction of parochial right by that plebanus or furnished aid or assent to him in his malice, establishing the same against the plebani to be sustained (substituted?) for him thereafter. But our beloved sons, the noblemen Orso Badoer and Marino Giacomo, sent to us on behalf of the nobleman Enrico Dandolo, Doge of the Venetians, proposed in our presence that formerly, in the recovery of the eastern land, prelates of churches and secular princes granted to the Venetians by full right a third part of the city of Tyre, which they possessed for a long time without litigation. But after the death of those who had experienced in effect their fidelity, constancy, and aid in the recovery of that land, their successors, either ignorant of or ungrateful for the benefits conferred by the Venetians upon the Holy Land, improperly moved a question against them concerning the parochial right of the church of Saint Mark—which belongs by full right solely to the church of Saint Mark situated at Venice. But when the destruction of the western*

land supervened, they obtained letters from Clement and Celestine of good memory, our predecessors, that before the recovery of that land they should not in any way be compelled to answer anyone concerning this matter. Hence, when the said archbishop obtained letters of commission concerning it, the aforesaid plebanus, as one who held the judges suspect for certain reason—inasmuch as it was established that two of them were suffragans of the church of Tyre—and also because the letters themselves had been obtained by suppression of the truth, since no mention of the aforesaid letters was made in them, appealed to our hearing. But after an appeal had lawfully been interposed to us, the judges, before issue had been joined, pronounced a sentence of excommunication against him and all his accomplices and presumed to adjudge possession of the parochial right to the aforesaid archbishop and his church. But when he did not obey so unjust a sentence, the same archbishop despoiled his churches of their goods.]

Therefore, since *it was established to us by inspection of the sentence that* issue had not been joined before those judges; since *from the transcript of the letters which those predecessors of ours had granted to Venice* it was manifestly apparent that the letters had been obtained by suppression of the truth; since *it did not come into doubt but rather* was manifest that two of the aforesaid judges—namely, the Bishops of Acre and Beirut—were subject to that archbishop as suffragans to their metropolitan; and since from these things it was established that the *same* plebanus had lawfully appealed, even if he had appealed less than lawfully, although the judges perhaps could have pronounced a sentence of excommunication against him on account of contumacy, they nevertheless ought not to have pronounced definitive sentence concerning the principal business before issue had been joined. Therefore, *with the counsel of our brothers*, we quashed the aforesaid sentences *rendered by those judges*—or rather declared them quashed and void—*and we will that no prejudice be inflicted through them upon the church of Saint Mark or its supporters.*

Hence we commanded the [*said*] Archbishop of Tyre to restore to the *same* church of Saint Mark [*both*] the instruments and also everything which, on the occasion of a sentence of this kind, he had occupied personally or through others, *and not to impede the Venetian church from enjoying possession of its parochial right and other dignities as it had before the sentence was rendered.* [*Therefore, your fraternity, etc. Given at the Lateran, on the Nones of April, in the third year of our pontificate,* 1200.]

Textual note: The source prints *sustinedos (substituendos?)* in the bracketed passage concerning future plebani. The translation preserves both the printed form's apparent sense and the source's conjectural alternative.

> In causa restitutionis contra contumacem lite non contestata sententia proferrii non potest. Hoc dicit comprehendendo omnem modum summandi.
>
> Idem Hierosolymitano Patriarchae et Archiepiscopo Cassensi.
>
> Accedens *ad praesentiam nostram venerabilis frater noster Paphensis episcopus venerabilium fratrum nostrorum Acconensis, Tiberiadensis et Berytensis episcoporum nobis literas praesentavit, sententiam continentes, quam super causa, quae inter venerabilem fratrem nostrum Tyrensem archiepiscopum ex una parte, et plebanum sancti Marci ex altera vertebatur, iidem ipsi promulgarunt. Asserebant tamen episcopi memorati per suas literas, quod, quum causam ipsam de mandato nostro susceperint terminandam, partes ad suam praesentiam convocarunt. Sed plebanus* [*praedictus*] *nec eorum literas, in quibus mandati nostri tenor erat expressus, recipere voluit, nec eorum se conspectui praesentare, et secundo citatus, licet* [*nec eorum nuntium*], *nec literas eorum recipere voluisset, coram eis apparuit, prioris absentiae suae causis allegatis, et inspecto tenore literarum nostrarum, petitis etiam induciis et receptis *[*ab eis*], *licentiatus abscessit, se statuto die ad eos redire promittens*. Quum in iudicum delegatorum praesentia archiepiscopus Tirenensis restitutionis beneficium postularet, plebanus sancti

Marci de Venetiis, contra quem agebat, nihil ad obiecta respondit, sed ad nostram audientiam appellavit. Et licet saepe *per ipsos* fuisset admonitus, ut iuri pareret, quia eius appellatio non tenebat, *quum in literis nostris appellationis esset obstaculum partibus interclusum, licet per ipsorum nuncios ad iudicium fuerit revocatus*; noluit tamen respondere amplius, vel coram eis etiam comparere. Ipsi vero iudices *accedentes ad civitatem Tyrensem*, quum plebanus *ipse* in sua contumacia perduraret, testes receperunt ab adversa parte productos, et depositionibus redactis in scriptis mandaverunt eidem *plebano*, ut ad eos accederet in personas vel in dicta testium obiecturus. Quod quum facere noluisset, in ipsum excommunicationis sententiam protulerunt, possessionem iuris parochialis adiudicantes archiepiscopo memorato, et eum, *quantum in eis erat*, restituentes in integrum, *auctoritate sedis apostolicae* districtius vetuerunt, ne quis possessionem Tirenensi ecclesiae restitutam praesumeret perturbare, *vel institutioni apostolicae contraire, et ne plebanus S. Marci vel quilibet alius parochiale ius exerceret in Tyro.* [*Insuper in omnes illos excommunicationis sententiam protulerunt, qui plebano eidem in subtractione parochialis iuris consentirent in posterum, vel in sua malignitate praeberent auxilium vel assensum idem contra sustinedos (substituendos?) ei plebanos in posterum statuentes. Verum dilecti filii, nobiles viri, Ursus Badoarius et Marinus Iacobus, ad nos ex parte nobilis viri, Henrici Danduli, Ducis Venetorum transmissi, in nostra proposuerunt praesentia constituti, quod olim in recuperatione terrae orientalis ecclesiarum praelati et principes saeculares tertiam partem civitatis Tyrensis pleno iure Venetis consenserunt, quam ipsi possederunt longo tempore, sine lite. Ceterum decedentibus illis, quibus in recuperatione illius terrae ipsorum experti fuerant fidem, constantiam et auxilium in effectu, successores eorum vel ignari, vel ingrati beneficiorum terrae sacrae collatorum a Veneticis, super iure parochiali ecclesiae s. Marci, quae ad ecclesiam S. Marci Venetiis positam pleno iure solummodo pertinet, a paucis moverunt indebite quaestionem. Sed superveniente terrae occidentalis excidio, ipsi a bonae memoriae Clemente ac Coelestino, praedecessoribus nostris, literas impetraverunt, ne ante recuperationem terrae illius super hoc respondere cuiquam aliquatenus cogerentur. Unde, quum dictus archiepiscopus super hoc commissionis literas impetrasset, praedictus plebanus, tanquam qui iudices habebat ex certa ratione suspectos, utpote quorum duos suffraganeos ecclesiae Tyrensis esse constabat: tum quia literae ipsae per veri erant oppressionem obtentae, velut in quibus de praedictis literis mentio non fiebat, ad nostram audientiam appellavit. Sed iudices post appellationem ad nos legitime interpositam, lite non contestata in eum et omnes complices eius excommunicationis sententiam protulere, et possessionem iuris parochialis adiudicare praedicto archiepiscopo et eius ecclesiae praesumserunt. At quum ipse tam iniquae sententiae non pareret, idem archiepiscopus ecclesias eius bonis spoliavit.*] Quum igitur *nobis ex inspectione sententiae constitisset, quod* lis coram eisdem iudicibus non fuerit contestata, et *ex transscripto literarum, quas iidem praedecessores nostri concesserant Veneciis*, manifeste pateret, literas ipsas per veri suppressionem obtentas, quum *non veniret in dubium, sed potius* manifestum esset, duos praedictorum iudicum, Achoniensem videlicet et Beritensem episcopos, eidem archiepiscopo tanquam suffraganeos suo metropolitano subesse, ac ex his plebanum *ipsum* legitime appellasse constaret; in quem, etiamsi minus legitime appellasset, et iudices ipsi licet propter contumaciam excommunicationis forte potuerunt proferre sententiam, non tamen debuerunt super principali negotio diffinitivam sententiam lite non contestata proferre, praedictas *ab ipsis iudicibus latas de consilio fratrum nostrorum* cassavimus sententias, immo cassas denunciavimus et inanes, *et per eas nullum praeiudicium ecclesiae S. Marci vel eius favoribus volumus irrogari*. Unde [*dicto*] Tirenensi archiepiscopo dedimus in mandatis, ut *ipsi* ecclesiae S. Marci [*et*] instrumenta restituat, et etiam universa, quae huiusmodi occasione sententiae per se, vel per alios occupavit, *nec impediat, quo minus sicut ante latam sententiam Venetorum ecclesia parochialis iuris et aliarum dignitatum suarum possessione laetetur. *[*Ideoque frat. v. etc. Dat. Later. Non. April. A. III.* 1200.]

Chapter III

Latin source headnote: If, before issue has been joined, the defendant is contumacious, the claimant is placed, if possible, in possession for the sake of custody; otherwise the defendant will be excommunicated.

The same, to the Bishop of Brescia.

The devotion of your fraternity—(*And below:* [cf. c. 10, On One Who Has Known His Wife's Consanguine, IV.13.]) *You further consulted whether, if anyone cited by lawful peremptory citations is unwilling to appear, the judge ought to promulgate sentence against him before issue has been joined, so that, affected by weariness, he may at least present himself before the judge in order to appeal. To this* we have considered that your consultation should be answered in this way: if the defendant contumaciously absents himself before issue has been joined, and the cause is of such a kind that the claimant can be inducted into possession of the things sought, he is to be inducted into it for the sake of custody. But if the cause is of such a kind that he cannot be put into possession, the contumacious person *who absented himself contumaciously* is to be compelled through ecclesiastical censure to obey the law. [*Moreover, etc.* (cf. c. 20, On Prebends, III.5.) *Given at Rome, etc.,* 1206.]

> Si lite non contestata reus est contumax, si fieri potest, mittitur actor in possessionem causa custodiae; alias reus excommunicabitur.
>
> Idem Episcopo Brixiensi.
>
> Tuae fraternitatis devotio (*Et infra:* [*cf. c.* 10. *de eo, qui cogn. IV. *13.]) *Consuluisti praeterea, utrum si aliquis citatus legitimis peremptoriis comparere noluerit, iudex lite non contestata contra ipsum debeat sententiam promulgare, ut idem affectus taedio appellaturus saltem se iudicis conspectui repraesentet. Ad quod* Consultationi tuae taliter duximus respondendum, quod, si reus, lite non contestata se absentat contumaciter, talisque sit causa, quod actor possit in petitarum rerum possessionem induci, est in eandem causa custodiae inducendus. Quod si causa talis fuerit, quod idem in possessionem nequeat intromitti, ut iuri pareat *is, qui contumaciter se absentavit*, per censuram ecclesiasticam est contumax compellendus. [*Praeterea etc.* (*cf. c.* 20. *de praeb. III.* 5.) *Dat. Rom. etc.* 1206.]

Chapter IV

Latin source headnote: The reception of witnesses made against a person who is not contumacious before issue has been joined is null in a matrimonial cause.

The same, to the Abbots de Decima and Helemosio of the dioceses of Orléans and Chartres.

Approaching the Apostolic See, *our beloved son*, the nobleman G., Viscount of Benaicum, [*showed us with humble complaint that, when he had lawfully taken the noblewoman Eustachia as wife and had received two daughters from her, at last that noblewoman, at the persuasion of the enemy of the human race, withdrew from him. And when he could not obtain justice concerning this matter from our venerable brother the Bishop of Poitiers, his diocesan, at the petition of his messengers and of the same woman we considered that the cause pending between them concerning their marriage should be committed to our beloved sons the Abbot of Saint-Léger, the Dean of Saint Peter, and the Prior of Saint-Hilaire de la Celle at Poitiers. As they intimated to us through their letters, when it had been clearly established to them that the aforesaid E. had withdrawn by her own authority from her husband, by whom she had received two daughters, after taking the counsel of prudent men they decreed that the same E. ought to return to her husband, with full power reserved to her to accuse the marriage after her return if she wished. When she was unwilling to do this, they bound her by the chain of excommunication and subjected her land and household to ecclesiastical interdict.*]

[*But when we afterward commanded that sentence to be inviolably observed, as it had reasonably been rendered, until suitable satisfaction, at last the same E., at the suggestion of our venerable brother the Bishop of Angers and our beloved sons the Abbots de Granateria and de Bellofonte, obtained the delegation of that cause to our venerable*

brother the Bishop and our beloved son G., Archdeacon of Quimper, and Master P. de Buter, Canon of Angers, under this form: that, if it were established to them that the same woman, as the same bishop and abbots had written to us, had been unable on account of wars to approach the aforesaid judges at the place fixed for her, and that she had wished to give the opposing party safe conduct on the border of the bishoprics of Poitiers and Angers and to furnish most sufficient security that she would preserve them harmless, then, after revoking as void whatever they found rashly attempted to her prejudice after an appeal lawfully interposed to us, notwithstanding the aforesaid commission they should summon the parties before them and, after fully hearing and considering the arguments on each side, terminate the cause with a due end, appeal removed, causing what they decreed to be firmly observed through ecclesiastical censure.]

[*But they, as we perceived was contained in their letters, after assigning the parties a term at Vouvant and afterward at Luçon, received through letters and a proctor the excuse of the same viscount, who asserted that he did not dare approach those places because his enemies held dominion there and because of the danger of death. The opposing party and the barons who were present there answered him that they had sent that viscount letters of safe conduct, together with letters of the Viscount of Thouars, Seneschal of Poitou, through a messenger. The viscount's proctor replied that he did not dare approach a place suspect to him on account of letters, but petitioned that a safe place be assigned to him and that his wife be restored. He said that, if the judges were unwilling to do this, his lord was being aggrieved; on this account he had recourse to the remedy of appeal and afterward, although requested, was unwilling to answer before the judges, asserting that they were manifestly suspect, and renewed the appeal that had been made. But the judges, believing that the appeal was not lawful and afterward learning through witnesses that sentence had been rendered against the said woman after the appeal, declared that it did not hold at all.*]

[*At last, after a peremptory term had been assigned to the parties at Pouzauges, [...] the Dean of Tours, uncle of the same viscount, offered that he would come on his behalf if safe conduct were granted him, alleging nevertheless through letters causes of suspicion against the judges: namely, that the bishop was a blood relative of the nobleman G. de Thouars, Count of Brittany, who was involving himself excessively in that woman's cause, and was subject to the power of the same count; that the archdeacon was a cleric and table-companion of the same count; and that Master P. [...] de Buter originated from the woman's land. But the judges, after afterward assigning another peremptory term to the parties, received the woman's witnesses concerning the consanguinity and, after another term had been assigned to the parties at Malleonia, caused the attestations to be published, while the viscount excused himself through his letters.*]

[*Finally, when a term had been assigned to the parties for receiving sentence, and when the woman's messengers and [...] the Archdeacon of Tours, brother of the viscount, had been established in their presence, the woman's messengers petitioning for sentence and the archdeacon seeking a term on behalf of his brother, with the counsel of prudent men they assigned the parties a term on which they ought to proceed in the cause according to the order of law. But the woman's messengers, departing contumaciously, appealed on the following day to our hearing, saying that grievance was being inflicted upon their lady because the judges had not been present at Malleonia, where they had assigned the term for rendering sentence, and because they were assigning a place outside the province, although they themselves were from the province of Tours.*]

[*When the judges deferred to the appeal, the woman's messenger, approaching the Apostolic See, proposed that, although in that cause the aforesaid judges had several times cited the same viscount by peremptory process to suitable places and at lawful intervals, the aforesaid woman appearing, the same viscount was unwilling to come or send a sufficient representative. They therefore received the woman's witnesses and cited the viscount again by peremptory edicts to appear before them to speak against the witnesses or their testimony. But when he did not come*

or send a sufficient messenger, the attestations having been published by them and the parties cited to hear sentence, the same woman, the said viscount contumaciously absenting himself, petitioned that sentence be given to her; but although frequently requested, they were unwilling to proceed to it. On account of this the woman's party, feeling that grievance threatened her, appealed to our hearing.]

[*But we, believing that the same woman was laboring in favor of the marriage, considered that at the messenger's petition those judges should be enjoined to proceed lawfully in the same cause according to the attestations received and to terminate it with a due end, the obstacle of every contradiction and appeal having been removed. We nevertheless commanded our beloved sons [...] the Abbots de Granateria, [...] de Insula Calveti, and [...] de Alba Corona that, if the aforesaid judges were negligent or remiss in executing our mandate, they should not delay proceeding to definitive sentence in that business according to the attestations received by those judges, with the obstacle of appeal removed. But the said Viscount of Benaicum, established in our presence,*] set forth *a grave complaint before* us *against the said judges*: that, since the *said* Bishop of Quimper is connected in the nearest degree of blood relationship to the nobleman Guy de Thouars, Count of Brittany, and his archdeacon is a cleric and table-companion of that count—who is the viscount's principal adversary, inasmuch as he presumes publicly to detain his wife and land—and since Master P. *de Buter*, originating from his wife's land, is excessively favorable to her, and all are under the jurisdiction *and power of the same G.*, the aforesaid count, and no access lies open to them except through the count's district, the persons to whom the cause between him and his wife had been committed were never willing to assign him a place and term except in the land of his enemies, which he did not dare approach without danger of death; and although he did not have letters of safe conduct, even if they had been sent to him, he ought not to have entrusted himself to his mortal enemies.

[*Moreover, although we had considered that a certain form should be prescribed to them, after an appeal had lawfully been interposed to us, they abandoned the form which we had prescribed to them and, inquiring only into the appeal while passing over the order of law, when it had not been shown that the appeal was lawful or that anything had been rashly attempted, and when they had not inquired into the other chapters enjoined upon them, less than justly declared void the sentence rightly rendered against the woman.*] *And, presuming before issue had been joined to receive witnesses concerning the principal matter,* [*and rejecting his lawful exceptions, they omitted from their letters the greater part of his allegations, especially those which supported his cause, while setting forth on behalf of the opposing party many things that had not been alleged before them. Moreover, the opposing party, which had obtained the delegation of the cause to them by false suggestion, fraudulently intending through reprobate witnesses to weaken the viscount's justice under the pretext of a frivolous appeal, secretly obtained letters for those same men and the aforesaid Abbots de Granateria, de Insula Calveti, and [...] de Alba Corona concerning the rendering of sentence, while the viscount was on the road to the Apostolic See to prosecute his appeal.*]

[*Hence, since the fraud of his adversaries ought not to support them, and since it is established that after an appeal had lawfully been interposed to us the judges, as manifestly suspect, rashly proceeded in the cause contrary to the form of our mandate, the same viscount urgently petitioned that, after revoking as void whatever had been attempted to his prejudice by those judges or others after the appeal lawfully interposed to us, and after also revoking the letters which had been obtained by falsehood while he was coming to us, we deign to compel his wife through a sentence of excommunication and interdict of the land to return to him, compelling those who detained her and the land by the same severity to restore her and the land together with the fruits received from it, and that we cause the sentences to be published every Sunday and feast day throughout the provinces of Tours and Bordeaux and firmly observed until fitting satisfaction.*]

Therefore, since in matrimonial causes we ought to be more inclined toward joining than separating, lest perhaps man presume to separate what God has joined, through apostolic writings we command your discretion that, since, *as the same viscount asserts*, you are nearer to the land of the already-mentioned noblewoman than to his own, the cause can more conveniently be terminated through you, since safe access lies open to you. After summoning the parties on each side *and inquiring more diligently into the truth concerning the aforesaid matters*, if it is established to you that before issue was lawfully joined, or after the appeal interposed for the aforesaid causes, witnesses concerning consanguinity against the marriage were received without the fault of contumacy, you are to decree attestations of this kind null and void and, *appeal ceasing*, compel the said noblewoman through *ecclesiastical censure* to return to the husband whom she left without due consideration, *executing the apostolic mandate with the obstacle of every contradiction and appeal removed*, so that, after the husband has received full restitution of both wife and land, you hear the cause concerning the marriage and terminate it with a canonical end. [*As for contradictors, etc. Given at Rome, at Saint Peter's, on the thirteenth day before the Kalends of March,* 1205.]

Textual note: Several corrupt high-byte characters in the Latin Library transcription mark omitted personal names. The Friedberg-derived reference prints ellipsis points at these positions; they are preserved above as **[...]** rather than conjecturally supplied.

> Receptio testium facta contra non contumacem lite non contestata, in causa matrimoniali est nulla.
>
> Idem de Decima et Helemosio Abbatibus Aurelianensis et Carnotensis dioecesis.
>
> Accedens ad sedem apostolicam *dilectus filius* nobilis vir. G. vicecomes *Benaici *[*humili nobis conquestione monstravit, quod quum nobilem mulierem Eustachiam duxisset legitime in uxorem, et duas filias suscepisset ex ipsa, tandem ipsa nobilis suadente humani generis inimico divertit ab ipso. Quumque a venerabili fratre nostro Pictaviensi episcopo dioecesano suo non posset super hoc iustitiam obtinere, nos ad petitionem nunciorum ipsius et mulieris eiusdem causam, quae inter ipsos super eorum matrimonio vertebatur, dilectis filiis abbati S. Leodegarii, decano S. Petri et priori S. Hilarii de Cella Pictaviensibus duximus committendam, qui, sicut nobis suis literis intimaverunt, quum eis liquido constitisset, praefatam E. a viro suo, de quo duas susceperat filias, auctoritate propria divertisse, habito prudentum virorum consilio decreverunt, eandem E. ad virum suum debere reverti, reservata sibi accusandi matrimonium post reversionem suam, si vellet, plenaria potestate. Quod quum facere noluisset, excommunicationis eam vinculo adstrinxerunt, supponentes terram eius et familiam ecclesiastico interdicto. Verum quum sententiam ipsam praecepissemus postmodum, sicut rationabiliter lata erat, usque ad satisfactionem congruam inviolabiliter observari, tandem eadem E. ad suggestionem venerabilis fratris nostri Andegavensis episcopi et dilectorum filiorum de Granateria et de Bellofonte abbatum causam ipsam venerabili fratri nostro episcopo et dilecto filio G. archidiacono Corisopitensibus et magistro P. de Buter. canonico Andegavensi sub hac forma obtinuit delegari, ut, si eis constaret, quod eadem mulier, sicut nobis scripserant iidem episcopi et abbates, loco sibi praefixo nequiverit ad praedictos iudices accedere propter guerras, et quod in confinio Pictaviensis et Andegavensis episcopatuum securum adversae parti conductum dare voluerit, et praestare sufficientissimam cautionem, quod eos servaret indemnes, in irritum revocato quicquid in eius praeiudicium post appellationem ad nos legitime interpositam invenirent temere attentatum, non obstante commissione praedicta partes ante suam convocarent praesentiam, et rationibus hinc inde plenius auditis et cognitis causam appellatione remota fine debito terminarent, facientes quod decernerent per censuram ecclesiasticam firmiter observari. Ipsi vero, sicut in eorum literis perspeximus contineri, quum partibus apud Voventum, et postmodum apud Lucion. terminum assignassent, idem vicecomes, se per literas et procuratorem excusans, asseruit, quod ad loca illa, quum inimici eius ibidem haberent dominium, propter mortis periculum accedere non audebat, cui adversa pars et barones, qui ibidem aderant, responderunt, quod ipsi eidem vicecomiti literas de conductu cum literis vicecomitis Toarcii, Senescalli Pictaviae, per nuncium destinaverant, quibus procurator vicecomitis replicavit, quod propter literas ad suspectum sibi locum non audebat accedere, sed tutum locum assignari sibi et restitutionem uxoris fieri postulabat,*

quod si facere nollent iudices, dominum suum gravari dicebat, propter quod ad appellationis remedium convolavit, nec voluit postmodum, licet fuerit requisitus, coram ipsis iudicibus respondere, ipsos asserens manifeste suspectos, et innovavit appellationem emissam. Iudices autem credentes appellationem non esse legitimam, et per testes postmodum cognoscentes, quod sententia fuerat post appellationem in dictam mulierem prolata, eam denunciaverunt penitus non tenere. Tandem vero, apud Pozaugias peremptorio partibus assignato ... Turonensis Decanus, avunculus eiusdem vicecomitis, se obtulit pro ipso venturum, si securus eidem concederetur conductus, per literas nihilo minus contra iudices causas suspicionis allegans, videlicet, episcopum ipsum esse consanguineum, nobilis viri G. de Toarcio, comitis Britanniae, qui causae ipsius mulieris se nimium immiscebat, et ipsius comitis subditum potestati, archidiaconum vero clericum ipsius comitis commensalem, et magistrum P. ... de Buter. oriundum de terra mulieris ipsius. Iudices autem, postmodum alio peremptorio partibus assignato, super consanguinitate testes receperunt mulieris eiusdem, et alio termino apud Malleoniam partibus assignato, attestationes publicari fecerunt, vicecomite se per suas literas excusante. Ad ultimum vero, quum terminus ad recipiendam sententiam fuisset partibus assignatus, nunciis mulieris, et ... archidiacono Turonensi, fratre ipsius vicecomitis, in ipsorum praesentia constitutis, nunciis ipsius mulieris sententiam postulantibus, et ipso archidiacono pro fratre suo terminum requirente, de prudentum consilio terminum partibus assignarunt, quo deberent secundum iuris ordinem in causa procedi; sed nuncii mulieris, contumaciter recedentes, altera die nostram audientiam appellarunt, dicentes, dominae suae gravamen inferri eo, quod iudices non interfuerant apud Malleoniam, ubi terminum assignarant ad sententiam perferendam, et quia locum extra provinciam assignabant, quum ipsi essent de provincia Turonensi. Iudicibus autem appellationi deferentibus, nuncius mulieris ad apostolicam sedem accedens proposuit, quod, quum super causa ipsa iudices praelibati eundem vicecomitem ad praesentiam suam pluries peremptorio ad loca competentia et intervallis legitimis citavissent, nec idem vicecomes, muliere comparente praefata, venire voluerit vel sufficientem mittere responsalem, ipsi testes mulieris receperunt, vicecomitem ipsum iterato per peremptoria edicta citantes, ut coram ipsis dicturus contra testes vel dicta testium compareret. Sed, quum ipse non venerit, nec sufficientem nuncium destinarit, attestationibus publicatis ab ipsis, et partibus citatis ad sententiam audiendam, mulier eadem, dicto vicecomite se contumaciter absentante, sibi dari sententiam postulavit, ad quam procedere, licet requisiti saepius, noluerunt, propter quod pars mulieris, sibi sentiens imminere gravamen, ad nostram audientiam appellavit. Nos vero, credentes, quod eadem mulier pro matrimonio laboraret, eisdem ad petitionem nuncii duximus iniungendum, ut, in eadem causa secundum attestationes receptas legitime procedentes, ipsam, oblato cuiuslibet contradictionis et appellationis obstaculo, fine debito terminarent, dilectis filiis ... de Granateria ... de Insula Calveti, et ... de Alba corona abbatibus dantes nihilominus in mandatis, ut, si praefati iudices in exsecutione mandati nostri negligentes exsisterent vel remissi, ipsi secundum attestationes receptas ab ipsis in eodem negotio ad diffinitivam sententiam sublato appellationis obstaculo procedere non tardarent. Ceterum dictus vicecomes Benaici in nostra praesentia constitutus] *gravem coram* nobis exposuit *quaestionem contra dictos iudices*, quod, quum *dictus* Corisopitensis episcopus *nobilem virum Guidonem de Toarcio* comitem Britanniae proxima linea consanguinitatis attingat, et archidiaconus eius sit clericus commensalis, qui eidem vicecomiti est adversarius principalis, utpote qui uxorem suam et terram publice detinere praesumit, et magister P. *de Buter*, de terra uxoris suae oriundus, exsistat nimis favens eidem, et omnes sub districtu *et potestate ipsius G.* exsistant comitis memorati, nec nisi per districtum ipsius ei pateat accessus ad eos, et ipsi, quibus causa inter ipsum et uxorem suam commissa fuerat, nunquam ei voluerunt, nisi in terra inimicorum suorum, locum et terminum assignare, quo sine mortis periculo accedere non audebat, et, licet literas non habuerit de conductu, si tamen missae ei fuissent, non debebat se credere suis capitalibus inimicis. [*Insuper, quum eis certam formam duxerimus praefigendam, ipsi post appellationem legitime ad nos interpositam, relinquentes formam, quam praefixeramus eisdem, de appellatione tantummodo praetermisso iuris ordine inquirentes, quum non fuisset ostensum, ipsam esse legitimam, nec temere aliquid attentatum, nec de aliis iniunctis sibi capitulis inquisivissent, sententiam in ipsam mulierem rite latam minus iuste irritam nunciarunt,*] *et lite non contestata, testes super principali recipere praesumentes *[*et recusantes legitimas exceptiones illius, allegationes eius pro maiori parte, et maxime quae faciebant ad causam, in suis literis tacuerunt, pro adversa parte multa, quae coram eis allegata non fuerant, opponentes. Praeterea adversa pars, quae per falsi suggestionem ipsis causam obtinuerat delegari,*

fraudulenter intendens per testes reprobos ipsius vicecomitis iustitiam enervare sub frivolae appellationis praetextu, furtim ad eosdem, et praedictos de Granateria, de Insula Calveti et ... de Alba corona abbates super ferenda sententia literas impetravit, ipso vicecomite super prosequenda appellatione sua exsistente in itinere ad sedem apostolicam veniendi. Unde, quum fraus adversariorum suorum eis patrocinari non debeat, quumque constet iudices ipsos in causa post appellationem ad nos legitime interpositam praeter formam mandati nostri tanquam manifeste suspectos temere processisse, idem vicecomes petebat instanter, ut, revocato in irritum quicquid post appellationem ad nos legitime interpositam per ipsos iudices vel alios in eius praeiudicium fuerat attentatum, revocatis etiam literis, quae ipso veniente ad nos fuerant per mendacium impetratae, uxorem suam reverti ad ipsum per excommunicationis sententiam et interdictum terrae compellere dignaremur, detentores ipsius et terrae eadem districtione cogentes ipsam et terram restituere cum fructibus perceptis ex ipsa, et faceremus sententias singulis diebus dominicis et festivis per Turonensem et Burdegalensem provincias publicari, et firmiter observari usque ad satisfactionem condignam.] *Quum igitur in matrimonialibus causis non tam ad disiungendum, quam ad coniungendum debeamus exsistere proniores, ne forte quod Deus coniunxit homo separare praesumat, discretioni vestrae per apostolica scripta* Mandamus, quatenus, quum, *sicut idem asserit vicecomes*, propinquiores sitis terrae nobilis iam dictae, quam suae, et causa ipsa per vos commodius valeat terminari, quum ad vos securus pateat accessus, utrinque partibus convocatis *et inquisita super praemissis diligentius veritate* si vobis constiterit, quod ante litem legitime contestatam, vel post appellationem ex praemissis causis interpositam, testes super consanguinitate contra matrimonium absque culpa contumaciae recepti fuissent, vos attestationes huiusmiodi decernatis irritas et inanes, *appellatione cessante* compellentes *censura ecclesiastica* dictam nobilem, ut revertatur ad virum suum, quem inconsulte dimisit, *mandatum apostolicum sublato cuiuslibet contradictionis et appellationis obstaculo impleturi* ita, quod, postquam ipse vir plenariam restitutionem habuerit tam uxoris quam terrae, causam super matrimonio audiatis, eamque fine canonico terminetis. [*Contradictores etc. Dat. Rom. ap. S. Petr. XIII. Kal. Mart.* 1205.]

Chapter V

Latin source headnote: Before issue has been joined, witnesses are not regularly received concerning the principal matter. This rule fails in the cases noted here, namely when the death or long absence of the witnesses is feared. For then, with the solemnity set forth here observed, witnesses can be examined even before issue has been joined. This is what it says as far as § Moreover. When an action concerns carnal or spiritual marriage, witnesses can be received and definitive sentence rendered against a contumacious person even before issue has been joined. But if the defendant is absent, though not contumaciously, then in a carnal marriage no proceeding occurs, but the absentee is awaited. In a spiritual marriage, however, if the action concerns one already contracted, the ancient laws shall be followed; if one to be contracted, the absentee is awaited for six months. But concerning this last case, when the action concerns a marriage to be contracted, speak today as in the chapter *How Great* and the chapter *Desiring*, On Election, in the Sixth Book, where provision is made otherwise. This is what it says. § 5. For the perpetual memory of the matter, or when proceeding by way of inquiry, witnesses can be received without joinder of issue and even published. This is what it says as far as "But in other cases." § 6. If, before issue has been joined, the defendant is contumacious and a real action is brought, the claimant is placed in possession of the thing sought for the sake of custody. The defendant nevertheless recovers it if he comes within a year, provided that he offers security to stand to the law and restores the expenses; but after a year he is not heard without observing these requirements, except concerning ownership. But if one who possesses in another's name is sued by a real action, he shall name the owner in court, and a term will be established for him within which he shall cause the owner to appear. If the owner does not

come within the term, the judge will cite him; if he still does not come, the judge will place the claimant in true possession. But if a contumacious defendant is sued by a personal action, the claimant will be placed in possession of the defendant's goods according to the amount of the debt declared—first movable goods, and second immovable goods if no movables exist—or the defendant will be excommunicated. This is what it says to the end.

The same.

Because it is frequently called into doubt by many whether witnesses can be received before issue has been joined, we have considered that it should be declared by authority of the present writings to be regularly true that, before issue has been joined, no proceeding is to be had to the reception of witnesses, unless perhaps the death or long absence of the witnesses is feared. In these cases, when one is to proceed civilly, lest the truth be concealed and an abundance of proof be taken away by fortuitous events, the elderly, the infirm, and other witnesses concerning whom fear exists for some reasonable cause are without doubt to be admitted even before issue has been joined, whether the party sued is contumacious or is absent without malice so that he cannot be sued. But if the claimant does not sue the adversary within a year from the time when he can be sued, or at least does not announce to him a reception of witnesses of this kind, the attestations so received are not to be valid, lest perhaps he procure this by fraud so that, through the passage of time, lawful exceptions for excluding the witnesses, or others, cannot have a place.

§ 1. Moreover, special causes can occur in which something else is incidentally to be observed, as, for example, if a question is moved concerning someone's election or marital union. For then, lest a church suffer injury in spiritual and temporal things because of long delay, or an occasion of fornication be furnished to a man or woman—especially when a degree of kinship prohibited by divine law is objected—in cases of this kind, if *namely* the person against whom the action was to be directed appears contumacious, either because, after receiving a peremptory citation, he treats coming with contempt, or because he maliciously conceals himself, or because he impedes the citation from reaching him, witnesses are deservedly to be admitted before issue has been joined, and nevertheless, if the cause is clear, one is to proceed to definitive sentence.

§ 2. But if he is absent otherwise, and the action concerns a spiritual marriage already contracted between a prelate and a church—especially when the election has been confirmed—we will that what is defined in the sacred canons concerning awaiting such persons be observed in this article.

§ 3. But if perhaps the action concerns a spiritual marriage to be contracted, the person elected as prelate is to be awaited for the space of six months, unless, after weighing the circumstances of the business, he is to be awaited for more or less time by the superior's providence.

§ 4. But if an action concerning carnal marriage is to be brought, either spouse is to be awaited until his death is probably presumed. For since he is absent without fault—as if perhaps he is detained by captivity, illness, or another just impediment, or even stays in remote regions by his own but not malicious will, so that he cannot easily or quickly be cited—he ought not to be prejudiced, since perhaps he has lawful exceptions to destroy the opposing claim. It does not stand in the way that lapse of the flesh could be objected, since in marriage many cases occur in which spouses are compelled to remain continent without fault, although not without cause.

§ 5. There are also other similarly special cases, *which we remember having distinguished elsewhere*, in which witnesses can lawfully be produced without joinder of issue, as when an inquiry into excesses or publication of witnesses is imminently to be made.

§ 6. But in other cases one must prudently consider whether the contumacious person is sued by a real or personal action. If by a real action, the claimant is *certainly* to be placed in possession of the thing sought, so that the defendant, affected by weariness, may come to answer. If he comes within a year, let him recover possession after furnishing security to appear for judgment and exhibiting suitable satisfaction for expenses. But if he neglects to offer security within a year, after the year the claimant will be constituted the true possessor, with a lawful defense concerning ownership alone reserved to the opposing party.

§ 7. But if anyone is sued concerning immovable things which he possesses in another's name, he ought immediately to name the owner in court, within a certain space of days to be established by the judge, and bring this to the owner's knowledge so that, coming personally or directing a suitable representative, he may oppose the claimant's claim. But if, after the allotted time, he is unwilling to fulfill what has been arranged, as though the suit brought has been joined from the day on which the possessor was called to judgment for the purpose of interrupting prescription of long time, the judge shall summon the owner of the possession by three lawful edicts; and then, if he remains in the same will, after examining the business summarily, the judge shall not delay placing the claimant in possession of the things themselves, with every allegation concerning the principal question reserved to the absentee.

§ 8. But if he is sued by a personal action, either the claimant is to be placed in possession of the defendant's movable *goods*, or of his immovables if perhaps he has no movables, according to the amount of the debt declared, or an ecclesiastical sentence is to be pronounced against the contumacious person. The judge, namely, is to be content at the beginning with whichever penalty ought to be feared more, proceeding nevertheless to the other if the insolence of the contumacious person merits this. If he comes within a year, or even after a year, he will be heard according to the distinction noted above in the other case.

> Lite non contestata non recipiuntur testes regulariter super principali. Fallit in casibus hic annotatis, scilicet quum timetur de morte vel absentia diuturna testium. Tunc enim servata solennitate hic posita possunt etiam lite non contestata testes examinari. H. d. usque ad §. Porro. - Quum agitur de matrimonio carnali vel spirituali, possunt contra contumacem etiam lite non contestata testes recipi, et sententia diffinitiva ferri. Si vero reus est absens, sed non contumaciter, tunc in carnali non proceditur, sed exspectatur absens. In spirituali vero, si agatur de contracto, stabitur iuribus antiquis; si de contrahendo, exspectatur absens per sex menses. Sed de hoc ultimo, quando agitur de contrahendo, dic hodie ut in capit. Quam sit, et capit. Cupientes, de elect. in VI., ubi aliter est provisum. H. d. §. 5. Ad perpetuam rei memoriam, vel quum agitur per viam inquisitionis, possunt testes sine litis contestatione recipi et etiam publicari. H. d. usque ad In aliis vero. §. 6. Si reus lite non contestata est contumax, et agitur reali, mittitur actor in possessionem rei petitae causa custodiae; quam tamen recuperat reus veniens infra annum, si offerat cautionem de stando iuri, et restituat expensas; post annum vero his non servatis non auditur, nisi super proprietate. Sed si convenitur reali qui nomine alieno possidet, nominabit dominum in iudicio, et statuetur ei terminus, infra quem faciet dominum comparere. Qui si infra terminum non venerit, iudex illum citabit, quo adhuc non veniente iudex mittet actorem in possessionem veram. Si vero reus contumax convenitur actione personali, mittetur actor in

possessionen bonorum ipsius rei pro modo debiti declarati, et primo mobilium, secundo immobilium, si mobilia non exsistant; vel excommunicabitur reus. H. d. usque ad finem.

Idem.

Quoniam frequenter in dubium revocatur a multis, an, lite non contestata, testes recipi valeant, auctoritate praesentium duximus declarandum, regulariter verum esse, quod lite non contestata non est ad receptionem testium procedendum, nisi forte de morte testium timeatur vel absentia diuturna. In quibus casibus, quum civiliter est agendum, ne veritas occultetur, et probationis copia fortuitis casibus subtrahatur, senes, et valetudinarii, et alii testes, de quibus ex aliqua rationabili causa timetur, etiam lite non contestata sunt procul dubio admittendi, sive pars conventa sit contumax, sive sit absens absque malitia, ut conveniri non possit. Sed si actor non convenerit adversarium infra annum, ex quo conveniri poterit, vel saltem receptionem huiusmodi testium non denunciaverit illi, attestationes sic receptae non valeant, ne forte hoc procuret in fraudem, ut processu temporis exceptiones legitimae ad repellendum testes, vel aliae locum habere non possint. 1. Porro speciales causae possunt occurrere, in quibus casualiter est aliud observandum, ut, verbi gratia, si super alicuius electione vel copula maritali quaestio moveatur. Tunc etenim, ne propter longam moram in spiritualibus et temporalibus patiatur ecclesia laesionem, vel viro sive mulieri fornicationis occasio praebeatur, maxime quum propinquitatis gradus opponitur lege divina prohibitus, in huiusmodi casibus, si *videlicet* contumax apparuerit is, in quem fuit actio dirigenda, sive quia peremptoria citatione recepta venire contemnit, sive quia malitiose se ipsum occultat, sive quia impedit, ne possit ad eum citatio pervenire, testes lite non contestata sunt merito admittendi, et nihilominus, si de causa liqueat, ad diffinitivam sententiam procedendum. 2. Si vero aliter absens fuerit, et agatur de spirituali coniugio inter praelatum et ecclesiam iam contracto, electione maxime confirmata, illud in hoc articulo volumus observari, quod super exspectatione talium personarum in sacris est canonibus diffinitum. 3. Quod si forsan agatur de spirituali coniugio contrahendo, is, qui est in praelatum electus, per spatium sex mensium exspectetur, nisi pensatis negotii circumstantiis per superioris providentiam magis vel minus fuerit exspectandus. 4. Si autem de carnali coniugio sit agendum, tam diu alteruter coniugum exspectetur, donec de ipsius obitu verisimiliter praesumatur, quia, quum sine culpa sit absens, ut, si captivitate, vel aegritudine, aut alio iusto impedimento forsitan teneatur, aut etiam [*ex*] propria, sed non malitiosa voluntate, in remotis partibus moram faciat, ut de facili vel in brevi citari non possit, ei quidem praeiudicari non debet, quum habeat forsan exceptiones legitimas ad intentionem contrariam elidendam, eo nequaquam obstante, quod de lapsu carnis posset opponi, quoniam in coniugio multi casus occurrunt, in quibus coniuges sine culpa, sed non sine causa continere coguntur. 5. Sunt et alii casus similiter speciales, *quos alibi nos meminimus distinxisse*, in quibus absque litis contestatione legitime possunt testes produci, ut quando excessuum inquisitio vel testium publicatio imminet facienda. 6. In aliis vero casibus prudenter est attendendum, utrum contumax actione reali, an personali conveniatur. Si reali, mittendus est *utique* actor in rei petitae possessionem, ut taedio affectus reus veniat responsurus. Qui si venerit infra annum, iudicio sisti praestita cautione, ac exhibita satisfactione congrua expensarum, possessionem recuperet. Quodsi cautionem offerre neglexerit infra annum, actor post annum verus constituetur possessor, super proprietate duntaxat adversae parti defensione legitima reservata. 7. Quodsi super rebus immobilibus quisquam conveniatur, qui eas possidet nomine alieno, debet statim in iudicio dominum nominare, certo dierum spatio a iudice statuendo, eoque ad eius notitiam perducendo, ut vel ipse veniens, vel idoneum dirigens responsalem actoris intentionem excipiat. Si vero post tempus indultum quod dispositum est noluerit adimplere, tanquam lite, quae ingeritur, ex eo die, quo possessor ad iudicium vocatus est, ad interrumpendam praescriptionem longi temporis contestata, dominum possessionis iudex tribus edictis legitimis evocabit, et tunc ipso in eadem voluntate manente negotium summatim examinans, in possessionem ipsarum rerum actorem mittere non tardabit, omni allegatione absenti

super principali quaestione reservata. 8. Si autem super personali actione conveniatur, vel mittendus est actor in possessionem mobilium *bonorum* ipsius, vel immobilium, si forte mobilia non habeat, pro modo debiti declarati, vel in contumacem est ecclesiastica sententia proferenda, ita videlicet, quod alterutra poena, quae magis timeri debeat, iudex a principio sit contentus; ad alteram nihilommus processurus, si hoc meruerit protervitas contumacis, qui veniens infra annum vel post annum etiam audietur iuxta distinctionem in alio casu superius annotatam.

Title VII: On the Oath against Calumny

Chapter I

Latin source headnote: A cleric can commit the oath against calumny to another in a cause of his church, and is not compelled to swear personally, nor ought he to do so without his superior's permission.

Honorius III.

Adhering to the footsteps of our predecessors, who say that graver questions are to be terminated by the Supreme Pontiff, *after diligently seeking the counsel of our brothers, with God's help we decide the form of this cause irrefragably.* We therefore find it provided in the laws that no cleric is to presume to swear. Elsewhere, however, it is found written that all principal parties are to undergo the oath against calumny at the first beginning of the suit, on account of which it comes into doubt for many whether a cleric ought to furnish the oath or whether it is lawful to delegate this office to *another person*.

But because that constitutional edict in which clerics are prohibited from swearing appears to have been promulgated concerning the clerics of Constantinople by Marcus Augustus *to Constantine, the praetorian prefect*, it is therefore not believed to pertain to others. Therefore, so that this doubt may be *entirely* removed from all, according also to the decision of our son H., formerly emperor, *made, as we have learned, at Rimini on the third day before the Nones of April, as is contained there*, whose words are these: "We therefore confirm its interpretation and decree that the constitution of the divine Marcus ought to be interpreted in such a way that it is judged generally to pertain to the clerics of all churches. For since Emperor Justinian decreed *by law* that the canons of the Fathers ought to have the force of laws, and since in certain canons of the Fathers it is found that clerics are altogether not to dare to swear, it is fitting that the whole clerical order be immune from furnishing the oath against calumny."

Moreover, the tenor of the prince's statute *in our possession* is known to be this: "Therefore we, with the intention of *both* divine and human law preserved, decree and irretractably define by imperial authority that no bishop, no priest, no cleric of any order, no abbot, no monk, or religious woman is for any reason to be compelled to undergo an oath in any cause or controversy, whether criminal or civil; but if he knows that it is expedient for his church, let it be lawful to delegate an office of this kind to other suitable defenders—yet with this qualification, that a bishop is by no means to dare to swear without consulting the Roman Pontiff, nor any cleric without consulting his prelate."

We command all bishops, *all priests generally*, and the entire clergy that these provisions ought thus to be observed, so that, if anyone acts against that constitution, he may know that pardon will thereafter be denied him, *and so that they do not take as an example or form from us what we recently did in the cause of our brothers and fellow bishops of the churches of Arezzo and Siena, when we assented to their will and petition.*

DE IURAMENTO CALUMNIAE.

Clericus in causa ecclesiae suae iuramentum calumniae potest alteri committere, et per se iurare non cogitur, nec debet sine superioris licentia.

Honorius III.

Inhaerentes vestigiis praedecessorum nostrorum, dicentium, graviores quaestiones per summum Pontificem terminari, *nostrorum fratrum consilio diligenter inquisito, huius causae speciem irrefragabiliter Deo opitulante decidimus*. Legibus itaque comperimus esse cautum, ut nullus clericus iurare praesumat. Alibi vero reperitur scriptum, ut omnes principales personae in primo litis exordio subeant calumniae iuramentum, propter quod plerisque venit in dubium, atrum clericus iusiurandum praestare debeat, aut alii *personae liceat* hoc officium delegare. Quia vero illud constitutionis edictum, ubi clerici iurare prohibentur, a Marco Augusto *Constantino praefecto praetorio* de Constantinopolitanis clericis promulgatum fuisse videtur, idcirco ad alios non creditur pertinere. Ut ergo dubietas ista *omnibus penitus* auferatur, secundum etiam decisionem filii nostri H. quondam imperatoris, *ut accepimus, Arimino factam tertio Nonas Apriles, sicut ibi continetur*, cuius sunt verba haec: Eius itaque interpretationem corroboramus, et divi Marci constitutionem ita interpretari debere decernimus, ut ad omnium ecclesiarum clericos generaliter pertinere iudicetur. Nam quum imperator Iustinianus *iure* decreverit ut canones Patrum vim legum habere oporteat, et in nonnullis Patrum canonibus reperiatur, ut clerici omnino iurare non audeant, dignum est, ut totus clericalis ordo a iuramento calumniae praestando sit immunis. Praeterea statuti principis tenor *penes nos* talis esse dignoscitur: Nos itaque, *utriusque* divinae et humanae legis intentione servata, decernimus et imperiali auctoritate irretractabiliter diffinimus, ut non episcopus, non presbyter, non cuiuscunque ordinis clericus, non abbas, non aliquis monachus, vel sanctimonialis, in quacunque causa sive controversia, seu criminali sive civili, iusiurandum compellatur qualibet ratione subire, sed aliis idoneis defensoribus, si expedire ecclesiae suae noverit, huiusmodi officium liceat delegare, verum cum hac moderatione, ut episcopus, inconsulto Romano Pontifice, vel quisque clericus inconsulto praelato suo minime iurare audeat. Omnibus autem episcopis, *ac cunctis generaliter sacerdotibus*, et universo clero haec ita custodiri debere mandamus, ut, si quis in illam constitutionem commiserit, veniam sibi deinceps noverit denegari, *non sumentes exemplum, seu formam a nobis, quod in causa nostrorum fratrum et coepiscoporum Aretinae et Senensis ecclesiae nuper fecimus, quando eorum voluntati et postulationi annuimus.*

Chapter II

Latin source headnote: In spiritual causes the oath against calumny is not sworn.

The same, to Ordinator, Subdeacon of the Roman Church, and Master Omnibonus.

We *kindly received the letters of your kindness, in which you asked whether it is fitting that the oath against calumny be furnished in the cause conducted under your examination between our venerable brother G., Bishop of Bologna, and our beloved son Aldric, Abbot of Padua.* Certainly, in those cases in which an action concerns only churches, tithes, and spiritual things, the Roman Church is accustomed neither to give nor receive the oath against calumny, because such causes obtain their due end not from the strictness of the laws but from the equity of the canons; and the canons impose the oath against calumny upon no one at all in causes of this kind. Hence, the contention about furnishing the oath against calumny having been set aside, let your discretion proceed to further matters.

In spiritualibus causis de calumnia non iuratur.

Idem Ordinatori Romanae ecclesiae Subdiacono et Magistro Omnibono.

Literas *benignitatis vestrae benigne recepimus, in quibus, utrum in causa, quae inter venerabilem fratrem nostrum G. Bononiensem episcopum, et dilectum filium nostrum Aldricum Paduansum abbatem sub vestro examine agitatur, iuramentum calumniae praestari conveniat, requisistis*. Sane Romana ecclesia in his casibus, in quibus de ecclesiis, decimis et rebus spiritualibus tantum agitur, iuramentum calumniae nec dare, nec recipere consuevit eo, quod tales causae non ex legum districtione, sed ex canonum aequitate finem debitum sortiuntur, canones autem iuramentum calumniae in huiusmodi causis nulli prorsus indicunt. Unde, contentione de iuramento calumniae praestando dimissa, ad ulteriora discretio vestra procedat.

Chapter III

Latin source headnote: A principal party is not indiscriminately relieved from the burden of swearing the oath against calumny, although he appears through an oeconomus; rather, after inspection of the quality of the cause and persons, it is to be tendered to him or to the oeconomus. This is what it says.

Pope Eugene.

In handling causes we do not command that the oath against calumny be exhibited indiscriminately, but, *when we permit it to be done and* after *diligent* inspection of the quality of the cause and of the principal parties, we command it to be furnished sometimes by the principal parties themselves and sometimes by the oeconomi *granted to them*, who are not altogether ignorant of the cause, upon the soul of the person swearing. *Therefore, so that the cause conducted between the Abbey of the Holy Trinity and the church of Ripoll may, by the Lord's authorship, obtain its due end without delay, by authority of the present writings we command that, as shall appear to you more salutary and suitable, you terminate the cause itself as justice dictates, with appeal removed. We also add that the monastery of the Holy Trinity is in no way to be deprived of its right on account of the injury which, while the Abbot of the Holy Trinity was ignorant, we have heard was inflicted upon the Abbot of Ripoll, if justice is otherwise known to favor it.*

Principalis persona non indistincte relevatur ab onere iurandi de calumnia, licet compareat per oeconomum; sed sibi vel oeconomo est deferendum, inspecta qualitate causae et personarum. H. d.

Eugenius Papa.

In pertractandis causis sacramentum calumniae non passim praecipimus exhiberi, sed *quum fieri sinimus et* causae et principalium personarum qualitate *diligenter* inspecta, quandoque per ipsas principales personas, quandoque per oeconomos *sibi indultos*, qui causam omnino non nesciant, in animam iurantis illud praecipimus praestari. *Ut igitur causa, quae inter abbatiam S. Trinitatis et Ripulensem ecclesiam agitatur, sine dilatione finem debitum, auctore Domino sortiatur, praesentium vobis auctoritate mandamus, quatenus sicut salubrius et competentius vobis visum fuerit, causam ipsam, appellatione remota, dictante iustitia terminetis. Adiicimus etiam ut propter iniuriam quam ignorante abbate S. Trinitatis, Ripulensi abbati audivimus illatam, si alias ei iustitiam favere dignoscitur, monasterium S. Trinitatis nullatenus suo iure privetur.*

Chapter IV

Latin source headnote: A corporation is bound to swear the oath against calumny unless it relieves itself by appointing an oeconomus.

The same, to the Bishops of Maguelone and Nîmes.

The *laws of secular emperors and the ecclesiastical constitutions of the holy Fathers protect and defend religious men in the service of almighty God and do not permit any molestation or disturbance contrary to holy order to be inflicted*

upon them. We have *however* learned that the oath against calumny is required from the Abbot and Brothers of Clairvaux as it is from others—*although this is uncustomary among the brothers of that order*—and *we cannot and* ought not compel them to furnish it.

§ 1. But lest they appear on an occasion of this kind unlawfully to retain the rights of others, and lest they fall from their cause if the aforesaid oath has not been furnished on their behalf when the matter demands it, we command them to appoint in their monastery, *as the imperial laws permit*, an oeconomus who can claim and except on their behalf and, when necessary, exhibit the oath against calumny. *Therefore, through the present writings we command your fraternity that you instruct the same brothers who are in this cause more fully, as reason requires, so that they cannot thereafter lose their rights on this account and ought, so far as justice permits, to satisfy others in such causes.*

§ 2. But you, brother Bishop of Nîmes, are to appoint a suitable oeconomus who appears fitting for that monastery in such an office.

> Universitas tenetur iurare de calumnia, nisi relevet se constituendo oeconomum.
>
> Idem Magalonensi et R. Neumausensi Episcopis.
>
> Imperatorum *saecularium leges et sanctorum Patrum ecclesiasticae constitutiones viros religiosos in omnipotentis Dei servitio protegunt et defendunt, et nullam eis molestiam vel turbationem, quae sacro ordini contradicat, irrogari permittunt*. Accepimus *autem*, quod ab abbate et fratribus Clarevallis, sicut ab aliis, exigitur calumniae iuramentum, *quod quidem inter fratres eiusdem ordinis inusitatum est, et* ad quod faciendum *nos* eos cogere non *possumus nec* debemus. 1. Sed ne aliena iura videantur huiusmodi occasione illicite detinere, et ipsi a causa sua decidant, si ex parte ipsorum praedictum iuramentum, quum res postulaverit, non fuerit praestitum, eisdem praecipimus, ut in suo monasterio, *sicut imperiales leges consentiunt*, oeconomum statuant, qui pro eis petere et excipere, atque iuramentum de calumnia, quum necesse fuerit, valeat exhibere. *Ideoque per praesentia scripta fraternitati vestrae mandamus, quatenus eosdem fratres, qui in ista causa sunt, sicut ratio exigit, plenius instruatis, ut de cetero sua iura propter hoc non possint amittere, et aliis, quantum iustitia permittit, in talibus causis debeant satisfacere*. 2. Tu vero, frater Neumausensis episcope, oeconomum idoneum statuas, qui in tali officio conveniens ipsi monasterio videatur.

Chapter V

Latin source headnote: Clerics also swear the oath against calumny in their causes, notwithstanding a contrary custom.

Lucius III, to the Bishop of Ely and the Archdeacon of Norwich.

Furthermore, because it is fitting that new antidotes be prepared for new diseases, *we will and* command that, in the cause *concerning suretyship* pending between R., cleric of Saint Albans, and I. and F., Canons of London, in order to elicit the truth you cause the oath against calumny to be furnished by both parties, appeal ceasing, notwithstanding the custom which is contrary to law. [*Given at Rome, at Saint Peter's, on the fifth day before the Ides of December.*]

> Clerici etiam in eorum causis iurant de calumnia, contraria consuetudine non obstante.
>
> Lucius III. Heliensi Episcopo et Archidiacono Norvicensi.
>
> Ceterum, quia novis morbis nova convenit antidota praeparari, *volumus et* mandamus, quatenus in causa *fideiussionis*, quae inter R. clericum de sancto Albano, et I. et F. canonicos Londonenses vertitur, ad veritatem eliciendam appellatione cessante praestari faciatis ab utraque parte calumniae iuramentum, consuetudine, quae legi contraria est, non obstante. [*Dat. Rom. ap. S. Petr. V. Id. Dec.*]

Chapter VI

Latin source headnote: The proctor or syndic of an ecclesiastical or secular corporation can swear the oath against calumny. This is what it says.

Innocent III, to the Bishop of Piacenza.

When we considered that the cause pending between *our venerable brother* the Archbishop of Ravenna and the commune of Faenza concerning the village of Lugo and certain other matters should be committed to delegated judges, and those judges had not proceeded in the business, we commanded the parties to present themselves before us for that cause. When their proctors, with instruments of ratification, had been established in our presence, *and when there had been argument for some time in our presence concerning joinder of issue, the reception of certain witnesses, and many exceptions, we at last* caused the petition of the archbishop to be exhibited through his proctor and the other party to answer it; and, after the interrogations and answers had been reduced to writing and issue had been most fully joined before us, we caused the oath against calumny to be furnished by the proctors themselves on each side. [*But because, etc.* (cf. c. 37, On Witnesses, II.20.) *Given at Ferentino, on the tenth day before the Kalends of July, in the ninth year of our pontificate,* 1206.]

> Procurator vel syndicus universitatis ecclesiasticae vel saecularis de calumnia iurare potest. H. d.
>
> Innocentius III. Episcopo Placentino.
>
> Quum causam, quae inter *venerabilem fratrem nostrum* Ravennatensem archiepiscopum et commune Faventinum super villa Luci ac quibusdam aliis vertitur, delegatis iudicibus duxerimus committendam, et iidem in negotio minime processissent, nos partibus dedimus in mandatis, ut pro ipsa causa nostro se conspectui praesentarent. Quorum procuratoribus cum instrumentis de rato in nostra praesentia constitutis, *quum aliquamdiu super litis contestatione, receptione quorundam testium et multis exceptionibus fuisset in nostra praesentia disputatum, nos tandem* petitionem ipsius archiepiscopi per procuratorem eius fecimus exhiberi et ad eam partem alteram respondere, ac, interrogationibus et responsionibus redactis in scriptis et lite coram nobis plenissime contestata, fecimus calumniae iuramentum ab ipsis procuratoribus utrinque praestari. [*Quia vero etc.* (*cf. c.* 37. *de test. II.* 20.) *Dat. Ferentini X. Kal. Iul. Ao. IX. *1206.]

Chapter VII

Latin source headnote: A bishop swears the oath against calumny if he personally chooses to litigate, with the Gospels merely set before him but not touched. But if he litigates through a syndic, he will be able to swear through him. This is what it says. § 1. A claimant who refuses the oath against calumny without cause ought to fall from the action instituted; the defendant, however, ought to be held as having confessed. This is what it says.

Gregory IX, to the Bishop of Beauvais.

Since in the pecuniary cause which you propose has been moved between you and R. you have chosen to litigate not personally but through a syndic or representative, the oath against calumny will indeed have to be furnished through him. But if you litigate personally, it appears that an oath of this kind is to be exhibited by you with the Gospels merely set before you but not touched, as when giving testimony. (*And below:*)

§ 1. The penalty for one refusing this oath when it is to be furnished is that the claimant falls from the action instituted, while the defendant ought to be held as having confessed.

> Episcopus iurat de calumnia, si per se ipsum elegit litigare, propositis tantum, non tactis evangeliis. Si vero per syndicum litigat, per illum poterit iurare. H. d. §. 1. Actor refutando iuramentum calumniae sine causa, cadere debet ab instituta actione; reus autem debet haberi pro confesso. Hoc dicit.
>
> Gregorius IX. Episcopo Belvacensi.
>
> Quum in causa pecuniaria, quam inter te et R. motam esse proponis, non per te, sed per syndicum vel actorem elegeris litigare, per illum quidem praestandum erit calumniae iuramentum. Quod si per te ipsum, propositis tantum, sed non tactis evangeliis, sicut in dicendo testimonio, a te videtur huiusmodi iuramentum exihibendum, (*Et infra:*) 1. Poena vero recusantis hoc iuramentum, quum praestandum fuerit, est, ut actor ab instituta cadat actione, reus autem haberi debeat pro confesso.

Title VIII: On Delays

Chapter I

Latin source headnote: Summarize thus, lest it appear to belong under the rubric on appeals: a citation that is both summons and peremptory ought not to be excessively brief, especially where ecclesiastical things are concerned, unless necessity suggests otherwise.

Alexander III, to the Bishops of Canterbury and Worcester.

Our beloved sons, the Abbot and Monks of H., took care to intimate to us that, when we committed to the Dean and Archdeacon of Lincoln for termination the cause pending between them and the nuns of Leden. concerning the church of Alten., they, fearing that they would be aggrieved by the *aforesaid* judges because at the first citation they established for them an excessively brief and peremptory term, appealed to our hearing; *the judges nevertheless adjudged the aforesaid church to the aforesaid nuns*. (*And below:*) But because it does not belong to the order of law to hasten a peremptory day in such a way, *especially* when ecclesiastical things are concerned, unless perhaps necessity presses, *nor to promulgate sentence in such a way against those who contumaciously absent themselves—except that the opposing party be placed in possession, so that, affected by weariness, they may thus be compelled to stand in judgment—through apostolic writings we command your fraternity, by way of precept,* that, if it is so, after revoking as void whatever you find attempted after an appeal of this kind, you proceed in the cause according to the tenor of the earlier letters.

> **DE DILATIONIBUS.**
>
> Summa sic, ne videatur convenire rubricae de appellationibus: Citatio vocatoria cum peremptoria non debet esse nimis brevis, maxime ubi de rebus ecclesiasticis agitur; nisi necessitas aliud suggerat.
>
> Alexander III. Cantuariensi et Vigoriensi Episcopis.
>
> Dilecti filii *nostri*, abbas et monachi de H. nobis insinuare curarunt, quod, quum causam, quae vertitur inter ipsos et moniales de Leden., super ecclesia de Alten., decano et archidiacono Linconensibus commiserimus terminandam, ipsi timentes, se a *praedictis* iudicibus aggravari, eo, quod ad primam citationem terminum sibi nimis brevem et peremptorium statuerunt, ad nostram audientiam duxerunt appellandum; *ipsi nihilominus praedictam ecclesiam praefatis monialibus adiudicaverunt* (*et infra*). Quia vero non spectat ad iuris ordinem, diem peremptorium, *et* maxime, quum de rebus ecclesiasticis agitur, nisi forte necessitate urgente, taliter maturare, *nec etiam in eos, qui se contumaciter absentant, sententiam taliter*

> *promulgare, nisi ut pars adversa in possessionem mittatur, ut sic taedio affecti iudicio stare cogantur, fraternitati vestrae per apostolica scripta praecipiendo* mandamus quatenus, si est ita, revocato in irritum, si quid inveneritis post appellationem huiusmodi attentatum, in causa iuxta priorum tenorem literarum procedatis.

Chapter II

Latin source headnote: Deliberative adjournments are denied to a defendant if through the letters of citation he could have been fully instructed and could have deliberated concerning the matter in question.

Celestine III.

Furthermore, *in your petition* you added that, when causes are delegated to you by the Apostolic See, you insert the apostolic rescript in the letters of citation so that, after seeing it, the one sued by another may be able to deliberate. *And when he comes not at the first and second canonical citation but only at the third, peremptory one—although the claimant comes at all the citations—and the claimant proposes his claim in court, the defendant, intent upon vexing him, then for the first time seeks deliberative adjournments, although the claimant offers him the authentic instrument so that he may compare it with the rescript which he received at the first citation, asserting also that during so long a span of citations he could, if he wished, have had time for full deliberation.*

§ 1. Therefore, because you desire to be instructed about what is to be done in this case, we answer you in this way: when the defendant has been lawfully summoned to judgment *in the aforesaid manner*, if from the rescript transmitted to him he could have been fully instructed concerning the matter about which he is sued in judgment, deliberative adjournments are not [*further*] to be granted to him, but one is rather to proceed to examination of the cause and impose its due end. [*Given at the Lateran, in the third year of our pontificate,* 1193.]

> Induciae deliberatoriae denegantur reo, si per literas citatorias plene potuit instrui, et deliberare super eo, de quo quaeritur.
>
> Coelestinus III.
>
> Praeterea *in tuo petitorio* adiecisti, quod, quum causae tibi a sede apostolica delegantur, in literis citatoriis rescriptum apostolicum inseris, ut, eo viso, deliberare valeat qui ab altero convenitur; *quumque non ad primam et secundam cononicam citationem, sed ad tertiam peremtoriam tantummodo veniat, actore ad omnes citationes veniente, et ipse actor intentionem suam in iure proponat, reus vexationi eius intendens, tunc primo deliberatorias requirit inducias, quum actor eidem authenticum offerat, ut conferat cum rescripto, quod in prima citatione recepit, asserens etiam, quod tam longo citationum spatio, si voluerit, plenae deliberationis tempus potuit habere. *§. 1. Quia igitur, quid agendum sit in hoc casu desideras edoceri, taliter tibi respondemus, quod, *praedicto modo* reo ad iudicium legitime convocato, si ex rescripto sibi transmisso plene potuit instrui super eo, de quo in iudicio convenitur, induciae deliberatoriae [*sibi*] non sunt ulterius indulgendae, sed procedendum potius est ad examinationem causae, et finem et debitum imponendum. [*Dat. Lat. Ao. III. *1193.]

Chapter III

Latin source headnote: From the clarification of a general or ambiguous word placed in a complaint, new deliberative adjournments are not to be given if, from the things expressed, the defendant could deliberate concerning that ambiguity or generality. This is what it says.

Honorius III, to the Bishop of Ferentino.

Your letters and the petition of *our beloved son*, the priest of Saints Prisca and Aquila in the City, exhibited to us contained that, *when we had considered that the cause pending between the same archpriest on one side and the noblemen Andrew of Alatri and G., and their brothers and sons, on the other, concerning certain possessions and other things, should be committed to you*, the same priest offered against the noblemen A. and G., in the name of his church, a complaint containing that the pension from the *said* possessions had not been paid to that church, three years and more having now elapsed.

But when those noblemen petitioned that he explain to them the span which he intended to signify by this addition, "and more," and the priest expressed that payment of the said pension had ceased for seven years, the same *noblemen*, saying that the complaint had been changed by an expression of this kind, sought longer adjournments for deliberating. Because you denied these to them, they appealed to our hearing. Therefore, considering an appeal of this kind frivolous, we command *your fraternity* that, notwithstanding it entirely, you proceed in the business itself, reason leading the way, according to the contents of the earlier letters.

> Ex declaratione verbi generalis vel ambigui positi in libello novae induciae deliberatoriae dandae non sunt, si per expressa potuit reus deliberare super ambiguitate illa vel generalitate. H. d.
>
> Honorius III. Ferentino Episcopo.
>
> Literae tuae ac petitio *dilecti filii* presbyteri sanctarum Priscae et Aquilae de Urbe nobis exhibitae continebant, *quod, quum causam, quae inter ipsum archipresbyterum ex una parte, et nobiles viros Andream Alatrinum et G. ac fratres et filios eorum ex altera super quibusdam possessionibus et rebus aliis vertitur, tibi duximus committendam*, Idem presbyter contra nobiles viros A. et G. libellum ecclesiae suae nomine obtulit, continentem, quod pensio de *dictis* possessionibus soluta non fuerat ipsi ecclesiae, elapsis iam tribus annis et ultra. Nobilibus vero ipsis petentibus, ut explicaret ipsis spatium, quod per hanc adiectionem: et ultra, significari volebat, et ipso presbytero exprimente, quod septem annis fuerat in dictae pensionis solutione cessatum, *et* iidem *nobiles* dicentes, libellum esse huiusmodi expressione mutatum, longiores ad deliberandum petierunt inducias. Quas quia denegasti eisdem, ad nostam audientiam appellaverunt. Nos igitur appellationem huiusmodi frivolam reputantes, *fraternitati tuae* mandamus, quatenus, ea nequaquam obstante, in negotio ipso ratione praevia procedas iuxta priorum continentiam literarum.

Chapter IV

Latin source headnote: If a person cited in an arduous cause is summoned from afar for the public utility, even to the place of judgment, in such a way that within the term of citation he could not deliberate and arrange the other things necessary for appearing, he is not compelled to answer at the term if he is found at the place of judgment, but will have new adjournments. This is what it says notably.

Gregory IX, to the Abbot of L'Eau Vive in the diocese of Tours and the Archdeacon of Tours.

The Archbishop of Bourges set forth to us—(*And below:*) We commanded the Archbishop of Bordeaux that, concerning the right of primacy which the said Archbishop of Bourges proposes that he has over him and his province, he should present himself before us, personally or through a suitable proctor, at the beginning of the recently past Lent, which we assigned him as a peremptory term. And when afterward, personally summoned for the support of the Roman Church, he approached our hearing,

the said Archbishop of Bourges, established at the Apostolic See, urgently petitioned that we ought to proceed in the same business.

But the same Archbishop of Bordeaux, returning to his own lands, constituted a proctor for himself in that business who, preserving the exceptions belonging to him in answering, defending, and other matters, was to do everything which he would have done in his own person. Therefore, when the aforesaid archbishop petitioned that the proctor answer him, the latter proposed by way of exception that he was not bound to do this, since the said Archbishop of Bordeaux, having been summoned for another, greater cause—namely, for the public utility—ought to have been regarded as absent and to have possessed the privilege of being sent back home. Nor had he yet deliberated concerning this matter with his suffragans and others whose counsel so arduous a cause required, nor had he had time in which he could be prepared for both businesses as was expedient.

But the other party answered to the contrary that, since he had first been summoned concerning the aforesaid question, it had not been our intention to revoke the first mandate by the later one. He had also had so long a space of time that, if he had wished, he could have deliberated concerning the aforesaid cause, as he had done with certain persons, and conveniently attend to both businesses. (*And below:*) Therefore, with the counsel of our brothers, we considered that a further delay until the next coming feast of the Lord's Nativity should be granted to him.

> Si citatus in causa ardua de longinquo vocatur pro publica utilitate, etiam ad locum iudicii, ita, quod infra terminum citationis deliberare, et alia sibi necessaria ad comparendum explicare non potuit, in termino respondere non cogitur, si reperiatur in loco iudicii, sed habebit novas inducias. H. d. notabiliter.
>
> Gregorius IX. Abbati Aquae vivae Turonensis dioecesis et Archidiacono Turonensi.
>
> Exposuit nobis Bituricensis archiepiscopus (*Et infra:*) Burdegalensi archiepiscopo dedimus in mandatis, ut super iure primatiae, quam in eo et in provincia sua dictus Bituricensis archiepiscopus se habere proponit, ad initium proxime praeteritae Quadragesimae, quod ei terminum peremptorium assignavimus, per se aut per procuratorem idoneum se conspectui nostro praesentaret. Quumque postmodum personaliter vocatus pro ecclesiae Romanae subsidio ad nostram audientiam accessisset, dictus Bituricensis archiepiscopus apud sedem apostolicam constitutus postulavit instanter, ut in eodem negotio procedere deberemus. Idem vero Burdegalensis archiepiscopus ad propria rediens constituit pro se procuratorem in ipso negotio, qui, salvis exceptionibus sibi competentibus in respondendo et defendendo ac aliis, omnia faceret, quae in propria erat persona facturus. Petente ergo archiepiscopo supradicto, ut praefatus procurator responderet eidem, ille excipiendo proproposuit, se ad hoc non teneri, quum pro alia maiori causa, pro publica scilicet utilitate, dictus Burdegalensis vocatus, pro absente reputari debuerat et revocandi domum privilegium habuisset. Nondum etiam super hoc deliberaverat cum suffraganeis suis et aliis, quorum consilium tam ardua causa requirit, nec tempus habuerat, in quo ad utrumque negotium valuerit, sicut expediret, esse paratus. Sed pars altera econtra respondit, quod, quum super quaestione praedicta prius fuerit evocatus, nostrae intentionis non fuerat primum mandatum per posterius revocare. Temporis quoque spatium habuerat tam prolixum, ut potuisset, si voluisset, super causa deliberare praedicta, sicut fecerat cum quibusdam, et commode utrique negotio imminere. (*Et infra:*) Nos igitur de consilio fratrum nostrorum usque ad proximum venturum festum Nativitatis dominicae dilationem adhuc sibi duximus indulgendam.

Title IX: On Judicial Vacations

Chapter I

Latin source headnote: On Sundays one ought not to trade, litigate, judge, or swear, but they ought to be celebrated from evening to evening.

From the Council at Compiègne.

We decree that all Sundays be observed from evening to evening with every reverence, and that persons abstain from every unlawful work, so that on them no market at all is held, nor any judicial hearing, nor is anyone judged to death or punishment, nor are oaths furnished except for peace or some other necessity.

> **DE FERIIS.**
>
> Diebus dominicis mercari, litigari, iudicari, vel iurari non debet, sed de vespera in vesperam debent celebrari.
>
> Ex concilio apud Compendium.
>
> Omnes dies dominicos a vespera in vesperam cum omni veneratione decernimus observari, et ab omni illicito opere abstinere, ut in eis mercatum minime fiat, neque placitum, neque aliquis ad mortem vel ad poenam iudicetur, nec sacramenta nisi pro pace vel alia necessitate, praestentur.

Chapter II

Latin source headnote: The beginning and end of feasts ought to be determined according to their importance and the custom of the region. This is the first point. On the principal feasts and between Easter and Pentecost no solemn bending of the knees is made. If, however, clerics or bishops are then ordained, the knees are bent according to the manner of the ordination. This is the second point. The Roman Church does not keep a special feast of the Trinity; nevertheless, the custom of each church concerning this is preserved. This is the third point.

Alexander III.

Because in the region—(*And below:*) *We wish your prudence to hold with certain knowledge that*, although it is written, "From evening to evening you shall celebrate your sabbaths," nevertheless the beginning and end of feasts ought to be considered according to their character and *according to* the custom of the various regions; and, just as the importance of the days requires *them to be celebrated, so by true reason they appear* to begin earlier and to end later. (*And below:*)

1. On Sundays, however, and on other principal feasts, or between Easter and Pentecost, a bending of the knees ought by no means to be made, unless someone out of devotion wishes to do this in private.
2. But at the consecrations of bishops and the ordinations of clerics, only the consecrator and the person consecrated may bend their knees, according as the manner of consecration requires.
3. Furthermore, according to the customs of various regions, the feast of the Holy Trinity has customarily been celebrated by some on the octave of Pentecost, by others on the first Sunday before the Advent of the Lord. The Roman Church, however, does not have it as its usage to celebrate a special feast of this kind at any time, since every day "Glory be to the Father and to

the Son and to the Holy Spirit," and other similar things pertaining to the praise of the Trinity, are said. *Wherefore, brother archbishop, we have by no means been able to give you a certain answer concerning the use of the pallium on the day on which the feast of the Holy Trinity is celebrated.*

> Festorum principium et finis fieri debet secundum ipsorum magnitudinem et consuetudinem regionis. Hoc primo. In praecipuis festis et intra Pascha et Pentecosten non fit solennis genuum flexio. Si tamen tunc clerici vel episcopi ordinentur, secundum ordinationis modum genua flectuntur. Hoc secundo. Romana ecclesia speciale festum de Trinitate non facit; servatur tamen de hoc cuiusque ecclesiae consuetudo. Hoc tertio.
>
> Alexander III.
>
> Quoniam in parte (*Et infra:*) *Vestram volumus prudentiam certa cognitione tenere, quoniam,* Licet scriptum sit, de vespera in vesperam celebrabitis sabbata vestra, festorum tamen principium et finis iuxta eorum qualitatem et *iuxta* diversarum regionum consuetudinem debet attendi, et, sicut magnitudo dierum exigit *celebrari, sic* prius incipere, et tardius terminari *vera ratione videntur.* (*Et infra:*) 1. Diebus autem dominicis et aliis praecipuis festivitatibus, sive inter Pascha et Pentecosten, genuum flexio nequaquam debet fieri, nisi aliquis ex devotione id velit facere in secreto. 2. In consecrationibus autem episcoporum et clericorum ordinationibus consecrans et consecratus tantum genua flectere possunt, secundum quod consecratioinis modus requirit. 3. Praeterea festivitas sanctae Trinitatis secundum consuetudines diversarum regionum a quibusdam consuevit in octavis Pentecostes, ab aliis in dominica prima ante Adventum Domini celebrari. Ecclesia siquidem Romana in usu non habet, quod in aliquo tempore huiusmodi celebret specialiter festivitatem, quum singulis diebus Gloria Patri et Filio et Spiritui sancto et cetera similia dicantur ad laudem pertinentia Trinitatis. *Quare tibi, frater archiepiscope de usu pallii eo die, quo sanctae Trinitatis festivitas celebratur, certum nequaquam potuimus dare responsum.*

Chapter III

Latin source headnote: On account of the necessity of sustenance, it is permissible on feast days established in honor of God to attend to servile work, especially concerning a thing liable to perish with time. This is what it says.

The same, to the Archbishop of Trier.

Although the page of both the Old and the New Testament has specially assigned the seventh day to human rest, and the Church has decreed that both it and other days assigned to the Most High Majesty, as well as the birthdays of the holy martyrs, are to be observed, and that on these one must cease from every servile work, *nevertheless we, to whom the governance of the Church has been entrusted by the Provider of all, are bound fittingly to provide for the faithful of Christ concerning those things which necessity requires, so that, if at any time it should happen that they attend, not to servile work—that is, to the doing of sin—but perhaps to seeking things necessary for food and clothing, we will that the providence of the Apostolic See come to their aid with its accustomed mercy. Hence indeed it is that, knowing from the reports of many that your region does not abound in many crops and that the sea, in which the people have customarily had their greater sustenance, has become more barren than usual, by the authority of blessed Peter and our own* we grant that, on Sundays and other feast days, except on the greater solemnities of the year, if herrings have approached the land, it may be lawful for your parishioners, under the pressure of necessity, to attend to catching them, yet *in such a way* that, after the catch has been made, they make a fitting portion for the neighboring churches and the poor of Christ. *If, however, those who are bound by a penance imposed upon them to pass certain days on bread and water do not have bread on which to feed, let them, if necessity requires, be*

refreshed with fish or other foods, moderate discretion nevertheless being employed, so that they use these not for delicacies, but only for necessary sustenance.

> Propter necessitatem alimentorum licet diebus feriatis in honorem Dei operi servili intendere, maxime circa rem tempore perituram. H. d.
>
> Idem Triburiensi Archiepiscopo.
>
> Licet tam veteris quam novi testamenti pagina septimum diem ad humanam quietem specialiter deputaverit, et tam eum quam alios dies maiestati altissimae deputatos, nec non natalitia sanctorum martyrum ecclesia decreverit observanda, et in his ab omni opere servili cessandum, *nos tamen, quibus ab omnium provisore ecclesiae regimen est commissum, super his, quae necessitas exigit, Christi fidelibus tenemur commode providere, ut, si quando eos non servili operi id est actioni peccati, sed necessaria victui et vestitui quaerendo forte intendere contigerit, volumus, ut eis apostolicae sedis providentia misericordia consueta subveniat. Inde siquidem eo est quod regionem vestram, quae non multis frugibus abundet, et mare, in quo populus maiorem consuevit habere sustentationem, sterilius solito effectum fuisse multorum relationibus cognoscentes, auctoritate B. Petri et nostra* Indulgemus, ut liceat parochianis vestris diebus dominicis et aliis festis, praeterquam in maioribus anni solennitatibus, si alecia terrae se inclinaverint, eorum captioni ingruente necessitate intendere, ita *tamen*, quod post factam capturam ecclesiis circumpositis et Christi pauperibus congruam faciant portionem. *Si autem illi, qui aliquos dies in pane et aqua ex iniuncta sibi poenitentia tenentur peragere, panent quo vescantur, non habent aut piscibus vel aliis cibariis si necessitas exegerit reficiantur, moderata tamen discretione habita, quod his non ad delicias, sed ad necessariam solummodo sustentationem utantur.*

Chapter IV

Latin source headnote: The three weeks during which the canon prohibits weddings from being held before the feast of John the Baptist are not continuous with the feast, but are understood to mean the week of the Ascension together with the two following weeks.

Clement III, otherwise Celestine III.

Your chaplain, brother bishop, proposed before us on your behalf that, since the canonical statutes declare that weddings ought by no means to be celebrated during the three weeks before the feast of the Nativity of blessed John the Baptist, some understand those weeks to be continuous without interruption. Others, however, wishing to make an interval between the feast and those weeks, say that this was established out of reverence for the feast of Pentecost, which is sometimes accustomed to fall within these weeks; and thus, beginning from the three Rogation Days before the Ascension of the Lord and extending to the eighth day after Pentecost, those weeks being counted, they do not permit weddings to be celebrated during that space of time alone, but by no means prohibit their celebration thereafter.

Therefore, because we were consulted as to which of these opinions appears the stronger, it appeared to us and our brothers that, although this has been the custom of the Roman Church, *observed from long-past times*, that at whatever time a marriage is contracted with a legitimate consent in the present tense intervening—nevertheless, because weddings are not permitted to be celebrated from Septuagesima until seven days after Pentecost, and afterward they are celebrated without distinction even within three weeks or more before the feast of Saint John, the latter opinion rests upon better and subtler reason. And whether, according to the canons, weddings are suspended from Septuagesima until after the octave of Easter, or, according to the custom of the Roman Church, until

after the seven days of the feast of Pentecost, which has no octave, they may lawfully be celebrated on the following Sunday and thereafter.

> Tres septimanae, quibus canon prohibet fieri nuptias ante festum Ioannis Baptistae, non continuantur festo, sed intelligitur de septimana Ascensionis cum duabus sequentibus.
>
> Clemens III. alias Coelestinus.
>
> Capellanus tuus, frater episcope, coram nobis ex parte tua proposuit, quod, quum statuta canonica declarent nuptias tribus septimanis ante festum Nativitatis B. Ioannis Baptistae minime celebrari debere, quidam hebdomadas illas absque interpellatione continuandas intelligunt. Alii vero inter festum et ipsas volentes facere intervallum, illud dicunt ob reverentiam festivitatis Pentecostes fuisse statutum, quae in septimanis istis solet intervenire quandoque, et sic a tribus diebus rogationum ante Ascensionem Domini inchoantes, usque ad octavum diem post Pentecosten, illis hebdomadis computatis, illo tantum spatio temporis celebrari nuptias non permittunt, earum celebrationem abinde nullatenus inhibentes. Quia ergo consulti fuimus, utra istarum opinionum potior videatur, nobis et fratribus nostris apparuit, quod, licet ea sit Romanae ecclesiae consuetudo *a longis retro temporibus observata*, ut quocunque tempore matrimonium contrahatur consensu interveniente legitimo de praesenti, quia tamen a septuagesima usque ad septem dies post Pentecosten celebrari nuptiae non sinuntur, et postea etiam tribus septimanis vel pluribus ante festivitatem sancti Ioannis sine differentia celebrantur, posterior sententia meliori et subtiliori nititur ratione, et, sive secundum canones a septuagesimae usque post octavas Paschae, sive iuxta consuetudinem ecclesiae Romanae usque post septem dies festi Pentecostes, quod caret octavis, nuptiae suspendantur, in dominica, quae sequitur, et deinceps possunt licite celebrari.

Chapter V

Latin source headnote: On judicial vacations introduced in honor of God and the saints, judgment cannot be exercised, even with the consent of the parties, unless by reason of necessity or piety; the parties can, however, renounce judicial vacations introduced for the benefit of human beings.

Gregory IX.

He complained to us—(*And below:*) Although questions ought not to be prolonged but dispatched, nevertheless judicial clamor ought to be quieted on feast days, which are known to have been established out of reverence for God, namely: the Nativity of the Lord; Saint Stephen; John the Evangelist; the Holy Innocents; Saint Sylvester; the Circumcision; the Epiphany; the seven days of the Lord's Passion; the Resurrection with the seven following days; the Ascension; Pentecost with the two days which follow; the Nativity of John the Baptist; all the feasts of the glorious Virgin; the Twelve Apostles, and especially Peter and Paul; blessed Lawrence; the Dedication of blessed Michael; the solemnity of All Saints; Sundays; and the other solemnities which the individual bishops, together with clergy and people, shall have determined are to be solemnly venerated in their dioceses. On these solemn judicial vacations it is assuredly fitting to abstain from things of this kind—unless necessity urges or piety counsels—to such a degree that, even if the parties consent, neither shall proceedings conducted be valid, nor a sentence which happens to be promulgated on days of this kind; although on judicial vacations which are granted on account of vintages or harvests because of human needs, proceedings may be conducted if this has proceeded from the will of the parties.

> In feriis introductis in honorem Dei et sanctorum, nisi ob necessitatem vel pietatem, iudicium exerceri non potest, etiam de consensu partium; feriis tamen introductis favore hominum partes renunciare

possunt.

Gregorius IX.

Conquestus est nobis (*Et infra:*) Quamvis non prorogari, sed expediri deceat quaestiones, debet tamen iudicialis strepitus diebus conquiescere feriatis, qui ob reverentiam Dei noscuntur esse statuti, scilicet Natalis Domini, sancti Stephani, Ioannis Evangelistae, Innocentium, sancti Silvestri, Circumcisionis, Epiphaniae, VII. diebus dominicae Passionis, Resurrectionis cum VII. sequentibus, Ascensionis, Pentecostes cum duobus, qui sequuntur, Nativitatis Ioannis Baptistae, festivitatum omnium Virginis gloriosae, XII. Apostolorum, et praecipue Petri et Pauli, beati Laurentii, dedicationis beati Michaelis, solennitatis omnium sanctorum, ac diebus dominicis, ceterisque solennitatibus, quas singuli episcopi in suis dioecesibus cum clero et populo duxerint solenniter venerandas, quibus utique solennibus feriis, nisi necessitas urgeat vel pietas suadeat, usque adeo convenit ab huiusmodi abstinere, ut, consentientibus etiam partibus, nec processus habitus teneat, nec sententia, quam contingit diebus huiusmodi promulgari, licet diebus feriatis, qui gratia vindemiarum vel messium ob necessitates hominum indulgentur, procedi valeat, si de partium processerit voluntate.

Title X: On the Order of Judicial Inquiry

Chapter I

Latin source headnote: Against a woman claiming someone as her husband, an exception of consanguinity is admitted, which must be discussed before judgment is pronounced concerning the marriage; and it is sufficient to pronounce upon the principal matter itself. This is what it says.

Clement III, to the Bishop of Alatri.

We have understood from your letters that, when a certain woman claimed a certain man as her husband, she produced witnesses in support of her contention; through them the man's party, fearing future prejudice to itself, interposed an exception of consanguinity, by which it maintains that the woman's petition is *entirely* defeated. *Because you wished to consult us as to whether the impediment of consanguinity should be dealt with before sentence is rendered upon the matrimonial cause*, we have considered that your inquiry should be answered in this way: since, when the exception is proved, the principal question is extinguished, cognizance must be taken of the exception before proceeding to the point of definition. When this has been done, you shall absolve the man from the woman's attack, as the reason of law requires.

DE ORDINE COGNITIONUM.

Contra mulierem vindicantem aliquem in maritum admittitur exceptio consanguinitatis, quae prius discutienda est, quam super matrimonio pronuncietur, et sufficit super ipso principali pronunciare. H. d.

Clemens III. Alatrino Episcopo.

Intelleximus ex literis tuis, quod, quum quaedam mulier peteret quendam in virum, testes ad suae intentionis assertionem induxit, per quos pars viri futurum sibi praeiudicium metuens, exceptionem consanguinitatis obiecit, ex qua intendit petitionem mulieris *prorsus* elidi. *Quia vero nos consulere voluisti, an prius sit de impedimento consanguinitatis agendum, quam super causa matrimonii sententia proferatur*, Inquisitioni tuae taliter duximus respondendum, quod, quum exceptione probata quaestio principalis perimatur, ante est cognoscendum de ipsa, quam ad diffinitionis articulum procedatur. Quo facto virum ab impetitione mulieris, prout exposcit ratio iuris, absolvas.

Chapter II

Latin source headnote: If a defendant objects that the plaintiff is a despoiler, he does so either by excepting, and then he is heard first and, when this is proved, is not compelled to answer, but is not restored by this; or by bringing an action, and then both questions are determined together, and when it is proved he will be restored.

Innocent III, to the Bishop of Narni.

When the beloved son, the Abbot of Ferentillo, *had approached our presence, complaining* of the noblemen *O. and A., his brother, and the sons of R.*, lords of Arrone, *the parties being established in our presence, we appointed as auditors our beloved sons I., cardinal priest of the title of Saint Mary across the Tiber, and G., cardinal priest of the title of Saint Pudentiana. In their presence the abbot* set forth his complaint: that *the aforesaid nobles, without any previous demand,* coming with armed force and an army to the monastery's castle *of Ferentillo and Gabio,* had presumed to damage the said monastery, through seizures of animals, *burning of crops, captures of men, homicides committed,* and other *losses up to the amount of five hundred Lucchese pounds, apart from the slaughter of men and the injuries inflicted*; and he requested that justice be done for him concerning these *and likewise other matters which he wished to propose against them*.

Before joinder of issue it was answered against him in the form of an exception that, *since the abbot himself had promised the noblemen O. and R., under an oath furnished, that he would assist them against all men—except the Roman Pontiff, the emperor, and their legates—to retain what they then held in castles, villages, and other goods, and to recover it without fraud or evil contrivance if they lost any of it,* through his deceit and violence they had *fraudulently* lost the castle of Sirati, which both their ancestors had held and they themselves had possessed in peace. [*Although he had often been admonished by them concerning this, he refused to restore it to them. Indeed, rather, in breach of the compact, he and his men had plundered in animals, spoils, and other household goods the three villages—namely Quadraginta, Casale, and Carpium—which the said abbot had received under safeguard for himself and his party; married women had been shamefully treated and women also harshly beaten. He even caused a priest, with his hands bound behind his back, to be led before him, afflicted with blows and wholly stripped of his garments. He also caused the men of the villages to be shut in prison, where it happened that one of them expired. The abbot also caused fire to be set by night to the castle in which the said nobles dwelt; through this, in the aforesaid losses and many others, they said that they had been despoiled of as much as one hundred marks.*] They therefore petitioned to be restored before they answered his petitions, especially since they had witnesses present through whom they wished to prove their contention immediately, *and they endeavored to show by the authorities of both laws that restitution ought to be made to the despoiled before entry upon the cause*.

But on the abbot's behalf it was replied as follows: that *his libellus ought first to be answered according to the rule of law by which it is said, "Let him who first calls another to judgment first proceed"*; that restitution could not be sought from one who had not been the despoiler, especially since the said castle pertained to the right and ownership of his monastery, which the adverse party did not deny at all; and hence that the true owner, to whom his own thing returns from another by whom it is possessed, even after rather long periods, ought to obtain the advantage of retention, while the restitutory judgment is known to lie only against a despoiler. *Nor could restitution be demanded for losses inflicted, but a competent action ought to be brought for them; otherwise, since the abbot's party also complained that very grave losses had been inflicted upon it, those losses would first have had to be restored, if restitution were to be made for matters of this kind according to the tenor of the aforesaid rule. They also asserted that the chapters speaking of*

restitution to be made have place in criminal matters and when someone is despoiled by an adversary and is sued concerning the very thing of which he had been despoiled. Moreover, the adverse party said that the rule introduced by the abbot's party has place in mutual petitions, since causes treated in turn are afterward determined by one sentence. But when one party proposes that something is owed to it by way of restitution or in some other manner, and the other asserts by way of exception that it has been despoiled and will by no means answer before its own restitution, it asserted that cognizance must first be taken of the incidental matter.

We, however, believe that a distinction must be made as to whether the question of spoliation is raised by those nobles by way of an action for seeking restitution, or in the form of an exception for repelling the opponent's contention. For when it is proposed by way of an action, the mutual petitions are understood not to touch one another, as being distinct; and consequently, in accordance with the aforesaid rule of law by which it is said, "Let him who first calls another to judgment first proceed," the one which was proposed first would be treated first, although, when both had been brought into the same proceeding and treated in turn, they would be determined together by the same sentence. But because that question was raised by those nobles only by way of an exception, *by the common counsel of our brothers* we pronounced by an interlocutory judgment that their proofs concerning that exception should first be heard; and, when it had been lawfully proved, they should not be compelled to answer the abbot concerning the aforesaid petitions until they were restored by him, since one despoiled is by no means compelled to answer his despoiler before restitution.

1. Yet when spoliation has been proved only by way of an exception, restitution is not to be made by this fact, just as, if some crime is alleged against a witness by way of an exception so that he may thus be repelled from testimony, even if [*thus*] the crime has been proved against him civilly, the ordinary penalty is not therefore inflicted upon him, but credence is merely not given to his testimony. This occurs for the reason that an accusation is not proceeding against him. Nor are witnesses whose testimony is rejected held among the infamous as though on account of false testimony. [*But when, etc. Given at Amelia on the third day before the Nones of October,* 1198.]

> Si reus contra actorem spoliatorem spoliationem opponit, aut excipiendo, et tunc prius auditur, et ea probata respondere non cogitur, sed per hoc non restituitur; aut agendo, et tunc simul utraque quaestio terminatur, et ea probata restituetur.
>
> Innocentius III. Episcopo Narmarinensi.
>
> Quum dilectus filius abbas de Ferentino *ad nostram praesentiam accessisset, conquerens* de nobilibus viris *O. et A. fratre ipsius et filiis R.* dominis de Artone, *partibus in nostra praesentia constitutis, dilectum filium nostrum I. tit. S. Mariae trans Tiberim et G. tit. S. Pudentianae presbyteros cardinales deputavimus auditores, in quorum praesentia suam abbas* deposuerit quaestionem, quod *praefati nobiles, nulla requisitione praemissa,* manu armata et cum exercitu ad castrum monasterii *Ferentilli et Gab.* venientes, in praedis animalium, *segetum combustionibus, captionibus hominum, homicidiis perpetratis* et *damnis* aliis *usque ad D. libras Lucenses praeter stragem hominum et iniurias irrogatas,* damnificare dictum coenobium praesumpserunt, de quibus *et aliis pariter, quae vellet proponere contra ipsos,* iustitiam sibi fieri postulabat. Ei citra litis contestationem sub forma exceptionis fuit ex adverso responsum, quod, *quum abbas ipse nobilibus viris O. et R. promiserat praestito iuramento, quod eos contra omnes homines, exceptis Romano Pontifice, imperatore ac legatis ipsorum ad retinendum quod tunc habebant in castris, villis et bonis aliis, et recuperandum sine fraude ac malo ingenio, si eorum aliquid amitterent, adiuvaret,* per ipsius dolum et violentiam castrum Sirati amiserant *fraudulenter,* quod et

progenitores eorum tenuerant, et ipsi possederant in quiete, [*Super quo ab ipsis saepe admonitus illud eis restituere denegavit. Quin potius villas tres, Quadraginta scilicet, Casale et Carpium, quas pro se et parte sua dictus abbas sub securitate receperat, foedere violato in animalibus, spoliis et supellectilibus aliis ipse cum suis fuerat depraedatus, coniugatis tractatis turpiter, mulieribus etiam acriter verberatis; etiam sacerdotem ligatis a tergo manibus ante se duci fecit afflictum verberibus et vestibus penitus spoliatum. Homines quoque villarum recludi fecit in carcerem, ubi unum ex ipsis contigit exspirare. Castro etiam, in quo dicti nobiles habitabant, ignem abbas de nocte fecit apponi, per quem in praemissis damnis et aliis multis usque centum marcas se spoliatos dibebant,*] sibi petentes prius restitui, quam petitionibus ipsius responderent, praesertim quum testes haberent praesentes, per quos intentionem suam in continenti probare volebant, *et quod restitutio ante causae ingressum deberet fieri spoliatis utriusque iuris auctoritatibus ostendere conabantur*. Verum ex parte abbatis fuit taliter replicatum, quod *libello suo secundum regulam iuris, qua dicitur, ut qui prior appellat prior agat, debebat primitus responderi*, ab eo restitutio peti non poterat, qui non fuerat spoliator, praesertim quum dictum castrum ad ius et proprietatem sui monasterii pertineret, quod etiam pars adversa nullatenus denegabat. Unde et verus dominus, ad quem ab alio res sua possessa revertitur etiam post tempora longiora, retentionis debebat commodum obtinere, et iudicium restitutorium contra spoliatorem tantum competere dignoscitur. *Pro damnis quoque illatis restitutio postulari non poterat, sed ad ea debebat actio competens intentari; alioquin, quum et pars abbatis damna gravissima sibi quereretur illata, prius restituenda fuerant, si pro huiusmodi esset restitutio facienda secundum tenorem regulae memoratae. Capitula quoque de restitutione facienda loquentia locum habere in criminalibus asserebant, et quando quis ab adversario spoliatur, et super re ipsa, qua spoliatus fuerat, convenitur. Ceterum ex parte abbatis regulam introductam adversa pars in mutuis petitionibus locum habere dicebat, quum causae vicissim tractatae una postea sententia terminantur. Quumque vero pars aliqua per restitutionem vel alio modo aliquid sibi deberi proponit, et altera in modum exceptionis se asserit spoliatam, nec ante restitutionem suam ullatenus responsuram, de incidenti asserebat antea cognoscendum*. Nos autem distinguendum esse credimus, utrum spoliationis quaestio ab eisdem nobilibus sit obiecta in modum actionis ad restitutionem petendam, an in forma exceptionis ad intentionem adversarii repellendam; quum, ea in modum actionis proposita, intelligantur mutuae petitiones sese tanquam diversae minime contingentes, ac per hoc iuxta regulam iuris praemissam, qua dicitur: qui prior appellat prior agat, quae prius esset proposita prius foret tractanda, quanquam in idem iudicium ambae deductae vicissimque tractatae simul essent eadem sententia terminandae. Sed quoniam quaestio illa fuit ab eisdem nobilibus tantum in modum exceptionis obiecta, *de communi fratrum nostrorum consilio* interloquendo pronunciavimus, ut probationes eorum super ipsa exceptione primitus audirentur, et ea probata legitime abbati non cogerentur respondere super petitionibus memoratis, donec restituerentur ab ipso, quum spoliatori spoliatus ante restitutionem non cogatur ullatenus respondere. 1. Verum spoliatione in modum exceptionis tantum probata non est per hoc restitutio facienda, quemadmodum, si in modum exceptionis aliquod crimen testi obiicitur, ut sic a testimonio repellatur, etsi [*sic*] crimen contra eum civiliter probatum fuerit, non ideo sibi poena infligitur ordinaria, sed eius duntaxat testimonio non creditur, quod ea ratione contingit, quoniam in ipsum accusatio non procedit. Testes etiam, quorum testimonium reprobatur, inter infames quasi ex falso testimonio non habentur. [*Quum autem etc. Dat. Ameliae III. Non. Oct. *1198.]

Chapter III

Latin source headnote: Against one seeking an inheritance there lies an exception concerning birth, which must first be determined before the ecclesiastical judge. This is what it says according to the gloss, with the understanding that the inheritance here had first been sought before the secular judge, and an exception had been taken concerning illegitimacy.

Honorius III, to Louis, King of the Franks.

We do not believe it escapes your prudence that the cause concerning the birth of *our dearest daughter in Christ, the illustrious* Queen of Cyprus, since it pertains to the ecclesiastical forum, *has long since* been brought to our examination. *Hence we took care to admonish by our letters Philip, king of the Franks of illustrious memory, your father, that if the queen herself should perhaps propose before him a question concerning succession to the county of Champagne, he should not hear it until the aforesaid cause concerning her birth, upon which that question is known to depend, had been determined. Therefore, although, as we wrote to your father, we wish the queen herself to be heard in her just petitions*, nevertheless, because to begin the cause of succession dependent upon it before the cause concerning birth had been determined would be nothing other than to entangle the business in diverse proceedings and to disturb the order of judgment by a certain confusion, if perhaps you are requested concerning this by the queen herself, *or by her messenger or any other person*, you shall wait patiently until the aforesaid cause concerning birth has received its end by apostolic judgment. [*Given at the Lateran on the seventeenth day before the Kalends of December, in the eighth year of our pontificate.* 1223.]

> Petenti hereditatem obstat exceptio nativitatis, quae prius debet coram ecclesiastico iudice terminari. Hoc dicit secundum glossam, intelligendo, quod hic erat prius coram iudice saeculari petita hereditas, et exceptum fuit de illegitimitate.
>
> Honorius III. Ludovico Regi Francorum.
>
> Tuam non credimus latere prudentiam, causam natalium *carissimae in Christo filiae nostrae illustris* reginae Cypri ad examen nostrum, utpote quae ad forum ecclesiasticum pertinet, *iam dudum* esse delatam. *Unde clarae memoriae Philippum regem Franciae patrem tuum literis nostris curavimus praemonere, ut, si forsan regina ipsa super successione comitatus Campaniae quaestionem proponeret coram eo, non audiret eandem, quousque terminata esset praedicta causa natalium, ex qua illa noscitur dependere. Licet ergo, sicut eidem patri tuo scripsimus, velimus reginam ipsam in suis iustis petitionibus exaudiri,* Quia vero, antequam natalium causa terminata esset, dependentem ex illa successionis causam incipere nihil aliud esset quam diversis processibus intricare negotium, et confusione quadam iudicii ordinem perturbare, si forte ab ipsa regina *vel nuncio eius seu quolibet alio* fueris super hoc requisitus, donec iam dicta causa natalium apostolico iudicio finem acceperit, patienter exspectes. [*Dat. Lat. XVII. Kal. Dec. Pont. nostr. Ao. VIII.* 1223.]

Chapter IV

Latin source headnote: One bringing a possessory action for recovery is not bound before restitution to answer his despoilers, except concerning the question of spoliation; he can nevertheless be repelled from bringing the action by an exception of spoliation. This is what it says.

Gregory IX.

A person sued concerning spoliation is not to be heard against one seeking restitution—unless he brings a counterclaim against him concerning the question of spoliation—since a petition for restitution is known to be privileged in this respect: one instituting it is not compelled before restitution to answer his despoilers, although he may be repelled from bringing the action when the spoliation is proposed by them by way of an exception.

> Agens possessorio recuperandae non tenetur ante restitutionem suis spoliatoribus, nisi super quaestione spoliationis, respondere; potest tamen ab agendo repelli per exceptionem spoliationis. H. d.
>
> Gregorius IX.

> Super spoliatione conventus adversus restitutionem petemtem non est, nisi super quaestione spoliationis, si eum reconveniat, audiendus, quum restitutionis petitio in hoc privilegiata noscatur, ut ipsam intentans non cogatur ante restitutionem spoliatoribus respondere, quanquam ab agendo spoliatione ab eis in modum exceptionis proposita repellatur.

Title XI: On Excessive Claims

Sole Chapter

Latin source headnote: It sets down the four modes of claiming too much and the penalties of those who claim too much.

Gregory IX.

It cannot be called the counsel of prudence that you demanded from your adversary before the term the money owed to you. For the importunity of those claiming too much is punished if they have determined to persist in judgment with their petition, in such a way that those who, without cause, seek more in respect of the thing are condemned in expenses to the adversary.

1. Those who claim too much in respect of place are liable for the interest, because the advantage which the debtors would have had if they had paid at the appointed place is taken from them.
2. For him from whom more is sought in respect of time, the delays are doubled, nor shall he undertake the lawsuit unless his expenses are paid to him.
3. We do not believe that you doubt that too much is sought in respect of cause when something is owed generically or under an alternative and it happens that a specific thing or one thing precisely is sought.
4. In respect of the thing, however, when ten are owed and twenty are demanded.
5. In respect of place, when someone is sued, not where it was agreed that he should pay, but elsewhere.
6. In respect of time, when what is owed is sought before the day or the condition.

> **DE PLUS PETITIONIBUS.**
>
> Ponit quatuor modos plus petendi et poenas plus petentium.
>
> Gregorius IX.
>
> Consilium providentiae dici non potest, quod pecuniam tibi debitam ante terminum ab adversario repetisti. Punitur enim importunitas plus petentium, si super petitione sua duxerint in iudicio persistendum, ita, quod, qui re petunt amplius sine causa, in expensis adversario condemnantur. 1. Qui autem plus loco, ad interesse tenentur pro eo, quod utilitas adimitur debitoribus, quam haberent, si statuto loco solvissent. 2. Ei vero, a quo amplius tempore petitur, induciae duplicantur, nec litem excipiet, nisi ei solvantur expensae. 3. Te quoque dubitare non credimus, quod causa plus petitur, quum aliquid in genere vel sub alternatione debetur, et rem in specie vel unum praecise peti contingit. 4. Re autem, si X. sint debita et XX. repetantur. 5. Loco vero, quum quis non ubi convenit solvere, sed alibi convenitur. 6. Tempore quoque, quum ante diem vel conditionem petitur quod debetur.

Title XII: On the Cause of Possession and Ownership

Chapter I

Latin source headnote: The cause of possession and ownership ought to be determined before one and the same judge, nor is judgment to be pronounced against an absent person.

Gregory I, to the Duke of Sicily.

Having received [*the letters of your Magnitude, we were saddened that you indicated that certain possessions, which you say you held, had been unreasonably occupied by the agents of the Church of Syracuse. But we believe that this did not come to the knowledge of our brother and fellow bishop John. For, once the truth was known, whatever had been unlawfully done could readily be corrected. And therefore, because*] it has been decreed by legal provision that both the cause of momentary possession and the cause concerning ownership ought to be heard before one and the same judge, and we cannot determine anything against a party who has not been heard, [*to the aforesaid brother, etc. Given in the month of October, in the second indiction.* 598.]

> **DE CAUSA POSSESSIONIS ET PROPRIETATIS.**
>
> Causa possessionis et proprietatis sub eodem iudice terminari debet, nec contra absentem est pronunciandum.
>
> Gregorius I. Duci Siciliae.
>
> Susceptis [*magnitudinis vestrae epistolis contristati sumus, quod ab actoribus ecclesiae Syracusanae quasdam possessiones, quas vos tenuisse dicitis, occupatas irrationabiliter indicastis. Sed credimus, quia hoc ad fratris et coepiscopi nostri Ioannis notitiam non pervenit. Nam absolute poterat cognita veritate, si quid illicite factum est, emendari. Et ideo, quia*] Legali provisione decretum est, tam momenti, quam proprietatis causam sub uno eodemque iudice debere cognosci, nec nos contra inauditam partem aliquid possumus diffinire, [*praedicto fratri etc. Dat. Mens. Oct. Ind. II. *598.]

Chapter II

Latin source headnote: If proceedings have been conducted in both the possessory and the petitory action, the judge, after receiving the proofs concerning both, may first discuss the proofs concerning the possessory action and determine it. This is what it says.

Celestine III.

Finally, we were asked whether judges appointed to take cognizance of possession and ownership, wishing to spare the parties heavy expenses, may hear the allegations concerning both intermingled and likewise admit the witnesses, and thereafter first hear the attestations concerning possession and pronounce according to their tenor; and whether this is lawfully done. We answer that it may lawfully be done, since this is expressed in the civil law.

> Si actum est possessorio et petitorio, potest iudex receptis probationibus super utroque prius discutere probationes super possessorio, et illud terminare. H. d.
>
> Coelestinus III.
>
> Ad ultimum interrogati fuimus, si iudices deputati, ut de possessione et proprietate cognoscant, gravibus partium sumptibus parcere cupientes, de utraque commixtim audiant allegationes pariter et testes admittant, deinde prius audiant attestationes de possessione, et pronuncient secundum tenorem

illarum utrum licite hoc agatur. Nos autem quum hoc sit in iure civili expressum, quod licite possit fieri, respondemus.

Chapter III

Latin source headnote: If a person who has been despoiled, bringing the possessory and petitory actions together, proves possession and spoliation but not lordship or ownership, he prevails in the possessory action but fails in the petitory.

Innocent III, to the Archbishop and Canons of Sutri.

When the Church of Sutri was without a pastor, you came together and, as is customary, after the grace of the Holy Spirit had been invoked, unanimously elected a pastor, petitioning that his election be confirmed by the Apostolic See. But *the beloved sons*, the clergy of the conventual churches of that same city, afterward laid their complaint *against you before us*: that, since they and their predecessors had been accustomed to take part in *making* episcopal elections, you presumed, while they were *unwilling*, resisting, and excluded, to proceed to *make* the election; and for that reason they petitioned that it not be confirmed, but rather annulled.

Therefore, when the parties had been established before the Apostolic See *for a question of this kind, we gave them as auditors our beloved sons B., cardinal priest of the title of Saint Peter in Chains, I., cardinal priest of the title of Saint Prisca, and the cardinal deacon of the title of Saint Mary in Cosmedin*. In the presence of *these* auditors witnesses were produced on both sides, and, their depositions having been published, the party of the canons said that by the witnesses whom they had produced their contention—that the election pertained to them alone—had been sufficiently proved. The party of the clergy nevertheless asserted that by the statements of the witnesses whom they had produced they too had more fully proved their assertion that they ought to take part in the election of bishops; through these statements, they said, it was established that they had been present with the canons of the cathedral church at the elections of the three bishops who had last and immediately presided over the Church of Sutri, and that they had possessed with the others a voice in electing.

We therefore, *having heard the allegations and reasons of the parties and having diligently inspected the depositions themselves*, because we *clearly* discovered that your witnesses had been inconsistent in giving their testimony and had wavered before the *said* auditors against the credibility of their attestation, *as those auditors afterward reported to us*, and because they were endeavoring in a certain manner to establish a negative—wishing to prove that the right of election pertained *indeed* to you in such a way that it by no means pertained to your adversaries—while it was sufficiently shown by the witnesses of the adverse party that in the elections of the three bishops mentioned above the clergy had been present and had possessed a voice in electing, *by the counsel of our brothers* we decreed that the aforesaid election, made while they contradicted and were excluded, should be annulled, restoring the often-mentioned clergy to that quasi-possession which they had held before the controversy was moved.

Yet because in the aforesaid question whatever right either party had in the election appeared to have been brought into judgment, since it is provided by the civil law that not only that which it was intended should come into judgment does come into judgment, but that does not come into judgment concerning which it was expressly intended that it should not come; and since, according to the canonical statutes, the elections of bishops are known regularly to pertain to the clergy of cathedral churches unless *perhaps* a special custom obtains otherwise in some place; and since the

aforesaid clergy could not acquire for themselves the right of electing from the fact that they had proved that they had taken their place among those electing the bishops of Sutri on three occasions, because of the brevity of a time not extending to lawful prescription; and since, when the plaintiff does not prove his case, the person sued will prevail even if he has furnished nothing—we have considered that you should be absolved from their attack concerning elections to be made, imposing perpetual silence concerning this upon the often-mentioned clergy of the churches. [*Therefore let no one, etc. Given at the Lateran on the seventh day before the Ides of February,* 1200.]

> Si spoliatus possessorio et petitorio simul agens possessionem et spoliationem probat, sed non dominium seu proprietatem, obtinet in possessorio, sed succumbet in petitorio.
>
> Innocentius III. Archiepiscopo et Canonicis Sutrinis.
>
> Quum ecclesia Sutrina pastore vacaret, vos convenientes in unum, et, sicut moris est, Spiritus sancti gratia invocata, pastorem unanimiter elegistis, petentes ipsius electionem a sede apostolica confirmari. Verum *dilecti filii* clerici conventualium ecclesiarum civitatis eiusdem *apud nos de vobis* consequenter suam deposuere querelam, quod, quum in episcoporum electionibus *faciendis* ipsi ac praedecessores eorum consueverint interesse, vos eis *invitis* renitentibus et exclusis ad *faciendam* electionem procedere praesumpsistis, quam ob hoc non confirmari, sed infirmari potius postulabant. Partibus igitur *pro quaestione huiusmodi* apud sedem apostolicam constitutis, *dilectos filios nostros B. tit. S. Petri ad vincula, et I. tit. S. Priscae presbyteros, et tit. S. Mariae in Cosmedin diaconum cardinales dedimus auditores*, in *quorum* auditorum praesentia testes utrinque producti fuerunt, et eorum depositionibus publicatis, pars canonicorum per testes a se productos intentionem suam, quod ad eos tantum spectaret electio, sufficienter dicebant esse probatam; parte clericorum nihilominus asserente, quod per dicta testium, quos produxerant, et ipsi assertionem suam, quod electioni pontificum interesse deberent, plenius probavissent, per quae constare dicebant, eos electionibus trium episcoporum, qui ecclesiae Sutrinae ultimo et immediate praefuerant, cum canonicis cathedralis ecclesiae adfuisse, vocemque habuisse cum aliis eligendi. Nos igitur, *auditis allegationibus et rationibus partium et depositionibus ipsis diligenter inspectis*, quoniam *liquido* deprehendimus, testes vestros in perhibendis testimoniis varios exstitisse, atque adversus fidem attestationis suae coram *dictis* auditoribus vacillasse, *sicut ipsi nobis postea retulerunt*, et quod negativam quodammodo adstruere satagebant, probare volentes, ius electionis ita *quidem* ad vos spectare, quod ad adversarios minime pertineret, per testes vero adversae partis fuit sufficienter ostensum, quod in trium episcoporum electionibus, de quibus praemissum est, clerici praesentes adfuerint et vocem habuerint eligendi, praemissam electionem factam eis contradicentibus et exclusis *de fratrum nostrorum consilio* decrevimus irritandam, clericos saepe dictos in eam quasi possessionem, quam ante controversiam motam habuerant, reducentes. Verum quoniam in quaestione praedicta quicquid iuris utraque pars in electione habebat deductum in iudicium videbatur, quum iure civili sit cautum, id venire in iudicium, non solum de quo actum est, ut veniret, sed id non venire, de quo nominatim actum est, ne veniret, et secundum statuta canonica electiones episcoporum ad cathedralium ecclesiarum clericos regulariter pertinere noscantur, nisi *forte* alibi secus obtineat de consuetudine speciali, nec ex eo, quod clerici antedicti se inter eligentes Sutrinos episcopos probaverunt tertio exstitisse, ius eligendi propter brevitatem temporis usque ad praescriptionem legitimam non producti sibi acquirere potuerunt, et actore non probante, qui convenitur, etsi nihil praestiterit, obtinebit, ab eorum impetitione super electionibus faciendis vos duximus absolvendos, saepedictis ecclesiarum clericis super hoc perpetuum silentium imponentes. [*Nulli ergo etc. Dat. Lat. VII. Febr.* 1200.]

Chapter IV

Latin source headnote: With respect to its sense, this says the same thing as the immediately preceding decretal.

The same, to the Canons of Bethlehem.

When, concerning the election of the Church of Bethlehem, a question was being conducted between R., our subdeacon, and P., canon of the Lord's Sepulchre, *recently in our presence*, each conducting himself as the elect—since the aforesaid subdeacon had been confirmed by *our venerable brother*, the Patriarch of Jerusalem, *while the other enjoyed royal favor—we gave them as auditors our beloved sons P., cardinal priest of the Basilica of the Twelve Apostles, I., cardinal priest of the title of Saint Stephen on the Coelian Hill, and G., cardinal deacon of Saint Mary in the Portico. In their presence, witnesses having been received on each side and their depositions published, they faithfully and prudently reported to us and our brothers what had been alleged on this side and that. But we, having been sufficiently instructed concerning the merits of the cause both through the cardinals' reports and through the acts, after sharing the counsel of our brothers,* decreed, by the mediation of justice, that the person who had proved that he had been despoiled by secular power should be restored. Yet because both the possessory and *also* the petitory matter had been brought into judgment, and both the question of restitution and that of election had been fully argued, and because it was established to us that the election of each had been less than canonical, since a judge ought to pronounce upon *even* the matter of which he has taken cognizance, we considered that both elections should be annulled by sentence *according to the canonical sanctions*. [*Moreover, etc.* (*Cf. c.* 2, *On Confessions, II.* 18.)]

> Idem dicit quoad intellectum, quod decretalis supra proxima.
>
> Idem Canonicis de Bethlehem.
>
> Quum super electione Bethlehemitanae ecclesiae inter R. subdiaconum nostrum, et P. canonicum sepulcri Dominici *nuper in nostra praesentia* quaestio verteretur, utroque se pro electo gerente, quum praefatus subdiaconus a *venerabili fratre nostro* patriarcha Hierosolymitano fuerit confirmatus, *alter vero favorem regium obtineret, eis dilectos filios P. Basilicae XII. Apostolorum, I. titul. S. Stephani in monte Coelio presbyteros et G. S. Mariae in porticu diaconum cardinales dedimus auditores, in quorum praesentia receptis utrinque testibus, et eorum depositionibus publicatis, quae hinc inde allegata fuerunt nobis et fratribus nostris retulerunt fideliter et prudenter. Nos vero tam per relationes cardinalium quam per gesta de causae meritis sufficienter instructi, communicato fratrum nostrorum consilio,* Eum, qui se probaverat per saecularem potentiam spoliatum, restituendum decrevimus iustitia mediante. Verum quoniam tam possessorium, quam *etiam* petitorium deductum fuerat in iudicium, et tam restitutionis quam electionis quaestio plenius agitata, et constitit nobis, electionem utriusque minus canonicam exstitisse, quum iudex, de qua re cognoverit, *etiam* pronunciare debeat, *iuxta canonicas sanctiones* utramque duximus sententialiter irritandam. [*Ceterum etc.* (*cf. c.* 2. *de confess. II.* 18.)]

Chapter V

Latin source headnote: One who brings an action concerning ownership may, before the conclusion of the cause, bring a possessory action for acquiring or recovering possession; but after conclusion and before sentence he cannot do this unless a just cause is present.

The same, to the Bishop of Noyon.

You pursue *the duty of pastoral office with a solicitous mind when, inflamed by zeal for justice, you humbly seek and devotedly await, through the oracle of the Apostolic See—from which the authority of your jurisdiction depends—answers concerning doubtful points of law, lest perhaps a new diversity of opinions or an exception of law distinguished by novel variation should produce, not the effect of law, but rather bring about a failure of justice.* Indeed, as *you informed us through your letters*, it sometimes happens that, when one who asserts that he has been despoiled brings his despoiler into a cause and, being asked at the very beginnings of the law which judgment he prefers to employ, enters the lawsuit concerning ownership without making any mention of the violence inflicted upon him, then, when *the proceeding in the cause has advanced so far that witnesses have been produced on this side and that*, he endeavors to begin a new judgment concerning the possessory matter, *saying that one who has begun to vindicate a thing does not appear to renounce the possessory judgment. It is resisted on the other side that, when he voluntarily proposed the complaint concerning ownership, he created prejudice against himself in the question of possession, which according to the order of law could and ought first to have been proposed and determined. Your fraternity therefore asked what is to be established in these matters. We, however,* answer your consultation in this way:

The possessory judgment which is proposed for recovering or acquiring possession may indeed be employed by one who has begun to vindicate the thing before the petitory judgment first instituted has been renounced or concluded. For it has been established by legal provision that one who has vindicated land from the person against whom he could have proceeded by the interdict *unde vi* may nevertheless institute the interdict while the judgment is pending; the other possessory judgments, which by their nature precede the vindication of ownership, are to remain in their force.

But if the petitory judgment has been renounced or concluded, so that the cause concerning ownership can now be determined by the decision of a definitive sentence, the possessory judgment is not to be employed while the cause remains undecided, lest lawsuits be heaped upon lawsuits and a way be opened to frauds—unless the judge who takes cognizance of the cause should see that this is expedient for a just cause, as, for example, when the inequity of the invader is readily inferred from manifest indications and a mischance or malice has taken from the despoiled person the faculty of proving ownership. Therefore, having considered these and other causes which contain equity or justly move the mind of the judge, we do not deny that, even after the cause has been concluded, a possessory action may be brought. [*Given at the Lateran on the fifth day before the Kalends of June.* 1202.]

> Qui agit de proprietate, ante conclusionem causae possessorio adipiscendae vel recuperandae agere potest, post conclusionem vero et ante sententiam hoc non potest, nisi iusta causa subsit.
>
> Idem Episcopo Novioniensi.
>
> Pastoralis officii *debitum sollicita mente prosequeris, quum iustitiae zelo succensus super dubiis iuris articulis per apostolicae sedis oraculum, a qua tuae pendet iurisdictionis auctoritas, responsa humiliter appetis et devotus exspectas, ne forte nova opinionum varietas aut iuris exceptio varia novitate distincta non iuris effectum pariat, sed iustitiae defectum potius inducat*. Sane, sicut *nobis per tuas literas* intimasti, contingit aliquando, ut, quum is, qui se asserit spoliatum, suum trahit spoliatorem in causam, inter ipsa iuris auspicia requisitus, quo malit experiri iudicio, litem proprietatis ingreditur, de illata sibi violentia nullam faciens mentionem. Quum autem *adeo* fuerit in causa processum, *ut testes sint hinc inde producti*, novum iudicium super possessorio nititur inchoare, *dicens, quia non videtur possessorio renunciare iudicio qui rem coeperit vindicare. Cui ex adverso resistitur, quia, dum querelam proprietatis sponte proposuit, praeiudicium sibi fecit in quaestione possessionis, quam secundum iuris ordinem prius proponi licuit et debuit terminari. Quid igitur in his statuendum sit, tua fraternitas requisivit. Nos autem* Consultationi tuae taliter respondemus, quod possessorio quidem iudicio, quod de

recuperanda seu adipiscenda possessione proponitur, antequam renunciatum sit, aut conclusum in proprietatis iudicio primitus instituto, agi potest ab eo, qui rem coeperit vindicare, quum legali sit provisione statutum, eum, qui fundum vindicaverit ab eo, cum quo interdicto unde vi potuit experiri, pendente iudicio interdictum posse nihilominus intentare, aliis possessoriis iudiciis in suo robore duraturis, quae vendicationem dominii sui natura praecedunt. Si vero renunciatum fuerit vel conclusum, ut iam possit causa proprietatis diffinitivae sententiae calculo terminari, ne lites litibus inculcentur, et via possit fraudibus aperiri, causa non decisa possessorio non erit utendum, nisi iudex, qui de causa cognoscit, hoc ipsum ex iusta causa viderit expedire, puta quum ex perspicuis indiciis facile arguitur iniquitas invasoris, et spoliato casu seu malitia probandi dominium subtraxerit facultatem. His igitur et aliis causis inspectis, quae continent aequitatem aut iuste moverint animum iudicantis, postquam etiam conclusum fuerit, posse agi possessorio iudicio non negamus. [*Dat. Lat. V. Kal. Iun.* 1202.]

Chapter VI

Latin source headnote: If proceedings have been conducted in the petitory and possessory actions together, they are determined by one sentence, and the possessory is put first in the determination; but the petitory prevails in execution.

The same, to the Bishop and Official of Saint Andrews.

When the beloved son—(*And below:* [*Cf. c.* 6, *On Arbitrators, I.* 43.]) To the fourth question, however, we answer briefly that, when proceedings have been conducted concerning the possessory and petitory matters together, both ought to be determined by one sentence. But although possession is to be placed first in the pronouncement, ownership ought nevertheless to prevail in the execution. [*Although, however, etc. Given at the Lateran on the thirteenth day before the Kalends of April, in the tenth year [of our pontificate].* 1207.]

Si petitorio et possessorio simul est actum, una sententia terminatur, et praemittitur possessorium in terminando; sed in exsequendo praevalet petitorium.

Idem Episcopo et Officiali sancti Andreae.

Quum dilectus (*Et infra:* [*cf. c.* 6. *de arb. I.* 43.]) Ad quartum *autem* breviter respondemus, quod, quum super possessorio et petitorio simul est actum, utrumque una sententia debet terminari. Sed licet in pronunciatione sit possessio praemittenda, in exsecutione tamen debet proprietas praevalere. [*Quamvis autem etc. Dat. Lat. XIII. Kal. Apr. Ao. X.* 1207.]

Chapter VII

Latin source headnote: A benefice is adjudged to the person who proved that his collator was in possession of conferring it at the time of the collation; by this, however, the unsuccessful party is not prohibited from bringing an action concerning ownership of the right of conferring against the collator himself. This is what the whole letter intends.

The same, to the Bishop of Verona.

When formerly the question which existed between *the beloved son*, the archdeacon, on the one side, and the archpriest and canons of the Church of Vicenza on the other—(*And below:*) *Therefore, when the aforesaid archdeacon faithfully recounted these things before us,* because it was clearly established to us through *the same* attestations that the archdeaconry itself had been assigned without any protest of

the canons by the bishops of Vicenza to the two archdeacons who had successively preceded him; and because the aforesaid canons ought not to have refused the judges *or requested a copy of the rescript*, since the cause had been delegated to the aforesaid judges with the assent of the proctors of both parties, *and the rescript had been obtained by those same proctors, nor ought they to have sought delays for deliberation when issue had been joined before the Apostolic See through the proctors of both parties*—we took care to adjudge the aforesaid archdeaconry to him by definitive sentence, *notwithstanding exceptions of this kind*, imposing perpetual silence upon the canons of Vicenza who contradicted the same archdeacon *concerning the stall assigned to the archdeacon and his other appurtenances*. Nevertheless, the question of ownership concerning the collation of the archdeaconry itself was reserved to them, if perhaps they should wish to contend concerning this against the Bishop of Vicenza, since a matter conducted between others ought not to generate prejudice against them. [*Given at Anagni on the third day before the Nones of January,* 1204.]

> Adiudicatur illi beneficium, qui probavit collatorem suum fuisse in possessione conferendi collationis tempore; per hoc tamen non prohibetur succumbens agere de proprietate iuris conferendi cum ipso collatore. Hoc vult tota littera.
>
> Idem Veronensi Episcopo.
>
> Quum olim quaestio, quae inter *dilectum filium* archidiaconum ex una parte, et archipresbyterum et canonicos Vincentinae ecclesiae ex altera (*Et infra:*) *Quum igitur archidiaconus praedictus haec coram nobis fideliter recitaret, *Quoniam per *ipsas* attestationes nobis constitit evidenter, quod ab episcopis Vincentinis archidiaconatus ipse sine reclamatione aliqua canonicorum duobus archidiaconis continue, qui ante ipsum exstiterant, fuerat assignatus, et quia canonici praedicti iudices recusare *vel postulare rescripti copiam* minime debuerunt, quum causa praedictis iudicibus delegata fuisset de utriusque partis procuratorum assensu, *et ab eisdem esset rescriptum impetratum, nec deliberationis inducias petere, quum apud sedem apostolicam per procuratores utriusque partis lis esset contestata*, praedictum archidiaconatum *non obstantibus huiusmodi exceptionibus* eidem per diffinitivam sententiam adiudicare curavimus, canonicis Vincentinis *contradicentibus eidem archidiacono, stallo etiam archidiacono deputato et aliis pertinentiis suis*, perpetuum silentium imponentes, reservata tamen eis quaestione proprietatis super collatione archidiaconatus ipsius, si forte super hoc contendere voluerint adversus episcopum Vincentinum, quum res inter alios acta non debeat eis praeiudicium generare. [*Dat. Anagniae III. Non. Ian. *1204.]

Chapter VIII

Latin source headnote: If one seeking a thing fails on one ground, he will be able to seek it on another ground. This is what it says according to the letter. Or thus: For one seeking a thing by right of ownership, it is not sufficient to prove possession. This is what it says in relation to the title.

Honorius III, to the Abbot of Saint Cyprian in the Diocese of Torcello and the Abbot of Saint Mary the New in Venice.

In the cause which was conducted between *our venerable brothers*, the Patriarch of Grado *and the Bishop of Castello*, on the one side, and the abbot and convent of the monastery of Saint George in Venice, concerning the subjection of that monastery, on the other, we found it proved for the same patriarch *that he was received processionally in that monastery with incense, holy water, and an icon; that when he returned from the step, the bells were rung there, as in the other churches of the city; and*, among other things, that the abbot sometimes went to his synod, paying him fifty *small* Venetian solidi over many years. *For the bishop, however, it was found proved that he confirmed the abbots of the same monastery, who rendered him*

obedience and reverence. The abbots of that monastery also came to the bishop's synods; when invited to funerals, he was received processionally with the aforesaid solemnity; and, similarly, when invited on the feast of blessed George, he received procuration there. They conveyed him in their boat on the feast of the Purification of the Blessed Virgin.

Since the aforesaid patriarch and bishop had first proceeded in the possessory action concerning these matters, we restored them to the possession or quasi-possession of the aforesaid things. Yet because proceedings had nevertheless been conducted on both sides in the petitory action, and each party appeared to have brought its entire right into judgment, we, having inspected the privileges of our predecessors, by the counsel of our brothers decree that the monastery itself is free and pertains immediately to the Roman Church. We absolve it from the attack of the said patriarch and bishop in the aforesaid matters and in others which concern jurisdiction and subjection, notwithstanding the possession proved concerning the aforesaid matters, since they did not show that they had received such things for so long a time that the privileges of liberty were derogated by this. We reserve, however, to the aforesaid bishop those things which are specially reserved to him in the same privileges concerning chrism, holy oil, ordinations of clerics, and certain other matters.

In addition, since the patriarch proceeded concerning the aforesaid fifty solidi, which he sought as evidence of subjection, by the definitive sentence which he received against him concerning this we do not take away his power if he should wish to proceed concerning them by another right. [*Therefore to your discretion, etc. Given on the Nones of May, in the eighth year [of our pontificate].* 1224.]

> Si petens rem ex una causa succumbit, ex alia causa petere poterit. Hoc dicit quoad literam. Vel sic: Petenti rem iure dominii possessionem probare non sufficit. Hoc dicit quoad titulum.
>
> Honorius III. Abbati S. Cypriani Torcellanae dioecesis et S. Mariae novae de Venetiis.
>
> In causa, quae inter *venerabiles fratres nostros* patriarcham Grandensem *et episcopum Castellanum* ex una parte, et abbatem et conventum monasterii sancti Georgii de Venetiis super subiectione ipsius monasterii ex altera vertebatur, invenimus pro eodem patriarcha probatum, *quod recipiebatur in ipso monasterio processionaliter cum incenso, aqua benedicta, et icona, et quando revertebatur a gradu, pulsabantur ibi campanae, sicut in aliis ecclesiis civitatis, et* quod inter alia abbas quandoque ivit ad eius synodum, L. solidos Venetorum *minorum* ei per plures annos exsolvens. *Probatum vero pro episcopo invenitur quod eiusdem monasterii confirmavit abbates, qui ei obedientiam et reverentiam impenderunt. Abbates etiam eiusdem monasterii ad synodos veniebant episcopi, et idem ad exsequias invitatus recipiebatur processionaliter cum solennitate praedicta, ac similiter invitatus in festo beati Georgii procurationem ibidem recipiebat, quem in barca sua in festo Purificationis B. Virginis conducebant. Quum autem in his primo possessorio egerint patriarcha et episcopus memorati, nos eos ad possessionem vel quasi restituimus praedictorum. Verum quia hinc inde petitorio nihilominus actum fuit, et utraque pars totum suum ius videtur in iudicium deduxisse, nos, visis praedecessorum nostrorum privilegiis, monasterium ipsum de fratrum nostrorum consilio liberum esse decernimus, et immediate ad Romanam ecclesiam pertinere, illud in praemissis, et aliis, quae iurisdictionem et subiectionem respiciunt, ab impetitione dictorum patriarchae ac episcopi absolventes, non obstante possessione circa praedicta probata, quum non docuerint se tanto tempore talia percepisse, quod per hoc libertatis fuerit privilegiis derogatum. Reservamus autem episcopo supradicto quae sibi circa chrisma, oleum sanctum, ordinationes clericorum et quaedam alia in eisdem privilegiis specialiter reservantur.* Ad haec, quum de praemissis L. solidis, quos petiit ad subiectionis iudicium, a patriarcha sit actum, per sententiam diffinitivam quam super hoc contrariam reportavit, ei non adimimus, si alio iure de ipsis experiri voluerit, potestatem. [*Ideoque discretioni etc. Dat. Non. Maii Ao. VIII.* 1224.]

Title XIII: On the Restitution of Those Despoiled

Chapter I

Latin source headnote: Against one seeking restitution, a defendant objecting concerning ownership is not to be heard unless the plaintiff consents.

Gregory IX, to the Bishop of Constance.

Although greatly [*the scourge of blindness borne by Philagrius, the bearer of the present letters, invites your fraternity to preserve justice for him, nevertheless, because he wished you to be made more prompt by us to restore the things which he asserts are prejudicially detained from him, we have foreseen that the present writing should be directed to you.*] *But* Philasius, a blind man, has complained to us that his field, *together with his vineyard*, has been unreasonably occupied by men of *your* church. If this is so, although before every contention the possession violently taken from him ought to have been restored to him, nevertheless, because [*our common son*] Eventus, a deacon of that church, with his consent undertook that he would lawfully prove that the said field belongs to that church's right, *therefore* inquire into the truth; and, if this is proved, it is to be said to him that he should withdraw from his contention; otherwise, *before every contention*, let the thing taken from him be returned to him. *So that thereafter cognizance concerning ownership may remain unimpaired for each party, etc. He indicated furthermore, etc.* (*Cf. c.* 4, *On Payments, III.* 39.)

> **DE RESTITUTIONE SPOLIATORUM.**
>
> Adversus restitutionem petentem, non est audiendus reus de proprietate opponens, nisi actore consentiente.
>
> Gregorius IX. Episcopo Constan.
>
> Licet multum [*fraternitatem vestram ad servandam sibi iustitiam Philagrii portitoris praesentium flagellum caecitatis invitet, veruntamen, quia ad restituenda quae sibi praeiudicialiter asserit detineri per nos vos voluit fieri promptiores, praesentia ad vos scripta praevidimus dirigenda.*] Conquestus est *autem* nobis Philasius caecus, eius campum *cum vinea sua* ab ecclesiae *vestrae* hominibus irrationabiliter occupatum. Quod si ita est, quanquam ante omnem contentionem possessio ei debuerat violenter ablata restitui, tamen, quia [*communis filius*] Eventus diaconus ipsius ecclesiae consentiente illo constituit se legitime probaturum, dictum campum eiusdem ecclesiae iuris esse, *ideoque* veritatem inquire, et, si hoc probatum fuerit, huic dicendum est, ut a sua intentione discedat; alioquin *ante omnem contentionem* res ei ablata reddatur. *Ut sua cuique parti integra post hoc maneat de proprietate cognitio etc. Indicavit praeterea etc.* (*cf. c.* 4. *de cens. III. *39.)

Chapter II

Latin source headnote: A renunciation made after spoliation does not stand against one seeking restitution of a benefice, because it is presumed not to have been voluntary. And I deliberately added "because it is presumed not to have been voluntary," since, even if it were proved voluntary, such an exception or renunciation ought to stand in beneficial matters.

Alexander III, to the Bishop of Worcester.

You shall take solicitous *and diligent* care to investigate at what time H. renounced the church; and if it is established to you that he *had been* despoiled when he renounced the same church—*whether he renounced on this occasion only, or whether he renounced the aforesaid church on several occasions, provided that he renounced while despoiled*—you shall not admit against him, before he has been restored, the witnesses

of the other party concerning an oath and a renunciation voluntarily made, because it is not likely that one who renounces while despoiled has voluntarily renounced his right. But you shall not postpone receiving the witnesses of the same H., through whom he intends to prove for himself that he was violently despoiled of the aforesaid church, provided that they are suitable.

> Petenti restitutionem beneficii non obstat renunciatio facta post spoliationem, quia praesumitur non spontanea. Et seriose addidi: quia praesumitur non spontanea: quoniam, etsi probaretur spontanea, deberet obstare talis exceptio vel renunciatio in beneficialibus.
>
> Alexander III. Vigorniensi Episcopo.
>
> Sollicite cures *et diligenter* perquirere, quo tempore H. renunciavit ecclesiae, et, si tibi constiterit, eum *esse* spoliatum, quum eidem ecclesiae renunciavit, *si hac vice tantum renunciavit, aut si pluribus vicibus renunciavit ecclesiae praescriptae, dummodo spoliatus renunciavit*, contra eum testes alterius partis de iuramento et renunciatione sponte facta, antequam restitutus fuerit, non admittas, quia non est verisimile, quod sponte iuri suo renunciaverit qui renunciat spoliatus. Sed testes eiusdem H., quibus intendit se probare, quod violenter praedicta ecclesia fuerit spoliatus, dummodo idonei sint, recipere non postponas.

Chapter III

Latin source headnote: One seeking restitution of a benefice is not heard, even if he proves spoliation, if it is proved that he had previously resigned that benefice voluntarily.

The same.

Having received the complaint of P., a cleric, that he had been violently despoiled of the church *of Procebrant*, we, [*by commanding*] *through apostolic writings, if we remember correctly,* gave you a mandate that, if this were established, you should cause it to be restored to him *by our authority*. When this became known, it was answered by the adversary, *as we are told*, that this ought not to benefit him because he had of his own free will abjured the aforesaid church before the Archbishop of York, legate of the Apostolic See. *But because we have not written to unlearned men, but to discerning persons, and because it belongs to us to discern what reason dictates, by the authority of the present letters* we command your discretion that *you diligently and subtly inquire into the truth of the matter*, and, if it is established to you that the aforesaid P., compelled by no fear or force but voluntarily, abjured the aforesaid church in this manner, you shall impose perpetual silence upon him concerning this, *every occasion and appeal being removed*.

> Petens restitutionem beneficii non auditur, etiamsi spoliationem probat, si probatur, eum sponte illud beneficium prius resignasse.
>
> Idem.
>
> Accepta conquestione P. clerici, quod violenter fuerat ecclesia *de Procebrant* spoliatus, vobis *per apostolica scripta, si bene meminimus,* [*praecipiendo*] dedimus in mandatis, ut, si hoc constaret, eam sibi *auctoritate nostra* restitui faceretis. Quo cognito responsum est, *sicut nobis dicitur*, ab adversario, id non debere proficere eo, quod spontanea voluntate coram Eboracensi archiepiscopo apostolicae sedis legato praescriptam ecclesiam abiurasset. *Quia vero non scripsimus idiotis, sed discretis personis, et nostrum est discernere, quid ratio dictet, discretioni vestrae praesentium auctoritate* Mandamus, quatenus *rei veritatem diligenter et subtiliter inquiratis, et*, si vobis constiterit, quod praefatus P. nullo metu vel vi coactus, sed spontanee praelibatam ecclesiam taliter abiuraverit, ei *omni occasione et appellatione remota* super hoc perpetuum silentium imponatis.

Chapter IV

Latin source headnote: In an interdict for retaining possession, the defendant fails when his abjuration has been proved. This is what it says in relation to the title.

The same, to the Bishop of Worcester and the Archdeacon of Ely.

Having heard the complaint of *our beloved son* T., a cleric *of our dearest son in Christ, the illustrious King of the Scots,* that H., parson of the church of Sander, was unduly troubling him concerning his church of Pelen, *which the aforesaid T. had obtained, then free and vacant, upon the presentation of the same king, although the same H. is said to have sworn voluntarily that he would move no question against the aforesaid T. concerning the church of Porten, we gave a mandate to our venerable brother* the Bishop of London and to you, son archdeacon, that, *after the truth of the matter had been more fully investigated,* if it were established to you that the aforesaid H. held the parsonship of another church, or had confirmed by a voluntarily furnished oath that he would not thereafter move a question against the aforesaid T. concerning the same church, *you should thereupon, appeal being removed, impose perpetual silence upon him and* restrain him from troubling that man concerning this.

But afterward a messenger of the aforesaid H., approaching our presence, proposed to us with firm assertion that the same H. had been despoiled of the same church through violence; and for that reason he obtained our letters to you, directing that, if it were established to you after the truth had been learned that H. himself had been despoiled when he renounced that church, you should by no means receive against him the witnesses of the other party concerning an oath and renunciation voluntarily made, but rather should not delay to receive the witnesses of H. himself, through whom he intended to be able to prove that he had been violently despoiled of the aforesaid church, provided that they were suitable; and that, according to their depositions and the reasons and allegations produced on this side and that, you should judge in that cause what was just, the obstacle of appeal being removed, notwithstanding [our] letters, if any others had been obtained by either party, *or the form which we expressed in other letters obtained concerning this. We added, furthermore, that if anything had been changed in the cause itself after the messenger of the aforesaid Henry began his journey to come to our presence, before entering the principal cause you should, every contradiction and appeal ceasing, restore the whole cause to the state in which it was known to have been when the messenger of H. himself undertook that journey, unless perhaps in the meantime the same H. could come to an agreement concerning the church itself with the other party by voluntary will.*

But now it has become known to us from the letters of the aforesaid bishop and from yours, son archdeacon, that you, [*as you ought*], *following the tenor of the former letters, cited the parties with due solemnity*. When, however, *after several citations a peremptory day was finally appointed, the contumacy of the aforesaid H. had been more fully established to you by lawful proof,* and when you learned from the testimony of *suitable persons that the often-mentioned H. not only held the parsonship of another church but also, of his voluntary will, had abjured the church of Pelen* in perpetuity *in the face of the Church*, you prohibited him from thereafter troubling the said T. concerning this.

Although, however, the messenger of the same H. obtained the later letters, *as we have said*, containing a different form—that, notwithstanding letters obtained by the other party, anything changed in the cause after the same messenger began his journey to come to us ought to be revoked—nevertheless, because we did not understand, nor ought it to have been understood, that what had been done by you under the authority of our letters should be *rendered void*, but only if anything had been changed by presumption or violence, *by commanding your discretion through apostolic writings* we order that you

shall by no means attempt, on the occasion of those letters, to revoke the sentence which you rendered before receipt of the later letters; and, if you have decreed anything against that sentence, you shall take care to revoke it, the obstacle of appeal being removed, *and shall by no means permit the aforesaid H. to proceed against the same sentence, but rather, contradiction and appeal being set aside, shall cause the sentence to be inviolably observed by our authority*. But if the sentence was rendered after receipt of the subsequent letters, notwithstanding that *sentence*, you shall proceed *in the cause* according to the tenor of *those letters*, appeal being set aside, *provided that the aforesaid H. was despoiled through violence and furnished that oath while despoiled*.

In interdicto de retinenda succumbit reus, ipsius abiuratione probata. H. d. quoad titulum.

Idem Wigorensi Episcopo et Heliensi Archidiacono.

Audita querela *dilecti filii nostri* T. clerici *carissimi in Christo filii nostri illustris Scotorum regis*, quod H. persona ecclesiae de Sander, ipsum super ecclesia sua de Pelen. indebite molestaret, *quam liberam tunc et vacantem ad repraesentationem eiusdem regis praedictus T. fuerat adeptus, licet idem H. sponte iurasse dicatur, quod super ecclesia de Porten. praefato T. nullam quaestionem moveret, venerabili fratri nostro* Londonensi episcopo, et tibi, fili archidiacone, dedimus in mandatis, ut, *veritate rei plenius inquisita*, si vobis constaret, quod praedictus H. alterius ecclesiae personatum haberet, vel iuramento spontanee praestito firmaverit, se memorato T. super eadem ecclesia quaestionem de cetero non moturum, *ei exinde appellatione remota perpetuum silentium imponatis, et* ab eius molestia super hoc compesceretis eundem. *Postmodum vero nuncius praefati H. ad praesentiam nostram accedens constanti nobis assertione proposuit, quod per violentiam idem H. eadem ecclesia fuerit spoliatus, et ideo ad vos nostras literas impetravit, ut, si constaret vobis veritate cognita, ipsum H. spoliatum esse, quum eidem renunciavit ecclesiae, contra eum testes alterius partis de iuramento et renunciatione spontanee facta nullatenus reciperetis, sed potius testes ipsius H., quibus intendebat posse probare, quod violenter praedicta ecclesia spoliatus fuerit, dummodo essent idonei, non differretis recipere, et secundum eorum depositiones et rationes et allegationes hinc inde productas in causa ipsa appellationis obstaculo remoto quod iustum esset iudicaretis, non obstantibus literis *[*nostris*], *si quae aliae ab alterutra parte impetratae fuissent, aut forma, quam expressimus in aliis literis super hoc impetratis. Addidimus insuper, quod, si in causa ipsa aliquid esset immutatum, postquam nuncius praedicti Henrici iter arripuit ad nostram praesentiam veniendi, totam causam ante ingressum principalis causae contradictione et appellatione cessante in eum statum reduceretis, in quo fuisse dignoscitur, quum nuncius ipsius H. est iter ipsum aggressus, nisi forte interim idem H. cum altera parte spontanea voluntate posset super ecclesia ipsa convenire. Nunc autem ex literis praedicti episcopi et tuis, fili archidiacone, nobis innotuit, quod vos, priorum literarum tenorem,* [*sicut debuistis*] *secuti, partes debita solennitate citastis*. Quum vero *post plures citationes die tandem peremtorio constituto, de iam dicti H. contumacia legitima probatione* vobis plenius constitisset, *idonearum personarum testimonio cognoscentes, saepe* dictum H. non solum ecclesiae alterius personatum habere, sed etiam spontanea voluntate ecclesiam de Pelen. *in faciem ecclesiae* in perpetuum abiurasse, prohibuistis eidem, ne dictum T. super hoc de cetero molestaret. Licet autem nuncius eiusdem H. posteriores literas, *sicut diximus*, impetraverit, formam aliam continentes, quod, non obstantibus literis a parte altera impetratis, revocari deberet, si quid immutatum esset in causa, postquam idem nuncius iter ad nos arripuerit veniendi, quia tamen non intelleximus, nec intelligi debuit, ut revocaretur *in irritum* quod per vos factum esset auctoritate literarum nostrarum, sed si quid praesumptione vel violentia immutatum esset *discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus sententiam, quam protulistis ante posteriorum literarum receptionem, occasione ipsarum nullatenus revocare tentetis, et, si contra sententiam ipsam aliquid statuistis, studeatis id, sublato appellationis obstaculo, revocare, *et praefatum H. contra eandem sententiam nullatenus venire permittatis, sed potius sententiam contradictione et appellatione postposita faciatis auctoritate nostra inviolabiliter*

observari. Si vero post receptionem sequentium literarum sententia lata fuerit ea *sententia* non obstante *in causa* iuxta tenorem *literarum* ipsarum appellatione postposita procedatis, *dummodo praefatus H. per violentiam spoliatus fuerit, et spoliatus illud praestiterit iuramentum*.

Chapter V

Latin source headnote: The question of noncanonical institution cannot be raised against one seeking restitution of a benefice.

The same, to the Bishop of Brescia.

In your letters—(*And below:* [*Cf. c.* 9, *On the Office of a Delegated Judge, I.* 29.]) Concerning that question—namely, when someone says that he *has been* violently ejected from possession, and his adversary says that he was not canonically instituted—we answer that proceedings concerning the violent ejection ought to be conducted before proceedings concerning canonical institution, because even a robber must be restored according to the rigor of law. [*Likewise, when, etc.* (*Cf. the following chapter.*)]

Petenti restitutionem beneficii quaestio institutionis non canonicae referri non potest.

Idem Brixiensi Episcopo.

In literis tuis (*Et infra:* [*cf. c.* 9. *de off. iud. del. I.* 29.]) Super illa quaestione, videlicet quum quis dicit, se de possessione violenter eiectum *esse*, et adversarius dicit, eum non fuisse canonice institutum, respondemus, prius de violenta eiectione, quam de canonica institutione agi debere, quia praedo etiam est secundum rigorem iuris restituendus. [*Item quum etc.* (*cf. cap. seq.*)]

Chapter VI

Latin source headnote: An exception of crime does not stand against one proceeding by the interdict *unde vi* or *quod vi aut clam*.

The same, to the Bishop of Exeter.

Likewise, when someone says that he has been violently ejected from possession, or that his adversary has secretly entered the possession, and the adversary alleges a crime against him in order to repel him from his contention *by reason of the crime*, it does not *indeed* occur to us that the latter's objection ought to be admitted, or that the execution of the principal cause ought for this reason to be delayed, because he cannot proceed criminally against him before restitution, since he is presumed to be his enemy.

Non obstat exceptio criminis agenti interdicto unde vi, vel quod vi aut clam.

Idem Exonensi Episcopo.

Item quum quis dicit, se de possessione violenter eiectum, vel adversarium clam possessionem intrasse, et adversarius ei crimen obiicit, ut eum *ratione criminis* a sua intentione repellat, non occurrit *quidem* nobis, quod illius obiectio admitti debeat, vel principalis causae propter hoc exsecutio retardari, quoniam criminaliter adversus eum ante restitutionem agere non potest, quum praesumatur eius exsistere inimicus.

Chapter VII

Latin source headnote: One despoiled even by a judge, the order of law having been omitted, is to be restored before all else.

The same, to the Archbishop of Canterbury.

Upon the complaint of the cleric R., *the bearer of the present letters*, we learned that, *while he was devoting himself to scholastic disciplines*, you despoiled him, [*without his having been cited*], of the church of Werfort without a judgment. But because it does not become your honor to despoil the clerics of your jurisdiction, without a manifest and reasonable cause, of their benefices—clerics for whom you are bound to provide with paternal foresight—[by commanding] *your fraternity through apostolic writings* we command that, if it is so, you restore to the aforesaid cleric the aforementioned church together with the revenues received from it, and permit him to possess it in peace. But after restitution has been made, if you wish to propose anything [*thereupon*] against him concerning the aforesaid church, you will be able, personally or through your sufficient representative, to proceed according to judicial order with the same R. before *our venerable brother*, the Bishop of Exeter, delegated by us; and you shall firmly receive and observe *what* [*he*] *shall thereupon decree, for we have committed the cause to the same bishop for determination*.

> Spoliatus etiam a iudice, iuris ordine praetermisso, ante omnia restituatur.
>
> Idem Cantuariensi Archiepiscopo.
>
> Conquerente nobis R. clerico *latore praesentium* accepimus, quod, *quum vacaret scholasticis disciplinis*, ipsum [*non citatum*] ecclesia de Werfort sine iudicio spoliasti. Quia vero iam non decet honestatem tuam clericos tuae iurisdictionis sine manifesta causa et rationabili suis beneficiis spoliare, quibus teneris paterna provisione consulere, *fraternitati tuae per apostolica scripta* [*praecipiendo*] mandamus, quatenus, si est ita, praedicto clerico praefatam ecclesiam cum reditibus inde perceptis restitutas, et in pace eam possidere permittas. Restitutione autem facta, si quid [*exinde*] adversus eum super praescripta ecclesia proponere volueris, coram *venerabili fratre nostro* Exonensi episcopo delegato a nobis per te vel per sufficientem responsalem tuum cum eodem R. ordine iudicario poteris experiri, *et quod* [*ipse*] *exinde statuerit suscipias firmiter et observes; nos enim eidem episcopo causam commissimus terminandam*.

Chapter VIII

Latin source headnote: A spouse is restored to a husband who proves betrothal and carnal union and gives security for her safety, unless the husband's cruelty is great.

The same.

From that transmitted to us—(*And below:*) *Because the truth could not become clear to us, we have considered that the cause should be committed to your experience; through apostolic writings* we command your fraternity that, if it is established to you that the aforesaid woman had been lawfully betrothed to the aforesaid knight and carnally known by him, you shall cause her to be restored to him, sufficient security nevertheless having been received that he ought not to inflict any harm upon her. But if the husband persecutes the woman with such mortal hatred that she deservedly distrusts him *and holds him suspect*, she shall be carefully committed for safekeeping until the decision of the cause to some upright and honorable woman, in a place where neither the husband nor his relatives can inflict any violence upon the woman.

> Restituitur coniunx viro probanti desponsationem et copulam, et de ipsius impunitate caventi; nisi magna sit viri saevitia.
>
> Idem.

Ex transmissa nobis (*Et infra:*) *Quia nobis de veritate liquere non potuit, causam experientiae vestrae duximus committendam; fraternitati vestrae per apostolica scripta* Mandamus, quatenus, si vobis constiterit, quod praefata mulier praedicto militi legitime desponsata fuisset, et ab eo cognita, ipsam ei restitui faciatis, recepta tamen sufficienti cautione, quod illi non debeat aliquod malum inferre. Si autem capitali odio ita mulierem vir persequitur, quod merito de ipso diffidat *et eum habeat suspectum*, alicui probae et honestae mulieri usque ad causae decisionem custodienda studiosius committatur in loco, ubi vir vel parentes eius mulieri nullam possint violentiam inferre.

Chapter IX

Latin source headnote: Through payment of the pension from the donated thing, made to the donee with the donor's authority, possession of the donated thing is acquired for that donee to such a degree that, if he is expelled from it, he will be able to proceed by the interdict for recovering possession.

The same.

When *our beloved son* G., canon of Holy Trinity of Hasul, came to us, having been sent by his prior and chapter, he proposed in our hearing that, when *our venerable brother* the Archbishop of York had granted them the church of N. and confirmed it by his own writing, in such a way that after the death of G. *of Pontino*, the cleric who held the aforesaid church *at that time*, it would in every way be applied to their uses, and meanwhile, *by* the authority of that archbishop, the same G. would pay an annual pension to those canons, *we afterward, having diligently inspected the writing of that archbishop, considered that the same grant should be confirmed by apostolic authority. But when the aforesaid cleric had died, the said canons, although they had not been inducted into possession of the aforesaid church by the archbishop himself, nevertheless, placing very great confidence in the grant and our confirmation, entered the church itself lest they be troubled by a certain cleric who was endeavoring to harass them concerning that church; and they appealed to our hearing both against the archbishop himself, by whom they feared they would be aggrieved, and against the aforesaid cleric. While two of their brothers were prosecuting the appeal made by them, the often-mentioned archbishop caused the grain and all the goods of the church which the aforesaid cleric G., when dying, left there to be carried away against the will of the aforesaid canons—which we can scarcely believe.* (*And below:*)

Master M. and A., clerics and messengers of the same archbishop, who were present, steadfastly excused him concerning these matters, and added that a grave injury had been inflicted upon the aforesaid archbishop by the aforesaid canons, because, even if they had letters of grant from him, they ought not, after his authority had been disregarded, to have entered into possession by themselves. We therefore answer that, if the aforesaid canons, during the cleric's lifetime, received an annual pension from the aforesaid church under the authority of the same archbishop, then, when that cleric was dead, although they did not seek the authority of the same archbishop, they nevertheless did not enter possession wrongfully, since, as is provided *in the laws of secular princes*, he possesses in whose name possession is held.

We commit the cause itself to you, in whose prudence and integrity we confide, commanding your fraternity through apostolic writings that, having summoned the parties before your presence, if their assertion is established, before entry upon the principal cause you shall by our authority cause the grain and all the goods of the church carried away after the appeal by command of the archbishop himself to be restored, the obstacle of appeal being removed. Thereafter you shall earnestly admonish the archbishop to hold his grant ratified and henceforth cease to harass the aforesaid canons concerning the aforesaid church. But if he is unwilling to acquiesce in your admonition, you shall

diligently hear the cause concerning the church and determine it without acceptance of persons, the evasion of appeal being removed.

> Per solutionem pensionis rei donatae, factam donatorio cum auctoritate donatoris, acquiritur illi donatario rei donatae possessio, adeo, quod, si ab illa expellitur, per interdictum recuperandae agere poterit.
>
> Idem.
>
> Quum venisset ad nos *dilectus filius noster* G. canonicus sanctae Trinitatis de Hasul. a suo priore et capitulo destinatus, in audientia nostra proposuit, quod, quum *venerabilis frater noster* Eboracensis archiepiscopus ecclesiam de N. eis concessisset, et per scriptum proprium confirmasset, ita, quod post decessum G. *de Pontino* clerici, qui praefatam ecclesiam tunc *temporis* tenebat, usibus eorum omnibus modis proficeret, et interim *de* auctoritate ipsius archiepiscopi idem G. ipsis canonicis annuam solveret pensionem, *nos postmodum eandem concessionem, scripto ipsius archiepiscopi diligenter inspecto, auctoritate apostolica duximus confirmandam. Mortuo autem praefato clerico iam dicti canonici, licet per ipsum archiepiscopum non fuissent in praedictae ecclesiae possessionem inducti, tamen de concessione et confirmatione nostra plurimum confidentes, ecclesiam ipsam, ne a quodam clerico turbaretur, qiu eos super eadem ecclesia nitebatur fatigare, sunt ingressi, et tam contra ipsum archiepiscopum, a quo gravari timebant, quam praefatum clericum ad nostram audientiam appellaverunt. Ipsis vero per duos de fratribus suis appellationem factam prosequentibus, saepe dictus archiepiscopus bladum et omnia bona ecclesiae, quae praefatus G. clericus suus moriens ibidem reliquit, fecit, quod vix credere possumus, invitis praedictis canonicis asportari.* (*Et infra:*) *Magister M. et A. clerici et nuncii eiusdem archiepiscopi, qui praesentes aderant, ipsum super his constanter excusaverunt, et adiecerunt, archiepiscopo iam praedicto per praefatos canonicos gravem iniuriam irrogatam, quia, et si ab ipso literas concessionis habuissent, ipsius postmodum auctoritate contempta, per se ipsos ingredi in possessionem non deberent. Nos itaque *Respondemus, quod, si praefati canonici de praedicta ecclesia auctoritatem eiusdem archiepiscopi vivente clerico perceperunt annuam pensionem, eo mortuo, quamvis auctoritatem eiusdem archiepiscopi non quaesierunt, vitiose tamen non sunt possessionem ingressi, quum, sicut *in saecularium legibus principum* cautum est, is possideat, cuius nomine possidetur. *Causam ipsam vobis, de quorum prudentia et honestate confidimus, committimus, fraternitati tuae per apostolica scripta mandantes, quatenus ante praesentiam vestram partibus convocatis, si de ipsorum assertione constiterit, bladum et omnia bona ecclesiae post appellationem de mandato ipsius archiepiscopi asportata ante ingressum principalis causae, auctoritate nostra, sublato appellationis obstaculo restitui faciatis: deinde archiepiscopum attentius moneatis, ut concessionem suam ratam habeat et praefatos canonicos amodo desinat super praefata ecclesia fatigare. Si vero commonitioni vestrae acquiescere noluerit, super ecclesia causam diligentius audiatis, et sine personarum acceptione sublato appellationis diffugio terminetis.*

Chapter X

Latin source headnote: If, while the plaintiff proceeds in the petitory action, the defendant brings a possessory action concerning the same thing, proceedings are conducted only in the possessory action, the petitory being suspended.

Lucius III, to the Archdeacon and I., Archpriest of Tours.

You should know that it has reached us from the complaint of the woman B. that, when the knight C. had joined her to himself in marriage and, treating her with marital affection, had begotten a daughter from her, he afterward removed her from himself without a judgment of the Church and obtained letters to judges for accusing the marriage on the ground of consanguinity, the obstacle of appeal being removed. But when, before the woman was cited by the *delegated* judges, she had

petitioned through the diocesan bishop that her husband be restored to her, and for this reason *she* had sent her own messenger to us, finally, having been established before the aforesaid judges, now personally, now through a proctor, she petitioned both before entry upon the cause itself and afterward that her husband be restored to her. The judges, however, restitution being *entirely* denied —which ought not to have been done—wished to proceed in the principal matter, whereupon she appealed *from such a grievance to* our hearing.

Therefore, because we ought to impart apostolic protection to those unjustly aggrieved, by commanding your discretion through apostolic writings we order that, if it is so, you shall cause *her own* husband to be restored to the *aforesaid* woman, *every contradiction and appeal ceasing*, revoking as void the things done after her appeal, and afterward shall hear the cause concerning the marriage *attentively* and determine it with a canonical end. *Given at Verona on the twelfth day before the Kalends of November.*

> Si, actore agente petitorio, reus super eadem re deducit possessorium, proceditur in solo possessorio, suspenso petitorio.
>
> Lucius III. Archidiacono et I. Archipresbytero Turonensibus.
>
> Ex conquestione B. mulieris ad nos noveritis pervenisse, quod, quum C. miles eam sibi matrimonio copulasset, et maritali affectione pertractans ex ipsa filiam suscepisset, sine iudicio ecclesiae *postmodum* a se removit eandem, et de accusando super consanguinitate matrimonio, remoto appellationis obstaculo, literas ad iudices impetravit. Quum autem prius, quam a *delegatis* iudicibus mulier citaretur, per dioecesanum episcopum virum sibi restitui petiisset, et ob hoc *ipsa* ad nos proprium nuncium destinasset, demum coram praefatis iudicibus constituta, modo per se, modo per procuratorem, ante ipsius causae ingressum et post virum sibi restitui postulabat. Iudices vero restitutione *penitus* negata, quod fieri non debuit, in principali procedere voluerunt, unde ipsa *a tali gravamine ad* nostram audientiam appellavit. *Quia ergo iniuste gravatis apostolicum debemus patrocinium impertiri, discretioni vestrae per apostolica scripta praecipiendo* Mandamus, quatenus, si est ita, *memoratae* mulieri *omni contradictione et appellatione cessante* virum *suum* restitui faciatis, quae post appellationem ipsius acta sunt in irritum revocantes, postmodum super matrimonio causam audiatis *attentius*, et fine canonico terminetis. *Datum Veronae XII. Kal. Nov.*

Chapter XI

Latin source headnote: A violent possessor is compelled to restore the thing together with the fruits, including those which could have been received, to repair the losses, and to make satisfaction for the injuries.

Celestine III.

A grave complaint [has come] to us—(*And below:*) *Therefore, through apostolic writings* we command *and firmly enjoin* your fraternity that, *having summoned the parties*, if the aforesaid matters are established to you, you shall compel the aforesaid archdeacon, by ecclesiastical constraint, relying upon our authority, every favor, fear, and affection being set aside and every delay, contradiction, and appeal ceasing, to restore in their entirety the things taken from the brothers of the aforesaid monastery, *to* repair the losses fully, and to make competent satisfaction for the injuries inflicted; then you shall admonish the archbishop to hold his grant ratified and henceforth cease to harass the aforesaid canons concerning the aforesaid church. But if he is unwilling to acquiesce in your admonition, you shall compel him, *being attentively provident* that you cause to be rendered to them, *by the aforesaid sentence, the obstacle of any appeal being removed*, not only the fruits received by the new and violent

possessor, but those which the former possessors would have received if it had been lawful for them to possess.

Furthermore, if any persons should determine to oppose the restoration of the things taken to the aforesaid brothers according to our mandate, you, supported by our authority, shall strike them with a sentence of anathema, notwithstanding appeal. But if the aforesaid archbishop perhaps does not come at the citation of your admonition, or is unwilling to obey your mandate, you, having received the witnesses of the monastery of Dol, shall proceed in the whole business according to the aforesaid form and take care to execute it with every solicitude as we have said, appeal ceasing, providing in every way that you do not permit the liberties granted to the aforesaid monastery by our predecessors and by you to be diminished or infringed by anyone.

> Violentus rem cum fructibus etiam qui percipi potuissent, restituere, damna resarcire, et de iniuriis satisfacere compellitur.
>
> Coelestinus III.
>
> Gravis ad nos querela (*Et infra:*) *Ideoque fraternitati vestrae per apostolica scripta* Mandamus *firmiterque praecipimus*, quatenus, *partibus convocatis*, si vobis constiterit de praemissis, praedictum archidiaconum ablata praenominati monasterii fratribus cum integritate restituere, *et* damna plenarie resarcire, et de illatis iniuriis competenter satisfacere, *omni gratia, timore et amore postpositis, dilatione, contradictione et appellatione cessante per districtionem ecclesiasticam nostra freti auctoritate compellatis restitui, deinde archiepiscopum moneatis, ut concessionem suam ratam habeat et praefatos canonicos amodo desinat super praefata ecclesia fatigare. Si vero admonitioni vestrae acquiescere noluerit, cogatis Eum* provisuri *attentius*, ut non tantum fructus a novo et violento possessore perceptos, sed quos, si eis possidere fuisset licitum, possessores veteres percepissent, *per supradictam sententiam, sublato cuiuslibet appellationis, obstaculo*, reddi faciatis eisdem. *Praeterea si qui, quominus secundum mandatum nostrum memoratis fratribus restituantur ablata, se duxerint opponendos, vos auctoritate nostra suffulti eos, non obstante appellatione, anathematis sententia percellatis. Si praefatus vero archiepiscopus ad citationem commonitionis vestrae forte non venerit, vel mandato vestro parere noluerit, vos Dolensis monasterii testibus receptis secundum formam praedictam in toto negotio procedentes, secundum quod diximus, appellatione cessante exsequi procuretis omnimoda sollicitudine providentes, ne libertates praefato monasterio vestro a praedecessoribus nostris vobisque concessas, a quoquam sustineatis minui vel infringi.*

Chapter XII

Latin source headnote: One who has entered possession without the knowledge of the lord to whom it pertains can, as soon as the lord learns of it, be repelled by that lord even violently; nor from such repulsion does a possessory interdict lie against the lord for the person repelled. This is what it says.

Innocent III, to the Bishop and Chapter of Tortona.

Formerly, we remember committing, *under a certain form*, to *the beloved sons*, the abbots of Lucedio and La Colomba, the cause which was conducted between you, in the name of the Church of Tortona, and *the beloved sons B.*, the master and brothers of the Knights of the Temple in Lombardy, concerning the house of Calventia. *The abbots themselves, having summoned the parties and issue having been joined in their presence, received the witnesses produced by each party; and, when renunciation had been made, they solemnly published their depositions on each side and, reducing them to writing by a public hand, remitted the fully instructed cause to our presence. We therefore granted as auditors to the beloved son C., canon and proctor of the Church of Tortona, and to the aforesaid master our beloved sons I., cardinal priest of the title of Saint Stephen on the Coelian Hill, and H., cardinal deacon of Saint Eustace. Before them it was proposed on your behalf that, when formerly*

certain Humiliati had sought from V., Bishop of Tortona of good memory, license to construct a hospital and oratory in the place of Calventia, the Bishop of Tortona redeemed certain possessions *from certain knights who held them in fief from the Church of Tortona, and granted them* to the Humiliati *at their request* under this condition: that *in honor of God and the Blessed Virgin* they would construct an oratory and hospital there in the name of the Bishop of Tortona; would furnish three solidi as an annual payment to the Bishop of Tortona; and the person placed over that place would receive investiture from him and, for himself and the other brothers, would make manual obedience to him and his successors, the bishop nevertheless retaining for himself lordship of the place.

But the said master, aspiring to that house *and wishing to join it to the house of Caselle,* so circumvented them that, without your knowledge, they delivered themselves and their things into his hands, this condition nevertheless being added: if what they did pleased you, without whose assent they asserted that they could do nothing. *The master accepted the condition added and affirmed that otherwise he would not receive them.* (*And below:*)

Then the master, approaching Calventia, took from there the ornaments of the church, the instruments of the house, and the books, and caused ninety sheep to be led away. Afterward, returning to you when what he had sought had been denied him, he added that he was prepared to render you an account if perhaps he had offended you. But you, observing his malevolent intention, strictly prohibiting him from intermeddling with the aforesaid house, appealed to the Apostolic See. And when you, brother bishop, heard what had been done, all of you together approached the same house and cast out from it those whom you found there, left by the master for the custody of the house, lawfully repelling force with force, as all laws permit. Hence, since possession of the aforesaid house had been delivered to the same master under a condition, the condition not existing, the delivery was not valid. Furthermore, since the same master secretly entered that house, no prejudice was generated against you whereby you could not repel him when this came to your hearing, especially since the true lord either moved a controversy against him, or he suspected, or ought to have suspected, that he would. (*And below:*)

Understanding that the aforesaid house had been delivered to the same master under a condition, and that no prejudice had been inflicted upon your right by the fact that the same master, not ignorant of your right, took possession without your knowledge—especially since, immediately when this became known to you, you determined that force should be repelled with force—and that the same *master* by his own temerity entered possession without the knowledge of you, to whom he knew that possession pertained and whom he ought to have suspected would move a question against him, *by the counsel of our brothers* we absolve the *said* proctor, personally and in your name, from the attack of the master himself, in the name of the house of the Knights of the Temple, with respect to making the restitution which he sought, *saving to him the question of ownership, concerning which nothing was conducted in this judgment, as the aforesaid Abbot of Lucedio explained to us orally*. We *nevertheless* decree that you furnish due satisfaction to the *same* master if, in defending your right, you perhaps exceeded the measure to the injury of him or of the house of the Knights of the Temple.

> Ingressus possessionem ignorante domino, ad quem pertinet, potest per ipsum dominum, statim quum sciverit, repelli etiam violenter, nec ex tali repulsione competit repulso contra dominum interdictum possessorium. H. d.
>
> Innocentius III. Episcopo et Capitulo Tridonensi.
>
> Olim causam, quae inter vos nomine Tridonensis ecclesiae, et *dilectos filios B.* magistrum et fratres militiae templi in Lombardia, super domo Calventiae vertebatur, *dilecto filio* de Locedio et de Columba

abbatibus *sub certa forma* meminimus commisisse. *Ipsi autem abbates, partibus convocatis, et lite in eorum praesentia contestata, testes receperunt ex utraque parte productos, et quum renunciatum fuisset, utrinque depositiones eorum solenniter publicarunt, et eas per manum publicam redigentes in scriptis, causam plene instructam ad nostram praesentiam remiserunt. Nos ergo dilecto filio C. canonico et procuratori ecclesiae Terdonensis et praedicto magistro dilectos filios nostros I. tit. S. Stephani in Coelio monte presbyterum et H. S. Eustachii diaconum cardinales concessimus auditores, coram quibus fuit ex parte vestra propositum, quod, quum olim Humiliati quidam a bonae memoriae V. episcopo Terdonensi licentiam postulassent, hospitale et oratorium in loco Calventiae construendi,* Episcopus Tridonensis possessiones quasdam *a quibusdam militibus, qui eas tenebant in feudum, ab ecclesia Terdonensi redemit, et illas* Humiliatis *petentibus* sub ea conditione concessit, quod *ad honorem Dei et B. Virginis* nomine Tridonensis episcopi oratorium ibidem et hospitale construerent, et tres solidos censuales Tridonensi episcopo annis singulis exhiberent, a quo etiam persona, quae loco praeficeretur eidem, investituram perciperet, et pro se et aliis fratribus ei et successoribus eius obedientiam faceret manualem, episcopo sibi loci dominium nihilominus retinente. Dictus vero magister ad eandem domum adspirans, *et volens eum copulare domui de Casellis*, ipsos, adeo circumvenit, quod praeter conscientiam vestram se et sua in eius manibus tradiderunt, ea tamen conditione apposita, si vobis quod facerent complaceret, sine quorum assensu se nihil posse facere asserebant. *Magister vero conditionem acceptavit appositam, et quod aliter eos non reciperet affirmavit.* (*Et infra:*) *Tunc vero magister accedens Calventiam exinde paramenta ecclesiae, instrumenta domus et libros accepit, et nonaginta oves fecit abduci ac postmodum reversus ad vos, quum ei fuisset quod petierat denegatum, quia paratus esset vobis facere rationem, si forsan vos offenderit, adiecit. Vos autem intentionem eius malevolam attendentes, et ne se de domo intromitteret memorata districtius inhibentes, ad sedem apostolicam appellastis. Et quum tu, frater episcope, quae gesta fuerant audivisses, omnes pariter ad domum accessistis eandem, et eos, quos invenistis ibidem ad domus custodiam a magistro relictos, eiecistis ex ea, vim vi, secundum quod omnia iura permittunt, licite repellentes. Unde quum possessio praedictae domus sub conditione tradita fuerit eidem magistro, non exstante conditione traditio non tenebat. Praeterea quum idem magister clam domum illam intraverit, nullum vobis est praeiudicium generatum, quo minus eum possetis repellere, quum id ad vestram audientiam perveniret; praesertim quum verus dominus controversiam ipsi moveret, vel suspicatus fuerit, vel debuerit suspicari.* (*Et infra:*) Intelligentes autem, praedictam domum eidem magistro traditam sub conditione fuisse, et quod nullum iuri vestro praeiudicium fuerat irrogatum, ex eo, quod idem magister iustitiae vestrae non inscius, vobis ignorantibus, possessionem accepit, praesertim quum statim, ex quo id vobis innotuit, vim vi duxeritis repellendam, et quod idem *magister* sua temeritate possessionem praeter conscientiam vestram, ad quos ipsam possessionem noverat pertinere, et quos quaestionem sibi moturos suspicari debuerat, est ingressus, *dictum* procuratorem vestrum et vestro nomine ab impetitione ipsius magistri, nomine domus militiae templi, quoad faciendam restitutionem, quam petebat, *de consilio fratrum nostrorum* reddimus absolutum, *salva ei quaestione proprietatis, de qua in hoc iudicio nihil est actum, sicut praedictus abbas de Locedio nobis exposuit viva voce*, decernentes *nihilominus*, vos magistro *ipsi* satisfactionem debitam exhibere, si defendendo ius vestrum in offensam ipsius vel domus militiae templi modum forsitan excessistis.

Chapter XIII

Latin source headnote: If consanguinity in a prohibited degree is objected against one seeking restitution of a spouse, and proofs ready at hand are offered, then, after an oath concerning absence of malice has been received from the objector, restitution will be denied with respect to the marriage bed and made with respect to the other matters. But if the proofs are not ready, full restitution will be made, unless the husband's cruelty is great.

The same, to the Archdeacon of Bourges.

We *recently* received your letters, *containing* that, when a certain matrimonial cause was being conducted in your presence while *our venerable brother* the Archbishop of Bourges was acting in distant regions, a woman named Guillelma most urgently petitioned to be separated from B., her husband, to whom she alleged that she was joined in the fourth degree of consanguinity. *Accusers also appeared, producing witnesses and a chart setting out the line of consanguinity on both sides; they said that they had been absent at the time the marriage was contracted and that they were prepared immediately to prove the things which they proposed.* The husband, *on the other hand*, petitioned that his wife be restored to him, alleging that she had departed from him by her own temerity.

Moreover, the wife's party replied that restitution should be entirely denied, both on account of the future danger of incest and because, with the proofs ready and at hand, what was maintained could be demonstrated without evasion. In addition, it alleged that the husband's cruelty was known: he possessed impetuous levity and bestial cruelty; and, if he had free power over his wife when she had been restored to him, her friends feared that danger of death or bodily torment would thereby threaten her, and thus they would desist from the accusation, preferring that she live in whatever manner rather than perish. They added, nevertheless, that she had departed from the husband with permission, in tears and unwilling. But the knight himself nevertheless petitioned that his wife be restored to him freely and peaceably; and, lest otherwise be done, he appealed to the Apostolic See. Therefore, since exceptions of this kind are rather often proposed in matrimonial causes, you sought to be instructed by an apostolic rescript as to what is to be done in such matters, *eliciting from the foregoing, as from a certain theme, many questions.*

First, you asked whether, when some degree of consanguinity is alleged in which the Apostolic See cannot and is not even accustomed to dispense, and proofs are ready and at hand, restitution is to be granted or denied. *Second, you asked whether the same rule of law exists if some dispensable degree or another dispensable impediment is alleged and proofs are similarly present—whether restitution ought to be granted or denied. Third, you asked whether, if the husband's cruelty and savagery are known to the judge, so that, angered because the controversy was moved, he is likely to treat his wife with torments and afflict her with injuries, and the accusers thus desist from accusing because they fear the woman's death, this furnishes in the first or second case an aid for denying restitution. Finally, you asked whether, if restitution is to be denied in any of the aforesaid cases and appeal is made to the Apostolic See, deference should be given to an appeal of this kind.*

Indeed, concerning the resolution of the proposed question, different persons hold different opinions: some assert that restitution is to be made *in the aforesaid cases*; others hold the contrary; and some choose a middle way, saying that it is sometimes to be made and sometimes *indeed* entirely denied.

The first appear to be assisted by the decretal letter of Pope Lucius *of good memory, our predecessor*. In it he reproved certain delegated judges who denied to a woman, despoiled and seeking her spouse, the restitution of a husband who had dismissed his wife without a judgment of the Church and afterward objected consanguinity against her; and he commanded that the woman so despoiled first be restored to him, and that cognizance afterward be taken of the matrimonial cause. The danger of incest, however, appears to oppose their assertion. But they answer that the fear of incest is empty, since even after the benefit of restitution has been obtained, one who has knowledge of consanguinity is neither permitted to demand the marital debt against conscience nor bound to render it, because, if such a person acts otherwise, he builds toward Gehenna, just as does one conscious of consanguinity concerning whose marriage no question is moved.

The second assertion, however, is supported by the oracle of Pope Clement *of happy memory, our predecessor*. When he was asked whether, when a certain woman was claiming a certain man as her

husband and he, in order to repel her, interposed an exception of consanguinity, the impediment of consanguinity should be dealt with before sentence was rendered concerning the marriage, he answered the inquiry made in this manner: because, when the exception is proved, the principal question is extinguished, cognizance must first be taken of the exception before proceeding to the point of definition, since in many cases restitution is also deferred according to the canonical sanctions.

It appears not unfittingly adapted to the final opinion that, in degrees of consanguinity prohibited by divine law, access to restitution should be closed, but that, in degrees forbidden by human constitution, restitution should have its place with effect, since there can be no dispensation in the former, but dispensation can be granted in the latter, as blessed Gregory and many others granted dispensations. Hence one who, at the command of the Church, renders the marital debt in this circumstance does not sin.

We, however, at present reprove none of the aforesaid opinions, nor do we wish any prejudice to be generated against any of them by our response, although the aforesaid mandate of Pope Lucius relates to the possessory action, while the response of Clement, *our father and predecessor*, relates to the petitory action. Furthermore, since *that* woman who has knowledge of consanguinity—especially within the degrees prohibited by divine law—cannot be carnally joined to a man of this kind without mortal sin, because everything which is not from faith is sin, and whatever is done against conscience builds toward Gehenna, restitution would in vain be adjudged in such a case to the person despoiled. For in this matter she ought not to obey the judge against God, but rather humbly to endure excommunication. Thus a difficulty would arise as though insoluble, because on account of the sentence she would have to render the marital debt, and on account of conscience she ought not to render *the debt*. Hence it would happen that they would be gravely impeded, and a snare would be prepared for each of them, since they could not be joined carnally to each other, nor could either be matrimonially joined to another.

For this reason it appears better *to us* that, when consanguinity is objected—especially in the degrees prohibited by divine law—and proofs ready at hand are immediately offered, restitution should *indeed* be adjudged in other matters, but, for greater caution, after an oath has been received that an objection of this kind is not made maliciously, restitution with respect only to carnal union, especially if reputation agrees, is to be deferred until, the proofs having been heard and discussed, the cause is determined without evasion, since it is better for each to be dispatched in this way than to remain impeded in that way.

But if she does not have proofs ready immediately, but awaits longer delays, because there is a presumption against her who departed from her husband without a judgment of the Church solely by her own temerity, she ought to be compelled to full restitution by ecclesiastical censure. Nevertheless, by refusing association in the marriage bed she ought humbly to endure that censure until she offers proofs that have been prepared; and then, having sought absolution, she will be absolved according to the form of the Church. But before a command is issued to her under the obligation of an oath, let proceedings be conducted after the proofs have been received, in the manner stated above. If, however, the husband's cruelty is so great that sufficient security cannot be provided for the trembling woman, not only ought she not to be restored to him, but she ought

rather to be removed from him; otherwise, sufficient security having been provided if this can be done, the spouse assuredly appears to be restored to the husband before cognizance of the cause.

Si contra petentem restitutionem coniugis opponitur consanguinitas in gradu prohibito, et offeruntur probationes paratae, recepto ab opponente iuramento de malitia, negabitur restitutio quoad torum, et fiet quoad reliqua. Si vero probationes promptae non sint, fiet plena restitutio, nisi sit magna viri saevitia.

Idem Bituricensi Archidiacono.

Literas tuas *nuper* recepimus, *continentes*, quod, quum quaedam matrimonialis causa *venerabili fratre nostro* Bituricensi archiepiscopo in remotis agente, in tua praesentia tractaretur, Gulielma mulier separari a B. viro suo instantissime postulabat, cui se quarto gradu consanguinitatis proponebat esse coniunctam. *Apparebant etiam accusatores et testes exhibentes chartam ab utroque latere consanguinitatis lineam contingentem, qui se contracti matrimonii tempore absentes fuisse dicebant, et quod in continenti parati erant quae proposuerunt comprobare*. Vir autem *econtra* sibi uxorem postulabat restitui, quae ab eo sua temeritate divertit, *quemadmodum allegabat. Ceterum pars replicabat uxoris, tum propter futurum incestus periculum, tum quia probationibus paratis et promptis sine diffugio quod intendebatur poterat demonstrare, restitutionem penitus denegandam. Ad haec notam esse mariti saevitiam proponebat, cui erat impetuosa levitas et crudelitas bestialis, et, si liberam restitutae sibi facultatem haberet uxoris, eius amici timebant mortis ex hoc sibi periculum imminere vel corporis cruciatum, et sic ab accusatione desisterent, eam qualiter cunque vivere quam interire malentes; adiicientes, nihilominus ipsam licentiatam a viro recessisse cum lacrimis et incitam. Ipse vero miles nihilominus sibi uxorem petebat libere ac pacifice restitui, et, ne secus fieret, sedem apostolicam appellavit. Quum igitur in causis matrimonialibus exceptiones huiusmodi saepius proponantur, quid sit in talibus agendum*, Rescripto petebas apostolico edoceri, *ex praemissis velut quodam themate multas eliciens quaestiones, primo quidem* utrum, quando aliquis consanguinitatis gradus obiicitur, in quo sedes apostolica dispensare non potest nec etiam consuevit, et probationes promptae sint et paratae, indulgenda restitutio sit, an neganda? *Secundo quaerebas, an idem iuris exsistat, si aliquis gradus dispensabilis vel aliud impedimentum dispensabile allegetur, et probationes similiter sint praesentes, utrum restitutio concedi debeat, an negari? Tertio loco quaerebas, si mariti crudelitas et saevitia nota sint iudici, ut propter motam controversiam indignatus uxorem torturis tractaturus sit et iniuriis affecturus, et sic accusatores de morte feminae metuentes accusare desistant: utrum hoc in primo vel in secundo casu restitutionis praebeat adminiculum denegandae? Postremo quaerebas, si deneganda sit restitutio in aliquo casuum praemissorum, et ad sedem apostolicam appelletur, utrum appellationi huiusmodi sit deferendum?* Sane circa solutionem propositae quaestionis diversae sunt sententiae diversorum; aliis asserentibus restitutionem *in praemissis casibus* faciendam; aliis sentientibus in contrarium; nonnullis viam mediam eligentibus, ac dicentibus, eam faciendam interdum, quandoque *vero* penitus denegandam. Primi per decretalem epistolam *bonae memoriae* Lucii Papae *praedecessoris nostri* iuvari videntur, arguentis quosdam iudices delegatos, qui, restitutionem viri, qui sine iudicio ecclesiae uxorem dimiserat, et ei consanguinitatem postmodum opponebat, spoliatae ac repetenti coniugem denegabant, et mandantis, sibi prius restitui taliter spoliatam, et postea de matrimoniali causa cognosci. Horum autem assertionem incestus videtur periculum oppugnare; sed ipsi timorem incestus inanem esse respondent, quum etiam beneficio restitutionis obtento qui consanguinitatis habet notitiam nec exigere debitum contra conscientiam, nec solvere teneatur, quoniam, si secus egerit, aedificat ad gehennam, sicut nec consanguinitatis conscius, super cuius coniugio quaestio non movetur. Secunda vero assertio per oraculum *felicis recordationis* Clementis Papae *praedecessoris nostri* fulcitur, a quo quum fuisset quaesitum, utrum, muliere quadam quendam in virum petente, qui, ut eam repelleret, exceptionem consanguinitatis obiecit, prius esset de impedimento consanguinitatis agendum, quam super matrimonio sententia proferretur, sic inquisitioni factae respondit, quod, quum exceptione probata principalis quaestio perimatur, prius est cognoscendum de ipsa, quam ad diffinitionis articulum procedatur, quum etiam in multis casibus restitutio differatur

secundum canonicas sanctiones. Opinioni autem ultimae videtur non incongrue adaptari, ut in gradibus consanguinitatis divina lege prohibitis restitutioni aditus praecludatur, sed constitutione interdictis humana restitutio locum habeat cum effectu, quum in illis dispensari non possit, et in istis valeat dispensari, sicut B. Gregorius et multi alii dispensarunt. Unde non peccat qui in hoc articulo ad mandatum ecclesiae reddit debitum coniugale. Nos autem ad praesens nullam de praedictis sententiis reprobamus, nec cuiquam earum aliquod praeiudicium ex nostra responsione volumus generari, quamvis praescriptum Lucii Papae mandatum ad possessorium, responsum vero *patris et praedecessoris nostri* Clementis ad petitorium referatur. Porro quum mulier *illa*, quae consanguinitatis habet notitiam, praesertim in gradibus, quos lex divina prohibuit, non possit huiusmodi viro sine mortali peccato carnaliter commisceri, quoniam omne quod non est ex fide, peccatum est, et quicquid fit contra conscientiam aedificat ad gehennam, frustra in tali casu adiudicaretur restitutio spoliato, quum illa contra Deum non debeat in hoc iudici obedire, sed potius excommunicationem humiliter sustinere. Sicque difficultas occurreret quasi perplexa, quia propter sententiam oporteret eam reddere debitum, et propter conscientiam *debitum* reddere non deberet. Unde contingeret eos graviter impediri; et utrique laqueus pararetur, quum inter se carnaliter coniungi non possent, nec alter alteri matrimonialiter copulari. Propterea melius *nobis* videtur, quod, quum opponitur consanguinitas, praesertim in gradibus divina lege prohibitis, et probationes offeruntur in continenti paratae, in ceteris *quidem* adiudicanda sit restitutio, sed ad maiorem cautelam iuramento recepto, quod talis obiectio malitiose non fiat, sola quoad commixtionem carnalem, maxime si fama consentit, est restitutio differenda, donec auditis probationibus et discussis causa sine diffugio terminetur, quum utrique sit melius taliter expediri, quam manere taliter impeditos. Quod si non habeat probationes in continenti paratas, sed dilationes exspectat longiores, quia praesumitur contra eam, quae sine iudicio ecclesiae sua tantum temeritate recessit a viro, ad restitutionem plenariam ecclesiastica debet censura compelli, quam tamen ipsa tori negando consortium debet humiliter tolerare, donec probationes offerat praeparatas, et tunc absolutione petita secundum formam ecclesiae absolvetur. Sed antequam fiat ei mandatum sub debito iuramenti, receptis probationibus procedatur, quemadmodum est praemissum. Si vero tanta sit viri saevitia, ut mulieri trepidanti non possit sufficiens securitas provideri, non solum non debet illi restitui, sed ab eo potius amoveri; alioquin sufficienti, si fieri potest, securitate provisa profecto videtur coniunx ante causae cognitionem restituenda marito.

Chapter XIV

Latin source headnote: By the mere conveyance of a woman to a man's house, when no betrothal preceded or the betrothal was invalid, possession is not acquired; hence, when she departs on her own authority, restitution does not lie.

The same, to the Bishop of Volterra.

It was proposed *before us* on behalf of the woman M. that, while she was *still* within the years before puberty, a certain paternal uncle of hers wished to join her *in* marriage to the son of H., a citizen of Siena, who was not yet seven years old. When she had been conveyed to the house of that *citizen*, and when she reached marriageable years, being unwilling to ratify what had been procured in this matter by *her said* uncle, she sought from *our venerable brother*, the Bishop of Siena, license to marry another. *And when that bishop had cited the parties, and the aforesaid M. appeared in judgment through a suitable proctor, seeking that the possessions and other things given for her in the name of dowry be restored to her, while the other party sought restitution of that woman, asserting that she could not conduct the cause through another but ought personally to attend its treatment, the aforesaid bishop, doubting what he could decree by law concerning these matters, suspended the course of the business, as he informed us by his letters.*

Therefore, because we do not believe it doubtful that this woman—although she is said to be a minor—*can* conduct the matrimonial cause through a proctor, and that restitution ought by no means to be made to the other party which first petitioned that the woman be restored to it, since that party lacks every advantage of right or possession, because by *the aforesaid* conveyance alone, which no betrothal or legitimate consent preceded and which none followed either, no binding bond was contracted between them, *so that an end may be imposed upon the lawsuits, through apostolic writings* we command your fraternity that, if it is so, notwithstanding the aforesaid exceptions and *having summoned the parties*, you shall hear what the parties shall determine to propose on this side and that, and decree, appeal being removed, what is canonical, [*causing what you decree, etc. Given at the Lateran on the third day before the Ides of January, in the eleventh year of our pontificate.* 1209.]

> Per solam traductionem mulieris ad domum viri factam, non praecedentibus sponsalibus vel invalidis, non acquiritur possessio, unde ea recedente propria auctoritate non competit restitutio.
>
> Idem Vulterano Episcopo.
>
> Ex parte M. mulieris fuit propositum *coram nobis*, quod, quum eam *adhuc* intra pubertatis tempora constitutam *quidam* patruus suus filio H. Senensis civis, nondum VII. annorum, *in* matrimonio voluerit copulare, ac eadem traducta fuerit in domum *civis* eiusdem, ipsa, ex quo ad nubiles annos pervenit, ratum nolens habere quod *a dicto* patruo suo circa hoc procuratum fuerat, a *venerabili fratre nostro* Senensi episcopo nubendi alii licentiam postulavit. *Quumque partes idem episcopus citasset, et praefata M. per procurutorem idoneum in iudicio compareret, quaerens possessiones et res alias sibi restitui dotis nomine pro se datas, et pars altera restitutionem peteret mulieris eiusdem, asserens eam non posse per alium causam agere, sed debere ipsius tractatui personaliter interesse, praefatus episcopus dubitans, quid super his statuere posset de iure, prout nobis suis literis intimavit, processu negotii supersedit*. Quia igitur non credimus ambigendum, quin ipsa mulier, quamvis minor *esse dicatur et* causam possit matrimonii per procuratorem tractare, ac pars alia, quae mulieris restitutionem sibi fieri prius postulabat, restitui nequaquam debeat, utpote nullo iuris seu possessionis commodo destituta, quum per solam traductionem *praedictam*, quam non praecesserunt sponsalia vel consensus legitimus, nec fuerunt etiam subsecuta, nullum inter eos obligatorium vinculum sit contractum, *ut finis litibus imponatur, fraternitati tuae per apostolica scripta* mandamus, quatenus, si est ita, non obstantibus exceptionibus supradictis, *partibus convocatis*, audias quae hinc inde partes duxerint proponenda, et quod canonicum fuerit appellatione remota decernas, [*faciens quod decreveris etc. Dat. Lat. III. Id. Ian. Pont. nostr. Ao. XI. *1209.]

Chapter XV

Latin source headnote: The interdict *unde vi* does not lie against one who neither despoiled, nor commanded that spoliation be committed, nor ratified the spoliation.

The same.

When formerly the proctors of *A., our venerable brother*, the Bishop of Como, and *brother G., of the beloved sons*, the brothers of the Hospital of Jerusalem, had approached the Apostolic See *and presented to us the instruments and the acts of the cause which was conducted between them concerning the church and hospital of Monte Cinaro, as they had been carried out in the presence of our venerable brother the Bishop of Pavia, who had taken cognizance of the cause by our delegation, we, having diligently inspected the things done before that bishop, decreed that they should be held as not done, since it was established to us that he had not been a judge in that cause, as he himself finally acknowledged*. We considered that the same cause, *with the assent of the parties*, which was conducted between them concerning the church and hospital of Monte Citano,

should be committed to *the beloved son*, the Abbot of Accon, in such a way that he would hear all things pertaining both to the possessory and to the petitory judgment which either party should determine to propose, and would determine the cause itself with a due end.

Before him *afterward* the proctor of the Hospital of Jerusalem petitioned that the aforesaid *church and hospital*, together with their possessions and appurtenances, which *the said* Bishop of Como held, be restored to him, asserting that they belonged by right to the Hospital of Jerusalem and that the Hospital had possessed them for a rather long time. To these things the bishop's proctor answered that he neither knew nor believed that the aforesaid things had *ever* been possessed by the Hospital of Jerusalem or in any way pertained to it; rather, the Bishop of Como reasonably detained them, since they were situated in his diocese. Therefore, when each party produced witnesses to establish its contention, the said abbot, *afterward having inspected the attestations, arguments, and instruments of both parties*, condemned the bishop's proctor to restitution of all the aforesaid things. (*And below:*)

But recently, when the proctors of each party appeared *for this reason* before us, *the acts of the former judgment having been faithfully presented to us*, we diligently examined the cause itself, *sometimes personally and sometimes through our beloved sons P., cardinal priest of the title of Saint Marcellus, and R., cardinal priest of the title of Saint Anastasia*. It indeed appeared to have been proved through the witnesses that *Cratus*, the messenger of the Bishop of Como, formerly took the crosses from the Hospitallers, prohibiting them from returning to the aforesaid church or hospital, and that the bishop possessed all the aforesaid things; hence the proctor of the Hospitallers petitioned that the said sentence of restitution be confirmed *by apostolic authority*.

On the opposite side, however, it was proposed that, even if it had perhaps been sufficiently shown through the witnesses that the Hospitallers had been despoiled by the bishop's messenger, nevertheless, since it was not established that he did this by the bishop's command or that the bishop ratified his deed, restitution could not claim a place for itself, although it was established that the bishop held the aforesaid things, which he assuredly possessed by right, since they pertained to him and were situated in his diocese. But to this the other party replied that, although the bishop's command or ratification was not clearly proved by the statements of the witnesses, nevertheless, because the judge could have informed the movement of his mind from other grounds, a presumption should deservedly be made in favor of the sentence. Therefore, having understood these and the other things which the proctors of both parties took care to propose, we, reviewing *more diligently* the acts of the former judgment, *which had, as stated above, been fully and faithfully presented to us*, because it could not be established to us—either by the statements of the witnesses, or by confessions of the parties, since none at all had been made in judgment, or even by instruments which did not in any way deal with the spoliation, or *even* by the evidence of the fact—that the Bishop of Como had despoiled the *aforesaid* Hospitallers, or commanded them to be despoiled, or at least ratified the spoliation committed, *by the counsel of our brothers* we pronounced in the aforesaid question that the interdict *unde vi* had by no means had place. Justice requiring it, we quashed the sentence of restitution rendered by the aforesaid abbot, although the adverse party proposed that a presumption should be made in favor of the judge's sentence, since he could have informed the movement of his mind from other grounds.

> Interdictum unde vi non competit contra illum, qui non spoliavit, nec spoliari mandavit, nec spoliationem ratam habuit.
>
> Idem.

Quum ad sedem apostolicam accessissent *olim A. venerabilis fratris nostri* Cumani episcopi, et *frater G. dilectorum filiorum* fratrum hospitalis Hierosolymitani procuratores, *et instrumenta nobis et acta causae, quae super ecclesia et hospitali de Monte Cinaro inter eos agitabatur, prout gesta fuerant, in praesentia venerabilis fratris nostri Papiensis episcopi, qui ex delegatione nostra de causa cognoverat, praesentassent, nos, diligenter inspectis quae coram eodem episcopo acta fuerant, haberi ea decrevimus pro infectis, quum constiterit nobis, eum in causa ipsa iudicem non fuisse, sicut ipsemet ad ultimum recognovit, eandem dilecto filio,* Abbati de Accon. causam, quae super ecclesia et hospitali de Monte Citano inter eos vertebatur, *de assensu partium* taliter duximus committendam, ut audiret omnia tam ad possessorium quam ad petitorium iudicium pertinentia, quae utraque pars duceret proponenda, et causam ipsam fine debito terminaret. Coram quo *postea* procurator hospitalis *Hierosolymitani ecclesiam et hospitale* praedicta cum possessionibus et pertinentiis suis, quae tenebat, *dictus Cumanus* episcopus *iniuste* sibi restitui postulavit, asserens, illa de iure ad hospitale Hierosolymitanum spectare, et quod ipsa diutius possedisset. Ad quae respondit procurator episcopi, se nec scire, nec credere, supradicta *unquam* ab hospitali *Hierosolymitano* possessa, vel ad illud aliquatenus pertinere, quae Cumanus episcopus, utpote in sua dioecesi constituta, rationabiliter detinebat. Quum igitur ad fundandam intentionem suam pars utraque testes produceret, dictus abbas *deinde utriusque partis attestationibus, rationibus et instrumentis inspectis*, procuratorem episcopi condemnavit ad restitutionem omnium praedictorum. (*Et infra:*) Nuper autem utriusque partis procuratoribus *propter hoc* comparentibus coram nobis, *prioris actis iudicii nobis fideliter praesentatis*, causam ipsam *interdum per nos, quandoque per dilectos filios nostros P. tit. S. Marcelli et R. tit. S. Anastasiae presbyteros cardinales* examinavimus diligenter, et quidem per testes videbatur esse probatum, quod *Cratus* Cumani episcopi nuncius cruces Hospitalariis *olim* abstulit, inhibendo ipsis, ne ad supradictam ecclesiam vel hospitale redirent, et quod episcopus supradicta omnia possidebat, unde procurator Hospitalariorum petiit dictam restitutionis sententiam *auctoritate apostolica* confirmari. *Ex adverso vero proponebatur, quod, etsi per testes forsan esset sufficienter ostensum, quod per nuncium episcopi fuerint Hospitalarii spoliati, quum tamen non constiterit, quod de mandato eius hoc fecerit, vel quod episcopus ratum habuerit factum ipsius, restitutio sibi locum non potuit vendicare, quanquam constaret episcopum praedicta tenere, qui utique ipsa de iure possidet, utpote ad se spectantia et in sua dioecesi constituta. Sed ad hoc pars altera replicavit, quod, quamvis per dicta testium evidenter mandatum episcopi vel ratihabitio non probetur, quia tamen iudex motum animi potuit ex aliis causis informare, pro sententia erat merito praesumendum. His igitur et aliis intellectis, quae utriusque partis procuratores proponere curaverunt*, Nos prioris acta iudicii, *quae nobis fuerant, sicut praemissum est, plene ac fideliter praesentata, diligentius* recensentes, quia nec per dicta testium, vel confessiones partium, quum nullae penitus in iudicio factae fuerint, vel etiam instrumenta, quae nullatenus de spoliatione tractabant, nec *etiam* per evidentiam facti nobis constare potuerit, quod Cumanus episcopus *supradictos* Hospitalarios spoliaverit, vel mandaverit spoliari, vel spoliationem factam saltem ratam habuerit, *de consilio fratrum nostrorum* pronunciavimus in quaestione praedicta, interdictum Unde vi locum nullatenus habuisse, restitutionis sententiam a praedicto abbate prolatam, licet pars adversa proponeret, quod praesumendum esset pro sententia iudicis, qui motum animi sui potuit ex causis aliis informare, iustitia exigente cassantes.

Chapter XVI

Latin source headnote: An exception of poverty, the truth of which is established, when interposed by a cleric, prevents execution of a sentence, even one rendered in the possessory action. This is what it says, comprehending the sense of the letter and the true reading.

The same.

We remember formerly giving you a mandate that you should compel *our venerable brother*, the Bishop of Oviedo, to due restitution to the party of the diocese of Zamora which he held, together with the

fruits received, [*if it should happen that the beloved son Rainerius entered upon the way of all flesh before he fulfilled the apostolic mandate concerning this.*] But because an action which the debtor's poverty excludes is empty, [*through apostolic writings*] we command your fraternity that you shall not compel *the bishop himself* to restitution of the fruits before he himself has been restored in such a manner that he can restore what he received from another's revenues. [*We, however, etc. Given at Rome, etc., on the fifth day before the Kalends of June.* 1198.]

> Exceptio inopiae, de qua constat, a clerico opposita, impedit exsecutionem sententiae, etiam latae in possessorio. H. d. comprehendendo mentem literae et veram lecturam.
>
> Idem.
>
> Olim vobis dedisse meminimus in mandatis, ut *venerabilem fratrem nostrum* Ovetensem episcopum ad debitam partis restitutionem Zamorensis dioecesis, quam tenebat, cum perceptis fructibus restituere cogeretis, [*si dilectum filium Rainerium prius, quam super hoc mandatum apostolicum adimpleret, viam ingredi contingeret omnis carnis.*] Verum quoniam inanis est actio quam inopia debitoris excludit, [*fraternitati vestrae per apostolica scripta*] mandamus, quatenus non prius episcopum *ipsum* ad restitutionem fructuum compellatis, quam ipse fuerit taliter restitutus, ut restituere possit quod percepit de proventibus alienis. [*Nos autem etc. Dat. Rom. etc. V. Kal. Iun. *1198.]

Chapter XVII

Latin source headnote: By proof of an excommunication, quasi-possession of jurisdiction is not proved, although the excommunication was observed for several days; therefore one seeking restitution, having proved this alone, fails. This is what it says with respect to its sense.

The same.

Formerly, when a question arose between you on behalf of your abbey and *our venerable brother*, the Bishop of Paris, in the name of the Church of Paris, concerning possession of parochial right in the parish of Mont—(*And below:*) We, considering that from the sole fact that the people of the aforesaid parish abstained from divine services for several days through fear of his sentence, the same bishop had acquired no possession of parochial right over them, and that it had not been proved in any way that, at the time at which he rendered the sentence, he possessed parochial right over them or had even possessed it previously, could not by law adjudge restitution to him, since it was not established that he *had been* despoiled.

> Per excommunicationis probationem non probatur quasi possessio iurisdictionis, licet aliquibus diebus fuerit observata; ideo petens restitutionem, hoc solo probato, succumbit. Hoc dicit quoad intellectum.
>
> Idem.
>
> Olim inter te pro abbatia tua, et *venerabilem fratrem nostrum* Parisiensem episcopum nomine Parisiensis ecclesiae super possessione iuris parochialis in parochia de Monte quaestione suborta (*Et infra:*) Nos attendentes, quod ex eo solo, quod populus praedictae parochiae timore sententiae suae per aliquot dies abstinuit a divinis, nullam in eos iuris parochialis possessionem idem episcopus fuerit assecutus, nec fuerit aliquo modo probatum, quod, eo tempore, quo sententiam ipse protulit, possessionem in ipsis iuris parochialis haberet, vel prius etiam habuisset, restitutionem ei adiudicare de iure nequivimus, quum ipsum non constiterit spoliatum *fuisse*.

Chapter XVIII

Latin source headnote: One who knowingly receives from a despoiler a thing that has been invaded is bound to restore it to the person despoiled, although the latter does not prove ownership.

The same, in the General Council.

It often happens that, when an *unjustly* despoiled person's thing has been transferred by the despoiler to another, while the despoiled person is not aided against the possessor by the benefit of restitution, he loses the effect [of his right] because of the difficulty of proofs of the right of ownership, the advantage of possession having been lost. Hence, notwithstanding the rigor of civil law, we decree that if henceforth anyone knowingly receives such a thing, since he succeeds, as it were, to the despoiler's vice—because there is not much difference, [*especially*] with respect to peril of the soul, between unjustly detaining and invading another's property—the person despoiled shall be aided against a possessor of this kind by the benefit of restitution.

> Recipiens scienter rem invasam a spoliatore, tenetur eam spoliato restituere, licet non probet dominium.
>
> Idem in concilio generali.
>
> Saepe contingit, quod spoliatus *iniuste*, per spoliatorem in alium re translata, dum adversus possessorem non subvenitur per restitutionis beneficium spoliato, commodo possessionis amisso, propter difficultatem probationum iuris proprietatis amittit effectum. Unde, non obstante iuris civilis rigore, sancimus, ut, si quis de cetero scienter rem talem receperit, quum spoliatori quasi succedat in vitium eo, quod non multum intersit, [*praesertim*] quoad periculum animae, iniuste detinere ac invadere alienum, contra possessorem huiusmodi spoliato per restitutionis beneficium succuratur.

Chapter XIX

Latin source headnote: One who occupies a particular place in which someone freely possessed rights can, if through that occupation the possessor cannot freely possess his rights as before, be sued in a possessory action for freedom of possession; and restitution cannot be made unless he leaves the place in its former freedom. This is what it says, very exceptionally.

Gregory IX, to the Bishop of Lucca.

When the citizens of Pisa and Lucca had been gravely afflicted and worn down by the grave discord which they had long had between themselves—(*And below:*) we gave a mandate to P., our subdeacon, that, after the possession which it was established that the Church of Lucca had held in certain castles had first been fully and freely restored to it as it had held it at the time the discord arose, and after sufficient security had been received concerning that possession about which doubt arose that the aforesaid Pisans would obey the law before us, he should relax the sentences rendered against them for the occupation of those castles. (*And below:*)

Therefore, when the Pisans asserted that it stood through you that restitution was not made to you according to our mandate, and urgently petitioned that the aforesaid subdeacon relax the said sentences, he, having received securities for obeying justice before us, relaxed those sentences. Because of this, you, considering yourself aggrieved, approached our presence, intending to attack the proceeding of the often-mentioned subdeacon. (*And below:*)

Furthermore, two things were contained in our mandate: namely, that the possession which it was established that the Church of Lucca had held at the time the discord arose should first be restored to it; and that restitution of the same possession should be made fully and freely, as it had held it at the aforesaid time. The first of these related to the fact, but the second to the manner. Hence, although, as the party of the Pisans said, the subdeacon himself was unable in fact to fulfill the form of the mandate because he could not cause possession of the castles to be restored to you—a possession concerning which he had no established evidence—and, even according to what you yourself said, possession of the rents and pensions could not be restored to you because you had not been despoiled of it, there was nevertheless an error in the manner. For he ought to have caused the Pisans to leave to you, fully and freely, the possession of the pensions and rents which it was established by their confession that you held in the aforesaid castles, just as your church had held it at the time the discord arose. This assuredly could not be so unless the Pisans entirely relinquished the castles themselves, because, while they detained the castles and the fortifications of the castles in which you receive the said pensions and rents, you could not hold them fully and freely as you held them when they did not detain the same castles at all, because, for as long as they detain them, it is left in their power not to admit you or to repel you whenever they wish. Therefore, having diligently heard these things, by the counsel of our brothers we adjudge a proceeding of this kind void.

> Occupans certum locum, in quo quis iura libere possidebat, si per ipsius occupationem non potest possessor sua iura libere possidere sicut prius, conveniri potest possessorio pro libertate possidendi, et restitutio fieri non potest, nisi dimittat locum in pristina libertate. H. d. valde singulariter.
>
> Gregorius IX. Episcopo Lucano.
>
> Pisanis ac Lucanis civibus per gravem discordiam, quam diu inter se habuerant, afflictis graviter et attritis (*Et infra:*) P. subdiacono nostro dedimus in mandatis, ut possessione, quam in quibusdam castris constat Lucanam ecclesiam habuisse, sibi prius plene ac libere, sicut tempore motae discordiae habuerat, restituta, et super ea, de qua dubietas oriretur, sufficienti cautione recepta, quod iuri coram nobis praedicti Pisani parerent, prolatas pro occupatione castrorum ipsorum in eos sententias relaxaret. (*Et infra:*) Pisanis igitur asserentibus, quod per te stabat, quo minus tibi iuxta mandatum nostrum fieret restitutio, et instanter petentibus, ut dictas sententias praefatus subdiaconus relaxaret, ipse, receptis cautionibus de parendo iustitiae coram nobis, sententias relaxavit easdem, propter quod tu reputans te gravatum ad nostram praesentiam accessisti, impugnaturus processum subdiaconi saepe dicti. (*Et infra:*) Porro duo in nostro continebantur mandato, ut videlicet possessio, quam constabat Lucanam ecclesiam habuisse tempore motae discordiae, prius restitueretur eidem, et ut eiusdem possessionis restitutio fieret plene ac libere, sicut eam habuerat tempore supradicto, quorum primum ad factum, alterum vero referebatur ad modum. Unde licet, prout pars Pisanorum dicebat, in facto mandati formam subdiaconus ipse adimplere nequiverit, quia non poterat facere tibi restitui possessionem castrorum, de qua non constabat eidem, nec etiam, secundum quod tu ipse dicebas, affictuum et pensionum possessio poterat tibi restitui, quia ea non fueras spoliatus, fuit tamen in modo peccatum, quia debuit facere, ut Pisani possessionem pensionum et affictuum, quam per eorum confessionem constabat te in castris praedictis habere, tibi dimitterent plene ac libere, sicut ecclesia tua illam habuerat tempore motae discordiae, quod quidem esse non poterat, nisi Pisani castra ipsa omnino dimitterent, quia illis detinentibus castra et munitiones castrorum, in quibus dictas pensiones recipis et affictus, ea plene ac libere habere non posses, sicut habebas, quando ipsi castra eadem minime detinebant, eo, quod, quamdiu ea detinent, in eorum potestate relinquitur, te non admittere vel repellere, quando velint. His ergo diligenter auditis, processum huiusmodi de fratrum nostrorum consilio irritum iudicamus.

Title XIV: On Fraud and Contumacy

Chapter I

Latin source headnote: A defendant who did not admit into possession a person who was to be sent into possession at the judge's command will not, according to canonical equity, be punished if within a year he gives security to submit to the law. This is what it says.

Alexander III, to the Bishop of Hereford.

In addition, since it frequently happens that a plaintiff is to be sent into possession for the purpose of preserving the property because of the absence of the adverse party, and because of the latter's fraud or power the *plaintiff* cannot obtain the thing to be preserved, while, as the end of the year approaches, the defendant offers the security due, lest he lose possession, your fraternity asked us with what kind of penalty the defendant is to be punished because he did not obey the command of the judge. To this we say that in ecclesiastical persons and affairs the rigor and severity of the law is not required *nor exercised*; rather, since justice is not endangered on this account, it ought patiently *to be tolerated and* admitted when the defendant binds himself by security to submit to judgment.

> **DE DOLO ET CONTUMACIA.**
>
> Reus, qui mittendum in possessionem ad mandatmn iudicis non admisit, non mulctabitur de canonica aequitate, si infra annum caveat stare iuri. H. d.
>
> Alexander III. Herfordensi Episcopo.
>
> Ad haec quum contingat, actorem multoties mittendum esse in possessionem causa rei servandae propter absentiam partis adversae, et per eius dolum sive potentiam non possit *actor* rem custodiendam nancisci, ac imminente fine anni reus, ne possessionem amittat, debitam offerat cautionem, cuiusmodi sit poena reus mulctandus, quia iussioni non paruit iudicis, a nobis tua fraternitas requisivit. Ad quod dicimus, quod in ecclesiasticis personis et negotiis rigor et districtio iuris non requiritur, *nec exercetur*; sed, quum iustitia propter hoc non periclitatur, patienter *tolerari et* admitti debet, quum reus per cautionem standi iudicio se adstringit.

Chapter II

Latin source headnote: Because of a defendant's contumacy, a judge can sequester the thing sought and condemn the contumacious person in the expenses which the plaintiff incurred because of his contumacy or fraudulent exception. This is what Panormitanus says.

The same, to the Abbot of Ramsey and the Archdeacon of Ely.

We learned from your letters *directed to us* that, when we considered that the cause conducted between *our beloved sons*, the monks of Etoll and the canons of Lincoln, *and also Gervase, a cleric*, concerning the churches of V. and M., should be committed to you, and the canons, although lawfully cited, contumaciously absented themselves, you—although the monks were to be sent into possession of the things sought on account of the contumacy of the adverse party—nevertheless, wishing to act more mildly with them out of regard for their religious state, caused the possession to be sequestered, so that at least in this way the canons, affected by weariness, would be compelled to submit to judgment.

But finally, *when the parties had been established in your presence and the aforesaid* monks petitioned that the churches be restored to them, the canons answered that your authority had wholly expired because they had obtained letters *from us* to other judges which appeared to prejudice the former letters. But because no mention of the former letters was made in the later ones, nor were the names of the churches contained in them which had been placed in the former ones, but it was said indefinitely, "concerning certain churches," we, considering that malice and fraud ought to protect no one, *and being unwilling to leave so great a mockery unpunished, by commanding your discretion through apostolic writings*, order that, *when you are requested concerning this, you shall summon the parties before your presence and* determine the aforesaid cause according to the form of the former letters, notwithstanding the later letters, causing the expenses which the monks are known to have incurred because of this to be restored to them by the canons.

> Propter contumaciam rei potest iudex rem petitam sequestrare, et ipsum contumacem in expensis condemnare, quas propter ipsius contumaciam vel dolosam exceptionem actor fecit. Hoc dicit Panorm.
>
> Idem Abbati de Ramese et Archidiacono Heliensi.
>
> Ex literis vestris *ad nos directis* accepimus, quod, quum vobis causam, quae inter *dilectos filios nostros* monachos de Etoll. et canonicos Linconenses *nec non etiam Gervasium clericum* super ecclesiis de V. et M. vertitur, duxerimus committendam, et canonici citati legitime se contumaciter absentaverint, vos, licet monachi essent ob contumaciam adversae partis in possessionem rerum petitarum mittendi, intuitu tamen religionis suae cum eis mitius agere volentes, possessionem sequestrari fecistis, ut sic saltem canonici affecti taedio stare iudicio cogerentur. Tandem *vero, partibus in praesentia vestra constitutis, et memoratis* monachis ecclesias sibi restitui postulantibus, canonici responderunt, auctoritatem vestram penitus exspirasse eo, quod *a nobis* ad alios iudices literas impetrarunt, quae praeiudicare prioribus videbantur. Verum quoniam in posterioribus literis non fuit mentio facta priorum, nec in eis nomina continebantur ecclesiarum, quae in prioribus posita fuerant, sed indefinite dicebatur: super quibusdam ecclesiis: nos attendentes, malitiam et dolum nulli patrocinari debere, *et nolentes tantam illusionem impunitam relinquere discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus, *quum exinde requisiti fueritis, partes ante vestram convocetis praesentiam, et* praedictam causam secundum formam priorum literarum, non obstantibus posterioribus, terminetis, expensas, quas propter hoc monachi fecisse noscuntur, eis a canonicis restitui facientes.

Chapter III

Latin source headnote: When the plaintiff is contumacious, witnesses ought to be received and sentence rendered, even when issue has not been joined, at the defendant's urging. This is what it says according to the common understanding.

The same, to the Bishops of Exeter and Winchester and the Abbot of Hereford.

We committed to you, brother bishops, and to *our venerable brother*, the Bishop of London, *under a certain form*, for determination the cause which is conducted between *the noblemen* F. and R. *of Arden formerly*, son of Agatha, concerning his birth. (*And below: cf. c.* 17, *On the Office of a Delegated Judge, I.* 29.) Moreover, if his adversary, having been lawfully cited, should scorn to approach your presence or to obey your judgment, or even *if, as is proposed to us, he has absented himself for many days past*, since he is said to have departed from England *and afterward not to have appeared openly in the land nor approached your presence*, you shall nevertheless summon to your presence his proctor, if perhaps he left one. Whether the *proctor* comes or not, or if he left no proctor, all denunciations having been sent to his

house, you shall *attentively hear the cause according to the order of law and*, after receiving the witnesses of the other party, shall, *within three months after receipt of these letters*, proceed according to the said form, *the obstacle of appeal being removed*, to the rendering of sentence, *in such a way that you by no means defer the decision of the cause beyond three months, notwithstanding any letters—whether those which make mention of restitution of possession to R. of Arden to be made, or those which make mention of leaving the possessory judgment to the king, or any others—which were obtained before, or if any should happen to be obtained afterward without the tenor of these letters having been set forth. Indeed, if within the aforesaid time you are unable or unwilling to proceed in execution of the things which have been said, we will that our commission ought for this reason to expire.*

> Actore contumace testes recipi et sententia ferri debent, etiam lite non contestata, reo instante. Hoc dicit secundum communem intellectum.
>
> Idem Exonensi et Vintoniensi Episcopis et Abbati Herfordensi.
>
> Causam, quae inter *nobiles viros* F. et R. *de Ardenna quondam* filium Agathae de nativitate ipsius vertitur, vobis, fratres episcopi, et *venerabili fratri nostro* Londonensi episcopo *sub certa forma* commisimus terminandam. (*Et infra: cf. c. *17. *de off. iud. del. I. *29.) Ceterum, si adversarius suus legitime citatus ad praesentiam vestram accedere, vel iudicio vestro parere contempserit, aut etiam *si ita, sicut nobis proponitur*, se absentaverit *a multis retro diebus*, quum de Anglia recessisse dicatur, *nec in terra postea manifeste comparuisse, neque ad praesentiam vestram accesserit*, procuratorem eius, si quem *forte* reliquerit, *ad praesentiam vestram nihilominus* convocetis, qui sive *procurator* venerit sive non, aut si procuratorem non dimisit, denunciationibus [*omnibus*] ad domum eius missis, *secundum ordinem iuris causam audiatis attentius, et* receptis testibus alterius partis, *infra tres menses post harum literarum susceptionem* iuxta dictam formam *sublato appellationis obstaculo* ad proferendam sententiam procedatis, *ita quod ultra tres menses causam ipsam decidere minime differatis, nullis obstantibus literis, sive quae de restitutione possessionis R. de Ardenna facienda, sive quae de possessionis iudicio regi relinquendo fecerint mentionem, sive quibuslibet aliis, quae antea fuerint impetratae, aut si quas in posterum, non exposito tenore literarum istarum contigerit impetrari. Sane si intra praescriptum tempus nequiveritis vel nolueritis in eorum quae dicta sunt, exsecutione procedere, volumus quod commissio nostra debeat propter hoc exspirare.*

Chapter IV

Latin source headnote: If the defendant is contumacious after joinder of issue, then, if the cause is otherwise clear, a definitive sentence is rendered; if it is not clear, the plaintiff is inducted into true possession.

Urban III, to the Priors of Neuflieu and Viger.

As you noted to us *in your letters, etc.* (*And below:*) Because the defendant had contumaciously withdrawn from your presence, you compelled him to furnish security under oath that he would obey the law before you *in all respects*. And when he had presented himself before you on the appointed day, under the pretext of an advocate, whom he did not have, he refused to answer with his customary malice. Finally, at the plaintiff's urging, he answered that he had received for forty years the tithes concerning which there was contention; and afterward, employing various excuses, he broke forth into the utterance of an appeal and, in contempt of his oath, contumaciously withdrew.

Therefore, *by commanding you* we order that, in order to convict his malice, you summon him once to your presence; and, if he comes, *you shall hear what shall be proposed and, appeal ceasing,* impose a fitting end upon the business. But if, *having been summoned*, he scorns to come, *you shall nevertheless* determine the cause by definitive sentence, since issue has been joined in the matter introduced, or at least

adjudge possession to the person present, saving only the question of ownership to the person absent. *Concerning that matter, however, etc.* (*Cf. c.* 4, *On Parishes, III.* 29.)

> Si reus post litem contestatam est contumax, si alias liquet de causa, fertur diffinitiva sententia; si non liquet, actor in veram possessionem inducitur.
>
> Urbanus III. de Novo loco et de Viger. Prioribus.
>
> Prout nobis *vestris literis annotastis etc*. (*Et infra:*) Reum, quia contumaciter a praesentia vestra recesserat, iuratoriam coegistis exponere cautionem, quod coram vobis *per omnia* iuri pareret; quumque die praefixa vestro se conspectui praesentasset, praetextu advocati, quem non habebat, respondere solita malitia recusavit. Tandem actore instante respondit, quod quadraginta annis decimas, de quibus erat contentio, percepisset, variisque postmodum excusationibus utens in vocem appellationis prorupit, et contumaciter iuramento contempto recessit. Ideoque *vobis praecipiendo* mandamus, quatenus ad convincendam eius malitiam semel eum ad praesentiam vestram convocetis, et, si venerit, *audiatis quae fuerint proponenda, et appellatione cessante* finem imponatis negotio competentem. Quod si *vocatus* venire contempserit, *vos nihilominus* causam, utpote lite, quae ingeritur, contestata, diffinitiva sententia terminetis, vel praesenti saltem adiudicetis possessionem, servata duntaxat quaestione proprietatis absenti. *Super eo vero etc.* (*cf. c.* 4. *de paroch. III.* 29.)

Chapter V

Latin source headnote: One who, after the plaintiff's contention has been established, interposes a peremptory exception which he does not prove immediately but receives delays to prove, if he fails in proving, is immediately, without waiting for the definitive sentence, condemned in expenses and compelled to pay; but if he cannot, he will be punished in his person according to the judgment of the judge. This is what it says. This text is noteworthy according to the reading which pleases Panormitanus.

Innocent III.

Desiring that an end be imposed upon lawsuits, lest the parties be burdened beyond measure with labors and expenses—especially when litigation concerns ecclesiastical benefices *or offices*, which cannot long remain vacant without loss—we establish by the present decree that, after one party has established its contention, if the other should perhaps wish to interpose a lawful exception which it is unwilling or unable to prove immediately, because exceptions of this kind are frequently interposed through calculated malice to impede or defer the proceeding, then, when delays have been accepted, it shall from that time be condemned, if perhaps it fails in proof, to pay the other party the moderate expenses thereafter to be incurred in the judgment. And if it is not solvent, it shall be punished otherwise according to the judgment of a discerning judge, so that, at least terrified by this fear, no one may readily interpose false exceptions to the injury of another.

> Qui fundata intentione actoris exceptionem peremptoriam obiicit, quam non probat in continenti, sed accipit inducias, si defecerit in probando, condemnatur in continenti, diffinitiva non exspectata, in expensis, ac solvere cogitur; quod si non potest, punietur in corpus secundum arbitrium iudicis. H. d. notab. iste text. secundum lecturam, quae placet Panorm.
>
> Innocentius III.
>
> Finem litibus cupientes imponi, ne partes ultra modum graventur laboribus et expensis, praesertim quum de beneficiis *vel officiis* ecclesiasticis litigatur, quae sine dispendio diu vacare non possunt,

praesenti decreto statuimus, ut, postquam intentionem suam altera pars fundaverit, si reliqua forte voluerit legitimam exceptionem opponere, quam nolit aut nequeat in continenti probare, quia frequenter ad impediendum vel differendum processum exceptiones huiusmodi per excogitatam malitiam opponuntur, ad solvendas alteri parti moderatas expensas extunc in iudicio faciendas, cum acceptis induciis, si forsitan in probatione defecerit, condemnetur. Et si solvendo non fuerit, alias secundum arbitrium discreti iudicis puniatur, ut hoc saltem timore perterritus non facile quis in gravamen alterius falsas exceptiones opponat.

Chapter VI

Latin source headnote: A person cited for the whole cause, with a certain term assigned for appearing, is bound to appear at the term; and, if an impediment exists at the term, he ought to appear as soon as he can after the term; otherwise he will be condemned in expenses from the time the citation was issued.

The same, to the Bishop of Palestrina, Legate of the Apostolic See, and the Dean of Brin.

When the beloved sons *Master S. of Liège and H., canon of Laon*, messengers of *the beloved son H., called* Bishop-elect of Liège, had *formerly* approached the Apostolic See on his behalf, *the beloved son* [*L.*], archdeacon, and H., canon of the Church of Liège, *afterward coming to our presence* in their own names and those of certain of their fellow canons—*L., archdeacon, H., cantor, L., provost of Saint Peter, and certain others*—whose letters of ratification *concerning the same business they exhibited to us*, proposed certain crimes against that bishop-elect, through which they endeavored to repel him from election to the *Church of Liège* as unworthy. (*And below:*)

Although, however, no slight suspicion had arisen against him from the fact that the same bishop-elect appealed from the grievance of the adverse party and that, although the appeal had not been *interposed* through sufficient proctors, he could have prosecuted it while they prosecuted, nevertheless, wishing to observe the order of law *in all things, by strictly commanding him* we ordered that by the Sunday then *past* on which "I am the good shepherd" is sung, he should approach our presence either personally or through a sufficient proctor *sufficiently instructed, lest he appear afterward to evade examination through delays or any occasions*, to answer concerning all the aforesaid matters; otherwise, since we assigned the aforesaid term to him as peremptory, he should know that, so far as we could by law, we would thereafter proceed in the aforesaid business.

Therefore, while his adversaries *waited for him at the Apostolic See*, we considered that he should be awaited for a long time, *even* beyond the term; but he *neither came nor sent a sufficient proctor*, but *only* a simple messenger bearing letters of *his* excuse. For he wrote that he had received late *the aforesaid Master S.*, his *messenger*, upon whom, when *he* withdrew from us, we had enjoined orally that he should cite the same man; hence, both on account of the shortness of the term and the dangers of the roads, he could not present himself before us. But it operated against this that, just as he had sent *to us* an excuser, so he could have sent a representative, since it had not been enjoined upon him that he come to the cause only in his own person, but that either he should approach or he should send a suitable proctor.

Furthermore, when someone is commanded to present himself to a judge at a certain term, two things are commanded under this form: that he come to the judge and that he approach on the day appointed to him. Hence, if he cannot come on the assigned day, he is nevertheless bound to present

himself to the judge, *as reason suggests and lawful sanction manifests*. For if someone is commanded to pay a certain thing to another on a certain day, he will not for that reason be released from the command if he is unable to pay on the given day; indeed, he is bound to payment even when the day appointed for payment has elapsed.

Wherefore, because the said bishop-elect neither came nor sent a sufficient representative on the day appointed to him, or afterward, although awaited for a rather long time, and because there was no hope of his nearby arrival—inasmuch as he had in some fashion excused his delay by letters and feared the summer heats and ambushes set for him—*by the counsel of our brothers* we held him contumacious and took care to condemn him to the lawful and moderate expenses which his adversaries had incurred *from* the time the citation was issued, when they began to await him, *regarding as frivolous what was meanwhile said by some to have been attempted concerning H., provost of Saint Denis*.

> Citatus ad totam causam, certo termino ad comparendum assignato, tenetur comparere in termino, et dato impedimento in termino debet comparere quam citius potest post terminum; alias condemnabitur in expensis a tempore citationis emissae.
>
> Idem Praenestino Episcopo apostolicae sedis Legato et Decano Brinensi.
>
> Quum dilecti filii *magister S. Leodiensis et H. Laudunensis canonici* nuncii *dilecti filii H. dicti* Leodicensis electi pro eo *quondam* ad sedem apostolicam accessissent, *dilectus filius* [*L.*] archidiaconus et H. canonicus Leodicensis ecclesiae nomine suo et quorundam concanonicorum suorum, *L. archidiaconi, H. cantoris, L. praepositi sancti Petri et quorundam aliorum*, quorum literas *super eodem negotio nobis* exhibuere de rato, *ad nostram postmodum praesentiam venientes*, contra eundem electum quaedam crimina proponebant, per quae nitebantur eum ab electione *Leodiensis ecclesiae* repellere ut indignum. (*Et infra:*) Quamvis autem ex eo, quod idem electus a gravamine adversae partis appellaverit, et appellationem non fuerit *interpositam* per sufficientes procuratores, quum possit, illis prosequentibus, prosecutus, *his* non levis exorta esset suspicio contra eum, volentes tamen *in omnibus* iuris ordinem observare, ipsi *districte praecipiendo* mandamus, quatenus usque ad dominicam, qua cantatur: Ego sum pastor bonus, *transactam* per se vel per procuratorem sufficientem *sufficienter instructum, ne postmodum per dilationes vel occasiones quaslibet subterfugere videretur examen*, ad praesentiam nostram accederet, super praedictis omnibus responsurus; alioquin, quum assignaremus ei pro peremptorio terminum supradictum, sciret, quod, quantum de iure possemus, procederemus extunc in negotio memorato. Exspectantibus igitur adversariis *eius apud apostolicam sedem*, ipsum diu *etiam* ultra terminum duximus exspectandum; sed ipse *nec venit, nec sufficientem procuratorem* direxit, *sed* simplicem solummodo nuncium excusationis *eius* literas afferentem. Scribebat enim, quod *praedictum magistrum S.* nuncium *suum*, cui *nos*, quum a nobis recederet, iniunximus viva voce, ut citaret eundem, sero receperat; unde non poterat, tum propter termini brevitatem, tum propter viarum discrimina, nostro se conspectui praesentare. Sed contra hoc faciebat, quod, sicut excusatorem *ad nos* direxerat, sic dirigere potuerat responsalem, quum ei non fuisset iniunctum, ut ad causam in propria persona duntaxat veniret, sed vel ipse accederet, vel procuratorem idoneum destinaret. Praeterea quum mandatur alicui, ut ad certum terminum se iudici repraesentet, duo sub hac forma mandantur, ut ad iudicem veniat, et ad diem sibi praefixam accedat. Unde si venire non possit ad diem assignatum, tenetur nihilominus se iudici praesentare, *sicut ratio suggerit et legitima sanctio manifestat*. Si enim mandatur alicui, ut alii ad certum diem certam rem exsolvat, non ideo erit a mandato solutus, si solvere nequiverit die data; immo ad solutionem elapso etiam die solutioni praefixo tenetur. Quapropter quia dictus electus nec venerat, nec sufficientem miserat responsalem, ad diem sibi statutum vel post etiam diutius exspectatus, nec de vicino eius adventu spes erat, utpote qui per literas utcunque excusaverat moram suam, et calores aestivos et insidias sibi positas formidabat, eum *de consilio fratrum*

nostrorum reputavimus contumacem, et ad legitimas et moderatas expensas, quas adversarii eius fecerant *a* tempore citationis emissae, quem extunc exspectare inceperant, ipsum curavimus condemnare, *quod de H. praeposito sancti Dionysii dicebatur interim ab aliquibus attentatum fricolum reputantes*.

Chapter VII

Latin source headnote: A sentence in a beneficial cause does not pass into res judicata with respect to a superior so as to prevent him from being able to inquire into the rights of the parties, especially when sentence was rendered against a person absent, although contumacious and undefended.

The same, to the Archbishops of Armagh and Cashel.

When formerly the cleric D., presenting diverse letters of the prelates of Ireland to Pope Celestine, our predecessor, asserted that he had been elected Bishop of Ross, and no one appeared who proposed anything against him, our said predecessor caused the office of consecration to be conferred upon him *through A., Bishop of Albano of good memory, and sent him back consecrated to his church*. But afterward *the beloved sons* F. and G., monks, approaching the presence of the same predecessor of ours, each asserted that he had been elected by the canons of the Church of Ross, and *the same F. explained* that the aforesaid D. had been consecrated *to the same church at the Apostolic See, which he had circumvented* through false letters.

For this reason our same predecessor committed *their* cause to you, *brothers, the Bishops of Cashel and Laon*, under this form: that you should solicitously inquire into the form and proceeding of the election of the aforesaid D.; and, if it were established that he had been canonically elected, you should cause him to enjoy peaceful possession; otherwise, you should hear the cause between the aforesaid F. and G., and whichever one's election you found to have been canonical and more reasonably made, *reason going before*, you should take care to prefer it to the election of the other; *and you, brother of Cashel, should consecrate as bishop the one whom you reasonably considered should be confirmed*.

But, as we learned from your letters, when the letters of the said commission had been presented to you, you wished first, according to their tenor, to inquire into the election of the aforesaid D. When the said D., although cited by you a third time, was unwilling to present himself before you, you proceeded in the cause; and you learned, both from the testimony of the clergy and people of the Church of Ross and from the assertion of the *illustrious* King of Cork and the prelates of *his* province, that the election of the aforesaid F. had been canonically celebrated, and *afterward* took care to confirm it by apostolic authority, especially since the chapter of the Church of Ross steadfastly asserted that it had not elected the said D., nor had it thought in any way about the election of the aforesaid monk G.

Meanwhile, however, the aforesaid D., approaching the Apostolic See [*and*] *making no mention at all of the aforesaid commission or even of the elections of the aforesaid persons*, [*did not fear to suggest to us that, when he was returning to the diocese of Ross with the aforesaid letters of our predecessor, the aforesaid King of Cork had caused it to be prohibited to him that he enter the diocese or Church of Ross until he paid, or at least promised, a certain sum of money to him. But when his friends afterward, without his knowledge, promised certain gifts to the king, he was admitted to his church and ministered in it for half a year. But when he was unwilling to pay the money promised by his friends, the king, moved to anger, commanded the dean to show him no reverence. Although the dean was bound to the said D. by an oath, nevertheless, because he could not obtain the archdeaconry from him for his still-young son, on the Thursday of Holy Week he presumed to steal the oil which ought to have been blessed; and,*

although on account of this he had been bound by D. with the bond of excommunication, nevertheless, on the Tuesday of the following week he stole the books of the Church of Ross and did not at all hesitate to transfer himself to the king against him. Wearied by the harassment of these two, he was compelled to leave the king's land, on account of which he obtained from us letters to our venerable brother, the Bishop of Ferns, and his co-judges, directing them diligently to induce and admonish the aforesaid king to permit him to return safely to his church without any exaction of money and to exercise the administration of the episcopate in temporal and spiritual matters; otherwise, they were to bind the king with the bond of excommunication and subject his land to interdict, relaxing neither sentence until he fulfilled the apostolic mandate concerning D.'s reception. They were also to compel the aforesaid dean, if the foregoing were established to them, to come to the Apostolic See, suspended from office and benefice, and, until he came to his senses, cause him to be publicly announced as excommunicated.]

Furthermore, he obtained letters concerning certain other grievances and injuries against the said F. and certain others, [*asserting that the same bishop detained the rights of the Church of Ross and that the same monk F. had rashly laid violent hands upon the archdeacon and clerics. Moreover, when the same D. departed from us with letters of this kind, after a space of almost three months*] the said monk F. *approached the Apostolic See and* afterward presented to us letters on your behalf which contained how you had proceeded in the aforesaid commission. *Therefore, after diligent deliberation concerning this had been held with our brothers, fearing lest, just as our predecessor is said to have been circumvented through the letters which the same D. had presented to him, it might also happen that we were circumvented through your letters, presented to us by the same monk,* wishing therefore still to act mercifully with the absent man, so that [*both*] his malice might be [*more strongly*] convicted, we considered that the said *monk* F. should be remitted *jointly* to you, *by more strictly commanding your fraternity through apostolic writings* that, notwithstanding the fact that the election of the same F. had been confirmed, you should lawfully cite the often-mentioned D., if he could be found in Ireland, to the cause and, after the faculty of defense had been granted to him, should proceed canonically in the cause itself, *having God alone before your eyes*.

If, having been found, he should scorn to present himself before you within three months, you shall proceed to the consecration of the said F., every occasion being set aside. But if he is not found in Ireland, after a period of one year has been granted to him from the time when he is understood to have appealed to us—if not by word, nevertheless by deed—by undertaking the journey to come to the Apostolic See, you shall commit the administration of the Church of Ross in spiritual and temporal matters to the said F.; and, when that period has elapsed, you shall not defer to consecrate him as bishop. [*Lest, however, etc. Given at Perugia on the fifteenth day before the Kalends of October.* 1198.]

> Sententia in causa beneficiali non transit in rem iudicatam respectu superioris, quo minus possit de iuribus partium inquirere, maxime quando sententia fuit lata contra absentem, licet contumaciter et indefensum.
>
> Idem Armachano et Caselensi Archiepiscopo.
>
> Quum olim D. clericus Coelestino Papae praedecessori nostro, diversis praelatorum Hyberniae literis praesentatis, se assereret in episcopum Roscensem fuisse electum, nullusque appareret, qui aliquid contra eum proponeret: dictus praedecessor noster ei *per bonae memoriae A. Albanensem episcopum* munus fecit consecrationis impendi, *et ad suam eum remisit ecclesiam consecratum*. Postmodum *vero dilecti filii* F. et G. monachi ad eiusdem praedecessoris nostri praesentiam accedentes, uterque se asseruit a canonicis Roscensis ecclesiae fuisse electum, et *idem F.*, quod praedictus D. *ad eandem ecclesiam apud sedem apostolicam, quam* per falsas literas *circumvenerat*, fuerat consecratus, *exposuit*. Propter quod idem praedecessor noster causam *eorum* vobis, *fratres, Cassellensis et Laonensis episcopi*, sub ea forma commisit,

ut de forma et processu electionis memorati D. sollicite quaereretis, et, si eum electum canonice fuisse constaret ipsum faceretis pacifica possessione gaudere; alioquin inter praedictos F. et G. audiretis causam, et cuius electionem canonicam et magis rationabiliter factam inveneritis, *ratione praevia*, alterius curaretis electioni praeferre, *ac tu, frater Cassellensis, alterum, quem rationabiliter duceres confirmandum, in episcopum consecrares. Verum, sicut ex literis vestris accepimus, quum dictae commissionis vobis fuissent literae praesentatae, iuxta tenorem earum primo de electione praedicti D. inquirere voluistis*, quumque a vobis dictus D. tertio citatus vestro se nollet conspectui praesentare, procedentes in causa, tam ex testimonio cleri et populi Roscensis ecclesiae, quam ex assertione *illustris* regis Coarcaiae et praelatorum *ipsius* provinciae, de praedicto F. electionem fuisse celebratam canonice didicistis, et eam *postmodum* curastis auctoritate apostolica confirmare, praesertim quum capitulum Roscensis ecclesiae dictum D. se non elegisse constanter assereret, nec de praedicti G. monachi electione aliquatenus cogitasse. Interim autem memoratus D. ad apostolicam sedem accedens, [*et*] *nullam penitus de commissione praedicta, vel etiam de praedictorum electionibus faciens mentionem,* [*nobis suggerere non expavit, quod quum ad Roscensem dioecesia cum praedictis praedecessoris nostri literis remearet, supradictus rex Corcaiae ipsi fecerat inhiberi, ne dioecesin vel ecclesiam Roscensem intraret, donec ei certam solveret vel saltem promitteret pecuniae quantitatem. Quum autem postmodum amici eius praeter ipsius conscientiam certa regi munera promisissent, ipse ad ecclesiam suam admissus, in ea per annum dimidium ministravit. Sed quum promissam ab amicis suis pecuniam noluisset exsolvere, rex ira commotus decano mandavit, ut ei reverentiam nullatenus exhiberet. Qui licet dicto D. iuramento teneretur adstrictus, quia tamen ab eo pro filio suo adhuc parvo archidiaconatum non potuit obtinere, quinta feria maioris hebdomadae oleum, quod benedici debuerat, furari praesumpsit; et quamvis propter hoc ab eo fuerit excommunicationis vinculo innodatus, nihilominus tamen tertia feria septimanae sequentis Roscensis ecclesiae libros surripuit, et ad regem contra ipsum se transferre minime dubitavit. Quorum duorum molestiis fatigatus, terram ipsius regis coactus exivit, propter quod a nobis ad venerabilem fratrem nostrum Fernensem episcopum et coniudices suos literas impetravit, qui memoratum regem diligentius inducerent et monerent, ut ipsum sine alicuius exactione pecuniae ad ecclesiam suam secure redire permitteret, et administrationem episcopatus tam in temporalibus quam spiritualibus exercere; alioquin eum excommunicationis vinculo innodarent, et terram eius subiicerent interdicto, neutram relaxaturi sententiam, donec super receptione ipsius mandatum apostolicum adimpleret; memoratum quoque decanum, si eis de praemissis constaret, ab officio beneficioque suspensum ad sedem apostolicam venire compellerent, et, donec resipisceret, excommunicatum facerent publice nunciari.*] *Praeterea* super quibusdam aliis gravaminibus et iniuriis contra dictum F. et quosdam alios literas impetravit, [*asserens eundem episcopum iura Roscensis ecclesiae detinere, ac eundem F. monachum in archidiaconum et clericos manus iniecisse temere violentas. Ceterum eodem D. a nobis cum huiusmodi literis recedente, fere post trium mensium spatium*] dictus F. *monachus ad sedem apostolicam accessit, et* postmodum ex parte vestra nobis literas praesentavit, quae qualiter a vobis in commissione praedicta processum fuerat continebant. *Cum fratribus igitur nostris habito super hoc diligenti tractatu, timentes, ne, sicut praedecessor noster per literas, quas idem D. ei praesentaverat, dicitur circumventus, nos etiam circumveniri contingeret per literas vestras, nobis ab eodem monacho praesentatas, *Volentes igitur adhuc misericorditer agere cum absente, ut [*et*] eius malitia [*fortius*] convicatur, dictum F. *monachum* ad vos *communiter* duximus remittendum, *fraternitati vestrae per apostolica scripta districtius praecipiendo* mandantes, quatenus *eo* non obstante, quod eiusdem F. fuit electio confirmata, saepe dictum D., si in Hibernia poterit inveniri, legitime citetis ad causam, et, facultate sibi defensionis indulta, *solum Deum habentes prae oculis* in causa ipsa canonice procedatis. Qui si inventus infra tres menses vestro se conspectui contempserit praesentare, ad consecrationem dicti F., omni occasione postposita procedatis. Si autem in Hibernia inventus non fuerit, indulto sibi unius anni spatio, ex quo ad nos, etsi non verbo, facto tamen intelligitur provocasse, arrepto itinere ad sedem apostolicam veniendi, dicto F. administrationem Roscensis ecclesiae in spiritualibus et temporalibus committatis, quo elapso eum non differatis in episcopum consecrare. [*Ne autem etc. Dat. Perusii XV. Kal. Oct.* 1198.]

Chapter VIII

Latin source headnote: If proceedings are conducted by way of inquisition against a person contumaciously absent, witnesses can be received even when issue has not been joined, and a definitive sentence can be rendered, even by way of deposition, if the offense merits this.

The same.

The word emitted by the instrument of the Lord's voice is a word of truth: *that the tree which uselessly occupies the earth is deservedly judged to be cut down and cast into the fire, so that the earth, which is held barren under the harmful occupation of a useless tree, may through a new planting receive suitable cultivation for bearing fruit. Not without reason is H., formerly Bishop of Chur, compared to this tree, for he has until now detained the Church of Chur through violence and,* as *the beloved sons*, the canons of Chur, *V., S., and R., and Be. Ro., pleban of Saint George, reported in our tribunal on your behalf, the aforesaid* H., Bishop of Chur, not only brought his church low by dilapidating it, as public infamy proclaimed, but polluted it with homicide, incest, and other crimes.

But we, as those upon whom the correction of these matters lies, when your canons themselves, induced by good zeal, as we judge, took care to accuse the aforesaid bishop [and], considering the enormities of the same man, to bring them to our ears—fearing lest, as is contained in the decree of Gelasius, they would incur apostolic offense if they thought that excesses of this kind ought to be suppressed from the hearing of the Catholic Church—first committed the cause concerning these matters to *our venerable brother*, the Bishop of Trent, and *the beloved sons*, the Abbot of Mount Saint Mary and the Provost of Isola; and a second time to *our venerable brother*, the Bishop of Brescia, and again to the same *abbot and provost*, etc. But when the bishop himself had contumaciously scorned to approach the presence of the first judges, *etc.*, he was suspended from office and benefice by those *first* judges under our authority. (*And the rest:*)

Finally, having been called before the judges by canonical citation, he with difficulty presented himself; but then, advancing a frivolous excuse conceived in malice, he neglected to proceed at law with the canons. For this reason, we, by the counsel of our brothers, suspending the bishop himself —or rather, confirming by apostolic authority the suspension made by the judges—committed the cause concerning these matters for a third time to *our venerable brother*, the Bishop of Como, and *the beloved son*, the Abbot of Saint A., to be heard in order to overcome the malice of the bishop himself. They, after the parties had been cited, *having associated with themselves prudent and honorable men*, when he appeared neither personally nor through a suitable representative, rendered a sentence of excommunication against the *bishop* on account of his disobedience, admitting the witnesses on your behalf as they had received in mandate from us—namely, abbots, priors, provosts, and other religious men—through whom it was established that every article of the aforesaid crimes had been proved. (*And below:*)

We therefore, seeing that the judicial order had been observed in this deed, considering furthermore that after the sentences rendered against him he presumed to celebrate, and since many prelates of churches wrote against that bishop and not one wrote in his defense or even to excuse him in any respect, wishing in the name of the Lord with the Apostle to avenge every disobedience, although absent in body yet present in spirit, according to the word of the same Apostle we rendered a sentence of perpetual deposition against him; and, depriving him both of pontifical office and of every priestly office, we considered that he should be condemned without any hope of restitution,

nevertheless revoking as void whatever, after the prohibition of the Apostolic See or after the suspension and excommunication had been made, he presumed to alienate from the goods of the church.

> Si proceditur per viam inquisitionis contra absentem contumaciter, etiam lite non contestata testes recipi possunt, et sententia diffinitiva ferri, etiam per viam depositionis, si hoc meretur delictum.
>
> Idem.
>
> Veritatis est verbum organo dominicae vocis emissum, *quod arbor, quae terram inutiliter occupat, digne excidi, et in ignem mitti censetur, ut terra, quae sub nociva occupatione inutilis arboris sterilis habetur, per novam plantationem ad fructificandum culturam recipiat congruentem. Huic nimirum arbori H. quondam Curiensis episcopus non immerito comparatur, qui Curiensem ecclesiam usque modo per violentiam detinuit, et, *Sicut *dilecti filii* canonici Curienses *V. S. et R. et Be. Ro. plebanus S. Georgii ex parte vestra* in nostro auditorio retulerunt, *quod praedictus* H. Curiensis episcopus ecclesiam suam non solum dilapidando depressit, sicut publica praedicabat infamia, sed homicidio, incestu aliisque criminibus polluit. *Nos autem, utpote quibus haec imminent corrigenda, quum ipsi canonici vestri bono zelo, ut arbitramur, inducti praedictum episcopum accusare, *[*et,*] *intuentes enormitates eiusdem, ad aures nostras deferre curarunt, timendo, ne, sicut in decreto Gelasii continetur, apostolicam offensam incurrerent, si huiusmodi excessus auditui catholicae ecclesiae supprimendos putarent*, super his commisimus primo causam *venerabili fratri nostro* Tridonensi episcopo, et *dilectis filiis* abbati Montis sanctae Mariae et praeposito de Insula, secundo quoque *venerabili fratri nostro* Brixiensi episcopo, et ipsis *iterum* abbati et praeposito. etc. Verum quum episcopus ipse priorum iudicum praesentiam adire per contumaciam contempsisset *etc.*, auctoritate nostra fuit per ipsos *primos* iudices ab officio beneficioque suspensus. (*Et cet.*:) Tandem vero coram iudicibus canonica citatione vocatus, praesentiam suam difficulter exhibuit; sed frivolam tunc excusationem malitia concepta praetendens, experiri cum canonicis in iure neglexit. Qua de causa nos de consilio fratrum nostrorum suspendentes episcopum ipsum, vel potius suspensionem a iudicibus factam auctoritate apostolica confirmantes, tertio super his *venerabili fratri nostro* Cumano episcopo et *dilecto filio* abbati sancti A. causam ad superandam malitiam ipsius episcopi commisimus audiendam, qui partibus citatis, *adhibitis secum viris prudentibus et honestis*, quum nec per se, nec per responsalem idoneum comparuerit, in eundem *episcopum* propter inobedientiam excommunicationis sententiam protulerunt, testes ex parte vestra, quemadmodum in mandatis a nobis acceperant, admittentes, scilicet abbates, priores, praepositos et alios religiosos viros, per quos quemlibet articulum criminum praedictorum constat fuisse probatum. (*Et infra:*) Nos igitur videntes, ordinem iudiciarium in hoc facto fuisse servatum, considerato praeterea, quod post sententias in se datas celebrare praesumpserit, quum multi praelati ecclesiarum contra eundem episcopum scripserint, nec unus pro eo defendendo vel aliquatenus excusando, in nomine Domini cum Apostolo omnem inobedientiam ulcisci volentes, licet absentes corpore, praesentes tamen spiritu, iuxta verbum eiusdem Apostoli tulimus sententiam perpetuae depositionis in ipsum, et eum tam a pontificali quam ab omni officio sacerdotali privantes, sine spe restitutionis aliqua duximus condemnandum, ea nihilominus in irritum revocantes, quaecunque post inhibitionem apostolicae sedis seu factam suspensionem et excommunicationem de rebus ecclesiae alienare praesumpsit.

Chapter IX

Latin source headnote: A plaintiff who is not admitted into the possession decreed to him by a judge for the purpose of preserving the property, or who is expelled from it, becomes a true possessor through the lapse of a year.

The same, in the General Council.

It sometimes happens that, when possession for the purpose of preserving the property is adjudged to a plaintiff because of the contumacy of the adverse party, because of the defendant's power or fraud the plaintiff cannot obtain the thing to be preserved within a year, or loses it after acquiring it; and thus, since according to the assertion of many he would not become a true possessor after the lapse of a year, the defendant derives advantage from his own malice. Therefore, lest the contumacious person be in a better condition than the obedient person, according to canonical equity we decree that in the aforesaid case the plaintiff shall, when a year has elapsed, be constituted a true possessor. [*For this, etc.* (*Cf. c.* 8, *On Arbitrators, I.* 43.)]

> Actor non admissus in possessionem sibi decretam per iudicem causa rei servandae, vel ab ea expulsus, per lapsum anni verus efficitur possessor.
>
> Idem in concilio generali.
>
> Contingit interdum, quod, quum actori ob contumaciam adversae partis adiudicatur causa rei servandae possessio, propter rei potentiam sive dolum actor infra annum rem custodiendam nancisci non potest, vel acquisitam amittit, et sic, quum secundum multorum assertionem verus non efficeretur post lapsum anni possessor, reportet commodum de malitia sua reus. Ne igitur contumax melioris quam obediens conditionis exsistat, de canonica aequitate sancimus, ut in casu praemisso actor verus constituatur elapso anno possessor. [*Ad hoc etc.* (*cf. c.* 8. *de arb. I.* 43.)]

Chapter X

Latin source headnote: If the defendant is not found, it is sufficient for the citation to be posted publicly at his church.

Gregory IX, to the Archbishop of Bordeaux.

Our venerable brother—(*And below:*) Wishing that an end be imposed upon lawsuits, lest they be immortal, we command that at the beginning of the next approaching Lent—which we have considered should be assigned to you as a peremptory term—you shall present yourself before us, personally or through a suitable proctor sufficiently instructed for joining issue and for transacting all other matters which appear necessary for decision of the business, concerning the right of primacy which the Archbishop of Bourges proposes that he has over you and your province. We nevertheless gave a mandate to the Archdeacon of Transuig and Master M., canon of Tours, that they too should take care by our authority to cite you peremptorily for the same term according to the aforesaid form; and, if you cannot be found, they shall cause the edict of citation to be posted publicly at your church by themselves or others.

> Si reus non invenitur, sufficit publice citationem ad ecclesiam suam proponi.
>
> Gregorius IX. Archiepiscopo Burdegalensi.
>
> Venerabilis frater noster (*Et infra:*) Volentes finem imponi litibus, ne immortales exsistant, mandamus, quatenus ad initium proxime venturae Quadragesimae, quod tibi peremptorium terminum duximus assignandum, super iure primatiae, quod Bituricensis archiepiscopus in te ac in provincia tua se habere proponit, per te vel per procuratorem idoneum sufficienter instructum ad litem contestandam et ad alia omnia negotia peragenda, quae necessaria decisioni negotii videbuntur, nostro te conspectui repraesentes. Nos vero nihilominus archidiacono Transuigensi et magistro M. canonico Turonensi dedimus in mandatis, ut et ipsi ad eundem terminum auctoritate nostra iuxta praemissam formam te

peremptorie citare procurent, et, si non poteris inveniri, faciant, ut citationis edictum per ipsos vel alios apud ecclesiam tuam publice proponatur.

Title XV: On One Sent into Possession for the Purpose of Preserving the Property

Chapter I

Latin source headnote: One sent into possession by the first decree in a real action acquires, through the lapse of a year, true and unchangeable possession of that thing, although the person who suffered the sending into possession had within the year the intention of furnishing security but, through his own default, did not put it into effect. This is what it says according to the true understanding.

Alexander III, to the Prior and Brothers of Guisborough.

When *our beloved son* R., your canon, and the representatives of *our beloved son G.*, provost of Beril, were established in our presence, concerning possession of the church of Lamento, into which you had been inducted for the purpose of preserving the property *by our mandate and authority through the delegated judges, namely the Bishop of Exeter and the Prior of Chinelwi*, there was debate on each side before us for some time.

Finally, however, *after the reasons and allegations on each side had been produced*, we gathered from the assertion of each party that, although you had been inducted into possession of the same church only for the purpose of preserving the property, nevertheless within the year the other party did not furnish security *with you concerning the same cause* to submit to the law, although it had the intention of furnishing *that security* and you were prepared to receive it. Hence *it is that, by apostolic authority with the common counsel of our brothers*, we decree that *you* shall henceforth possess the aforesaid church *freely and* without any contradiction, saving the right which the same provost is known to have in seeking the church; *nor shall the aforesaid provost dare henceforth in any respect to harass you with vexations concerning the same possession*.

But so that the sentence of our determination may be inviolably observed *in future times*, we have considered that it should be strengthened by apostolic protection, *establishing that it shall be lawful for no person whatsoever to infringe this page of our determination. But if anyone should presume to attempt this, let him know that he will incur the indignation of Almighty God and of the Apostles Peter and Paul*.

DE EO, QUI MITTITUR IN POSSESSIONEM CAUSA REI SERVANDAE.

Missus in possessionem ex primo decreto in reali, per lapsum anni veram et incommutabilem illius rei possessionem acquirit, licet passus missionem habuerit infra annum voluntatem cautionem praestandi, quam tamen non deduxit ad effectum suo defectu. Hoc dicit secundum verum intellectum.

Alexander III. Priori et Fratribus de Guiseburch.

Constitutis in praesentia nostra *dilecto filio nostro* R. canonico vestro, et responsalibus *dilecti filii nostri G.* praepositi de Beril. super possessione ecclesiae de Lamento, in quam *de mandato et auctoritate nostra per iudices delegatos, videlicet Exoniensem episcopum et priorem de Chinelwi*, causa rei servandae fueratis inducti, hinc inde fuit coram nobis aliquamdiu disputatum. Tandem *vero post rationes et allegationes utrinque productas* ex utriusque partis assertione tenuimus, quod licet causa rei servandae tantum in eiusdem ecclesiae possessionem inducti fueritis, infra annum tamen altera pars *super eadem causa vobiscum* standi iuri non praestitit cautionem: licet voluntatem *ipsam cautionem* praestandi habuerit, et vos eam parati

recipere fuissetis. Inde *est, quod nos de communi fratrum nostrorum consilio auctoritate apostolica* decernimus, ut *vos* amodo possessionem praescriptae ecclesiae, salvo iure, quod idem praepositus in petenda ecclesia habere dignoscitur, *libere et* absque contradictione qualibet habeatis, *nec praefatus praepositus super eadem possessione vos audeat aliquatenus de cetero vexationibus fatigare*. Ut autem nostrae diffinitionis sententia *futuris temporibus* inviolabiliter observetur, eam apostolico duximus patrocinio roborandam, *statuentes, ut nulli omnino hominum liceat hanc paginam nostrae diffinitionis infringere. Si quis autem hoc attentare praesumpserit, indignationem omnipotentis Dei et Apostolorum Petri et Pauli se asserit incursurum*.

Chapter II

Latin source headnote: The period of a year does not run against the person who suffered the sending into possession if, within that period, he offered security to the judges, or to one of them while the others were absent, although it was not received by them or by him. And according to this understanding, this is a noteworthy case.

Clement III, to the Bishop and Archdeacon of York.

When, as we have learned, a question was being conducted between *the beloved son* P., subdean *of Bayeux*, and *the beloved daughters in Christ*, the abbess and convent of Holy Trinity *of Caen*, concerning the church of Capit, the abbots of Thaurin and Corinth and the archdeacon of Chima, delegated by the Apostolic See, sent those nuns into possession of the thing sought for the purpose of preserving the property, *which the constitution of the law appears to have decreed against contumacious persons*. Hence, when this came to the knowledge of the subdean, he approached the aforesaid archdeacon and, offering him security for submitting to judgment—because the Abbot of Corinth had departed for England and the Abbot of Thaurin had entered upon the way of all flesh—urgently petitioned that possession be resigned to him *according to the order of law* within the year; but he could not obtain this.

But in the course of time the nuns whom we have mentioned obtained other letters to our venerable brother W., Archbishop of Rouen, and the beloved sons, the Abbot of Saint Catherine and I. of Vieux-Pont, Archdeacon of Rouen. The subdean, as they assert, refuses to undergo their judgment for this reason: that he holds the aforesaid archbishop suspect for a certain reason and fears that the co-judges may readily be drawn by his authority to either party. But because no one is compelled against his will to be subjected to the judgment of suspect judges, through apostolic writings we command your discretion that, *if the subdean shows a certain ground of suspicion against the archbishop, you shall hear the business and determine it, appeal being removed, by the mediation of justice; yet first*, if it is so, after security for submitting to judgment has been received from him, you shall cause possession to be restored to him. Nor do we will that it stand in the way that the year is alleged to have elapsed, if it did not stand through him that he did not receive possession and furnish security within the year. *But if you learn that anything was wrongfully changed against him concerning this through the aforesaid letters after he refused the suspect judges, you shall reduce it to the due state, proceeding in all these matters without the obstacle of appeal*.

Tempus annale non currit missionem passo, si infra illud cautionem iudicibus vel alteri eorum aliis absentibus obtulit, licet per eos seu per eum recepta non fuerit. Et est casus notabilis secundum hunc intellectum.

Clemens III. Episcopo et Archidiacono Eboracensibus.

Quum, sicut accepimus, inter *dilectum filium* P. subdecanum *Baiocensem* et *dilectas in Christo filias*, abbatissam et conventum sanctae Trinitatis *de Cadomo* super ecclesia de Capit. quaestio verteretur, de

Thaurino et de Corinth. abbates, ac archidiaconus Chima. a sede apostolica delegati, moniales ipsas rei servandae causa in possessionem rei petitae miserunt, *quod in personas contumacium iuris videtur constitutio decrevisse*. Unde, quum hoc ad subdecani notitiam pervenisset, ad archidiaconum praedictum accessit, et offerens ei sistendi iudicio cautionem, quoniam abbas de Corinth. profectus erat in Angliam, et abbas Thaurinensis viam fuerat universae carnis ingressus, possessionem infra annum sibi *iuris ordine* resignari cum instantia postulavit, sed non potuit obtinere. *Processu vero temporis moniales, quas diximus, ad venerabilem fratrem nostrum W. Rothomagensem archiepiscopum et dilectos filios abbatem S. Catharinae et I. de Veteri Ponte archidiaconum Rothomagensem literas alias impetrarum, quorum iudicium ideo subdecanus, sicut asserunt, subire recusat, quod praedictum archiepiscopum habet certa ratione suspectum, et metuit, ne coniudices ad partem quamlibet eius auctoritate de facili trahantur. Quia vero nemo invitus suspectorum iudicum compellitur iudicio subiacere*, Discretioni vestrae *per apostolica scripta* mandamus, quatenus, *si certam suspicionis causam contra archiepiscopum ostenderit subdecanus, audiatis negotium, et appellatione remota mediante iustitia terminetis, in primis tamen*, si, ita est sistendi iudicio ab eo cautione recepta, ei possessionem restitui faciatis. Nec obstare volumus, quod annus elapsus esse proponitur, si per eum non steterit, quo minus infra annum et possessionem receperit, et dederit cautionem. *Si quid autem per praedictas literas, ex quo suspectos iudices recusavit, adversus eum super hoc noveritis contra iustitiam innovatum, in statum debitum reducatis, in his omnibus sine appellationis obstaculo processuri*.

Chapter III

Latin source headnote: If the person who suffered the sending into possession, in seeking possession again, alleges that he was not contumacious, he is restored to his former state after security has been furnished, and condemnation in expenses is deferred; he avoids that condemnation if it is afterward established that he was not contumacious.

Innocent III, to the Bishops of Urbino and Senigallia.

When *the beloved sons*, the Abbot of Saint Angelo *on behalf of his monastery*, and *the nobleman* P. Gal., *a knight, on behalf of himself, his father, and his wife*, came to the Apostolic See, the same P. proposed *before us* that, *when* the aforesaid abbot had drawn him into a cause concerning a certain possession before *our beloved son* John, *cardinal priest of the title of Saint Prisca, then* legate of the Apostolic See *in the March*, he asserted before the same cardinal *that he would answer him according to the good custom of the land*. But the legate himself committed *their* cause to judges for determination according to the law and the good custom *of that land*. When they wished to proceed *in the cause* according only to the law *and not according to a custom of this kind*, the aforesaid P. appealed *from them, as persons who wished to exceed the form of the mandate, to* our hearing. Nevertheless, the judges decreed that the adverse party should be inducted into possession of the things sought for the purpose of custody, in such a way that, if *the knight himself* furnished security for submitting to judgment within a year and a day and restored thirty pounds to the other party for expenses, he would receive *that* possession.

And when *our beloved son* G., *cardinal priest of the title of Saint Mary across the Tiber*, legate of the Apostolic See, afterward entered that land within the year, the knight offered before him security to submit to the law and petitioned that possession be restored to him. *But the same legate cited the aforesaid abbot to the cause, to whom afterward* the *same knight was* prepared to restore the expenses incurred in the suit, which, as he asserts, did not exceed the sum of six pounds; but the abbot petitioned that the amount of thirty pounds be restored to him. (*And below:*)

We therefore, *when the often-mentioned knight sought that possession be restored to him, while the abbot petitioned that he be constituted a true possessor by the second decree, understanding that the abbot himself had confessed in law that the often-mentioned knight had applied to that cardinal within the lawful time—indeed, had even offered before the same cardinal, within the year, security to submit to the law—and that the cardinal had sent his letters to him within the year, although he was cited for a later term*, believe that P. himself should, after security has been furnished, be reduced into possession. We also decree that, if it is established that *that* custom which *the knight* alleges is praiseworthy, because it follows from this that he reasonably appealed, he shall by no means be compelled to restore the expenses. Otherwise, *if you find that custom to be reprobated*, since it appears from this that he appealed for the purpose of frustration, he shall be compelled to restitution of those expenses which it is established that the abbot necessarily incurred in the suit because of this.

> Si passus missionem, repetens possessionem, allegat se contumacem non fuisse, restituitur in pristinum statum praestita cautione, et dilata condemnatione expensarum, quam evitat, si postea constiterit, eum non fuisse contumacem.
>
> Innocentius III. Urbinati et Senagolensi Episcopis.
>
> Quum venissent ad apostolicam sedem *dilecti filii* abbas sancti Angeli *pro monasterio suo*, et *nobilis vir* P. Gal. *miles pro se, patre et uxore suis*, idem P. proposuit *coram nobis*, quod, *quum* praedictus abbas eum super quadam possessione coram *dilecto filio nostro* Ioanne *tit. S. Priscae presbytero cardinali, tunc* apostolicae sedis legato *in Marchia* traxit in causam, *quod ei secundum bonam terrae consuetudinem responderet, coram eodem asseruit cardinali*. Verum legatus ipse causam *ipsorum* commisit iudicibus secundum ius et bonam terrae *illius* consuetudinem terminandam. Qui quum secundum ius tantum, *et non huiusmodi consuetudinem* vellent *in causa* procedere, praefatus P. *ab eis, tanquam qui formam mandati volebant excedere, ad* nostram audientiam appellavit; sed iudices nihilominus partem adversam in possessionem rerum petitarum inducendam causa custodiae decreverunt ita, quod, si *miles ipse* usque ad annum et diem praestaret sistendi iudicio cautionem, et parti alteri triginta libras restitueret pro expensis, *et* reciperet possessionem eandem. Quumque *postmodum dilectus filius noster* G. *tit. S. Mariae trans Tiberim presbyter cardinalis* sedis apostolicae legatus infra annum fuisset terram illam ingressus, ipse cautionem standi iuri obtulit coram eo, et possessionem sibi restitui postulavit. *Sed idem legatus praedictum abbatem citavit ad causam, cui postmodum* paratus *idem miles* expensas restituere factas in lite, quae sex librarum summam, sicut asserit, non excedunt; sed abbas triginta librarum sibi restitui petiit quantitatem. (*Et infra:*) Nos igitur, *quum saepe dictus miles possessionem sibi restitui peteret, abbas vero ex secundo decreto verum possessorem se constitui postularet, intelligentes, abbatem ipsum esse confessum in iure, quod saepe dictus miles infra legitimum tempus cardinalem interpellasset eundem, immo etiam infra annum coram eodem cardinali cautionem obtulit standi iuri, et cardinalis ad eum infra annum suas literas destinavit, licet ad longiorem terminum citaretur*, ipsum P. cautione praestita in possessionem credimus reducendum, hoc etiam decernentes, ut, si consuetudinem *illam*, quam *miles* allegat, laudabilem esse constiterit, quia ex hoc sequitur, eum rationabiliter appellasse, ad restituendas expensas nullatenus compellatur. Alioquin, *quodsi consuetudinem illam inveneritis reprobandam*, quum ex hoc appareat, eum frustratorie appellasse, ad restitutionem cogatur expensarum illarum, quas abbatem constiterit propter hoc necessarias in lite fecisse.

Chapter IV

Latin source headnote: Against an absent person who did not leave a proctor, citation having been made at his home and no one defending, a sending into possession is made. This is what it says, by supplying chiefly to the letter, as is said in the gloss. And this is the true and noteworthy understanding.

Gregory IX.

If your adversary, transferring himself to distant places after the edict of citation, did not leave a lawful proctor, and, denunciation having been publicly made at his home, no one appears to defend him, you can by law petition that you be inducted, for the purpose of custody, into possession of those lands concerning which the question is conducted.

> Contra absentem, qui non dimisit procuratorem, facta citatione domi, nullo defendente, fit missio. H. d. supplendo ad literam maxime, ut dicitur in gloss. Et est verus et notabilis intellectus.
>
> Gregorius IX.
>
> Si adversarius tuus post citationis edictum, ad remota loca se transferens, procuratorem legitimum non dimisit, et denunciatione publice facta domi non apparet qui defendat eundem, iure petere potes, ut in possessionem earum terrarum, de quibus quaestio vertitur, causa custodiae inducaris.

Title XVI: That Nothing Be Altered While Litigation Is Pending

Chapter I

Latin source headnote: Even a privilege obtained from a prince, through which someone is deprived of the use of possession while litigation is pending without cognizance of the cause, is invalid as surreptitiously obtained, or is to be revoked as contrary to reason.

Alexander III, to the Archbishop of York.

It has not fallen from our memory *how, in the first year of our advancement, you caused to be presented to us a transcript of the letters of Pope Honorius, our predecessor of happy memory, in which it was contained that it had been granted by apostolic kindness to your predecessors that both they and their successors should be free to have the cross borne before them throughout all England. We, however, adhering to the footsteps of our predecessor, confirmed to you under the protection of our writing what had been kindly granted to your predecessors by our predecessor. But afterward T., formerly Archbishop of Canterbury of holy and venerable memory, judging that this redounded to the depression of his right and dignity, began to move a question concerning it. And for this reason he appealed to the Apostolic See, affirming, if we remember correctly, that this had by no means been lawful for you and your predecessors. And thus it happened that through our writings we prohibited you from daring for any reason to have the cross borne before you in the province of the Church of Canterbury until cognizance had been taken of the cause itself. Therefore, because through our beloved sons I. and A., your clerics, you laid a grave complaint before us, asserting that we had despoiled you, before cognizance in judgment, of possession of this thing which you and your predecessors had held, we, wishing to defer to you as our venerable brother and to preserve your rights unimpaired [and] inviolate, by the present letters* establish that our letters of prohibition, which we directed to your fraternity at the petition of the Archbishop of Canterbury, shall create no prejudice against you whereby you and your successors are not free—as has been granted to you by the benefit of the privileges of the Apostolic See and as you and your predecessors have been accustomed *to do this*—to have the cross borne before you throughout all England, until it is decreed by definitive sentence whether your church ought by right to have this.

> **UT LITE PENDENTE NIHIL INNOVETUR.**
>
> Privilegium etiam a principe impetratum, per quod privatur quis sine causae cognitione, lite pendente, usu possessionis, tanquam surreptitium non valet, seu tanquam rationi obvium est revocandum.

Alexander III. Eboracensi Archiepiscopo.

A memoria, nostra non excidit, *qualiter in primo anno nostrae promotionis transscriptum literarum felicis memoriae praedecessoris nostri Honorii Papae nobis feceris praesentari, in quo continebatur, antecessoribus tuis apostolica benignitate esse indultum, ut tam eis, quam successoribus suis liberum esset per totam Angliam ante se crucem deferre. Nos vero antecessoris nostri vestigiis inhaerentes, tibi sub scripti nostri munimine confirmavimus quod antecessoribus tuis fuerat a praedecessore nostro clementer indultum. Postmodum vero sanctae et venerandae memoriae T. quondam Cantuariensis archiepiscopus existimans hoc in depressionem iuris et suae dignitatis redundare, exinde coepit quaestionem movere. Et propter hoc ad sedem apostolicam appellavit, affirmans, si bene meminimus, quod tibi et praedecessoribus tuis id nullatenus licuisset. Sicque factum est, quod nos tibi per scripta nostra prohibuerimus, ne in provincia Cantuariensis ecclesiae, donec de ipsa causa cognosceretur, ante te crucem deferre aliqua ratione auderes. Quia ergo per dilectos filios nostros I. et A. clericos tuos gravem coram nobis querimoniam deposuisti, asserens, quod te de possessione huius rei, quam tu et antecessores tui habuistis, ante cognitionem iudicii spoliassemus, volentes nos tibi tanquam venerabili fratri nostro deferre, et iura tua integra *[*et*] *illibata servare, praesentibus literis* Statuimus, ut literae prohibitionis nostrae, quas ad petitionem archiepiscopi Cantuariensis tuae fraternitati direximus, nullum tibi praeiudicium faciant, quo minus tibi et successoribus tuis liberum sit, quemadmodum vobis est beneficio privilegiorum apostolicae sedis indultum, et tu et praedecessores tui *id* consuevistis facere, ante vos per totam Angliam deferre crucem, quousque diffinitiva sententia decernatur, an ecclesia tua de iure hoc debeat habere.

Chapter II

Latin source headnote: One accused of adultery for the purpose of separation from the marriage bed ought not, while litigation is pending, to be deprived of marital possession.

Clement III.

A praiseworthy—(*And below:* [*Cf. Comp. II, c.* 3, *On Cognizance of Spiritual Matters, IV.* 6.]) You ask *again*, when it happens that a marriage is accused, whether carnal intercourse is immediately to be suspended, *or how long it can be dissembled or rather sustained*. To this we answer briefly that, *since Alexander II expressly prohibits persons from being separated from one another until a just examination of the cause is made, and the institution of Pope Symmachus contains that any prelate who is accused ought not to be abandoned by his subjects before the things alleged shine forth in the light, in the present matter* either one of the spouses who is accused cannot, before the accusation is proved, be deprived of the right which that person has in the other. [*Furthermore, etc.* (*Cf. c.* 4, *Who Can Accuse a Marriage, IV.* 18.)]

Accusatus de adulterio ad separationem tori non debet lite pendente privari possessione coniugali.

Clemens III.

Laudabilem (*Et infra:* [*cf. Comp. II. c. *3. *de cogn. spir. IV.* 6.]) Quaeris *iterum*, quando matrimonium accusare contingit, an statim sit carnale commercium suspendendum, *aut quamdiu dissimulari possit vel potius sustineri*. Ad quod breviter respondemus, quod, *quum Alexander II. aperte prohibeat, ne ab invicem, donec causae iustae fiat examinatio, separentur, et Symmachi Papae contineat institutum, ut praelatus aliquis accusatus, antequam ea, quae obiiciuntur, luce clarescant, relinqui non debeat a subiectis, in praesenti articulo*, coniugum alteruter accusatus ante probatam accusationem iure, quod habet in altero, privari non potest. [*Insuper etc.* (*cf. c. *4. *qui matr. acc. poss. IV.* 18.)]

Chapter III

Latin source headnote: One who has alienated a litigated thing in such a way that it cannot be recovered ought to substitute in its place an equivalent which he will not be able to alienate. This is what it says, together with the following chapter.

Innocent III, to the Abbot and Convent of Saint Sylvester.

The Church of Saint Mary in Via Lata moved a question before the judge L., *in the time of B., called Carosomo, senator*, against John of Ateia, who was said to detain certain of its possessions contrary to justice. (*And below:* [*Cf. c.* 10, *On Constitutions, I.* 2.]) We prohibit you from presuming meanwhile to alienate the possessions which succeeded into the place and right of those which the Church of Saint Mary had sought from John of Ateia and which were transferred by the same John into your monastery while litigation was pending, so that, if the Church of Saint Mary should *perhaps* wish to proceed either concerning the vice of the litigated contract or concerning ownership, it may, if it prevails in judgment, have something which it can evict and possess, lest it labor in vain when your monastery no longer possesses it. [*Given at the Lateran on the fifth day before the Kalends of December.* 1199.]

> Qui rem litigiosam alienavit ita, quod rehaberi non potest, debet aequivalentem substituere in locum illius, quam alienare non poterit. H. d. cum sequ.
>
> Innocentius III. Abbati et Conventui sancti Silvestri.
>
> Ecclesia sanctae Mariae in Via lata contra Ioannem de Ateia, qui quasdam possessiones ipsius dicebatur contra iustitiam detinere, movit *tempore B. Carosomi dicti senatoris* sub L. iudice quaestionem (*Et infra:* [*cf. c.* 10. *de constit. I.* 2.]) Prohibemus, ne possessiones, quae successerunt in locum et ius illarum, quas ab Ioanne de Ateia ecclesia sanctae Mariae petierat, in monasterium vestrum ab eodem Ioanne lite pendente translatas alienare interim praesumatis, ut, si ecclesia sanctae Mariae *vel* de vitio litigiosi contractus vel de proprietate *forsitan* voluerit experiri, ne, si obtinuerit in iudicio, in vanum laboret, monasterio vestro minime possidente, sit quod evincere valeat et habere. [*Dat. Lat. V. Kal. Dec. *1199.]

Chapter IV

Latin source headnote: It says the same thing as the preceding chapter.

The same.

The Church of Saint Mary—(*And below:* [*Cf. c.* 10, *On Constitutions, I.* 2.]) petitioned that the possession of which the aforesaid church had been despoiled, the order of law having been omitted, be restored to it. (*And below:*) We decree as void and empty whatever was done by others after our predecessor recalled the same business to his curia. (*And below:*) But because, after restitution had been made to you by John of Ateia, you assigned the aforesaid possession to another by title of lease and could not restore it to the despoiled church, we caused an equal quantity of equivalent possessions to be assigned in its place to that church according to the judgment of good men. Because those possessions had been pledged to another, we caused them to be released by you from the creditors, who *afterward* resigned to us the instrument of pledge. [*And because, etc.* (*Cf. c.* 10, *On Constitutions, I.* 2.) *Given at the Lateran on the fifth day before the Kalends of December.* 1199.]

> Idem dicit, quod in praecedenti.

Idem.

Ecclesia sanctae Mariae (*Et infra:* [*cf. c.* 10. *de constit. I.* 2.]) Possessionem, qua fuerat praetermisso iuris ordine praedicta ecclesia spoliata, sibi restitui postulabat (*Et infra:*) Nos quicquid ab aliis factum fuit, postquam praedecessor noster ad curiam suam idem negotium revocavit, irritum decernimus et inane (*Et infra:*) Verum quoniam praefatam possessionem post restitutionem vobis factam ab Ioanne de Ateia alii locationis titulo assignastis, neque restituere poteratis ecclesiae spoliatae, loco ipsius tantundem possessionum aequivalentium ad arbitrium bonorum virorum ipsi ecclesiae fecimus assignari, quas, quoniam alii fuerant pignori obligatae, per vos liberari fecimus a creditoribus, qui nobis instrumentum pignoris *postea* resignaverunt. [*Et quia etc.* (*cf. c.* 10. *de constit. I.* 2.) *Dat. Lat. V. Kal. Dec.* 1199.]

Chapter V

Latin source headnote: A suit is to be decided according to the laws existing at the time of the controversy, not according to a privilege obtained while litigation is pending, unless it makes mention of the pendency of the suit.

Honorius III, to the Chancellor, Cantor, and A., Canon of Paris.

The beloved son Master A., parson of the church of Basseville, explained before us that, when a question had arisen between his predecessor on the one side and the prior and monks of Basseville *in the diocese of Chartres* on the other, concerning the tithes of newly cultivated lands situated within the bounds of his parish, while it was pending before judges delegated *by the Apostolic See*, the abbot and convent *of Saint Martin* of Marmoutier at Tours, to whom the aforesaid prior and monks are subject, obtained from the Apostolic See for themselves and their members an indulgence concerning the receipt of tithes of this kind. Under pretext of it the said prior and monks strive to claim the aforesaid tithes for themselves, although no mention of the *above-mentioned* question had been made in *that* indulgence. Therefore, we command *your discretion* that *by our authority* you enjoin upon the same judges *to whom that question was committed* that, notwithstanding the aforesaid indulgence, they proceed in the business according to the form handed down to them.

Lis decidenda est secundum iura exsistentia tempore controversiae, non autem secundum privilegium impetratum lite pendente; nisi de litis pendentia mentionem faciat.

Honorius III. Cancellario, Cantori et A. Canonico Parisiensibus.

Dilectus filius magister A. persona ecclesiae de Bassevilla exposuit coram nobis, quod, quum inter praedecessorem suum ex parte una, et priorem ac monachos de Bassevilla *Carnotensis dioecesis* ex altera super decimis novalium infra fines parochiae suae consistentium quaestio emersisset, ea pendente coram iudicibus *a sede apostolica* delegatis, abbas et conventus *sancti Martini* maioris monasterii Turonensis, quibus subsunt prior et monachi supradicti, pro se ac membris suis obtinuerunt a sede apostolica indulgentiam super perceptione huiusmodi decimarum, cuius praetextu iam dicti prior et monachi supradictas decimas sibi vendicare contendunt, licet in indulgentia *ipsa* de *supra* dicta quaestione facta mentio non fuisset. Ideoque *discretioni vestrae* mandamus, quatenus *auctoritate nostra* eisdem iudicibus, *quibus commissa fuit ipsa quaestio*, iniungatis, ut indulgentia non obstante praedicta in negotio ipso procedant iuxta traditam sibi formam.

Title XVII: On the Sequestration of Possessions and Fruits

Chapter I

Latin source headnote: A thing into possession of which a sending has been made ought not to be sequestered, even if the person sent into it was violently ejected from it. Or, more notably, thus: A sequestration made in place of a sending into possession for the avoidance of scandal ought to be revoked after security has been offered and expenses restored.

Innocent III, to the Archbishop of Milan.

For this God anointed us [*with the oil of gladness above our fellows, that we should love justice and hate iniquity. We fulfill this laudably when, walking on the royal road, we turn aside neither to the right nor deviate at all to the left, but, justly pursuing what is just, we neither regard the person of the poor nor honor the face of the powerful, because there is no acceptance of persons before the Lord; when we also discuss merits by subtle examination and consider the quality of petitions, so that we render to everyone his right and reasonably repel petitions which do not accord with reason.*]

For the Abbot of Regula, coming to the Apostolic See, explained to us [*and our brothers*] that, when M., [*formerly Archbishop of Milan*], your predecessor, concerning the cause which had been conducted *for a rather long time* between him and his monastery, *after many commissions finally* obtained letters directed to [*our venerable brother*] the Bishop of Verona, [*a cardinal of the Roman Church*], and he, [*the delegated judge, after the parties had been established in his presence*], rendered sentence in the possessory judgment partly for the monastery and partly for the archbishop, when the proctor of that monastery afterward wished to institute a question concerning ownership, [*the archbishop's party rather often sought delays and adjournments. And when the same archbishop had very often informed the aforesaid Bishop of Verona by letters that he by no means declined his judgment, and each party was at Novara before the messenger of the bishop himself, who had been sent for this purpose,*] the archbishop objected that the bishop's jurisdiction had expired, asserting that only the cause of possession and not that of ownership had been committed, and that, because he had pronounced concerning possession, having once discharged his office, he could not thereafter take cognizance of the question of ownership. [*And after alleging these matters, the aforesaid archbishop appealed.*]

To these things the monastery's party proposed to the contrary that the cause conducted between the archbishop and the monastery had been committed to the aforesaid bishop absolutely and without distinction, and it therefore said that the scope of the cause ought not to be divided. [*It also added that, since the archbishop had so often sought from the judge a delay and a place in which he ought to answer before him concerning that question of ownership, he could not afterward refuse him or appeal in any respect; especially because, while the adverse party was absent, as stated above, he himself had petitioned for the same judge and had caused the remedy of appeal to be prohibited in the apostolic rescript.*]

But the judge, [*having employed the counsel of prudent men*], decreed that, on account of the archbishop's contumacy, the plaintiff should be sent into the possession which had been adjudged by *the bishop himself to that* archbishop, from which, nevertheless, the archbishop violently ejected the monastery. *And when* [*the beloved son G., then prior but now abbot of that monastery, and G., messenger of the adverse party*], *approached the Apostolic See for this reason, Pope* Celestine, our predecessor *of good memory, after all the matters stated above had been more fully understood through* [*our beloved sons Hugh, cardinal priest of the title*] *of Saint Martin, and the cardinal deacon of Saint Mary in Aquiro, whom he had granted to them as auditors, through*

[*Al. of good memory,*] *then Bishop of Albano,* interpreted his rescript in this manner: that both the cause of possession and that of ownership had been delegated to the judge, since it had been committed absolutely and without distinction and its scope ought not to be divided, [*and that for the aforesaid reasons the same judge could not have been refused by the archbishop even through the obstacle of appeal.*]

Therefore, the same predecessor of ours, wishing to defer to the archbishop and abbot without injury to justice, also ordered the aforesaid possession to be sequestered *with our venerable brother the Bishop of Vercelli and the Bishop of Novara of good memory* according to his judgment. He enjoined upon [*our venerable brother*] the Bishop of Reggio and the [*then, of happy memory,*] Bishop of Modena that, [*having summoned the parties to their presence and notwithstanding any contradiction or appeal concerning either the principal or the incidental matter*], after taking fuller cognizance *within two months* of the cause of possession and ownership, they should decide it with a due end and afterward resign possession to the party which prevailed triumphantly concerning ownership.

[*And when the same letters reached the said Bishops of Modena and Reggio and the parties had been established in their presence, the archbishop's proctor offered security to purge the contumacy, if any had preceded. The monastery's proctor was unwilling to receive it unless sequestration of the possession first occurred and the right which belonged to him from a commission of this kind was preserved, so that the archbishop should seek from him in judgment as from the possessor. When, on the other hand, the archbishop's proctor answered that it ought to be sought from him as from the possessor, the debate was prolonged, and the term within which the aforesaid bishops ought to have taken cognizance concerning ownership expired. Moreover, a messenger of the monastery, again approaching the Roman Church, asserted that it had stood through the archbishop that neither had possession been sequestered nor had proceedings concerning ownership been conducted in the cause. For this reason our said predecessor commanded our venerable brother, the Bishop of Bobbio, through apostolic writings that, after possession, together with the fruits received from it, had been restored to the monastery, they should afterward hear whatever question the parties had against one another.

When he commanded through his messenger that, according to the tenor of the apostolic mandate, the abbot be inducted into the possession which the Bishop of Verona had adjudged, Hugh of Camerario violently ejected the abbot from it. With his accomplices he drove away by armed force both the bishop's messenger and the abbot and monks; burned with fire the boat by whose conveyance they had approached there; plundered the cells of the monastery; beat several lay brothers; and did not blush to burn houses situated outside the enclosure of the cloister, together with certain animals and a certain man. After this reached the hearing of the same predecessor of ours through the report of the abbot's messenger, by strictly commanding our venerable brother, the Bishop of Ferrara, he ordered that, having summoned the parties and after possession, together with the fruits received from it from the time of the sentence rendered by the said Bishop of Verona, had been restored to the monastery, he should take cognizance concerning ownership and, preserving it unharmed in the possession adjudged to it, should decree what was just and cause it to be firmly observed by apostolic authority, the obstacle of appeal being removed. He was also to restrain by sentence of excommunication, appeal being removed, those who opposed apostolic mandates or troubled the monastery concerning the other possession; and he was to announce the said Hugh and his accomplices as excommunicated and cause them to be avoided by all until they made competent

satisfaction to the monastery for all things taken and injuries inflicted and presented themselves before the apostolic countenance with his letters, unless you, brother archbishop, exercised against them this coercion as had been commanded to you.

But the said Bishop of Ferrara, having received letters of the Apostolic See concerning this, as we learned from his letters, after admonition had been made, promulgated a sentence of excommunication against Hugh of Camerario and his accomplices when you were unwilling to excommunicate him within the appointed term; and when, although lawfully cited by him, you neither approached nor sent a sufficient representative, but excused your absence by words and letters, he pronounced, saving the question of ownership, that possession was to be restored to the monastery. And when he caused the abbot to be inducted into it through his messenger, that abbot was cast out from it through the violence of armed men, at the command of you, brother archbishop, Hugh of Camerario, and the beloved sons, the consuls of Milan.

For this reason the same abbot petitioned us that we ought to confirm by apostolic authority the sentence of restitution so often rendered for him and, after possession had been restored to him together with the fruits, should cause him to enjoy it without molestation. But the beloved son Passaguerra, your proctor, and his associates said that the abbot's petition was not to be admitted, especially for this reason: that the abbot himself, in the letters which he obtained from the Apostolic See to the Bishops of Bobbio and Ferrara, had suppressed the truth and expressed falsehood. For he had suggested that the Bishop of Verona had promulgated sentence concerning possession, saving the question of ownership, although he had only decreed that the abbot be inducted into possession for the purpose of preserving the property. He also concealed the truth when he made no mention before the Apostolic See of the giving of security offered by the archbishop before the said Bishops of Reggio and Modena.*]

We therefore, [*after mature counsel had been held concerning these and all other matters proposed on this side and that with our brothers, the archbishops and bishops established at the Apostolic See, understanding that the said Bishop of Verona had decreed that the abbot be inducted into possession only for the purpose of preserving the property, as was consonant with reason, since issue concerning ownership had not been joined before him; and that it had not stood through the same M., the former archbishop, that he did not furnish the security offered within the year and purge the contumacy, if any had preceded; also considering that the abbot himself had obtained the letters to the Bishops of Bobbio and Ferrara through suppression of the truth and expression of falsehood—not rendering sentence, because issue had not been joined before us, but responding to the abbot, we answered that his petition according to the aforesaid form was not to be admitted, and commanded that he lack the writings which he had obtained through falsehood;*] reduce the scope of the cause to the state in which it had been when our aforesaid predecessor committed the cause of ownership and possession to the Bishops of Reggio and Modena, the mandate of sequestration being entirely revoked. [*We will and command, nevertheless, that the sentence of excommunication rendered against Hugh of Camerario and his accomplices be inviolably observed until fitting satisfaction.*]

But lest we appear to fail the monastery in its right, we decree that there are to be restored to it the moderate expenses incurred for this from the time when the Bishop of Verona decreed that it be inducted into possession until the time of the satisfaction offered, and that sufficient security to submit to judgment is to be furnished by you. [*The sentence, however, etc. Given at the Lateran on the sixth day before the Nones of March.* 1198.]

DE SEQUESTRATIONE POSSESSIONUM ET FRUCTUUM.

Res, in quam facta est missio, non debet sequestrari, etiam si missus inde fuerit violenter eiectus. Vel notabilius sic: Sequestrum factum loco missionis propter scandalum evitandum revocari debet, oblata cautione et restitutis expensis.

Innocentius III. Mediolanensi Archiepiscopo.

Ad hoc unxit nos Deus [*oleo laetitiae prae consortibus nostris, ut diligamus iustitiam et odiamus iniquitatem, quod tunc laudabiliter adimplemus, quum via regia incedentes non declinamus ad dexteram, neque ad sinistram aliquatenus deviamus, sed iuste quod iustum est persequentes, nec pauperis personam attendimus, nec honoramus vultum potentis, quia non est personarum acceptio apud Dominum; dum etiam merita subtili examinatione discutimus, et precum attendimus qualitatem, ut cuilibet reddamus ius suum, et preces, quae rationi non consonant, rationabiliter repellamus.*] *Veniens siquidem ad apostolicam sedem* Abbas de Regula nobis [*et fratribus nostris*] exposuit, quod quum M. [*quondam Mediolanensis archiepiscopus*] praedecessor tuus super causa, quae inter ipsum et monasterium suum *diutius* fuerat agitata, *post multas commissiones tandem* obtinuisset [*venerabili fratri nostro*] Veronensi episcopo [*Romanae ecclesiae cardinali*] literas destinari, et ipse [*iudex delegatus partibus in sua praesentia constitutis*] super iudicio possessorio partim pro monasterio, partim pro archiepiscopo sententiam protulisset, procuratore ipsius monasterii quaestionem de proprietate postmodum intentare volente, [*pars archiepiscopi dilationes et inducias saepius postulavit. Quumque saepenumero idem archiepiscopus praefato Veronensi per literas direxisset, quod ipsius iudicium nullatenus declinaret, utraque parte apud Novariam coram nuncio ipsius episcopi, qui ad hoc missus fuerat, exsistente,*] archiepiscopus iurisdictionem episcopi opposuit exspirasse, asserens, causam possessionis tantum, et non proprietatis fuisse commissam, et quia super possessione pronunciaverat, semel functus officio suo, super quaestione proprietatis deinceps cognoscere non valebat. [*Et his allegatis, praedictus archiepiscopus appellavit.*] *Ad haec pars monasterii contra proposuit, quod causa, quae inter archiepiscopum et monasterium vertebatur, fuerat memorato episcopo absolute et indistincte commissa, et sic continentiam causae dividi non debere dicebat. *[*Adiecit etiam, quod, quum archiepiscopus toties postulaverit dilationem et locum a iudice, in quo ante illum super illa proprietatis quaestione respondere deberet, eum postea recusare nequivit, vel aliquatenus appellare; praesertim quia absente parte adversa, sicut est praelibatum, ipsemet eundem iudicem postulaverat, et in rescripto apostolico fecerat appellationis remedium inhiberi.*] Sed iudex actorem in possessionem, quae fuerat per ipsum [*episcopum eidem*] archiepiscopo adiudicata, [*usus consilio virorum prudentum*] propter eiusdem contumaciam mitti decrevit, a qua tamen archiepiscopus violenter monasterium eiecit. *Quumque* [*dilectus filius G. tunc prior, nunc vero abbas eiusdem monasterii, et G. nuncius adversae partis*] *propter hoc ad sedem apostolicam accessissent, bonae memoriae* Coelestinus Papa praedecessor noster, *supra dictis omnibus per* [*dilectos filios nostros Hug. tit.*] *sancti Martini presbyterum et sanctae Mariae in Aquiro diaconum cardinales, quos eis auditores concesserat, plenius intellectis, per* [*bonae memoriae*] *Al. tunc Albanensem episcopum* sic suum interpretatus fuit rescriptum, quod tam causa possessionis quam proprietatis fuerat iudici delegata, quum absolute et indistincte commissa fuerit, et eius continentia dividi non deberet, [*et quod idem iudex ob dictas rationes ab archiepiscopo non potuisset etiam per appellationis obstaculum recusari.*] *Volens igitur idem praedecessor noster archiepiscopo et abbati sine iustitiae laesione deferre*, Praelibatam quoque possessionem *apud venerabilem fratrem nostrum Vercellensem et bonae memoriae Novariensem episcopos* pro suo arbitrio sequestrari praecepit, iniungens [*venerabili fratri nostro*] Reginensi et [*felicis recordationis tunc*] Mutinensi episcopis, ut [*partes ad suam praesentiam convocarent et nullius contradictione vel appellatione tam super principali quam super incidenti obstante*] de causa possessionis et proprietatis *infra duos menses* plenius cognoscentes, eam debito fine deciderent, et possessionem ei parti postmodum resignarent, quae obtineret de proprietate triumphum. [*Quumque literae ipsae ad dictos Mutinensem et Reginensem episcopos pervenissent, partibus in ipsorum praesentia constitutis, procurator archiepiscopi cautionem obtulit, ut contumaciam, si qua praecesserat, expurgaret; quam procurator monasterii recipere noluit, nisi possessionis sequestratione praemissa, et salvo iure, quod ei ex*

commissione huiusmodi competebat, ut a se tanquam a possessore peteret in iudicio. Quumque procuratur archiepiscopi e contrario responderet, quod ab eo peti velut a possessore deberet, disceptatione protracta in longum terminus exspiravit, infra quem episcopi memorati de proprietate cognoscere debuissent. Ceterum nuncius monasterii iterum ad ecclesiam Romanam accedens, per archiepiscopum stetisse asseruit, quod nec possessio sequestrata fuerat, nec super proprietate processum in causa. Propter quod dictus praedecessor noster venerabili fratri nostro Bobiensi episcopo per apostolica scripta mandavit, ut, possessione cum fructibus perceptis ex ipsa monasterio restituta, audirent postmodum si quid haberent partes inter se invicem quaestionis. Qui quum abbatem iuxta tenorem mandati apostolici in possessionem, quam Veronensis adiudicaverat, per suum nuncium mandasset induci, Hugo de Camerario ipsum abbatem ex ea violenter eiecit, qui cum suis complicibus tam nuncium episcopi, quam abbatem et monachos armata manu fugavit, et navi, cuius vehiculo illuc accesserant, igne combusta, cellas monasterii depraedatus, conversis pluribus verberatis, domos extra claustri ambitum constitutas cum quibusdam animalibus et quodam homine non erubuit concremare. Quod postquam ad eiusdem praedecessoris nostri audientiam nuncio ipsius abbatis referente pervenit, venerabili fratri nostro Ferrariensi episcopo districte praecipiendo mandavit, quatenus partibus convocatis, et possessione cum fructibus a tempore sententiae per dictum Veronensem prolatae perceptis ex ipsa monasterio restituta, de proprietate cognosceret, et, eo in adiudicata sibi possessione indemni servato, quod iustum esset statueret, et faceret auctoritate apostolica sublato appellationis obstaculo firmiter observari; eos autem, qui se apostolicis mandatis opponerent, vel monasterium super possessione alterius molestarent, per sententiam excommunicationis appellatione remota compesceret, et dictum Hugonem et eius complices, donec monasterio de ablatis omnibus et illatis iniuriis satisfacerent competenter, et cum literis eius apostolico se conspectui praesentarent, nunciaret excommunicatos, et faceret ab omnibus evitari, nisi tu, frater archiepiscope, hanc in ipsos districtionem, prout tibi mandatum fuerat, exerceres. Dictus vero Ferrariensis, receptis super hoc literis apostolicae sedis, sicut ex literis eius accepimus, admonitione praemissa in Hugonem de Camerario et complices eius; te infra statutum terminum eum excommunicare nolente, excommunicationis sententiam promulgavit, et, quum tu legitime citatus ab ipso nec accederes, nec sufficientem mitteres responsalem, sed absentiam tuam verbis et literis excusares, salva quaestione proprietatis possessionem monasterio restituendam pronunciavit; et, quum abbatem in eam per nuncium suum fecisset induci, idem abbas ab ea deiectus fuit te, frater archiepiscope, Hugone de Camerario et dilectis filiis consulibus Mediolanensibus mandantibus per violentiam armatorum. Propter quod idem abbas postulabat a nobis, ut sententiam restitutionis toties latam pro eo deberemus auctoritate apostolica confirmare, et possessione sibi cum fructibus restituta faceremus eum absque molestatione gaudere. Verum dilectus filius Passaguerra procurator tuus et socii eius petitionem abbatis non esse admittendam ea praesertim ratione dicebant, quod abbas ipse in literis, quas ad Bobiensem et Ferrariensem episcopos a sede apostolica impetravit, veritatem suppresserat et expresserat falsitatem. Suggesserat enim, Veronensem episcopum salva quaestione proprietatis super possessione promulgasse sententiam, quum non nisi causa rei servandae abbatem decrevisset in possessionem induci. Tacuit etiam veritatem, quum de satisdatione coram dictis Reginensi et Mutinensi episcopis oblata per archiepiscopum nullam fecit apud sedem apostolicam mentionem.] *Nos igitur *[*habito super his et aliis, quaecunque fuerunt hinc inde proposita, cum fratribus nostris archiepiscopis et episcopis apud sedem apostolicam constitutis consilio maturo, intelligentes, quod dictus Veronensis abbatem in possessionem causa rei servandae solummodo decrevisset induci, sicut erat consentaneum rationi, utpote coram quo super proprietate lis non fuerat contestata, et quod per eundem M. quondam archiepiscopum non stetisset, quin satisdationem infra annum oblatam praestiterit, et contumaciam, si qua praecesserat, expurgavit, attendentes etiam, abbatem ipsum per suppressionem veritatis et falsitatis expressionem literas ad Bobiensem et Ferrariensem episcopos impetrasse, non sententiantes, quia lis coram nobis contestata non fuit, sed respondentes abbati, petitionem eius iuxta formam praescriptam non esse admittendam respondimus, et ipsum scriptis carere mandavimus, quae per mendacium impetravit;*] In eum statum continentiam causae reducimus, in quo fuerat, quum praedictus praedecessor noster causam proprietatis et possessionis Reginensi et Mutinensi episcopis commisit, mandato sequestrationis penitus revocato. [*Sententiam tamen excommunicationis in Hugonem de Camerario et complices eius prolatam volumus et mandamus usque ad satisfactionem condignam inviolabiliter observari.*] Ne autem monasterio videamur in suo iure deesse, moderatas expensas, ex quo episcopus Veronensis ipsum in

possessionem induci decrevit usque ad satisfactionis tempus oblatae propter hoc factas, sibi restituendas esse censemus, et a te sufficientem praeberi standi iudicio cautionem. [*Sententiam autem etc. Dat. Lat. VI. Non. Mart.* 1198.]

Chapter II

Latin source headnote: If one sent into possession for the purpose of custody dissipates the fruits, those dissipated are recalled and sequestered with the others.

Honorius III, to the Prior of Deben and the Dean of Calin.

The beloved son R., rector of the church of Bethusia, showed us by his petition that, when a question was being conducted concerning the same church before the Abbot of Sibiton and his colleagues *by apostolic delegation*, between him on the one side and the abbot and convent of Cisteria *in the diocese of London* on the other, those judges, *inasmuch as they were more favorable than was due to the other party, after an appeal had been lawfully interposed by the same R.*, inducted the aforesaid abbot and convent into possession of the church itself for the purpose of custody. They dispose according to the choice of their own will of the fruits of *that church* received in the meantime, *to his prejudice and injury*. Wherefore, we command *your discretion* that, if it is so, causing the aforesaid fruits to be sequestered *until decision of the business*, you shall recall to its former state whatever you find *meanwhile* to have been disposed of by them from those fruits, *restraining contradictions by ecclesiastical censures*.

Si missus in possessionem causa custodiae fructus dissipat, dissipati revocantur, et cum aliis sequestrantur.

Honorius III. Priori Deben. et Decano de Calin.

Dilectus filius R. rector ecclesiae de Bethusia sua nobis petitione monstravit, quod, quum inter ipsum ex parte una, et abbatem, et conventum de Cisteria *Londoniensis dioecesis* ex altera super eadem ecclesia coram abbate de Sibiton. et eius collegis *ex delegatione apostolica* quaestio verteretur, et iudices ipsi, *prout erant plus debito parti alteri favorabiles, post appellationem ab eodem R. legitime interpositam* praedictos abbatem et conventum in possessionem ipsius ecclesiae causa custodiae induxerunt, qui fructus *ipsius ecclesiae* medio tempore perceptos pro suae distrahunt libito voluntatis *in eius praeiudicium et gravamen*. Quocirca *discretioni vestrae* mandamus, quatenus, si est ita, facientes *usque ad decisionem negotii* fructus sequestrari praedictos, si quid *interim* de ipsis per eos distractum inveneritis, in statum pristinum revocetis, *contradictiones per censuras ecclesiasticas compescentes*.

Chapter III

Latin source headnote: If a defendant in possession appeals from a sentence rendered against him, the fruits of the thing sought are lawfully sequestered if they are dissipated by him.

Gregory IX.

The fruits of the possession can reasonably be sequestered while litigation is pending from one who has appealed from a sentence, if they are dissipated by him.

Si reus possessor appellat a sententia contra eum lata, licite rei petitae fructus sequestrantur, si dissipantur ab eo.

Gregorius IX.

Ab eo, qui a sententia provocavit, fructus possessionis, si dissipentur ab ipso, possunt lite pendente rationabiliter sequestrari.

Title XVIII: On Confessions

Chapter I

Latin source headnote: From the statement alone of one confessing his own crime, no penalty is to be inflicted upon another; nevertheless, purgation is to be enjoined upon one defamed.

Clement III.

When the monastery—(*And below:* [*Cf. c.* 13, *On Election, I.* 6.]) *But concerning what you took care to attach to your letters—what you should do concerning a certain priest of the same monastery who, at the instigation of the devil, killed one of the brothers, as you publicly proposed that he confessed—we write back to your fraternity and command through apostolic writings that you shall not defer solemnly to degrade him from every divine office and to confine him in some monastery of the Cistercian order, in which, performing the penance imposed upon him for so great a crime, he may worthily lament there for as long as he lives what he committed.* But those at *whose* suggestion the priest declares that he perpetrated the crime of homicide, unless it is established to *you* by other means *and just reasons* to be true, we judge are to be subjected to no penalty, since according to the statutes of both laws persons who have confessed concerning themselves ought not to be questioned concerning the consciences of others; and, except for the crime of injured majesty, the perilous confession of one confessing concerning his own guilt is not to be admitted against anyone. If, however, you learn that they labor under infamy of this kind, you shall enjoin purgation upon each of them with three associates of his order joined to him.

> **DE CONFESSIS.**
>
> Ad solum dictum confitentis crimen proprium non est alteri infligenda poena aliqua; infamato tamen est indicenda purgatio.
>
> Clemens III.
>
> Quum monasterium (*Et infra:* [*cf. c.* 13. *de elect. I.* 6.]) *Super eo vero, quod tuis literis adnectere studuisti, quid tibi faciendum sit de quodam eiusdem monasterii sacerdote, qui diabolo instigante quendam ex fratribus, sicut eum publice proposuisti confessum, occidit, hoc fraternitati tuae rescribimus et per apostolica scripta mandamus, quatenus eum solenniter ab omni officio divino non differas degradare, et in monasterium aliquod Cisterciensis ordinis recludere, in quo iniunctam sibi tanti facinoris poenitentiam agens ibi, dum vixerit, digne lugeat quod commisit*. Eos, *autem, de* quorum suggestione scelus homicidii presbyter se perpetrasse proponit, nisi *tibi* aliis modis *et iustis rationibus* verum esse constiterit, nulli censemus poenae subdendos, quum secundum utriusque iuris statuta de se confessi super aliorum conscientiis interrogari non debent, et, crimine laesae maiestatis excepto, de reatu proprio confitentis periculosa confessio non est adversus quemlibet admittenda. Si tamen eos infamia huiusmodi laborare cognoveris, singulis eis, adiunctis tribus sociis sui ordinis, purgationem iniungas.

Chapter II

Latin source headnote: If a crime touching the principal cause is established against someone through his confession, he is punished with the ordinary penalty even if proceedings are not directed against him directly. This is what it says according to the gloss. And it is a noteworthy case and true in itself. Or summarize it thus according to another no less noteworthy understanding, which the gloss also holds although it does not explain it perfectly: If anyone incidentally confesses a crime in judgment, the ordinary judge, by beginning a new proceeding, can punish him with the ordinary penalty. This is what it says exceptionally. Abbas.

Innocent III, to the Canons of Bethlehem.

When a question was being conducted concerning the election of the Church of Bethlehem between R., *your subdeacon*, and P., *canon of the Lord's Sepulchre, recently in our presence*—(*And below:* [*Cf. c.* 4, *On the Cause of Possession, II.* 12.]) *Moreover*, because V., canon of Bethlehem, confessed in law that, in return for furnishing his consent to the election of another, he had received an *obligation and promise* of five hundred Saracens and had acted as an intermediary of simoniacal depravity, we, *understanding that a contract of this kind contained simoniacal depravity*, because we wish to prosecute a vice of this kind as we ought, considered that he should, by definitive sentence, be deposed *from every clerical order* and from every ecclesiastical benefice and office.

> Si de crimine contingente causam principalem constat contra aliquem per eius confessionem, punitur poena ordinaria, etiamsi directe contra eum non agatur. H. d. secundum glossam. Et est casus notabilis et verus in se. Vel summa sic secundum alium intellectum non minus notabilem, quem etiam sentit glossa, licet non perfecte explicet: Si quis confitetur crimen in iudicio incidenter, potest iudex ordinarius novum inchoando processum illum punire poena ordinaria. H. d. singulariter. Abbas.
>
> Innocentius III. Canonicis de Bethlehem.
>
> Quum super electione Bethlehemitanae ecclesiae inter R. *subdiaconum vestrum* et P. *canonicum sepulcri dominici nuper in nostra praesentia* quaestio verteretur (*Et infra:* [*cf. c.* 4. *de causa poss. II.* 12.]) *Ceterum* Quoniam V. canonicus Bethlehemitanus fuit in iure confessus, quod pro praestando alterius electioni consensu quingentorum Sarracenorum obligationem receperat *et promissum*, et mediator exstitit simoniacae pravitatis, nos *intelligentes, contractum huiusmodi continere simoniacam pravitatem*, quoniam vitium huiusmodi persequi volumus, ut debemus, ipsum *ab omni ordine clericali* per diffinitivam sententiam duximus ab omni beneficio et officio ecclesiastico deponendum.

Chapter III

Latin source headnote: A confession made in law by a church's steward harms the church itself; it can nevertheless be revoked if, before the business is ended, it is shown to have issued from an error of fact. This is what it says.

Gregory IX, to B., Judge of Viterbo.

It was proposed [*before us*] on behalf of [*the beloved sons*], the abbot and convent of the monastery of Saint M. [*on the mountain of Viterbo, of the Cistercian order*], that, when a question was being conducted before you between them on the one side and V., [*a citizen of Viterbo*], in the name of his wife, on the other, [*the parties finally submitted it to you as arbitrator under an agreed penalty. And when the suit proceeded before you by its own impetus*], the steward of the aforesaid monastery, [*who was prosecuting the same cause*], confessed certain things in law through an error of fact, from which he fears that prejudice may be generated against it. [*Wherefore they petitioned us that fitting provision be made for it concerning this.*] Therefore, since an error of fact harms no one while the business is not yet ended, we command that, if [*the aforesaid abbot and convent*] can demonstrate an error of this kind, you shall provide [*concerning this by our authority*] that no prejudice is generated against it concerning this. [*Given at Rieti on the twelfth day before the Kalends of February, in the fifth year [of our pontificate].* 1232.]

> Confessio facta in iure per oeconomum ecclesiae nocet ipsi ecclesiae; potest tamen revocari, si ante finitum negotium doceatur per errorem facti emanasse. H. d.
>
> Gregorius IX. B. Iudici Viterbiensi.

Ex parte [*dilectorum filiorum*] abbatis et conventus monasterii sancti M. [*in monte Viterbien. Cistercien. ordinis*] fuit propositum [*coram nobis*], quod, quum inter ipsos ex parte una, et V. [*civem Viterb.*] nomine suae uxoris ex altera coram te quaestio verteretur, [*tandem in te tanquam in arbitrum fuit a partibus poena interposita compromissum. Quumque coram te lis procederet suo Marte*], oeconomus monasterii memorati [*qui causam prosequebatur eandem*] quaedam per errorem facti fuit in iure confessus, ex quibus timet sibi praeiudicium generari. [*Quare super hoc sibi petierunt a nobis congrue provideri.*] Quum igitur negotio nondum finito nemini noceat error facti, mandamus, quatenus, si [*praedicti abbas et conventus*] de huiusmodi potuerit errore docere, [*super hoc auctoritate nostra*] provideas, ut nullum sibi super hoc praeiudicium generetur. [*Dat. Reatin. XII. Kal. Febr. A. V.* 1232.]

Title XIX: On Proofs

Chapter I

Latin source headnote: A defendant is not bound to produce his own instruments for his plaintiff. It is commonly summarized thus.

Gregory, to King Tancred of Winchester.

From the words of the letter—(*And below:*) Your Excellency petitioned that I write to the [*most pious*] emperor that he should seek in the archive the agreements which were formerly issued between the Emperor Justinian *of pious memory* and your predecessors, so that from them he might gather what he ought to observe toward you. But this strongly prevented *me* from doing this: that no one is to be told, "You ought to seek among your own things the documents which are against you and bring them forward into the midst." [*From this matter, etc.*]

DE PROBATIONIBUS.

Reus actori suo propria instrumenta edere non tenetur. Ita communiter summatur.

Gregorius Tancredo Regi Vincestriae.

Ex epistolae verbis (*Et infra:*) Tua excellentia postulavit, ut [*piissimo*] imperatori scriberem, quatenus pacta in chartophylacio requireret, quae dudum inter *piae memoriae* Iustinianum principem et praedecessores tuos fuerunt emissa, ut ex his colligeret, quid tibi servare deberet. Sed ad hoc faciendum *hoc mihi* vehementer obstitit, quia nulli dicendum est: ea, quae contra te sunt, apud temetipsum debes documenta requirere, in mediumque proferre. [*Ex qua re etc.*]

Chapter II

Latin source headnote: A plaintiff who has proved fully ought not to be compelled to swear.

Alexander III.

Just as no praiseworthy custom *ought to be torn down by any novelty, so that which is known to have been introduced by usage contrary to law ought, when contrary reason meets it, to be dissolved*. Indeed, because we have learned that it is customary among you that, when someone has established his contention by instruments or *introduced* witnesses, an oath is nevertheless tendered to him, and, if he is unwilling to undertake it, faith is not given to the proofs *produced—which, since it is supported by no reason but manifestly opposes the laws*—we reprove such a custom, since only then is recourse to be had to aid of this kind when other lawful proofs are known to be lacking, *and we decree that it shall henceforth possess no validity*.

Actor, qui plene probavit, non debet compelli iurare.

Alexander III.

Sicut consuetudo laudabilis *nulla debet novitate convelli, sic quod noscitur contra ius moribus introductum obvia ratione debet dissolvi*. Sane quoniam apud vos consuetum esse didicimus, ut, quum aliquis intentionem suam fundaverit instrumentis aut testibus *introductis*, ei sacramentum nihilominus deferatur, quod si subire noluerit, fides probationibus *exhibitis* non habetur, *quod quum nulla sit ratione subnixum, sed manifeste legibus adversetur*: nos, quum tunc demum ad huiusmodi sit suffragium recurrendum, quum aliae legitimae probationes deesse noscuntur, talem consuetudinem reprobamus, *nec ullam habere firmitatem deinceps sancimus*.

Chapter III

Latin source headnote: In a common judgment both plaintiff and defendant prove; and if they prove equally, the defendant is absolved, unless the plaintiff supports a favored cause.

Lucius III, to the Bishop of Chichester.

We have understood from your letters that you and the archdeacon have adjoining prebends in the villages which you each possess individually, and that a controversy is conducted between you under pretext of their boundaries because you say that he has passed beyond the ancient bounds and occupied part of your land, while he asserts to the contrary that he has possessed the same part of the land undisturbed for the space of forty years. But you affirm that you have possessed it peacefully for the same time, and therefore you asked whether proof lies upon the claimant or the possessor.

To this you ought to know that a judgment for regulating boundaries is of such a kind that in it each person holds the places of two persons, namely of plaintiff and defendant. Hence witnesses can be *duly* produced on each side to instruct the judge's cognizance; when they have been examined, the judge shall admit for creating faith for himself those whom he understands to excel. But if *perhaps* the witnesses of both parties are equally suitable, the possessor's witnesses shall be preferred, since the laws are more ready to absolve than to condemn, except in a cause concerning liberty, in which, if the witnesses of each party *perhaps* are equal, sentence shall *nevertheless always* be rendered in favor of liberty. For it is manifest law that proof is sometimes given to the possessor, since it is *thus* provided by law that one who has objected a prescription of the longest time—which no one rightly objects unless he possesses—and has proved it ought to prevail in the cause.

In communi iudicio probant actor et reus; et si pariter probant, reus absolvitur, nisi favorabilem causam foveat actor.

Lucius III. Cistrensi Episcopo.

Ex literis tuis intelleximus, te et archidiaconum confines habere praebendas in villis, quas singuli singulas possidetis, et praetextu terminorum inter vos controversiam agitari eo, quod dicas, eum antiquos fines egressum, partemque tui fundi occupasse; illo in contrarium asserente, se partem eandem fundi possedisse quadraginta annorum spatio inconcusse. Tu autem, quod per idem tempus quiete illam possederis, asseveras, quare utrum incumbat petitori vel possessori probatio quaesivisti. Ad quod scire debes, quod iudicium finium regundorum tale est, ut in eo utraque persona vices duorum habeat, videlicet actoris et rei. Unde hinc inde testes *rite* produci possunt ad cognitionem iudicis instruendam, quibus examinatis iudex quos praecellere intellexerit ad fidem sibi faciendam admittat. Quod si *forte* ambarum partium testes sint aeque idonei, possessoris testes praeferentur, quum

promptiora sint iura ad absolvendum quam ad condemnandum, praeterquam in liberali causa, in qua si utriusque partis testes *forte* aequales fuerint, pro libertate *tamen semper* sententia proferetur. Nam possessori probationem aliquando dari, iuris manifesti est, quum iure *ita* cautum sit, quod, qui obiecerit praescriptionem longissimi temporis, quam nemo recte obiicit, nisi qui possidet, et eam probaverit, in causa debeat obtinere.

Chapter IV

Latin source headnote: Credence is not given to a husband asserting, even with an oath, that he has known his wife carnally if the wife proves the contrary through matrons attesting by inspection of her body.

Gregory VIII, to the Provost of Saint Cataldus.

You proposed *to us, beloved son provost*, that the matrimonial cause conducted between *our beloved son* O. of Casanova and the woman S., *daughter of O. of Pisco*, was delegated to you by apostolic mandate. And when the parties were established in your presence, the woman proposed that she had neither been known carnally by the man nor could have been known, which she proved both by her own oath and by the testimony of seven women, who affirm by inspection of her body that she is a virgin; while the man, *however*, asserted the contrary through his oath, *you were by no means willing to proceed in the business until you had our counsel concerning this*. It therefore appears to us that faith is rather to be given to the oath of the girl and the testimony of those seven women, *who affirm from experience that she is a virgin*.

Non creditur marito asserenti etiam cum iuramento, uxorem se cognovisse, si uxor per matronas attestantes per ipsius corporis aspectum probat contrarium.

Gregorius VIII. Praeposito sancti Cataldi.

Proposuisti *nobis, dilecte fili praeposite*, quod causa matrimonii, quae inter *dilectum filium *nostrum* O. de Casa nova, et S. *filiam O. de Pisco* mulierem vertitur, tibi fuit de mandato apostolico delegata. Quumque partes essent in tua praesentia constitutae, mulier proposuit, se nec a viro cognitam, nec potuisse cognosci, quod tam proprio iuramento, quam testimonio septem mulierum probavit, quae per aspectum corporis eam esse virginem asseverant; viro *autem* per iuramentum suum contrarium asserente, *vos in negotio procedere minime voluistis, donec de hoc nostrum consilium haberetis*. Videtur igitur nobis, quod iuramento puellae et testimonio illarum septem mulierum, *quae ipsam per experientiam virginem asseverant*, fides est potius adhibenda.

Chapter V

Latin source headnote: Individual members of a corporate body can, for the advantage of the corporate body, disprove an instrument falsely drawn up in the name of the corporate body.

Clement III.

In the third place, *indeed*, we were asked as follows: Behold, a certain regular, using the seal of the chapter, sealed a certain instrument for a friend of his, in which is contained an alienation to him of certain immovable things of the church. When this was produced in judgment, the proctor of the corporate body asserted that it had not been drawn up with the assent of the convent and that the seal was adulterated or stolen. And when, *wishing to reveal the falsehood civilly*, he produced the *regular* brothers to give testimony, they said under oath that, *at the time at which the adversary alleged that the*

same instrument had been conferred upon him, whenever there was any mention of this among the brothers, the counsel of the whole convent and its voice were unanimous that they did not wish the alienation of those things, but wished the things of *their* house to remain whole *and* be preserved. But because the adverse party proved nothing against this, we answer that judgment is to be made solely according to the assertion of the witnesses.

> Singulares de universitate possunt ad commodum universitatis reprobare instrumentum falso confectum nomine universitatis.
>
> Clemens III.
>
> Tertio *quippe* loco fuit a nobis ita quaesitum: Ecce quidam regularis sigillo capituli quoddam instrumentum cuidam amico suo signavit, in quo facta ei alienatio quarundam rerum ecclesiae immobilium continetur. Quo exhibito in iudicio procurator universitatis illud asseruit de assensu conventus non fuisse confectum, et adulterinum vel furtivum esse sigillum. Quumque, *volens falsitatem civiliter **revelare*, fratres *regulares* ad perhibendum testimonium produxisset, iurati dixerunt, quod *eo tempore, quo adversarius allegabat idem instrumentum sibi fuisse collatum*, quotiens de hoc inter fratres aliqua erat mentio, consilium totius conventus et vox fuit unanimis, quod nolebant alienationem rerum illarum, sed res domus *suae fore* integras *et* conservari volebant. Sed quoniam contra hoc nihil pars adversa probavit, respondemus secundum assertionem testium tantummodo iudicandum.

Chapter VI

Latin source headnote: Where proceedings concern contracting a marriage, after an impediment has been proved and the attestations published, other witnesses concerning the absence of the impediment are not to be admitted.

The same.

A certain man swore, as you assert, that he would take a certain woman as his lawful wife. When he wished to convey her [to his house], certain persons, after furnishing oaths according to custom, lawfully proved that they were related to each other in the fifth degree of consanguinity. But because you asked us what is to be done when another person wishes to prove, against the aforesaid proof made by canonical oaths and published to the parties, that no degree of consanguinity touches them, we answer *your fraternity in the present matter* that the former proof is to be upheld. *Nor is heed to be paid to the testimony of only one person. Nor does the fact that the groom and bride propose with steadfast assertion that they have known one another carnally persuade that the marriage should remain, since carnal intercourse between persons who are not lawful cannot by law make a marriage.*

> Ubi agitur de matrimonio contrahendo, probato impedimento et publicatis attestationibus alii testes super defectu impedimenti admittendi non sunt.
>
> Idem.
>
> Iuravit quidam, ut asseris se quandam in uxorem legitimam accepturum. Quam quum vellet traducere, quidam iuramentis secundum morem exhibitis legitime probaverunt, ipsos in quinto consanguinitatis gradu sibi invicem attinere. Quia vero requisisti a nobis, quid agendum sit, quum quidam alius probare velit contra praedictam probationem iuramentis canonicis factam et partibus publicatam, nullo eos sese consanguinitatis gradu contingere, *fraternitati tuae in praesenti articulo* respondemus, quod standum est probationi priori. *Nec de unius testimonio tantum curandum est. Illud etiam, ut matrimonium remaneat, non suadet, quod sponsus et sponsa constanti assertione proponunt, se carnaliter cognovisse, quum commercium carnale inter non legitimas personas matrimonium de iure facere non possit*.

Chapter VII

Latin source headnote: If it is proved by letters of the ordinary that someone is excommunicated, he will be repelled from acting as proctor. This is what it says; and this summary agrees with the text and title, admits no objection, and therefore hold it.

Innocent III, to the Archdeacon of Paris.

After the resignation [*of the beloved son, formerly Abbot of Saint Martin of Troyes, when the votes of the canons of that church were divided in the election, some of them elected the beloved son Manasses, canon of the Church of Saint Lupus, while others transferred their votes to the beloved son P., chaplain of our venerable brother [...], Archbishop of Sens. For this reason we committed the cause for determination to our venerable brother [...], Bishop of Chalon, and the beloved son [...], Abbot of Cluny, under this form: that, inquiring into the rights of each election and the merits of those elected, they should confirm by apostolic authority the election which they found canonically celebrated concerning a suitable person. But if they found neither canonical, after both elections had been quashed they should cause provision to be made for that church concerning a suitable person.

They, summoning the parties to their presence and solemnly taking cognizance of the cause, received very many witnesses both concerning the deed of the electors and against the persons; and, when they had proceeded as far as publication of the witnesses, [...], the proctor of the said chaplain P., appealed to the Apostolic See. But the judges, because one of them—namely, the Abbot of Cluny—was occupied with greater affairs and could not attend cognizance of the cause, deferred to an appeal of this kind on the counsel of prudent men, enjoining upon the parties that they should hasten to our presence with the attestations received, to receive from us a definitive sentence concerning the cause itself.

Therefore, when the acts of the judgment had been received by each party, certain of the aforesaid canons constituted V., their fellow canon, as proctor in the presence of the aforesaid bishop, as we perceived was contained in that bishop's letters. But while the same V. was on the journey to come to the Apostolic See, when in the meantime the said Archbishop of Sens was traveling through the diocese of Nevers for the purpose of visitation, the messengers of the aforesaid church approached him, intimating to him that all the canons, except a few who, although they did not contradict, nevertheless did not expressly consent, had conferred their votes upon P., his chaplain; and they entreated the archbishop himself to hasten to the place as quickly as possible to provide for the church. When he approached it because of their urgency, all who had formerly refused to express their consent, except Vitalis alone, who was absent, returned to agreement with the others and voluntarily consented to the aforesaid chaplain, seeking pardon for their former dissent. And thus it happened that, at the petition of all, on the feast of the Apostles Peter and Paul, in the greater Church of Troyes, the same P. received the office of benediction from the aforesaid metropolitan; and afterward, solemnly introduced into the Church of Saint Martin with the exultation of all and general joy, and installed as is customary by the beloved son [...], Dean of Troyes, he publicly received in the chapter of the same church the professions of each.

But the said Vitalis, coming to our presence, presented to us the acts of the judges, solicitously petitioning that we deign to dispatch him as quickly as possible. While he waited for some time, the proctor of the said chaplain P. arrived in the meantime. When they were established in our presence,

the said proctor humbly petitioned that we deign to approve what had been done concerning the said chaplain by the archbishop and that we should not hear the often-mentioned V. at all, since he was excommunicated. For he asserted that the same V. had beaten L., formerly Abbot of Saint Martin, to the shedding of blood; had also scourged John, a priest of that church, with such grave blows that all his companions despaired of his life; and had afflicted with such hard blows a certain priest of that church who had recently returned from the Apostolic See that his battered face appeared exceedingly frightful. For these excesses and others—concerning which, although cited and admonished by the said metropolitan, he was unwilling either to make satisfaction or even to appear—he was bound by the bond of excommunication. To prove this, the same proctor produced letters both of the said Archbishop of Sens and of the Dean of Troyes.

To these things it was answered to the contrary on behalf of the said Vitalis that he ought not to be impeded in any respect by the objection of an excommunication of this kind. For the canons themselves, not avoiding him up to that time, had by no means declined communion with him either in offices or in judgment; indeed, rather, when he was constituted proctor in the presence of the said Bishop of Chalon, they admitted him without any contradiction. Nor had the archbishop announced to the judges or his fellow brothers that he was subject to excommunication. Therefore, he proposed that he ought to be admitted in judgment like any other, notwithstanding an exception of this kind.

Against this the proctor of the other party replied that, if at any time the same V. attended divine services with his canons, this displeased them altogether; but he, although prohibited, thrust himself into divine offices while they grieved, as is manifestly gathered from the letters of the aforesaid dean. Nor did they communicate with him in judgment, because, although he was of the number of those who opposed the election of the aforesaid chaplain, faith was nevertheless not made in the judgment that the same V. was a proctor or witness in that judgment, or that the often-mentioned canons otherwise communicated with him. He also added that the fact that the same V. was not excluded as an excommunicated person when he was constituted proctor before the aforesaid bishop could not generate prejudice, because this was done in their absence. He further added that, if the archbishop did not announce in that judgment that he was subject to excommunication, this was because he did not know that he was litigating in that judgment; nevertheless, after he had announced him excommunicated by letters fortified with his seal, he was to be avoided by all as excommunicated.*]

Therefore, *when debate concerning this had been conducted before us, because* it was established to us by the letters of the ordinary judge—which are to be upheld until the contrary is proved—that V. was excommunicated *at the time* when he assumed the office of proctor, we considered that he was not to be admitted as proctor. [*But, etc. Given at the Lateran on the fourth day before the Nones of October, in the ninth year [of our pontificate]*. 1206.]

> Si per literas ordinarii probatur quis excommunicatus, a procuratione repelletur. H. d. et haec summatio convenit textui et titulo, et nullam patitur calumniam, et ideo eam tene.
>
> Innocentius III. Archidiacono Parisiensi.
>
> Post cessionem [*dilecti filii abbatis olim S. Martini Trecensis, canonicorum eiusdem ecclesiae votis in electionem divisis, quidam ex ipsis dilectum filium Manassem, ecclesiae S. Lupi canonicum elegerunt, aliis in dilectum filium P. venerabilis fratris nostri ... Senonensis archiepiscopi capellanum transferentibus vota sua; propter quod causam ipsam venerabili fratri nostro ... Cabilonensi episcopo et dilecto filio ... abbati Cluniacensi terminandam commisimus sub hac forma, ut, de utriusque electionis iuribus et electorum meritis inquirentes, electionem quam invenirent de persona*

idonea canonice celebratam, auctoritate apostolica confirmarent. Si vero neutram canonicam invenirent, utraque electione cassata de persona idonea facerent eidem ecclesiae provideri. Qui, partes ad suam praesentiam convocantes, ac de causa solenniter cognoscentes, tam super eligentium facto, quam contra personas testes plurimos receperunt, et, quum usque ad publicationem testium processissent, ... procurator dicti P. capellani, ad sedem apostolicam provocavit. Iudices vero pro eo, quod alter eorum abbas scilicet Cluniacensis, maioribus erat negotiis occupatus, nec causae cognitioni poterat interesse, appellationi huiusmodi de prudentum virorum consilio detulerunt, partibus iniungentes, ut cum receptis attestationibus ad nostram praesentiam festinarent, super ipsa causa definitivam a nobis sententiam recepturae. Actis itaque iudicii ab utraque parte receptis, quidam ex canonicis supradictis procuratorem constituerunt V. concanonicum suum in praesentia episcopi memorati, sicut in eiusdem episcopi literis perspeximus contineri. Verum, eodem V. in itinere constituto ad sedem apostolicam veniendi, quum interim dictus archiepiscopus Senonensis visitandi gratia Nivernensem dioecesim peragraret, ad ipsum supradictae ecclesiae nuncii accesserunt; insinuantes eidem, quod omnes canonici in P. capellanum ipsius, praeter paucos, qui, licet non contradicerent, non tamen consentiebant expresse, contulerant vota sua, ipsum archiepiscopum deprecantes, ut ad locum quam citius properaret ecclesiae provisurus. Ad quem quum propter eorum instantiam accessisset, universi, qui prius consensum suum exprimere recusabant, praeter solum Vitalem, qui absens erat, ad aliorum concordiam redeuntes, in supradictum capellanum voluntarie consenserunt, de dissensu praeterito veniam postulantes. Sicque factum est, quod ad postulationem omnium in festo Apostolorum Petri et Pauli apud maiorem ecclesiam Trecensem idem P. a metropolitano iam dicto munus benedictionis accepit, ac postmodum in ecclesiam S. Martini cum omnium tripudio et gaudio generali solenniter introductus, et a dilecto filio ... decano Trecensi, sicut moris est, installatus in eiusdem ecclesiae capitulo professiones recepit publice singulorum. Dictus autem Vitalis, ad nostram praesentiam veniens, acta nobis iudicum praesentavit, sollicite postulans, ut eum dignaremur quam citius expedire. Ipso vero aliquamdiu exspectante, dicti P. capellani procurator interim supervenit. Quibus in nostra praesentia constitutis, procurator iam dictus humiliter petiit, quatenus dignaremur quod de dicto capellano per archiepiscopum factum fuerat approbare, ac saepedictum V. utpote excommunicatum in nullo penitus audiremus. Asserebat siquidem, quod idem V. L. quondam abbatem S. Martini usque ad effusionem sanguinis verberavit; Ioannem quoque, eiusdem ecclesiae sacerdotem tam gravibus verberibus flagellavit, quod de ipsius vita omnes eius socii desperabant; quendam etiam presbyterum eiusdem ecclesiae nuper a sede apostolica redeuntem tunsionibus tam duris affecit, ut eius facies afflicta videretur nimium et horrenda; propter quos excessus et alios, super quibus a dicto metropolitano citatus et monitus satisfacere noluit vel etiam comparere, excommunicationis fuit vinculo innodatus. Ad quod probandum idem procurator tam dicti archiepiscopi Senonensis quam decani Trecensis literas exhibebat. Ad haec fuit pro parte iam dicti Vitalis ex adverso responsum, quod huiusmodi excommunicationis obiectu non debebat aliquatenus impediri. Ipsi siquidem canonici, eum usque ad haec tempora non vitantes, tam in o fficiis quam in iudicio communionem ipsius nullatenus declinarunt; quin immo, quum in praesentia dicti Cabilonensis episcopi procurator exstitit constitutus, ipsum sine contradictione qualibet admiserunt. Archiepiscopus etiam iudicibus vel confratribus ipsum excommunicationi subiectum minime nunciavit, quare, se admitti debere in iudicio sicut quemlibet alium, proponebat, exceptione huiusmodi non obstante. Contra quod procurator ex parte altera replicabat, quod, si quando idem V. cum canonicis suis divinis interfuit, hoc ipsis omnino displicuit; sed ipse, licet inhibitus, se divinis officiis, illis dolentibus, ingerebat, sicut ex literis praedicti decani colligitur manifeste; sed nec in iudicio communicarunt eidem, quia, licet de numero illorum fuerit, qui electioni capellani se opposuere praedicti, non tamen est in iudicio facta fides, quod idem V. procurator in illo iudicio fuerit sive testis, vel quod alias ei communicaverint canonici saepedicti. Adiecit etiam, quod nec illud poterat praeiudicium generare, quod idem V. non fuit tanquam excommunicatus exclusus, quando coram praedicto episcopo constitutus exstitit procurator, quoniam hoc in eorum absentia factum fuit. Adiecit quoque, quod, si archiepiscopus ipsum in illo iudicio non denunciaverit excommunicationi subiectum, quia nec scivit ipsum in illo iudicio litigare, postquam tamen per literas suo sigillo munitas ipsum excommunicatum denunciaverat, tanquam excommunicatus est ab omnibus evitandus.] Quum igitur *super hoc coram nobis disceptatum fuisset, quia* per literas iudicis ordinarii, quibus standum est, donec probetur contrarium, nobis constiterit, quod V. *tunc* excommunicatus erat, quum procurationis officium assumpsit, ipsum tanquam procuratorem non duximus admittendum. [*Verum etc. Dat. Lat. IV. Non. Oct. Ao. IX.* 1206.]

Chapter VIII

Latin source headnote: If one who was requested to restore the whole inheritance in the event that he died without children enters a monastery, the fideicommissum vanishes and the inheritance is applied to the monastery; nor, to invalidate his entrance, is it sufficient to prove minority of age at the time of entrance if a twofold entrance is proved on the other side. This is what it says, with the understanding that the substitution was fideicommissary. But if it was direct, summarize it thus: A substitution made for a son in the event that he dies without children vanishes through his entrance into a monastery. And then add what is in the first summary at the words "nor, to invalidate," etc., to the end; and each understanding is true in itself. I say, nevertheless, that the first is truer, because here there was a fideicommissary substitution, although Lord Antonius says here that it was compendious.

The same, to the Abbot and Convent of Casamari.

In the presence of *our beloved son* G., cardinal deacon of Saint Adrian, G., *a subdeacon*, and B., *a woman, his sister*, siblings *of Veroli*, caused it to be proposed before him, when they were established with your syndic, that, when the late A., their brother, made his testament, he instituted M., his son, as his heir and directed that, if he *perhaps* died without children, his goods should devolve upon *G. and B.* Hence they petitioned that the things which your monastery detained from his goods be restored to them, and sought that you be restrained from troubling them concerning this.

But the syndic proposed to the contrary that the aforesaid M. had offered himself and his property to your monastery, wherefore everything which he had possessed had devolved upon the monastery. He therefore petitioned that everything which they had invaded from his goods be restored to your monastery and that silence concerning the remainder be imposed upon them. To these things, however, the other party replied that the said M. was a minor in years at the time of his offering, *as it lawfully proved through witnesses*, and that, repenting of the vow made, he revoked after recovery *that* which he had done in the fervor of illness. *Hence, both because Milo offered himself and his property to the monastery of Casamari below lawful age and because he afterward revoked what he had done without deliberation, his offering was not valid.* Therefore, since he died without children, under the testament of *his* father his inheritance had devolved upon them.

But *to these things* the syndic took care to answer that, although the said M. had departed from *that* monastery *with your permission, son abbot*, afterward, *approaching your presence with his grandfather, who was his proctor, when you had gone to Veroli*, he humbly and devoutly offered himself and his property to it, and confirmed by oath *that he would no further proceed against his offering and donation, as the public instrument contains*. Therefore, since it is established *from these things* that the same M. twice conferred himself and his property upon your monastery, and it is not proved on the other side that *M.* was a minor in years at the time of each offering, the proof of an exception of this kind does not destroy your proof, since, even if he was a minor in years at the time of the first offering, he could nevertheless have been of age at the second.

Furthermore, since the phrase "a minor in years" could be understood in two ways—for both one who is younger than fourteen years and one who *is younger than* twenty-five years is customarily called a minor in years—the doubtful phrase did not harm your contention, since a donation made under twenty-five years, *especially* one confirmed by oath, was valid. But even if what had been done by the

said A. were valid, since one who instituted a monastery as his heir was nevertheless not to be understood to die without an heir, this did not harm the monastery.

And when the aforesaid cardinal reported in the hearing of us and our brothers the things proposed before him, we considered that the beloved son H., cardinal deacon of Saint Eustace, should be appointed to advise. Therefore the same beloved son H., cardinal of Saint Eustace, *having more fully understood the merits of the cause*, considering that your syndic had fully established his contention and that nothing had been sufficiently proved on the opposite side—since, even if it had been shown through witnesses that M. was a minor in years at the time of his offering, it had not been expressed whether he was a minor at the time of the first or second offering, nor by how many years he was a minor—rendered sentence by our mandate. Imposing silence upon the aforesaid G. and B. concerning the things which they sought from the monastery, he condemned them to restitution of those things which by their own temerity they had invaded from the goods of the aforesaid M. We therefore confirm that sentence by apostolic authority.

> Si rogatus restituere totam hereditatem, eo sine liberis decedente intret monasterium, evanescit fideicommissum, et hereditas applicatur monasterio; nec ad invalidandum ingressum sufficit probare minorem aetatem tempore ingressus, si ex adverso geminatus probetur ingressus. H. d. intelligendo, quod substitutio fuit fideicommissaria. Si vero fuit directa, summa sic: substitutio facta filio, eo decedente sine liberis, evanescit per ingressum monasterii. Et tunc adde id, quod est in primo summario ibi: nec ad invalidandum etc., usque ad finem, et uterque intellectus est verus in se. Dico tamen, quod primus est verior, quod hic fuit substitutio fideicommissaria, licet Dom. Anton. hic dicat, quod fuit compendiosa.
>
> Idem Abbati et Conventui Cassensi.
>
> In praesentia *dilecti filii nostri* G. sancti Hadriani diaconi cardinalis G. *subdiaconus* et B. *mulier soror eius, Verulanenses* fratres *cum* vestro syndico constitutos coram ipso fecere proponi, quod, quum quondam A. frater ipsorum conderet testamentum, M. filium suum sibi heredem instituit, et praecepit, ut, si absque liberis *forte* decederet, ad eos *G. et B.* bona devolverentur ipsius, unde illa, quae de bonis ipsius vestrum monasterium detinebat, sibi restitui postulabant, et petebant vos super hoc a sua molestatione compesci. Verum syndicus ipse proposuit ex adverso, quod praedictus M. monasterio vestro obtulit se et sua, unde universa, quae habuerat, erant ad monasterium devoluta, quare universa, quae ipsi de bonis eius invaserant, restitui monasterio vestro petebat, et super ceteris silentium illis imponi. Ad haec autem pars altera replicavit, quod dictus M. oblationis suae tempore fuerat minor annis, *sicut per testes legitime comprobavit*, et quod voti facti poenitens *id*, quod fervore infirmitatis fecerat, post convalescentiam revocavit. *Unde tum ex eo, quod Milo infra aetatem legitimam monasterio Casemarii obtulit se et sua, tum quia quod inconsulte fecerat postmodum revocavit, eius oblatio non tenebat*. Unde quum sine liberis decessisset, ex testamento patris *illius* ad ipsos erat eius hereditas devoluta. Verum *ad haec* syndicus respondere curavit, quod, licet dictus M. de monasterio *ipso de tua licentia, fili abbas*, fuisset egressus, eidem postmodum, *cum avo suo, qui eius erat procurator, ad praesentiam tuam, quum Verulas ivisses, accedens*, se et sua obtulit humiliter et devote, et, quod nec contra oblationem *et donationem* suam veniret *ulterius*, iuramento firmavit, *sicut publicum continet instrumentum*. Quare quum constet *ex his*, quod idem M. bis monasterio vestro contulit se et sua, nec ex adverso probetur, quod utriusque oblationis tempore *M.* fuerit minor annis, probationem vestram huiusmodi exceptionis probatio non elidit, quum, etsi primae oblationis tempore fuerit minor annis, secundae tamen potuit maior exstitisse. Praeterea quum verbum illud minor annis duobus potuerit modis intelligi, quum et qui minor est quatuordecim annis, et qui viginti quinque *minor fuerit*, dici soleat minor annis, intentioni vestrae verbum dubium non nocebat,

quum infra viginti quinque annos teneret donatio *praesertim* iuramento firmata. Sed etsi teneret quod factum fuerat a dicto A., qui tamen intelligendum non erat sine herede decedere qui monasterium sibi heredem instituit, hoc monasterio non nocebat. *Quum que cardinalis praedictus ea, quae coram ipso proposita fuerant, in nostra et fratrum nostrorum audientia retulisset, nos ad consilium dilectum filium H. sancti Eustachii diaconum cardinalem duximus deputandum. Idem igitur* Dilectus filius H. sancti Eustachii cardinalis *causae meritis plenius intellectis* attendens, quod syndicus vester intentionem suam plene fundasset, et quod nihil fuisset ex adverso sufficienter probatum, quum, etsi ostensum esset per testes, quod M. suae oblationis tempore fuerit minor annis, utrum tamen primae vel secundae oblationis tempore minor fuerit, et quot annis minor, non fuisset expressum, de mandato nostro sententiam protulit, et praedictis G. et B. silentium imponens super his, quae a monasterio postulabant, eos ad restitutionem illorum, quae de bonis praedicti M. propria temeritate invaserant, condemnavit. Nos igitur sententiam ipsam auctoritate apostolica confirmamus.

Chapter IX

Latin source headnote: If plaintiff and defendant prove in the interdict for retaining possession, the one prevails who proves the older possession, especially one justified by title, or has adduced better proofs with respect to possession. This is what it says notably; and the summary is sufficiently proved at the verse "from the foregoing," when the verse "especially" is weighed.

The same.

Although the cause which is conducted between the Church of Ravenna and the commune of Faenza concerning jurisdiction, honors, and district in the village of *Luci*, Saint P., and the castle of Ariolo, which the said church proposed pertained to it by right—(*And below:*) *But because it was very burdensome to each party to produce witnesses before us, we commanded the Bishop of Piacenza that within three months, appeal being removed, he should receive the witnesses whom each party should determine to produce both concerning the principal business and against the persons of the witnesses, in such a way, namely, that, restraining an unbridled multitude, he should by no means permit them on each side to exceed the number forty.* (*And below:*) *And thus afterward the proctors of both parties returned to our presence with the sealed attestations.*

Furthermore, when the attestations had been *solemnly* published, the syndic of the people of Faenza proposed that he wished to object and prove certain things against the persons of the witnesses produced by the other party, while the steward of the church asserted that this ought not to be done. Concerning this, *when debate had been conducted on each side for some time, finally* we decreed by interlocutory judgment that he should by no means be heard *concerning this*, since he had not taken care to produce witnesses of this kind within the space of three months contained in our letters, within which term each party could introduce witnesses both against the persons of witnesses and concerning the principal business.

After this the same *syndic* objected against the aforesaid witnesses that, having been corrupted, they had spoken falsely, *and petitioned that the faculty of proving the complaint of falsehood be granted to him*. Hence, because such an exception can be interposed not only before but even after sentence *according to lawful sanctions*, although some believed that the party of Faenza had interposed an exception of this kind through calculated malice to impede the course of the business, nevertheless, because we are unwilling to deviate from the path of law, we commanded *the beloved sons* Masters G. and T., *dwelling at Bologna, through our writings* that, *having summoned the parties*, they should take care within a month to receive and examine the witnesses whom the proctor of Faenza should determine to produce

concerning this exception, subtly inquiring into the individual circumstances *and faithfully reducing their depositions to writing*. Another month was thereupon granted to the proctor of the aforesaid church, within which, if he wished, he might produce witnesses before them for the reprobation of those witnesses; *and, faithfully writing down their statements, they should appoint to each party a term of twenty days, within which they should present themselves before us with the attestations to receive sentence. Therefore, when the parties again appeared before us and attestations of this kind had been published, we heard whatever they wished to propose.*

Although the party of Faenza produced many witnesses concerning the principal business, *to prove that from long-past times the men of the aforesaid places had furnished them services in bans, pleas, ditches, collections, military expeditions, and certain other matters pertaining to the district*, nevertheless, scarcely six *only* of them remained concordant, since *many* others contradicted themselves in the course of their testimony, and certain others were singular in the statement of their testimony. Although certain witnesses were introduced on behalf of Faenza to disprove some of the witnesses of the Church of Ravenna, nevertheless most of them are rejected because they very clearly contradict one another. Certain few others, although they are not expressly rejected, are nevertheless of such bad reputation and slight standing, *as was proved through the attestations produced*, that no or little faith is to be given to their statements.

The same witnesses of Faenza are also generally repelled because they do not prove that for the proving of which their syndic bound himself, namely, that, having been corrupted, they had spoken falsely; for, even if they appear to say something about corruption, they say nothing at all *about falsehood. But it was manifestly proved through many witnesses of the Church of Ravenna, greater than every exception, that the Church of Ravenna had possessed the village of Luci, Saint Potitus, and the castle of Aureolo from the longest time with every honor, district, and jurisdiction, all the articles expressing jurisdiction, honor, and district having been individually specified.*

From the foregoing, therefore, it appears sufficiently clearly that the *Church of Ravenna*, through witnesses more numerous in number, whom the light of truth assists more fully and who also expressed in their testimony things more fitting to the business and nearer to the truth, sufficiently showed that it possessed the aforesaid places from sixty years ago and thereafter with every jurisdiction, honor, and district. Through this it is evident that, if the commune of Faenza received any services in the aforesaid places from fifty years ago and thereafter, as their witnesses appear to depose, they undoubtedly began to receive them without just title, since two persons cannot simultaneously possess the same thing wholly and in the same manner, especially since the same people of Faenza do not show a just title of possession, and it is very clearly gathered from the privileges of the emperors and Roman Pontiffs granted to the Church of Ravenna that the possession of that church in the aforesaid places was just.

Therefore, since it is established that the people of Faenza, from the time from which they strive to prove that they possessed, less justly and without title occupied certain things in the aforesaid places by their own temerity, *and in the course of time extorted them through violence, as is manifestly proved through many witnesses of the Church of Ravenna*, and since the steward of the same church petitioned *before us* that the commune of Faenza be prohibited from disturbing or disquieting force concerning the aforesaid matters, we, recognizing that in this case the interdict *Uti possidetis* does not have place in such a way that we ought to say, "As you possess, so shall you possess," since the proofs of the

church are far stronger and it is therefore superior in the interdict, *by the counsel of our brothers* condemn the commune of Faenza to [submit] to it. With respect to the possessory judgment, concerning which alone proceedings were conducted, we impose perpetual silence upon the commune concerning jurisdiction, honor, district, and other things generally pertaining to this in the aforesaid places; and we prohibit it from presuming, either personally or through others, to trouble the Church of Ravenna or the inhabitants of the aforesaid places in any respect concerning these matters.

> Si actor et reus in interdicto retinendae possessionis probant, obtinet is, qui antiquiorem possessionem probat titulo maxime iustificatam, vel meliores probationes respectu possessionis adduxit. H. d. notabiliter, et probatur satis summarium in versic. ex praemissis, ponderato versic. maxime.
>
> Idem.
>
> Licet causam, quae vertitur inter ecclesiam Ravennatensem et commune Faventiae super iurisdictione, honores, ac districtu in villa *Luci*, sancti P. et castro Arioli, quod de iure ad se spectare dicta ecclesia proponebat (*Et infra:*) *Verum, quia utrique parti erat plurimum onerosum, testes producere coram nobis, Placentino episcopo dedimus in praeceptis, ut infra tres menses testes appellatione remota reciperet, quos utraque pars tam super principali negotio, quam in personas testium duceret producendos, ita videlicet, ut** effrenata multitudine refrenata hinc inde quadragenarium numerum nullatenus excedere pateretur. *(*Et infra:*) *Sicque postmodum utriusque partis procuratores cum attestationibus consignatis ad nostram praesentiam redierunt*. Porro attestationibus *solenniter* publicatis, syndicus Faventinorum proposuit, se velle in personas testium ex parte altera productorum quaedam obiicere ac probare, oeconomo ecclesiae asserente, id fieri non debere. Super quo *quum fuisset hinc inde aliquamdiu altercatum, tandem* interloquendo decrevimus, ipsum *super hoc* nullatenus audiendum, quum infra trium mensium spatium in nostris literis comprehensum testes huiusmodi producere non curaverit, infra quem terminum pars utraque testes inducere potuit tam in personas testium, quam super negotio principali. Post hoc idem *syndicus* obiecit in testes praedictos, quod corrupti falsa dixissent, *et ad querelam falsi probandam concedi sibi petiit facultatem*. Unde quia talis exceptio non solum ante, sed etiam post sententiam potest opponi *secundum legitimas sanctiones*, licet nonnulli crederent, Faventinorum partem exceptionem huiusmodi per excogitatam malitiam ad impediendum processum negotii obiecisse, quia tamen nolumus a iuris tramite declinare, *dilectis filiis* magistris G. et T. *Bononiae commorantibus per scripta nostra* praecipimus, ut *partibus convocatis* testes, quos super hac exceptione procurator Faventinorum duceret producendos infra mensem, recipere et examinare curarent, de singulis circumstantiis subtiliter inquirentes, *et depositiones eorum fideliter redigentes in scriptis*, indulto extunc altero mense procuratori ecclesiae supradictae, infra quem, si vellet, ad reprobationem testium illorum produceret testes coram eis, *et eorum dicta fideliter conscribentes XX. dierum terminum utrique parti praefigerent, infra quem cum attestationibus ipsis nostro se conspectui praesentarent sententiam recepturae. Partibus itaque comparentibus iterum coram nobis, et huiusmodi attestationibus publicatis, audivimus quaecunque proponere voluerunt*. Quanquam autem pars Faventinorum testes multos produxerit super negotio principali, *ad probandum, quod homines praedictorum locorum a longis retro temporibus exhibuerunt eis servitia in bannis, et placitis, fossatis et collectis et cavalcatis, et quibusdam aliis pertinentibus ad districtum*, vix tamen ex illis sex *tantummodo* remanserunt concordes, quum alii *multi* sibimet in serie sui testimonii contradicant, et quidam alii sint in dicto sui testimonii singulares. Ad reprobandum vero quosdam testium ecclesiae Ravennatensis etsi ex parte Faventinorum quidam sint testes inducti, plures tamen illorum reprobantur, quia sibi invicem evidentissime contradicunt. Quidam vero alii pauci numero quamvis non reprobentur expresse, usque adeo tamen malae famae sunt et levis opinionis, *sicut per attestationes exhibitas est probatum*, quod eorum dictis nulla vel modica est fides adhibenda. Iidem quoque testes Faventinorum generaliter repelluntur, quia non probant illud, ad quod probandum eorum

syndicus se adstrinxit, videlicet, quod corrupti falsa dixissent, quoniam, etsi de corruptione videantur aliquid diceres, de falsitate *tamen* penitus nihil dicunt, *per multos autem ecclesiae Ravennatensis testes omni exceptione maiores probatum est manifeste, ecclesiam Ravennatensem villam Luci, S. Potiti et castrum Aureoli a longissimo tempore possedisse cum omni honore, districtu et iurisdictione, nominatim expressis universis articulis exprimentibus iurisdictionem, honorem atque districtum*. Ex praemissis igitur satis evidenter apparet, quod ecclesia *Ravennatensis* per testes numero plures, quibus potius lux veritatis assistit, qui etiam aptiora negotio et vero proximiora in suis testimoniis expresserunt, sufficienter ostendit, quod a LX. annis et citra cum omni iurisdictione, honore atque districtu loca supra dicta possedit. Per quod patet, quod, si commune Faventiae a L. annis et citra, sicut videntur testes eorum deponere, aliqua servitia in locis perceperunt supra dictis, illa proculdubio sine iusto titulo percipere inceperunt, quum duo insimul eandem rem et eodem modo in solidum possidere non possint, maxime quum iidem Faventini iustum possessionis titulum non ostendant, et ex privilegiis imperatorum et Romanorum Pontificum ecclesiae Ravennatensi concessis evidentissime colligatur, possessionem ipsius ecclesiae in praedictis locis iustam fuisse. Quum ergo constet Faventinos ab eo tempore, quo se possedisse probare contendunt, minus iuste ac sine titulo aliqua in praedictis locis temeritate propria occupasse, *ac **processu temporis per violentiam extorsisse, sicut per multos testes ecclesiae Ravennatensis manifeste probatur*, et oeconomus eiusdem ecclesiae petierit *coram nobis*, a vi turbativa seu inquietativa super praemissis commune Faventiae prohiberi, nos recognoscentes in hoc casu, non sic locum esse interdicto Uti possidetis, ut dicere debeamus; Uti possidetis, ita possideatis, quum probationes ecclesiae longe sint potiores, et ideo sit in interdicto superior, *de fratrum nostrorum consilio* commune Faventinum sibi condemnamus, super iurisdictione, et honore, atque districtu et aliis ad hoc generaliter pertinentibus in locis praedictis, quoad possessorium iudicium, quo tantummodo actum est, perpetuum silentium imponentes, et prohibentes eidem, ut neque per se, neque per alios super his praesumat Ravennatensem ecclesiam aut habitatores praedictorum locorum aliquatenus molestare.

Chapter X

Latin source headnote: If persons name someone as a son, and he is commonly reputed to be so, credence is not afterward given to one of them swearing the contrary.

The same.

You informed us through your letters that, when T., a citizen of Tivoli, had kept a certain woman as a concubine for seven years and had meanwhile received no offspring from her, and when she afterward departed from him but returned to him not long afterward, she asserted that the son whom, after returning, she bore in his house had been received by her from him. *Although he said at first that this boy was by no means his son, since that woman, living with him for seven years, had not conceived from him, finally, overcome by the insistence of the woman and others, he acknowledged him as his own son, calling him by the name Rainaldus. And when the same R. reached manly age and frequented the house of Saturnella, the sister of T. himself, who publicly named him as her nephew, he betrothed and carnally knew Sophia, the daughter of Saturnella herself, with whom he had had daily association. When this came to the knowledge of Saturnella, she harshly reproved them both and, retaining her daughter with herself, removed the aforesaid R. from the house. And when the mother of Rainaldus himself learned that the father of the same Sophia gravely threatened R., she publicly swore before many persons in the square of the city that Rainaldus was by no line of relationship related to the aforesaid Sophia, affirming under the force of the oath furnished that she had received Rainaldus from someone other than the aforesaid T.*

But because that woman at first steadfastly asserted that she had received R., concerning whom proceedings are conducted, from the said T., and the same T., overcome especially by the insistence of the aforesaid woman, publicly acknowledged him as his own son, and because he was commonly named and held as the son of them both, the oath of the same woman afterward furnished to the contrary is not to be upheld, since according to lawful sanctions it is exceedingly unworthy that what anyone has clearly attested by his own voice, *that* he should be able in the same case to weaken by his own testimony. Hence it consequently appears that the aforesaid R. cannot in any respect have as wife the *aforesaid* Sophia, granddaughter of the aforesaid T., whose first cousin he is presumed at first sight to be. [*Given at the Lateran on the fifth day before the Kalends of December, in the thirteenth year of our pontificate.* 1210.]

> Si qui nominent aliquem filium, et ita communiter reputatur, non creditur postea alteri eorum iuranti contrarium.
>
> Idem.
>
> Per tuas nobis literas intimasti, quod, quum T. Tiburtinus civis quandam per septennium habuerit concubinam, nec prolem susceperit interim ex eadem, ac ipsa postmodum divertens ab eo, ad ipsum non post multum tempus rediisset, filium, quem reversa in domum ipsius peperit, ex eo se asseruit suscepisse. *Qui, licet a principio dixerit, illum nequaquam filium suum esse, quum mulier illa per septennium eidem cohabitans ex eo minime concepisset, mulieris tandem et aliorum devictus instantia eum suum filium recognovit, Rainuldum eum nomine appellando. Quum autem idem R. ad virilem pervenisset aetatem, ac domum Saturnellae sororis ipsius T. frequentaret, quae ipsum nepotem suum publice nominabat, et Sophiam ipsius Saturnellae filiam, cum qua quotidianam conversationem habuerat,** arravit et carnaliter cognovit eandem. Quod quum pervenisset ad notitiam Saturnellae, acriter increpavit utrumque, et apud se **filiam retinens, supradictum R. removit a domo. Quum autem mater ipsius Rainaldi accepisset, **quod pater eiusdem Sophiae eidem R. graviter minabatur, in civitatis platea iuravit publice coram multis, quod Rainaldus supradictam Sophiam propinquitatis linea minime contingebat, affirmans sub virtute praestiti iuramenti, se de alio quam de supradicto T. ante fatum suscepisse Rainaldum*. Quia vero mulier illa de dicto T. suscepisse R., de quo agitur, primitus constanter asseruit, et idem T. praefatae mulieris praecipue devictus instantia ipsum suum filium publice recognovit, et filius eius nominatus communiter fuit et habitus ab ambobus, eiusdem mulieris postmodum iuramento in contrarium praestito non est standum, quum nimis indignum sit iuxta legitimas sanctiones, ut, quod sua quisque voce dilucide protestatus est, *id* in eundem casum proprio valeat testimonio infirmare. Unde apparet per consequens, quod praedictus R. *memoratam* Sophiam neptem memorati T., cuius prima facie praesumitur consobrinus, non potest habere aliquatenus in uxorem. [*Dat. Lat. V. Kal. Dec. Pont. nostr. Ao. XIII. *1210.]

Chapter XI

Latin source headnote: A judge ought to have a notary or two suitable men who write the acts of the judgment; otherwise, if any difficulty arises, he will be punished by his superior, nor is he believed concerning the proceeding except insofar as it is established by the acts or otherwise by lawful documents.

The same, in the General Council.

Because an innocent litigant sometimes cannot prove a true denial against the false assertion of an iniquitous judge, since by the nature of things there is no direct proof of the act of one denying, lest falsehood prejudice truth or iniquity prevail over equity, we establish that, both in an ordinary and an

extraordinary judgment, the judge shall always employ either a public person, if he can have one, or two suitable men who shall faithfully write down all the acts of the judgment: namely, citations *and* delays, recusations *and* exceptions, petitions *and* answers, interrogations *and* confessions, depositions of witnesses *and* productions of instruments, interlocutory judgments *and* appeals, renunciations, conclusions, and the other things which arise and are to be written down in fitting order, designating places, times, and persons.

And all things thus written shall be delivered to the parties in such a way that the originals remain with the scribes, so that, if a contention arises concerning the judge's proceeding, the truth can be declared through this; to the end that, when this safeguard has been employed, deference may be given to honorable and discerning judges in such a way that the justice of innocent persons is not injured by improvident and iniquitous judges. But a judge who neglects to observe this constitution, if any difficulty arises because of his negligence, shall be chastised by the superior judge with due correction; nor shall a presumption be made in favor of his proceeding except insofar as it is established in the cause by lawful documents.

> Iudex debet habere notarium vel duos viros idoneos, qui scribant acta iudicii; alias, si quid difficultatis emerserit, per superiorem punietur, nec creditur ei super processu, nisi in quantum per acta vel alias per legitima documenta constabit.
>
> Idem in concilio generali.
>
> Quoniam contra falsam assertionem iniqui iudicis innocens litigator quandoque non potest veram negationem probare, quum negantis factum per rerum naturam nulla sit directa probatio, ne falsitas veritati praeiudicet, aut iniquitas praevaleat aequitati, statuimus, ut tam in ordinario iudicio quam extraordinario iudex semper adhibeat aut publicam, si potest habere, personam, aut duos viros idoneos, qui fideliter universa iudicii acta conscribant, videlicet citationes *et* dilationes, recusationes *et* exceptiones, petitiones *et* responsiones, interrogationes *et* confessiones, testium depositiones *et* instrumentorum productiones, interlocutiones *et* appellationes, renunciationes, conclusiones, et cetera, quae occurrerint, competenti ordine conscribenda, loca designando, tempora et personas. Et omnia sic conscripta partibus tribuantur ita, quod originalia penes scriptores remaneant, ut, si super processu iudicis fuerit suborta contentio, per hoc possit veritas declarari, quatenus hoc adhibito moderamine sic honestis et discretis deferatur iudicibus, quod per improvidos et iniquos innocentium iustitia non laedatur. Iudex autem, qui constitutionem ipsam neglexerit observare, si propter eius negligentiam quid difficultatis emerserit, per superiorem iudicem animadversione debita castigetur, nec pro ipsius praesumatur processu, nisi quatenus in causa legitimis constiterit documentis.

Chapter XII

Latin source headnote: If it can be proved that a defendant committed an offense, his proof that he did not commit the offense is not to be admitted.

Honorius III, to the Archbishop of Lund and His Suffragans.

You should know that it has reached our hearing that the priests and clerics of Denmark, rashly relying *against the canons and lawful sanctions* upon the law of the kingdom through which a negative is proved, are reputed innocent of crimes which can lawfully be proved against them by witnesses worthy of faith if they can purge themselves concerning them in any manner. *Hence it happens that sometimes they adduce criminals like themselves for their purgation, so that those persons ought in similar*

circumstances to respond to them at the opportune time, and many crimes are committed more boldly by the same persons.

Therefore, wishing that this pest contrary to every law be entirely uprooted from the clergy, [*by commanding through apostolic writings*] we order *your fraternity* that in a proof of a negative of this kind, provided that the affirmative can be proved on the opposite side, you shall hear no one *against the canonical sanctions in the ecclesiastical forum*. Rather, admitting canonically in purgations only men of good reputation, you shall know that a person who is stained with the mark of infamy concerning a similar fault is less suitable to purge any crime. [*Given at Rome on the fifth day before the Kalends of January, in the second year [of our pontificate]*. 1218.]

> Si probari potest, reum deliquisse, eius probatio, quod non deliquerit, non est admittenda.
>
> Honorius III. Archiepiscopo Londonensi et eius Suffraganeis.
>
> Ad nostram noveritis audientiam pervenisse, quod sacerdotes et clerici Daciae legi regni, per quam negativa probatur, *contra canones et legitimas sanctiones* temere innitentes, a criminibus, quae probari testibus fide dignis possunt legitime contra eos, reputantur insontes, si se super his purgare valeant quoquo modo. *Unde **contingit, quod quandoque ad purgationem sui similes criminosos adducunt, ut eis debeant in similibus opportuno tempore respondere, multaque crimina committuntur audacius ab eisdem*. Volentes igitur, ut haec pestis contraria omni iuri penitus exstirpetur a clero, *fraternitati vestrae* mandamus [*per apostolica scripta praecipiendo*], quatenus in huiusmodi probatione negativae, dum tamen possit affirmativa ex adverso probari, *contra canonicas sanctiones in foro ecclesiastico* neminem audiatis, *sed in pergationibus bonae famae viros duntaxat canonice admittentes eum minus esse idoneum ad purgandum quodlibet crimen sciatis, qui nota infamiae super culpa consimili est respersus*. [*Dat. Romae V. Kal. Ian. Ao. II. *1218.]

Chapter XIII

Latin source headnote: The boundaries of dioceses are proved through ancient books, supporting evidence, witnesses, and reputation.

The same, to the Bishops of Orense and Lamego.

Since we have considered that the cause conducted between *our venerable brothers*, the Bishops of Coimbra and Idanha, concerning the delimitation of their dioceses, should be committed to you, we command *your discretion* that, *when you come to the principal matter in the aforesaid cause*, you shall proceed in the *business committed to you, having God before your eyes*, according to the divisions which are better proved through ancient books or in another manner, and also according to witnesses, reputation, and any other supporting evidence.

> Fines dioecesium probantur per libros antiquos, adminicula, testes et famam.
>
> Idem Aurelianensi et Lametensi Episcopis.
>
> Quum causam, quae inter *venerabiles fratres nostros* Colubriensem et Egitanensem episcopos super suarum limitatione dioecesum vertitur, vobis duximus committendam, *discretioni vestrae* mandamus, quatenus, *quum **ad principale in causa veneritis supra dicta, vos* secundum divisiones, quae per libros antiquos vel alio modo melius probabuntur, nec non et testes, famam et quaecunque alia adminicula, *Deum habentes prae oculis*, in *commisso vobis* negotio procedatis.

Chapter XIV

Latin source headnote: The matrons through whom virginity is proved can be discredited.

The same, to the Bishop and Archdeacon of Sens.

The matrimonial cause which is known to be conducted between V., a young man, and G., a girl of Sens who professes herself a virgin and a nun, *because you, brother bishop, did not send it so instructed that we could freely proceed in it as far as the decision of a definitive sentence, we remit to you to be more fully instructed.* We command your discretion that meanwhile, *by apostolic authority*, you place that girl in the monastery which she entered, so that she may dwell there safely until it is decreed by judicial sentence what ought to be done. Afterward, *as justice shall dictate*, you shall receive not only the man's proofs, *as he had protested*, which he wishes to introduce against those women who were introduced on behalf of the girl to investigate the signs of virginity, but also the other proofs touching this business which either party should determine to produce. And because, as the canon says, the hand and eye of midwives are often deceived, we will and command that you shall take care to appoint still other honorable, provident, and prudent matrons to inquire whether the said girl is fortified with the privilege of virginity, *and shall remit the cause to us more fully instructed under your seals*.

> Possunt reprobari matronae, per quas virginitas probatur.
>
> Idem Episcopo et Archidiacono Senonensibus.
>
> Causam matrimonii, quae inter V. iuvenem et G. puellam Senonensem, quae se virginem et monacham profitetur, noscitur agitari, *quia non ita instructam misisti, frater episcope, ut in ea usque ad calculum sententiae di**ffini tivae procedere libere valeremus, vobis remittimus plenius instruendam; discretioni vestrae* Mandamus, quatenus eandem puellam ponatis interim in illo monasterio *auctoritate apostolica*, quod intravit, ut ibi secure valeat commorari, donec iudiciali sententia quid agi debeat decernatur, recepturi postmodum, *prout iustitia dictaverit*, non solum probationes viri, *sicut protestatus fuerat*, quas inducere voluerit contra mulieres illas, quae ad investigandum signa virginitatis ex parte puellae fuerunt introductae, verum etiam probationes alias hoc negotium contingentes, quas pars utralibet duxerit producendas. Et quia, ut dicit canon, saepe manus fallitur et oculus obstetricum, volumus et mandamus, ut adhuc honestas matronas providas et prudentes deputare curetis ad inquirendum, utrum dicta puella virginitatis privilegio sit munita, *causamque nobis sub vestris sigillis instructam plenius remittatis*.

Chapter XV

Latin source headnote: Acts ordering the litigation, even when done before the first judges, create faith before the second judges.

Gregory IX, to the Provost of Saint Mary of Magdeburg and the Dean of Meissen.

When, of good memory—(*And below:*) Since the original acts are said to have remained with the former judges, we command that, seeking them with every diligence, you shall remit to our presence the acts themselves, if they can be found, together with whatever the parties shall determine lawfully to propose, reduced to writing. Otherwise, since no doubt is raised concerning the joinder of issue over the status of the monastery of Pigam and certain spoliations committed against its abbot by the Bishop of Merseburg, you shall receive the proofs of the parties anew; and, hearing a discussion of settlement if the parties wish to hear it, you shall take care to remit to us both what you shall find concerning this and the sufficiently instructed cause.

> Acta etiam litis ordinatoria facta coram primis iudicibus, fidem faciunt coram secundis.
>
> Gregorius IX. Praeposito sanctae Mariae Magdeburgensis et Decano Misinensi.

Quum bonae memoriae (*Et infra:*) Quum acta originalia dicantur apud priores iudices remansisse, mandamus, quatenus ea cum omni diligentia requirentes, ipsa, si potuerint inveniri, et si qua partes duxerint legitime proponenda, in scriptis redacta ad nostram praesentiam remittatis. Alioquin quum non revocetur in dubium de contestatione litis super statu Pigamensis monasterii, et quibusdam spoliationibus contra abbatem eius factis a Mesburgensi episcopo, recipiatis partium probationes de novo, et audientes, si partes audire voluerint, de compositione tractatum, tam quod super hoc inveneritis, quam causam sufficienter instructam ad nos remittere procuretis.

Title XX: On Witnesses and Attestations

Chapter I

Latin source headnote: It is brief.

From the Council of Mainz.

It pleased the holy assembly that witnesses should not be hired for *giving testimony* at a price; that all persons who are suitable and faithful should be assumed as witnesses, *so that the person against whom they ought to testify can impute no infamy to them*; and that no one shall give testimony unless fasting.

De testibus et attestationibus.

Breve est.

Ex concilio Matercensi.

Placuit sancto conventui, ut testes *ad testimonium* non conducantur pretio, et ut quicunque idonei et fideles in testimonium assumantur, *ut is, contra quem testimoniare debent, nullam eis infamiam possit inferre*, ac nullus testimonium dicat, nisi ieiunus.

Chapter II

Latin source headnote: A reception of witnesses made against a person not cited is invalid.

Gregory, to John the Defender, Going to Spain.

In the name of the Lord—(*And below:*) But what the same bishop says, that in his absence even persons of the vilest condition were produced as witnesses, is to be known as of no moment under the law of the Novel Constitution, which speaks concerning witnesses in these words: [*"We have also rather often learned this: that certain persons enter either before the defenders of places, or before the most illustrious judges of provinces, or even, as is customary, here before the most illustrious master of the census, and complain as though they suffered something contrary to the laws from another, or were otherwise injured or damaged, wishing to produce witnesses. But"*] "lest it afterward be objected against them that these things were conducted and completed by one party, it is necessary that the testimonies be given after that person has been admonished by the judge or defender to come and hear the witnesses. But if he is unwilling to come, and is unable to come not from some unavoidable necessity, we decree that testimonies of this kind shall be valid as though they had not been constituted by one party, but had been given in his presence." Behold, the adversary must always be admonished to come to hear the witnesses; and because this was omitted here, it is necessary that what was done contrary to law possess no validity. [*But what kind of witnesses, etc.*]

Nulla est receptio testium facta contra non citatum.

Gregorius Ioanni Defensori eunti in Hispaniam.

In nomine Domini *(Et infra:)* Quod autem dicit idem episcopus, quia se absente etiam vilissimi sint testes exhibiti, nullius momenti lege noscendum est constitutionis novellae, quae de testibus loquitur in haec verba: [*«Hoc quoque saepius agnovimus, quoniam quidam aut apud locorum defensores aut apud clarissimos provinciarum iudices, aut etiam, ut assolet, hic apud virum clarissimum magistrum census ingrediuntur, et queruntur tanquam ab alio passi aliquid contra leges, aut aliter laesi aut damnificati, testes volentes producere. At»*] «Ne postea obiiciatur eis, quod per unam partem gesta et confecta sunt, oportet, ut testimonia dentur, illo admonito a iudice aut defensore, venire et audire testes. Si vero noluerit venire, et non ex inevitabili quadam necessitate venire non possit, sancimus, huiusmodi testimonia ita valere, tanquam si non ex una parte consisterent, sed etiam ipso praesente facta fuissent.» Ecce admonendus est semper adversarius, ut ad audiendos testes veniat, quod quia hic omissum est, necesse est, ut quod contra legem actum est non habeat firmitatem. [*Quales autem testes etc.*]

Chapter III

Latin source headnote: A woman testifies against a cleric when proceedings concern a crime.

The same, to Sabinus, Defender of Sardinia.

Because certain crimes concerning the person of Epiphanius the priest have been reported to us, it is necessary that you investigate everything more diligently and hasten to bring here *together* either the women with whom he is said to have committed them or others whom you perceive to know something about the *same* cause, so that through ecclesiastical coercion the things which are true can clearly be disclosed. [*These things, however, etc.*]

Mulier testificatur contra clericum, quum de crimine agitur.

Idem Sabino Defensori Sardiniae.

Quoniam aliqua nobis de persona Epiphanii presbyteri sunt facinora nunciata, necesse est, ut cuncta diligentius perscruteris, et seu mulieres, cum quibus peregisse dicitur, seu alios, quos de causa *eadem* scire aliquid senseris, huc *pariter* festines adducere, quatenus ecclesiastica districtione liquide possint quae vera sunt aperiri. [*Haec vero etc.*]

Chapter IV

Latin source headnote: Where proceedings are conducted for correction by preventing sin, the principal person is admitted as a witness.

Pope Paschal II.

In every business, the principal person, speaking the truth about a matter known to him, is most rightly to be held as a witness; when *indeed* one person is joined to him, two witnesses are produced, and when two are joined, three are produced. The Lord plainly shows this when he says: "If your brother sins against you, correct him between you and him alone; but if he does not hear you, take with you one or two witnesses, so that in the mouth of two or three witnesses every word may stand"; *and elsewhere [the same] affirms, saying: "Let not one stand against another, but in the mouth of two or three witnesses let every word stand."* Likewise, elsewhere he affirms, saying: "I am he who bears testimony concerning myself, and the Father bears testimony concerning me; for in your law it is written that the testimony of two men is true."

Ubi agitur ad correctionem de peccato impediendo, principalis persona admittitur in testem.

Pascalis Papa II.

In omni negotio principalis persona, dicens veritatem de re sibi nota, rectissime habenda est pro teste, cui *quidem* adhibito uno efficiuntur duo testes, adhibitis duobus efficiuntur tres. Quod patenter ostendit Dominus, quum dicit: «Si peccaverit in te frater tuus, corripe eum inter te et ipsum solum; quodsi te non audierit, adhibe tecum unum vel duos testes, ut in ore duorum, vel trium testium stet omne verbum,» *et alibi [idem] affirmat dicens. «Non unus stet contra alium, sed in ore duorum vel trium testium stet omne verbum.»* Item alibi affirmat dicens. «Ego sum, qui testimonium perhibeo de me ipso, et testimonium perhibet de me Pater; nam in lege vestra scriptum est, quia duorum hominum testimonium verum est.»

Chapter V

Latin source headnote: It states what sort of persons those who depose concerning consanguinity ought to be, and how they ought to swear.

Eugenius III.

Whenever persons are sought to be separated because of relationship by affinity *or consanguinity*, it *ought to be affirmed* by two or three witnesses who survive from the same family relationship, or it ought lawfully to be proved by the same number of older and better persons of the same place. The proof of the witnesses ought to be made by a twofold oath: they are to swear that they have not been induced to swear this through private hatred, friendship, or for any advantage which they have had, have, or will have; *afterward they ought to swear* that they received the truth of the matter from their ancestors, as they themselves say, and believe it to be so.

Dicit, quales esse, et qualiter iurare debeant, qui super consanguinitate deponunt.

Eugenius III.

Quotiens aliqui propter cognationem propinquitatis *vel consanguinitatis* separari petuntur, duobus vel tribus testibus adhibitis *affirmari debet*, qui de eadem consanguinitate supersint, vel totidem senioribus et melioribus loci eiusdem id debet legitime comprobari. Probatio autem testium debet fieri duplici iuramento, ut iurent se non privato odio, neque amicitia, neque pro aliquo commodo, quod habuerint, vel quod habent vel habituri sunt, ad hoc iurandum esse inductos; *postea debent iurare*, sicut ipsi dicunt, rei veritatem accepisse a maioribus suis, et credere ita esse.

Chapter VI

Latin source headnote: A prelate and clerics who do not conduct the cause of a church can testify in it.

The same, to the Prior and Brothers of Holy Trinity.

Furthermore, *by our authority*, we establish that it shall be lawful for you to give testimony in the causes of your church, provided that one or two of you are appointed to bring actions and answer them; their testimony ought not to be admitted in the causes in which they are appointed as plaintiffs or representatives.

Praelatus et clerici qui causam ecclesiae non procurant, testificari possunt in ea.

Idem Priori et Fratribus S. Trinitatis.

Insuper etiam *auctoritate nostra* statuimus, ut liceat vobis in causis ecclesiae vestrae ferre testimonium, dummodo unus ex vobis vel duo ad agendum et respondendum instituantur, quorum testimonium in

causis, in quibus actores vel responsales sunt instituti, non debet admitti.

Chapter VII

Latin source headnote: If proof of an exception interposed against a produced witness is not admitted before the witness's statement is received, in a case in which it ought to have been admitted, an appeal is lawfully made. This is what it says according to the reading which Panormitanus sets down.

The same, to R., Bishop of Hereford, and the Abbot of Sard.

A complaint was brought to us on behalf of the priest A. that, when *he* had canonically obtained the church of Clunoden and had possessed it peacefully for thirty years and more, a certain knight named H. *provoked him from it with grave vexations and injuries and finally*, suppressing the fact that he was a layman, obtained *our* letters to judges, directing that, if the said priest was the son of the person who had most recently ministered in that church *and held it by hereditary right*, or *if* he publicly kept a concubine, they should *entirely* remove him from the aforesaid church.

Finally, *however*, when the *same* knight, through an intermediary, drew him into a cause before the aforesaid judges, he is said to have produced certain infamous and notorious laymen to *give* testimony, *namely that the aforesaid priest was the son of that priest who had most recently ministered in that church*. Although the *aforesaid priest A*. asserted that those *witnesses* should not be received because certain of them were manifest thieves and robbers, while certain others had been convicted of perjury in another cause, and *steadfastly* said that he would prove this, the *aforesaid* judges nevertheless, after receiving such witnesses *of the adverse party*, even after the appeal *which he proposes that he interposed concerning this*, awarded the aforesaid church away from that *priest* in his absence. It is now held occupied by the son of the steward of the *aforesaid* knight.

Therefore, because we fully confide in you, we have considered that the cause itself should be committed to your discretion; by commanding you under the authority of the present letters, we order that, *having summoned the parties before you, you shall diligently inquire into the truth of the matter concerning this*; and if it is established to you that the aforesaid priest was not lawfully despoiled of the aforesaid church through suitable witnesses, you shall, after quashing the sentence of those judges and notwithstanding letters of confirmation, if any were obtained concerning the same church, restore that church to the same priest, *delay, contradiction, and appeal ceasing*, and shall not permit him *henceforth* to be troubled concerning it *by the aforesaid knight or by the person who holds that church*. But if the matter has itself otherwise, you shall *nevertheless* hear the cause and determine it with a due end. You shall take care to admonish *and diligently induce, from consideration of God and love of justice*, any witnesses whom the same A. invokes in testimony of his assertion to give testimony to the truth concerning these matters before you, *and not to presume to conceal anything concerning this to the peril of their salvation*.

Si probatio exceptionis oppositae contra testem productum non admittitur, antequam dictum testis recipiatur, in casu, in quo admitti debuit, licite appellatur. Hoc dicit secundum lecturam, quam ponit Panorm.

Idem R. Herfordensi Episcopo et Abbati Sardi.

Ex parte A. presbyteri ad nos est querela perlata, quod, quum *ipse* ecclesiam de Clunoden. canonice fuisset adeptus, et eam XXX. annis et amplius pacifice possedisset, miles quidam H. nomine *ipsum exinde gravibus molestiis et iniuriis lacessivit, et tandem*, tacito, quod laicus esset, ad iudices *nostras* literas

impetravit, quod, si dictus presbyter filius esset illius, qui proximo in eadem ecclesia ministrarat, *et iure hereditario eam teneret*, vel *quod* publice fornicariam haberet, ipsum a praedicta ecclesia *prorsus* amoverent. Tandem *vero*, quum *idem* miles per interpositam personam eum coram praefatis iudicibus traxisset in causam, quosdam laicos infames et notabiles ad testimonium *perhibendum* dicitur produxisse, *quod videlicet memoratus presbyter filius sacerdotis illius fuisset, qui proximo in ipsa ecclesia ministraverat*. Licet autem *praedictus A.* presbyter assereret, illos *testes* non esse recipiendos pro eo, quod quidam eorum latrones et raptores manifesti essent, quidam vero in causa alia fuissent convicti de periurio, et *se constanter* hoc diceret probaturum, nihilominus *tamen praefati* iudices, testibus talibus *adversae partis* receptis, eidem *presbytero* absenti, *etiam* post appellationem, *quam super hoc se interposuisse proponit*, praescriptam abiudicaverunt ecclesiam, quam nunc *praescripti* militis dapiferi filius detinet occupatam. +*Quoniam igitur de vobis satis plene confidimus, causam ipsam discretioni vestrae duximus committendam, praesentium vobis auctoritate praecipiendo* Mandamus, quatenus, *partibus coram vobis convocatis, super hoc rei veritatem diligenter inquiratis, et* si vobis constiterit, quod praedictus presbyter non fuerit legitime per testes idoneos praescripta ecclesia spoliatus, eorundem iudicum cassata sententia literis etiam confirmationis, si quae sunt super eadem ecclesia impetratae, non obstantibus, ecclesiam illam presbytero restituatis eidem *dilatione, contradictione et appellatione cessante*, ipsumque *de cetero* non permittatis exinde *a supra dicto milite, vel ab eo, qui ipsam tenet ecclesiam* molestari. Si vero res aliter se haberet, *nihilominus* causam audiatis, et fine debito terminetis. Testes autem, si quos idem A. in suae assertionis testimonium invocaverit, monere curetis *et diligenter inducere divino intuitu et amore iustitiae*, ut coram vobis super his perhibeant testimonium veritati, *nec quicquam exinde in suae salutis periculum reticere praesumant*.

Chapter VIII

Latin source headnote: A judge ought to send a discerning examiner to receive witnesses who cannot conveniently come to him.

The same, to the Bishops of Exeter and Worcester.

If any of the witnesses are sick, aged, consumed by weakness, or oppressed by poverty, so that they cannot be brought to your presence, you shall send suitable and discerning persons to receive them.

Iudex mittere debet examinatorem discretum ad testes recipiendos, qui ad eum commode venire non possunt.

Idem Exonensi et Vigorniensi Episcopis.

Si qui testium valetudinarii sunt, et senes, vel debilitate confecti, aut paupertate depressi, ita, quod non possint ad vestram praesentiam adduci, ad ipsos recipiendos mittatis personas idoneas et discretas.

Chapter IX

Latin source headnote: A sentence is to be reconsidered if it is established that it was rendered according to the statement of corrupted witnesses. This is what it says according to the reading which Panormitanus holds.

Alexander III, to the Bishop of Beauvais.

As was intimated to us *on your behalf*, certain *of your parishioners*, having received money, furnish oaths concerning a relationship between a man and wife, through which a sentence of separation is promulgated between them; but afterward, asserting privately that there is no line of consanguinity between them, they say that they were corrupted *by gifts and* gave testimony to falsehood. Concerning this we answer as follows: if the man and wife, or either of them, has passed to second vows, *it*

appears that no other remedy remains except that penance be enjoined upon the witnesses for perjury and for the adultery of one or more persons to which they gave cause. But if the same man and wife have not migrated to second vows, diligent inquiry is to be made concerning those before whom the corruption took place; and, if such persons are produced through whom the truth of the aforesaid corruption can be proved, the sentence is to be revoked after their testimony has been received. For the testimony of the aforesaid persons, since they are perjurers, is not to be admitted in this case in any respect.

> Retractanda est sententia, si constat, eam fuisse latam ad dictum corruptorum testium. H. d. secundum lecturam, quam tenet Panorm.
>
> Alexander III. Belvacensi Episcopo.
>
> Sicut nobis est* ex parte tua* intimatum, quidam *parochiani tui* accepta pecunia de parentela inter virum et uxorem exhibent iuramenta, per quae inter ipsos divortii sententia promulgatur, postea vero privatim nullam inter eos consanguinitatis lineam asserentes, se corruptos *muneribus* dicunt, *et* testimonium perhibuisse falsitati. Super quo taliter respondemus, quod, si vir et uxor, aut alter eorum ad secunda vota transivit, *nullum aliud remedium superesse videretur, nisi ut* testibus de periurio, et adulterio uno pluribusve, quibus causam dederunt, poenitentia indicatur. Si vero ad secunda vota idem vir et uxor non migraverint, diligenter inquirendi sunt coram quibus corruptio intercessit, et, si tales exhibeantur, per quos possit praedictae corruptionis veritas comprobari, recepto eorum testimonio est sententia revocanda. Non enim testimonium praedictorum, quum periuri sint, est in hoc casu aliquatenus admittendum.

Chapter X

Latin source headnote: An associate in the crime and the gift does not testify even in the crime of simony. And the testimony of one person does not suffice for condemnation.

The same.

Coming to us *with your letters*, L., *your* priest, showed us by his report, *and your letters contained the same thing*, that *when he had been instituted in the church of Oven*, it was objected against him that he had not had a canonical entrance into the church of Oven, *namely* because he had *previously* promised to remit to each parishioner five barrels of wine which they had been accustomed to give as a benefice to the priest serving *that church* there for the time being. But when two persons appeared who deposed under oath that the aforesaid priest had made such a promise and [*said*] that that agreement had been *improperly* made with one of them, you judged concerning the priest as *was fitting and as the order* of reason requires. And we commend your sentence, *as is worthy*, because the person who was infected with the same crime could not testify against him concerning it, no one who has confessed concerning himself is to be believed against another in the same crime, and the testimony of one person does not suffice for anyone's condemnation. [*Indeed, what is in the letters, etc.*]

> Socius criminis et muneris non testificatur etiam in crimine simoniae. Et unius testimonium non sufficit ad condemnationem.
>
> Idem.
>
> Veniens ad nos *cum literis tuis* L. presbyter *tuus* sua *nobis* relatione monstravit, *et hoc idem tuae literae continebant*, quod, *quum in ecclesia de Oven. institutus fuisset*, ei obiectum fuit, quod in ecclesia de Oven. canonicum non habuisset ingressum, *videlicet* quia *prius* promisisset unicuique parochianorum quinque

barillos vini remittere, qui sacerdoti *eiusdem ecclesiae* ibi pro tempore servienti consueverant pro beneficio dari. Verum quum duo apparuissent, qui iurati deposuerunt, praedictum presbyterum talem fecisse promissionem, et cum altero illorum pactum illud *indecenter* [*dicerent*] factum fuisse, tu de presbytero prout *decuit et ordo* rationis exigit, iudicasti. Et nos tuam sententiam, *prout dignum est*, commendamus, eo, quod ille, qui eodem erat infectus crimine, inde contra eum testificari non posset, nullique de se confesso adversus alium in eodem crimine sit credendum, nec unius testimonium ad condemnationem sufficiat alicuius. [*Sane, quod in literis etc.*]

Chapter XI

Latin source headnote: Attestations received in one judgment create faith in the same cause and between the same persons before another judge.

The same, to the Abbot of Saint L. and the Prior of Saint C.

We commit to your experience for hearing, and for determination with a due end, appeal being removed, the cause *which has for a rather long time been conducted between the monks N. and O. concerning the election of each made in the monastery. Therefore, by commanding through apostolic writings,* we order *your discretion* that, *having summoned the parties before your presence and* having received the attestations of both parties which were received by other judges, *admitting other witnesses if any suitable ones are produced, unless the attestations themselves have been published, and after the arguments on this side and that have been diligently heard and understood,* you shall determine the cause itself with a due end, *the remedy of appeal being removed.*

Attestationes in uno iudicio receptae fidem faciunt in eadem causa, et inter easdem personas coram alio iudice.

Idem Abbati sancti L. et Priori sancti C.

Causam, quae *+inter N. et O. monachos super electione de utroque facta in monasterio diutius est agitata, experientiae vestrae committimus audiendam, et appellatione remota fine debito terminandam. Ideoque* Discretioni vestrae *per apostolica scripta praecipiendo* mandamus, quatenus *partes ante vestram praesentiam convocetis, et* susceptis attestationibus utriusque partis, quae ab aliis iudicibus sunt receptae, *testes alios, si qui idonei producti fuerint, admittentes, nisi attestationes ipsae sint publicatae, et rationibus hinc inde diligenter auditis et cognitis, causam ipsam sublato appellationis remedio* fine debito terminetis.

Chapter XII

Latin source headnote: Clerics are not to be repelled from giving testimony in the cause of their church without a reasonable cause.

The same, to the Archbishop of Canterbury and the Bishop of Worcester.

When the messenger *of the canons of Plutin and the messenger of Joel, a knight, etc. (And below:) Furthermore,* let it not escape your prudence that clerics are not to be repelled from giving testimony concerning the *own* business of their church unless another reasonable cause impedes.

Clerici non sunt a ferendo testimonio in causa ecclesiae suae sine rationabili causa repellendi.

Idem Cantuariensi Archiepiscopo et Vigorniensi Episcopo.

Quum nuncius *canonicorum de Plutino, et nuncius Ioelis militis etc. (Et infra:) Praeterea* Non lateat prudentiam vestram, quod clerici non sunt a ferendo testimonio super *proprio* negotio ecclesiae suae, nisi alia rationabilis causa impediat, repellendi.

Chapter XIII

Latin source headnote: A crime now proved repels a witness who has not otherwise been condemned for that crime.

The same, to the Archbishop of Canterbury.

Concerning what *indeed* you asked *us*—whether *those* witnesses against whom crimes are objected by the adverse party are to be discredited in a criminal or civil cause—we answer *your prudence* that, even if they have not previously been convicted of or confessed those crimes, provided that they are convicted of them, they ought not to be admitted as witnesses.

> Crimen nunc probatum repellit testem alias de illo crimine non damnatum.
>
> Idem Cantuariensi Archiepiscopo.
>
> Super eo *vero*, quod quaesivisti *a nobis*, utrum testes *illi* sint reprobandi in causa criminali vel civili quibus ab adversa parte crimina opponuntur *tuae prudentiae* respondemus, quod, si etiam ante non sunt convicti vel confessi de criminibus illis, dummodo inde convincantur, in testimonium non debent admitti.

Chapter XIV

Latin source headnote: A layman does not testify against a cleric in a criminal cause, but he accuses for an injury to himself or his people.

The same, to the Archbishop of Salerno.

For the rest, the censure of the sacred canons teaches more clearly that laymen are not to be admitted in any respect to accusation or testimony against a cleric in a criminal cause, unless perhaps they prosecute an injury to themselves or their people; and even then they can be admitted not to testimony but to accusation. *But if, etc.* (*Cf. c.* 4, *On Judgments, II.* 1.)

> Laicus in criminali non testificatur contra clericum, accusat tamcn pro sua vel suorum iniuria.
>
> Idem Salernitano Archiepiscopo.
>
> De cetero laicos in accusationem vel testimonium contra clericum in criminali causa non esse aliquatenus admittendos, censura sacrorum canonum manifestius edocet, nisi forte suam vel suorum iniuriam prosequantur; nec tunc etiam ad testimonium, sed ad accusationem possunt admitti. *At si etc.* (*cf. c. 4. de iud. II. 1.*).

Chapter XV

Latin source headnote: In ecclesiastical and civil causes, three productions of witnesses can be made; but a fourth is not admitted without legal solemnity. And after the statements of the witnesses have been published, they can be debated publicly. This is what it says according to the common reading, which agrees with the words of the text.

The same, to the same.

In ecclesiastical or civil causes, witnesses ought not to be produced beyond the third production unless a certain solemnity expressed in the laws is employed. And when the statements of the witnesses have been published, they can be debated publicly.

In causis ecclesiasticis et civilibus possunt fieri tres productiones testium; quarta autem non admittitur absque solennitate legali. Et super dictis testium post ipsorum publicationem potest publice disputari. H. d. secundum lecturam communem et verbis textus congruentem.

Idem eidem.

In causis ecclesiasticis vel civilibus ultra tertiam productionem non debent testes produci, nisi adhibita quadam solennitate, quae in legibus invenitur expressa. Et super dictis testium, quum fuerint publicata, publice potest disputari.

Chapter XVI

Latin source headnote: If someone proves that an act was performed after an appeal and the adversary proves that it was performed before, the first proof is preferred and the act is judged invalid unless the second proves that it occurred before every appeal.

The same, to the Provost and Canons of the Church of Embrun.

When you, son provost, with certain of your canons, and *your venerable brother* [*our*] archbishop, *for the cause which was conducted between you and him,* were established in our presence, *the archbishop asserted that he had excommunicated you before the appeal and petitioned that his sentence be confirmed; but you proposed to the contrary that he had rendered the sentence of excommunication against you after the appeal, and for this reason you said that it was of no moment. Both you and the other party also objected that witnesses had been produced on each side and their attestations received. But we, having heard and understood the arguments and allegations of both parties and having diligently inspected the attestations,* since it is established that your witnesses swore that he rendered the sentence of excommunication after the appeal and the archbishop's witnesses similarly swore that it was before the appeal, wishing kindly to interpret the statements of the witnesses *and to provide* that they not be marked with the guilt of perjury, because both could have occurred—that the sentence was rendered after the first appeal and before the second—*by the common counsel of our* [*brothers*] we *announce and* decree that the same sentence is not valid. [*But so that this our determination, etc.*]

Si quis probat actum gestum post appellationem, et adversarius probat quod ante, praefertur prima probatio, et actus iudicatur non tenere, nisi secundus probet, quod ante omnem appellationem.

Idem Praeposito et Canonicis Embrudensis ecclesiae.

Quum tu, fili praeposite, cum quibusdam canonicis tuis, et *venerabilis frater* [*noster*] archiepiscopus vester *pro causa, quae inter vos et ipsum vertebatur,* essetis in nostra praesentia constituti, +*archiepiscopo asserente, quod vos ante appellationem excommunicasset, et postulante sententiam suam confirmari, econtra proposuisti, quod post appellationem in vos sententiam excommunicationis protulisset, et ob hoc dixisti, eam nullius momenti fuisse. Obiecisii etiam tam tu quam altera pars, quod testes fuerint hinc inde producti, et attestationes eorum receptae. Nos vero, auditis et cognitis rationibus et allegationibus utriusque partis, et attestationibus diligenter inspectis,* Quum constet, testes vestros iurasse, quod post appellationem excommunicationis sententiam tulerit, et archiepiscopi testes similiter iurasse, quod ante appellationem, nos dicta testium benigne interpretari *ac providere* volentes, ne *de* periurii reatu notentur, quia utrumque esse potuit, et quod post primam appellationem et ante secundam sententia lata fuerit, *de communi consilio fratrum* [*nostrorum*] eandem sententiam *denunciamus et* decernimus non tenere. [*Ut autem huius nostrae diffinitionis etc.*]

Chapter XVII

Latin source headnote: In an appellate cause, new and former witnesses are produced only concerning new articles, after an oath has first been received according to custom.

The same, to the Bishop of Piacenza.

Through the letters of your fraternity you wished to consult us whether new witnesses are to be received concerning an adjudicated question in which it is established that witnesses were renounced on each side, and whether, after witnesses have been received in the first cause, it is lawful to propose anything new concerning adjudicated questions on account of the appellate cause. *Although, therefore, it did not become fully known to us from these things whether the parties desire witnesses to be introduced concerning the same or new articles, nevertheless, because you wished to consult us concerning this when you* [*do not*] *have an abundance of persons learned in law*, we have considered that you should be answered that, in an appellate cause, if new articles should happen to arise concerning which one of the parties wishes to introduce new witnesses or to prove something through those already received, we believe that they can be received only concerning the new articles, after oaths according to the form for receiving witnesses have first been received from them.

> In causa appellationis super novis capitulis tantum testes novi et veteres producuntur iuramento secundum morem prius recepto.
>
> Idem Episcopo Placentino.
>
> Fraternitatis tuae literis nos consulere voluisti, utrum recipiendi sint novi testes super quaestione iudicata, in qua testibus renunciatum esse constet utrinque, et an, testibus in prima causa receptis, propter causam appellationis liceat super quaestionibus iudicatis aliquid novi proponere? +*Licet igitur nobis ex his non plene innotuerit, utrum testes super eisdem vel novis capitulis a partibus desiderentur induci, quia tamen, quum prudentium iuris copiam* [*non*] *habeas, nos super hoc consulere voluisti, hoc* Duximus tibi respondendum, quod in appellationis causa, si nova contigerit emergere capitula, super quibus aliqua partium voluerit novos testes inducere, vel per iam receptos aliquid comprobare, eos credimus posse recipi super novis duntaxat capitulis, receptis prius ab ipsis secundum formam recipiendorum testium iuramentis.

Chapter XVIII

Latin source headnote: One who swore not to give testimony is compelled to testify if the attestations have not been published.

The same, to the Bishop of Exeter.

The priest R. intimated to us that the cleric G. bound his chaplain and very many others of his witnesses by an oath that they would not furnish testimony, counsel, or aid to him against G. Therefore, *by the authority of the present letters*, we enjoin upon you that, if their testimony has not been published and witnesses have not been renounced, you shall not postpone receiving those who are bound by the oath and other suitable persons, if necessary, *whom he* produces *as witnesses*.

> Qui iuravit testimonium non dicere, testificari compellitur, si testificationes publicatae non sunt.
>
> Idem Exonensi Episcopo.
>
> Intimavit nobis R. presbyter, quod G. clericus capellanum eius et alios quamplures de testibus suis iuramento constrinxit, quod testimonium, consilium et auxilium contra ipsum non praeberent eidem.

Ideoque *praesentium auctoritate vobis* iniungimus, ut, si testimonium eorum publicatum non est, nec est abrenunciatum testibus, eos, qui sunt iuramento adstricti, et alios, si necesse fuerit, idoneos, *quos ipse* in testimonium *produxerit*, recipere non postponas.

Chapter XIX

Latin source headnote: Publication or renunciation of witnesses concerning certain articles does not prejudice a person wishing to produce witnesses concerning others. This is what it says in relation to the title.

The same, to the Abbot and Brothers of Martura.

We formerly committed to our sons, the archpriest of Volterra and the Abbot of Spognia, as judges for determination *with a due end, appeal being removed*, the cause which is conducted between you and *our beloved sons*, the pleban and clerics of the *parish church* of Saint Mary of Martura. And when each party was *for this reason* established in their presence, and witnesses had been received on each side and renounced by both parties, and the attestations *of both parties* had also been published, you brought into the midst a certain privilege recently obtained from us, *asserting that you had obtained from us certain other defenses which appeared to obscure and impede the arguments of the aforesaid parish church, wherefore the cause itself could not yet be determined. But because it lies upon our solicitude to preserve unimpaired the rights of each church and to impose an end upon lawsuits and contentions, by commanding* the judges themselves we ordered that they should *summon those parties before their presence; diligently hear the arguments on this side and that* concerning other articles, if there were any other than those concerning which witnesses had been received and their attestations published; receive any suitable witnesses produced; and decide the cause by agreement or through justice, no articles recently obtained from us through your messengers—which are contained in your privilege or in other letters which we granted you after we committed the cause itself to those judges—furnishing an impediment to the aforesaid parish church in this cause.

But because *our venerable brother I.*, the Bishop of Florence, intimated to us *through his letters* that certain articles were inserted into the same privilege *which we recently granted to your monastery* and appear contrary to reason, *by commanding you through the present writings, we order that, as you hold dear the grace of blessed Peter and our own, you shall transmit* that privilege to our presence with your messenger, *who shall come safely to us with it, delay and occasion ceasing*.

Publicatio vel renunciatio testium in certis capitulis non praeiudicat volenti testes producere in aliis. H. d. quoad titulum.

Idem Abbati et Fratribus de Martura.

Causam, quae vertitur inter vos, et *dilectos filios nostros* plebanum et clericos *plebis* sanctae Mariae de Martura, *iam pridem filiis nostris archipresbytero Vulterano et abbati de Spognia* commisimus iudicibus *appellatione remota fine debito* terminandam. Quumque utraque pars *propter hoc* in eorum esset praesentia constituta, et testes essent hinc inde recepti, et eis ab utraque parte renunciatum, et attestationes *utriusque partis* etiam publicatae, quoddam privilegium nuper a nobis impetratum in medium protulistis, *+asserentes, vos quaedam alia munimenta a nobis impetrasse, quae rationes supra dictae plebis obscurare et impedire videntur, quare causa ipsa nondum potuit terminari. Quia vero sollicitudini nostrae incumbit, utrique ecclesiae iura sua conservare integra, ac litibus et contentionibus finem imponere*, Iudicibus ipsis *praecipiendo* mandavimus, ut *partes ipsas ante suam praesentiam convocent, et* super aliis capitulis, si qua alia fuerint ab his, super quibus testes recepti sunt, et eorum attestationes publicatae, *rationes hinc inde diligenter audiant, et* testes, si qui

idonei producti fuerint, recipiant, et nullis capitulis noviter a nobis per vestros nuncios impetratis, quae contineantur in privilegio vestro, vel in aliis literis, quas vobis indulsimus, postquam causam ipsam eisdem commisimus, praedictae plebi in hac causa impedimentum praestantibus, concordia vel iustitia mediante decidant. Quia vero *venerabilis frater noster I.* Florentinus episcopus *per suas nobis literas* intimavit, quaedam capitula eidem privilegio, *quod monasterio vestro nuper indulsimus*, esse inserta, quae obvia rationi videntur, *per praesentia scripta vobis praecipiendo mandamus, quatenus privilegium* illud, *sicut gratiam beati Petri et nostram caram habetis*, ad nostram praesentiam cum vestro nuncio, *qui ad nos secure cum eodem veniat, dilatione et occasione cessante* transmittatis.

Chapter XX

Latin source headnote: One laboring under a similar disease is repelled from testimony.

The same, to the Bishop of Noyon.

The persons of the churches—(*And below:* [*Cf. c.* 4, *On Appeals, II.* 28.]) But if businesses *of this kind* are ventilated before you or anyone else, we will that, if persons laboring under a similar disease are brought forward as witnesses by either party, they shall not be admitted to testimony if it is certain or they can lawfully be convicted concerning this.

A testimonio repellitur simili morbo laborans.

Idem Novicensi Episcopo.

Personas ecclesiarum (*Et infra:* [*cf. c. 4. de appell. 2.28.*]) Verum si coram te, vel alio quolibet *huiusmodi* negotia ventilentur, nolumus, ut aliqui consimili morbo laborantes, si certum sit, aut legitime super hoc possint convinci, si ab alterutra parte testes adducti fuerint, in testimonium admittantur.

Chapter XXI

Latin source headnote: A Christian is admitted as a witness against a Jew.

The same, in the Lateran Council.

Jews or Saracens—(*And below: cf. c.* 5, *On the Jews, V.* 5.) We judge also that the testimony of Christians against Jews is to be received in all causes, since the latter presume to use their witnesses against Christians; and we decree that whoever wishes to prefer Jews to Christians in this respect is to be struck with anathema, since they ought to be subject to Christians and to be supported by them for humanity alone. [*If any, etc. Cf. c.* 5, *On the Jews, V.* 5.]

Christianus contra Iudaeum in testem admittitur.

Idem in concilio Lateranensi.

Iudaei sive Sarraceni (*Et infra: cf. c. 5. de Iudaeis V. 5.*) Testimonium quoque Christianorum adversus Iudaeos in omnibus causis, quum illi adversus Christianos testibus suis uti praesumant recipiendum esse censemus, et anathemate decernimus feriendos, quicunque Iudaeos Christianis voluerint in hac parte praeferre, quum eos Christianis subiacere oporteat, et ab eis pro sola humanitate foveri. [*Si qui etc. cf. c. 5. de Iudaeis V. 5.*]

Chapter XXII

Latin source headnote: The testimony of a mother is suspect where her daughter claims as husband a man superior to herself. And at the statement of the mother alone deposing concerning an impediment, a marriage is impeded, but a contracted marriage is not dissolved.

The same, to Cardinal Matthew.

Concerning what your devotion sought from us—whether, when a man denies that he betrothed a woman, the mother of the woman herself and another woman can be received as witnesses—we answer your consultation in this way: since a mother appears to love the advancement and honor of her daughter, where the man is superior in riches and nobility, power, or honor, her testimony appears to be *altogether* suspect, and therefore not to be admitted in any respect.

But concerning that question which you posed, whether a woman is not to be joined to a man because the mother alone of either one confesses that they are consanguineous, we answer *your discretion in this way*: if marriage has not been established between them, when the mother affirms that they are consanguineous, they ought not to be joined, because there is no slight presumption that they touch one another by a line of consanguinity, *since the mother confesses it*. But if the marriage has been established, it ought not to be dissolved without the oath of several persons.

> Testimonium matris est suspectum, ubi filia petit in virum aliquem se maiorem. Et ad dictum solius matris de impedimento deponentis impeditur matrimonium, sed contractum non dissolvitur.
>
> Idem Matthaeo Cardinali.
>
> Super eo, quod a nobis tua devotio postulavit, utrum, viro negante se mulierem affidasse, ipsius mater mulieris et altera mulier possint ad testimonium recipi, consultationi tuae taliter respondemus, quod, quum mater filiae incrementum et honorem videtur diligere, ubi vir superior est divitiis et nobilitate, potentia vel honore, testimonium eius *omnino* videtur esse suspectum, et ideo non esse aliquatenus admittendum. Super illa vero quaestione, quam fecisti, an mulier coniungenda non sit viro, pro eo, quod sola mater alterutrius eos esse consanguineos confitetur, *discretioni tuae taliter* respondemus, quod, si non est firmatum matrimonium inter eos, matre asseverante, ipsos esse consanguineos, non debent coniungi, quia praesumptio est non modica, quod se linea consanguinitatis attingant, *quum mater id confitetur.* Si vero matrimonium est firmatum, non debet sine plurium iuramento dissolvi.

Chapter XXIII

Latin source headnote: For decision of a cause, especially on behalf of a Jew, the testimony of one person does not regularly suffice, but that of two persons of proved life and praiseworthy conduct does.

The same.

Although, by duty of the office committed to us, [*we ought to assist with provision all the faithful of God, nevertheless we ought with vigilant care more attentively to defend ecclesiastical men from the harassment of depraved malignant persons, to whose governance we have, although of insufficient merits, more specially been appointed by the providence of God.*] *It has, however, been brought* [*to*] *our hearing that the Jews dwelling in your city have come to such pride and elation that, whenever a cause has arisen between them and any cleric, or between you and them, they draw you before a secular judge and litigate with you before any judge; through a simple charter without witnesses, or through one Christian or Jew of any sort, they intend to prove their cause contrary to every justice and reason, and they do not receive against themselves* [*even*] *the testimony of great and approved men.*

But because it is not lawful for any Christian—and much less for an enemy of the cross of Christ—*namely, to draw ecclesiastical men before a secular curia* and to impose an end upon his cause by the purportedly lawful testimony of only one person, [*by commanding*] *through apostolic writings* we order

your discretion that, if a question arises between you and any *Christians or* Jews, *you shall not presume, at anyone's summons, to approach a secular curia to treat the business or be judged there; but, as justice requires and the reason of equity demands*, in any cause you shall admit the testimony of no fewer than two or three Christian men—and especially clerics—who are of proved life and faithful conduct, according to the Lord's saying: "In the mouth of two or three witnesses every word stands." For, although there are certain causes which require more than two witnesses, nevertheless no cause is *reasonably* determined by the testimony of only *one* person, however lawful. [*In addition, etc.* (*Cf. c.* 8, *On the Jews, V.* 5.)]

> Ad decisionem causae, maxime pro parte Iudaei, non sufficit regulariter unius testimonium, quam duorum probatae vitae et laudabilis conversationis.
>
> Idem.
>
> Licet universis +[*Dei fidelibus ex commissi nobis officii debito debeamus provisione adesse, attentius tamen ecclesiasticos viros a pravorum molestiis malignantium vigili cura defendere debemus, ad quorum regimen specialius sumus, licet insufficientibus meritis, Dei providentia deputati.*] *Perlatum est* [*autem*] *ad audientiam nostram, quod Iudaei in civitate vestra commorantes ad tantam devenerint superbiam et elationem, quod, si quando inter eos et quemlibet clericum, sive inter vos et ipsos causa emerserit, vos ad saecularem iudicem trahunt, et coram quocunque iudice vobiscum litigant, per simplicem chartam absque testibus, vel per unum qualemcunque Christianum vel Iudaeum contra omnem iustitiam et rationem causam suam probare intendunt, et adversum se* [*etiam*] *magnorum et probatorum virorum non recipiunt testimonium.* Quia vero non est licitum alicui Christiano, et multo minus crucis Christi inimico, ut *scilicet ecclesiasticos viros ad saecularem curiam trahant*, et causae suae unius tantum quasi legitimo testimonio finem imponant *discretioni vestrae per apostolica scripta* [*praecipiendo*] mandamus, quatenus, si inter vos et quoscunque *Christianos sive* Iudaeos emerserit quaestio, *pro nullius vocatione ad saecularem curiam, ut ibi de negotio tractetis aut iudicemini, accedere praesumatis, sed, sicut exigit iustitia et aequitatis ratio postulat*, in qualibet causa Christiani, et maxime clerici, non minus quam duorum vel trium virorum, qui sint probatae vitae et fidelis conversationis, testimonium admittatis, iuxta illud dominicum: «In ore duorum vel trium testium stat omne verbum,» quia, licet quaedam sint causae, quae plures quam duos exigant testes, nulla est tamen causa, quae unius *tantum* testimonio, quamvis legitimo, *rationabiliter* terminetur. [*Ad haec etc.* (*cf. c. 8. de Iud. V. 5.*)]

Chapter XXIV

Latin source headnote: Witnesses whom the plaintiff produced from his household are not suitable.

The same, to the Bishop of Fermo.

In the letters—(*And below:*) A certain nobleman of your bishopric, having lawfully joined a certain woman to himself, after he had kept her in *his* house for almost seven years, asserted that before marrying her he had known carnally her father's female cousin; to prove this he produced three witnesses from his household. We therefore answer that, if the matter is so, you shall for no reason permit him to be separated from his wife on account of their testimony, nor shall you hear any persons against them unless they are of proved life and reputation, concerning whom it would not be likely that they ought to perjure themselves for anyone.

> Non sunt idonei testes, quos actor de familia sua produxit.
>
> Idem Firmano Episcopo.
>
> In literis (*Et infra:*) Quidam nobilis tui episcopatus quandam sibi legitime copulans, quum eam in domo *sua* fere per septennium tenuisset, consobrinam patris eius, antequam duceret, se asseruit cognovisse, ad quod probandum testes de familia sua tres produxit. Respondemus igitur, ut, si res ita se habet, pro

illorum testimonio ipsum ab uxore nulla ratione dividi patiaris, nec contra ipsos aliquos audias, nisi probatae essent vitae et opinionis, de quibus verisimile non esset, quod deberent pro aliquo deierare.

Chapter XXV

Latin source headnote: Until the attestations have been published and witnesses renounced, witnesses can be produced; afterward, however, they cannot be produced concerning the same article, but they can be concerning another. This is what it says in relation to the title.

Urban III.

When *our beloved son* Master M. came to the Apostolic See, he explained to us that Pope Lucius, our predecessor *of happy memory*, committed to judges for determination with a due end the cause conducted between him and *our beloved son*, the Abbot of Sicolan. (*And below:*) *By commanding your discretion through apostolic writings*, we order that, *having summoned the parties*, if you learn that their sentence was canonically promulgated, you shall confirm it by apostolic authority *and cause it to be committed to execution*. Nor shall the appeal which is said to have been interposed here on the occasion of our predecessor's death impede it, since afterward he both *brought an action* and answered, and determined to produce witnesses.

You shall also determine by the mediation of justice, *without the obstacle of appeal*, the other questions concerning which witnesses were produced and their depositions published, or witnesses were renounced on this side and that, no others being received from either party concerning the same matter, according to the tenor of those depositions. But if there are any questions concerning which either witnesses were not produced or those witnesses were renounced, you shall hear whatever has been proposed on this side and that and impose upon them a due end, *appeal ceasing*.

Donec attestationes fuerint publicatae, et eis renunciatum, produci possunt testes; postea vero non super eodem capitulo, sed super alio sic. H. d. quoad titulum.

Urbanus III.

Quum venisset ad apostolicam sedem *dilectus filius noster* magister M., nobis exposuit, quod *felicis memoriae* Lucius Papa praedecessor noster causam, quae inter ipsum et *dilectum filium nostrum* abbatem de Sicolan. vertebatur, commisit iudicibus fine debito terminandam (*Et infra:*) *Discretioni vestrae per apostolica scripta praecipiendo* Mandamus, quatenus, *partibus convocatis*, si sententiam illorum noveritis canonice promulgatam, eam auctoritate apostolica confirmetis *et faciatis exsecutioni mandari*, nec appellatio illam impediat, quae hic interposita dicitur occasione mortis praedecessoris nostri, quum postea *et* egerit et responderit, testesque duxerit producendos. Quaestiones quoque alias, super quibus testes fuere producti, et depositiones publicatae eorum, vel renunciatum fuit testibus hinc et inde, nullis aliis ab alterutra parte super eodem receptis, secundum tenorem ipsarum mediante iustitia *sine appellationis obstaculo* terminetis. Si quae vero fuerint quaestiones, super quibus vel testes non fuerint producti, vel, renunciatum eisdem, audiatis, si qua hinc inde proposita fuerint, *appellatione cessante* finem illis debitum imponentes.

Chapter XXVI

Latin source headnote: A defendant can produce witnesses to prove the contrary of what the plaintiff proved if publication of the attestations has not been made, notwithstanding a contrary custom. This is what it says according to the more noteworthy reading.

Clement III.

The course of your rescript disclosed to us that, when a conjugal question was recently conducted between the sons *and daughters* of certain nobles of your city, *because you were distracted by other more urgent business, you committed your functions in the ventilation of that question to certain prudent men, before whom* that *party* which accused the marriage produced lawful witnesses who firmly asserted that consanguinity existed *in the fifth degree* between the aforesaid persons, placing two persons in the first degree, namely B. and I., and saying that they were brother and sister. But the opposite party said this was false—namely, that B. was the sister of I.—offering both witnesses and a public instrument to corroborate its assertion.

Hence, because the party of the accusers proposes that those witnesses are not to be received, and you affirm that it is not the custom of *your* church that, after witnesses have been received who compute consanguinity according to the form of the canons, others are admitted from the opposite side, *concerning which you request to be instructed both in the present business and in similar ones*, we answer by the present page that, if there is no other canonical matter which stands in the way, notwithstanding that custom as contrary to law, you shall not omit to receive the witnesses, *appeal ceasing*.

> Potest reus producere testes ad probandum contrarium eius, quod actor probavit, si publicatio attestationum non est facta, consuetudine contraria non obstante. H. d. secundum notabiliorem lecturam.
>
> Clemens III.
>
> Series tui rescripti nobis aperuit, quod, quum nuper inter filios *et filias* quorundam nobilium tuae civitatis coniugalis quaestio tractaretur, *+quia distrahebaris ad alia urgentiora negotia, vices tuas in ventilatione illius quaestionis quibusdam viris prudentibus commisisti, ante quos* Pars *illa*, quae matrimonium accusabat, testes produxit legitimos, qui consanguinitatem inter praedictos esse firmiter asserebant *in quinto gradu*, in primo gradu ponendo duas personas, B. videlicet et I., dicentes illos esse fratrem et sororem; pars autem opposita id falsum esse dicebat, B. scilicet esse sororem I., ad corroborandam assertionem suam tam testes offerens quam publicum instrumentum. Unde, quia pars accusantium testes illos non esse recipiendos proponit, et tu non esse consuetudinem ecclesiae *tuae* affirmas, ut post receptos testes, qui consanguinitatem secundum formam canonum computant, alii ex opposito admittantur, *super quo tam in praesenti negotio quam in similibus postulas edoceri*, praesenti pagina respondemus, quod, si non est aliud canonicum, quod obsistat, non obstante illa consuetudine, utpote iuri contraria, testes *appellatione cessante* recipere non omittas.

Chapter XXVII

Latin source headnote: Carnal union is proved by consistent eyewitness testimony; the same applies to testimony from hearing, when supporting evidence and reputation assist it.

Celestine III.

Furthermore, you wished to consult us, among other matters, when someone is accused of having known a woman carnally, whether the witnesses are to be questioned concerning sight, whether the reputation of the neighborhood alone suffices, or whether credence is to be given to sworn witnesses who confess that they are aware of the carnal union but affirm nothing concerning sight. *To these things, therefore,* we answer that, if consistent testimony concerning sight is rendered, or even testimony concerning hearing, and agreeing reputation supplies a violent presumption, and other

lawful supporting evidence assists it, the testimony of the sworn witnesses *is* to be upheld. For a circumspect and discerning judge, *according to what is provided in the civil law*, will confirm the movement of his mind from the arguments and testimonies which he finds more fitting to the matter.

> Carnalis copula probatur per conveniens testimonium de visu; idem in testimonio auditus, quod adminicula et fama coadiuvant.
>
> Coelestinus III.
>
> Praeterea quum quis accusatur aliquam cognovisse, an sint testes interrogandi de visu, aut sola viciniae fama sufficiat, vel si iuratis testibus sit credendum, qui se carnalis copulae conscios esse fatentur, sed de visu nihil affirmant, *nos inter alia consulere voluisti. Ad haec itaque* Respondemus, quod, si testimonium conveniens de visu reddatur, vel etiam de auditu, et praesumptionem violentam fama consentiens subministret, ac alia legitima adminicula suffragentur *eidem* standum est testimonio iuratorum. Etenim circumspectus iudex atque discretus *iuxta illud, quod in iure civili cautum exsistit*, motum animi sui ex argumentis et testimoniis, quae rei aptiora esse compererit, confirmabit.

Chapter XXVIII

Latin source headnote: Credence is not given to the word of one judge; his writings, however, can be disproved through witnesses. This rule fails in the case of the Pope. It is commonly summarized thus.

Innocent III, to the Consuls and People of Benevento.

When from us—(*And below:*) Following both canon and civil laws, we more strictly prohibit credence from being given in causes to the word of one judge, of however great authority he may be, whether a question is conducted concerning testaments, *concerning* any other contracts, or other matters. Nor shall his writing, unless supported by the aid of witnesses, obtain such force that the testimonies of two or three good witnesses cannot and ought not to prevail over it, saving in all matters the authority of the Apostolic See. [*Therefore let no one, etc. Given at Rome at Saint Peter's on the fourth day before the Ides of June.* 1198.]

> Unius iudicis verbo non creditur; scripturae vero eius per testes reprobari possunt. Fallit hoc in Papa. Ita communiter summatur.
>
> Innocentius III. Consulibus et Populo Beneventano.
>
> Quum a nobis (*Et infra:*) Et canonica et civilia iura sequentes districtius inhibemus, ne unius iudicis, quantaecunque fuerit auctoritatis, verbo credatur in causis, sive super testamentis, sive *super* quibuslibet aliis contractibus quaestio agitetur. Nec scriptum eorum, nisi testium adminiculo fulciatur, earn obtineat firmitatem, quin ei possint et debeant duorum vel trium testium bonorum testimonia praevalere, salva in omnibus sedis apostolicae auctoritate. [*Nulli ergo etc. Dat. Romae ap. S. Petr. IV. Id. Iun. 1198.*]

Chapter XXIX

Latin source headnote: A witness introduced concerning a dilatory exception is not believed concerning the principal matter, nor is he compelled to depose; it is otherwise if he is introduced concerning a peremptory exception. For then he can be compelled to swear to depose concerning the whole matter.

The same, to the Bishop of Tyre.

Your fraternity was led to consult us concerning witnesses *who are introduced by the parties to prove an exception*: whether they are to be compelled to give testimony to the truth also concerning the principal business, and whether those who are introduced to purge someone's infamy are to be strictly examined like the other witnesses. Therefore, greatly commending your fraternity [*in the Lord*] *because it wishes to be made certain in doubtful matters by a rescript of the Apostolic See*, we answer your consultation in this way: if the witnesses *have already* been introduced only to prove a dilatory exception, since they swore to speak the truth concerning it alone, they ought neither to be heard nor compelled to give testimony concerning the principal matter, since they have not sworn concerning that upon which they would depose.

But if, when they are introduced by either party to prove a peremptory exception, the other party should perhaps seek that they also depose concerning the principal business and petition that they be compelled to be bound by an oath to speak the truth concerning the whole business, they are without doubt to be compelled to this, unless perhaps a sufficient production of witnesses concerning the principal matter has already been made, or witnesses have been renounced, or the depositions of the witnesses have been published. [*But those, etc.* (*Cf. c.* 13, *On Canonical Purgation, V.* 34.) *Given at the Lateran on the fourth day before the Nones of January.* 1199.]

> Testi super dilatoria inducto non creditur super principali, nec cogitur deponere; secus si super peremptoria. Tunc enim cogi potest, ut iuret deponere super toto.
>
> Idem Tyrensi Episcopo.
>
> De testibus, +*qui ad exceptionem probandam a partibus inducuntur, tua nos duxit fraternitas consulendos, utrum cogendi sint super principali etiam negotio ferre testimonium veritati, et an illi sint, sicut ceteri testes, examinandi districte, qui ad purgandam alicuius infamiam inducuntur. Super hoc igitur fraternitatem tuam plurimum* [*in Domino*] *commendantes, quae in dubiis sedis apostolicae vult certificari rescripto*, Consultationi tuae taliter respondemus, quod, si testes *iam* sint inducti ad exceptionem dilatoriam solummodo probandam, quum super ea tantum iuraverint dicere veritatem, super principali nec debent audiri, nec cogi testimonium perhibere, utpote super quo deponerent non iurati. Si vero, quum ad probandam exceptionem peremptoriam ab alterutra partium inducuntur, reliqua pars super principali negotio etiam eos deponere forte petierit, et ut cogantur super toto negotio dicere veritatem, sacramento eos postulaverit obligari, ad id sunt sine dubitatione cogendi, nisi forsitan sufficiens productio testium super principali iam facta fuerit, vel renunciatum testibus, vel depositiones testium fuerint publicatae. [*Illi vero etc.* (*cf. c. 13. de purg. can. V. 34.*) *Dat. Lat. IV. Non. Ian. 1199.*]

Chapter XXX

Latin source headnote: The statements of witnesses are not to be published at the petition of a third party. And one who produced witnesses before certain judges cannot produce them for the same effect before other judges, but ought to be content with their attestations.

The same, to the Bishops of Ely and Chichester and the Archdeacon of Norban.

Established in our presence, *the beloved son Master Robert, proctor* of Master R. *of Saint Edmund*, proposed that, when *the beloved sons*, the dean and chapter of York, had canonically conferred upon him the Archdeaconry of Richmond both by authority of the Lateran Council and by reason of their own privilege, *assigning to him both a stall in the choir and a place in the chapter, and when, having obtained possession of the archdeaconry through them, he had received obedience and the customary oath from the clerics of the same*

archdeaconry, the beloved son Master H. *of Kent*, who is called Archdeacon of Richmond, despoiled him of it *outside the order of law* and after an appeal had been interposed to us. And when the aforesaid R. obtained letters of commission to judges concerning his restitution, the aforesaid Master H. *appealed to the Apostolic See and, approaching our presence,* obtained letters of revocation, *which the same proctor asserted had been obtained through a suggestion of falsehood.* (*And below:*)

And, among other things, the aforesaid H. petitioned that we cause the depositions of certain witnesses to be opened; but the aforesaid proctor said that they were not to be opened, since they had not been introduced in this cause, but *rather* in the one conducted between *our venerable brother*, the Archbishop of York, and the same R. (*And below:*) *Although, however, the archdeacon, as stated above, sought that certain attestations be opened to create fuller faith for us concerning all matters, while the adversary asserted that they had been received in another cause,* we were unwilling to open them, but, *with the assent of those same persons*, considered that the cause should be committed to your examination.

Therefore, through apostolic writings, we command your discretion that, having summoned the parties, you shall inquire more diligently into the truth concerning all the aforesaid matters, discern what is canonical, appeal being set aside, and cause what you decree to be firmly observed through ecclesiastical censure, yet in such a way that, if it is established to you that the aforesaid H. produced witnesses on his behalf before the Bishop *of good memory* and the *beloved son*, the Dean of Lincoln, before you, son archdeacon, *and before our beloved son P., cardinal priest of the title of Saint Marcellus, then legate of the Apostolic See,* as delegated judges, he shall be content with the attestations deposited with him. Otherwise, notwithstanding the fact that those witnesses were produced before those judges and you, son archdeacon, if they are produced on behalf of the said H., they shall be admitted to testimony.

> Dicta testium non sunt ad petitionem tertii publicanda. Et is, qui produxit testes coram certis iudicibus, non potest ad eundem effectum coram iudicibus aliis illos producere; sed illorum attestationibus debet esse contentus.
>
> Idem Heliensi et Cistrensi Episcopis et Archidiacono de Norban.
>
> Constitutus in praesentia nostra *dilectus filius magister Robertus procurator* magistri R. *de sancto Eadmundo* proposuit, quod, quum *dilecti filii* decanus et capitulum Eboracense ei tum auctoritate Lateranensis concilii, tum privilegii proprii ratione archidiaconatum Richemundiae canonice contulissent, +*eidem tam stallum in choro quam locum in capitulo assignantes, et ipse possessionem archidiaconatus per eosdem adeptus obedientiam et iuramentum solitum ab eiusdem archidiaconatus clericis recepisset, dilectus filius* magister H. *de Kent*, qui archidiaconus Richemundiae nominatur, ipsum eo *praeter iuris ordinem* et post appellationem ad nos interpositam spoliavit, quumque praedictus R. ad iudices super restitutione sua commissionis literas impetrasset, memoratus *magister* H. *ad sedem apostolicam appellavit, et, ad praesentiam nostram accedens*, literas revocatorias impetravit, *quas idem procurator per falsi suggestionem asseruit impetratas*. (*Et infra:*) *Et* Inter alia postulabat praedictus H., faceremus depositiones quorundam testium aperiri, sed procurator praedictus aperiendas eas non esse dicebat, quum non in hac causa fuissent inducti, sed in ea *potius*, quae inter *venerabilem fratrem nostrum* Eboracensem archiepiscopum et eundem R. vertebatur. (*Et infra:*) *Licet autem archidiaconus, sicut superius est praemissum, ad faciendam nobis fidem super omnibus pleniorem attestationes quasdam peteret aperiri, adversarius autem in alia causa eas assereret fuisse receptas,* Nos eas aperire noluimus, sed causam *eorundem ipsorum assensu* duximus vestro examini committendam. *Ideoque discretioni vestrae per apostolica scripta mandamus, quatenus partibus convocatis inquiratis super praemissis omnibus diligentius veritatem, et quod canonicum fuerit appellatione postposita discernatis, facientes quod decreveritis per censuram ecclesiasticam firmiter observari*, ita *tamen*, quod, si vobis constiterit, praefatum H. testes pro se coram *bonae*

memoriae episcopo et *dilecto filio* decano Linconensi, et te, fili archidiacone, *ac dilecto filio nostro P. tit. S. Marcelli presbytero cardinali, tunc apostolicae sedis legato*, delegatis iudicibus produxisse, attestationibus apud eum depositis sit contentus; alioquin, eo non obstante, quod testes illi coram iudicibus ipsis, et te, fili archidiacone, fuere producti, pro dicto H. si producti fuerint, ad testimonium admittantur.

Chapter XXXI

Latin source headnote: After the attestations have been published, objection is not made against the persons of the witnesses; it excepts three cases and adds a determination concerning the second.

The same.

By the authority of the present letters we establish that, if anyone wishes after the depositions of the witnesses have been published to object against their persons, this shall then at last be lawful for him when he has confirmed by oath that he is not proceeding to this from malice, unless perhaps before publication he protested concerning this, or he can show that after publication he learned what he objects against their persons. Moreover, when someone has protested that he wishes after publication of the depositions to repel the persons of the witnesses, if they say anything on his behalf, credence shall not readily be given to it.

Publicatis attestationibus non opponitur in personas testium; tres casus excipit, et ad secundum determinationem subdit.

Idem.

Praesentium auctoritate statuimus, ut si quis post depositiones testium publicatas obiicere voluerit in personas eorum, ei tunc tandem id liceat, quum iuramento firmaverit, quod ad hoc ex malitia non procedat: nisi forsan ante publicationem id fuerit protestatus, vel ostendere poterit, quod post publicationem didicerit quod obiicit in personas. Ceterum, quum quis personas testium se velle post publicationem depositionum repellere fuerit protestatus, si quid pro ipso dixerint, de facili non credatur.

Chapter XXXII

Latin source headnote: If the witnesses of the plaintiff and defendant depose contrary things, they do not derogate from one another's credibility, but those who are worthier and depose more probable things prevail; and, if there is no disparity in the other matters, number is preferred.

The same, to the Bishops of London and Ely.

Established *in our presence, the beloved son Master Walter, in the name of the beloved son, the Archdeacon of Canterbury, by whom he had been appointed proctor for this purpose, petitioned that possession of the church of Middleton, which the beloved sons, the abbot and monks of Saint Augustine of Canterbury, had unlawfully occupied, be restored to him together with the fruits received in the meantime*, [*especially since custody of vacant churches of the diocese of Canterbury pertained to the archdeacon himself both under the common law and by the general custom of the English Church; and, when two parsons died in the aforesaid church before the monks most recently occupied that custody, the Archdeacon of Canterbury had used this right in the same church, as he said had been sufficiently proved through twenty-five witnesses greater than every exception in the presence of the delegated judges, whose depositions we heard read before us. He added, furthermore, that after the death of the last parson who died in the same church, the same archdeacon possessed the keys of the church itself, as four priests, one deacon, and one cleric most clearly testified. Hence, since we decreed that the church of Faversham be restored to the aforesaid*

monks, by equal right the aforesaid church ought to be restored to the archdeacon. But the beloved son O., monk of Saint Augustine of Canterbury, proposed to the contrary that, since the said church of Middleton pertained to his monastery without intermediary and it had hitherto possessed its custody undisturbed, as had likewise been clearly proved on his behalf through sixteen witnesses greater than every exception, they did no injury to the aforesaid archdeacon by using their own right. It had also been sufficiently shown through two monks that it freely disposed of the church itself and its property.]

Therefore, since on one side more witnesses and on the other fewer in number were produced, and since it is established that in certain matters they rendered not only different but wholly adverse testimonies, because regard ought not to be had only to multitude but to the quality of the witnesses and their depositions—which the light of truth more fully assists—from which it is fitting that the judge inform the movement of his mind, *through apostolic writings* we command your discretion that, if the witnesses produced on each side are of the same integrity and reputation, since it is established that the witnesses of the monks are fewer in number than those of the archdeacon, you shall render sentence for the *same* archdeacon, *the obstacle of any contradiction and appeal being removed*. But if the witnesses produced on behalf of the monks are of such preeminence that their authority is deservedly to be preferred to the multitude of the others, you shall absolve the same *abbot and monks* from the archdeacon's attack, *contradiction and appeal likewise notwithstanding*. [*But if not all, etc. Given at Rome on the second day before the Ides of December.* 1205.]

> Si actoris et rei testes contraria deponunt, fidem sibi non derogant, sed praevalent digniores, et verisimiliora deponentes, et, si in ceteris est disparitas, praefertur numerus.
>
> Idem Londonensi et Heliensi Episcopis.
>
> In nostra praesentia +*constitutus dilectus filius magister Walterus, nomine dilecti filii archidiaconi Cantuariensis, a quo procurator ad hoc fuerat destinatus, possessionem ecclesiae de Midleton, quam dilecti filii abbas et monachi S. Augustini Cantuariensis illicite occuparant, cum fructibus medio tempore perceptis sibi restitui postulavit,* [*praesertim quum tam de communi iure, quam de consuetudine generali Anglicanae ecclesiae custodia vacantium ecclesiarum Cantuariensis dioecesis ad archidiaconum ipsum pertineat, ac, duabus personis decedentibus in ecclesia memorata, antequam monachi nunc ultimo ipsam custodiam occupassent, archidiaconus Cantuariensis in eadem ecclesia usus fuerit isto iure, sicut per XXV. testes omni exceptione maiores in praesentia delegatorum iudicum sufficienter probatum esse dicebat, quorum depositiones legi audivimus coram nobis. Adiecit insuper post mortem ultimae personae in eadem ecclesia decedentis possessionem clavium ipsius ecclesiae eundem archidiaconum habuisse, sicut quatuor sacerdotes, unus diaconus et unus clericus evidentissime testabantur. Unde, quum ecclesiam de Faversham restitui decrevimus monachis antedictis, pari iure archidiacono debebat restitui ecclesia memorata. Dilectus autem filius O. monachus S. Augustini Cantuariensis proposuit ex adverso, quod, quum dicta ecclesia de Midelton ad monasterium suum pertineat nullo mediante, et ipsius custodiam hactenus possederit inconcusse, sicut per XVI. testes omni pariter exceptione maiores pro parte sua fuerat evidenter probatum, utendo iure suo praefato archidiacono iniuriam non fecerunt. Per duos quoque monachos fuerat sufficienter ostensum, quod de ipsa et rebus eius libere disponebat.*] Quum igitur hinc plures, inde vero sint testes numero pauciores producti, quos non solum diversa, sed adversa penitus in quibusdam constat testimonia reddidisse, quia etiam ad multitudinem tantum respicere non oportet, sed ad testium qualitatem, et ad ipsorum deposita, quibus potius lux veritatis assistit, ex quibus motum animi sui convenit iudicem informare, *discretioni vestrae per apostolica scripta* mandamus, quatenus, si testes utrinque producti eiusdem honestatis et existimationis exstiterint, quum constet testes monachorum esse testibus archidiaconi numero pauciores, *sublato cuiuslibet contradictionis et appellationis obstaculo* pro *ipso* archidiacono sententiam proferatis. Si vero testes ex parte monachorum producti tantae praeeminentiae fuerint, quod eorum auctoritas aliorum sit merito multitudini praeferenda, *contradictione*

et appellatione pariter non obstante ab impetitione archidiaconi absolvatis eosdem *abbatem et monachos*. [*Quod si non omnes etc. Dat. Romae II. Id. Dec. 1205.*]

Chapter XXXIII

Latin source headnote: Laymen and women are admitted to prove impediments of a person elected. Add: witnesses from hearing and reputation do not prove sufficiently.

The same, to the Prior of Saint Fridianus of Lucca and Master G., Canon of Pisa.

Having *diligently heard* both your letters and the depositions of the witnesses, we *clearly* understood that nothing had been sufficiently shown against *the beloved son*, the Bishop-elect of Lucca, except concerning hearing alone and reputation, since concerning the other matters, if any perhaps appear to have been proved, the witnesses are either alone or of such a kind that they could not lawfully prove them. But because concerning the marriage which the same bishop-elect is said to have contracted with a widow, witnesses were not received because of the obstacle of appeal—namely, lest laymen or women be received against him in such a matter—*as you intimated to us by your letters, although the messengers of the same bishop-elect endeavored to prove otherwise before us*, we, so that the objection of so great an irregularity does not remain undiscussed, *through apostolic writings* command *and enjoin* your discretion that you shall lawfully receive and prudently examine witnesses, whether laymen or women, provided only that they are suitable, who are introduced *within a month* to prove this; solemnly excommunicating anyone who presumes to impede them from giving testimony to the truth.

Then, after the attestations have been published, if perhaps it is established that an irregularity of this kind has not been proved, you shall enjoin upon the same bishop-elect canonical purgation concerning the matters objected, to be furnished through seven canons of the greater church, or priest or deacon priors of the *secular* churches of the city of Lucca, of good reputation. When this has been received, you shall appoint for him a *fitting* term in which he is to present himself before us to be consecrated. But if either the impediment of irregularity has been proved or he has not furnished the enjoined purgation within the appointed term, you, *supported by our authority and with the obstacle of any contradiction and appeal removed*, shall *entirely* remove him from the prelacy of the Church of Lucca and command the chapter on our behalf that they shall not defer canonically to celebrate the election of another.

You shall announce that the Archpriest of Lucca and G. [*Amsoff*], the sacristan, who directed to us letters against the aforesaid bishop-elect in the name of the *far* greater part of the chapter, are suspended from office and benefice until they merit to obtain our indulgence, since it is established by the aforesaid attestations that by far the greater part of the chapter had not been aware of letters of this kind. *You shall inquire, etc.* [*Given at Ferentino on the second day before the Ides of May.* 1203.]

Ad probanda impedimenta electi, laici et feminae admittuntur. Adde: et testes de auditu et fama sufficienter non probant.

Idem Priori sancti Fridiani Lucani et magistro G. Canonico Pisano.

Tam literis vestris, quam depositionibus testium *diligenter auditis*, intelleximus *evidenter*, nihil esse contra *dilectum filium* Lucanum electum sufficienter ostensum, nisi de auditu tantum et fama, quum super aliis, si qua forte videantur esse probata, testes sint vel soli, tales, qui non potuerunt illa legitime comprobare. Quia vero super matrimonio, quod idem electus dicitur contraxisse cum vidua, testes non

fuere recepti propter appellationis obstaculum, ne *videlicet* laici vel feminae in tali reciperentur articulo contra ipsum, *sicut vestris nobis literis intimastis, licet nuncii eiusdem electi coram nobis probare aliud niterentur*, nos, ut tantae irregularitatis obiectio non remaneat indiscussa, *discretioni vestrae per apostolica scripta* mandamus *atque praecipimus*, quatenus testes sive laicos sive feminas, duntaxat idoneos, qui ad hoc fuerint probandum *infra mensem* inducti, recipiatis legaliter et examinetis prudenter, excommunicantes solenniter, si quis eos impedire praesumpserit, quo minus testimonium perhibeant veritati. Demum attestationibus publicatis si forte constiterit, irregularitatem huiusmodi non esse probatam, indicatis eidem electo purgationem canonicam de obiectis, per septem canonicos maioris ecclesiae, vel priores ecclesiarum *saecularium* civitatis Lucanae presbyteros seu diaconos bonae famae praestandam. Qua recepta praefigatis ei terminum *competentem*, quo consecrandus nostro se conspectui repraesentet. Si vero vel irregularitatis impedimentum fuerit probatum, vel infra terminum constitutum non praestiterit purgationem indictam, vos eum *auctoritate nostra suffulti, remoto cuiuslibet contradictionis et appellationis obstaculo* a praelatione Lucanae ecclesiae *penitus* amoventes, mandetis ex parte nostra capitulo, ut electionem de alio non differant canonice celebrare. Archipresbyterum autem Lucanum et G. [*Amsoff*] sacristam, qui contra praedictum electum literas nobis sub nomine *longe* maioris partis capituli destinaverunt, quum constet per attestationes praedictas, longe maiorem partem capituli non fuisse consciam huiusmodi literarum, ab officio et beneficio denuncietis esse suspensos, donec mereantur nostram indulgentiam obtinere. *Inquiratis etc.* [*Dat. Ferentini II. Id. Maii. 1203.*]

Chapter XXXIV

Latin source headnote: In a cause concerning liberty, witnesses can be received against a contumacious person even when issue has not been joined. This is what it says notably according to the common reading.

The same, to the Bishop of Durham and the Dean and Prior of Holy Trinity of York.

When formerly *the beloved son*, the Archdeacon of St Davids, proposed *in the presence of us and our brothers* a question against *our venerable brother*, the Archbishop of Canterbury, concerning the status of the Church of St Davids, *we gave the archbishop himself a mandate through our letters that he should approach our presence concerning this, personally or through a suitable proctor, to answer. But when he neither came nor sent a suitable representative for this purpose, wishing with paternal solicitude to provide for the Church of St Davids, we considered that the cause concerning this should be committed under a certain form to our venerable brother, the Bishop of Ely, and the beloved sons, the Dean of London and the Archdeacon of Buckingham; they have not hitherto proceeded in that business according to our mandate. Therefore, lest the cause itself remain undecided, through apostolic writings* we command your discretion that, unless the adverse party can repel the aforesaid archdeacon from bringing the action through a lawful exception, after the parties, if it can be done, or their proctors have been summoned *through your messengers and letters* to a safe and suitable place and issue has been lawfully joined, you shall take care to receive in England the witnesses whom the archbishop, and in Wales those whom the archdeacon, shall determine to produce *against him*.

But if the archbishop, although lawfully cited *before you*, is unwilling to appear either personally or through a suitable proctor, or even to join issue, you shall *nevertheless* admit the witnesses, especially the aged and sick, whom the archdeacon *personally or through his proctor* shall determine to produce, *the obstacle of any contradiction and* appeal being removed; and you shall take care to send their written depositions, *enclosed under your seals*, to the Apostolic See, appointing for the parties a *fitting* peremptory term at which, personally or through suitable representatives, they shall present

themselves before us to receive sentence. [*The witnesses, etc. Given at Ferentino on the fourteenth day before the Kalends of July, in the sixth year of our pontificate.* 1203.]

> In causa liberali contra contumacem, etiam lite non contestata, testes recipi possunt. Hoc dicit notabiliter secundum lectur. communem.
>
> Idem Dulmensi Episcopo et Decano et Priori sanctae Trinitatis Eboracensis.
>
> Quum olim *dilectus filius* archidiaconus Menensis adversus *venerabilem fratrem nostrum* Cantuariensem archiepiscopum super statu Menensis ecclesiae proposuerit *in nostra et fratrum nostrorum praesentia* quaestionem, *archiepiscopo ipsi per literas nostras dedimus in mandatis, ut per se vel procuratorem idoneum ad praesentiam nostram super hoc accederet responsurus. Verum quum ipse nec venisset, nec misisset propter hoc idoneum responsalem, volentes Menevensi ecclesiae paterna sollicitudine providere, causam super hoc venerabili fratri nostro episcopo Heliensi et dilectis filiis Londinensi decano et archidiacono de Botingeham sub certa forma duximus committendam, a quibus non fuit hactenus iuxta mandatum nostrum in negotio ipso processum. Ne igitur causa ipsa remaneat indecisa, discretioni vestrae per apostolica scripta* Mandamus, quatenus, nisi pars adversa praedictum archidiaconum per exceptionem legitimam repellere valeat ab agendo, partibus, si poterit fieri, vel procuratoribus earum ad locum securum et idoneum *per nuncios vestros et literas* convocatis, et lite legitime contestata, testes, quos archiepiscopus in Anglia, et quos archidiaconus duxerit producendos *contra eum* in Wallia, recipere procuretis. Verum si archiepiscopus citatus legitime *coram vobis* vel per se vel per procuratorem idoneum noluerit comparere, aut litem etiam contestari, vos *nihilominus* testes, maxime senes et valetudinarios, quos archidiaconus *per se, vel procuratorem suum* duxerit producendos, sublato *cuiuslibet contradictionis et* appellationis obstaculo admittatis, et depositiones eorum conscriptas *et vestris sigillis inclusas* ad sedem curetis apostolicam destinare, statuentes partibus terminum peremptorium *competentem*, quo per se, vel responsales idoneos nostro se conspectui repraesentent sententiam recepturae. [*Testes etc. Dat. Ferentini XIV. Kal. Iul. Pont. nostr. Ao. VI. 1203.*]

Chapter XXXV

Latin source headnote: After the attestations have been published, the adversary is admitted to prove the contrary if before publication he could not have been instructed concerning this contrary proof. This is what it says, and it is an exceptional case.

The same, to the Prior of Bolonic and I., Rector of the Church of Borellis.

We learned from the tenor of your letters that, when we committed to you *and the beloved son, the Abbot of Furneia,* for determination with a due end, the cause conducted between R., *son of W. of Eston*, a knight, and the woman M., *sister of W. of Arches, when the aforesaid abbot reasonably excused himself because he could not attend cognizance of the same cause, you cited the parties to your presence. When they were established in your presence*, the woman's party proposed that the said knight first furnished a corporal oath that he would take her as his wife, and afterward, having known [*her*] carnally, conveyed her into his house *and received offspring from her*.

But the *aforesaid* knight denied this altogether, adding that, even if *the things proposed by her* were true, he nevertheless could not by law have her because he had previously taken another woman, then living, as his wife. *Therefore, after witnesses had been received from each party and the attestations published*, when it appeared to have been proved through the witnesses of the *often-mentioned* knight that before the feast of the Purification of the Blessed Virgin *Mary* he had solemnly taken the woman B. as his wife, while the witnesses of the woman M. *of Arches* said that during Easter week following the

aforesaid feast he had furnished an oath to marry her, the aforesaid knight urgently petitioned to be absolved from her attack.

But it was replied on behalf of the often-mentioned woman that at that time, and also previously, at which the witnesses of the said knight had said that he contracted marriage with another, he had always dwelt in the province of York, while the witnesses themselves said that this had been done far outside the said province, specifying the time and place; and she was prepared to prove this through suitable witnesses. But it was answered to the contrary on the opposite side that, since the attestations had already been solemnly published on this side and that, there was no longer place for the production of witnesses. Therefore, because you doubt whether witnesses ought to be admitted after publication of the attestations concerning that article, by the authority of the present letters we answer your inquiry that the woman's witnesses are to be admitted to prove that article. [*Given on the eighth day before the Kalends of December.* 1203.]

> Publicatis attestationibus, admittitur adversarius ad probandum contrarium, si ante publicationem super hac probatione contraria instrui non potuit. H. d. et est casus singularis.
>
> Idem Priori de Bolonic. et I. Rectori ecclesiae de Borellis.
>
> Ex tenore vestrarum accepimus literarum, quod, quum vobis *et dilecto filio abbati de Furneia* causam, quae vertitur inter R. *filium W. de Eston.* militem, et M. mulierem, *sororem W. de Arches* commiserimus fine debito terminandam, *+praedicto abbate se rationabiliter excusante, quod cognitioni eiusdem causae interesse non posset, partes ad vestram praesentiam citavistis. Quibus in vestra praesentia constitutis*, Pars mulieris proposuit, quod dictus miles prius corporale praestitit iuramentum, quod ipsam duceret in uxorem, et [*eam*] postmodum carnaliter cognitam traduxit in domum,* et prolem suscepit ex ea*. Miles vero *praedictus* hoc inficiabatur omnino, adiiciens, quod, etsi haec *quae proponebantur ab ipsa*, vera essent, eam tamen de iure habere non potuit eo, quod aliam tunc viventem prius duxerat in uxorem. *Testibus itaque ab utraque parte receptis, et attestationibus publicatis*, Quum per testes militis *saepe dicti* videretur esse probatum, quod ipse ante festum Purificationis beatae Virginis *Mariae* B. mulierem solenniter accepit in uxorem, et testes M. mulieris *de Arches* dicerent, quod in septimana paschali, sequente festum praedictum, de ea ducenda praestitit iuramentum, praedictus miles ab impetitione ipsius absolvi cum instantia postulabat. Verum ex parte saepe dictae mulieris exstitit replicatum, quod eo tempore, nec non et ante, quo testes dicti militis dixerant eum cum alia matrimonium contraxisse, fuerat semper in Eboracensi provincia commoratus; quum testes ipsi dicerent, hoc longe extra dictam provinciam actum esse, determinantes tempus et locum; quod per testes idoneos erat probare parata. Sed econtra fuit ex adverso responsum, quod, quum attestationes iam essent hinc inde solenniter publicatae, locus productioni testium iam non erat. Quia igitur dubitatis, utrum post publicationem attestationum super illo articulo deberent testes admitti, nos inquisitioni vestrae auctoritate praesentium respondemus, testes mulieris ad probandum illum articulum admittendos. [*Dat. VIII. Kal. Dec. 1203*.]

Chapter XXXVI

Latin source headnote: A fourth production of witnesses sought in a cause with legal solemnity is to be granted when no lawful cause opposes it; otherwise, an appeal is lawfully made.

The same, to the Prior of Saint Victor.

Our venerable brother, the Bishop of Senlis, and the beloved sons I., Abbot of Saint Victor of Paris, and F., Dean of Orléans, signified to us through their letters that, when the cause conducted between the abbot and monks of Saint Denis on the one side and the abbess and nuns of Forchelles on the other, concerning both

ownership and possession of the priory of Argenteuil, had been committed to them as judges by us, and when the nuns, first entering the suit concerning ownership, had produced witnesses in it, they afterward instituted the possessory judgment, the petitory being suspended, *which, after counsel from prudent men, those judges declared by interlocutory sentence was lawful for them by right*.

Hence, *when*, in the cause concerning possession which the nuns sought—*namely* for the reason that those whom they had succeeded had been violently ejected from it—witnesses had been produced by each party, and proceedings *had* reached the point that publication ought now to be made, *the aforesaid nuns petitioned that the depositions of the witnesses be published only in the cause concerning possession. But the monks contradicted them, alleging that, just as the cause concerning ownership had first been begun, so it ought first to receive an end, or at least the witnesses concerning both the petitory and the possessory ought to be published together. But those judges, after hearing what was proposed on each side, when they wished to pronounce an interlocutory judgment concerning this after taking the counsel of wise men, the monks added that the nuns had renounced the production of witnesses concerning the cause of ownership. When the adverse party denied this and it was conducted between the parties as though doubtful, they pronounced interlocutorily that they would publish the attestations in the possessory and hear the monks' proofs concerning the nuns' renunciation; but the monks appealed from this interlocutory judgment to our hearing. The judges, appointing another day for the parties so that they might deliberate whether they ought to defer to an appeal of this kind, summoned prudent men and, by their counsel, without reproving their sentence, granted the monks' party a hearing if perhaps they might allege some reason for retracting the aforesaid ineffective sentence. They finally, after their appeals, strongly insisted upon the appeal previously made.*

[*But because they could scarcely find assessors at Paris without their being said to be suspect—although the nuns' party finally said that they would in no way hold as suspect anyone whom the three judges together summoned—the judges nevertheless, considering the arduousness of the business, judged that these things should be intimated to us, enjoining upon the parties that on the feast of Saint Luke the Evangelist, then next to come, they should present themselves before us with letters of this kind. But when the aforesaid Abbot of Saint Victor and Dean of Orléans together affixed their seals to the letters containing this course of events, the said Bishop of Senlis deferred affixing his seal because the monks of Saint Denis complained that certain things which ought to have been included had been omitted. Hence, the parties having been recalled, they appointed the day after Saint Remigius. The monks steadfastly asserted that the nuns had had three productions of witnesses in the cause of ownership and conclusion had already been made in them, so that they were not going to be heard further in producing witnesses concerning the cause of ownership, and they offered lawful proofs concerning these things; but the adverse party denied all these things.

But when for this reason both the abbess on her own behalf and Master Thomas on behalf of the abbot and monks, around the octave of blessed Martin, which had been assigned as the term for the parties to present themselves before us, approached our presence, and when we had given them a full hearing in our consistory, the same master added that it had often been petitioned by the abbot and monks from the delegated judges that they grant them a fourth production in the cause of possession with legal solemnity. When the judges entirely denied it to them contrary to lawful sanctions, they, perceiving themselves to be unjustly aggrieved, appealed immediately to our hearing after the interlocutory judgment concerning publication of the witnesses in the possessory had been promulgated. They endeavored to show this from the testimony of certain special letters of the

aforesaid Bishop of Senlis, who wrote, among many things, that in the addition which, upon recall of the parties, was made to the first letters, the monks petitioned that this clause be included: namely, that there still remained to them in the possessory judgment a fourth production, the solemnity of law having been employed, and they offered necessary proofs concerning this. The same master promised that he would prove his assertion by lawful witnesses. But the abbess, relying upon the report of the three delegates and upon certain of their letters containing that they had assigned the third day after the Purification of the Blessed Mary for publication of the witnesses produced by each party concerning possession, asserted that what had been added by the same master was entirely false.*]

We therefore, having diligently heard these and the other things proposed on this side and that, by the common counsel of our brothers, through apostolic writings command your discretion that, *coming together at Paris*, if it is established to you *through lawful proofs* that the abbot and monks sought a fourth production of witnesses in the possessory with the solemnity of law, and that for this reason they appealed within ten days after the interlocutory sentence—unless perhaps the judges denied the fourth production because they wished to restrain an unbridled multitude of witnesses—you shall admit the *aforesaid abbot and monks* to the fourth production *of witnesses*, legal solemnity having been employed, condemning them in lawful expenses if they fail in proof. And unless proceedings in the petitory have already advanced so far that ownership can be fully clear, you shall first determine the cause of possession, to which the abbess and nuns had recourse by benefit of law, and afterward proceed *lawfully* in the cause of ownership; otherwise, you shall determine both questions together. [*But those, etc. Given on the Kalends of February, in the eighth year [of our pontificate]*. 1206.]

> Indulgenda est in causa quarta productio testium petita cum solennitate legali, causa legitima non refragante; alias legitime appellatur.
>
> Idem Priori sancti Victoris.
>
> Significaverunt nobis *per literas suas venerabilis frater noster Silvanectensis episcopus, et dilecti filii I. abbas S. Victoris Parisiensis et F. Aurelianensis decanus, quod*, Quum causa, quae vertitur inter abbatem et monachos sancti Dionysii ex una parte, ac abbatissam et moniales de Forcellis ex altera tam super proprietate quam super possessione prioratus de Argentolio iudicibus a nobis commissa fuisset, et moniales super causa proprietatis prius litem ingressae testes produxissent in illa, postmodum possessionis iudicium suspenso petitorio intentarunt, *quod eis de iure licere ipsi de prudentium consilio per interlocutoriam sententiam declararunt*. Unde *quum* in causa possessionis, quam moniales petebant, ea *videlicet* ratione, quod illae, quibus ipsae successerant, inde fuerant violenter eiectae, testes fuerunt ab utraque parte producti, et eousque *erat* processum, ut publicatio iam fieri deberet, *+petebant moniales praedictae, depositiones testium in causa possessionis tantummodo publicari; sed contradicebant monachi, allegantes, quod, sicut causa proprietatis fuerat prius coepta, ita debebat accipere prius finem, vel saltem tam super petitorio quam super possessorio testes simul publicari debebant. Ipsi vero, auditis hinc inde propositis, quum super hoc vellent interloqui habito consilio sapientum, monachi adiecerunt, quod super causa proprietatis renunciaverant productioni testium moniales. Quod quum pars adversa negaret, et inter partes quasi dubium verteretur, inlerlocuti fuerunt, quod attestationes in possessorio publicarent, et super renunciatione monialium probationes monachorum audirent; sed ab hac interlocutoria monachi ad nostram audientiam appellarunt. Ipsi autem diem alteram partibus praefigentes, ut deliberarent, an deberent huiusmodi appellationi deferre, convocatis prudentibus de ipsorum consilio, sententiam suam minime reprobantes, parti monachorum audientiam indulserunt, si forte rationem aliquam allegarent ad retractandam sententiam praedictam inefficacem; qui tandem post appellationes suas appellationi prius factae fortiter insistebant*. [*Quia vero vix poterant assessores Parisius invenire, quin dicerentur esse suspecti, quamvis pars monialium tandem diceret, quod, quemcunque*

tres insimul evocarent, illum non haberent ullo modo suspectum, ipsi tamen, considerantes arduitatem negotii, haec nobis intimanda duxerunt, partibus iniungentes, ut in festo S. Lucae Evangelistae proximo tunc futuro nostro se conspectui cum huiusmodi literis praesentarent. Quum autem literis ipsis hanc seriem continentibus praefati abbas S. Victoris et decanus Aurelianensis sua pariter appendissent sigilla, iam dictus Silvanectensis episcopus suum distulit sigillum apponere pro eo, quod monachi S. Dionysii querebantur, quaedam omissa fuisse, quae fuerant apponenda. Unde partibus revocatis diem in crastino S. Remigii praefixerunt, monachis firmiter asserentibus, quod moniales in causa proprietatis tres testium productiones habuerant, et in easdem fuerat iam conclusum, ita, quod in producendis testibus super causa proprietatis eas non erant ulterius audituri, ac super his probationes legitimas offerebant; sed haec omnia pars adversa negabat. Verum, quum propter hoc tam abbatissa pro parte sua, quum magister Thomas pro parte abbatis et monachorum circa octavos B. Martini, quae, fuerant pro termino partibus assignatae nostro se conspectui praesentandi, ad nostram praesentiam accessissent, et nos eis in consistorio nostro plenam audientiam dedissemus, idem magister adiecit, quod saepe fuit ex parte abbatis et monachorum a delegatis iudicibus postulatum, ut in causa possessionis quartam eis productionem concederent cum solennitate legali, quam quum eis penitus denegarent contra legitimas sanctiones, ipsi, sentientes se iniuste gravari, post interlocutoriam de publicandis testibus in possessorio promulgatam protinus ad nostram audientiam appellarunt, quod ex testimonio quarundam specialium literarum praedicti Silvanectensis episcopi nitebantur ostendere, inter multa scribentis, quod in additione illa, quae in revocatione partium primis literis facta fuit, petebant monachi clausulam illam apponi, scilicet, quod adhuc restabat eis super possessorio iudicio quarta productio solennitate iuris adhibita, et super hoc probationes necessarias offerebant, idemque magister assertionem suam promittebat se legitimis testibus probaturum. Abbatissa vero relationi trium delegatorum innitens, et quibusdam eorum literis continentibus, quod diem tertiam post Purificationem B. Mariae ad publicationem testium assignaverant, super possessione a parte productorum utraque, quod ab eodem magistro fuerat superadditum, asserebat penitus esse falsum.] *Nos igitur, his et aliis diligenter auditis, quae fuerunt hinc inde proposita, de communi fratrum nostrorum consilio discretioni vestrae per apostolica scripta* Mandamus, quatenus, *Parisius convenientes in unum*, si *per legitimas* vobis *probationes* constiterit, abbatem et monachos quartam productionem testium cum iuris solennitate super possessorio petivisse, seque propter hoc infra decem dies post interlocutoriam sententiam appellasse, nisi forte iudices quartam productionem negaverint pro eo, quod voluerint effrenatam multitudinem testium refrenare, vos *praefatos abbatem et monachos* ad quartam productionem *testium* adhibita solennitate legali admittatis eosdem, ipsos, si in probatione defecerint, in expensis legitimis condemnantes. Et nisi adeo sit in petitorio iam processum, ut plene possit de proprietate liquere, vos causam possessionis, ad quam de iuris beneficio abbatissa et moniales habuere recursum, primitus terminetis, in causa proprietatis postmodum *legitime* processuri; alioquin quaestionem terminetis simul utramque. [*Illos vero etc. Dat. Kal. Febr. Ao. VIII. 1206.*]

Chapter XXXVII

Latin source headnote: Witnesses are to be diligently examined, those who impede them are to be punished, and the multitude of the witnesses themselves is to be restrained by the judge.

The same, to the Bishop of Piacenza.

When the cause known to be conducted between *our venerable brother*, the Archbishop of Ravenna, and *the beloved sons*, the commune of Faenza, *concerning the village of Luci and Saint Potitus, the castle of Aureolo, and their district, honor, and jurisdiction, had been* [*committed by us to various judges, because it could not be determined with a due end by certain of them, we, wishing to impose an end upon the suit, finally commanded our venerable brother, the Bishop of Montefeltro, and the beloved son, the Abbot of Galeata, through our letters that, notwithstanding the commissions hitherto obtained and every occasion and exception ceasing, they should assign the parties a period of three months within which they were to produce all the witnesses whom they should determine to produce concerning this cause; and, after diligently examining them and faithfully reducing the attestations to*

writing, if it proceeded from the will of the parties, they should determine the cause itself through the mediation of justice; otherwise, remitting the attestations with the instruments and other arguments to our presence, they should appoint a fitting term for the parties at which they should present themselves before us to receive sentence. Therefore, when the aforesaid delegates had by no means proceeded, etc. (*Cf. c.* 6, *On the Oath against Calumny, II.* 7.)]

But because it would be exceedingly burdensome for each party to produce witnesses before us, [*by commanding*] *your fraternity, in whom we place full confidence, through apostolic writings*, we order that *within three months after receipt of the present letters* you shall receive, *appeal being removed*, the witnesses whom each party should determine to produce both concerning the principal business and against the persons of the witnesses. You shall take care to examine them diligently and, prudently inquiring into the individual circumstances—namely, concerning causes, persons, place, time, sight, hearing, knowledge, belief, reputation, and certainty—shall write down everything fully and carefully, *and shall faithfully transmit these things to us under your seal, enjoining upon the parties that they come to our presence thus instructed, so that, after the attestations have been published and the instruments produced, and after sufficient argument has been made, with the Lord as author they may receive from us a just sentence*.

The witnesses, however, etc. But if perhaps the people of Faenza or others presume to impede those whom the said archbishop should determine to produce to give testimony to the truth, after admonition has first been made you shall compel them by ecclesiastical censure, appeal being removed, to cease from presumption *of this kind*. Wishing, moreover, that an unbridled multitude of witnesses be restrained, we will that you shall not permit the number of witnesses on each side to exceed forty, in such a way that, if the people of Faenza wish to hold ratified the depositions of the witnesses which were received by *our venerable brother*, the Bishop of Ferrara, and the Abbot of Pomposa, those witnesses shall be counted within the aforesaid number; otherwise, since the attestations themselves are closed, the same witnesses, if necessary, shall be produced again. [*Given at Ferentino on the tenth day before the Kalends of July, in the ninth year [of our pontificate]*. 1206.]

> Diligenter examinandi sunt testes, et puniendi qui eos impediunt; et ipsorum testium multitudo est per iudicem refrenanda.
>
> Idem Episcopo Placentino.
>
> Quum causam, quae inter *venerabilem fratrem nostrum* archiepiscopum Ravennatensem ac *dilectos filios* commune Faventiae +*super villa Luci et S. Politi, et castro Aureoli et eorum districtu, honore ac iurisdictione noscitur agitari, diversis iudicibus fuisse* [*a nobis commissa, quia per eorum aliquos fine debito non potuit terminari, nos imponere volentes liti finem, venerabili fratri nostro Feretrano episcopo et dilecto filio abbati de Galiata per nostras tandem literas dedimus in praeceptis, ut, non obstantibus commissionibus hactenus impetratis, omnique occasione ac exceptione cessantibus, trium mensium spatium partibus assignarent, infra quod universos testes producerent, quos, super hac causa ducerent producendos, et diligenter examinatis eisdem, attestationibusque fideliter redactis in scriptis, si de partium procederet voluntate, causam ipsam mediante iustitia terminarent; alioquin attestationes cum instrumentis et aliis rationibus ad nostram praesentiam remittentes, praefigerent partibus terminum competentem, quo se nostro conspectui praesentarent sententiam recepturae. Quum igitur delegati praedicti minime processissent etc.* (*cf. c. 6. de iur. cal. II. 7.*)] Quia vero utrique parti nimis exsisteret onerosum, ut testes producerent coram nobis, *fraternitati tuae, de qua plenam fiduciam obtinemus, per apostolica scripta* [*praecipiendo*], mandamus, quatenus *infra tres menses post susceptionem praesentium* recipias *appellatione remota* testes, quos utraque pars tam super principali negotio quam in personas testium duxerit producendos, ac eos diligenter examinare procures, et de singulis circumstantiis prudenter inquirens, de causis videlicet, personis, loco, tempore, visu, auditu, scientia, credulitate, fama et certitudine, cuncta plene ac curiose conscribas,

+et ea nobis fideliter sub tuo sigillo transmittas, iniungens partibus, ut ad praesentiam nostram veniant sic instructae, quatenus attestationibus publicatis et instrumentis exhibitis, postquam sufficienter fuerit allegatum, iustam a nobis sententiam Domino auctore reportent. Testes autem etc. Quod si forte Faventini vel alii eos, quos dictus archiepiscopus ad perhibendum testimonium veritati duxerit producendos, praesumpserint impedire, tu ipsos ab huiusmodi praesumptione cessare *monitione praemissa per censuram ecclesiasticam appellatione remota* compellas. Volentes autem effrenatam multitudinem testium refrenari, volumus, ut hinc inde quadragenarium numerum testium excedere non permittas, ita videlicet, ut, si Faventini testium depositiones ratas habere voluerint, quae a *venerabili fratre nostro* Ferrariensi episcopo et abbate Pompon. receptae fuerint, testes ipsi computentur in numero praelibato; alioquin, quum attestationes ipsae sint clausae, iidem testes, si necesse fuerit, iterate producantur. [*Dat. Ferentini X. Kal. Iul. Ao. IX. 1206.*]

Chapter XXXVIII

Latin source headnote: Attestations received in a summary judgment do not create faith in a plenary judgment. And, notwithstanding their publication, the same or other witnesses can be received concerning the same articles.

The same, to the Abbots of New Fountain and La Chaise-Dieu.

Coming to the Apostolic See, *the beloved son* G. *de Cros*, Archdeacon of Clermont, humbly supplicated *us* that we cause the sentence *reasonably* rendered for him *by our venerable brother, the Bishop of Limoges*, concerning the deanery of the Church of Clermont, which had already in part been committed to execution, to be committed to execution in its entirety. But when *the beloved sons, the abbot and G. Dalmas,* [*a canon*] *of Clermont*, proctors of *the beloved sons*, the chapter of Clermont, being established in our presence, proposed *to us* that that sentence had been promulgated contrary to justice and after an appeal had been *lawfully* interposed to us, [*and that therefore the same archdeacon was by no means to be heard in his petition, the same archdeacon proposed to the contrary that the said abbot and canon ought not to be received as proctors, since both they and those on whose behalf they had come were bound by the bond of excommunication. For the aforesaid bishop had bound with the bond of excommunication all those who determined to oppose the sentence rendered by him for the aforesaid archdeacon; and, when litigation concerning this had been conducted for some time, we finally caused the aforesaid proctors to be absolved as a precaution. But afterward, when the same abbot and canon wished to proceed against him, the archdeacon was unwilling even thus to admit them as proctors because they conducted themselves as proctors of those who were still bound by the bond of excommunication, and therefore could not proceed at law on their behalf,*] and when the same archdeacon was unwilling to admit them as proctors or to answer their statements in any respect, *the beloved son* P., our subdeacon, *a canon of the basilica of the Prince of the Apostles*, opposed him on the other side, asserting that he *had been* canonically elected Dean of Clermont. For this reason, the said archdeacon was by no means to be heard in his petition, because the deanery itself pertained not to him but rather to P.

[*To this the aforesaid archdeacon replied that, until the sentence rendered for him had been committed to full execution, the aforesaid P. ought not to be heard to impede execution of the sentence. To this the said P. answered that the sentence rendered for the archdeacon by the aforesaid bishop generated no prejudice against him, since according to lawful sanctions a matter conducted between others does not prejudice others.*]

Therefore, when they had debated concerning these matters for some time, we pronounced interlocutorily that the said P., if he could, should establish his contention immediately. When he *to establish his contention* produced witnesses and instruments concerning this, *and when debate had been*

conducted on each side concerning them for some time, we pronounced by interlocutory judgment, *because it was established by the things which had been shown*, that it concerned his interest, so that *the same P.* could oppose the aforesaid archdeacon.

Therefore, when issue had been *lawfully* joined between them concerning both the election and the sentence, the archdeacon himself was asked *before us* whether he wished to admit in this judgment the attestations previously produced concerning the aforesaid point. *After prior deliberation*, he answered that he wished this, provided that he could object both against the persons of the witnesses and against their statements. Upon hearing this, the adverse party answered that it was unwilling to use those attestations in this judgment, since they had been received, when issue had not been joined, not concerning the principal business but concerning an incidental point. Hence it wished to produce other witnesses concerning the whole business, or the same witnesses.

But the adverse party answered that, since those witnesses had spoken concerning both the sentence and the election, and their attestations had been published in judgment, it was not lawful for P., after he had learned the things testified, to produce other witnesses concerning the same articles, especially since the aforesaid subdeacon had used those attestations in this *same* judgment. We therefore, *having heard what was proposed on this side and that*, pronounced, as justice required, that witnesses whom each party should determine to produce were to be received concerning the whole business.

Wherefore, *through apostolic writings*, we command your discretion that, after the witnesses have been received and the arguments of the parties understood, you shall determine the cause itself with a canonical end concerning both the principal and the incidental matter, *the obstacle of every contradiction and appeal being removed, causing* [*what you decree to be firmly observed.*] But because the things done in a chapter can hardly be proved except through the canons themselves, we *will and command* that as a precaution you absolve them, so that, when called to testimony, they may be able freely to testify for each party. [*The witnesses, etc. Given at the Lateran on the fourth day before the Ides of July, in the seventh year [of our pontificate]*. 1204.]

> Attestationes receptae in summario fidem non faciunt in plenario iudicio. Et illarum publicatione non obstante iidem vel alii testes super eisdem capitulis recipi possunt.
>
> Idem de Novo Fonte et Casae Dei Abbatibus.
>
> Veniens ad apostolicam sedem *dilectus filius* G. *de Cros* archidiaconus Claremontensis *nobis* humiliter supplicavit, ut sententiam *per venerabilem fratrem nostrum Lemovicensem episcopum* super decanatu Claremontensis ecclesiae pro eo *rationabiliter* latam, quae iam fuerat in parte exsecutioni mandata, faceremus in totum exsecutioni mandari. Quum autem *dilecti filii abbas et G. Dalmas* [*canonicus*] *Claromontensis* procuratores *dilectorum filiorum* capituli Claremontensis in nostra *essent* praesentia *constituti nobis* proposuerint sententiam illam contra iustitiam, et post appellationem ad nos *legitime* interpositam promulgatam +[*et ideo idem archidiaconus in petitione sua non erat aliquatenus audiendus. Idem vero archidiaconus proposuit ex adverso, quod dicti abbas et canonicus tanquam procuratores recipi non debebant, quum tam ipsi, quam illi, pro quibus venerant, excommunicationis essent vinculo innodati, quia praedictus episcopus omnes illos excommunicationis vinculo innodarat, qui sententiae per eum pro memorato archidiacono latae se ducerent opponendos, et, quum super hoc fuisset aliquamdiu litigatum, tandem ad cautelam procuratores absolvi fecimus antedictos. Postmodum vero, quum idem abbas et canonicus vellent agere contra illum, ipse archidiaconus nec sic eos ut procuratores admittere voluit pro eo, quod illorum se procuratores gerebant, qui adhuc erant excommunicationis vinculo innodati, et ideo pro eis in iure non poterant experiri,*] et idem archidiaconus ipsos tanquam procuratores

admittere noluerit, vel dictis eorum aliquatenus respondere, *dilectus filius* P. subdiaconus noster *basilicae principis Apostolorum canonicus* se ipsi opposuit ex adverso, asserens, se canonice *fuisse* in decanum Claremontensem electum, propter quod dictus archidiaconus in sua petitione non erat aliquatenus audiendus, quia decanatus ipse non ad illum, sed ad se potius pertinebat. +[*Ad quod memoratus archidiaconus replicabat, quod donec sententia lata pro ipso plenariae foret exsecutioni mandata, praedictus P. ad impediendam exsecutionem sententiae non debebat audiri. Ad hoc dictus P. respondebat, sententiam pro ipso archidiacono a supradicto episcopo latam nullum sibi praeiudicium generare, quum res inter alios acta non praeiudicet aliis secundum legitimas sanctiones.*] Quum igitur super his aliquamdiu disceptassent, interlocuti fuimus, ut dictus P., si posset, in continenti suam intentionem fundaret. Qui quum *ad suam intentionem fundandam* super hoc testes et instrumenta produxerit, *super quibus, quum utrimque fuisset aliquamdiu disputatum, nos* interloquendo pronunciavimus, *quoniam per ea, quae fuerant ostensa, constabat*, quod sua intererat, ut *idem P.* se posset opponere archidiacono memorato. Lite igitur in eos tam super electione, quam super sententia *legitime* contestata, quaesitum fuit ab ipso archidiacono *coram nobis*, utrum attestationes prius exhibitas in articulo supradicto in hoc iudicio vellet admittere, qui *praehabita deliberatione* respondit, quod vellet, dummodo posset, obiicere tam in personas testium quam in dicta. Quo audito pars adversa respondit, quod attestationibus illis in hoc iudicio uti nolebat, quum non super principali negotio, sed super articulo incidenti fuissent lite non contestata receptae. Unde super toto negotio alios volebat testes producere vel eosdem. Pars autem respondit adversa, quod, quum testes illi tam super sententia quam super electione dixissent, et eorum attestationes fuissent in iudicio publicatae, non licebat eidem, postquam testificata didicerat, super eisdem articulis alios testes producere, praesertim quum in hoc *ipso* iudicio attestationibus illis usus fuisset subdiaconus praelibatus. Nos igitur, *auditis quae fuerunt hinc inde proposita*, iustitia pronunciavimus exigente, quod testes essent recipiendi super toto negotio, quos utraque pars duceret producendos. Quocirca *discretioni vestrae per apostolica scripta* mandamus, quatenus, receptis testibus, et rationibus partium intellectis, causam ipsam tam super principali quam etiam incidenti, *sublato cuiuslibet contradictionis et appellationis obstaculo*, fine canonico terminetis *facientes* [*quod decreveritis firmiter observari.*] Quia vero quae in capitulo aguntur non facile possunt nisi per canonicos ipsos probari, volumus *et mandamus*, ut ad cautelam absolvatis eosdem, ut vocati ad testimonium libere valeant pro utraque parte testari. [*Testes etc. Dat. Lat. IV. Id. Iul. Ao. VII. 1204.*]

Chapter XXXIX

Latin source headnote: Even religious persons are not admitted to testify without an oath, unless it is remitted by the parties.

The same, to the Archbishop of Besançon.

To your questions—(*And below:* [*Cf. c.* 23, *On Prebends, III.* 5.]) Monks cannot produce their brothers and lay brothers as witnesses in their own causes without the furnishing of an oath, unless perhaps it is remitted by the adverse party. [*Religious persons also, etc. Given at the Lateran on the eleventh day before the Kalends of April, in the eleventh year [of our pontificate].* 1208.]

Religiosi etiam ad testificandum non admittuntur absque iuramento, nisi a partibus remittatur.

Idem Bisuntino Archiepiscopo.

Tuis quaestionibus (*Et infra:* [*cf. c. 23. de praeb. III. 5.*]) Monachi vero de suis fratribus ac conversis testes in causis propriis producere absque iuramenti exhibitione non possunt, nisi forte a parte remittatur adversa. [*Religiosi quoque etc. Dat. Lat. XI. Kal. Apr. Ao. XI. 1208.*]

Chapter XL

Latin source headnote: A delegated judge necessary as a witness is removed from judging, and another is substituted.

The same, to the Bishop of Arras and the Abbots of Dedimenen and Ourscamp.

It became known to us from the explanation of the beloved son, the Provost of Aire, that, when we considered that the cause conducted between him and *the noblewoman*, the Countess of Flanders, concerning the donation of six priestly prebends, should be committed to you, *brother* bishop and *son* Abbot of Dedimenen, *and also* to the *beloved son*, the Dean of Arras, the same provost proposed *before you*, before joinder of issue, that the testimony of *that* dean was necessary to him in the aforesaid cause, since he could not create faith concerning his right except through him and only one other witness. Hence he *urgently* petitioned that proceedings be conducted in the cause itself after the dean was excluded, or that the business be suspended until *we* substituted another in his place. But you refused to admit his petition *in this respect*; indeed, rather, after the appeal *which he interposed to us for this and other reasons*, you suspended him from the donation of those prebends.

Therefore, lest his justice perish because of the want *of such* a witness, we have considered that you, *son* Abbot of Ourscamp, should be substituted in his place, commanding *through apostolic writings* that, if it is so, after the aforesaid suspension of the provost has been relaxed, you shall proceed in the *same* cause according to the tenor of the former mandate, reason going before. [*But if not all, etc. Given at the Lateran on the fourteenth day before the Kalends of March, in the eleventh year [of our pontificate]*. 1209.]

> Delegatus necessarius in testem removetur a iudicando, et alius subrogatur.
>
> Idem Attrebatensi Episcopo et Dedimenen. et Ursicampi Abbatibus.
>
> Dilecto filio Ariensi praeposito nobis innotuit exponente, quod, quum causam, quae inter ipsum et *nobilem mulierem* comitissam Flandrensem super donatione sex praebendarum sacerdotalium agitatur, vobis, *frater* episcope ac *fili* abbas Dedimenen., *nec non* et *dilecto filio* Attrebatensi decano duxerimus committendam, idem praepositus citra litis contestationem proposuit *coram vobis*, quod testimonium *ipsius* decani sibi necessarium erat in causa praedicta, quum de iure suo non nisi per ipsum et alium unicum tantum testem facere fidem posset. Unde postulavit *instanter*, ut in causa ipsa eo procederetur excluso, vel supersederetur negotio, quousque *nos* substitueremus alium loco eius; vos autem petitionem eius *in hoc* admittere recusastis, quin immo post appellationem, *quam ad nos ipse propter hoc et alia interposuit*, a praebendarum ipsarum donatione suspendistis eundem. Ne igitur ob *huiusmodi* testis defectum eius iustitia valeat deperire, te, *fili* abbas Ursicampi, loco ipsius duximus subrogandum *per apostolica scripta* mandantes, quatenus, si est ita, *praelibata* suspensione praepositi relaxata, in causa *ipsa* iuxta prioris mandati tenorem ratione praevia procedatis. [*Quod si non omnes etc. Dat. Lat. XIV. Kal. Mart. Ao. XI. 1209.*]

Chapter XLI

Latin source headnote: Lest an abundance of proof perish, after the adversary has been cited, witnesses whom the defendant introduced are received and published.

The same, to the Judge of Sabina.

The *beloved son* [*B.*], priest of Saint N. in the diocese of Sabina, signified to us that the founders of the same church, wishing it to be free, said at the time of foundation that they retained *absolutely* no right in it for themselves. Hence, fearing that with the course of time an abundance of proof might perish,

the same priest petitioned that provision be made *for him* concerning this. Wherefore, *by the authority of the present letters*, we command you that you shall diligently examine the suitable witnesses whom he should determine to produce *to you* concerning this and shall cause their statements to be reduced to public records, notifying the aforesaid founders or their heirs that they may attend the reception of the witnesses if they wish, and shall cause a public instrument to be made concerning notification thus made. [*Given at the Lateran on the Ides of April, in the twelfth year [of our pontificate]*. 1209.]

> Ne probationis copia pereat, citato adversario recipiuntur et publicantur testes, quos reus induxit.
>
> Idem Iudici Sabinensi.
>
> Significavit nobis *dilectus filius* [*B.*] presbyter sancti N. Sabinensis dioecesis, quod fundatores eiusdem ecclesiae liberam eam esse volentes, fundationis tempore se in ea nihil iuris *penitus* retinere dixerunt. Unde timens, ne processu temporis probationis copia valeat deperire, provideri *sibi* super hoc idem presbyter postulavit. Quocirca *praesentium tibi auctoritate* mandamus, quatenus testes idoneos, quos ipse super hoc *tibi* duxerit producendos, examines diligenter, et eorum dicta in publica redigi facias monumenta, denunciando fundatoribus ante dictis vel eorum heredibus, ut receptioni testium, si velint, intersint, et super denunciatione sic facta confici facias publicum instrumentum. [*Dat. Lat. Id. April. Ao. XII. 1209.*]

Chapter XLII

Latin source headnote: If the subject matter of an old article is repeated with something added which is subjected to the necessity of proof, even former witnesses can be produced after the attestations have been published.

The same, to the Bishop and Archdeacon of Benevento.

When the cause conducted between the steward of the monastery of Saint Martin of Monte—(*And below: cf. c.* 6, *On Sale, III.* 17.) Therefore, since the abbot and brothers of that place intend *through witnesses* to prove how great the price of the aforesaid possessions was at the time of sale, *by the authority of the present letters* we command you that *within the space of three months* you shall receive, *appeal being removed*, the witnesses whom either party should determine to produce concerning this, *hear the cause and, remitting it to us sufficiently instructed, appoint a fitting term for the parties at which they shall present themselves before us to receive sentence*. But if the monastery's party produces, to prove this article, the same witnesses whom it produced to prove another, you shall nevertheless take care to receive them, because it is one thing to have proved the excess of the deception and another to prove the quantity of the value.

> Si materia antiqui capituli repetitur aliquo addito, quod subiicitur necessitati probandi, possunt testes etiam antiqui publicatis attestationibus produci.
>
> Idem Episcopo et Archidiacono Beneventanis.
>
> Quum causa, quae inter oeconomum monasterii sancti Martini de Monte (*Et infra: cf. c. 6. de empt. III. 17.*) Quum igitur abbas et fratres eiusdem loci probare *per testes* intendant, quanti pretii venditionis tempore possessiones praedictae fuere, *praesentium vobis auctoritate* mandamus, quatenus *infra trium mensium spatium* recipiatis *appellatione remota* testes, quos alterutra partium super hoc duxerit producendos, *+audiatis causam et, eandem remittentes ad nos sufficienter instructam, praefigatis partibus terminum competentem, in quo nostro se conspectui repraesentent sententiam recepturae*. Si vero pars monasterii ad hunc *probandum* articulum eosdem testes produxerit, quos ad alium probandum produxit, vos nihilominus

eos recipere procuretis, quoniam aliud est probasse deceptionis excessum, et aliud probare quantitatem valoris.

Chapter XLIII

Latin source headnote: Witnesses who were present at a sentence are received and published where the sentence does not appear from a writing.

The same.

The knight Alberic took care to intimate to us that, when formerly a matrimonial question was conducted between him and C., a woman of Ravenna, before the chapter of Ravenna, finally, *as justice required*, a sentence of separation was rendered between them. But afterward the said knight *lawfully joined two wives to himself at different times and received sons from them*, and, fearing that prejudice could be generated against himself and the sons whom he received from a lawful wife from the fact that the aforesaid sentence was not reduced to writing, *humbly supplicated us that, taking paternal care for him concerning this*, we cause the witnesses who were present at the aforesaid sentence to be received. *Therefore, because it becomes us to impart benevolent favor to those seeking just things*, we command that you shall take care to receive the aforesaid witnesses, causing their depositions to be reduced to a public writing.

Recipiuntur et publicantur testes, qui interfuerunt sententiae, ubi per scripturam de sententia non apparet.

Idem.

Albericus miles nobis insinuare curavit, quod, quum olim inter ipsum et C. mulierem Ravennatensem coram capitulo Ravennatensi matrimonii quaestio verteretur, tandem *exigente iustitia* lata fuit divortii sententia inter eos. Postea vero dictus miles *duos diversis temporibus legitime sibi copulavit uxores, et filius ex eisdem suscepit, et* timens, sibi et filiis, quos de legitima uxore suscepit, ex eo posse praeiudicium generari, quod in scriptis redacta non fuit sententia memorata, *nobis humiliter supplicavit, ut, super hoc paterna sibi sollicitudine praecaventes*, testes, qui sententiae interfuere praedictae, recipi faceremus. *Quoniam igitur iusta petentibus favorem nos decet benevolum impertiri*, Ideoque mandamus, quatenus testes curetis recipere ante dictos, depositiones ipsorum in scripturam publicam redigi facientes.

Chapter XLIV

Latin source headnote: After the attestations have been published, witnesses who were previously produced in a summary judgment or outside judgment can be produced concerning the same article or one directly contrary to it. This is what it says according to the more noteworthy understanding, without positing any special rule in a matrimonial cause. And then explain the text at the end, where it says "in this case"; namely, when witnesses produced elsewhere are produced again. Panormitanus.

The same, to the Bishop of Beauvais.

When in your diocese—(*And below:* [*Cf. c.* 30, *On Tithes, III.* 30.]) But whether, if a suitable accuser appears and relationship between persons already joined is proved through three or four witnesses, the depositions of those later witnesses derogate from the credibility of eleven or twelve relatives—earlier in time and more excellent in merits—who, before the marriage was contracted, swore the contrary while distinguishing the persons and degrees from whom those whose union is at issue directly descended, or whether the former witnesses are preferred to the later ones, could not

undeservedly be asked. Although both those and these swore for another matter and for another reason, nevertheless, if in the second judgment the persons first sworn deposed those same things which they said in the first, without doubt their testimonies would prevail, nor could they be repelled under the pretext that the parties had learned the things testified, since such an exception has no place in this case. [*Given at the Lateran on the fourth day before the Kalends of November, in the fifteenth year of our pontificate.* 1212.]

> Publicatis attestationibus possunt produci testes super eodem articulo, vel directe contrario, qui prius fuerunt producti in iudicio summario seu extra iudicium. H. d. secundum notabiliorem intellectum, non ponendo aliquam specialitatem in causa matrimoniali. Et tunc expone textum in fin. ibi, in hoc casu; scilicet quum testes alias producti reproducantur. Panorm.
>
> Idem Belvacensi Episcopo.
>
> Quum in tua dioecesi: (*Et infra:* [*cf. c. 30. de decimis III. 30.*]) Utrum autem, si accusatore idoneo comparente, per tres vel quatuor testes inter iam coniunctos parentela probaretur, per depositiones eorundem posteriorum testium derogetur fidei undecim vel duodecim propinquorum, qui antiquiores tempore ac praestantiores meritis ante contractum matrimonium in contrarium iuraverant, distinguendo personas et gradus, a quibus directe hi, de quorum copula agitur, descenderunt, an primi posterioribus praeferantur, non immerito quaeri posset. Quanquam autem ad aliud et ob aliud iuraverint tam illi quam isti, tamen, si in secundo iudicio priores personae iuratae deponerent illa eadem, quae primo dixerunt, absque dubio eorum testimonia praevalerent, nec eo possent praetextu repelli, quod partes testificata didicerant, quum talis exceptio locum non habeat in hoc casu. [*Dat. Lat. IV. Kal. Nov. Pont. nostr. Ao. XV. 1212.*]

Chapter XLV

Latin source headnote: Those who impede a party in producing witnesses can be excommunicated, and witnesses are to be declared not bound by an oath not to tell the truth. And if relatives impede the plaintiff's witnesses from telling the truth, the defendant is punished, since this is presumed to be done by his will.

The same.

When *our venerable brother* [*Alferius*], Archbishop of Sorrento, and *the beloved son* M., canon of Sorrento, were established in our presence, while M., [*after a libellus of accusation had been framed*], denounced him for the crime of simony, [*asserting nevertheless that he was liable for the crime of injured majesty because, as he said, by the machination of the same archbishop the city of Sorrento withdrew from royal fidelity and swore to the reprobate Otto; and that the archbishop himself, while excommunicated, celebrated divine services, since after such a machination—through which persons who machinate things of this kind incur the sentence of excommunication rendered by the Apostolic See—he presumed to celebrate divine services, the archbishop, before he petitioned that the faculty of copying the libellus be granted to him, excepted against the person of the accuser that he was an enemy and conspirator, alleging that access to accusation should be interdicted to him, since according to canonical institutes enemies and conspirators ought to be admitted to the accusation of no one.

To this the adverse party answered that, since the stain of simoniacal depravity is so great that slaves are admitted against masters and any criminals whatever are admitted, and since, in betraying the

crime of injured majesty, even an associate in the faction entered into is not only heard but indeed endowed with reward and honor, exceptions of this kind could not defeat the accusation concerning the aforesaid matters, especially since it concerns public liberty that crimes not remain unpunished. To these things, however, it was answered to the contrary that, since in the decree of Pope Anacletus it is expressly provided that persons who were enemies before yesterday or the day before yesterday cannot be accusers, lest in anger they desire to harm or, having been injured, to avenge themselves, and since an unoffending and not a suspect disposition of accusers is sought, and the constitution of Pope Callistus generally forbids conspirators to be admitted to anyone's accusation, while it is not expressed in any canon that an enemy and conspirator is heard in excepted crimes, lest what has not been established by the teaching of the holy Fathers be attempted through superstitious inventions, the general prohibition is to be upheld concerning the aforesaid matters, especially according to canonical equity, which ought not to open a way to acts of malice.

Amid these things, when the archbishop was questioned concerning the causes of enmity and conspiracy, he answered that the aforesaid M. had opposed himself to the bishop as a manifest adversary both when he was assumed as archdeacon and when he was assumed as archbishop. Furthermore, when a certain Neapolitan had machinated the death of the archbishop's brother and was ejected from his own city by the latter's friends, certain magnates whom the said Neapolitan touched by a line of consanguinity, regarding his ejection as an injury, induced the same Matthew to conspire with certain others for the condemnation of the archbishop himself. We did not consider that the former ground should be admitted, especially since reconciliation had followed, as was noted from the narration of the archbishop himself. But concerning the other, which M. denied, it was proposed on his behalf that every conspiracy by subjects against a prelate is not prohibited. For, since according to the decree of Pope Gelasius no cleric ought to trust that he is immune from apostolic offense if he sees a bishop transgressing in those things which apostolic authority has declared are to be followed salubriously and does not immediately take care to bring this to the ears of the Roman Pontiff, subjects can not undeservedly conspire against a pestilential prelate, after the example of the forty bishops of Illyricum and Greece who, coming together through a profession made in writing, withdrew from Timothy, who through fear of the Emperor Anastasius had been assumed as Bishop of Constantinople.

But when the archbishop asserted that Matthew conspired against him from the foment of malice and that he would lawfully prove this, finally, with the parties consenting, we considered that provision should be made as follows: that the archbishop, receiving the libellus presented, should answer concerning the crimes objected, the faculty of proving that the same M. had conspired against him from malice being reserved to him. The framing of the libellus was as follows:

"In the name of the Lord, Amen. In the year of the Lord one thousand two hundred and thirteen, in the sixteenth year of the pontificate of the lord Innocent III, Supreme Pontiff, in the month of October, on the seventh day before its Ides. Before you, lord Innocent, by the grace of God Supreme Pontiff, I, Matthew, canon of Sorrento, denounce the lord Alferius, Archbishop of Sorrento, as guilty under canonical law of simony, because I say that in the city of Sorrento, in the chamber beside the dining room of the episcopal residence, in the time of the lord Celestine III, Supreme Pontiff, in the month of January, he promised the Archdeaconry of Sorrento to John Ciroleon, formerly canon of Sorrento, so that he would consent to his election. Likewise, I denounce him as guilty of the crime of

injured majesty because, in the city of Sorrento, in his palace, in the month of May, in the time of the lord Innocent III, Supreme Pontiff, through his procurement the city of Sorrento, withdrawing from royal fidelity, swore to Otto. And I denounce that afterward he celebrated divine services many times in the Church of Sorrento, although I believe that on this account he incurred the bond of excommunication through your sentence. I, the said M., profess that I have given this libellus of inscription."

When the libellus was finally offered, the archbishop's party alleged that in a certain part it had been framed less than lawfully because it did not contain the year in which the objected crimes had been committed. For since the framing of a libellus ought to contain the month and consuls under whom the crime is said to have been committed, and consuls were appointed annually in antiquity, it appears that the year of the admitted crime ought to be expressed in the libellus. The month would also be ordered to be included in vain if there were no certainty concerning the year to which the month belongs.

To this the accuser's party answered that, since the year is not found expressed in the form of framing a libellus, just as the day is not to be included, so neither is the year of the admitted crime to be included, lest an occasion for suborning witnesses be furnished. Nor, from the fact that consuls ought to be expressed in the civil forum, although consuls were formerly annual, does it follow that a certain year is to be expressed, since the same consul could have held the office of consul at different times and in several years; hence a certain year could not be established by expression of his name. And since in the naming of the month it is not established to which year the month belongs, an occasion for suborning witnesses could not be taken through expression of the month as it could through expression of the year.

But after these and other things had been proposed on this side and that, when finally the accuser expressed that the archbishop committed the objected crime of simony in the year in which he obtained the archbishopric, by promising the Archdeaconry of the Church of Sorrento to I. Ciroleon, formerly canon of Sorrento, if he would consent to him; and since the time when the aforesaid city swore to Otto was sufficiently manifestly established, proceedings advanced to joinder of issue, the archbishop denying the crimes alleged against him. He confessed, nevertheless, that after the city swore to Otto, he celebrated many times.

But after certain witnesses had been produced on behalf of the archbishop to prove the exception objected, with a protestation of this kind by M.—namely, that after publication of their depositions he might, if he wished, object against their persons, because the archbishop was unwilling to be content with them—without publishing their depositions, with the consent of the parties we considered that the reception of witnesses concerning both the principal matter and the aforesaid exception should be committed to your fraternity. Through apostolic writings we command you that you shall diligently examine the witnesses whom each party should determine to produce and shall faithfully transmit their written statements to us enclosed under your seal, appointing for the parties a fitting term at which they shall present themselves before us.*]

Moreover, because from the beginning the aforesaid M. protested that *the nobleman Simon of Sorrento, the full brother of the aforesaid archbishop, and certain other* relatives of the archbishop himself had through their power furnished many impediments whereby he could not have with him an abundance of proofs in our presence—since they induced certain persons to swear that they would say nothing

against the archbishop and endeavor by threats and terrors to keep others from giving testimony—we, wishing by our office to provide concerning this, command that you shall render a general sentence of excommunication against all who presume to furnish any impediment to M. himself in producing witnesses. But you shall announce that those who, as has been said, are established to have sworn that they would say nothing against the archbishop are not bound by an oath of this kind, [*whereby they may freely give testimony to the truth in this cause.*]

But if any of the said archbishop's relatives presumes to impede any of the witnesses, because it does not appear likely that such things would be done against his will, and for this reason he is not free from the scruple of concealed complicity, because, if he had wished, he could have prohibited it—since according to lawful sanctions persons who withdraw the opportunity of defense from an adversary show that they favor an iniquitous cause and ought to experience the authority of the judge as mocked—you shall suspend the same archbishop from pontifical office and cause him, *the obstacle of appeal being removed*, to remain suspended until he causes that person to cease from such presumption. [*You, finally, etc. Given at the Lateran on the eighth day before the Ides of November, in the sixteenth year of our pontificate.* 1213.]

> Excommunicari possunt qui partem impediunt in testibus producendis et denunciandi sunt testes non teneri iuramento de veritate non dicenda. Et si consauguinei impediunt testes actoris de veritate non dicenda, punitur reus, de cuius voluntate hoc fieri praesumitur.
>
> Idem.
>
> Constitutis in praesentia nostra *venerabili fratre nostro* [*Alferio*] archiepiscopo et *dilecto filio* M. canonico Surrentianis, dum ipse [*accusationis concepto libello*] illum de simoniae crimine deferret +[*asserens nihilominus eum crimini laesae maiestatis obnoxium eo, quod, ut dicebat, eodem archiepiscopo machinante Surrentina civitas a regia fidelilate recessit, et reprobo iuravit Othoni, ac ipsum archiepiscopum excommunicatum celebrasse divina, quum post talem machinationem, per quam machinatores huiusmodi latam a sede apostolica excommunicationis sententiam incurrerunt, divina praesumpserit celebrare, archiepiscopus, antequam describendi libellum fieri sibi copiam postularet, in personam accusatoris, quod esset inimicus et conspirator, excepit, allegans interdicendum ei aditum accusandi, quum secundum instituta canonica inimici et conspiratores in nullius debeant accusationem admitti. Ad quod pars adversa respondit, quod, quum, tanta sit labes simoniacae pravitatis, ut servi adversus dominos et criminosi quilibet admittantur, et in prodendo crimine laesae maiestatis socius etiam initae factionis non solum auditur, quin immo praemio et honore donatur, super praemissis exceptiones huiusmodi accusationem elidere non valebant, praesertim quum publicae libertatis intersit, ne crimina remaneant impunita. Fuit autem ad haec ex adverso responsum, quod, quum in decreto Anacleti Papae caveatur expresse, accusatores esse non posse qui ante hesternum diem aut nudiustertius inimici fuerunt, ne irati nocere cupiant vel laesi ulcisci, et inoffensus accusatorum quaeratur affectus et non suspectus, ac constitutio Callisti Papae generaliter interdicat conspiratores in alicuius accusationem admitti, nec in aliquo canone sit expressum, quod inimicus ac conspirator in exceptis criminibus audiatur, ne quod sanctorum Patrum documento sancitum non est superstitiosis adinventionibus attentetur, circa promissa prohibitioni standum est generali, praesertim secundum aequitatem canonicam, quae viam non debet malignitatibus aperire. Inter haec autem de causis inimicitiarum et conspirationis archiepiscopus interrogatus respondit, quod memoratus M. ipsi episcopo, et quum in archidiaconum, et quum in archiepiscopum fuit assumptus, se opposuit adversarium manifestum. Praeterea quum quidam Neapolitanus fuisset in mortem fratris archiepiscopi machinatus, et per amicos ipsius eiiceretur de propria civitate, quidam magnates, quos dictus Neapolitanus consanguinitatis linea contingebat, eiectionem illius ad iniuriam reputantes, eundem induxere Matthaeum, ut cum quibusdam aliis in damnationem ipsius archiepiscopi coniuraret. Porro priorem causam non duximus admittendam, maxime quum reconciliatio fuerit subsecuta, prout ex narratione ipsius archiepiscopi notabatur. Super alia vero, quam inficiabatur M., fuit pro ipsius parte propositum, quod non est*

interdicta subiectis omnis coniuratio in praelatum, quia, quum secundum decretum Gelasii Papae quisquam clericorum confidere non debeat offensae apostolicae se immunem, si in iis, quae sequenda salubriter apostolica deprompsit auctoritas, episcopum viderit excedentem, et non protinus ad aures Romani Pontificis deferre curaverit, in pestilentem praelatum non immerito possunt coniurare subiecti, exemplo quadraginta episcoporum Illyrici ac Graeciae, qui per professionem in scriptis factam convenientes in unum, a Timotheo, qui per metum imperatoris Anastasii fuerat in Constantinopolitanum assumptus episcopum; discesserunt. Verum asserente archiepiscopo ex fomite malignitatis in eum coniurasse Matthaeum et hoc se legitime probaturum, ad ultimum consentientibus partibus sic duximus providendum, ut archiepiscopus, porrectum libellum accipiens, super obiectis criminibus responderet, reservata sibi facultate probandi, quod idem M. ex malignitate coniuravit in ipsum. Libelli vero conceptio talis erat: «In nomine Domini Amen. Anno Domini millesimo CCXIII. pontificatus domini Innocentii III. summi Pontificis anno sextodecimo, mense Octobris, septimo Idus eiusdem. Apud vos, domine Innocenti, Dei gratia summe Pontifex, ego Matthaeus canonicus Surrentinus defero dominum Alferium Surrentinum archiepiscopum lege canonica reum de simonia, quia dico ipsum promisisse archidiaconatum Surrentinum Ioanni Ciroleon olim canonico Surrentino, ut consentiret electioni suae in civitate Surrenti, in camera, iuxta triclinium episcopii, tempore domini Coelestini tertii summi Pontificis, mense Ianuarii. Item defero eum reum de crimine laesae maiestatis, quia civitas Surrentina recedendo a fidelitate regia iuravit Othoni, ipso hoc procurante, tempore domini Innocentii tertii summi Pontificis in civitate Surrenti, in palatio suo, mense Maii. Et defero eum postmodum multotiens celebrasse divina in ecclesia Surrentina, quum per sententiam vestram credam eum ob hoc excommunicationis vinculum incurrisse. Ego dictus M. profiteor me hunc libellum inscriptionis dedisse.» Oblato tandem libello pars archiepiscopi allegavit, quod erat minus legitime in quadam sui parte conceptus eo, quod non continebatur in ipso, quo anno fuerint crimina obiecta commissa. Quum enim libelli conceptio continere debeat mensem et consules, sub quibus crimen dicitur fuisse commissum, et antiquitus consules constituerentur annales, videtur quod admissi criminis annus exprimi debeat in libello. Frustra etiam mensis iuberetur apponi, si anni, cuius est mensis, non habetur aliqua certitudo. Ad quod pars accusatoris respondit, quod, quum in forma concipiendi libellum de anno non inveniatur expressum, sicut nec dies, ita nec annus admissi criminis debet apponi, ne subornationi testium occasio praebeatur. Nec propter hoc, quod in foro civili debent exprimi consules, licet consules essent antiquitus annui, sequitur, quod certus annus sit exprimendus, quum idem consul diversis vicibus et pluribus annis gerere potuisset officium consulatus; unde per expressionem nominis eius de certo anno constare non posset. Et quum in denominatione mensis non constet, cuius anni mensis exsistat, non ita per expressionem mensis, sicut et anni, ad subornandum testes occasio posset assumi. His autem et aliis hinc inde propositis, quum ad ultimum accusator expresserit archiepiscopum eo anno commisisse simoniae crimen obiectum, quo fuit archiepiscopatum adeptus, promittendo archidiaconatum ecclesiae Surrentinae I. Ciroleon quondam canonico Surrentino, si consentiret in ipsum, ac de tempore, quo praedicta civitas iuravit Othoni, satis manifeste constaret, ad contestationem litis, inficiante archiepiscopo crimina sibi opposita, est processum. Confessus est tamen, quod, postquam civitas iuravit Othoni, multotiens celebravit. Pruductis autem ex parte archiepiscopi quibusdam testibus ad probandam exceptionem obiectam cum huiusmodi protestatione M., scilicet quod post publicationem depositionum illorum, si vellet, posset obiicere in personas, quia illis archiepiscopus contentus esse nolebat, depositiones ipsorum minime publicantes, receptionem testium tam super principali quam super exceptione praedicta de consensu partium fraternitati tuae duximus committendam, per apostolica tibi scripta mandantes, quatenus testes, quos utraque pars duxerit producendos, diligenter examines, et eorum dicta conscripta fideliter ad nos sub tuo conclusa sigillo transmittas, praefigens partibus terminum competentem, quo nostro se conspectui repraesentent.] Ceterum quoniam a principio protestatus est praefatus M., *nobilem virum Simonem Surrentinum germanum archiepiscopi memorati, et quosdam alios* ipsius archiepiscopi consanguineos multa impedimenta per suam potentiam praestitisse, quo minus probationum copiam in nostra praesentia secum haberet, quum quosdam induxerint ad iurandum, ne adversus archiepiscopum aliquid dicerent, et alios minis et terroribus a testimonio perhibendo arcere nitantur, nos ex officio nostro super hoc providere volentes, mandamus, ut generalem feras excommunicationis sententiam in omnes, qui impedimentum aliquod ipsi M. praestare praesumpserint in testibus producendis. Illos autem, quos, ut dictum est, iurasse constiterit, quod contra archiepiscopum nihil dicerent, denuncies iuramento

huiusmodi non teneri, [*quo minus valeant in hac causa perhibere testimonium veritati*.] Si quis autem de consanguineis dicti archiepiscopi aliquem de testibus praesumpserit impedire, quia verisimile non videtur, ut eo invito talia fierent, et ob hoc non caret scrupulo societatis occultae eo, quod, si voluerit, potuerit prohibere, quum secundum legitimas sanctiones iniquam ostendant se causam fovere, et experiri debeat iudicis auctoritatem elusam, qui defensionis copiam subtrahit adversario, eundem archiepiscopum ab officio pontificali suspendas, et facias *sublato appellationis obstaculo* manere suspensum, donec illum fecerit a tali praesumptione cessare. [*Tu denique etc. Dat. Lat. VIII. Id. Nov. Pont. nostr. Ao. XVI. 1213*.]

Chapter XLVI

Latin source headnote: One who has not learned the things testified and has not renounced the production of witnesses can produce, concerning old articles or chapters, even witnesses produced elsewhere.

The same, to the Archbishop of Magdeburg and the Provost of Seeburg.

When the proctor of *the beloved daughter in Christ* A., sister of the nobleman, the Margrave of Meissen, and the messenger of the illustrious Prince of Bohemia were established in our presence, *we granted as auditor our beloved son P., cardinal priest of Saint Marcellus. Before him the proctor of the aforesaid noblewoman proposed that, when it had formerly reached our hearing upon her report that the aforesaid prince had lawfully taken her as his wife, had treated her as a lawful spouse for fourteen years and more, and had received sons and daughters from her*, the Bishop of Prague, at the petition *and command* of the same prince, promulgated a sentence of separation after an appeal had been interposed to us, while she wished to approach him in order to propose her actions before him but was prohibited by the attendants of the same *prince*, who twice or three times prohibited her entrance; from that sentence she *through her chaplain, within ten days,* caused an appeal to be made to our presence. (*And below:*)

We therefore, having understood through the aforesaid cardinal what was proposed on this side and that, considered that the attestations received for the aforesaid noblewoman should neither be approved nor disapproved, but decreed that they be reserved for the time of discussion, so that the parties might then allege for or against them; by more strictly commanding you through apostolic writings, we order that, after the parties have been summoned to a suitable place, *every excuse and contradiction ceasing*, you shall receive the witnesses whom either the noblewoman herself on her own behalf or the prince on his behalf should determine to produce concerning the proceeding of the Bishop of Prague or of the later judges, since they have not yet learned the things testified. Nor shall the noblewoman herself be prohibited from introducing on her own behalf either the witnesses whom she previously introduced or others, if she wishes, since she did not renounce the production of witnesses. [*And the acts, etc.*]

Qui testificata non didicit, nec renunciavit testibus producendis, super antiquis articulis seu capitulis testes etiam alias productos producere potest.

Idem Magdeburgensi Archiepiscopo et Praeposito Seburgensi.

Constitutis in praesentia nostra procuratore *dilectae filiae in Christo* A. sororis nobilis viri marchionis Misnensis et nuncio illustris principis Bohemorum, *+dilectum filium nostrum P. Sancti Marcelli presbyterum cardinalem concessimus auditorem, coram quo proposuit procurator nobilis memoratae, quod, quum olim ea significante ad nostram audientiam pervenisset, quod praedictus princeps eam duxisset legitime in uxorem, et XIV. annis et amplius velut coniugem legitime pertractasset, et filiis et filiabus susceptis ex ea*, Pragensis episcopus ad petitionem *et mandatum* eiusdem principis, ipsa volente ad ipsum accedere, ut suas coram eo proponeret actiones, sed

a satellitibus eiusdem *principis* prohibita, qui ei bis vel ter prohibuerunt ingressum, post appellationem ad nos interpositam divortii sententiam promulgavit, a qua ipsa *per suum capellanum intra decem dies* fecit ad nostram praesentiam provocari. (*Et infra:*) *Nos igitur, intellectis per cardinalem praedictum quae fuere hinc inde proposita, attestationes pro nobili memorata receptas nec approbandas duximus, nec etiam improbandas, sed eas tempore discussionis decrevimus reservari, ut tunc pro illis vel contra illas a partibus allegetur, per apostolica scripta districtius vobis praecipiendo* Mandamus, quatenus, partibus ad locum idoneum convocatis, *omni excusatione et contradictione cessante* recipiatis testes, quos vel nobilis ipsa pro se, vel princeps pro parte sua, quum nondum testificata didicerint, super processu Pragensis episcopi vel posteriorum iudicum duxerint producendos, et nobilis ipsa pro se vel testes, quos prius induxit, vel alios, si voluerit, inducere non vetetur, quum non renunciaverit testibus producendis. [*et gesta etc.*]

Chapter XLVII

Latin source headnote: The council lays down twelve requirements, without which testimony from hearsay is not valid for proving consanguinity in a matrimonial cause. This it says, summing generally.

The same, in the general council.

Although, from a certain necessity, it was formerly established, beyond the common form, that testimony from hearsay should be valid in calculating the degrees of consanguinity and affinity, since, because of the brevity of human life, witnesses were unable to depose from sight when calculating as far as the seventh degree; nevertheless, because we have learned by many examples and sure experiences that from this many dangers have arisen against lawful marriages, we establish that henceforth witnesses from hearsay shall not be received concerning this, since now the prohibition does not extend beyond the fourth degree, unless perhaps they are persons of weight to whom faith may deservedly be given, and, before litigation was initiated, they learned the matters testified from their elders—not, indeed, from one, since he would not suffice if he were living, but from two at least; and not from infamous and suspect persons, but from persons worthy of faith and superior to every exception, since it would appear sufficiently absurd that those should be admitted whose authorities would be repelled. Nor yet, if one person has received from several persons, or infamous persons from persons of good reputation, what they testify, ought they to be admitted as several suitable witnesses, since *even* according to the accustomed order of judgments the assertion of one witness does not suffice, even if he shines with the dignity of a governor, and lawful acts are forbidden to infamous persons. Moreover, witnesses of this kind, confirming by their own oath that they do not proceed to give testimony in the cause itself from hatred, love, *fear,* or advantage, shall designate the persons by their express names, or by a demonstration or sufficient circumlocution, and shall distinguish the individual degrees on either side by a clear computation, and shall likewise conclude in their oath that they received from their elders what they depose and believe it to be so. But not even such persons shall suffice unless, under oath, they depose that they saw persons situated at least *in one* of the aforesaid degrees hold themselves to be blood relatives. For it is more tolerable to leave some persons joined contrary to human statutes than to separate persons lawfully joined contrary to the statutes of the Lord.

Ponit concilium duodecim, sine quibus ad probandam consanguinitatem in causa matrimoniali, non valet testimonium de auditu. H. d. summando generaliter.

Idem in concilio generali.

Licet ex quadam necessitate praeter communem formam olim fuerit institutum, in consanguinitatis et affinitatis gradibus computandis valere testimonium de auditu, quum propter brevem hominum vitam testes de visu deponere non valerent usque ad gradum septimum computando; quia tamen pluribus exemplis et certis experimentis didicimus, ex hoc multa pericula contra legitima provenisse coniugia, statuimus, ne super hoc recipiantur de cetero testes de auditu, quum iam quartum gradum prohibitio non excedat, nisi forte personae graves exstiterint, quibus fides sit merito adhibenda, et ante litem motam testificata didicerint ab antiquioribus quidem suis, non utique ab uno, quum non sufficeret ille, si viveret, sed duobus ad minus; nec ab infamibus et suspectis, sed a fide dignis et omni exceptione maioribus; quum satis videretur absurdum illos admitti, quorum repellerentur auctores. Nec tamen, si unus a pluribus, vel infames ab hominibus bonae famae acceperint quod testantur, tanquam plures et idonei testes debent admitti, quum *etiam* secundum ordinem solitum iudiciorum non sufficiat unius testis assertio, etiamsi praesidiali refulgeat dignitate, et actus legitimi sint infamibus interdicti. Testes autem huiusmodi proprio iuramento firmantes, quod ad ferendum testimonium in causa ipsa odio, vel amore, *vel* timore *vel* commodo non procedant, personas expressis nominibus, vel demonstratione vel circumlocutione sufficienti designent, et ab utroque latere singulos gradus clara computatione distinguant, et in suo nihilominus iuramento concludant, se accepisse a suis maioribus quod deponunt, et credere ita esse. Sed nec tales sufficiant, nisi iurati deponant, se vidisse personas vel *saltem* in uno praedictorum graduum constitutas pro consanguineis se habere. Tolerabilius est enim, aliquos contra statuta hominum dimittere copulatos, quam coniunctos legitime contra statuta Domini separare.

Chapter XLVIII

Latin source headnote: After publication, at the petition of the producing party, witnesses ought not to be interrogated unless, through the fraud or negligence of the examiners, they were not interrogated upon all the chapters.

Honorius III, to the Provost of Mogliano in the Diocese of Fermo.

You have intimated to us by your letters that, when the cause that is being conducted concerning certain lands between the canons of Old Saint Peter on one side and G. of Saint Simon *of Guido of Fermo* on the other had been committed to you by the Apostolic See, the said G., after three months had elapsed following the publication of the witnesses, petitions that his witnesses be interrogated again, *concerning which you desire to be instructed by an apostolic response as to what you ought to do.* We therefore *briefly* respond *to your discretion* that he is not henceforth to be heard concerning this, unless perhaps from the beginning he had petitioned that they be interrogated concerning certain chapters and this had been omitted maliciously or negligently.

Post publicationem ad petitionem producentis interrogari non debent testes, nisi quando dolo vel negligentia examinatorum super omnibus capitulis interrogati non fuerunt.

Honorius III. Praeposito Molisii Firmanae dioecesis.

Per tuas nobis literas intimasti, quod, quum causa, quae super quibusdam terris vertitur inter canonicos sancti Petri veteris ex una parte, et G. sancti Simonis *Guidonis Firmani* ex altera, tibi fuisset ab apostolica sede commissa, dictus G., tribus mensibus post testium publicationem elapsis, testes suos interrogari postulat iterato, *super quo quid agere debeas, apostolico responso desideras edoceri*. Nos igitur *discretioni tuae breviter* respondemus illum non esse super hoc de cetero audiendum, nisi forsan a principio illos interrogari super certis capitulis postulasset, idque malitiose vel negligenter fuerit praetermissum.

Chapter XLIX

Latin source headnote: It is permitted to disqualify witnesses of proof and witnesses disqualifying those of proof; but it is not permitted to disqualify witnesses disqualifying those disqualifying witnesses.

The same, to the Abbots of Valladolid and Sacramenia in the Dioceses of Palencia and Segovia.

Although our beloved son L., cardinal priest of the title of the Holy Cross, whom we appointed as auditor for the proctors *of our venerable brother* the Bishop of Burgos and of the clerics of Saint Mary of Castro Soret, diligently heard the matters that the proctors themselves wished to propose, nevertheless, because the proctor of the said bishop proposed that he still wished to speak against the persons of the witnesses produced in the principal cause, *likewise protesting that, for certain reasons, the attestations of the other party, which are said to have been received while the see of Burgos was vacant, were of no moment, since the question itself could not be terminated by you, although the other party urgently sought a sentence. Therefore, remitting it to you with the consent of the parties, we* command your discretion to receive the witnesses whom the parties should determine to produce against the persons of those produced concerning the principal matter. If the other party or both parties should wish in turn to disqualify them, you shall take care to admit proofs against them in such a way that thereafter the parties shall not be permitted to aspire to the disqualification of witnesses, lest, if permission be granted to the parties to produce fourth witnesses against the third, and so forth, it should happen that the matter, *already long protracted,* be protracted still longer.

> Testes probatorios et roprobatorios probatoriorum reprobare licet; sed reprobatorios reprobatorium non licet.
>
> Idem Vallis Oleti et Sacrameniae Abbatibus Palentinae et Segobiensis dioecesis.
>
> Licet dilectus filius noster L. tituli sanctae Crucis presbyter cardinalis, quem procuratoribus *venerabilis fratris nostri* Burgensis episcopi, et clericorum sanctae Mariae de castro Soret dedimus auditorem, ea, quae procuratores ipsi proponere voluerunt, audierit diligenter, quia tamen procurator dicti episcopi contra personas testium productorum in principali adhuc se velle dicere proponebat, +*protestans nihilominus, attestationes partis alterius, quae vacante sede Burgensi dicuntur fuisse receptae, certis de causis nullius esse momenti, quum ipsa quaestio per vos non potuit terminari, licet pars altera sententiam cum instantia postularet. Illam igitur ad vos de consensu partium remittentes, discretioni vestrae* Mandamus, quatenus recipiatis testes, quos contra personas productorum super principali negotio partes duxerint producendos. Quos si rursus pars altera vel utraque voluerit reprobare, contra illos probationes admittere procuretis ita quod ultra non liceat partibus ad reprobationem testium adspirare, ne, si producendi quartos contra tertios et sic deinceps partibus licentia tribuatur, negotium *protelatum iam diu* diutius protelari contingat.

Chapter L

Latin source headnote: Attestations received by an arbiter create faith in a judgment if the witnesses are dead; if they are alive, it is at the option of the person against whom the witnesses were produced whether he wishes to receive the attestations or to have the witnesses depose anew. And add: even if the attestations have been published. And this last point is not in the final law of the Code, under the same title, where the case of this decretal is set forth.

The same, to the Provost and Masters G. and R., Canons of Laon.

The petition presented to us by *Garaud,* Archdeacon of Soissons, contained that, when a question was being conducted between R., his late predecessor, on one side, and the chapter of Saint Peter of Soissons on the other, concerning the jurisdiction that the same archdeacon proposed that he had in the said church by reason of the archdeaconry, at length *by the counsel of good men they elected Bernard,* Chancellor of Paris, and Masters R. of Reims and P. the Breton, canons, as arbiters concerning this. When, after assuming the arbitration, they had proceeded so far in the *aforesaid* matter that, the witnesses having been produced and *their* depositions published, the allegations of both parties having been received, and all the acts having been reduced to writing *and* marked by the impression of their seals, they ought to pronounce the award, *while they were deferring it at the pleasure of their own will,* one of them entered upon the way of all flesh, and another *was* appointed Archbishop of Embrun, who is distant from them by twelve days' journeys and more. Hence, since the arbitration appears to have expired because the aforesaid R. alone was wholly unable to arbitrate, *he humbly supplicated us that we should deign to write to discreet men who ought to proceed to the decision of the cause according to the aforesaid acts. Therefore* we command your discretion that, *if it is so,* you shall terminate *the cause itself* with its due end according to acts of this kind, *the obstacle of appeal removed;* nevertheless reserving to *the same* chapter *according to the laws* the option either to receive the depositions of those of the witnesses produced against them who survive, or, rejecting them, to consent that the same witnesses be admitted again, yet saving *the* right that in either case belongs to the same chapter, both against the persons of the witnesses and against their statements.

> Attestationes receptae per arbitrum fidem faciunt in iudicio, si testes mortui sunt; si vivunt, est in optione illius, contra quem testes producti sunt, an velit attestationes recipere, an testes de novo deponere. Et adde: etiamsi attestationes publicatae sunt. Et hoc ultimum non. est in I. fin. C. eod., ubi ponitur casus huius decret.
>
> Idem Praeposito et Magistro G. et R. Laudun. Canonicis.
>
> Praesentata nobis *Garaudi* Suessionensis archidiaconi petitio continebat, quod, quum inter R. quondam praedecessorem suum ex una parte, et capitulum sancti Petri Suessionensis ex altera super iurisdictione, quam idem archidiaconus se in dicta ecclesia ratione archidiaconatus proponebat habere, quaestio verteretur, tandem *de virorum bonorum consilio Bernardum* cancellarium Parisiensem et magistros R. Remensem et P. Briton. canonicos super hoc arbitros elegerunt. Qui quum suscepto arbitrio adeo in *praedicto* negotio processissent, quod productis testibus et depositionibus publicatis *eorum*, receptisque allegationibus utrorumque, et actis omnibus redactis in scriptis, *et* sigillorum suorum impressione signatis, arbitrium proferre deberent, *eisdem differentibus pro suae libito voluntatis*, unus ipsorum viam fuit universae carnis ingressus, et alius *est* in archiepiscopum Ebredunensem assumptus, qui distat per duodecim diaetas et amplius ab eisdem. Unde quum praedicto R. solo minime arbitrari valente videatur arbitrium exspirasse, *nobis humiliter supplicavit, ut viris discretis, qui secundum arbitrii acta praedicti ad decisionem causae procedere debeant, scribere dignaremur. Ideoque* Discretioni vestrae mandamus, quatenus, *si ita est*, causam *ipsam* iuxta huiusmodi acta *sublato appellationis obstaculo* fine debito terminetis; optione *tamen eidem* capitulo *secundum sanctiones* reservata, ut vel recipiant depositiones eorum, qui supersunt, productorum testium contra eos, vel eas respuentes consentiant, ut iidem testes admittantur iterum, salvo *tamen* iure, quod in utroque casu eidem capitulo competit tam in personas testium quam in dicta.

Chapter LI

Latin source headnote: Faith is not given to a witness, even a religious, who deposes without an oath.

The same, to the Bishop of Penne.

Recently it became known to us upon the supplication of the priest A. that, since he had entered the Order of Friars Minor for the purpose of trial *and thereafter, no profession having been made, had left within a year, we should deign mercifully to provide concerning this; we commanded you that, if the matter stood thus, you should declare that he was not bound to regular observance. Therefore, when the said priest and Brother John, custos of the Friars Minor in your parts, together with certain others, were established in your presence on this account, the said* custos, in order to prove that the same priest had made profession, introduced certain witnesses of his order, who deposed concerning this, without being sworn, while the said priest contradicted. *Hence the aforesaid priest asserted that their testimony was null, while the aforesaid custos replied that according to the rule of his order they could not and ought not to swear, but that in matters of this kind one was to stand by their simple words; wherefore you humbly supplicated us that through our letters we should render you certain of what ought to be done. We therefore briefly* respond to your fraternity that the testimony of no one, however religious he may be, ought to be believed to the prejudice of another unless he has deposed under oath. [*Given at the Lateran, on the Kalends of March, 1225.*]

> Non creditur testi etiam religioso, qui sine iuramento deponit.
>
> Idem Pennensi Episcopo.
>
> Nuper nobis A. presbytero supplicante innotuit, ut, quum ipse ordinem fratrum Minorum causa probationis intrasset, *ac exinde, nulla facta professione, infra annum exiisset, super hoc providere misericorditer dignaremur, tibi dedimus in mandatis, ut, si res taliter se haberet, denunciares ipsum ad regularem observantiam non teneri. Dicto ergo presbytero et fratre Ioanne in partibus tuis Minorum fratrum custode cum quibusdam aliis propter hoc in tua praesentia constitutis, dictus* custos ad probandum, quod idem presbyter professionem fecisset, quosdam ordinis sui testes induxit, qui deposuerunt super hoc, contradicente dicto presbytero, non iurati. +*Unde praefatus presbyter asserebat, eorum testimonium nullum esse, praedicto replicante custode, quod secundum ordinis sui regulam iurare non poterant, nec debebant, sed eorum verbis simplicibus in huiusmodi standum erat, quare nobis humiliter supplicasti, ut, quid agendum sit tibi, te redderemus nostris literis certiorem. Nos ergo fraternitati tuae breviter* Respondemus, quod nullius testimonio, quantumcunque religiosus exsistat, nisi iuratus deposuerit, in alterius praeiudicium debet credi. [*Dat. Laterani Kal. Mart. 1225.*]

Chapter LII

Latin source headnote: Witnesses are to be examined diligently and separately. Supply: even if the matter concerns the life and miracles of someone to be canonized. Abbas.

The same, to the Bishops of Quimper and Tréguier.

When our venerable brother the Bishop and *our beloved sons* the chapter of Quimper, and all the abbots assembled at Cîteaux in general chapter, *and many other bishops and religious, together with the abbot and convent of the Monastery of Saint Maurice of the Cistercian Order in the Diocese of Quimper, formerly intimated to us that, by divine gift, Maurice, of pious memory, abbot of the aforesaid monastery, was resplendent with illustrious miracles, so much so that the monastery itself, by a certain usurpation of usage, or rather by a certain anticipation of what was to come, has taken its designation from his name, and humbly supplicated that we should cause him to be numbered in the catalogue of the saints, so that what the people now usurp by devout presumption, as we have said, or even anticipate by divine prompting—calling him a saint and venerating him without the authority of the Apostolic See—they may at length do duly by apostolic command, to the glory of Christ and of the Christian name, we, assenting to their devout prayers insofar as was fitting, commanded through our*

letters our venerable brother the Bishop of Saint-Pol-de-Léon and our beloved son the Abbot of Saint Leo in the Diocese of Quimper that they should most diligently inquire into the truth concerning the life and miracles of the aforesaid man and faithfully intimate it to us, so that, when it had been fully ascertained, we might more fully be able to assent to the pious desire of the supplicants. The same bishop and abbot transmitted to us a certain document secured by the appending of their own seals, in which indeed many and great miracles are contained, performed, as is said, by the Lord through the merits of the said man; although they are found to have been proved through witnesses sworn and named in the document itself, nevertheless it does not appear from the often-mentioned document that they examined the witnesses themselves separately, or that they interrogated them concerning those things about which they testified and the circumstances thereof with that diligence which is customarily and ought to be employed in the reception of witnesses. Hence, although human devotion ought with ready affection to honor those whom the condescension of divine goodness honors, nevertheless we have judged it safer to defer this matter than to pronounce a sentence in it with insufficient consideration. Yet, unwilling to fail the gift of heavenly grace, but wishing to assist it, we command your discretion that you shall take care to examine separately, with that diligence which is customarily and ought to be employed in the reception of witnesses, the witnesses whom the abbot and monks of Saint Martin of the Cistercian Order shall determine to produce concerning the life and miracles of M., of pious memory, abbot of the aforesaid monastery. [*Given on the Kalends of September, 1225.*]

> Diligenter et sigillatim examinandi sunt testes. Supple: etiamsi agitur de vita et miraculis alicuius canonizandi. Abbas.
>
> Idem Corisopitensi et Trecorensi Episcopis.
>
> Venerabili fratre nostro episcopo et *dilectis filiis* capitulo Corisopitensi, ac universis abbatibus apud Cistercium in generali capitulo congregatis, *+multisque episcopis aliis et religiosis una cum abbate et conventu monasterii S. Mauritii Cisterciensis ordinis Corisopitensis dioecesis olim nobis insinuantibus, piae memoriae Mauritium abbatem praefati monasterii divino munere claris coruscantem miraculis adeo, ut monasterium ipsum quadam usurpatione usus, seu potius quadam anticipatione futuri votum ab eius nomine sortiatur, et humiliter supplicantibus, ut ipsum annumerari sanctorum catalogo faceremus, ut, quod populus devota praesumptione, sicut diximus, nunc usurpat, seu etiam divino instinctu anticipat, illum appellando sanctum et absque auctoritate sedis apostolicae venerando, rite tandem iussione apostolica faciat ad gloriam Christi et nominis Christiani, nos eorum devotis precibus, in quantum decuit, annuentes, venerabili fratri nostro episcopo Leonciensi et dilecto filio abbati sancti Leonis Corisopitensis dioecesis per nostras dedimus literas in mandatis, ut inquirerent super praedicti viri vita et miraculis diligentissime veritatem, et eam nobis fideliter intimarent, ut, ea plene comperta, pio supplicantium desiderio plenius annuere valeremus. Iidem autem episcopus et abbas quandam nobis paginam transmiserunt propriorum sigillorum appensione munitam, in qua multa quidem et magna miracula continentur, facia, ut dicitur, a Domino meritis dicti viri; quae licet probata per testes iuratos et nominatos in ipsa pagina inveniantur: non tamen apparet per paginam saepe dictam, quod ipsos testes examinaverint sigillatim, et quod eos super his, de quibus sunt testificati, ac eorum circumstantiis cum ea interrogaverint diligentia, quae solet et debet in testium receptionibus adhiberi. Unde licet humana devotio prompto affectu debeat honorare quos dignatio divinae bonitatis honorat, tutius tamen esse censuimus hoc differre negotium, quam in eo sententiam minus considerate proferre. Nolentes autem deesse supernae gratiae muneri, sed adesse,* Discretioni vestrae mandamus, quatenus testes, quos abbas et monachi S. Martini Cisterciensis ordinis super vita et miraculis piae memoriae M. abbatis monasterii supradicti duxerint producendos, examinare sigillatim curetis cum ea diligentia, quae solet et debet in receptione testium adhiberi. [*Dat. Kal. Sept. 1225.*]

Chapter LIII

Latin source headnote: A witness who has deposed obscurely is to be examined again. You supply: by the office of the judge.

Gregory IX.

When a strong outcry had ascended against the Bishop of Acerenza concerning simony and other crimes, we commanded the Bishops of Melfi and Ruvo that they should inquire diligently into the truth concerning them. (*And below:*) But because, after the attestations were opened, L. and G. deposed concerning simony so confusedly that the truth cannot be made clear from their statements, we command that you shall diligently examine them again, and faithfully report to us under your seals the matters testified by them and by the others whom you shall receive.

> Iterum examinandus est testis, qui obscure deposuit. Supple tu: ex iudicis officio.
>
> Gregorius IX.
>
> Quum clamor validus contra Acherontinum episcopum super simonia et aliis criminibus adscendisset, Melfitensi et Rubensi episcopis dedimus in mandatis, ut super his diligenter veritatem inquirerent. (*Et infra:*) Verum quia apertis attestationibus L. et G. super simonia ita deposuere confuse, quod ex dictis eorum non potest veritas declarari: mandamus, quatenus examinetis eos iterum diligenter, et tam eorum quam aliorum, quos receperitis, testificata, sub sigillis vestris nobis fideliter referatis.

Chapter LIV

Latin source headnote: One persisting in a crime is repelled from testimony even in a civil cause; but one reformed, if not infamous, is admitted in a civil cause, and even in a criminal cause pursued civilly. It is otherwise in the case of a perjurer, who is repelled in a criminal cause.

The same.

The testimony of one against whom a crime is objected by the adverse party is deservedly disqualified in a criminal cause, or in a civil cause if he persists in the crime itself. But if he is both reformed from the crime and is not accompanied by infamy, he is not to be repelled in a civil cause, or even when a crime is pursued civilly, except on account of the guilt of perjury. In a criminal cause, however, if, upon an accusation instituted against him in another judgment, he has been convicted of or confessed the crime, or if he is now convicted of it by way of exception, or if his reputation has been burdened because at some time he was repelled in such a manner, although in this case he would not be excluded in a civil cause, he can be removed from testimony even if he has done penance.

> Perseverans in crimine, etiam in civili repellitur a testimonio; emendatus vero, non infamis, admittitur in civili, et etiam criminali mota civiliter. Fallit in periuro, qui in criminali repellitur.
>
> Idem.
>
> Testimonium eius, cui ab adversa parte opponitur crimen, merito reprobatur in criminali causa, sive civili, si in ipso crimine perseveret. Si vero sit et crimine emendatus, et eum non comitetur infamia, non est in causa civili, vel etiam quum de crimine civiliter agitur, praeterquam pro reatu periurii, repellendus. In criminali autem, si in alio iudicio instituta accusatione contra ipsum, de crimine convictus exstitit vel confessus, vel si nunc per exceptionem exinde convincatur, aut gravata sit eius opinio, pro eo, quod quandoque fuit tali modo repulsus, quamvis in hoc casu non excluderetur in causa civili, potest a testimonio, licet egerit poenitentiam, removeri.

Chapter LV

Latin source headnote: A fourth production is not to be granted without the legal solemnity described here.

The same.

After a third production, witnesses ought not to be produced further in a cause unless an oath has been furnished by the person who petitions this, that neither by himself nor through another has he withdrawn matters testified or made inquiry into them, nor does he seek a fourth production through any fraud or artifice, but because he was previously unable to have those whom he desires to produce anew.

> Quarta productio non est danda sine solennitate legali, de qua hic.
>
> Idem.
>
> Ultra tertiam productionem non debent testes ulterius produci in causa, nisi praestito ab eo, qui hoc postulat, iuramento, quod neque per se, neque per alium testificata subtraxerit, vel fuerit percunctatus, nec per dolum aut artem aliquam quartam productionem exposcat; sed quia quos desiderat de novo producere prius habere nequivit.

Chapter LVI

Latin source headnote: A person criminally accused is not admitted as a witness against another in a criminal cause while his own accusation is pending, except in excepted crimes.

The same.

No one ought to be admitted to give testimony in criminal matters, except perhaps in excepted crimes, while an accusation of crime against him is pending, since accused persons also are repelled from accusation and from the reception of orders unless they first prove themselves innocent.

> Accusatus criminaliter non admittitur in testem contra alium in causa criminali sua accusatione pendente, nisi in exceptis criminibus.
>
> Idem.
>
> Non debet quis in criminibus, nisi forsan in exceptis, ad testificandum admitti pendente accusatione de crimine contra ipsum, quum etiam accusati, nisi prius se probaverint innocentes, ab accusatione ac susceptione ordinum repellantur.

Title XXI: On Witnesses Being Compelled or Not

Chapter I

Latin source headnote: In a civil cause witnesses are to be admonished and induced to testify, and, if they withdraw themselves because of hatred, favor, etc., they are to be compelled.

Alexander III, to the Bishop-elect of Pavia.

We have committed for termination by judges the matrimonial cause that is being conducted between the woman M. and the son of R. *Cane, which was brought by appeal from your examination to our hearing*. Therefore, *by commanding through apostolic writings,* we order your fraternity that you shall diligently admonish and induce the witnesses invoked by either of the parties in testimony of its

assertion, lest they conceal the truth. But if *you see that* they withdraw themselves because of hatred, favor, or fear, *lest the truth be concealed,* you shall compel them by ecclesiastical coercion to give testimony before the aforesaid judges, or before their messenger whom they shall send for this purpose.

> **De testibus cogendis vel non.**
>
> In causa civili monendi et inducendi testes sunt ad testificandum, et, si se subtrahant odio, gratia etc., compelluntar.
>
> Alexander III. Papiensi Electo.
>
> Causam matrimonii, quae inter M. mulierem et filium R. *Canis* vertitur, *ab examine tuo ad audientiam nostram appellatione perlatam* commisimus iudicibus terminandam. Ideoque *fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus testes ab alterutra partium in suae assertionis testimonium invocatos, ne veritatem occultent, diligentius moneas et inducas. Si autem *videris, quod* odio, vel gratia vel timore se subtrahant, *ne veritas occultetur,* eos ad ferendum testimonium coram praefatis iudicibus, vel eorum nuncio, quem ad hoc miserint, ecclesiastica districtione compellas.

Chapter II

Latin source headnote: Where testimony is necessary, witnesses are to be compelled to give it, even by a sentence of suspension, excommunication, and deposition.

The same, to the Priests of Ponza.

Since your testimony is necessary concerning the cause that is being conducted between *our venerable brother* the Bishop of Palestrina and *our beloved son* the Abbot of Subiaco, *lest anything contrary to truth should occur, by the authority of the present letters we* command you that *on the Wednesday of the immediately following week,* in order to give testimony to the truth, you shall present yourselves before the apostolic presence, *every occasion and excuse ceasing.* But if *then* you do not come, know that by apostolic authority you are suspended from ecclesiastical office and benefice; and, if you do not come even thus, you will be able to fear a sentence of excommunication and deposition.

> Ubi testimonium est necessarium, compellendi sunt testes ad illud ferendum, etiam per suspensionis, excommunicationis et depositionis sententiam.
>
> Idem Presbyteris Pontiae.
>
> Quum super causa, quae vertitur inter *venerabilem fratrem nostrum* Praenestinensem episcopum et *dilectum filium* Sublacensem abbatem, sit testimonium vestrum necessarium, *ne contrarium veritati contingat, praesentium auctoritate vobis* mandamus, quatenus *quarta feria proxime sequentis hebdomadae* perhibituri testimonium veritati *omni occasione et excusatione cessante* apostolico vos conspectui praesentetis. Si vero *tunc* non veneritis, sciatis vos ab officio et beneficio ecclesiastico apostolica auctoritate suspensos, et, si nec sic veneritis, excommunicationis sententiam et depositionis poteritis formidare.

Chapter III

Latin source headnote: A witness who withdraws himself through fear of the adverse party is compelled to testify; add: even in a criminal cause, according to the common understanding, and thus something is added to chapter 1 above, under the same title, and to the chapter *Dilectorum* below, under the same title.

The same, to the Archbishop of Genoa.

Concerning that *of which you desire to be made certain—whether, when someone is convened before a judge concerning some manifest deed, those who were present at the deed are to be compelled to give testimony to the truth* — we respond to your consultation in this way: if the deed is notorious, it does not need to be made clear by the depositions of witnesses, since such matters, *as your discretion is not unaware,* do not require proof or judicial order. But if it is not notorious and the person who is convened has denied the deed, the witnesses who were present at the deed, *according to the custom of the Roman Church,* are to be admonished, not compelled, to give testimony to the truth—unless perhaps it has been established to the judge that they are recalled from giving testimony by fear of the adverse party—although *perhaps* they may generally be compelled to this according to the rigor of human law. [*But if a priest, etc.* (*cf. c. 5, On the Competent Forum, II.2.*)]

> Testis, qui timore adversae partis se subtrahit, testificari compellitur, adde: etiam in criminali, secundum communem intellectum, et sic aliquid additur ad c. 1. supr. eod. et c. Dilectorum. infr. eod.
>
> Idem Genuensi Archiepiscopo.
>
> Super eo +*vero, quod certificari desideras, an, quum aliquis de aliquo facto manifesto ante iudicem convenitur, hi, qui facto interfuerunt, cogendi sint ad ferendum testimonium veritati,* Consultationi tuae taliter respondemus, quod, si factum est notorium, non eget testium depositionibus declarari, quum talia, *sicut tua non ignorat discretio*, probationem vel ordinem iudiciarium non requirant. Verum si non est notorium, et is, qui convenitur, factum negaverit, testes, qui interfuerunt facto, *de consuetudine Romanae ecclesiae* monendi sunt, non cogendi ad ferendum testimonium veritati; nisi forte timore adversae partis constiterit iudici, eos a ferendo testimonio revocari; licet ad hoc *forte* passim possint de iuris humani rigore compelli. [*Si vero presbyter etc.* (*cf. c. 5. de for. comp. II.* 2.)]

Chapter IV

Latin source headnote: Even in a criminal cause, witnesses whom the accused maliciously withdrew from the accuser are compelled. This it says according to the true and common understanding. Abbas.

The same.

It has reached our hearing that, when I., Prior of Saint Lawrence, had been accused before you of the crime of simony and adultery, he *induced and* bound by oath a certain person who was to be led as a witness against him not to depose against him. *Therefore you doubt in what manner one must proceed against the defendant, or whether the aforesaid witness is to be compelled to the assertion of the truth.* We therefore, considering that no one ought to withdraw from an adversary instruments, under the appellation of which witnesses are contained, and that both he who steals instruments and he who withdraws from an adversary an equal opportunity for advocacy *or defense* shows that an inequitable suit is fostered by him, and ought to experience in himself the authority of the judge that he has mocked, *by the authority of the present letters* [*thus*] respond *to you* that the witness himself is deservedly to be compelled in order to uncover the contrivance of so great a fraud and cunning.

> Compelluntur testes etiam in criminali, quos accusatus malitiose accusatori subtraxit. Hoc dicit secundum verum et communem intellectum. Abbas.
>
> Idem.
>
> Pervenit ad audientiam nostram, quod, quum I. Prior sancti Laurentii coram te fuisset de simoniae et adulterii crimine accusatus, quendam, qui contra eum ducendus erat in testimonium, *induxit et*

iuramento adstrinxit, ut non deponeret contra ipsum. +*Ideoque dubitas, qualiter adversus reum sit procedendum, vel si testis supradictus sit cogendus ad veritatis assertionem.* Nos igitur attendentes, quod nemo debet adversario instrumenta, quorum appellatione testes continentur, subtrahere, et quod tam ille, qui surripit instrumenta, quam qui adversario parem advocationis *seu defensionis* copiam subtrahit, iniquam ostendit a se litem foveri, et experiri debet in se iudicis auctoritatem elusam, *praesentium auctoritate tibi* [*taliter*] respondemus, ad detegendum tantae fraudis et calliditatis commentum ipsum testem merito esse compellendum.

Chapter V

Latin source headnote: If the matter cannot be proved otherwise, witnesses are to be compelled even in a criminal cause. This it says according to the more notable reading.

Clement III, to the Bishop of Segovia.

It has reached us that, when *in your episcopate it often happens that* an enormous and intolerable injury is inflicted by laymen upon a cleric in the presence and sight of many, [*or that, while the people are present in church, human blood is horribly shed at the instigation of diabolical fraud,*] *and on this account* those inflicting the injury, when drawn into a cause, deny that they committed so great a crime. And when the injured person desires to prove this by the testimony of those who were present *and saw it,* they, *although they know the truth,* are unwilling to bear testimony to the truth. *And thus it happens that ecclesiastical justice perishes and the clerical order becomes vile.* [*It also happens that, when several persons frequently lay violent hands rashly upon clerics, they are unable, because of very many obstacles, to labor their way to the Apostolic See. And*] *because your fraternity was led to consult us concerning these matters,* we respond to your consultation in this way: those who refuse to testify concerning ecclesiastical affairs, if the truth cannot otherwise be elicited, are to be compelled to do so through ecclesiastical censure. *But if clerics who have suffered injury are unable* [*perhaps*] *to prove the truth by the testimony of others, although according to the rigor of the canons one ought not to stand by the testimony of one, nevertheless, according to the custom of the Roman Church, on account of reverence for the clerical order, we will that faith be given to their oath.* [*But those, etc.* (*cf. c. 17, On the Sentence of Excommunication, V.39.*)]

Si res aliter probari non potest, etiam in causa criminali compellendi sunt testes. H. d. secundum lecturam notabiliorem.

Clemens III. Segobiensi Episcopo.

Pervenit ad nos, quod, quum *in episcopatu tuo saepe contingat, quod* a laicis enormis et intolerabilis iniuria clerico multis adstantibus et videntibus inferatur, [*vel praesente plebe in ecclesia cum diabolicae fraudis instinctu accidat horribiliter humanum sanguinem perfundi,*] *et ob hoc* iniuriantes in causam tracti negant se tantum facinus commisisse. Et quum laesus eorum testimonio, qui praesentes exstiterant *et viderant*, hoc probare desideret, illi, *licet veritatem cognoverint*, nolunt veritati testimonium perhibere. +*Sicque fit, quod ecclesiastica iustitia deperit, et ordo clericalis vilescit.* [*Accidit etiam, quod quum plures frequenter in clericos violentas manus temere iniiciant, ad sedem apostolicam plurimis nequeant obstaculis laborare. Et*] *quia super his tua nos duxit fraternitas consulendos*, Consultationi tuae taliter respondemus, quod hi, qui de rebus ecclesiasticis testificari recusant, si aliter veritas nequiverit elici, ad illud sunt per censuram ecclesiasticam compellendi. *Si vero clerici passi iniuriam veritatem* [*forte*] *aliquorum testimonio nequiverint comprobare, licet iuxta rigorem canonum unius testimonio non sit standum, tamen iuxta consuetudinem Romanae ecclesiae propter reverentiam clericalis ordinis ipsorum iuramento fidem volumus adhiberi.* [*Illos autem etc.* (*cf. c. 17. de sent. exc. V. 39.*)]

Chapter VI

Latin source headnote: Witnesses are to be compelled concerning the proof of consanguinity. Thus it is commonly summarized. But Panormitanus is not pleased by this summary and therefore summarizes it as chapter 1 above, under the same title.

The same.

Moreover, it is not doubted by us that a witness is to be compelled to bear testimony to the truth concerning consanguinity, since both written law approves this and custom approved by the acts of those employing it, *so that,* if it has been established that he suppresses the truth through hatred or favor, *or fear, he is to be compelled to confess completely what is true.*

> Super consanguinitate probanda cogendi sunt testes. Ita communiter summatur. Sed Panorm. non placet hoc summarium, et ideo summat, sicut c. 1. supra eod.
>
> Idem.
>
> Ceterum, quod super consanguinitate cogendus sit testis perhibere testimonium veritati, non dubitatur a nobis, quum id tam ius scriptum approbet, quam consuetudo actibus utentium approbata, *ut*, si ipsum constiterit odio vel gratia veritatem supprimere, *seu timore, cogendus sit, ut quod verum est penitus fateatur*.

Chapter VII

Latin source headnote: A synodal witness who has deposed concerning a marriage before the ordinary is not compelled to swear concerning it before a delegate; this is the first point. Because of supervening infamy he is repelled from testimony; this is the second. He can nevertheless, if he has erred, correct his statement immediately, but not after an interval. This is the third.

Celestine III.

Furthermore, if public witnesses whom your city calls synodal have once rendered testimony concerning a matrimonial cause before you or your chapter, they ought not to be compelled to furnish an oath again concerning the same cause in the presence of any delegated judge, provided that faith is otherwise made for the delegated judge, unless perhaps the article of a new question should arise. Witnesses of this kind, however, can by public law be removed from giving testimony because of infamy, if it should happen that they have *publicly* contracted it after they were received in common. Their testimonies, if at any time they have erred—not, however, deliberately, but in *the very act of* uttering them—and have corrected themselves immediately, ought not to be disqualified; but it will be otherwise if they have interposed an interval before their correction.

> Testis synodalis, qui coram ordinario super matrimonio deposuit, non compellitur iurare super eo coram delegato; hoc primo. Propter supervenientem infamiam a testimonio repellitur; hoc secundo. Potest tamen, si erraverit, in continenti, non ex intervallo, dictum suum corrigere. Hoc tertio.
>
> Coelestinus III.
>
> Praeterea si testes publici, quos tua civitas nuncupat synodales, super causa matrimonii coram te vel tuo capitulo semel testimonium reddiderint, non debent compelli, ut in praesentia alicuius delegati iudicis super eadem causa iterato praebeant iuramentum, dummodo aliter fiat fides iudici delegate, nisi forte articulus novae quaestionis emergat. Huiusmodi vero testes publico iure possunt propter infamiam a perhibendo testimonio removeri, si eam, postquam in communi recepti fuerint, contigerit *publice* contraxisse. Quorum testimonia, si quandoque, non *tamen* studiose, sed in *ipso* proferendo erraverint, et

se in continenti correxerint, reprobari non debent; secus autem erit, si correctioni suae interposuerint intervallum.

Chapter VIII

Latin source headnote: When inquiry is made concerning reputation or the vice of falsity, witnesses are to be compelled. This it says according to Johannes Andreae, but according to Panormitanus it restricts the text too greatly.

Innocent III, to the Prior of Saint Fridianus and Master P., Canon of Pisa.

Concerning these matters—(*And below:* [*cf. c. 16, On Accusations, V.1.*]) Moreover, we will and *by the authority of the present letters* command you that, concerning the articles of the inquiry, both concerning the reputation of the bishop-elect and concerning the letters sent against him in the name of by far the greater and sounder part of the chapter, you shall compel the witnesses who shall have been named to bear testimony to the truth. [*Given at the Lateran, on the third day before the Ides of February, in the fifth year of our pontificate, 1203.*]

Quum de fama vel vitio falsitatis inquiritur, cogendi sunt testes. Hoc dicit secundum Ioan. Andr., sed secundum Panorm. nimis restringit textum.

Innocentius III. Priori sancti Fridiani et Magistro P. Canonico Pisano.

Super his (*Et infra:* [*cf. c. 16. de accus. V. 1.*]) Ceterum volumus et *praesentium vobis auctoritate* mandamus, ut super inquisitionis articulis, tam de fama electi, quam literis contra eum sub nomine longe maioris et sanioris partis capituli destinatis, cogatis testes, qui nominati fuerint, perhibere testimonium veritati. [*Dat. Lat. III. Id. Febr. Pont. nostr. Ao. V. 1203.*]

Chapter IX

Latin source headnote: Witnesses who withdraw themselves are to be compelled even in a criminal cause.

The same, to the Archdeacon of Milan.

When we directed our writings to you against Master R. *of Arca Mariana in the Diocese of Novara* concerning the fact that he is said to have brought back false letters from the Apostolic See and to have used them by himself or through a proctor, you petitioned to be instructed by the oracle of the Apostolic See whether you ought to compel the witnesses named concerning the aforesaid vice of falsity. We therefore *briefly* respond *to your fraternity* that, if the aforesaid witnesses withdraw themselves because of favor, hatred, or fear, you ought, appeal removed, to compel them through ecclesiastical censure to bear testimony to the truth.

Testes, qui se subtrahunt, etiam in criminali cogendi sunt.

Idem Archidiacono Mediolanensi.

Quum contra magistrum R. *de Arca Mariana Novariensi dioecesis* super eo, quod dicitur a sede apostolica falsas literas reportasse, ac eis per se vel per procuratorem usum fuisse, tibi direximus scripta nostra, postulasti per sedis apostolicae oraculum edoceri, utrum super praefato vitio falsitatis testes compellere debeas nominatos. Nos igitur *fraternitati tuae breviter* respondemus, quod testes praedicti, si se gratia, odio vel timore subtraxerint, per censuram ecclesiasticam debes appellatione remota compellere veritati testimonium perhibere.

Chapter X

Latin source headnote: It is not summarized because of the variety of readings, nor is it divided.

Honorius III, to the Abbot of Saint Eugenius and Master G., Canon of Siena.

When the proctors of the beloved sons, the chapter of Volterra, on one side, and of *our venerable brother,* the Bishop of Volterra, on the other, were established in our presence, *we granted our beloved son, the cardinal deacon of the title of Saints Cosmas and Damian, as auditor; before him, when through complaint and countercomplaint issue had lawfully been joined concerning the several chapters that we transmit to you enclosed under our bull, etc.* (*And below:*) Moreover, as to the witnesses who shall have been named, except concerning crimes, if they withdraw themselves because of favor, hatred, or fear, you shall, *appeal ceasing,* compel them through ecclesiastical censure to bear testimony to the truth.

> Non summatur propter varietatem lecturarum, nec etiam dividitur.
>
> Honorius III. Abbati S. Eugenii, et Magistro G. canonico Senensi.
>
> Dilectorum filiorum Vulterani capituli ex parte una, et *venerabilis fratris nostri* episcopi Vulterani ex altera procuratoribus in nostra praesentia constitutis, *dilectum filium tit. sanctorum Cosmae et Damiani diaconum cardinalem concessimus auditorem, coram quo quum per conventionis et reconventionis modum super diversis capitulis, quae sub bulla nostra vobis transmittimus interclusa, lis fuerit legitime contestata, etc.* (*Et infra:*) Testes *autem,* qui fuerint nominati, praeterquam super criminibus, si se gratia, odio vel timore subtraxerint, per censuram ecclesiasticam *cessante appellatione* cogatis veritati testimonium perhibere.

Chapter XI

Latin source headnote: To uncover the truth of a conspiracy, the associates are compelled, even though bound by oath.

The same, to the Bishop of Bologna and Master B.

Our venerable brother the Archbishop of Ravenna proposed *before us* that the citizens of Cervia, together with M. and I., former clerics of the church of Ravenna, presumed to make a certain conspiracy against him, likewise giving them a certain quantity of money to his detriment and binding themselves by the bond of an oath to conceal these matters. Hence *the same archbishop* humbly supplicated *us* that, since we determined to commit the cause concerning these matters and certain articles to you *for his sake,* and he cannot prove his intention except by the testimony of the aforesaid citizens, *we should* deign *to* provide for him *concerning this,* lest his justice perish for lack of witnesses. Therefore *we* command *your discretion* that, admonition having been given beforehand, you shall, through ecclesiastical censure and with appeal removed, compel those whom you see ought to be compelled to absolve *those* whom the same archbishop shall lead to be produced as witnesses from an oath of this kind; likewise compelling them, if they withdraw themselves because of favor, hatred, or fear, by similar coercion to bear testimony to the truth.

> Ad detegendam veritatem coniurationis coguntur socii, etiam iurati.
>
> Idem Episcopo Bononiensi et Magistro B.
>
> Venerabilis frater noster archiepiscopus Ravennatensis proposuit *coram nobis,* quod cives Cervicenses cum M. et I. quondam clericis ecclesiae Ravennatensis quandam praesumpserunt coniurationem facere contra eum, nihilominus in detrimentum eius dantes eis quandam pecuniae quantitatem, et ad haec celanda se adstringentes vinculo iuramenti. Unde *idem archiepiscopus nobis* humiliter supplicavit, ut,

quum causam super his et quibusdam articulis vobis *eius obtentu* duxerimus committendam, et ipse intentionem suam probare non possit, nisi testimonio civium praedictorum, *super hoc* providere ei, ne pro defectu testium pereat sua iustitia, dignaremur. Ideoque *discretioni vestrae* mandamus, quatenus, monitione praemissa, per censuram ecclesiasticam appellatione remota cogatis illos, quos videritis compellendos, ut ab huiusmodi iuramento absolvant *illos*, quos idem archiepiscopus ad testimonium duxerit producendos; eos nihilominus, si se gratia, vel odio vel timore subtraxerint, districtione simili compellentes ad perhibendum testimonium veritati.

Title XXII: On the Credibility of Instruments

Chapter I

Latin source headnote: A copy of an instrument not taken with solemn formality does not create faith without the original. This it says according to its meaning.

Gregory.

If we do not see the authentic writing, we can do nothing upon the copies. [*But to the Florentine, etc.*]

De fide instrumentorum.

Instrumenti exemplum non solenniter sumptum fidem non facit absque originali. H. d. secundum ipsius mentem.

Gregorius.

Si scripturam authenticam non videmus, ad exemplaria nihil facere possumus. [*Sed Florentino etc.*]

Chapter II

Latin source headnote: An instrument falls if the subscribed witnesses have died, unless it has an authentic seal or was drawn up by a notary.

Alexander III.

Authentic writings, indeed, if the subscribed witnesses have died, unless *perhaps* they were made by a public hand in such a way that they appear public, or have an authentic seal by which they can be proved, do not appear to us to possess the strength of any firmness.

Corruit instrumentum, si testes inscripti decesserint, nisi sigillum habeat authenticum, vel a notario sit confectum.

Alexander III.

Scripta vero authentica, si testes inscripti decesserint, nisi *forte* per manum publicam facta fuerint, ita, quod appareant publica, aut authenticum sigillum habuerint, per quod possint probari, non videntur nobis alicuius firmitatis robur habere.

Chapter III

Latin source headnote: An apostolic rescript is not judged defective because of an erasure in a place not open to suspicion. This it says according to its meaning.

The same.

We have *clearly* learned from your letters that, when you undertook by our mandate to terminate the cause being conducted between Master A. *of Hillesdale* and R. *of Haute Rive* concerning the chapel of Ambitoria, *and caused our letters to be read in a public hearing,* the aforesaid R. petitioned that a copy of the letters be made for him. When, *after diligently inspecting the letters,* he accused them of falsity, *for this reason, namely,* that they were erased in the narrative of the fact where "parochial rights" is written, [*asserting that he would prove in our presence that such letters had not emanated from our chancery; but you, seeing that the form of the letters deviated in no respect from the path of reason, were unwilling to desist from the execution of the cause, tendering to the aforesaid R. an oath that he had not alleged this for the purpose of evasion or delay, but because he believed it to be so. The oath, however, not having been furnished on the appointed day, you adjudged that the aforementioned H. be placed in possession for the purpose of preserving the thing; and because a certain lay servant of the same R. resisted your judgment, he was excommunicated and excluded from the church under interdict. The aforesaid R., approaching us and concealing, as is said, that appeal had been prohibited in the commission, and making no mention of the erasure of the letters, or of the oath tendered to him and not furnished, or of the sentence placing [H.] in possession for the purpose of preserving the thing, obtained letters to the Bishops of London and Norwich in this form: that, if anything had been done to the prejudice of the aforementioned R. by occasion of the former commission, it should be recalled as void by our authority. And when the aforesaid H., cited by the Bishop of Norwich, who was discharging his own office and that of the Bishop of London, said before him that the letters had been obtained with the truth suppressed, fearing that the sentence would be executed and holding the Bishop of Norwich suspect—since the aforesaid R. was joined to him by great familiarity, as one who was the nephew of the Bishop of London and is said to eat his bread daily—he appealed to us. Hence, because one's own fraud ought to benefit no one or furnish protection,*] *we, inspecting our letters,* say that they cannot be judged false because of that erasure, nor even held suspect, especially since privileges may be erased in [the descriptions of] possessions, and letters may without hesitation be erased in the narrative of fact if an error has been made.

> Rescriptum apostolicum propter rasuram in loco non suspecto non censetur vitiosum. H. de secundum mentem.
>
> Idem.
>
> Ex literis vestris *evidenter* accepimus, quod, quum causam, quae inter magistrum A. *de Hillesdale* et R. *de Alta ripa* super capella de Ambitoria vertitur, de mandato nostro susceperitis terminandam *et nostras literas in communi audientia perlegi fecissetis*, praefatus R. literarum sibi copiam fieri postulavit. Qui *literis diligenter inspectis*, quum eas argueret falsitatis, *hac de causa scilicet*, quia in narratione facti abrasae sunt, ubi scriptum est: «iura parochialia,» [*asseverans, se probaturum in praesentia nostra, quod tales literae de cancellaria nostra non emanassent; vos autem videntes formam literarum a rationis tramite minime deviare, ab exsecutione causae desistere noluistis, praefato R. iuramentum deferentes, quod nec subterfugii nec dilationis causa hoc allegasset, sed quod ita esse credebat. Iuramento autem ad diem praefixam non praestito, memoratum H. in possessionem causa rei servandae iudicastis induci, et quod quidam laicus serviens eidem R. vestro iudicio restitit, excommunicatus est et ex ecclesia sub interdicto exclusus, praedictus R. ad nos accedens, et tacens, prout dicitur, quod in commissione appellatio fuit inhibita, nec mentionem faciens abrasionis literarum, aut iuramenti eidem delati et non praestiti, seu sententiae missionis in possessionem causa rei servandae, literas ad Londoniensem ei Norwicensem episcopum impetravit in hunc modum, ut si quid in praeiudicium memorati R. occasione prioris commissionis factum fuisset, nostra auctoritate in irritum revocetur. Quumque praefatus H. citatus a Norwicensi episcopo, qui suas et Londoniensis episcopi vices gerebat, coram eo literas tacita veritate impetratas diceret, metuens exsecutionem sententiae fieri, Norwicensem episcopum suspectum habens, cui praefatus R. multa familiaritate coniunctus, ut qui Londoniensis episcopi nepos erat, et eius panem quotidie comedere dicitur, ad nos appellavit. Unde quoniam propria fraus nulli debet*

prodesse aut patrocinium ministrare,] *nos inspicientes literas nostras* Dicimus, quod propter abrasionem illam iudicari falsae non possunt, nec etiam haberi suspectae, praesertim quum et privilegia in possessionibus abradantur, et literae in narratione facti, si erratum est, possunt incunctanter abradi.

Chapter IV

Latin source headnote: For one who challenges a privilege as false, the judge shall cause it to be exhibited before the judge and a few persons, in a suitable and secure place; and in the meantime the sentence rendered through it shall be observed.

The same, to the Archbishop of York.

We have received the letters that *our beloved son R.,* Abbot of Saint Augustine, sent against *our venerable brother* the Archbishop of Canterbury, *legate of the Apostolic See.* (*And below:*) *We therefore, considering that the time prescribed for prosecuting the appeal is by no means to be awaited,* since privileges that have not been inspected cannot be accused of falsity, and it is difficult and dangerous for them to be exhibited at the Apostolic See, command, [*by the common counsel of our brothers,*] that either *the privileges* be exhibited to the same archbishop in the cloister of the aforesaid brothers, or in another place suitable *to them* and secure *for him, according to your judgment,* by the next feast of the Nativity of Saint John the Baptist. [*We do not, however, will that all be exhibited together; but, when one has been exhibited and an opportunity to inspect and copy it, if necessary, has been furnished to them, let it be returned to the brothers themselves and another presented. Then, by the feast of the Purification of the Blessed Mary in the following year, the archbishop, sufficiently instructed to challenge the aforesaid privileges, shall approach the Apostolic See by himself or through a sufficient representative.*] But if he shall neither come nor send a sufficient representative, you shall impose perpetual silence upon him *and his successors* from challenging those [*privileges*] further. Meanwhile, however, we do not will those privileges to waver, but command that the sentence rendered in reliance upon them concerning the status of the monastery be inviolably observed. [*We also command that a sentence against the clerics of the same monastery or its churches be publicly declared not to bind, appeal removed. And those who prohibited obedience to or reception of the apostolic letters, having been suspended, shall be compelled to labor their way to the Apostolic See. Therefore, because the more we trust in your prudence and integrity, the more studiously and faithfully it befits you to examine the matter committed to your experience, we order and command your discretion that, every favor and fear set aside and the evasion of appeal removed, you shall proceed in the fact according to the form that we have prescribed; and on the prescribed feast of the Purification you shall transmit to us, enclosed under your seals, the transcripts of the privileges that shall have been exhibited to you, together with your letters containing the truth of the matter. But lest contention arise from the multitude,*] we also order that you shall cause the archbishop to be content with the number of twelve persons in the inspection of the privileges. *Any sentence that you find to have been pronounced against the clerics and churches of the monastery after the appeal was interposed, you shall also publicly declare not to bind, notwithstanding any appeal.*

Redarguenti privilegium de falso, iudex faciet illud exhiberi coram iudice et paucis, et in loco congruo et securo, et interim stabitur sententiae latae per illud.

Idem Eboracensi Archiepiscopo.

Accepimus literas, quas *dilectus filius noster R.* abbas sancti Augustini contra *venerabilem fratrem nostrum* Cantuariensem archiepiscopum *apostolicae sedis legatum* transmisit. (*Et infra:*) *Nos igitur attendentes, tempus ad prosequendam appellationem praescriptum nullatenus exspectandum,* Quum privilegia non inspecta non

valeant argui falsitatis, et difficile sit et periculosum, ea apud sedem apostolicam exhiberi, praecipimus, [*de communi fratrum nostrorum consilio*] ut vel exhibeantur *privilegia* eidem archiepiscopo in claustro praedictorum fratrum, vel in alio loco *ipsis* congruo et *illi* securo *ad arbitrium vestrum* usque ad Nativitatem proximam sancti Ioannis Baptistae. [*Nolumus autem exhiberi omnia simul, sed uno exhibito et ipsis inspiciendi et conscribendi, si necesse fuerit, copia praestita, reddatur illud fratribus ipsis, et aliud praesentetur. Deinde usque ad purificationem B. Mariae sequentis anni archiepiscopus sufficienter instructus ad redarguenda privilegia praedicta per se vel per sufficientem responsalem ad apostolicam sedem accedat*.] Si vero nec venerit, nec sufficientem responsalem miserit, ei *suisque successoribus* perpetuum silentium imponatis ipsa [*privilegia*] ulterius arguendi. Interim autem nolumis illa privilegia vacillare: sed praecipimus, sententiam, quae eorum obtentu super statu monasterii lata est, inviolabiliter observari. [*Mandamus etiam, ut sententia in clericos eiusdem monasterii vel ecclesias appellatione remota denuncietur publice non tenere. Et qui prohibuerunt literis apostolicis obediri aut eas recipi, compellantur suspensi ad sedem apostolicam laborare. Quia igitur quanto amplius de prudentia vestra et honestate confidimus, tanto studiosius et fidelius decet vos commissum experientiae vestrae negotium ventilare, discretioni vestrae mandamus atque praecipimus, quatenus in facto iuxta formam quam praescripsimus, omni gratia et timore postposito, sublato appellationis diffugio procedatis, et in praescripto festo Purificationis rescripta privilegiorum, quae vobis exhibita fuerint, cum literis vestris rei veritatem continentibus sub sigillis vestris nobis transmittatis inclusa. Ne autem contentio prae multitudine oriatur*] Iubemus etiam, ut archiepiscopum in inspectione privilegiorum XII. hominum numero faciatis esse contentum. *Sententiam quoque si quam in clericos et ecclesias monasterii post appellationem interpositam pronuntiatam esse inveneritis nulla appellatione obstante denuncietis publice non tenere.*

Chapter V

Latin source headnote: An instrument or privilege that someone uses before a judge ought not to be read in full to the adversary, but only the chapter at issue ought to be produced.

Celestine III, to the Abbot of Saint Secundus.

It happens sometimes, as you say, that whenever you have litigation *in causes* with someone and are compelled to exhibit your privilege more fully to the adverse party, it results that *perhaps,* by occasion of the one chapter concerning which you are convened, very many disputes are stirred up, *and thus rivals receive grounds for many cavils by which they assail your peace and tranquillity. Therefore, because it is our concern to oppose disputes that may be stirred up and to decide those already stirred up,* we respond *to your consultation, since you proposed concerning this,* in this way, *and we will* that, whenever you shall have been required to exhibit a privilege, indulgence, or instrument, in the presence of the judge or of certain prudent men appointed by the *judge himself,* while the contrary party hears, it shall only be recited in such a way that *the privilege is in no manner handed over for transcription; but* if there is a question concerning only one chapter *of the privilege,* that *chapter* alone shall be copied, and a copy thereof shall be made for the adverse party.

Instrumentum vel privilegium, quo quis utitur coram iudice, adversario integraliter legi non debet, sed solum illud capitulum, de quo agitur, edi debet.

Coelestinus III. Abbati sancti Secundi.

Contingit interdum, ut dicitis, quod quandocunque cum aliquo litem *in causis* habetis, et privilegium vestrum adversae parti cogimini plenius exhibere, unde accidit, quod *forte* occasione unius capituli, super quo convenimini, plurima litigia suscitantur, *+et sic aemuli multarum cavillationum argumenta recipiunt, quibus pacem et tranquillitatem vestram impugnant. Quia igitur nostra interest iurgiis obviare suscitandis, et suscitata decidere,* Consultationi tuae *quum super hoc proposuistis* taliter respondemus *et volumus,* ut,

quandocunque super exhibendo privilegio, vel indulgentia seu instrumento fueritis requisiti, praesente iudice, aut aliquibus prudentibus viris deputatis ab ipso *iudice*, audiente parte contraria, tantummodo recitetur ita, quod *privilegium ad transscribendum nullo modo tradatur; verum* si super uno tantum *privilegii* capitulo quaestio fuerit, illud *capitulum* solummodo rescribatur, et adversae parti copia eius fiat.

Chapter VI

Latin source headnote: An instrument not drawn up by a public hand, bearing a seal whose letters are not legible or whose writing is erased, or which suffers an enormous fracture, does not prove. This it says insofar as it pertains more closely to the title. And it is an everyday and notable case concerning those ancient seals. Panormitanus.

Innocent III, to the Archbishop of Milan.

Between the beloved sons G., Abbot of Saint Donatus of Scozula, *on one side in the name of the monastery,* and *W.* B., *Canon of Milan,* your proctor *on the other in the name of the Archbishopric of Milan,* litigation was conducted for a long time in our auditorium concerning the articles set forth below. For the *said* abbot, in the name of his monastery, sought from your aforesaid proctor, in the name of the Church of Milan, restitution to the aforementioned monastery of the port of Scozula *or Sesto,* together with the lordship, district, and jurisdiction of the aforesaid place *and castellany,* saying that all these belonged to the monastery; and he said the same concerning the people who dwell in the court of Beruno and hold property of the *aforementioned* monastery, *namely,* in Gralia, *Carpuneno, Vesterpeno, Cadempleno, and Baveno* [*and Isola Superiore, Belgirate, and Lesa. He also sought that the Archbishop of Milan cease from troubling the people who dwell in the place of Baveno*] *concerning a manse of the court,* respecting whom the monastery had prevailed in a possessory judgment by the sentence of the Bishop of Verona. [*Likewise, that he cease from troubling the vicars, that is, the communes and lands situated in the territory of Sesto or Scozula and in its castellany, and also from troubling the lodging-service of the aforesaid place of Scozula or Sesto and also of that castellany. Again, that he not trouble the aforesaid monastery in possession or quasi-possession of the fishery of the whole water of the Ticino as far as the ravine of Castelletto or Pigarolo. And*] he sought all these things together with all fruits received from them, saving in all things the right to add or diminish, striving *in many ways* to prove that all the foregoing belonged to his monastery. First, through the privilege of Count Luitard, formerly Bishop of Lucca, who had founded the monastery itself and had given it all the foregoing. Second, through the instrument of the sentence of Aspert, formerly Archbishop of Milan, which he rendered concerning these matters by delegation of Emperor Louis, for the *often-mentioned* monastery against A., nephew of the aforesaid Luitard, who was troubling the monastery concerning them. Third, through the privileges of the Roman emperors, and especially of Henry, who confirmed or even conferred all the foregoing upon the monastery. Fourth, through the instruments of leases that the abbots of the aforementioned monastery had made to various persons. He had also produced witnesses through whom he endeavored to prove that the monastery, for the last sixty years and within, and for fifty years and more, *had held and* possessed *all* the foregoing, and that it was public report that they had all been donated to the aforesaid monastery by the already-mentioned Luitard.

But many objections were made by your proctor against the privilege of donation. First, because it appeared to be consumed most of all at the very point, namely in the notation of the indiction, where falsity could more easily have been detected. Second, because, although the charter appeared most ancient, the writing appeared more recent, as though it had not been made at that time. Third,

because a false seal appeared to have been defectively affixed, in that on one half of the seal a certain image appeared, not with a miter on its head but with a cap, and not clothed in pontifical but in royal vestments, holding in its hand not a pastoral staff but something like a royal scepter; its face did not appear whole but half, as though on that half it looked toward another half-image, although that other half remained entirely empty. But a certain image appeared to have been erased from it, because the wax in that part appeared similar to the remaining part neither in color nor in flatness. Hence it appeared to have been the seal not of a bishop but of an emperor, because on one half it portrayed the image of Caesar and on the other half it was presumed to have borne the image either of his son or of his wife. For on the seal itself no other letters appeared except those that designated the proper name together with this addition, "By the grace of God." But since the proper name of the bishop himself had been Luitard, two letters had been erased in the proper name expressed by the seal: the second, which was between "I" and "t," and the sixth, which had been between "r" and "v," so that, if the second *had been* "o" and the sixth had been "i," without doubt it would read not Luitardus but Lotharius. This could also be proved from the fact that, according to the disposition of the other letters, between "I" and "t" there was space sufficient to contain only one letter, although according to the completeness of the name Luitardus there are two different letters between "I" and "t." Moreover, between "r" and "v" there was so little space that the letter "d," which occupies greater space, did not appear to have been formed there, but rather the letter "i," which occupies the least. Again, although the wax of the seal on the inner side was most ancient, the wax placed on the outer side, as if for preservation of the seal, was fresh and soft. When this had been diligently investigated, it was ascertained with the greatest certainty that the charter had been perforated beneath the ancient seal and, through the adhesive of the new wax placed on the outside as if for preservation of the seal, it was defectively joined to the charter itself. By the same kind of falsity, namely through defective affixing of a seal, nearly all the other privileges of the Roman emperors, except the privilege of Henry, were found either false or falsified.

But even Henry's privilege itself did not appear sufficient for establishing faith, because it had neither been drawn up by a public hand nor did it have an authentic seal, in that it was consumed over almost one half and no more of the proper name appeared than its latter half, namely "icus," nor of the other letters except this addition, "By the grace of God," so that from the letters themselves it could no more be proved to have been the seal of Henry than of Louis. The instrument of the sentence was also found suspect in many ways, both because certain erasures appeared in it and because the subscription of the notary appeared to be by a different hand than the writing of the instrument, although the notary professed in the subscription that he had written the instrument with his own hand. The writing also appeared more recent than the charter, and the ink appeared to have been stained with water so that it might appear older. Moreover, in all the imperial privileges that were later, no mention *at all* was made of that sentence, although in some of them mention was made of Luitard, who was said to have made the donation.

Furthermore, if the instrument of the sentence were *true and* lawful, nevertheless no prejudice could be generated against the Archbishopric of Milan through that sentence, since the sentence itself had been rendered between other persons, and a matter transacted between some persons does not prejudice another. Nor could the attestations contained in the instrument of the sentence, by which the lawful donation of Luitard appeared to have been proved, inflict any injury upon the same archbishopric, since they had been received between other persons and in another judgment.

Moreover, the aforementioned privilege of Henry appeared to have been not only one of confirmation but also one of donation, whence perhaps the ownership of the things donated could be understood to have been acquired *and delivered* to the monastery. Yet, although from the form of the petition declared in the privilege itself *and from certain other words placed in it* it appeared *to have been only* confirmatory, nevertheless, so that it may be understood in the manner in which it could have greater effect, it appeared *certainly* necessary to distinguish that the same Henry donated some things and confirmed others, since the same things could not lawfully *both* be confirmed and donated at the same time: confirmed, as things previously had and possessed; donated, as things then delivered and granted. *He donated, I say, those things that he granted to the monastery within the space of three miles; but he confirmed those things that had previously been granted and donated to the monastery itself, among which were contained those brought into judgment.* And on this account those things could not be understood to have been donated through that privilege, but confirmed, since according to the sanctions of the laws that which is mine cannot become mine by another cause unless it has ceased to be mine; *especially since the party of the monastery endeavored to prove, both through the privilege of grant and through the instrument of the sentence, that those things had lawfully been donated by Luitard, and throughout the whole judgment it relied upon that donation; whence after a donation of this kind the same things could not be donated again to the same party.* Therefore, since Henry's privilege was only confirmatory, at least as to those things brought into judgment, if the principal did not hold, neither did the accessory, which is known to have followed from it or on account of it. *In the same way, the other privileges of the Roman emperors, even if they had been true and without suspicion, would nevertheless be proved invalid for proof.* Through the instruments of lease, indeed, neither ownership nor *even* full possession is proved, since *according to the lawful sanctions* a lease made is not sufficient for proof or defense of one's own property.

[*Although in these and other ways your often-mentioned proctor appeared to refute the intention of the abbot, and it is provided in civil law that, when the claimant does not prove, the person convened shall prevail even if he has furnished nothing, nevertheless, in order to show more clearly the justice of your party, he appeared to prove through witnesses that the Archbishop of Milan had possessed undisturbed for the last sixty years all the foregoing. But against prescription of this kind the said abbot objected both civil and natural interruption in the intervening time. For formerly, when Gozovio, once a count, had been delegated as judge concerning these matters by Emperor Frederick, because after lawful citations the Archbishop of Milan had contumaciously absented himself, a sentence was rendered for the monastery, and corporal possession was assigned in its name; the abbot asserted that, after it had been held for six years and more, it was lost in the war of the Milanese. Through this he alleged that prescription was interrupted civilly and naturally. But your often-mentioned proctor replied to the foregoing exception in this way: John of Anagni, of good memory, cardinal deacon of Saint Mary in Portico, afterward cardinal priest of Saint Mark and finally Bishop of Palestrina, then legate of the Apostolic See, observing with what barbaric ferocity and insatiable hatred Emperor Frederick wished utterly to overthrow the church and city of Milan and reduce them to the lowest servitude, recalled as void whatever he or any judge or ministerial of his had ordained at that time against the churches, clerics, or citizens of Milan. Our predecessor Pope Alexander, of happy memory, approving his act, confirmed it; whence what had been done by the aforesaid count in hatred of the Milanese, whom the said emperor was persecuting more bitterly, could not for the foregoing reason generate prejudice against the Church of Milan. But the adverse party considered reasoning of this kind frivolous, since completed matters cannot be made uncompleted by any constitution of law.*]

When litigation had therefore been conducted for a rather long time concerning *the matters that we have set forth in our presence and that of our brothers,* because *the things* that were sought had not been

lawfully proved to belong to the monastery, *by the common counsel of our brothers* we determined by sentence that *your aforesaid* proctor, in your name and that of the Church of Milan, should be absolved from its claim, since, when the rights of the parties are obscure, it is customary for judgment to be rendered against the person who is claimant. [*But concerning the manse, etc. Given at the Lateran, on the sixteenth day before the Kalends of May, 1199.*]

> Instrumentum publica manu non confectum, habens sigillum, cuius literae non sunt legibiles vel scripturae deletae, vel enormem patitur fracturam, non probat. Hoc dicit, prout magis facit ad titulum. Et est casus quotidianus et notabilis pro istis sigillis antiquis. Panorm.
>
> Innocentius III. Mediolanensi Archiepiscopo.
>
> Inter dilectos filios G. abbatem sancti Donati de Scozula *ex una parte nomine monasterii* et *W.* B. *Mediolanensem canonicum* procuratorem tuum *nomine Mediolanensis archiepiscopatus ex altera* super subiectis articulis diu fuit in nostro auditorio litigatum. Petebat siquidem *dictus* abbas nomine monasterii sui a praefato procuratore tuo nomine Mediolanensis ecclesiae restitui monasterio memorato portum Scozulae *sive Sexti*, cum honore, districtu et iurisdictione loci praefati *et castellaniae*, dicens, ad monasterium haec omnia pertinere, hoc ipsum dicens de hominibus, qui habitant in curte Berunensi et tenent res monasterii *memorati, scilicet* in Gralia, *Carpuneno, Vesterpeno, Cadempleno, Baveno* [*et Insula superiori, Bolgerate ac Lisia. Petens etiam ut Mediolanensis archiepiscopus cessaret ab inquietatione hominum, qui habitant in loco Baveni*] *super manso de curte*, de quibus monasterium obtinuerat in iudicio possessorio per sententiam episcopi Veronensis. +[*Item, ut cessaret ab inquietatione vicariorum, id est, communium et terrarum in territorio Sexti sive Scozulae et in eius castellania positarum, ab inquietatione quoque albergariae praedicti loci Scozulae sive Sexti, et illius etiam castellaniae. Rursus, ut non inquietaret monasterium antedictum in possessione vel quasi possessione piscariae totius aquae Ticini usque ad raviam Castelleti vel Pigaroli. Et*] Haec omnia petebat cum omnibus fructibus inde perceptis, salvo in omnibus iure addendi vel diminuendi, satagens *multipliciter* comprobare omnia, quae praemissa sunt, ad suum monasterium pertinere. Primo per privilegium Luitardi comitis, quondam episcopi Lucani, qui monasterium ipsum fundaverat, et ei, quae praemissa sunt, donaverat universa. Secundo per instrumentum sententiae Asperti quondam Mediolanensis archiepiscopi, quam ex delegatione Lodovici imperatoris tulit super his, pro monasterio *saepe dicto* contra A. praefati Luitardi nepotem, qui super his monasterium molestabat. Tertio per privilegia Romanorum imperatorum et praesertim Henrici, qui praemissa omnia monasterio confirmabat, vel etiam conferebat. Quarto per instrumenta locationum, quas fecerant diversis personis abbates monasterii memorati. Testes quoque produxerat, per quos nitebatur probare, quod monasterium a LX. annis et citra, et a L. annis et supra *tenuerat et* possederat *omnia* supradicta, et quod fama publica erat, ea omnia praefato monasterio a iam dicto Luitardo fuisse donata. Sed contra privilegium donationis a procuratore tuo multa fuerunt obiecta. Primo, quia ibi maxime apparebat consumptum, videlicet in annotatione indictionis, ubi potuisset falsitas facilius deprehendi. Secundo, quia, quum charta vetustissima videretur, recentior apparebat scriptura, tanquam non illo tempore facta fuisset. Tertio, quia falsum sigillum vitiose videbatur appositum, eo, quod a media parte sigilli apparebat quaedam imago, non cum mitra in capite, sed cum pileo, nec induta pontificalibus, sed regalibus indumentis tenens in manu non baculum pastoralem, sed quasi sceptrum regale, cuius facies non apparebat integra, sed dimidia, tanquam in illa medietate respiceret aliam mediam, quae tamen tota vacua remanebat. Sed quaedam imago videbatur ex ea fuisse deleta, quia cera in ea parte nec in colore, nec in planicie reliquae parti similis apparebat. Unde non episcopi, sed imperatoris videbatur fuisse sigillum, quia in una medietate Caesaris imaginem exprimebat, et in altera medietate praesumebatur, vel filii vel coniugis imaginem habuisse. Nam et in ipso sigillo nullae aliae literae apparebant, nisi quae nomen proprium cum hac adiectione: «Dei gratia,» designabant. Sed quum proprium nomen ipsius episcopi fuerit

Luitardus, in nomine proprio, quod exprimebat sigillum, deletae fuerant duae literae, secunda, quae erat inter «I» et «t,» et sexta, quae fuerat inter «r» et «v,» ita, quod, si secunda *fuisset* «o,» et sexta fuisset «i,» procul dubio non Luitardus, sed Lotharius legeretur. Quod etiam inde convinci poterat, quod secundum dispositionem aliarum literarum inter «I» et «t» non erat spatium, nisi quod potuisset unam literam continere, quum secundum integritatem huius nominis Luitardus inter «I» et «t» duae literae sint diversae. Praeterea inter «r» et «v» tam modicum erat spatium, ut in eo nec haec litera «d,» quae maius occupat spatium, sed haec litera «i,» quae minimum occupat, videretur formata fuisse. Rursus quum cera sigilli ab interiori parte vetustissima esset, cera, quae posita erat ab exteriori parte, quasi ad conservationem sigilli, recens erat et mollis. Quod quum diligenter investigatum fuisset, certo certius est compertum, quod sub vetusto sigillo charta fuerat perforata, et per glutinum novae cerae, quae posita fuerat exterius, quasi ad conservationem sigilli vitiose fuit ipsi chartae subiunctum. Eadem falsitatis specie, per vitiosam videlicet appositionem sigilli, cetera fere privilegia Romanorum imperatorum praeter privilegium Henrici vel falsa reperta sunt, vel falsata. Sed et ipsum Henrici privilegium ad fidem instruendam non videbatur sufficere, quia nec erat publica manu confectum, nec sigillum habebat authenticum, eo, quod erat ex media fere parte consumptum, nec plus de nomine proprio, nisi ultima medietas, videlicet «icus,» nec de ceteris literis, nisi haec adiectio: «Dei gratia» apparebat, ita, quod ex literis ipsis non magis poterat comprobari fuisse sigillum Henrici, quam Lodovici. Instrumentum quoque sententiae multis modis inveniebatur suspectum, tum quia in ipso quaedam apparebant liturae, tum quia subscriptio notarii videbatur manus alterius fuisse, quam subscriptio instrumenti; quum tamen notarius in subscriptione profiteretur, se instrumentum manu propria conscripsisse. Litera quoque recentior videbatur, quam charta, et aqua videbatur encaustum infectum, ut antiquius appareret. In omnibus autem imperialibus privilegiis, quae posteriora fuerant, nulla *prorsus* est habita mentio de illa sententia, quamvis in eorum aliquibus mentio facta fuerit Luitardi, qui dicebatur donationem fecisse. Porro si legitimum esset *et verum* instrumentum sententiae, per illam tamen sententiam nullam Mediolanensi archiepiscopatui praeiudicium poterat generari, quum ipsa sententia lata fuerit inter alios, et res inter alios acta alii non praeiudicet. Nec attestationes, quae continebatur in instrumento sententiae, per quas legitima donatio Luitardi videbatur esse probata, poterant eidem archiepiscopatui nocumentum aliquod irrogare, quum inter alias personas et in alio iudicio receptae fuissent. Ceterum memorati Henrici privilegium, quod non solum confirmationis, sed etiam donationis videbatur fuisse, unde rerum dominium donatarum intelligi forte poterat monasterio acquisitum *et traditum*, quamvis ex forma petitionis, quae in ipso privilegio declaratur, *et quibusdam aliis verbis, quae ponuntur in ipso*, confirmatorium *tantum fuisse* videretur, ut tamen intelligatur eo modo, quo magis posset valere, distinguendum *utique* videbatur, ut idem Henricus alia donaverit, et alia confirmaverit, quum eadem legitime nequivissent *et* confirmari pariter et donari; confirmari, tanquam prius habita et possessa: donari, tanquam tunc tradita et concessa. *Donaverit, inquam, illa, quae ipse intra trium milliarium spatium monasterio concedebat; confirmaverit autem, quae prius ipsi nonasterio concessa fuerant et donata, inter quae illa continebantur, quae deducta sunt in iudicium.* Ac per hoc illa non poterant intelligi per privilegium illud donata, sed confirmata, quum iuxta legum sanctiones quod meum est ex alia causa meum fieri non possit, nisi desierit esse meum; *+praesertim quum pars monasterii nixa fuerit comprobare tum per privilegium concessionis, tum per instrumentum sententiae, quod illa legitime fuerint a Luitardo donata, et illi donationi per totum iudicium est innixa; unde post donationem huiusmodi eadem eidem non poterant redonari.* Quum igitur privilegium Henrici confirmatorium tantum exstiterit, saltem quoad illa, quae deducta sunt in iudicium, si principale non tenuit, nec accessorium, quod ex eo vel ob id dignoscitur esse secutum. *+Pari modo cetera privilegia Romanorum imperatorum, etiam si vera fuissent et sine suspicione, ad probationem tamen invalida probarentur.* Per instrumenta vero locationis nec est utique probata proprietas, nec *etiam* ad plenum possessio, quum *iuxta legitimas sanctiones* ad probationem rei propriae sive ad defensionem non sufficiat facta locatio. [*Licet autem his et aliis modis saepedictus procurator tuus intentionem abbatis videretur*

elidere, cautumque sit in iure civili, quod actore non probante is, qui convenitur, etsi nihil praestiterit, obtinebit; ad ostendendam tamen evidentius iustitiam tuae partis, per testes videbatur probare, quod Mediolanensis archiepiscopus omnia, quae praemissa sunt, a sexaginta annis infra possederat inconcusse. Verum contra praescriptiones huiusmodi dictus abbas interruptionem medii temporis civilem pariter et naturalem obiecit. Olim enim Gozovio quondam comite a Frederico imperatore super his iudice delegato, quum post citationes legitimas Mediolanensis archiepiscopus se contumaciter absentasset, pro monasterio fuit lata sententia, et ipsius nomine corporalis possessio assignata, quam per sex annos et amplius habitam in bello Mediolanensium asserebat amissam; per quod allegabat praescriptionem civiliter et naturaliter interruptam. Porro ad exceptionem praemissam saepedictus procurator tuus taliter replicabat, quod bonae memoriae Ioannes Anagninus sanctae Mariae in porticu diaconus cardinalis, postea sancti Marci presbyter, et tandem episcopus Praenestinensis, tunc apostolicae sedis legatus, attendens quam barbarica feritate et insatiabili odio ecclesiam et civitatem Mediolanensem Fredericus imperator funditus vellet evertere atque in supremam redigere servitutem, quicquid ipse vel aliquis iudex seu ministerialis eius in ecclesias, clericos vel cives Mediolanenses statuerant tempore illo, in irritum revocavit. Cuius factum felicis recordationis Alexander Papa praedecessor noster approbans confirmavit, unde quod a praefato comite factum fuerat in odium Mediolanensium, quos dictus imperator acrius infestabat, Mediolanensi ecclesiae praemissa ratione non poterat praeiudicium generare. Porro rationem huiusmodi pars adversa frivolam reputabat, quum factae causae nulla iuris constitutione fieri possint infectae.] Quum autem super his, *quae praemisimus, in nostra et fratrum nostrorum praesentia* fuisset diutius litigatum, quia legitime probata non fuerant *ea*, quae petebantur ad monasterium pertinere, *de communi fratrum nostrorum consilio* ab impetitione ipsius *praefatum* procuratorem tuum nomine tuo et Mediolanensis ecclesiae sententialiter duximus absolvendum, quoniam, quum obscura sunt iura partium, consuevit contra eum, qui petitor est, iudicari. [*Super manso vero etc. Dat. Lat. XVI. Kal. Maii. 1199.*]

Chapter VII

Latin source headnote: Letters concerning absolution from a vow obtained by crusaders with the truth suppressed or falsity expressed are not valid.

The same, to the Archbishop of Canterbury.

Concerning what—(*And below:* [*cf. c. 8, On a Vow, III.34.*]) *You asked, moreover,* what you ought to do concerning crusaders who, saying that they are returning from the Apostolic See, bring back unknown seals of cardinals concerning their absolution, although they should not lightly have been believed concerning the impediments alleged. To this we respond to you that, *when we* at any time grant *apostolic* letters to such persons, we write in this manner to those who know their persons and resources more fully: that, after the truth concerning the impediments alleged has been more diligently investigated, they shall ordain concerning them what they shall know to be more expedient for the salvation of souls and the relief of the Holy Land, providing attentively, *as is contained above,* lest anything be deceitfully fabricated in fraud of the vow. Hence, if it has been established that such persons obtained, through suppression of the truth or expression of falsity, letters not only of the cardinals but also our own, and not only doubtful but even certain letters, we will them to be without what was obtained and, notwithstanding those letters, *command, appeal removed, as is expressed above,* that they be compelled to execution *or redemption* of the vow.

Non valent literae super absolutione voti per cruce signatos impetratae tacita veritate vel expressa falsitate.

Idem Cantuariensi Archiepiscopo.

Quod super his (*Et infra:* [*cf. c. 8. de voto III. 34.*]) Quaesivisti *praeterea*, quid agere debeas circa cruce signatos, qui dicentes, se ab apostolica sede redire, super absolutione sua ignota cardinalium sigilla

reportant, quum eis super impedimentis expositis non fuisset de levi credendum. Ad quod tibi respondemus, quod, *quum nos*, si quandoque talibus literas *apostolicas* indulgemus, illis, qui personas et facultates eorum plenius noverunt, hoc modo scribimus, ut super impedimentis expositis inquisita diligentius veritate, statuant circa illos quod animarum saluti et succursui terrae sanctae magis noverint expedire, providentes attentius, *sicut superius continetur*, ne quid in fraudem voti fallaciter confingatur; unde, si tales per suppressionem veritatis aut falsitatis expressionem literas non solum cardinalium, sed etiam nostras, nec solum dubias, sed etiam certas constiterit impetrasse, carere volumus impetratis, et, eis non obstantibus, ad voti exsecutionem *vel redemptionem* compelli *praecipimus, appellatione remota, sicut superius est expressum*.

Chapter VIII

Latin source headnote: If there is doubt whether an *extravagans* is an authentic decretal, either it accords with the law, and then judgment is rendered according to it, or it conflicts with the law, and then the Pope is consulted.

The same, to the Bishop of Ely.

The pastoral—(*And below:* [*cf. c. 28, On the Office of a Delegated Judge, I.29.*]) *You also asked by what indications faith is to be given to decretals concerning whose authority a judge can not undeservedly doubt, since many are found in the compilation of scholars and alleged in causes, concerning which authenticity by bull has not been established, nor were they themselves published through the metropolitan sees. Therefore, because it often happens that decretals of this kind are proposed even before us which we doubt to be authentic, responding benignly to your fraternity,* we have determined by authority of the present letters to establish that, when some decretal concerning which a judge deservedly doubts is alleged, if it accords with the common law, he shall not fear to judge according to it, since he appears to proceed not so much by its authority as by the authority of the common law. But if it conflicts with the common law, he shall not judge according to it, but shall consult his superior concerning it. [*Moreover, because, etc.* (*cf. c. 4, On Exceptions, II.25.*) *Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.*]

Si de extravaganti dubitatur, an decretalis sit authentica, aut est iuri consona, et tunc iudicatur secundum illam; aut dissona, et tunc Papa consulitur.

Idem Heliensi Episcopo.

Pastoralis (*Et infra:* [*cf. c. 28. de off. iud. del. I. 29.*]) *Quaesivisti etiam, quibus indiciis fides habenda sit decretalibus, de quarum auctoritate iudex potest non immerito dubitare, quum plures inveniantur in compilatione scholarium, et allegentur in causis de quibus per bullam non constitit, nec ipsae per metropoles insinuatae fuerunt. Quia igitur saepe contingit, quod etiam coram nobis decretales huiusmodi proponuntur, quas esse authenticas dubitamus, fraternitati tuae benignius respondentes,* Auctoritate praesentium duximus statuendum, ut, quum aliqua decretalis, de qua iudex merito dubitet, allegatur, si eadem iuri communi sit consona, secundum eam non metuat iudicare, quum non tam ipsius, quam iuris communis auctoritate procedere videatur. Verum si iuri communi sit dissona, secundum ipsam non iudicet, sed superiorem consulat super ea. [*Quoniam autem etc.* (*cf. c. 4. de exc. II. 25.*) *Dat. Rom. ap. S. Petr. XIV. Kal. Ian. 1204.*]

Chapter IX

Latin source headnote: After the attestations have been published, instruments can be produced until conclusion. This is the first point. The custom of a place makes an instrument authentic. This is the second.

The same, to the Bishop of Saint Andrews and the Abbot of Broch.

When the beloved—(*And below:* [*cf. c. 6, On Arbiters, I.43.*]) *Moreover,* we have determined to respond to the second question *in this way:* either party can exhibit instruments even after publication of the attestations, up to the casting of the definitive sentence, before the cause has been concluded. But concerning the third article *we respond in this way:* you shall *inquire more diligently into the truth, and,* if the approved custom of that country obtains that faith is given *in such matters* to the instruments of that king, you will be able to admit them safely, especially since the aforesaid king was of such integrity that his instruments are of the greatest authority in the regions of Scotland. [*To the fourth, etc.* (*cf. c. 6, On the Cause of Possession, II.12.*) *Given at the Lateran, on the sixteenth day before the Kalends of April, in the tenth year, 1207.*]

> Post publicatas attestationes usque ad conclusionem possunt instrumenta produci. Hoc primo. Consuetude loci facit instrumentum authenticum. Hoc secundo.
>
> Idem Episcopo sancti Andreae et Abbati de Broch.
>
> Quum dilectus (*Et infra:* [*cf. c. 6. de arb. I. 43.*]) Ad secundam *autem* quaestionem *taliter* duximus respondendum, quod utraque pars potest instrumenta etiam post publicationem attestationum usque ad diffinitivae sententiae calculum exhibere, antequam sit in causa conclusum. Super tertio vero articulo *taliter* respondemus, quod *inquiratis diligentius veritatem, et,* si consuetudo illius patriae obtinet approbata, ut instrumentis illius regis fides adhibeatur *in talibus,* vos ea secure poteritis admittere, praesertim quum supradictus rex tantae fuerit honestatis, quod ipsius instrumenta maximae auctoritatis sint in partibus Scoticanis. [*Ad quartum etc.* (*cf. c. 6. de causa poss. II. 12.*) *Dat. Lat. XVI. Kal. Apr. Ao. X. 1207.*]

Chapter X

Latin source headnote: The falsity of an instrument, or what is lacking in an instrument, can be proved through witnesses.

The same, to Peter, a Citizen of Viterbo.

When John the Hermit had sought from you one hundred and thirty Sienese pounds by reason of a loan before Donadeus and John, judges of Viterbo, and you proposed in opposition that, since the same *John* was bound to you for one hundred and eighty pounds as the price of a house that you had sold to him, the one hundred and thirty pounds from them ought not undeservedly to be set off *against the loan,* at length, after litigation had been conducted between you for some time concerning this and certain other articles, *the same* judges, *having understood the arguments of both parties and diligently inspected* the attestations *and* published *instruments,* condemned you by sentence to deliver to the same *John* vacant possession of the aforesaid house, *and* freed from creditors. (*And below:*)

Therefore, when you determined to appeal from this sentence to our hearing, and we appointed *our beloved son* T., our subdeacon and chaplain, as auditor both for you and for the aforesaid John, it was proposed *before him* on your behalf that the sale of the aforesaid house had been not pure but rather conditional, and that you were in no way bound to its delivery. Four witnesses were nevertheless introduced to prove this, because, even if it was a new chapter, it nevertheless depended upon the old; having been sworn, they deposed that they were present at the contract celebrated between you and the aforesaid John concerning the same house, *situated in the quarter of Saint Blaise,* for which a price of one hundred and eighty pounds had been fixed for you, with this condition added, namely, that you should inhabit the house itself freely during your life and, after your death, it should remain

to M. and R., your children and the nephews of the same John. In consideration of this condition, you sold the house itself to the same John for a lower price, although you could have had two hundred pounds for it from G. Morandi; but the same witnesses said that they did not at all remember the year, month, and day on which the sale was made.

The said John, however, proposed that the *sale itself* had been not conditional but pure, exhibiting to prove this a public instrument [*drawn up in the year of the Lord's incarnation 1206, in the month of November, on the fourth day,*] *in which you professed that by your own will you had sold and delivered the house itself to the same John and afterward received the price of one hundred and eighty pounds*. He also introduced to prove it the notary who had drawn up the instrument and one of the witnesses subscribed in the instrument. *But although the notary affirmed that the sale had been pure, as is contained in the sequence of the instrument,* [*and the witness also asserted that the sale had been made,*] *nevertheless, whether the contract had been entered into under a condition or purely, he said that he did not at all remember.*

Furthermore, when a doubt had arisen as to whose proof ought to prevail, it was proposed on your behalf that, although *according to the lawful sanctions* the credibility of instruments and the depositions of witnesses possess the same force in conducting litigation, nevertheless not every instrument ought to be of such moment that it is preferred to the depositions of three or more suitable witnesses. *For it is sufficient if, on account of the authority of the notary, who is presumed faithfully to fulfill his office since he is bound to this by oath, as much faith is given to the instrument drawn up as would be given to two suitable witnesses. But since it was manifestly proved through four witnesses superior to every exception that the aforesaid sale had been celebrated conditionally, you asserted that their depositions were deservedly to be preferred to the instrument*.

To this, however, the same John responded in opposition that, since he founded his intention through the already-mentioned instrument, *to which undoubted faith is to be given, since it is neither canceled, effaced, nor corrupted in any part of itself,* and you propose by way of exception that the sale itself was celebrated not purely but conditionally, and certain faith concerning the time was not made through the witnesses introduced by you for this purpose, and therefore it does not appear that they depose concerning that sale which, as is established by the said instrument, was contracted at a determinate time, proof of this kind appeared ineffective to refute the contrary intention. But you proposed that this response was invalid, because, when either party, interrogated by us, had confessed at law that only one sale had been contracted concerning the house, and it is clear from the depositions of the witnesses that the sale was conditional, it is gathered from the confession of both parties that the sale of the same house was conditional, not pure, notwithstanding that the interrogation itself was made after the cause had been concluded by the parties, since the judge, who ought to investigate all things up to the pronouncement of sentence, can interrogate concerning a fact whenever some matter of doubt occurs.

Therefore, these and other matters having been proposed both before us and before the said chaplain and more fully understood, by the counsel of our brothers we pronounced that the sale of the aforesaid house had been celebrated conditionally and that on this account you were in no way obligated to its delivery, imposing *perpetual* silence upon the aforementioned John concerning this. But the sentence of the aforesaid judges, who are known otherwise to have pronounced justly, since an exception of this kind was neither proved nor objected before them, we invalidate as to the said chapter, confirming it as to the other articles by apostolic authority.

Falsitas instrumenti, vel quod deest instrumento, probari potest per testes.

Idem Petro Civi Viterbiensi.

Quum Ioannes Eremita a te centum triginta libras Senenses ex causa mutui coram Donadeo et Ioanne iudicibus Viterbiensibus petiisset, et tu ex adverso proponeres, quod, quum idem *Ioannes* in centum et octoginta libris tibi pro pretio domus, quam eidem vendideras, teneretur, centum triginta libras ex illis non immerito *in mutuo* debebat compensare. Tandem quum super hoc et quibusdam aliis articulis inter vos fuisset aliquamdiu litigatum, *iidem* iudices, *utriusque partis rationibus intellectis et diligenter inspectis* attestationibus, *et* publicatis *instrumentis*, te sententialiter condemnaverunt, ut eidem *Ioanni* praedictae domus possessionem vacuam traderes, *et* a creditoribus liberatam (*Et infra:*) Quum igitur ab hac sententia ad nostram duxeris audientiam appellandum, et nos tam tibi, quam praedicto Ioanni *dilectum filium nostrum* T. subdiaconum et capellanum nostrum dederimus auditorem, ex parte tua fuit propositum *coram eo*, supradictae domus venditionem non puram, sed conditionalem potius exstitisse, ac nullatenus te teneri ad traditionem ipsius, quatuor nihilominus testibus ad hoc probandum inductis, quod, etsi novum esset capitulum, pendebat tamen ex veteri, qui iurati deposuerunt, se interfuisse contractui inter te et praedictum Ioannem super eadem domo *posita in ora S. Blasii*, celebrato, pro qua centum octoginta librarum pretium tibi fuerat constitutum, tali videlicet adiecta conditione, ut tu domum ipsam inhabitares libere in vita tua, et post obitum tuum M. et R. natis tuis, eiusdem Ioannis nepotibus, remaneret. Cuius conditionis intuitu domum ipsam eidem Ioanni pro minori pretio vendidisti, quum a G. Morandi pro ipsa ducentas libras potuisses habere; anni vero, mensis et diei, quo venditio facta fuit, iidem testes se dixerunt minime recordari. Dictus vero Ioannes venditionem *ipsam* non conditionalem, sed puram proposuit exstitisse, ad hoc probandum publicum exhibens instrumentum [*anno dominicae incarnationis MCCVI. mense Novembri die quarto confectum;*] *in quo profitebaris, te propria voluntate vendidisse ac tradidisse domum ipsam eidem Ioanni Eremitae, et postea CLXXX. librarum pretium recepisse.* Tabellionem quoque, qui confecerat instrumentum, et unum ex testibus in instrumento subscriptis ad id probandum induxit. +*Sed licet tabellio venditionem puram exstitisse firmavit, prout in serie instrumenti continetur,* [*et etiam testis asseruit venditionem esse factam,*] *utrum tamen sub conditione vel pure fuerit contractus initus, dixit se minime recordari.* Porro quum dubitatio fuisset exorta, utrius deberet probatio praevalere, pro tua fuit parte propositum, quia, etsi *secundum legitimas sanctiones* eandem vim obtineant instrumentorum fides et depositiones testium in litibus exercendis, non tamen quodlibet instrumentum tanti debet esse momenti, ut trium vel plurium idoneorum testium depositionibus praeferantur. +*Satis est etenim, si propter tabellionis auctoritatem, qui suum officium fideliter adimplere praesumitur, quum ad hoc ex iuramento teneatur, tanta fides adhibeatur instrumento confecto, quanta foret duobus idoneis testibus adhibenda. Sed quum. per quatuor testes omni exceptione maiores fuerit manifeste probatum, supradictam venditionem fuisse conditionaliter celebratam, eorundem depositiones asseruisti instrumento merito praeferendas.* Ad hoc autem idem Ioannes ex adverso respondit, quod, quum intentionem suam per iam dictum fundaverit instrumentum, *cui fides est indubitata adhibenda, quum nec cancellatum, nec abolitum, nec corruptum sit in aliqua parte sui,* ac tu in modum exceptionis venditionem ipsam non pure, sed conditionaliter celebratam esse proponas, nec per testes ad hoc a te inductos de certo fuerit tempore facta fides, et ideo non appareat, quod super illa venditione deponant, quam constat per dictum instrumentum determinato tempore fuisse contractam, huiusmodi probatio videbatur inefficax ad intentionem contrariam elidendam. Verum responsionem istam esse proponebas invalidam, quoniam, quum utraque pars a nobis interrogata fuisset in iure confessa, quod unica tantum venditio super domo contracta fuerit, et ex depositionibus testium liqueat, venditionem conditionalem fuisse, ex utriusque confessione colligitur, eiusdem domus venditionem conditionalem exstitisse, non puram, non obstante, quod ipsa interrogatio facta fuerit, postquam a partibus exstitit in causa conclusum, quum iudex, qui usque ad prolationem sententiae debet universa rimari, possit interrogare de facto, quotiens dubitationis aliquid occurrit. *His ergo et aliis tam coram nobis,*

quam coram dicto capellano propositis et plenius intellectis, De consilio fratrum nostrorum pronunciavimus venditionem praedictae domus fuisse conditionaliter celebratam, et te ob hoc nullatenus obligatum ad traditionem ipsius, super hoc memorato Ioanni silentium imponentes *perpetuum*. Sententiam vero iudicum praedictorum, qui alias iuste pronunciasse noscuntur, quum huiusmodi exceptio coram ipsis nec probata fuerit nec obiecta, quoad dictum capitulum infirmamus, eam quoad alios articulos auctoritate apostolica confirmantes.

Chapter XI

Latin source headnote: The absence of a letter does not invalidate a rescript.

Honorius III.

It was proposed *before us on behalf of our dearest daughter in Christ B., formerly Queen of the English, that, when the nobleman W. de Guerche and his accomplices of the Dioceses of Nantes, Rennes, and Angers despoiled her at their own pleasure of the castle of Segré, which belonged to her by reason of her dower, and she obtained letters concerning this against him from Pope I., our predecessor of good memory, directed to us,* because an apostolic rescript is asserted to be defective on the ground that in the word *spoliarunt* this character "o" was missing, *although three or four citations had already emanated from us, nevertheless, admitting frivolous exceptions of this kind, you deferred proceeding in the matter itself. We therefore, marveling not a little at your discretion, since from what precedes and follows the meaning can be understood, although through the fault or occupation of the scribe the aforesaid "o" was omitted, you could sufficiently have ascertained the intention of the mandator, nor had his mandate expired at his death because the matter was no longer untouched; and willing that an end be imposed upon litigation, through apostolic writings* we command your discretion that, notwithstanding this, you shall proceed in the matter itself *according to the tenor of the former letters, with the obstacle of any contradiction and appeal removed,* reason going before. [*Given at the Lateran, on the fifteenth day before the Kalends of November, in the first year, 1216.*]

> Defectus literae non vitiat rescriptum.
>
> Honorius III.
>
> Ex parte carissimae in Christo filiae B. quondam Anglorum reginae fuit propositum +*coram nobis, quod, quum nobilis vir W. de Guerchia et complices eius Nannetensis, Rodenensis et Andegavensis dioecesis ipsam castro de Segreio, ad eam ratione sui dotalitii pertinente, pro suae voluntatis arbitrio spoliarint, et ipsa super hoc contra eum a bonae memoriae I. Papa praedecessore nostro ad nos literas impetraverit,* Quia rescriptum apostolicum pro eo, quod in hac dictione «spoliarunt,» haec figura «o» deerat, asseritur vitiosum, +*licet iam a nobis tres citationes vel quatuor emanassent: vos tamen, admissis huiusmodi exceptionibus frivolis, in ipso negotio procedere distulistis. Nos ergo de discretione vestra non modicum admirantes, quum per praecedentia et subsequentia intelligantur, licet ex scriptoris vitio vel occupatione praedictum «o» fuerit omissum, satis vobis potuerit de mandatoris intentione constare, nec eius mandatum in ipsius obitu exspiraverat, eo, quod res integra iam non erat, ac volentes, ut finis litibus imponatur, discretioni vestrae per apostolica scripta* Mandamus, quatenus hoc non obstante in negotio ipso *iuxta priorum continentiam literarum, sublato cuiuslibet contradictionis et appellationis obstaculo,* ratione praevia procedatis. [*Dat. Lat. XV. Kal. Nov. A. I. 1216.*]

Chapter XII

Latin source headnote: An appeal is lawfully taken from a judge who does not cause common instruments to be produced for a party petitioning this.

Gregory IX, to the Prior of Saint Bartholomew and the Dean of Arches in London.

G., perpetual vicar of the church of Rechan., explained to us that, when the prior and convent of Leeds convened him concerning tithes before judges by apostolic authority, and the said G. reconvened them before the same judges concerning like matters, because the said judges did not cause a copy of certain common instruments—which the other party had and through which he intended to establish his intention concerning the principal matter—to be made for him although he petitioned this insistently, he appealed to our hearing. Therefore, we command that, if it is so, after [the matter] has been recalled to its due state, etc.

> Licito appellatur a iudice, qui parti hoc petenti non facit edi communia instrumenta.
>
> Gregorius IX. Priori sancti Bartholomaei et Decano de Arcubus Londoniensibus.
>
> G. perpetuus vicarius ecclesiae de Rechan. nobis exposuit, quod, quum prior et conventus de Ledis eum super decimis coram iudicibus auctoritate apostolica convenissent, et dictus G. super similibus coram ipsis reconvenisset eosdem, quia dicti iudices copiam quorundam instrumentorum communium, quae habebat pars altera, et per quae intendebat intentionem suam super principali fundare, fieri non faciebant eidem hoc cum instantia postulanti, nostram audientiam appellavit. Ideoque mandamus, quatenus, si est ita, revocato in statum debitum, etc.

Chapter XIII

Latin source headnote: Contrary writings produced by the same person do not create faith.

The same.

It can be imputed to one who has produced in judgment writings contrary to one another, mutually derogating from their own credibility, since it was within his power not to produce whichever he wished.

> Scripturae contrariae ab eodem productae fidem non faciunt.
>
> Idem.
>
> Imputari ei potest, qui contrarias inter se scripturas in iudicio protulit, fidem sibi adinvicem derogantes, quum in ipsius fuerit potestate quam voluerat non proferre.

Chapter XIV

Latin source headnote: If the cause is expressed in an instrument of debt, the debtor is condemned unless he proves that it is not owed. If it is not expressed, it is necessary that the creditor prove that it is owed.

The same.

If the bond that you propose was issued by you without being owed speaks indeterminately, your adversary is bound to show the debt that is contained in it. But if you expressed in it the cause on account of which a writing of this kind issued, one stands by your confession unless you prove that you promised it without its being owed.

> Si in instrumento debiti exprimitur causa, condemnatur debitor, nisi probet indebitum. Si non exprimitur, nccesse est, ut creditor probet, id fore debitum.
>
> Idem.

> Si cautio, quam a te indebite proponis expositam, indeterminate loquatur, adversarius tuus tenetur ostendere debitum, quod continetur in ea. Sed si causam, propter quam huiusmodi scriptura processerit, expresseris in eadem, confessioni tuae statur, nisi probaveris, te id indebite promisisse.

Chapter XV

Latin source headnote: By authority of the ordinary, a notary can reduce the notes of a deceased notary to public form.

The same, to I., Notary.

Since P., a notary overtaken by death, did not complete certain instruments that had been reduced by him to notes, at the petition of those to whom they belong you will be able, by authority of the ordinary judge, faithfully to reduce them to public form, and by this they shall have perpetual firmness.

> Auctoritate ordinarii potest notarius tabellionis mortui notas in publicam formam redigere.
>
> Idem I. Tabellioni.
>
> Quum P. tabellio morte praeventus quaedam non perfecerit instrumenta, quae in nota redacta fuerant ab eodem, ad petitionem eorum, ad quos pertinent, auctoritate ordinarii iudicis poteris ea fideliter in publicam formam redigere, habitura per hoc perpetuam firmitatem.

Chapter XVI

Latin source headnote: An instrument copied by a notary by authority of the ordinary has the same force as the original.

The same.

If instruments are petitioned to be copied because of age or another just cause, they shall be presented before the ordinary judge or one specially delegated by him. If, after inspecting them diligently, he finds them defective in no part of themselves, he shall command that they be copied by a public person, and through this they shall have the same authority as the originals.

> Instrumentum exemplatum per tabellionem auctoritate ordinarii, eandem vim habet cum originali.
>
> Idem.
>
> Si instrumenta propter vetustatem vel propter aliam iustam causam exemplari petantur, coram ordinario iudice vel delegato ab eo specialiter praesententur. Qui si ea diligenter inspecta in nulla sui parte vitiata repererit, per publicam personam illa praecipiat exemplari, eandem auctoritatem per hoc cum originalibus habitura.

Title XXIII: On Presumptions

Chapter I

Latin source headnote: Just as one manifestly doing harm is liable to punishment, so also is one doing so secretly, even though afterward he says that he did it in jest.

Solomon in Proverbs.

As one is guilty who casts spears and arrows unto death, so is the man who fraudulently harms his friend and, when he has been detected, says: "I did it in sport."

De praesumptionibus.

Sicut manifesto nocens est poenae obnoxius, ita et occultus, licet postea dicat, se ioco fecisse.

Salomon in Parabolis.

Sicut noxius est, qui mittit lanceas et sagittas in mortem, ita vir, qui fraudulenter nocet amico suo, et, quum fuerit deprehensus, dicit: ludens feci.

Chapter II

Latin source headnote: A definitive sentence is rendered from a violent presumption. And it is a notable case.

The same.

"Bring me a sword." And when they had brought [*the sword before the king,*] he said: "Divide the living infant [*into two parts,*] and give half to the one and half to the other." But the woman whose son was living said to the king—for her bowels were moved over her son—"I beseech you, lord, give her the living infant, and let him not be killed." The other, on the contrary, was saying: "Let him be neither mine nor yours, but let him be divided." The king responded and said: "Give this woman the living infant, and let him not be killed. For she is his mother."

Ex violenta praesumptione fertur definitiva. Et est casus notabilis.

Idem.

Afferte mihi gladium. Quumque attulissent [*gladium coram rege*] ait: Dividite infantem vivum [*in duas partes*], et date dimidiam partem uni, et dimidiam partem alteri. Dixit autem mulier, cuius filius erat vivus, ad regem, (commota sunt quippe viscera eius super filio suo): Obsecro domine, date illi infantem vivum, et non occidatur. E contrario alia dicebat: Nec mihi, nec tibi sit, sed dividatur. Respondit rex et ait: Date huic infantem vivum, et non occidatur. Haec est enim mater eius.

Chapter III

Latin source headnote: Conduct in youth creates a presumption in old age.

Jerome on Proverbs.

"A boy is understood from his pursuits." For whomever you see pursue virtues with the modesty of continence, the hearing of the wise, [*and*] the observance of the commandments of God, *and* especially simplicity and humility, understand that this person's works [*are*] pure and upright. *But correct one who is contrary to these, or, if you cannot, avoid him lest you be corrupted by him.*

Conversatio in adolescentia facit praesumptionem in senectute.

Hieronymus super Parabolis.

«Ex studiis suis intelligitur puer.» Quemcunque enim virtutibus studere cum modestia continentiae auditioni sapientum, [*et*] observantiae mandatorum Dei, *et* maxime simplicitati et humilitati videris, huius munda [*esse*] et recta opera intellige. *Quem vero his contrarium corrige, aut si non potes, devita, ne ab eo corrumparis.*

Chapter IV

Latin source headnote: A presumption is made against one who evades judgment by delays.

Pope Boniface, to the Bishops of Gaul.

No one doubts that a guilty person evades judgment in the same manner as one who is innocent seeks to be absolved, *but the crafty cavil of those who believe that matters are to be conducted with cunning counsels will never receive the name of innocence.* For whoever thinks that he evades judgment by delays confesses concerning all things. [*He shall come, etc. Given on the day of the Ides of June, in the consulship of Monaxius, clarissimus, for the eleventh time, 419.*]

> Praesumitur contra illum, qui dilationibus subterfugit iudicium.
>
> Bonifacius Papa Episcopis Galliae.
>
> Nullus dubitat, quod ita iudicium nocens subterfugit, quemadmodum ut absolvatur, qui est innocens, quaerit, *sed astuta cavillatio eorum, quae versutis agendum credunt esse consiliis, nunquam innocentiae nomen accipiet.* Confitetur enim de omnibus, quisquis se subterfugere iudicium dilationibus putat. [*Veniet etc. Dat. sub die Id. Iun. Monaxio XI. V. C. Cons. 419.*]

Chapter V

Latin source headnote: One who denies one of two charges brought is presumed to affirm the remaining one.

Gregory in a Homily.

"Do *we* not rightly say that you are a Samaritan and have a demon?" Jesus answered: "I do not have a demon." For two things were brought against him: he denied one and conceded the other by remaining silent.

> Qui ex duobus illatis alterum negat, reliquum affirmare praesumitur.
>
> Gregorius in Homilia.
>
> «Nonne bene dicimus *nos* quia Samaritanus es tu, et daemonium habes? Respondit Iesus: Ego daemonium non habeo.» Duo quippe ei illata fuerunt: unum negavit, alterum tacendo concessit.

Chapter VI

Latin source headnote: From past things a presumption is made concerning future things.

The same, to Bishop Maximus.

We carry out the heavenly commands more effectively if we share our burdens with our brothers. Therefore, we decree that you, [*the most reverend man Maximianus,*] *our brother and fellow bishop,* shall administer the office of the Apostolic See over all the churches of Sicily, [*so that whoever is enrolled there in the habit of religion shall be subject to your fraternity by our authority, in order that it may not be necessary for him to reach us concerning small causes by crossing such expanses of sea. But if perhaps there are any difficult matters that can by no means be resolved by the judgment of your fraternity, let these alone seek our judgment, so that, relieved from lesser causes, we may be occupied more effectively with greater ones.*] We grant *this office* not to the place but to the person, because from your past life we have learned what we may presume [*also*] concerning your subsequent conduct. [*In the month of December, the tenth indiction, 591.*]

> Ex praeteritis praesumitur circa futura.

Idem Maximo Episcopo.

Mandata coelestia efficacius gerimus, si nostra cum fratribus onera partiamur. Proinde super cunctas ecclesias Siciliae te, [*reverentissimum virum Maximianum*] *fratrem, et coepiscopum nostrum* vices sedis apostolicae ministrare decernimus *ut quisquis illuc religionis habitu censetur, fraternitati tuae ex nostra auctoritate subiaceat, quatenus ei non sit necessarium pro parvulis ad nos causis tanta maris spatia transmeando pervenire. Sed si qua fortasse difficilia exsistunt, quae fraternitatis tuae iudicio nequaquam dirimi possint, haec solummodo nostrum iudicium flagitent, ut sublevali de minimis in causis maioribus efficacius occupemur.*] Quas *videlicet vices* non loco tribuimus, sed personae, quia ex transacta in te vita didicimus, quid [*etiam*] de subsequenti conversatione tua praesumamus. [*Mense Decembr. Indict. X. 591.*]

Chapter VII

Latin source headnote: From proximity, knowledge of a fact in a neighboring place is presumed.

The same.

Certain persons—(*And below:*) But as to how Africa is being laid waste by mortality and sicknesses, the nearer you are, [*the more*] keenly I believe that you have learned it. [*But concerning the East, etc.*]

Ex vicinitate praesumitur notitia facti loci vicini.

Idem.

Quosdam (*Et infra:*) Africa vero qualiter mortalitate et languoribus vastetur, quanto viciniores estis, [*tanto*] credo quod subtilius cognovistis. [*De oriente vero etc.*]

Chapter VIII

Latin source headnote: A deed known in a remote place is presumed known in a neighboring place.

The same, to Bishop Victor.

In proportion as [*it is a joy to us to know that our brothers are becoming fittingly solicitous toward their sons with paternal charity, so we reckon it a sorrow when neither reverence for other brothers nor consideration of the priesthood is able to restrain them from illicit things. Therefore, it is not doubtful that it is clear to your fraternity how grave and bitter is the complaint against our brother, the bishop of the city of Tegessis, by his clerics or by those who are placed in sacred order, because*] it could not remain hidden from you nearby which reached us far away. [*And because, etc.*]

Praesumitur factum notum in vicino loco, quod est notum in remoto.

Idem Victori Episcopo.

Quanto +[*laetitiae nobis est fratres nostros cognoscere erga filios suos paterna caritate decenter esse sollicitos, tanto tristitiae deputamus, quando eos ab illicitis nec aliorum fratrum reverentia, nec sacerdotii praevalet consideratio temperare. Quam igitur gravis et aspera adversus fratrem nostrum Tegessis civitatis episcopum clericorum eius vel eorum, qui in sacro sunt ordine positi, sit querela, fraternitati tuae liquere non dubium est, quia*] Latere te in vicino non potuit, quod ad nos in longinquo pervenit. [*Et quonian etc.*]

Chapter IX

Latin source headnote: From past things a presumption is made concerning future things.

Jerome on Hosea.

"I shall write for them my manifold laws." From those given previously and neglected, it appears that they will neglect these.

> Ex praeteritis praesumitur circa futura.
>
> Hieronymus super Osee.
>
> «Scribam eis multiplices leges meas.» Ex prius datis, et neglectis apparet, quod has negligent.

Chapter X

Latin source headnote: More effective proof is required from one who wishes to prove that which is not probable.

Alexander III, to the Dean of Cassium.

Because it is not probable that the priest H. granted the personate of the church to the chaplain R. and received from him the vicarage of the same church, you shall provide *attentively* that you do not receive the proof of *the aforementioned W.* concerning this, unless the common report of the place holds it or such persons appear concerning whom it is not probable that they ought to perjure themselves; since it often happens that witnesses corrupted *by payment* are easily induced to put forward false testimony.

> Efficacior probatio requiritur ab eo, qui probare vult illud, quod non est verisimile.
>
> Alexander III. Decano Cassiensi.
>
> Quia verisimile non est, quod H. presbyter personatum ecclesiae R. capellano concesserit, et ab eo eiusdem ecclesiae acceperit vicariam, provideas *attentius*, ne *memorati W.* super hoc probationem recipias, nisi communis loci fama id habeat, vel tales personae appareant, de quibus verisimile non sit, quod debeant deierare; quoniam saepe contingit, quod testes corrupti *pretio* facile inducantur ad falsum testimonium proferendum.

Chapter XI

Latin source headnote: Marriage is proved through long cohabitation and reputation concerning marriage, matrimonial contracts, and other supporting evidence. Panormitanus.

The same, to the Archbishop of Genoa.

That also *has nevertheless become known to us from your inquiry:* that, when *a certain* free woman knowingly cohabited for ten years and more with a certain slave and was known carnally by him, she now asserts that he is not her husband *because the witnesses to the betrothal do not appear.* But the man, claiming her as wife, shows a public instrument in which they name themselves spouses and through which it appears that he made to her a donation on account of marriage. The woman, however, asserting that the instrument was defective, so that the master might be defrauded of the slave, produced several witnesses that *that slave,* often asked by her friends to betroth her, firmly asserted that *he* had neither betrothed nor would betroth her. But the man proved that *the woman herself was* his wife by nothing except the aforesaid instrument and certain witnesses who had seen her wearing rings; but the woman said that she wore the rings according to the custom of those *women* who sell bread. But because in doubt of this kind the reputation of the neighborhood ought rather to be considered, *it shall belong to your solicitude to inquire diligently into the reputation of the place—whether the aforesaid man had her at bed and board as his wife or as a concubine; and* if the reputation of the place holds

that the man kept her at bed and board as a wife, since marriage is the union of male and female retaining an undivided custom of life, the woman is to be compelled to serve the same man with conjugal affection, especially if the aforesaid instrument was drawn up by one who fulfilled his office faithfully.

> Per cohabitationem diutinam et famam de matrimonio et contractibus matrimonialibus ac alia adminicula probatur matrimonium. Panorm.
>
> Idem Genuensi Archiepiscopo.
>
> Illud quoque *nihilominus ex tua inquisitione* nobis innotuit, quod, quum *quaedam* libera mulier per decem annos et ultra cuidam servo scienter cohabitaverit, et ab eo fuerit carnaliter cognita, nunc ipsum asserit suum non esse maritum *pro eo, quod testes desponsationis non comparent*. Verum vir eam vendicans in uxorem ostendit publicum instrumentum, in quo sese coniuges nominant, et per quod ipsum ei donationem propter nuptias fecisse apparet. Mulier vero instrumentum illud asserens vitiosum, ut servo dominus fraudaretur, plures testes produxit, quod *servus* ille ab amicis eius saepe rogatus, ut eam desponsaret, et *ille* nec desponsasse, nec desponsaturum se ipsam firmiter asserebat. Vir autem nonnisi praedicto instrumento, et quibusdam testibus, qui viderant eam annulos deferentem, *mulierem* ipsam probavit *esse* uxorem; sed mulier de more illarum *mulierum*, quae panes vendunt, se annulos detulisse dicebat. Verum, quia in huiusmodi dubietate fama viciniae magis debet attendi, *tuae sollicitudinis erit famam loci diligenter inquirere, utrum praedictus vir eam in lecto et in mensa sicut suam uxorem aut concubinam habuerit; et* si fama loci habet, quod vir ipsam in lecto et in mensa sicut uxorem tenuerit, quum matrimonium sit maris et feminae coniunctio, individuam vitae consuetudinem retinens: cogenda est mulier, ut eidem viro affectu serviat coniugali, praesertim si praescriptum instrumentum ab eo conditum fuerit, qui officium suum fideliter adimplevit.

Chapter XII

Latin source headnote: Carnal union is proved through a violent presumption.

The same.

Having received the letters of your fraternity, *from their tenor* it became known to us that, when P., *your parishioner,* sought *by your judgment* to be separated from the woman A., whom he had taken as wife, the accusers of the marriage produced witnesses firmly asserting that, after *the aforesaid* woman had contracted marriage with the aforesaid man, they saw a blood relative of her husband lying alone with her alone, naked with her naked, in the same bed, with the intention, as they believed, that he should know her carnally. They also said that this happened often in their presence *both* in many secret places and hiding places suitable for this purpose and *at* chosen hours *and places. And public report agrees that after the marriage had been contracted they mingled with one another, which, as you assert, they publicly confessed in your presence, although they denied that they had done it before the marriage was contracted. It is also said concerning the aforesaid woman that, pretending that she had conceived by her husband, she falsely claimed that she had given birth to another's offspring, already baptized, as is reported, and, causing it to be rebaptized, deceived her husband. But in the course of time, when report of the purchased alien offspring uncovered the fraud, she secretly returned it to the parents from whom she had bought it. Afterward the same woman is reported to have prepared a poisonous drink and other snares against the life of the man. Therefore, because your fraternity considered that we should be consulted as to whether the already-mentioned proofs suffice to dissolve the marriage,* we respond to your consultation in this way: *both from the confession and* from a violent and certain suspicion of fornication of this kind, *especially if what is said concerning the offspring and the*

contrivance of death can be proved, a sentence of separation can not undeservedly be promulgated, yet in such a way that the man shall have permission to marry another when she is dead, while the woman remains without hope of marriage.

> Per violentam praesumptionem probatur carnis copula.
>
> Idem.
>
> Literis tuae fraternitatis receptis *ex tenore illarum* nobis innotuit, quod, quum P. *parochianus tuus* ab A. muliere, quam in uxorem acceperat, *tuo iudicio* peteret separari, accusatores matrimonii produxerunt testes firmiter asserentes, quod, postquam *praedicta* mulier cum praedicto viro contraxerat matrimonium, consanguineum viri eiusdem solum cum sola, nudum cum nuda, in eodem lecto iacentem, ea, ut credebant, intentione, ut eam cognosceret carnaliter, viderunt, *sed et in* multis secretis locis, et latebris ad hoc commodis, et *tam* horis electis *+quam locis saepe praesentibus eis hoc contigisse dixerunt. Et publica fama consentit, quod post contractum matrimonium se miscuerunt ad invicem, quod in praesentia tua publice, ut asseris, sunt confessi, quamvis id se ante contractum matrimonium fecisse negarent. Dicitur quoque de muliere praedicta, quod de marito sese simulans concepisse, alienum partum iam baptizatum, ut fertur, se mentita est peperisse, et rebaptizari faciens virum suum decepit. Procedente vero tempore, quum fama empti alieni partus fraudem detegeret, parentibus, a quibus eum emerat, occulte restituit, postea veneficum poculum et alias vitae insidias viro parasse eadem mulier perhibetur. Quia ergo tua nos fraternitas duxit consulendos, si ad solvendum matrimonium iam dictae probationes sufficiant,* Consultationi tuae taliter respondemus, quod *tum ex confessione, tum* ex huiusmodi violenta et certa suspicione fornicationis, *praesertim, si quod de partu et machinatione mortis dictum est probari valet, non immerito* potest sententia divortii promulgari, ita quidem, ut vir licentiam habeat mortua illa ducendi aliam, muliere sine spe coniugii remanente.

Chapter XIII

Latin source headnote: It says the same as the preceding chapter.

Clement III.

In the third place, your fraternity sought to have the knot of a question of this kind untied: whether a young man ought to have as wife the betrothed woman to whom he consented through words of the present tense, when her niece, springing forth to impede their marriage, proposed that she had previously been known carnally by the young man. Witnesses produced by her said that they believed for certain that she had been the concubine of the said young man *and joined to him by carnal commingling,* adding that they had seen them wandering together many times through plains and woods, ways and pathless places, and said that they had received the testimony of the neighborhood concerning this. For greater certainty, however, because you believed that what the same woman asserted had been proved less than sufficiently, both she and the young man, bound by oaths, separately confessed that they had previously known one another carnally, although the young man did not wish to be separated from the woman whom he had betrothed. But we, understanding *these things* that have been said, *and considering that the reputation of the neighborhood, the customary conversations of the said woman and young man, and their wandering courses through solitary places were proved by witnesses, and that they separately confessed under oath to carnal knowledge,* especially since this is not said to be hidden but is proclaimed by many as virtually manifest, *adhering to the footsteps of our predecessors, and especially following the statutes of Alexander III of happy memory,* believe it *more advisable and safer* that they not be joined matrimonially, but that, their betrothal being dissolved, they be separated *from one another.* [*Given at the Lateran.*]

Idem dicit, ut praeced. cap.

Clemens III.

Tertio loco quaestionis huiusmodi nodum tua fraternitas petiit explicari, an iuvenis sponsam, in quam per verba de praesenti consensit, debeat in uxorem habere, ad quorum matrimonium impediendum neptis ipsius sponsae prosiliens, se a iuvene carnaliter praecognitam proponebat. A qua producti testes dixerunt, se pro certo credere, quod illa dicti iuvenis exstiterit concubina, *et ei carnali commixtione coniuncta*, adiicientes, quod eos insimul viderant per plana et nemora, vias et invia pluries convagantes, et testimonium viciniae se super hoc recepisse dicebant. Ad maiorem autem certitudinem, quia minus sufficienter credidisti esse probatum quod eadem mulier asserebat, tam ipsa quam iuvenis iuramentis adstricti seorsum confessi sunt, quod se invicem carnaliter praecognoverant, licet iuvenis nollet ab ea, quum desponsaverat, separari. Nos autem *haec*, quae dicta sunt, intelligentes, *et attendentes viciniae famam, et dictorum mulieris ac iuvenis consuetas confabulationes, et per solitudines vagos incessus per testes esse probatos, ut de carnali cognitione eos per iuramentum separatim fuisse confessos,* praesertim quum hoc non dicatur occultum, sed quasi praedicetur a pluribus manifestum, *praedecessorum nostrorum vestigiis inhaerentes, et praesertim felicis memoriae Alexandri III. statuta sectantes*, consultius *et securius* esse credimus, ut matrimonialiter non coniungantur, sed *ab invicem* solutis sponsalibus separentur. [*Dat. Laterani.*]

Chapter XIV

Latin source headnote: No one ought to be condemned of a grave crime because of a presumption, even a vehement one.

Innocent III, to the Bishop of Nevers and the Archdeacon of Bourges.

We have received your letters containing that, when the cause being conducted between *our venerable brother* the Bishop of Auxerre and certain burgesses of La Charité whom the same bishop was accusing of heresy had been delegated to you and *our beloved son* the Abbot of Colonges by the Apostolic See, both parties *at length, so that the prolixity of the matter might more easily be brought to an end,* appointed you two as arbiters for themselves under a certain penalty, while the power delegated to you was nevertheless reserved. But G., the bearer of the present letters and one of those *whom the aforesaid bishop was accusing,* had confessed his heresy *at La Charité* in a public voice, and had similarly acknowledged concerning *a certain* brother of his that he was laboring with him under the same error. *When this man was convened concerning his faith before our venerable brother the Archbishop of Bourges, and a purgation to be made by the same W., who was believed to be truly penitent and Catholic, had been prescribed to him, W. himself, after furnishing an oath, purged his brother, whom he had publicly asserted* [*to be*] *a heretic, and thus he was judged by the bishop to be both perjured and a heretic. On the contrary, however, the same W. proposed that, although he had publicly confessed concerning himself, he had nevertheless confessed nothing concerning his brother. Hence he could rightly have purged him, especially since he had heard from two chaplains of Aubigny, who knew the latter's conscience, that he could safely purge him as a Catholic; afterward he showed you their letters. But concerning what he had denied about his brother, the bishop immediately convicted him before you through himself, one priest, and another deacon; whence he called him relapsed into heresy. You, therefore, considering these notable contradictions in the aforesaid W., transmitted him with your letters to our presence, his goods having meanwhile been inventoried until we should take care to ordain what ought to be ordained concerning his person and goods; you added that, when the same W., together with certain persons, pressed you to receive his purgation, as you had that of certain others, you were unwilling to admit his oath because he appeared self-contradictory, although a purgation for him with eight reputable men as oath-helpers was admitted.*

But we, *because the little foxes that endeavor to demolish the vineyard of the Lord are to be caught by sagacious effort—for foxes have dens and the birds of heaven nests—from the matters written above* held the aforesaid G. vehemently suspect of heresy, both because he afterward denied having said what he had said before, *as he was convicted before you,* and because either he first spoke a falsehood against his brother by asserting him to be a heretic, or afterward committed perjury against God by purging him of heresy, either of which renders him very suspect; although it appears more probable that at the time when, as one truly penitent, he was returning from heresy to the faith, he would not have spoken so grave a falsehood, especially against a brother whom *certainly,* as most dear to him, he would not have asserted to be a heretic unless he had been kindled by zeal for the orthodox faith. Hence it is presumed that, when he afterward purged him of heresy, he perjured himself shamefully.

Wherefore, [*by commanding through apostolic writings,*] we order *your discretion* that, since we do not will him to be condemned of so grave a crime because of suspicion alone, although indeed vehement, you shall receive from him, beyond an oath-bound surety, security of such kind and quantity that he ought to be restrained by fear of corporal punishment; you shall impose upon him a discreet penance from which it can appear whether he walks in darkness or in light, and whether he is truly penitent or feignedly converted. And if in this manner you learn that he is a true Catholic, you shall not permit him to be unduly molested; otherwise, you shall condemn him as a heretic. [*Given at Ferentino, on the Kalends of June, in the ninth year, 1206.*]

> Propter praesumptionem etiam vehementem non debet quis de gravi crimine condemnari.
>
> Innocentius III. Nivernensi Episcopo et Archidiacono Biturícensi.
>
> Literas vestras accepimus continentes, quod, quum causa, quae vertitur inter *venerabilem fratrem* Altissiodorensem episcopum, et quosdam Burgenses de Caritate, quos idem episcopus de haeresi impetebat, vobis et *dilecto filio* abbati Collonensi, a sede apostolica delegata fuisset, utraque pars *tandem, ut negotii prolixitas posset facilius expediri*, vos duos sub certa poena sibi arbitros statuerunt, delegata vobis potestate nihilominus reservata; G. autem lator praesentium, unus ex illis, *quos praefatus episcopus impetebat*, haeresim suam *apud Caritatem* fuerat publica voce confessus, et de *quodam* fratre suo similiter recognoverat, quod eodem secum laborabat errore. *+Qui quum de fide sua coram venerabili fratre nostro Biturícensi archiepiscopo conveniretur, eique purgatio facienda per eundem W., qui vere poenitens et catholicus credebatur, esset indicta, ipse W. fratrem suum, quem publice asseruerat* [*esse*] *haereticum, praestito iuramento purgavit, et sic ab ipso et periurus et haereticus censebatur. E contrario vero idem W. proposuit, quod, licet de se publice confessus fuisset, nihil tamen fuerat de fratre confessus. Unde bene poterat illum purgasse, maxime quum a duobus capellanis de Albiniaco, qui conscientiam illius noverant, audivisset, quod tanquam catholicum poterat illum secure purgare, quorum literas postea vobis ostendit. Sed episcopus super eo, quod de fratre negaverat, protinus eum per se ipsum et unum presbyterum et alium diaconum coram vobis convicit; unde ipsum relapsum in haeresim appellabat. Vos igitur has in praedicto W. contrarietates notabiles attendentes, ipsum cum literis vestris ad nostram praesentiam transmisistis, bonis eius interim annotatis, donec de persona eius et bonis quid statuendum foret statuere curaremus, adiicientes, quod, quum idem W. apud vos cum quibusdam instaret, ut purgationem reciperetis ipsius, sicut aliorum quorundam, vos iuramentum eius, quia sibi contrarius videbatur, admittere noluistis, purgatione tamen pro eo per octavam manum bonorum virorum admissa.* Nos vero, *quia vulpeculae, quae moliuntur vineam Domini demoliri, sagaci sunt studio capiendae, nam vulpes foveas habent, et volucres coeli nidos, ex iis, quae praescripta sunt,* praedictum G. suspectum de haeresi vehementer habuimus, tum quia quod ante dixerat postea se dixisse negavit, *sicut convictus est coram vobis,* tum quia vel mendacium prius dixit in fratrem, asserendo illum haereticum, vel periurium postea commisit in Deum, purgando illum de haeresi, quorum utrumque reddit illum valde suspectum; quanquam verisimilius videatur, quod eo tempore, quo

tanquam vere poenitens ab haeresi revertebatur ad fidem, tam grave mendacium non dixisset, praesertim in fratrem, quem *utique* tanquam carissimum non asseruisset haereticum, nisi fuisset accensus zelo fidei orthodoxae. Unde praesumitur, quod, quum postea purgavit illum de haeresi, turpiter deieravit. Quocirca *discretioni vestrae per apostolica scripta* [*praecipiendo*] mandamus, quatenus, quum propter solam suspicionem, quamvis utique vehementem, nolumus illum de tam gravi crimine condemnari, talem et tantam securitatem recipiatis ab ipso praeter iuratoriam cautionem, quod timore poenae corporalis debeat coerceri, discretam ei poenitentiam iniungentes, ex qua valeat apparere, utrum in tenebris ambulet, an in luce, utrumve sit vere poenitens, an ficte conversus. Et si eum hoc modo verum catholicum cognoveritis, non sinatis ipsum indebite molestari; alioquin eum tanquam haereticum condemnetis. [*Dat. Ferentini Kal. Iun. Ao. IX. 1206.*]

Chapter XV

Latin source headnote: One who maintained continence in youth is not presumed incontinent in old age, especially if he is learned.

The same, to the Bishop of Ceneda and the Abbot of Deciquorum.

Since in his youth *our venerable brother C.,* Bishop of Pécs, exhibited himself so mature, honorable, and provident that, *because of the sweet odor of his probity,* he merited to be adorned with the pallium by the Roman Church, it is not lightly to be believed that, after he reached old age, he shamefully cast aside the yoke of the Lord by embracing the stenches *and foulness* of lust, since a stain of this kind, which is sometimes contracted in youth, is more frequently expiated in old age. Who, moreover, would easily believe that a man endowed with knowledge of letters, forgetful of his own salvation, would turn himself to that ignominy of passion so as to perpetrate abominable incest with his own niece, since, even according to the opinions of the pagans, the natural bond between such persons permits no suspicion of a savage crime? Therefore, although the King of Hungary, *of illustrious memory,* had *sometimes* denounced the same bishop to us through messengers and letters concerning such a crime, *supplicantly and insistently* petitioning that we remove from the Hungarian Church an evil of this kind, pernicious by example, nevertheless, because his suggestion appeared to proceed not from the root of charity *but from the tinder of hatred, since he did not cease to persecute him as an enemy, as is manifest throughout the whole province,* we were unwilling to incline our ears as if to malicious denunciations; but, so that we might prove whether the spirit was from God, we commanded the Bishop of Auria, *of good memory,* that he should prudently and cautiously investigate from the fellow bishops whether they believed that the aforesaid bishop had been sprinkled with such a stain. They afterward wrote back to us that they believed him to be a man of honorable conduct, commending his person in many ways. [*But because, etc.* (*cf. c. 12, On Canonical Purgation, V.34.*) *Given at Ferentino, on the Nones of July, in the ninth year, 1206.*]

Non praesumitur incontinens in senectute, qui in iuventute continuit, maxime si est literatus.

Idem Cenadiensi Episcopo et Abbati Deciquorum.

Quum in iuventute sua *venerabilis frater noster C.* Quinqueecclesiensis episcopus adeo se maturum, honestum et providum exhibuerit, ut *propter suavem suae probitatis odorem* ab ecclesia Romana meruerit pallio decorari, non est de levi credendum, quod, postquam ad senilem pervenit aetatem, turpiter abiecerit iugum Domini, foetores *et foeditates* libidinis amplexando; quum labes huiusmodi, quae nonunquam in iuventute contrahitur, in senectute frequentius expietur. Quis praeterea de facili crederet, quod vir praeditus scientia literarum, propriae salutis oblitus, ad eam passionis ignominiam se

converteret, ut cum propria nepte abominabilem perpetraret incestum, quum, etiam secundum sententias ethnicorum naturale foedus inter tales personas nihil permittat saevi criminis suspiciari? Licet igitur *illustris memoriae* rex Hungariae eundem episcopum nobis *interdum* per nuncios et literas de tali crimine detulisset, *suppliciter et instanter* postulans, ut malum huiusmodi pernitiosum exemplo de Hungarica ecclesia tolleremus, quia tamen eius suggestio non de caritatis radice, *sed ex odii fomite* procedere videbatur, *quum ipsum tanquam inimicum persequi non cessaret, sicut est in tota provincia manifestum:* noluimus aures nostras quasi malignis delationibus inclinare, sed, ut probaremus, si spiritus esset ex Deo, *bonae memoriae* Auriensi episcopo dedimus in mandatis, ut prudenter et caute a coepiscopis indagaret, utrum praefatum episcopum crederent tali labe respersum. Qui nobis postmodum rescripserunt, quod eum virum honestae conversationis esse credebant, personam illius multipliciter commendantes. [*Quia vero etc.* (*cf. c. 12. de purg. can. V. 34.*) *Dat. Ferentini Non. Iul. Ao. IX. 1206.*]

Chapter XVI

Latin source headnote: A person in whose favor a letter is written concerning the conferral of a benefice with the clause "if he shall have been suitable" is not bound to prove that he is suitable, since he is presumed suitable.

The same, to the Archdeacon and Provost of Milan.

Some time ago we commanded the Archdeacon of Milan, *of good memory,* that he should cause *our beloved son* C., a scholar, to be received as a cleric and brother of the same church by the priest of Saint Victor *of the Forty Martyrs, who alone ministered in that church, in which, as the same scholar asserted, a cleric and a priest formerly ministered, and the same scholar proposes that its resources have in no way been diminished.* But the aforementioned priest, *maliciously* declining the examination of *the* archdeacon, sent *the cleric I.* [*on his own behalf*] *to our presence; and we appointed as auditor for him and the aforesaid C. our venerable brother the Archbishop of Trani, legate of the Apostolic See, then our subdeacon and chaplain; before him the said John* asserted that the resources of the aforementioned church by no means sufficed for two clerics, adding that the aforesaid C. was not suitable for obtaining the benefice of that church.

[*Hence, with their assent, we commanded our venerable brother [N.], Patriarch of Jerusalem, then Bishop of Vercelli, that, if the aforesaid C. lawfully proved before him that the resources of the aforesaid church had not been diminished but sufficed for two and that his person was suitable, he should compel the aforesaid priest to receive him through ecclesiastical censure, appeal removed; and, if any contradictors or rebels should perhaps appear, he should restrain them from their presumption by similar coercion, appeal ceasing; otherwise he should impose perpetual silence upon the aforementioned scholar concerning this. Any witnesses who should be named to him, if they withdrew themselves because of favor, hatred, or fear, he should also compel by canonical coercion, appeal ceasing, to bear testimony to the truth. But when the aforesaid scholar, in order to prove that the resources of the church had not been diminished but sufficed for two, had many times approached the presence of the aforesaid patriarch, then Bishop of Vercelli, and the same bishop had placed under interdict the witnesses named by him because, after admonition had been given beforehand, they were unwilling to bear testimony to the truth, our venerable brother [N.], then Archbishop of Milan, relaxed the interdict by his own authority. For this reason the aforesaid C. was unable to obtain his right. Hence we afterward commanded you, son Provost, that, having inspected the attestations already received—which we willed that you should cause to be exhibited to you through ecclesiastical censure—you should, according to them and others, if the parties should determine lawfully to produce any, since those received had not yet been published, terminate the cause itself according to the tenor of the preceding letters, with the obstacle of any contradiction and appeal removed, reason going before. Therefore, when the parties were afterward established in*

your presence on this account, since the said C., in order to prove that the resources of the church were sufficient, had named certain patrons and parishioners of the church to give testimony, and although often admonished by you they were unwilling to give testimony, excusing themselves by certain reasons, you bound them with the bond of excommunication unless within fifteen days from then they came to give testimony; but before the appointed day they appealed to the Apostolic See, wherefore the cause was not further pursued. Therefore, willing that an end be imposed upon the same controversy,] we have determined to commit the cause to you, [*commanding you by authority of the present letters that you shall, as a precaution, bestow the benefit of absolution upon the aforesaid laymen, and shall terminate the cause itself according to the tenor of the former letters, appeal removed, reason going before;*] in such a way that, from that clause—namely, "if the person shall have been suitable"—which is found inserted in our rescript, no necessity of proving himself suitable shall be imposed upon the same scholar, since prima facie he is presumed suitable unless something contrary is shown. [*Moreover, the witnesses, etc. Given at the Lateran, on the fifth day before the Ides of May, in the tenth year, 1207.*]

Is, pro quo beneficiando scribitur cum clausula, si idoneus fuerit, non tenetur probare se idoneum, quum idoneus praesumatur.

Idem Archidiacono et Praeposito Mediolanensibus.

Dudum *bonae memoriae* archidiacono Mediolanensi dedimus in mandatis, ut *dilectum filium* C. scholarem a presbytero sancti Victoris *XL. martyrum, qui solus in ipsa ecclesia ministrabat, in qua, sicut scholaris idem assuerit, quondam ministraverunt clericus et sacerdos*, in clericum eiusdem ecclesiae recipi faceret et in fratrem, *+cuius facultates idem scholaris proponit nullatenus imminutas*. Sed presbyter memoratus *ipsius* archidiaconi *malitiose* declinans examen, *I. clericum* [*pro se*] *ad nostram praesentiam destinavit, cui et praefato C. venerabilem fratrem nostrum Tranensem archiepiscopum apostolicae sedis legatum, tunc subdiaconum et capellanum nostrum, dedimus auditorem, coram quo dictus Ioannes* asseruit, quod nequaquam sufficiebant duobus clericis facultates ecclesiae memoratae, adiiciens, quod praedictus C. non erat idoneus ad illius ecclesiae beneficium obtinendum. +[*Unde nos venerabili fratri nostro ... Patriarchae Hierosolymitano, tunc Episcopo Vercellensi, de illorum assensu mandavimus ut si praedictus C. legitime coram ipso probaret quod facultates ecclesiae supradictae imminutae non essent, sed duobus sufficerent, et persona eius esset idonea, presbyterum supradictum ad receptionem ipsius per censuram ecclesiasticam appellatione remota compelleret, contradictores vel rebelles, si qui forsitan apparerent, a praesumptione sua districtione simili, cessante appellatione, compescens; alioquin perpetuum silentium scholari super hoc imponeret memorato. Testes etiam qui nominarentur eidem, si se gratia, odio, vel timore subtraherent, canonica districtione, cessante appellatione, compelleret perhibere testimonium veritati. Quum autem praefatus scholaris ad probandum quod facultates ecclesiae imminutae non essent, sed duobus sufficerent, ad praedicti Patriarchae tunc Vercellensis Episcopi praesentiam multotiens accessisset, et idem Episcopus testes nominatos ab ipso, quia monitione praemissa nolebant veritati testimonium perhibere, interdicto supposuisset, venerabilis frater noster ... tunc Mediolanensis Archiepiscopus interdictum ipsum auctoritate propria relaxavit. Quare supradictus C. ius suum non potuit obtinere. Unde tibi, fili Praeposite, dedimus postmodum in praeceptis ut inspectis attestationibus iam receptis, quas voluimus ut per censuram ecclesiasticam tibi faceres exhiberi, secundum eas et alias, si quas partes legitime ducerent proferendas, quum nondum essent, quae receptae fuerant, publicatae, causam ipsam iuxta tenorem praecedentium litterarum, sublato cuiuslibet contradictionis et appellationis obstaculo, ratione praevia terminares. Partibus igitur propter hoc in tua postmodum praesentia constitutis, quum dictus C. ad probandum quod facultates ecclesiae suppetebant, quosdam patronos et parochianos ecclesiae ad ferendum testimonium nominasset, et ipsi licet a te saepius moniti, nollent testimonium perhibere, quibusdam se rationibus excusantes, tu eos, nisi usque ad quindecim dies ex tunc venirent ad testimonium perhibendum, excommunicationis vinculo innodasti; sed ipsi ante praefixum diem ad sedem apostolicam provocarunt; quare non fuit ulterius in causa processum. Volentes igitur ut finis eidem controversiae imponatur,*] Causam vobis duximus committendam [*praesentium vobis auctoritate praecipiendo mandantes, quatenus laicis supradictis ad cautelam absotulionis beneficium impendatis, et causam ipsam iuxta priorum literarum*

continentiam appellatione remota, ratione praevia terminetis;] ita, ut ex illa clausula, scilicet si persona fuerit idonea, quae nostro rescripto reperitur inserta, eidem scholari probandi se idoneum nulla necessitas imponatur, quum prima facie praesumatur idoneus, nisi aliud contrarium ostendatur. [*Testes autem etc. Dat. Later. V. Id. Mai. Ao. X. 1207.*]

Title XXIV: On Oaths

Chapter I

Latin source headnote: An action can be brought for release from an oath whose fulfillment contains turpitude on the part of the recipient. This it says as to its meaning, and it is a notable case. Abbas.

Gregory III.

From the administration—(*And below:*) *Therefore, because creditors bind debtors by oath to pay them usury, to the manifest peril of souls, we, wishing according to the duty of our office to provide for their salvation and to remove the unjust burden from debtors, and especially from those who have given themselves as aid for bringing relief to the land of Jerusalem,* command all of you that you shall compel the creditors themselves by ecclesiastical coercion to release the oaths furnished concerning payment of usury to them, *with the obstacle of contradiction and appeal removed.*

De iureiurando.

Agi potest ad relaxationem iuramenti, cuius implementum turpitudinem continet ex parte suscipientis. H. d. quoad intellectum, et est casus notabilis. Abbas.

Gregorius III.

Ex administrationis (*Et infra:*) *Quoniam igitur creditores ad usuras sibi solvendas in manifestum periculum animarum iuramento debitores adstringunt, nos eorum saluti volentes iuxta debitum officii nostri prospicere, et iniquum gravamen a debitoribus removere, et ab illis praecipue, qui se in auxilium dederunt ad succursum terrae Hierosolymitanae praestandum, universitati vestrae* Mandamus, quatenus creditores ipsos ad iuramenta super usuris sibi solvendis praestita relaxanda *sublato contradictionis et appellationis obstaculo* ecclesiastica districtione cogatis.

Chapter II

Latin source headnote: An oath furnished by a prelate not to seek the return of property of the church is not valid. Or thus: absolution from an oath induced by fear is made by an ecclesiastical judge.

From the Register of Gregory.

It has reached us that the Bishop of Laodicea, despoiled of his property by Count Ar., was compelled *at sword-point, in an increase of wickedness,* to swear that he would not seek the return of the things thus taken, *and [the count] asks that pardon for so great a crime be imparted to him.* Therefore, having learned of the insult *inflicted upon himself in blessed Peter,* we grieved greatly, asserting that the bishop himself could be bound by no bonds of an oath concerning this; nevertheless, *by apostolic authority,* we absolve him who swore under most abominable compulsion. [*Given at Rome, on the third day before the Kalends of February, in the third indiction, 1080.*]

Non valet iuramentum praestitum a praelato de non repetendis rebus ecclesiae. Vel sic: a iuramento meticuloso fit absolutio per iudicem ecclesiasticum.

Ex registro Gregorii.

Pervenit ad nos, Laudicensem episcopum ab Ar. comite rebus suis spoliatium, et *ad nequitiae augmentum gladiis* iurare compulsum, quod non repeteret sic ablata *et huius tanti sceleris veniam sibi impertiri rogat*. Cognita igitur contumelia, *sibi in beato Petro illata*, valde doluimus, asserentes, ipsum episcopum nullius iuramenti vinculis super hoc posse constringi, quern tamen *apostolica auctoritate* absolvimus, qui nefandissima coactione iuravit. [*Dat. Romae III. Kal. Febr. Ind. III. 1080.*]

Chapter III

Latin source headnote: One who changes the fulfillment of an oath for the better does not perjure himself; and no one is bound by an oath to fulfill what he swore if the other party, with respect to whom he furnished the oath, does not fulfill [his part].

The same, to the King of the Franks.

It has reached us *that, when formerly [you went] to the regions of Auvergne, etc.* (*And below:*) For one who changes a purpose or promise for the better does not break it. Nor are you bound to him in any respect, even if you had confirmed *your aforesaid* promise by an oath or an obligation of faith with a condition interposed, if it is established that he did not at all comply with the condition.

Non deierat qui iuramenti implementum in melius commutat, et non adstringitur quis iuramento ad implendum quod iuravit, si ab alia parte non impletur, cuius respectu praebuit iuramentum.

Idem Regi Francorum.

Pervenit ad nos, *quod, quum iam pridem ad partes Alverniae, etc.* (*Et infra:*) Non enim propositum aut promissum infringit qui in melius illud commutat. Nec tu ei, etiamsi *praescriptum* promissum tuum iuramento vel fidei obligatione interposita conditione firmasses, aliquatenus teneris, si constat, eum conditioni minime paruisse.

Chapter IV

Latin source headnote: A form of oath containing seven chapters is set forth, according to which bishops swear to the Pope; but today all persons receiving a dignity from the Pope swear to him. Let this stand for the summary and division.

The same, to Peter the Subdeacon.

I, N., bishop, from this hour forward shall be faithful to Saint Peter, to the holy *apostolic* Roman Church, to my lord Pope C., and to his successors entering canonically. I shall be neither in counsel nor in deed that he lose life or limb, or be taken by an evil capture. Counsel that he shall reveal to me, either by himself, by letters, or by a messenger, I shall disclose to no one to his harm. I shall be a helper in defending and retaining the papacy of the Roman Church and the rules of the holy Fathers, saving my order, against all men. Summoned to a synod, I shall come unless I shall have been hindered by a canonical hindrance. I shall treat honorably, in going and returning, a legate of the Apostolic See whom I shall know to be a certain *legate,* and shall aid him in his necessities. I shall visit the thresholds of the Apostles every year, either by myself or by a certain messenger *of mine,* unless I shall be released by their permission. So may God and these holy Gospels aid me.

Ponitur forma iuramenti septem capitula continens, secundum quam iurant Papae episcopi; sed hodie omnes recipientes dignitatem a Papa sibi iurant. Hoc sit pro summario et divisione.

Idem Petro Subdiacono.

Ego N. episcopus ab hac hora in antea fidelis ero sancto Petro, sanctaeque *apostolicae* Romanae ecclesiae, dominoque meo Papae C. eiusque successoribus canonice intrantibus. Non ero neque in consilio neque in facto, ut vitam perdat aut membrum, vel capiatur mala captione. Consilium quod mini aut per se, aut per literas, aut per nuncium manifestabit, ad eius damnum nulli pandam. Papatum Romanae ecclesiae et regulas sanctorum Patrum adiutor ero ad defendendum et retinendum, salvo ordine meo, contra omnes homines. Vocatus ad synodum veniam, nisi praepeditus fuero canonica praepeditione. Legatum apostolicae sedis, quern certum *legatum* esse cognovero, in eundo et redeundo honorifice tractabo, et in suis necessitatibus adiuvabo. Apostolorum limina singulis annis aut per me aut per certum nuncium *meum* visitabo, nisi eorum absolvar licentia. Sic me Deus adiuvet et haec sancta evangelia.

Chapter V

Latin source headnote: A cleric is not bound to furnish an oath of obedience to his bishop except by reason of an administration granted to him.

Pope Urban.

No bishop shall compel his clerics to swear to him, except perhaps those to whom the administration of ecclesiastical property shall have been committed.

Non tenetur clericus episcopo suo obedientiae iuramentum praestare, nisi ratione administrationis sibi concessae.

Urbanus Papa.

Nullus episcopus clericos suos, nisi forte quibus ecclesiasticarum rerum commissa fuerit dispensatio, sibi iurare compellat.

Chapter VI

Latin source headnote: One who obligated himself to pay usury is not compelled to pay unless he swore; in that case he is compelled, but he recovers it.

Alexander III, to the Bishop of Ávila.

Debtors, *however,* ought not to be compelled to pay usury to which they had bound themselves, *unless they are bound by oath to pay it*. But if they have sworn concerning its payment, they are to be compelled to render the oath to the Lord, *so that they may be released by the creditors.* And when the usury has been paid, the creditors are to be compelled by ecclesiastical severity to restore it, if necessary.

Qui se obligavit ad usuras solvendas, solvere non cogitur, nisi iuraverit; quo casu cogitur, sed repetit.

Alexander III. Episcopo Vigiliensi.

Debitores *autem* ad solvendas usuras, in quibus se obligaverant, cogi non debent, *nisi eas iuramento solvere teneantur.* Si vero de ipsarum solutione iuraverint cogendi sunt Domino reddere iuramentum, *ut a creditoribus solvantur.* Et quum usurae solutae fuerint, creditores ad eas restituendas sunt ecclesiastica severitate, si necesse fuerit, compellendi.

Chapter VII

Latin source headnote: A debtor who swore to inflict no burden upon the creditor concerning a pledged thing until he paid the debt is not heard when seeking the pledge back and wishing to set off the fruits against the principal; but he ought first to pay the debt in full and then seek the thing together with the fruits received from it. This it says, and it is a notable case.

The same, to the Archbishop of Rouen and his Suffragans.

Know that it has reached our hearing that, when Peter *de Neasdem, during the war that existed between our dearest son Henry, illustrious King of the English, and his sons,* lent a certain sum of money to certain men *of a province of the Kingdom of France,* he received from them in pledge certain possessions and revenues, binding them to himself *under* the sanctity of an oath that they would inflict no burden *or molestation* upon him concerning *those possessions and revenues* until they paid him the *lent* money. Although he has not yet received his *principal, as he asserts,* from those possessions and the *aforesaid* revenues after expenses have been deducted, *nevertheless, because* you, brother Archbishop, bound him with the bond of excommunication on this account, *we are therefore compelled to direct our letters to you, especially since he wishes, as he asserts,* to be content with [*his*] *principal.* Therefore, *by commanding you through apostolic writings,* we order your fraternity that, having received from the aforesaid P. sufficient security that *in this matter* he ought to obey your mandate, you shall *by our authority wholly* absolve him, *contradiction and appeal ceasing, from the sentence by which he is bound.* Then, if it is so, you shall compel his debtors, who are said to have withdrawn *from him* the aforesaid possessions and revenues contrary to *their* oath, by ecclesiastical censure to restore these *to the same P., delay and appeal ceasing,* and not henceforth inflict molestations upon him *contrary to their oath* until the money is paid to him, *because it is not safe for anyone, but rather dangerous, to violate the sanctity of an oath.* But when they have paid *his* money to him, as they swore, you shall endeavor *studiously to admonish and diligently* induce him to restore whatever, after expenses have been deducted, it is established *before you* that he received beyond the principal; and, if after admonition he does not do *this,* you shall, *appeal removed,* bring him back under the same sentence of excommunication, *because, just as it is dangerous for debtors to violate their oath, so it is no less dangerous for creditors to retain what they have received as usury, since the crime of usury is detestable and exceedingly horrible and condemned by the page of either Testament.*

> Debitor, qui iuravit, creditori nullum gravamen super re pignorata inferre, donec solverit debitum, non auditur repetens pignus, volendo compensare fructus in sortem; sed debet prius debitum integraliter solvere, et demum rem cum fructibus inde perceptis exposcere. H. d. et est casus notabilis.
>
> Idem Rothomagensi Archiepiscopo et eius Suffraganeis.
>
> Ad nostram noveritis audientiam pervenisse, quod, quum Petrus *de Neasdem tempore guerrae, quae fuit inter carissimum filium nostrum Henricum illustrem Anglorum regem et filios eius,* quibusdam hominibus *provinciae regni Francorum* certam summam pecuniae mutuasset, quasdam ab eis possessiones et reditus recepit in pignore, ipsos *sub* iuramenti religione sibi adstringens, quod super *possessionibus et reditibus* illis, donec solverent sibi pecuniam *mutuatam*, nullum ei gravamen *vel molestiam* inferrent. Licet autem de possessionibus illis et reditibus *praefatis* nondum sortem *suam, sicut asserit*, deductis expensis receperit, *quia* tu tamen, frater archiepiscope, eum propter hoc excommunicationis vinculo adstrinxisti, +*exinde cogimur literas vobis nostras destinare, praesertim, quum ipse sicut asserit,* [*sua*] *velit esse sorte contentus*. Ideoque *fraternitati vestrae per apostolica scripta praecipiendo* mandamus, quatenus, recepta a praefato P. sufficienti cautione, quod *exinde* vestro debeat parere mandato, *contradictione et appellatione cessante, a sententia, qua tenetur, penitus auctoritate nostra,* absolvatis eundem, *et* deinde debitores eius, qui *sibi* praedictas

possessiones et reditus contra iuramentum *suum* subtraxisse dicuntur, si ita est, eos ecclesiastica censura cogatis, ut haec *eidem P. dilatione et appellatione cessante* restituant, nec sibi *de cetero contra iuramentum suum* molestias inferant, donec ei pecunia persolvatur, *quia non est tutum cuilibet, sed periculosum potius religionem infringere iuramenti*. Quum autem ei pecuniam *suam*, sicut iuraverunt, persolverint, vos ipsum ad restituendum, quicquid *eum vobis* deductis expensis ultra sortem recepisse constiterit, *studiose monere et diligenter* inducere studeatis, et, si commonitus *id* non fecerit, in eandem excommunicationis sententiam *remota appellatione* reducatis eundem, *quia, sicut periculosum est debitoribus suum infringere iuramentum, ita non minus periculosum est creditoribus detinere quod pro usuris receperint, quum sit usurarium crimen detestabile et horrendum plurimum, et utriusque testamenti pagina condemnatum.*

Chapter VIII

Latin source headnote: If an oath extorted through fear can be observed without the destruction of eternal salvation, it is to be observed; nevertheless, the Roman Church has been accustomed to absolve from such an oath.

The same, to the Archbishop of Sens.

But if someone, by gravest fear and under the sanctity of an oath, has compelled another to renounce his right and has retained it for himself, because you wished to consult us whether one of them or neither ought to have it, we have determined to respond *this* to you: it is not safe for anyone to go against his oath unless the *oath* is such that, if observed, it tends toward the destruction of eternal salvation. Nor do we will *by our response* to give anyone material for going against his own oath, lest we appear *to be* authors of perjury. But it is recalled that this was sometimes done in the Roman Church by many of our predecessors: clerics who, under compulsion, abjured the ministry of the church merited the benefit of absolution from the oath, and, in order to restrain the iniquity of those who compelled ecclesiastical men to furnish *that oath,* they were permitted to minister in the same church.

Si iuramentum per metum extortum servari potest sine interitu salutis aeternae, servandum est; ecclesia tamen Romana consuevit a tali iuramento absolvere.

Idem Senonensi Archiepiscopo.

Si vero aliquis quemquam gravissimo metu sub religione iuramenti suum ius refutare coegerit, ipsumque sibi retinuerit, quia nos consulere voluisti, an alter eorum, vel neuter id habere debeat: *hoc* tibi duximus respondendum, quod non est tutum, quemlibet contra iuramentum suum venire, nisi tale sit *iuramentum*, quod servatum vergat in interitum salutis aeternae. Nec nos alicui *ex responsione nostra* dare materiam volumus veniendi contra iuramentum proprium, ne auctores periurii *esse* videamur. Verum aliquando in Romana ecclesia a pluribus praedecessoribus nostris factum esse recolitur, quod clerici, qui coacti ministerium ecclesiae abiurarunt, de iuramento absolutionis beneficium meruerunt, et ad coercendam iniquitatem eorum, qui ecclesiasticos viros ad praestandum illud *iuramentum* compulerant, permissi sunt in eadem ecclesia ministrare.

Chapter IX

Latin source headnote: Monks who swear to remain in hostage for a debt of the monastery, and sureties who swear to keep the creditor indemnified, are compelled to observe their oaths.

The same, to the Bishops of Sardinia.

From *a certain* rescript presented to us, it became *manifestly* known to us that *R., formerly* Abbot of Tremiti, agreed with Peter concerning a sum of eight thousand solidi in this manner—(*And below:*) In addition, the aforesaid abbot gave certain monks as hostages, who swore to observe the agreement, so that, if they failed, other monks would be placed in hostage in their place. Moreover, if the said monks did not keep faith, the abbot gave to the same man V. and his wife as sureties, who are likewise said to have pledged faith. Therefore, we command that you shall take care *studiously* to admonish the abbot and the monks, and V. and his wife, that, as they swore, they cause the same agreement to be fulfilled; otherwise, you shall prohibit entry into the church to *the same* abbot and monks, and prohibit divine offices from being celebrated in the land of the aforesaid V. and his wife until worthy satisfaction.

> Monachi, qui pro debito monasterii iurant stare in obstagio, et fideiussores, qui iuraverunt creditorem indemnem servare, iuramenta servare coguntur.
>
> Idem Sardinensibus Episcopis.
>
> Ex rescripto *quodam*, quod nobis est praesentatum, *manifeste nobis* innotuit, *R. quondam* abbatem Tremensem cum Petro super summa octo millium solidorum taliter convenisse (*Et infra:*) Super haec praedictus abbas quosdam ex monachis obsides dedit, qui de observanda conventione iuraverunt, ut, si ipsi deficerent, alii monachi loco eorum in obstagio ponerentur. Insuper, si fidem dicti monachi non servarent, abbas dedit eidem V. et eius uxorem fideiussores, qui similiter fidem praestitisse dicuntur. Ideoque mandamus, quatenus tam abbatem quam monachos, quam V. et uxorem ipsius *studiose* monere curetis, ut, sicut iurarunt, eandem conventionem faciant adimpleri, alioquin *eidem* abbati et monachis ingressum interdicatis ecclesiae, et in terra praefati V. et uxoris eiusdem usque ad dignam satisfactionem inhibeatis divina officia celebrari.

Chapter X

Latin source headnote: One who goes against a lawful oath not from necessity but voluntarily is perjured and is to be removed from the church.

The same, to the Bishops of London and Worcester.

We have received the complaint of R., canon *of the church* of Lincoln, that, when a cleric named V. *Savage* had paid him two bezants in the name of the church of Statera *for very many years, and had confirmed by an interposed oath that he would pay them to him* annually, *the sanctity of the oath now having been contemned,* for two years he has ceased from payment of a pension of this kind. Therefore, because those who are entangled in the crime of perjury do not deserve to rule churches, *by commanding you through apostolic writings,* we order your fraternity that *you shall summon the parties before your presence and take care to inquire more diligently into the truth of the matter concerning these things; and,* if it is established to you that the aforementioned V. ceased from payment of the same pension contrary to his oath not from necessity but voluntarily, you shall, *by our authority, contradiction and appeal ceasing,* remove him from the aforesaid church and not at all delay restoring it to the aforesaid R., *and shall cause him to possess it peacefully.*

> Periurus est et ab ecclesia removendus qui non necessitate, sed voluntate venit contra licitum iuramentum.
>
> Idem Lundonensi et Vigoriensi Episcopis.

> Querelam R. canonici Linconiensis *ecclesiae* accepimus, quod, quum V. *Salvagius nomine* clericus ei duos Bisantios nomine ecclesiae de Statera *annis plurimis persolvisset, et se illos* annuatim *sibi* soluturum interposito sacramento firmasset, *contempta religione iuramenti iam* per biennium ab huiusmodi pensionis solutione cessavit. Quoniam igitur non merentur ecclesias regere, qui sunt crimine periurii irretiti, *fraternitati vestrae per apostolica scripta praecipiendo* mandamus, quatenus *partes ante vestram praesentiam convocetis, et super his rei veritatem curetis diligentius inquirere, et*, si vobis constiterit, memoratum V. contra iuramentum suum non necessitate, sed voluntate ab eiusdem pensionis solutione cessasse, ipsum a praescripta ecclesia *auctoritate nostra contradictione et appellatione cessante* removentes, eam praefato R. restituere minime differatis, *ipsumque faciatis eam pacifice possidere*.

Chapter XI

Latin source headnote: If a person presented swears to the presenter to increase an ancient payment and afterward swears the contrary to the person instituting him, the second oath is valid and not the first; nevertheless, he is removed from the church.

Lucius III, to the Bishop of Norwich.

Your fraternity considered that we should be consulted as to which oath is to be followed when religious persons bind *certain* clerics by the sanctity of an oath to pay a greater pension than customary, or to furnish something [*in the name*] of the benefice beyond the customary pension; but, when they are instituted by bishops, they swear that they will not increase the ancient and customary pension. We therefore respond briefly to your consultation that, since the later oath is supported by reason and the authority of the Lateran Council, it prejudices the first, which proceeded from greed. Moreover, it is just that clerics [*thus entangled*] be perpetually excluded from churches because of the perjury that they cannot avoid.

> Si praesentatus iurat praesentanti de antiquo censu augendo, et postea contrarium iurat instituenti, valet secundum, et non primum; tamen ab ecclesia removetur.
>
> Lucius III. Norvicensi Episcopo.
>
> Tua nos duxit fraternitas consulendos, cui standum sit iuramento, quum clericos *quosdam* religiosi iurisiurandi religione constringunt ad maiorem solito pensionem solvendam, vel praestandum aliquid [*nomine*] beneficii praeter solitam pensionem; quum autem instituuntur abepiscopis, iurant, quod antiquam pensionem et solitam non augebunt. Tuae igitur consultationi breviter respondemus, quod, quum posterius iuramentum ratione et Lateranensis concilii auctoritate iuvetur, primo praeiudicat, quod de cupiditate processit. Ceterum iustum est, ut clerici [*sic perplexi*] pro periurio, quod vitare non possunt, ab ecclesiis perpetuo excludantur.

Chapter XII

Latin source headnote: Bishops are to be punished more gravely for perjury than others. This it says. — § 1. An oath not to furnish aid to a relative is unlawful. This it says.

Urban III, to the Archbishop of Pisa.

When a certain—(*And below: cf. c. 8, On the Times of Ordinations, I.11.*) We respond to your consultation in this way: punishment is to be taken against bishops who have transgressed their oath all the more gravely in proportion as they are eminent in greater dignity and others can more easily be provoked to similar acts by their example. (*And below: cf. c. 8, On the Times of Ordinations, I.11.*)

§ 1. But those who swear not to speak to father, mother, sister, or brother, or not to furnish them the aid of humanity, are to be absolved from observance of that oath, since it is unlawful and contrary to *all* reason; nevertheless, a fitting penance is to be imposed upon them for having sworn wrongly concerning this.

> Episcopi de periurio gravius quam alii sunt puniendi. H. d. - §. 1. Illicitum est iuramentum de non praebendo subsidium coniuncto. H. d.
>
> Urbanus III. Archiepiscopo Pisano.
>
> Quum quidam (*Et infra: cf. c. 8. de temp. ord. I. 11.*) Consultationi tuae taliter respondemus, quod in episcopos, qui suum transgressi sunt iuramentum, est tanto gravius vindicandum, quanto maiori praeeminent dignitate, et eorum exemplo facilius alii poterunt ad similia provocari. (*Et infra: cf. c. 8. de temp. ord. I. 11.*) §. 1. Illi vero, qui iurant, non loqui patri vel matri vel sorori vel fratri, aut eis humanitatis subsidium non exhibere, absolvendi sunt ab illius observantia iuramenti, quum illicitum sit et *omni* contrarium rationi; iniuncta tamen eis de hoc, quod male iuraverant poenitentia competenti.

Chapter XIII

Latin source headnote: The oath of a monk abjuring the cloister is not valid, and a grave penance concerning this is imposed upon him.

The same.

As we have learned from the letters of your discretion, R., prior of your monastery *and bearer of the present letters,* inflamed by the heat of anger, *by the rash impulse of a precipitate mind* confirmed by oath that he would no longer remain with the monk G. in the cloister of the same monastery, to which he bound himself by the bond of profession. *Therefore, to you who ask what is to be done concerning this with regard to the same monk,* we respond that, *since blessed Benedict in his rule, which nearly all monks profess, altogether prohibits swearing,* it was not permitted to the aforesaid monk to make the rash oath, especially since he would break the faith of his profession and make void his purpose of stability. Therefore, your solicitude shall provide concerning him that such a penance be imposed upon him *through which he may make satisfaction to almighty God for taking his name in vain,* so that anyone else, deterred by his example, may fear to do anything similar; but he himself shall perform his penance with perpetual stability in the cloister, which he could not lawfully abjure, *yet in such a way that, because he approached our presence, he is not deprived of the customary portion of the benefit of the rule.*

> Non valet iuramentum monachi claustrum abiurautis, et sibi de hoc gravis poenitentia imponitiur.
>
> Idem.
>
> Sicut ex literis tuae discretionis cognovimus, R. prior monasterii tui *lator praesentium* iracundiae calore succensus *praecipitato mentis instinctu temerario* iuramento firmavit, quod in claustro eiusdem monasterii, quo se vinculo professionis adstrinxit, non esset cum G. monacho ulterius moraturus. +*Quaerenti ergo tibi, quid super hoc circa eundem monachum. sit agendum,* Respondemus, quod, *quum beatus Benedictus in regula sua, quam fere omnes monachi profitentur, iurare omnino prohibeat,* non licuit monacho supra dicto temerarium iuramentum facere; maxime quum fidem professionis frangeret, et stabilitatis suae propositum evacuaret. Ideoque circa eum tua sollicitudo provideat, quod talis ei poenitentia iniungatur, *per quam omnipotenti Deo de suscepto in vanum eius nomine satisfaciat,* ut alius quilibet exemplo eius deterritus simile aliquid facere pertimescat; ipse vero in claustro, quod licite abiurare non potuit, cum stabilitate

perpetua suam poenitentiam exsequatur, *ita tamen, ne ex eo, quod ad praesentiam nostram accessit, solita regularis beneficii portione privetur.*

Chapter XIV

Latin source headnote: A vassal who swore to a prelate is not compelled to swear to his successors.

Clement III.

Simplicity, the friend of truth, *does not seek to be obscured by any deceits of words or by any coverings of ambiguities.* [*It is therefore frequently necessary that those things which appear to have been said less fully, and which might generate the scruples of ambiguities although said soundly, should shine forth more clearly through truthful explanation.*] *On this account, dearest son in the Lord, having heard that a question was moved in the presence of your greatness as to whether it was gathered from the tenor of our rescript that each of your heirs ought to furnish an oath of fealty and homage to each of our successors; having understood also the exposition of our beloved sons A., cardinal priest of the title of the Holy Cross in Jerusalem, and P., cardinal priest of the title of Saint Lawrence in Damaso, legates of the Apostolic See, which was transmitted to us under the attestation of their seals; unwilling to dissent in any way from their sound understanding, we have determined to intimate to the royal serenity that, since our intention is to impose nothing intolerable upon you* [*and your*] *heirs, we respond to you in this article* in such a way that your heirs who have sworn to us or any of our successors shall not at all be compelled to swear [*afterward*] to others. Nevertheless, they shall be bound at all times faithfully and without any tergiversation to observe toward our Catholic successors who shall be in office for the time being the purity of homage and fealty, no less than if they had sworn, *unless perhaps homage shall have been relaxed to any of them, as it was to your person, by the benignity of the Apostolic See; yet such a person shall not on that account believe himself immune from observance of his fealty.* [*Given at the Lateran.*]

Vasallus, qui iuravit praelato, successoribus iurare non cogitur.

Clemens III.

Veritatis amica simplicitas *+nullis verborum fallaciis, nullis appetit ambiguitatum involucris obfuscari.* [*Frequenter igitur est necesse, ut quae minus plene dicta videntur, et ambiguitis scrupulos pussent sane dicta generare, explanatione veridica clarius elucescant.*] *Ea propter, carissime in Domino fili, audito, quod in magnitudinis tuae praesentia quaestio mota fuerit, utrum ex nostri tenore rescripti colligeretur, quod singuli heredum tuorum singulis nostris successoribus fidelitatis praestare debeant et hominii iuramentum, intellecta etiam expositione dilectorum filiorum nostrorum A. tit. S. crucis in Hierusalem et P. tit. S. Laurentii in Damaso presbyterorum cardinalium apostolicae sedis legatorum, quae ad nos fuit sub sigillorum suorum testificatione transmissa, a sano eorundem intellectu nolentes aliquatenus dissentire, serenitati regiae duximus intimandum, quod, quum intentio nostra sit nil intolerabile tibi* [*tuisque*] *heredibus imponere, taliter in hoc articulo tibi* Respondemus, ut heredes tui, qui nobis vel alicui successorum nostrorum iuraverunt, aliis [*postea*] iurare minime compellantur; catholicis tamen successoribus nostris, qui pro tempore fuerint, et homagii et fidelitatis puritatem, nihilominus ac si iurassent, omni tempore teneantur absque tergiversatione aliqua fideliter observare, *nisi forte alicui eorum, sicut personae tuae fuerit hominium de benignitate sedis apostolicae relaxatum; qui tamen non se propterea credat a fidelitatis suae observatione immunem.* [*Dat. Laterani.*]

Chapter XV

Latin source headnote: The Church is accustomed to absolve from an oath extorted through fear, and its transgressors are not punished as persons sinning mortally.

Celestine III.

But in that question which *in addition to this* is placed fifth—namely, whether those who made an oath unwillingly in order to preserve life and property are absolved from the bond of the oath—*following the custom of our Church,* we judge nothing other than what our predecessors, the Roman Pontiffs *Zacharias, Gelasius, Gregory VII, Urban II, and others,* are known to have judged, who absolved such persons from the bonds of the oath. Moreover, so that action may be taken more advisedly and material for perjuring themselves be removed *from them,* it shall not be said to them so expressly that they are not to observe the oaths; but, if they do not attend to them, they are not on that account to be punished as for a mortal crime.

> A iuramento per metum extorto ecclesia solet absolvere, et eius transgressores ut peccantes mortaliter non puniuntur.
>
> Coelestinus III.
>
> Verum in ea quaestione, quae *praeter hoc* quinto loco ponitur, an scilicet a sacramenti vinculo absolvantur qui illud inviti pro vita et rebus servandis fecerunt, *morem ecclesiae nostrae prosequentes* nihil aliud arbitramur, quam quod antecessores nostri Romani Pontifices *Zacharias, Gelasius, Gregorius VII. et Urbanus II. atque alii* arbitrati fuisse noscuntur, qui tales a iuramenti nexibus absolverunt. Ceterum ut agatur consultius et *ab eis* auferatur materia deierandi, non eis ita expresse dicatur, ut iuramenta non servent, sed, si non ea attenderint, non ob hoc sunt tanquam pro mortali crimine puniendi.

Chapter XVI

Latin source headnote: If the person whose mandate I swore to obey commands me to do something contrary to an oath previously and lawfully made by me, I am not bound to observe it. This it says, adhering to the words of the letter.

Innocent III, to H., S., and M., Citizens of Venice.

Coming to our presence, *the beloved son* A. [*Mengun,*] *bearer of the present letters, by a humble report* explained to us that, *when* formerly *he had been established in the presence of the beloved son, the noble Doge of Venice, together with several others for the discussion of many causes,* he contended with M. Maurien., alternately inflicting insults. Because he incurred grave enmities on this account, *and you and your other relatives were more vehemently stirred on this account,* certain persons who were lovers of either party, *placing themselves in the middle, endeavored to recall that disturbance to peace and concord,* suggested to the aforesaid A. that, in satisfaction for the injuries, he should swear to obey your mandate. And since he did not believe that he had committed anything of such a kind that something grave ought to be imposed upon him, and had furnished that oath under such confidence, you *immediately* commanded him under the obligation of the oath that, *from the feast of blessed Michael immediately past onward,* he should never enter the court of the *said* doge except when all persons were generally called to court by his edict, *or unless it should happen that he was released by the nobleman Count Roger and M. Mauricen., who are said to be absent.* But because the same A., who, *as he asserts,* is a counselor of the said doge and is bound by promise to assist in their right many churches of which he is advocate, would by no means have sworn in this way if he had foreknown that mandate contrary to him, *especially since he fears to act against the salvation of his soul, through apostolic* writings we command [*you*] that, for the remedy of your souls, you shall wholly revoke the mandate itself. But if you are unwilling or unable to revoke *the mandate itself,* know that *we have commanded our venerable brother* the Patriarch of Grado that, if *that*

mandate conflicts with the prior oath lawfully made, he shall by our authority declare that it is not to be observed. [*Given at Civita Castellana, on the fourth day before the Ides of October, 1198.*]

> Si is, cuius mandato stare iuravi, aliquid inihi praecipit contra iuramentum per me prius licite factum, illud servare non teneor. H. d. Inhaerendo verbis literae.
>
> Innocentius III. H. et S. et M. Civibus Venetis.
>
> Veniens ad praesentiam nostram *dilectus filius* A. [*Mengun*] *lator praesentium humili relatione* nobis exposuit, quod, *quum* olim *fuisset in praesentia dilecti filii nobilis viri ducis Veneti cum pluribus aliis constitutus pro multarum discussione causarum*, cum M. Maurien. alternatim convicia inferendo certavit. Propter quod quum graves inimicitias incurrisset, *et vos et alii parentes vestri propter hoc fuissetis vehementius excitati*, quidam, qui partis utriusque amatores exstiterant, *se in medium ingerentes turbationem illam ad pacem studuerunt et concordiam revocare*, suggesserunt praedicto A., ut in satisfactione iniuriarum vestro iuraret obedire mandato. Quumque idem non crederet, se tale quid commisisse, propter quod ei aliquod grave deberet imponi, iuramentumque illud sub tali confidentia praestitisset, ipsi *statim* sub iuramenti debito praecepistis, ut *a festo beati Michaelis proxime praeterito in antea* nunquam curiam *dicti* ducis intraret, nisi tunc, quum omnes per edictum ipsius generaliter ad curiam vocarentur, *aut nisi per nobilem virum Rogerium comitem et M. Mauricen., qui absentes esse dicuntur, ipsum contingeret relaxari*. Verum quia idem A., qui, *sicut asserit*, dicti ducis est consiliarius, et in iure suo multis ecclesiis, quarum est advocatus, ex promisso tenetur adesse, nequaquam taliter iuravisset, si mandatum illud sibi contrarium praescivisset, *praesertim quum animae suae timeat obviare saluti, per apostolica* [*vobis*] *scripta mandamus, quatenus mandatum ipsum pro vestrarum remedio animarum penitus revocetis. Quodsi mandatum ipsum aut nolueritis, aut nequiveritis revocare*, noveritis, *nos venerabili fratri nostro* patriarchae Grandensi mandasse, ut, si mandatum *illud* priori iuramento licite facto repugnet, ipsum auctoritate nostra denunciet non servandum. [*Dat. ap. Civitatem Castellanam IV. Id. Oct. 1198.*]

Chapter XVII

Latin source headnote: One who swore to defend a church and, when required, refuses without just cause is perjured, and an appeal does not defend him.

The same, to Master Apollinaris.

You asked *the Apostolic See* in a brief question whether a person who is bound by oath to preserve and, to the extent possible, defend the rights of some church incurs the guilt of perjury if, when necessity presses, he *has been* required under the obligation of the oath concerning this and, *unwilling to do it, has determined to appeal to the Apostolic See. But we respond to your question in this way:* in this article, such an appeal does not excuse the appellant from perjury; rather, unless *some* difficulty exists on account of which the person required cannot aid the church, he is instead entangled in the fault of perjury. [*Given at the Lateran, on the twelfth day before the Kalends of November, 1198.*]

> Qui iuravit ecclesiam defendere, et requisitus sine iusta causa recusat, periurus est, nec eum defendit appellatio.
>
> Idem Magistro Apollinari.
>
> Brevi *sedem apostolicam* sciscitatus es quaestione, utrum ille, qui iura alicuius ecclesiae servare, ac pro posse defendere iuramento tenetur, si necessitate imminente super hoc sub iuramenti debito requisitus *fuerit, et nolens hoc facere ad sedem apostolicam* duxerit appellandum, periurii reatum incurrat. *Nos autem quaestioni tuae taliter* Respondemus, quod in hoc articulo appellantem a periurio talis appellatio non

excusat, immo, nisi *aliqua* difficultas exsistat, propter quam requisitus non possit ecclesiae subvenire, culpa periurii potius irretitur. [*Dat. Lat. XII. Kal. Nov. 1198.*]

Chapter XVIII

Latin source headnote: One who knowingly swears to something unlawful does not need absolution but is bound not to observe it. But if he swore in ignorance, he ought to observe it if it is observable in some lawful manner. If, however, he swore to something lawful that he thought unlawful, he ought to observe the oath, but shall do penance for his depraved intention.

The same, to the Illustrious King of Aragon.

In proportion as we love your person *among the other Christian princes with more sincere charity, with so much the more diligent solicitude do we wish to take precaution for the royal serenity, lest anything, which God forbid, threaten it that could redound either to the peril of the soul or detriment of the land. For from the tenor of your letters and those of many prelates, and also of many others dwelling in your kingdom, it became known to us that, when you were hastening with a multitude of armed men against the enemies of Christianity, who at that time occupied the land of Spain by reason of the magnitude of their power, to the aid of our dearest son in Christ, the illustrious King of Castile,* certain of your counselors—or rather deceivers—induced your mind to swear, without the assent of the people having been sought, that until a certain time you would preserve your father's coinage, which nevertheless around the time of his death had been defrauded of its lawful weight. But since *the same coinage* has been so diminished and rendered of lesser value that grave scandal is generated among the people on this account, you, desiring to revoke what you had done indiscreetly and to satisfy the necessity of the people, supplicated us humbly to be absolved from observance of the aforesaid oath, *from which you fear that grave peril threatens you and your kingdom.*

Concerning this, a diligent investigator, *the truth having been discovered,* could easily perceive that absolution was not so much necessary as interpretation was to be sought, because, when you made the oath, you believed the coinage to be either false or lawful. If false—*which we do not believe concerning the royal serenity*—the oath would have been unlawful and in no way to be observed, and penance would have to be imposed upon you for it, since an oath was not instituted to be a bond of iniquity. But if you believed *it* to be lawful, the oath was lawful and is altogether to be observed. And so that it may be observed blamelessly, we counsel and command that, the coinage that had been defrauded of its lawful weight having been rejected, another coinage be struck under the name of your father, which you shall restore to lawful weight according to the best condition that it had in your father's time, in such a way that [*also*] the old coinage that had not been falsified from that condition shall be spent equally with it, through which both loss can be avoided and the oath observed. Nevertheless, if *perhaps* when furnishing the oath you believed that the coinage itself had been diminished from lawful weight, and your conscience reproaches you concerning this, *you shall humbly confess your sin to our venerable brother the Bishop of Zaragoza, to whom we write concerning this,* and shall *devoutly receive and* endeavor to fulfill the satisfaction imposed upon you for the unlawful oath. [*Given at the Lateran, on the Nones of April, 1199.*]

Iurans scienter illicitum, non indiget absolutione, sed tenetur illud non observare. Si vero iuravit ignoranter, debet illud observare, si aliquo licito modo est observabile. Si autem iuravit licitum quod putabat illicitum, debet observare iuramentum, sed de animo depravato aget poenitentiam.

Idem illustri Regi Aragoniae.

Quanto personam tuam +*inter alios principes Christianos sinceriori caritate diligimus, tanto serenitati regiae diligentiori sollicitudine volumus praecavere, ne quid ei, quod absit, immineat, quod vel in periculum animae, aut detrimentum terrae valeat redundare. Ex tenore siquidem literarum tuarum et plurium praelatorum, nec non et aliorum multorum in regno tuo consistentium nobis innotuit, quod, quum adversus inimicos Christianitatis, qui prae magnitudine suae potentiae terram Hispaniae tunc temporis occupabant, in auxilium carissimi in Christo filii nostri Castellae regis illustris cum armatorum multitudine festinares,* Quidam consiliarii tui, quin immo potius deceptores, tuum animum induxerunt, ut iurares irrequisito assensu populi usque ad certum tempus patris tui conservare monetam, quae tamen circa mortem eius fuerat legitimo pondere defraudata. Quum autem *eadem moneta* adeo sit diminuta et minoris valoris effecta, quod grave propter hoc scandalum in populo generatur, tu quod egeras indiscrete cupiens revocare, ac necessitati populi satisfacere, ab observatione iuramenti praedicti, *ex quo tibi et regno tuo metuis grave periculum imminere,* postulasti suppliciter a nobis absolvi. Super quo diligens indagator *veritate comperta* potuisset facile intueri, quod non tam erat absolutio necessaria, quam interpretatio requirenda, quoniam, quum iuramentum fecisti, monetam aut falsam, aut legitimam esse credebas. Si falsam, *quod de regia serenitate non credimus*, iuramentum fuisset illicitum et nullatenus observandum, et pro eo esset tibi poenitentia iniungenda, quum iuramentum non, ut esset iniquitatis vinculum, fuerit institutum. Si vero *ipsam* legitimam esse credebas, iuramentum licitum fuit et usquequaque servandum. Et ut irreprehensibiliter observetur, consulimus et mandamus, ut reprobata moneta, quae a legitimo pondere fuerat defraudata, alia sub nomine patris tui moneta cudatur, quam ad legitimum pondus reducas, secundum eum statum, quem tempore patris tui habuit meliorem, ita, quod [*et*] antiqua moneta, quae ab illo statu falsata non fuerat, cum ea pariter expendatur, per quod et dispendium vitari poterit, et iuramentum servari. Verumtamen si *forte* monetam ipsam in praestatione iuramenti credebas a legitimo pondere diminutam, et tua super hoc conscientia te remordeat, *venerabili fratri nostro Caesaraugustano episcopo, cui super hoc scribimus*, tuum humiliter confitere peccatum, et satisfactionem iniunctam tibi pro illicito iuramento *devote suscipias et* studeas adimplere. [*Dat. Lat. Non. Apr. 1199.*]

Chapter XIX

Latin source headnote: An oath furnished to the prejudice of the right of a superior is not valid.

The same, to the Consuls and People of Todi.

When *recently* your *beloved sons,* the consuls, came to the Apostolic See, *we received them benignly and* took care both to admonish [you] *paternally* and to convene [you] somewhat sharply concerning those matters that are rather frequently reported to us about you. For although, when appeals have been interposed to the Apostolic See, you are bound humbly and devoutly to defer to them, since even secular laws do not deny the benefit of appeal after sentence to persons aggrieved, you, *attending to this less than befits you,* put into execution sentences suspended by appeal, *and, in contempt of the Apostolic See, burden those appealing when aggrieved.* But the same consuls took care to explain to us, *in your excuse,* that, when any of you are called to the office of consul, they confirm by their own oath that they will judge concerning loans and kidnappers according to the custom of your city and will execute within twenty-eight days the things they have judged. Hence they said that, saving an oath of this kind, you were unable to defer to appeals concerning these matters.

But because judges swore to judge according to the laws no less than your consuls according to the custom of your city, and therefore, just as judges could burden subjects contrary to the laws, so also could your consuls contrary to custom, *lest we appear to fail the aggrieved even in these matters, through apostolic writings* we command *and order* all of you that, *since we will your approved customs to be observed,*

you shall *humbly and devoutly* defer to appeals interposed to us, since the aforesaid oath cannot excuse you, in which the right of a superior ought to be understood to be excepted. Therefore, since, *as we have learned,* after *the beloved son* S., bearer of the present letters, appealed to the Apostolic See from the sentence of Judge G., you determined to put the sentence itself into execution, placing the adversary of the appellant in possession of the things concerning which the question was being conducted, we nevertheless will and command that you restore the possession itself to the same man. Otherwise, know that we have commanded *our venerable brother* the Bishop of Nocera *through apostolic writings* that, *admonition having been given beforehand,* he shall compel you to this by ecclesiastical censure, *appeal removed.* [*Given at the Lateran, 1200.*]

> Non valet iuramentum praestitum in praeiudicium iuris superioris.
>
> Idem Consulibus et Populo Tudertino.
>
> Venientes *nuper* ad sedem apostolicam *dilectos filios* consules vestros *benigne recepimus et* super his, quae ad nos de vobis saepius referuntur, et commonere *paterne* curavimus, et aliquantulum aspere convenire. Quum enim appellationibus interpositis ad apostolicam sedem teneamini humiliter et devote deferre, quum et leges etiam saeculares post sententiam beneficium appellationis non denegent aggravatis, vos, *id minus, quam vos decent, attendentes*, sententias appellatione suspensas exsecutioni mandatis, *et gravatis in contemptum sedis apostolicae appellantes*. Verum iidem consules nobis *ad excusationem vestram* exponere curaverunt, quod, quum aliqui vestrum vocantur ad officium consulatus, firmant proprio sacramento, quod super mutuis et plagiariis secundum vestrae civitatis consuetudinem iudicabunt, et infra XXVIII dies quae iudicaverunt exsequentur. Unde salvo huiusmodi iuramento vos non posse super his appellationibus deferre dicebant. Quia vero non minus iudices secundum leges, quam consules vestri secundum consuetudinem vestrae civitatis iudicare iurarunt, et ideo, sicut iudices contra leges, sic et consules vestri contra consuetudinem possent subditos aggravare, *ne in his etiam videamur deesse gravatis, universitati vestrae per apostolica scripta* mandamus *atque praecipimus*, quatenus, *quum approbatus consuetudines vestras servari velimus*, appellationibus ad nos interpositis deferatis *humiliter et devote*, quum praedictum iuramentum vos excusare non possit, in quo debet intelligi ius superioris exceptum. Quum ergo, *sicut accepimus*, postquam *dilectus filius* S. lator praesentium ad sedem apostolicam a sententia G. iudicis appellavit, sententiam ipsam duxeritis exsecutioni mandandam, in possessionem rerum, de quibus quaestio vertebatur, appellantis adversarium inducentes, volumus nihilominus et mandamus, ut possessionem ipsam restituatis eidem; alioquin noveritis, nos *venerabili fratri nostro* episcopo Nucerino *per apostolica scripta* mandasse, ut vos ad id *monitione praemissa* ecclesiastica censura *appellatione remota* compellat. [*Dat. Laterani. 1200.*]

Chapter XX

Latin source headnote: One who swears not to recover usury can, notwithstanding the oath, recover it upon a new cause. This it says according to the more notable understanding.

The same, to the Archbishop of Pisa.

Know that it has reached our hearing that, when I. *Pellar.* and G., *his son,* had paid no small amount of usury to Peter *Soctan.,* by an oath *furnished* they confirmed that neither by themselves nor through another would they recover the aforesaid usury, or bring a question concerning it before an ecclesiastical or even a secular judge. And when *the creditor himself, established at the point of death,* made a testament, he commanded his heirs that they should take care to restore it to all who should *reasonably* prove that they had given usury to him. Hence, since the aforesaid I. and G. do not attempt

to recover the usury because of an oath of this kind, and the heirs of the aforesaid P. neglect to satisfy them concerning the usury, *therefore, through apostolic writings,* we command your fraternity that you shall cause it to be publicly proposed in the church under penalty of excommunication—or shall propose it—that those who know the truth concerning this shall come forward to put forward testimony; and, if it is *lawfully* established to you concerning the foregoing through the statements of witnesses or other documents, you shall, *admonition having been given beforehand,* compel his heirs by ecclesiastical censure, *appeal removed,* to restore all the usury that their father received from the aforesaid *I. and G.* [*Given at Rome at Saint Peter's, on the Ides of March, 1205.*]

> Iurans usuras non repetere, potest iuramento non obstante ex nova causa repetere. H. d. secundum intellectum notabiliorem.
>
> Idem Pisano Archiepiscopo.
>
> Ad nostram noveris audientiam pervenisse, quod, quum I. *Pellar*. et G. *filius eius* Petro *Soctan.* usuras non modicas persolvissent, *praestito* iuramento firmaverunt, quod nec per se, nec per alium praedictas usuras repeterent, vel apud ecclesiasticum iudicem seu etiam saecularem super his deponerent quaestionem. Quumque creditor *ipse in mortis articulo constitutus* condiderit testamentum, suis praecepit heredibus, ut omnibus, qui *rationabiliter* probarent, se dedisse usuras eidem, ipsas eis restituere procurarent. Unde quum praedicti I. et G. usuras repetere non attentent propter huiusmodi iuramentum, et heredes praedicti P. eis negligant satisfacere de usuris, *ideo fraternitati tuae per apostolica scripta* mandamus, quatenus sub poena excommunicationis publice in ecclesia proponi facias vel proponas, ut qui super hoc noverint veritatem procedant ad testimonium proferendum, et, si per dicta testium vel alia documenta tibi *legitime* constiterit de praemissis, heredes illius ut usuras, quas a praedictis *I. et G.* pater eorum accepit, restituant universas, *monitione praemissa* ecclesiastica censura *appellatione remota* compellas. [*Dat. Rom. ap. S. Petr. Id. Mart. 1205.*]

Chapter XXI

Latin source headnote: A general oath ought, if possible, to be understood in such a way that it does not conflict with law; otherwise, as rash, it does not bind contrary to observance of law.

The same, to the Archbishop of Naples.

Know that it has reached our hearing that *some time ago,* almost through extortion, an oath of such a kind was furnished by you: that in every cause you ought to observe judicial order. But because, according to canonical traditions, manifest matters do not need an accusation, nor is the judicial order that ought to be observed in other matters to be observed in them; and because, when you swore under the foregoing tenor, you did not have it in mind that on account of this you would go against the canonical sanctions—for otherwise it would have been not an oath but rather perjury, and would not have to be observed for any reason—we, wishing to interpret your oath more benignly so that it accords with canonical institutes, intimate to your fraternity by authority of the present letters that, in manifest and notorious matters, we do not believe that by reason of the foregoing oath you are bound to observe the subtlety of judicial order, which the very *reason* of law also postulates and requires not to be observed in all respects in such matters. Hence, to one looking subtly, it will appear, *and not undeservedly,* to proceed from the order of judgments that judicial order is not observed in all respects in the foregoing, although also according to the approved understanding *of divine scripture* what you swore can rightly be understood as meaning that you would observe judicial order in all causes—namely, in those in which judicial order is to be observed. Therefore, by acting thus,

you will both observe the tenor of the oath and not omit the canonical institutes. [*Given at the Lateran, on the eighteenth day before the Kalends of December, 1198.*]

> Iuramentum generale debet ita intelligi, si fieri potest, ut non obviet iuri; alias tanquam temerarium non obligat contra iuris observantiam.
>
> Idem Neapolitano Archiepiscopo.
>
> Ad nostram noveris audientiam pervenisse, quod *dudum* a te quasi per extorsionem tale fuit praestitum iuramentum, quod in omni causa deberes ordinem iudiciarium observare. Verum quoniam secundum traditiones canonicas manifesta accusatione non indigent, nec in eis est ordo iudiciarius observandus, qui debet in aliis observari, nec tu, quando sub praemisso tenore iurasti, habebas in mente, ut propterea venires contra canonicas sanctiones, alioquin non iuramentum, sed periurium potius exstitisset, nec esset aliqua ratione servandum, nos iuramentum tuum benignius interpretari volentes, ita, quod consonet canonicis institutis, fraternitati tuae auctoritate praesentium intimamus, quod in manifestis et notoriis ratione iuramenti praemissi non credimus te teneri servare subtilitatem ordinis iudiciarii, quam in his non servari per omnia ipsa *quoque* iuris ratio postulat et requirit. Unde videbitur *nec immerito* subtiliter intuenti de ordine iudiciorum procedere, ut in praemissis non per omnia ordo iudiciarius observetur, quanquam et secundum approbatum intellectum *scripturae divinae* recte possit intelligi, quod iurasti, ut in omnibus causis ordinem iudiciarium observares, in illis videlicet, in quibus est ordo iudiciarius observandus. Sic ergo faciens et iuramenti tenorem servabis, et instituta canonica non omittes. [*Dat. Lat. XVIII. Kal. Dec. 1198.*]

Chapter XXII

Latin source headnote: If one oath owed to one person is furnished to another, it is unlawful, and notwithstanding it the oath is to be furnished to the person to whom it is owed.

The same, to the Judge of Cagliari.

We believe that you flourish in such discretion that you understand by yourself that a burden is not remitted but increased when that which is to be furnished to another as a debt is imprudently discharged to someone else. Indeed, when *our venerable father* the Archbishop of Torres exacted from you in our name an oath of fealty, as he had received a mandate from us, you deferred furnishing it into his hands, asserting that you had furnished an oath of this kind to *our venerable brother* the Archbishop of Pisa, saving the honor of the Apostolic See. Therefore, since you are bound to make fealty to us and the Roman Church, *as even your prudence acknowledges,* if you reckon the oath furnished to be contrary to that which is to be furnished to us by you as a debt, you will judge it unlawful and, notwithstanding the unlawful oath, will furnish what is lawfully—indeed, by debt—sought; or, if the oath furnished does not conflict with that to be furnished, you will furnish the latter without difficulty. *We therefore admonish and attentively exhort your nobility, and through apostolic* writings [*to you*] *command and order that, every excuse and occasion ceasing, into the hands of the same archbishop you shall furnish to us and the Roman Church an oath of fealty.* [*Given at Ferentino, on the seventeenth day before the Kalends of October, 1203.*]

> Si unum iuramentum uni debitum alteri praestatur, illicitum est, et eo non obstante cui debetur praestandum est.
>
> Idem Iudici Carolitano.

Ea te credimus discretione vigere, ut intelligas per te ipsum, quod onus non remittitur, sed augetur, quum cuiquam improvide solvitur quod alii ex debito est praestandum. Sane, quum *venerabilis pater noster* archiepiscopus Turritanus a te nomine nostro iuramentum fidelitatis, sicut a nobis mandatum acceperat, exegisset, illud exhibere in eius manibus distulisti, asserens, quod *venerabili fratri nostro* Pisano archiepiscopo salvo apostolicae sedis honore huiusmodi praestiteras iuramentum. Quum igitur nobis et ecclesiae Romanae fidelitatem facere tenearis, *sicut tua etiam prudentia recognoscit*, si praestitum iuramentum ei, quod a te nobis tanquam debitum est praestandum, contrarium reputes, illud illicitum iudicabis, et, illicito non obstante, quod licite, immo ex debito petitur, exhibebis, vel, si praestitum praestando contrarium non exsistit, illud sine difficultate praestabis. *Monemus igitur nobilitatem tuam et exhortamur attentius, et per apostolica* [*tibi*] *scripta mandamus atque praecipimus, quatenus omni excusatione et occasione cessante in manibus eiusdem archiepiscopi fidelitatis nobis et ecclesiae Romanae exhibeas iuramentum.* [*Dat. Ferentini XVII. Kal. Oct. 1203.*]

Chapter XXIII

Latin source headnote: One who swore to stand by someone's mandate is not bound to obey if he commands unlawful things, such as that he disinherit his son or abjure his wife.

The same, to the Bishop of Alatri.

Quintavallis, *a vicar,* intimated to our ears that, *when formerly his daughters and Giborga and Venetia, daughters of John Bertius, had come from words even to blows, the same Quintavallis,* desiring *on the advice of neighboring persons* to make satisfaction to those women *and their relatives* for the injury that his daughters had inflicted upon the other women, furnished an oath that he would obey their mandate *for their injury. After receiving the oath from him,* they gave him such a mandate under the obligation of the oath: that, if at any time his sons *or daughters* or his wife should cast some insulting deed or word against those women, the same *Quintavallis* should disinherit *his* daughters and sons and remove his own wife from himself. Wherefore, *through apostolic writings,* we command your fraternity that *you shall inquire more diligently into the truth concerning the foregoing, and, if you learn that the matter is so,* since the oath was lawful but the mandate unlawful, you shall enjoin upon the aforesaid *daughters of John Bertius* that they revoke that mandate; otherwise, *supported by our authority,* you shall declare that he is not bound to observe that mandate. [*Given at Anagni, on the third day before the Nones of February, 1204.*]

Qui iuravit stare mandato alicuius, non tenetur parere, si praecipit illicita, ut quod filium exheredet, vel uxorem abiuret.

Idem Alatrino Episcopo.

Quintavallis *vicarius* nostris auribus intimavit, quod, *quum olim filiae suae cum Giborga et Venetia filiabus Ioannis Bertii ad verba etiam ad verbera devenissent, idem Quintavallis* pro offensa, quam filiae ipsius aliis mulieribus irrogarant *satisfacere cupiens de consilio convicinorum mulieribus illis et consanguineis, suis*, quod *pro offensa* earum mandato pareret praestitit iuramentum, quae *ab ipso iuramento recepto* tale illi sub debito iuramenti dedere mandatum, quod, si quando filii *vel filiae* aut uxor illius aliquod factum vel verbum contumeliosum mulieribus illis obiicerent, idem *Quintavallis et* filias et filios *suos* exheredaret, et a se propriam removeret uxorem. Quocirca *fraternitati tuae per apostolica scripta* mandamus, quatenus *inquiras de praemissis diligentius veritatem, et, si rem noveris ita esse*, quum licitum fuerit iuramentum, sed mandatum illicitum, praedictis *filiabus Ioannis Bertii*, ut revocent mandatum illud, iniungas; alioquin eum ad mandati observationem illius *auctoritate nostra suffultus* denuncies non teneri. [*Dat. Anagniae III. Non. Febr. 1204.*]

Chapter XXIV

Latin source headnote: Spouses cannot separate themselves, even as to bed and mutual cohabitation, for a light and rash cause, even with the interposition of an oath.

The same, to the Archbishop of Tarragona.

Your fraternity considered that we should be consulted as to what is to be done by you concerning this *article, namely,* that B. *of Bell-lloc* and A., his wife, *formerly* swore to one another that they would never seek one another again; but now he insistently seeks her again, while she on the contrary affirms that she would sooner make herself a Saracen *and lose her soul* than return to him, *but would willingly dismiss the adulterer to whom she adhered after she withdrew from him, and would promise and swear chastity.* We therefore, responding to your fraternity *concerning this, through apostolic writings* command you that you shall *attentively* admonish and induce both to observe continence. If they wish to promise and observe it, you shall permit each to remain without the other. Otherwise, if the man is unwilling to be continent, you shall compel her, by a sentence of excommunication and with appeal removed, to return to him and remain with the man as his wife, since an oath of this kind was rash and adultery was committed on both sides. [*Given at Ferentino, on the twelfth day before the Kalends of July, 1203.*]

> Ex causa levi et temeraria coniuges etiam quoad torum et mutuam cohabitationem se separare non possunt, etiam cum iuramenti interpositione.
>
> Idem Archiepiscopo Terraconensi.
>
> Tua nos duxit fraternitas consulendos, quid tibi super hoc *articulo* sit faciendum, *videlicet* quod B. *de Bella loco* et A. uxor eius *olim* adinvicem iuraverunt, se nunquam mutuo petituros; idem vero nunc repetit illam instanter, ea e contrario affirmante, quod, prius se faceret Sarracenam *et perderet animam suum*, quam rediret ad eum; *+sed adulterum, cui adhaesit, postquam recessit ab eo, libenter dimitteret, et castitatem promitteret, et iuraret*. Nos igitur fraternitati tuae *super hoc* respondentes, *per apostolica tibi scripta* mandamus, quatenus utrumque ad continentiam servandam moneas *attentius* et inducas. Quam si promittere voluerint et servare, utrumque dimittas sine alio commorari. Alioquin, si vir noluerit continere, tu illam, ut revertatur ad ipsum, et tanquam uxor cum viro moretur, per excommunicationis sententiam appellatione remota compellas, quum et temerarium fuerit huiusmodi iuramentum, et adulterium utrinque sit commissum. [*Dat. Ferentini XII. Kal. Iul. 1203.*]

Chapter XXV

Latin source headnote: One who swore to contract with a woman can reject her because of supervening fornication or deformity, but not because of preceding fornication or deformity. This it says. — (*Moreover, that, etc.:*) If a man swore not to accuse his wife, the oath is rash. But if he swore this specifically concerning adultery, he will be able to denounce her, but ought not to accuse her.

The same, to the Archbishop of Genoa.

Just as, if a man had sworn to a woman when he contracted with her that he would always hold her as his lawful wife, *he indeed* could not dismiss her for fornication that the woman had committed before, but could dismiss her for fornication that she might perpetrate afterward, notwithstanding an oath of this kind, because in it this condition was to be understood—namely, if she did not sin against the law of marriage—so, if someone has sworn that he will take a certain woman as wife, *he assuredly* cannot object against her preceding fornication, but *can object against her* subsequent

fornication so that he does not take her as spouse, because in that oath this condition ought to be understood—namely, if she does not go against the rule of betrothal. Otherwise, if after an oath of this kind she became a public prostitute, he would be bound to take her as wife, which is utterly absurd. For if, after marriage has been contracted, a man can lawfully dismiss a wife from his cohabitation because of fornication, much more strongly, before marriage has been celebrated, a betrothed man can lawfully refuse to admit a betrothed woman into his cohabitation for the same cause, because a guest is more shamefully cast out than not admitted; notwithstanding in either case the bond of the oath, which indeed, because of the condition to be understood, is of such a kind that the person who swore can comport himself toward either outcome without transgression.

But if, after an oath of this kind, the woman became not only leprous but also paralytic, or lost her eyes or nose, or something more shameful befell her, would the man be bound to take her as wife? Certainly, he could not dismiss her once taken. But would he be bound to admit her when not taken, although that which sometimes does not dissolve a contract impedes a contract to be made?

Moreover, that oath is undoubtedly rash if a man swears to his wife that he will accuse her of no crime, because, if the woman should become an unbeliever and should be unwilling to cohabit with the man without insult to the Creator, or [should seek] to draw him into the error of unbelief, then the man ought without hesitation to accuse her before his judge so that, unless she came entirely to her senses, he should dismiss her altogether according to the canonical sanctions. But if he had expressly sworn that he would not accuse her concerning adultery, would an oath of this kind have to be observed, since scripture testifies that he who conceals the crime of his wife is a patron of turpitude, and according to the rule of the Gospel, if after being corrected a first and second time she were unwilling to come to her senses, it would have to be told to the Church, so that she would thereafter be avoided as a heathen and a publican, and through this a free faculty of sinning would not be furnished to her because of the impunity of sin? But can a man not forgive his wife who sins *against him,* not only seven times but even seventy-seven times, according to the truth of the Gospel? It therefore appears safer in this case that, because of the sanctity of the oath, the man desist from accusing his wife for the pronouncement of a separation, although he can denounce her for the performance of penance. *Therefore, having weighed the tenor of this response, you shall proceed in the cause concerning which you determined to consult us.* [*Given at Viterbo, on the Kalends of September, in the tenth year, 1207.*]

> Is, qui iuravit cum muliere contrahere, propter supervenientem fornicationem vel deformitatem eam repellere potest; propter praecedentem non. H. d. - (Illud autem etc.:) Si vir iuravit non accusare uxorem, temerarium est iuramentum. Sed si specialiter de adulterio hoc iuravit, denunciare poterit; sed accusare non debet.
>
> Idem Genuensi Archiepiscopo.
>
> Quemadmodum, si vir mulieri iurasset, quando contraxit cum illa, quod eam semper pro legitima uxore teneret, *ipse quidem* pro fornicatione, quam mulier antea commisisset, non posset eam dimittere, sed pro fornicatione, quam postea perpetraret eam dimittere posset non obstante huiusmodi iuramento, quoniam in eo talis erat subintelligenda conditio, si videlicet in legem coniugii illa non peccaret, ita, si quis iuraverit, se ducturum aliquam in uxorem, *ipse profecto* non potest ei fornicationem opponere praecedentem, sed subsequentem *ei potest opponere*, ut illam non ducat in coniugem, quia in illo iuramento talis debet conditio subintelligi, si videlicet illa contra regulam desponsationis non venerit. Alioquin si post huiusmodi iuramentum publica meretrix fieret, teneretur eam ducere in uxorem, quod

est prorsus absurdum. Nam si post contractum coniugium vir propter fornicationem licite potest uxorem a sua cohabitatione dimittere, longe fortius ante coniugium celebratum propter eandem causam sponsus licite potest in suam cohabitationem non admittere sponsam, quia turpius eiicitur quam non admittitur hospes, non obstante in alterutro casu vinculo iuramenti, quod quidem propter subintelligendam conditionem est tale, ut is, qui iuravit, ad utrumque sine transgressione se possit habere. Quod si post huiusmodi iuramentum mulier fieret non solum leprosa, sed etiam paralytica, vel oculos vel nasum amitteret, seu quicquam ei turpius evenerit, numquid vir teneretur eam ducere in uxorem? Profecto ductam non posset dimittere. Sed numquid non ductam admittere teneretur, quamvis interdum contractum non dirimat, quod impedit contrahendum? Illud autem iuramentum est proculdubio temerarium, si vir iuret uxori, quod eam super nullo crimine accusabit, quia, si mulier fierit infidelis, et nollet cohabitare viro absque contumelia creatoris, vel ut illum pertraheret ad infidelitatis errorem, tunc vir incunctanter deberet illam impetere apud iudicem suum, ut eam, nisi penitus resipisceret, omnino dimitteret, secundum canonicas sanctiones. Quodsi expresse iurasset, quod eam super adulterio non impeteret, essetne servandum huiusmodi iuramentum, quum scriptura testetur, quod patronus est turpitudinis qui celat crimen uxoris, et secundum regulam evangelii, si primo et secundo correcta resipiscere nollet, dicendum esset ecclesiae, ut tanquam ethnica et publicana deinde vitaretur, nec per hoc libera praeberetur ei peccandi facultas propter impunitatem peccati? Sed numquid vir non potest dimittere uxori *in ipsum* peccanti non solum septies, sed etiam usque septuagies septies secundum evangelicam veritatem? Tutius ergo in hoc casu videtur, ut propter iurisiurandi religionem vir accusare desistat uxorem ad divortium celebrandum, quanquam denunciare eam possit ad poenitentiam peragendam. *Pensato itaque huius responsionis tenore procedas in causa, super qua nos consulere decrevisti.* [*Dat. Viterbii Kal. Sept. Ao. X. 1207.*]

Chapter XXVI

Latin source headnote: An oath is lawfully made from a necessary cause, even by religious persons.

The same, to the Abbot and Chapter of Châtillon.

Although Christ commanded according to the truth of the Gospel [*that*] your speech be "yes, yes," *and* "no, no," [*that is,*] that an affirmation or negation should proceed from the heart just as it proceeds from the mouth, nevertheless, because as human malice grows a simple assertion or negation is scarcely believed, he therefore prudently added: "What is more than this is from evil." From evil indeed, not so much of fault as of punishment; and not of those furnishing the oath but of those exacting it. For unbelief of this kind is more punishment than fault. Hence he did not say "evil," but said "from evil."

For although the Lord appears to have prohibited an oath, he nowhere prohibited swearing by the Creator, but by a creature, lest through an oath of this kind the honor of the Creator be transferred to a creature. Wherefore, when in the Gospel he had premised, "I say to you, do not swear at all," he immediately added: "neither by heaven, because it is the throne of God; nor by earth, because it is his footstool; nor by Jerusalem, because it is the city of the great king; nor by your head, because you cannot make one hair white or black." And although one must not swear by a creature, nevertheless, if one swears by a creature, it is indeed to be observed, provided that what is sworn is lawful, because, as Truth testifies, "he who swears by heaven swears by the throne of God and by him who sits upon it."

James also does not simply prohibit an oath, but "the will to swear," when he says: "Before all things, my brothers, do not swear," since spontaneous will ought not to induce anyone to an oath, [*because one who swears easily perjures himself easily,*] but pressing necessity ought to draw him. And then you can swear without fault, provided the oath has those three companions concerning which the Prophet speaks thus: "And they shall swear, 'The Lord lives,' in truth, judgment, and justice, *and all shall bless him and praise him.*" But when James adds, "neither by heaven, nor by earth, nor by any other oath whatsoever," he forbids swearing by any creature, whatever it may be. Otherwise, the Apostle would not have said: "Men swear by one greater than themselves, and an oath for confirmation is the end of all their controversy." In this he plainly shows by whom one is to swear, when he says, "Men swear by one greater than themselves," that is, by God; and why one is to swear, namely, that an oath may be the end of all controversy.

The angel also whom John saw in the Apocalypse standing upon the sea and upon the earth lifted his hand to heaven and swore by him who lives for ever and ever. Christ also is read to have said more in the Gospel than "yes, yes," "no, no," since he very frequently said, "Amen, I say to you." Explaining this according to Luke, when he had premised, "Amen, I say to you, that no prophet is accepted in his own country," he consequently added: "In truth I say to you, that there were many widows in Israel in the days of Elijah." The Apostle also swore when he said, "God is my witness," and again, "I die daily by your glory, brothers." The Greek copies show these words to be a most manifest oath.

For if to swear were evil in itself, assuredly the Lord would not have sworn, although in the Old Testament it is read: "Because the Lord has sworn and will not repent," and again: "The Lord swore truth to David and will not frustrate him"; indeed, he also commanded in the Old Testament: "Render your oaths to God." For some things are prohibited because they are evil in themselves, such as theft, adultery, and things of this kind, which are not to be done in any way. But some things are prohibited because of a cause, not because they are evil in themselves, but because, if they are done frequently and much, evils follow from them. Thus wine is not [*indeed*] evil in itself, and nevertheless the Apostle prohibits it, saying: "Do not become drunk with wine, in which there is wantonness," since wantonness is generated from frequent and immoderate drinking of wine. So also an oath is indeed not evil in itself, since it is a confirmation of truth, but nevertheless it is prohibited for a cause, because perjury often occurs from frequent and incautious swearing, as is read in Ecclesiasticus: "A man who swears much will be filled with iniquity, and a plague will not depart from his house."

Therefore, just as Paul permitted his disciple [*namely*] Timothy, on account of necessity, to use a little wine because of his stomach and frequent infirmities, so assuredly, when necessity exacts it, one can safely swear concerning a true, lawful, and honorable matter, because when the cause ceases the effect ceases. Therefore, although you ought to be perfect men, so that, insofar as you can, you avoid the bond of an oath, nevertheless, wishing *with paternal solicitude* to provide for the indemnity of your monastery, lest through a deficiency of witnesses it sustain injury to its right, *by the authority of him who says in the Gospel, "If your brother sins against you, correct him between you and him alone; and, if he does not hear you, take with you two or three witnesses, so that in the mouth of two or three witnesses every word may stand,"* by the present page we grant to you that you and the lay brothers of your monastery may in its causes, when other witnesses are lacking, bear testimony to the truth on its behalf. [*Let no one*

therefore, etc. Given at Rome at Saint Peter's, on the twelfth day before the Kalends of April, in the ninth year, 1206.]

Licite ex causa necessaria etiam per religiosos iuratur.

Idem Abbati et Capitulo Castellionis.

Etsi Christus praeceperit secundum evangelicam veritatem [*ut*] sit sermo vester: est est *et* non non, [*id est,*] ut affirmatio vel negatio, sicut procedit ex ore, ita procedat ex corde, quia tamen hominum excrescente malitia simplici assertioni vel negationi vix creditur, idcirco prudenter adiunxit: «quod amplius est, a malo est.» A malo quidem, non tam culpae, quam poenae; nec exhibentium, sed exigentium iuramentum. Nam incredulitas huiusmodi magis est poena, quam culpa. Unde non dixit «malum,» sed dixit: «a malo.» Licet enim iuramentum prohibuisse Dominus videatur, nusquam tamen per creatorem, sed per creaturam iurare prohibuit, ne per huiusmodi iuramentum transferretur ad creaturam honorificentia creatoris. Quare quum in evangelio praemisisset: «Dico vobis, nolite iurare omnino,» statim subiunxit: «neque per coelum, quia thronus Dei est; neque per terram, quia scabellum pedum ipsius est; neque per Hierosolymam, quia civitas est regis magni; neque per caput tuum, quia non potes unum capillum facere album aut nigrum.» Et quamvis non sit per creaturam iurandum, si tamen iuretur per creaturam, servandum est quidem, dummodo sit licitum quod iuratur, quia, teste veritate, «qui iurat in coelo, iurat in throno Dei, et in eo, qui sedet super eum.» Iacobus quoque non simpliciter prohibet iuramentum, sed «voluntatem iurandi,» quum ait: «Ante omnia, fratres mei, nolite iurare,» quoniam ad iuramentum non debet quemquam spontanea voluntas inducere, [*quia qui facile iurat facile peierat,*] sed necessitas trahere importuna. Et tunc potes sine culpa iurare; dummodo illos tres comites habeat iuramentum, de quibus Propheta sic ait: «Et iurabunt, vivit Dominus, in veritate, et iudicio, et iustitia, *et benedicent eum omnes, ipsumque laudabunt*. Quod autem Iacobus subdit: «neque per coelum, neque per terram, neque per quodcunque aliud iuramentum,» iurare vetat per quamlibet creaturam, quodcunque sit illud. Alioquin non dixisset Apostolus: «Homines per maiorem suum iurant, et omnis controversiae eorum ad confirmationem finis est iuramentum.» In quo patenter ostendit, per quem sit iurardum, quum ait: «homines per maiorem suum iurant,» id est, per Deum, et cur sit iurandum, ut videlicet omnis controversiae finis sit iuramentum. Angelus quoque, quem vidit in Apocalypsi Ioannes stantem super mare et super terram, levavit manum suam ad coelum, et iuravit per viventem in saecula saeculorum. Christus etiam plus legitur dixisse in evangelio, quam est est, non non, quum saepissime dixerit: «Amen dico vobis.» Quod ipse secundum Lucam exponens, quum praemisisset: «amen dico vobis, quia nemo propheta acceptus est in patria sua,» consequenter adiunxit: «in veritate dico vobis, quia multae viduae erant in diebus Heliae in Israel.» Apostolus quoque iurabat, quum diceret: «Testis est mihi Deus,» et iterum: «Quotidie morior per gloriam vestram, fratres.» Quae graeca exemplaria manifestissimam iurationem esse ostendunt. Si enim per se malum esset iurare; profecto Dominus non iurasset, quum tamen in veteri testamento legatur: «Quia iuravit Dominus, et non poenitebit eum,» et rursum: «Iuravit Dominus David veritatem, et non frustrabitur eum;» immo et praecepit in veteri testamento: «Redde Deo iuramenta tua.» Quaedam enim prohibentur, quia per se mala sunt, ut furtum, adulterium et huiusmodi, quae non sunt aliquatenus facienda. Quaedam vero prohibentur ex causa, non quia per se mala sunt, sed quia, si fiant frequenter et multum, ex his mala sequuntur, ut vinum per se [*quidem*] malum non est, et tamen prohibet Apostolus dicens: «Nolite inebriari vino, in quo est luxuria,» quoniam ex frequenti et immoderata potatione vini luxuria generatur. Sic et iuramentum per se quidem malum non est, quum sit confirmatio veritatis, sed tamen prohibetur ex causa, quoniam ex frequenti et incauta iuratione periurium saepe contingit, sicut in Ecclesiastico legitur: «Vir multum iurans replebitur iniquitate, et non discedet a domo eius plaga.» Quemadmodum ergo Paulus indulsit propter necessitatem discipulo suo, [*videlicet*] Timotheo, ut utatur modico vino propter stomachum et frequentes infirmitates, sic profecto, quum necessitas exigit, pro re vera, licita et

honesta potest secure iurari, quia cessante causa cessat effectus. Licet ergo debeatis esse viri perfecti, ut, quantum potestis, iuramenti vinculum evitetis, volentes tamen indemnitati vestri monasterii *paterna sollicitudine* providere, ne propter defectum testium sui iuris sustineat laesionem, *eius auctoritate, qui dicit in evangelio: «Si peccaverit in te frater tuus, corripe eum inter te et ipsum solum, et, si non audierit te, adhibe tecum duos vel tres testes, ut in ore duorum vel trium testium stet omne verbum,»* praesenti vobis pagina indulgemus, quatenus vos et monasterii vestri conversi possitis in causis eiusdem, deficientibus aliis testibus, pro ipso perhibere testimonium veritati. [*Nulli ergo etc. Dat. Rom. ap. S. Petr. XII. Kal. Apr. Ao. IX. 1206.*]

Chapter XXVII

Latin source headnote: An oath furnished contrary to ecclesiastical utility does not bind.

The same, to the Bishop of Amelia.

As was intimated to our ears, when the Church of Todi was *some time ago* vacant, its canons—and *our venerable brother* the *Bishop of Todi* with them, while he was established in minor orders—made certain oaths to the detriment of episcopal right before any discussion was had concerning the election of a pontiff, *as to whether they ought to be observed, especially since it would happen from them that episcopal revenues would be diminished, the same bishop, as a provident and discreet man, formerly considered that we should be consulted. We therefore, wishing with paternal solicitude to provide for his salvation,* caused a fitting penance to be imposed upon the bishop for the incautious swearing. *And nevertheless, considering that an oath was not instituted to be a bond of iniquity, and* because things attempted contrary to ecclesiastical utility are to be called not oaths but rather perjuries, *through apostolic writings* we command your fraternity that, *personally approaching the Church of Todi,* you shall inquire more diligently from the canons themselves into the truth concerning the foregoing; and, if you find that the things *said above* are true, you shall, *supported by our authority and with appeal removed,* reduce to its due state whatever you find to have been attempted in this manner to the detriment of episcopal right, *causing what you decree to be firmly observed through ecclesiastical censure.*

Iuramentum contra utilitatem ecclesiasticam praestitum non tenet.

Idem Episcopo Ameliensi.

Sicut nostris est auribus intimatum, ecclesia *dudum* Tudertina vacante ipsius canonici, et *venerabilis quoque frater noster* episcopus *Tudertinus* cum eis, dum esset in minoribus ordinibus constitutus, iuramenta quaedam in damnum episcopalis iuris fecerunt, priusquam de pontificis electione tractatus aliquis haberetur, *+quae utrum servari debeant, quum ex eis praesertim contingeret reditus episcopales minorari, tanquam vir providus et discretus olim nos idem duxit episcopus consulendos. Nos ergo saluti eius paterna volentes sollicitudine providere,* Pro iuratione incauta imponi fecimus episcopo poenitentiam congruentem. *Et nihilominus attendentes, quod iuramentum non, ut esset iniquitatis vinculum, fuerit institutum, et* Quia non iuramenta, sed periuria potius sunt dicenda, quae contra utilitatem ecclesiasticam attentantur, *fraternitati tuae per apostolica scripta* mandamus, quatenus *personaliter ad ecclesiam Tudertinam accedens* ab ipsis canonicis inquiras super praemissis diligentius veritatem, et, si ea, *quae dicta sunt superius,* inveneris esse vera, quod in damnum episcopalis iuris repereris taliter attentatum, *nostra suffultus auctoritate* in statum debitum appellatione remota reducas, *faciens quod decreveris per censuram ecclesiasticam firmiter observari.*

Chapter XXVIII

Latin source headnote: An oath furnished concerning an act invalidated by law principally in favor of the person swearing, although secondarily in the public interest, necessarily is to be observed if it was furnished neither by force nor fraud and does not principally redound to the prejudice of another. This it says, with the core of the chapter considered in a very singular manner.

The same.

Since it sometimes happens *in your diocese* that, while a marriage continues, women [*spontaneously*] consent to alienations concerning dotal property and donations *given to them* on account of marriage, confirming by their own oath that they will not afterward contravene them, and, after the marriage is dissolved in the course of time, endeavor to contravene them, your fraternity asked us whether this is permitted to them. But we respond to your fraternity in this way: although the consent of women in such matters does not appear obligatory according to the lawful sanctions, nevertheless, lest under such a pretext it happen that a way is opened to perjuries, the women themselves ought to observe oaths of this kind, furnished willingly *and in good faith,* without force and fraud, since they do not redound to the prejudice of another, nor, when observed, tend toward loss of eternal salvation. [*Moreover, you asked, etc. Given at the Lateran, on the sixteenth day before the Kalends of June, in the thirteenth year—1210.*]

> Iuramentum praestitum super actu a lege infirmato principaliter favore iurantis, licet secundario in favorem publicum, necessario est observandum, si non vi, nec dolo fuit praestitum, et in alterius praeiudicium principaliter non redundat. H. d. multum singulariter considerata medulla capituli.
>
> Idem.
>
> Quum contingat interdum *in tua dioecesi*, quod constante matrimonio mulieres alienationibus super rebus dotalibus et donationibus propter nuptias *sibi datis* [*sponte*] consentiant, ne ulterius contraveniant proprio sacramento firmando, ac soluto processu temporis matrimonio contravenire nitantur, utrum hoc eis liceat, a nobis tua fraternitas requisivit. Nos autem fraternitati tuae taliter respondemus, quod, etsi mulierum consensus in talibus non videatur obligatorius secundum legitimas sanctiones, ne tali tamen praetextu viam contingat periuriis aperiri, mulieres ipsae servare debent huiusmodi iuramenta, sine vi et dolo, sponte *ac pro fide* praestita, quum in alterius praeiudicium non redundent, nec observata vergant in dispendium salutis aeternae. [*Praeterea requisisti etc. Dat. Lateran. XVI. Kal. Iun. Ao. XIII. - 1210.*]

Chapter XXIX

Latin source headnote: One who initiates an unjust war is compelled to restore the things he occupied through violence and to absolve those from whom he unduly extorted oaths. This it says as far as the words "But the oath." — § 1. No one is bound by an oath to fulfill what he swore if the other party, with respect to whom the oath was furnished, does not fulfill [his part].

The same.

As [*the tenor of the letters offered to us by the beloved son I. de Cuter. expressed, he recently experienced in himself that the deceptive pleasantness of this life scarcely or never remains in the same condition. For the more willingly one clings to it, the more easily one falls with it as it falls.* (*And below:*) *Therefore, since we are established in that place where, according to the prophetic word, we ought to dissolve the bonds of impiety and the bundles that oppress, to send free those who are broken, and to break every burden, through apostolic writings we command your discretion that,*] if it is established to you that the aforesaid H. unjustly initiated war against I., you shall

endeavor *attentively to admonish and* induce H. himself to restore *both* [*the*] *land of the same man and all other things* occupied through violence of this kind *without delay* to the complainant, wholly absolving him from the oath furnished to H. But if *perhaps, after your admonitions,* he is unwilling to acquiesce, you shall, if the foregoing rests upon truth, compel him to this by a sentence of excommunication, [*with the obstacle of any contradiction and appeal removed,*] *also* subjecting his land to a sentence of interdict.

§ 1. But the oath that [*the same*] I. asserts that he *last* furnished, if it was made with the assent of both parties, does not bind the person who furnished it while the person to whom it had been furnished neglects to observe what he promised.

> Movens bellum iniustum compellitur restituere, quae per violentiam occupavit, et eos absolvere, a quibus indebite iuramenta extorsit. H. d. usque ad vers.: Iuramentum. - §. 1.: Non adstringitur quis iuramento ad implendum quod iuravit, si ab alia parte non impletur, cuius respectu praestitum est iuramentum.
>
> Idem.
>
> Sicut +[*oblatus dilecti filii I. de Cuter. literartum nobis tenor expressit, nuper expertus est in se ipso quod fallax huius vitae incunditas vix aut nunquam statu permaneat in eodem. Quanta enim ei libentius quis inhaeret, tanto facilius labitur cum labente. (Et infra:) Quum igitur simus in eo loco constituti, ut secundum verbum propheticum debeamus dissolvere colligationes impietatis et fasciculos deprimentes, ac dimittere eos, qui confracti sunt, liberos, et omne onus dirumpere, discretioni vestrae per apostolica scripta mandamus, quatenus*] Si vobis constiterit, quod praedictus H. iniuste bellum moverit contra I., ipsum H. *monere attentius et* inducere studeatis, ut [*et*]* terram ipsius et alia* universa per huiusmodi violentiam occupata *sine dilatione* restituat conquerenti, eum a praestito sibi iuramento prorsus absolventes. Quodsi *monitis vestris forte* acquiescere noluerit, ipsum ad hoc, si praemissa veritate nitantur, [*sublato cuiuslibet contradictionis et appellationis obstaculo*] cogatis per sententiam excommunicationis, *et* terram eius interdicti sententiae supponentes. §. 1. Iuramentum autem, quod [*idem*] I. *ultimo* se asserit praestitisse, si de assensu factum est utriusque, eum non ligat, qui praestitit, dum ille, cui praestitum fuerat, servare negligit quod promisit.

Chapter XXX

Latin source headnote: Clerics who do not hold temporal things from laymen are not bound to furnish them oaths of fealty.

The same, in the general council.

Laymen indeed strive to usurp too much of divine right when they compel ecclesiastical men who hold nothing temporal from them to furnish oaths of fealty to them. But because, according to the Apostle, a servant stands or falls to his own lord, by authority of the sacred council we prohibit clerics of this kind from being compelled to furnish such oaths to secular persons.

> Clerici non habentes temporalia a laicis non tenentur eis praestare iuramenta fidelitatis.
>
> Idem in concilio generali.
>
> Nimis de iure divino quidem laici usurpare nituntur, quum viros ecclesiasticos, nihil temporale obtinentes ab eis, ad praestandum sibi fidelitatis iuramenta compellunt. Quia vero secundum Apostolum servus suo domino stat aut cadit, sacri auctoritate concilii prohibemus, ne tales clerici personis saecularibus praestare cogantur huiusmodi iuramenta.

Chapter XXXI

Latin source headnote: One who swears not to be against someone can be against him in causes belonging to himself and his church. This it says according to the understanding of the gloss.

Honorius III, to A. and C., Canons of Antioch.

Your petition exhibited to us contained that, while the Church of Antioch was vacant, *the nobleman R.,* Prince of Antioch, fearing that certain conspiracies would be made against him, extorted from you an oath that henceforth you would not be against him. *But since the same prince has frequent disputes against the church itself, you can neither fail the church without its detriment nor dare to assist it lest you appear to act contrary to the said oath. Wherefore you humbly supplicated us that we should deign to provide concerning these matters with paternal solicitude. We therefore, providing equally for the utility of the same church, your salvation and reputation, and the honor of the said prince,* declare by a fitting interpretation that you are not bound by an oath of this kind so that you cannot stand freely against the prince himself in lawfully defending the rights and honors of the church itself, and also your own particular rights, restraining you only from a machination through which the same prince ought to incur injury to his person or loss of his principality. *We therefore decree that, when necessary, by resisting the said prince for defense of the right or honor of the often-mentioned church or of yourselves, you are subject through this to no mark or calumny.*

> Qui iurat non esse contra aliquem, potest in causis propriis et ecclesiae suae esse contra eum. H. d. secuudum intellectum glossae.
>
> Honorius III. A. et C. Canonicis Antiochenis.
>
> Petitio vestra nobis exhibita continebat, quod ecclesia Antiochena vacante *nobilis vir R.* princeps Antiochenus, timens conspirationes aliquas fieri contra eum, a vobis iuramentum extorsit, quod contra ipsum de cetero non essetis. +*Quum autem idem princeps adversus ipsam ecclesiam frequentes habeat quaestiones, vos nec ipsi deesse ecclesiae sine ipsius detrimento potestis, nec eidem audetis adesse, ne videamini contra dictum facere iuramentum. Quare nobis humiliter supplicastis, ut super his paterna providere sollicitudine dignaremur. Nos igitur utililati eiusdem ecclesiae, et saluti ac famae vestrae, et honori dicti principis pariter providentes,* Interpretatione congrua declaramus, vos iuramento huiusmodi non teneri, quin pro iuribus et honoribus ipsius ecclesiae, ac etiam specialibus vestris legitime defendendis contra ipsum principem stare libere valeatis, coercendo vos a machinatione duntaxat, per quam idem princeps deberet laesionem personae vel sui amissionem incurrere principatus. *Decernimus igitur, vos pro defensione iuris seu honoris ecclesiae saepedictae vel vestri dicto principi quum opus fuerit resistentes, nulli per hoc notae seu calumniae subiacere.*

Chapter XXXII

Latin source headnote: When the matter concerns usury, a judge can at any part of the litigation, proofs being deficient, exact from the parties by his office an oath to tell the truth. And by the same reasoning the same applies in any cause in which sin threatens. This it says according to Panormitanus.

The same, to the Archdeacon and Master G., Canon of Toul.

We have learned from your letters that, in the cause concerning usury committed to you by the Apostolic See for G., *a knight of Rossuel,* against E., *a knight of Épinal in the Diocese of Toul,* the quantity of the principal could not become clear *to you* through witnesses produced by the party of G. himself, although the obligation of the pledge was established. Hence you see it to be expedient that an oath to tell the truth be exacted from the parties, since it is held as virtually notorious from report that the

aforesaid E. received the principal and more from a certain land of G. himself obligated to him by title of pledge. Therefore, lest justice succumb with the truth concealed through the lack of an oath of this kind, we command *your discretion* that, *if it is so,* you shall compel the parties by ecclesiastical censure, appeal removed, to furnish an oath of this kind.

> Quum agitur de usuris, potest iudex in qualibet parte litis ex officio suo deficientibus probatiouibus exigere a partibus iuramentum de veritate dicenda. Et eadem ratione idem in qualibet causa, in qua imminet peccatum. H. d. secundum Panormitanum.
>
> Idem Archidiacono et Magistro G. Canonico Tullensibus.
>
> Ex literis vestris accepimus, quod super causa usurarum vobis pro G. *de Rossuel milite* contra E. *de Espinal militem Tullensis dioecesis* ab apostolica sede commissa non potuit *vobis* per testes ab ipsius G. parte productos de sortis quantitate liquere, licet de obligatione pignoris constitisset. Unde expedire videtis, quod exigatur de dicenda veritate a partibus iuramentum, quum ex fama quasi notorium habeatur, praefatum E. ex quadam terra ipsius G. sibi titulo pignoris obligata sortem et amplius percepisse. Ne igitur ex huiusmodi iuramenti defectu iustitia occultata veritate succumbat, *discretioni vestrae* mandamus, quatenus, *si est ita,* partes ad praestandum huiusmodi iuramentum per censuram ecclesiasticam appellatione remota cogatis.

Chapter XXXIII

Latin source headnote: If one placed in a dignity alienates the goods of the dignity, the alienation is not valid; and he himself ought to revoke it, notwithstanding an oath not to revoke it, especially if he first swore not to alienate. This it says according to the true understanding. Panormitanus.

The same, to the Archbishop of Kalocsa and his Suffragans.

Having understood some time ago that our dearest son in Christ, the illustrious King of Hungary, made certain alienations to the prejudice of his kingdom and contrary to the honor of the king, we, *desiring to counsel him concerning this with paternal affection,* direct our writings to the same king that he shall endeavor to revoke the aforesaid alienations, notwithstanding an oath, if he made any, not to revoke them, because, since he is bound, and *also* swore at his coronation, to preserve inviolate the rights of his kingdom and the honor of the crown, an oath not to revoke alienations of this kind was assuredly unlawful if he furnished it, and is therefore not at all to be observed.

> Si positus in dignitate alienat bona dignitatis, non valet alienatio; et ipsemet revocare debet, non obstante iuramento de non revocando; maxime, si prius iurat non alienare. H. d. secundum verum intelleutum Panormitanus.
>
> Idem Collossensi Archiepiscopo et eius Suffraganeis.
>
> Intellecto iamdudum, quod carissimus in Christo filius noster Hungariae rex illustris alienationes quasdam fecerit in praeiudicium regni sui et contra regis honorem, nos, *super hoc affectione paterna consulere cupientes,* eidem regi dirigimus scripta nostra, ut alienationes praedictas, non obstante iuramento, si quod fecit de non revocandis eisdem, studeat revocare, quia, quum teneatur, et in sua coronatione iuraverit *etiam*, iura regni sui et honorem coronae illibata servare, illicitum profecto fuit, si praestitit de non revocandis alienationibus huiusmodi iuramentum, et propterea penitus non servandum.

Chapter XXXIV

Latin source headnote: If a woman swore that someone was her husband and lost her case because she did not prove it otherwise, permission to contract with another is neither given nor denied to her.

Gregory IX, to the Bishop of Le Mans.

To a woman who asserted at law, under an oath furnished, that a certain man had consented matrimonially to her through words of the present tense, but who had no other proofs, the man having been absolved from her claim by sentence, you ought not to give permission to contract marriage with another, lest you appear an author of perjury. Nor do we say that this is to be prohibited to her, lest perhaps, if she swore falsely, it should happen that a lawful marriage is impeded; but it is rather to be left to her own conscience.

> Si mulier iuravit, aliquem esse suum maritum, et succubuit, quia aliter non probavit, non datur, nec denegatur ei licentia cum alio contrahendi.
>
> Gregorius IX. Episcopo Cenomanensi.
>
> Mulieri, quae in iure praestito iuramento asseruit, virum talem in ipsam per verba de praesenti matrimonialiter consensisse, probationes alias non habenti, viro ab eius impetitione per sententiam absoluto, non debes licentiam dare cum alio matrimonium contrahendi, ne auctor periurii videaris. Nec hoc ei dicimus prohibendum, ne forte, si falsum iuraverit, matrimonium contingat legitimum impediri; sed suae conscientiae est potius relinquenda.

Chapter XXXV

Latin source headnote: One who swore to observe statutes already issued and afterward, by that oath without swearing otherwise, promised to observe statutes to be issued or afterward issued is not bound by the oath to those newly issued. This it says according to the true understanding.

The same.

A cleric who swore that he would observe the statutes issued in his church, promising through the same oath faithfully to observe a statute that followed afterward, although he ought not to have transgressed what he promised, is not bound to its observance by the obligation of the furnished oath.

> Qui iuravit servare statuta edita, et postea per illud iuramentum aliter non iurando promisit servare edenda seu postea edita, non tenetur ex iuramento ad noviter edita. H. d. secundum verum intellectum.
>
> Idem.
>
> Clericus, qui iuravit, se statuta in ecclesia sua edita servaturum, promittens per idem iuramentum, statutum, quod postmodum subsecutum est, fideliter observare, licet transgredi non debuerat quod promisit, non tenetur ad illius observantiam ex debito praestiti iuramenti.

Chapter XXXVI

Latin source headnote: A decisory oath in litigation tendered by a judge cannot be refused without just cause; but one tendered by a party is lawfully refused and referred back; nevertheless, in an infamous action it is not permitted to the defendant to refer it back. This it says as far as § *Certainly.* — § 1. When the claimant proves nothing, the defendant is to be absolved without any burden; but if

there is a presumption for [the claimant], an oath is tendered to the defendant or to the claimant himself, after consideration of the circumstances of the persons and the cause. This it says.

The same, to Judge H.

An oath tendered by you to a party could not be refused except for a just cause, although an oath tendered in judgment by one party to another can be lawfully refused and referred back; nor is it permitted to the person convened in an infamous action to refer back an oath of this kind.

§ 1. Certainly, if the claimant has wholly failed in proof, the defendant ought to prevail even if he has furnished nothing; but if a presumption makes for the claimant, an oath can be tendered to the defendant to show his innocence, unless the judge, after inspecting the circumstances of the persons and of the cause, sees that it should be tendered to the claimant.

> Iuramentum litis decisorium a iudice delatum, sine iusta causa recusari non potest; delatum vero a parte licite recusatur et refertur; in actione tamen famosa non licet reo referre. Hoc dicit, usque ad §. Sane. - §. 1. Actore ninil probante reus est absque omni onere absolvendus; si vero praesumptio est pro eo, defertur reo iuramentum vel ipsi actori, consideratis personarum et causae circumstantiis. H. d.
>
> Idem H. Iudici.
>
> Iuramentum a te parti delatum, nisi iusta de causa, non potuit recusari, quamvis, quod in iudicio a parte parti defertur, recusari possit licite ac referri; nec liceat convento famosa actione referre huiusmodi iusiurandum. §. 1. Sane, si actor omnino in probatione defecerit, reus debet, et si nihil praestiterit, obtinere; praesumptione vero faciente pro illo, reo deferri potest ad ostendendam suam innocentiam iuramentum, nisi iudex inspectis personarum et causae circumstantiis illud actori videat deferendum.

Title XXV: On Exceptions

Chapter I

Latin source headnote: If a witness is convicted of a crime excepted against him, or appears to have been convicted otherwise, he is repelled from testimony; but he is not punished for the crime if it does not touch the principal matter.

Celestine III.

Finally, as to the fact that objections can be made against the statements and persons of witnesses *against whom nothing was objected before their oath or depositions, after the attestations have been published, know that this has obtained by long custom in the Roman Church: that before the oath or depositions and afterward, a lawful exception* [*at law*] *can be objected against the statements and persons of witnesses. And,* if crimes are objected against witnesses concerning which they had not hitherto been accused, but which are only opposed by way of exception *by anyone,* proof *certainly* of those crimes is to be exhibited before the cause is terminated by sentence, since, as the canonical institutes declare, witnesses without any infamy, suspicion, or manifest stain are required in giving testimony. But if only [*those*] crimes concerning which at another time they were convicted or confessed are objected against witnesses, they can be repelled from testimony, because, as Pope Stephen and many other Roman Pontiffs testify, their confession is not to be believed against others unless they first prove themselves innocent. Moreover, if witnesses have been convicted of or confessed crimes objected against them solely by way of exception, they ought not to be punished by the ordinary penalty, since

an accusation does not proceed against them according to the order of law. It therefore suffices if they are repelled from giving testimony, especially where the crime objected against them does not appear to touch the cause at issue.

> **De exceptionibus.**
>
> Si testis de crimine contra eum excepto convincitur, vel alias convictus apparet, repellitur a testimonio; sed de crimine non punitur, si non tangit negotium principale.
>
> Coelestinus III.
>
> Denique, quod in dicta et personas testium, +*quibus ante iuramentum vel depositiones nihil obiectum fuit, post attestationes publicatas possit opponi, hoc in Romana ecclesia de longa consuetudine obtinuisse cognoscas, ut ante iuramentum vel depositiones et post, in dicta et personas testium legitima exceptio* [*in iure*] *possit opponi. Et,* Si crimina testibus obiiciuntur, de quibus non fuerant hactenus accusati, sed tantum per exceptionem *a quolibet* opponuntur, probatio *utique* illorum criminum exhibenda est, antequam causa per sententiam terminetur, quum, sicut canonica instituta declarant, testes absque ulla infamia, vel suspicione vel manifesta macula in ferendo testimonio requirantur. Quodsi sola [*illa*] crimina, de quibus alio tempore convicti vel confessi fuerunt, testibus obiiciuntur, a testimonio repelli possunt, quia, sicut Stephanus Papa et alii Pontifices multi Romani testantur, non est credendum contra alios eorum confessioni, nisi prius se probaverint innocentes. Ceterum si de criminibus ad solam exceptionem obiectas testes convicti fuerint sive confessi, poena ordinaria mulctari non debent, quum accusatio in ipsos secundum iuris ordinem non procedat. Sufficit ergo, si a perhibendo testimonio repellantur, praesertim ubi crimen, quod eis obiicitur, causam, de qua agitur, contingere non videtur.

Chapter II

Latin source headnote: When the defendant excepts against the claimant on account of excommunication, a replication of communion does not obstruct him.

Innocent III, to the Archdeacon of Richmond.

It was asked of us on your behalf whether one who knowingly communicates with an excommunicated person in speech or prayer can repel the excommunicated person himself from his accusation when the latter replicates a communion of this kind against him. We therefore respond to your inquiry in this way: the excommunicated person himself can be removed from accusing the other, since the first is excluded from the communion of the faithful, while the second is removed only from participation in the sacraments.

> Reo excipiente de excommunicatione contra actorem, non obstat communionis replicatio.
>
> Innocentius III. Archidiacono Richemundiae.
>
> A nobis ex parte tua fuit quaesitum, utrum is, qui excommunicato in locutione vel oratione scienter communicat, excommunicatum ipsum a sua possit accusatione repellere, quum ille communionem huiusmodi replicet contra eum. Nos igitur inquisitioni tuae taliter respondemus, quod ipse ab accusatione illius poterit removeri, quum primus a communione fidelium sit exclusus, secundus vero tantum a sacramentorum participatione sit remotus.

Chapter III

Latin source headnote: One who has several benefices does not except against another concerning plurality. This it says. Johannes Andreae.

The same, to the Bishop of Aosta.

Since the office of ecclesiastical provision, [*to which, although unworthy, we have been called by the Lord's disposition, has, according to the word of the Apostle, established us as debtors to the wise and the unwise, it thus befits us to discuss with subtle investigation the questions brought to the notice of our apostolate, to terminate them by judgment or through reasonable settlement, and to commit for decision by others, on our authority, those that we cannot [decide] ourselves, so that no one may be able to complain in the sight of the Apostolic See that he has suffered a failure of his right, and so that we may appear, as we are bound by the care of pastoral solicitude, to judge just things and love justice.*]

For both the messengers of the chapter of Novara and the same cleric Jacob approached the Apostolic See because of the question being conducted between the beloved sons, the chapter of Novara and Jacob the cleric, concerning a prebend of the Church of Novara. And while either party was established in our presence and that of our brothers, it was alleged in our auditorium on behalf of Jacob in this way: [*that, when formerly by mandate of F., of good memory, cardinal priest of the title of Saint Marcellus, then legate of the Apostolic See, he had been invested with the first prebend then to become vacant in the Church of Novara, a stall in the choir and a place in the chapter having been assigned to him, and afterward the son of the beloved son Saxo Vulgaminus, a noble Roman citizen, had been admitted to it by authority of the Apostolic See—who suffered molestations and oppressions from the relatives of the aforesaid Jacob concerning possession and fruits of the prebend itself—at length an amicable settlement concerning those fruits intervened between Jacob himself and the aforesaid nobleman, because silence had been imposed upon Jacob himself concerning the prebend so that he could move no further question concerning it. At length it pleased C., our predecessor of good memory, after considering the labors and expenses of the aforesaid Jacob, at the prayers of certain cardinals, to confer upon him the prebend of the Church of Novara that had belonged to Master B. de Suno and to invest him with it by his own hand through a ring, strictly commanding the chapter of Novara that, notwithstanding the election that they had made concerning several persons to be assumed as canons in the Church of Novara, the constitution that they had made concerning the fruits of prebends—all of which our same predecessor had invalidated by the counsel of the brothers—and any alienation, obligation, or assignment of the same prebend, they should, every difficulty set aside and appeal postponed, receive Jacob himself as a brother and canon in the name of the said prebend, place him in corporal possession of the prebend itself, and assign him a stall in the choir and a place in the chapter. Otherwise, they should know that our beloved provost of Saint Gaudentius of Novara, our subdeacon, and R., canon of Gorgonzola, had been firmly commanded by our predecessor himself that they should not delay executing these things by canonical coercion, appeal postponed. We plainly perceived all these things to be contained in the letters of our same predecessor. And when the said canons passed by the apostolic mandates and commands with deaf ears, the aforesaid executors, having heard whatever was proposed on behalf of the canons and received it reduced to writing, after many admonitions and delays sought by them, having taken counsel with prudent men and decreeing that the exceptions of the canons were not to be admitted, assigned to Jacob himself, according to the tenor of the apostolic mandate, a stall in the choir and a place in the chapter; and one of the executors, namely R. de Gorgonzola, by the mandate and will of the other, placed him in corporal possession of the prebend and, after very many admonitions, bound the aforesaid canons with the bond of excommunication unless within fifteen days they obeyed the apostolic mandate, as is contained in the instruments that he exhibited to us.*]

But the canons of Novara, responding on the contrary, alleged very many exceptions by which they intended in every way to repel Jacob himself from receipt of the prebend, [*saying that, through the letters that Jacob himself had obtained from the aforesaid Cardinal F., he had been invested with the prebend after an appeal had lawfully been interposed; that our aforesaid predecessor invalidated what had been done concerning him by the cardinal; and that*

after the annulment had been made, contrary to apostolic prohibition, he did not fear to invade the fruits of the prebend by his own authority. Moreover, he obtained the investiture of the prebend and letters of execution from our predecessor through false suggestion, because he did not disclose that he was beneficed in another church, nor did he say that for those two prebends that were vacant in the Church of Novara—one of which had belonged to Master R. and the other to Master P., now Bishop of Novara but then a canon—a priest and another who ought soon to be ordained priest had, with discretion granted to two persons before that general ordinance was made, been concordantly elected and admitted in the Church of Novara. Furthermore, many other things were proposed on either side that we did not order to be intermingled with the present letters. Therefore, wishing to preserve each person's justice unharmed, because certainty concerning the foregoing could not be given to us as was fitting, by the counsel of our brothers we determined to commit the fact itself to your fraternity; through apostolic writings] we command that [*the parties having been summoned to your presence, unless within two months it shall lawfully be established to you that the aforesaid priest and the other who ought soon to be ordained priest were canonically elected and admitted to those two prebends before that general ordinance annulled by authority of the Apostolic See, by our authority and with the obstacle of any contradiction and appeal removed,*] *notwithstanding the other exceptions, you shall cause* Jacob himself to enjoy peaceful possession of that prebend with which he is known to have been invested by Celestine, our predecessor, *especially* since those who are established to obtain various benefices in different churches cannot oppose against him that exception, that the aforesaid Jacob possesses a benefice in another church. [*But those, etc. Given at the Lateran, on the fifth day before the Nones of March, 1198.*]

Habens plura beneficia contra alium de pluralitate non excipit. H. d. Ioan. Andr.

Idem Audicensi Episcopo.

Quum ecclesiasticae provisionis officium, +[*ad quod sumus, licet immeriti, Domino disponente vocati, nos iuxta verbum Apostoli sapientibus et insipientibus constituerit debitores, sic nos convenit perlatas ad apostolatus nostri notitiam quaestiones subtili indagatione discutere, et eas iudicio vel rationabili mediante concordia terminare, et quas per nos non possumus, aliis de auctoritate nostra committere diffiniendas, quod nullus in conspectu sedis apostolicae sui iuris se conqueri valeat sustinuisse defectum, et nos, sicut ex cura tenemur sollicitudinis pastoralis iusta iudicare et iustitiam diligere videamur.*] *Pro quaestione siquidem, quae inter dilectos filios Novariense capitulum et Iacobum clericum super praebenda Novariensis ecclesiae vertebatur, tam nuncii capituli, quam idem Iacobus ad sedem apostolicam accesserunt. Et dum in nostra et fratrum nostrorum praesentia foret utraque partium constituta, pro ipso Iacobo fuit taliter in nostro auditorio allegatum, [quod, quum olim de mandato bonae memoriae F. tit. sancti Marcelli presbyteri cardinalis tunc apostolicae sedis legati de primo tunc vacatura in Novariensi ecclesia praebenda fuerit investitus, eidem stallo chori et loco capituli assignatis, et ad eandem postmodum filius dilecti filii Saxonis Vulgamini nobilis civis Romani de auctoritate apostolicae sedis admissus, qui super possessione et fructibus praebendae ipsius a consanguineis praedicti Iacobi molestias sustinuit et pressuras, de quibus fructibus inter ipsum Iac. et praefatum nobilem amicabilis tandem compositio intervenit, quia super praebenda ipsa eidem Iacobo silentium fuerat impositum, ut de ea movere non posset ulterius quaestionem, placuit tandem bonae memoriae C. praedecessori nostro, praefati Iacobi consideratis laboribus et expensis, praebendam Novariensis ecclesiae, quae fuerat magistri B. de Suno, ad preces quorundam cardinalium eidem conferre, et ipsum de eadem manu propria per annulum investire, Novariensi capitulo districte praecipiendo, quatenus ipsum Iac. electione, quam de pluribus personis in Novariensi ecclesia in canonicos assumendis, et constitutione, quam de fructibus fecerant praebendarum, quae omnia idem praedecessor noster de fratrum consilio irritaverat, alienatione etiam, obligatione vel assignatione eiusdem praebendae nequaquam obstantibus, in fratrem et canonicum nomine dictae praebendae sine qualibet difficultate postposita appellatione reciperent, et eundem in ipsius praebendae possessionem inducerent corporalem, stallum ei in choro et locum in capitulo assignantes; alioquin scirent dilecto praeposito sancti Gaudentii Novariensis subdiacono nostro et R. canonico de*

Gorgozula ab ipso praedecessore nostro datum firmiter in mandatis, ut ipsi ea exsequi per districtionem canonicam appellatione postposita non tardarent. Quae omnia in eiusdem praedecessoris nostri literis manifeste perspeximus contineri. Quumque dicti canonici mandata apostolica et praecepta surdis auribus pertranstirent, praefati exsecutores, auditis quaecunque ex parte canonicorum fuere proposita et in scriptis redacta receptis, post multas admonitiones et dilationes postulatas ab eis, habito prudentium virorum consilio, exceptiones canonicorum non esse admittendas decernentes, iuxta tenorem mandati apostolici stallum ipsi Iac. in choro et locum in capitulo assignarunt, et unus exsecutorum, R. scilicet de Gorgozula, de mandate et voluntate alterius eum in corporalem praebendae possessionem induxit, et supradictos canonicos post admonitiones plurimas, nisi mandato apostolico infra dies quindecim obedirent, vinculo excommunicationis adstrinxit, sicut in instrumentis, quae nobis exhibuit, continetur.] *E contrario vero Novarienses canonici respondentes exceptiones quam plurimas allegabant, quibus ipsum Iac. a perceptione praebendae repellere omnimodis intendebant,* [*dicentes, quod per literas, quas a praedicto cardinali F. impetraverat, ipse Iac. de praebenda post appellationem legitime interpositam fuerat investitus, et praefatus praedecessor noster quod de eo per cardinalem factum fuerat irritavit, et quod post cassationem factam contra prohibitionem apostolicam fructus praebendae auctoritate propria invadere non expavit. Insuper etiam investituram praebendae et exsecutionis literas a praedecessore nostro per falsam suggestionem obtinuit, quia se beneficiatum in alia ecclesia non exposuit, nec dixit, quod ad illas duas praebendas, quae in Novariensi vacabant ecclesia, quarum una fuerat magistri R., et alia magistri P. nunc Novariensis episcopi, tunc canonici, unus sacerdos, et alius, qui proximo deberet in presbyterum ordinari, concesso duobus arbitrio ante generalem illam ordinationem factam, in Novariensi ecclesia electi fuerant concorditer et admissi. Utrinque praeterea multa alia fuere proposita, quae literis praesentibus non iussimus admisceri. Volentes igitur cuique suam iustitiam conservare illaesam, quia de praemissis nobis certitudo dari non poterat, ut decebat, factum ipsum fraternitati tuae de fratrum nostrorum consilio duximus committendum, per apostolica tibi scripta*] Mandamus, quatenus, [*partibus ad tuam praesentiam convocatis, nisi infra duos menses legitime tibi constiterit, praedictos sacerdotem et alium, qui proximo debebat in presbyterum ordinari, ante ordinationem illam generalem de sedis apostolicae auctoritate cassatam ad illas duas praebendas electos canonice et admissos, auctoritate nostra, sublato cuiuslibet contradictionis et appellationis obstaculo,*] *ceteris exceptionibus non obstantibus ipsum* Ia. faciatis praebendae illius, de qua per Coelestinum praedecessorem nostrum noscitur investitus, pacifica possessione gaudere, *praesertim* quum exceptionem illam, quod praefatus Ia. in alia ecclesia beneficium possidet, ei non possint opponere, quos constat varia beneficia in diversis ecclesiis obtinere. [*Illos autem etc. Dat. Lat. V. Non. Mart. 1198.*]

Chapter IV

Latin source headnote: A judge ought to establish a term for proposing all dilatory exceptions, after which he will not hear one making an exception, except in the three cases excepted here.

The same, to the Bishop of Ely.

The pastoral—(*And below:* [*cf. c. 28, On the Office of a Delegated Judge, I.29.*]) *Moreover,* because termination of causes is sometimes maliciously prolonged through dilatory exceptions, responding to your inquiry, we decree that all dilatory exceptions be proposed within a certain time to be assigned by the judge, in such a way that, if the parties thereafter wish to oppose any exceptions concerning which they had not made protest, they shall in no way be heard, unless perhaps one newly belonging to them has arisen, or the person who wishes to oppose it makes faith by oath that he afterward came to knowledge of it. *We establish, etc.* (*cf. c. 14, On Judgments, II.1.*) [*Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.*]

Iudex statuere debet terminum ad omnes dilatorias proponendas, post quem excipientem non audiet, nisi in tribus casibus hic exceptis.

Idem Episcopi Heliensi.

Pastoralis (*Et infra:* [*cf. c. 28. de off. iud. del. I. 29.*]) Quoniam *autem* per dilatorias exceptiones malitiose nonnunquam causarum terminatio prorogatur, inquisitioni tuae respondendo decernimus, ut infra certum tempus a iudice assignandum omnes dilatoriae proponantur ita, quod si partes extunc aliquas voluerint opponere, quas non fuerint protestatae, nullatenus audiantur, nisi forte aliqua de novo sibi competens exorta fuerit, vel is, qui voluerit eam opponere, fidem faciat iuramento, se postmodum ad illius notitiam pervenisse. *Statuimus etc.* (*cf. c. 14. de iud. II. 1.*) [*Dat. Rom. ap. S. Petr. XIV. Kal. Ian. 1204.*]

Chapter V

Latin source headnote: An excommunicated person can make an exception, appeal, and make every defense; but he cannot bring a counterclaim.

The same, to the Monks of Farfa.

When a question was being conducted before you by our delegation concerning damages and other matters between *the beloved sons,* the prior and convent of Argenteuil, on one side, and the nobleman S. de Mauléon of the Diocese of Poitiers on the other, and the proctor of that nobleman wished to decline your judgment because he held two of you suspect, the proctor of the monastery alleged that the benefit of an exception of this kind was forbidden to the party of the same nobleman because he was bound by the bond of excommunication. *For since an excommunicated person, lest he receive an advantage from contumacy, can be convened, if he could have free recourse to exceptions, that which was introduced in his disfavor would very often be drawn to his favor. Hence you sought to be instructed by the oracle of the Apostolic See how you ought to proceed in this article of doubt. To this* we have determined to respond to your inquiry that lawful defense in judgment is reserved to the aforesaid nobleman, and especially recusation of a judge, since it is dangerous to litigate before a suspect judge, and the Apostolic See does not knowingly commit a cause to suspect judges. Hence, in such matters the favor of the excommunicated person is not considered, but the equity of the person judging, since judgment ought not to limp, and it appears sufficiently absurd if, while the claimant attacks, an opportunity for defense is denied to the defendant, because in this way one who ought to be absolved would often be condemned. Furthermore, since a just sentence is not to be denied to an excommunicated person when he exists in a cause of absolution, nor ought the remedy of appeal to be forbidden to him if he is condemned contrary to justice, we do not see by what reason other lawful supports should be withdrawn from him in one and the same matter. But we do not think thus concerning a counterclaim, lest that which is sustained as a remedy of defense be extended to material for attack.

Excommunicatus excipere, appellare, et omnem defensionem facere potest; sed reconvenire non potest.

Idem Monachis Farsensibus.

Quum inter *dilectos filios* priorem et conventum de Argentolio ex parte una, et nobilem virum S. de Malileone dioecesis Pictaviensis ex altera super damnis et aliis coram vobis ex delegatione nostra quaestio verteretur, procuratore ipsius nobilis vestrum volente declinare iudicium, eo, quod duos ex vobis habebat suspectos, procurator monasterii allegavit, parti eiusdem nobilis, quum esset vinculo excommunicationis adstrictus, exceptionis huiusmodi beneficium interdictum. +*Quum enim excommunicatus, ne repurtet ex contumacia commodum, valeat conveniri, si ad exceptiones liberum posset habere recursum, traheretur multoties in favorem quod est in odium introductum. Unde postulastis apostolicae sedis oraculo edoceri, qualiter in hoc dubitationis articulo procedere debeatis. Ad quod sic* Inquisitioni vestrae duximus respondendum, quod praedicto nobili legitima defensio in iudicio reservatur, et maxime iudicis

recusatio, quum periculosum sit coram suspecto iudice litigare, ac suspectis iudicibus sedes apostolica causam de certa conscientia non committat. Unde in talibus non excommunicati favor attenditur, sed aequitas iudicantis, quum non debeat claudicare iudicium, ac satis videatur absurdum, si actore impugnante reo defensionis copia denegetur, quia sic condemnaretur multotiens absolvendus. Porro quum excommunicato, quando in causa absolutionis exsistit, non sit iusta deneganda sententia, nec interdici debet eidem appellationis remedium, si contra iustitiam condemnetur, qua ratione in uno eodemque negotio ipsi alia legitima subtrahantur suffragia, non videmus. Ceterum non sic in reconventione sentimus, ne quod in defensionis remedium sustinetur ad impugnationis materiam extendatur.

Chapter VI

Latin source headnote: One who makes an exception is not seen to confess the things included in the exception, and an exception of falsity can be opposed even after sentence.

The same, to the Monks of Farfa.

When our venerable brother I., Bishop of Sabina, sought before our beloved sons R., cardinal priest of the title of Saint Anastasia, and P., cardinal deacon of Saint Lucia *in Septisolio,* whom we granted as auditors to him and R., your proctor, the Church of Saint Vitus [*of Granica*] with its possessions and [*its*] appurtenances, asserting that it belonged to him in spiritual and temporal matters, the same [*proctor,*] before the intention of the *same* bishop had yet been established, responded prematurely that, even if the said church had formerly been subject to the Church of Sabina, nevertheless the bishop could not claim it, since the Monastery of Farfa held it by reason of an exchange. To prove this he exhibited a certain instrument in which it appeared prima facie to be contained that Bishop Theodosius, with the assent of his priests, determined that the aforesaid Church of Saint Vitus should be granted in exchange to your monastery for certain churches and other property.

To these things [*however*] the aforementioned bishop proposed that his intention had been established through a response of this kind. For since your party responded that it held the said church by an exchange made by the Bishop of Sabina, *which it also endeavored to prove by a public instrument,* it appeared by consequence to confess that it believed that the said church belonged to the Church of Sabina at the time of the exchange, since exchange is numbered among contracts of good faith and cannot lawfully be celebrated with anyone other than the owner or one who was held in the place of the owner. *He added that, although he wished to stand by a confession* [*of this kind*] *insofar as it appeared to act against you, nevertheless he did not at all admit against himself an instrument of this kind, which is known to be supported neither by the authority of a notary nor by the subscription of witnesses.*

But to this your party responded that, since the proctor objected to it by way of exception, he was not seen to have confessed the intention of the adverse party, because, according to the lawful sanctions, one who uses an exception is not judged to confess the intention of the adversary against whom the action is brought. It added that, even if at the time of the exchange the Monastery of Farfa believed that the said Church of Saint Vitus belonged to the Church of Sabina, nevertheless the aforesaid proctor could afterward have informed his belief in such a way from certain causes or probable conjectures that [*now*] *he believed the same church not to have belonged to the Church of Sabina at that time.*

Furthermore, in order to prove that the already-mentioned church belonged to him in temporal matters, the aforementioned bishop introduced certain witnesses through whom he endeavored to

show that the bishops of Sabina had rather long possessed both the said church and its mills, lands, and other goods, freely disposing of them at the pleasure of their will. [*Certain witnesses were also produced by your party to prove prescription; through them your proctor asserted that it was sufficiently shown that for ninety years your monastery had possessed the same church with its mills and other goods in peace. But to this the party of the bishop responded that, although certain witnesses appeared to depose concerning ninety years, nevertheless, according to the order of law, there ought to be subtracted from the computation the periods of schisms known to have intervened in the times of Innocent and Alexander, Roman Pontiffs of good memory, and, by our special indulgence granted to the aforementioned bishop, the time of Conrad, formerly Bishop of Sabina, when, on account of his absence—since he exercised pastoral care in the Church of Mainz—and the negligence of those to whom care of the bishopric of Sabina had at different times been committed, the rights of that bishopric were neglected; since we determined that the same bishop was to be restored, as regards defense of the rights of the bishopric of Sabina, to the condition that it had when the same Conrad received the prelacy of the Church of Sabina, the remaining time without doubt did not at all reach the limit of lawful prescription.*]

Therefore, after deliberation with our brothers concerning these and other matters proposed before the aforesaid cardinals, we understood that the aforesaid bishop had not at all established his intention through the depositions of witnesses or the response of the aforesaid proctor, because, *as was premised,* one who objects an exception is not understood to have confessed the intention of the adverse party; nor [*even*] through the instrument exhibited by the opposing side, since in it Bishop Theodosius, by whom the exchange is proposed to have been made, is not called Bishop of Sabina, although in the transcript that the proctor used "of Sabina" had been appended through the vice of falsity. Although the person who falsified the transcript of that instrument exceeded greatly, nevertheless, because the delict of a person ought not to redound to the damage of the church, and an exception of falsity can be cast forth not only before sentence but even afterward—since a sentence rendered under pretext of false instruments can, when the truth has been discovered, be retracted within the space of twenty years—we do not will prejudice to be generated against your monastery through it.

But because it was established to us that the aforesaid Church of Saint Vitus was situated in the Diocese of Sabina, we adjudged to the same bishop episcopal right in all [*spiritual*] matters in it, excepting only those things known to have been withdrawn from him through authentic writings, since it was in no way proved to be exempt through privilege or lawful prescription. But because the said bishop, who claimed the same church [*for himself as to temporal matters,*] did not show himself fortified [*concerning this*] by lawful prescription, although he proved that a Bishop of Sabina possessed the goods of the same church for some time, we determined by sentence that you were to be absolved from the claim of the bishop as to the temporal matters of the same church. [*Let no one therefore, etc. Given at Viterbo, on the second day before the Nones of August, in the twelfth year, 1206.*]

> Excipiens non videtur fateri ea, quae in exceptione includuntur, et exceptio falsi potest etiam post sententiam opponi.
>
> Idem. Monachis Farsensibus.
>
> Quum venerabilis frater noster I. Sabinensis episcopus coram dilectis filiis nostris R. tituli S. Anastasiae presbytero, et P. sanctae Luciae *ad septa solis* diacono cardinali, quos sibi et R. procuratori vestro concessimus auditores, ecclesiam sancti Viti [*de Granica*] cum suis possessionibus et [*suis*] pertinentiis petiisset, asserens, eandem ad se in spiritualibus et temporalibus pertinere, idem [*procurator*], nondum *eiusdem* episcopi intentione fundata, praepropere sic respondit, quod, etsi dicta ecclesia dudum fuerit

ecclesiae Sabinensi subiecta, eam tamen non poterat episcopus vendicare, quam ex permutationis causa Farsense monasterium obtinebat, ad hoc probandum quoddam exhibens instrumentum, in quo contineri prima facie videbatur, quod Theodosius episcopus cum suorum sacerdotum assensu praedictam ecclesiam sancti Viti pro quibusdam ecclesiis et rebus aliis in cambium vestro duxit monasterio concedendam. Ad haec [*autem*] episcopus proposuit memoratus, intentionem suam per huiusmodi responsionem esse fundatam. Quum enim pars vestra responderit, se dictam ecclesiam, ex permutatione facta per Sabinensem episcopum obtinere, *quam etiam publico nitebatur instrumento probare*, confiteri per consequens videbatur, se credere, quod dicta ecclesia tempore permutationis pertinuit ad ecclesiam Sabinensem, quum permutatio inter contractus bonae fidei computetur, nec cum alio, quam cum domino, vel cum eo, qui habebatur loco domini, legitime valeat celebrari, *+adiiciens, quod, etsi confessioni* [*huiusmodi*] *stare vellet, in quantum contra vos facere videbatur, instrumentum tamen huiusmodi contra se minime admittebat, quod nec tabellionis auctoritate, nec subscriptione testium dignoscitur esse fulcitum. Sed ad hoc pars vestra respondit, quod, quum procurator id in modum exceptionis obiiceret, non videbatur ex adversae partis intentione fuisse confessus, quia iuxta legitimas sanctiones qui exceptione utitur non aestimatur de intentione adversarii, cum quo agitur, confiteri, adiungens, quod, etsi permutationis tempore coenobium Farfense crediderit dictam ecclesiam S. Viti ad Sabinensem ecclesiam pertinere, praedictus tamen procurator ex certis causis seu verisimilibus coniecturis credulitatem suam postmodum potuit taliter informare, ut* [*nunc*] *crederet eandem ecclesiam ad Sabinensem ecclesiam tunc temporis non spectasse.* Porro memoratus episcopus ad probandum, quod iam dicta ecclesia ad se in temporalibus pertinebat, quosdam testes induxit, per quos nitebatur ostendere, quod tam dictam ecclesiam, quam molendina, terras, et alia bona eius Sabinenses episcopi diutius possederunt, de illis pro suae voluntatis arbitrio libere disponendo. +[*Quidam quoque testes ad probandam praescriptionem ex vestra fuerunt parte producti; per quorum aliquis vester procurator asseruit, sufficienter ostensum, quod a nonaginta annis eandem ecclesiam cum molendinis et aliis bonis eius vestrum monasterium possederat in quiete. Sed ad hoc pars episcopi respondebat quod etsi quidam testes de nonaginta annis deponere videantur, quia tamen de iuris ordine tempora schismatum, quae temporibus bonae memoriae Innocentii et Alexandri Romanorum Pontificum intercessisse noscuntur, et de nostra indulgentia speciali episcopo memorato concessa tempus Conradi quondam Sabinensis episcopi, quum propter eius absentiam, qui pastoralem curam gessit in ecclesia Maguntinensi, et illorum incuriam, quibus Sabinensis episcopatus diversis temporibus fuit cura commissa, eiusdem episcopatus iura neglecta fuerint, debeant de computatione subduci, quum eundem episcopum in eo statu quoad defendenda Sabinensis episcopatus iura duxerimus reponendum quem habuit quando idem Conradus Sabinensis ecclesiae praesulatum accepit, residuum temporis procul dubio ad legitimae praescriptionis limitem minime pertingebat.*] *Super iis igitur et aliis propositis coram cardinalibus supradictis deliberatione cum fratribus nostris habita,* Intelleximus, supradictum episcopum intentionem suam minime fundavisse per testium depositiones, vel procuratoris supradicti responsionem, quia, *sicut praemissum est*, exceptionem obiiciens de intentione partis adversae, non intelligitur fuisse confessus, vel [*etiam*] per instrumentum ex adverso exhibitum, quum in eo Theodosius episcopus, a quo permutatio facta proponitur, non dicatur episcopus Sabinensis, quanquam in transscripto, quo procurator utebatur, appositum fuerit «Sabinensis» per vitium falsitatis. Licet autem nimis excesserit qui transscriptum illius instrumenti falsavit, quia tamen delictum personae in damnum ecclesiae redundare non debet, ac non solum ante sententiam, verum etiam post abiici potest exceptio falsitatis, quum falsorum instrumentorum praetextu lata sententia usque ad XX. annorum spatium valeat retractari veritate comperta, nolumus, ut per id monasterio vestro praeiudicium generetur. Quia vero nobis constitit, supradictam ecclesiam sancti Viti constitutam esse in dioecesi Sabinensi, episcopale ius in omnibus [*spiritualibus*] eidem episcopo adiudicavimus in eadem, illis duntaxat exceptis, quae per authentica scripta ei noscuntur esse subtracta, quum per privilegium vel praescriptionem legitimam nullatenus probaretur exempta. Verum quia dictus episcopus, qui eandem ecclesiam vendicabat [*sibi quoad temporalia*], munitum se [*super hoc*] praescriptione legitima non ostendit, quanquam probaverit, episcopum Sabinensem bona eiusdem ecclesiae aliquanto tempore possedisse, vos ab impetitione

episcopi quoad temporalia eiusdem ecclesiae sententialiter duximus absolvendos. [*Nulli ergo etc. Dat. Viterbii II. Non. Aug. Ao. XII. 1206.*]

Chapter VII

Latin source headnote: If an exception excluding jurisdiction, on account of which an appeal was made, is proved true, the judge of appeal ought not to take cognizance of the principal matter, but to stay proceedings. This it says on the understanding that these were judges of appeal, and it is a notable understanding. Panormitanus.

Honorius III, to the Abbots of Saint-Hubert and Saint Martin of Liège.

Formerly *it was intimated to our ears that, when Pope Innocent, our predecessor of happy memory, had commanded our venerable brother the Archbishop of Trier to cause the amicable settlement entered into between the noblemen L., Count of Loon, and W. of Holland, crusaders of the Diocese of Utrecht, concerning the abduction of the noblewoman, wife of the same count, lands, and other property to be observed, and the said W. endeavored to go against the aforesaid settlement and turned himself to the evasion of appeal, the same archbishop, not deferring to his appeal, which he decreed to be frivolous, promulgated against the aforesaid W.—who was otherwise bound by the bond of excommunication—a sentence of excommunication specifically on account of the aforesaid settlement, and a sentence of interdict against his land. And when afterward the beloved son G., proctor of the said count, obtained our letters to you concerning execution of those sentences, and H., proctor of the aforesaid W., publicly contradicted them in the hearing, our venerable brother P., Bishop of Albano, and our beloved son R., cardinal deacon of Saint Mary in Cosmedin, whom we appointed as auditors for the aforesaid proctors, because it was manifestly established through the things proposed by them before the auditors that the said W. was bound by the bond of excommunication, decreed by sentence that the proctor of the same W. was not to be admitted to obtain letters or to contradict, and released the letters that the proctor of the said count had obtained to you. We indeed, at the insistence of the proctor of the often-mentioned count, who feared the cunning of the other party, commanded you that, proceeding in the matter committed to you according to the form expressed in our aforesaid letters, reason going before, you should decree that any letters that it might happen were obtained from us by surreption concerning the foregoing on behalf of W., to the prejudice of the often-mentioned count, and that did not make full mention of the foregoing, lacked force.*

But *recently* it was proposed *before us* on behalf of the aforementioned G. that, when the letters of our aforesaid predecessor were presented to the Archbishop of Trier, the latter proposed *before him* by way of exception that he was in no way bound to respond by authority of *the letters themselves, both because the mandate had already expired upon the death of the mandator while the matter remained untouched, and also* because, *contrary to the constitution of the general council,* he was drawn into a cause more than two days' journeys outside his diocese. And because the said archbishop refused to admit this exception, *the same W.* uttered the voice of appeal to us. *But the aforesaid archbishop, having contemned his appeal, commanded our venerable brother the Bishop of Utrecht to cause the aforesaid settlement to be firmly observed through ecclesiastical censure. It was also added on behalf of the aforesaid W. that the said count, falsely claiming that the aforesaid appeal was frivolous, obtained the aforesaid letters to you while excommunicated and with the truth concealed. Wherefore it was humbly supplicated of us on behalf of W. himself that, since he, his land, and his other goods exist under the protection of the Apostolic See, we should deign mercifully to provide for him concerning this, notwithstanding the sentence that he incurred while crossing into England with Louis, since we absolved him from it. We therefore, wishing to provide for him after he had been absolved from the bond of excommunication,*

commanded through our letters the Abbot of Saint Lawrence in Oostbroek and his fellow judges that, if they found the matter to stand thus, after recalling as void whatever they found to have been attempted after an appeal of this kind, they should hear the cause and terminate it with its due end; otherwise they should remit the parties to your examination, condemning the appellant in lawful expenses.

But the proctor of the adverse party responded that the same G. was in no way drawn more than two days' journeys outside his diocese, since the archbishop himself had established a term in such a place as was not more remote from him than is provided by the constitution of the general council. *The proctor of the same count also added that the often-mentioned W. was bound by another excommunication by authority of our already-mentioned predecessor, of which he made no mention at all in the letters directed to the already-mentioned Abbot of Saint Lawrence and his fellow judges. Wherefore the proctor of the often-mentioned count petitioned that for the aforesaid causes we decree them void and empty. But because in so great a contradiction among the persons proposing the truth is not established to us,* we command your discretion that, if the proctor of the said G., *within three months after the first term assigned to him by us concerning this,* shall be able to prove the exception that he proposed before the often-mentioned archbishop—namely, *that the mandate expired while the matter remained untouched, or* that he was drawn into a cause more than two days' journeys away, contrary to the constitution of the general council, *or even that the Count of Loon himself was excommunicated at the time when he obtained our letters to you, as the proctor of W. himself explained before us*—you, decreeing that the appeal of the said G. was lawful, shall take care to stay proceedings in the matter. *But if the proctor of the often-mentioned W. fails in proof of the said exceptions, or if the count himself sufficiently proves that the said W., at the time the letters were obtained for him, was bound by an excommunication other than that which he incurred when crossing into England, you shall proceed in the matter itself, appeal postponed, according to the form delivered to you, notwithstanding the letters obtained for the Abbot of Saint Lawrence and his fellow judges, or any letters that may appear to have been obtained from the Apostolic See with the tenor of the present letters suppressed.*

> Si exceptio iurisdictionis exclusiva, propter quam fuit appellatum, probatur vera, iudex appellationis non debet de principali cognoscere, sed supersedere. H. d. intelligendo, quod isti erant iudices appellationis, et est notabilis intellectus. Panorm.
>
> Honorius III. Abbati S. Huberti et sancti Martini Leodiensis.
>
> Olim +*nostris fuit auribus intimatum, quod, quum felicis recordationis Innocentius Papa praedecessor noster mandavisset venerabili fratri nostro archiepiscopo Treverensi, ut compositionem inter nobiles viros L. comitem de Los et W. de Hollandia crucesignatos Traiectensis dioecesis super raptu nobilis mulieris uxoris eiusdem comitis, terris et rebus aliis amicabiltiter initam faceret observari, dicto W. nitente contra compositionem venire praedictam, et se ad appellationis diffugium convertente, idem archiepiscopus appellationi eius non deferens, quam frivolam esse decrevit, in praefatum W., qui alias erat vinculo excommunicationis adstrictus, specialiter propter compositionem praedictam excommunicationis, et in terram eius interdicti sententias promulgavit. Quumque postmodum dilectus filius G. dicti comitis procurator nostras ad vos super exsecutione sententiarum ipsarum literas impetrasset, et H. procurator praefati W. in audientia publice contradixisset eisdem, venerabilis frater noster P. Albanus episcopus et dilectus filius noster R. sanctae Mariae in Cosmedin diaconus cardinalis, quos procuratoribus antedictis dedimus auditores, quia per ea, quae ab eisdem fuerunt proposita coram eis, constitit manifeste, dictum W. excommunicationis vinculo esse innodatum, procuratorem eiusdem W. ad impetrandum literas vel contradicendum admittendum non esse sententialiter decreverunt, literis, quas ad vos procurator dicti comitis impetraverat, absolutis. Nos quidem ad instantiam procuratoris comitis saepe dicti alterius partis astutiam metuentis, vobis dedimus in mandatis, ut in commisso vobis negotio iuxta formam in praedictis literis nostris expressam, ratione praevia procedentes, literas decerneretis carere viribus, si quas forte a nobis super praemissis pro ipso W. in praeiudicium saepe dicti comitis per subreptionem contingeret impetrari, quae*

plenam de praedictis non faciant mentionem. Nuper *autem* ex parte memorati G. fuit propositum *coram nobis,* quod literis praedicti praedecessoris nostri Treverensi archiepiscopo praesentatis, idem excipiendo proposuit *coram eo,* quod auctoritate *literarum* ipsarum respondere minime tenebatur, *tum quia mortuo mandatore exspiraverat iam mandatum, tum etiam,* quia ultra duas diaetas extra suam dioecesim trahebatur in causam *contra constitutionem concilii generalis*. Et quia dictus archiepiscopus hanc exceptionem admittere recusabat, *idem W.* vocem ad nos appellationis emisit. *+Sed praefatus archiepiscopus, ipsius appellatione contempta, mandavit venerabili fratri nostro episcopo Traiectensi, ut compositionem praefatam faceret per censuram ecclesiasticam firmiter observari. Adiectum etiam fuit ex parte praedicti W., quod dictus comes appellationem frivolam mentiens antedictam, ad vos excommunicatus exsistens, veritate tacita literas impetraverat supradictas. Quare pro parte ipsius W. fuit a nobis humiliter supplicatum, ut, quum idem, ac terra et alia bona sua sub apostolicae sedis protectione consistant, super hoc sibi providere misericorditer dignaremur, non obstante sententia, quam incurrerat cum Ludovico in Angliam transfretando, quum ipsum absolverimus ab eadem. Nos igitur eidem ab excommunicationis vinculo absoluto providere volentes, abbati S. Laurentii in Hostbroch et coniudicibus suis per nostras dedimus literas in mandatis, ut, si rem invenirent taliter se habere, revocato in irritum quicquid invenirent post appellationem huiusmodi attentatum, causam audirent et fine debito terminarent; alioquin partes ad examen vestrum remitterent, appellantem in expensis legitimis condemnantes.* Porro procurator partis adversae respondit, quod idem G. ultra duas diaetas extra suam dioecesim minime trahebatur, quum ipse archiepiscopus terminum in tali loco statuerit, qui remotus ab illo non erat ultra, quam provisum est per constitutionem concilii generalis. *+Adiecit etiam eiusdem comitis procurator, quod saepe dictus W. auctoritate iam dicti praedecessoris nostri alia est excommunicatione ligatus, de qua in literis ad iam dictum abbatem S. Laurentii et eius coniudices directis nullam fecit penitus mentionem. Quare petiit saepe dicti comitis procurator, ut eas ob causas praedictas decerneremus irritas et inanes. Quia vero in tanta contrarietate proponentium nobis de veritate non constat,* Discretioni vestrae mandamus, quatenus, si procurator dicti G. *infra tres menses post primum terminum, sibi super hoc assignatum a nobis,* probare potuerit exceptionem, quam coram archiepiscopo proposuit saepe dicto, videlicet *mandatum re integra exspirasse, vel* se in causam trahi ultra duas diaetas contra constitutionem concilii generalis, *seu etiam ipsum comitem de Los excommunicatum fuisse tempore, quo nostras ad vos literas impetravit, prout eiusdem W. procurator exposuit coram nobis,* vos appellationem dicti G. legitimam decernentes, negotio supersedere curetis. *Procuratore vero saepedicti W. deficiente in exceptionum probatione dictarum, vel ipso comite sufficienter probante, dictum W. tempore literarum impetratarum pro eo excommunicatione alia ab ea quam in Angliam transfretando incurrit, fuisse ligatum, vos, literis ad abbatem S. Laurentii et eius coniudices obtentis nequaquam obstantibus in negotio ipso iuxta formam vobis traditam, appellatione postposita procedatis, nullis literis obstantibus, si quae apparuerint harum tenore tacito a sede apostolica impetratis.*

Chapter VIII

Latin source headnote: For the defense of his church, someone can oppose an exception of excommunication, perjury, or another lawful exception, and cannot be repelled through a replication of excommunication or perjury.

The same, to the Archdeacon of Translig., the Official, and I., Canon of Tours.

The beloved sons S., P., and G., canons of the Church of Saint Mary of Graçay, showed by a petition transmitted to us that, when M., a canon of the same church *in the Diocese of Bourges,* drew them into a cause before *the dean and Master Hervé, Canon of Auxerre,* delegated by us, concerning the fact that they opposed the election made by certain canons of Graçay of him as prior of the aforesaid church, *and* they proposed *before the aforesaid judges* that the said M. ought not to be heard because he was excommunicated and entangled in the crime of perjury. And when the said M., objecting by way of exception and replication that the aforesaid G. and P. had committed perjury and that S. was

excommunicated, endeavored *through this* to refute their exception, their proctor proposed that, *although the judges had assigned the aforesaid M. a term to prove his replication,* nevertheless his proof concerning this ought not to be received, because, even if the perjury objected against the aforesaid canons were proved, *nevertheless* they were not on that account to be repelled from defense of their church. He also added that the excommunication of the aforesaid S. could not be replicated *with effect* against the excommunication objected by way of exception against the said M., *both because S. showed this by the letters of his absolution, and* because the exception opposed and proved against M. himself would repel him from acting, while the replication would by no means repel the often-mentioned S. from defending, even if it were proved. *Wherefore he petitioned that, omitting proofs of a replication of this kind—in which, even if it were proved, labor would, as was shown above, be consumed in vain—they should receive the proofs that they should determine to produce to prove the matters objected against M. himself.* But the judges themselves ruled interlocutorily that they would first receive proofs concerning the aforesaid replication, on account of which an appeal was made to our hearing. Wherefore, we command *your discretion* that, if the matter stands thus, after recalling as void, etc.

> Pro defensione suae ecclesiae potest quis opponere exceptionem excommunicationis, periurii, vel aliam legitimam exceptionem, nec per replicationem excommunicationis vel periurii repelli potest.
>
> Idem Archidiacono Translig. et Officiali, et I. Canonico Turonensi.
>
> Dilecti filii S. et P. ac G. canonici ecclesiae sanctae Mariae Gratiacensis transmissa nobis petitione monstrarunt, quod, quum M. canonicus eiusdem ecclesiae *Biturícensis dioecesis* ipsos coram *decano et magistro Herveo canonico Altissiodorensi* delegatis a nobis traxisset in causam, super eo, quod se opponunt electioni a quibusdam canonicis Grandensibus factae de ipso in priorem ecclesiae supradictae, *et* iidem proposuerunt *coram praefatis iudicibus*, quod dictus M. non debebat audiri, eo, quod excommunicatus erat et periurii crimine irretitus. Quumque dictus M. praefatis G. et P. periurium, et S. excommunicationem in modum exceptionis et replicationis obiiciens, *per hoc* eorum exceptionem elidere niteretur, procurator eorum proposuit, quod, *licet iudices praefato M. ad probandam replicationem suam terminum assignassent*, eius *tamen* super hoc probatio recipi non debebat, quia, etsi obiectum praefatis canonicis periurium probaretur, non essent *tamen* propter hoc a defensione suae ecclesiae repellendi. Adiecit etiam, quod contra excommunicationem dicto M. in modum exceptionis obiectam excommunicatio supradicti S. replicari non poterat *cum effectu, tum quia suae absolutionis literis ostendebat, tum* quia exceptio ipsi M. opposita et probata eundem repelleret ab agendo, replicatio vero saepe dictum S. nequaquam a defendendo repelleret, si etiam probaretur. +*Quare petebat, ut, omissis huiusmodi replicationis probationibus, in quibus etiamsi probaretur, labor, ut praeostensum est, consumeretur inanis, probationes reciperent, quas ad probandum obiecta ipsi M. ducerent producendas.* Ipsi vero iudices interlocuti fuerunt, quod prius probationes reciperent super replicatione praemissa, propter quod ad nostram fuit audientiam appellatum. Quocirca *discretioni vestrae* mandamus, quatenus, si res ita se habet, revocato in irritum etc.

Chapter IX

Latin source headnote: If the ordering of a church is retarded through an exception of suspension against which nullity is replicated, absolution is made as a precaution.

Gregory IX, to I. and M., Canons of Prague.

Of the Apostolic See—(*And below:*) Indeed, while you were established at the Apostolic See, certain sentences of suspension and removal from benefices were objected against you by way of exception. Although you proposed that you could prove through suitable witnesses and instruments that they

were null, nevertheless, lest it happen that the ordering of the Church of Prague, on account of which you had come, be retarded by the obstacle of an objection of this kind, we relaxed the sentences themselves as a precaution. *But because, etc.* [*cf. c. 9, On Excommunicated Clerics, V.27. Given on the fourth day before the Ides of May, in the year 1227.*]

> Si per exceptionem suspensionis, contra quam replicatur de nullitate, ordinatio ecclesiae retardatur, fit absolutio ad cautelam.
>
> Gregorius IX. I. et M. Canonicis Pragensibus.
>
> Apostolicae sedis (*Et infra:*) Sane vobis apud sedem apostolicam constitutis quaedam suspensionis et amotionis a beneficiis sententiae fuerunt in modum exceptionis obectae. Quas licet proponeretis vos posse nullas esse per testes idoneos et instrumenta probare, ne tamen ordinationem Pragensis ecclesiae, propter quam veneratis, huiusmodi obiectionis obstaculo contingeret retardari, sententias ipsas relaxavimus ad cautelam. *Verum quia etc.* [*cf. c. 9. de cler. exc. V. 27. Dat. IV. Id. Maii Ao. 1227.*]

Chapter X

Latin source headnote: Notwithstanding an exception of excommunication, a rescript obtained in a cause of appeal is valid, even though it makes no mention of an excommunication rendered after an appeal from a grievance. This it says, and according to this it is a notable and singular case, from which perhaps one rule could be gathered: that it is not necessary to make mention in a rescript of something introduced after an appeal, even from an interlocutory [sentence]. Panormitanus.

The same, to the Dean of Lincoln.

The beloved daughters in Christ, the prioress and convent of Campsey, took care to signify to us that, when a question was being conducted between them on one side and the prior and convent of Bucklesham on the other concerning certain tithes and other things for which they were convened by the latter before the Abbot of Saint Benedict and his colleagues by apostolic authority, and they appealed to us from a sufficient grievance and sent their messenger to prosecute the appeal, the aforesaid judges afterward rendered a sentence of excommunication against them. Therefore, when our letters concerning the aforesaid appeal, making no mention of the excommunication, had been obtained through the same messenger for the Prior of Angles and his fellow judges, the adverse party, proposing that it had appealed because those judges denied admission of the exception of the aforesaid excommunication proposed against them by the same party, obtained our letters concerning this for the Prior of Yarmouth and his fellow judges. Before them it was proposed by way of exception on behalf of the women that, since the said sentence had been rendered after a lawful appeal and the aid of defense is known to belong to every excommunicated person, the aforementioned judges were unwilling to admit the exception of the contrary party, just as they ought not. But when the said Prior of Yarmouth and his fellow judges did not receive an exception of this kind from them, they appealed to our hearing. Wherefore we command that, if it is so, after recalling to its due state whatever you find to have been attempted after an appeal of this kind, you shall proceed in the same matter, reason going before, according to the tenor of our former mandate directed to the aforesaid Prior of Yarmouth and his fellow judges.

> Excommunicationis exceptione non obstante, valet rescriptum impetratum in causa appellationis, licet de excommunicatione lata post appellationem a gravamine non faciat mentionem. Hoc dicit, et secundum hoc est casus notabilis et singularis, per quem forte posset colligi una regula, quod de

innovato post appellationem etiam ab interlocutoria non est necesse in rescripto facere mentionem. Panorm.

Idem Decano Linconiensi.

Dilectae in Christo filiae priorissa et conventus de Campessia nobis significare curarunt, quod, quum inter ipsas ex una parte, et priorem et conventum de Buccelleia ex altera super quibusdam decimis et rebus aliis, pro quibus conveniebantur ab illis coram abbate S. Benedicti et eius collegis, auctoritate apostolica quaestio verteretur, et ipsae ad nos ex sufficienti gravamine appellassent, ac nuncium suum ad appellationem miserint prosequendam, praefati iudices postmodum tulerunt excommunicationis sententiam in easdem. Nostris ergo literis super appellatione praefata, non facta mentione de excommunicatione, per eundem nuncium ad priorem de Angles et suos coniudices impetratis, pars adversa ex eo se appellasse proponens, quod ipsi iudices exceptionem excommunicationis praedictae contra ipsas ab eadem parte propositam admittere denegarunt, ad priorem de Gernemoe et suos coniudices nostras super hoc literas impetravit. Coram quibus ex parte ipsarum fuit excipiendo propositum, quod, quum post appellationem legitimam dicta sententia lata fuerit, et cuilibet excommunicato defensionis auxilium competere dignoscatur, memorati iudices exceptionem partis contrariae, sicut nec debebant, admittere noluerunt. Sed quum dictus prior de Gernemoe et coniudices sui talem exceptionem non reciperent earundem, ipsae ad nostram audientiam appellarunt. Quocirca mandamus, quatenus, si est ita, revocato in statum debitum quicquid post huiusmodi appellationem inveneris attentatum, in eodem negotio iuxta prioris mandati nostri ad praefatum priorem de Gernemoe et coniudices suos directi tenorem praevia ratione procedas.

Chapter XI

Latin source headnote: Even an original claimant ought not to be repelled from prosecution of an appeal through an exception of excommunication. This it says, and it is a singular case insofar as it speaks of a claimant.

The same, to the Abbot of Saint Saviour of Pavia and the Provost of Vercelli.

The chapter of Tornacens. signified to us that, when they had elected P. as their archpriest, the Archbishop of Milan, refusing to confirm the election presented to him, instituted a certain cleric Zepus as archpriest of the aforesaid church. Wherefore, when they appealed to the Apostolic See, we are said to have committed the cause itself concerning these matters to the Provost of Saint Stephen, who, confirming their election and pronouncing that the right of electing belonged to the chapter itself, absolved the adverse party from their claim. When the parties appealed from this sentence to the Apostolic See, they obtained that the cause itself be committed to you. But when an exception of excommunication was opposed by the other party against the aforementioned chapter, you, attending less providently to the fact that no one ought to be excluded from prosecution of an appeal under pretext of an opposed excommunication, since every lawful defense is reserved in judgment to an excommunicated person, wrongly decreed that the adverse party was not to be compelled to respond to them; on account of this the said chapter appealed to our hearing. (*And below:*) We command that, if it is so, notwithstanding an exception of this kind, you shall proceed in the same matter.

Per exceptionem excommunicationis a prosecutione appellationis etiam originalis actor repelli non debet. H. d. et est casus singularis, quatenus dicit de actore.

Idem Abbati sancti Salvatoris Papiensis et Vercellensi Praeposito.

> Significaverunt nobis capitulum de Tornacens., quod, quum P. in suum archipresbyterum elegissent, Mediolanensis archiepiscopus praesentatam sibi electionem renuens confirmare, quendam Zepum clericum in archipresbyterum instituit ecclesiae supradictae. Quare, ipsis ad sedem apostolicam appellantibus, praeposito sancti Stephani causam ipsam super his dicimur commisisse, qui electionem ipsorum confirmans, et pronuncians, ius eligendi ad ipsum capitulum pertinere, partem adversam ab impetitione ipsorum absolvit, a qua sententia partes ad sedem apostolicam appellantes, causam ipsam vobis obtinuere committi. Sed a parte altera exceptione excommunicationis opposita contra capitulum memoratum, vos minus provide attendentes, quod praetextu excommunicationis oppositae a prosecutione appellationis non debeat quis excludi, quum omnis legitima defensio excommunicato in iudicio reservetur, partem adversam non esse cogendam ad respondendum eisdem, perperam decrevistis, propter quod dictum capitulum nostram audientiam appellarunt. (*Et infra:*) Mandamus, quatenus, si est ita, exceptione huiusmodi non obstante in eodem negotio procedatis.

Chapter XII

Latin source headnote: A defendant who objects excommunication against a claimant at any part of the litigation is heard; and, if he maliciously delayed, he is condemned in expenses; and granted that he does not except, the judge himself will repel a publicly excommunicated person.

The same.

A defendant who knowingly omits an exception of excommunication when dilatory exceptions are proposed is not prohibited from opposing it at any part of the litigation; this is to be observed specially in this exception, lest anyone be compelled to communicate with an excommunicated person to the peril of his soul. But if he omitted it so that the claimant might be wearied by labors and expenses, he is to be condemned in lawful expenses. Moreover, one publicly excommunicated is nevertheless to be repelled by the office of the judge even if an exception of this kind is not opposed.

> Reus in qualibet parte litis excommunicationem contra actorem obiiciens auditur, et, si malitiose distulerit, in expensis condemnatur, et dato, quod non excipiat, ipse iudex publice excommunicatum repellet.
>
> Idem.
>
> Exceptionem excommunicationis in dilatoriis proponendis reus scienter omittens; in qualibet parte litis opponere minime prohibetur, quod est in hac exceptione specialiter observandum, ne quisquam in periculum animae suae excommunicato communicare cogatur. Qui si eam omiserit, ut actor laboribus et sumptibus fatigetur, in expensis est legitimis condemnandus. Excommunicatus autem publice, etsi huiusmodi exceptio non opponitur, nihilominus est officio iudicis repellendus.

Chapter XIII

Latin source headnote: An exception of a matter adjudged does not belong to a defendant absolved because he did not possess [the thing].

The same.

When your adversary has been absolved by the judge because at the time the litigation was initiated he had ceased without fraud to possess the thing sought from him, if he now possesses it, an exception of a matter adjudged does not obstruct you when you seek it anew.

> Non competit exceptio rei iudicatae reo absoluto, quia non possidebat.

Idem.

Adversario tuo per iudicem absoluto, quoniam tempore motae litis rem petitam ab ipso sine dolo desierat possidere, si eam modo possideat, tibi petenti denuo rei iudicatae exceptio non obsistit.

Chapter XIV

Latin source headnote: A rescript obtained by an excommunicated person concerning prosecution of an appeal is valid, even though he made no mention of the excommunication.

The same.

We have decreed that our venerable brother the Archbishop of Narbonne, who, appealing from the judges to the Apostolic See because of a sufficient grievance, brought back to you our letters concerning his appeal, is to be admitted to prosecute the aforesaid appeal through the same letters, even if, at the time the rescript was obtained, he was bound by the bond of excommunication for other causes of which no mention is made therein, because it would profit an excommunicated person nothing to appeal if he could not prosecute his appeal and obtain letters concerning it.

Valet rescriptum impetratum ab excommunicato super prosecutione appellationis, licet de excommunicatione non fecerit mentionem.

Idem.

Venerabilem fratrem nostrum archiepiscopum Narbonensem, qui a iudicibus ex sufficienti gravamine ad apostolicam sedem appellans ad vos super appellatione sua nostras literas reportavit, etsi ex causis aliis tempore impetrati rescripti vinculo fuerit excommunicationis adstrictus, de quibus ibi mentio non habetur, ad prosequendam per easdem literas appellationem praedictam decrevimus admittendum, quia nihil excommunicato appellare prodesset, si non posset appellationem suam prosequi, et super ea literas impetrare.

Title XXVI: On Prescriptions

Chapter I

Latin source headnote: A bishop prescribes in three years against another bishop a place converted to the faith by himself; but while the church is vacant or is in schism, prescription does not run against it.

From the African Council.

It was resolved that, if anyone *after the laws* has converted some place to Catholic unity, if he has held it for three years without anyone seeking it back, it shall no longer be sought back from him; provided, nevertheless, that during those three years there was a bishop who could seek it back and remained silent, [*he shall suffer prejudice.*] But if there was none, prejudice shall not be done to the mother church; rather, when the place has received a bishop, *which it did not have,* it shall be permitted to seek it back within three years from that day. Likewise, if a bishop has been converted to the Catholic faith from the party of Donatus, the prescribed time shall not prejudice him; but from the day on which he was converted, he shall have for three years the power to seek back a place that belonged to that see.

De praescriptionibus.

Episcopus contra episcopum locum per se conversum ad fidem praescribit triennio, sed, quum vacat ecclesia vel est in schismate, non praescribitur contra ipsam.

Ex concilio Africano.

Placuit, ut, si quisquam *post leges* aliquem locum ad catholicam unitatem converterit, si eum per triennium nemine repetente tenuerit, ulterius ab eo non repetatur; si tamen per ipsum triennium fuerit episcopus, qui posset repetere, et tacuit, [*praeiudicium patietur.*] Si autem non fuerit, non praeiudicetur matrici ecclesiae, sed liceat, quum locus acceperit episcopum, *qui non habebat*, ex ipso die infra triennium repetere. Item si fuerit episcopus ad catholicam fidem ex Donati parte conversus, non ei praeiudicet praefinitum tempus; sed ex quo die conversus est, habeat per triennium potestatem repetendi locum, qui ad ipsam cathedram pertinebat.

Chapter II

Latin source headnote: It is summarized in two ways. First thus: the silence of a prelate does not harm the church until prescription is completed. Second thus: prescription does not run in invaded property. Johannes Andreae.

From the Register of Gregory, to Patricia of Italy.

Nothing profits *most glorious health and beauty on the surface of the body if a wound lies hidden within. And that discord to which outward peace furnishes attendance is the more to be guarded against. But as to that which Your Excellency earnestly strives to recall to our memory in the aforesaid letters, know that it was written to you:* we will to determine nothing with you concerning causes of the poor with scandal or forensic clamor. *We remember that we wrote this also to you, and we know that, with the Lord helping, we restrain even ourselves from the strife of causes with ecclesiastical moderation and, according to that apostolic meaning, sustain with joy the plundering of our goods.* But we believe that you know this: our silence and patience will not create prejudice in the property of the poor against the pontiffs future after me. [*Hence we also, fulfilling, etc.*]

Duobus modis summatur, primo sic: Taciturnitas praelati non nocet ecclesiae, donec sit praescriptum. Secundo sic: In rebus invasis non currit praescriptio. Ioan. Andr.

Ex registro Gregorii Italiae Patriciae.

Nihil prodest *+gloriosissima sanitas et pulchritudo in corporis superficie, si vulnus latet intrinsecus. Atque illa magis cavenda est discordia, cui satellitium pax praebet exterior. Illud vero, quod in epistolis praedictis revocare in memoriam nostram excellentia vestra studiose contendit, sciat scriptum vobis,* Nihil cum scandalo, nihil cum forali strepitu vobiscum nos velle de causis pauperum definire, *hoc nos et* vobis scripsisse meminimus, *et scimus, nosmet ipsos iuvante Domino a causarum litigiis ecclesiastica moderatione compescere, atque secundum apostolicum illum sensum rapinam bonorum nostrorum cum gaudio sustinere.* Sed illud vos scire credimus, taciturnitatem atque patientiam nostram futuris post me pontificibus in rebus pauperum praeiudicium non facturam. [*Unde et nos, explentes etc.*]

Chapter III

Latin source headnote: Through quiet and good-faith possession of thirty years, a church prescribes a private person's thing. This it says insofar as it speaks of a church prescribing actively, and this understanding is to be held.

Gregory.

The sanctions of the holy Fathers, establishing [this] *and the human laws,* have confirmed it irrefragably, and we, *in the present council with all who are with us,* confirm it irrefragably: that all possessions belonging to the individual provinces of our brothers, which have been possessed by them quietly and in good faith for thirty years without synodal proclamation, shall be held perpetually, *and permission to be heard shall be granted to no adversary. But if some presumptuous person shall have deviated with rash mouth, because he acts against the statutes of the holy Fathers, let him be indissolubly bound by the bonds of excommunication and wholly banished from the Church and alien from the communion of the brothers.*

> Per quietam et sinceram possessionem triginta annorum praescribit ecclesia rem privati. H. dicit, prout loquitur in praescriptione ecclesiae active, et iste intellectus tenendus est.
>
> Gregorius.
>
> Sanctorum Patrum sanctiones *et humanae leges irrefragabiliter* statuentes confirmaverunt, et nos *in praesenti concilio cum omnibus, qui sunt nobiscum*, irrefragabiliter confirmamus, ut omnes possessiones ad singulas provincias nostrorum fratrum pertinentes, a quibus per triginta annos possessae sunt, quiete et sincere absque synodali proclamatione perpetuo teneantur *nullaque vox audiendi alicui adversario concedatur. Si vero aliquis praesumptor temerario ore exorbitaverit, quia contra sanctorum Patrum statuta agit, sit vinculis excommunicationis indissolubiliter innodatus et penitus extorris ab ecclesia et communione fratrum alienus.*

Chapter IV

Latin source headnote: The fourth part of tithes and funeral offerings is prescribed against a bishop if it is not paid for a space of forty years and the cathedral church was not vacant in the meantime.

Alexander III, to the Archbishop of Salerno.

As to the fourth part *indeed* of a tithe and the offering of the dead, a cleric appears able to defend himself from the claim of a bishop by prescription of forty years, unless perhaps in the meantime the pastoral see had lacked a pastor who ought to have exacted the rights of his church. For the Roman Church does not admit a thirty-year prescription against a church.

> Quarta decimarum et funeralium praescribitur contra episcopum, si quadraginta annorum spatio non solvatur, et cathedralis ecclesia interim non vacavit.
>
> Alexander III. Salernitano Archiepiscopo.
>
> De quarta *vero* decimae et oblationis defunctorum clericus ab impetitione episcopi quadragenaria praescriptione temporis se posse tueri videtur, nisi forte interim pastoralis sedes caruisset pastore, qui iura ecclesiae suae exigere debuisset. Nam Romana ecclesia tricennalem praescriptionem contra ecclesiam non admittit.

Chapter V

Latin source headnote: A possessor in bad faith does not prescribe.

The same.

It is to be guarded against with vigilant study, *since the supreme measure of divine judgment has from the beginning decreed that one relinquish one's own things and not seek another's,* lest we be possessors in bad faith of another's estates *and property,* [*especially*] *ecclesiastical property,* since no ancient possession of days *by divine law* aids any possessor in bad faith unless he comes to his senses after he learns that he

possesses another's property, since *even at law* he cannot be called a possessor in good faith. For the Ephesian legislator, *the paternal uncle of Origen,* first imposed the force of law upon thirty- or forty-year prescription solely to avoid the sluggishness of the wretched and the error and confusion of a long time. But it has pleased us that it shall have no force either in known matters or *in matters* lying hidden.

> Possessor malae fidei non praescribit.
>
> Idem.
>
> Vigilanti studio cavendum est, *quum summa dimensio divini iudicii ab initio censuerit propria dimittere, aliena non appetere,* ne malae fidei possessores simus in praediis alienis, *atque rebus* [*maxime*] *ecclesiasticis,* quoniam nulla antiqua dierum possessio *divino iure* iuvat aliquem malae fidei possessorem, nisi resipuerit, postquam se noverit aliena possidere, quum *iure etiam* bonae fidei possessor dici non possit. Ephesinus enim legislator *Origenis patruus* solum propter vitandam miserorum segnitiem et longi temporis errorem et confusionem primus tricennali vel quadragenali praescriptioni vigorem legis imposuit. Nobis autem tam in rebus cognitis quam *in rebus* latentibus placuit non habere vigorem.

Chapter VI

Latin source headnote: One church prescribes tithes in the parish of another through a space of forty years.

The same, to the Bishop of Maurienne.

It reached our ears *upon your report* that two churches *under your examination* rather frequently litigated concerning tithes that one of them possessed in the parish of the other for forty years, *and through this it thinks the latter's action extinguished; but the other, wishing to evict them by parochial right, proposes that prescription ought not to obstruct it. Therefore, your fraternity considered that we should be consulted as to what the law is in this case.* Let it *therefore* become known to your fraternity by the tenor of the present letters that, by *divine and human* law, the condition of the possessor is better, because forty-year prescription wholly excludes every action.

> Una ecclesia in parochia alterius quadraginta annorum spatio decimas praescribit.
>
> Idem Mauritano Episcopo.
>
> Ad aures nostras *te significante* pervenit, duas ecclesias *sub examine tuo saepius* litigasse super decimis, quas una earum in alterius parochia annis XL. possedit, *+ac per hoc eius putat actionem exstinctam; altera vero volens eas iure parochiali evincere, praescriptionem non debere sibi obesse proponit. Ideoque quid iuris sit in hoc casu, tua nos duxit fraternitas consulendos.* Tuae *itaque* fraternitati tenore praesentium innotescat, quod de iure *divino et humano* melior est conditio possidentis, quia quadragenalis praescriptio omnem prorsus actionem excludit.

Chapter VII

Latin source headnote: Laymen cannot possess spiritual things; therefore, by consequence, neither can they prescribe them. This it says, and it is alleged daily.

The same, to the Bishop of Parma.

The cause being conducted between *our beloved son I.,* Archdeacon of Reggio, and the nobleman G. *de Baiso* concerning tithes *that the same G. and his men are known to have in the court of Fogliano, we commit to*

your experience, in which we have full confidence, to be heard and terminated by means of justice. Therefore, *by commanding through apostolic writings,* we order your fraternity that *you shall summon the parties before your presence and, the arguments having been heard and diligently learned, contradiction and appeal ceasing,* decide the cause itself with its due end, notwithstanding prescription of time or a grant of an ecclesiastical or secular person, if the same G. should wish to oppose it; because, since laymen cannot retain tithes, they can prescribe them by no reasoning.

> Laici spiritualia possidere non possunt; ergo et per consequens nec praescribere. H. d. et quotidie allegatur.
>
> Idem Parmensi Episcopo.
>
> Causam, quae inter *dilectum filium nostrum I.* Reginensem archidiaconum et nobilem virum G. *de Baisio* super decimis vertitur, *+quas idem G. et homines sui habere in curte Folianni dignoscuntur, experientiae tuae, de qua plene confidimus, committimus audiendam et mediante iustitia terminandam.* Ideoque *fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus *partes ante tuam praesentiam convoces, et rationibus auditis diligenter et cognitis, contradictione et appellatione cessante* causam ipsam debito fine decidas, non obstante praescriptione temporis, vel concessione ecclesiasticae saecularisve personae, si idem G. eam opponere voluerit; quia, quum laici decimas detinere non possint, eas nulla valent praescribere ratione.

Chapter VIII

Latin source headnote: If interruption is opposed against a prescription of forty years, which alone runs against a church, each party will prove [its claim].

The same.

But we will you to know and *firmly* hold this: against churches the Roman Church does not admit a prescription shorter than forty years, although certain canons approve a thirty-year prescription; and a church can defend itself against a church by prescription of forty years concerning a thing that it is known to have possessed undisturbed for forty years. But if a question concerning prescription *and interruption* has been moved between the parties, witnesses ought to be received from either party; and, if interruption has been proved, the prescription will not bind.

> Si contra praescriptionem XL. annorum, quae sola currit contra ecclesiam, opponatur interruptio, uterque probabit.
>
> Idem.
>
> Illud autem te scire volumus et *firmiter* tenere, quod adversus ecclesias minorem praescriptionem, quam quadraginta annorum, Romana ecclesia non admittit, licet quidam canones comprobent tricennalem, et ecclesia se potest adversus ecclesiam quadragenaria temporis praescriptione tueri de re illa, quam inconcusse quadraginta annis noscitur possedisse. Verum si de praescriptione *et interruptione* inter partes fuerit mota quaestio, ab utraque parte testes recipi debent, et, si probata fuerit interruptio, praescriptio non tenebit.

Chapter IX

Latin source headnote: Boundaries of ecclesiastical estates are prescribed through a space of forty years.

The same.

Because, upon the indication of Abbot C. *of the Monastery of Saint Peter,* [*which is situated in a place called Baia,*] we have learned that a *grave* question concerning [*certain*] boundaries has arisen between him and *John,* Abbot *of the Monastery* of Saint Lucia [*situated in the city of Syracuse,*] *lest the contention itself be prolonged between them,* we have provided that it be terminated by the determination of a land surveyor. [*And therefore we wrote to Fantinus the defensor that he ought to send there to your fraternity John the land surveyor, who set out from the city of Rome for Palermo.*] We therefore exhort you that, approaching *with him* the places concerning which there is contention [*and either party being established nearby,*] you shall cause it to be terminated in your presence, preserving for either party a prescription of only forty years. [*But whatever, etc.*]

> Fines praediorum ecclesiasticorum quadraginta annorum spatio praescribuntur.
>
> Idem.
>
> Quia indicante abbate C. *monasterii S. Petri*, [*quod in loco est, qui Baias dicitur, constitutum,*] comperimus, inter eum et *Ioannem* abbatem *monasterii* sanctae Luciae [*in Syracusana civitate constituti*] *gravem esse* exortam de [*quibusdam*] finibus quaestionem: *ne ipsa inter eos valeat contentio prolongari*, agrimensoris definitione illam prospeximus finiendam. [*Et ideo scripsimus Fantino defensori, ut Ioannem agrimensorem, qui de Roma urbe Panormum profectus est, illuc ad fraternitatem vestram debeat destinare.*] Hortamur igitur, ut *cum eo* ad loca, de quibus est contentio, accedentes, [*et utraque parte cominus constituta*] eam in vestra faciatis praesentia terminari, quadraginta tantum annorum praescriptione utrique parti servata. [*Quaecunque vero etc.*]

Chapter X

Latin source headnote: Prescription does not run in time of hostility.

Lucius III.

From the complaint transmitted *to us* by the abbot and monks of Haben., we learned that, although the Church of Camenon belongs to their right, and the people of Sibin. and Vinto. are parishioners of that church, the clerics who held the aforesaid churches *from N. and W.* gradually withdrew every parochial right except the right of burial from the mother church. *For, retaining the tithes and other revenues for themselves, they permitted only the bodies of the dead to be carried to the aforesaid church; their successors are said to contend to take away the aforesaid parochial rights. Through apostolic writings* we command your discretion that, *if you learn that what is asserted rests upon truth, appeal removed,* you shall cause the aforesaid tithes and offerings, together with other revenues, to be restored to the aforementioned mother church, prescription not running during time of hostility, *and shall henceforth restrain the aforesaid clerics from receiving them by ecclesiastical censure.*

> Tempore hostilitatis non currit praescriptio.
>
> Lucius III.
>
> Ex transmissa *nobis* conquestione abbatis et monachorum de Haben. accepimus, quod, quum ecclesia de Camenone ad ius eorum pertineat, et homines de Sibini et Vinto. ecclesiarum parochiani sint ipsius ecclesiae, clerici, qui praedictas habuerunt ecclesias *de N. et W.*, minutatim omne ius parochiale praeter ius funerandi matrici ecclesiae subtraxerunt. +*Sibi enim decimas et obventiones alias retinentes tantum mortuorum cadavera ad praedictam ecclesiam deferri sinebant, quorum successores praedicta parochialia iura, ut dicitur, contendunt auferre.* Discretioni vestrae *per apostolica scripta* mandamus, quatenus, *si quod asseritur noveritis veritate esse subnixum, praedictas* decimas et oblationes cum aliis obventionibus memoratae matrici

ecclesiae *appellatione remota*, praescriptione hostilitatis tempore non currente, restitui faciatis, *et praefatos clericos de cetero ab earum perceptione ecclesiastica censura compescatis*.

Chapter XI

Latin source headnote: Procurations that are owed to legates and messengers of the Apostolic See cannot be prescribed.

Innocent III, to the Abbot of Ceneda.

Coming to our presence, *the beloved sons,* the Provost of Saint Nazarius and A., Canon of Saint Stephen, syndics and proctors of *the beloved sons,* the primicerius and clerics of Milan, complained gravely *to us* concerning the ordinaries of the greater church that, although they themselves devoutly receive and furnish procuration for the legates and messengers of the Apostolic See, the said ordinaries refuse both to furnish procuration for them *and* to impart aid for expenses to those furnishing it. *Hence they complained that grave prejudice was generated against the clerics of Milan. For since it often happens that our messengers and legates make passage through that city, the fewer there are in furnishing their procurations, the more heavily those furnishing them are burdened; and the more persons among whom the burden of procuration would be divided, the more easily it would be borne by those furnishing it. Since we do not cease continually to keep watch for those ordinaries and others, and to minister spiritual things to all as the Lord shall grant, it does not appear why they strive to defend themselves in a special right of this kind, especially since the Apostle also says, "If we sow spiritual things for you, it is no great thing if we reap your carnal things," and our daily insistence is the continual solicitude of all the churches, as those present and remote alike know more fully.* But, willing that what presses upon all be borne together by all, *by commanding through apostolic writings,* we order your discretion that, unless the said ordinaries show through a special privilege of the Apostolic See that they are immune from furnishing procurations, even if for the longest time they have not furnished the service of procuration—since prescription cannot claim a place for itself in such matters—you shall decree, *appeal removed,* that they are bound to undertake the burden of procuration in due order. [*If indeed, etc. Given at the Lateran, on the seventh day before the Kalends of March, 1199.*]

Procurationes, quae debentur legatis et nunciis apostolicae sedis, praescribi non possunt.

Innocentius III. Abbati de Cenedo.

Accedentes ad praesentiam nostram *dilecti filii* praepositus sancti Nazarii, et A. canonicus sancti Stephani, syndici et procuratores *dilectorum filiorum* primicerii et clerici Mediolanensium, de ordinariis maioris ecclesiae *nobis* graviter sunt conquesti, quod, quum ipsi legatos et nuncios apostolicae sedis devote recipiant et procurent, dicti ordinarii *et* procurare ipsos renuunt, et procurantibus ad expensas subsidium impertiri. +*Unde clericis Mediolanensibus grave querebantur praeiudicium generari. Quum enim per civitatem ipsam saepe contingat transitum facere nostros nuncios et legatos, quanto in eorum procurationibus faciendis pauciores exsistunt, tanto facientes amplius praegravantur, et quanto per plures onus esset procurationis divisum, tanto a facientibus facilius portaretur. Qui siquidem ordinarii, quum pro eis et aliis vigilare iugiter non cessemus, et spiritualia, sicut Dominus dederit, omnibus ministrare, cur in huiusmodi speciali se iure satagant tueri, non videtur; praesertim quum et Apostolus dicat: «si vobis spiritualia seminamus, non est magnum, si carnalia vestra metamus», et instantia nostra quotidiana sit omnium ecclesiarum sollicitudo continua, sicut plenius norunt praesentes pariter et remoti.* Volentes autem, ut quod omnibus imminet ab omnibus comportetur, *discretioni tuae per apostolica scripta praecipiendo* mandamus, quatenus nisi dicti ordinarii per speciale privilegium apostolicae sedis a praestandis procurationibus ostenderint se immunes, etiamsi longissimo tempore procurationis

obsequium non impenderint, quum in talibus praescriptio sibi locum nequeat vendicare, ipsos ad procurationis sarcinam ordine debito subeundam *appellatione remota* teneri decernas. [*Si quietiam etc. Dat. Lat. VII. Kal. Mart. 1199.*]

Chapter XII

Latin source headnote: A subject does not prescribe obedience against a prelate.

The same, to the Priors of Costa and Saint Donatus.

Since it is not permitted for the members to withdraw from the head, we cannot sufficiently marvel that, as was intimated to us upon the report of *our venerable brother* the Archbishop of Braga, although your churches are situated in his diocese, nevertheless you, *putting forward no privilege of exemption,* contumaciously refuse to obey him as your bishop. Therefore, *since to resist is the crime of divination and to be unwilling to acquiesce is the wickedness of idolatry, unwilling to sustain that subjects do not obey their prelates as they are bound, by the common counsel of our brothers and through apostolic writings* we command *and strictly order in virtue of obedience* that henceforth, *without any contradiction,* you shall furnish the aforesaid archbishop and the Church of Braga the obedience and reverence owed, as the other clerics of his diocese do, notwithstanding prescription of time. *Otherwise, we shall hold as ratified the sentence that he shall reasonably render against you or your churches on this account and, with God as author, shall cause it to be inviolably observed.* [*Given at the Lateran, on the twelfth day before the Kalends of August, 1199.*]

Subditus non praescribit obedientiam contra praelatum.

Idem de Costa et de S. Donato Prioribus.

Quum non liceat a capite membra recedere, non sufficimus admirari, quod, sicut referente *venerabili fratre nostro* Bracharensi archiepiscopo nobis est intimatum, licet ecclesiae vestrae in ipsius sint dioecesi constitutae, vos tamen, *nullum exemptionis privilegium praetendentes,* obedire sibi tanquam episcopo vestro contumaciter recusatis. Ideoque *+quum crimen ariolandi sit repugnare, et scelus idololatriae nolle acquiescere, sustinere nolentes, quod subditi praelatis suis non obediant, ut tenentur, de communi fratrum nostrorum consilio per apostolica scripta* mandamus *et in virtute obedientiae districte praecipimus,* quatenus praefato archiepiscopo et ecclesiae Bracharensi obedientiam et reverentiam debitam, sicut alii clerici suae dioecesis faciunt, *de cetero sine contradictione qualibet* impendatis, praescriptione temporis non obstante. *Alioquin sententiam quam idem in vos vel ecclesias vestras propter hoc rationabiliter tulerit, ratam habebimus, et faciemus auctore Deo inviolabiliter observari.* [*Dat. Lat. XII. Kal. Aug. 1199.*]

Chapter XIII

Latin source headnote: Concerning rights belonging to the Roman Church, only a hundred-year prescription runs.

The same, to the Nobleman Matafelon.

It reached the hearing of our apostolate *upon your complaint that the castellan of the same castle denied returning certain rights from the castle of Palazzuolo, granted to you by Pope Alexander, our predecessor of happy memory. Furthermore, we caused you and the beloved son Leo, consul of the castle itself, who were established in our presence on this account, to be heard diligently.* It was *indeed* proposed on your behalf that *the aforesaid* Pope Alexander, our predecessor, granted to you in the *already-mentioned* castle of Palazzuolo each year forty solidi of Pavia denarii, which the Roman Church was accustomed to receive there annually; and also the meals, banns, pleas, forfeitures, and all rights that the Apostolic See had there. But the castellan

of the same castle most steadfastly asserted that they were owed to you for no reason. To prove this, you introduced the privilege of the aforesaid Pope, *in which it is expressly contained that all the aforesaid things were granted to you by him with the common counsel of the brothers,* and the census book of the Roman Church, *in which it is similarly contained, as the consul himself with another fellow castellan acknowledged in our presence, that the people of Palazzuolo are bound to pay each year to the Roman Church forty solidi of Pavia money.* You also endeavored to prove this through witnesses who said that they had seen the aforesaid census paid to the messengers of the Roman Pontiffs for the last fifty years. *Moreover, you endeavored in many ways to prove other articles through many witnesses.*

But among other things it was responded in opposition that neither the *Pope Alexander's* privilege nor the census book brought you any advantage, since you had not used the *Alexander's* privilege for a space of thirty years, and the census book was suspect because it had not been received in our chamber *but in that of Master G., cardinal deacon of Saint Adrian at that time,* and the scriniarius had written the statements of the witnesses otherwise than they had spoken them. We therefore, *the attestations, allegations, arguments, and instruments of either party having been diligently heard and learned,* attending more to the authority of the privilege than to the depositions of witnesses, considering also the census book, which we did not hold suspect although it was found not in our chamber but in that of the Cardinal of Saint Adrian, who had received it from the chamber of Blessed Peter when he was chamberlain, and not believing that the scriniarius, since he had sworn to execute his office faithfully, had written anything other than what was said by the witnesses, considering moreover what is far stronger, that the matter itself principally touched the Roman Church, against which no prescription runs except one of a hundred years, *by the counsel of our brothers* condemned the adverse party in the payment of the aforesaid census, *namely forty solidi of Pavia money,* and the other things sought, *firmly* enjoining it *by apostolic authority* that it shall pay to you without difficulty—not as to you, but as to the Roman Church, by whose authority you ought to receive it and of which, on account of the aforesaid benefices, you also exist as vassal—*what is established to have been adjudged by us with the common counsel of our brothers.*

> De iuribus ad Romanam ecclesiam spectantibus currit sola centenaria praescriptio.
>
> Idem nobili viro Matafeloni.
>
> Ad audientiam apostolatus nostri *te conquerente* pervenit, *+quod quaedam iura de castro Palatioli, a felicis memoriae Alexandro Papa praedecessore nostro tibi concessa, castellanus eiusdem castri reddere denegabat. Porro te ac dilectum filium Leonem cunsulem ipsius castri propter hoc in nostra praesentia constitutos audiri fecimus diligenter.* Proponebatur *quidem* ex parte tua, *praefatum* Alexandrum Papam praedecessorem nostrum tibi in *iam dicto* castro Palatioli concessisse singulis annis XL. solidos denariorum Papiensium, quos Romana ecclesia ibi consuevit recipere annuatim; insuper comestiones, banna, placita, forisfacta et omnia iura, quae ibi apostolica sedes habebat. Sed ea tibi nulla ratione deberi castellanus eiusdem castri constantissime asserebat. Ad quod probandum inducebas praedicti Papae privilegium, *in quo continetur expressum, praedicta omnia tibi ab eo communi fratrum consilio fuisse concessa,* et librum ecclesiae Romanae censualem, *in quo similiter continetur, sicut ipse consul cum alio concastellano suo in nostra praesentia recognovit, quod homines de Palatiolo annis singulis tenentur ecclesiae Romanae persolvere quadraginta solidos Papiensis monetae.* Hoc etiam nitebaris probare per testes, qui dicebant, se vidisse praescriptum censum nunciis Romanorum Pontificum a. L. annis et infra fuisse solutum. *Alia insuper capitula per multos testes probare multipliciter nitebaris.* Sed inter alia fuit ex adverso responsum, quod nec privilegium *Alexandri Papae,* nec liber censualis tibi aliquid commodi afferebat, quum privilegio *Alexandri* usus non fueris spatio annorum

XXX. et liber censualis suspectus exsisteret, quia non fuerat in camera nostra, *sed in magistri G. sancti Hadriani diaconi cardinalis tunc* receptus, ac scriniarius alio modo scripsisset dicta testium, quam dixissent. Nos igitur, *attestationibus, allegationibus, rationibus et instrumentis utriusque partis diligenter auditis et cognitis*, magis auctoritatem privilegii quam depositiones testium attendentes, considerantes etiam librum censualem, quem non suspectum habuimus, licet non in nostra, sed in cardinalis sancti Hadriani camera sit inventus, qui eum, quando camerarius fuerat, de camera B. Petri suscepit, nec credentes, ipsum scriniarium, quum iuratus sit officium suum fideliter exsequi, aliud scripsisse quam a testibus diceretur, respicientes insuper, quod est longe validius, ipsum negotium tangere principaliter Romanam ecclesiam, contra quam non nisi centenaria praescriptio currit, in solutione praedicti census, *scilicet XL. solidorum Papiensis monetae*, et aliorum petitorum *de consilio fratrum nostrorum* condemnavimus partem adversam, *auctoritate apostolica firmiter* iniungentes eidem, ut tibi, non tanquam tibi, sed tanquam ecclesiae Romanae, cuius auctoritate debes percipere, cuius etiam propter praedicta beneficia vasallus exsistis, sine difficultate persolvat *quod constat a nobis de communi fratrum nostrorum consilio iudicatum*.

Chapter XIV

Latin source headnote: From the hundred-year prescription, which alone runs against the Roman Church, the periods of schisms are to be deducted.

The same, to the Abbots Hel. and Gu.

Since *by other letters we commanded you that, in the cause known to be conducted between the Church of Hildesheim on one side and the Church of Gandersheim and the Roman Church on the other, you ought to receive witnesses to prove prescription, by notification of the present letters we have determined to declare to you that, after prescription against the often-mentioned monastery and its liberty is said to have begun, the rupture of three schisms against the Roman Church intervened.* Therefore, although it has been established by both legal and canonical definition that against the *holy* Roman Church, which rejoices in a special privilege, no prescription except one of a hundred years can claim a place for itself, nevertheless we do not will the periods of intervening schisms, which according to the order of law impede the course of prescription, to be computed in any way, but, diligent consideration having been applied, to be deducted from the computation itself. [*Given at Ferentino, on the fifteenth day before the Kalends of July, in the ninth year, 1206.*]

De centenaria praescriptione, quae solum currit contra Romanam ecclesiam, tempora schismatum deducantur.

Idem Hel. et Gu. Abbatibus.

Quum vobis *+aliis literis dederimus in mandatis, ut in causa, quae inter ecclesiam Hildesemensem ex una parte, et ecclesiam de Gandersheim et ecclesiam Romanam ex altera dignoscitur agitari, testes ad probandam praescriptionem recipere debeatis: insinuatione praesentium vobis duximus declarandum, quod, postquam praescriptio contra monasterium saepe dictum et libertatem ipsius dicitur inchoata, scissura trium schismatum adversus Romanam ecclesiam intervenit*. Licet *igitur* tam legali quam canonica sit diffinitione statutum, ut contra *sacrosanctam* Romanam ecclesiam, quae gaudet privilegio speciali, non nisi centum annorum praescriptio locum sibi valeat vindicare, tempora tamen intercidentium schismatum, quae secundum iuris ordinem cursum praescriptionis impediunt, nolumus aliquatenus computari, sed diligenti consideratione adhibita de ipsa computatione deduci. [*Dat. Ferentini XV. Kal. Iul. Ao. IX. 1206.*]

Chapter XV

Latin source headnote: An inferior prelate can prescribe the whole episcopal right in certain churches of his diocese; nevertheless, the time during which the cathedral church was vacant is subtracted from the prescription.

The same, to the Bishops of Ely and Rochester.

Having heard and understood the merits of the cause being conducted between *our venerable brother* the Bishop of Worcester and *the beloved son* the Abbot of Evesham concerning the churches *situated* in the Vale of Evesham, which the bishop asserts belong to him by diocesan law, while the abbot [asserts] that they are altogether exempt from his jurisdiction, *we learned clearly that these churches were not withdrawn from episcopal jurisdiction through privileges of the Roman Pontiffs, unless perhaps the Vale of Evesham is that place which, having been endowed with liberty by two kings, namely Cenred and Offa, Pope Constantine of good memory endowed with liberty, as is contained in his privileges.* But they are proved through witnesses to have been possessed with full right by the Abbots of Evesham for so long a time that they appear lawfully to have prescribed episcopal right in them, *unless perhaps in the meantime the Church of Worcester was vacant for so great a period that, the time of vacancy being subtracted, the prescription is not at all completed.* [*Although the cause has been concluded on either side, nevertheless, because either party lost proof that it asserts was necessary, we, considering that either church discharges the function of a minor, after equity was weighed restored either against the other for proving the omitted argument, lest either be injured by grave loss on account of negligence of this kind.*]

Wherefore, *through apostolic writings,* we command your discretion that, after inspecting the privileges of Kings Cenred and Offa, which the abbot asserts that he has concerning the aforesaid liberty, if through them it shall be established that the Vale of Evesham is that place which Celestine, our predecessor, endowed with liberty, you shall absolve *the Evesham* abbot from the claim of *the Worcester* bishop concerning the aforementioned churches and, adjudging that they are subject with full right to the abbot, shall impose *perpetual* silence upon the bishop concerning them. But if the abbot fails in this proof, you shall hear the proofs concerning the time during which the episcopal see was vacant within the forty years; and, if it is established to have been vacant for so long a time that, it having been subtracted, a forty-year prescription is not completed, you shall adjudge episcopal right in those churches to the bishop and impose perpetual silence upon the abbot concerning it. But if the bishop does not prove an exception of this kind, nevertheless, because he proved interruption concerning the Pentecostal procession in the village and Church of Morton, the reception and procuration of the archdeacon, and also payment of Peter's Pence in the Vale of Evesham, and also concerning cognizance of matrimonial causes, the suspension of a chaplain in the aforesaid village of Morton, and the interdict of the chapels in the aforesaid village of Evesham, you shall adjudge episcopal right concerning these matters to him—provided, nevertheless, that concerning suspension and an interdict of this kind, interruption was made within forty years—imposing silence upon him in the other matters that the abbot is proved to have prescribed. [*But if perhaps they are unwilling, etc. Given on the third day before the Nones of February, 1205.*]

> Praelatus inferior potest praescribere in certis ecclesiis suae dioecesis totum ius episcopale; subducitur tamen de praescriptione tempus, quo vacavit ecclesia cathedralis.
>
> Idem Heliensi et Roffensi Episcopis.

Auditis et intellectis meritis causae, quae vertitur inter *venerabilem fratrem nostrum* Vigorensem episcopum, et *dilectum filium* abbatem de Hevescam super ecclesiis in valle de Hevescam *constitutis*, quas episcopus asserit ad se dioecesana lege spectare, abbas autem eas esse ab eius iurisdictione prorsus exemptas, +*cognovimus evidenter, ecclesias istas per privilegia Pontificum Romanorum non esse ab episcopali iurisdictione subtractas, nisi forte vallis de Evesham sit ille locus, quem a duobus regibus, Kenredo videlicet et Offa, libertate donatum bonae memoriae Constantinus Papa libertate donavit, sicut in ipsius privilegiis continetur.* Verum tanto tempore probantur per testes ab abbatibus de Hevescam pleno iure possessae, ut videantur in eis episcopale ius legitime praescripsisse, +*nisi forte per tantum temporis Wigorniensis ecclesia interim vacavisset, ut tempore vacationis subducto praescriptio minime sit completa.* [*Licet autem utrinque sit in causa conclusum, quia tamen utraque pars necessariam, ut asserit, probationem amisit, nos attendentes, quod utraque ecclesia fungitur vice minoris, aequitate pensata utramque restituimus contra reliquam ad probandum rationem omissam, ne alterutra propter huiusmodi negligentiam gravi iactura laedatur.*] Quocirca *discretioni vestrae per apostolica scripta* mandamus, quatenus, inspectis privilegiis The. et Of. regum, quae abbas super praemissa libertate asserit se habere, si per illa constiterit, quod vallis de Hevescam sit ille locus, quem Coelestinus praedecessor noster libertati donavit, absolvatis *Eveshamensem* abbatem ab impetitione *Wigorniensis* episcopi super ecclesiis memoratis, et adiudicantes illas abbati pleno iure subiectas, episcopo super illis *perpetuum* silentium imponatis. Quodsi abbas in hac probatione defecerit, audiatis probationes super tempore, quo infra quadraginta annos sedes episcopalis vacavit, et, si per tantum temporis vacasse constiterit, ut illo subducto non sit quadragenaria completa praescriptio, vos in illis ecclesiis ius episcopale adiudicetis episcopo, et super illo perpetuum silentium imponatis abbati. Si autem exceptionem huiusmodi episcopus non probaverit, quia tamen interruptionem probavit circa processionem pentecostalem in villa et ecclesia de Mortona, et receptionem ac procurationem archidiaconi, nec non solutionem denariorum S. Petri in valle de Hevescam, circa cognitionem quoque causarum matrimonialium, et capellani suspensionem in praedicta villa de Mortona, et interdictum capellarum in praefata villa de Hevescam, vos super his ius episcopale adiudicetis eidem, si tamen circa suspensionem et interdictum huiusmodi infra quadraginta annos interruptio facta fuit, in ceteris ei silentium imponentes, quae abbas praescripsisse probatur. [*Quod si forte noluerint etc. Dat. III. Non. Febr. 1205.*]

Chapter XVI

Latin source headnote: A subject cannot prescribe against a superior either visitation or the procuration owed by reason of visitation in himself, although another could prescribe both in the person of another.

The same, to the Bishop of Paris.

When *our venerable brother* the Archbishop of Sens was visiting the Province of Sens by the obligation of his office, making passage through the Diocese of Paris, he had need to turn aside to the churches of the Abbot of Saint-Magloire, the Prior of Castres, and certain others of the same diocese. When he sought from them the procuration owed to him, they inhumanly denied the *exacted* procuration, *altogether contemning to pay it,* alleging only this in defense of their denial: that they did not remember having paid a procuration of this kind to the predecessors of the same archbishop, *nor* that it had ever been sought from them. *But the same archbishop, on account of the procuration less than reasonably denied to him, suspended them from execution of their offices by authority of a rescript that he had obtained from the Apostolic See concerning this; afterward, because they did not observe the sentence of suspension, he bound them with the bond of excommunication. We perceived all this to be contained in the letters of the archbishop himself, who sought that the same sentence be confirmed by apostolic authority.*

We therefore, considering their foregoing allegation altogether null—since it was impossible to prescribe against a procuration owed by reason of visitation, just as prescription can in no manner run against visitation itself, even if another could prescribe both against him—[*by commanding*] *through apostolic writings,* we order your fraternity that you shall cause the sentence that the aforementioned archbishop rendered against contemners of this kind, *both by authority of our rescript and* by the ancient custom of the metropolis, to be *inviolably* observed *throughout your diocese* until worthy satisfaction, because *according to divine law an ox treading grain is not to have its mouth closed, and,* according to the Apostle, "if one sows spiritual things, it is no great thing if he reaps carnal things, since no one is compelled to serve as a soldier at his own expense." For if they wish to object and prove anything other than what was alleged above against the intention of the *often-mentioned* archbishop, we shall cause justice to be exhibited to them. [*You also, etc. Given at the Lateran, on the fourth day before the Kalends of December, in the fifth year of our pontificate, 1202.*]

> Non potest subditus contra superiorem visitationem aut procurationem ratione visitationis debitam in se ipso praescribere, quamvis alius in personam alterius praescribere posset utramque.
>
> Idem Parisiensi Episcopo.
>
> Quum ex officii sui debito Senonensem provinciam visitaret *venerabilis frater noster* archiepiscopus Senonensis, per Parisiensem dioecesim transitum faciens, ad abbatis sancti Maglorii, prioris de Castres et quorundam aliorum ecclesias eiusdem dioecesis necesse habuit declinare. A quibus quum procurationem sibi debitam postularet, ipsi eam *exactam* inhumaniter negaverunt *illam solvere penitus contemnentes,* ad suae negationis defensionem hoc solum allegantes, quod non meminerint, se procurationem huiusmodi praedecessoribus eiusdem archiepiscopi exsolvisse, *sed* nec ab eis aliquando fuisse petitam. +*Idem vero archiepiscopus propter procurationem sibi minus rationabiliter denegatam illos auctoritate rescripti, quod super hoc a sede apostolica impetrarat, ab officiorum exsecutione suspendit, eosdem postmodum, quoniam suspensionis sententiam non servabant, vinculo excommunicationis adstringens, quod totum in ipsius archiepiscopi literis perspeximus contineri, qui eandem sententiam petebat auctoritate apostolica confirmari.* Nos igitur praemissam allegationem eorum nullam penitus reputantes, quum contra procurationem, quae ratione visitationis debetur, praescribi nequiverit; quemadmodum nec contra visitationem ipsam potest aliquo modo praescribi, etsi alius contra eum praescribere posset utramque, fraternitati *tuae per apostolica scripta* [*praecipiendo*] mandamus, quatenus sententiam, quam in huiusmodi contemptores *tam nostri auctoritate rescripti, quam* de antiqua metropolis consuetudine tulit archiepiscopus memoratus, usque ad satisfactionem condignam *per tuam dioecesim* facias *inviolabiliter* observari, quia *secundum legem divinam non est os bovi trituranti claudendum, et,* secundum Apostolum, «qui spiritualia seminat, non est magnum, si metat carnalia, quum nemo cogatur suis stipendiis militare.» Si quid enim aliud, quam superius fuerit allegatum, contra intentionem archiepiscopi *saepe fati* obiicere voluerint et probare, nos eis faciemus iustitiam exhiberi. [*Tu quoque etc. Dat. Lat. IV. Kal. Dec. Pont. nostr. Ao. V. 1202.*]

Chapter XVII

Latin source headnote: One who possesses in another's name does not prescribe; nor even does one who possesses in his own name unless he has good faith and a just title, if a presumption is against him. This it says according to Johannes Andreae, with the addition supplied by Panormitanus.

The same, to the Archbishop of Pisa.

If by diligent *meditation you had weighed what that ark of the tabernacle signifies, in which, at the Lord's command, the rod and manna were deposited together with the tablets, you would by no means reckon that we wrote*

harshly or severely to you, since in the breast of the Roman Pontiff, who by God's authority is known to preside over all prelates of the churches, there ought to be both the rod of correction and the manna of sweetness, so that with the one he may cherish the humble and devout, but with the other strike rebels and punish delinquents. Hence it is that wine and oil are applied to the wounds of that wounded man whom the Samaritan brought into the inn, so that, unless the wounds of delinquents are soothed by the oil of admonition and exhortation, the wine of ecclesiastical severity may follow. Therefore, although from the matters that we have premised, our admonitions and mandates having been contemned—by which we frequently endeavored to induce your fraternity to absolve our beloved son W., Margrave of Massa and Judge of Cagliari, from the oath of fealty that you caused to be furnished to you and the Church of Pisa, so that, notwithstanding it, he might swear to us and the Roman Church—we could perhaps have proceeded against you not only with severity of words but with execution of ecclesiastical discipline, since the Judicate of Cagliari belongs to the right and property of Blessed Peter, just as all Sardinia belongs immediately, *and nothing has been reasonably alleged on your behalf why* it was permitted to you to exact an oath of fealty for yourself or your church from the Margrave of Massa, Judge of Cagliari. (*And below:* [*cf. c. 12, On the Competent Forum, II.2.*])

But concerning the other article, you responded in this way: that from the time when you were assumed to the office of prelate, you received the oath of fealty for the Apostolic See from the judges [*of Sardinia,*] *knowing that Villanus the archbishop, your predecessor, a man of great authority and integrity who existed for a long time as a cardinal in the Roman Curia and knew its customs and statutes more fully, and all your predecessors, who were men of great authority, had thus equally held and acted by ancient custom, since nothing had hitherto been objected to you or them by the Apostolic See.* We therefore, having more fully considered *these and the other things* that *the beloved son Master Bondinus,* your messenger, wished to propose, did not understand that you or your church was supported concerning this by any right *through which you could reasonably be excused from execution of our mandate,* since you do not show authority of the Apostolic See through which you and your predecessors exacted oaths of fealty from the Judges of Cagliari, nor are you fortified by any prescription; since, according to your confession, neither the Church of Pisa nor you were in quasi-possession of the right to exact an oath of this kind, which you confess was received from those judges for the Apostolic See. Through this it is established that the Roman Church was always in quasi-possession, since the oath was exacted and furnished on its behalf through the ministry of you and your predecessors, and one is also said to possess in whose name possession is held.

But if it should be said that the oath was exacted in your name and that of your predecessors, and not in our name and that of the Roman Church, it could be inferred that the oath furnished concerning preservation of the right and honor of the Apostolic See had been violated. Hence what had knowingly been obtained contrary to an oath of this kind could not be lawfully retained, because even according to this prescription could have no place, since in prescription of ecclesiastical property good faith and a just title are required. And even if prescription could have had a place, we do not believe that a hundred-year prescription, which alone runs against the Roman Church, can be proved. [*But because, etc. Given at Rome at Saint Peter's, on the second day before the Nones of May, in the ninth year, 1206.*]

> Qui alieno nomine possidet, non praescribit; nec etiam is, qui proprio nisi habeat bonam fidem et iustum titulum, si praesumptio est contra eum. Hoc dicit secundum Ioan. Andr. addita suppletione Panormitani.
>
> Idem Pisano Archiepiscopo.

Si diligenti +*meditatione pensasses, quid illa tabernaculi arca significet, in qua cum tabulis virga simul et manna sunt iubente Domino recondita, nequaquam nos tibi scripsisse dure vel aspere reputares, quum in pectore Romani Pontificis, qui universis ecclesiarum praelatis praeesse Deo auctore dignoscitur, et virga correctionis et manna debeat esse dulcedinis, ut altero foveat humiles et devotos, reliquo vero rebelles feriat et puniat delinquentes. Hinc est, quod illius vulneribus sauciati, quem Samaritanus duxit in stabulum, vinum adhibetur et oleum, ut, nisi commonitionis et exhortationis oleo delinquentium vulnera foveantur, vinum ecclesiasticae severitatis subsequatur. Licet igitur ex his, quae praemisimus, contemptis monitis nostris et mandatis, quibus fraternitatem tuam nisi sumus frequenter inducere, ut dilectum filium nostrum W. marchionem Massae iudicem Calaritanum a iuramento fidelitatis absolveres, quod exhiberi tibi et ecclesiae Pisanae fecisti, ut eo non obstante nobis et ecclesiae Romanae iuraret, non solum asperitate verborum, sed exsecutione forsitan potuissemus in te procedere ecclesiasticae disciplinae,* Quum iudicatus Calaritanus ad ius et proprietatem B. Petri pertineat, sicut tota Sardinia nullo pertinet mediante, *nec ex parte tua sit quidquam rationabiliter allegatum, quare* tibi non licuit pro te vel ecclesia tua a marchione Massae iudice Calaritano fidelitatis exigere iuramentum. (*Et infra:* [*cf. c. 12. de foro comp. II. 2.*]) *Super alio vero articulo taliter respondisti, quod ab eo tempore, quo fuisti assumptus ad praesulatus officium, iuramentum fidelitatis pro sede apostolica ab ipsis iudicibus* [*Sardiniae*] *recepisti, sciens te per archiepiscopum Villanum pradecessorem tuum, virum magnae aucturitatis et honestatis, qui longo tempore in curia Romana exstitit cardinalis, ipsiusque plenius novit consuetudines et statuta, et omnes antecessores tuos, qui fuerunt viri magnae auctoritatis, sic de antiqua consuetudine tenuisse pariter et fecisse, quum nihil tibi vel ipsis hactenus ab apostolica sede fuisset obiectum.* Nos igitur, *his et aliis*, quae *dilectus filius magister Bondinus* nuncius tuus proponere voluit, plenius circumspectis, non. intelleximus, te vel ecclesiam tuam super hoc aliquo iure subnixam, *quo valeas a mandati nostri exsecutione rationabiliter excusari*, quum auctoritatem sedis apostolicae non ostendas, per quam a iudicibus Calaritanis tu et antecessores tui fidelitatis exigeretis iuramenta, nec praescriptione aliqua muniaris, quum secundum confessionem tuam non ecclesia Pisana vel tu fueris in quasi possessione iuris exigendi huiusmodi iuramentum, quod per sedem apostolicam ab ipsis iudicibus receptum fuisse fateris, per quod constat, ecclesiam Romanam semper in quasi possessione fuisse, quum pro ea ministerio tuo et antecessorum tuorum exactum fuerit et praestitum iuramentum, et is etiam possidere dicatur, cuius nomine possidetur. Si vero dicatur, quod nomine tuo et antecessorum tuorum, et non nomine nostro et ecclesiae Romanae fuerit iuramentum exactum, posset inferri, quod iuramentum praestitum de conservando iure et honore sedis apostolicae fuerit violatum. Unde licite retineri non posset, quod contra iuramentum huiusmodi fuerit scienter obtentum, quia etiam secundum hoc locum praescriptio habere non posset, quum in praescriptione rerum ecclesiasticarum bona fides et iustus titulus exigantur. Et si etiam locum potuisset habere praescriptio, non credimus, centenariam praescriptionem, quae sola currit adversus Romanam ecclesiam, posse probari. [*Verum quia etc. Dat. Rom. ap. S. Petr. II. Non. Maii Ao. IX. 1206.*]

Chapter XVIII

Latin source headnote: An abbot can prescribe episcopal rights in chapels; nevertheless, he prevails only in those rights that he has prescribed. This it says as regards the title.

The same, to the Bishop of Lucca.

When formerly, brother Bishop, litigating in our presence with *the beloved sons,* the abbot and monks of Saint Saviour of Fucecchio, concerning the parish church of Salamazana and its adjacent chapels, you claimed institution [*of clerics*] in them and other matters belonging to episcopal right, to establish your intention you principally alleged the common law, by whose authority you said that all spiritual things in the aforesaid places, which are situated in your diocese, belonged to you as diocesan bishop. You further alleged the award concerning this promulgated by *the Bishop of Pistoia of good memory* and

by the archpriest and primicerius of Lucca, *who had been elected by the parties, which had been commonly approved by either party.* [*In it it is expressly contained that, after any professed religious in the same parish church has been elected as plebanus by the abbot, he shall be presented to the Bishop of Lucca to receive from him the favor of confirmation and promise to the same bishop, together with his priests, manual obedience under this form: that he shall go with his people to the synod, chapter, and also the litanies at the Church of Saint Martin; answer to the bishop in an annual procuration and concerning the fourth part of the tithes; when necessary, supply him aid; and observe his sentence of interdict rendered against the people of Fucecchio; and, if the plebanus or his priests should perhaps offend the Church of Lucca in the matters contained in the award, and the abbot, having been required once or twice, did not cause the offense to be amended within twenty days, it should be permitted to the Bishop of Lucca to judge them for that fault as his own priests.*]

But in order to refute your intention, the *aforesaid* abbot exhibited the privilege of Pope Gregory VII, our predecessor *of happy memory,* which appeared to precede the aforesaid award by much time and through which both the *Fucecchio* monastery and the aforesaid parish church and chapels appeared to have been endowed with liberty. [*For in it is contained that our already-mentioned predecessor instituted the Church of Salamazana with the adjacent chapels granted to the aforementioned monastery, so that no archbishop or bishop should dare to molest the place itself or the aforesaid parish church and chapels, or to excommunicate or even judge the priests established there by the abbot then in office, but that, existing under the protection, immunity, and judgment of the Roman Pontiff, they should take care to serve almighty God securely.*] The said abbot also used privileges of other Roman Pontiffs, *namely Urban, Paschal, Calixtus, Eugenius, Anastasius, Adrian, Alexander, and Lucius,* obtained after the award was promulgated, who appeared to grant him privileges of liberty. [*For this is found among other things in the privileges of each: "We also decree that it shall be permitted neither to any bishop or archbishop nor to their ministers to excommunicate or place under interdict the place itself"—namely the Monastery of Fucecchio—"or its monks, or the adjacent churches of Salamazana with their chapels, or the priests established there by the abbot, without the cognizance of the Roman Pontiff."*]

The said abbot further proposed that, even if the aforesaid matters belonged to you by common law, nevertheless it was established that both he and his monastery were fortified concerning them by lawful prescription. Through his own witnesses and those of your party, who by our mandate had been produced on either side before the beloved son, the Prior of Saint Fridianus of Lucca, he said that it was proved that his monastery had enjoyed peaceful possession of all the foregoing for forty years and more. He further alleged that no prejudice could have been generated against the monastery through the often-mentioned award, both because the greater and sounder part of the chapter of the same place in no way consented to the aforementioned submission to arbitration and because it was not at all proved that the authority of the Roman See, to which the monastery and churches belonged, had acceded.

To these things, however, it was responded on your behalf that faith was not to be given to the privilege of Pope Gregory, as manifestly suspect. For it was found erased in that part of itself in which the force of the question existed, namely, where mention is made of the chapels. You further proposed that the same abbot ought to receive no advantage through the other privileges, since they appeared obtained by surreption because they make no mention of the aforesaid award, approved by the parties, which had passed into the authority of a matter adjudged. You added that you could not be repelled by the objection of prescription by the adverse party, because, although certain witnesses depose that they remember from a time of forty years and add that they saw the monastery enjoy

liberty in the aforesaid places concerning those matters that belong to episcopal right, nevertheless, through depositions of this kind, faith is not made concerning continuous possession for forty years, since these two things can sufficiently concur: that the witnesses remember from a time of forty years and saw the monastery in possession of the aforesaid matters only for the last ten years.

But the other party, considering this frivolous, responded that, even if some witnesses thus use doubtful words, nevertheless there are several witnesses who openly testify that they saw the aforementioned monastery in continuous possession of all the aforesaid matters for forty years and beyond. Against this your party proposed in replication that, although forty-year prescription were established, nevertheless the time of the schism that was shown through witnesses to have intervened in the Church of Lucca ought deservedly to be subtracted from the computation. The other party responded in opposition that, although faith had been made concerning a schism that intervened, nevertheless, since it was in no way shown how long it lasted and it could have lasted for a short time, the objection of prescription could not on this account be effectively impeded, especially since prescription of forty-five years was proved through several witnesses.

We therefore, having perspicaciously understood these and the other things proposed on either side before us, because the aforesaid abbot sufficiently showed that his monastery was fortified by lawful prescription concerning the institution, destitution, and ordination of the plebanus and clerics; baptism; penance in lighter faults; burial; receipt of tithes; celebration of divine offices in both the parish church and the aforesaid chapels; excommunicating, placing under interdict, and also absolving—we determined, *by the counsel of our brothers,* that the abbot himself was to be absolved from your claim concerning the already-mentioned articles, imposing perpetual silence upon you concerning them; but concerning all other matters known to belong to episcopal right, we condemn the same abbot by sentence as regards the aforesaid parish church and chapels, according to the tenor of the award. [*Let no one therefore, etc. Given at Ferentino, on the second day before the Kalends of November, in the eleventh year of our pontificate, 1208.*]

> Abbas in capellis praescribere potest iura episcopalia; obtinet tamen in his solis, quae praescripsit. H. D. quoad titulum.
>
> Idem Episcopo Lucano.
>
> Quum olim, frater episcope, cum *dilectis filiis* abbate et monachis sancti Salvatoris de Ficheto super plebe Salamazanae et adiacentibus capellis ipsius in nostra praesentia litigando, institutionem [*clericorum*] in eis et alia ad ius episcopale pertinentia vendicares, ad fundandam intentionem tuam ius commune principaliter allegabas, cuius auctoritate dicebas, universa spiritualia in praedictis locis, quae sunt in dioecesi tua constituta, ad te tanquam ad dioecesanum episcopum pertinere, arbitrium praeterea super hoc promulgatum a *bonae memoriae* Pistoriensi episcopo, et archipresbytero ac primicerio Lucanis +*a partibus electis allegans, quod ab utraque parte fuerat communiter approbatum* [*in quo continetur expresse, ut postquam in eadem plebe conversus quisquam in plebanum electus fuerit ab abbate, Lucano episcopo praesentetur, ab ipso confirmationis gratiam recepturus, et promissurus eidem cum suis presbyteris sub hac forma obedientiam manualem, ut ad synodum, capitulum et etiam litanias ad ecclesiam S. Martini cum populo suo vadat, et episcopo in annua procuratione ac de quarta respondent decimarum, et, quum necesse fuerit, ei subministret auxilium, et servet eius sententiam interdicti latam in populum Ficheclensem, et si plebanus vel presbyteri sui Lucanam ecclesiam forsan offenderent in iis, quae in arbitrio continentur, et abbas semel vel bis requisitus infra XX. dies offensam non faceret emendari, liceret Lucano episcopo pro illa culpa eos tanquam suos presbyteros iudicare.*] Ad elidendam autem intentionem tuam abbas *praedictus felicis recordationis* Gregorii VII. Papae praedecessoris nostri

privilegium exhibuit, quod praedictum arbitrium multo videbatur tempore praecessisse, per quod tam *Ficheclense* monasterium, quam plebs et capellae praedictae videbantur libertati donatae. +[*In ipso siquidem continetur, quad iam dictus praedecessor noster ecclesia de Salamazano cum capellis adiacentibus monasterio memorato concessis instituit, ne quis archiepiscopus vel episcopus locum ipsum seu plebem et capellas praedictas molestare audeat, vel presbyteros ab abbate, qui pro tempore fuerit, inibi constitutos excommunicare vel etiam iudicare, sed sub tutela et immunitate ac iudicio Romani Pontificis consistentes omnipotenti Deo secure deservire procurent.*] Aliorum quoque Romanorum Pontificum, *Urbani scilicet, Paschalis, Calixti, Eugenii, Anastasii, Adriani, Alexandri et Lucii* dictus abbas privilegiis utebatur post arbitrium promulgatum obtentis, qui libertatis privilegia sibi concedere videbantur. +[*Sic enim in singulorum privilegiis inter cetera reperitur: «Sancimus etiam, ut nec episcopo nec archiepiscopo cuiquam aut eorum ministris liceat locum ipsum,» scilicet monasterium Ficheclense, «vel eius monachos aut adiacentes ecclesias de Salamazano cum capellis suis, vel presbyteros ab abbate constitutos ibidem praeter Romani Pontificis conscientiam excommunicare aut supponere interdicto.» Proposuit praeterea dictus abbas, quod etsi praedicta ad se de communi iure spectarent, super iis tamen tam ipsum quam monasterium suum legitima constabat praescriptione munitum. Per testes quoque suos et partis tuae, qui coram dilecto filio priore sancti Fridiani Lucani de mandato nostro fuerant utrinque producti, dicebat esse probatum, quod super praemissis omnibus monasterium suum per quadraginta annos et amplius pacifica fuerat possessione gavisum, allegans insuper, per arbitrium saepedictum nullum potuisse monasterio praeiudicium generari, tum quia maior et sanior pars capituli eiusdem loci nullatenus compromissioni memoratae consenserat, tum etiam quia Romanae sedis auctoritas, ad quam monasterium et ecclesiae pertinebant, accessisse minime probabatur. Ad haec autem ex parte tua exstitit sic responsum, quod privilegio Gregorii Papae, utpote manifeste suspecto, fides adhibenda non erat. Nam in ea sui parte inveniebatur abrasum, in qua vis quaestionis exsistit, ubi videlicet fit mentio de capellis. Sed nec per alia privilegia proponebas eundem abbatem aliquod debere commodum reportare, quum illa viderentur per subreptionem obtenta, quum de praedicto arbitrio a partibus approbato, quod in rei iudicatae auctoritatem transierat, nullam faciat mentionem; adiiciens insuper, te non posse praescriptionis obiectu ab adversa parte repelli, quia, licet quidam testes deponant, se a quadraginta annorum, tempore recordari, et adiiciant, se vidisse monasterium super iis, quae ad ius episcopale spectant, in praedictis locis libertate gavisum, per depositiones tamen huiusmodi de quadraginta annorum possessione continua non fit fides, quum haec duo concurrere satis possint, ut et testes a quadraginta annorum tempore recordentur, et a decennio citra duntaxat monasterium ipsum in possessione viderint praedictorum. Sed hoc frivolum pars altera reputando respondit, quod etsi testes aliqui verbis dubiis sic utantur, plures tamen testes sunt, qui aperte testantur, se a quadraginta annis et ultra monasterium memoratum in continua praedictorum omnium possessione vidisse. Contra quod pars tua proposuit replicando, quia, licet de quadraginta annorum praescriptione constaret, tempus tamen schismatis, quod in Lucana ecclesia intervenisse per testes erat ostensum, debebat merito de computatione subduci. E contra parte altera respondente, quod, licet de schismate, quod intercesserat, fuerit facta fides, quum quanto tempore duraverit minime sit ostensum, et potuerit modico tempore duravisse, propter hoc tamen praescriptionis obiectio non poterat efficaciter impediri, praecipue quum per plures testes quadraginta quinque annorum praescriptio sit probata.*] *Nos igitur, his et aliis, quae coram nobis utrinque fuere proposita, perspicaciter intellectis,* Quia praedictus abbas sufficienter ostendit, monasterium suum super institutionibus, destitutionibus, et ordinationibus plebani et clericorum, baptismo, poenitentia in levioribus culpis, sepultura, decimarum perceptione ac divinis officiis celebrandis tam in plebe quam in capellis etiam praedictis, in excommunicando atque interdicendo, et etiam absolvendo legitima praescriptione munitum, abbatem ipsum ab impetitione tua super iam dictis articulis *de consilio fratrum nostrorum* duximus absolvendum, super illis tibi perpetuum silentium imponendo, super aliis omnibus, quae ad ius episcopale spectare noscuntur, iuxta tenorem arbitrii eundem abbatem quoad plebem et capellas praedictas sententialiter condemnantes. [*Nulli ergo etc. Dat. Ferentini II. Kal. Nov. Pont. nostr. A. XI. 1208.*]

Chapter XIX

Latin source headnote: One who, after prescription has been completed, obtains a contrary privilege and uses it renounces the prescription. If the prescription was not completed, he has bad faith and therefore does not prescribe.

The same.

Coming to our presence, *the beloved son* [*G.,*] Abbot of Saint Martin of Pannonhalma, [*showed us by his complaint that our venerable brother the Bishop of Veszprém exempted conditional persons, who furnish certain services to him, from full payment of tithes and, although he has jurisdiction over them, does not compel them by pontifical authority to pay the aforesaid tithes to him in full and to make fitting satisfaction concerning those withdrawn; and that he refuses to furnish him counsel and aid in expenses and other things against woodland people dwelling at the outermost boundaries of the aforesaid parish, who withdraw themselves from payment of tithes. Wherefore he humbly petitioned that we should deign to enjoin the same bishop by apostolic authority not to attempt this henceforth. He petitioned further that the same bishop should prohibit the priests of that parish from admitting to divine offices certain persons who do not pay tithes to him as they are bound, with a servile condition falsely objected as their excuse, or bell-ringers and funeral attendants delinquent in the same article, or receiving from them any part of the tithes, while furnishing him fitting satisfaction for the things withdrawn. He humbly supplicated that, if the said bishop did not take care to effect this, we should command it to be done through judges delegated by us, compelling the bishop to make fitting satisfaction for the aforesaid matters if the said chaplains presumed to attempt this by his authority. He petitioned, moreover, that the same bishop should not permit parishioners of his chapels to be received into other chapels as to spiritual jurisdiction and the fourth part of tithes, making satisfaction to him for the things withdrawn if anything in this had hitherto been presumed by his authority. Otherwise, he should cause fitting satisfaction concerning these matters to be exhibited to him by his chaplains; and, lest any doubt arise concerning the parishioners, he petitioned by distinguishing thus: that the aforementioned bishop should not withdraw the parishioners of the villages of Fajsz and Görbe from the Chapel of Táp; but should not withdraw from the Chapel of the Swineherds the parishioners of the estate of Dominic de Mogh, of the king's udvornici, and of the village of those who give martens to the king; prohibiting priests from receiving any caps or cubuli of wine from the conditionarii of the king or queen, who are commonly called royal servants, while permitting the abbot himself to receive them; and also compelling the king's archers and Bisseni to pay the tithes in full.*]

The same abbot afterward [*also*] sought from us *and humbly petitioned* that the Bishop of Veszprém should not impede, or cause to be impeded, all those who dwell in the parish or county of Somogy from paying him tithes from all the things they possess, as is more fully contained in the privileges of Pope Paschal, our predecessor *of happy memory,* and of the holy King Stephen. But the aforesaid bishop, *established in our presence, on the contrary* petitioned that we cause the tithes of the county of Somogy situated within the boundaries of his diocese, which the same abbot retains, to be restored to him, unless *the said abbot* showed by some special right that he justly possessed them, *commanding that, when he visits the said county, the bishop be furnished procuration in its churches by the same abbot.* [*He further petitioned that the fourth part assigned to building be restored to him for repairing churches; sought that the chapels in the village of the swineherds and Saint Ladislaus of Fizgoi be destroyed as constructed without the authority and consent of the diocesan bishop; and sought back the Church of Keurishyg, in which the said abbot usurps spiritual jurisdiction for himself, and also the Church of Táp, in possession of which the same abbot had confessed that he was. Asserting that reconciliation of penitents and ordinations of clerics belonged to him, he humbly petitioned that the chaplains and people of Saint Martin situated in the Diocese of Veszprém should receive*

chrism, holy oil, and the other ecclesiastical sacraments from him as their diocesan, leaving cognizance of spiritual causes to him.]

But we, having understood through our venerable brother [*Hugolinus,*] *Bishop of Ostia, whom we granted to the parties as auditor, the things that had been proposed before him,* decree that the objections proposed by [*the*] *bishop against the privileges of the aforesaid Pope Paschal and the holy King Stephen, to which the abbot sufficiently responded, are invalid, so that, notwithstanding them, the privileges themselves shall be reckoned valid if the authentic instrument of the aforesaid king shall have been found to be such as the transcript thereof presented to us under the bull of our dearest son in Christ, the illustrious King of the Hungarians; but how far it avails to establish the intention of the abbot, we shall decree at the opportune time.* [*Meanwhile, nothing shall be altered concerning the status of the monastery according to the receipt of tithes that the same monastery possesses.*]

But chrism, holy oil, consecrations of altars or basilicas, and ordinations of clerics who are to be promoted to holy orders, the clerics of the churches or chapels of the monastery itself, which is situated in the Diocese of Veszprém, shall seek from the Bishop of Veszprém, provided that he is Catholic, has the favor [*and communion*] of the Apostolic See, and wishes to exhibit them freely *and* without any depravity; otherwise, they shall have free faculty to receive them from another Catholic prelate whom they prefer, as we perceived to be contained in the privilege of the said Paschal and of Pope Alexander, *of good memory,* our predecessors, notwithstanding the privilege of Pope Clement *of happy memory,* through which the privileges of his predecessors were not derogated, since he made no mention of them, especially since Clement himself granted that privilege saving the institutions not only of the Roman Church but even of its legates.

Nor could the prescription that the same abbot opposed in his own support obstruct, because, if the *prescription* was completed when the *Abbot of Saint Martin* obtained the privilege from Pope Alexander, he appears to have renounced the right of prescription, especially since before us he used that privilege, which contradicts his intention as to this article. But if the prescription was not yet completed but was in the process of prescribing, after a privilege of this kind had been obtained he did not have good faith, and therefore according to the canons he did not prescribe. [*Moreover, the interdicted persons, etc. Given at the Lateran, on the fifth day before the Nones of March, in the fifteenth year of our pontificate, 1212.*]

> Qui praescriptione completa privilegium contrarium impetrat, et utitur illo, praescriptioni, renunciat. Si praescriptio non erat completa, malam fidem habet, et ideo non praescribit.
>
> Idem.
>
> Veniens ad praesentiam nostram *dilectus filius* [*G.*] abbas sancti Martini de Pannonia +[*sua nobis conquestione monstravit, quod venerabilis frater noster Vesprimensis episcopus conditionales homines, qui certa ei servitia exhibent, exemit a praestatione integra decimarum, et eos, quum iurisdictionem in ipsos habeat, ad solvendas integre sibi praedictas decimas, et ad satisfaciendum congrue de subtractis pontificali auctoritate non cogit, praestare sibi recusans consilium et auxilium in expensis et aliis contra silvestres homines in extremis praedictae parochiae finibus commorantes, qui se a solutione subtrahunt decimarum. Quare humiliter postulabat, ut, ne id de cetero idem episcopus attentaret, iniungere sibi auctoritate apostolica dignaremur. Petebat insuper, quod idem episcopus sacerdotibus illius parochiae inhiberet, ne quosdam homines sibi, prout tenentur, decimas non solventes, servili conditione falso ad suam excusationem obiecta, et ne pulsatores et exequiales in eodem articulo delinquentes recipiant ad divina, vel ab eis percipiant partem aliquam decimarum, ipsi de subtractis satisfactionem congruam impendentes; humiliter supplicans, ut hoc per delegatos a nobis iudices fieri mandaremus, si dictus episcopus id efficere non curaret, compellentes eundem ad*

satisfactionem congruam praedictorum, si auctoritate sua dicti capellani hoc praesumerent attentare. Postulabat praeterea, quod idem episcopus parochianos capellarum suarum in iure spirituali et quarta decimarum recipi ad capellas alias non permittat, satisfaciens de subtractis eidem, si aliquid est in hoc hactenus ipsius auctoritate praesumptum. Alioquin a suis sibi faciat capellanis super his satisfactionem congruam exhiberi, et, ne de parochianis dubitatio aliqua oriretur, sic petiit distinguendo, ut parochianos de villis Fayz et de Gurbei a capella Thapey non subtrahat episcopus memoratus; parochianos autem de praedio Dominici de Mogh, et de Udwornicis regis, et de villa illorum, qui dant regi martium, a capella de porcorum custodia non subducat; inhibens sacerdotibus, ne recipiant capetias aliquas vel cubulos vini a regis vel reginae conditionalibus, qui vulgo regales servi vocantur, ab ipso ea recipi permittentes, cogens insuper regis sagittarios et bissenos ad decimas integre persolvendas.] Petiit [*etiam*] a nobis postmodum idem abbas *et humiliter postulavit*, ut Vesprimensis episcopus non impediat vel faciat impediri, quo minus omnes qui in Simagiensi parochia vel comitatu consistunt, de omnibus, quae possident, decimas sibi solvant, sicut in privilegiis *felicis memoriae* Paschalis Papae praedecessoris nostri et sancti regis Stephani plenius continetur. Praefatus vero episcopus *in nostra praesentia constitutus e contrario* postulavit, ut decimas Simagiensis comitatus infra suae dioecesis terminos constitutas, quas detinet idem abbas, sibi restitui faceremus, nisi *dictus abbas* aliquo iure speciali se ipsas iuste possidere monstraret, *+mandantes, ipsum per eundem abbatem, quum dictum comitatum visitat, in suis ecclesiis procurari.* [*Petebat insuper, deputatam quartam fabricae sibi restitui ad ecclesias reparandas, capellas in villa subulcorum, et S. Ladislai de Fizgoi destrui postulans, tanquam sine auctoritate ac consensu episcopi dioecesani constructas; et petens ecclesiam de Keurishyg, in qua sibi dictus abbas spiritualen iurisdictionem usurpat, ecclesiam etiam de Thapey, in cuius possessione ipsum fuisse idem abbas confessus fuerat, repetebat. Reconciliationes etiam poenitentium et ordinationes clericorum ad se asserens pertinere, humiliter postulabat, ut chrisma, oleum sanctum, et alia ecclesiastica sacramenta capellani et homines S. Martini in Vesprimensi dioecesi constituti ab eo tanquam a suo dioecesano perciperent, sibi cognitiones causarum spiritualium relinquendo.*] *Nos autem, intellectis per venerabilem fratrem nostrum* [*Hugolinum*] *Hostiensem episcopum, quem partibus concessimus auditorem, quae proposita fuerant coram eo, obiectiones propositas ab* [*ipso*] *episcopo contra privilegia praedictorum Paschalis Papae et sancti regis Stephani, quibus abbas sufficienter respondit, invalidas esse decernimus, ut, eis non obstantibus, privilegia ipsa valida reputentur, si authenticum praedicti regis tale repertum fuerit, quale nobis rescriptum ipsius sub bulla carissimi in Christo filii nostri Hungarorum regis illustris exstitit praesentatum; quantum tamen ad fundandam intentionem abbatis proficiat, opportuno tempore decernemus. *[*Interim autem nihil circa statum monasterii secundum perceptionem decimarum, quam idem monasterium possidet, immutetur.*] Chrisma vero, oleum sanctum, consecrationes altarium seu basilicarum, ordinationes clericorum, qui ad sacros ordines promovendi fuerint, clerici ecclesiarum vel capellarum ipsius monasterii, quod est in Vesprimensi dioecesi constitutum, a Vesprimensi episcopo postulabunt, si quidem catholicus fuerit, et gratiam [*atque communionem*] sedis apostolicae habuerit, et ea gratis *et* sine pravitate aliqua voluerit exhibere; alioquin ab alio quem maluerint, praesule catholico suscipiendi ea liberam habeant facultatem, sicut in privilegio dicti Paschalis, et *bonae memoriae* Alexandri Papae praedecessorum nostrorum perspeximus contineri, non obstante privilegio *felicis memoriae* Clementis Papae, per quod privilegiis suorum praedecessorum non exstitit derogatum, quum de ipsis nullam fecerit mentionem, praesertim quum et ipse Clemens privilegium illud concesserit salvis institutionibus non solum Romanae ecclesiae, sed ipsius etiam legatorum. Nec obstare poterat praescriptio, quam idem abbas in suum subsidium opponebat, quia, si consummata erat *praescriptio*, quando *abbas sancti Martini* ab Alexandro Papa privilegium impetravit, iuri praescriptionis renunciasse videtur, praesertim quum coram nobis privilegio illo sit usus, quod suae intentioni quantum ad hunc articulum contradicit. Si vero nondum consummata erat praescriptio, sed erat in praescribendo, post impetratum huiusmodi privilegium bonam fidem non habuit, et ideo secundum canones non praescripsit. [*Ceterum interdictos etc. Dat. Lat. V. Non. Mart. Pont. nostr. Ao. XV. 1212.*]

Chapter XX

Latin source headnote: In neither the canonical nor the civil forum is prescription with bad faith valid.

The same, in the general council.

Because everything that is not from faith is sin, by synodal judgment we define that no prescription, either canonical or civil, shall be valid without good faith, since every constitution and custom that cannot be observed without mortal sin is generally to be derogated. Hence it is necessary that one who prescribes have no consciousness at any part of the time that the thing belongs to another.

> Non in foro canonico nec civili valet praescriptio cum mala fide.
>
> Idem in concilio generali.
>
> Quoniam omne, quod non est ex fide, peccatum est, synodali iudicio diffinimus, ut nulla valeat absque bona fide praescriptio tam canonica quam civilis, quum generaliter sit omni constitutioni atque consuetudini derogandum, quae absque mortali peccato non potest observari. Unde oportet, ut qui praescribit in nulla temporis parte rei habeat conscientiam alienae.

Title XXVII: On Sentence and a Matter Adjudged

Chapter I

Latin source headnote: A sentence rendered contrary to laws or canons does not bind, nor is it necessary to appeal from it. Panormitanus.

Gregory.

A sentence pronounced contrary to laws or canons, although it is not suspended by an appeal, nevertheless cannot subsist by the law itself. *But after, by way of superabundance, it is established that an appeal was also extended to you, we marveled why you did not even send men who could have rendered an account of your right*.

> **De sententia et re iudicata.**
>
> Sententia lata contra leges vel canones non tenet, nec ab ea opus est appellare. Panorm.
>
> Gregorius.
>
> Sententia contra leges canonesve prolata, licet non sit appellatione suspensa, non potest tamen subsistere ipso iure. *Postquam tamen ex abundanti, et appellalionem tibi constat esse porrectam, mirati sumus, cur nec homines, qui tui iuris potuissent rationem reddere transmisisti*.

Chapter II

Latin source headnote: Litigations ought to be terminated quickly.

The same.

To terminate the controversies of disputants by a swift sentence [*without doubt*] *accords both with equity and with rigor.* [*Therefore, because, etc.*]

> Lites debent celeriter terminari.
>
> Idem.

> Iurgantium controversias celeri sententia terminare et aequitati [*proculdubio*] *convenit et rigori*. [*Quia ergo etc.*]

Chapter III

Latin source headnote: A priest is not to be deposed without just cause.

The same.

A concordant sentence of priests cannot remove anyone from the priestly grade except for just causes. [*We exhort, etc.*]

> Sacerdos sine iusta causa non est deponendus.
>
> Idem.
>
> Non potest quemquam a sacerdotali gradu, nisi iustis ex causis, concors sacerdotum sententia submovere. [*Hortamur etc.*]

Chapter IV

Latin source headnote: Someone justly petitions that a sentence be confirmed by the Pope if it was rendered justly and reasonably.

Pope Leo.

Let the things that have been defined justly and reasonably according to ecclesiastical custom be strengthened also by our sentence. [*Given on the fourth day of August, in the current year, 446.*]

> Iuste quis petit sententiam a Papa confirmari, si iuste et rationabiliter fuit lata.
>
> Leo Papa.
>
> Ea, quae iuxta ecclesiasticum morem iuste et rationabiliter fuerint diffinita, nostra quoque sententia roborentur. [*Dat. IV. Aug. c. a.* 446.]

Chapter V

Latin source headnote: A judge appointed over execution of a sentence admits an exception of fraud or nullity of the sentence, not to the effect that he pronounces upon it, but that he transmits the matter to the superior who judged, if he finds it probable. This it says notably.

Alexander III, to the Archbishop of York.

For the rest, know that, if we command that a sentence rendered by us be put into execution by someone and fraud has intervened, the executor does not have faculty to take cognizance of the whole matter, but it will be necessary that the questions that arise be brought to the Apostolic See.

> Iudex deputatus super exsecutione sententiae, admittit exceptionem fraudis seu nullitatis sententiae, non ad effectum, ut super ea pronunciet, sed ut negotium ad superiorem, qui iudicavit, transmittat, si illam probabilem repererit. H. d. notabiliter.
>
> Alexander III. Eboracensi Archiepiscopo.
>
> De cetero noveris, quod, si sententiam a nobis latam praecipimus per aliquem executioni mandari, et fraus intervenerit, non est facultas exsecutori de toto negotio cognoscendi, sed deferri quaestiones, quae inciderint, ad sedem apostolicam oportebit.

Chapter VI

Latin source headnote: For a defendant condemned to delivery of possession, it does not suffice to deliver a pledge in place of possession itself.

The same, to the Bishop of Norwich.

When possession has been adjudged to certain persons, it does not suffice that pledges be given to them unless they enjoy corporal possession.

> Non sufficit reo damnato ad traditionem possessionis tradero pignus pro ipsa possessione.
>
> Idem Norvicensi Episcopo.
>
> Quum aliquibus est adiudicata possessio, non sufficit eis dari pignora, nisi corporali possessione laetentur.

Chapter VII

Latin source headnote: A sentence rendered against a marriage never passes into a matter adjudged; hence it is revoked whenever the error is established.

The same, to the same and V., Archdeacon.

W., bearer of the present letters *and your parishioner,* showed us by his notification that, when *in the face of the Church* he had lawfully betrothed a certain woman, *a widow named A.,* and carnal union followed, scandal arose between them, on occasion of which *the aforesaid man* withdrew the *conjugal* debt from her. But the blood relatives of the *already-mentioned* woman, taking this ill, moved a question *before you,* proposing that he had taken the woman as wife when unwilling and resisting, and not existing at an age suitable for marriage. And because the same *man, as is proposed to us,* desired to lead a dissolute life, at length, through the intervening effort of either, they were separated less than reasonably. Therefore, unwilling that marriages canonically contracted be dissolved through a certain levity, *by commanding through apostolic writings,* we order your discretion that, if it is established to you that they were not lawfully separated by a judgment of the Church and that the Church was deceived, you shall cause them to remain together as man and wife, *contradiction and appeal ceasing*.

> Sententia lata contra matrinionium nunquam transit in rem iudicatam; unde quandocunque revocatur, quum constat de errore.
>
> Idem eidem et V. Archidiacono.
>
> Lator praesentium *W. parochianus vester* sua nobis insinuatione monstravit, quod, quum *in facie ecclesiae* quandam mulierem *viduam A. nomine* legitime desponsasset, et carnalis esset copula subsecuta, inter eos scandalum est subortum, cuius occasione *praedictus vir* debitum ei *coniugale* subtraxit. Consanguinei vero *iam dictae* mulieris hoc molestum habentes, *coram vobis* quaestionem moverunt proponentes, quod mulierem invitam et renitentem, nec aetatis aptae matrimonio exsistentem duxisset uxorem. Et quoniam idem *vir, sicut nobis proponitur*, vitam cupiebat agere dissolutam, demum, utriusque studio interveniente, fuerunt minus rationabiliter separati. Nolentes igitur matrimonia canonice contracta levitate quadam dissolvi, *discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus, si vobis constiterit, eos per iudicium ecclesiae non fuisse legitime separatos, ecclesiamque deceptam, ipsos *contradictione et appellatione cessante* faciatis sicut virum et uxorem insimul permanere.

Chapter VIII

Latin source headnote: A sentence rendered against a church under pretext of an iniquitous custom is retracted.

The same, to T. and the Clerics of Saint Anastasia of Verona.

When the cause being conducted between you and the laymen G. and A. concerning a certain house sold to them by your archpriest had been brought to the examination of *our beloved son* I., *cardinal priest of the Basilica of the Twelve Apostles and then* legate of the Apostolic See, after an appeal had been interposed to us and delays received, because within the term fixed for you, son T., to prosecute it you had not set out on the journey *of coming to us,* he, pronouncing sentence against you, took care to adjudge the aforesaid house to the aforementioned G. and A. according to the custom of the city of Verona. Then, when the cause had been brought to us by appeal, the Bishop of Brescia, delegated by us, promulgated a sentence against you according to the same custom, with the form of the canons spurned, as the aforesaid legate had done. But we, *when at length either party had presented itself to our sight, more diligently* considering that, although the authority of usage or custom is not small, nevertheless it never prejudices truth or law, revoked the aforesaid sentence *by the common counsel of our brothers* and, absolving you from their claim, adjudged the aforesaid house to you and your church *by apostolic authority.*

> Retractatur sententia praetextu iniquae consuetudinis lata contra ecclesiam.
>
> Idem T. et Clericis S. Anastasiae Veronensis.
>
> Quum causa, quae vertitur inter vos, et G. et A. laicos super domo quadam eis ab archipresbytero vestro vendita, ad examen *dilecti filii nostri* I. *basilicae XII. Apostolorum presbyteri cardinalis, tunc* apostolicae sedis legati delata fuisset, post appellationem ad nos interpositam, et receptas inducias, quoniam infra terminum tibi, fili T., ad eam prosequendam praefixum iter *ad nos veniendi* non arripueras, contra te sententiam proferens memoratis G. et A. praetaxatam domum secundum Veronensis civitatis consuetudinem adiudicare curavit. Deinde quum causa fuisset ad nos per appellationem delata, Brixiensis episcopus delegatus a nobis sententiam contra vos, spreta forma canonum, secundum eandem consuetudinem, sicut praefatus legatus fecerat, promulgavit. Nos autem, *quum tandem utraque pars nostro se conspectui praesentasset, diligentius* considerantes, quod, licet usus vel consuetudinis non minima sit auctoritas, nunquam tamen veritati aut legi praeiudicat, praescriptam sententiam *de communi fratrum nostrorum consilio* revocavimus, et vos ab impetitione absolventes illorum, vobis et ecclesiae vestrae domum *auctoritate apostolica* adiudicavimus supradictam.

Chapter IX

Latin source headnote: An iniquitous sentence is retracted by a superior, although the cause was committed with appeal removed. But if it contains manifest iniquity, it is null. This it says on the understanding that it sets forth two cases.

The same, to the Archbishop of York.

Among the other—(*And below:* [*cf. c. 2, On the Office of a Delegated Judge, I.29.*]) Likewise, when some cause is committed with appeal removed and an iniquitous sentence is rendered, it is necessary that it be annulled; nor ought one to stand by it if it contains manifest iniquity.

> Sententia iniqua retractatur per superiorem; licet causa fuerit appellatione remota commissa. Si autem continet manifestam iniquitatem, est nulla. H. d. intelligendo, quod ponat duos casus.

Idem Eboracensi Archiepiscopo.

Inter ceteras (*Et infra:* [*cf. c. *2. *de off. iud. del. I.* 29.]) Item quum aliqua causa appellatione remota committitur, et sententia fertur iniqua, eam evacuari oportet, nec ei debet stari, si iniquitatem contineat manifestam.

Chapter X

Latin source headnote: A sentence rendered against an absent person who is not contumacious is not valid in a matrimonial cause. This it says on the understanding that this woman was not contumacious. Panormitanus.

Clement III.

The tenor of your letters *transmitted to us* shows that, when *in the archpresbyterate of Saint Germanus* a matrimonial question was being conducted between R. and the woman M. and had been committed to *our venerable brother* the Bishop of Chieti, *because that land was then disturbed by the death of the king, the woman, taking precaution for herself against the evident danger of the roads, could not present herself to the judge, by whom she had now been cited a third time, although she transmitted a messenger with an excuse; nevertheless, the* same bishop *afterward* absolved R., while the woman was absent, from her claim. But the same woman, *coming to our presence,* obtained letters from us to you that you should take cognizance of the cause and terminate it with its due end, *since it could not be decided before the aforementioned bishop because of the disturbance of the land.* But the said R., summoned by you to the cause, did not attend, putting forward illness. But because on the following night he presumed to join another woman to himself, you promulgated a sentence of excommunication against him. Afterward, absolved from it and coming to you *in his own person,* he showed the letters of the aforementioned bishop, by which it appeared that he had been absolved *on this account* from her disturbance, *because the woman did not approach the presence of the bishop.*

Therefore, because, *as you propose, the same* woman daily cries after you with tears and offers her witnesses to prove that the same R. publicly betrothed her with a betrothal ring, you *humbly* petition to be instructed as to what you ought to do concerning these things. We therefore respond to your inquiry in this way: notwithstanding *such* unlawful absolution that the bishop made, you shall proceed in the cause, *with the impediment of appeal removed, and decide it with its due end,* strictly prohibiting the same R. under penalty of excommunication from approaching the woman whom he superinduced before the cause has been decided. *Moreover, you shall not reject the witnesses whom the aforesaid M. shall determine to produce from her own kindred, or others, provided that they are otherwise suitable, since blood relatives are accustomed to know their own kinship better than strangers, both through charters, witnesses, recitation of their elders, or other arguments.*

Sententia lata contra absentem non contumacem in causa matrimoniali non valet. H. d. intelligendo, qnod haec mulier non fait contumax. Panorm.

Clemens III.

Tenor literarum tuarum *nobis transmissus* ostendit, quod, quum *in archipresbyteratu sancti Germani* inter R. et M. mulierem quaestio matrimonii verteretur, et *venerabili fratri nostro* Theatino episcopo commissa fuisset, *quia, terra illa tunc pro regis morte turbata fuerat, mulier sibi evidenti periculo viarum praecavens non poterat se iudici, a quo iam tertio citata fuerat, praesentare, licet nuncium cum excusatione transmiserit, episcopus tamen* idem eundem R. *postmodum,* muliere absente, ab impetione ipsius absolvit. Ceterum eadem mulier *ad*

praesentiam nostram veniens a nobis ad te literas impetravit, ut de causa cognosceres, et eam fine debito terminares, *quandoquidem coram memorato episcopo pro commotione terrae non poterat definiri*. Dictus vero R., a te vocatus ad causam, infirmitate praetenta non adfuit. Sed quia nocte sequente aliam sibi copulare praesumpsit, in eum excommunicationis sententiam promulgasti; a qua postmodum absolutus ad te *in propria persona* veniens, ostendit literas episcopi memorati, quibus eum ab inquietatione ipsius *ob hoc* absolutum fuisse patebat, *quod mulier ad praesentiam episcopi non accessit*. Quia igitur, *sicut proponis*, mulier *eadem quotidie cum lacrimis clamat post te*, suos testes offert ad probandum, quod idem R. eam desponsationis annulo publice subarrasset, tu quid super his agere debeas *humiliter* postulas edoceri. Ideoque inquisitioni tuae taliter respondemus, quod, non obstante *tali* illicita absolutione, quam episcopus fecit, in causa *sublato appellationis impedimento* procedas, *et eam debito fine decidas*, eidem R. sub poena excommunicationis arctius interdicens, ne ad eam, quam superinduxit, accedat, priusquam fuerit causa decisa. *Testes autem non respuas, quos de parentela sua, vel alios, dummodu alias idonei sint, praenominata M. duxerit producendos, quum consanguinei tum chartis, tum testibus, tum et recitatione maiorum vel argumentis aliis melius quam extranei suam consueverunt cognoscere parentelam.*

Chapter XI

Latin source headnote: A sentence of separation duly rendered in a matrimonial cause is not revoked solely upon the confession of a spouse asserting the contrary, but in the meantime one stands by it until the contrary is lawfully shown. Thus Panormitanus summarizes it, so that it contributes something new.

The same.

The blood relatives of E., bearer of the present letters, as you intimated to *us* by your letters, *having produced witnesses at law under your examination,* lawfully proved spiritual co-parenthood between her and her husband in such a way that you pronounced a sentence of separation between them. But when the aforesaid E. afterward confessed to you that in truth she had not been his co-mother before the sentence, but that after the separation she contracted spiritual co-parenthood with him, she at length hastened into a second marriage. *Therefore, because, now recognizing her guilt, she awaits our counsel concerning this, and you also sought a response from us in this matter,* by *the present page* we respond to your fraternity that one is not to withdraw from a sentence reasonably promulgated by a judgment of the Church because of the confession of the woman alone, unless *perhaps* the contrary were lawfully proved. *Finally, you shall impose upon the same woman, who confessed her delict to you, that penance which, according to the quality of the person and the quantity of the excess, you see should be imposed upon her.*

Sententia divortii in causa matrimoniali rite lata, ad solum coniugis confessionem asserentis contrarium non revocatur, sed interim ei statur, donec legitime de contrario doceatur. Ita summatur, ut aliquid de novo afferat, Panorm.

Idem.

Consanguinei E. latricis praesentium, sicut *nobis* tuis literis intimasti, *productis in iure sub examine tuo testibus*, compaternitatem inter ipsam et virum suum legitime probaverunt ita, quod inter eos sententiam divortii protulisti. Praedicta vero E., quum sit tibi postmodum confessa, quod eius commater in veritate ante sententiam non fuisset, sed post separationem compaternitatem cum eo contraxit, et tandem ad secundas nuptias convolavit. *+Quia igitur reatum suum nunc cognoscens consilium nostrum super hoc exspectat, tu etiam a nobis in hoc postulasti responsum*, Fraternitati tuae *praesenti pagina* respondemus, quod propter solam confessionem mulieris non est recedendum a sententia per iudicium ecclesiae rationabiliter promulgata, nisi *forte* legitime in contrarium probaretur. *Ad ultimum vero eidem*

mulieri delictum suum tibi confessae poenitentiam illam iniungas, quam iuxta qualitatem personae et quantitatem excessus ei videris imponendam.

Chapter XII

Latin source headnote: If the Pope, contrary to his own pronouncement, confers a benefice while concealing this, the collation is said to be surreptitious and does not bind.

Innocent III, to the Archdeacon and Sacristan of Maguelone.

When formerly, [*as we have learned,*] the Bishop of Maguelone *of good memory,* [*having obtained the assent of the beloved sons P. de Agrifolio, archdeacon, and B., claustral prior,*] nominated *our beloved son* P. of Castelnau to the vacant archdeaconry of the same church, while the provost prohibited by interposed appeal that anyone be instituted there unless a double vote had first been granted to him, the bishop [*both because he said that it was contrary to the ancient custom of the Church of Maguelone and the common law of the canons for anyone to claim for himself the vote of two persons in the same church, and because from an indulgence of Pope Celestine, our predecessor of happy memory, which he caused to be read in the chapter while the provost was present, he proved that it was granted to him that he should confer a vacant archdeaconry or sacristy, notwithstanding contradiction or appeal, if nothing reasonable and canonical could lawfully be objected and proved against the person nominated by him,*] invested the said P. with the archdeaconry through *his* ring, *placing him corporally in the office of archdeacon.* But the provost, agitated by the goads of indignation, [*afterward*] presumed to nominate another person to the same archdeaconry.

When, on occasion of this act, both the provost and the aforesaid P. presented themselves to the apostolic sight, [*and received as auditors in their questions us, then established in a lesser office, and our beloved sons B., cardinal priest of the title of Saint Peter in Chains, and M., of good memory, cardinal priest of the title of Saints John and Paul, the provost objecting that the institution by the bishop ought to be annulled because it was made after appeal, contrary to the definition of Pope Alexander, our predecessor of happy memory, and by one suspended, the aforesaid P. responded, as he asserts, to each point in this manner: namely, that it was established that the appeal itself was of no moment, both because an appeal had been made by a suspended person—which he said that he wished to prove immediately—wherefore it was not his concern to appeal, and because an appeal interposed contrary to the said indulgence did not bind; and because in the form of appeal he expressed a cause prohibited at law, namely that of a double vote or dignity, which according to the canonical sanctions ought to be committed to no person, however experienced. Hence he proved from a consultation of Pope Alexander of happy memory that deference was not to be given to such an appeal. He firmly asserted that the constitution of Henry, formerly Bishop of Albano, under pretext of which the provost had usurped the dignity of senior prior, could not protect him, since in it it is expressed more clearly that henceforth there should be no senior prior in the Church of Maguelone. Hence it followed that neither the provost nor another could in any way claim that dignity for himself, especially since it is expressly contained there that the provost ought not to have the dignity of prior but only care concerning correction of excesses and errors. For if he had wished a dignity to be understood where he placed "care," he would have expressed the term "dignity," as he said could be proved from a consultation of our aforesaid predecessor Pope Alexander. From the words of the constitution itself, however, he showed that the provost ought to have received the said care from the hand of the bishop. Moreover, from the letters of the bishop complaining concerning this, it was clearly evident that the provost, not called by God as Aaron was but arising from himself, had shamelessly assumed honor for himself. Hence, since one who abuses power permitted to him deserves to lose his privilege, he petitioned that perpetual silence concerning this be imposed upon him both in the name of the bishop and in his own, proposing that by law and the ancient*

custom of the Church of Maguelone the aforementioned dignity was to be conferred only upon one discharging priestly office. He insistently affirmed that the provost could not be promoted to the priesthood because weakness as well as deformity of body impeded him, saying that the party of the bishop, as the greater and sounder part, deservedly prevailed according to the Lateran Council, notwithstanding the appeal of one person. He further alleged that the provost had voluntarily renounced the appeal interposed. For since he had appealed in such a way that no archdeacon ought to be instituted unless a double vote were granted to him, and he himself attempted to proceed to the institution of another, he was convicted by a contrary act, according to a consultation of Pope Urban, our predecessor of good memory, of having withdrawn from the office of appeal. But to the article of the definition he responded in this way, asserting that the bishop proceeded reasonably according to the tenor of the definition, adding also that the provost, by retaining the Churches of Saint Firminus and Maurinus, had acted manifestly contrary to the definition itself and therefore could not invoke its aid at law. To the objection of suspension, he said in opposition that the bishop had first lawfully appealed and therefore was in no way bound by the sentence afterward rendered, proposing also that the sentence of interdict had been rendered conditionally and for a time, namely until he obeyed the apostolic mandates. Hence, since before the said institution he had obeyed the commands of the Apostolic See, he had without doubt been absolved by the censure of both civil and canon law, especially since the person who had suspended him did not at all doubt to communicate with him in all things as one fully absolved. Finally, he concluded that, even if the aforementioned bishop truly were suspended, nevertheless this could not be objected against him by the provost, because, since the provost had been marked by a sentence of suspension for the same matter, every hearing against the bishop ought to have been denied to one laboring under a similar disease, especially since he had often communicated with the bishop himself both in the ecclesiastical sacraments and in institutions of churches, and therefore could not object against him the mark of suspension. Finally, if none of these things supported the party of the bishop, he said that this could suffice to deny the provost a hearing: that from the letters of the bishop it appeared most clearly that the provost was bound by the bond of excommunication both through the sentence of the ordinary judge and by the law itself.]

At length C., our predecessor, annulled *by sentence* what had been done by either party *according to its own will,* pronouncing that he would write to certain persons *of the province* that they should admonish both the bishop and the persons to ordain the archdeacon concordantly and, if perhaps their admonitions were not admitted, should not delay executing this *by apostolic authority.* But after this our said predecessor, as we believe deceived, conferred the archdeaconry itself, contrary to his own pronouncement, upon G., who had not yet been promoted to the office of the diaconate, without the knowledge of *the aforesaid Peter,* proctor of the bishop, then staying at the Apostolic See.

We therefore, adhering to the footsteps of our predecessors, who say that a sentence of the Roman See, when something has been obtained by surreption, can be altered for the better, revoke as void, *by the* [*common*] *counsel of our brothers,* what was done concerning the aforesaid G., notwithstanding the donation that he is recently said to have received from the same bishop in mockery of the apostolic donation; and, imposing perpetual silence upon him concerning the said archdeaconry, although absent, since the surreption is clearly established, *by authority of the present letters and by commanding,* we order you that, *notwithstanding any contradiction or appeal, within the space of one month after receipt of these letters,* you shall take care to ordain the often-mentioned archdeaconry *with a person against whom none of the canonical institutes stands,* with the full concord of all of you who shall be present in the church intervening. [*Otherwise, etc. Given at Rome, on the sixth day before the Ides of June, 1198.*]

Si Papa contra pronunciationem suam confert beneficium, hoc tacito subreptitia dicitur collatio, et non tenet.

Innocentius III. Archidiacono et Sacristae Magalonensibus.

Quum olim, [*sicut accepimus*,] *bonae memoriae* Magalonensis episcopus [*habito dilectorum filiorum P. de Agrifolio archidiaconi et B. prioris claustralis assensu, dilectum filium nostrum*] P. de Castro novo, ad vacantem archidiaconatum eiusdem ecclesiae nominasset, praeposito, ut nullus ibi, nisi prius duplici sibi voce concessa, institueretur per appellationem interpositam inhibente, episcopus [*tum quia contra antiquam Magalonensis ecclesiae consuetudinem et commune ius canonum esse dicebat, aliquem sibi vocem duarum personarum in eadem ecclesia vendicare, tum quia ex indulgentia felicis memoriae Coelestini Papae praedecessoris nostri, quam in capitulo praesente praeposito legi fecit, sibi probabat indultum, ut vacantem archidiaconatum vel sacristiam, si contra personam ab ipso nominatam aliquod rationabile et canonicum non posset legitime obiici et probari, non obstante contradictione vel appellatione conferret,*] dictum P. de archidiaconatu per *suum* annulum investivit *in locum archidiaconi corporaliter illum inducens*. Praepositus vero indignationis stimulis agitatus alium ad eundem archidiaconatum [*postmodum*] nominare praesumpsit. +*Cuius facti occasione quum tam praepositus, quam praefatus P. apostolico se conspectui praesentassent*, [*et nos in minori tunc officio constitutos, et dilectos filios nostros B. tit. sancti Petri ad Vincula, et bonae memoriae M. tit. sancti Ioannis et Pauli presbyteros cardinales recepissent in suis quaestionibus auditores, praeposito obiiciente institutionem episcopi post appellationem, et contra definitionem felicis recordationis Alexandri Papae praedecessoris nostri, et a suspenso factam cassari debere: a praedicto P. (sicut asserit) ad singula fuit hoc modo responsum, scilicet, quod appellationem ipsam nullius constabat esse momenti, tum quia a suspenso fuerat appellatum, quod in continenti se velle probare dicebat, quare illius non intererat appellare, et contra dictam indulgentiam appellatio interposita non tenebat; tum quia causam in iure prohibitam, scilicet duplicis vocis vel dignitatis, quae nulli quantumlibet exercitatae personae secundum canonicas sanctiones debet committi, in forma appellationis, expressit: unde tali appellationi non fuisse deferendum, ex consultatione felicis memoriae Alerandri Papae probabat, nec constitutionem Henrici quondam Albanensis episcopi, cuius obtentu dignitatem prioris maioris usurpaverat, illi posse patrocinari firmiter asserebat, quum in ipsa evidentius exprimatur, ne deinceps prior maior in Magalonensi ecclesia haberetur; unde sequebatur, nec praepositum, nec alium dignitatem illam sibi posse aliquatenus vendicare, praesertim quum ibi contineatur expresse, quod praepositus non dignitatem prioris, sed curam circa correctionem excessuum et erratorum debeat duntaxat habere. Si enim dignitatem vellet intelligi, ubi curam apposuit, dignitatis vocabulum expressisset, sicut ex consultatione dicti Alexandri Papae praedecessoris nostri comprobari dicebat. Ex verbis autem ipsius constitutionis monstrabat, ipsum praepositum dictam curam de manu episcopi accipere debuisse. Ceterum ex literis episcopi super hoc conquerentis evidenter liquebat, praepositum non tanquam Aaron a Deo vocatum, sed a se ipso exortum sibi impudenter honorem sumpsisse. Unde, quum privilegium mereatur amittere qui permissa sibi abutitur potestate, tam nomine episcopi quam suo super hoc ei perpetuum silentium imponi petebat, proponens, quod dignitas memorata non nisi sacerdotali fungenti officio de iure et antiqua Magalonensis ecclesiae consuetudine fuerat conferenda; praepositum vero tam debilitate quam deformitate corporis impediente ad sacerdotium promoveri non posse affirmabat instanter, dicens partem episcopi, utpote maiorem et saniorem, non obstante unius appellatione, merito secundum Lateranense concilium obtinere; insuper allegans, eum praepositum appellationi renunciasse spontaneum interiectae. Quum enim taliter appellasset, ut nullus, nisi duplici sibi voce concessa, archidiaconus deberet institui, et ipse ad institutionem alterius procedere attentaret, contrario actu convincebatur secundum consultationem bonae memoriae praedecessoris nostri Urbani Papae ab appellationis officio recessisse. Ad definitionis autem articulum taliter respondebat, asserens episcopum secundum tenorem definitionis rationabiliter processisse, adiiciens etiam, quod praepositus ecclesias sancti Firmini et de Maurino retinendo contra ipsam definitionem fecerat manifeste, et ideo eius auxilium de iure non poterat invocare. Ad suspensionis obiectionem ex adverso dicebat, quod episcopus prius legitime appellavit, et ideo sententia post lata nullatenus tenebatur adstrictus, proponens etiam, conditionalem et ad tempus latam fuisse sententiam interdicti, scilicet, donec apostolicis obediret mandatis. Unde quum ante dictam institutionem sedis apostolicae iussionibus paruisset, tam civilis quam canonici iuris*

censura indubitanter fuerat absolutus, praesertim quum ille, qui eum suspenderat, ipsi ut plene absoluto in omnibus communicare minime dubitaret. Ad ultimum concludebat, quod, etsi vere suspensus esset episcopus memoratus, tamen a praeposito hoc ei non posset opponi, quia, quum pro eodem suspensionis sententia notatus fuisset, morbo consimili laboranti omnis contra episcopum audientia debuit denegari, maxime quum ipsi episcopo tam in ecclesiasticis sacramentis, quam in ecclesiarum institutionibus saepe communicasset, et ideo ei notam suspensionis obiicere non valebat. Denique, si nihil horum parti suffragaretur episcopi, ad denegandam praeposito audientiam sufficere posse dicebat, quod tam per sententiam iuducis ordinarii, quam ipso iure eum excommunicationis vinculo innodatum esse, per episcopi literas evidentissime apparebat.] Tandem C. praedecessor noster, quod factum fuerat ab utraque parte *pro sua voluntate* cassavit *sententiando* pronuncians, quod aliquibus *de provincia* scriberet, ut tam episcopum quam personas ad ordinandum concorditer archidiaconum moneret, et, eorum forte monitis non admissis, hoc ipsi *auctoritate apostolica* exsequi non differrent. Post haec vero dictus praedecessor noster G., qui nondum ad diaconatus erat promotus officium, praeter conscientiam *praefati Petri* procuratoris episcopi apud sedem apostolicam tunc morantis, ipsum archidiaconatum contra pronunciationem suam contulit, sicut credimus, circumventus. Nos igitur inhaerentes vestigiis praedecessorum nostrorum, dicentium, sententiam Romanae sedis, quum aliquid fuerit subreptum, posse in melius communitari, quod de praedicto G. factum est, non obstante donatione, quam ab eodem episcopo in illusionem donationis apostolicae nuper dicitur recepisse, *de* [*communi*] *fratrum nostrorum consilio* in irritum revocamus, et ei, licet absenti, quum de subreptione liquido constet, super dicto archidiaconatu perpetuum silentium imponentes, *vobis praesentium auctoritate* praecipiendo mandamus, quatenus *nullius contradictione vel appellatione obstante infra unius mensis spatium post harum susceptionem* saepe dictum archidiaconatum *de persona, cui nihil de canonicis obviet institutis*, plena omnium vestrum, qui praesentes fuerint in ecclesia, interveniente concordia, ordinare curetis. [*Alioquin etc. Dat. Rom. VI. Id. Iun.* 1198.]

Chapter XIII

Latin source headnote: A sentence rendered against the right of a litigant is valid if an appeal was not made from it within ten days. Or otherwise thus: through a sentence from which no appeal was made, a church can be subjected to a prelate inferior to a bishop or made to belong to another church.

The same, to the Abbot and Convent of Saint Zeno of Verona.

When a question was being conducted between you [*on one side*] on behalf of your church and *Musetus,* archpriest, and the clerics of Saint Proculus, *in the name of their church,* concerning subjection of the same *Church of Saint Proculus and many other articles,* [*while you, son Abbot, and the archpriest himself were established in our presence, we appointed as auditors our venerable brothers P., Archbishop of Compostela, and Odo, Bishop of Tortona, then staying at the Apostolic See. But when the bishop himself departed from the regions of the City while the litigation was pending, we took care to substitute in his place the beloved son M., our subdeacon and chaplain. In their presence,*] it was proposed on your behalf that the said [*Church of Saint Proculus*] ought to be subject with full right to your monastery, namely in institution, destitution, *or* investiture of the archpriest; his fealty; the obedience of him and the brothers; correction; presentation to orders; tonsure; reception of chrism; litanies; and other similar things through which full subjection is declared.

To prove this, your party produced in the midst the public instrument of the grant of B., formerly Bishop of Verona *of good memory,* which grant his successor T. held ratified and also confirmed. Concerning these matters it also introduced privileges and confirmations both of Roman Pontiffs and

of the Patriarchs of Aquileia. One of them, *namely Godfrey,* expressly stated concerning full subjection in his privilege that this had been done and completed under the testimony of R., formerly Bishop of Verona, who had been archpriest of the same church, and in it he commanded that the prior of the *Monastery* of Saint Zeno subscribe in his place, *as is contained in the public instrument*. Your party also added that in the course of time a controversy arose between B., formerly abbot of the same monastery, and *Sicherius,* Archpriest of Saint Proculus, and his brothers concerning fealty and manual obedience; they denied that they were bound only to those two things, and witnesses were produced concerning them. At length the aforesaid T., Bishop of Verona, *the arguments of either party having been heard and learned,* following a certain cardinal by whom it had been adjudged that either the archpriest should leave the church or promise obedience to the abbot, *and also believing that the witnesses who had given manifest testimony concerning fealty had deposed true things before him, himself likewise* defined it by sentence, *as we perceived to be contained in the public instrument*.

Since his sentence had been suspended by no appeal, it passed into a matter adjudged, *which your party asserted could be attacked by no remedy of law. From its pronouncement until the present times, a space of fifty years elapsed, through which it proved by witnesses and instruments that the Monastery of Saint Zeno possessed the aforesaid church with full right; that the aforesaid archpriest and his brothers, past and present, made obedience to the Abbots of Saint Zeno;* [*that they received tonsure from them and furnished them services in the other matters that we have premised; and thus it firmly asserted that the monastery was in possession until the time of the recently arisen litigation, complaining that the Church of Saint Zeno was unduly molested by the named archpriest concerning certain of the foregoing. It therefore proposed that its assertion was fortified principally by three arguments: namely, confirmation of privileges, authority of the sentence, and length of time, so that a threefold cord is dissolved with difficulty. But in opposition, the aforementioned archpriest denied that all the foregoing belonged to the monastery, responding to the foregoing arguments in this way: because the instrument of the grant of the aforesaid Bishop B. had not been drawn up by a public hand or secured by an episcopal seal and appeared prima facie suspect on account of certain erasures, it neither could nor ought to generate prejudice against his party. And thus neither could the other proofs of the abbot, such as confirmations and privileges dependent upon that donation, since, resting as upon a sandy foundation and a reed staff, and the principal not being valid, the accessories had no firmness. He said that the sentence of the aforementioned T., Bishop of Verona, did not harm his party for this reason also: because it contained neither absolution nor condemnation, since it had been pronounced under an alternative, as was the sentence of the cardinal, which, since it could not be produced in the midst, could neither profit nor harm, especially since he altogether denied that it had been pronounced. Against it, even if it had been pronounced and not suspended by appeal, an action of falsity could nevertheless be brought, since it had been rendered from the instrument of the aforesaid B., Bishop of Verona, falsified through the vice of erasure. Nor are the witnesses said from the tenor of the sentence to have deposed under oath, wherefore no faith was to be given to them. He also said that length of time or prescription could not harm his church, because the adverse party had in no way proved continuous or frequent subjection, but only that an abbacy at some time presided over the Church of Saint Proculus. Moreover, to assert his intention, the party of the aforesaid archpriest produced a public instrument of the above-mentioned B., Bishop of Verona, older than that which had been produced by the already-mentioned abbot. In it, the same bishop, when the archpriest and clerics of Saint Proculus lamentably petitioned him, firmly promised under penalty of excommunication that he would never subject the named church to another, after the archpriest and clerics of the Church of Saint Firmus had heard from the bishop that it was to be subjected. The said T., his successor, confirmed his act by his letters. They would in no way have acted contrary to these letters if the aforesaid abbot, when he obtained from them the letters of subjection that we premised, had disclosed the things that had been done.*

Therefore, he said that the rescripts of the abbot were obtained through suppression of the truth with fraud employed. The same archpriest, also wishing to show the liberty of the church, lawfully proved by the depositions of witnesses that he, together with his clerics and without the abbot's permission, had leased and withdrawn leases, and had ordered the chapels of Saints Vitus and Maximus, placing lay sisters and other persons in them; that he had freely instituted cellarers and other officials in his church; and that he had sometimes received chrism from the cathedral church and sometimes from the named monastery. But the party of the abbot, in order to refute the response of the adverse party that said the instrument of donation lacked force, produced other instruments of that time, so that from comparison with them, although they had not been drawn up by a public hand, its instrument might appear authentic, since the simplicity of the people of that time did not require such things. But the adverse party disqualified both it and the others. Furthermore, the party of the abbot said that the instruments of the adverse party, which it proposed bore the mark of falsity, even if they were true, could harm it in no respect, since they had been exhibited in the former judgment, where both these and other things that the adverse party could object—whether committed or even alleged—ought not to be heard further, lest litigations become immortal; they ought in no way to be renewed under pretext of an instrument afterward discovered. Also, a complaint of falsity, which the adverse party wished to propose, does not exceed a space of twenty years; and since forty years and more had elapsed from the time of the sentence rendered, and three years from the time litigation was moved, a complaint of falsity could no longer be brought.]

Therefore, when the aforesaid auditors had prudently and faithfully reported these things that we have premised and many similar things to us and our brothers, we, having communicated the counsel of our brothers, although perhaps one should not rely greatly upon the said instrument of donation or upon the confirmations or privileges that took cause and origin from it, nevertheless, considering that, as far as the litigants themselves are concerned, a right was made from the sentence after it passed into a matter adjudged —even if it had been rendered contrary to the right of a litigant, since it was not rendered expressly contrary to the law of a constitution, the truth of the acts prevailing over words, which is presumed to have been duly celebrated in all respects—*we establish and by sentence* define that the Archpriest of Saint Proculus who shall be in office for the time being shall furnish fealty and obedience to the Abbot of Saint Zeno. [*And because, etc. Given at Rome at Saint Peter's, on the thirteenth day before the Kalends of July, 1198.*]

> Valet sententia contra ius litigatoris lata, si sub ea infra X. dies non fuerit appellatum. Vel sic aliter: Per sententiam, a qua non fuit appellatum, potest ecclesia subiici praelato inferiori episcopo, seu ad aliam ecclesiam pertinere.
>
> Idem Abbati et Conventui S.Zenonis Veronensis.
>
> Quum inter vos [*ex una parte*] pro ecclesia vestra et *Musetum* archipresbyterum et clericos S. Proculi, *nomine ecclesiae suae*, super subiectione eiusdem ecclesiae *S. Proculi et aliis multis articulis* quaestio verteretur, +[*tibi, fili abbas, et ipsi archipresbytero in nostra praesentia constitutis venerabiles fratres nostros P. Compostellanum archiepiscopum et Odonem Terdonensem episcopum, tunc apud sedem apostolicam commorantes, dedimus auditores. Sed ipso episcopo lite pendente ab Urbis partibus recedente, dilectum filium M. subdiaconum et capellanum nostrum loco eius curavimus substituere. In quorum praesentia*] ex parte vestra fuit propositum, quod dicta ecclesia [*S. Proculi*] monasterio vestro pleno iure debet esse subiecta, videlicet in institutione, destitutione, *vel* investitura archipresbyteri et eiusdem fidelitate, ipsius et fratrum obedientia, correctione, repraesentatione ad ordines, tonsuratione, susceptione chrismatis, letaniis et aliis similibus, per quae plena subiectio declaratur. Ad quod probandum instrumentum publicum concessionis *bonae memoriae* B. quondam Veronensis episcopi pars vestra in medium producebat, quam

concessionem successor eius T. ratam habuit, et etiam confirmavit. Super his quoque tam Romanorum Pontificum, quam patriarcharum Aquilegiensium privilegia et confirmationes induxit, quorum unus, *scilicet Godefridus*, de subiectione plenaria in privilegio suo evidenter expressit, quod sub testimonio R. quondam Veronensis episcopi, qui eiusdem ecclesiae archipresbyter exstitit, factum fuerat et completum, et in eo a priore *monasterii* sancti Zenonis mandavit sua vice subscribi, *sicut in instrumento publico continetur*. Adiecit etiam pars vestra, quod inter B. quondam abbatem eiusdem monasterii, et *Sicherium* sancti Proculi archipresbyterum et fratres ipsius procedente tempore de fidelitate et obedientia manuali controversia fuit exorta, ad quae duo illi se duntaxat teneri negabant, et super his testes producti fuerunt. Tandem praefatus T. Veronensis episcopus, *rationibus utriusque partis auditis et cognitis*, quendam cardinalem sequens, a quo idem fuerat iudicatum, quod vel archipresbyter dimitteret ecclesiam, aut abbati obedientiam repromitteret, *credens etiam, quod testes vera deposuerint coram eo, qui de fidelitate manifestum protulerant testimonium, idem et ipse* sententialiter diffinivit, *sicut in instrumento publico perspeximus contineri*. Cuius sententia, quum nulla fuerit appellatione suspensa, in rem transiit iudicatam, *quam asserebat nullo posse iuris remedio attentari, a cuius prolatione usque ad tempora ista L. annorum spatium est transactum, per quos, quod monasterium S. Zenonis praefatam ecclesiam pleno iure possederit, et quod praedictus archipresbyter et fratres eius praeteriti et praesentes obedientiam abbatibus S. Zenonis fecerint,* [*tonsuram ab ipsis receperint, et in aliis, quae praemisimus, obsequia sibi praestiterint, per testes et instrumenta probavit, et sic usque ad tempus litis nuper exortae monasterium in possessione fuisse firmiter asserebat, querens, ecclesiam S. Zenonis a nominato archipresbytero super quibusdam de praemissis indebite molestari. Tribus ergo praecipue rationibus suam assertionem proponebat esse munitum, videlicet per privilegiorum confirmationem, per auctoritatem sententiae et per temporis longaevitatem, ut quasi funiculus triplex difficile dissolvatur. Ex opposito vero memoratus archipresbyter praedicta omnia monasterio competere denegabat, praemissis rationibus sic respondens, quod, quum instrumentum concessionis praedicti B. episcopi non fuerit publica manu confectum, nec sigillo episcopali munitum, et propter rasuras quasdam suspectum prima facie videbatur, parti suae nec poterat nec debebat praeiudicium generare, et sic nec ceterae probationes abbatis, ut confirmationes et privilegia, ex ipsa donatione pendentia, quum quasi arenoso fundamento et arundineo baculo niterentur, et principali, non valente nullam haberent accessoria firmitatem. Quod etiam parti suae sententia memorati T. Veronensis episcopi non noceret, illa ratione dicebat, quia non continebat absolutionem vel condemnationem, quum sub alternatione prolata fuisset, sicut et sententia cardinalis, quae, quum in medium produci non posset, nec prodesse poterat nec obesse, praesertim quum et prolatam esse penitus denegaret; contra quam, etiamsi prolata fuisset, nec appellatione suspensa, poterat tamen agi de falso, quum ex instrumento praedicti B. Veronensis episcopi per vitium rasurae falsato lata fuisset. Sed nec testes ex tenore sententiae dicuntur deposuisse iurati, quare nulla fides eis fuerat adhibenda. Longaevitatem etiam temporis seu praescriptionem ecclesiae suae non posse nocere dicebat, quia pars adversa nulla ratione probaverat subiectionem continuam vel frequentem, sed quod ecclesiae S. Proculi quandoque praefuit abbatia. Ceterum ad assertionem intentionis suae pars archipresbyteri praedicti supra dicti B. Veronensis episcopi publicum protulit instrumentum antiquius illo, quod fuerat a iam dicto abbate productum, in quo idem episcopus lacrimabiliter postulantibus archipresbytero et clericis S. Proculi sub poena excommunicationis firmiter repromisit, quod nunquam alii subiiceret ecclesiam nominatam, quam ecclesiae S. Firmi archipresbyter et clerici audierant ab episcopo supponendam. Cuius factum dictus T. successor illius suis literis confirmavit. Contra quas nulla ratione venissent, si praefatus abbas, quum subiectionis ab eis literas, de quibus praemisimus, impetravit, quae gesta fuerant expressisset. Ideoque abbatis rescripta per suppressionem veritatis adhibita fraude dicebat obtenta. Idem etiam archipresbyter libertatem ecclesiae volens ostendere, quod ipse cum clericis suis sine abbatis licentia locaverit et dislocaverit, et capellas sanctorum Viti et Maximi ordinaverit, conversas et alias in eis ponendo personas, et quod canevarios et alias officiales in ecclesia sua libere instituerit, et ab ecclesia cathedrali quandoque chrisma receperit, quandoque a monasterio nominato, depositionibus testium legitime comprobavit. Verum pars abbatis, ut responsionem partis adversae elideret, quae instrumentum donationis viribus carere dicebat, illius temporis alia instrumenta produxit, ut ex eorum collatione, quum non essent publica manu confecta, instrumentum suum authenticum appareret, quum simplicitas hominum illius temporis talia non requireret. Sed pars adversa et illud et alia reprobabat. Porro*

instrumenta partis adversae, quae notam falsitatis habere pars proponebat abbatis, etiam si vera essent, in nullo sibi posse nocere dicebat, quum in priori iudicio fuissent exhibita, ubi et haec et alia, quae posset obiicere pars adversa, sive commissa fuerint vel etiam allegata, audiri ulterius non deberent, ne lites fierent immortales, quae praetextu instrumenti post reperti non debent ullatenus instaurari. Querela quoque falsi, quam volebat proponere pars adversa, viginti annorum spatium non excedit, et quum a tempore latae sententiae XL. anni et amplius, a tempore vero litis motae triennium sit elapsum, querela falsi non poterat ulterius intentari.] *Quum itaque haec, quae praemisimus, et similia multa praefati auditores nobis et fratribus nostris prudenter et fideliter retulissent, nos, communicato fratrum nostrorum consilio,* Quamvis forte dicto instrumento donationis non sit plurimum innitendum, nec confirmationibus, vel privilegiis, quae de ipso causam et originem acceperunt, attendentes tamen, quod, quantum ad litigantes ipsos, ius ex sententia factum fuit, postquam in rem transiit iudicatam, etiamsi contra ius litigatoris lata fuisset, quum contra ius constitutionis expresse lata non fuerit, veritate gestorum sermonibus praevalente, quae praesumitur rite per omnia celebrata, *statuimus, et per sententiam* diffinimus, ut archipresbyter S. Proculi, qui pro tempore fuerit, fidelitatem et obedientiam praestet abbati sancti Zenonis. [*Et quia etc. Datum Romae ap. S. Petrum XIII. Kal. Iul.* 1198.]

Chapter XIV

Latin source headnote: A sentence rendered against a claimant, containing nothing iniquitous, is to be confirmed in a cause of appeal, although through the attestations it appears that proof was made for the claimant, provided that presumptions concur for the sentence. These are in the letter here, and according to this understanding the case here is very singular.

The same, to the Canons of Novara.

The cause being conducted between you and *the beloved son* A. *Siccus,* a cleric, concerning a prebend of the Church of Novara *that formerly belonged to our venerable brother the Bishop of Novara, with which the same Albert said that he had been invested by a ring by Pope C., our predecessor of good memory, after it had been examined before us for a rather long time, at length,* with the consent of the parties *and appeal removed,* we committed it to *our venerable brother* the Bishop of Lodi to be terminated. He, *as we learned from his letters, having more fully understood the arguments of either party,* promulgated a definitive sentence for you against the said A., from which an appeal was made to our hearing. *Therefore, when the said Albert and Masters I. and V., proctors of your church, were established in our presence on this account, the same Albert endeavored in many ways to prove that the sentence itself had been rendered iniquitously and for this reason ought not undeservedly to be retracted, while your said proctors defended the sentence and petitioned that it be fortified by the protection of our confirmation. We therefore, having heard the things proposed on either side and understood them more diligently, having held* [*also*] *a diligent deliberation with our brothers concerning this,* although it had been proposed on behalf of A. himself that the said bishop promulgated the sentence contrary to the form of our mandate, as he endeavored to prove through the attestations, nevertheless, because the mind of a judge is not always inclined to one kind of proof; because the sentence itself contained nothing iniquitous; because the cause had been committed to the same judge by the common assent of the parties *with appeal removed;* and because he had been requested by either party to render sentence after examination of the cause, we took care to confirm the sentence itself *by apostolic authority and by the counsel of our brothers, and through our venerable brother the Bishop of Porto we defined that it was to be observed* [*etc. Given at the Lateran, on the sixth day before the Ides of December, 1198*.]

Sententia contra actorem lata, nihil iniqui continens, venit in causa appellationis confirmanda, licet per attestationes videatur pro actore fuisse probatum, dummodo pro sententia concurrant praesumptiones. De quibus hic in litera, et secundum hunc intellectum est hic casus singularis valde.

Idem canonicis Novariensibus.

Causam, quae inter vos et *dilectum filium* A. *Siccum* clericum super praebenda Novariensis ecclesiae vertebatur, *quae quondam fuit venerabilis fratris nostri Novariensis episcopi, de qua se dicebat idem Albertus per bonae memoriae C. Papam praedecessorem nostrum fuisse per annulum investitum, coram nobis diutius ventilatam venerabili tandem fratri nostro* Laudensi episcopo de consensu partium *appellatione remota* commisimus terminandam, qui, *sicut ex literis ipsius accepimus, utriusque rationibus plenius intellectis*, pro vobis contra dictum A. diffinitivam sententiam promulgavit, a qua fuit ad nostram audientiam appellatum. +*Dicto igitur Alberto et magistro I. et V. procuratoribus ecclesiae vestrae in nostra propter hoc praesentia constitutis, idem Albertus probare multipliciter nitebatur, sententiam ipsam inique latam fuisse, ac propter hoc debere non immerito retractari, dictis procuratoribus vestris defendentibus sententiam et eam petentibus confirmationis nostrae praesidio communiri. Nos igitur, auditis quae fuerant hinc inde proposita et diligentius intellectis, habito* [*etiam*] *cum fratribus nostris super hoc diligenti tractatu*, Licet ex parte ipsius A. fuisset propositum, quod contra formam mandati nostri dictus episcopus sententiam promulgavit, sicut per attestationes nitebatur probare, quia tamen iudicis animus non semper ad unam probationis speciem inclinatur, et ipsa sententia nihil continebat iniquum, et eidem iudici de communi partium assensu fuerat causa *appellatione remota* commissa, qui, ut sententiam ferret post examinationem causae, ab utraque parte fuerat requisitus, sententiam ipsam *de fratrum nostrorum consilio auctoritate apostolica* curavimus confirmare, *ac eam per venerabilem fratrem nostrum Portuensem episcopum diffinivimus observandam* [*etc. Dat. Lat. VI. Id. Dec.* 1198.]

Chapter XV

Latin source headnote: If a sentence commands something to be done at a certain term, the period of ten days for appealing runs from the time of the sentence, not from the day when the term ended. This is the first point. The period of four months that is granted by law to those condemned in a personal action can for cause be shortened by the judge, and one who willingly receives the shortened term cannot appeal after ten days, even though it is not established that the judge shortened the term for cause. This is the second. An appeal is not made from execution of a sentence unless the manner is exceeded in execution. This is the third point, extracting the core of the chapter according to Panormitanus.

The same, to the Bishop of Constance.

As to the consultation—(*And below:*) Because *you similarly* asked us whether deference is to be given to the appeal of a cleric who, receiving without contradiction a purgation prescribed to him by sentence and a suitable term for receiving it—say twenty days or more—and coming on the day afterward appeals, expressing no cause for appealing, although there is no place except for undertaking the purgation and executing the sentence, and more than ten days is said to have elapsed from its pronouncement and the purgation enjoined, we have determined to respond in this way: since after a space of ten days a sentence passes into the authority of a matter adjudged, one who does not have recourse to the aid of appeal within that time has denied himself an approach to appeal, since through this he appears by interpretation of law to have obeyed the sentence rendered, especially where no cause for appealing is rendered. Nor is it fitting on that account that execution of the sentence itself be retarded, although a period of four months is regularly established for doing this, because it can sometimes be shortened by the person sitting in the middle and also extended. And it can and ought to be imputed to one who from the beginning willingly receives a shorter term, since from this he appears to have contemned a greater benefit. Hence such a person will not be

heard when appealing, unless perhaps the canonical manner of execution is exceeded against him. [*Given at the Lateran, on the third day before the Ides of January, 1199.*]

> Si sententia praecipit aliquid fieri ad certum terminum, tempus decendii ad appellandum currit a tempore sententiae, non autem a die finiti termini. Hoc primo. Quadrimestre tempus, quod a lege datur condemnatis in personali, potest a iudice ex causa arctari, et sponte terminum arctatum recipiens non potest post decendium appellare, licet non constet, iudicem ex causa terminum abbreviasse. Hoc secundo. Ab exsecutione sententiae non appellatur, nisi in exsecutione modus excedatur. Hoc tertio d. evacuando medullam cap. secundum Panorm.
>
> Idem Constantiensi Episcopo.
>
> Quod ad consultationem (*Et infra:*) Quia *a nobis similiter* postulasti, utrum appellationi sit clerici deferendum, qui purgationem indictam sibi per sententiam, et ad ipsius receptionem terminum competentem, puta viginti dies vel amplius, sine contradictione recipiens, et ad diem veniens consequenter appellat, causam non exprimens appellandi, nec sit locus nisi suscipiendae purgationi et exsecutioni sententiae, a cuius prolatione et purgatione iniuncta ultra decendium dicitur effluxisse, taliter duximus respondendum, quod, quum post decem dierum spatium sententia in auctoritatem rei transeat iudicatae, qui ad provocationis subsidium infra id temporis non recurrit, appellandi sibi aditum denegavit, quum per hoc videatur per interpretationem iuris latae sententiae paruisse, praesertim ubi causa non redditur appellandi. Sed nec exsecutionem ipsius sententiae ideo convenit retardari, licet ad hoc agendum quadrimestre tempus regulariter sit statutum, quia id arctari potest nonnunquam a sedente in medio, et etiam prorogari. Et qui ab initio sponte recipit terminum breviorem, imputari sibi potest et debet, quum ex hoc videatur amplius beneficium contempsisse. Unde talis non audietur appellans: nisi forte adversus eum modus exsecutionis canonicus excedatur. [*Dat. Lat. III. Id. Ian.* 1199.]

Chapter XVI

Latin source headnote: A sentence can be proved through witnesses, although they do not depose concerning the causes that customarily move the judge to give sentence.

The same, to the Dean, Chancellor, and C., Canon of London.

As you intimated to us *by your letters,* when the cause being conducted between H., a subdeacon, and B., priest *of Saint Clement,* concerning five measures of grain to be paid to the subdeacon himself each year had been committed to you *by our delegation,* and, *the parties being established in your presence,* the aforesaid subdeacon petitioned that restitution be made to him, the adversary responded that he was not bound to this, since on another occasion he had been convened *before a judge* concerning this and absolved by sentence, which he wished to show through the testimony of two *priests.* From their depositions it was established *to you* that Master A., by authority of *our venerable brother* the Bishop of London, absolved him *by judgment* from the claim of the aforementioned subdeacon. But because their testimony had been put forward as if naked, since they said that they *knew* nothing concerning the causes that customarily move a judge to pronounce sentence, *there was disagreement among the learned in law from whom you sought counsel, some asserting that such testimony was not valid and others thinking that it was. Hence in this ambiguity,* you determined that the Apostolic See should be consulted as to what is to be held. But since in very many places in which there is an abundance of prudent persons, the custom exists that all things that move the judge are not expressed in pronouncing sentences, we respond to you in this way: since from the depositions of the aforesaid witnesses it was established *to you* that a

sentence *was* pronounced by his judge, it ought to be presumed, on account of judicial authority, that all things proceeded lawfully. [*Given at the Lateran, on the second day before the Kalends of April, 1199.*]

> Sententia potest probari per testes; licet non deponant de causis, quae solent iudicem movere ad sententiandum.
>
> Idem Decano, Cancellario et C. Canonico Lundoniensibus.
>
> Sicut nobis *vestris literis* intimastis, quum causa, quae inter H. subdiaconum et B. presbyterum *sancti Clementis* super quinque frumenti modiis vertebatur, ipsi subdiacono per annos singulos exsolvendis, *ex delegatione nostra* vobis commissa fuisset, et *partibus in vestra praesentia constitutis* restitutionem sibi fieri postularet subdiaconus supradictus, adversarius se ad hoc non teneri respondit, quum alia vice super hoc *coram iudice* conventus fuerit, et sententialiter absolutus, quod ostendere voluit duorum testimonio *sacerdotum*, ex quorum depositione *vobis* constitit, quod magister A. auctoritate *venerabilis fratris nostri* episcopi Lundunensis ipsum *per iudicium* absolvit ab impetitione subdiaconi memorati. Verum quia testimonium ipsorum quasi nude prolatum fuerat, quum de causis, quae iudicem movere solent ad sententiam proferendam, nihil *se scire* dixerint, *variatum fuit inter iuris peritos, a quibus consilium postulastis, aliis asserentibus tale testimonium non valere, aliis sentientibus, quod valeret. Unde in hac ambiguitate* Quid tenendum sit, sedem duxistis apostolicam consulendam. Quum autem in plerisque locis, in quibus copia prudentum habetur, id moris exsistat, quod omnia, quae iudicem movent, non exprimantur in sententiis proferendis, vobis taliter respondemus, quod, quum ex depositionibus testium praedictorum constiterit *vobis*, sententiam a iudice suo *fuisse* prolatam, propter auctoritatem iudiciariam praesumi debet, omnia legitime processisse. [*Dat. Lat. II. Kal. Apr. *1199.]

Chapter XVII

Latin source headnote: Not only a defeated defendant but also a third party whose interest is involved can appeal from the same sentence; and the sentence can be confirmed as regards a defendant showing nothing of his right, but invalidated with respect to a third party reasonably appealing.

The same, to the Bishop of Astorga and the Abbot of Saint Isidore of León.

When, concerning the controversy being conducted between *our venerable brother* the Bishop of Orense *on one side* and the Monastery of Celanova on the other *concerning its status,* various sentences had been rendered for the *same* bishop, *O., archdeacon and messenger of our venerable brother* the Bishop of Oviedo, *approaching the Apostolic See,* complained that through them the Church of Oviedo was gravely injured, to which he proposed that *that* monastery belonged. (*And below:*) *Therefore, after the aforesaid cardinals faithfully reported these and similar things to us and our brothers, because it was established to us through the letters of the legates that two had proceeded when the third was unable to participate, as we also understood from the assertion of that third person established at the Apostolic See; and against their sentence,* since nothing reasonable was proposed and shown on behalf of the monastery why the sentence promulgated for the bishop ought to have been invalidated, we determined, *after communicating the counsel of our brothers,* that it was to be confirmed as regards *the monastery itself, imposing perpetual silence upon it in this part. But because we could not elicit the truth concerning the appeal of the Church of Oviedo, we have determined to commit the cause itself to your examination; through apostolic writings* we command that, if it is established that an appeal was reasonably interposed on behalf of the Church of Oviedo and that its messenger was sent to prosecute it within the lawful time, execution of the sentence shall be deferred, lest the Church of Oviedo incur detriment concerning *the same* possession. Otherwise, *it* shall be put into execution, as

law postulates, without prejudice to the Church of Oviedo, to which the foregoing does not prejudice its ability to obtain its right, since a matter transacted between some persons does not regularly harm others according to canonical and civil constitutions.

> Ab eadem sententia potest appellare nedum reus victus, sed etiam tertius, cuius interest; et poterit sententia quoad reum nil de suo iure docentem confirmari, respectu vero tertii rationabiliter appellantis infirmari.
>
> Idem Astoricensi Episcopo, et Abbati sancti Isidori Legionensis.
>
> Quum super controversia, quae inter *venerabilem fratrem nostrum* Auriensem episcopum *ex parte una*, et monasterium Cellae novae super statu ipsius *ex altera* vertebatur, pro *ipso* episcopo diversae sententiae latae fuissent, *O. archidiaconus et nuncius venerabilis fratris nostri* Ovetensis episcopi *ad apostolicam sedem accedens*, per eas Ovetensem ecclesiam laesam graviter querebatur, ad quam *illud* proponebat monasterium pertinere. (*Et infra:*) *Postquam igitur haec et similia nobis et fratribus nostris praefati cardinales fideliter retulerunt, quia constitit nobis per legatorum literas, a duobus, quum tertius interesse nequiverit, sicut ex ipsius etiam assertione tenuimus apud sedem apostolicam constituti, fuisse processum, et contra ipsorum sententiam* Quum ex parte monasterii nihil rationabile fuerit propositum et ostensum, quare sententia pro episcopo promulgata debuerit irritari, eam, *communicato fratrum nostrorum consilio*, quantum ad monasterium *ipsum* duximus confirmandam, *+sibi perpetuum hac in parte silentium imponentes. Ceterum, quia super appellatione Ovetensis ecclesiae non potuimus elicere veritatem, causam ipsam vestro duximus examini committendam; per apostolica scripta* Mandamus, quatenus, si constiterit, appellationem pro ecclesia Ovetensi rationabiliter interpositam, et ad eam prosequendam nuncium eius infra tempus legitimum destinatum fuisse, exsecutio sententiae differatur, ne circa possessionem *eandem* Ovetensis ecclesia detrimentum incurrat. Alioquin* ea*, sicut ius postulat, exsecutioni absque Ovetensis ecclesiae praeiudicio demandetur, cui quae praemissa sunt non praeiudicant, quo minus suam valeat consequi rationem, quum res inter alios acta non noceat regulariter aliis iuxta constitutiones canonicas et civiles.

Chapter XVIII

Latin source headnote: If one cited for sentence did not appear for a lawful cause unknown to the judge, the sentence rendered in his absence holds, but is retracted when he proves the lawful cause of his absence. But if the impediment is proved not fully, the sentence is not retracted unless he first demonstrates its injustice. This it says, and this is the true and noteworthy understanding according to Panormitanus, which other doctors did not elucidate so clearly.

The same.

When Berthold, a knight, had obligated his manor *or estate in Westhusen formerly* to P., a knight, as a pledge, after that P. had been taken from the midst, A., his nephew, who succeeded him, *of the diocese of Strasbourg,* while the church of the same place *in Westhusen* was vacant, asserting that the right of patronage had passed to him with the whole estate, presented D., a cleric *of the same diocese, at the entreaties of C. of good memory, Bishop of Strasbourg,* to the archdeacon of the same place for the aforesaid church; and the archdeacon, with the consent *and will* of the bishop, instituted him in it, causing him to be inducted into corporal possession. But the aforesaid B., lord of the estate, *asserting that he had expressly retained the right of patronage for himself when he had obligated the estate to the creditor,* presented T., a priest, to the aforementioned bishop, but the bishop did not admit him, *at the judgment of his own will.* But when *the aforesaid bishop had entered the way of all flesh,* the said T. lodged a question against the aforementioned D. concerning the aforesaid church *before the substitute of the bishop-elect,* and the

Bishop of Reims, legate of the Apostolic See, delegated the business to judges. When afterward they had remitted to him the attestations received on both sides through the parties, and, while the aforesaid D. approached with his attestations, the said T. took no care to appear either through himself or through a suitable representative, the bishop, after carefully inspecting the attestations of the aforementioned cleric, *as we perceived to be contained in his letters,* rendered him absolved by sentence from the impetition of the often-mentioned T., imposing silence upon that T. concerning the aforementioned church.

Afterward, however, that priest, approaching the presence of *the same* archbishop *with his attestations* within a short time, alleged a just cause of absence. The archbishop, by his letters, commanded the aforesaid Bishop-elect of Strasbourg and *the beloved sons,* the Abbots of Haute-Seille and Tudebernon, that, if he showed a just cause of absence before them, they should declare the aforesaid sentence to be of no validity and, *after carefully inspecting the attestations of both parties,* should terminate *the cause itself* with its due end; otherwise they should cause the sentence *that he had rendered firmly* to be observed. But when the said bishop-elect and the aforesaid abbots committed their places to others, those subdelegates received witnesses concerning the aforesaid article, from whom the said cleric sent forth the voice of appeal to us.

Although, *when each party had approached our presence with the attestations sealed with the seals of the aforesaid judges,* the priest had proved a just cause of absence less than sufficiently, nevertheless, lest opinion prejudice truth, *wishing to proceed in truth, since Christ is truth,* we granted to them as auditor *our beloved son* R., cardinal deacon *of Santa Maria in Domnica.* When he had fully and faithfully reported to us all things *that had been proposed before him, we, after carefully inspecting the attestations of both parties and the sentence of the aforesaid bishop,* found that *the same* archbishop had been circumvented by the tenor of his sentence: both because it was contained in it that it had been sufficiently proved through the attestations of that cleric that the aforesaid A. had been in possession of the right of patronage when he presented the same *Bruno* to the aforesaid church, although through those attestations nothing else *concerning this* had been shown except that, for a certain right customarily rendered from that church to the patrons, the aforesaid P. and A. received ten solidi annually, *which the parish priest of the same place nevertheless always resisted providing*; and also because it is said in the same sentence that the said T. *utterly* failed in proof, although it appears *manifestly* through his attestations that he sufficiently proved his intention; and also because he did not receive the cause sufficiently instructed, since he received the attestations of only one party, which contributed little to the cause.

Hence we have determined that the sentence itself should be invalidated, adjudging the aforesaid church to the aforementioned T., since it has been established to us evidently through the attestations that he was presented to the often-mentioned church by the true patron, *imposing perpetual silence upon the adversary concerning it; wherefore, through apostolic writings,* [*by way of precept,*] *we command your discretion that, supported by our authority, you cause our sentence to be observed inviolably, inducting the aforesaid T. into corporal possession of the same church and protecting him after induction.* [*Contradictors, etc. Given at Rome, at Saint Peter's, on the Ides of March, 1205.*]

> Si citatus ad sententiam ex legitima causa iudici ignota non comparuit, tenet sententia eo absente lata, sed retractatur eo probante legitimam absentiae causam. Si vero impedimentum probatur non plene, non retractatur sententia, nisi prius doceat de ipsius iniquitate. H. d. et est verus et not. intellectus secundum Panorm., quem alii doctores non dare dilucidarunt.

Idem.

Quum Bertholdus miles curiam suam *sive fundum in Westhusen quondam* P. militi pignori obligasset, eodem P. sublato de medio A. nepos eius qui, successit eidem, *Argentinensis dioeceseos*, vacante ecclesia eiusdem loci *in Westhusen*, asserens, quod ius patronatus cum universitate transisset in eum, D. clericum *eiusdem dioecesis ad preces bonae memoriae C. Argentinensis episcopi* eiusdem loci archidiacono ad supra dictam ecclesiam praesentavit, qui de consensu *et voluntate* episcopi ipsum instituit in eadem, in possessionem eum induci faciens corporalem. Praedictus vero B. dominus fundi, *asserens, quod sibi retinuerat ius patronatus expresse, quum fundum obligaverat creditori*, T. sacerdotem memorato episcopo praesentavit, sed ipsum episcopus non admisit *pro suae arbitrio voluntatis*. Quum autem *praefatus episcopus viam fuisset universae carnis ingressus*, dictus T. adversus memoratum D. super praedicta ecclesia *coram substituto electo* deposuerit quaestionem, Remensis episcopus apostolicae sedis legatus iudicibus negotium delegavit. Ad quem quum attestationes utrinque receptas per partes postmodum remisissent, et, praefato D. cum suis attestationibus accedente, dictus T. nec per se, nec per responsalem idoneum comparere curaret, ipse attestationibus, *sicut in ipsius literis perspeximus contineri, diligenter* inspectis clerici memorati, ipsum ab impetitione saepe dicti T. sententialiter reddidit absolutum, eidem T. imponens silentium super ecclesia memorata. Postmodum autem idem presbyter ad *eiusdem* archiepiscopi praesentiam *cum attestationibus suis* infra breve tempus accedens, iustam causam absentiae allegavit; archiepiscopus vero, *praedicto* Argentino electo et *dilectis filiis* Altae silvae et Tudebernon abbatibus dedit suis literis in mandatis, ut, si iustam absentiae causam ille ostenderet coram eis, praedictam sententiam nullius decernerent esse valoris, et *utriusque partis attestationibus diligenter inspectis* causam *ipsam* fine debito terminarent; alioquin facerent sententiam, *quam ipse tulerat, firmiter* observari. Verum dicto electo et praefatis abbatibus committentibus aliis vices suas, ipsi subdelegati testes super praedicto articulo receperunt, a quibus dictus clericus vocem ad nos appellationis emisit. Licet autem, *quum utraque pars cum attestationibus signatis sigillis iudicum praedictorum ad nostram praesentiam accessisset*, iustam causam absentiae minus sufficienter presbyter probavisset, ne tamen praeiudicaret opinio veritati, *volentes in veritate procedere, quum Christus sit veritas, dilectum filium* R. *S. Mariae in Dominica* diaconum cardinalem eis concessimus auditorem. Qui quum nobis omnia, *quae coram ipso proposita fuerant, plene ac* fideliter retulisset, *nos, utriusque partis attestationibus ac sententia praefati episcopi diligenter inspectis, quia eundem* ex tenore ipsius sententiae archiepiscopum invenimus circumventum, tum quia continebatur in illa, quod per attestationes ipsius clerici fuerat sufficienter probatum, quod praefatus A. in possessione iuris patronatus exstiterat, quum eundem *Brunonem* ad praedictam ecclesiam praesentavit; quum tamen per attestationes illas nihil aliud *super hoc* ostensum fuerit, nisi quod pro quodam iure, quod de illa ecclesia consuevit exhiberi patronis, praedicti P. et A. annuatim decem solidos acceperunt, *quos tamen plebanus eiusdem loci semper contradicebat praebere*; tum etiam, quia in eadem sententia dicitur, quod dictus T. *penitus* in probatione defecit, quum per attestationes suas appareat *manifeste*, ipsum suam intentionem sufficienter probasse; tum etiam quia causam non recepit sufficienter instructam, quum unius tantum partis attestationes receperit, quae parum faciebant ad causam. Unde sententiam ipsam duximus irritandam, memorato T. adiudicantes ecclesiam supra dictam, quum per attestationes nobis constiterit evidenter, ipsum a vero patrono fuisse ad saepe dictam ecclesiam praesentatum, *adversario super ea perpetuum silentium imponentes quocirca discretioni vestrae per apostolica scripta* [*praecipiendo*] *mandamus, quatenus auctoritate nostra suffulti sententiam nostram faciatis inviolabiliter observari praefatum T. in corporalem possessionem eiusdem ecclesiae inducentes et tuentes inductum*. [*Contradictores etc. Dat. Rom. ap. S. Petr. Id. Mart.* 1205.]

Chapter XIX

Latin source headnote: The Pope observes the order of law in the sentences that he pronounces.

The same.

In causes that are decided by the judgment of the Supreme Pontiff, both the order of law and the force of equity are to be subtly observed, since in similar cases others are bound to judge similarly, unless perhaps, upon considering a cause of necessity and utility, he has determined by way of dispensation that something is to be established. [*Therefore, some time ago, etc. (cf. c. 22, On Election, I. 6.) Given at the Lateran, on the fifth day before the Ides of April, 1203.*]

> Papa in sententiis, quas profert, ordinem iuris servat.
>
> Idem.
>
> In causis, quae summi Pontificis iudicio deciduntur, et ordo iuris et vigor aequitatis est subtiliter observandus, quum in similibus casibus ceteri teneantur similiter iudicare, nisi forte, quum aliquid causa necessitatis et utilitatis inspecta dispensative duxerit statuendum. [*Dudum ergo etc.* (*cf. c. *22. *de elect. I. 6.*) *Dat. Lat. V. Id. Apr.* 1203.]

Chapter XX

Latin source headnote: A second sentence, rendered in a different instance contrary to the first, holds by mere law; nor ought it to be infringed, even if it is unjust, since no appeal was taken from it —especially if the first sentence was not shown to the second judges. This it says, according to Panormitanus.

The same, to the Convent of Saint Leodius.

A question was *some time ago* agitated between the Monastery of Saint Audoen of Rouen and yours concerning the manner of electing an abbot in *your said* monastery, [*on account of which, when the parties approached the Apostolic See, we gave them as auditors our venerable brother Octavian, Bishop of Ostia, and our beloved son G., cardinal deacon of San Giorgio in Velabro. In their presence it was proposed on behalf of your monastery that, when that abbey was formerly vacant of a pastor, you, coming together as one, assumed for yourselves as abbot by canonical election Richard, a monk and religious man, from the bosom of that church, according to the Rule of blessed Benedict and the liberty of the church, also strengthened by apostolic privilege, presenting that abbot-elect to the diocesan bishop for obtaining the office of benediction. The bishop, being prohibited by the beloved son Geoffrey, abbot of the aforesaid Monastery of Saint Audoen, did not grant what had been requested. Therefore, seeing that your purpose was being retarded, lest anything be done to the prejudice of your monastery, you appealed to the Apostolic See, from which afterward, through your messengers, you obtained letters of commission to our venerable brother Henry, bishop, and the beloved sons Henry, cantor, and R., archdeacon, of Bayeux, under this tenor: that, the parties having been called to their presence, after inspecting the privilege and all the reasons that they should determine to propose on each side, they should terminate the cause itself, with appeal removed, by concord or judgment, notwithstanding any letters obtained from the Apostolic See without mention being made of these. But if all could not participate, the bishop with one of the others should nevertheless execute these things.

When, therefore, the parties, established in the presence of the aforesaid bishop and precentor of Bayeux—their colleague the archdeacon being excused for a certain and necessary cause—could not be recalled to concord, your party wished to produce witnesses greater than every exception to prove

that the election had been canonically celebrated according to the tenor of the privilege of Pope Lucius of good memory, our predecessor, granted concerning the election to be made. R., a monk and proctor of the said Abbot of Saint Audoen, presented to them the open letters of our venerable brother the Archbishop of Rouen, the Bishop of Évreux, and the beloved son R., Archdeacon of Évreux, prohibiting them from proceeding in the cause on the ground that they said they had received an apostolic mandate concerning discussion of the same cause. But because the tenor of the mandate had not been inserted in those letters, and the proctor, although more often required, was unwilling to show the original or rescript, setting their prohibition aside, they decreed together more than once that the proof you offered concerning the canonical election was to be admitted.

But the aforesaid proctor, striving to oppose the proof, said that in the preceding election the Monastery of Saint Audoen had been despoiled of possession of a certain right of its own, which it had obtained without disturbance up to the creation of the last abbot of that place, who had been petitioned and elected from the congregation of Saint Audoen by the monks of La Croix. Therefore, when he wished to prove this, they received your witnesses concerning the canonical election, but those of the proctor concerning the alleged spoliation. When, after diligent examination, they were preparing to publish their depositions, at the instance of the said proctor they assigned another day for a second production of witnesses, with which he said that he would be content.

And when the parties came together on the day and at the place, the proctor, being required by the judges themselves concerning the witnesses to be produced, as though renouncing the production of witnesses, delivered to them letters of the beloved sons the Abbots of Bellebec and Mortemer and the Prior of Bellebec, prohibiting them from proceeding in the cause. For they said that they had undertaken a mandate prejudicial to the first, the tenor of which they joined to their letters. But when the first judges, after diligently inspecting the rescript, recognized that it had been obtained through suggestion of falsehood and concealment of the truth—since in the second no mention was made of the apostolic privilege, as in the first, from which the election drew its principal firmness, and the judges themselves were said in the second letters to be suspect to the monks of Saint Audoen for a certain reason, which the proctor could not show—after alleging certain sufficiently frivolous causes of suspicion, he withdrew contumaciously from them without waiting for any interlocutory decision.

Therefore, considering that a recusation of this kind and the allegation of the said suspension had been late and superfluous, especially after the suit had been commenced and witnesses produced on each side—an allegation that perhaps could have had some color before entry into the suit—and also considering that the same mandate had made mention of the former not fully but perfunctorily, they were unwilling to acquiesce in the prohibition of the later judges, just as they had not in that of the former, wishing rather to obey apostolic commands than to exhibit undue reverence to the mandates of inferiors. Many learned in law who were present agreed with them that, since the often-mentioned Abbot of Saint Audoen first obtained letters to the former judges, of which no mention was made in the second, he ought to lack the benefit of both; or, if one mandate ought to prevail over the other, the first was to be obeyed rather than the second, in which there was no mention of the former, since neither did the first, obtained by the same Abbot of Saint Audoen, make mention of that which the other party had obtained.

Moved, therefore, by the foregoing reasons and using the counsel of discreet men, and the attestations of the parties also having been published and their reasons and allegations subtly understood, by authority of our mandate they held the aforesaid election ratified and firm, imposing perpetual silence upon the abbot and monks of Saint Audoen concerning that molestation of the abbot-elect. They also condemned them in expenses of one hundred Angevin pounds, although the other party wished, after giving oath, to declare concerning two hundred. Your party therefore petitioned us that the act of the delegated judges be confirmed and the office of benediction be imparted to the abbot-elect.

But the other party proposed in opposition that your often-mentioned monastery had from the beginning of its construction been made subject to the other by consent of the diocesan bishop to such an extent that no one was to be assumed there as abbot from anywhere other than the Monastery of Saint Audoen, provided that someone suitable for this could be found in it. The correction of the monks and of the Abbot of La Croix also, if he were negligent, was reserved to the Abbots of Saint Audoen, and thus it had obtained from times so long that no memory of them exists. And this institution and the use itself, indeed, are alleged to have been confirmed by Pope Alexander of good memory, our predecessor. Hence, when at one time the monks of Saint Leufredus had elected a certain abbot from somewhere other than the bosom of Saint Audoen, the Abbot of Saint Audoen, learning these things, appealed; and through a sentence of delegates of the Apostolic See the abbot-elect was obliged to renounce the abbey. When, after making profession to the Abbot of Saint Audoen, he had resided for several days in that monastery, through the abbot's grant he was given as abbot to the aforesaid monks.

But while the last abbot still held the monastery—from which, compelled by fear of the king, he withdrew for a time—and while the monks wished to vindicate themselves into liberty and proceed to an unaccustomed election, the Abbot of Saint Audoen, foreseeing this, appealed to the Apostolic See, as Richard, then your abbot-elect, confessed in judgment, adding nevertheless that he had appealed first. But the often-mentioned monks, nevertheless electing him as abbot, obtained an apostolic rescript to the already-said Henry, Bishop of Bayeux, and his colleagues. The Abbot of Saint Audoen, desiring to avoid their judgment as suspect, obtained letters of revocation to the aforesaid abbot and prior. After the prohibition of the former judges, who intimated to them the tenor of the apostolic mandate through their letters, and after the abbot's proctor presented the authentic instrument to them, those former judges asserted that the letters had been obtained through suggestion of falsehood because no mention of the privilege of the adverse party was made in them; and, even after the appeal interposed by the same proctor, they nevertheless proceeded in the cause. On behalf of the Monastery of Saint Audoen they petitioned that their act be revoked as invalid.*]

Therefore, these and similar things that the already-said bishop and cardinal prudently and faithfully reported to us and our brothers having been more fully understood, since it was established to us that the first commission had not been revoked through the last—both because the causes of suspicion proposed in law appeared frivolous, which they ought also to have raised as dilatory before entry into the suit, and which they seem to have renounced by undergoing judgment before the same delegates; and also because nothing was said in the second letters concerning privileges of the Apostolic See and the process of the business *up to the publication of witnesses* before the first judges, which, if it had been expressed, they could by no means have obtained them—notwithstanding the sentence that was said

to have been rendered for the Monastery of Saint A., which nevertheless was not shown to us, since, if it had been shown to the aforesaid judges, they would have set it aside and established the contrary; otherwise, *it is the case that* it is to be imputed to those raising it, since suits ought not to be renewed under pretext of new instruments: *after communicating the counsel of our brothers,* we hold the act of the first judges ratified and firm, and, confirming their sentence, we ourselves took care that the office of benediction be exhibited to the abbot-elect by you *afterward,* saving the right of the diocesan *bishop.* [*Therefore, let no one, etc. Given at the Lateran, on the third day before the Nones of June, 1199.*]

> Secunda sententia, in diversa instantia contra primam lata, tenet mero iure; nec debet infringi, etiamsi sit iniusta, ex quo ab ea non fuerit appellatum; praesertim si prima sententia secundis iudicibus non fuit ostensa. H. d. Panorm.
>
> Idem Conventui sancti Leodii.
>
> Inter monasterium sancti A. Rothomagensis et vestrum super modo eligendi abbatem in *dicto* monasterio vestro *iam dudum* fuit quaestio agitata, +[*pro qua partibus ad sedem apostolicam accedentibus, venerabilem fratrem nostrum Octavianum episcopum Hostiensem et dilectum filium G. sancti Georgii ad Velum aureum diaconum cardinalem dedimus auditores. In quorum praesentia propositum fuit pro monasterio vestro, quod, quum abbatia ipsa olim pastore vacaret, vos convenientes, in unum, Riccardum monachum virum religiosum secundum beati Benedicti regulam et ecclesiae libertatem apostolico etiam privilegio roboratam de gremio ipsius ecclesiae in abbatem vobis per electionem canonicam assumpsistis, electum ipsum ad benedictionis munus obtinendum dioecesano episcopo praesentantes, qui, per dilectum filium Gaufridum abbatem praefati monasterii sancti Audoeni prohibitus, quod postulatum fuerat non concessit. Vos ergo videntes vestrum propositum retardari, ne aliquid in praeiudicium monasterii vestri fieret, sedem apostolicam appellastis, a qua postmodum ad venerabilem fratrem nostrum Henr. episcopum et dilectos filios Hen. cantorem et R. archidiaconum Baiocenses sub eo tenore per nuncios vestros commissionis literas impetrastis, ut partibus ad suam praesentiam convocatis, inspecto privilegio et rationibus omnibus, quas utrinque ducerent proponendas, causam ipsam appellatione remota concordia vel iudicio terminarent, nullis literis obstantibus ipsarum mentione non habita a sede apostolica impetratis. Quod si omnes interesse non possent, episcopus cum eorum altero ea nihilominus exsequeretur. Quum igitur partes in praesentia praedictorum episcopi et praecentoris Baiocensium constitutae, archidiacono collega ipsorum ex certa causa et necessaria excusato, non possent ad concordiam revocari, parte vestra volente testes suos omni exceptione maiores producere ad probandam electionem canonice celebratam iuxta tenorem privilegii bonae memoriae Lucii Papae praedecessoris nostri super electione facienda indulti, R. monachus procurator dicti abbatis sancti Audoeni eis venerabilis fratris nostri Rothomagensis archiepiscopi, episcopi Ebroicensis et dilecti filii R. Ebroicensis archidiaconi patentes literas praesentant, ne in causa procederent inhibentes pro eo, quod super eiusdem causae discussione mandatum se dicebant apostolicum recepisse. Verum quia tenor mandati literis illis non erat insertus, nec procurator, licet saepius requisitus, originale ostendere voluit vel rescriptum, eorum prohibitione postposita, probationem vestram oblatam saepius super electione canonica decreverunt pariter admittendam. Sed procurator iam dictus probationi obviare contendens in electione praemissa, monasterium sancti Audoeni spoliatum fuisse cuiusdam iuris sui possessione dicebat, quam usque ad creationem abbatis illius loci novissimi obtinuerat inconcusse, qui de congregatione sancti Audoeni a monachis de Cruce postulatus fuerat et electus. Eo igitur id probare volente, testes vestros super electione canonica, procuratoris vero super spoliatione opposita receperunt, quorum depositiones quum post diligentem examinationem disponerent publicare, ad instantiam dicti procuratoris secundae productioni testium, qua se dixit fore contentum, diem alteram assignarunt. Quumque partes ad diem et locum pariter convenissent, requisitus procurator ab ipsis iudicibus de testibus producendis, ipse quasi testium productioni renuncians, dilectorum filiorum de Bellebec et de Mortuomari abbatum et prioris de Bellebec literas eis porrexit, ne in causa procederent inhibentes. Dicebant enim, se suscepisse mandatum primo praeiudicans, cuius tenorem suis literis adiunxerunt. Ceterum quum primi iudices, rescripto diligenter inspecto, cognoscerent illud per falsi suggestionem et*

veritate tacita impetratum, quum in secundo mentio facta non fuerit apostolici privilegii, ut in primo, ex quo electio sortiebatur praecipuam firmitatem, et ipsi iudices in secundis literis a monachis sancti Audoeni dicerentur certa ratione suspecti, quod ostendere non potuit procurator, causis quibusdam suspicionis satis frivolis allegatis, ab eis contumaciter nulla exspectata interlocutione recessit. Attendentes igitur iudices recusationem huiusmodi et allegationem dictae suspensionis seram et supervacuam exstitisse, praesertim post litem inchoatam et testes utrinque productos, quae forte ante litis ingressum colorem aliquem poterat habuisse; considerantes etiam, idem mandatum non plene, sed perfunctorie prioris fecisse mentionem, prohibitioni posteriorum iudicum, sicut nec priorum, acquiescere noluerunt, magis volentes iussionibus apostolicis obedire, quam inferiorum mandatis indebitam reverentiam exhibere; multis, qui aderant, iurisperitis sentientibus cum eisdem, quod, quum saepedictus abbas sancti Audoeni primo ad priores iudices literas impetrasset, quarum non habebatur mentio in secundis, carere debebat beneficio utrarumque, vel, si deberet mandatum alterum alteri praevalere, primo esset parendum potius quam secundo, in quo non habebatur mentio de priore, quum nec primum, ab eodem abbate sancti Audoeni obtentum, de illo faceret mentionem, quod pars altera impetrarat. Praescriptis itaque rationibus moti et usi consilio discretorum, publicatis etiam attestationibus partium, et earum rationibus et allegationibus subtiliter intellectis, praedictam electionem auctoritate mandati nostri ratam habuerunt et firmam, super illa molestatione ipsius electi perpetuum abbati et monachis sancti Audoeni silentium imponentes, quos condemnarunt etiam in expensis centum librarum Andegavensium, licet pars altera de ducentis vellet sacramento praestito declarare. Pars igitur vestra petebat a nobis factum delegatorum iudicum confirmari, et electo munus benedictionis impendi. Ceterum pars altera proposuit ex adverso, saepedictum monasterium vestrum a primordio constructionis suae in tantum ex consensu dioecesani episcopi alteri fuisse subiectum, ut non aliunde assumeretur ibi aliquis in abbatem, nisi de monasterio sancti Audoeni, dummodo in eo posset aliquis idoneus ad hoc reperiri. Correctio quoque monachorum et abbatis de Cruce, si negligens esset, fuit S. Audoeni abbatibus reservata, et ita obtinuit a longis temporibus, quorum memoria non habetur. Et haec siquidem institutio et usus ipsius a bonae memoriae Alexandro Papa praedecessore nostro proponitur confirmata. Unde quum quondam monachi sancti Leufredi abbatem quendam aliunde quam de sancti Audoeni gremio elegissent, abbas sancti Audoeni haec comperiens appellavit; et per sententiam delegatorum apostolicae sedis electum renunciare oportuit abbatiae, qui, quum facta professione abbati sancti Audoeni per dies aliquot in ipso monasterio resedisset, per abbatis concessionem datus fuit praefatis monachis in abbatem. Ceterum abbate novissimo adhuc monasterium detinente, a quo regio metu compulsus secessit ad tempus, et monachis se in libertatem volentibus vendicare, atque ad electionem procedere insuetam, abbas sancti Audoeni hoc praesentiens, sedem apostolicam appellavit, sicut Ric. tunc electus vester in iudicio est confessus, adiiciens tamen se primitus appellasse. Verum saepedicti monachi, eum eligentes nihilominus in abbatem, ad iam dictos Hen. episcopum Baiocensem et collegas suos rescriptum apostolicum impetrarunt, quorum iudicium ut suspectum abbas sancti Audoeni cupiens declinare, ad praefatos abbatem et priorem literas revocatorias impetravit, qui post inhibitionem priorum iudicum, qui eis tenorem mandati apostolici per suas literas intimarunt, et postquam procurator abbatis eis authenticum praesentavit, asserentes literas illas per falsi suggestionem obtentas, quia privilegii partis adversae in eis mentio non fiebat, post appellationem quoque ab eodem procuratore interpositam, in causa nihilominus processerunt, quorum factum pro monasterio sancti Audoeni petebant in irritum revocari.] *His igitur et similibus, quae iam dicti episcopus et cardinalis nobis ac fratribus nostris prudenter et fideliter retulerunt, plenius intellectis,* Quum constiterit nobis, primam commissionem non fuisse per ultimam revocatam, tum quia causae suspicionis in iure propositae frivolae videbantur, quas etiam tanquam dilatorias ante litis ingressum opponere debuissent, quibus coram delegatis eisdem subeundo iudicium renunciasse videntur; tum etiam quoniam de privilegiis apostolicae sedis et processu negotii *usque ad publicationes testium* coram primis iudicibus nihil in secundis literis dicebatur, quod si fuisset expressum, obtinere minime potuissent, non obstante sententia, quae pro monasterio sancti A. dicebatur fuisse prolata, quae tamen nobis ostensa non fuit, quum, si praedictis iudicibus fuisset ostensa, ea posthabita contrarium statuissent, alioquin *est, quod* eam obiicientibus imputetur, quum sub praetextu novorum instrumentorum lites non debeant instaurari: *communicato fratrum nostrorum consilio* factum priorum iudicum ratum et firmum habemus, et

eorum sententiam confirmantes electo a vobis *postmodum* nos ipsi munus benedictionis, salvo iure dioecesani *episcopi*, curavimus exhibere. [*Nulli ergo etc. Dat. Lat. III. Non. Iun.* 1199.]

Chapter XXI

Latin source headnote: A sentence rendered contrary to a privilege, whether shown or not shown, holds if no appeal or supplication was made from it.

The same, to the Bishop, Dean, and Chancellor of Paris.

When a matter of question had *some time ago* arisen between *our venerable brother* the Bishop of Meaux and the Monastery of Arras concerning the subjection of the monastery itself, and the proctors of the parties were litigating before us, because it was established through the confession of the adverse party that the same bishop had had a quasi-possession of obedience in the same monastery, we decreed that he was to be restored to it. But because a privilege of Pope Innocent of happy memory, our predecessor, expressed the full liberty of the monastery, we commanded [*the beloved son Master G.,*] Dean of Soissons, and his fellow judges that, when the [*aforementioned*] bishop had been restored to the quasi-possession of obedience, unless *within six months after his restoration* he objected and proved something reasonable against the privilege, they should take care, *with the obstacle of appeal removed,* to impose upon him *perpetual* silence concerning the subjection of the *aforesaid* monastery. [*We strictly prohibited him from daring thereafter to molest the same monastery concerning the liberty of the privilege. But if it were the will of the parties, after sufficiently instructing the cause and remitting it to our presence, they were to set for them a suitable term at which they should present themselves before us to receive sentence.

Therefore, when the parties were afterward established in the presence of those judges and the same bishop had had a copy of the privilege, he wished to accuse it of falsity on the ground that, when the bull of that privilege was compared with other bulls, it appeared, as the bishop proposed, smaller than and dissimilar to the others. He also alleged the authority of a matter adjudged to evacuate the force of the privilege, asserting that Pope Alexander of happy memory, our predecessor, as he showed through Alexander's letters, had promulgated a sentence against the monastery concerning this. The same bishop additionally introduced privileges of the said Pope Alexander and Pope Honorius of good memory, our predecessors, in which it is expressly recognized to have been established that canonical obedience should be rendered to him by the Abbot of Rebais.

But the abbot of the aforesaid monastery proposed in opposition that he ought to enjoy full liberty by authority of the aforesaid privilege, and indeed also for another reason: namely, because Saint Faro, Bishop of Meaux, had determined that a most liberal privilege should be granted to it, as he said was manifestly contained in the legend of that saint. The same abbot added that, until that day, he had never heard any mention of the aforesaid sentence that the bishop alleged for his own party; but even if the sentence were genuine, there had been a tacit withdrawal from it through the amicable settlement that followed. For, as he said, such a settlement intervened between B. of good memory, Abbot of Rebais, and Stephen, Bishop of Meaux, that the same abbot would render obedience to him on this condition: that if the privilege of liberty, which he did not have at hand, were found, the same abbot would enjoy liberty and would be bound in no way to exhibit obedience to that bishop. The same abbot asserted that he would prove this settlement and certain other things that he had proposed.

Therefore, a day having been assigned at Paris, the dean and succentor received the witnesses of the aforesaid abbot, because the third judge could not participate, and at Rebais they examined the same witnesses and certain other elderly and infirm persons. At length, when your party, to make greater faith concerning Alexander's sentence, presented to the judges the letters of certain cardinals and others, the abbot's party objected that, since a period of six months was comprehended in our letters, within which you had the faculty of proving what you wished, after that time had elapsed you could not exhibit instruments on your behalf or other proofs. But since the approach to proving was not closed to you, it requested that an oath be received, which the chapter of Rebais commanded to be rendered under peril of their souls, namely, that they had never seen before the sentence that you determined was to be exhibited.*]

But when the judges remitted the instructed cause, because we recognized the bishop's reasons to be more efficacious, we adjudged to him the subjection of the aforementioned monastery, so that there he may have *free* power as diocesan bishop, yet in such a way that no prejudice is generated thereby to the Apostolic See, whereby, *at the lawful time,* if it wishes, it may prosecute its justice. For indeed, if the privilege of the aforesaid Innocent was presented to Alexander in judgment and he rendered sentence against it, he is understood to have disapproved *it*. But if it was not exhibited before him, the aforesaid sentence ought not to be retracted under pretext of a newly found privilege. *Wherefore, through apostolic writings, we command your discretion that you cause what has been defined by us by sentence to be observed reasonably, with appeal removed,* [*constraining contradictors, if there are any, etc. Given at Viterbo, on the seventeenth day before the Kalends of July, in the tenth year, 1207.*]

> Tenet sententia contra privilegium ostensum vel non ostensum, si ab ea non fuerit appellatum vel supplicatum.
>
> Idem Episcopo, Decano et Cancellario Parisiensibus.
>
> Suborta *dudum* inter *venerabilem fratrem nostrum* Meldensem episcopum et monasterium Attrebatense super ipsius monasterii subiectione materia quaestionis, et procuratoribus partium litigantibus coram nobis, quia per confessionem partis adversae constitit, eundem episcopum quasi possessionem obedientiae in eodem monasterio habuisse, ipsum restituendum decrevimus ad eandem. Verum quia privilegium *felicis memoriae* Innocentii Papae praedecessoris nostri libertatem monasterii plenariam exprimebat, [*dilectis filiis magistro G.*] decano Suessionensi et suis coniudicibus dedimus in mandatis, ut episcopo [*memorato*] in quasi possessionem obedientiae restituto, nisi *post restitutionem suam infra sex menses* contra privilegium rationabile aliquid obiiceret et probaret, super subiectione monasterii *supra dicti perpetuum* sibi silentium *sublato appellationis obstaculo* imponere procurarent. +[*Districtius inhibentes ne idem monasterium super libertate privilegii auderet ulterius molestare. Quod si de partium exsisteret voluntate causam sufficienter instructam ad nostram praesentiam remittentes, praefigerent ipsis terminum competentem, quo se nostro conspectui praesentarent, sententiam recepturae. Partibus igitur in ipsorum iudicum praesentia postmodum constitutis quum idem episcopus privilegii copiam habuisset illud voluit arguere falsitatis eo quod facta collatione bullae ipsius privilegii ad alias bullas, ipsa sicut episcopus proponebat, minor et dissimilis aliis videbatur. Autoritatem, quoque rei iudicatae ad evacuandas vires privilegii allegavit afferens quod felicis recordationis Alexander Papa praedecessor noster, sicut per ipsius litteras ostendebat super hoc contra monasterium sententiam promulgarat. Privilegium insuper Alexandri Papae dicti et bonae memoriae Honorii Papae praedecessorum nostrorum episcopus idem induxit, in quibus expresse dignoscitur esse statutum, ut ipsi a Resbacensi abbate canonica obedientia persolvatur. Abbas vero monasterii supradicti proposuit ex adverso quod idem authoritate privilegii praetaxati plena debet libertate gaudere, verum etiam alia ratione, quia videlicet sanctus Faro Meldensis episcopus liberalissimum ei duxerat privilegium indulgendum, sicut in eiusdem Sancti legenda contineri manifeste dicebat adiiciens idem abbas, quia de sententia supradicta quam pro parte*

sua episcopus allegebat, usque ad illum diem, nullam unquam audierat mentionem: sed etsi sententia vera esset, tacite tantum per compositionem amicabilem subsequentem fuerat ab ipsa recessum. Talis enim ut ipse dicebat, inter bonae memoriae B. Resbacensem abbatem et Stephanum Meldensem episcopum compositio intercessit, ut idem abbas ea conditione ipsi obedientiam faceret, ut reperto privilegio libertatis, quod prae manibus non habebat, idem abbas libertate gauderet et ad exhibendam eidem episcopo obedientiam minime teneretur. Quam compositionem et quaedam alia quae proposuerat idem abbas, se assseruit probaturum. Die igitur Parisius assignato testes abbatis supradicti, decanus et succentor, quia iudex tertius interesse non potuit, receperunt; et apud Resbacum examinantes eosdem quosdam alios senes et valitudinarios. Tandem quum tua pars ad maiorem fidem super Alexandri sententia faciendam, litteras quorundam cardinalium et aliorum iudicibus praesentasset, pars abbatis obiecit, quod quum semestre tempus in nostris esset litteris comprehensum, infra quod probandi, quod voluisti, habueras facultatem, post tempus illud elapsum munimenta pro parte tua, vel probationes alias non poteras exhibere, sed quum tibi non esset aditus probandi praeclusus, iuramentum recipi postulabat, quod capitulum Resbacense sub animarum suarum periculo praestari mandabat, videlicet quod nunquam amplius sententiam viderant, quam tu duxeras exhibendam.] Iudicibus autem causam instructam remittentibus quia cognovimus efficaciores episcopi rationes, subiectionem eidem adiudicavimus memorati monasterii, ut ibidem *liberam* habeat tanquam dioecesanus episcopus potestatem, ita tamen, ut nullum per hoc apostolicae sedi praeiudicium generetur, quo minus *legitimo tempore*, si voluerit, suam iustitiam prosequatur. Nimirum si praefati Innocentii privilegium Alexandro fuit in iudicio praesentatum, et ipse tulit sententiam contra illud, *ipsum* intelligitur reprobasse. Si vero non fuit coram eo exhibitum, praetextu privilegii de novo reperti praedicta non debet sententia retractari. *Quocirca discretioni vestrae per apostolica scripta mandamus, quatenus quod a nobis est sententialiter diffinitum, faciatis appellatione remota rationabiliter observari* [*contradictores si qui fuerint etc.; Dat. Viterbii XVII. Kal. Iul. Ao. X.* 1207.]

Chapter XXII

Latin source headnote: A sentence from which an appeal was taken is retracted if it is established that the witnesses, upon whose statements alone it was rendered, were conspirators and were received over the party's contradiction.

The same, Alexander III, to the Abbots of Saint Mary in Cagi and of Valsecrète.

When I. and A., canons of Saint Denis of Reims, revealed to our apostolate on behalf of certain canons of the same church that their abbot was multiply defamed concerning dilapidation, perjury, simony, and certain other things, *and when concerning these and other matters they had litigated for a long time at the Apostolic See with the proctor of the abbot himself,* we *afterward* commanded *our venerable brother* the Bishop of Châlons and his colleagues that, personally approaching *that* church, they should correct, both in head and members, the things to be corrected, *with appeal set aside,* and establish the things they should see were to be established. [*Afterward, when both the abbot and the canons were established before them, the same abbot appealed lest the judges proceed in that business against the order of law; and when the judges required from the abbot and canons alike an oath concerning speaking the truth about the status of the church, the abbot, asserting through his advocate that he had been despoiled, petitioned from them the benefit of restitution. Thereupon*] the judges, [*with the will of the parties, restored the abbot himself to the administration of spiritual things and committed the care of temporal things to certain discreet and faithful men. After these things,*] receiving the oaths of the abbot and canons, [*they examined certain of them on the same day, establishing another day for examining others, which each party received gladly. But on the appointed day, while the abbot did not appear before them at all, the Abbot of Saint James of Provins, his maternal uncle, presented himself with open letters concerning ratification. While he in no way contradicted, the judges proceeded in that*

examination; and when on the following day they were prepared to promulgate sentence, the aforesaid proctor exhibited before them letters in which it was expressly contained that he renewed the appeal that he had interposed on the first day. But the judges, considering that the same abbot had tacitly renounced the aforesaid appeal by rendering the oath and undergoing their judgment, especially since the obstacle of appeal was closed off by our letters and an irreparable collapse of that church was feared,] *after taking the counsel of prudent men,* removed the *aforementioned* abbot from the administration of the church itself by sentence, deferring the correction of the members, which they could not then dispatch.

When the aforesaid proctor appealed from that sentence *as iniquitous* to our hearing, [*on the ground that the delegates had declared by interlocutory decision that, for the aforesaid causes, there had been a withdrawal from the appeal; moreover, when the aforesaid abbot and the proctor of the canons recently came to the Apostolic See on account of this, before our beloved son John, cardinal deacon of Santa Maria in Via Lata, whom we gave to them as auditor, the same abbot proposed many things*] *through which he said that* the said sentence was *deservedly* to be disapproved: [*both because those letters by whose authority the judges proceeded had been obtained by suppression of the truth, since the canons through whom they were obtained had made no mention of the threefold sentence of excommunication with which they had been bound by him because they were dice players, frequently entered taverns, and were disobedient to him;*] and because [*after the appeal interposed to us, in the inquiry itself —although a charitable admonition had in no way preceded the denunciation, while he had not yet been restored— and*] the judges proceeded in that business without joinder of issue; and *also* because, receiving the oaths of conspirators against him, *the judges* presumed to proceed to sentence when the depositions had in no way been published before the parties or shown to him.

[*To these things the other party responded that the aforesaid canons could in no way be repelled under pretext of an excommunication of this kind, since, even if that excommunication were established, the same abbot had communicated with them in divine things not only through his proctor, who received common letters with them, but also through himself. Nor could the aforesaid appeal have impeded the judges' process; for when the abbot appealed lest the judges proceed against the order of law, and the judges proceeded according to the order of law in all things, it appears evidently that nothing at all was attempted contrary to that provocation. But even if an admonition had not preceded the denunciation, it is the case that it can be imputed to the abbot if he neglected to allege this at the beginning. The aforesaid party also added that the same abbot ought not to have been restored to temporal things, although he was restored to spiritual things, since a question concerning dilapidation was being held; rather, in such a case, according to the rigor of law, even if he had been found in possession of the administration, he could not undeservedly have been removed as suspect.

Furthermore, it was not necessary that joinder of issue be made before those judges, since long ago issue had been joined at the Apostolic See through the proctors of both parties concerning the same articles, especially since that subtlety is not to be observed in inquiries so that joinder of issue is necessarily required. And this one thing could have sufficed against the preceding citations: that he voluntarily underwent the judgment of inquiry. Although it were also established that the judges received the oaths of conspirators, nevertheless their process ought not to be invalidated from this, since it is not established that they pronounced the sentence by following those persons' statements —especially since the statements of confederates could be received in those matters that in no way touched the abbot. Nor could the depositions of the witnesses be published before the parties or a

copy of them be made for the abbot, since he had absented himself through contumacy and the aforesaid proctor had not been sent for defense of the cause but only for renewing the provocation. When, therefore, that cardinal faithfully reported to us these and other things that were proposed before him,*] because full faith could not be made to us concerning the article of conspiracy, [*through apostolic writings, we*] command your discretion that, *after more fully inquiring into the truth,* if it is established to you that those whose oaths it is established were received by the judges were conspirators, *and* that *this very thing* the abbot wished to prove before them, *and that* the judges, following only their statements when those matters had not been proved through others, pronounced the sentence, then, *with appeal removed,* invalidating their process, you shall proceed in *that* business according to the aforesaid form comprehended in the former letters.

But if he is unable to prove that they were conspirators, or, although this were established, it nevertheless appears that they deposed nothing concerning those things for which the same abbot was removed, or, even if they deposed something concerning them, those things nevertheless had been sufficiently shown through the statements of others, you shall confirm the process of those judges, *with the obstacle of appeal removed.* For although conspirators ought not to have been admitted against the abbot, their oaths concerning speaking the truth about the status of that house could nevertheless have been received, so that faith might be had through their statements concerning other things that in no way touched the abbot, especially since at that time it had not been proved that they were conspirators. [*Moreover, we will and command, etc. Given at the Lateran, on the fifteenth day before the Kalends of April, in the eleventh year, 1208.*]

> Sententia, a qua fuit appellatum, retractatur, si constat, testes, ad quorum dicta tantum lata fuit, conspiratores fuisse, et contradicente parte receptos.
>
> Idem Alex. III. S. Mariae in Cagi et Vallis secretae Abbatibus.
>
> Quum I. et A. canonici sancti Dionysii Remensis ex parte quorundam canonicorum eiusdem ecclesiae nostro apostolatui reserarint, quod abbas eorum super dilapidatione, periurio, simonia et quibusdam aliis erat multipliciter infamatus, *et quum super his et aliis cum procuratore ipsius abbatis apud sedem apostolicam diu litigassent*, nos *postmodum venerabili fratri nostro* Cathalanensi episcopo et eius collegis dedimus in mandatis, ut ad ecclesiam *ipsam* personaliter accedentes, tam in capite quam in membris *appellatione postposita* corrigerent corrigenda, et statuerent quae statuenda viderent. +[*Coram quibus postea, tam abbate quam canonicis constitutis, idem abbas, ne iudices contra iuris ordinem in negotio ipso procederent appellavit; quumque iudices ab abbate pariter et canonicis de dicenda veritate super statu ecclesiae requirerent iuramentum, abbas per advocatum suum se asserens spoliatum restititutionis beneficium postulavit ab eis. Inde*] Iudices, [*de voluntate partium abbate ipso ad administrationem spiritualium restituto, quibusdam discretis et fidelibus viris curam temporalium commiserunt. Post haec*] autem abbatis et canonicorum iuramenta recipientes, [*quosdam eorum examinaverunt eodem die, ad examinandum alios diem alium statuendo, quem gratanter pars utraque recepit. Verum statuto die abbate coram eis minime comparente, abbas S. Iacobi Pruviniensis avunculus eius se cum literis de rato patentibus praesentavit. Quo nequaquam contradicente in examine ipso iudices processerunt, et quum die sequenti parati essent sententiam promulgare, procurator iam dictus literas exhibuit coram eis, in quibus continebatur expresse, quoniam appellationem, quam prima die interposuerat, innovabat. Sed iudices attendentes, quod idem abbas appellationi praedictae tacite renunciaverat, iuramentum praestando et ipsorum iudicium subeundo, maxime quum appellationis obstaculum nostris esset literis interclusum, et de ipsius ecclesiae lapsu irreparabili timeretur,*] *habito virorum prudentum consilio* abbatem *memoratum* ab administratione ipsius ecclesiae per sententiam removerunt, correctione membrorum dilata, quam tunc non poterant expedire. A qua sententia *tanquam iniqua* quum procurator praedictus ad nostram audientiam appellaverit [*pro eo, quid interlocuti fuerant*

delegati praedictis ex causis ab appellatione fuisse recessum; porro praefatus abbas et procurator canonicorum propter hoc nuper ad sedem apostolicam venientes, coram dilecto filio nostro Ioanne S. Mariae in Via lata diacono cardinali, quem ipsis dedimus auditorem, idem abbas multa] proposuit, *per quae dicebat*, dictam sententiam *merito* reprobandam, [*tum quia literae illae, quarum auctoritate iudices processerunt, per suppressionem veritatis fuerant impetratae, quum canonici, per quos fuerant obtentae, de triplici excommunicationis sententia, qua per eum pro eo, quod aleatores erant et tabernas frequenter intrabant, et inobedientes exsistebant eidem, ligati fuerant, non fecerant mentionem,*] tum quia [*post appellationem ad nos interpositam in inquisitione ipsa, quum denunciationem caritativa commonitio minime praecessisset, eo nondum restituto, et*] iudices lite non contestata in ipso negotio processerunt; tum *etiam*, quia iuramenta conspiratorum contra ipsum *iudices* recipientes, depositionibus coram partibus minime publicatis, nec ostensis eidem, ad sententiam procedere praesumpserunt. [*Ad haec altera pars respondit, quod praedicti canonici repelli minime potuerunt huiusmodi excommunicationis obtentu, quum etiamsi de illa excommunicatione constaret, idem abbas non solum per procuratorem suum qui cum ipsis litteras communes accepit, sed etiam per se ipsum in divinis communicasset; sed nec appellatio supradicta potuit processum iudicum impedire: nam quum abbas, ne contra iuris ordinem iudices procederent, appellasset, et iudices secundum iuris ordinem processissent in omnibus, evidenter apparet contra provocationem eandem nihil penitus attemptatum. Sed etsi denunciationem monitio non praecessisset, est quod imputari possit abbati, si hoc neglexerit a principio allegare. Adiecit etiam pars praedicta, quod ad temporalia restitui non debuit idem abbas, licet esset ad spiritualia restitutus, quum de dilapidatione quaestio haberetur; qui potius in tali casu iuxta rigorem iuris, etsi fuisset in administrationis possessione repertus, potuisset tamquam suspectus non immerito amoveri. Praeterea non oportuit ut coram illis iudicibus fieret litis contestatio, quum per utriusque partis procuratores olim lis fuerit apud sedem apostolicam super eisdem articulis contestata, maxime quum non sit ea subtilitas in inquisitionibus attendenda ut litis contestatio necessario requiratur; et hoc unum contra praemissas citationes sufficere potuit, quod inquisitionis iudicium sponte subiit, licet etiam iuramenta conspiratorum constaret iudices recepisse; irritari tamen ex hoc non deberet processus ipsorum, quum non constet ipsos, illorum dicta sequendo, sententiam protulisse, praesertim quum coniuratorum dicta recipi possent in iis quae abbatem nullutenus contingebant. Depositiones quoque testium nequiverunt coram partibus publicari, vel earum abbati copia fieri, quum ipse se per contumaciam absentasset, et procurator praedictus non ad defensionem causae transmissus fuerit, sed ad provocationem tantummodo innovandam. Quum igitur haec et alia quae coram cardinali praedicto fuere proposita, idem nobis fideliter retulisset.*] Quia vero de conspirationis articulo nobis non potuit fieri plena fides, [*discretioni vestrae per apostolica scripta*] mandamus, quatenus, *inquisita plenius veritate*, si vobis constiterit, quod illi conspiratores fuerint, quorum constat a iudicibus iuramenta recepta, *et* quod *hoc ipsum* abbas probare voluit coram eis, et *quod* eorum dicta iudices secuti tantummodo, quum per alios ea probata non essent, sententiam protulerunt, vos *appellatione remota* irritantes processum eorum in negotio *ipso* iuxta praedictam formam, comprehensam in prioribus literis, procedatis. Si vero eos conspiratores fuisse nequiverit comprobare, vel, licet de hoc constaret, appareat tamen, illos nihil super his deposuisse, pro quibus idem abbas fuit amotus; vel, etiamsi aliqua super his deposuerint, ea tamen per aliorum dicta fuerant sufficienter ostensa: processum ipsorum iudicum *sublato appellationis obstaculo* confirmetis, quia, licet adversus abbatem non debuerint conspiratores admitti, iuramenta tamen ipsorum de veritate dicenda super statu ipsius domus recipi potuerunt, ut per ipsorum dicta super aliis fides possit haberi, quae abbatem minime contingebant, praesertim quum tunc probatum non esset, eos conspiratores fuisse. [*Volumus insuper et mandamus etc. Dat. Later. XV. Kal. Apr. Ao. XI.* 1208.]

Chapter XXIII

Latin source headnote: One condemned in an action for injuries is infamous and can be restored to reputation by the Pope. This it says, as it is commonly summarized.

The same, to H. of Castro Guarti.

When you had been convened by Bartholomew in an action for injuries because you said that your horse was not of less value than his hairs, [*Jacob of Guarino and L. of Vico,*] the judges who were taking cognizance concerning this, condemned you in ten solidi. Fearing that their sentence would mark you with infamy, you implored from the Apostolic See the benefit of restoration to reputation. But we, considering that [*almost*] no injury, or only a minimal one, was done, will [*and grant*] that you shall not be marked with infamy through the aforesaid sentence. [*Given at Segni, on the seventh day before the Ides of September, in the fifteenth year of our pontificate, 1212.*]

> Damnatus in actione iniuriarum infamis est, et per Papam potest famae restitui. H. d. prout communiter summatur.
>
> Idem H. de castro Guarti.
>
> Quum te a Bartholomaeo iniuriarum actione convento, eo, quod diceres, equum tuum non esse minoris pretii quam capillos ipsius, [*Iacobus de Guarino et L. de Vico*] iudices, qui super hoc cognoscebant, te in decem solidos condemnassent, tu timens, ne ipsorum sententia te notaret infamia, beneficium restitutionis ad famam a sede apostolica implorasti. Nos autem considerantes, quod [*paene*] nulla fuerit vel minima facta iniuria, volumus [*et concedimus*], te per praedictam sententiam infamia non notari. [*Dat. Signiae VII. Id. Sept. Pont. nostr. Ao. XV.* 1212.]

Chapter XXIV

Latin source headnote: When a sentence has been revoked because of a defect of jurisdiction—as because one of the judges was publicly excommunicated—or because the order of law was not observed, inquiry is made again concerning the principal matter.

The same.

To prove that the proctor of the lady—(*And below:*) Meanwhile, however, take cognizance of the sentence of confirmation that was rendered by the delegated judges concerning the election of the custodian, so that you take care to confirm or invalidate it, as ought to be done by law; in such manner, indeed, that, if it is established that the same sentence is to be invalidated because one of the delegated judges who pronounced it was publicly bound by the bond of excommunication when the sentence was rendered, as is asserted through the metropolitan's letters, or for another just cause, after it has been quashed you shall take cognizance again concerning the election of the custodian herself, *and, hearing the things that have been proposed and shown both as to the act and as to the person, if the election is found canonical, confirm it by our authority; otherwise, after invalidating it utterly, give the sisters the faculty of freely electing, and confirm by apostolic authority, with the obstacle of appeal removed, the election of the woman whom they have determined is regularly to be elected as their abbess, and cause provision to be made for the aforesaid custodian from the goods of the church for legitimate expenses incurred.*

> Revocata sententia propter defectum iurisdictionis, ut, quia unus ex iudicibus publice excommunicatus erat, vel propter iuris ordinem non servatum, iterum de principali quaeritur.
>
> Idem.
>
> Ad probandum, quod procurator dominae (*Et infra:*) Vos autem interim agnoscatis de confirmationis sententia quae lata est a iudicibus delegatis de electione custodis, ut eam, sicut de iure fuerit faciendum, confirmare vel infirmare curetis, ita *quidem*, ut, si pro eo, quod unus ex delegatis iudicibus, qui eandem sententiam protulerunt, excommunicationis vinculo esset publice innodatus, quando sententia lata fuit, sicut per metropolitani literas perhibetur, aut ex alia iusta causa eandem sententiam

> constiterit infirmandam, ipsa cassata de ipsius electione custodis iterum cognoscatis, *et audientes quae tam in factum quam in personam proposita fuerint et ostensa, eam si inventa fuerit canonica auctoritate nostra confirmetis; alioquin ea penitus infirmata detis sororibus facultatem libere eligendi et quam in abbatissam sibi duxerint regulariter eligendam, eius electionem sublato appellationis obstaculo, auctoritate apostolica confirmetis, ac praefatae custodi de bonis ecclesiae faciatis in expensis legitimis factis provideri.*

Chapter XXV

Latin source headnote: A matter adjudged between some persons does not harm others. This fails in the case of one who allowed him to litigate to whom an action or defense belonged in the second place, or from whom he derived his cause in the matter adjudged.

Gregory IX.

Although regularly a matter adjudged between some persons does not harm others, nevertheless prejudice is generated for one who, when an action or defense concerning that matter belonged first to him, allowed a subsequent person to act, and also for one who allowed the person from whom he derived his cause to litigate.

> Res inter alios iudicata aliis non nocet. Fallit in eo, qui passus est illum litigare, cui secundo loco competebat actio vel defensio, vel a quo causam in iure iudicato habuit.
>
> Gregorius IX.
>
> Quamvis regulariter aliis non noceat res inter alios iudicata, ei tamen, qui, quum sibi primum de ea re actio vel defensio competebat, sustinuit sequentem agere, ac illi etiam, qui passus est eum, a quo causam habuit, experiri, est praeiudicium generatum.

Chapter XXVI

Latin source headnote: If two ordinaries pronounce contrary sentences, the sentence for the defendant holds. This fails in the four cases contained here and similar ones. But if delegated judges disagree, the delegator is to be approached; if arbiters disagree, neither sentence holds.

The same.

When two judges, as we have received, pronounce differing sentences, if they proceeded from ordinary jurisdiction, the sentence for the defendant, not for the claimant, holds, unless in a favorable cause—for example, marriage, liberty, dowry, or testament—it was promulgated for the claimant. But if they proceeded from delegated power, each sentence depends upon the decision of the delegator. But if they proceeded from a compromise, neither ought to have force.

> Si duo ordinarii pronunciant contraria, tenet sententia pro reo. Fallit in quatuor casibus hie contentis, et similibus. Si vero delegati discordant, delegans est adeundus; si arbitri, neutra tenet.
>
> Idem.
>
> Duobus iudicibus, ut accepimus, diversas sententias proferentibus, si ex iurisdictione ordinaria processerunt, tenet pro reo, non pro actore sententia, nisi in causa favorabili, puta matrimonio, libertate, dote seu testamento, pro ipso fuerit promulgata. Si vero ex delegata potestate, utraque pendet sententia ex arbitrio delegantis. Quodsi ex compromisso, neutra debet habere vigorem.

Title XXVIII: On Appeals, Recusations, and References

Chapter I

Latin source headnote: A collation of a benefice made after an appeal interposed from a probable and plausible cause is null by the law itself.

Alexander III, to the Bishop of Exeter and the Dean of London.

Our beloved sons, the prior and clerics of Giseburn, transmitted a grievance *very grave and difficult for us:* that *our venerable brother R.,* Archbishop of York *and* legate of the Apostolic See, suspended that prior after an appeal *made to us, and* interdicted his churches, and declared the canons excommunicated if they obeyed him as prior. (*And below:*) Concerning all *of these things,* if, after the truth has been solicitously inquired into through suitable persons and the reputation of the locality, you find that grants of the churches were made *in such manner,* unless the prior and canons maliciously deferred arranging them insofar as it pertained to them, you shall revoke those grants as invalid, *by our authority, notwithstanding any appeal, causing the churches themselves to be restored to the prior and canons and compelling both the vicars and those who swore to their canons to observe the oath rendered, unless it was unjustly extorted by the prior. Being provident, etc.* [*Cf. c. 6, On Judgments, II. 1.*]

> **De appellationibus, recusationibus, et relationibus.**
>
> Collatio beneficii facta post appellationem ex probabili et verisimili causa interpositam est ipso iure nulla.
>
> Alexander III. Exonensi Episcopo et Decano Lundonensi.
>
> Dilecti filii nostri prior et clerici de Gisebergen, gravem *admodum et difficilem nobis* querimoniam transmiserunt, quod *venerabilis frater noster R.* Eboracensis archiepiscopus *et* apostolicae sedis legatus eundem priorem post appellationem *ad nos factam* suspendit, *et* suas ecclesias interdixit, et canonicos, si eidem tanquam priori obedirent, excommunicatos denunciavit. (*Et infra:*) Super quibus *omnibus* si veritate per idoneas personas et famam loci sollicite inquisita inveneritis ecclesiarum concessiones *taliter* factas, nisi prior et canonici malitiose distulerint eas, quantum ad se pertinet, ordinare, *nullius appellatione obstante auctoritate nostra* in irritum revocetis easdem, *et priori et canonicis ecclesias ipsas restitui facientes, et tam vicarios quam iuratos eorum canonicorum iuramentum praestitum servare cogatis nisi fuerit a priore inique extortum. Provisuri etc.* [*cf. c.* 6. *de iudic. II.* 1.]

Chapter II

Latin source headnote: A general appeal with respect to a cause is not valid.

The same, to the Archbishop of Reims.

Among the other things *concerning which you wished to consult us—what you ought to do concerning those who appeal from you and do not prosecute the appeal—we respond thus: that you ought to compel them within a suitable term to prosecute the interposed appeal or to submit to justice before you.* But concerning the fact that the Abbot of Saint Apollinaris in the cloister interposed before you a general appeal concerning every cause that could be moved against him at any time, we reproved him thereupon and determined that an appeal of this kind was not to be admitted. *But if someone specifically appeals from you to us, we do not have power to remit him to your examination.*

> Appellatio generalis respectu causae non valet.

Idem Archiepiscopo Remensi.

Inter cetera +*quod nos consulere voluisti, quid facere debeas de his, qui appellant a te nec appellationem prosequuntur, taliter respondemus, quod debes eos compellere infra congruum terminum appellationem interpositam prosequi aut coram te iustitiae parere*. Super eo vero, quod abbas sancti Apollinaris in claustro a te appellationem interposuit generalem super omni causa, quae adversus eum aliquo tempore posset moveri, ipsum exinde redarguimus, nec huiusmodi appellationem duximus admittendam. *Verum si quis specialiter a te ad nos appellaverit ad examen tuum eum remittere non valemus*.

Chapter III

Latin source headnote: No appeal is made from lawful correction unless the measure is exceeded. This it says, when the intention of the letter is inspected.

The same, to the Abbot of Saint Peter.

You should know that it has *reached our hearing that, if at any time you wish to correct and chastise your subjects for their excesses according to the Rule of blessed Benedict and the institution of your order, they flee to the remedy of appeal so that they may be able more freely to exercise their malice*. But because the remedy of appeal was not invented for this purpose, that it ought to exhibit protection in his wickedness to someone deviating from observance of religion and order, *through apostolic writings, by way of precept,* we command your discretion that, if at any time any one of your subjects has flown to the remedy of appeal *lest you correct and chastise him for his excesses,* you shall no less on that account correct and chastise him according to the tenor of the mandate contained in the aforesaid rule and the institution of the order.

A correctione legitima non appellatur, nisi modus excedatur. H. d. inspecta mente literae.

Idem Abbati S. Petri.

Ad nostram +*noveris audientiam pervenisse, quod, si quando subditos tuos vis pro suis excessibus secundum regulam B. Benedicti et institutionem tui ordinis corrigere et castigare, ipsi, ut malitiam liberius suam valeant exercere, ad appellationis remedium confugiunt*. Quia vero remedium appellationis non ideo est inventum, ut alicui a religionis et ordinis observantia exorbitanti debeat in sua nequitia patrocinium exhibere, *discretioni tuae per apostolica scripta praecipiendo* mandamus, quatenus, si quando quilibet subditorum tuorum, *ne ipsum pro suis excessibus corrigas et castiges*, ad remedium appellationis convolaverit, non ideo minus eum iuxta tenorem mandati, quod in praedicta regula continetur, et institutionem ordinis corrigas et castiges.

Chapter IV

Latin source headnote: If an appellant does not prosecute the appeal within the term established by the judge from whom he appealed or by himself, he is compelled to stand by that judge's sentence or judgment.

The same, to the Bishop of Norwich.

You shall *fortify the parsons of the churches situated in your diocese by your authentic writings and those of the lords of the estate in such a way that, when it should happen that any of them dies, the son or vicar of the deceased, or anyone else, cannot by any cunning forestall your course of conferring the parsonship of the vacant church upon a suitable man. But* if any *of such persons* appeals to our hearing *for the sake of frustrating delay* and fixes a protracted term for his appeal, you shall assign him a day within which he can suitably approach the Apostolic See. If he contemns to come to it, you shall then *strictly* compel him to stand by your

judgment concerning those things that are in question, without any contradiction, *every excuse and appeal ceasing*. But if anyone fixes a suitable term for his appeal and nevertheless has not prosecuted the cause by the day of appeal, you shall no less constrain him thenceforth to obey your sentence, with appeal removed, as we said concerning the other. *But if, etc.* (*Cf. c. 20, On Witnesses, II. 20.*)

> Si appellans infra terminum, a iudice, a quo appellavit, vel a se ipso statutum, appellationem non prosequitur, sententiae vel iudicio illius stare compellitur.
>
> Idem Norvicensi Episcopo.
>
> Personas ecclesiarum +*in tua dioecesi consistentium ita tuis et dominorum fundi authenticis scriptis praemunias, ut, quum aliquam illarum decedere forte contigerit decedentis filius vel vicarius seu alius quilibet personatum ecclesiae vacantis viro idoneo conferendi tibi viam praeripere aliqua calliditate non possit. Quod* Si quis *talium* ad nostram audientiam *frustratoriae dilationis causa* appellaverit, et appellationi suae prolixum terminum praefixerit, tu ei diem, infra quem apostolicam sedem convenienter possit adire, assignes. Ad quam si venire contempserit, tu illum extunc iudicio tuo super iis, quae in quaestione vertuntur, sine contradictione aliqua stare *omni excusatione et appellatione cessante districte* compellas. Si autem quisquam appellationi suae praefigat terminum congruentem, nec tamen causam ad diem appellationis fuerit prosecutus, ipsum nihilominus ex tunc sententiae tuae, sicut de alio diximus, appellatione remota parere constringas. *Verum si etc.* (*cf. c. *20. *de test. II.* 20.)

Chapter V

Latin source headnote: An appellant has a year for prosecuting and, for cause, two years, unless the judge moderates the period. And if he does not prosecute within that time, the sentence remains ratified, or he returns to the first judge if he appealed before sentence. This it says. § 1. One who is assailed concerning a crime can appeal unless the crime is notorious. This it says.

The same, to the Archbishop of Reims.

Since the *most holy* Roman *Church has been constituted by the Lord's ordering as the head and mistress of all churches, and consultations and questions are deservedly referred to it from the diverse parts of the world, we rejoice that you have consulted it concerning various questions of law and not undeservedly commend your prudence. Hence it is that by the present writing* we have determined that a *worthy* response should be made to your fraternity: that, if an appeal has been made *for the sake of frustrating delay or even necessarily* before sentence or afterward, a year is granted to appellants of this kind, or, from a necessary and evident cause, two years, unless perhaps the judge from whom the appeal was taken has moderated a shorter time according to the distance of the *places and provinces* and the quality of the persons and business. If, within that time, the person who appealed has not prosecuted the cause of appeal, the sentence will hold. If he appealed after sentence, he also appears to have fallen from his cause, nor will the appellant be heard further concerning the same business. But if an appeal was taken from a grievance and before entry into the suit, an appellant of this kind will be heard, since the sacred canons allow appeals everywhere even outside judgment; appeals of this kind are not customarily called appeals but provocations to a cause. But if someone appealed before sentence, he is compelled to stand by the judgment of the person to whom he is known to have appealed.

§ 1. Moreover, if the person who appeals is a ravisher or *otherwise* a violent detainer of another's thing, an appeal of this kind made in judgment before ecclesiastical persons is customarily heard,

unless perhaps he is a manifest ravisher or fornicator, like the man whom the Apostle excommunicated while absent and without being required. [*To these things, etc. Cf. the following chapter.*]

> Appellans ad prosequendum habet annum, et ex causa biennium, nisi iudex moderetur. Et si infra id tempus non prosequitur, rata manet sententia, vel redit ad primum, si ante sententiam appellavit. H. d. - §. 1. Qui de crimine impetitur, appellare potest, nisi sit notorium. Hoc dicit.
>
> Idem Remensi Archiepiscopo.
>
> Quum sit *sacrosancta* Romana +*ecclesia caput et magistra omnium ecclesiarum disponente Domino constituta, et ad eam consultationes et quaestiones de diversis mundi partibus merito referantur, quod eam super variis iuris quaestionibus consulueris, gratulamur et prudentiam tuam non immerito commendamus. Inde est, quod scriptis praesentibus* Fraternitati tuae *dignum* duximus respondendum, quod, si *frustratoriae dilationis causa vel etiam necessario* ante sententiam vel postea fuerit appellatum, huiusmodi appellantibus annus indulgetur aut ex necessaria et evidenti causa biennium, nisi forte iudex, a quo appellatum fuerit, secundum locorum *et provinciarum* distantiam, et personarum et negotii qualitatem recisius tempus fuerit moderatus. Infra quod si is, qui appellaverit, causam appellationis non fuerit prosecutus, tenebit sententia. Si post sententiam appellaverit, et a causa sua cecidisse videtur, nec amplius super eodem negotio audietur appellans. Si vero a gravamine et ante litis ingressum fuerit appellatum, huiusmodi audietur appellans, quoniam sacri canones etiam extra iudicium passim appellare permittunt, nec solent huiusmodi dici appellationes, sed provocationes ad causam. Si autem ante sententiam quis appellaverit, cogitur illius stare iudicio, ad quem noscitur appellasse. §. 1. Praeterea si raptor sit, vel *alias* violentus detentor alienae rei *is*, qui appellat, huiusmodi appellatio facta in iudicio apud ecclesiasticas personas solet audiri, nisi forte manifestus raptor vel fornicator exsistat, sicut ille, quem absentem et irrequisitum Apostolus excommunicavit. [*Ad haec etc. cf. c. sequ.*]

Chapter VI

Latin source headnote: Before the judge from whom I have appealed in one cause, I can be convened in another, unless I recuse him as suspect.

The same, to the same.

To these things: if someone appeals in one cause and, while the appeal is pending, commits some crime, or is said previously to have committed one, or is now even accused, or is convened concerning another matter about which no appeal has been taken, and it happens that it is brought to the hearing of the judge from whom he [*also*] appealed in another business, he can, if he wishes, avoid him as suspect; otherwise he will be obliged to stand by the judgment of the person *from whom the appeal was taken,* especially if he is his ordinary judge. [*Likewise if to two persons; cf. the following chapter.*]

> Coram iudice, a quo appellavi in una causa, possum in alia conveniri, nisi eum recusem ut suspectum.
>
> Idem eidem.
>
> Ad haec si in una causa quis appellaverit, et pendente appellatione aliquod crimen committat, vel prius commisisse dicatur, vel modo etiam accusetur, aut conveniatur de alia re, super qua non sit appellatum, et illam proferri contingat ad audientiam iudicis, a quo in alio [*quoque*] negotio appellavit, eum potest, si voluerit, tanquam suspectum vitare; alioquin debebit eius stare iudicio, *a quo appellatum est*, maxime si suus ordinarius iudex exsistat. [*Item si duobus cf. c. sequ.*]

Chapter VII

Latin source headnote: If, from a lower judge, one person appeals to the Pope and another to an inferior judge, the person appealing to the Pope is bound to appear upon the citation of the inferior judge, at least to allege his appeal; otherwise the process before the lesser judge will be valid, unless he knew that an appeal had been interposed to the Pope. § 1. No appeal is made to the Pope from a civil judge who is not of the temporal jurisdiction of the Church. This it says up to the end.

The same.

If, while two persons are litigating before their own judge, one appeals concerning the same business to our hearing and the other to the hearing of his own judge, and the person who appealed to his own judge, coming on the day of appeal, proposes that he appealed to him—being silent concerning the fact that his adversary had appealed to the hearing of the Roman Pontiff—if that adversary, lawfully cited, neither comes nor sends *any* representative, or otherwise even contemns to obey, *and the judge renders a sentence of excommunication against him,* the sentence of excommunication promulgated against him for contumacy will [*certainly*] hold, unless the judge knew that he had appealed to the hearing of the Roman Pontiff.

§ 1. Finally, as to what you ask *at the end of your questions:* if an appeal has been taken from a civil judge, before judgment or afterward, to our hearing, whether an appeal of this kind holds—it indeed holds in the case of those who are subject to our temporal jurisdiction; but in the case of others, although it holds by custom of the Church, according to the rigor of law we believe that it does not hold. [*Given at Tusculum, on the eleventh day before the Kalends of April.*]

> Si a iudice inferiori unus appellat ad Papam, alius ad inferiorem, tenetur appellans ad Papam comparere ad citationem iudicis inferioris, saltem allegaturus appellationem suam; alias valebit processus a minori, nisi sciverit appellationem interiectam ad Papam. - §. 1. A civili iudice, qui non est de temporali iurisdictione ecclesiae, non appellatur ad Papam. H. d. usque ad finem.
>
> Idem.
>
> Si duobus coram suo iudice litigantibus alter ad nostram, alter ad sui iudicis audientiam super eodem negotio appellaverit, et ille, qui ad suum iudicem appellavit, ad diem appellationis veniens, se ad eum appellasse proponit, eo tacito, quod adversarius eius ad audientiam Romani Pontificis appellarat, si legitime citatus nec venit, nec *aliquem* responsalem misit, aut etiam alias parere contemnit, *et in eum excommunicationis sententiam tulerit*, tenebit [*utique*] excommunicationis sententia in eum pro contumacia promulgata, nisi iudex cognoverit, eum ad audientiam Romani Pontificis appellasse. §. 1. Denique, quod *in fine quaestionum tuarum* quaeris, si a civili iudice ante iudicium vel post ad nostram audientiam fuerit appellatum, an huiusmodi appellatio teneat: tenet quidem in his, qui sunt nostrae temporali iurisdictioni subiecti; in aliis vero, etsi de consuetudine ecclesiae teneat, secundum iuris rigorem credimus non tenere. [*Dat. Tusculi XI. Kal. Apr.*]

Chapter VIII

Latin source headnote: The lapse of two years does not prejudice an appellant so as to prevent him from being heard for a lawful cause, at least through the benefit of restitution in full. This it says according to the fuller understanding.

The same, to the Parish Priest and Clerics of Saint Nazarius of Albia.

From reason—(*And below:*) But if, after two years had elapsed, you did not prosecute the appeal interposed from the sentence *that had been* pronounced against you *concerning the controversy that you had against the Church of Solaria,* provided it is established that you omitted prosecution of the *appeal* through inability, we will that it ought not to generate *in any way* prejudice to your justice.

> Lapsus biennii non praeiudicat appellanti, quo minus ex causa legitima audiatur, saltem per beneficium restitutionis in integrum. H. d. secundum uberiorem intellectum.
>
> Idem Plebano et Clericis sancti Nazarii de Albia.
>
> Ex ratione (*Et infra:*) Verum si appellationem biennio elapso interpositam a sententia, *quae fuerat* contra vos prolata, *de controversia, quam habuistis contra ecclesiam Solariae*, prosecuti non estis, dummodo prosecutionem ipsius *appellationis* per impotentiam vos constiterit omisisse, nolumus, quod iustitiae vestrae debeat *aliquatenus* praeiudicium generare.

Chapter IX

Latin source headnote: If the defendant went to the Curia after citation or notice of the letters, the delegate shall proceed in the cause; otherwise not. This it says, together with c. *It Was Suggested,* below, under the same title.

The same, to the Bishop of Worcester.

We remember—(*And below:* [*Cf. c. 3, Clerics or Those Vowed, IV. 6.*]) But when it happens that some cause is committed to you with appeal removed, and the adverse party after the citation *has been made* enters upon the journey of coming to the Apostolic See, you will nonetheless be able to proceed in the business according to the form of law; but *certainly,* if he entered upon the journey before the citation *was made,* there is no proceeding in any way.

> Si reus post citationem vel notitiam literarum ivit ad curiam, delegatus in causa procedat; alias non. Hoc dicit, cum c. Suggestum infra. eod.
>
> Idem Vigoriensi Episcopo.
>
> Meminimus (*Et infra:* [*cf. c.* 3. *Qui cler. vel vov. IV.* 6.]) Ceterum quum aliquam causam contingit tibi appellatione remota committi, et adversa pars post citationem *factam* iter arripuerit ad sedem apostolicam veniendi, non minus poteris in negotio secundum iuris formam procedere, quod *utique*, si ante citationem *factam* iter arripuerit, non est aliquatenus procedendum.

Chapter X

Latin source headnote: Proceedings are stayed, on account of the article in which an appeal was taken, even concerning the principal cause, if it cannot be dispatched without that article. This it says, by adhering to the letter. § 1. Notwithstanding an appeal interposed from a false cause, the judge can proceed to further acts. This it says.

The same.

Concerning the matter about which your solicitude inquired *from us—whether a sentence ought to be suspended through an appeal that often happens to be made from an incidental question, although the cause had been committed with appeal removed*—we have determined that a response should be made to your prudence: that, if a question arises concerning some exception and it happens that an appeal is taken therefrom, proceedings are deservedly to be stayed concerning that exception; and if the principal cause cannot

be terminated without it, proceedings are no less to be stayed concerning the principal cause. § 1. But if the adverse party broke forth into an appeal concerning suggestion of falsehood, the sentence is not to be deferred concerning this, *if by the letters of commission the obstacle of appeal is prohibited.* [*On Appeals, etc. (Cf. the following chapter.)*]

> Supersedetur propter articulum, in quo appellatum est, etiam super principali causa, si sine illo articulo expediri non potest. H. d. inhaerendo literae. - §. 1. Non obstante appellatione, ex falsa causa interposita, potest iudex ad ulteriora procedere. H. d.
>
> Idem.
>
> Super eo, quod *a nobis* sollicitudo tua quaesivit, *utrum sententia per appellationem, quam ex incidenti quaestione fieri saepe contingit, fuerit suspendenda, licet causa fuerit appellatione remota commissa,* prudentiae tuae duximus respondendum, quod, si de aliqua exceptione quaestio oriatur, et exinde appellationem fieri contingat eidem exceptioni erit merito supersedendum, et, si principalis causa sine illa terminari non poterit, ei nihilominus supersedeatur. §. 1. Si autem adversa pars de falsi suggestione in appellationem prorupit, non est sententia super hoc differenda, *si literis commissoriis appellationis obstaculum inhibeatur. * [*De appellationibus etc. *(*cf. cap. sequ.*)]

Chapter XI

Latin source headnote: An appeal can be taken even for lesser or lighter causes.

The same.

But concerning appeals interposed for the smallest causes, we will you to hold that deference is no less to be given to them, for whatever and *however slight* a cause they are made, than if they were made for greater causes. *But if they contemn to prosecute their appeal, you shall strictly compel them either to prosecute the appeal or, with appeal removed, to stand by your judgment.*

> Etiam pro minoribus seu levioribus causis appellari potest.
>
> Idem.
>
> De appellationibus *vero* pro causis minimis interpositis volumus te tenere, quod eis, pro quacunque et *quantulacunque* levi causa fiant, non minus est, quam si pro maioribus fierent, deferendum. *Verum si appellationem suam contemserint prosequi tu illos aut appellationem prosequi vel tuo iudicio stare appellatione remota districte compellas.*

Chapter XII

Latin source headnote: According to the canons an appeal is made even before sentence; according to the laws it is not, except in certain cases. This is the first point. And appeal and recusation are made equivalent in this: that just as a reasonable cause is required in an appeal, so also in a recusation. This is the second. And the time assigned to a judge for deciding a cause begins to run from the time of presentation of the rescript. This is the third, according to the true understanding.

The same.

Concerning the matter *that sometimes delegated judges are recused by one of the parties as suspect, let this become known to your prudence by the present letters: that, since* the sacred canons grant to individuals the faculty of appealing both before and after joinder of issue, in the pronouncement of sentence, and after *sentence,* but the secular laws do not admit an appeal before sentence except in certain cases, in

ecclesiastical causes also, where the remedy of appeal is removed, *both remedies are denied; and therefore,* just as no deference is to be given to an appeal, so [*also*] none is to be given to a recusation in any way. But if a suit is committed to *certain persons* to be decided within a certain time, *in such a way that it is contained in the letters that the cause, after receipt of the letters,* [*and*] *within a certain term, ought to be terminated,* the term begins to run from the time when it happens that the judges *to whom the suits are delegated* receive those letters.

> Secundum canones appellatur etiam ante sententiam; secundum leges non, nisi in quibusdam casibus. Hoc primo. Et appellatio et recusatio aequiparantur in hoc, quia, sicut in appellatione requiritur causa rationabilis, ita et in recusatione. Hoc secundo. Et tempus assignatum iudici ad causam decidendam incipit currere a tempore praesentationis rescripti. Hoc tertio secundum verum intellectum.
>
> Idem.
>
> Super eo +*vero, quod interdum iudices delegati ab altera partium tanquam suspecti recusantur, hoc tuae prudentiae praesentibus literis innotescat, quod, quum* Sacri canones *et* ante et post litis contestationem, et in prolatione sententiae, et post *sententiam* singulis facultatem tribuunt appellandi, leges autem saeculares appellationem, nisi in casibus, ante sententiam non admittunt, in causis quoque ecclesiasticis, ubi appellationis remedium tollitur, *utrumque remedium denegatur, et ideo*, sicut appellationi, ita [*et*] recusationi non est aliquatenus deferendum. Si autem infra certum tempus *personis aliquibus* lis decidenda committitur, *ita quod contineatur in literis, causam post susceptionem literarum* [*et*] *infra certum terminum terminari debere*, extunc terminus incipit currere, quum iudices *quibus lites delegantur, easdem* contigerit literas recepisse.

Chapter XIII

Latin source headnote: A person convened concerning an injury to a cleric or concerning adultery can appeal unless he is notorious. This it says together with the following chapter.

The same.

It has reached us that, when *priests and other* clerics complain that they have been wounded by some persons or have otherwise been *gravely* injured, *and frequently produce witnesses to prove what they assert, those* who are assailed appeal to the Apostolic See, *but contemn to prosecute the interposed appeal or to avoid the fellowship of men. Hence, because you desire to be made more certain through our letters concerning what you are to do thereupon,* by authority of the present writing we command your fraternity that, if their excess is not public and notorious, you shall compel those *who appeal for such a cause, contradiction and appeal ceasing,* by ecclesiastical censure, to prosecute *the* interposed appeal within a suitable time. But if *their excess* is public and notorious, under pretext of an appeal, *if they have interposed any to foster their iniquity,* you shall not omit to declare them excommunicated, *inasmuch as* [*from*] *the very laying of hands upon clerics they incurred a sentence of excommunication,* and shall cause them to be more cautiously avoided as excommunicated until they make satisfaction to those who suffered injury and present themselves to the apostolic presence with your letters.

> Conventus super iniuria clerici vel super adulterio appellare potest, nisi sit notorius. H. d. cum c. sequ.
>
> Idem.
>
> Pervenit ad nos, quod, quum *presbyteri et alii* clerici se conquerantur ab aliquibus vulneratos, vel alias *graviter* esse laesos, *et ad probandum quod asserunt plerumque testes producunt, ii*, qui impetuntur, apostolicam sedem appellant; *sed appellationem interpositam prosequi, vel consortia hominum devitare contemnunt. Unde quia*

quid tibi faciendum sit exinde nostris literis certiorari desideras Fraternitati tuae *praesentium auctoritate* mandamus, quatenus, si eorum excessus publicus non sit et notorius, eos, *qui pro tali causa appelant, contradictione et appellatione cessante* ecclesiastica censura compellas, ut infra conveniens tempus *ipsam* appellationem interpositam prosequantur. Si vero *eorum excessus* publicus est et notorius, appellationis obtentu, *si quam ad suam iniquitatem fovendam interposuerint*, non praetermittas, quin eos excommunicatos denuncies, *sicut* [*ex*] *ipsa iniectione manuum in clericos excommunicationis sententiam incurrerunt*, ipsosque facias sicut excommunicatos cautius evitari, donec passis iniuriam satisfaciant, et cum literis tuis apostolico se conspectui repraesentent.

Chapter XIV

Latin source headnote: It is summarized above in the immediately preceding chapter.

The same, to the Archbishop of Toledo.

Your fraternity consulted *us whether deference is to be given to appeals when an appeal is made for the cause of frustrating delay and they do not prosecute the interposed appeal. Concerning this, indeed,* we have determined that a response should be made to your consultation: that if *at any time* some persons who are manifestly and notoriously known to detain another's wife or to have laid violent hands upon a cleric appeal, no deference is to be given to their appeal in any way. But since many things are called notorious that are not, you ought to provide lest you appear to hold as notorious what is doubtful. But those who appeal from your presence you ought to compel, within a suitable time, to prosecute the interposed appeal or, with appeal removed, to obey your judgment.

Summatum est supr. cap. proximo.

Idem Archiepiscopo Toletano.

Consuluit nos fraternitas tua, *+utrum deferendum sit appellationibus, quando causa frustratoriae dilationis appellatur, nec interpositam appellationem prosequuntur. Super quo utique* Consultationi tuae duximus respondendum, quod, si *aliquando* aliqui, quos manifestum sit et notorium uxorem alterius detinere, aut iniecisse manus violentas in clericum, appellaverint, eorum appellationi non est aliquatenus deferendum. Sed quum multa dicantur notoria, quae non sunt, providere debes, ne quod dubium est pro notorio videaris habere. Illos autem, qui appellant a praesentia tua, cogere debes infra tempus conveniens appellationem interpositam prosequi, aut iudicio tuo appellatione remota, parere.

Chapter XV

Latin source headnote: This chapter is summarized above, under the same title, in the chapter *We Remember.*

The same.

It has been suggested to our ears that, when those oppressed *and aggrieved* have recourse to the protection of the Apostolic See and, an appeal having been made, enter upon a journey, their adversaries, knowing of the interposed appeal, neither approach our presence nor transmit a representative *for themselves*; but when they perceive that those persons *have returned and* have brought back our letters, they break forth into the voice of appeal and enter upon the journey of coming to us, so that they may thus elude the solicitude of those by whom they are assailed. *But because no one's fraud ought to protect him, and things that are known to contain in themselves the vice of cunning and fraud are to be cut away by the sickle of apostolic moderation,* we respond to your consultation in this way: if anyone is

discovered to do this from fraud or malice, you shall not defer to his appeal, nor on that account postpone terminating *with a suitable end* the cause committed to you, because you are to know that we issued the decretal letter with which such persons appear to be fortified not to suppress anyone's justice, but to remove an *unjust* grievance.

> Hoc cap. summatum est supr. eod. cap. Meminimus.
>
> Idem.
>
> Suggestum est auribus nostris, quod, quum oppressi *et gravati* ad praesidium apostolicae sedis recurrunt, et appellatione facta iter arripiunt, adversarii eorum appellationem interpositam cognoscentes, nec ad praesentiam nostram accedunt, nec *pro se* responsalem transmittunt; quum autem senserint, illos *rediisse, et* nostras literas reportasse, in vocem appellationis prorumpunt, et iter ad nos arripiunt veniendi, ut sic eorum sollicitudinem, a quibus impetuntur, eludant. *Verum quoniam nemini debet fraus sua patrocinari, et falce apostolici moderaminis sunt resecanda quae in se vitium noscuntur calliditatis et fraudis continere,* Tuae consultationi taliter respondemus, ut, si quis deprehensus fuerit hoc ex fraude vel malitia facere, appellationi eius non deferas, neque ob id causam tibi commissam *fine congruo* terminare postponas, quia decretalem epistolam, qua tales muniri videntur, non ad deprimendam cuiusque iustitiam, sed ad removendum *iniustum* gravamen nos fecisse cognoscas.

Chapter XVI

Latin source headnote: An excommunicated person can, while cognizance of the appeal is pending, be absolved as a precaution; and if it appears that he appealed lawfully, he is not punished because in the meantime he celebrated divine services.

The same, to the Archbishop of York.

When R., a priest, came to our presence, we committed your cause and his to the Bishop of Tusculum and P., Cardinal of Santa Susanna, to be heard. At your objection, although R. the priest was not excommunicated by law, they nevertheless caused him to be absolved in fact. *But because we will that what is known to have been established in this part by our brothers be changed for no reason, through apostolic writings, by way of precept,* we command your fraternity that you in no way trouble the aforesaid priest because, after the excommunication made contrary to the appeal, he sang divine services, but, *the appeal ceasing,* restore all things to that status in which they were at the time the appeal *to the Apostolic See* was sent forth.

> Excommunicatus pendente cognitione appellationis absolvi potest ad cautelam, et, si apparet eum legitima appellasse, non punitur pro eo, quod interim celebravit divina.
>
> Idem Eboracensi Archiepiscopo.
>
> Ad praesentiam nostram R. presbytero veniente, episcopo Tusculano et P. sanctae Susannae cardinali tuam et ipsius causam commisimus audiendam. Qui ad obiectionem tuam, licet R. presbyter non esset excommunicatus de iure, de facto tamen eum fecerunt absolvi. *Quia vero quod a fratribus nostris noscitur in hac parte statutum nolumus aliqua ratione mutare: fraternitati tuae per apostolica scripta praecipiendo* Mandamus, quatenus praedictum presbyterum pro eo, quod post excommunicationem contra appellationem factam divina cantavit, nullatenus inquietes, sed ad eum statum *cessante appellatione* reducas omnia, in quo erant tempore appellationis *ad sedem apostolicam* emissae.

Chapter XVII

Latin source headnote: If an appellant is disturbed in the possession concerning which the appeal was taken, the judge from whom the appeal was taken can reform that possession for him, while the appeal remains in its state. This it says according to the common understanding.

The same, to the Archbishop of Canterbury.

Since we are bound *to respond to the consultations of individuals insofar as the Lord shall have ministered, we wish to impart a response to you the more gladly, the more we love your person with more abundant charity.* Since, *therefore,* you wished to consult us whether, if the possession of those who appeal to our hearing has been disturbed, it is lawful for you to reform it for them, setting aside that concerning which the appeal was interposed, we respond to your prudence in this way: if a complaint thereupon has reached you, it will be lawful for you to do this in judicial order.

> Si appellans turbatur in possessione, super qua fuit appellatum, iudex a quo potest illam possessionem sibi reformare, appellatione in suo statu permanente. H. d. secundum communem intellectum.
>
> Idem Cantuariensi Archiepiscopo.
>
> Quum teneamur +*consultationibus singulorum, quantum Dominus ministraverit, respondere, tanto gratius volumus tibi responsum impendere, quanto personam tuam abundantiori diligimus caritate.* Quoniam *igitur* nos consulere voluisti, utrum, si eorum possessio, qui ad audientiam nostram appellant, turbata fuerit, tibi eam sibi liceat reformare, eo, de quo appellatio est interposita, praetermisso, prudentiae tuae taliter respondemus, quod, si exinde ad te querela pervenerit, id ordine iudiciario tibi licebit.

Chapter XVIII

Latin source headnote: A general and vague appeal with respect to any grievance whatever is not valid, but one restricted to a certain cause is. Thus.

The same, to the Bishop and Archdeacon of Bologna.

Your devotion consulted *us that we should make your prudence more certain through our letters whether an appeal interposed from every grievance holds, and therefore* we respond to your consultation in this way: that if *perhaps* someone were generally to interpose an appeal from every grievance that could happen to him, an appeal of this kind ought not to hold. But if *someone* before some judge *were to interpose the obstacle of appeal* concerning every grievance that could be inflicted upon him in one cause, although a general appeal has been interposed, nevertheless deference is to be given to his appeal by the same judge. *But concerning the fact that you say some persons appeal for purposes of frustration so that they may avoid canonical punishment, and do not prosecute the interposed appeal, we will this to become known to you: that if, because they have appealed from you, you ought to compel them within a suitable and competent time to prosecute the appeal or, concerning those things about which the appeal was taken, with appeal removed, to obey your judgment.*

> Generalis et vaga appellatio respectu cuiuslibet gravaminis non valet, sed restricta ad certam causam. Sic.
>
> Idem Episcopo et Archidiacono Bononiensibus.
>
> Consuluit +*nos vestra devotio, uf, si appellatio, quae ab omni aggravamine interponitur, teneat, prudentiam vestram nostris literis redderemus certiorem, et ideo* Consultationi vestrae taliter respondemus, quod, si *forte* generaliter appellationem quis interponeret ab omni gravamine, quod sibi posset contingere, huiusmodi

appellatio tenere non debet. Si vero *aliquis* ab aliquo iudice super omni gravamine, quod in una causa sibi possit inferri, *appellationis obstaculum interponeret*, quanquam generalis appellatio sit interposita, appellationi tamen eius est ab eodem iudice deferendum. *Super eo vero quod quosdam dicitis frustratorie ut poenam possint vitare canonicam appellare, nec appellationem interpositam prosequi, hoc vobis volumus innotescere, quod si, quia a vobis appellaverint eos debetis cogere ut infra tempus congruum et competens appellationem prosequantur, aut super his, de quibus appellatum fuerit, appellatione remota, iudicio vestro pareant*.

Chapter XIX

Latin source headnote: A frivolous appeal does not excuse an inferior from being bound to obey a superior and from being punished for contempt, unless he purges his innocence in another way. This it says, and it is a noteworthy case in that it is said that this man is to be punished.

The same, to the Bishop of Zamora.

When we were prepared kindly to admit and efficaciously hear the petitions *that you presented to us through your messenger, our beloved son* I., cardinal deacon *of Santa Maria in Cosmedin,* formerly legate of the Apostolic See, proposed *to us with constant assertion* that, when *he had called you to his synod and* you had contemned to approach at his summons, he promulgated a sentence of excommunication against your person, *after which excommunication you caused yourself to be consecrated as bishop by one who was discharging our place.* And when *our beloved son* N., canon of Saint James, firmly asserted that you were on a legation of the king and therefore could not have approached at the summons of the aforesaid cardinal, the cardinal asserted in opposition that his messenger found you not on a legation of the king but in the Church of Salamanca, *and told you that he was not going to require you in another church. And when it was again proposed on your behalf that, when our venerable brother the Archbishop of Compostela appealed, you also interposed your appeal, the cardinal added that that appeal could in no respect have protected you from being bound to approach at his summons.* But we, considering that it was not fitting for you, under pretext of an appeal, to contemn coming at the summons of the legate, *admonish and* command your fraternity that, either in your own person or through suitable messengers, you present yourself to the apostolic presence, to show your innocence and *immunity,* if you can.

Appellatio frivola non excusat inferiorem, quo minus teneatur obedire superiori, et ut de contemptu puniatur, nisi innocentiam suam aliter purget. H. d. et est casus notabilis in eo, quod dicitur, istum esse puniendum.

Idem Zamorensi Episcopo.

Quum parati essemus petitiones, *quas nobis per nuncium tuum porrexisti, benigne admittere, et efficaciter exaudire, dilectus filius noster* I. *sanctae Mariae in Cosmedin* diaconus cardinalis olim apostolicae sedis legatus *constanti nobis assertione* proposuit, quod, quum *te ad synodum suam vocasset, et* ad eius vocationem contempsisses accedere, in personam tuam excommunicationis sententiam promulgavit, *+post cuius excommunicationem qui vice nostra fungebatur, te fecisti in episcopum consecrari.* Quumque *dilectus filius noster* N. canonicus B. Iacobi firmiter asseveraret, quod in legatione regis esses, et ideo non potuisses ad vocationem praedicti cardinalis accedere, cardinalis e contra asseruit, quod non in legatione regis, sed in Salamantina ecclesia te suus nuncius invenisset, *+tibique dixisset, quod in alia ecclesia te non esset requisiturus. Et quum iterum ex parte tua fuisset propositum, quod, quando venerabilis frater noster archiepiscopus Compostellanus appellavit, tuam etiam appellationem interposuisses, cardinalis adiecit, quod appellatio illa te tueri nulla parte potuit quin ad ipsius vocationem accedere tenereris.* Nos vero attendentes, quod te non decuit contemnere obtentu appellationis ad vocationem venire legati, *fraternitatem tuam monemus atque*

praecipimus, quatenus vel in persona propria, vel per nuncios idoneos apostolico te conspectui repraesentes, innocentiam et *immunitatem* tuam, si poteris, ostensurus.

Chapter XX

Latin source headnote: If a mandate made to one who swore to stand by the judgment of the Church exceeds the limits of the oath and of a lawful promise, he will be able to appeal; otherwise it is different. This it says compendiously, according to the Abbot.

The same, to the Archbishop of Canterbury.

To these things—(*And below:*) Moreover, concerning those who render an oath that they will stand by the judgment of the Church and afterward appeal, *the oath having been rendered,* let your solicitude provide that you compel them to observe what they swear, or within forty days after the appeal has been interposed to enter upon the journey to prosecute it.

Si mandatum factum ei, qui iuravit stare iudicio ecclesiae, excedit limites iuramenti et licitae promissionis, appellare poterit; alias secus. H. d. compendiose. Abb.

Idem Cantuariensi Archiepiscopo.

Ad haec (*Et infra:*) Praeterea de his, qui iuramentum praestant, quod ecclesiae stabunt iudicio, et postea *praestito sacramento* appellant, id tua sollicitudo provideat, ut eos servare quod iurant, vel infra XL. dies post appellationem interpositam iter arripere ad ipsam prosequendam compellas.

Chapter XXI

Latin source headnote: The summary is as above, in the immediately preceding chapter.

The same, to the Bishop of Chartres.

To the question [*however*] that you ask—whether deference is to be given to the appeal of one who, as is customary, merits to be absolved after rendering an oath, and, before anything is commanded to him, *has appealed,* or *if,* after receiving a mandate, he appeals for the sake of evasion—we respond *thus:* that, *after he has sworn,* no deference at all is to be given to *his* appeal that ought to derogate from his oath; but he is immediately to be reduced to the same sentence, which ought to be firmly observed until he has received the mandate and, to the extent of [*his*] ability, has prosecuted what was received.

Summa ut supr. cap. proximo.

Idem Carnotensi Episcopo.

Quaestioni [*vero,*] quam facis, utrum appellationi illius sit deferendum, qui, sicut moris est, praestito iuramento absolvi meretur, et antequam ei mandetur aliquid, *appellasset*, vel *si* mandato recepto causa subterfugii appellaverit, *taliter* respondemus, quod, *postquam iuravit,* appellationi *eius*, quae iuramento eius debeat derogare non est in aliquo deferendum; sed statim erit in eandem reducendus sententiam, quae, donec mandatum susceperit, et susceptum pro posse [*suo*] fuerit prosecutus, debet firmiter observari.

Chapter XXII

Latin source headnote: One who appeals from an ordinary can afterward be punished by that ordinary for an offense committed by him. This it says; but supply to the text that the same applies to

offenses committed before, if he is now accused concerning them, as in c. *To These Things* 1 above under the same title, and c. *He Proposed* below under the same title.

The same, to the Bishop of Winchester.

Moreover, concerning those who appeal to the Apostolic See and afterward, committing grave *and enormous* things, protect themselves with the appeal when they are convened, we have determined that *this* response should be made: that, *if after the appeal they commit grave things, and so publicly and manifestly that others are gravely scandalized and the seemliness of ecclesiastical honor is deformed,* the appeal ought not to protect them in their *wickedness and* iniquity so as to prevent their excesses from being punished by canonical censure. *Moreover, concerning those who, bound by a sentence of excommunication, swear to stand by ecclesiastical judgment and immediately, having forgotten it, break forth into the voice of appeal, we signify to your affection that you ought through excommunication to compel them to pursue the appeal made within a suitable time or to stand by the judgment of the Church.*

> Appellans ab ordinario postea de delicto ab eo commisso puniri potest per ipsum ordinarium. H. d., sed supple ad textum, idem esse de antea commissis, si nunc de illis accusatur, ut cap. Ad haec 1. supr. eod. et cap. Proposuit. infra eod.
>
> Idem Vintoniensi Episcopo.
>
> Praeterea de his, qui ad sedem apostolicam appellant, et postea gravia *et enormia* committentes, se, dum conveniuntur, appellatione tuentur, *hoc* duximus respondendum, quod, *si post appellationem gravia committunt, et ita publice et manifeste, quod alii graviter scandalizentur, et decor ecclesiasticae honestatis deformetur,* eos appellatio non debet in sua *nequitia et* iniquitate tueri, quo minus eorum excessus censura canonica puniantur. *Porro de iis, qui sententia excommunicationis innodati iurant ecclesiastico iudicio stare et mox obliti in vocem appellationis prorumpunt, dilectioni tuae significamus, quod eos per excommunicationem compellere debes appellationem factam congruo tempore persequi vel iudicio ecclesiae stare.*

Chapter XXIII

Latin source headnote: One who did not defer to his adversary's appeal cannot raise an exception against him concerning his own later appeal in the same matter.

The same, to the Patriarch of Grado and the Cardinal Priest of San Vitale.

When *our beloved sons M.,* Abbot of Saint Felix, and the priest R., *and* [*V.,*] *canon of Saint Mark,* were established in our presence for the controversy that arose concerning the election of the Church of Torcello, *through the envy of the malignant enemy*—(*And below:*) Therefore, *through apostolic writings, by way of precept,* we command that, *coming together as one, you summon both parties before your presence and, after diligently inquiring into and learning the truth of the matter,* if *it is established to you that the aforesaid* archdeacon, after the appeal *made to us* and *after* denunciation *also* of excommunication, proceeded to the nomination of the often-mentioned C., and that the primicerius with the canons, and the parish priest with the assent of the [*whole*] clergy of the bishopric, or of the greater and sounder part, elected the aforesaid I. as bishop and pastor, then, notwithstanding the appeal *or prohibition* of the aforesaid archdeacon, if he himself did not defer to the appeal made earlier, you shall confirm by apostolic authority, *with appeal and excuse removed,* the election made concerning the aforesaid I.; *and you, brother patriarch, shall impart to him the office of consecration. But if the matter was otherwise, after summoning the suffragans of the patriarchate of Grado and associating with yourselves other discreet and honorable men, you shall hear the cause and, with the obstacle of appeal removed, terminate it with its due end.*

Qui non detulit appellationi sui adversarii, de sua posteriori circa idem contra eum excipere nequit.

Idem Grandensi Patriarchae et S. Vitalis Presbytero cardinali.

Constitutis in praesentia nostra *dilectis filiis nostris M.* abbate sancti Felicis et presbytero R. *atque* [*V.*] *canonici sancti Marci* pro controversia, quae de electione Torcellanae ecclesiae *faciente maligni hostis invidia* est suborta (*Et infra:*) Ideoque *per apostolica scripta praecipiendo* mandamus, quatenus *in unum pariter convenientes utramque partem ante vestram praesentiam convocetis, et, inquisita rei veritate diligenter et cognita* si *vobis constiterit, quod praefatus* archidiaconus post appellationem *ad nos factam* et *post* denunciationem *etiam* excommunicationis ad nominationem saepe dicti C. processerit, et primicerius cum canonicis, et plebanus cum assensu [*totius*] cleri episcopatus, vel maioris et sanioris partis, praenominatum I. in episcopum et pastorem elegerint, non obstante appellatione *vel prohibitione* praefati archidiaconi, si ipse appellationi prius factae non detulit, electionem de praefato I. factam *appellatione et excusatione remota* auctoritate apostolica confirmetis, *et tu, frater patriarcha, ei consecrationis munus impendas. Si autem aliter res se habuerit convocatis suffraganeis Grandensis patriarchatus aliisque viris discretis et honestis vobis ascitis causam audiatis et eam remoto appellationis obstaculo fine debito terminetis.*

Chapter XXIV

Latin source headnote: One who appeals from an ordinary in one cause is bound to respond before him in others; he can nevertheless recuse him as suspect, unless he is convened concerning a manifest crime in which no excuse or suspicion has place, as when a penalty of law arising from the act itself is imposed. This it says according to the understanding.

The same, to the Archbishop of York.

M., your cleric, proposed to us that it often happens that, when someone appeals concerning some cause, he *utterly refuses and* declines to respond in other causes in which no appeal has been taken. Concerning this, we respond to your consultation in this way: although on account of that appeal he is no less bound to respond in other *causes* concerning which no appeal has been taken, nevertheless the judge from whom the appeal is made, because he is altogether suspect to him, ought not *in the preceding cause* to compel him to respond concerning other *causes,* unless for a crime so grave and manifest that by the act itself he *is held guilty and* is deservedly to be condemned.

Appellans ab ordinario in una causa, in aliis coram eo respondere tenetur, potest tamen eum recusare ut suspectum, nisi conveniatur de crimine manifesto, et in quo non cadit excusatio nec suspicio, ut quia imponitur poena iuris surgens ipso facto. H. d. secundum intellectum.

Idem Eboracensi Archiepiscopo.

Proposuit nobis M. clericus tuus, quod saepe contingit ut, quum aliquis super aliqua causa appellat, in aliis causis, in quibus non est appellatum, respondere *penitus renuat et* recuset. Super quo consultationi tuae taliter respondemus, quod, licet pro illa appellatione non minus teneatur in aliis *causis,* super quibus appellatum non est, respondere, iudex tamen, a quo appellatur, quia illi omnino suspectus est, eum *in causa praecedente* non debet ad respondendum super aliis *causis* compellere, nisi pro crimine adeo gravi et manifesto, quo ipso actu *habetur reus, et* merito sit damnandus.

Chapter XXV

Latin source headnote: An excommunicated person is absolved after security has been received, although the adversary or the excommunicator appeals lest he be absolved. This it says according to one understanding, which nevertheless must be limited to when the excommunication was not

rendered for manifest contumacy or offense, because then he ought not to be absolved unless satisfaction has preceded, as in c. *On Behalf* 1 below, On the Signification of Words.

The same, to R., Archbishop of Canterbury.

With what countenance you are able to consult us *concerning articles of law* we do not see, since *in those things that are known and clearly manifest* you are said to pervert the order of law *and evidently to oppose ecclesiastical liberty, for which that glorious and illustrious martyr Thomas, your predecessor, did not fear to undergo martyrdom*. For now you are said to confirm elections of bishops, contrary to the due order of law and *contrary to* the dignity of the pontifical office, not in a church, as is canonical and honorable, nor even in a palace, nor in your chamber, but in the *very* chamber of the king. *But lest we appear to deny our assent to your petitions, concerning those things about which you wished to consult us we respond to you as the Lord shall have given to us*.

Indeed, if anyone is held bound by interdict or excommunication for contumacy or any other cause and offers himself to justice concerning those things for which he received the sentence itself, the judge will be able to absolve him lest he die in excommunication, even if the adverse party interposes the obstacle of appeal lest he be absolved—sufficient security nevertheless having been received from him before absolution, that he will obey the equity of law either in the presence of the Roman Pontiff, to whose hearing the appeal is made, if the adversary should prefer, or before the judge to whom the *Roman Pontiff* shall delegate the cause. Concerning those also who complain that they have been subjected unreasonably to excommunication or interdict, we say the same thing, even if those who pronounced a sentence of this kind have determined to appeal to the Apostolic See. *But concerning the fact that, when someone has died, sometimes religious persons, sometimes ecclesiastical persons, and sometimes secular persons demand that debts owed to them, which the deceased himself owed, be paid, and, if they are not paid, send forth the voice of appeal lest the body of the deceased be delivered to burial, we have determined that this response should be made to your fraternity: unless sufficient security concerning payment of the debts, provided the estate is solvent, is given to them by the heir or relatives of the deceased, his body is not to be delivered to burial after the appeal*.

> Absolvitur excommunicatus cautione recepta, licet adversarius vel excommunicator, ne absolvatur, appellet. H. d. secundum unum intellectum, quem tamen oportet limitare, quando excommunicatio non fuit lata pro manifesta contumacia vel offensa, quia tunc non debet absolvi, nisi satisfactione praecedente, ut in cap. Ex parte 1. infra, de verb. signif.
>
> Idem R. Cantuariensi Archiepiscopo.
>
> Qua fronte nos *super articulis iuris* consulere valeas, non videmus, quum *in iis, quae nota sunt et liquido manifesta*, dicaris ordinem iuris pervertere, *et evidenter libertati ecclesiasticae contraire, pro qua ille gloriosus et inclytus martyr Thomas praedecessor tuus subire martyrium non expavit*. Iam enim non in ecclesia, sicut est canonicum et honestum, non etiam in palatio, non in camera tua, sed in *ipsa* camera regis, contra debitum iuris et *contra* pontificalis officii dignitatem episcoporum electiones diceris confirmare. +*Verum ne petitionibus tuis nostrum denegare videamur assensum, super his, de quibus nos consulere voluisti, tibi, prout dederit nobis Dominus, respondemus*. Sane, si quis pro contumacia vel alia qualibet causa, interdicto vel excommunicatione tenetur adstrictus, et offert se ad iustitiam, de his, pro quibus sententiam ipsam excepit, iudex eum, ne in excommunicatione decedat, absolvere poterit, etiamsi pars adversa, ne absolvatur, appellationis obstaculum interponat: ab ipso tamen ante absolutionem sufficienti cautione recepta, quod vel in praesentia Romani Pontificis, ad cuius audientiam appellatur, si maluerit adversarius, vel coram iudice, cui causam *Romanus Pontifex* delegaverit, iuris pareat aequitati. De his

etiam, qui conqueruntur, se irrationabiliter excommunicationi vel interdicto suppositos, illud idem dicimus, etiamsi ii, qui huiusmodi protulerunt sententiam, ad sedem apostolicam duxerint appellandum. *Super eo vero, quod defuncto aliquo interdum religiosae personae, interdum ecclesiasticae, interdum saeculares postulant, sibi debita solvi, quae defunctis ipsis debebat, et nisi solvantur ne corpus defuncti sepulturae tradatur, vocem appellationis emittunt, hoc tuae fraternitati duximus respondendum, quod nisi eis de solutione debitorum dummodo sit solvendo ab herede vel consanguineis defuncti sufficiens cautio detur, corpus eius post appellationem non est tradendum sepulturae.*

Chapter XXVI

Latin source headnote: A prelate ought not to suspend or excommunicate a subject unless admonition has preceded, nor can a subject appeal against ecclesiastical discipline, especially if he is religious. And the judge from whom the appeal is made sets a term for the appellant to prosecute the appeal; if he does not prosecute within it, the judge from whom the appeal is made reassumes jurisdiction. But an appellant who does not prosecute his appeal is condemned in expenses, when the appellee prosecutes it.

The same, in the Lateran Council.

A very reprehensible *custom has grown strong in certain regions: that, when our brothers and fellow bishops, or even archdeacons, think that certain persons will appeal in their causes, without any admonition at all having preceded, they render against them a sentence of suspension or excommunication. Others also, while they dread the sentence of a superior and canonical discipline, raise an appeal without any grievance and usurp for the defense of iniquity what is recognized to have been instituted for the protection of the innocent. Wherefore, lest either prelates be able to aggrieve subjects without cause, or subjects at their mere will be able under pretext of appeal to elude the correction of prelates,* by the present decree we establish that neither shall prelates pronounce a sentence of suspension or excommunication against subjects unless canonical admonition has preceded, unless perhaps the fault is such that by its own kind it induces the penalty of suspension or excommunication; nor shall subjects break forth into the voice of appeal against ecclesiastical discipline *before entry into the cause.*

But if anyone believes that he must appeal for his necessity, a competent term shall be set for him to prosecute the appeal; if perhaps he neglects to prosecute within it, then the bishop may freely use his authority. But if in any business someone appeals, and, when the person appealed against comes, the one who appeals neglects to come, if he has anything of his own, he shall make to the other a suitable recompense of expenses, so that, terrified at least by this fear, someone may not easily appeal to the grievance of another. But we will this to be observed especially in *religious places,* lest *monks or any* religious persons, when they are to be corrected for some excess, presume to appeal against the regular discipline of their prelate and chapter, but shall humbly and devoutly receive what has been *usefully* enjoined upon them for their salvation.

Praelatus subditum suspendere vel excommunicare non debet, nisi monitione praemissa, nec subditus contra disciplinam ecclesiasticam appellare potest, maxime si est religiosus. Et iudex a quo praefigit terminum appellanti ad appellationem prosequendam, infra quem si non prosequitur, iudex a quo reassumit iurisdictionem. Appellans vero non prosequens appellationem suam, condemnatur in expensis, appellato hoc prosequenti.

Idem in concilio Lateranensi.

Reprehensibilis +*valde consuetudo in quibusdam partibus inolevit, ut, quum fratres et coepiscopi nostri seu etiam archidiaconi appellaturos quosdam in suis causis existimant, nulla penitus admonitione praemissa suspensionis sive excommunicationis in eos sententiam ferant. Alii etiam, dum superioris sententiam et disciplinam canonicam reformidant, sine ullo gravamine appellationem obiiciunt, et ad defensionem iniquitatis usurpant quod ad praesidium innocentium dignoscitur institutum. Quocirca, ne vel praelati sine causa valeant gravare subiectos, vel subditi pro sola voluntate sub appellationis obtentu correctionem valeant eludere praelatorum*, Praesenti decreto statuimus, ut nec praelati, nisi canonica commonitione praemissa, suspensionis vel excommunicationis sententiam proferant in subiectos, nisi forte talis sit culpa, quae ipso suo genere suspensionis vel excommunicationis poenam inducat, nec subiecti contra disciplinam ecclesiasticam *ante ingressum causae* in vocem appellationis erumpant. Si vero quisquam pro sua necessitate crediderit appellandum, competens ei ad prosequendam appellationem terminus praefigatur, infra quem si forte prosequi neglexerit, tunc episcopus libere sua auctoritate utatur. Si autem in quocunque negotio aliquis appellaverit, et, eo, qui appellatus fuerit, veniente, qui appellat venire neglexerit, si quid proprium habuerit, competentem illi recompensationem faciat expensarum, ut hoc saltem timore territus in gravamen alterius non facile quis appellet. Praecipue vero hoc in *locis* religiosis volumus observari, ne *monachi sive quicunque* religiosi, quum pro aliquo excessu fuerint corrigendi, contra regularem praelati sui et capituli disciplinam appellare praesumant, sed humiliter ac devote suscipiant quod pro salute sua fuerit *utiliter* eisdem iniunctum.

Chapter XXVII

Latin source headnote: The judge from whom the appeal is made takes cognizance of the cause notwithstanding the appeal if the appellant does not prosecute. This is the first point. And a judge recused as suspect can commit the cause to another. This is the second.

The same.

To these things, *we have determined that it should be granted to you by the present letters that,* when an appeal has been taken from you concerning some cause, it shall be lawful for you, with the appeal ceasing, to compel the appellants either to prosecute the interposed appeal or to obey the equity of law before you. Or, if either of the parties holds you suspect, at your insistence they shall choose a judge who may be able to decide the question proposed between them. [*But, etc. (Cf. c. 5, On Judgments, II. 1.)*]

Iudex a quo non obstante appellatione cognoscit de causa, si appellans non prosequitur. Hoc primo. Et iudex, ut suspectus recusatus, potest alteri causam committere. Hoc secundum.

Idem.

Ad haec +*praesentibus tibi literis duximus indulgendum, ut*, quum a te super aliqua causa fuerit appellatum, fas tibi sit appellantes appellatione cessante compellere, ut vel appellationem interpositam prosequantur, vel coram te iuris pareant aequitati. Aut, si alterutra partium te suspectum habuerit, te insistente iudicem eligant, qui propositam inter eos valeat dirimere quaestionem. [*Ceterum etc.* (*cf. c.* 5. *de iud. II.* 1.)].

Chapter XXVIII

Latin source headnote: If a canon, admonished to residence, appeals, a term is established for him to prosecute the appeal, and meanwhile the benefice is served through a vicar to be sustained from the fruits of the benefice. And if he does not prosecute the appeal or make residence, he is deprived of the prebend.

The same, to the Bishop of Salisbury.

It has reached us that, when you admonished *Roger, son of* G., a canon of your church, that he should make *due* residence in it, he broke forth into an appeal *to our hearing and prescribed as the term for his appeal the approaching feast of blessed Luke*. But since the said canon appears to have appealed for the sake of frustrating delay, *through apostolic writings, by way of precept,* we command that you *diligently and* earnestly admonish him to make due residence in the same church, *all delay set aside,* or, within the term, to enter upon the journey of coming to us to prosecute it. Meanwhile, however, you shall commit his place in the aforesaid church to some honorable person *to be executed,* and, *with appeal ceasing,* assign to him from the benefices of that canon the means by which he can be suitably sustained. But if the aforesaid G. neglects to fulfill either of these, you shall *then, every contradiction and appeal set aside,* deprive him of his prebend, and, *no appeal being admitted,* grant *and assign* it to another suitable person.

> Si canonicus ad residentiam monitus appellat, statuitur sibi terminus ad appellationem prosequendam, et interim deservitur beneficio per vicarium de fructibus beneficii sustentandum. Et si appellationem non prosequitur, vel residentiam non facit, privatur praebenda.
>
> Idem Salabriensi Episcopo.
>
> Pervenit ad nos, quod, quum *Rogerium filium* G. ecclesiae tuae canonicum, ut *debitam* in ea residentiam faceret, monuisses, *ad audientiam nostram* in appellationem prorupit *et appellationi suae terminum proximum festum B. Lucae praescripsit*. Quum autem frustratoriae dilationis causa videatur dictus canonicus appellasse, *per apostolica scripta praecipiendo* mandamus, quatenus eum *diligenter et* studiose moneas, ut in eadem ecclesia debitam, *omni mora postposita,* residentiam faciat, vel infra terminum eam prosecuturus iter ad nos arripiat veniendi. Interim vero alicui honestae personae vices eius in ecclesia praetaxata *exsequendas* committas, et ei de beneficiis illius *appellatione cessante* assignes, unde possit congrue sustentari. Quodsi praefatus G. alterum istorum adimplere neglexerit, tu *extunc* praebenda sua prives eundem *omni contradictione et appellatione postposita,* et eam alii idoneae personae *nullius appellatione admissa* concedas *pariter et assignes*.

Chapter XXIX

Latin source headnote: No appeal is made from a judge executing jurisdiction.

The same.

Your fraternity consulted us whether deference is to be given to appeals interposed by *our dearest son in Christ L.,* [*the illustrious*] King of the Franks, on behalf of the Jews, so that they may retain Christian slaves, *and whether you ought to tolerate their establishing new synagogues where they had none at all.* [*We therefore wrote to the aforesaid king that he should desist from defending the Jews in this part, and concerning this we also caused him to be admonished through others; and we believe that he will acquiesce in our admonitions, because it would not be right that what was recently established by the holy Fathers in council should be negligently observed.*] *Hence,* it is not fitting that on account of appeals of this kind you ought to abstain from observance of the decree. [*The Jews, etc. (Cf. c. 7, On the Jews, V. 6.)*]

> A iudice iurisdictionem exsequente non appellatur.
>
> Idem.
>
> Consuluit nos tua fraternitas, utrum sit appellationibus deferendum a *carissimo in Christo filio nostro L.* [*illustri*] rege Francorum pro Iudaeis interpositis, ut mancipia detineant Christiana, *+et utrum sustinere*

debeas, quod de novo constituant synagogas, ubi eas nullatenus habuerunt. [*Scripsimus itaque memorato regi, ut a defensione Iudaeorum in hac parte desistat, et super hoc etiam per alios ipsum fecimus admoneri, et credimus, quod monitis nostris acquiescet, quia non esset rectum, ut quod a sanctis Patribus nuper in concilio statutum est negligenter servaretur.*] *Unde* Non convenit, ut pro huiusmodi appellationibus ab observatione decreti debeas abstinere. [*Iudaeos etc.* (*cf. c. *7. *de Iudaeis V. *6.)]

Chapter XXX

Latin source headnote: One who sent a messenger to the Pope before citation or notice of the letters can appeal so that the delegate does not proceed; it is otherwise if afterward.

The same, to the Archbishop of Genoa.

To these things: as you assert, *sometimes concerning a cause that is committed to a judge with appeal removed, one party appeals, asserting that he has sent his messenger to the Apostolic See for the same cause. To this* we respond thus: that the judge, if it is established to him that *the* appellant, before the parties were cited or the delegation of the cause reached the person who interposes the obstacle of appeal, had sent a messenger to the Apostolic See, ought to defer to the appeal made; but if the messenger was sent after the citation, he can sufficiently execute what is commanded.

Qui ante citationem vel notitiam literarum misit nuncium ad Papam, appellare potest, ne delegatus procedat, secus si post.

Idem Genuensi Archiepiscopo.

Ad haec, sicut asseris, +*quandoque super causa, quae iudici appellatione remota committitur, altera pars appellat, asserens, se pro eadem causa nuncium suum ad sedem apostolicam destinasse. Ad quod taliter* Respondemus, quod iudex, si ei constiterit, *ipsum* appellantem, antequam partes essent citatae, vel delegatio causae pervenisset ad ipsum, qui appellationis interponit obstaculum, nuncium ad sedem apostolicam destinasse, factae debet appellationi deferre; sed, si post citationem fuerit destinatus, satis potest exsequi quod mandatur.

Chapter XXXI

Latin source headnote: One who did not defer to an appeal interposed to the Pope is sent to the Curia with the ordinary's letters to be punished.

The same.

Concerning the prior *who, not deferring to our protection and to the appeal made to the Apostolic See, caused a certain canon of his to be stripped of all his garments down to his shirt, and compelled him to renounce the accusation and appeal because he murmured concerning his own and certain brothers' enormities, we have determined to intimate this to your solicitude: after diligently inquiring into the truth of the matter, if you find that the aforesaid canon appealed to avoid discipline, you ought on that account to inflict no penalty upon the same prior, since the most holy Roman Church is not accustomed to admit an appeal of this kind, lest audacity for offending be furnished to monks or regular canons.* But if the aforesaid canon appealed the prior to the Apostolic See on account of his manifest enormities, which render him notorious, and he contemned to defer to such an appeal, you shall compel him to come to the Apostolic See with your letters containing the truth, to make satisfaction for so great an excess. *But upon his accomplices in this wickedness you shall inflict such a penalty that others hearing of it shall not dare to perpetrate similar things.*

Qui non detulit appellationi interpositae ad Papam, mittitur cum literis ordinarii ad curiam puniendus.

Idem.

De priore, +*qui non deferens protectioni nostrae et appellationi ad sedem apostolicam factae quendam canonicum suum vestibus fecit omnibus usque ad camisiam spoliari, et eum accusationi et appellationi renunciare coegit, quia de suis et quorundam fratrum enormitatibus murmuravit, id tuae sollicitudini duximus insinuandum ut rei veritate diligenter inquisita si inveneris, quod pro evitanda disciplina praedictus canonicus appellavit, eidem priori propterea nullam poenam infligere debeas, quoniam sacrosancta Romana ecclesia huiusmodi appellationem admittere non consuevit, ne monachis vel canonicis regularibus praeberetur audacia delinquendi.* Ceterum si praefatus canonicus priorem propter suas enormitates manifestas, quae ipsum notabilem reddunt, ad sedem apostolicam appellavit, et ipse tali appellationi deferre contempsit, eum cum literis tuis veritatem continentibus de tanto excessu satisfacturum ad sedem apostolicam venire compellas. *Suis autem in hac malitia complicibus talem poenam infligas quod ceteri audientes similia non audeant perpetrare.*

Chapter XXXII

Latin source headnote: An appeal does not defend a religious against regular constitutions.

The same.

Because the Lord *chose us for an inheritance for himself and looked out from afar on high, desiring to provide for your peace and tranquility insofar as divine grace grants, by apostolic authority we concede and grant you* that abbots *of your order* who have been publicly bespattered by, or convicted of, some public infamy, and who, after being admonished *by the abbots and* afterward in the general chapter, are unwilling *of their own accord* to yield their prelacy, shall not have the faculty of appealing *to the Apostolic See, defending their guilt through an appeal.* [*Given at Benevento, on the fourth day before the Nones of July, in the second indiction, 1169.*]

Contra constitutiones regulares appellatio religiosum non defendit.

Idem.

Quia nos +*elegit Dominus in hereditatem sibi, et a longe de alto prospexit, paci et tranquillitati vestrae, quantum divina gratia concedit, prospicere cupientes, apostolica vobis auctoritate concedimus et indulgemus,* ut abbates *vestri ordinis,* qui de aliqua publica infamia publice respersi sunt aut convicti, *ab abbatibus, et* deinde in communi capitulo commoniti, *sponte suae* praelationi cedere noluerint, *ad sedem apostolicam* appellandi non habeant facultatem, *suum reatum per appellationem defendendo.* [*Dat. Beneventi IV. Non. Iul. Ind. II.* 1169.]

Chapter XXXIII

Latin source headnote: The judge from whom the appeal is made can set a term for the appellant to prosecute the appeal; when it has elapsed, the judge reassumes jurisdiction.

The same.

It has *reached our ears through your intimation that, when sometimes we delegate causes to you or others with the remedy of appeal removed, one of the parties, so that he may avoid the examination of the delegated judge, opposes incidental questions and, although the remedy of appeal has not been reserved in the principal cause, nevertheless breaks forth into the voice of appeal, fixing no term for his appeal, and thus causes the other party to remain suspended without prosecution of the appeal. Therefore you petition that it be granted to you and other judges, where causes are committed without the remedy of appeal, to terminate incidental questions with their due end, with appeal set aside. But since incidental questions are often not undeservedly judged prejudicial, we have not determined that assent should be given to your petition in this part; but lest either party be afflicted longer by*

frustrating judgments, a suitable term shall be set for the appellant to prosecute the appeal; if he has not prosecuted the appeal within it, from that time he shall be compelled to stand by the judgment of the delegated *judge, with appeal set aside, both concerning the incidental questions and concerning the principal cause, in such a way that neither shall the common remedy be withdrawn from one, nor shall the other be able to be wearied by frustrating delays.*

> Iudex a quo potest praefigere terminum appellanti ad prosequendam appellationem, quo lapso reassumit iudex iurisdictionem.
>
> Idem.
>
> Ad aures nostras +*te significante pervenit, quod quum interdum, tibi vel aliis delegamus causas sublato appellationis remedio, altera partium, ut examen declinare valeat iudicis delegati, quaestiones incidentes opponit, et, licet in principali causa non sit appellationis remedium reservatum, in appellationis tamen vocem prorumpit, appellationi suae terminum non praefigens, sicque partem aliam sine prosecutione appellationis facit remanere suspensam. Postulas igitur tibi et aliis iudicibus indulgeri, ubi causae sine appellationis remedio committuntur, incidentes quaestiones fine debito appellatione postposita terminare. Ceterum quum incidentes quaestiones saepius praeiudiciales non immerito iudicentur, petitioni tuae in hac parte non duximus annuendum, sed, ne quae partium diutius frustratoriis iudiciis affligatur,* Appellanti ad prosecutionem appellationis terminus congruus praefigatur, infra quem si appellationem non fuerit prosecutus, extunc *tam super incidentibus questionibus, quam super causa principali appellatione postposita* compellatur stare iudicio delegati *iudicis, ita quod nec uni commune medium subtrahetur, nec alter possit frustratoriis dilationibus fatigari.*

Chapter XXXIV

Latin source headnote: If, after a grievance has preceded, someone submits himself to the protection of a superior, he is held as an appellant, provided that he has observed those things that are necessary in an appeal.

The same, to the Bishop of Ávila.

You should know that it has reached our hearing that, when the Bishop of Zamora multiply molested G., priest of the Church of Saint James of Zamora, *which belongs properly to the Church of Compostela,* at length the same priest, *to avoid his grievances,* subjected himself and his church *and parishioners* to our protection *and that of the Roman Church. But the aforesaid bishop, perhaps because he did not expressly appeal, after the protection of the Apostolic See had been invoked, and even contrary to the privilege granted to the Church of Compostela, promulgated a sentence of excommunication against him.* Although the aforesaid priest perhaps did not express the word of appeal from simplicity, nevertheless, because after he had subjected himself and his things to our protection he ought not to have been condemned by any sentence without cognizance of the cause, *through apostolic writings* we command your fraternity that you *inquire more diligently into the truth concerning this, and,* if it is thus established to you, declare that the sentence that the aforesaid bishop rendered against the same priest does not hold, *with contradiction and appeal ceasing. But afterward, if the aforesaid bishop perhaps wishes to act against the priest, you shall hear the cause and decide it with its due end. You shall also more earnestly admonish and induce the same bishop to desist altogether from the molestations and grievances of the Church of Compostela, and so to be content with his own right that he shall in no way presume to usurp those things that belong to the aforesaid church.*

> Si praecedente gravamine quis submittit se protectioni superioris, habetur pro appellante, dummodo servaverit ea, quae in appellatione sunt necessaria.

Idem Abulensi Episcopo.

Ad audientiam nostram noveris pervenisse, quod, quum Zamorensis episcopus G. presbyterum ecclesiae sancti Iacobi Zamorensis, *quae est propria Compostellanae ecclesiae*, multipliciter molestaret, tandem idem presbyter *pro eius gravaminibus evitandis* se et ecclesiam suam *ac parochianos* nostrae *ac Romanae ecclesiae* protectioni subiecit. +*Sed praefatus episcopus pro eo forte, quod expressim non appellavit, in eum post invocatum sedis apostolicae patrocimum, contra etiam privilegium Compostellanae ecclesiae indultum, excommunicationis sententiam promulgavit*. Licet autem praedictus presbyter ex simplicitate forte verbum appellationis non expresserit, quia tamen, postquam se et sua nostrae protectioni subiecerat, non debuit sine causae cognitione aliqua sententia condemnari, *fraternitati tuae per apostolica scripta* mandamus, quatenus *super hoc inquiras diligentius veritatem, et* si ita tibi constiterit, sententiam, quam praefatus episcopus in eundem presbyterum tulit, *contradictione et appellatione cessante* denuncies non tenere. *Postmodum vero, si praefatus episcopus adversus presbyterum forte agere voluerit causam audias et fine debito decidas. Eundem quoque episcopum studiosius moneas et inducas ut a molestiis et gravaminibus Compostellanae ecclesiae omnino desistat, et sic suo iure sit contentus, ut ea quae ad praedictam ecclesiam spectant sibi nequaquam praesumat usurpare.*

Chapter XXXV

Latin source headnote: A cause is not to be remitted to the judge from whom the appeal was taken while the appeal has not yet been justified, unless by consent of the parties.

The same, to the Archbishop of Tarragona.

Having received the complaint of the canons of Pamplona *that the beloved son the Duke of the Navarrese had despoiled them of their goods, at their petition we determined that the cause itself should be committed to your fraternity and terminated with a canonical end. But because they were silent to us that an appeal had been taken from your hearing to the Apostolic See, and we would not have committed the cause itself to your examination if this had been established to us, since* a cause ought not to be remitted to those from whom it is known that an appeal was taken unless the parties have consented *to this, through apostolic writings we command and more strictly prohibit your fraternity from proceeding in any way in execution of that business on occasion of our letters.*

Causa non est ad iudicem a quo remittenda appellatione adhuc non iustificata, nisi de partium consensu.

Idem Archiepiscopo Terraconensi.

Accepta conquestione canonicorum Pampilonensium, +*quod dilectus filius noster dux Navarrorum eos bonis suis spoliasset, causam ipsam tuae fraternitati ad eorum petitionem duximus committendam, et fine canonico terminandam. Verum quoniam nobis tacuerunt, quod ab audientia tua fuit ad sedem apostolicam appellatum, nec nos, si hoc nobis constitisset, ipsam causam tuo commisissemus examine quum* Non debet ad eos causa remitti, nisi partes *in hoc* consenserint a quibus noscitur appellatum, *fraternitati tuae per apostolica scripta mandamus et arctius inhibemus, ne in exsecutione ipsius negotii occasione literarum nostrarum aliqua ratione procedas.*

Chapter XXXVI

Latin source headnote: Even a delegate appointed with the clause "with appeal removed" can be recused if he is a blood relative of the impetrant or if he was his advocate in that cause.

Lucius III, to Walter, Bishop of Lincoln.

Finally, by the present letters we intimate to your fraternity that, if *some* cause has been delegated to someone who is a blood relative of the person who impetrated the letters, or has discharged the office of advocate in the same business, or is suspect from any *other* just cause, a delegate of this kind will not undeservedly be able to be recused, although the business was delegated to him with appeal removed.

> Delegatus etiam datus cum clausula «appellatione remota» recusari potest, si est consanguineus impetrantis, vel si fuit advocatus eius in illa causa.
>
> Lucius III. Galtero Linconiensi Episcopo.
>
> Postremo fraternitati tuae literis praesentibus intimamus, quod, si causa *aliqua* alicui fuerit delegata, qui consanguineus sit illius, qui literas impetravit, aut in eodem negotio advocati officio functus, vel ex alia *quacunque* iusta causa suspectus, huiusmodi delegatus non immerito poterit recusari, quamvis appellatione remota fuerit ei negotium delegatum.

Chapter XXXVII

Latin source headnote: A sentence of interdict is not suspended through a subsequent appeal.

The same, to the Bishop of Norwich.

To these things: because some persons established under interdict appeal and afterward contemn to observe it, you wished to consult what is to be observed in this case. You should know, therefore, that, just as they cannot be excommunicated after an appeal, so they cannot avoid an interdict to which it is established they were subjected before the appeal.

> Sententia interdicti non suspenditur per appellationem sequentem.
>
> Idem Norvicensi Episcopo.
>
> Ad haec, quoniam sub interdicto aliqui constituti appellant, et deinde illud servare contemnunt, quid in hoc casu servandum sit consulere voluisti. Noveris igitur, quod, sicut post appellationem excommunicari non possunt, sic interdictum nequeunt, cui ante appellationem eos constat suppositos, declinare.

Chapter XXXVIII

Latin source headnote: The judge of appeal remits the appellant and the cause to the first judge unless it is established to him that an appeal was taken from a grievance or an unjust sentence.

Clement III.

Since in the [*Church of God, according to the diversity of orders and honors, the jurisdiction of those presiding sometimes varies among subjects, and our venerable brothers the bishops exercise the power conceded to them in rendering the rights of subjects and peoples, it happens that, considering not justice but the liberty of their own will, seeking the things that are their own, not those of Jesus Christ, they avoid the judgment and power of the bishops themselves, usurping the refuge of appeal, whose aid, to be interposed justly for the protection of the innocent, is recognized to have been instituted.*] But we received *a complaint through the grievance of our venerable brother the Bishop of Lincoln transmitted to us* that certain clerics of Gual., *not compelled by necessity of grievance nor burdened by the weight of any oppression, but under the sole pretext of casting off from themselves the yoke of ecclesiastical discipline, so that they may more freely rage in the liberty of their error and iniquitous purpose, send forth the voice of appeal from his hearing and,* on occasion of your judgment, which they boast that they

wish to observe, avoid without reasonable cause the cognizance of the Bishop of Lincoln, their ordinary judge.

Hence, [*because both canonical and civil laws introduced the refuge of appeal not for the defense of iniquity but as a remedy for the oppressed and those unjustly condemned, according to the statutes of the Lateran Council an appeal of subjects of this kind is not to be admitted, which is not extended except where the worthy correction of prelates may be eluded; and it is recognized to concern all who, by the Lord's ordering, are called into a share of the solicitude of the churches that each person's rights be preserved inviolate,*] *through apostolic writings* we command your discretion that, if at any time it happens that any of the *aforesaid* clerics appeals from the aforesaid bishop to your hearing, you shall neither *provide him a hearing nor* admit his appeal before it is established to you that it was extended either from a grievance or from an unjust condemnation; otherwise you shall remit him to the hearing of the aforesaid bishop, with appeal removed, to obey his judgment *in the just examination of his discussion. For thus the contumacy of the wicked will be restrained, and the honor due to fellow bishops, through observance of fraternal reciprocity, will remain in its liberty.*

> Iudex appellationis remittit appellantem et causam ad priorem iudicem, nisi sibi constiterit a gravamine vel iniusta sententia fuisse appellatum.
>
> Clemens III.
>
> Quum in ecclesia +[*Dei pro diversitate ordinum et honorum iurisdictio praesidentium nonnunquam in subditis varietur, et venerabiles fratres nostri episcopi concessam sibi potestatem exerceant in reddendis iuribus subditorum populorumque, evenit, ut non consideratione iustitiae, sed voluntatis propriae libertate pensata, quae sua sunt, non quae Iesu Christi quaerentes, ipsorum episcoporum iudicium potestatemque declinent appellationis refugium usurpantes, cuius auxilium iuste interponendum ad praesidium innocentium noscitur institutum.*] Accepimus *autem venerabilis fratris nostri Linconiensis episcopi transmissa nobis conquestione querelam,* quod quidam clerici de Gual. *gravaminis necessitate non compulsi et nullius oppressionis mole gravati, sed solo praetextu excutiendi a se iugum ecclesiasticae disciplinae, ut possint liberius in sui erroris et iniqui propositi libertate bacchari, ab audientia sua vocem appellationis emittunt, et* occasione iudicii tui, quod velle observare se iactant, Linconiensis episcopi iudicis ordinarii sine causa rationabili cognitionem evitant. Unde [*quia appellationis diffugium non ad defensionem iniquitatis, sed ad remedium oppressorum et iniuste damnatorum tam canonica quam civilia iura induxerunt ad statuta Lateranensis concilii non est subditorum huiusmodi appellatio admittenda, quae non porrigitur, nisi ubi digna correctio eludi valeat praelatorum, et omnium, qui in partes sollicitudinis ecclesiarum disponente Domino convocantur, interesse dignoscitur, ut sua cuique iura illibata serventur,*] *discretioni tuae per apostolica scripta* mandamus, quatenus, si quando contigerit, aliquem de *praedictis* clericis a praefato episcopo ad tuam audientiam appellare, non ante *audientiam sibi praebeas, nec eius* appellationem admittas, quam tibi constiterit, eam vel a gravamine vel iniusta condemnatione porrectam; alioquin ipsum ad praedicti episcopi audientiam remittas, appellatione remota *in suae discussionis examine iusto* eius iudicio pariturum. *Sic etenim contumacia refrenabitur improborum et honor coepiscopis debitus pro fraternae vicissitudinis observantia in sua libertate consistet.*

Chapter XXXIX

Latin source headnote: If an appellant who does not prosecute returns to the judge from whom the appeal was taken and is again aggrieved, notwithstanding the first abandonment he can appeal again. This it says, and it is a noteworthy case, according to Panormitanus.

The same.

Your letters directed to us showed that, when a cause concerning a certain marriage was being treated in your presence, in which the man's party objected a bond of consanguinity, and the woman's party had appealed to the Apostolic See and had not prosecuted her appeal by the appointed term *for its prosecution and for receiving the apostoli when the term arrived,* afterward, when she renounced the appeal that she had made, you, proceeding in cognizance of the cause, received testimony concerning the kinship. But because the woman's party appealed again, you petition *us* to be instructed whether you have power to proceed to the calculus of sentence. We respond, therefore, that, although according to the decree of the Lateran Council, after an appellant has not prosecuted his appeal within the term established for prosecuting the appeal, you can freely use your authority, nevertheless, because she appealed again, since according to the laws it was lawful for her to appeal twice in the same cause, she made herself exempt from your jurisdiction—especially since here the man's intention proceeds toward separation of a marriage, which is a favorable matter, *and nothing is to be done unless it lacks suspicion and is judged irreprehensible by law. But another judge will be able to terminate the same cause, according to God and the enactments of the canons, according to the statements of the witnesses who were rightly admitted after renunciation of the first appeal, and other things, if any, that can still be produced in the same cause.*

> Si appellans, qui non prosequitur, redit ad iudicem a quo, et iterum gravatur, non obstante prima desertione potest iterum appellare. H. d. et est casus notabilis. Panormit.
>
> Idem.
>
> Directae nobis tuae literae demonstrarunt, quod, quum in tua praesentia causa cuiusdam matrimonii tractaretur, in qua pars viri consanguinitatis vinculum opponebat, et pars mulieris ad sedem apostolicam appellasset, nec appellationem suam praefixo termino *ad persecutionem ipsius et recipiendos apostolos adveniente termino* fuerit prosecuta, postmodum ea renunciante appellationi, quam fecerat, tu in causae cognitione procedens de parentela testimonia recepisti. Verum quia mulieris pars iterum appellavit, *a nobis* postulas utrum ad calculum sententiae procedere valeas, edoceri. Respondemus igitur, quod, licet iuxta decretum Lateranensis concilii, postquam in termino prosequendae appellationis statuto appellans suam appellationem non fuerit prosecutus, auctoritate tua libere possis uti, tamen, quia iterum appellavit, quum secundum iura ei licuerit in eadem causa bis appellare, a iurisdictione tua se fecit exemptam, praesertim quum hic ad separationem matrimonii, quod est res favorabilis, intentio viri procedat, *nihilque agendum sit, nisi quod suspicione careat, quod iure inreprehensibile censeatur. Alius vero iudex poterit eandem causam iuxta dicta testium qui post renuntiationem primae appellationis rite admissi fuerunt et alia si qua adhuc poterunt in eadem causa produci secundum Deum et sancita canonum terminare.*

Chapter XL

Latin source headnote: A sentence of excommunication, suspension, or interdict rendered under a condition is suspended if an appeal was taken before the occurrence of the condition. This it says by adhering to the words of the letter, so that it may thus satisfy every reading. And it is a subtle and very much allegeable decision.

Celestine III.

Moreover, we were asked: if some judge has pronounced sentence thus, "Unless you make satisfaction to Sempronius within twenty days, know yourself to be excommunicated, suspended, or interdicted," *and* the person against whom [*such*] a sentence is rendered, appealing in the intervening time, has made no satisfaction by the appointed day, whether he is bound by such a sentence or

remains protected by interposition of the appeal? It appears to us that the obstacle of appeal ought to impede a sentence of this kind. [*Given at the Lateran, in the third year, 1193*.]

> Sententia excommunicationis, suspensionis vel interdicti lata sub conditione suspenditur, si ante conditionis eventum fuerit appellatum. H. d. inhaerendo verbis literae, ut sic satisfaciat cuilibet lecturae. Et est decisio subtilis et multum allegabilis.
>
> Coelestinus III.
>
> Praeterea requisiti fuimus, si quis iudex ita protulerit sententiam: «nisi Sempronio infra XX. dies satisfeceris, te excommunicatum vel suspensum aut interdictum esse cognoscas,» *et* ille, in quem fertur [*talis*] sententia, medio tempore appellans, ad diem statutum minime satisfecerit, utrum ille sententia tali ligetur, aut interpositione appellationis tutus exsistat? Videtur autem nobis, quod huiusmodi sententiam appellationis obstaculum debeat impedire. [*Dat. Lat. Ao. III.* 1193.]

Chapter XLI

Latin source headnote: If several connected articles are committed by a rescript and appeal is removed in one, it is understood to be removed in the others also. This it says. § 1. The cause of suspicion is to be proposed before the judge who is recused and proved before arbiters. This it says.

The same.

Second, you ask: when several articles have been placed in one commission, and only in one does it happen that appeal is expressly prohibited, whether an appeal holds if an appeal has been taken concerning the others? Concerning this we respond to you that, since according to blessed Gregory words serve intention, and this is our intention—that concerning all the articles that are placed in *our* commission justice shall attain its effect *notwithstanding appeal*—appeal is understood to be interdicted in all. For it makes no difference whether [*appeal*] is prohibited first or second, in the middle or at the end, since, as the *express* arguments of each law teach us, *both* those things that are at the beginning *of rescripts* often happen to be referred to the middle and the end, and those that are in the middle to the end and the beginning.

§ 1. Third, you petition to be instructed *whether, when someone recuses a judge as suspect, he ought to allege a cause of suspicion and is bound to prove the cause, unless it is manifest, before the same judge; and also whether the judge can proceed in that judgment and business if the person who objects the suspicion is unwilling or unable to prove its cause in law.* We respond to your consultation in this way: when someone proposes that he holds a judge suspect, he is bound to allege the cause of suspicion before that *judge, lest anyone else be able, at the decision of his own will, frustratingly to avoid any judgment whatsoever.* But the parties, through that judge *who is named as suspect,* ought to be compelled to agree upon *some one judge or upon* some persons not very remote. If the cause of suspicion is not proved before *him or* them within a competent term, then at length the judge shall use his authority. But if the cause *of that* suspicion is proved before those *upon whom agreement is made,* the recused *judge* will be bound to stay cognizance of the cause.

For reason itself dictates, *and it is proved by very many examples,* that suspect and hostile persons ought not to be judges, *since, as a decretal constitution asserts, no one can give anything more welcome and pleasing to an enemy than if he has committed to him for assailing the person whom he intends to injure and damage. Moreover, you propose in the fourth place this other question: whether a judge can take cognizance by his office whether an appeal was taken for purposes of frustration or from a reasonable cause, and, if the appellant has not objected a*

reasonable cause of appeal or has not proved the one he objects, whether the judge is bound under pretext of this appeal to cease from cognizance of the cause. Here it does not please us to define otherwise than has been defined by our predecessors and those skilled in each law. For it is provided in the law that, when an appeal has been interposed, whether it has been received or not, nothing ought to be altered in the intervening time. Canonical constitutions no less hold that those who wish, or for whom it is necessary, to flee to the Roman Church as to their head may appeal without any impediment, to which indeed it is granted that they may go freely without any calumny, custody, excommunication, or despoiling; it permits appeals everywhere according to the sanctions of the holy canons. Therefore, when a judge has before him a cause that he recognizes has thus been suspended through an appeal, he shall abstain as quickly as possible from cognizance of the cause. [*Therefore, fifth, etc. (Cf. c. 21, On the Office of a Delegated Judge, I. 29.) Given at the Lateran, on the fifteenth day before the Kalends of July, in the third year of our pontificate, 1193.*]

> Si per rescriptum committantur plures articuli connexi, et in uno removeatur appellatio, intelligitur remota etiam in aliis. Hoc dicit. - §. 1. Causa suspicionis proponenda est coram iudice, qui recusatur, et probanda coram arbitris, H. d.
>
> Idem.
>
> Secundo requiris, quum, pluribus articulis in una commissione positis, in uno tantum contingit appellationem expresse vetari, utrum appellatio teneat, si super aliis fuerit appellatum? In quo tibi respondemus, quod, quum secundum B. Gregorium verba intentioni deserviant, et haec sit nostra intentio, ut de omnibus articulis, qui in commissione *nostra* ponuntur, iustitia *non obstante appellatione* suum consequatur effectum, in omnibus appellatio intelligitur interdicta. Nihil enim interest, utrum [*appellatio*] inhibeatur primo an secundo, medio an in fine, quum, sicut utriusque iuris argumenta *expressa* nos docent, *et* ea, quae in principio *rescriptorum*, ad medium et ad finem, illa vero, quae in medio, ad finem atque principium saepe referri contingat. §. 1. Tertio postulas edoceri, +*quum aliquis iudicem tanquam suspectum recusat, an causam suspicionis debeat allegare, et causam, nisi manifesta sit, coram eodem iudice probare teneatur; utrum etiam iudex possit in ipso iudicio et negotio procedere, si ille, qui suspicionem obiicit, causam eius non velit vel non possit in iure probare*. Consultationi tuae taliter respondemus, quod, quum aliquis iudicem proponit se habere suspectum, suspicionis causam coram eodem *iudice* allegare tenetur, *ne possit alius quilibet pro suae voluntatis arbitrio quodlibet iudicium frustratorie declinare*; sed partes, in *aliquem. iudicem vel in* aliquos non valde remotos conveniant, per eundem iudicem, *qui nominatur suspectus*, debent cogi, coram *quo vel* quibus si causa suspicionis infra terminum competentem probata non fuerit, tunc demum auctoritate sua iudex utetur. Quodsi coram ipsis, *in quos convenitur, eiusdem* causa suspicionis probata fuerit, causae cognitioni supersedere tenebitur *iudex* recusatus. Ipsa namque ratio dictat, *et plurimis probatur exemplis*, quod suspecti et inimici iudices esse non debent, *quum, sicut decretale perhibet institutum, nil gratius et amabilius quis dare valeat inimico, quam si ad impetendum commiserit, quem laedere et damnificare intendit. Illam vero praeterea quaestionem quarto loco proponis, utrum iudex possit de officio suo cognoscere an frustratorie sit an causa rationabili sit appellatum et si appellans rationabilem appellationis causam non opposuerit aut non probaverit quam opponit, an iudex huius appellationis obtentu teneatur a causae cognitione cessare. Hic non placet aliter definire quam ab antecessoribus nostris et utriusque iuris peritis fuerit definitum. Cautum est enim in lege, quod appellatione interposita sive ea recepta sit sive non tempore medio nihil innovare oportet. Canonica nihilominus tenent instituta, ut qui vult, vel quibus necesse fuerit ad Romanam ecclesiam quasi ad caput suum confugere, possent et sine impedimento quolibet appellare, ad quam nimirum sine ulla calumnia, vel custodia, vel excommunicatione, vel exspoliatione ire libere concedatur, quae secundum canonum sanctorum sanctiones passim appellare permittit. Ideo iudex quum ante se causam tractaverit quam sic per appellationem suspensam esse cognoverit a cognitione causae quam citius abstineat.* [*Quinto igitur etc.* (*cf. c.* 21. *de off. iud. del. I.* 29.) *Dat. Lat. XV. Kal. Iul. Font. nostr. Ao. III.* 1193.]

Chapter XLII

Latin source headnote: Neither the judge nor the adversary is bound to defer to an appeal to which the appellant did not defer.

The same.

You determined to consult us through your messengers whether deference is to be given to the appeal of one whom his adversary is prepared to convict immediately of a despoiling committed against him after an appeal had been lawfully interposed. We respond *therefore* that, since one is to be punished in that in which he offended, one who neglected to defer to an appeal renders himself unworthy of the benefit of appeal, *whence we judge that deference is not to be given to him when appealing either.*

> Non tenetur iudex vel adversarius deferre appellationi, cui non detulit appellans.
>
> Idem.
>
> An sit deferendum appellationi illius, quem adversarius de exspoliatione post appellationem legitime interpositam sibi facta paratus est in continenti convincere, nos duxisti per tuos nuncios consulendos. Respondemus *itaque*, quod, quum in eo quis puniendus sit, in quo deliquit, qui appellationi deferre neglexit se beneficio reddit appellationis indignum, *unde nec ei appellanti esse deferendum censemus*.

Chapter XLIII

Latin source headnote: It has two understandings. According to the first it intends this: a mere executor is not recused, nor is an appeal made from him, unless he exceeds the measure, especially if he is appointed with the clause "with appeal removed." According to the other understanding, this it says: there is no withdrawal from a suspect judge through appeal unless he exceeds the measure.

Innocent III, to the illustrious King of the Franks.

He who is ignorant of nothing knows—(*And below:* [*Cf. c. 7, On the Office of a Legate, I. 30.*]) Moreover, the cardinal himself did not issue the *said* sentence of interdict but rather published it; nor was he its author, but more truly its executor. Hence, since according to *canonical and civil law* no appeal can be taken from executors unless perhaps they exceed the measure in executing, and we also took care in the letters directed to him concerning this to prohibit the obstacle of appeal, no deference was to be given to the appeal interposed from him. But concerning the objection of suspicion, although we believe that he was deservedly not suspect to you, nevertheless, even if he had been, he ought not on account of the appeal interposed to have desisted from that to which he proceeded not by his own motion but rather by our precept.

> Habet duos intellectus; secundum primum hoc intendit: Merus exsecutor non recusatur, nec ab eo appellatur, nisi modum excedat, maxime si est datus cum clausula: «appellatione remota.» Secundum alium intellectum h. d.: A iudice suspecto non receditur per appellationem, nisi modum excedat.
>
> Innocentius III. illustri regi Francorum.
>
> Novit ille, qui nihil ignorat: (*Et infra:* [*cf. c.* 7. *de off. leg. I.* 30.]) Praeterea *dictam* interdicti sententiam *ipse* cardinalis non edidit, sed potius publicavit, nec fuit dictator ipsius, sed verius exsecutor. Unde quum secundum ius *canonicum et legale* ab exsecutoribus appellari non possit, nisi forsan modum excederent in exsequendo, nos etiam in literis super hoc directis ad ipsum appellationis curavimus obstaculum inhibere, appellationi ab eo interpositae non fuerat deferendum. De suspicionis autem obiectu, licet

eum merito tibi suspectum non fuisse credamus, non tamen, et si fuisset, propter appellationem interpositam ab eo desistere debuisset, ad quod non proprio motu, sed nostro potius praecepto processit.

Chapter XLIV

Latin source headnote: If an appeal is received by the judge or approved by the party, the term fixed for prosecuting it obtains the place of a peremptory citation, so that proceedings are taken against the absent person as though he had been cited peremptorily; nor can such a term be anticipated by either party.

The same.

It often happens that, when an appeal is made to our hearing, suits that could easily have been terminated remain undecided on account of the default of one party who prosecutes the interposed appeal neither through himself nor through a suitable representative, or perhaps through the malice of a representative who afterward conceals his procuratorial mandate, although frequently a question of law is moved, for which necessary proofs to the contrary do not exist before us, and sometimes also a question of fact could lightly be proved with the parties present. Hence, although it was established in the Lateran Council that, if in any business someone appeals and, when the person appealed against comes, the person who appealed neglects to come, he shall make to the other a suitable recompense of expenses, so that, deterred at least by this fear, someone may not easily appeal to the grievance of another, nevertheless, because questions are no less prolonged on this account, *wishing that an end be imposed upon suits and that fraud and deceit support no one, by the counsel of our brothers,* by the present decree we establish that, if an appeal of this kind has been either received by the judge or approved by the party, after the term fixed for the appeal it shall obtain the force of a peremptory edict, in such a way, namely, that from then proceedings shall be taken against the absent person just as if he had been called to judgment peremptorily.

But if perhaps the interposed provocation was maliciously neither received nor approved, when it is established that a lawful provocation was made, we will that it no less obtain force, saving the constitutions promulgated concerning those provoking after sentence: if they take no care to prosecute their appeals, after the term fixed for prosecuting the appeal the sentence that had been suspended by the appeal remains ratified. But whatever could be proposed by an absent person against a peremptory citation may be alleged against an appeal of this kind. But if anyone, anticipating the term of appeal and concealing the truth, has impetrated letters, he shall both lack the letters impetrated and not escape the penalty of contumacy. We will this, however, to be observed in conducting suits or judgments.

Si appellatio recipitur a iudice, vel approbatur a parte, terminus ad eam prosequendam praefixus obtinet vicem peremptorii, ut in absentem procedatur, ac si peremptorie fuisset citatus; nec talis terminus praeveniri poterit ab aliqua partium.

Idem.

Saepe contingit, quod, quum ad nostram audientiam appellatur, propter defectum partis alterius neque per se, neque per responsalem idoneum appellationem interpositam prosequentis, vel forsitan ex malitia subsequentis responsalis mandatum procuratorium occultantis, lites, quae de facili poterant terminari, remaneant indecisae, quum frequenter iuris questio moveatur, cuius apud nos probationes

necessariae in contrario non exsistunt, et interdum etiam facti quaestio de levi posset partibus praesentibus comprobari. Unde, licet in Lateranensi concilio fuerit constitutum, ut, si in quocunque negotio aliquis appellaverit, et eo, qui appellatus fuerat, veniente, qui appellavit venire neglexerit, competentem illi recompensationem faciat expensarum, ut hoc saltem timore deterritus in gravamen alterius non facile quis appellet; quia tamen propter hoc quaestiones nihilominus prorogantur, *volentes, ut finis litibus imponatur, et ne fraus et dolus alicui suffragentur, de consilio fratrum nostrorum* praesenti decreto statuimus, ut, si huiusmodi appellatio vel a iudice recepta, vel a parte fuerit approbata, post terminum appellationi praefixum edicti peremptorii vires obtineat, ita videlicet, ut extunc in absentem perinde procedatur, ac si peremptorie vocatus ad iudicium exstitisset. Quodsi forsitan interposita provocatio malitiose recepta vel approbata non fuerit, quum constiterit legitime provocatum, nihilominus eam vigorem volumus obtinere, salvis constitutionibus de provocantibus post sententiam promulgatis; quibus appellationes suas prosequi non curantibus, post terminum appellationi prosequendae praefixum rata manet sententia, quae fuerat appellatione suspensa. Quicquid autem contra citationem peremptoriam posset ab absente proponi, adversus appellationem huiusmodi valeat allegari. Si quis autem terminum appellationis praeveniens tacita veritate literas impetravit, et careat impetratis, et poenam contumaciae non evadat. Hoc autem in litibus sive iudiciis exercendis volumus observari.

Chapter XLV

Latin source headnote: When an appeal has been abandoned through the appellant's negligence, the judge can proceed by office in cases in which his office abounds. And it is a very noteworthy case.

The same, to the Bishops of Limoges and Cahors.

Established in our presence, *the beloved son G.,* Archdeacon of the *Church* of Clermont, explained to us that, when *formerly* the deanery of Clermont was vacant, *the abbot, the cantor, and* certain canons *of Clermont* transferred their votes to the *venerable brother, the Bishop of Clermont,* and the bishop, with certain others expressly consenting, conferred the deanery upon the same archdeacon, although only eleven canons had first appealed that no one should be assumed as dean without the assent of all, while [*other*] twenty-five consented to his election, partly through themselves and partly through the mediation of the bishop. And when *the beloved son P., cardinal priest of the title of* San Marcello, then legate of the Apostolic See, made his passage through those regions, not so that he might derogate from the appeal interposed *to us* but so that he might transmit the instructed cause to us, he delegated its examination to *the beloved sons,* the Abbots of Saint Giles and Saint Andrew, and commanded them to cite to himself the party contradicting the election of the dean, to show in his presence the cause of its contradiction. *When, therefore, the aforesaid cardinal had faithfully reported to you the things proposed before him,* it was therefore understood through the assertion of *the aforesaid G.,* Cardinal *of San Marcello,* that an appeal had been made under this form—namely, lest proceedings be taken in the election of the dean without the assent of all—and that the appellants had not prosecuted the appeal within a year, nor was there a reason that two years should be granted to them, since, just as twice within the lawful time they sent a simple messenger to the Apostolic See, so they could have sent a suitable proctor at least once.

Nevertheless, lest we appear to pass over in silence the peremptory exceptions proposed on their behalf, *through apostolic writings* we command your fraternity that you *inquire more diligently into the truth concerning these things; and,* if it is established to you that the archdeacon voluntarily renounced the bishop's act upon which he relies, or that the aforesaid bishop proceeded to his election while

omitting the aforesaid things without which it is proposed that it had been agreed that he should not proceed in that transfer of votes upon which the archdeacon relies, you shall impose silence upon him concerning *that* deanery; otherwise you shall declare *by our authority, with the obstacle of appeal removed,* that the nomination or election thus made concerning the other person, and whatever followed from it, is invalid and empty.

> Appellatione deserta per negligentiam appellantis, potest iudex ex officio procedere in casibus, in quibus eius officium exuberat. Et est casus valde notabilis.
>
> Idem Lemovicensi et Caturcensi Episcopis.
>
> Constitutus in praesentia nostra *dilectus filius G.* archidiaconus Claremontensis *ecclesiae* nobis exposuit, quod *olim* Claremontensi decanatu vacante, *abbas, cantor et* quidam *Claromontenses* canonici vota sua in *venerabilem fratrem Claromontensem* episcopum transtulerunt, et episcopus cum quibusdam aliis expresse consentientibus in eundem archidiaconum ei contulit decanatum, XI. *tantum* canonicis prius appellantibus, ne quis assumeretur praeter assensum omnium in decanum, quum electioni eius [*alii*] XXV. tum per se, tum episcopo medio consentirent. Quumque *dilectus filius P. tit. *sancti Marcelli presbyter cardinalis tunc apostolicae sedis legatus per partes illas transitum faceret, non ut appellationi *ad nos* interpositae derogaret, sed ut instructam transmitteret ad nos causam, *dilectis filiis* sancti Egidii et sancti Andreae abbatibus examinationem delegavit ipsius, et mandavit eisdem, ut partem contradicentem electioni decani citarent ad ipsum, contradictionis suae causam in eius praesentia ostensuram. +*Quum igitur cardinalis praedictus quae coram eo proposita sunt vobis fideliter retulisset* Intellecto igitur per assertionem *supradicti G.* cardinalis *S. Marcelli,* quod sub ea forma fuerat appellatum, ne *scilicet* sine assensu omnium procederetur in electione decani, et quod appellantes appellationem infra annum non fuerant prosecuti, nec erat, propter quod eis esset biennium indulgendum, quum, sicut bis infra tempus legitimum simplicem nuncium ad sedem apostolicam destinarant sic potuissent saltem semel procuratorem idoneum destinasse; ne tamen peremptorias exceptiones ex eorum parte propositas videamur sub silentio praeterire, *fraternitati vestrae per apostolica scripta* mandamus, quatenus *de his inquiratis diligentius veritatem, et,* si vobis constiterit, archidiaconum facto episcopi, ex quo nititur, sponte renunciasse, vel praedictum episcopum processisse ad electionem ipsius, praetermissis praedictis, sine quibus ne procederet in illa translatione voluntatum, ex qua nititur archidiaconus, proponitur esse actum, ei super decanatu *ipso* silentium imponatis; alioquin nominationem seu electionem taliter factam de alio, et quicquid fuerit secutum ex ipsa, *sublato appellationis obstaculo* denuncietis *auctoritate nostra* irritum et inane.

Chapter XLVI

Latin source headnote: Against a person elected or confirmed, who awaits no other right, an exception or appeal is not regularly admitted, especially a frustrating one to impede the effect of election or confirmation; but, after possession has been obtained, he will be able to be accused or denounced. This it says, and according to this it is a noteworthy case.

The same, to the Chancellor of Metz.

When *the beloved son I.,* Dean *of the Church* of Saint-Sauveur, and *the beloved son E.,* Cantor of Metz, *and D., scholasticus of the same church, your proctors,* were established in our presence, we took care to grant them a kindly hearing. But it was proposed to us on your behalf, as also *our venerable brother* the Bishop *of Metz intimated to us through his letters,* that, when the provostship of Saint-Sauveur was vacant and the day for the election had been fixed, *the aforesaid D. bishop, understanding that the votes of the brothers were divided into two parties*—(*And below:*) through the Father and the Son and the Holy Spirit,

in virtue of obedience and under peril of their souls, adjured the canons that, according to God and according to their conscience, they should elect *only* one of the two toward whom the parties *already* appeared to have extended their eyes, the one whom they deemed more useful and suitable for the church. But the dean with two deacons and three subdeacons nominated the said cantor, *his kinsman of the greater church,* as provost. But the cantor himself, who discharges the priestly office, and the custodian with the scholasticus and Master B., priests, two Levites, and five subdeacons concordantly elected you; and the aforesaid bishop, since the honesty of your person was established, confirmed your election as made by the greater and sounder part of the chapter. And when he wished to extend to you the house and investiture, as is customary, the dean appealed to the Apostolic See, alleging only inability against you.

Although the bishop did not believe that deference was to be given to an appeal of this kind, since Pope Alexander of happy memory, our predecessor, established in the Lateran Council that, unless something reasonable has been objected and shown by the fewer and inferior persons, with appeal removed, what was instituted by the greater and sounder part of the chapter shall always prevail and attain its effect, nevertheless, humbly and devotedly deferring to us, he ceased from the investiture. But it was proposed in opposition that the dean, who obtains the greater place in the aforementioned church, with the two more senior deacons and three subdeacons from among the elders of the church, understanding that the provost ought to exercise the administration of temporal things, and that therefore he is more useful for this who is deemed more powerful, with good zeal nominated the aforesaid E. as provost, a man knowing how to provide for the church and powerful to protect its rights and possessions, if necessary, with a strong hand and an outstretched arm. Hence, when the other party, although greater in number, nevertheless inferior in authority, nominated you as provost, proposing that you were, as it were, utterly powerless in those regions in which the possessions of the provostship exist, both on account of this *and because it held the bishop suspect by law, it appealed to the Apostolic See,* adding that it would object other things to you in our presence, which it was then unwilling to explain in the presence of the suspect judge; *but the bishop, not deferring to the appeal, nevertheless confirmed the nomination made concerning you.*

We therefore, *having heard these and other things that had been proposed on this side and that,* because it was evidently established that the cause of appeal that was *set out and* expressed was not reasonable, but the dean then neither *objected nor* expressed another, although he said that he wished to object another before us, *by the counsel of our brothers* decree that the effect of your confirmation ought not to be impeded by the things that were proposed. Nevertheless, if he should determine to propose anything against you not in the manner of an exception to impede the effect of the election and confirmation, but in the manner of denunciation or accusation, after you have obtained peaceful possession of the provostship itself, we do not deny him license to propose it.

> Contra electum vel confirmatum, nullum aliud ius exspectantem, non admittitur regulariter exceptio vel appellatio, maxime frustratoria ad impediendum electionis vel confirmationis effectum; sed possessione habita poterit accusari vel denunciari. H. d. et secundum hoc est casus notabilis.
>
> Idem Cancellario Metensi.
>
> Constitutis in praesentia nostra *dilecto filio I.* decano *ecclesiae* sancti Salvatoris, et *dilecto filio E.* cantore Metensi *et D. scholastico eiusdem ecclesiae tuae procuratoribus benignam curavimus audientiam indulgere. Fuit autem ex tua nobis parte propositum, sicut etiam venerabilis frater noster* Metensis episcopus *per suas nobis literas* intimavit, quod, sancti Salvatoris praepositura vacante, die electioni praefixo, *intelligens praedictus D. episcopus, in duas partes fratrum vota divisa.* (*Et infra:*) Per Patrem et Filium et Spiritum sanctum in virtute

obedientiae, ac sub animae periculo canonicos adiuravit, ut secundum Deum et iuxta conscientiam suam *tantum* unum eligerent de duobus, in quos *iam* partes videbantur oculos extendisse, quem ecclesiae magis utilem et idoneum reputarent. Decanus autem cum duobus diaconibus et subdiaconibus tribus dictum cantorem *maioris ecclesiae cognatum suum* in praepositum nominavit. Cantor vero ipse, qui presbyterali officio fungitur, et custos cum scholastico et magistro B. sacerdotibus, Levitis duobus, et subdiaconibus quinque te concorditer elegerunt, cuius electionem tanquam a maiori et saniori parte capituli factam, quum de personae tuae honestate constaret, praedictus episcopus confirmavit. Et quum tibi vellet domum et investituram porrigere, ut est moris, decanus ad sedem apostolicam appellavit, contra te impotentiam duntaxat allegans. *Licet autem episcopus appellationi huiusmodi non crederet deferendum, quum felicis recordationis Alexander Papa praedecessor noster in concilio Lateranensi statuerit, ut, nisi a paucioribus et inferioribus aliquid rationabile obiectum fuerit et ostensum, appellatione remota semper praevaleat et suum consequatur effectum quod a maiori et saniori parte capituli fuerit institutum, nobis tamen humiliter deferens et devote ab investitura cessavit. Fuit autem propositum ex adverso, quod decanus, qui maiorem locum obtinet in ecclesia memorata, cum duobus antiquioribus diaconibus et tribus subdiaconibus de antiquis ecclesiae intelligens, quod propositus administrationem temporalium debeat exercere, ideoque ille ad hoc utilior, qui potentior reputetur, bono zelo praedictum E. in praepositum nominavit, scientem ecclesiae providere ac potentem iura et possessiones ipsuis, si esset necesse, in forti manu et brachio extenso tueri. Unde quum pars altera, licet maior numero, auctoritate tamen inferior te in praepositum nominasset*, proponendo te in partibus illis, quasi penitus impotentem, in quibus praeprositurae possessiones exsistunt, tum propter hoc, *tum quia episcopum habebat de iure suspectum, ad sedem apostolicam appellavit*, addens, quod alia tibi obiiceret in praesentia nostra, quae tunc in praesentia iudicis suspecti noluit explicare; *sed episcopus appellationi non deferens nominationem de te factam nihilominus confirmavit*. Nos ergo, *auditis his et aliis, quae fuerant hinc inde proposita*, quia constitit evidenter, illam appellationis causam, quae fuit *exposita et* expressa, rationabilem non fuisse, aliam autem tunc non *opposuit vel* expressit, etsi dixerit idem decanus, quod aliam vellet obiicere coram nobis, *de consilio fratrum nostrorum* decernimus, tuae confirmationis effectum non debere per ea, quae sunt proposita, impediri. Si quid tamen contra te non in modum exceptionis ad impediendum electionis et confirmationis effectum, sed in modum denunciationis vel accusationis duxerit proponendum, postquam pacificam ipsius praepositurae possessionem fueris assecutus, proponendi licentiam non negamus.

Chapter XLVII

Latin source headnote: An appeal can be taken if a place not safe for the parties is assigned, even if "with appeal removed" is written.

The same, to the Bishop of Worcester.

On your behalf *it was proposed before us that, since there are manifest enmities between the English and the Welsh, and passage to those regions is dangerous for the English because of the dangers of the roads and the war that is recognized to be frequent or continual between those peoples, many who distrust the merits of their cause sometimes strive by authority of our letters to draw you or your men before judges established in Wales, so that thus you may abandon even the most just causes undefended or undergo a settlement equally unjust and damaging. Since, therefore, we will the causes that we commit to be terminated with their due end in such a way that neither party is aggrieved contrary to justice, to your fraternity* by the present page we respond [*thus:*] that, since one who, although cited, cannot come safely to the presence of delegated judges is honorably excused, whenever it happens that you or your men are summoned before judges to whose presence it is dangerous for you to go, you will freely be able to appeal *to the Apostolic See,* even if in the letters of *our* commission the remedy of appeal has been closed, unless the *same* judges assign you a suitable

and safe place. [*Given at the Lateran, on the tenth day before the Kalends of May, in the fifth year of our pontificate, 1202.*]

> Appellari potest, si locus non tutus partibus assignatur, etiamsi sit scriptum appellatione remota.
>
> Idem Vigoriensi Episcopo.
>
> Ex parte tua *+fuit propositum coram nobis, quod, quum inter Anglicos et Wallenses sint inimicitiae manifestae, et ad partes illas Anglicis periculosus sit transitus, pro viarum periculis et guerrae, quae inter gentes illas frequens esse dignoscitur vel continua, multi de causae suae meritis diffidentes, te aliquando vel tuos auctoritate literarum nostrarum trahere satagunt ad iudices in Wallia constitutos, ut sic indefensas causas etiam iustissimas relinquatis, vel compositionem subeatis iniustam pariter et damnosam. Quum igitur causas, quas commitimus, sic velimus fine debito terminari, quod neutra partium contra iustitiam aggravetur, fraternitati tuae* Praesenti pagina [*taliter*] respondemus, quod, quum excusetur honeste qui ad praesentiam delegatorum iudicum non potest secure venire citatus, tu vel tui, quotiens ad illos iudices vos evocari contigerit, ad quorum praesentiam vobis periculosum est ire, libere poteritis *ad sedem apostolicam* appellare, etiamsi in literis commissionis *nostrae* appellationis fuerit remedium interclusum, nisi iudices *ipsi* vobis assignent locum idoneum et securum. [*Dat. Lat. X. Kal. Mai. Pontif. nostr. Ao. V.* 1202.]

Chapter XLVIII

Latin source headnote: A defendant lawfully appeals if he is not heard when objecting that the claimant's proctor does not have a sufficient mandate, or that he was previously convened through other letters of which no mention is made in the second. This it says with regard to the title.

The same, to the Bishop, Dean, and Precentor of Hereford.

The beloved son John, master of the Hospital of York, signified to us *that, when P., formerly rector of that hospital, had closed his last day, our venerable brother the Archbishop of York, to whom and to whose predecessors the ordering of the same hospital had belonged from antiquity, unwilling that it should sustain loss from the want of a rector, placed over it as rector the said I., a priest of the same house unanimously elected by his brothers, hoping that the house itself would receive increase through him both in temporal and spiritual things. But in the course of time, the dean and chapter of the Church of York, as though the ordering of the same hospital belonged to them, wishing to remove the master himself from the office of his administration, impetrated apostolic letters concerning this to the Dean of Lincoln and his fellow judges, by whose authority they caused both the archbishop and the rector to be called into law. Therefore, when the parties were established before those judges on the day peremptorily assigned to them, the judges committed their places to others, reserving only definitive sentence to themselves.*

Furthermore, the Chapter of York, by authority of certain letters on whose seal was contained the seal of the chapter only for citations, although that chapter is known to have another seal, constituted through *it* a certain person as claimant. But although the same master alleged that *the same* person ought not to be admitted as claimant on occasion of those letters, and additionally added that, by authority of certain letters obtained by us *concerning this* to other judges, he had been convened earlier and ought not to have been convened through later letters in which no mention was made of the former, nevertheless the judges were unwilling to admit exceptions of this kind; on account of this he sent forth the voice of appeal to us. Wherefore, *through apostolic writings* we command your discretion that you *inquire more diligently into the truth concerning the foregoing, and,* if it is established to you that an appeal was taken to our hearing on account of the said causes or *one* of them, after revoking as invalid whatever you know was done after an appeal of this kind, you shall

summon the parties to your presence and diligently hear, with appeal removed, the things that they determine to propose on this side and that. [*Given at the Lateran, on the second day before the Ides of May, 1284.*]

> Licite appellat reus, si non auditur excipiens, procuratorem actoris non habere sufficiens mandatum, vel se prius conventum per alias literas, de quibus non fit mentio in secundis. Hoc dicit quoad titulum.
>
> Idem Episcopo, Decano et Praecentori Herfordensibus.
>
> Significavit nobis *dilectus filius Ioannes* magister hospitalis Eboracensis, +*quod, quum P. quondam rector hospitalis ipsius diem clausisset extremum, venerabilis frater noster Eboracensis archiepiscopus, ad quem et praedecessores suos hospitalis eiusdem ordinatio pertinuit ab antiquo, nolens ipsum ex defectu rectoris dispendium sustinere, dictum I. presbyterum eiusdem domus a suis fratribus unanimiter in rectorem electum praefecit ibidem, sperans, quod domus ipsa per ipsum tam in temporalibus quam spiritualibus susciperet incrementum; procedente vero tempore decanus et capitulum Eboracensis ecclesiae, tanquam ad ipsos hospitalis eiusdem ordinatio pertineret, magistrum ipsum a suae administrationis officio removere volentes, literas super hoc apostolicas ad decanum Lincolniensem et suos coniudices impetrarunt, quarum auctoritate in ius vocari fecerunt tam archiepiscopum quam rectorem. Partibus igitur die sibi peremptorie assignata coram ipsis iudicibus constitutis, iudices vices suas aliis commiserunt, sola sibi definitiva sententia reservata*. Praeterea capitulum Eboracense auctoritate quarundam literarum, in quarum sigillo continebatur sigillum capituli ad citationes tantum, quum aliud sigillum capitulum illud noscatur habere, *per ipsum* quendam constituebat actorem. Sed licet idem magister allegaverit, quod *idem* occasione literarum illarum actor non deberet admitti, et insuper adiunxisset, quod auctoritate literarum quarundam a nobis *super hoc* ad alios iudices obtentarum, prius conventus non debuit per literas posteriores, in quibus nulla fiebat mentio de prioribus, conveniri, iudices tamen exceptiones huiusmodi admittere noluerunt, propter quod vocem ad nos appellationis emisit. Quocirca *discretioni vestrae per apostolica scripta* mandamus, quatenus *inquiratis super praemissis diligentius veritatem, et* si vobis constiterit, ob dictas causas vel *ob* earum aliquam ad nostram fuisse audientiam appellatum, revocato in irritum quicquid post appellationem huiusmodi noveritis esse factum, partes *ad vestram praesentiam convocetis et audiatis diligenter appellatione remota, quae hinc inde duxerint proponenda*. [*Dat. Lat. II. Id. Mai.* 1284].

Chapter XLIX

Latin source headnote: A defendant lawfully appeals if he is not heard when petitioning that the thing sought in the libellus be declared.

The same, to Master G., Archdeacon, and Wnormannus, canons of Soissons.

Through the signification of the brothers T. and R. it was declared to our apostolate that, when a question concerning a certain land was being conducted before delegated judges between them on one side and V. on the other, since they had several lands, they petitioned the judges that the land concerning which the question was being conducted should be shown to them. When the judges refused to do this, they provoked to our hearing. Wherefore we command that, if it is so, after restoring to the due state whatever, if anything, you know was attempted after the appeal, etc.

> Licite appellat reus, si non auditur petens declarari rem petitam in libello.
>
> Idem Magistro G. Archidiacono et Wnormanno canonicis Suessionensibus.
>
> Significantibus T. et R. fratribus nostro fuit apostolatui declaratum, quod, quum inter ipsos ex una parte, et V. ex altera super quadam terra coram iudicibus delegatis quaestio verteretur, ipsi, quum plures terras haberent, ut terra illa, super qua quaestio vertebatur, ostenderetur eisdem, a iudicibus postularunt. Quod quum ipsi facere denegarent, ad nostram audientiam provocarunt. Quocirca

mandamus, quatenus, si est ita, revocato in statum debitum, si quid post appellationem noveritis attentatum, etc.

Chapter L

Latin source headnote: The judge from whom the appeal is taken cannot establish a term for finishing the appeal; but if he does so, he is understood to have established it for presenting oneself.

The same, to the Bishop of York and the Abbots of Luc. and Mont-Molli.

From the intimation of *the beloved sons,* the prior and canons of Saint Barbara, it became known to us that, when a question concerning a certain manor was being conducted before an ordinary judge, *not by our delegation,* between them on one side and V., chamberlain of Tangar. *in the Diocese of Rouen,* on the other, and the same chamberlain appealed from *that same judge* to our hearing, fixing *no* term for *his* appeal, the said judge—who appeared to favor his cause because a certain cleric, a table-companion of his, had been advocate in the same cause for the *already-said* chamberlain—*deceitfully and contrary to custom* fixed this term for the appeal: that by the feast of the Purification *of blessed Mary* each party was to have returned from prosecution of the appeal. Yet he could not impose a law upon us that we should be bound to dispatch it within the said term, since also, according to lawful sanctions, a suit that is expected to be introduced in the prince's consistory remains untouched without detriment from delay until he causes it to be introduced and decided by the nobles according to custom. Meanwhile, however, the messenger of the *aforesaid* chamberlain, anticipating their messenger and not waiting for him until the lawful term, impetrated letters and withdrew. But because fraud and deceit ought to protect no one, *through apostolic writings* we command your discretion that, if it is so, after summoning the parties, you shall hear the cause *and, after hearing the things proposed on this side and that, terminate the cause concerning them by means of justice, with appeal removed.* [*Given at Rome, on the fourth day before the Ides of February, 1205.*]

Iudex a quo non potest statuere terminum ad finiendam appellationem; quod si fecerit, intelligitur statuisse ad se praesentandum.

Idem Eboracensi Episcopo, et de Luc. et de Monte Molli Abbatibus.

Ex insinuatione *dilectorum filiorum* prioris et canonicorum sanctae Barbarae nobis innotuit quod, quum inter ipsos ex una parte, et V. camerarium de Tangar. *Rothomagensis dioecesis* ex altera super quodam manerio coram iudice ordinario, *non ex delegatione nostra,* quaestio verteretur, et idem camerarius ad nostram audientiam appellaverit *ab eodem, suae* appellationi terminum *aliquem* non praefigens, dictus iudex, qui causam illius videbatur fovere pro eo, quod quidam clericus commensalis suus *iam* dicti camerarii in eadem causa fuerat advocatus, *deceptorie et contra consuetudinem* hunc terminum appellationi praefixit, ut ad festum Purificationis *beatae Mariae* utraque pars esset ab appellationis prosecutione reversa, licet nobis non potuerit legem imponere, ut eam teneremur infra dictum terminum expedire, quum et secundum legitimas sanctiones lis, quae in consistorio principis speratur inferri, absque damno morae intacta permaneat, donec ipsam faciat introduci, et a proceribus dirimi iuxta morem. Interim autem nuncius camerarii *supra dicti* praeveniens nuncium eorundem, nec ipso usque ad terminum legitimum exspectato, impetravit literas et recessit. Quia vero fraus et dolus alicui patrocinari non debent, *discretioni vestrae per apostolica scripta* mandamus, quatenus, si est ita, partibus convocatis audiatis causam *et auditis hinc inde propositis causam super his, appellatione remota, mediante iustitia terminetis.* [*Dat. Romae IV. Id. Febr.* 1205.]

Chapter LI

Latin source headnote: One who appeals outside judgment from plausible and probable causes lest he be molested in possession, if he is afterward despoiled, is restored before all things to the state in which he was at the time the appeal was sent forth. This it says by adhering to the words of the letter and so that accommodation may be made for every reading, according to Panormitanus.

The same, to the Bishops of Rochester and London.

When O. de Camera of good memory, parson of the Church of Faversham, entered the way of all flesh, *the beloved son* the Abbot of Saint Augustine of Canterbury, first through certain monks and second through himself, entered possession of the same church, which he asserts belongs to him, and more than once sent forth to us the voice of appeal lest anyone presume *unduly* to molest him concerning possession of that church. And when he had peacefully possessed the aforesaid church for some time, certain laymen of the Diocese of Canterbury, *rashly laying violent hands upon that abbot and the monks within the same church, even to the shedding of blood,* violently cast them out of possession of the church itself.

[*We therefore, hearing of the savagery of the aforesaid laymen and wishing with paternal solicitude to provide for the abbot and monks concerning so great an injury inflicted upon them, firmly commanded our venerable brother the Bishop of Ely and his fellow judges that, if the matter stood thus, with appeal removed, they should publicly declare those laymen and their accomplices excommunicated and command them to be more strictly avoided by everyone until they made suitable satisfaction to those who suffered the injury and presented themselves to the apostolic presence with the testimony of their letters. By our authority, under threat of anathema, they were also more strictly to prohibit anyone from presuming, in the cities, towns, villages, and other places to which it should happen that they came, to celebrate divine services in their presence, except baptism of infants and penances of the dying, or to exchange anything with them under the appearance of any contract whatsoever. We added no less in the mandate that, after removing any unlawful detainer from that church, notwithstanding anyone's precept and with the obstacle of appeal removed, they should reduce and preserve the aforesaid abbot and monks in that state in which they had been before the violence was attempted.

Meanwhile, however, when the dean of the place obtained possession of the same church through induction by the laymen who had violently cast out the monks, the beloved son the Archdeacon of Canterbury afterward began to possess the same church, and, converting its fruits to his own utility, still perseveres in the same possession, as is said. Therefore, when in the presence of the aforesaid judges the proctor of the aforementioned abbot insistently petitioned for restitution of the said church, after the archdeacon had been removed from it, so many exceptions were opposed on this side and that, so many delays were granted, and so many byways of escape were invented that, after a very long space had elapsed from the time the commission was made, since the cause did not have its due process, the abbot and the often-mentioned monks took care to impetrate other letters from us. In them, reproving those judges because they had deferred so much to frustrating appeals and frivolous exceptions that the cause had not yet been able to have process under their examination—wherefore the abbot and monks had been compelled to undergo, besides great injuries and losses, no less grave labors and expenses—we strictly commanded those judges that, all favor and fear set aside and the obstacle of any contradiction and appeal removed, they should through ecclesiastical coercion

compel the party adverse to them immediately to join issue. They were to take care to receive and examine within two months after joinder of issue the witnesses whom either party should determine to produce concerning both the principal matter and any incidental matter, in such a way that, if they could not participate personally, they should nevertheless execute this through others, from whom no appeal would in any way be lawful. But after the attestations had been received, they were to fix for the parties a competent term at which they should present themselves to our presence to receive sentence.

Therefore, after receiving the later mandate, the same judges, advancing the business according to its tenor, when witnesses had been admitted after joinder of issue, at length, after the attestations had been published, established for the parties a day on which they should appear in our presence to receive sentence concerning this. They transmitted to us the attestations and acts and also other things that appeared to contribute to the cause, enclosed under their seals, as they had in mandate. Therefore, when the beloved son ..., a monk and proctor of the Abbot and Monks of Saint Augustine, approached the Apostolic See at the appointed term and by our mandate waited for the proctor of the other party for almost three months, and at length both were established in our presence, the aforesaid monk proposed that, when the abbot and monks, as was aforesaid, enjoyed peaceful possession of the Church of Faversham, after an appeal had more often been lawfully interposed to us they were violently cast out of it. On that account he petitioned more insistently that, after any unlawful detainer had been removed from it, we deign to restore to them possession of the church itself, with the fruits both received and to be received, also to be calculated from the time of the ejection.

He also sought the expenses of forty marks and more that the abbot and monks were compelled to incur on occasion of certain exceptions that the archdeacon's proctor had proposed for purposes of frustration, and of the competent delays for proving them, since that archdeacon or his proctor afterward did not prove those exceptions. For since the aforesaid O. de Camera possessed the said church in another's name, inasmuch as he rendered for it a certain pension each year to the Abbot and Monks of Saint Augustine, and since it was also proved through several witnesses that, after O. Medicus had been taken from the midst until the substitution of O. de Camera, the Abbot of Saint Augustine had custody of the aforesaid church, after the death of the aforesaid O. de Camera that possession was continued, since it was apprehended by the monks immediately after his death. Furthermore, since an appeal was made by that abbot while he possessed the church itself, both before the ejection and afterward, nothing ought to have been altered while the appeal was pending. He said that it was no obstacle that the archdeacon is alleged to have done this for the sake of preserving his right, because, since a question concerning this had already been moved and it was denied on behalf of the abbot that he had jurisdiction of this kind, through the denial the matter was made doubtful. Hence he could not be judge, since he had already become adversary; and therefore, since he presumed to pronounce law for himself in his own cause, he deservedly ought to suffer detriment from his act, and it is fitting that the matter be recalled to its former state.*]

But the proctor of the *aforementioned* archdeacon proposed in opposition that, when a parson of a church dies, only its custody is given; indeed, the *Canterbury* archdeacons who existed for the time being had always used this right, both by common law and by the general custom *of the Province of Canterbury,* as much in that church as in all others of the same diocese. *As had been sufficiently proved,*

such restitution in no way belonged to the monks, nor did he appear to do them injury by using his own right. Furthermore, *since* the aforesaid O. *de Camera* possessed the same church in the name of the archdeacon, inasmuch as each year he paid him one procuration and five solidi in the name *of that* church, *when the same O. had been taken from the midst, possession in intention is recognized to have remained with the archdeacon; it is not lost unless the archdeacon thought that he could be repelled or unless, upon coming, he had not been admitted. Thus, therefore, the possession of the monks ought rather to be called clandestine detention, since the archdeacon did not lose that possession. And thus the monks could not have it, since two persons cannot possess anything wholly. Therefore, since the archdeacon could enter possession by his own right and cast out the de facto holders, all the more could he, when no one was there and no one resisted in any way, reserve his own right for himself, since the execution of a right is recognized to contain no injury.

To these things, the monks cannot in any way call away the possession of the archdeacon, even if it were established that they had it, because, since he in no way cast them out of possession, and this was neither proved nor confessed in law, they have nothing to object against an external detainer, especially since they themselves entered possession by their own authority and, doing injury to another,* [*for the monastery*] *were unable to acquire any right. The appeal also that the monks allege they interposed was utterly null, since an appeal ought to be made only from a present, past, or future grievance. But the archdeacon had neither previously aggrieved them nor aggrieved them after the appeal, since he is known to have undertaken custody of a vacant thing that he has a right to guard—indeed, which by office he is bound to guard. Finally, no deference at all was to be given to the monks' appeal because, even if the same church belonged to them, they ought [nevertheless] not to have entered possession of it by their own authority, especially since they knew, or rather ought to have known, that custody of vacant churches belonged to the archdeacon and that, if the same archdeacon had then been present, he would have denied it to them and retained it for himself, as pertained to his office. Since, however, their possession was clandestine, they could not be held as true possessors, since no injury concerning possession can be done to a clandestine possessor.*

Therefore, after diligently inspecting the foregoing, we decree that the aforesaid abbot and monks are to be reduced to that state in which they are known to have been at the time the appeal, lawfully interposed to us from plausible and probable causes, was made, saving the right of either party concerning ownership; and we judge that the fruits received in the intervening time are likewise to be assigned to them. *Wherefore, through apostolic writings, we command your discretion that, with the obstacle of any contradiction and appeal removed, you reduce the aforesaid abbot and monks to that state in which they are known to have been at the time of the appeal, and cause all the fruits of the intervening time likewise to be resigned to them, restraining contradictors, if there are any, or rebels, after admonition has preceded, through ecclesiastical censure, with appeal set aside.* [*Given at Rome, at Saint Peter's, on the eleventh day before the Kalends of December, 1205.*]

> Qui extra iudicium appellat ex verisimilibus et probabilibus causis, ne in possessione molestetur, si postea spoliatur, restituitur ante omnia in statum, in quo erat tempore appellationis emissae. H. d. inhaerendo verbis literae, et ut mos geratur unicuique lecturae. Panormitan.
>
> Idem Rofensi et Londoniensi Episcopis.
>
> Bonae memoriae O. de Camera persona ecclesiae de Fan. viam universae carnis ingresso, *dilectus filius* abbas sancti Augustini Cantuariensis eiusdem ecclesiae, quam ad se asserit pertinere, primo per quosdam monachos, secundo per se ipsum possessionem ingressus, ad nos pluries vocem appellationis

emisit, ne quis eum super possessione ipsius ecclesiae praesumeret *indebite* molestare. Quumque aliquamdiu praedictam ecclesiam pacifice possedisset, quidam laici Cantuariensis dioecesis in ipsum abbatem et monachos *infra eandem ecclesiam usque ad effusionem sanguinis manibus iniectis temere violentis, eos* de possessione ipsius ecclesiae per violentiam eiecerunt. +[*Nos igitur, audita praedictorum saevitia laicorum, eisdem abbati et monachis super tanta ipsis iniuria irrogata paterna volentes sollicitudine providere, venerabili fratri nostro Eliensi episcopo et suis coniudicibus dedimus firmiter in mandatis, ut, si res taliter se haberet, laicos ipsos et eorum complices tamdiu appellatione remota publice nunciarent et mandarent ab omnibus arctius evitari, donec passis iniuriam satis facerent competenter, et cum suarum testimonio literarum apostolico se conspectui praesentarent, auctoritate quoque nostra sub interminatione anathematis districtius inhiberent, ne quis in civitatibus, oppidis, villis et aliis locis, ad quae ipsos contingeret devenire, ipsis praesentibus praeter baptisma parvulorum et poenitentias morientium divina celebrare praesumeret, aut cum eis sub specie cuiuscunque contractus aliquid permutare. Adiecimus nihilominus in mandato, ut amoto ab ea ecclesia quolibet illicito detentore non obstante cuiuscunque praecepto sublato appellationis obstaculo abbatem et monachos antedictos in eum statum reducerent ac servarent, in quo fuerant ante violentiam attentatam. Interim autem decano loci per inductionem laicorum, qui monachos eiecerant violenter, possessionem ipsius ecclesiae nanciscente, dilectus filius archidiaconus Cantuariensis incepit postmodum eandem ecclesiam possidere, et fructus in propriam utilitatem convertens adhuc in eadem possessione, sicut dicitur, perseverat. Quum igitur in praesentia iudicum praedictorum procurator memoruti abbatis restitutionem dictae ecclesiae cum instantia postularet, remoto ab ipsa archidiacono, tot fuerunt hinc inde exceptiones oppositae, tot dilationes concessae, tot inventa diverticula fugiendi, quod, longissimo spatio a tempore factae commisssionis elapso, quum causa debitum processum non haberet, abbas et monachi saepedicti alias a nobis studerunt literas impetrare, in quibus nos, eosdem iudices increpantes, quod in tantum appellationibus frustratoriis et frivolis exceptionibus detulissent, ut nondum sub eorum examine causa potuerit habere processum, unde abbas et monachi praeter grandes iniurias et iacturas graves nihilominus labores et sumptus fuerant subire coacti, eisdem iudicibus districte dedimus in praeceptis, ut omni gratia et timore postpositis, sublato cuiuslibet contradictionis et appellationis obstaculo, partem eis adversam per districtionem ecclesiasticam cogerent litem protinus contestari, et testes, quos utralibet pars tam super principali quam quolibet incidenti duceret producendos, infra duos menses post litis contestationem recipere et examinare curarent ita, quod, si non possent personaliter interesse, id nihilominus exsequerentur per alios, a quibus non liceret aliquatenus appellari; attestationibus vero receptis praefigerent partibus terminum competentem, quo sententiam recepturae nostro se conspectui praesentarent. Accepto igitur posteriori mandato secundum tenorem ipsius iidem iudices negotium maturantes, quum lite contestata testes fuissent admissi, demum attestationibus publicatis diem partibus statuerunt, quo in nostra praesentia comparerent, super hoc sententiam recepturae; attestationes et acta, et alia etiam, quae ad causam facere videbantur, suis inclusa sigillis nobis, prout in mandatis habuerant, transmittentes. Dilecto itaque filio ... monacho procuratore abbatis et monachorum S. Augustini statuto termino ad sedem apostolicam accedente ac de mandato nostro fere per tres menses procuratorem partis alterius expectante, tandem utroque in praesentia nostra constituto, monachus proposuit antedictus, quod, quum abbas et monachi, sicut praedictum est, ecclesiae de Faversham pacifica possessione gauderent, post appellationem ad nos legitime saepius interiectam de ipsa fuerunt violenter eiecti, propter quod postulabat instantius, ut ab eadem amoto quolibet illicito detentore, cum fructibus tam perceptis quam percipiendis, etiam a deiectionis tempore computandis, possessionem ipsius ecclesiae sibi restituere dignaremur. Repetebat etiam expensas XL. marcarum et amplius, quas occasione quarundam exceptionum, quas frustratorie proposuerat archidiaconi procurator, et ad eas probandas dilationes competentes abbas et monachi facere coacti sunt, quum idem archidiaconus seu procurator eius exceptiones illas postea non probarit. Quum enim praefatus O. de Camera alieno nomine dictam ecclesiam possideret, utpote qui pro ea abbati et monachis S. Augustini certam reddebat annis singulis pensionem, et, quum per plures testes etiam sit probatum, quod O. Medico sublato de media usque ad substitutionem O. de Camera abbas S. Augustini habuerit custodiam ecclesiae antedictae, post mortem praedicti O. de Camera continuatur illa possessio, quum in continenti post eius obitum a monachis fuerit apprehensa. Praeterea quum eodem abbate ipsam ecclesiam possidente, et ante deiectionem et postea, ab ipso fuerit appellatum, appellatione pendente nihil debuit innovari; nec obstare dicebat, quod archidiaconus hoc fecisse proponitur sui iuris gratia*

conservandi, quia, quum iam esset quaestio ex hoc mota, et ex parte abbatis fuerit denegatum, ipsum huiusmodi iurisdictionem habere, per negotionem res dubia facta fuit, unde iudex esse non poterat, quum iam adversarius factus esset, et ideo, quum praesumpserit in propria causa sibi ius dicere, facti sui pati debet merito detrimentum, et rem convenit in statum pristinum revocari.] Procurator vero archidiaconi *memorati* proposuit ex adverso, quod defuncta persona ecclesiae tantum datur eius custodia, immo archidiaconi *Cantuarienses*, qui fuerunt pro tempore, tam de iure communi quam de generali consuetudine *Cantuariensis provinciae*, tam in illa ecclesia, quam in aliis universis eiusdem dioecesis hoc iure semper usi fuerunt, *sicut fuerat sufficienter probatum, talis restitutio nequaquam monachis competebat, nec utendo iure suo eis iniuriam facere videbatur.* Praeterea *quum* praefatus O. *de Camera* nomine archidiaconi ecclesiam possedit eandem, utpote qui ei unam procurationem, et V. solidos nomine *ipsius* ecclesiae annis singulis exsolvebat, *+eodem O. sublato de medio, apud archidiaconum animi possessio dignoscitur remansisse, quae non perditur, nisi archidiaconus se putaret posse repelli, vel nisi veniens non fuisset admissus. Sic ergo monachorum possessio potius detentio clandestina debet dici, quoniam archidiaconus ipsam possessionem non perdidit. Et sic eam monachi non potuerunt habere, quum duo in solidum quicquam possidere non possint. Quum igitur archidiaconus potuerit suo iure possessionem intrare, ac tenentes de facto eiicere, fortius potuit, nullo ibi exsistente, nec nullatenus resistente, sibi ius proprium reservare, quum iuris exsecutio nullam habere iniuriam dignoscatur. Ad haec monachi possessionem archidiaconi non possunt aliquatenus avocare, etsi eos ipsam habuisse constaret, quia, quum eos de possessione nequaquam eiecerit, nec hoc probatum fuerit, nec in iure confessum, non habent quod obiiciant extraneo detentori, praesertim quum et ipsi auctoritate propria possessionem intraverunt, et iniuriam alii facientes* [*monasterio*] *ius aliquod acquirere nequiverunt. Appellatio quoque, quam monachi se interposuisse proponunt, penitus nulla fuit, quum non nisi a gravamine praesenti, praeterito vel futuro debeat appellari. Archidiaconus vero nec prius eos gravaverat, nec ipsos post appellationem gravavit, quum rem vacuam, quam custodiendi ius habet, immo quam ex officio custodire tenetur, custodiendam suscepisse noscatur. Denique appellationi monachorum non fuit ullatenus deferendum, quoniam, etsi ad eos eadem ecclesia pertineret, non debuerunt *[*tamen*] *auctoritate propria ipsius possessionem intrare, praesertim quum scierint vel scire potius debuerint, quod custodia ecclesiarum vacantium ad archidiaconum pertinebat, et, si tunc idem archidiaconus praesens esset, eam denegasset eisdem, et sibi, prout ad eius spectabat officium, tenuisset. Quum autem clandestina fuerit eorum possessio, non potuerunt vere possessores haberi, quum super possessione nequeat iniuria fieri clandestino possessori.* Praemissis igitur diligenter inspectis, praedictos abbatem et monachos in eum statum, in quo tempore appellationis factae ex verisimilibus et probabilibus causis ad nos legitime interpositae fuisse noscuntur, proprietatis parti utrilibet salvo iure, decernimus reducendos, ac fructus medii temporis perceptos censuimus pariter assignandos eisdem. *Quocirca discretioni vestrae per apostolica scripta mandamus, quatenus, sublato cuiuslibet contradictionis et appellationis obstaculo, in eum statum, in quo tempore appellationis fuisse noscuntur, praefatos abbatem et monachos reducatis, ac faciatis eisdem pariter resignari fructus medii temporis universos; contradictores, si qui fuerint, vel rebelles, monitione praemissa, per censuram ecclesiasticam, appellatione postposita, compescendo.* [*Dat. Rom. ap. S. Petr. XI. Kal. Dec.* 1205.]

Chapter LII

Latin source headnote: Entering upon a journey has the force of an appeal if those things that ought to be observed in an appeal are observed. This it says according to one intrinsic understanding.

The same, to the Priors of Saint Augustine and Saint Gregory.

The beloved sons I. and H., messengers [*of the beloved sons*] the prior and monks of the Church of Canterbury, *humbly* reported to us that, when they were sent by the said prior and monks to the Apostolic See for the cause being conducted between *the prior and monks themselves* and *our venerable brother* the Archbishop of Canterbury concerning the chapel of Lamede, *as was proposed to them,* the

same archbishop, after they entered upon the journey, promulgated a sentence of excommunication against them. But since it is more to provoke to the Apostolic See by deed than by word, and, when they came to the Roman Church on account of the said cause, a provocation to the Apostolic See is understood to have been made, *through apostolic writings* we command your discretion that, if it is so, you declare that the said I. and H. are not bound by the bond of excommunication, *with appeal set aside*. [*Given at Perugia, on the third day before the Ides of September, 1198*.]

> Itineris arreptio habet vim appellationis, si servantur ea, quae servari debent in appellatione. H. d. secundum unum intellectum intrinsecum.
>
> Idem S. Augustini et S. Gregorii Prioribus.
>
> Dilecti filii I. et H. [*dilectorum filiorum*] prioris et monachorum Cantuariensis ecclesiae nuncii *nobis humiliter* retulerunt, quod, quum pro causa, quae inter dictos priorem et monachos, et *venerabilem fratrem nostrum* Cantuariensem archiepiscopum super capella de Lamede vertebatur, ab ipsis *priore et monachis* ad sedem apostolicam mitterentur, *sicut eis propositum fuit*, idem archiepiscopus post iter arreptum in eos excommunicationis sententiam promulgavit. Quum autem plus sit ad sedem apostolicam facto provocare, quam verbo, et ipsis propter dictam causam ad Romanam ecclesiam venientibus intelligatur ad sedem apostolicam provocatum, *discretioni vestrae per apostolica scripta* mandamus, quatenus, si est ita, dictos I. et H. *appellatione postposita* denuncietis excommunicationis vinculo non teneri. [*Dat. Perusii III. Id. Sept.* 1198.]

Chapter LIII

Latin source headnote: Through the clause "with appeal removed," every appeal that is not expressly granted by law is prohibited. This it says up to § *But*. § 1. Although an excommunicated person appeals from the excommunication, he can nevertheless be denounced and despoiled of the revenues of a benefice. This it says.

The same, to the Bishop of Ely.

The diligence of the pastoral office—(*And below:* [*Cf. c. 28, On the Office of a Delegated Judge, I. 29.*]) You asked, *also diligently,* whether, when *appeal* is prohibited in a rescript, only a frustrating appeal appears to be prohibited, *so that it is lawful to appeal from every grievance, or every appeal appears to be excluded, except only in cases expressed by law.* We therefore, considering that a business ought not to be impeded through a frustrating appeal even if it had not been prohibited, respond *briefly to your diligence* that every provocation is understood to be removed that is not expressly granted by law; but if an appellant has been unjustly aggrieved, a grievance of this kind will be able to be amended by a superior.

§ 1. But because frequently someone is for a time exempted through a lawful appeal from the power of his judge with regard to some certain article, you consulted us whether, if someone bound by a sentence of excommunication, before its denunciation, has taken care to provoke from it as less than reasonably promulgated, in a case in which an appeal before sentence would have obtained force, on the ground that through the interposed appeal the jurisdiction of the excommunicator appears to have lain dormant, he can denounce that person and for a time despoil a cleric of ecclesiastical benefices, *since through a provocation made in such manner the excommunication is not deprived of its effect.* We therefore respond *to your inquiry* that, since excommunication brings execution with it, and the excommunicated person is not bound more fully through denunciation, you can *not undeservedly*

denounce him as excommunicated, so that he may be avoided by others. And ecclesiastical revenues are *indeed* deservedly withdrawn from him to whom the communion of the Church is denied. [*But when, etc. You petitioned, etc. (Cf. c. 29, On the Right of Patronage, III. 38.) Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.*]

> Per clausulam: «appellatione remota» inhibetur omnis appellatio, quae a iure non indulgetur expresse. Hoc dicit, usque ad §. Verum. - §. 1. Licet excommunicatus ab excommunicatione appellet, nihilominus denunciari potest, et beneficii reditibus spoliari. Hoc dicit.
>
> Idem Episcopo Helinensi.
>
> Pastoralis officii diligentia (*Et infra: *[*cf. c.* 28. *de off. iud. del. I.* 29.]) Quaesivisti, *etiam diligenter*, utrum, quando inhibetur *appellatio* in rescripto, frustratoria tantum apellatio inhibita videatur, *ut ab omni gravamine liceat appellare, an omnis appellatio videatur exclusa, nisi tantum in casibus expressis a iure*. Nos igitur attendentes, quod per appellationem frustratoriam, etiamsi non fuisset inhibita, negotium non debeat impediri, *diligentiae tuae breviter* respondemus, quod quaelibet provocatio intelligitur removeri, quae a iure non indulgetur expresse; sed, si appellans fuerit gravatus iniuste, gravamen huiusmodi per superiorem poterit emendari. §. 1. Verum quia multotiens quis ad tempus per appellationem legitimam a iudicis sui quoad aliquem certum articulum eximitur potestate, consuluisti nos, utrum, si quis excommunicationis sententia innodatus ante denunciationem ipsius ab ea, tanquam minus rationabiliter promulgata, in eo casu, in quo ante sententiam appellatio vires obtinuisset, curaverit provocare, eo, quod per appellationem interpositam excommunicantis videtur iurisdictio dormitasse, ipse denunciare possit eundem, et ad tempus ecclesiasticis beneficiis clericum spoliare, *quum per provocationem taliter factam suo effectu excommunicatio non privetur*. Nos itaque *inquisitioni tuae* respondemus, quod, quum exsecutionem excommunicatio secum trahat, et excommunicatus per denunciationem amplius non ligetur, ipsum excommunicatum denunciare *non immerito* potes, ut ab aliis evitetur. Et illi *nimirum* proventus ecclesiastici merito subtrahuntur, cui ecclesiae communio denegatur. [*Quum autem etc. Postulasti etc.* (*cf. c. *29. *de iure patr. III.* 38.) *Dat. Rom. ap. S. Petr. XIV. Kal. Ian.* 1204.]

Chapter LIV

Latin source headnote: If an appellant to a superior appears before an inferior judge concerning matters touching the appeal itself, he appears to renounce that appeal. But if he protests that on this account he does not intend to renounce the appeal, he is not to be heard as one alleging contraries, unless it is notorious that the act concerning whose amendment he approached the inferior was unjust. This it says, and it is a good case.

The same, to the Bishop of Paris.

You execute the solicitude of the pastoral office *prudently when you petition to be instructed by a response of the Apostolic See concerning doubts of law.* Indeed, when, as we received *from your intimation,* while two persons were litigating before their bishop, one of them appealed to the Apostolic See, the bishop, *not deferring to the interposed appeal but* reckoning the appellant contumacious, bound him with the bond of excommunication. Before *his* metropolitan, he petitioned that justice concerning this be exhibited to him concerning the bishop, asserting that after an appeal had lawfully been interposed to us the bishop excommunicated him *and caused him to be publicly denounced as excommunicated,* and petitioning that he be reduced by the metropolitan to that state in which he had been at the time of the appeal—namely, that he be declared absolved—adding also that he did not renounce the objected appeal but wished to prosecute it. *Hence your fraternity asked us whether the metropolitan has power to take*

cognizance of a complaint of this kind, and, if he finds that the man lawfully provoked, whether he ought to declare him absolved, and whether, if the bishop appeals before the archbishop lest the person who had been excommunicated by him be absolved, deference is to be given to an appeal of this kind.

We therefore respond to your inquiry thus: just as the metropolitan has altogether no power to take cognizance of an appeal interposed to us, so neither does he have power concerning those things that had been altered after *that* appeal, provided that cognizance cannot be taken of them unless cognizance is taken [*also*] of the appeal at the same time, or of those things that are recognized to touch the cause of appeal. In that case, if the metropolitan should perhaps presume to interpose his part for taking cognizance, the bishop *certainly* could fly to the benefit of appeal. For it pertains to the office of the person who is to take cognizance of the appeal prudently to correct the things that he finds attempted contrary to it. But if it *perhaps* were notorious that the bishop's mandate had been indiscreet or unjust, which the subject was not bound to obey, and consequently it was evidently clear to him that the subject lawfully provoked, the archbishop can by metropolitan authority declare that the subject was unreasonably struck by the sword of anathema.

But when the excommunicated person who had appealed lodges a question against the bishop before the archbishop according to the prescribed form, *namely, that he take cognizance of the injury inflicted upon him by the bishop,* the metropolitan *himself* can interpose his part to take cognizance of the cause, since that person appears tacitly to renounce prosecution of the appeal. But if by word or deed he protests that he wishes to prosecute the appeal, *as is expressed above in the proposed case,* he is not to be heard as one petitioning adverse things and contrary to himself. [*Given at Rome, at Saint Peter's, on the second day before the Ides of December, in the tenth year, 1207.*]

> Si appellans ad superiorem comparet coram iudice inferiori super concernentibus ipsam appellationem, ipsi appellationi renunciare videtur. Si autem protestetur, quod propter hoc non intendit renunciare appellationi, tanquam contraria allegans non est audiendus, nisi notorium sit, actum illum esse iniustum, super cuius emendatione adivit inferiorem. H. d. et est bonus casus.
>
> Idem Episcopo Parisiensi.
>
> Sollicitudinem pastoralis officii +*prudenter exsequeris, quum super dubitationibus iuris responso sedis apostolicae postulas edoceri.* Sane, quum, sicut *ex tua insinuatione* recepimus, duobus coram suo episcopo litigantibus, alter eorum ad sedem apostolicam appellasset, episcopus *interpositae appellationi non deferens, sed* appellantem reputans contumacem, ipsum excommunicationis vinculo innodavit; qui coram metropolitano *suo* de episcopo sibi petiit *super hoc* iustitiam exhiberi, asserens, quod post appellationem legitime ad nos interpositam ipsum excommunicaverat, *et excommunicatum fecerat publice nunciari,* et petens, se ad eum statum, in quo fuerat appellationis tempore, a metropolitano reduci, denunciari videlicet absolutum, adiiciens etiam, quod appellationi non renunciabat obiectae, sed prosequi volebat eandem. +*Unde tua fraternitas requisivit a nobis, utrum metropolitanus de huiusmodi conquestione cognoscere valeat, et, si repererit, illum legitime provocasse, an eum denunciare debeat absolutum, et an, si episcopus coram archiepiscopo appellaverit, ne is, qui excommunicatus ab eo fuerat, absolvatur, appellationi sit huiusmodi deferendum.* Nos igitur inquisitioni tuae taliter respondemus, quod, sicut metropolitanus de appellatione ad nos interposita cognoscere omnino non valet, sic nec de his, quae post appellationem *ipsam* fuerant innovata, dummodo de aliis cognosci non possit, nisi [*et*] de appellatione pariter cognoscatur, vel de iis, quae appellationis causam contingere cognoscuntur. In quo casu si metropolitanus ad cognoscendum partes suas interponere forte praesumeret, episcopus *utique* posset ad appellationis beneficium convolare. Nam ad officium eius, qui de appellatione cogniturus est, pertinet prudenter corrigere quae

contra ipsam invenerit attentata. Si vero notorium *forsan* exsisteret, quod mandatum episcopi indiscretum fuerat vel iniustum, cui non tenebatur subditus obedire, ac per consequentiam ei liqueat evidenter, subditum legitime provocasse, potest archiepiscopus auctoritate metropolitana declarare subditum irrationabiliter exstitisse anathematis mucrone percussum. Quum autem excommunicatus, qui appellaverat, iuxta praescriptam formam coram archiepiscopo deponit contra episcopum quaestionem, *ut videlicet de iniuria sibi ab episcopo irrogata cognoscat*, metropolitanus *ipse* ad cognoscendum de causa potest interponere partes suas, quum ille appellationis prosecutioni renunciare tacite videatur. Sed si verbo vel facto appellationem se velle prosequi protestetur, *sicut in proposito casu superius est expressum*, non est tanquam adversa petens et sibi contrarius audiendus. [*Dat. Rom. ap. S. Petr. II. Id. Dec. Ao. X.* 1207.]

Chapter LV

Latin source headnote: Through an appeal lawfully interposed, the principal matter with its accessories is transferred to the judge of appeal, and sentences of excommunication and interdict rendered after the appeal do not hold.

The same, to the Bishop and Cantor of Troyes.

When the beloved sons the Dean of Auxerre and Master R., proctor of *our venerable brother* the Bishop of Auxerre, were established in our presence, the same master proposed *before us* that, when the said bishop caused R., a priest of the House of God [*of Mont-Attrito,*] in which *the same bishop* is recognized to obtain *provision and* full administration, to be detained and committed to chains because he refused to restore certain goods of the same house that he had furtively taken away—on account of which he had also been bound by the same bishop with the bond of excommunication—and the aforesaid dean admonished the bishop that he should restore to him, or at least provisionally release to him, the aforementioned priest, whom he firmly asserted belonged to his jurisdiction, [*the same bishop, alleging several reasons why he said he was in no way bound to this, utterly refused to restore or provisionally release the same priest. He proposed that concerning this he was prepared to exhibit justice to the same dean in his own court, since the dean was his vassal, or before arbiters to be chosen in common, or even before the metropolitan. But the dean, altogether refusing these things, began gravely to threaten that he would do something that would displease the bishop. On account of this,*] the bishop, fearing lest the dean attempt something to his prejudice, subjected himself and his men and the status of *his* church and city to the protection of the metropolitan and appealed to his hearing, *fixing the recently past feast of Saint Mary Magdalene as the term for the appeal.*

But after a short time the dean, *having summoned the canons of Auxerre,* promulgated an interdict of this kind, *although they contradicted,* that, while the bishop was present in the city, divine services should cease in the Church of Auxerre. But afterward, when on the day fixed for the appeal the parties appeared before the official of the Court of Sens, the dean alleged that he had determined not to defer to the appeal interposed by the bishop because the aforesaid priest was still held in chains when he sent forth to us the voice of appeal. The official, however, judged invalid the interdict promulgated by the dean after the bishop's appeal *interposed to the metropolitan see,* [*and enjoined upon the chapter of the Church of Auxerre that it should in no way observe that interdict. And when afterward, while the bishop was present, the dean firmly prohibited singing in the church and, binding G., the bishop's chaplain who was singing there after an appeal had been interposed to us, with the bond of excommunication, impeded divine office in the church, and, although admonished more often by the

bishop, did not desist from disturbing the office, at length the bishop struck him, as contumacious and incorrigible, with the sword of excommunication. Afterward our venerable brother the Archbishop of Sens publicly declared that he was to be avoided. Hence the proctor himself petitioned us that, judging the aforesaid sentence of interdict invalid, we should cause the sentence of excommunication rendered by the bishop to be observed inviolably until worthy satisfaction.

But the dean proposed in opposition that, when the bishop caused R., a priest belonging to his jurisdiction, to be detained in chains, and he himself had been gravely reproved by both clerics and laymen of the city as though he neglected to defend a right belonging to him—he who was bound to observe the customs of the church by an oath rendered concerning this—he admonished the bishop through himself to restore the priest himself to liberty, being prepared sufficiently to show that the same priest belonged to his jurisdiction, and at length caused the same bishop to be admonished through several others that he should render or provisionally release the priest to him, or at least place him in sequestration. And when the bishop could not be inclined to any of these, after summoning the chapter the dean, with its connivance, placed an interdict of this kind upon the church: that while the bishop was present in the city there should be an utter cessation from divine services in the church. He nevertheless suspended execution of the sentence until he should have a discussion concerning this with the archbishop, who was soon to come into the city, through whom he hoped that concord could be reformed.

But although afterward, when the archbishop was present, he admonished the bishop to accept one of the aforesaid modes for liberation of the priest, he could accomplish nothing with him; rather, the bishop appealed to the hearing of the metropolitan see, fixing the aforesaid term for his appeal. Hence the dean, returning to the chapter, enjoined upon all the canons that they should observe the interdict as it had been placed by him. But on the day fixed for the appeal, the dean, appearing before the official of Sens with the bishop's proctor and fearing that a grievance threatened him, appealed to the Apostolic See, establishing *Laetare Jerusalem* as the term for his appeal and subjecting himself and his status and that of the Church of Auxerre to the protection of the Apostolic See. But when, after these things and while the bishop was present, the dean publicly declared G., a cleric of the same bishop, excommunicated because he had violently seized two clerics, and commanded the clerics to observe the sentence of interdict rendered by him, the bishop promulgated a sentence of excommunication against the dean himself, declaring him excommunicated to the often-mentioned archbishop and the Chapter of Sens. On that account the archbishop, by the counsel of certain persons, publicly declared him to be avoided, although certain canons of Sens, led by sounder counsel, did not avoid communion with him.*]

From these things, therefore, and others that were proposed before us on each side, we understood evidently that, although the bishop would have provided prudently and usefully if he had provisionally released the often-mentioned priest to the dean, to cut away altogether every material of scandal, nevertheless, because the same bishop, *as was premised,* expressed diverse modes according to which he was prepared to exhibit justice to the dean concerning the seizure of the priest, and appealed to the metropolitan see, the dean could not after this render a sentence of interdict. And therefore, *by the counsel of our brothers,* we decree invalid and empty the sentence itself promulgated by him after the appeal had been lawfully made, notwithstanding *that* which the dean, as though varying, proposed *before us* for his excuse: that, before the bishop appealed, *he himself* had rendered the sentence, whose effect he had *nevertheless* determined

should be suspended for a time, since in the meantime, after the appeal was interposed, he ought not to have proceeded to execute the sentence.

We judge temerarious, *however,* the process of the official who, after the appeal *to the Apostolic See had been interposed,* decreed that such a sentence of interdict was invalid and empty *and commanded that it be observed in no way,* since, after an appeal had been interposed to us, nothing ought to have been altered. Furthermore, although at first appearance the sentence of excommunication promulgated against the dean by the bishop appeared to have been rightly rendered, *because,* when it had been prohibited through the *already-said* official that the interdict be observed in the church, the *same* dean, by prohibiting celebration in the church, appeared to disturb divine office, nevertheless, because through the appeal interposed to us on behalf of the dean, to which the official also determined to defer by granting the apostoli, not only the principal business but also the accessories were referred to our examination, we decree that the same sentence promulgated after an appeal of this kind lacked force, *and that the dean himself was not bound by it*.

But although the archbishop, *circumvented by the counsel of certain persons,* after the aforesaid appeal, which had become known to him through the letters of *his* official, declared that the dean was to be avoided, nevertheless we judge inculpable the canons of Sens who, led by sounder counsel, communicated with him, so that they deferred more to the appeal interposed to us than to the denunciation made by the archbishop. [*But because, etc. Given at Rome, at Saint Peter's, on the fourth day before the Ides of January, in the tenth year, 1207.*]

> Per appellationem legitime interpositam principale cum accessoriis ad iudicem appellationis defertur, et sententiae excommunicationis et interdicti post appellationem latae non tenent.
>
> Idem Episcopo et Cantori Trecensibus.
>
> Dilectis filiis decano Altissiodorensi, ac magistro R. *venerabilis fratris nostri* Altissiodorensis episcopi procuratore in nostra praesentia constitutis, idem magister proposuit *coram nobis*, quod, quum dictus episcopus R. presbyterum domus Dei [*de Monte atrito,*] in qua *provisionem et* dispensationem plenariam *idem episcopus* obtinere dignoscitur, detineri faceret vinculis mancipatum pro eo, quod bona quaedam eiusdem domus, quae furtive subtraxerat, restituere detrectabat, propter quod etiam ab eodem episcopo fuerat excommunicationis vinculo innodatus, et supradictus decanus episcopum monuisset, ut ei restitueret vel saltem recrederet presbyterum memoratum, quem ad iurisdictionem suam spectare firmiter asserebat, [*idem episcopus multiplicem rationem allegans, quare se ad hoc nullatenus teneri dicebat, eundem presbyterum restituere vel recredere penitus recusavit, proponens, quod super hoc eidem decano paratus erat in propria curia, quum decanus eius vasallus exsisteret, vel coram arbitris communiter eligendis, seu etiam coram metropolitano iustitiam exhibere. Decanus autem haec omnino recusans coepit graviter comminari, quod tale aliquid faceret, quod episcopo displiceret, propter quod*] episcopus metuens, ne decanus aliquid in suum praeiudicium attentaret, se ac suos, statum ecclesiae ac civitatis *suae* protectioni metropolitani supponens, ad eius audientiam appellavit, *festum sanctae Mariae Magdalenae proximo praeteritum terminum appellationi praefigens*. Verum decanus post modicum tempus *canonicis Altissiodorensibus convocatis*, interdictum huiusmodi *eis contradicentibus* promulgavit, ut episcopo in civitate praesente a divinis in Altissiodorensi ecclesia cessaretur. Postmodum vero quum die appellationi praefixo comparuissent partes coram officiali curiae Senonensis, decanus allegans, quod appellationi ab episcopo interpositae ideo non duxerat deferendum, quoniam presbyter supradictus adhuc in vinculis tenebatur, quando ad nos vocem appellationis emisit, officialis autem iudicavit irritum interdictum a decano post appellationem episcopi *ad sedem metropoliticam interpositam* promulgatum, +[*capitulo ecclesiae Altissiodorensis iniunxit, ut interdictum illud nullatenus observaret. Quumque postmodum episcopo praesente decanus firmiter inhiberet, ne in ecclesia cantaretur, et*

G. capellanum episcopi cantantem ibidem post appellationem ad nos interpositam vinculo excommunicationis adstringens, divinum officium in ecclesia impediret, nec monitus per episcopum saepius officium perturbare desisteret, episcopus demum ipsum tanquam contumacem et incorrigibilem excommunicationis mucrone percussit; quem postea venerabilis frater noster Senonensis archiepiscopus devitandum publice nunciavit. Unde procurator ipse postulavit a nobis, ut supradictam interdicti sententiam irritam iudicantes, excommunicationis ab episcopo latam sententiam faceremus usque ad satisfactionem condignam inviolabiliter observari. Decanus autem proposuit ex adverso, quod quum episcopus R. presbyterum pertinentem ad iurisdictionem suam faceret in vinculis detineri, et ipse tam a clericis quam laicis civitatis fuisset graviter increpatus, tanquam negligeret ius ad se pertinens defensare, qui ad servandas ecclesiae consuetudines iuramento super hoc praestito tenebatur, per se ipsum episcopum monuit, ut presbyterum ipsum restitueret libertati, paratus sufficienter ostendere, quod ad iurisdictionem suam idem presbyter pertinebat, eundem episcopum demum faciens per plures alios commoneri, ut presbyterum sibi redderet vel recrederet, vel saltem poneret in sequestro. Quumque nequisset episcopus ad istorum aliquod inclinari, capitulo convocato decanus de conniventia eius huiusmodi posuit in ecclesia interdictum, ut episcopo in civitate praesente cessaretur in ecclesia penitus a divinis, exsecutionem nihilominus sententiae suspendendo, donec super hoc haberet cum archiepiscopo, qui proximo venturus erat in civitate, tractatum, per quem sperabat posse concordiam reformari. Ceterum licet postea praesente archiepiscopo episcopum monuisset, ut aliquem supra dictorum modorum ad liberationem presbyteri acceptaret, in nullo tamen perficere potuit apud eum; quin immo ad metropolitanae sedis audientiam episcopus appellavit, appellationi suae praefigens terminum supra dictum. Unde decanus in capitulum rediens canonicis universis iniunxit, ut interdictum, sicut ab eo positum fuerat, observarent. Die vero appellationi praefixo coram Senonensi officiali decanus cum episcopi procuratore comparens, et gravamen sibi metuens imminere, ad sedem apostolicam appellavit, Laetare Ierusalem appellationi suae termino constituto, et se ac statum suum et Altissiodorensis ecclesiae protectioni sedis apostolicae supponendo. Quum autem episcopo praesente post haec decanus G. clericum eiusdem episcopi pro eo, quod duos clericos violenter ceperat, excommunicatum publice nunciasset, et mandasset clericis, ut a se latam interdicti sententiam observarent, episcopus in ipsum decanum excommunicationis sententiam promulgavit, excommunicatum eum saepe dicto archiepiscopo et capitulo Senonensi nunciando. Propter quod ipsum archiepiscopus de quorundam consilio nunciavit publice devitandum, licet quidam canonici Senonenses saniori ducti consilio non vitaverint communionem ipsius. Ex] *his igitur et aliis, quae utrinque fuere proposita coram nobis, intelleximus evidenter, quod, etsi episcopus prudenter et utiliter providisset, ut decano recredidisset presbyterum saepe dictum ad omnem prorsus scandali materiam amputandam*, Quia vero idem episcopus, *sicut praemissum est*, diversos modos expressit, secundum quos decano paratus fuit super captione presbyteri iustitiam exhibere, ad metropolitanam sedem appellans, decanus non potuit post hoc ferre sententiam interdicti, et ideo *de consilio fratrum nostrorum* sententiam ipsam ab eo post appellationem legitime promulgatam irritam decernimus et inanem, *illo* non obstante, quod decanus ad excusationem suam quasi variando proposuit *coram nobis*, quod, priusquam episcopus appellasset, *ipse* sententiam tulerat, cuius *tamen* effectum ad tempus duxerat suspendendum, quum interim appellatione interposita procedere non debuerit ad sententiam exsequendam, officialis *tamen* processum, qui post appellationem *ad sedem apostolicam interpositam* huiusmodi sententiam interdicti irritam et inanem decrevit *et mandavit penitus non servari*, temerarium iudicantes, quum appellatione ad nos interposita nihil debuerit innovari. Praeterea licet excommunicationis sententia in decanum per episcopum promulgata rite lata prima facie videretur, *quoniam*, quum per *iam* dictum officialem esset prohibitum, ne servaretur in ecclesia interdictum, et *idem* decanus, ne celebraretur in ecclesia prohibendo, divinum videretur officium perturbare: quia tamen per appellationem ad nos interpositam ex parte decani, cui etiam officialis duxerat deferendum apostolos concedendo, non solum principale negotium, sed accessoria etiam ad nostrum referebantur examen: eandem sententiam post appellationem huiusmodi promulgatam decernimus viribus caruisse, *ac ipsum decanum ea non fuisse ligatum*. Verum licet archiepiscopus *quorundam consilio circumventus* post appellationem praedictam, de qua sibi per officialis *sui* literas innotuerat, decanum denunciaverit evitandum, Senonenses tamen canonicos, qui saniori ducti consilio communicaverunt eidem, ut appellationi ad nos interpositae magis quam

denunciationi ab archiepiscopo factae deferrent, inculpabiles iudicamus. [*Quia vero etc. Dat. Rom. ap. S. Petr. IV. Id. Ian. Ao. X.* 1207.]

Chapter LVI

Latin source headnote: After the Pope recalls some cause to himself, a process afterward made by a lesser judge is not valid, just as it would not be valid if a lawful appeal had been taken from him. This it says, so that every reading may be satisfied.

The same, to the Archbishop of Milan.

That our judgment may go forth from the countenance of God—(*And below:* [*Cf. sole c., That Ecclesiastical Benefices, III. 12.*]) We commanded the judges that, if *even* after the second mandate, through which we recalled cognizance of the whole business to our judgment, they learned that delivery of the seal to the said H. had been made by you, they should declare it invalid and empty, prohibiting him from presuming to use it in any manner, since it is more for the Roman Pontiff to recall some business to himself than for anyone to provoke to him concerning some business. *But we tolerated, etc.* (*Cf. sole c., That Ecclesiastical Benefices, III. 12.*) [*Given at Perugia, on the ninth day before the Kalends of October, 1198.*]

Postquam Papa aliquam causam ad se revocat, non valet processus postea per minorem iudicem factus; sicut non valeret, si fuisset ab eo legitime appellatum. Hoc dicit, ut cuilibet lecturae satisfiat.

Idem Mediolanensi Archiepiscopo.

Ut nostrum prodeat de vultu Dei iudicium (*Et infra:* [*cf. c. un. Ut eccl. benef. III. *12.]) Iudicibus dedimus in mandatis, ut, si *etiam* post secundum mandatum, per quod totius cognitionem negotii ad nostrum iudicium revocavimus, traditionem sigilli dicto H. a te cognoscerent esse factam, eam decernerent irritam et inanem, inhibentes illi, ne quomodolibet eo uti praesumeret, quum plus sit, Romanum Pontificem ad se aliquod revocare negotium, quam quemquam ad eum super aliquo negotio provocare. *Tolerabamus autem etc.* (*cf. c. un. Ut eccl. benef. III.* 12.) [*Dat. Perusii IX. Kal. Oct.* 1198.]

Chapter LVII

Latin source headnote: If the other party anticipates a term established by a person for prosecuting an appeal, impetrating letters while concealing this, the letters are not valid; but even the appellee can anticipate the term of law, provided that he does not run too far ahead. And where danger threatens from delay, even when neither party prosecutes, the judge to whom the appeal is taken can supply the defect by compelling the parties to prosecution.

The same, to the Abbot of Saint Felix and G., Canon of Bologna.

Your letters offered to us contained that, when certain judges to whom the cause being conducted between the parish churches of Sambro and Rinocor. had been committed by the Apostolic See *without the remedy of appeal* pronounced sentence for the parish church of Sambro, and its proctor appealed to us without a term on behalf of the parish church of Rinocor., and neither had deference been given to the appeal nor had a term for prosecuting it been assigned to the parties by the judges, the parish priest of Sambro impetrated our letters to you concerning observance of the aforesaid sentence, as it had been reasonably rendered. Afterward the other party impetrated from us other letters of commission to other judges concerning invalidating [*or confirming*] the same sentence, no mention of the former letters having been made in the later. Hence, recalled into doubt whether the

later judges or you ought to take cognizance of it, you wished to consult us concerning this, [*adding nevertheless that it had been proposed by certain wise men on behalf of the appellant that, since in such an article he has by benefit of law a year within which he can execute the suit by himself or jointly, in the intervening time he could prosecute the same appeal at his own decision whenever he wished, nor ought he to be compelled to it before the same space of time had run. Therefore they asserted that the first letters were of no validity, even though no mention of them had been made in the second.

But on behalf of the other party certain other learned men in law were said to have maintained that, since it was in that party's interest that the sentence should not remain suspended for so long and its confirmation be deferred, and the judges who pronounced it determined that the aforesaid appeal was not to be admitted, both because it had been prohibited by us and because it appeared frivolous, the party appealed against could lawfully have impetrated letters of this kind in the meantime—especially since, if it were said otherwise, churches would sometimes sustain grave loss, since in ecclesiastical causes according to the canons it is lawful to appeal whenever a grievance or another just cause occurs. Hence it could happen, if in this way a year were given to everyone provoking, that a cause would not attain its due effect for six or eight years. Certain others were additionally of the opinion that the first letters, not the second, were valid, but that the party who had appealed was not bound to prosecute his appeal within a year.*]

Therefore, although a year is granted by law to one lawfully appealing from a sentence, or [*even*] two years from a just cause, to prosecute the interposed appeal, nevertheless, because a term of this kind can be restricted not only by the person provoking but also by the judge from whose sentence the provocation is made—since it was established for this purpose, not that the term itself cannot be anticipated, but lest it be capable of extension—we believe that a distinction is to be made as to the case in which letters are impetrated. And indeed, when a certain term is fixed by the appellant or judge for prosecuting the appeal, if the appellee, concealing it, impetrates letters, letters of this kind, as surreptitiously obtained by concealment of the truth, ought to obtain no firmness. But if no *certain* term has been fixed by the judge or appellant, the party appealed against will be able, within the term established by law, provided that he does not run too far ahead so as to supplant the appellant in impetrating the commission, to impetrate letters of commission, by whose authority lawful proceedings shall be taken in the cause of appeal, in such a way that, if the appellant wishes to proceed in the cause of appeal, he will be obliged to act under the judge thus obtained, unless he can lawfully recuse him.

But if the *appellant* is unwilling to act, the appellee can nonetheless prosecute the cause itself, especially if he perceives that a grievance threatens him from the delay. The superior judge also, if he sees that danger threatens from delay, can and ought, when neither party prosecutes the appeal, to intervene so that the danger may be avoided. For example, if a provocation was made from a sentence rendered concerning confirmation of some bishop-elect, and each party wishes to defer prosecution of the appeal even [*up to*] a year, the superior judge to whom the appeal was taken certainly can—indeed, ought—to moderate the term providently, lest the Lord's flock long lack the care of a pastor. From these things, therefore, you should know that a response has been made to your consultation: through the later letters no derogation is made from those first lawfully impetrated, through which

proceedings can be taken, with reason preceding, to confirm or invalidate the sentence. [*Given at Viterbo, on the seventh day before the Ides of July, in the twelfth year, 1209*.]

Si terminum appellationis prosequendae statutum ab homine altera pars praevenit, hoc tacito literas impetrando, literae non valent: sed terminum iuris etiam appellatus praevenire potest, dummodo nimium non praecurrat. Et ubi ex dilatione imminet periculum, etiam neutra parte prosequente potest iudex ad quem supplere, partes compellendo ad prosecutionem.

Idem Abbati sancti Felicis et G. Canonico Bononiensibus.

Oblatae nobis vestrae literae continebant, quod, quum quidam iudices, quibus causa, quae inter Sambr. et Rinocor. plebes vertebatur, *absque appellationis remedio* fuerat ab apostolica sede commissa, pro plebe Sambriensi sententiam protulissent, et a procuratore plebis de Rinocor. ad nos fuerit sine termino appellatum, nec delatum appellationi fuisset, nec ad prosecutionem ipsius terminus a iudicibus partibus assignatus: plebanus de Sambro super observatione praedictae sententiae, sicut rationabiliter lata erat, nostras ad vos literas et alia pars alias commissionis literas a nobis super infirmanda [*vel confirmanda*] eadem postmodum ad alios iudices impetravit, nulla in posterioribus literis de prioribus habita mentione. Unde in dubitatione revocato, an posteriores iudices, vel vos de illa debeatis cognoscere, nos super hoc consulere voluistis, [*adiicientes nihilominus, a quibusdam sapientibus pro parte fuisse propositum appellante, quod, quum in tali articulo de legis beneficio annum habeat, infra quem secundum se communiterve ipsam exsequi litem possit, medio tempore pro suo arbitrio, quando vellet, prosequi poterat appellationem eandem, nec ad id compelli debebat, antequam idem temporis spatium haberetur. Quare nullius esse valoris primas literas asserebant, etsi de ipsis nulla sit mentio habita in secundis. Pro parte vero altera quosdam alios iurisperitos dixisse, quod quum interesset eiusdem, ne tamdiu sententia maneret suspensa et ipsius confirmatio differretur, et iudices, qui eam protulerant, appellationem praedictam non duxerint admittendam, tum quia fuerat a nobis inhibita, tum quia frivola videbatur, licite pars potuit appellata huiusmodi literas interim impetrare, praesertim quum, si aliter diceretur, gravem interdum ecclesiae sustinerent iacturam, quum in causis ecclesiasticis secundum canones appellare liceat, quotiens gravamen occurrit vel alia iusta causa. Unde contingere posset, si taliter annus cuilibet provocanti daretur, quod causa usque ad sex vel octo annos debitum non sortiretur effectum. Quosdam insuper alias opinatos, quod primae valebant literae, non secundae, sed pars, quae appellaverat, infra annum suam appellationem prosequi non tenebatur*]. Licet igitur appellanti legitime a sententia indulgeatur annus a lege, aut [*etiam*] ex iusta causa biennium ad appellationem interpositam prosequendam; quia tamen huiusmodi terminus potest restringi non solum a provocante, verum etiam a iudice, a cuius sententia provocatur, quum ideo sit constitutus, non ut terminus ipse praeveniri non possit, sed ne valeat prorogari, credimus distinguendum, in quo casu literae impetrantur. Et quidem, quando certus terminus ab appellante vel a iudice appellationi praefigitur prosequendae, si eo tacito appellatus literas impetraverit, huiusmodi literae tanquam tacita veritate subreptae obtinere non debent aliquam firmitatem. Si vero non sit aliquis *certus* terminus a iudice vel ab appellante praefixus, pars appellata infra terminum constitutum a lege, dummodo nimium non praecurrat, ut appellantem in commissione impetranda supplantet, commissionis literas poterit impetrare, quarum auctoritate in appellationis causa legitime procedatur ita, quod, si appellans voluerit in causa appellationis procedere, oportebit eum agere sub iudice sic obtento, nisi possit eum legitime recusare. Quod si agere noluerit *appellans*, appellatus potest nihilominus prosequi causam ipsam, maxime si sentiat, sibi ex dilatione imminere gravamen. Superior quoque iudex, si viderit, ex dilatione periculum imminere, potest et debet, neutro prosequente appellationem, occurrere, ut periculum evitetur, puta, si a sententia lata super confirmatione alicuius electi fuerit provocatum, et utraque pars velit etiam [*usque*] ad annum prosecutionem appellationis differre, potest utique, immo debet superior iudex, ad quem fuerat appellatum, terminum provide moderari, ne gregi dominico diu desit cura pastoris. Ex his igitur consultationi vestrae noveritis esse responsum, quod per posteriores non

derogatur prioribus legitime impetratis, per quas ad confirmandam sententiam vel infirmandam praevia potest ratione procedi. [*Dat. Viterbii VII. Id. Iul. Ao. XII. *1209.]

Chapter LVIII

Latin source headnote: When the other party is contumaciously absent, the judge of appeal can define even the principal business if the appeal was taken after joinder of issue.

The same.

Through your letters you asked *us* whether, if an appeal has been made to the Apostolic See *under someone's examination* after sentence was rendered, or at least after the depositions of the witnesses were published *and read,* those who are delegated by us concerning these things can, if one of the parties is unwilling to present himself to their sight, terminate by judicial calculus the cause delegated to them. We therefore respond to your consultation in this way: since issue concerning the same business was lawfully joined before the first judges, the delegated judges, when the person convened absents himself through contumacy, will be able, when the merits of the cause are clear to them, to define the business committed to them.

Altera parte contumaciter absente potest iudex appellationis etiam principale negotium definire, si post litem contestatam fuerit appellatum.

Idem.

Per tuas *nobis* literas requisisti, utrum, si *sub alicuius examine* post latam sententiam, vel saltem post depositiones testium publicatas *et lectas*, fuerit ad sedem apostolicam appellatum, hi, qui super haec delegantur a nobis, si altera partium eorum se noluerit conspectibus praesentare, causam sibi delegatam iudiciali possint calculo terminare. Nos igitur consultationi tuae taliter respondemus, quod, quum lis super eodem negotio coram primis iudicibus sit legitime contestata, poterunt iudices delegati, eo, qui convenitur, se per contumaciam absentante, quum eis de meritis causae liquebit, commissum sibi negotium diffinire.

Chapter LIX

Latin source headnote: A noteworthy and famous chapter, having many new sayings limiting each law; and, in sum, this it says, by adhering simply to the words of the letter: one appealing before sentence is bound to express a reasonable cause before the very judge from whom the appeal is taken, nor is an exception admitted that he had previously sent a messenger to the Apostolic See or that he had impetrated letters that have not yet been presented to the judge.

The same, in the general council.

That due honor may be deferred to judges and that provision may be made for litigants concerning labors and expenses, we establish that, if someone convenes an adversary before a suitable judge, the latter shall not provoke to a superior judge before sentence without reasonable cause, but shall prosecute his justice before that judge, notwithstanding that he says he sent a messenger to the superior judge or *even* impetrated letters from him before they were assigned to the delegate. But when he believes that an appeal is to be taken from a reasonable cause, after a probable cause of appeal has been set out before the same judge—namely, such a cause as, if it were proved, ought to be reputed lawful—the superior shall take cognizance of the appeal. And if it is established that he appealed from that judge less than reasonably, the superior shall remit him to the inferior and

condemn him in expenses to the other party; otherwise the superior himself shall proceed, saving the constitutions concerning greater causes to be referred to the Apostolic See.

> Notabile et famosum capitulum, habens multa nova dicta utrumque ius limitantia; et h. d. in summa, inhaerendo simpliciter verbis literae: Appellans ante sententiam tenetur exprimere causam rationabilem coram ipso iudice a quo, nec admittitur exceptio, quod prius miserat nuncium ad sedem apostolicam, vel quod literas impetraverat, quae nondum sunt iudici praesentatae.
>
> Idem in concilio generali.
>
> Ut debitus honor deferatur iudicibus, et litigatoribus consulatur super laboribus et expensis, statuimus, ut, si quis coram idoneo iudice convenerit adversarium, ille ante sententiam ad superiorem iudicem absque rationabili causa non provocet, sed coram illo suam iustitiam prosequatur, non obstante, si dicat, quod ad superiorem iudicem nuncium destinaverit, aut *etiam* literas impetraverit ab eodem, priusquam delegato fuerint assignatae. Quum autem ex rationabili causa putaverit appellandum, coram eodem iudice causa probabili appellationis exposita, tali videlicet, quae, si foret probata, deberet legitima reputari: superior de appellatione cognoscat. Et si minus rationabiliter eum appellasse constiterit, illum ad inferiorem remittat, et in expensis alteri parti condemnet; alioquin ipse procedet, salvis constitutionibus de maioribus causis ad sedem apostolicam referendis.

Chapter LX

Latin source headnote: If the judge from whom an appeal is taken from a grievance revokes it, he can proceed in the principal cause.

The same, in the same council.

Since, when a cause ceases, its effect ceases, we establish that, whether an ordinary or delegated judge has pronounced something by threatening or by interlocutory decision by whose execution one of the litigants would be aggrieved, and, using sound counsel, has desisted from the effect of an interlocutory decision or threat of this kind, he shall freely proceed in cognizance of the cause, notwithstanding that an appeal was taken from such a threat or interlocutory decision, provided that he is not lawfully suspect from another cause, lest the process of the business be retarded by frivolous occasions.

> Si iudex, a quo est appellatum a gravamine, illud revocat, potest in principali causa procedere.
>
> Idem in eodem.
>
> Quum cessante causa cesset effectus, statuimus, ut, sive iudex ordinarius sive delegatus aliquid comminando vel interloquendo protulerit, quo exsecutioni mandato alter litigantium gravaretur, et sano usus consilio ab huiusmodi interlocutionis vel comminationis effectu destiterit, libere in causae cognitione procedat, non obstante, si a tali comminatione vel interlocutione fuerit appellatum, dummodo non sit ex alia causa legitima suspectus, ne processus negotii frivolis occasionibus retardetur.

Chapter LXI

Latin source headnote: One wishing to recuse a judge ought to propose the cause of suspicion before that judge and prove it before arbiters to be chosen in common. If it is not proved, the judge uses his jurisdiction in the principal matter; but if it is proved, he remits the business to the superior or commits the cause with the consent of the recusing party. (*Moreover, etc.:*) In notorious matters an appeal is not admitted. In doubtful matters a probable cause is to be expressed before the judge that

ought to be reputed lawful; if the appellant does not prosecute it, the judge from whom the appeal was taken shall proceed in the cause. It is the same if he prosecutes and does not prove. This constitution, however, is not extended to regulars. This it says.

The same, in the same council.

Since it is provided by a special prohibition that no one shall presume to promulgate a sentence of excommunication against anyone unless competent admonition has preceded, wishing also to provide lest perhaps the person admonished be able under pretext of a frustrating recusation or appeal to avoid examination by the person admonishing, we establish that, if he alleges that he holds the judge suspect, he shall assign before the same judge the cause of just suspicion, and he with the adversary—or, if perhaps he has no adversary, with the judge—shall choose arbiters in common; or, if *perhaps* they cannot agree in common, without malice he shall choose one and the other another, who shall take cognizance of the cause of suspicion. And if they are unable to agree upon one sentence, they shall call a third, so that what two of them decree shall obtain the strength of firmness. And they should know that they are bound to execute this faithfully by the strict precept enjoined by us in virtue of obedience under attestation of divine judgment.

But if the lawful cause of suspicion is not proved before them within a competent term, the judge shall use his jurisdiction. But if it is lawfully proved, the person recused shall, with the assent of the recusing party, commit the business to a suitable person or transmit it to the superior, so that proceedings may be taken in that matter according to what is to be done. Moreover, when the person admonished flies to the obstacle of appeal, if his excess is manifest by the evidence of the matter, by his confession, or by another lawful mode, since the remedy of appeal was instituted not for the defense of iniquity but for the protection of innocence, no deference is to be given to a provocation of this kind.

But when the excess is doubtful, lest the appellant impede the judge's process by the refuge of a frivolous appeal, he shall set out before the same judge a probable cause of appeal—namely, such a cause as, if it were proved, ought to be reputed lawful. And then, if he has an adversary, within a term to be moderated by the same judge according to the distance of places, the quality of the time, and the nature of the business, he shall prosecute the cause of appeal. If he takes no care to prosecute it, from that time the judge himself shall proceed notwithstanding the appeal. But when no adversary appears, since the judge proceeds by his office, if the cause of appeal is proved before the superior, the superior shall execute the office of his jurisdiction. But if the appellant fails in its proof, he shall be remitted to the person from whom it is established that he appealed maliciously. But we will that these two foregoing constitutions not be extended to regulars contrary to their special observances.

> Volens iudicem recusare, debet coram eodem suspicionis causam proponere, et eam coram arbitris communiter eligendis probare, qua non probata sua iurisdictione iudex utitur in principali; ea vero probata, remittit negotium ad superiorem, vel causam committit de recusatoris consensu. - (Porro etc.:) In notoriis non admittitur appellatio. In dubiis causa probabilis coram iudice est exprimenda, quae debeat legitima reputari, quam si non prosequitur, iudex a quo in causa procedat. Idem si prosequitur, et non probat. Haec autem constitutio non extenditur ad regulares. H. d.
>
> Idem in eodem.
>
> Quum speciali sit prohibitione provisum, ne quis in aliquem excommunicationis sententiam nisi competenti commonitione praemissa promulgare praesumat, volentes etiam providere, ne forte

commonitus frustratoriae recusationis vel appellationis obtentu monentis possit declinare examen, statuimus, ut, si allegaverit, se iudicem habere suspectum, coram eodem causam iustae suspicionis assignet, et ipse cum adversario, vel, si forte adversarium non habeat, cum iudice arbitros communiter eligat; aut, si *forte* communiter convenire non possint, absque malitia ipse unum, et ille alium eligat, qui de suspicionis causa cognoscant. Et si nequiverint in unam concordare sententiam, advocent tertium, ut quod duo ex ipsis decreverint robur obtineat firmitatis; sciantque se ad id fideliter exsequendum ex iniuncto a nobis in virtute obedientiae sub obtestatione divini iudicii districto praecepto teneri. Causa vero suspicionis legitima coram ipsis infra competentem terminum non probata, sua iurisdictione iudex utatur. At ipsa probata legitime, de recusatoris assensu personae idoneae committat negotium recusatus, vel ad superiorem transmittat, ut in eo ipso procedat secundum quod fuerit procedendum. Porro commonito ad appellationis obstaculum convolante, si eius excessus evidentia rei, vel ipsius confessione, aut alio modo legitimo fuerit manifestus, quum appellationis remedium non sit ad defensionem iniquitatis, sed ad praesidium innocentiae institutum, non est provocationi huiusmodi deferendum. Excessu quoque dubio exsistente, ne frivolae appellationis diffugio appellans iudicis processum impediat, coram eodem probabilem causam appellationis exponat, talem videlicet, quae, si foret probata, deberet legitima reputari, et tunc, si habuerit adversarium, infra terminum secundum locorum distantiam et temporis qualitatem et naturam negotii ab eodem iudice moderandum, appellationis causam prosequatur. Quam si prosequi non curaverit, extunc ipse iudex appellatione non obstante procedat. Nullo autem adversario comparente, quum iudex ex suo procedat officio, appellationis causa coram superiore probata, superior suae iurisdictionis officium exsequatur. Sed si appellans in eius probatione defecerit, ad eum, a quo ipsum malitiose appellasse constiterit, remittatur. Ceterum has duas constitutiones praemissas nolumus ad regulares extendi contra suas speciales observantias.

Chapter LXII

Latin source headnote: If a judge wishes to hold as joinder of issue an advocate's confession revoked on the same day, or ratifies a process made by a subdelegate of a subdelegate, a lawful appeal is taken.

Honorius III, to the Dean, Chancellor, and Cantor of Lincoln.

When, while the proctors of both parties were established at the Apostolic See, we committed to *our beloved son* R., cardinal deacon of Sant'Angelo, to be heard the cause being conducted concerning the Church of Holiseth between *the beloved sons* the abbot and brothers of the Valley of Saint John *of Croston, of the Premonstratensian Order,* on one side, and the prior and canons of Newstead *in the Diocese of York* on the other, *P. and B., proctors of the aforesaid abbot and brothers, established in his presence, insistently petitioned that, approving the process of the Abbots of Rievaulx and Bellalanda and the Prior of Malton, to whom the cause itself had been delegated by Pope I. of good memory, our predecessor, we deign to terminate by sentence the cause itself, which had already lasted for so long. But W.,* proctor of the aforesaid prior and canons, proposed *in opposition* that *issue had not been joined before the aforesaid judges, but they had proceeded wrongly and abruptly. For* when, *on the appointed day, the same man, appearing* before the subdelegates of the delegated judges, petitioned for delays to propose dilatory exceptions, because his advocate, led by error, responded that the Church of Newstead had peacefully *and quietly* possessed *that* church concerning which the question was being conducted for forty years and more, although on the same day he corrected the advocate's error and, lest through it any prejudice be capable of being generated against him because dilatory exceptions are to be proposed before joinder of issue, revoked before the same judges the advocate's response, which appeared to contradict his petition. Nevertheless, the judges,

believing through an erroneous response of this kind by the advocate that issue had been joined, proceeded *not only rashly* to the reception *and examination* of the witnesses of the other party, *but also, adding grievance to grievance, when they had delegated the examination of certain witnesses to the Prior of Vellebeum and his fellow judge, who subdelegated their places to others contrary to canonical sanctions, they less providently approved the reception and examination of witnesses made by those persons in fact, although they were unable to do it by law. On account of these grievances an appeal was taken to the Apostolic See on behalf of the aforesaid prior and canons. Hence the same proctor insistently petitioned that we declare the process of the aforementioned judges invalid and empty. But because full faith concerning the foregoing could not be made to us, with the assent of the proctors of both parties,* we command your discretion that, if the said prior and canons *of Newstead, within three months after receipt of the present writing,* lawfully prove *before you* that the advocate's response was revoked on the same day by *their aforesaid proctor W.,* because thus by consequence issue was not joined, *since the proctors of the other party also acknowledged that issue had been joined in no other way than through the response of the said advocate alleging prescription of time,* or that the *first* delegates, *namely the Abbot of Rievaulx and his colleagues,* approved the witnesses received by the subdelegates of their subdelegates, *as is proposed by the other party,* although, *according to canonical and lawful sanctions,* no one except a person delegated by the prince has power to delegate a cause to another, then, provided that these things were expressed in the appeal itself, you shall declare invalid and empty whatever was done by them after their appeal.

Si iudex confessionem advocati eadem die revocatam pro litis contestatione velit habere, vel processum a subdelegato subdelegati factum ratificat, licita appellatur.

Honorius III. Decano, Cancellario et Cantori Linconiensibus.

Quum causam, quae inter *dilectos filios* abbatem et fratres de Valle sancti Ioannis *de Croston Praemonstratensis ordinis* ex parte una, et priorem et canonicos de Novo loco *Eboracensis dioecesis* ex altera super ecclesia de Holiseth vertitur, *utriusque partis procuratoribus apud sedem apostolicam constitutis, dilecto filio nostro* R. sancti Angeli diacono cardinali commiserimus audiendam, *+P. et B. procuratores praedictorum abbatis et fratrum in ipsius praesentia constituti, petebant instanter, ut processum approbantes de Rievalle et Bellanledae abbatum et prioris de Malton, quibus ipsa causa a bonae memoriae I. Papa praedecessore nostro fuerat delegata, causam ipsam, quae tanto tempore iam duraverat, dignaremur sententialiter terminare. W. vero* Procurator praedictorum prioris et canonicorum proposuit *ex adverso* quod *coram praedictis iudicibus lis non fuerat contestata, sed perperam processerant ex abrupto. Nam* quum *die statuta idem* coram subdelegatis iudicum delegatorum *comparens* inducias ad proponendum exceptiones dilatorias petiisset, quia advocatus ipsius ductus errore respondit, quod ecclesia de Novo loco ecclesiam *ipsam,* de qua erat quaestio, per quadraginta annos et amplius pacifice possederat *et quiete,* licet ipse eadem die advocati errorem corrigens, ipsius responsionem, quae suae petitioni contradicere videbatur, ne per eam aliquod sibi posset praeiudicium generare, pro eo, quod ante litis contestationem sunt exceptiones dilatoriae proponendae, coram eisdem iudicibus revocavit. Iudices tamen per huiusmodi responsionem erroneam advocati litem contestatam fore credentes, *non solum* ad receptionem *et examinationem* testium partis alterius *temere* processerunt, *+sed etiam gravamini gravamen addentes, quum examinationem quorundam testium priori de Vellebeo et suo coniudici delegassent, qui vices suas subdelegarunt aliis contra canonicas sanctiones, receptionem et examinationem testium ab ipsis de facto, quum de iure nequiverint, factam minus provide approbarunt. Propter quae gravamina ex parte praefatorum prioris et canonicorum ad sedem fuit apostolicam appellatum. Unde idem procurator cum instantia postulabat, ut memoratum iudicum processum decerneremus irritum et inanem. Quia vero super praemissis nobis non potuit fieri plena fides, discretioni vestrae utriusque partis procuratorum assensu* Mandamus, quatenus, si dicti prior et canonici *de Novo loco infra tres menses post susceptionem praesentium*

legitime probaverint *coram vobis*, quod per *praefatum W.* procuratorem ipsorum eadem die advocati responsio exstiterit revocata, quia sic per consequens lis contestata non fuit, *quum etiam procuratores alterius partis recognoverint, litem non aliter quam per dicti advocati responsionem, praescriptionem temporis allegantis contestatam fuisse*, vel quod *primi* delegati, *videlicet abbas de Rievalle et eius collegae* testes receptos a subdelegatis subdelegatorum suorum, *sicut ab altera parte proponitur*, approbaverint quum *secundum canonicas et legitimas sanctiones* non nisi delegatus a principe causam alii valeat delegare, quicquid ab ipsis post appellationem eorum factum est, dummodo haec in appellatione ipsa expressa fuerint, nuncietis irritum et inane.

Chapter LXIII

Latin source headnote: It does not suffice for an appellant to show that he opposed a lawful and true exception and appealed unless he shows that he appealed because the exception was not admitted. This it says, and it is a noteworthy and everyday case.

The same, to the Dean and Treasurer and P., Canon of Saint Peter, of Zamora.

When our beloved son G., our chaplain, was granted by us as auditor to D., a priest, and I., proctor *of the bishop, and G., proctor* of the Chapter of Salamanca, the proctor of the chapter, *for himself and the proctor of the bishop himself,* proposed before him that, when the said priest impetrated from us executory letters concerning his reception in the Church of Salamanca to the Archdeacon of Ciudad and his colleagues, and *the parties* were established before them *as executors,* it was alleged on behalf of *the bishop and* chapter that, since in that church there was a certain number of canons confirmed by oath, of which no mention was made in the letters directed to them, they ought not to proceed against them through those letters; and, lest they do otherwise, an appeal was taken to our hearing, *certain other lawful causes having been assigned. But those executors, having contemned an appeal of this kind, pronounced a sentence of excommunication against the bishop and chapter. Wherefore the aforesaid proctor petitioned that the sentence itself be declared invalid and that the said priest be restrained concerning this from the vexation of the same bishop and chapter.* (*And below:*) Therefore, although through the confession of *the* priest himself made before the aforesaid auditor it was established that the Church of Salamanca had a certain number of canons confirmed by oath, and that an exception of this kind had been proposed before the *aforesaid* executors, and *also* that an appeal had been taken from them, nevertheless, because it was not established that an appeal had been taken on account of the nonadmission of an exception of this kind or another lawful *cause,* we command *your discretion* that, if it is established to you that the aforesaid exception concerning such a certain number of canons confirmed by oath, or other lawful exceptions, had been proposed before those executors and not admitted, and that for this reason the party of *the bishop and* chapter appealed, you shall declare the process of those executors invalid and empty.

Non sufficit appellanti docere, quod exceptionem legitimam et veram opposuit et appellavit, nisi doceat propter exceptionem admissam appellasse. H. d. et est casus not. et quotidianus.

Idem Decano et Thesaurario et P. S. Petri Canonico Zamorensibus.

Dilecto filio G. capellano nostro, D. presbytero et I. *episcopi et G.* capituli Salamantini procuratori a nobis auditore concesso, procurator capituli *pro se et procuratore ipsius episcopi* proposuit coram eo, quod, quum dictus presbyter super receptione sua in Salamantina ecclesia exsecutorias a nobis ad archidiaconum Civitatensem et collegas eius literas impetrasset, *partibus* coram eis *exsecutoribus constitutis*, fuit ex parte *ipsorum episcopi et* capituli allegatum, quod, quum in ipsa sit ecclesia certus numerus canonicorum

iuramento firmatus, de quo in literis ad eos directis mentio non fiebat, per eas non debebant contra ipsos procedere, et, ne aliter facerent, fuit ad nostram audientiam, *assignatis quibusdam aliis causis legitimis*, appellatum. +*Sed ipsi exsecutores, huiusmodi appellatione contempta, excommunicationis sententiam in episcopum et capitulum protulerunt. Quare petebat procurator praedictus, sententiam ipsam irritam nunciari, et dictum presbyterum super hoc ab eorundem episcopi et capituli vexatione compesci.* (*Et infra:*) Quoniam igitur, etsi per confessionem *ipsius* presbyteri factam coram auditore praedicto constiterit, Salamantinam ecclesiam habere certum numerum canonicorum iuramento firmatum, et huiusmodi exceptionem coram exsecutoribus *supra dictis* fuisse propositam, et *etiam*, quod appellatum exstiterit ab eisdem, quia tamen non constitit, quod propter exceptionem huiusmodi non admissam aliamve legitimam *causam* fuerit appellatum, *discretioni vestrae* mandamus, quatenus, si vobis constiterit, praefatam exceptionem huiusmodi de certo canonicorum numero iuramento firmato, vel alias legitimas exceptiones fuisse propositas coram ipsis exsecutoribus, nec admissas; ac ideo partem *episcopi et* capituli appellasse, ipsorum exsecutorum processum denuncietis irritum et inanem.

Chapter LXIV

Latin source headnote: An appellant who fixes a term for the appeal, if he sends a proctor only for impetrating and contradicting, and the appeal was received by the judge or approved by the party, is condemned in expenses to the adversary lawfully prosecuting. This it says according to the common understanding, although the gloss thought otherwise.

The same, to the Archdeacon of Saint Andrew and Master Canon of Melten.

When Nicholas, a knight, and Brother E., a monk of the Monastery of Saint Mary *of Drundanian, of the Cistercian Order in the Diocese of Whithorn,* were established at the Apostolic See, we granted them as auditor *our beloved son S.,* cardinal deacon of Saint Africanus. In his presence, since the said monk had been constituted proctor only for impetrating and contradicting, *as was evidently established from the letters of the said abbot and convent,* the same knight humbly supplicated that we ought to proceed against them as contumacious, *and to command certain persons that, lawfully condemning them to repair his damages and expenses because, while he personally prosecuted the appeal sent forth, they sent a less suitable proctor to prosecute it, after he had first been restored as should be just, they should hear those things that the aforesaid knight should reasonably determine to propose against the aforesaid abbot and convent. But because full faith concerning the foregoing could not be made to us, with the assent of the knight and the aforesaid monks,* we command your discretion that, if it is established to you that the said abbot and convent fixed a term for their appeal and did not send a sufficient proctor to prosecute it, while the aforementioned knight personally prosecuted it, you shall condemn them to restore to that knight the expenses incurred from the time of the appeal; *and, after he has first been restored as shall be just, you shall hear the cause and terminate it with its due end, with appeal removed.*

Appellans, qui terminum appellationi praefigit, si mittit procuratorem ad impetrandum et contradicendum tantum, et appellatio fuit recepta a iudice, vel approbata a parte, adversario legitime prosequenti condemnatur in expensis. H. d. secundum communem intellectum, licet glossa aliud senserit.

Idem sancti Andreae Archidiacono et Magistro Canonico de Melten.

Nicolao militi ac fratri E. monacho monasterii sanctae Mariae *de Drundaniam Cisterciensis ordinis dioecesis Candidae casae apud sedem apostolicam constitutis dilectum filium nostrum S.* sancti Africani diaconum cardinalem concessimus auditorem. In cuius praesentia quum dictus monachus non nisi ad

impetrandum et contradicendum procurator fuerit institutus, *sicut ex literis dictorum abbatis et conventus constitit evidenter*, supplicavit humiliter idem miles, ut contra ipsos tanquam contumaces procedere deberemus, *+ac dare aliquibus in mandatis, qui eosdem pro eo, quod ad prosequendam appellationem emissam procuratorem minus idoneum destinarunt, ipso eandem personaliter prosequente, in resarciendis sibi damnis et expensis legitime condemnantes, eo prius, sicut iustum fuerit, restituto, audiant super his quae contra praedictos abbatem et conventum praefatus miles rationabiliter duxerit proponenda. Quia vero super praemissis nobis non potuit fieri plena fides, de assensu militis et monachorum praedictorum discretioni vestrae* Mandamus, quatenus, si vobis constiterit, dictos abbatem et conventum appellationi suae terminum praefixisse, quum ad prosequendam eandem sufficientem procuratorem non miserint, memorato milite ipsam personaliter prosequente, ipsos ad restituendas expensas a tempore appellationis factas eidem militi condemnetis, *eodemque, sicut iustum fuerit, primitus restituto, audiatis causam, et appellatione remota fine debito terminetis*.

Chapter LXV

Latin source headnote: It is not lawful for the same person to appeal a third time from the same sentence.

The same, to the Bishop of Mantin. and P., Canon of Tuscania.

R., tutor of the children of the late B., a citizen of Tuscania, showed us by his petition that, when a question concerning a certain sum of money *and other things* was being conducted before *R., then* judge *of the county* of Tuscania, *not by apostolic delegation,* between him on one side and F. for himself and Peter *Campumallus,* tutor *of B.,* the late son of B., *their fellow citizens,* on the other, the same judge promulgated definitive sentence for that R., which was twice confirmed by judges delegated by the Apostolic See. But *although Peter Picheta, Canon of Tuscania, to whom we are said to have committed execution of the sentence itself, lawfully inducted him into possession of certain houses and other things, because* the other party, which had appealed once and a second time *from the cognizance of other delegates,* sending forth the voice of appeal to us a third time *contrary to lawful sanctions,* obtained from us that cognizance of the sentence itself be delegated to *the beloved son* P., Canon *of San Severino in Tuscania,* and his colleague, *they, as they were more than duly hostile toward him, cast him out of the aforesaid possession contrary to justice.* And when *our beloved son* R., cardinal deacon of Santa Maria in Cosmedin, appointed by us as auditor to each party concerning the appeal sent forth to us a third time, declared by interlocutory decision that they could not by law appeal a third time, by *our letters* we commanded the aforesaid P. *of San Severino* and his colleague that they should in no way attempt to proceed in that business.

Ab eadem sententia ab eodem tertio appellare non licet.

Idem Episcopo Mantin. et P. Canonico Tuscanensi.

Sua nobis R. tutor filiorum quondam B. civis Tuscanensis petitione monstravit, quod, quum inter ipsum ex una parte, et F. pro se, ac Petrum *Campumallum* tutorem *B.* quondam filii B. *concives suos* ex altera super quadam summa pecuniae *et rebus aliis* coram *R. tunc* iudice *comitatus* Tuscanensis *non ex delegatione apostolica* quaestio verteretur, idem diffinitivam pro eodem R. sententiam promulgavit, quae bis fuit per iudices delegatos a sede apostolica confirmata. Sed *licet Petrus Picheta canonicus Tuscanensis, cui exsecutionem ipsius sententiae dicimur commisisse, ipsum in possessionem quarundam domorum et aliarum rerum legitime induxisset, quia* pars altera, quae *ab aliorum delegatorum cognitione* semel et iterum appellaverat, tertio vocem appellationis ad nos emittens *contra legitimas sanctiones, dilecto filio* P. *Severini canonico Tuscanensi *et eius collegae cognitionem ipsius sententiae a nobis obtinuit delegari, *+illi, prout erant contra eum plus debito animosi a possessione praedicta contra iustitiam eiecerunt eundem*. Quumque *dilectus filius noster* R. sanctae

Mariae in Cosmedin diaconus cardinalis super appellatione tertio ad nos emissa utrique parti a nobis datus auditor, interlocutus fuerit, illos non potuisse de iure tertio appellare, nos praedicto P. *Severini *et eius collegae *nostris* dedimus *literis* in mandatis, ut in negotio ipso nequaquam procedere attentarent.

Chapter LXVI

Latin source headnote: An appeal interposed with the intermediate judge omitted does not devolve the cause when an exception is opposed. This it says according to the common understanding.

The same, to Master G., Archdeacon, and the Official of Limoges.

The beloved sons the prior and convent of Lac-Rouge showed us by their transmitted petition *that, when a question concerning a certain wood and other things was being conducted before Master A., Canon of Clermont, not by apostolic delegation, between them on one side and F. of Hambaro, a knight of the Diocese of Clermont, on the other, the same knight, frustratingly sending forth the voice of appeal to our venerable brother the Archbishop of Bourges, obtained that the cause concerning these things be delegated to the Official of Bourges. Before him,* it was proposed by way of exception on behalf of the said prior and convent that, since an appeal had been taken to the *same* archbishop with the diocesan bishop omitted, to whom appeal should have been made by degrees, he *could not and* ought not by law to proceed in the cause itself. But because the *said* official of the archbishop refused to admit an exception of this kind *by them,* they appealed to our hearing. *But he, contemning their appeal, rendered sentences of suspension and interdict against them.* Wherefore we command *your discretion* that, *if you find that the said* sentences were rendered against them after an appeal of this kind, you shall declare that *they* utterly do not hold.

Appellatio omisso medio iudice interposita causam non devolvit exceptione opposita. Hoc dicit secundum communem intellectum.

Idem Magistro G. Archidiacono et Officiali Lemon.

Dilecti filii prior et conventus de Lacu Rubeo transmissa nobis petitione monstrarunt, +*quod, quum inter ipsos ex parte una, et F. de Hambaro, militem Claromontensis dioecesis ex altera super quodam nemore et rebus aliis coram magistro A. canonico Claromontensi non ex delegatione apostolica quaestio verteretur, idem miles ad venerabilem fratrem nostrum Bituricensem archidiaconum frustratorie vocem appellationis emittens, causam super his officiali Bituricensi obtinuit delegari. Coram quo* Ex parte dictorum prioris et conventus fuit excipiendo propositum, quod, quum omisso dioecesano episcopo fuisset ad *eundem* archiepiscopum appellatum, ad quem gradatim fuerat appellandum, in causa ipsa de iure procedere non *poterat, nec* debebat. Sed quia *dictus* officialis archiepiscopi huiusmodi *eorum* exceptionem admittere denegabat, ipsi ad nostram audientiam appellarunt. *At ille, ipsorum appellatione contempta, suspensionis et interdicti tulit sententias in eosdem.* Quocirca *discretioni vestrae* mandamus, quatenus, *si dictas* sententias post huiusmodi appellationem *inveneritis esse* latas in eos, denuncietis *eas* penitus non tenere.

Chapter LXVII

Latin source headnote: If one who has ceased to be a tutor is unwillingly convened in the name of the pupil, he will be able to appeal.

Gregory IX, to H., Master of the Scholars, and G. de Rupe, Canons of Saint-Audomarus in the Diocese of Thérouanne.

On behalf of M., Lady of Colb., a complaint was offered to us that, when a woman, the Lady of Bellebron., drew her into a cause before judges by our authority concerning certain lands in the name

of her sons, she caused an exception to be made in the presence of those judges: that, since the things concerning which proceedings were being conducted in judgment, and the aforesaid sons, remained in no way under her power and tutelage, since she had already passed to second vows, she was not bound to respond concerning these things in their name, whose tutor she had ceased to be. But because the said judges, neglecting this exception, nonetheless compelled her to this, she, perceiving herself aggrieved, appealed to our hearing. And therefore we command that, if it is so, after revoking as invalid whatever you find was attempted after an appeal of this kind, you shall hear the things proposed on this side and that, etc.

> Si is, qui desiit esse tutor, nomine pupilli convenitur invitus, poterit appellare.
>
> Gregorius IX. Magistro scholarium H. et G. de Rupe Canonicis S. Andoniani Morinensis dioecesis.
>
> Ex parte M. dominae de Colb. nobis fuit oblata querela, quod, quum nobis mulier domina de Bellebron. super quibusdam terris ipsam nomine filiorum suorum coram iudicibus auctoritate nostra traxisset in causam, eadem in iudicum ipsorum excipi fecit praesentia, quod, quum res, de quibus in iudicio agebatur, et praedicti filii eius sub potestate et tutela ipsius minime permanerent, quum iam ad secunda vota transisset, super his ei non tenebatur ipsorum nomine, quorum tutrix esse desierat, respondere. Sed quia dicti iudices hac exceptione neglecta nihilominus ad hoc compellebant eandem, ipsa sentiens se gravari, nostram audientiam appellavit. Ideoque mandamus, quatenus, si ita est, revocato in irritum, quicquid post appellationem huiusmodi inveneritis attentatum, audiatis hincinde proposita, etc.

Chapter LXVIII

Latin source headnote: If a judge doubting concerning the law wishes to consult a superior, he ought to give the parties a copy of the consultation; otherwise faith is not given to his words of consultation.

The same, to the Master and Brothers of the House of Moriensis.

You intimated—(*And below:*) Moreover, the Hospitallers being ignorant and no copy of the process of inquiry having been made for them, they are known to have transmitted a reference to us, although according to lawful sanctions, whenever any judge promises that he will make a reference, he is bound immediately to give the litigants a copy of the consultation among the acts.

> Si iudex de iure dubitans vult consulere superiorem, debet consultationis copiam partibus edere; alias eius verbis consultationis fides non adhibetur.
>
> Idem Magistro et Fratribus domus Moriensis.
>
> Intimasti (*Et infra:*) Praeterea Hospitalariis ignorantibus, et non facta eis copia de inquisitionis processu ad nos relationem transmisisse noscuntur, quum iuxta legitimas sanctiones, quotiens relaturum se iudex quilibet pollicetur, illico litigatoribus apud acta consultationis exemplum edere teneatur.

Chapter LXIX

Latin source headnote: If, before joinder of issue, a judge alters something concerning the principal business or anticipates without cause the day assigned, a lawful appeal is taken. And if a proctor appointed to impetrate concerning the appeal did not observe the form of the mandate, the appellant is heard even after a year.

The same, to the Archbishop, Archdeacon, and G., Canon of Tours.

You should know that we received, through the signification of the Bishop of Orléans, that, when the dean and Chapter of Meung convened him before judges by apostolic authority concerning the fact that, as they said, butchers ought not to sell meat anywhere other than in the stalls of the aforesaid dean and chapter, and at length the named dean and chapter, petitioning by imploring the office of the judges that, since the same bishop after citation caused meat to be sold in other stalls, they should recall to its former state what had been done by him concerning this, it was proposed on his behalf that, since issue especially had not been joined concerning the business, an imploration of this kind had no place. He added that, since by consent of the parties a certain day had been established before the said judges for litigating concerning the business itself, and the session of those judges had been adjourned until that day, they ought not without the parties' consent to anticipate that day and hear the adverse party in such an imploration. And because they did not hear him concerning these things, he appealed to our hearing.

And although within a year he sent his proctor to prosecute an appeal of this kind, nevertheless, because the said proctor, circumvented, as is believed, contrary to the prohibition of the bishop himself impetrated our letters concerning this to certain judges suspect for a certain reason, the said bishop was unwilling to use the letters thus obtained, petitioning to be admitted to prosecution of the appeal notwithstanding the lapse of the year. And therefore we command that, if the prohibition of this kind and the foregoing causes of appeal, or one of them, are established, after revoking as invalid, etc., up to: what was attempted in the already-said business according to the contents of the former letters, etc.

> Si ante litem contestatam circa principale negotium iudex aliquid innovat, vel diem assignatam sine causa praevenit, licite appellatur. Et si procurator datus ad impetrandum super appellatione non servavit formam mandati, auditur appellans etiam post annum.
>
> Idem Archiepiscopo, Archidiacono et G. Canonico Turonensibus.
>
> Significante Aurelianensi episcopo nos noveritis accepisse, quod, quum decanus et capitulum Magdunense ipsum super eo, quod dicebant alibi, quam in stallis decani et capituli praedictorum carnifices carnes vendere non debere, coram iudicibus auctoritate apostolica convenissent, petentibus tandem decano et capitulo nominatis iudicum officium implorando, ut, quum idem episcopus post citationem carnes in stallis aliis vendi fecisset, quod per eum super hoc factum fuerat in statum pristinum revocarent, pro parte ipsius fuit propositum, quod, quum lis praesertim non fuisset super negotio contestata, locum imploratio huiusmodi non habebat, adiiciens, quod, quum de consensu partium coram dictis iudicibus ad litigandum super ipso negotio certus dies statutus fuisset, et quantum ad illam diem solutum fuisset iudicium eorundem, praevenire diem ipsum ac audire partem adversam in tali imploratione absque consensu partium non debebant. Et quia super his non audiebant eundem, nostram audientiam appellavit. Et licet procuratorem suum infra annum ad huiusmodi appellationem miserit prosequendam, quia tamen dictus procurator, ut creditur, circumventus contra inhibitionem ipsius episcopi nostras super hoc ad quosdam iudices certa ratione suspectos literas impetravit, dictus episcopus uti noluit literis sic obtentis, petens non obstante lapsu anni ad prosecutionem appellationis admitti. Ideoque mandamus, quatenus, si inhibitione huiusmodi et praemissis causis appellationis vel earum altera constiterit, revocato in irritum, etc. Usque ad attentatum in iam dicto negotio iuxta priorum continentiam literarum, etc.

Chapter LXX

Latin source headnote: A famous and very much allegeable chapter, and this it says: to justify an appeal interposed from a cause, it is necessary to prove the truth of the cause before the judge to whom the appeal is taken, unless it was offered and rejected before the judge from whom the appeal was taken. This it says uniquely up to § *To the Same*. § 1. If an appeal was not received by the judge or approved by the party, it suffices for the appellant to send a proctor for impetrating and contradicting, although the party appealed against is prepared to prosecute in the Curia. This it says up to § *Finally, He*. The Sicilian Abbot. § 2. Before prosecution of an appeal has begun, the appellant can, if he wishes, petition, even against the will of the appellee, that he be remitted to the judge from whom the appeal was taken; but he will be condemned in the expenses incurred by the adverse party in that appeal. This it says up to § *Indeed*. The Sicilian Abbot. § 3. The article of an appeal interposed from a grievance is discussed by the judge to whom the appeal is taken, when the party is absent through contumacy, even when issue has not been joined in the appeal or principal cause. This it says. The Sicilian Abbot.

The same.

When an appeal has been interposed from a probable cause, it does not suffice for the appellant to prove that he provoked from a cause of this kind unless he shows that it is true, unless, when offering to prove this, he was not admitted.

§ 1. It is also permitted to him, if his appeal is not received by the judge nor approved by the adversary, to impetrate letters concerning prosecution of the appeal through a proctor constituted for impetrating and contradicting, although the other party, through himself or a suitable proctor, is prepared to receive judgment concerning this at the Apostolic See.

§ 2. Finally, one who sent forth the voice of appeal, cognizance of which has not yet been delegated to another at his petition, is by law remitted to the person from whom he provoked, notwithstanding the contradiction of the other party; nevertheless he is to be condemned to the adversary in the lawful expenses that it is established the adversary incurred on this account.

§ 3. Indeed, when someone is prepared to prove the grievance on account of which he determined that an appeal was to be made, and the adverse party contumaciously absents himself, proceedings can be taken concerning this without joinder of issue, although joinder of issue has not yet been made in the article of appeal itself or the principal business, because, since in this case the injustice of the first judge is principally accused, the rigor of law from which perplexity of the cause could follow is not to be required.

> Capitulum famosum et multum allegabile, et h. d.: Ad iustificandam appellationem ex causa interpositam probare oportet causae veritatem coram iudice ad quem, nisi fuerit coram iudice a quo oblata et reiecta. H. d. singulariter usque ad §. Eidem. - §. 1. Si appellatio non fuit recepta a iudice vel approbata a parte, sufficit appellanti mittere procuratorem ad impetrandum et contradicendum, licet pars appellata sit parata in curia prosequi. H. d. usque ad §. Ille denique. Abbas Siculus. - §. 2. Ante inchoatam prosecutionem appellationis appellans potest, si vult, invito appellato petere, ut remittatur ad iudicem a quo; sed condemnabitur in expensis factis per partem adversam in illa appellatione. H. d. usque ad §. Sane. Abbas Siculus. - §. 3. Articulus appellationis interpositae a gravamine discutitur per iudicem ad quem, parte absente per contumaciam, etiam lite non contestata in appellatione vel principali causa. Hoc dicit, Abbas Siculus.

Idem.

Interposita appellatione ex causa probabili non sufficit appellanti probare, quod ex causa huiusmodi provocavit, si eam non doceat esse veram, nisi hoc se offerens probaturum non fuisset admissus. §. 1. Eidem quoque permittitur, si non recipiatur appellatio eius a iudice, nec ab adversario approbetur, super prosecutione appellationis per procuratorem ad impetrandum et contradicendum constitutum literas impetrare, licet pars altera per se vel per procuratorem idoneum iudicium super hoc apud sedem apostolicam recipere sit parata. §. 2. Ille denique, qui vocem appellationis emisit, cuius nondum est alii cognitio delegata ad petitionem eiusdem, ad eum, a quo provocavit, de iure remittitur, contradictione partis alterius non obstante; est tamen in legitimis expensis adversario, quas eum propter hoc fecisse constiterit, condemnandus. §. 3. Sane parato aliquo probare gravamen, propter quod duxerat appellandum, et parte adversa se contumaciter absentante, potest super hoc lite non contestata procedi, licet nondum litis contestatio facta fuerit in ipso appellationis articulo vel negotio principali, quia, quum in hoc casu iniquitas prioris iudicis principaliter arguatur, non est rigor iuris, ex quo sequi posset causae perplexitas, requirendus.

Chapter LXXI

Latin source headnote: The clause "with appeal removed," placed in the middle of letters, looks to the foregoing matters to which it is annexed, not the following, unless it is repeated at the end of the letters. And this applies if the businesses are separate.

The same.

We respond to your inquiry in this way: whenever a clause through which the remedy of appeal is removed is placed in the middle of letters, if there are several businesses in no way touching one another, it embraces only the foregoing, unless perhaps the aforesaid clause is repeated at the end of the letters.

Clausula: «appellatione remota» in medio literarum posita respicit praemissa, quibus annectitur, non sequentia, nisi repetatur in fine literarum. Et hoc si negotia sunt separata.

Idem.

Inquisitioni tuae taliter respondemus, quod, quotiens clausula, per quam tollitur appellationis remedium, in medio literarum ponitur, si sunt plura negotia se minime contingentia, praemissa tantum complectitur, nisi forte in fine literarum praedicta clausula iteretur.

Chapter LXXII

Latin source headnote: It is brief, but in other words it is summarized thus: the appeal of one profits another if they are helped by a common right, the business is the same, the cause of defense is the same, and they were condemned by the same sentence; otherwise it is different.

The same.

When several persons have been condemned by one sentence, if one alone flies to the benefit of appeal, his victory by common law supports the others, if they are helped by a common right and the business is the same and the cause of defense is the same.

Breve est, sed per alia verba sic summatur: Appellatio unius prodest alteri, si communi iure iuventur, et idem sit negotium, et eadem defensionis causa, et sint eadem sententia condemnati; alias secus.

Idem.

> Una sententia pluribus condemnatis, si unus solus ad appellationis beneficium convolaverit, illius victoria iure communi ceteris suffragatur, si communi iure iuventur, idemque negotium et eadem causa defensionis exsistat.

Chapter LXXIII

Latin source headnote: Just fear excuses to such a degree that one who does not appeal is held as an appellant if he has protested and determined that the causes of appeal were to be expressed.

The same.

If just fear excuses you from appealing, you are reputed to have flown to the benefit of appeal, provided that, within the time in which a provocation is lawfully made, after a protestation concerning this has been proposed before the judge from whom you had wished to appeal—or, if you were unable to have access to him, in the presence of good men—you determined that the causes of appeal were to be expressed.

> Iustus metus excusat adeo, quod non appellans habetur pro appellante, si fuerit protestatus, et appellationis causas duxerit exprimendas.
>
> Idem.
>
> Si iustus metus, quo minus appellaveris, te excusat, ad appellationis reputaris beneficium convolasse, dummodo infra tempus, quo licite provocatur, coram iudice, a quo appellasse volueras, vel, si habere ipsius copiam nequivisti, in praesentia bonorum virorum protestatione super hoc proposita, causas appellationis duxeris exprimendas.

Title XXIX: On Clerics Journeying

Sole Chapter

Latin source headnote: Nothing is to be altered against one making pilgrimage or setting out for the Apostolic See.

Celestine III, to the Bishop of Amiens.

From the complaint of I., a priest, we understood *that, after he entered upon the journey of coming to us, certain persons presumed to plunder his things.* Although *however* the same priest did not place his things and those of his church under our protection when he approached us, nevertheless, *because he ought not on that account to have been despoiled of his things,* since those who approach our presence ought to be secure under apostolic protection together with their things, we command *your fraternity* that you cause whatever was taken away or removed from that priest after he entered upon the journey of coming to us to be restored to him *without delay, with every appeal removed.*

> **De clericis peregrinantibus.**
>
> Contra peregrinantem seu proficiscentem ad sedem apostolicam non est aliquid innovandum.
>
> Coelestinus III. Ambianensi Episcopo.
>
> Conquerente I. presbytero intelleximus, *+quod, postquam ad nos veniendi iter arripuit, quidam res eius diripere praesumpserunt*. Licet *autem* presbyter idem res suas et ecclesiae suae in protectione nostra non posuerit, quando ad nos accessit, *quia* tamen *propter hoc non debuit rebus suis spoliari*, quum hi, qui accedunt ad praesentiam nostram, cum rebus eorum debeant esse sub apostolica protectione securi, *fraternitati tuae*

mandamus, quatenus, quicquid eidem presbytero post iter arreptum ad nos veniendi subtractum est vel ablatum, sibi *omni appellatione remota* restitui faciatis *incunctanter*.

Title XXX: On Useful or Useless Confirmation

Chapter I

Latin source headnote: An inferior judge cannot take cognizance of a matter knowingly confirmed by the Pope unless the confirmation did not hold, as because it was surreptitious or concerned a litigious matter. This it says together with the following chapter.

Alexander III, to the Bishop of Exeter.

If anyone has impetrated from the Apostolic See confirmation of a litigious matter, the judge can no less take cognizance of the cause and terminate it with its due end. But if he peacefully possessed the thing at the time when he obtained confirmation concerning it, it is not *safe or* lawful for a judge to decide or define a question that afterward arose without a mandate of the Apostolic See.

De confirmatione utili vel inutili.

De re scienter confirmata per Papam inferior iudex cognoscere non potest, nisi confirmatio non tenuerit, ut quia subreptitia, vel de re litigiosa. H. d. cum cap. sequenti.

Alexander III. Exonensi Episcopo.

Si quis rei litigiosae confirmationem impetravit ab apostolica sede, non minus potest iudex de causa cognoscere, et eam fine debito terminare. Sed si rem tunc pacifice possidebat, quum inde confirmationem obtinuit, non est *tutum aut* licitum iudici, de quaestione postea exorta decernere, aut eam diffinire absque sedis apostolicae mandato.

Chapter II

Latin source headnote: It says the same thing.

The same, to the Bishop of Worcester.

But concerning confirmations of the Roman Pontiffs, we will you to hold that judgment is in no way to be made contrary to them unless a new mandate of the Apostolic See proceeds or it is certain that *the confirmations themselves* were elicited through suggestion of falsehood.

Idem dicit.

Idem Vigoriensi Episcopo.

De confirmationibus autem Romanorum Pontificum volumus te tenere, quod contra illas, nisi novum apostolicae sedis procedat mandatum, aut certum sit, quod *ipsae confirmationes* sint per falsi suggestionem elicitae, non est aliquatenus iudicandum.

Chapter III

Latin source headnote: Letters of confirmation concerning a sentence from which an appeal had been taken are not valid if the appellee maliciously anticipated the appellant; otherwise they remain pending until cognizance is taken of the appeal.

Celestine III.

A. of good memory, *formerly* your canon, *who closed his last day at the Apostolic See, took care to consult us concerning certain things that we have determined necessarily to intimate to you according to the tenor of our response.* He *however* proposed that a sentence *through false instruments* had been pronounced by delegated judges, *which indeed were believed to be genuine,* and within ten days the person against whom sentence had been given, *noticing the falsity of the instruments,* appealed from that sentence; nevertheless, the judges no less commanded that the sentence be put into execution. But the appellant, immediately entering upon the journey to the Apostolic See, impetrated letters concerning retracting the sentence; his adversary, however, cunningly anticipating him, had obtained a rescript confirming the promulgated sentence, in which *nevertheless* no mention was made of the appeal that had been made. And therefore you asked which letters should generate prejudice against which. We respond, therefore, that the later ought to generate prejudice against the former.

Indeed, from this first consultation there arose a second question exhibited in our auditorium, which stands thus: if in the same letters—namely, the later—this clause were placed, "notwithstanding any letters of confirmation of the rendered sentence, let the cause be heard and terminated with its due end," whether the former letters ought thus to be revoked. To this we say that through the last the first would be utterly revoked. But if it were said, *as is more frequently accustomed to be placed in apostolic letters,* "no letters prejudicing truth and justice," or under another form of words, provided that nothing were said expressly concerning the letters of confirmation, we say that the first ought to have their force until fuller cognizance is had of the iniquitous *or false* sentence. Third, etc. (*Cf. c. 5, On Proofs, II. 19.*)

> Literae confirmationis super sententia, a qua erat appellatum, non valent, si appellatus malitiose praevenit appellantem; alias pendent, donec de appellatione cognoscatur.
>
> Coelestinus III.
>
> Bonae memoriae A. *quondam* canonicus vester, *qui apud sedem apostolicam diem clausit extremum, super quibusdam nos consulere studuit, quae secundum tenorem nostrae responsionis vobis necessario duximus intimanda*. Proposuit *autem*, sententiam *per falsa instrumenta* a delegatis iudicibus prolatam fuisse, *quae nimirum vera esse credebantur*, et infra decem dies ille, contra quem sententiatum fuerat, *falsitatem instrumentorum advertens* ab illa sententia appellavit; iudices tamen nihilominus sententiam exsecutioni mandarunt. Ceterum appellans, itinere statim ad apostolicam sedem arrepto, literas de retractando sententiam impetravit; adversarius autem ipsum caute praeveniens, confirmationis promulgatae sententiae rescriptum fuerat assecutus, in quo *tamen* nulla de facta appellatione mentio habebatur. Ideoque requisisti, quae quibus literis praeiudicium faciant. Respondemus igitur, quod posteriores debent prioribus praeiudicium generare. *Ab hac siquidem prima consultatione quaestio suborta exhibita est in auditorio nostro secunda, quae ita se habet: Si. in eisdem, videlicet posterioribus, literis haec clausula poneretur, non obstantibus aliquibus literis confirmationis latae sententiae audiatur causa et fine debito terminetur, utrum sic primae revocari deberent. Ad hoc dicimus, quod per ultimas primae forent penitus revocandae*. Verum si dicatur, *sicut frequentius in literis apostolicis consuevit apponi:* «nullis literis veritati et iustitiae praeiudicantibus,» vel sub alia forma verborum, dummodo nihil diceretur de literis confirmationis expresse, dicimus, quod primae tamdiu suum debent habere vigorem, donec de iniqua *vel falsa* sententia cognitio plenior habeatur. Tertio etc. (*cf. c. 5. de prob. II.* 19.)

Chapter IV

Latin source headnote: Renewal of a privilege does not grant a new right, nor does it confirm an old one; but it preserves whatever right belonged. More briefly it can be summarized thus: renewal of a privilege does not induce confirmation of the right contained in it.

Innocent III, to the Dean of Paderborn.

When the beloved daughter in Christ the abbess and sisters of the Church of Gardeven. wished their privileges to be renewed because of the dangers of the roads, we determined that it should be enjoined upon four bishops and as many abbots that they should inspect them diligently and, faithfully transcribing their tenor, remit them to us under their seals, *and they, obeying the apostolic mandate, subtly inspected the privileges of Agapitus and John of happy memory, our predecessors, presented to them, and faithfully transmitted their tenor to us under their seals. Our venerable brother G., Archbishop of Reims, also, then Bishop of Palestrina, discharging the office of legation in those regions, caused the tenor of those privileges to be presented to our sight under his own seal.* But we, giving due faith both to the legate, who caused them to be presented to our sight under his own seal, and to the investigators themselves, although we did not see why the same privileges ought not to be renewed, nevertheless, because C., canon of the greater church, and I., canon of Holy Cross, [*of Hildesheim, established in our presence,*] proposed that the Church of Hildesheim had been in possession of the subjection of that monastery for one hundred years and more, we determined that the privileges themselves were not then to be renewed.

Hence we commanded judges that, approaching *together* a suitable place and citing those who were to be summoned, they should inquire more diligently into the truth concerning these things, *and, proceeding up to definitive sentence, should faithfully send to the Apostolic See all the acts written under testimony of their letters, fixing for the parties a competent term at which they should present themselves to our sight to receive sentence. But they, wishing to execute the apostolic mandate, cited the parties to their presence,* from whom the party of the Church of Hildesheim appealed to the Apostolic See, *on account of which those judges were unable to proceed in the cause.* But recently, *when the parties were established in our presence,* the aforesaid abbess again petitioned that we ought to renew the privileges of her church, *especially since in the presence of the delegated judges the party of the Church of Hildesheim took no care to show or prove anything that derogated in any respect from the monastery or its privileges.* But in opposition it was *solicitously* petitioned that we deign to commit the cause itself to discreet men who should receive the witnesses whom that party proposed to introduce against the privileges of the monastery and to prove lawful prescription.

We therefore, *more diligently* considering that it was established by civil law *with provident deliberation* that, when danger concerning witnesses is feared, lest the truth be concealed and opportunity for proving be removed by fortuitous events, even without joinder of issue infirm witnesses and others concerning whom fear exists from some reasonable cause shall be admitted to testimony, being moved by the likeness of the same equity, determined that the aforesaid privileges should be renewed as though already consumed by excessive age, since they had been written not on parchment but on papyrus. We will that no new right be acquired by the monastery from a renewal of this kind, but *that* its ancient *right,* if it has any, be preserved through renewal of the privilege.

But because the aforesaid monastery is shown through a privilege of our predecessor to belong to the right and property of the Apostolic See, lest the right of the Roman Church remain undefended, we determined that the same abbess should be constituted its proctor, so that, since prescription does not run against the possessions and rights of the Roman Church unless it is of one hundred years, she shall in our place procure concerning this and other things those things that are to be procured before you in judgment. Therefore, unwilling that the status of the same monastery be doubted longer, *through which the cause itself would remain further undecided, through apostolic writings* we command

your discretion that, choosing a safe and suitable place, *within the space of six months after receipt of the present letters,* you shall receive the witnesses whom the Church of Hildesheim should determine to produce to prove prescription, or the Convent of *Gandersheim* to show interruption. And if the former proves lawful prescription, as it intends, unless interruption has been proved in opposition, you shall adjudge the subjection of the monastery itself to the aforementioned bishop, annulling the privilege that we caused to be renewed for *that* monastery; otherwise, imposing perpetual silence upon him concerning this, you shall pronounce that *the* monastery enjoys perpetual liberty, after our privilege has been returned to it. [*But the witnesses, etc. Given at Ferentino, on the fifteenth day before the Kalends of July, in the ninth year, 1206.*]

Innovatio privilegii novum ius non tribuit, nec antiquum confirmat; sed, si quod competebat, conservat. Brevius sic potest summari: Innovatio privilegii non inducit confirmationem iuris in eo contenti.

Innocentius III. Decano Padeburensi.

Quum dilecta in Christo filia abbatissa et sorores ecclesiae de Gardeven. sua cuperent privilegia innovari propter, viarum discrimina quatuor episcopis, et abbatibus totidem, ut ea inspicerent diligenter, et tenorem ipsorum fideliter transcribentes sub sigillis suis nobis remitterent, duximus iniungendum, *+qui apostolico mandato parentes, privilegia felicis recordationis Agapiti et Ioannis praedecessorum nostrorum sibi praesentata subtiliter conspexerunt, tenorem eorum sub sigillis suis nobis fideliter transmittentes. Venerabilis quoque frater noster G. Remensis archiepiscopus, tunc episcopus Praenestinus, in partibus illis officium legationis exercens, tenorem privilegiorum ipsorum sub sigillo proprio nostro fecit conspectui praesentari.* Nos autem tam legato, qui sub sigillo proprio ea nostro fecit conspectui praesentari, quam inquisitoribus ipsis fidem debitam adhibentes, licet non videremus, quare non deberent eadem privilegia innovari, quia tamen C. maioris ecclesiae, et I. sanctae Crucis canonici [*Hildesemenses in nostra praesentia constituti*] proposuerunt, Hildesemensem ecclesiam in possessione subiectionis ipsius monasterii per centum annos et amplius exstitisse, privilegia ipsa tunc non duximus innovanda. Unde iudicibus dedimus in mandatis, ut ad locum idoneum *pariter* accedentes, citatis qui fuerint evocandi, inquirerent super his diligentius veritatem, *et usque ad diffinitivam sententiam procedentes gesta omnia sub suarum testimonio literarum conscripta fideliter ad sedem apostolicam destinarent, praefigentes partibus terminum competentem, quo nostro se conspectui praesentarent, sententiam recepturae. Ipsi vero mandatum apostolicum exsequi cupientes partes ad suam praesentiam citaverunt*, a quibus pars Hildesemensis ecclesiae ad apostolicam sedem appellavit, *propter quod iudices ipsi in causa procedere nequiverunt*. Nuper autem, *partibus in nostra praesentia constitutis*, iterato praedicta petiit abbatissa, quatenus deberemus privilegia suae ecclesiae renovare, *praesertim quum in praesentia delegatorum iudicum pars Hildesemensis ecclesiae nihil ostendere studuerit vel probare, quod monasterio vel privilegiis eiusdem in aliquo derogaret*. Ex adverso vero fuit *sollicite* postulatum, ut causam ipsam discretis viris committere dignaremur, qui testes reciperent, quos contra privilegia monasterii, et ad probandum praescriptionem legitimam inducere proponebat. Nos igitur *diligentius* attendentes, quod iure sit civili *provida deliberatione* statutum, ut, quando periculum testium formidatur, ne veritas occultetur, et probandi copia fortuitis casibus subtrahatur, etiam lite non contestata testes valetudinarii et alii, de quibus ex aliqua rationabili causa timetur, ad testimonium admittantur, eiusdem aequitatis similitudine provocati, praedicta privilegia, quasi iam nimia vetustate consumpta, quum fuerint non in pergameno, sed in papyro conscripta, duximus innovanda, nolentes, quod ex innovatione huiusmodi novum ius monasterio acquiratur, sed *ut* antiquum *ius*, si quod habet, per innovationem privilegii conservetur. Quia vero praefatum monasterium ad ius et proprietatem apostolicae sedis per privilegium praedecessoris nostri pertinere monstratur, ne ius ecclesiae Romanae remaneat indefensum, eandem abbatissam procuratricem ipsius duximus statuendam, ut, quum adversus Romanae ecclesiae possessiones et iura non nisi centenaria currat praescriptio, ipsa super hoc et aliis vice nostra procuret quae coram te in

iudicio fuerint procuranda. Nolentes igitur, quod de statu eiusdem monasterii diutius dubitetur, *per quod causa ipsa remaneat ulterius indecisa, discretioni vestrae per apostolica scripta* mandamus, quatenus locum tutum et commodum eligens, *infra sex mensium spatium post susceptionem praesentium literarum* recipias testes, quos ad praescriptionem probandam Hildesemensis ecclesia, vel ad interruptionem ostendendam *Gandershemense* coenobium duxerit producendos, et si legitimam praescriptionem probaverit, ut intendit, nisi probata fuerit interruptio ex adverso, subiectionem ipsius monasterii adiudices episcopo memorato, quum constet ipsum in sua dioecesi constitutum, privilegium, quod *ipsi* monasterio innovari fecimus, corrumpendo; alioquin eidem super hoc perpetuum imponens silentium, monasterium *ipsum* pronuncies perpetua libertate gaudere, nostro sibi privilegio resignato. [*Testes autem etc. Dat. Ferentini XV. Kal. Iul. Ao. IX.* 1206.]

Chapter V

Latin source headnote: A confirmation that a religious impetrated from the Pope concerning a temporal administration or priory is not valid if he concealed that he was a regular. But if he expressed it, the rescript is presumed false, because the Pope is not accustomed to grant it. This it says together with the following chapter.

The same, to the Bishop and Provost of Utica.

It reached our hearing through the signification of *the beloved son* the provost of the Church of Neman. that certain canons of the Church of Neman., *defamed concerning dilapidation or other crimes,* labor to obtain from us letters of confirmation concerning their administrations, the condition of their religion *and profession* having been suppressed. Since, therefore, the Apostolic See is not accustomed personally to confirm anything to regular persons, *through apostolic writings* we command your discretion that you, *supported by our authority,* declare invalid and empty the confirmations that you know were thus impetrated by those canons, since they are regulars. [*But if not both, etc. Given at the Lateran, on the seventeenth day before the Kalends of July, 1209.*]

Non valet confirmatio, quam religiosus impetravit a Papa super temporali administratione seu prioratu, si tacuit se regularem. Si vero expressit, rescriptum praesumitur falsum, quia Papa non consuevit concedere. H. d. cum sequent.

Idem Episcopo et praeposito Uticensibus.

Ad nostram audientiam *dilecto filio* praeposito Nemanensis ecclesiae significante pervenit, quod quidam canonici Nemanensis ecclesiae, *super dilapidatione vel aliis criminibus infamati*, a nobis literas confirmationis super administrationibus suis obtinere laborant, religionis *ac professionis* suae conditione suppressa. Quum igitur regularibus personis non consueverit apostolica sedes aliqua personaliter confirmare, *discretioni vestrae per apostolica scripta* mandamus, quatenus confirmationes, quas ab ipsis canonicis, quum regulares exsistant, noveritis taliter impetratas, *auctoritate nostra suffulti* denuncietis irritas et inanes. [*Quodsi non ambo etc. Dat. Lateran. XVII. Kal. Iul.* 1209.]

Chapter VI

Latin source headnote: It says the same thing as the immediately preceding chapter above.

The same.

The petition extended to us on your behalf contained that several of the religious who preside over priories or other administrations assert that they have impetrated from us letters of confirmation

concerning possession of those *priories* for as long as they live, *on occasion of which they alienate and consume the goods of their priories, asserting that they are subject to you in no respect as regards those priories*. Since, therefore, we do not believe that letters of this kind emanated from our chancery, *through apostolic writings* we command your discretion that you punish as authors of falsity those who exhibit such letters in which priories or administrations are confirmed to them as religious; but if no mention of their religious status is made in them, you shall declare that they are not valid as having been surreptitiously obtained through concealment of the truth. [*Given at Rome, at Saint Peter's, on the fifth day before the Ides of February, 1205*.]

> Idem dicit, quod supra cap. proximo.
>
> Idem.
>
> Porrecta nobis ex parte tua petitio continebat, quod plures ex religiosis, qui prioratibus vel aliis administrationibus praesunt, a nobis super ipsis *prioratibus*, quoad vixerint, possidendis confirmationis literas se asserunt impetrasse, *+quarum occasione bona ipsorum prioratuum distrahunt et consumunt, asserentes se tibi quoad prioratus illos nulla ratione subesse*. Quum igitur a cancellaria nostra huiusmodi literas emanasse non credamus, *discretioni tuae per apostolica scripta* mandamus, quatenus illos, qui tales literas exhibuerint, in quibus prioratus vel administrationes tanquam religiosis confirmantur, eosdem punias tanquam falsitatis auctores; si vero in eis non fit mentio religionis ipsorum, illas tanquam tacita veritate subreptas denuncies non valere. [*Dat. Rom. ap. S. Petr. V. Id. Febr.* 1205.]

Chapter VII

Latin source headnote: A sentence or award rendered by arbiters contrary to the form of law or of the compromise does not hold, although it was confirmed by the Pope in common form.

The same, to the noble man Matthew de Rivariis.

After examining the cause being conducted between you and the knights of Campania concerning the Church of Saint Angelo *of Casaperota, after hearing the confessions and understanding the attestations, and also inspecting the instruments and investigating the allegations,* we perceived *evidently* that the arbitral award that the Vicedominus of Sabina was said to have promulgated concerning the same business had been dictated contrary to the form of law and of the compromise. Hence, notwithstanding the confirmation of Pope C. *of happy memory,* our predecessor, who had confirmed it as it had been providently rendered and received by both parties, we declare it invalid and empty. *But the action, etc.* (*Cf. c. 15, On Judgments, II. 1.*) [*Given at the Lateran, on the ninth day before the Kalends of April, in the tenth year, 1207.*]

> Sententia seu laudum contra formam iuris vel compromissi latum per arbitros, licet per Papam in forma communi fuerit confirmatum, non tenet.
>
> Idem nobili viro Matthaeo de Rivariis.
>
> Examinata causa, quae vertitur inter te et milites Campanicos super ecclesia sancti Angeli *de Casaperota, auditis, confessionibus et attestationibus intellectis, inspectis etiam instrumentis et allegationibus indagatis*, perpendimus *evidenter*, arbitrium, quod vicedominus Sabinensis dicebatur super eodem negotio promulgasse, contra formam iuris et compromissi fuisse dictatum. Unde non obstante confirmatione *felicis memoriae* C. Papae praedecessoris nostri, qui confirmaverat illud, sicut provide latum fuerat, et ab utraque parte receptum, decernimus ipsum irritum et inane. *Actionem autem etc. *(*cf. c.* 15. *de iud. II.* 1.) [*Dat. Lateran. IX. Kal. Apr. A. X.* 1207.]

Chapter VIII

Latin source headnote: In a confirmation from certain knowledge, the word "as" is placed causatively; nor does it harm if the word of confirmation precedes the tenor of what was confirmed.

Honorius III, to the illustrious King, the Barons and Knights, and the other men of Cyprus.

Our venerable brother the Archbishop of Nicosia and his suffragans showed us by their transmitted petition that an amicable settlement intervened, through the mediation of *our venerable brother* the Bishop of Albano, then legate of the Apostolic See, between them *on one side* and you *on the other* concerning certain tithes, *possessions, and other things,* with *this* expressly added: that as soon as it should happen to be confirmed by apostolic authority, it ought immediately to be put into execution. But although *the settlement itself* was confirmed *by us,* and, for greater evidence of the matter, the tenor of the settlement was inserted in the letters of confirmation, you nevertheless refused to observe *the settlement* itself, advancing a frivolous occasion both from the fact that in *our* letters the word of confirmation precedes the tenor of the settlement according to the style of the Roman Church, and because *that* customary clause—namely, "as it was providently made without depravity"—is contained in the same letters. *Since, therefore, you ought to insist upon no cavilling refuges of this kind, not merely against God and churches, but not even against private persons,* we command that, if truth supports the foregoing, you shall take care to fulfill the same settlement, *observing* it.

> In confirmatione ex certa scientia dictio «sicut» ponitur causative; nec nocet, si verbum confirmationis praecedit tenorem connrmati.
>
> Honorius III. illustri Regi, Baronibus et Militibus, et aliis hominibus Cypri.
>
> Venerabilis frater noster archiepiscopus Nichosiensis et suffraganei eius transmissa nobis petitione monstrarunt, quod inter ipsos *ex parte una*, et vos *ex altera* super quibusdam decimis, *possessionibus et rebus aliis* mediante *venerabili fratre nostro* Albanensi episcopo, tunc apostolicae sedis legato, amicabilis compositio intervenit, *hoc* expresse adiecto, quod quantocius eam auctoritate apostolica confirmari contingeret, statim deberet exsecutioni mandari. Verum licet *ipsa* sit per nos *compositio* confirmata, et ad maiorem rei evidentiam literis confirmationis tenor compositionis insertus, *compositionem* ipsam tamen renuistis observare, occasionem frivolam praetendentes tum ex eo, quod in literis *nostris* verbum confirmationis tenorem compositionis iuxta stylum ecclesiae Romanae praecedit, tum quia *illa* clausula consueta, scilicet: «sicut sine pravitate provide facta est,» in eisdem literis continetur. *Quum igitur nedum contra Deum et ecclesias, sed nec etiam contra privatas personas huiusmodi cavillosis diffugiis insistere debeatis,* Mandamus, quatenus, si praemissis veritas suffragatur, compositionem *observantes* eandem, *ipsam* adimplere curetis.

Chapter IX

Latin source headnote: A collation of a church made to another by a legate and confirmed by the Pope does not injure the right of the diocesan.

The same, to all Abbots and Prelates and Convents and Clerics established in the Diocese of Constantinople.

Our venerable brother the Patriarch of Constantinople showed us by his complaint that, when certain of you, taking occasion from the fact that *our beloved son* I., cardinal priest *of the title of Santa Prassede,* then legate of the Apostolic See, conferred their monasteries in spiritual and temporal things upon certain other churches and clerics, they refuse to obey the patriarch himself and to answer to him concerning

patriarchal rights, introducing in aid of their presumption confirmations of such collations impetrated from the Apostolic See. Since, therefore, we will that the rights that are owed to diocesans not be diminished or *in any way* injured through the aforesaid collations or confirmations, we command *your whole body* that, notwithstanding an occasion of this kind, you take care humbly to exhibit *due* reverence and obedience to the patriarch himself and to answer to him fully concerning his just rights, *also in spiritual things, unless perhaps some persons show themselves to be fortified by an express privilege of exemption; otherwise, we will that the sentence that the same patriarch shall reasonably render against rebels on this account be firmly observed until worthy satisfaction.*

END OF BOOK TWO.

> Collatio ecclesiae alteri facta per legatum et per Papam confirmata ius dioecesani non laedit.
>
> Idem universis Abbatibus et Praelatis ac Conventibus et Clericis in Constantinopolitana dioecesi constitutis.
>
> Sua nobis *venerabilis frater noster* patriarcha Constantinopolitanus conquestione monstravit, quod, quum quidam vestrum sumentes occasionem ex eo, quod *dilectus filius noster* I. *tit. sanctae Praxedis* presbyter cardinalis, tunc apostolicae sedis legatus, quibusdam aliis ecclesiis et clericis in spiritualibus et temporalibus contulit monasteria eorundem, ipsi patriarchae obedire recusant et ei de iuribus patriarchalibus respondere, in suae praesumptionis adiutorium inducentes, confirmationes huiusmodi collationum a sede apostolica impetratas. Quum igitur nolumus iura, quae dioecesanis debentur, per collationes seu confirmationes praedictas minui seu *aliquatenus* laedi, *universitati vestrae* mandamus, quatenus occasione huiusmodi non obstante, ipsi patriarchae reverentiam et obedientiam *debitam humiliter* exhibere curetis, eique de iustitiis suis integre *et in spiritualibus* respondere, *nisi forsan aliqui per expressum exceptionis privilegium osteriderint se munitos, alioquin sententiam quam idem patriarcha propter hoc rationabiliter tulerit in rebelles volumus usque ad satisfactionem condignam firmiter observari.*
>
> F I N I S L I B R I S E C U N D I .

Book III

Compilation of the Decretals of Lord Pope Gregory IX

Book Three

> **DECRETALIUM D. GREGORII PAPAE IX. COMPILATIO**
> **LIBER TERTIUS.**

Title I: On the Life and Honorable Conduct of Clerics

Chapter I

Latin source headnote: When celebration is taking place, the clergy ought to be separated from the people.

From the Council of Mainz.

Let laypersons not presume to stand or sit among the clerics beside the altar when the sacred mysteries are celebrated, *whether at vigils or at Masses altogether*; but let that part which is divided from the altar by the screens be open only to the clerics singing psalms. But for praying and communicating, let the holy of holies be open to laymen and women, as is the custom.

> **DE VITA ET HONESTATE CLERICORUM.**
>
> Quum celebratur, divi sus esse debet clerus a populo.
>
> Ex concilio Maguntino.
>
> Ut laici secus altare, quando sacra mysteria celebrantur, *tam ad vigilias quam ad missas penitus* stare vel sedere inter clericos non praesumant; sed pars illa, quae cancellis ab altari dividitur, tantum psallentibus pateat clericis. Ad orandum vero et communicandum laicis et feminis, sicut mos est, pateant sancta sanctorum.

Chapter II

From the Council of Poitiers.

Let clerics bearing arms and usurers be excommunicated.

> Ex concilio Pictaviensi.
>
> Clerici arma portantes et usurarii excommunicentur.

Chapter III

Latin source headnote: A priest having a people ought to have a cleric who sings with him and assists him in the other things expressed here.

From the Council of Mâcon.

Let every priest who rules a people have a cleric who sings with him, reads the epistle and lesson, and is able to maintain schools and admonish his parishioners to send their sons to the church to learn the faith, whom he himself shall instruct with all chastity.

> Presbyter habens populum debet habere clericum, qui secum cantet et in aliis hic expressis eum iuvet.
>
> Ex concilio Maticensi.
>
> Ut quisque presbyter, qui plebem regit, clericum habeat, qui secum cantet, et epistolam et lectionem legat, et qui possit scholas tenere, et admonere suos parochianos, ut filios suos ad fidem discendam mittant ad ecclesiam, quos ipse cum omni castitate erudiat.

Chapter IV

Gregory IX.

If any one of the clerics lets his hair grow long, let him be anathema.

> Gregorius IX.
>
> Si quis ex clericis comam relaxaverit, anathemas it.

Chapter V

From the Council of Carthage.

Let a cleric grow neither his hair nor his beard.

> Ex concilio Carthaginensi.
>
> Clericus neque comam nutriat, neque barbam.

Chapter VI

Latin source headnote: A cleric who has not made profession and is not in sacred orders can take a wife; but he shall be tonsured again if he wishes to enjoy clerical privilege or, by dispensation, to retain a benefice. This it says according to the manner that is more consonant with the letter, according to which it posits only one case.

From the Council of Tribur.

If a cleric who is without a grade and was not delivered to a monastery by his parents takes a wife after relinquishing the tonsure, let him be permitted to have the wife and be tonsured again, and let him not dare to dismiss his wife during her life.

> Clericus non professus, nec in sacris exsistens, potest uxorem ducere; sed iterum tondebitur, si vult gaudere privilegio clericali, vel dispensative tenere beneficium. H. d. secundum modam, qui est magis consentaneus literae, secundum quem ponit unum casum duntaxat.
>
> Ex concilio Triburiensi.
>
> Clericus, si tonsura dimissa uxorem acceperit, qui quidem sit sine gradu, nec monasterio a parentibus traditus, uxorem permittatur habere, et iterum tondeatur, nec in vi ta sua uxorem dimittere audeat.

Chapter VII

Latin source headnote: A cleric ought to bear the tonsure; and if he is unwilling, he can be tonsured against his will by his superior.

Alexander III, to the Archbishop of Canterbury.

To clerics—(*And below:* [*Cf. c. 5, Lest Clerics or Monks, III. 50.*]) Clerics who grow their hair and beard shall be tonsured by their archdeacons even against their will. *With garments, etc.* (*Cf. c. 5, Lest Clerics or Monks, III. 50.*)

> Clericus debet tonsuram deferre, et si non vult, potest invitus a suo superiore tonderi.
>
> Alexander III. Cantuariensi Archiepiscopo.
>
> Clericis (*Et infr a :* [*cf. c.* 5. *Ne cler. vel mon. III.* 50.]) Clerici, qui comam nutriunt et barbam etiam inviti a suis archidiaconis tondeantur. *Vestimentis etc.* (*cf.* 5. *Ne cler. vel mon. III. * 50.)

Chapter VIII

Latin source headnote: One who frequents monasteries of nuns and, after being admonished, does not desist, is deposed if he is a cleric; if a layman, he is excommunicated.

The same, in the Lateran Council.

If, *moreover,* any cleric presumes to frequent monasteries of nuns without a manifest and reasonable cause, let him be restrained by the bishop; and if he does not desist, let him be rendered exempt from ecclesiastical office. If laymen do so, let them be subjected to excommunication and made altogether alien from the assembly of the faithful.

> Frequentans monasteria monialium, et monitus non desistens, si clericus est, deponitur; si laicus, excommunicatur.
>
> Idem in concilio Lateranensi.
>
> Monasteria *praeterea* sanctimonialium si quisquam clericus sine manifesta et rationabili causa frequentare praesumpserit, per episcopum arceatur, et, si non destiterit, ab officio ecclesiastico reddatur immunis; si laici, excommunicationi subdantur, et a coetu fidelium fiant penitus alieni.

Chapter IX

Latin source headnote: A bishop can establish in a church a certain number of clerics according to its means who live in common, and compel contradictors to this; and he can absolve those living in common from excommunication incurred on account of laying hands upon a companion.

Gregory VII.

Because, as Scripture says, *the senses of man are inclined to evil from his youth, just as through sensuality the flesh inclines toward fault, so, with vigor of spirit preceding and divine grace following, the mind ought to strive toward pardon and always to seek remedies by which it may avoid rushing occasions of death. Hence indeed it is that, understanding that many things have occurred in your churches from one's own defect and many from another's malice, which either have offense in themselves or occasion for offending, we decree, through the authority of the Apostolic See, which by the Lord's disposition we serve, as it is given by him, that opposition is to be made, and that the authority of the episcopal office in you is to be fortified by apostolic writings for cutting away harmful things among your subjects and inserting useful ones,* [*we have determined,*] *recollecting that in the old law the Lord commanded, saying: "The fire shall always burn upon the altar, which the priest shall nourish, placing wood beneath it morning by morning each day."*

We establish, *therefore,* that, after the means *and* revenues and *also* expenses of *your* churches have been diligently inspected, you may establish in them a certain number of clerics and decree that their

goods shall come into common, *and* that they shall eat in one house and sleep and rest under one roof. But if there are any contradictors, let it be lawful for you to compel them to this observance, notwithstanding appeal, through suspension from office and benefice, or even by a graver penalty if there is need. We also grant that, if anyone among those who live together has merited to be made alien from communion for laying a hand upon a companion, you shall have full power to reconcile *him* and impose penance, unless perhaps the atrocity of the act awaits a graver penalty. *We will that this also be observed concerning women and those who, on account of old age or infirmity, cannot approach our presence, bringing no prejudice to an ecclesiastical constitution or our successors whereby they may have power to order concerning these things what they shall see more rightly.*

> Episcopus potest statuere in ecclesia certum numerum clericorum secundum ipsius facultates qui vivant in communi, et contradictores ad hoc compellere; et istos in communi viventes potest absolvere ab excommunicatione incursa propter iniectionem manuum in socium.
>
> Gregorius VII.
>
> Quoniam, ut ait scriptura, *+proni sunt sensus hominis ad malum ab adolescentia sua, sicut ex sensualitate caro vergit in culpam: ita vigore spiritus praecedente et subsequente divina gratia animus niti debet ad veniam, et remedia semper inquirere, quibus irruentes occasiones mortis valeat declinare. Inde siquidem est, quod intelligentes multa ex defectu proprio, multa ex aliena malitia in vestris ecclesiis pervenisse, quae aut delictum in se, aut occasionem habeant delinquendi, per auctoritatem apostolicae sedis, cui ex dispositione Domini deservimus, prout datur ab eo, decernimus, obviandum, et auctoritatem in vobis episcopalis officii ad resecanda nociva in subditis vestris et inserenda utilia scriptis apostolicis muniendam* [*duximus*], *recolentes quod in veteri lege praecepit Dominus, dicens: "ignis in altari semper ardebit, quem nutriet sacerdos, subiiciens mane ligna per singulos dies*. Statuimus *ergo*, ut, facultatibus ecclesiarum *vestrarum atque* proventibus et expensis *etiam* diligenter inspectis, certum in eis valeatis ponere numerum clericorum, et statuere, ut bona eorum veniant in commune, *et* in una domo vescantur, atque sub uno tecto dormiant et quiescant. Si qui vero contradictores exstiterint, licitum vobis sit per suspensionem officii et beneficii, aut graviori etiam poena, si opus fuerit, ad hanc observantiam eos appellatione compellere non obstante. Indulgemus etiam, ut, si quisquam eorum, qui simul vivunt, pro manus iniectione in socium a communione meruerit fieri alienus, reconciliandi *eum* et poenitentiam imponendi potestatem plenariam habeatis, nisi forte atrocitas facti poenam graviorem exspectet. *Quod etiam de mulieribus et his qui pro senectute vel infirmitate praesentiam nostram adire non possunt volumus observari, nullum praeiudicium constitutioni ecclesiasticae aut successoribus nostris afferentes, quo minus super his qui rectius viderint valeant ordinare*.

Chapter X

Latin source headnote: Ecclesiastical and delegated judges ought to judge without payment, nor can they exact a tenth or another quota of the suit, even if custom has this.

Innocent III.

Since the Apostle commands abstinence from every appearance of evil, *we who, although unworthy, have been established by God over peoples and kingdoms so that, according to the prophetic word, we may root out and destroy, build and plant, ought to strive with the greatest effort that we root out vices and plant virtues, destroy iniquitous things and build honorable ones, and thus, by the mediation of our solicitude, crooked things may pass into straight and rough things be converted into level. Although the labor of this solicitude of ours ought generally to extend to all, because we are debtors to the wise and the unwise, nevertheless it ought specially to extend to clerics,*

who ought to sleep away from vices so that they may be the silvered wings of the dove, lest anything appear in them that obscures the brightness of ecclesiastical purity.

Indeed, it has reached the hearing of our apostolate *through the assertion of many* that, when you receive causes to be treated by our delegation, in the manner of secular persons you make agreements with the litigants for your salary—pledges having been received—concerning a tenth of the suit or another part, according to the diverse custom of the lands, apart from expenses for provisions, *which afterward you contend to retain until payment of the money, even when the parties are unwilling.* We, considering that ecclesiastical revenues are allotted to you and other clerics for this purpose, that from them you ought to live honorably—(*And below:*) therefore, we *command and enjoin* that, abstaining henceforth from exactions of this kind, you take care to impart judicial vigor to litigants without payment, notwithstanding what is proposed by some in fraud: that it is exacted in the name of assessors, since it is lawful neither for a judge to sell a just judgment nor for venal sentences to be approved even by the secular laws themselves. [*Given at Todi, on the fifth day before the Nones of October, 1198.*]

> Ecclesiastici iudices et delegati gratis iudicare debent, nec exigere possunt decimam vel aliam quotam litis, etiamsi hoc habeat consuetudo.
>
> Innocentius III.
>
> Quum ab omni specie mali p raecipiat Apostolus abstinere +*nos, qui, licet indigni, constituti sumus a Deo super gentes et regna, ut iuxta verbum propheticum evellamus et destruamus, aedificemus et plantemus, summopere debemus satagere, quatenus evellamus vitia et plantemus virtutes, destruamus iniqua et aedificemus honesta, sicque nostra sollicitudine mediante prava transeant in directa, et aspera convertantur in plana. Licet autem huius nostrae sollicitudinis labor generaliter debeat ad omnes extendi, quia sapientibus sumus et insipientibus debitoses: specialiter tamen ad clericos, qui dormire debent a citiis, ut sint pennae columbae deargentatae, ne quid appareat in illis, quod obfuscet candorem ecclesiasticae puritatis*. Sane ad audientiam apostolatus nostri *multorum assertione* pervenit, quod, quum ex delegatione nostra causas suscipitis pertractandas, more saecularium super decima litis vel parte alia, pro diversa terrarum consuetudine praeter expensas victualium cum litigantibus, receptis pignoribus, pro salario convenitis, *quae postmodum usque ad solutionem pecuniae nolentibus etiam partibus contenditis detinere*. Nos attendentes, quod ad hoc vobis et aliis clericis sint ecclesiastici reditus deputati, ut ex i psis honeste vivere debeatis. (*Et infra:*) Ide oque mandamus *atque praecipimus*, quatenus ab huiusmodi exactionibus de cetero abstinentes vigorem iudiciarium gratis studeatis litigantibus impertiri, non obstante, quod in fraudem a quibusdam proponitur quod, id exigatur nomine assessorum, quum nec iustum iudicium iudici vendere liceat, et venales sententiae ab ipsis etiam saec ularibus legibus reprobentur. [*Dat. Tuderti V. Non. Oct.* 1198.]

Chapter XI

Latin source headnote: To avoid scandal, religious of diverse habits, sent to preach to the newly converted, can conform themselves to one superior habit and purpose.

The same, to the Bishop of Livonia and to the Brothers who are with him.

God, who always makes his Church fruitful with new offspring, *wishing to conform modern times to the former and to propagate the Catholic faith, inspired your predecessors, and you after them, with the pious affection that, entering the Province of Livonia, you should evangelize to the pagans the name of our Lord Jesus Christ, following the example of those to whom we read in the Gospel that it was said: "Going, teach all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit"; and concerning whom the evangelical word adds: "But they, setting forth, preached everywhere, the Lord cooperating and confirming the word by the signs that*

followed." For that evangelical householder, considering that the harvest is great but the laborers few, still sends laborers into his harvest and in this, as though the eleventh hour, appoints new vine-dressers to his vineyard, whose labor he may recompense with an equal denarius with the first. Hence, since you have assumed the office of evangelizing by the inspiration of him who makes both one, you must walk in the spirit of unity and charity, following the example of those concerning whom it is read: "The multitude of believers, however, had one heart and one soul."

Therefore, lest, if observance among you is disparate and habit dissimilar, scandal arise among those to whom you preach one Gospel, *and that new people be divided into parties before it is gathered into one Church, since the hostile man is still prepared to sow tares over the Lord's harvest, we admonish and exhort your discretion in the Lord, through apostolic writings* we command that, notwithstanding that among you there are monks and regular canons, or others also professing the regular life under another strictness, you all equally conform yourselves to one regular purpose and honorable habit, insofar as it concerns this office, *lest the new plantation of the Church of Livonia, reddened with the blood of your predecessor of pious memory, brother bishop, suffer even a slight scandal among you, through whom it is to be rooted in and fostered in the Catholic faith.* [*But because* (*Cf. c. 9, On the Separation of Spouses, IV. 19.*) *Given at the Lateran, on the thirteenth day before the Kalends of May, 1201.*]

> Ad evitandum scandalum possunt religiosi diversi habitus, missi ad praedicandum de novo conversis, se in unum superiorem habitum et propositum conformare.
>
> Idem Livoniensi Episcopo, et eis, qui cum ipso sunt, Fratribus.
>
> Deus, qui ecclesiam suam nova semper prole foecundat, *+volens moderna tempora conformare prioribus, et fidem catholicam propagare, praedecessoribus vestris et vobis post eos pium inspiravit affectum, ut Liconiensem ingressi provinciam paganis evangelizaretis nomen Domini nostri Iesu Christi, eorum sequentes exemplum, quibus in ev angelio legimus esse dictum:"Euntes docete omnes gentes, baptizantes eos in nomine Patris et Filii et Spiritus sancti," et de quibus evangelicus sermo subiungit: "Illi autem profecti praedicaverunt ubique, Domino cooperante et sermonem confirmante sequentibus signis. "Attendens enim evangelicus ille paterfamilias, quod messis est multa, operarii autem pauci, adhuc mittit operarios in messem suam, et in hac quasi undecima hora vineae suae novos deputat vinitores, quorum laborem pari cum primis denario recompenset. Unde quum evangelizandi officium eo assumpseritis inspirante, qui facit utraque unum, oportet vos in unitatis et caritatis spiritu ambulare, illorum sequen tes exemplum, de quibus legitur: "Multitudinis autem credentium erat cor unum et anima una.* Ne igitur, si dispar in vobis observantia fuerit et dissimilis habitus, apud eos, quibus unum evangelium praedicatis, scandalum suscitetur, *priusque dividatur populus ille novus in partes quam in unam ecclesiam congregetur, quum paratus sit adhuc inimicus homo messi dominicae superseminare zizania, discretionem vestram monemus et exhortamur in Domino, per apostolica vobis scripta* Mandamus, quatenus, eo non obstante, quod inter vos monachi sunt, et canonici regulares, vel alii etiam regularem vitam sub alia districtione professi, omnes pariter in unum regulare propositum et honestum habitum, quantum ad hoc spectat officium, conformetis, *ne nova ecclesiae Livoniensis plantatio piae memoriae praedecessoris tui, frater episcope, sanguine rubricata vel leve in vobis scandalum patiatur, per quos radicanda est in fide catholica et fovenda.* [*Quia vero* (*cf. c.* 9. *de divort. IV. * 19.) *Dat. Later. XIII. Kal. Mai.* 1201.]

Chapter XII

Latin source headnote: Theatrical games ought not to be performed in churches or by clerics, even under pretext of custom.

Innocent III.

Since the beauty of the house of God—(*And below:* [*Cf. c. 15, On the Sons of Priests, I. 15.*]) Sometimes theatrical games are performed in the *same* churches, and not only are monstrosities of masks introduced in them for spectacles of mockery, but also on certain feasts *of the year that immediately follow the Nativity of Christ,* deacons, priests, and subdeacons *in turn* presume to exercise the mockeries of their madness, *and through the obscene revelries of their gesticulations in the sight of the people cause clerical honor to become vile, although at that time they ought rather to soothe the people through preaching the word of God. Therefore, because through the office enjoined upon us zeal for the house of God consumes us, and the reproaches of those reproaching him are recognized to fall upon us, through apostolic writings* we command your fraternity that, lest the honorable conduct of the Church be polluted through turpitude of this kind, *those persons, etc.* (*Cf. c. 8, On Married Clerics, III. 3.*), and that you take care *thus* to root out from your churches the aforesaid custom—or rather corruption—of mockeries, *so that you prove yourselves zealous for divine worship and sacred order.* [*Given at Rome, at Saint Peter's, on the sixth day before the Ides of January, in the ninth year, 1207.*]

> Ludi theatrales etiam praetextu consuetudinis in ecclesiis vel per clericos fieri non debent.
>
> Innocentius III.
>
> Quum decorum domus Dei (*Et infra:* [*cf. c.* 15. *de fil. presb. I.* 15.]) Interdum ludi fiunt in *eisdem* ecclesiis theatrales, et non solum ad ludibriorum spectacula introducuntur in eis monstra larvarum, verum etiam in aliquibus *anni* festivitatibus, *quae continue natalem Christi sequuntur,* diaconi, presbyteri ac subdiaconi *vicissim* insaniae suae ludibria exercere praesumu nt, *+per gesticulationum suarum debacchationes obscoenas in conspectu populi decus faciunt clericale vilescere, quem potius illo tempore verbi Dei deberent praedicatione mulcere. Quia igitur ex officio nobis iniuncto zelus domus Dei nos comedit, et opprobria exprobrantium ei super nos cadere dignoscuntur,* Fraternitati vestrae *per apostolica scripta* mandamus, quatenus, ne per huiusmodi turpitudinem ecclesiae i nquinetur honestas, *eos, etc.* (*cf. c.* 8. *de cler. coniug. III.* 3.) praelibatam *vero* ludibriorum consuetudinem vel potius corruptelam curetis a vestris ecclesiis *taliter* exstirpare, *quod vos divini cultus et sacri c omprobetis ordinis zelatores.* [*Dat. Rom. ap. S. Petr VI. Id. Ian. Ao. IX.* 1207.]

Chapter XIII

Latin source headnote: Clerics ought to be continent and live chastely; he punishes those acting contrary, and those who can use lawful marriage are punished more severely.

The same, in the general council.

That the morals and acts of clerics may be reformed for the better, let all take care to live continently and chastely, especially those established in sacred orders, guarding against every vice of lust, especially *that* on account of which the wrath of God comes [*from heaven*] upon the children of distrust, so that in the sight of almighty God they may be able to minister with a pure heart and clean body. But lest facility of pardon furnish an incentive for offending, we establish that those who are caught laboring under the vice of incontinence shall be punished according to the canonical sanctions, in accordance with whether they have sinned more or less. We command that these be observed more efficaciously and strictly, so that temporal punishment may at least restrain from sin those whom divine fear does not recall from evil. Therefore, if anyone suspended for this cause presumes to celebrate divine services, not only shall he be despoiled of ecclesiastical benefices, but for *this* double fault he shall also be perpetually deposed. But prelates who presume to sustain such persons in their iniquities, especially under pretext of money or another temporal advantage, shall be subject to equal vengeance. But those who, according to the custom of their region, have not

renounced conjugal union shall be punished more gravely if they lapse, since they can use lawful marriage.

> Clerici debent continere et caste vivere; contra facientes punit, et severius puniuntur illi, qui possunt legitimo matrimonio uti.
>
> Idem in concilio generali.
>
> Ut clericorum mores et actus in melius reformentur, continenter et caste vivere studeant universi, praesertim in sacris ordinibus constituti, ab omni libidinis vitio praecaventes, maxime ill o, propter quod venit ira Dei [*de coelo*] in filios diffidentiae, quatenus in conspectu omnipotentis Dei puro corde ac mundo corpore valeant ministrare. Ne vero facilitas veniae incentivum tribuat delinquendi, statuimus, ut, qui comprehensi fuerint incontinentiae vitio laborare, prout magis aut minus peccaverint, puniantur secundum canonicas sanctiones, quas efficacius et districtius praecipimus observari, ut quos divinus timor a malo non revocat temporalis saltem poena cohibeat a peccato. Si quis igitur hac de causa suspensus praesumpserit celebrare divina, non solum ecclesiasticis beneficiis spolietur, verum etiam pro *hac* duplici culpa perpetuo deponatur. Praelati vero, qui tales praesumpserint in suis iniquitatibus sustinere, maxime obtentu pecuniae vel alterius commodi temporalis, pari subiaceant ultioni. Qui autem secundum regionis suae morem non abdicarunt copulam coniugalem, si lapsi fuerint, gravius puniantur, quum legitimo matrimonio uti possint.

Chapter XIV

Latin source headnote: A cleric given to gluttony or drunkenness who does not desist after being admonished is suspended from office or benefice.

The same, in the same council.

Let all clerics diligently abstain from gluttony and drunkenness; hence let them temper wine to themselves and themselves to wine. Nor let anyone be incited to drinking, since drunkenness both induces exile of the mind and provokes an incentive of lust. Hence we decree that abuse to be utterly abolished by which, in certain regions, drinkers bind themselves in their manner to equal draughts, and in the judgment of such persons he is praised more who intoxicates more persons and drains fuller cups. But if anyone shows himself culpable concerning these things, unless, after being admonished by his superior, he makes [*suitable*] satisfaction, let him be suspended from office or benefice.

> Clericus crapulosus vel ebriosus monitus non desistens, ab off icio vel beneficio suspenditur.
>
> Idem in eodem.
>
> A crapula et ebrietate omnes clerici diligenter abstineant, unde vinum sibi temperent, et se vino. Nec ad bibendum quispiam incitetur, quum ebrietas et mentis inducat exsilium et libidinis provocet incentivum. Unde illum abusum penitus decernimus abolendum, quo in quibusdam partibus ad potus aequales suo modo se obligant potatores, et ille iudicio talium plus laudatur, qui plures inebriat et calices foecundiores exhaurit. Si quis autem super his se culpabilem exhibuerit, nisi a supe riore commonitus satisfecerit [*competenter,*] ab officio vel beneficio suspendatur.

Chapter XV

Latin source headnote: He commands clerics to abstain from dishonorable occupations, persons, places, games, garments, and less than honorable adornment, and to use honorable habit, whose

vanity he expresses and detests in many particulars.

The same, in the same council.

Let clerics not exercise secular offices or commerce, especially dishonorable ones. Let them not attend to mimes, jesters, and actors. And let them altogether avoid taverns, unless perhaps, established upon a journey, for cause of necessity. Let them not play at dice and knucklebones, nor be present at games of this kind. Let them have a suitable crown and tonsure. And let them exercise themselves diligently in ecclesiastical offices and other good studies. Let them wear closed outer garments, not notable for excessive shortness or length. Let them not use red or green cloths, nor stitched or pointed sleeves or shoes, bridles, saddles, breastplates, and gilded spurs, or things bearing another superfluity. Let them not wear sleeved copes for divine office within a church, nor elsewhere either if they are established in the priesthood and in parsonships, unless a just cause of fear requires their habit to be transformed. Let them bear no brooches at all, nor belts having ornament of gold or silver, nor rings either, except those to whom it belongs by office of dignity. But let all pontiffs in public and in church use linen outer garments, unless they are monks, who must bear monastic habit. Let them not use unclasped cloaks in public, but ones joined on each side either behind the neck or before the breast.

> A negotiis, personis, locis, ludis, vestibus inhonestis et ornatu minus honesto praecipit clericos abstinere, et habitu honesto uti, cuius vanitatem in pluribus exprimit et detestatur.
>
> Idem in eodem.
>
> Clerici officia vel commercia saecularia non exerceant, maxime inhonesta. Mimis, ioculatoribus et histrionibus non intendant. Et tabernas prorsus evitent, nisi forte causa necessitatis in itinere constituti. Ad aleas et taxillos non ludant, nec huismodi ludis intersint. Coronam et tonsuram habeant congruentem. Et se in officiis ecclesiasticis et aliis bonis studiis exerceant diligenter. Clausa deferant desuper indumenta, nimia brevitate vel longitudine non notanda. Pannis rubeis aut viridibus, nec non manicis aut sotularibus consutitiis sed rostratis, frenis, sellis, pectoralibus et calcaribus deauratis, aut aliam superfluitatem gerentibus, non utantur. Cappas manicatas ad divinum officium intra ecclesiam non gerant, sed nec alibi, qui sunt in sacerdotio et personatibus constituti, nisi iusta causa timoris exegerit habitum transformari. Fibulas omnino non ferant, neque corrigas auri vel argenti ornatum habentes, sed nec annulos, nisi quibus competit ex officio dignitatis. Pontifices autem in publico et in ecclesia superindumentis lineis omnes utantur, nisi monachi fuerint, quos oportet ferre habitum monachalem. Palliis diffibulatis non utantur in publico, sed vel post collum, vel ante pectus hinc inde connexis.

Chapter XVI

Latin source headnote: A cleric who, after being admonished a third time, does not abstain from secular commerce in the meantime loses clerical privilege as regards his goods. This it says. And it is a very noteworthy text that is alleged daily.

Honorius III, to the Bishop of Amiens.

From the letters of *the noble man,* the Count of Ponthieu *and Montreuil,* we understood that certain clerics *in name alone* of his land, *declared taverners, who, not content with benefices but* devoting themselves rather to *illicit* secular commerce *and domestic cares* than to divine offices *and services,* and wishing to enjoy clerical privilege, are unwilling to be subject to the statutes of the country, by which, whenever

it is expedient, they defend themselves like laypersons, *and* to be subject in the profits of their commerce. *Hence, because great scandal is generated from this among the laity, he humbly supplicated us that we should either command clerics of this kind to be compelled to serve* [*in*] *churches, illicit secular commerce being set aside, or permit them, as regards their means, to be subject to the statutes and customs of the province. Since, therefore, these things are recognized to redound to the reproach of clerical order, and the life of clerics ought not to generate scandal for laypersons but to furnish an example of honorable conduct,* [*through apostolic writings*] we command your fraternity that, if *it is so, since you are the diocesan of the place,* if *such clerics,* after being admonished by you a third time, do not come to their senses from things of this kind but, divine offices having been set aside, persist in the aforesaid commerce, since by an act *of this kind* they cast away clerical privilege, you shall not defend them from being subject, while they implicate themselves in these things, to the statutes and customs of the country as regards their means. [*Given at Rome, on the fourth day before the Ides of May, in the second year, 1218.*]

> Clericus, qui tertio monitus a negotiationibus saecularibus non abstinet, interim perdit quoad bona privilegium clericale. H. d. Et est textus multum notab. et qui quotidie allegatur.
>
> Honorius III. Ambianensi Episcopo.
>
> Ex literis *nobilis viri* Pontini *et Monsteroli* comitis intelleximus, quod quidam *solo nomine* clerici terrae suae *tabernarii declarati, qui beneficiis non contenti, sed* potius *illicitis* saecularibus nego tiationibus *et curis domesticis*, quam officiis *et obsequiis* divinis intendunt, et, gaudere volentes privilegio clericali, nolunt statutis patriae, quibus, quotiens expedit, sicut laici se tuentur, *et* in negotiationum suarum quaestibus subiacere. +*Unde, quia magnum ex hoc scandalum inter laicos generatur, nobis humiliter supplicavit, ut vel compelli hui usmodi clericos ad serviendum* [*in*] *ecclesiis illicitis saecularibus negotiationibus postpositis mandaremus, vel pateremur eos quoad facultates eorum statutis et consuetudinibus provinciae subiacere. Quum igitur ista in clericalis ordinis vituperium redundare noscantur, et clericorum vita generare non debeat laicis scandalum, sed praestare honestati s exemplum, fraternitati tuae* [*per apostolica scripta*] Mandamus, quatenus, si *est ita, quum loci dioecesanus exsistas, clericos* tales, *si* tertio a te commoniti ab huiusmodi non resipuerint, sed praetermissis divinis officiis negotiationibus institerint supra dictis, quum facto *huismodi* privilegium abiiciant clericale, tu quo minus, dum his se implicant, de suis facultatibus statutis et consuetudinibus patriae sub iaceant, non defendas eosdem. [*Dat. Romae IV. Id. Mai. A. II. * 1218.]

Title II: On the Cohabitation of Clerics and Women

Chapter I

Latin source headnote: A cleric ought not to retain in his house a woman suspected of incontinence, even if she is his mother or another blood relative.

From the Council of Mainz.

It is to be forbidden *and threatened in every way* that no priest retain *in his house* women *as* [*also*] *is contained as inserted in the canon,* concerning whom suspicion can exist. But neither should he retain those whom the canons permit, [*namely*] a mother, paternal aunt, and sister, because, at the devil's instigation, crime is found to have been *frequently* perpetrated even with them, or also with their maidservants. But if any one of these has a necessity *suffering such a condition,* priests are to have for them a house in a village or country estate far from their own dwelling, and there supply to them the things that are necessary. *But according to the authority of the canons, in every way* it is also to be forbidden

that any woman presume to approach the altar, or minister to a priest, or stand or sit within the chancel.

> **DE COHABITATIONE CLERICORUM ET MULIERUM.**
>
> Clericus non debet retinere in domo mulierem suspectam de incontinentia, etiamsi sit mater vel alia consanguinea.
>
> Ex concilio Maguntino.
>
> Inhibendum est *et modis omnibus interminandum*, ut nu llus sacerdos feminas, *sicut* [*et*] *in canone insertum continetur*, de quibus suspicio potest esse, *in domo sua* retineat. Sed neque i llas, quas canones concedunt, [*scilicet*] matrem, amitam et sororem, quia instigante diabolo et in illis scelus *frequenter* perpetratum reperitur, aut etiam in pedissequis earundem. Sed si qua de his *talem patientem* necessitatem habuerit, presbyteri habeant in vico aut in villa domum longe a sua conversatione, et ibi eis quae sunt necessaria subministrent. *Sed secundum auctoritatem canonum modis omnibus* Prohibendum quoque est, ut nulla femina ad altare praesumat accedere, aut presbytero ministrare, aut infra cancellos stare sive sedere.

Chapter II

Latin source headnote: A cleric in sacred orders who, after being admonished, does not desist from conversation with suspect women or from their company is excommunicated.

From a decree of Pope Eugenius.

If any one of the priests, that is, a presbyter, deacon, or subdeacon, suspected of the crime of fornication with any woman whatsoever, is found after the first, second, and third admonition to converse and in any way associate with her, let him be subjected to excommunication; but let the woman be judged canonically.

> Excommunicatur clericus in sacris, qui a suspectarum mulierum colloquio vel earum consortio monitus non desistit.
>
> Ex decreto Eugenii Papae.
>
> Si quisquam sacerdotum, id est presbyter, diaconus vel subdiaconus, de quacunque femina crimine fornicationis suspectus, post primam et secundam et tertiam admonitionem inveniatur fabulari et ali quo modo conversari cum ea : excommunicationi subdatur, femina vero canonice iudicetur.

Chapter III

Latin source headnote: A prelate ought not to compel a cleric to abjure a concubine; but he can excommunicate one unwilling to dismiss her.

Alexander III, to the Archbishop of Salerno.

Moreover, we do not wish your fraternity to compel clerics constituted in sacred orders who publicly keep concubines *in their own houses* to abjure them, lest, returning to the same fornication by the instigation of diabolical fraud, they incur the guilt of perjury. But you ought to compel them more strictly by a sentence of suspension and interdict to remove those women from themselves in such a way that sinister suspicion cannot be had concerning them. And if any of them should perhaps presume to return to them or take others, you ought to pronounce against some of them a perpetual sentence of excommunication, so that others, terrified by their example, may be restrained from similar acts.

Non debet praelatus clericum cogere ad concubinam abiurandam; sed eam nolentem dimittere potest excommunicare.

Alexander III. Salernitano Archiepiscopo.

Clericos *autem* in sacris ordinibus constitutos, qui *in domibus propriis* publice tenent concubinas, ad eas abiurandas nolumus a tua fraternitate compelli, ne, in eandem fornicationem instinctu diabolicae fraudis redeuntes, periurii reatum incurrant. Verum ipsos per suspensionis et interdicti sententiam debes arctius cogere, ut mulieres ipsas a se ita removeant, quod de illis sinistra suspicio non possit haberi. Et si qui eorum ad ipsas redire, vel alias accipere forte praesumpserint, in aliquos eorum debes perpetuam excommunicationis sententiam proferre, ut alii eorum exemplo perterriti a similibus arceantur.

Chapter IV

Latin source headnote: If clerics, after being admonished, do not dismiss their concubines, they are suspended from benefices, and, if they do not correct themselves, they are deposed.

The same, to the Archbishop of Canterbury and his Suffragans.

Just as it becomes us to strive with the utmost effort to extirpate *vices that give rise to danger of souls, so also it befits us to propagate the seeds of virtues, from which an increase of salvation may come to* [*God's*] *faithful and the adornment of honorable conduct to sacred churches. Hence, since in England it has been established by a depraved and detestable custom and for a long time that clerics have fornicating women in their houses, we, wishing to remove so grave a scandal from the people and to bring the aforesaid clerics back to ecclesiastical honorable conduct,* command your fraternity *by apostolic writings, by way of precept,* that you take care diligently to admonish the clerics of your jurisdiction who, in the subdiaconate and above, have had fornicating women *in their houses,* that they remove them from themselves *cessation of delay and appeal,* in no way to admit them further. But if *within forty days after your communication they should perhaps* disdain to acquiesce in these matters, relying upon apostolic authority and with the remedy of appeal removed, suspend them from ecclesiastical benefices until fitting satisfaction; and, if while suspended they presume to retain them, take care to remove them perpetually from the same benefices. [*But if any, etc.* (*Cf. c. 1, On Married Clerics, III. 3.*)]

Si clerici moniti concubinas non dimittunt, suspenduntur a beneficiis, et, si se non corrigunt, deponuntur.

Idem Cantuariensi Archiepiscopo et eius Suffraganeis.

Sicut ad exstirpanda *+vitia, quae periculum pariunt animarum, summopere nos decet intendere ita etiam nos convenit germina propagare virtutum, ex quibus* [*Dei*] *fidelibus salutis augmentum, et sacris ecclesiis decor proveniat honestatis. Unde quum in Anglia prava a detestabili consuetudine et longo tempore sit obtentum, ut clerici fornicarias in suis domibus habeant, nos volentes tam grave scandalum de populo removere, et praedictos clericos ad honestatem ecclesiasticam reducere,* Fraternitati vestrae *per apostolica scripta praecipiendo* mandamus, quatenus clericos vestrae iurisdictionis, qui in subdiaconatu et supra *in domibus suis* fornicarias habuerint, studiose monere curetis, ut a se illas *dilatione et appellatione cessante* removeant, eas ulterius minime admissuri. Si vero *infra XL. dies post communicationem vestram vobis in his forte* acquiescere contempserint, eos *apostolica auctoritate freti sublato appellationis remedio* ab ecclesiasticis beneficiis usque ad satisfactionem congruam suspendatis, et, si eas suspensi praesumpserint detinere, ipsos ab eisdem benefici is perpetuo removere curetis. [*Si qui autem etc.* (*cf. c. I. de cler. coni. III.* 3.)]

Chapter V

Latin source headnote: Letters concerning absolution, obtained by a suspended concubinary cleric with the sequence of facts suppressed, are not valid.

The same, to the Archbishop of York.

But concerning what you assert, that A., a presbyter retaining a fornicating woman, was suspended from his office because of this, *we answer your prudence thus: that, if an appeal has been made concerning this to our presence, if it should happen that he comes to us, as we shall see to be expedient, we shall correct his pertinacity and audacity. But if he does not come to our presence, we wish the sentence of suspension pronounced against him because of this to be observed for so long until he casts his fornicating woman wholly away from himself and lives continently, as befits a presbyter.* Moreover, if he obtains from us letters that do not contain the sequence of the fact, we do not wish *those letters* to profit him.

> Literae a clerico concubinario suspenso super absolutione tacita facti serie obtentae non valent.
>
> Idem Eboracensi Archiepiscopo.
>
> Super eo vero quod asseris A. presbyterum fornicariam detinentem, propter hoc ab officio suo suspensum, *+prudentiae tuae taliter respondemus, quod, si super hoc appellatum sit ad praesentiam nostram, si contigerit ipsum ad nos accedere, prout expedire videbimus, pertinaciam eius et audaciam corrigemus. Si vero non venerit ad praesentiam nostram, suspensionis in eum sententiam propter hoc latam tamdiu volumus observari, donec fornicariam suam a se prorsus abiiciat, et vivat, sicut decet presbyterum, continenter*. Porro si literas a nobis obtinuerit, quae facti seriem non contineant, nolumus *literas* illas sibi prodesse.

Chapter VI

Latin source headnote: If clerics, after being admonished, do not dismiss their concubines, they are suspended from benefices, and, if they do not correct themselves, they are deposed.

The same, to the Archbishop of London.

But if clerics of your jurisdiction, whether constituted in sacred orders or in lower ones, retain fornicating women, unless at the second or third admonition they dismiss them from themselves, to hold them in contempt thereafter, let it be lawful for you, appeal being set aside, to despoil them of churches or portions of them, *if they have any,* their office nevertheless being interdicted to them.

> Si clerici moniti non dimittunt concubinas, suspenduntur a beneficiis, et, si se non corrigunt, deponuntur.
>
> Idem Londonensi Archiepiscopo.
>
> Si autem clerici tuae iurisdictionis, sive in sacris ordinibus sive in inferioribus constituti, fornicarias detinent, nisi eas ad secundam vel tertiam co mmonitionem a se dimiserint, easdem de cetero contempturi, liceat tibi eos ecclesiis vel earum, portionibus, *si quas habent*, appellatione postposita spoliare, officio ipsis nihilominus interdicto.

Chapter VII

Latin source headnote: Divine offices are lawfully heard and ecclesiastical sacraments received from a fornicating cleric so long as he is tolerated and there is no manifest evidence of the deed; but one must abstain from a notorious one, not because there is a defect in the sacrament, but for the correction of the fornicators themselves. This it says, adhering to the words of the letter.

Lucius III.

Your devotion has thought fit to inquire *whether, when you go to parish churches,* [*it is useful to hear the masses of those*] *who are believed to have concubines. For concerning this,* [*indeed,*] *diverse opinions of the sacred canons seem to have issued.* For in one place it is said: "Let no one hear the mass of a priest whom he knows indubitably to have a concubine"; but elsewhere it is read: "No one, however polluted he may have been, can pollute the divine sacraments, which exist as purgatives of all contagions. For of whatever sort a priest may be, the things that are holy cannot be defiled. Therefore receive *fearlessly* the mysteries of Christ from every priest, because all things are purified in the faith of Christ." Yet one thing is a notorious crime, another a hidden one. Notorious is defined as that concerning which a presbyter is canonically condemned. *Another is* hidden, which is *still* tolerated by the Church. Yet one thing is when a presbyter does not deny a notorious crime or has been canonically condemned concerning it; another is almost hidden, which is tolerated by the Church. Likewise, one thing is to abstain from the offices of such men, so that license to sin may be taken away from others and men of this kind may be drawn to the fruit of penance; and another, if the mysteries of such men are rejected as though they lay in fornication. Therefore hold without doubt that from clerics and presbyters, although fornicators, so long as they are tolerated *by the Church* and do not have manifest evidence of the deed, the divine mysteries may lawfully be heard and the other ecclesiastical sacraments received.

> A clerico fornicario, quamdiu toleratur, nec habet operis evidentiam, licite audiuntur divina, et percipiuntur ecclesiastica sacramenta; a notorio vero abstinendum est, non quia in sacramento sit defectus, sed ad ipsorum fornicatorum emendationem. H. d. inhaerendo verbis literae.
>
> Lucius III.
>
> Vestra d uxit devotio inquirendum, *+utrum vobis ecclesias parochiales adeuntibus* [*utile sit missas eorum audire*], *qui concubinas habere creduntur. De hoc* [*enim*] *videntur diversae sacrorum canonum sententiae emanasse*. Alicubi *enim* dicitur: " Nullus audiat missam sacerdotis, quem scit indubitanter concubin am habere; " alibi vero legitur: " Non potest aliquis, quantumcunque pollutus fuerit, divina polluere sacramenta, quae purgatoria cunctarum contagionum exsistunt. Qualiscunque enim sacerdos sit, quae sancta sunt coinquinari non possunt. Sumite ergo ab omni sacerdote *intrepide* Christi mysteria, quia o mnia in Christi fide purgantur. " Ceterum aliud est crimen notorium, aliud occultum. Notorium definitur, de quo presbyter canonice condemnatur. *Aliud est* occultum, quod *adhuc* ab ecclesia toleratur. Ceterum aliud est, quando crimen notorium non diffitetur presbyter, vel de ipso est canonice condemnatus; aliud est paene occultum, quod ab ecclesia toleratur. Item aliud est a talium officiis abstinere, ut peccandi licentia ceteris auferatur, et huiusmodi ad poenitentiae fructum trahantur; atque aliud, si talium tanquam in fornicatione iacentium mysteria respuantur. Sine dubitatione itaque teneatis, quod a clericis et presbyteris, quanquam fornicariis, quamdiu *ab ecclesia* tolerantur, nec habent operis evidentiam, licite divina mysteria audiantur, et alia recipiantur sacramenta ecclesiastica.

Chapter VIII

Latin source headnote: If the fornication of a cleric is so public that it passes into notoriety, neither accuser nor witness is necessary. But if it is public through report alone, testimonies alone—that is, statements of witnesses not under oath—do not suffice for condemnation. But if scandal should arise from this, purgation is imposed, and one failing in it is canonically punished.

Innocent III, to the Bishop of Exeter.

Your fraternity has thought fit to consult us whether, concerning clerics publicly having concubines who, when they are called before you, deny that they are concubinaries, and no lawful accuser appears against them, belief is to be given to the testimony of good men among whom they are known to live. We therefore answer your consultation thus: that, if their crime is so public that it ought deservedly to be called notorious, in that case neither witness nor accuser is necessary, since a crime of this kind cannot be concealed by any evasion. But if it is public not from manifest evidence but from report, in that case testimonies alone do not suffice for their condemnation, since judgment is to be made not by testimonies but by witnesses. But if such suspicion is had concerning those clerics that scandal is generated from it among the people, although no accuser has appeared against them, canonical purgation is nevertheless to be imposed upon them. If they are unwilling to perform it or fail in performing it, you ought to punish them by canonical chastisement. [*Given at the Lateran, on the fifth day before the Ides of May, 1199.*]

> Si fornicatio clerici est ita publica, quod transit in notorium, nec accusator, nec testis necessarius est. Sed si est publica per solam famam, non sufficiunt ad condemnationem sola testimonia, id est testium dicta non iuratorum. Sed si ex hoc oriretur scandalum inducitur purgatio, in qua deficiens canonice punitur.
>
> Innocentius III. Exonensi Episcopo.
>
> Tua nos duxit fraternitas consulendos, si de clericis publice concubinas habentibus, qui, quando a te conveniuntur, se esse concubinarios diffitentur, nec apparet contra eos legitimus accusator, credendum sit testimonio bonorum virorum, inter quos vivere dignoscuntur. Nos igitur consultationi tuae taliter respondemus, quod, si crimen eorum ita publicum est, ut merito debeat appellari notorium, in eo casu nec testis nec accusator est necessarius, quum huiusmodi crimen nulla possit tergiversatione celari. Si vero publicum est, no n ex evidentia, sed ex fama : in eo casu ad condemnationem eorum sola testimonia non sufficiunt, quum non sit testimoniis, sed testibus iudicandum. Sed si de clericis ipsis talis habeatur suspicio, ut ex ea scandalum generetur in populo, licet contra ipsos non apparuerit accusator, eis tamen est canonica purgatio indicenda. Quam si praestare noluerint, vel defecerint in praestanda, eos canonica d ebebis animadversione punire. [*Dat. Lat. V. Id. Mai.* 1199.]

Chapter IX

Latin source headnote: It is brief, whence it is not summarized.

The same, to the Bishop of Pistoia.

Your fraternity has asked of us—(*And below:* [*Cf. c. 24, On Tithes, III. 30.*]) You are also not to permit little women to dwell with clerics, unless perhaps they are among those persons in whom the bond of nature permits no suspicion of savage crime. [*Given at the Lateran, on the fourth day before the Nones of December, 1199.*]

> Breve est, unde non summatur.
>
> Idem Pistoriensi Episcopo.
>
> A nob is tua fraternitas requisivit (*Et infra:* [*cf. c.* 24. *de dec. III.* 30.]) Cum clericis quoque non permittas mulierculas habitare, ni si forte de illis personis exsistant, in quibus naturale foedus nihil permittit saevi c riminis suspicari. [*Dat. Lat. IV. Non. Dec.* 1199.]

Chapter X

Latin source headnote: A concubinary cleric is not to be avoided in offices unless he is notorious.

Gregory IX.

It has been asked concerning clerics fallen into fornication whether their office is to be heard before they have repented. But although it is established that anyone is suspended as regards himself for mortal sin, he ought nevertheless not to be avoided in offices, because, as regards others, even in the case proposed he is not suspended, unless a sin of this kind is notorious through a sentence or through a confession made in court, or through manifest evidence of the matter, which cannot be concealed by any evasion.

> Clericus concubinarius in officiis vitandus non est, nisi sit notorius.
>
> Gregorius IX.
>
> Quaesitum est de clericis in fornicationem prolapsis, si eorum sit officium, priusquam poenituerint, audiendum. Verum etsi quemlibet pro mortali peccato quoad se ipsum constet esse suspensum, non debet tamen in officiis evitari, quia, quantum ad alios, etiam in casu proposito suspensus non est, nisi peccatum huiusmodi sit notorium per sententiam seu per confession em factam in iure, aut per evidentiam rei, quae tergiversatione aliqua celari non possit.

Title III: On Married Clerics

Chapter I

Latin source headnote: A marriage contracted by a cleric existing in sacred orders does not hold; it is otherwise in minor orders, but then he is compelled to relinquish his benefice.

Alexander III.

But if any of those clerics *themselves* below the subdiaconate have taken wives, you shall compel them by ecclesiastical severity to relinquish ecclesiastical benefices, *if they have any,* and to retain *their* wives. But if they are known perhaps to have taken wives in the subdiaconate and other higher orders, take care to compel them by a sentence of suspension and excommunication, *appeal being set aside,* to dismiss the wives and do penance for the offense, *by our authority.*

> **DE CLERICIS CONIUGATIS.**
>
> Matrimonium contractum per clericum exsistentem in sacris non tenet; secus in minoribus; sed tunc cogitur dimittere beneficium.
>
> Alexander III.
>
> Si qui *autem* clericorum *ipsorum* infra subdiaconatum acceperint uxores, ipsos ad relinquenda beneficia ecclesiastica, *si qua habent,* et retinendas uxores *suas* districtione ecclesiastica compellatis. Sed si *forte* in subdiaconatu et aliis superioribus ordinibus uxores accepisse noscuntur, eos uxores dimittere, et poenitentiam agere de commisso *auctoritate nostra* per suspensionis et excommunicationis sententiam *appellatione postposita* compellere procuretis.

Chapter II

Latin source headnote: A married man is not promoted to an ecclesiastical administration, order, or benefice unless he promises chastity and is not a bigamist.

The same, to the Bishop of Hereford.

Indeed, *concerning clerics of the lower orders who, constituted in marriage, have for a long time held ecclesiastical benefices by grant of your predecessors, of which they cannot be deprived without great danger and shedding of blood, we have thought that this answer should be given to your fraternity: that, because a nation and a barbarous people and a multitude are involved there, you should tolerate under dissimulation their possession of the ecclesiastical benefices held for so long.* Take more attentive care that henceforth a married cleric not be admitted to ecclesiastical benefices, sacred orders, or ecclesiastical administrations, unless perhaps he should vow perpetual chastity and had had one wife, and a virgin.

> Coniugatus ad administrationem et ad ordinem ecclesiasticum vel beneficium non promovetur, nisi castitatem promittat, et non sit bigamus.
>
> Idem Herfordensi Episcopo.
>
> Sane +*de clericis inferiorum ordinum, qui in coniugio constituti diu ecclesiastica beneficia ex concessione praedecessorum tuorum habuerunt, a quibus sine magno discrimine ac effusione sanguinis non possunt privari, fraternitati tuae id duximus respondendum, ut, quia ibi natio et gens barbara et multitudo in causa est, eos sub dissimulatione sustineas ecclesiastica beneficia tamdiu habita possidere;* Provideas attentius, ne deinceps clericus coniugatus ad ecclesiastica beneficia, vel sacros ordines aut administrationes ecclesiasticas admittatur, nisi forte castitatem voveret perpetuam, et qui unicam et virginem habuisset uxorem.

Chapter III

Latin source headnote: If a beneficed cleric in minor orders contracts marriage, he is deprived of the benefice, and what he gave to the church is restored to him. This it says, and in this last point there is a noteworthy and highly citable case.

The same, to the Bishop of Veroli.

What by you—(*And below:*) *For the future, because the diligence of your fraternity seeks to know* whether clerics constituted below the order of subdeacon, who, overcome by the vice of the flesh and unable to contain themselves, take wives, ought canonically to be despoiled of ecclesiastical benefice: we wish you to hold *with undoubted truth* that, since they cannot at the same time devote themselves to pleasures and carnal desires and to divine and ecclesiastical services, they are, because of their uncleanness, unworthy to handle ecclesiastical sacraments *and* are without doubt to be deprived of ecclesiastical benefices. Indeed, if they are known to have conferred upon the churches to which they had been attached anything from *their own* possessions or other goods, when they have been separated from the ministry and benefice of those churches, dominion and ownership ought by the direct way to return to them *freely and* without *any* contradiction.

> Si clericus in minoribus beneficiatus matrimonium contrahat, privatur beneficio, et quod dedit ecclesiae sibi restituitur. H. d. et in hoc ultimo est casus not. et multum allegabilis.
>
> Idem Verulanensi Episcopo.
>
> Quod a te (*Et infra:*) *De cetero, quia fraternitatis tuae quaerit industria,* Utrum clerici infra subdiaconatus ordinem constituti, qui carnis devicti vitio continere non valentes uxores accipiunt, ecclesiastico bene ficio canonice debeant spoliari : id volumus te *indubitata veritate* tenere, quod, quum simul voluptatibus et carnalibus desideriis, ac divinis et ecclesiasticis obsequiis vacare non valeant, ob immunditiam suam ecclesiasticis sacramentis indigni tractandis, *et* ecclesiasticis procul dubio beneficiis sunt privandi. Sane si ecclesiis, quibus intitulati fuerant, de possessionibus aut aliis bonis *suis* aliqua contulisse noscuntur,

quum ab earundem ecclesiarum ministerio fuerint et beneficio sequestrati, ad ipsos recta via *dominium ac proprietas libere* debent *et* absque *ulla* contradictione redire.

Chapter IV

Latin source headnote: After penance has been completed, bishops dispense with priests who have contracted marriage in fact.

The same.

Indeed, those priests who contract nuptials, which are to be called not nuptials but rather concubinages, will be able, after long penance and a praiseworthy continent life, to be restored to their office and, by indulgence of their bishop, to have its exercise.

Peracta poenitentia dispensant episcopi cum sacerdotibus, qui matrimonium de facto contraxerunt.

Idem.

Sane sacerdotes illi, qui nuptias contrahunt, quae non nuptiae, sed contubernia sunt potius nuncupanda, post longam poenitentiam et vitam laudabilem continentes officio suo restitui poterunt, et ex indulgentia sui episcopi eius exsecutionem habere.

Chapter V

Latin source headnote: Benefices that a cleric had at the time of contracting marriage are to be taken away from him; but those knowingly conferred afterward by the bishop cannot be taken away by the same bishop, but by a superior. This it says.

Innocent III, to the Bishop of Norwich.

Ensnared by diverse deceits, *they endeavor to serve God and mammon, although according to evangelical truth no one can serve two masters, because, if he loves one, he will hold the other in hatred, or, having despised one, will sustain the other.* We have learned that certain clerics of your diocese who have contracted marriage *solemnly in the sight of the Church* contend that they may retain ecclesiastical benefices, in whose manner of life the harp agrees badly with the psaltery. Since, therefore, a husband thinks how he may please his wife and for that reason is less able to think about the things that are God's, since, as though divided in two, he does not have full power over himself so as to serve more fully him from whom he receives a stipend, *by the authority of the present letters* we command your fraternity that, *supported by our authority,* you deprive clerics of this kind of the ecclesiastical benefices they have obtained in your diocese, with appeal removed, especially since the substance of ecclesiastical property is accustomed to perish through such men; unless perhaps you knowingly conferred ecclesiastical benefices upon such men, in which case we decree that they are to be despoiled of them not by you but by a superior. [*Let no one therefore, etc. Given at Ferentino, on the twelfth day before the Kalends of July, 1203.*]

Auferenda sunt clerico beneficia, quae habebat tempore contracti matrimonii; collata vero postmodum scienter per episcopum per eundem auferri non possunt, sed per superiorem. H. d.

Innocentius III. Norvicensi Episcopo.

Diversis fallaciis +*circumventi Deo et mammonae famulari conantur, quum tamen secundum evangelicam veritatem nemo possit duobus dominis deservire, quoniam, si unum dilexerit, alium habebit exosum, aut uno contempto alium sustinebit*. Accepimus autem, quod quidam clerici tuae dioecesis, qui *solenniter in conspectu ecclesiae* matrimonium contraxerunt, ecclesiastica beneficia detinere contendunt, in quorum conversatione

cithara cum psalterio male concordat. Quum ergo vir cogitet, quomodo placere possit uxori, et ideo minus quae Dei sunt valeat cogitare, quum quasi divisus in duo plenam sui non habeat potestatem, ut ei, a quo stipendium recipit, plenius famuletur, *fraternitati tuae auctoritate praesentium* mandamus, quatenus huiusmodi clericos beneficiis ecclesiasticis, quae in tua dioecesi sunt adepti, *auctoritate nostra suffultus* prives appellatione remota, praesertim quum rerum ecclesiasticarum substantia per tales soleat deperire; nisi forte tu talibus scienter contuleris ecclesiastica beneficia, quibus eos non per te, sed per supe riorem decernimus spoliandos. [*Nulli ergo etc. Dat. Ferentini Xll. Kal. Iul.* 1203.]

Chapter VI

Latin source headnote: The son of a Greek priest, begotten of a wife, is lawfully promoted among the Latins if scandal does not stand in the way. This it says, and it is a noteworthy case.

The same, to the Archbishop of Acerenza.

When it had formerly come to our hearing that the canons of Anglona had elected *the beloved son,* the cantor of Tricarico, as their pastor, *we gave you a mandate that, after examining the election and the person more diligently, if you found the election canonical and the person suitable, you should confirm the election itself by apostolic authority, proceeding as metropolitan in the other matters.* Although it was established for you *in other respects* concerning the canonical form of the election and the suitability of the person, it nevertheless moved you, *and induced you to consult us,* that, since his father was a Greek and, according to the rite of the Greeks, had taken a wife while constituted in minor orders, he had begotten the cantor himself of a lawful wife while in the priesthood. We therefore, considering that the Eastern Church did not admit the vow of continence, because Easterners contract marriage in minor orders and in higher orders make use of a marriage already contracted, command your fraternity by apostolic writings that, unless the custom of the region opposes this because Greeks of this kind live among the Latins, if no other canonical impediment stands in the way, you proceed without hesitation to the confirmation and consecration of the same *cantor.* [*Given at Ferentino, on the Nones of September, 1203*.]

Filius sacerdotis Graeci, ex uxore genitus, licite inter Latinos promovetur, si scandalum non obsistat. H. d. et est casus notabilis.

Idem Archerontino Archiepiscopo.

Quum olim ad nostram audientiam pervenisset, quod canonici Anglorienses *dilectum filium* cantorem Tricaricensem sibi elegerant in pastorem, *+tibi dedimus in mandatis, ut, examinata electione diligentius et persona, si electionem canonicam et personam idoneam invenires, electionem ipsam auctoritate apostolica confirmares, sicut metropolitanus in ceteris processurus*. Licet *autem* tibi de forma electionis canonicae ac idoneitate personae in aliis constitisset, movit te tamen, *et ad nos consulendos induxit*, quod, quum pater eius Graecus fuerit, et iuxta ritum Graecorum uxorem duxerit in minoribus ordinibus constitutus, cantorem ipsum ex uxore legitima in sacerdotio suscepisset. Nos igitur attendentes, quod orientalis ecclesia votum continentiae non admisit, quoniam orientales in minoribus ordinibus contrahunt, et in superioribus utuntur matrimonio iam contracto, *fraternitati tuae per apostolica scripta* mandamus, quatenus, nisi pro eo, quod inter Latinos Graeci huiusmodi conversantur, regionis consuetudo repugnet, si aliud canonicum non obsistat, ad confirmationem et consecrationem eiusdem *cantoris* sine dubitatione procedas. [*Dat. Ferentini Non. Sept. * 1203.]

Chapter VII

Latin source headnote: A married cleric who is not beneficed is not compelled to wear the tonsure.

The same, to the Bishop of Poitiers.

John, *son of A.,* has shown us by complaint that, although he long ago took a lawful wife *and begot sons and daughters of her,* because he had previously been ordained an acolyte, you endeavor to compel him to wear the clerical tonsure, from which scandal could be generated between him and his wife, although according to the custom of your land married clerics are not compelled against their will to wear the tonsure. Therefore, because *a man ought to think how he may please his wife, and* the same man, even when tonsured, cannot enjoy clerical privilege, by the authority of the present letters we command that you no longer molest him concerning tonsure of this kind, provided that he receives no ecclesiastical benefice by reason of which he is bound to wear the clerical tonsure, because, since he must involve himself in secular business, the tonsure of one conducting secular affairs would indeed seem to redound to the reproach of our ministry.

> Clericus coniugatus non beneficiatus non cogitur deferre tonsuram.
>
> Idem Episcopo Pictaviensi.
>
> Ioannes *filius A.* nobis conquerendo monstravit, quod tu eum, quanquam iam dudum uxorem legitimam duxerit, *et f i lios et filias susceperit ex eadem,* pro eo, quod prius in acolythum fuerat ordinatus, compellere niteris, ut tonsuram deferat clericalem, ex qua inter ipsum et uxorem suam posset scandalum generari, quum de consuetudine terrae tuae clerici uxorati non cogantur inviti portare tonsuram. Quoniam igitur *virum oportet, quomodo uxori placeat, cogitare, et* idem etiam tonsuratus non potest privilegio clericali gaudere, *praesentium auctoritate* mandamus, quatenus ipsum super tonsuratione huiusmodi *de cetero* non molestes, dummodo nullum percipiat beneficium ecclesiasticum, cuius ratione teneatur clericalem deferre tonsuram, quia, quum eum oporteat saecularibus negotiis immisceri, tonsura ipsius saecularia exercentis videretur profecto in ministerii nostri vituperium redundare.

Chapter VIII

Latin source headnote: Married men are not admitted to ecclesiastical dignities, and they are compelled to relinquish those that they have.

The same.

Since the adornment—(*And below:* [*Cf. c. 15, On the Sons of Priests, I. 15.*]) You are henceforth not to admit those who are publicly married to ecclesiastical dignities, those being relinquished by them which they cannot retain without a depraved example and grave scandal. *Their sons also, etc.* (*Cf. c. 15, On the Sons of Priests, I. 15.*) [*Given at Rome, at Saint Peter's, on the sixth day before the Ides of January, in the ninth year, 1207.*]

> Uxorati non admittuntur ad ecclesiasticas dignitates, et coguntur dimittere quas habent.
>
> Idem.
>
> Quum decorem (*Et infra:* [*cf. c.* 15. *de fil. presb. I.* 15.]) Eos, qui sunt publice uxorati, non admittatis de cetero ad ecclesiasticas dignitates, dimissis ab eis, quas non possunt sine pravo exemplo et gravi scandalo retinere. *Filiis quoque etc.* (*cf. c.* 15. *de fil. presb. I. * 15.) [*Dat. Rom. ap. S. Petr. VI. Id. Ian. Ao. IX.* 1207.]

Chapter IX

Latin source headnote: Married clerics do not enjoy clerical privilege in their property.

Honorius III, to H., formerly Queen of the English.

It was proposed *before us* on your behalf that some learned men of your land, having laid aside clerical habit and tonsure, publicly take wives, *being solicitous about the things of this world and how they may please their wives, who, although they apply themselves to commerce and other secular business,* nevertheless, so that they may defraud you of customary dues and owed services, resume the discarded tonsure, *under pretext of which they may be excused as clerics from things of this kind, although they serve not the Lord but rather the world, as do other married men.* Certain men also, after receiving the first tonsure, similarly contract marriage and wear the same tonsure so that under the same pretext they may be excused from the aforesaid things, *and the venerable brother the bishop and the beloved sons the dean, archdeacon, and chapter of Le Mans endeavor to favor them as clerics in the withdrawal of your services, to your prejudice and burden.* Since, therefore, the things that are Caesar's are to be rendered to Caesar and the things that are God's to God, *and publicly married men are not ecclesiastical men while they thus entangle themselves in secular business,* we have thought that it should be tolerated with equanimity if you exact from such men the owed dues and customary services as from other married men *and receive them from the same, since the tonsure which they appear to have resumed or received not on account of religion but fraudulently to withdraw services ought not to furnish them protection in these matters.*

> Clerici coniugati in rebus suis non gaudent privilegio clericali.
>
> Honorius III. H. quondam Reginae Anglorum.
>
> Ex parte tua fuit propositum *coram nobis*, quod nonnulli literati terrae tuae, habitu et tonsura clericali rel ictis, publice ducunt uxores, *+de his, quae huius mundi sunt solliciti, et quomodo uxoribus placeant, exsistentes, qui, licet negotiationibus et aliis saecularibus insistant negotiis*, ut tamen consuetis iustitiis et debitis obsequiis te defraudent, tonsuram resumunt abiectam, *+qua ipsius praetextu ab huiusmodi ut clerici excusentur, quanquam non militent Domino, sed potius mundo, ut ceteri uxorati*. Quidam etiam accepta prima tonsura similiter contrahunt, et eandem tonsuram deferunt, ut eodem praetextu e xcusari valeant a praedictis, *+et venerabilis frater episcopus et dilecti filii decanus, archidiaconus et capitulum Cenomanenses ipsos tanquam clericos in subtractione servitiorum tuorum fovere nituntur in tuum praeiudicium et gravamen*. Quum igitur reddenda sint quae sunt Caesaris Caesari, et quae sunt Dei Deo, *et publice uxorati viri ecclesiastici non exsistant, dum se sic saecularibus negotiis implicant*, aequanimiter duximus tolerandum, si a talibus iustitias debitas velut ab aliis uxoratis exigas et servitia consueta, *et recipias ab eisdem quum tonsura quam non obtentu religionis sed in fraudem subtrahendi servitia resumpsisse vel accepisse videntur in his sibi non debeat patrocinium impertiri*.

Chapter X

Latin source headnote: If a cleric in minor orders serves as a soldier, he is not to be compelled to wear the tonsure or clerical habit.

The same.

That your consultation may be satisfied briefly, we answer that R., a knight of your diocese, who, *as he humbly confessed to you,* formerly, when he was constituted in a younger age, *when he knew how to read or sing but little,* received only the tonsure and clerical crown, *which he is ashamed to wear among soldiers and laypersons,* is not to be compelled to wear clerical habit.

> Si clericus in minoribus militet, non est cogendus deferre tonsuram vel habitum clericalem.
>
> Idem.

> Ut consultationi tuae breviter satisfiat, respondemus, quod R. miles tuae dioecesis, qui, *sicut tibi humiliter est confessus*, olim, quum in minori esset constitutus aetate, *quum modicum sciret legere vel cantare*, tonsuram tantum et coronam clericalem assumpsit, *quam gestare inter milites et laicos erubescit*, non est cogendus deferre habitum clericalem.

Title IV: On Clerics Not Residing in a Church or Prebend

Chapter I

Latin source headnote: It is not lawful for a bishop to transfer to another bishopric without the Pope's license by accepting it; otherwise he is deprived of the one held and the one sought. This is its meaning according to the gloss.

From the Council of Sardica.

Let it not be lawful for a bishop to transfer from his own city to another [*city*]. For the cause on account of which he attempts to do this is manifest, since no bishop has been found *in this matter* who would transfer from a greater city to a lesser one.

> **DE CLERICIS NON RESIDENTIBUS IN ECCLESIA VEL PRAEBENDA.**
>
> Episcopo non licet sine licentia Papae transire ad alium episcopatum, ipsum acceptando; alias privatur habito et ambito. Hoc intendit cum glossa.
>
> Ex concilio Sardicensi.
>
> Non liceat episcopo de c ivitate sua transire ad aliam [*civitatem*]. Manifesta est enim causa, pro qua facere hoc attentat, quum nullus *in hac re* sit inventus episcopus, qui ad minore m de maiori civitate transiret.

Chapter II

Latin source headnote: A cardinal who does not reside in his title is deposed. This it says, and this text is very noteworthy.

Leo III.

From the acts—(*And below:*) In the synod Anastasius, cardinal presbyter of the title of Blessed Marcellus, was canonically deposed by all because for five years he had deserted his parish contrary to the statutes of the canons and remains among others to this day.

> Deponitur cardinalis, qui in suo titulo non residet. H. d. et est iste textus multum notabilis.
>
> Leo III.
>
> Ex gestis (*Et infra:*) In synodo Anastasius presbyter cardinalis tituli beati Marcelli ab omnibus canonice est depositus eo, quod parochiam suam per annos quinque contra canonum instituta deseruit, et in alienis usque hodie demoratur.

Chapter III

Latin source headnote: Several dignities or churches ought not to be conferred upon one person, and a church is to be conferred upon one who is able to reside and govern by himself; otherwise the recipient loses the church, and the giver is deprived of the power to confer.

From the Lateran Council.

Because certain men, setting no measure to avarice, endeavor to receive diverse ecclesiastical dignities and several parish churches contrary to the statutes of the sacred canons [*thus*], so that, although they are scarcely sufficient to fulfill one office, they claim the stipends of many for themselves, we more strictly forbid this to be done henceforth. Therefore, when a church or ecclesiastical ministry is to be committed, let such a person be sought for this who is able to reside in the place and exercise its care by himself. But if it has been done otherwise, both let the one who received lose what he received contrary to the sacred canons, and let the one who gave be deprived of the power of bestowing.

> Uni plures dignitates vel ecclesiae conferri non debent, et ecclesia est conferenda illi, qui residere et regnare valeat per se ipsum; alias perdit ecclesiam, et donans conferendi potestate privatur.
>
> Ex concilio Lateranensi.
>
> Quia nonnulli, modum avaritiae non ponentes, dignitates diversas ecclesiasticas et plures ecclesias parochiales contra sacrorum canonu m instituta nituntur accipere [*ita*], ut, quum unum officium vix implere sufficiant, stip endia sibi vendicent plurimorum : ne id de cetero fiat, districtius inhibemus. Quum igitur ecclesia vel ecclesiasticum ministerium committi debuerit, talis ad hoc persona quaeratur, quae residere in loco et curam eius per se ipsam valeat exercere. Quod si aliter actum fuerit, et qui receperit quod contra sacros canones accepit amittat, et qui dederit largiendi potestate privetur.

Chapter IV

Latin source headnote: One presented to a church but not confirmed, if it appears that he does not wish to reside, ought not to be instituted by the superior; but one confirmed and not residing without a just cause is deprived, with appeal removed.

Alexander III, to the Archbishop of York.

It has been reported to us *on your behalf* that, although it was established in the Lateran Council that a church or ecclesiastical benefice be conferred upon such a person as is able to reside in the place and exercise its care by himself, certain persons presented to churches affirm that they can do this but refuse to carry it out. *Therefore you wished to consult* [*us*] *whether because of this you can reject such persons when presented, or remove them when instituted, the obstacle of appeal being taken away.* Since, therefore, words are to be taken with effect, such persons, if they have been presented, ought not to be admitted; and those admitted, *if they have been instituted,* can lawfully be removed—unless perhaps it should happen that they are absent by license of their prelates, for study of letters, or for other honorable causes. Nor ought the refuge of appeal to protect them if it was interposed against the intention of a decree of this kind. [*Because, moreover, etc.* (*Cf. c. 5, On the Right of Patronage, III. 38.*)]

> Praesentatus ad ecclesiam non confirmatus, si apparet, quod nolit residere, non debet institui per superiorem; confirmatus autem et ex non iusta causa non residens privatur appellatione remota.
>
> Alexander III. Eboracensi Archiepiscopo.
>
> Relatum est nobis *ex parte tua,* quod, quum in Lateranensi concilio statutum sit, ut personae tali ecclesia vel beneficium ecclesiasticum conferatur, quae residere in loco et curam eius per se valeat exercere, nonnulli ad ecclesias praesentati hoc se posse affirmant, sed efficere contradicunt. +*Ideo * [*nos*] *consulere voluisti, an propter hoc tales possis praesentatos repellere, vel institutos sublato appelationis obstaculo removere*. Quum igitur verba accipienda sint cum effectu, tales, si praesentati fuerint, non debent

admitti, et admissi, *si instituti fuerint, licite* poterunt amoveri; nisi forte de licentia suorum praelatorum, vel studio literarum, vel pro aliis honestis causis contigerit eos abesse. Nec patrocinari debet eis appellationis diffugium, si contra huiusmodi intentione m decreti fuerit interiectum. [*Quia autem etc.* (*cf. c.* 5. *de iur. patr. III. * 38.)]

Chapter V

The same, to the Archbishop of York.

We have thought fit *to grant to your fraternity that, if clerics who have obtained a benefice in churches of your jurisdiction have transferred to another diocese for the purpose of remaining there without your license and assent, it may be lawful for you to despoil them of the benefices they have from you, unless perhaps they have applied themselves to scholastic disciplines or shown you a reasonable cause why they ought not to return.* Furthermore, you ought not to receive a cleric of another diocese without commendatory letters from his bishop, unless on his behalf you have received *requests or* a mandate from the Apostolic See.

Idem Eboracensi Archiepiscopo.

Fraternitati tuae +*duximus indulgendum, ut, si clerici, qui in ecclesiis tuae iurisdictionis beneficium sunt adepti, ad aliam dioecesin absque licentia et assensu tuo morandi causa transierint, liceat eos tibi beneficiis, quae a te habent, spoliare, nisi forte scholasticis disciplinis invigilaverint, aut rationabilem causam tibi ostenderint, quare reverti non debeant*. Praeterea clericum alterius dioecesis absque commendatitiis literis sui episcopi non debes recipere, nisi pro eo receperis ab apostolica sede *preces aut* mandatum.

Chapter VI

Latin source headnote: One who does not reside in a benefice even of small value is deprived of it.

The same.

Upon the complaint of R., a presbyter, we learned that G., a cleric, endeavors to extort twenty solidi annually from him for his church, from which, *as is said,* he can scarcely receive the necessities of life, asserting that that benefice had been conferred upon him in the same church, *although, as we have learned, he does not serve the same church and has and possesses other sufficient ecclesiastical benefices from the Church. Since, therefore, it is indecent and not consonant with reason that the same man, when he has and possesses other sufficient ecclesiastical benefices, should seek a benefice from a church which he does not serve,* through apostolic writings we command your fraternity that, if it is established for you that the said G. has sufficient ecclesiastical benefices or that he does not serve the same church, with the obstacle of appeal removed, you impose silence upon him concerning the aforesaid benefice.

Qui non residet in beneficio etiam modicae aestimationis, illo privatur.

Idem.

Conquerente nobis R. presbytero accepimus, quod G. clericus ab eo pro ecclesia sua, de qua, *sicut dicitur*, vitae necessaria vix potest percipere, annuatim viginti solidos extorquere conatur, asserens beneficium illud in eadem e cclesia sibi fuisse collatum, +*quanquam eidem ecclesiae, sicut accepimus, non deserviat, et alia ecclesiastica beneficia sufficientia habeat et possideat ab ecclesia. Quoniam igitur indecens est et non consentaneum rationi, ut idem, quum alia ecclesiastica beneficia sibi sufficientia habeat et possideat, ab ecclesia, cui non deservit, beneficium quaerat*, Fraternitati tuae *per apostolica scripta* mandamus, quatenus, si tibi constiterit, quod dictus G. habeat ecclesiastica beneficia sibi sufficientia, vel quod eidem ecclesiae non deserviat, sibi super praescripto beneficio silentium sublato impedimento appellationis imponas.

Chapter VII

Latin source headnote: One who is in the service of a bishop receives the fruits of a benefice as though resident, except for daily distributions. Abbas.

The same.

For the future, *because it is worthy and fitting that the canons of your church, while they remain about you in your service, receive a portion of the common fund, by the present writing* we establish that nothing ought to be subtracted or taken away from *your* canons, while they are in your service, that is owed to them from the benefit of the common fund, unless perhaps these are victuals that are not accustomed to be furnished to absent persons.

> Qui est in servitio episcopi, percipit fructus beneficii tanquam residens, praeter distributiones quotidianas. Abbas.
>
> Idem.
>
> De cetero, *+quia dignum est et conveniens, ut ecclesiae tuae canonici, donec circa te in tuo servitio morantur, com munitatis portionem recipiant, p raesenti scripto* Statuimus, ne canonicis *tuis*, donec in servitio tuo fuerint, quicquam subtrahi debeat vel auferri, quod de communitatis sibi beneficio debetur, nisi forte sint victualia, quae non c onsueverunt absentibus exhiberi.

Chapter VIII

Latin source headnote: A nonresident prelate or cleric who, after being cited, does not return within the term fixed for him is to be deprived, unless he has a just impediment. This it says, together with the two following chapters.

Celestine III.

It was reported to our apostolate on your behalf that the dean of your church, who chose for himself a dwelling rather in the regions of Gaul, has for a space of ten years already made it impossible for your church to have his presence. Therefore, because we do not wish the same church to be defrauded of the office of dean, through apostolic writings we command your whole body that you write to him that *he ought to visit your church and* exercise his office there as dean. But if, after being summoned, he should perhaps be unwilling to come, we grant you from then on free faculty to elect another who is able to preside over and profit your church.

> Privandus est prelatus vel clericus non residens, qui citatus non revertitur in termino sibi praefixo, nisi habeat iustum impedimentum. H. d. cum duobus sequentibus.
>
> Coelestinus III.
>
> Ex parte vestra nostro fuit apostolatui reseratum, quod ecclesiae vestrae decanus, qui in partibus Gallicanis sibi potius habitationem elegit, iam per decem annorum spatium ecclesia vestra ipsius praesentiam habere nequivit. Quia ergo nolumus, ut eadem ecclesia decani officio defraudetur, *universitati vestrae per apostolica scripta* mandamus, quatenus scribatis eidem, quod *ecclesiam vestram visitare et* suum ibidem officium ut decanus debeat exercere. Quodsi *forte* vocatus venire noluerit, eligendi alium, qui praeesse ecclesiae vestrae valeat et prodesse, vobis extunc concedimus liberam facultatem.

Chapter IX

Latin source headnote: It has been summarized in the preceding chapter.

Innocent III, to the Chapter of Ragusa.

How your archbishop departed from the church of Ragusa by his own temerity and, though awaited, has not returned for more than four years already, *and* was recalled even by your letters, *your whole body knows fully, since you have very often laid complaints before us concerning him on this matter and requested that license to elect be granted to you. But we, waiting, thought that he should be awaited longer, to see whether perhaps he would return to his heart and go back to his church, which he had thus abandoned. Therefore, being unwilling that the church itself remain longer destitute of a pastor's solace,* through apostolic writings we command *and enjoin* your discretion that, unless perhaps he has now returned, after one month from receipt of the present letters you elect a person suitable for you as archbishop *and take care to present your election to us as quickly as possible.* [*Given at the Lateran, 1202.*]

> Summat um est in capitulo praecedenti.
>
> Innocentius III. Capitulo Ragusino.
>
> Qualiter archiepiscopus vester temeritate propria recessit ab ecclesia Ragusinensi, nec iam ultra quadriennium exspectatus redierit, *et* per lit eras etiam vestras revocatus, *+vestra universitas plene novit, quum saepius apud nos deposueritis super hoc de ipso querelas, et vobis concedi postulaveritis licentiam eligendi. Nos autem exspectantes diutius duximus exspectandum, si forte reverteretur ad cor, et ad ecclesiam suam, quam taliter reliquerat, remearet. Nolentes igitur, quod diutius ecclesia ipsa pastoris maneat solatio destituta,* Discretioni vestrae *per apostolica scripta* mandamus *atque praecipimus,* quatenus, nisi forsitan iam redierit, vos post mensem a receptione praesentium personam vobis idoneam in archiepiscopum eligatis, *et electionem vestram nobis curetis quam citius praesentare.* [*Dat. Laterani.* 1202.]

Chapter X

Latin source headnote: The summary is as in the chapter *On your behalf* above, under the same title.

The same, to the Patriarch of Constantinople.

Among the four animals—(*And below:* [*Cf. c. 8, On Majority and Obedience, I. 33.*]) But concerning clerics who without a just and necessary cause *in this new state of affairs* desert churches or prebends granted to them, especially without your consent being added, we have thought that this answer should be given to you: that, after they have been awaited for a suitable time, unless they return to them, they can justly be deprived of them, provided that they are not detained by a just impediment. [*Concerning monasteries, etc.* (*Cf. c. 5, On Religious Houses, III. 36.*) *Given at Ferentino, on the fourth day before the Nones of August, in the ninth year, 1206.*]

> Summa ut in capitulo Ex parte supr. eodem.
>
> Idem Constantinopolitano Patriarchae.
>
> Inter quatuor animalia (*Et infra:* [*cf. c.* 8. *de mai. et ob. I.* 33.]) De clericis *autem,* qui ecclesias vel praebendas sibi concessas sine iusta et necessaria causa *in hac novitate* deserunt, tuo praesertim non accedente consensu, hoc tibi duximus respondendum, quod, postquam congruo tempore fuerint exspectati, nisi redierint ad illas, possunt eis iuste privari, dummodo non si nt iusto impedimento detenti. [*De monasteriis etc.* (*cf. c.* 5. *de rel. dom. III.* 36.) *Dat. Ferentini IV. Non. Aug. Ao. IX. * 1206.]

Chapter XI

Latin source headnote: If it is not known where a cleric is, he will be cited by three public edicts in his church, and, if he does not return within six months, he will be deprived of his church. This it

says as far as the verse *Against them.* — (*Against them, etc.*) This short passage is not summarized because of the variety of readings and because according to one interpretation it does not pertain to the rubric.

The same, to the Archbishop of Palermo.

From the communication of your devotion *we received* [*that, when the Latins had occupied the region of Achaea, certain Greek bishops, your suffragans, terrified by fear and fleeing from their own places, left their churches; some of them, although admonished more often, nevertheless disdain to return to their sees, while some cannot now be admonished through reliable messengers because of the dangers of wars. Hence you humbly supplicated us that, giving you salutary counsel concerning this, we should deign to write to you how you ought to proceed concerning them and their dioceses. We therefore, considering that because of the novelty of the change of that land and the occurrence of new events one must proceed with very great maturity, answer your devotion thus: that you take care to cite them not once but often, namely a first, second, and third time; and if they are unwilling to appear but wish to persist in their contumacy, unless perhaps they have thought that they should be fortified by the shield of an appeal, which they are to prosecute within the lawful time, compel them by sentences of suspension and excommunication to come to your obedience.*] But in the churches of those who absent themselves fraudulently and whom a citation cannot reach, you are to cause an edict of triple citation to be published; and, if not even thus do they take care to obey, and if they desert their churches for more than six months, according to the canonical sanctions they ought deservedly to be despoiled of them. *Against them also,* as has been written above, let proceedings be taken, *namely* that you compel them by a sentence of suspension and excommunication to come to your obedience. But if not even thus can their malice be softened, let *the beloved son* B., cardinal presbyter of the title of Saint Susanna and legate of the Apostolic See, remove them from the administration of spiritual things and cause the churches over which they preside to be provided with suitable persons; but let him not promulgate a sentence of degradation against them, so that, if expedient, it may more easily be possible to act mercifully with them. [*You asked, etc. Given at the Lateran, on the thirteenth day before the Kalends of May, in the tenth year, 1207.*]

> Si nescitur, ubi sit clericus, tribus publicis edictis citabitur in ecclesia sua, et, si infra sex menses non revertatur, privabitur ecclesia sua. H. d. usque ad vers. Contra eos. — (Contra eos etc.) Iste versiculus non summatur propter varietatem lecturarum, et quia secundum unum intellectum non facit ad rubricam.
>
> Idem Archiepiscopo Panormitano.
>
> Ex tuae devotionis +*insinuatione recepimus,* [*quod, quum Latini regionem Achaiae occupassent, quidam episcopi Graeci suffraganei tui timore perterriti de locis propriis fugientes, suas ecclesias reliquerunt, quorum quidam, licet saepius moniti, ad sedes tamen suas redire contemnunt, nonnulli propter guerrarum discrimina per certos nequeunt nuncios commoneri. Unde nobis humiliter supplicasti, ut super hoc tibi salubriter consulentes, qualiter circa illos et ipsorum dioeceses procedere debeas, tibi scribere dignaremur. Nos igitur attendentes, quod propter novitatem mutationis illius terrae et novitatum eventus sit cum maturitate plurima procedendum, devotioni tuae taliter respondemus, ut illos non semel, sed saepe, videlicet primo, secundo et tertio citare procures, et si comparere noluerint, sed in sua voluerint contumacia perdurare, nisi forte se appellationis clypeo duxerint muniendos, quam intra tempus legitimum prosequantur, ipsos per suspensionis et excommunicationis sententias ad tuam obedientiam venire compellas.*] In ecclesiis *autem* eorum, qui se fraudulenter absentant, nec ad ipsos valet citatio pervenire, trinae citationis edictum facias publicari, et, si nec sic curaverint obedire, et ultra sex menses suas deseruerint ecclesias, iuxta sanctiones canonicas eis debent merito spoliari. Contra eos *quoque, sicut praescriptum est,*

etiam procedatur, *scilicet* ut ipsos per suspensionis et excommunicationis sententiam ad tuam obedientiam venire compellas. Quodsi nec sic eorum malitia poterit emolliri, eos *dilectus filius* B. tit. sanctae Susannae presbyter cardinalis apostolicae sedis legatus a spiritualium administratione removeat, et quibus praesunt ecclesiis de personis idoneis faciat provideri; sed in eos degradationis sententiam non promulget, ut cum eis misericorditer, si e xpediat, facilius agi possit. [*Postulasti etc. Dat. Lat. XIII. Kal. Mai. Ao. X.* 1207.]

Chapter XII

Latin source headnote: One privileged to receive the fruits of a prebend while absent in study does not use the privilege while staying in a village or castle where there is no study or a less suitable one.

The same, to the Bishop of Auxerre.

The discretion of your fraternity requested—(*And below:*) You asked furthermore whether, when at times canons to whom, for the sake of studies, it has been granted that in their absence they receive the fruits of their prebends, after obtaining license transfer themselves to villages or castles in which there is no exercise of studies or a less suitable one, the fruits of their prebends are to be conferred upon such men. To this we answer briefly that the aforesaid indulgence ought not to belong to those who commit fraud of this kind, since fraud and deceit ought to furnish protection to no one. [*Furthermore, etc.* (*Cf. c. 15, On Usury, V. 19.*) *Given at the Lateran, on the seventeenth day before the Kalends of June, in the tenth year, 1207.*]

Privilegiatus ut absens in studio fructus praebendae recipiat. Exsistens in villa vel castello, ubi nullum est vel minus competens studium, privilegio non utitur.

Idem Altissiodorensi Episcopo.

Tuae frate rnitatis discretio postulavit (*Et infra:*) Quaesivisti praeterea, ut, quum interdum canonici, quibus studiorum gratia est indultum, ut in absentia sua fructus percipiant praebendarum suarum, accepta licentia se ad villas transferunt vel castella in quibus nullum est vel minus competens studiorum exercitium, utrum praebendarum suarum fructus sint talibus conferendi. Ad quod breviter respondemus, eis, qui huiusmodi fraudem committunt, quum fraus et dolus nemini debeat patrocinium impertiri, praefatam indul gentiam competere non debere. [*Ceterum etc. * (*cf. c.* 15. *de usur. V. * 19.) *Dat. Lat. XVII. Kal. Iun. Ao. X.* 1207.]

Chapter XIII

Latin source headnote: One who swore to reside in a church lawfully absents himself for the services of the church.

Honorius III, to the Provost of Valières.

It was proposed *before us* on your behalf that at the time when you received the provostship of Valières, you took an oath to make residence, *which is called liege residence, in the church of Saint Martin of Tours, in which you hold the same provostship, promising by an oath additionally taken that you would maintain and defend the men and rights of the provostship itself. But because, while prosecuting the rights of the provostship, you sometimes cannot reside in the aforesaid church, fearing concerning the oath taken regarding the residence itself, you humbly requested that provision be made for you by us concerning this. But we* answer your petition thus: that, if, not absenting yourself fraudulently, you faithfully prosecute the rights of your provostship, since from this you ought to be accounted resident, you do not incur perjury.

Qui iuravit in ecclesia residere, pro servitiis ecclesiae licite se absentat.

Honorius III. Praeposito de Valeriis.

Ex parte tua fuit propositum *coram nobis*, quod tempore, quo recepisti praepositurum de Valeriis, praestitisti de fa cienda residentia iuramentum, *+quae ligia nuncupatur, in ecclesia S. Martini Turonensis, in qua praepositurum eandem obtines, praestito insuper iuramento promittens, quod homines et iura ipsius praepositurae manuteneas et defendas. Quum autem prosequendo praepositurae iura residere interdum in ecclesia memorata non possis, de iuramento super ipsa residentia praestito metuens, provideri tibi super hoc a nobis humiliter postulasti. Nos vero* Postulationi tuae taliter respondemus, quod, si te non absentando in fraudem praepositurae tuae iura fideliter prosequeris, quum ex hoc censeri debeas residens, periurium non incurris.

Chapter XIV

Latin source headnote: A member of the Pope's household receives the fruits of his prebend in his absence, notwithstanding a contrary constitution.

The same, to the Chapter of Metz.

Since the beloved son Master Otto, *our scribe and a canon of your church, continually renders pleasing services to us and is held to be no less useful to the same church when absent than when present, we have thought that your whole body should be requested and admonished, and through apostolic writings* we command you that, notwithstanding the constitution said to have issued among you against absent canons, *out of reverence for the Apostolic See and us,* you assign him *in full* the fruits of his prebend annually while he remains in our service, *making fitting satisfaction to him concerning those withdrawn,* since our household members, who exhibit themselves as serviceable toward all around us, ought not to enjoy a lesser prerogative than each of you, whose affairs are very often advanced through them.

Familiaris Papae, non obstante constitutione contraria, praebendae suae fructus percipit in absentia.

Idem Capitulo Metensi.

Quum d ilectus filius magister Otto, *+scriptor noster, canonicus ecclesiae vestrae, grata nobis iugiter impendat obsequia, et non minus, si sit absens, quam praesens, eidem ecclesiae utilis habeatur, universitatem vestram rogandam duximus et monendam, per apostolica vobis scripta* Mandamus, quatenus, non obstante constitutione, quae contra absentes canonicos inter vos dicitur emanasse, *ob reverentiam apostolicae sedis et nostram annuatim* fructus praebendae suae *integraliter* assignetis eidem in nostro servitio commoranti, *satisfacientes sibi congrue de subtractis*, quum familiares nostri, qui circa nos se obsequiales exhibent universis, minori non debeant praerogativa gaudere, quam vestrum singuli, quorum negotia per ipsos saepius promoventur.

Chapter XV

Latin source headnote: Two canons absent with the bishop, or in his service, receive the fruits of their prebends in their absence, notwithstanding a contrary constitution of the church.

The same, to the Bishop of Meaux.

It came to our hearing *through your report* that, although in the church of Meaux there is a certain constitution *entered into,* fortified by oath and confirmed by authority of the Apostolic See, that *namely its* canons who do not reside in the same church *for six months* are deprived of the fruits of their prebends, those alone being excepted whom infirmity *of their own body* would excuse or whom it should happen to be detained in the service of the Apostolic See, *and whom the labor of pilgrimage or literary studies might draw away, the dean and certain other canons of Meaux, on the occasion of a constitution of*

this kind, endeavor to deprive the canons remaining in your service of the fruits of their prebends. Hence, since it is very expedient for you to retain some of those canons in your service, you humbly supplicated us that we deign to provide for your necessity in this matter by the moderation of apostolic provision. Therefore, wishing so to moderate the aforesaid constitution that the said church may perceive fruit from it and you may not incur loss through its abuse, by the authority of the present letters we decree that two of the canons of the aforesaid church, existing in your service, receive in full the fruits of their prebends, since those who remain with you for your service and that of the church itself ought not to be called absent but present.

> Duo canonici absentes cum episcopo, seu in eius servitio, fructus praebendarum suarum percipiunt in absentia, constitutione ecclesiae contraria non obstante.
>
> Idem Meldensi Episcopo.
>
> Ad audientiam nostram *te significante* pervenit, quod, quum in Meldensi ecclesia quaedam sit constitutio *inita*, vallata iuramento et auctoritate sedis apostolicae confirmata, ut *videlicet eius* canonici, qui *per sex menses* non resident in eadem, suarum priventur fructibus praebendarum, illis *duntaxat* exceptis, quos infirmitas *proprii corporis* excusaret, sive in apostolicae sedis s ervitio contingeret detineri, *+quosque peregrinationis labor, aut studia traherent literarum, decanus et quidam alii canonici Meldenses occasione constitutionis huiusmodi canonicos in tuo servitio commorantes praebendarum suarum privare fructibus moliuntur. Unde, quum tibi plurimum expediat aliquos canonicorum ipsorum in tuo servitio retinere, nobis humiliter supplicasti, ut super hoc necessitati tuae apostolicae dignaremur provisionis moderamine providere. Volentes igitur sic constitutionem moderari praedictam, ut dicta ecclesia fructum sentiat ex eadem, et tu per eius abusum dispendium non incurras, praesentium auctoritate*, Decernimus, ut duo ex canonicis ecclesiae memoratae, in tuo servitio exsistentes, suarum fructus integre percipiant praebendarum, quum absentes dici non debeant, sed praesentes, qui tecum pro tuo et ipsius ecclesiae servitio commorantur.

Chapter XVI

Latin source headnote: If a church suffers a lack of ministers, those privileged concerning absence are compelled to return by withdrawal of revenues. This it says, and it is a good text and can be much practiced.

Gregory IX, to the Patriarch of Antioch, Legate of the Apostolic See.

Since ecclesiastical benefices are assigned for this—(*And below:*) Indeed, it has become known to us that the church of Antioch is almost destitute of ministers because many of its servants are absent. Hence we command that, notwithstanding apostolic indulgences and the license of your predecessors, you recall the absent canons and assessors to reside in the aforesaid church; and if they do not come, while they are absent you are to cause the same church to be fittingly served from their benefices, converting to the use of the same church what remains from the aforesaid benefices.

> Si ecclesia patitur ministrorum defectum, privilegiati super absentia per subtractionem proventuum redire coguntur. H. d. et est bonus textus, et potest multum practicari.
>
> Gregorius IX. Patriarchae Antiochiae apostolicae sedis Legato.
>
> Quum ad hoc sint ecc lesiastica beneficia deputata (*Et infra:*) Sane nobis innotuit, quod ecclesia Antiochena multis ex servitoribus eius absentibus est fere destituta ministris. Unde mandamus, quatenus, non obstantibus apostolicis indulgentiis et praedecessorum tuorum licentia, absentes canonicos et assisios revoces ad residendum in ecclesia supra dicta, et si non venerint, tu de ipsorum beneficiis, dum absentes fuerint, ipsi ecclesiae facias congrue deserviri, in utilitatem eiusdem quod ex praefatis beneficiis superfuerit convertendo.

Chapter XVII

Latin source headnote: A nonresident cleric is deprived of his benefice if, after being admonished, he does not return and does not allege a just excuse. This it says, and it is a noteworthy case.

The same.

Let it be lawful for you to despoil clerics who have obtained benefices requiring residence in churches of your jurisdiction, if they have transferred to another diocese for the purpose of remaining there without your license and, after being admonished, have not returned, of the said benefices, unless they have shown a reasonable excuse.

> Privatur beneficio clericus non residens, si monitus non redeat, nec iustam excusationem alleget. H. d. et est casus notabilis.
>
> Idem.
>
> Clericos in ecclesiis tuae iurisdictionis beneficia, quae residentiam exigunt, assecutos, si ad alterius dioecesim absque licentia tua morandi causa transierint, liceat tibi, si moniti non redierint, dictis beneficiis, nisi excusationem rati onabilem ostenderint, spoliare.

Title V: On Prebends and Dignities

Chapter I

Latin source headnote: There is no succession to the goods of a church by right of consanguinity.

From the Council of Poitiers.

Let no one of the clergy or *of the* people seek to have ecclesiastical goods for himself by right of consanguinity.

> **DE PRAEBENDIS ET DIGNITATIBUS.**
>
> In bonis ecclesiae non succeditur iure consanguinatis.
>
> Ex concilio Pictaviensi.
>
> Ut nullus de clero sive *de* populo ecclesiastica bona iure consanguinitatis sibi requirat habenda.

Chapter II

Latin source headnote: It is not lawful for a bishop to ordain anyone without a title.

In the Body of Canons.

Let it not be lawful for any bishop to ordain clerics and furnish them no means of support; rather, let him choose one of two alternatives: either let him not make clerics, or, if he makes them, let him give them that from which they can live.

> Non licet episcopo aliquem ordinare sine titulo.
>
> In Corpore Canonum.
>
> Non liceat ulli episcopo ordinare clericos, et eis nullas alimonias praes tare, sed duorum alterum eligat : vel non faciat clericos, vel si fecerit, det illis unde vivere possint.

Chapter III

Latin source headnote: The goods of churches are common, and no one ought to claim them for himself as his own.

Gregory, to Anthemius the Subdeacon.

No reason permits that what is recognized to have been given for the common utility be applied to anyone's private uses.

> Bona ecclesiarum communia sunt, nec debet quisquam tanquam propria sibi vendicare.
>
> Gregorius Anthemio Subdiacono.
>
> Ratio nulla permittit, ut quod pro communi utilitate datum esse cognoscitur propriis cuiusquam usibus applicetur.

Chapter IV

Latin source headnote: One who ordained to sacred orders without a title someone not having from his own property that from which he may live is bound to provide for him from his own property until he has obtained some title.

Alexander III, in the Lateran Council.

If a bishop ordains anyone as deacon or presbyter without a certain title from which he may receive the necessities of life, let him furnish necessities to him until he assigns him in some church suitable stipends of clerical service, unless perhaps the one so ordained can have the support of life from his own or his paternal inheritance.

> Qui ordinavit aliquem ad sacros ordines sine titulo, non habentem de suo unde vivat, providere tenetur ei de suo, donec aliquem titulum fuerit consecutus.
>
> Alexander III. in concilio Lateranensi.
>
> Episcopus, si aliquem sine certo titulo, de quo necessaria vitae percipiat, in diaconum vel presbyterum ordinaverit, tamdiu ei necessaria subministret, donec in aliqua ecclesia ei convenientia stipendia militiae clericalis assignet, nisi talis *forte* ordinatus de sua vel paterna hereditate subsidium vitae possit habere.

Chapter V

Latin source headnote: Bishops ought not to permit anyone to hold several churches.

The same, in the same council.

Because the ambition of certain men has *now* advanced so far that they are reported to have not two or three but *six or* more churches, although they cannot expend the provision owed upon even two, we command that this be corrected through our [*most beloved*] brothers and fellow bishops; and we wish the lack of those who are able to serve churches [*worthily*] to be relieved from the multitude of prebends, which is hostile to the canons, introduces matter for dissolution and wandering, and contains a certain danger of souls.

> Non debent episcopi permittere, quem plures ecclesias obtinere.
>
> Idem in eodem.

Quia in tantum quorundam *iam* processit ambitio, ut non duas vel tres, sed *sex aut* plures ecclesias perhibeantur habere, quum nec duabus possint debitam provisionem impendere, per fratres et coepiscopos nostros [*carissimos*] hoc emendari praecipimus, et de multitudine praebendarum canonibus inimica, quae dissolutionis materiam et evagationis inducit, certumque continet periculum animarum, eorum, qui ecclesiis [*digne*] deservire valeant, indigentiam volumus sublevari.

Chapter VI

Latin source headnote: By mandate of the Pope, one is not bound to provide for him who concealed a benefice in the letters, or for whom provision cannot be made without scandal. This it says; and in its last point this text is always to be held in mind.

The same.

Since we are bound *by the duty of the governance undertaken to attend to the provision of clerics, we direct our writings for them to you and to other prelates of churches, and sometimes even concerning the provision of those who are known to have another sufficient benefice. But because sometimes we do not know that those for whom we write to you and other prelates of churches have another benefice,* if you have received *our requests and* mandate for the provision of someone, *or shall at some time receive them,* who has another benefice from which he is able to be suitably sustained, unless perhaps mention of this is made in the letters themselves, or if provision cannot be made for him without scandal, we bear it with equanimity if you have not thought that *our requests and* mandate should be executed for him.

Ad mandatum Papae non tenetur quis providere illi, qui beneficium in literis tacuit, vel cui sine scandalo provideri non potest. H. d. et in ultimo est iste textus semper menti tenendus.

Idem.

Quum teneamur +*ex debito suscepti regiminis provisioni clericorum intendere, tibi et aliis ecclesiarum praelatis pro eis scripta nostra dirigimus, et interdum etiam super illorum provisione, qui aliud sufficiens beneficium habere noscuntur. Verum quia aliquando ignoramus, eos habere aliud beneficium, pro quibus tibi et aliis ecclesiarum praelatis scribimus ,* Si *preces et* mandatum nostrum pro alicuius provisione receperis *vel aliquando recipies*, qui aliud beneficium habeat, de quo valeat commode sustentari, nisi forte in literis ipsis de hoc mentio habeatur, aut si non potest ei sine scandalo provideri, aequanimiter sustinemus, si pro eo *preces et* mandatum nostrum non duxeris exsequendum.

Chapter VII

Latin source headnote: One having several churches is compelled to choose one and relinquish the other.

The same.

Upon the report of I., a presbyter and *bearer of the present letters,* we learned that, although he had two churches, your archdeacon despoiled him of one *of them* and assigned the same to a certain presbyter named G.; but the aforesaid I., perceiving that he was burdened in this respect, appealed to the metropolitan, namely the Archbishop of Reims. And when *the same I.* had been restored to the aforesaid church by mandate of the same archbishop, *the aforesaid G. appealed to our hearing. But afterward* the aforesaid archdeacon bound the same I. with the bond of excommunication because, when summoned to his presence so that he might *grant to the aforesaid* G. *one of the aforesaid churches,* he disdained to come. But we, causing him to be absolved from the sentence by which he was bound,

have thought that the same man should be remitted to you. Wherefore we command you that, *the parties having been summoned before your presence,* after one of the aforesaid churches, whichever he wishes, has been left to the aforesaid I. *with its appurtenances,* you do not delay in assigning the other to the aforesaid G., if he has no church; otherwise, without delay assign it to another suitable person lacking an ecclesiastical benefice.

> Habens plures ecclesias alteram eligere et alteram dimittere compellitur.
>
> Idem.
>
> Referente I. presbytero *latore praesentium*, accepimus, quod, quum, duas haberet ecclesias, archidiaconus tuus ipsum altera *illarum* spoliavit, et cuidam presbytero G. nomine assignavit eandem, praedictus autem I., sentiens se in hac parte, gravari, ad metropolitanum, videlicet Remensem archiepiscopum appellavit. Quumque *idem I.* de mandato eiusdem archiepiscopi in praedicta ecclesia restitutus fuisset, *memoratus G. ad nostram audientiam appellavit. Postea v ero* praefatus archidiaconus eundem I. eo, quod ad praesentiam suam vocatus, ut *alteram de praedictis ecclesiis praenominato* G. *concederet*, venire contempsit, vinculo excommunicationis adstrinxit. Nos autem ipsum a sententia, qua tenebatur, facientes absolvi, *eundem ad te duximus remittendum. Quocirca* tibi mandamus, quatenus, *partibus ante praesentiam tuam convocatis*, praescripto I. de praedictis ecclesiis una, quam voluerit, *cum pertinentiis suis* relicta, alteram praefato G., si ecclesiam non habet, non differas assignare; alioquin ipsam alteri personae idoneae beneficio ecclesiastico carenti incunctanter assignes.

Chapter VIII

Latin source headnote: Prebends and dignities ought not to be divided, nor even exchanged.

The same, in the Council of Tours.

While the greater benefices of a church remain in their integrity, it seems exceedingly unbecoming that the prebends of lesser clerics should suffer division. Therefore, so that the Church may have unity established in its lesser members just as in its greater ones, we forbid the division of prebends or the exchange of dignities to take place.

> Praebendae et dignitates non debent dividi, nec etiam permutari.
>
> Idem in concilio Turonensi.
>
> Maioribus ecclesiae beneficiis in sua integritate manentibus indecorum nimis videtur, ut minorum clericorum praebendae patiantur sectionem. Idcirco, ut, sicut in magnis, ita quoque in minimis membris suis firmatam ecclesia habeat unitatem, divisionem praebendarum aut dignitatum permutationem fieri prohibemus.

Chapter IX

Latin source headnote: One received as a canon by promise of the chapter ought, when the opportunity has offered itself, to have a prebend. See chapter 2, *On the Granting of Prebends*, in the Sixth Book, with the gloss.

The same, to the Archbishop of Canterbury.

It has been reported *to our ears that, although our beloved son Master Ja. has been canonically instituted by you in your church and has full power as a canon in the choir, chapter, and other things whose use is common, you have not yet taken care to assign him a prebend according to your promise, although several prebends are said to have*

become vacant in that church after your promise. Therefore, because it is worthy *and consonant with reason in every way* that, after Master I. has been instituted a canon in your church and had from you a promise that the first prebend should be conferred upon him when one became vacant in that church, he ought to enjoy the integrity of a prebend, *especially since, as is proposed to us, he is learned and discreet, by apostolic writings and by way of precept* we command your fraternity that, if the same I. has been canonically instituted in your church and has power as a canon in the choir and chapter and in other things whose use is common, you liberally grant and assign him, according to your promise, a prebend if any *of the old ones in that church* is now vacant, or when one shall first become vacant there, *every occasion and contradiction ceasing, in such a way that you can deservedly be commended for constancy and gravity and we are not compelled to write to you again because of this,* because it is not fitting that one who is known to have been received as a canon should lack a prebend.

> Receptus in canonicum ex promissione capituli debet quando facultas se obtulerit, habere praebendam. Vid. cap. 2. de concess. praebend. in VI. cum gloss.
>
> Idem Cantuariensi Archiepiscopo.
>
> Relatum est +*auribus nostris, quod, quum dilectus filius noster magister Ia. in ecclesia tua sit per te canonice institutus, et in choro, capitulo et aliis, quorum communis est usus, plenam, sicut canonicus habeat, potestatem, nondum sibi praebendam iuxta promissionem tuam assignare curasti, licet post promissum tuum plures praebendae in ipsa ecclesia vacasse dicantur.* Quoniam igitur dignum est *et omnimodis consentaneum rationi*, ut, postquam magister I. in ecclesia tua canonicus est institutus, et a te habuit in promissis de conferenda sibi prima praebenda, quum in ecclesia ipsa vacaret, ut debeat praebendae integritate gaudere, *praesertim quum, sicut nobis proponitur, literatus sit et discretus, fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus, si idem I. in ecclesia tua est canonice institutus, et in choro et capitulo et in aliis, quorum usus est communis, potestatem sicut canonicus habet, ei praebendam, si qua *de antiquis in ecclesia ipsa* nunc vacat, vel quum ibi primo vacaverit, *omni occasione et contradictione cessante* secundum promissionem tuam concedas liberaliter et assignes *ita, quod de constantia et gravitate possis merito commendari, et nos propter hoc iterato tibi scribere non compellamur*, quia non est congruum, ut praebenda careat qui in canonicum noscitur esse receptus.

Chapter X

Latin source headnote: Religious cannot diminish the revenues of their churches with respect to the portion owed to rectors or vicars, nor divide parishes.

The same, to the Canons Regular and Monks of the Diocese of York.

The root of avarice, which is the service of idols, *ought to be rooted out more diligently by those who, renouncing the vanities of the world, have chosen to serve the Lord in religious habit*. We have understood, *however,* that in your churches from which you have been accustomed to receive fixed pensions, you have diminished the portions or ancient revenues that certain clerics of those churches are known formerly to have had. Therefore, *because this proceeds from the root of avarice and cupidity, which you ought to avoid in every way, by apostolic writings and by way of precept* we command your fraternity that, if you have presumed *unduly,* without the *counsel or* consent of your archbishop, *after he obtained the archbishopric,* to diminish any portions or ancient revenues of clerics or to divide parishes, you restore *them* to their former integrity, *and preserve intact and unimpaired the reasonable and ancient pensions of the clerics who ought to serve at the altars; and in churches from which you have been accustomed to receive fixed pensions from them, in no way diminish by rash presumption the portions or ancient revenues that clerics had in them before the time of that*

archbishop and after he obtained the archbishopric, and do not presume in any way to divide the parishes of churches by your own authority.

> Religiosi reditus ecclesiarum suarum diminuere non possunt respectu portionis, quae debetur rectoribus seu vicariis, nec parochias dividere.
>
> Idem Canonicis regularibus et Monachis Eboracensis dioecesis.
>
> Avaritiae, quae est idolorum servitus, *+ii debent radicem studiosius exstirpare, qui saeculi vanitatibus renunciantes Domino elegerunt in religionis habitu militare*. Intelleximus *autem*, quod in ecclesiis vestris, de quibus certas pensiones consuevistis percipere, portiones vel antiquos reditus minorastis, quos nonnulli clerici ecclesiarum ipsarum olim habuisse noscuntur. Ideoque, *quoniam hoc ex radice avaritiae et cupiditatis procedit, quam debetis modis omnibus evitare, fraternitati vestrae per apostolica scripta praecipiendo* mandamus, quatenus, si quas portiones vel antiquos reditus clericorum *indebite* sine *consilio vel* consensu archiepiscopi vestri, *postquam ipse archiepiscopatum habuerit*, minuere vel parochias dividere praesumpsistis, *eas* ad integritatem pristinam revocetis, *et rationabiles et antiquas pensiones clericorum, qui debent altaribus deservire, integras et illibatas servetis, et in ecclesiis de quibus certas eis pensiones soliti estis percipere, portiones vel antiquos reditus, quos in illis clerici ante tempora ipsius archiepiscopi et postquam adeptus est archiepiscopatum habuerant, nullatenus praesumptione temeraria minuatis, ne parochias ecclesiarum auctoritate vestra dividere aliquatenus praesumatis*.

Chapter XI

Latin source headnote: A prelate and chapter can impose an honorable burden upon a vacant prebend, to which the prebendary is bound.

The same, to the Provost and Chapter of Lille.

It was signified to us that, by common [*consent and*] will, you gave one prebend in your church to a certain priest in such a way *indeed* that he ought to celebrate the Mass of Saint Mary daily unless burdened by bodily infirmity, and could not relinquish your church except by the common consent both of the provost and of the chapter, or delegate the anniversary of that prebend to anyone. We confirm this institution to this extent: that the aforesaid priest, unless impeded by bodily infirmity, ought assiduously to render his service to the aforesaid church and, as frequently as he can, with his honorable conduct and due devotion preserved, celebrate the solemnities of Masses; nor is it lawful for him to withdraw this service from it, whether for the sake of pleasure or by transferring himself to another church.

> Possunt praelatus et capitulum praebendae vacanti honestum onus imponere, ad quod praebendarius teneatur.
>
> Idem Praeposito et Capitulo Insulensibus.
>
> Significatum est nobis, quod cuidam sacerdoti praebendam unam in ecclesia vestra communi [*consensu et*] voluntate dedistis, ita *quidem*, quod missam de sancta Maria, nisi corporis infirmitate gravatus sit, debeat quotidie celebrare, et ecclesiam vestram non nisi communi tam propositi quam capituli consensu possit dimittere, vel cuiquam praebendae illius anniversarium delegare. Quam siquidem institutionem eatenus confirmamus, ut praedictus sacerdos, nisi infirmitate corporis fuerit impeditus, assidue debeat obsequium suum impendere ecclesiae memoratae, et, quanto frequentius potest, salva honestate sua et debita devotione missarum solennia celebrare, nec sibi liceat hoc illi subtrahere, sive causa voluptatis, sive se ad aliam ecclesiam transferendo.

Chapter XII

Latin source headnote: Upon the presentation of religious, no one ought to be instituted by the bishop in their churches unless a fitting portion of the revenues is first assigned to him.

The same, to the Archbishop of Worcester.

Concerning the monks, *however,* who burden vicars of parish churches *to such an extent* that they cannot maintain hospitality *or have an honorable sustenance,* you are to have that *care and* providence that you receive no one upon presentation of the monks unless so much from the revenues of the church has been assigned to him before you that he can pay the episcopal dues and have a fitting *and sufficient* sustenance. *But from those priests to whom the care of souls has been committed by you or your predecessors in churches of the monks, you will be able to withdraw it unless an honorable and sufficient sustenance has been assigned to them by the monks.*

> Ad praesentationem religiosorum in eorum ecclesiis nullus debet institui per episcopum, nisi prius ei congrua portio redituum assignetur.
>
> Idem Vigoriensi Archiepiscopo.
>
> De monachis *autem*, qui vicarios parochialium ecclesiarum *in tantum* gravant, ut hospitalitatem tenere non possint, *nec honestam sustentationem habere*, eam *curam et* providentiam habeas, quod ad praesentationem monachorum nullum recipias, nisi tantum ei de proventibus ecclesiae coram te fuerit assignatum, unde iura episcopalia possit persolvere, et congruam *atque sufficientem* sustentationem habere. *Illis autem sacerdotibus quibus a te vel praedecessoribus tuis in ecclesiis monachorum cura est animarum commissa, eam subtrahere poteris, nisi ipsis a monachis honesta et sufficiens sustentatio fuerit assignata.*

Chapter XIII

Latin source headnote: No one can have several dignities or personates in one or in diverse churches.

The same, to the Archbishop of Salerno.

To these matters: although *that custom is not consonant with reason according to which, if a cleric dies from the Kalends of March to the Kalends of November, he grants, according to his own will, the right to receive the entire benefice that he has for that year, nevertheless, because it is preserved in many churches, you will be able sufficiently to tolerate it in your archbishopric, especially if at his death the cleric is burdened by a load of debts. And* it is contrary to all reason that one cleric should hold several dignities or personates in one *church* or *in* diverse churches, since each office in churches requires the assiduity of persons.

> Plures dignitates vel personatus in una vel in diversis ecelesiis quis habere non potest.
>
> Idem Salernitano Archiepiscopo.
>
> Ad haec licet +*consuetudo illa non sit consona rationi, secundum quam si clericus, a Kalendis Martiis usque ad Kalendas Novembris decesserit, totum beneficium quod habet anno illo percipere, pro sua voluntate largitur; quia tamen in multis ecclesiis conservatur, eam satis in archiepiscopatu tuo poteris tolerare, praesertim si clericus in decessu suo gravetur onere debitorum. Et* Illud est omni rationi contrarium, ut unus clericus in una *ecclesia* vel *in* diversis ecclesiis plures dignitates vel personatus obtineat, quum singula officia in ecclesiis assiduitatem exigant personarum.

Chapter XIV

Latin source headnote: One having several dignities is compelled to relinquish one.

The same, to the Archbishop of Bordeaux.

Furthermore, concerning *Archdeacon* G., who has been constituted archdeacon in your church and that of Toulouse and has been regularly professed in each church, and who, *after collecting those things that he can collect in the archdeaconry of your church, returns to Toulouse without your knowledge and remains there for a year or more,* we command your prudence that you cause the same *G., if the matter is so,* to be content with one archdeaconry, whichever he prefers, *occasion and appeal ceasing.*

> Habens plures dignitates alteram dimittere compellitur.
>
> Idem Burdegalensi Archiepiscopo.
>
> Praeterea de *archidiacono* G., qui in tua et Tolosana ecclesia est archidiaconus constitutus, et in utraque ecclesia regulariter professus, *collectis illis, quae in archidiaconatu ecclesiae tuae colligere potest, praeter conscientiam tuam Tolosam regreditur, et ibi per annum vel eo amplius moratur, prudentiae tuae* mandamus, quatenus eundem *G., si res ita se habet*, altero, quem maluerit, archidiaconatu *occasione et appellatione cessante* facias esse contentum.

Chapter XV

Latin source headnote: If one elected to a second church is unwilling to relinquish the first, the electors can withdraw and not accept the elect.

The same, to the Archbishop of Genoa.

Since you are not unaware that one church ought to belong to one priest, *we regard it as astonishing and unworthy if you wish to grant one person a place in several churches and introduce into your episcopate the custom of the Gallican Church, which, since it receives one person to several benefices contrary to the statutes of the sacred canons, is not approved by us, although it cannot be corrected because of the multitude of delinquents.* Therefore, since the messenger of *that* presbyter who contends that he has a place in two churches, and certain clerics of the other church *in which he said that he had a place,* have come to our presence against him, we, considering that it is not fitting *or honorable* for the same presbyter to have a place in two churches, *will and* command that you cause him to remain content with *that* benefice which he has. But if perhaps the archpriest and clerics of the other church consented to him, since they now dissent, to their scandal, he ought not [*either*] to seek or have a place in that church.

> Si electus ad secundam ecclesiam noluerit dimittere primam, eligentes possunt resilire, et electum non acceptare.
>
> Idem Genuensi Archiepiscopo.
>
> Quum non ignores, quod una ecclesia unius debeat esse sacerdotis, *+mirabile gerimus et indignum, si uni personae locum in pluribus ecclesiis velis concedere, et in episcopatu tuo inducere consuetudinem ecclesiae Gallicanae, quae, quum unum ad plura recipiat beneficia contra sacrorum canonum instituta, non comprobatur a nobis, licet non possit prae multitudine delinquentium emendari*. Quum igitur nuncius *illius* presbyteri, qui in duabus ecclesiis locum habere contendit, et quidam clerici alterius ecclesiae, *in qua locum se habere dicebat*, ad nostram praesentiam accesserint contra eum, nos attendentes, non esse conveniens *vel honestum*, ut idem presbyter locum habeat in duabus ecclesiis, *volumus et* mandamus, quatenus ipsum *illo* beneficio, quod habet, facias manere contentum. Quodsi forte archipresbyter et clerici alterius ecclesiae in eum

consenserint, eis nunc dissentientibus, cum ipsorum scandalo non debet locum in ipsa ecclesia [*vel*] quaerere vel habere.

Chapter XVI

Latin source headnote: When someone has been ordained to sacred orders by a bishop without a title, no one presenting him, the ordainer or his successor is compelled to provide necessities until he has a title.

Innocent III, to the Bishop of Zamora.

Since according to the Apostle one who serves the altar ought to live from the altar, and one who is chosen for the burden ought not to be repelled from the reward, it is apparent by similitude that clerics ought to live from the patrimony of Jesus Christ, to whose service they are assigned, as the very rationale of the name persuades. For since clerics are named from κλῆρος, which is lot or inheritance, because in their ordination either they are taken into the Lord's inheritance or obtain an inheritance in him, so that they can truly sing with the Prophet, saying, "The Lord is the portion of my inheritance," it is worthy that they be sustained by the stipends of the church in which and through which they are enrolled in divine services. But although our predecessors wished the ordinations of those who are promoted without a certain title to be void and empty, to the injury of the ordainers, we nevertheless, desiring to act more benignly, will that those ordained be provided for by the ordainers or their successors until through them they obtain ecclesiastical benefices, *lest perhaps we seem with hardened face to neglect the cries of poor clerics, which we believe enter the ears of the Lord of Sabaoth*. Hence it is that, since *the beloved son* G., bearer of the present letters, was, *as he asserts,* promoted to the subdiaconate by *G. of good memory,* your predecessor, no one presenting him, [*and has obtained no ecclesiastical benefice,*] through apostolic writings we command your fraternity that, if those to whom we have thought that his examination should be committed, after you have lawfully been cited so that you may be present personally or through a suitable representative and may be permitted to propose whatever you reasonably think should be proposed concerning both the suitability of the person and the amount of the benefice, find him suitable *and not unworthy of ecclesiastical benefice,* you suitably furnish him the necessities of life until through you he has obtained a competent ecclesiastical benefice in the church of Zamora or *in* another, knowing for certain that, if through their examination he is found suitable and you neglect to provide for him according to our mandate, when this becomes known to us through their letters we shall compel you by ecclesiastical severity to execute it, *because, just as we do not wish to command unjust things, so, when we command just things, we wish to be heard effectually.* [*Given at the Lateran, on the third day before the Nones of April, 1198.*]

Ordinato ad sacros per episcopum sine titulo, nemine praesentante, ordinator vel successor compellitur in necessariis providere, donec titulum habuerit.

Innocentius III. Zamorensi Episcopo.

Quum secundum Apostolum qui altario servit vivere debeat de altari, et qui ad onus eligitur repelli non debeat a mercede, patet a simili, ut clerici vivere debeant de patrimonio Iesu Christi, cuius obsequio deputantur, ut ipsa nominis ratio persuadet. Quum enim a κλῆρος, quod est sors vel hereditas, clerici appellentur, quia in sui ordinatione vel assumuntur in hereditatem Domini, vel assequuntur hereditatem in ipso, ut vere possint psallere cum Propheta, dicente: " Dominus pars hereditatis meae, " dignum est, ut ecclesiae stipendiis sustententur, in qua et per quam divinis obsequiis adscribuntur. Licet autem praedecessores nostri ordinationes eorum, qui sine certo titulo promoventur, in iniuriam

ordinantium irritas esse voluerint et inanes, nos tamen, benignius agere cupientes, tam diu per ordinatores vel successores eorum provideri volumus ordinatis, donec per eos ecclesiastica beneficia consequantur, *ne forte clamores clericorum pauperum, quos in aures Domini Sabaoth credimus introire indurata facie negligere videamur*. Inde est, quod, quum *dilectus filius* G. lator praesentium a *bonae memoriae G.* praedecessore tuo, *sicut asserit*, fuerit ad subdiaconatum nullo praesentante promotus, [*nec ullum sit ecclesiasticum beneficium assecutus,*] *fraternitati tuae per apostolica scripta* mandamus, quatenus, si eum hi, quibus examinationem ipsius duximus committendam, te citato legitime, ut per te ipsum vel idoneum responsalem intersis, et tam super idoneitate personae quam etiam super quantitate beneficii proponere tibi liceat quicquid rationabiliter duxeris proponendum, idoneum esse repererint *et ecclesiastico beneficio non indignum*, tam diu ei vitae necessaria congrue subministres, donec per te in Zamorensi ecclesia vel *in* alia fuerit competens beneficium ecclesiasticum assecutus, sciturus pro certo, quod, si per examinationem eorum fuerit repertus idoneus, et tu ei iuxta mandatum nostrum neglexeris providere, quum hoc nobis per literas eorum innotuerit, ad id exsequendum te per districtionem ecclesiasticam compellemus, *quia, sicut nolumus iniusta praecipere, sic, quum iusta praecipimus, volumus efficaciter exaudiri.* [*Dat. Lat. III. Non. April.* 1198.]

Chapter XVII

Latin source headnote: One who knowingly conferred upon an ignorant person a prebend that he could not confer, when that prebend has been evicted, is bound to confer another that he can confer. This it says, and it is a singular disposition.

The same, to the Archbishop of Sens.

Among other things, [*by which we are instructed for the governance of the universal Church, he whose grace, not our merit, advanced us to its governance left us a wondrous and marvelous example of his kindness, namely in this: that, just as we see was done by the Lord concerning Blessed Peter, whose successors we are, though unworthy, he chose the weak things of the world so that he might confound every strong thing, mercifully foreseeing that he who before his calling had sustained the weight of secular passions, having experienced the frailty of the human condition, would know better how to suffer with his brothers and more suitably how to pity them, while, conscious of himself, he would have in himself manifest proof in similar things. Setting these things before our eyes, after our beloved son P. de Cassaneto explained to us the sequence of his business, we were moved by paternal piety toward him. Since certainty concerning the matter that we had handled while we formerly discharged a lesser office supported his account in part with testimony of fuller credibility, we assumed the endeavor of a more solicitous mind to assist him and relieve his useless labors, lest his pitiable affliction, which was already threatening him with doubtful perplexity, complain that the Apostolic See was devoid of its customary mercy and the remedy owed.*] *Indeed, we believe it to be sufficiently known to you how,* after G. (*de Bochar*), formerly a canon of Laon, [*the beloved son,*] had resigned the prebend of that church, which by an exchange of prebends ought by apostolic authority to have been assigned to *the beloved son* H., then a Siclunian canon, *by the dean of Reims of good memory,* Master P. was invested with that same prebend by [*our venerable brother*] the Bishop of Laon, *and was invested both in choir and in chapter by the dean and canons of Laon, the due solemnities having been employed according to the custom of the church of Laon.* When a controversy concerning this had arisen between the master himself and the said H., [*and an appeal had been interposed to the Apostolic See, although the same master, coming to the same See with great labors and expenses, after a long wait that, with the inclemency of a dangerous season threatening, afflicted him with much weariness and the hardships of diverse persecutions and brought him almost to extremity, had completed his business against the aforesaid H. according to his desire, nevertheless, when he was afterward absent because of illness, at the instance of the often-mentioned H.,*

then present at the Apostolic See,] all things were retracted by Pope C. *of good memory,* our predecessor, [*by counsel of the brothers,*] *and thus the master himself was wholly frustrated of his hope* [*and after his deprivation was compelled to approach the Apostolic See again, seeing that no remedy remained for him unless the Apostolic See should think that merciful provision ought to be made for his manifold desolation. Therefore, because of these and many other things that rendered his cause favorable, we, bearing a paternal affection toward him, by mandate strictly command the aforesaid dean and canons of Laon that they have the same master, who is known to have been instituted in that church by the said bishop and admitted by them as a brother, as a canon both in choir and in chapter, with that which the Apostolic See definitively adjudged concerning the aforesaid H. preserved, notwithstanding anyone's appeal or contradiction, and treat him with fraternal charity in the other things that pertain to a canon. Furthermore, we firmly forbid them to presume in any way to receive anyone as a canon until the aforesaid master has fully obtained the benefice of a prebend in the aforesaid church. Hence, by apostolic writings and by way of precept, we command your fraternity that, if the aforesaid dean and chapter neglect to fulfill our mandate, you do not omit, after diligent admonition has first been made, to compel them by ecclesiastical severity, with the obstacle of appeal removed, to carry out his reception as has been said, restraining by the same censure any who think that they should oppose the apostolic mandate. Know, moreover, that, because we do not wish the same bishop to be able to excuse himself under occasion of some promise or by authority of any rescript obtained from the Apostolic See in order to elude our mandate,*] we have given the aforesaid bishop a *strict* command that, until the same master has obtained a prebendal benefice in that church, he is not to presume to assign a prebend to anyone else *in any manner whatsoever*; but if perhaps he presumes to do so, we decree it [*wholly*] null and void. For it is fitting that, because he assigned him a prebend that he could not assign by law, he assign him one that he can assign by law, lest he seem to have assigned him a prebend fraudulently. [*Given at Rome, at Saint Peter's, on the tenth day before the Kalends of May, in the first year of our pontificate, 1198.*]

> Qui hoc ignoranti scienter contulit praebendam, quam non potuit, illa evicta aliam, quam potest, conferre tenetur. H. d. et est singularis dispositio.
>
> Idem Archiepiscopo Senonensi.
>
> Inter cetera, +[*quibus ad universalis ecclesiae regimen instruimur, ille, cuius gratia, non meritum nostrum, ad eiusdem regimen nos provexit, mirum et mirabile nobis suae benignitatis reliquit exemplum, in eo videlicet, quod sicut de B. Petro, cuius sumus, licet immeriti, successores, a Domino factum esse videmus, infirma mundi elegit, ut fortia quaeque confunderet misericorditer praevidens, quod qui saecularium pondus ante suam vocationem sustinuerat passionum, fragilitatem humanae conditionis expertus, fratribus suis melius compati sciret et commodius misereri, dum sibi conscius de se haberet evidens in similibus argumentum. Haec vero ante oculos nostros proponentes, postquam dilectus filius noster P. de Cassaneto seriem negotii sui nobis exposuit, paterna super eum moti fuimus pietate, cuius factum, quum ex certitudine rei, quam nos, dum olim minori fungeremur officio, tractaveramus, in parte plenioris fidei testimonium adiuvaret, ad succurrendum ei et labores ipsius inutiles relevandos, animi studium sollicitioris assumpsimus, ne miseranda ipsius afflictio, quae iam ei perplexitatem dubiam minabatur, sedem apostolicam expertem esse solitae misericordiae ac remedii debiti causaretur.*] *Tibi siquidem satis credimus esse notum, qualiter*, Facta resignatione a [*dilecto filio*] G. (*de Bochar*) quondam canonico Laudunensi de praebenda eiusdem ecclesiae, quae per commutationem praebendarum *dilecto filio* H. tunc Siclunensi canonico *a bonae memoriae decano Remensi* auctoritate apostolica assignari debebat, magister P. per [*venerabilem fratrem nostrum*] Laudunensem episcopum de praebenda fuit investitus eadem, *et tam in choro quam in capitulo per decanum et canonicos Laudunenses adhibitis solennitatibus debitis iuxta Laudunensis ecclesiae consuetudinem investitus*. Super quo quum inter magistrum ipsum et dictum H. controversia suborta fuisset, [*et appellatio ad sedem apostolicam interiecta, licet idem magister cum magnis laboribus et expensis ad eandem sedem*

accedens, post diutinam exspectationem, quae sub intemperie periculosi temporis imminente ipsum taedio multo et diversarum persecutionibus incommoditatum affectum fere usque ad extrema deduxit, suum negotium contra memoratum H. pro suo desiderio complevisset, eo tamen postmodum causa infirmitatis absente ad instantiam saepefati H. tunc ad apostolicam sedem praesentis] per *bonae memoriae* C. Papam praedecessorem nostrum [*de fratrum consilio*] omnia retractata fuerunt, *sicque ipse magister sua spe omnino frustratus* [*post destitutionem suam sedem apostolicam fuit iterum adire coactus, nullum sibi videns remedium superesse, nisi eius desolationi multiplici sedes apostolica duceret misericorditer providendum. Propter haec igitur et alia multa, quae causam eius favorabilem reddiderunt, nos circa ipsum paternum gerentes affectum, praedictis decano et canonicis Laudunensibus mandando districte praecipimus, ut eundem magistrum, qui per dictum episcopum in eadem ecclesia institutus fuisse dignoscitur et per ipsos in fratrem admissus, salvo eo, quod de praefato H. sedes apostolica sententialiter diffinivit, non obstante appellatione vel contradictione cuiuslibet, canonicum habeant tam in choro quam in capitulo, et in aliis, quae ad canonicum pertinent, fraterna eum caritate tractantes. Praeterea ipsis firmiter inhibemus, ne aliquem in canonicum recipere aliquo modo praesumant, donec praedictus magister praebendae beneficium in praefata ecclesia plenarie sit adeptus. Unde fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus, si memorati decanus et capitulum mandatum nostrum neglexerint adimplere, tu eos ad receptionem eius, prout dictum est, faciendam sublato appellationis obstaculo per districtionem ecclesiasticam, monitione tamen diligenti praemissa, compellere non omittas, quoslibet, qui mandato apostolico se duxerint opponendos, eadem censura compescens. Noveris autem, quod, quia nolumus, ut idem episcopus occasione alicuius promissionis seu cuiuslibet auctoritate rescripti a sede apostolica impetrati ad eludendum mandatum nostrum se valeat excusare,*] Supra dicto episcopo *districte* dedimus in praeceptis, ut, donec idem magister in eadem ecclesia fuerit praebendale beneficium assecutus, nulli alii praebendam *modo quolibet* assignare praesumat; quod si forte praesumpserit, id irritum decernimus [*penitus*] et inane. Decet enim, ut, quia praebendam ei, quam de iure non potuit, assignavit, eam, quam de iure potest, assignet, ne praebendam ei fraudulenter visus sit assignasse. [*Dat. Romae ap. S. Petrum X. Kal. Mai. Pont. nostr. Ao. I.* 1198.]

Chapter XVIII

Latin source headnote: The election of one who possesses several dignities and prebends is quashed, and likewise if he is held by any vice written here.

The same, to the Bishop and Cantor of Tournai.

Since some time ago [*a question had been brought to the Apostolic See concerning the election of the beloved son I. de Bethunia to the provostship of Siclinium, because omission had been made concerning this, the names of the dignities in which the same I. is said to abound having been suppressed, and after an appeal interposed to us confirmation had been obtained from the beloved sons the dean and provost of Soissons, it was established by common deliberation that the commissory letters, as obtained by surreption, should lack the weight of firmness, as should what had followed from them. Moreover, when the beloved sons R., a canon of Siclinium, for himself, and R. the archdeacon and Master W., his canons, with their letters of ratification, and Nicholas, a canon of the same church who asserted that he was the messenger of the aforesaid I., came because of this to the Roman Church, we thereafter gave them our beloved brother Hugh, cardinal presbyter of the title of Saint Martin, as auditor. In his presence, many things proposed on either side having been reduced to writing and also reported to us in summary, because a proctor appeared from only one party, the other not appearing through contumacy, we ought not to have defined anything concerning the principal business, since the merits of causes are disclosed by the assertions of the parties.*] But because certain things were objected by the *already-mentioned* R., canon of Siclinium, against the *aforesaid* I. de Bethunia, *which it was not fitting to pass over in silence,* namely the multitude both of dignities and of prebends, the vice of ambition and avarice, to which he has not yet set an

end, and because, contrary to the tenor of our definition and the statutes of the Lateran Council, he thrusts and has thrust himself forward to obtain the provostship of Siclinium, and because [*on*] the day of his intrusion he presumed to minister before confirmation, as also after the confirmation had been quashed, *which he obtained from the judges of Soissons,* [*having been obtained, we*] command you *through apostolic writings* that, if you find that the aforesaid I. has several other dignities and prebends, or find to be true any other of the foregoing things sufficient for his quashing, you impose silence upon him concerning the aforesaid provostship, *with the obstacle of appeal removed,* absolving the church of Siclinium from his suit, since many things are tolerated through patience that, if brought into judgment, ought not to be tolerated when justice requires.

> Cassatur electio illius, qui possidet plures dignitates atque praebendas, et idem, si detinetur aliquo vitio hic scripto.
>
> Idem Episcopo et Cantori Tornacensibus.
>
> Quum iam dudum +[*super electione dilecti filii I. de Bethunia ad praeposituram Sicliniensem ad apostolicam sedem quaestio perlata fuisset, quoniam super hoc omissio facta fuerat, suppressis nominibus dignitatum, quibus idem I. dicitur abundare, et post appellationem ad nos interpositam a dilecto filio decano et praeposito Suessionensibus confirmatio exstitit impetrata, communi fuit deliberatione statutum, quod literae commissoriae, tanquam per subreptionem obtentae, carerent pondere firmitatis, et quod ex eis fuerat subsecutum. Porro dilectis filiis R. Sicliniensi canonico pro se ipso, et R. archidiacono, et magistro W. canonicis suis, cum literis eorum de rato, et Nicolao eiusdem ecclesiae canonico, qui praedicti I. se nuncium asserebat, propter hoc ad Romanam ecclesiam accedentibus, consequenter dilectum fratrem nostrum Hugonem tit. S. Martini presbyterum cardinalem dedimus auditorem, in cuius praesentia multis hinc inde propositis redactis in scriptum, et nobis etiam sub compendio reseratis, quoniam ex altera tantum parte apparuit procurator, reliqua per contumaciam non adstante, non debuimus super principali negotio aliquid definire, quum merita causarum partium assertione pandantur.*] Verum quoniam ab *iam dicto* R. Siclunensi canonico *praefato* I. de Bythinia quaedam obiecta fuere, *quae non decuit sub silentio praeteriri,* multitudo videlicet tam dignitatum, quam etiam praebendarum ambitionis et avaritiae vitium, cui nondum finem imponens, contra definitionis nostrae tenorem et Lateranensis concilii statuta, ad obtinendam praeposituram Siclunensem se ingerit et ingessit, et quod [*in*] die intrusionis suae ante confirmationem praesumpserit ministrare, sicut et post confirmationem cassatam, *quam a Suessionensibus iudicibus impetravit* [*obtentam, nos*] *per apostolica vobis scripta* mandamus, quatenus, si inveneritis praedictum I. habere plures alias dignitates atque praebendas, aut aliquid aliud praemissorum, quod ad cassationem eius sufficiat, inveneritis esse verum, ei super iam dicta praepositura *sublato appellationis obstaculo* silentium imponatis, ab impetitione ipsius Siclunensem ecclesiam absolventes, quum multa per patientiam tolerentur, quae, si deducta fuerint in iudicium, exigente iustitia non debeant tolerari.

Chapter XIX

Latin source headnote: A prebend is owed to one received as a canon as soon as the opportunity offers itself, and meanwhile he will have the daily distributions.

The same, to the Archbishop and Archdeacon of Sens.

The beloved son T., a canon of Lincoln, *established in our presence,* proposed that, although by mandate of Pope C. *of good memory,* our predecessor, G., *formerly* Bishop of Lincoln, assigned him a certain prebend in the church of Lincoln, *and the same was confirmed to him by our aforesaid predecessor,* because the chapter of *Lincoln* disdained to receive him to that *prebend, the beloved sons the abbots of Clairvaux and Longpont, by authority* [*of our aforesaid*] *predecessor, when it was unwilling in any way to cease from*

contradiction, subjected it to ecclesiastical interdict. But afterward, coming to our presence, he obtained our writings to the beloved sons the abbots of Melun and Quincy. But when he could not obtain his justice through them, we gave a mandate, as he asserts, to our venerable brother the Archbishop of Reims, cardinal of the Holy Roman Church, then Bishop of Palestrina and legate of the Apostolic See, that he cause the aforesaid sentence of interdict, as it had reasonably been promulgated, to be firmly observed with appeal set aside. But when the same archbishop prolonged the business and the same man, after manifold labors, had almost despaired of advancing the business, failing in expenses, at the instance and by the authority of the Archbishop of Reims, then Bishop of Palestrina and legate of the Apostolic See, such a settlement intervened between him, *T. on one side,* and *our venerable brother R.,* the bishop, and *the beloved sons* the canons of Lincoln *on the other:* that, after he had been received by them as a canon and *as a brother through the hand of the aforesaid archbishop,* and a stall in choir and participation in all divine things had been granted to him, he ought not to receive the fruits of *any* prebend *of the same church* except in the place of the next one to become vacant. *But although we love the aforesaid archbishop in the Lord with sincere charity and wish to defer to his honor, nevertheless, because in those things that are known to be attempted contrary to canonical sanctions we neither wish nor ought to defer to him, we have thought that what was done unlawfully by him in this matter should be annulled, while approving what was done lawfully.* Therefore, since the reception of the said T. as a canon *and as a brother* does not oppose canonical statutes, while there is no doubt that awaiting a prebend to become vacant opposes the Lateran Council, we, disapproving the unlawful act of the same legate and approving what is lawful, because it seems unworthy that *one who has* been received as a canon should be defrauded of the benefice of a prebend, command your discretion *through apostolic writings* that you compel the said bishop and canons *of Lincoln, if what is asserted is true,* after admonition has been given, *by ecclesiastical censure,* with appeal set aside, not to delay in assigning him a prebend when the opportunity offers itself, causing the daily portions made in the aforesaid church to be assigned to him without any diminution, *restraining contradictors by ecclesiastical censure with appeal set aside.* [*Given at Rome, at Saint Peter's, on the thirteenth day before the Kalends of May, in the ninth year, 1206.*]

> Recepto in canonicum, quam cito facultas se obtulerit, debetur praebenda, et interim habebit quotidianas distributiones.
>
> Idem Archiepiscopo et Archidiacono Senonensibus.
>
> Dilectus filius T. canonicus Linconiensis *in nostra praesentia constitutus* proposuit, quod, quum de mandato *bonae memoriae* C. Papae praedecessoris nostri *G. quondam* Linconiensis episcopus quandam praebendam assignavit eidem in ecclesia Linconiensi, *et eadem sibi per praedictum praedecessorem nostrum fuerit confirmata*, quia capitulum *Lingonense* ipsum ad eandem *praebendam* recipere contemnebat, *+dilecti filii Clarevallensis et Longivadi abbates auctoritate* [*praedicti*] *praedecessoris nostri, quum nollet aliquatenus a contradictione cessare, ipsum supposuerunt ecclesiastico interdicto. Postmodum autem ad praesentiam nostram accedens, ad dilectos filios Melundensem et Quinciacensem abbates obtinuit scripta nostra. Sed quum per eos suam non potuisset iustitiam obtinere, nos venerabili fratri nostro Remensi archiepiscopo, S. Romanae ecclesiae cardinali, tunc episcopo Praenestino, apostolicae sedis legato, sicut asserit, dedimus in mandatis, ut praedictam interdicti sententiam, sicut rationabiliter fuerat promulgata, faceret appellatione postposita firmiter observari. Verum quum idem archiepiscopus negotium prorogaret, et idem post labores multiplices fere de promovendo ipso negotio desperasset, deficiens in expensis,* Ad instantiam Remensis archiepiscopi, tunc episcopi Praenestinensis, apostolicae sedis legati, et auctoritate ipsius talis inter eum *T. ex una parte*, et *venerabilem fratrem nostrum R.* episcopum et *dilectos filios* canonicos Linconienses *ex altera* compositio intercessit, quod ipso ab eis *per manum praedicti archiepiscopi* recepto in canonicum et *in fratrem, et* concesso sibi stallo in choro et participatione qualibet divinorum, idem fructus praebendae *alicuius eiusdem ecclesiae* percipere non

deberet, nisi loco proximo vacaturae. +*Licet autem memoratum archiepiscopum sincera diligamus in Domino caritate, ipsiusque velimus honori deferre, quia tamen in his, quae contra canonicas sanctiones attentari noscuntur, ei deferre nec volumus nec debemus, quod ab eo illicite factum est in hac parte duximus irritandum, quod licitum factum est approbantes*. Quum ergo dictum T. in canonicum recipi *et in fratrem* canonicis non obviet institutis, et vacaturam exspectare praebendam Lateranensi concilio non sit dubium obviare, nos, facto eiusdem legati illicito reprobato, quod est licitum approbantes, quia videtur indignum, ut *is, qui* receptus *est* in canonicum, praebendae beneficio defraudetur, *discretioni vestrae per apostolica scripta* mandamus, quatenus dictos episcopum et canonicos *Lingonenses, si verum est quod asseritur*, ut ei praebendam, quum se facultas obtulerit, non differant assignare, *monitione praemissa per censuram ecclesiasticam* appellatione postposita compellatis, facientes eidem portiones quotidianas, quae fiunt in ecclesia memorata, sine diminutione qualibet assignari, *contradictores per censuram ecclesiasticam appellatione postposita compescendo*. [*Dat. Rom. ap. S. Petrum XIII. Kal. Mai Ao. IX.* 1206.]

Chapter XX

Latin source headnote: An election does not hold when two persons are elected simply to one prebend.

The same, to the Bishop of Brescia.

The devotion of your fraternity—(*And below:* [*Cf. c. 10, On Him Who Knew His Wife by Consanguinity, IV. 13.*]) *Furthermore, you consulted* whether, since it often happens that two clerics are elected to one prebend because of the *excessive* importunity of petitioners, *such an election is to be confirmed or rather annulled.* We, *therefore,* considering that, if two held one prebend, that would be contrary to the Council of Tours, which forbids the division of prebends, and, if one of them obtained the prebend itself, the other would remain in expectation contrary to the statutes of the Lateran Council, answer your inquiry thus: that such an election is wholly to be quashed by rigor of law. [*Furthermore, etc. Given at Rome, etc., 1206.*]

Non tenet electio, quum ad unam praebendam duo simpliciter eliguntur.

Idem Episcopo Brixiensi.

Tuae fraternitatis devotio (*Et inf ra:* [*cf. c.* 10. *de eo, qui cogn. IV.* 13.]) *Praeterea consuluisti, * Quum saepe contingat, quod ad unam praebendam duo clerici propter *nimiam* importunitatem petentium eligantur, *utrum confirmanda sit talis electio, vel potius irritanda;* nos *igitur* attendentes, quod, si duo unam praebendam tenerent, illud esset contra concilium Turonense, quod praebendarum inhibet sectionem, et, si unus illorum ipsam obtineret praebendam, sub exspectatione alius contra Lateranensis concilii statuta remaneret, inquisitioni tuae taliter respondemus, quod talis electio de rigore iuris penitus est cassanda. [*Ceterum etc. Dat. Rom. etc.* 1206.]

Chapter XXI

Latin source headnote: If two persons elected to some dignity submit to judges by compromise, the judge can confirm one and, for the good of peace, make provision for the other from the revenues. This is a most beautiful disposition, and you do not have one similar in the whole body of law.

The same.

Unless both *those* who made the ordinance and those concerning whom the ordinance was made in your church regarding the business of the priorship were provident and honorable men, we would

hold that ordinance very suspect because of the destructiveness of the example. Therefore, what after prolonged contention was ordained concerning one of the two elect, that he should have the priorship, seems to have been established according to justice by delegated jurisdiction. But what was ordained concerning the other, that he should receive annually twenty pounds from the revenues of the chapter and forty *pounds* from the revenues of the priorship, is understood to have been commanded according to providence by arbitral power, since submission had been made to the delegates, who confess that, while retaining the authority committed to them, they ordained this for the good of peace and utility. Therefore, because this ordinance has been received by all, and the prior and chapter can lawfully furnish provision of this kind from their revenues for the aforesaid causes—not indeed by agreement of the parties but by command of the judges—we tolerate it with this moderation employed: that not the dignity of the priorship but the person of the prior remain burdened with the payment of forty pounds, lest perhaps [*even*] concerning the revenues some division of the priorship seem to have been made, such that, when that prior is dead, his successor is in no way bound to the payment of forty pounds. [*Given at Rome, at Saint Peter's, on the seventh day before the Ides of February, in the ninth year, 1207.*]

> Si duo electi ad aliquam dignitatem compromittant in iudices, poterit iudex alterum confirmare, et alteri pro bono pacis de proventibus provisionem facere. Ista est pulcherrima dispositio, et in toto corpore iuris non habes consimilem.
>
> Idem.
>
> Nisi essent viri providi et honesti tam *ii*, qui ordinationem fecerunt, quam illi, circa quos est facta ordinatio in ecclesia vestra super negotio prioratus, ordinationem illam valde suspectam propter exempli perniciem haberemus. Quod ergo post concertationem diutinam ordinatum est circa unum de duobus electis, ut ipse habeat prioratum, hoc ex iurisdictione delegata secundum iustitiam videtur esse statutum. Quod autem ordinatum est circa reliquum, ut ipse viginti libras de reditibus capituli, et quadraginta *libras* de proventibus prioratus percipiat annuatim, hoc secundum providentiam intelligitur esse praeceptum ex arbitraria potestate, quum in delegatos fuerit compromissum, qui, auctoritatem sibi retinendo commissam, se pro bono pacis et utilitatis hoc ordinasse fatentur. Quia igitur haec ordinatio ab omnibus est recepta, possuntque licite prior et capitulum de proventibus suis propter causas praedictas, non quidem ex pactione partium, sed ex iussione iudicum provisionem huiusmodi exhibere, nos eam hoc adhibito moderamine toleramus, ut ad praestationem quadraginta librarum non dignitas prioratus, sed persona pri oris maneat onerata, ne forte [*vel*] circa proventus aliqua videatur facta sectio prioratus ita, quod ipso priore defuncto successor ipsius ad praestationem quadraginta librarum minime teneatur. [*Dat. Rom. ap. S. Petr. VII. Id. Febr. Ao. IX.* 1207]

Chapter XXII

Latin source headnote: Canons privileged by the Pope concerning a certain number, if they voluntarily received someone beyond the number, cannot use the exception of number against those obtaining provision from the Pope.

The same, to the Bishop of Valence and the Abbot of Vatian.

For the provision of those—(*And below:*) *For the beloved son Master P. Audoen., who is known to have made a longer stay at the Apostolic See and had not yet obtained a competent ecclesiastical benefice, although he was suitable to obtain it, by our letters and by way of precept* we commanded the Archbishop of Bordeaux to cause a competent benefice to be assigned to Master P. in one of his churches where he recognized it

to be expedient for him, *every delay and excuse having been set aside, and the obstacle of anyone's contradiction and appeal having been removed,* restraining by ecclesiastical severity contradictors *who should think rashly to oppose him concerning this. But the archbishop himself, as he intimated to us by his letters, considering the knowledge and probity of the aforesaid master and recognizing him as suitable to obtain such a benefice, after receipt of our mandate,* commanded the dean and chapter of Saintes by our authority to admit him as a canon and brother *out of reverence for the Apostolic See and to treat him with fraternal charity.* And when those canons resisted *his requests and our mandates* and opposed to him an indulgence concerning a number of forty canons, *which they boast that they have from the Apostolic See,* because the *same* archbishop *manifestly* recognized that they, in elusion of our mandate, were irreverently abusing as their own the indulgence granted to them, *and it was clearly established for him that at that time there were not merely forty canons in the same church but more,* he invested the aforesaid master with a prebend and canonry of the church of Saintes *with your consent and will, brother bishop, and by counsel of prudent men,* binding contradictors with the bond of excommunication. (*And below:*) But because we wish what was providently done by the said archbishop concerning the aforesaid master by our authority to obtain *due* firmness, through apostolic writings we command *and more strictly enjoin* your discretion that, if it is established for you that the aforesaid canons did not observe the indulgence they have concerning a certain number of canons and received someone as a canon beyond the established number by their own authority, since they ought not to impose upon us a law that they themselves neglect to observe, you declare that the sentence of excommunication pronounced against them by the aforesaid archbishop is, *by our authority,* to be observed, with the obstacle of *any contradiction and* appeal removed, until they receive the often-mentioned master as a canon and take care to assign him those things that pertain to the canonicate, with a stall in choir and a place in chapter.

> Canonici privilegiati a Papa super certo numero, si sponte receperunt aliquem supra numerum, contra impetrantes a Papa exceptione numeri uti non possunt.
>
> Idem Valdensi Episcopo et abbati Vatianensi.
>
> Pro illorum provisione (*Et infra:*) *Pro dilecto filio magistro P. Audoen., qui apud apostolicam sedem moram fecisse dignoscitur longiorem, nec adhuc erat competens beneficium ecclesiasticum assecutus, licet ad ipsum esset idoneus obtinendum, venerabili fratri nostro* Burdegalensi archiepiscopo *literis nostris praecipiendo* mandavimus, ut magistro P. in aliqua ecclesiarum suarum, ubi ei expedire cognosceret, *omni dilatione et excusatione postpositis, sublato cuiuslibet contradictionis et appellationis obstaculo* competens faceret beneficium assignari, contradictores ecclesiastica districtione compescens, qui *se ei ducerent super hoc temere opponendos. Ipse autem archiepiscopus, sicut suis nobis literis intimavit, attendens praefati magistri scientiam et probitatem, et illum cognoscens idoneum ad tale beneficium obtinendum, post susceptionem mandati nostri,* decano et capitulo Xantonensibus auctoritate nostra mandavit, ut ipsum *pro reverentia sedis apostolicae* admitterent in canonicum et in fratrem, *et fraterna caritate tractarent*. Quumque *precibus eius et mandatis nostris* iidem reluctarentur canonici, ac indulgentiam de quadragenario canonicorum numero ei opponerent, *quam a sede apostolica iactitant se habere,* quia *idem* archiepiscopus *manifeste* cognovit, illos in elusionem mandati nostri *et sua* indulgentia eis concessa irreverenter abuti, *et non tantum XL. tunc esse canonicos in eadem ecclesia, sed plures constitit illi evidenter,* praedictum magistrum de praebenda et canonia Xantonensis ecclesiae *cum consensu et voluntate tua, frater episcope, et prudentum virorum consilio* investivit, contradictores vinculo excommunicationis adstringens. (*Et infra:*) Quia vero quod per dictum archiepiscopum de memorato magistro auctoritate nostra provide factum est firmitatem *debitam* volumus obtinere, *discretioni vestrae per apostolica scripta* mandamus *et districtius praecipimus,* quatenus, si vobis constiterit, praedictos canonicos indulgentiam quam habent de certo canonicorum numero, non servasse, et

aliquem ultra constitutum numerum in canonicum auctoritate propria recepisse, quum nobis legem imponere non debeant, quam ipsi negligunt observare, latam in ipsos excommunicationis sententiam a praedicto archiepiscopo tamdiu denuncietis *auctoritate nostra* sublato *cuiuslibet contradictionis et* appellationis obstaculo servandam, donec saepe dictum magistrum recipiant in canonicum et ea, quae ad canonicatum pertinent, cum stallo chori et loco capituli ei studeant assignare.

Chapter XXIII

Latin source headnote: An unbeneficed person having a sufficient patrimony is lawfully promoted to sacred orders.

The same, to the Archbishop of Besançon.

We answer your questions that clerics constituted in minor orders who have from patrimonial goods that from which they can be fittingly sustained, although they have not yet obtained an ecclesiastical benefice, can be promoted by you to higher orders, provided that no other canonical impediment stands in the way. [*But monks, etc.* (*Cf. c. 39, On Witnesses, II. 20.*) *Given at the Lateran, on the eleventh day before the Kalends of April, in the eleventh year, 1208.*]

Non beneficiatus habens sufficiens patrimonium, ad sacros legitime promovetur.

Idem Bisuntino Archiepiscopo.

Tuis quaestionibus respondemus, quod clericos in minoribus ordinibus constitutos, de patrimonialibus bonis habentes unde possint congrue sustentari, etsi nondum fuerint beneficium ecclesiasticum assecuti, dummodo aliud canonicum non obsistat, ad superiores poteris ordines promovere. [*Monachi vero etc.* (*cf. c.* 39. *de test. II.* 20.) *Dat. Lat. XI. Kal. Apr. Ao. XI.* 1208.]

Chapter XXIV

Latin source headnote: A benefice can be conferred upon an absent person through an intermediary, and it makes no difference whether the absent person is invested through the intermediate person or the intermediate person is invested for the absent person. This it says by joining both interpretations, and it is a noteworthy case and is practiced daily.

The same, to the Bishop of Zamora.

Coming to the Apostolic See, *the beloved son B., a brother of the Hospital of Jerusalem, asked us on your behalf whether an absent cleric can, for the sake of studies, be invested with an ecclesiastical benefice, and whether, if an abducted girl, carried into another diocese, consents to her abductor in the face of the Church, a marriage of this kind is to be held lawful. We therefore* answer your inquiry thus: that *both* an absent cleric can be invested with an ecclesiastical benefice through another, or another, rather, for him. *And an abducted girl, etc.* (*Cf. c. 7, On Abduction, V. 17.*)

Absenti potest conferri beneficium, alio mediante, nec refert, utrum absens investiatur per personam mediam, vel persona media investiatur pro absente. H. d. coniungendo utrumque intellectum, et est casus not. et quotidie practicatur.

Idem Episcopo Zamorensi.

Accedens ad apostolicam sedem +*dilectus filius B. frater Hierosolymitani hospitalis a nobis ex parte tua quaesivit, utrum clericus absens gratia studiorum de ecclesiastico beneficio possit investiri, et utrum, si rapta puella et in alienam delata dioecesim in ecclesiae facie consenserit in raptorem, matrimonium huiusmodi legitimum sit*

habendum. Nos igitur Inquisitioni tuae taliter respondemus, quod *et* clericus absens per alium, vel alius, magis pro ipso poterit de beneficio ecclesiastico in vestiri. *Et rapta puella etc. * (*cf. c.* 7. *de rapt. V.* 17.)

Chapter XXV

Latin source headnote: If two persons are received simply to one canonicate and prebend, the reception does not hold, even when apostolic authority intervenes. This it says, and it is a noteworthy chapter; therefore always hold it in mind and note it.

The same, to the Bishop of Troyes.

The beloved son P., *our* cardinal presbyter *of the title* of Saint Pudentiana, having been appointed auditor for the beloved sons R. [*de Avalon*], cellarer of Troyes, and R. [*de Noa*], *a cleric,* your proctor, the same cellarer proposed before him that, when he freely resigned into the hands of the Archbishop of Reims, then legate of the Apostolic See and intending to provide for his nephew G. in the church of Troyes, the prebend that he held there, the said legate instituted the aforesaid G. and the same cellarer as canons of Troyes, and the chapter of Troyes assigned to both a stall in choir and a place in chapter, and the same archbishop assigned the fruits of the aforesaid prebend to be divided in common until the same G. had obtained the full prebendal stipend *of the church, a sentence of excommunication having been promulgated against those who should presume to contravene.* The general proctor of your predecessor [*of good memory*], who was then acting in the regions of Constantinople, afterward approved their reception. The said cellarer is also known [*afterward*] to have read the lesson and Gospel in his week, and, as a canon of Troyes, was present both at the election of the dean and bishop and at the handling of other business, and obtained through the aforesaid chapter a certain house that was accustomed to be assigned only to a canon. And you, when after your consecration you came to the same church, received him with the other canons to the kiss, although *at that time* only canons were admitted to the kiss, and for two years you raised no question against him concerning the foregoing. On account of this he petitioned that we deign to restrain you from undue molestation of him concerning this. *But the said R., your proctor, proposed in opposition that, when the same cellarer had resigned his prebend into the hands of the aforesaid Archbishop of Reims, the archbishop invested his nephew with one half* [*of it and the said cellarer with the other*] *half,* [*which he still presumes to retain to your prejudice and burden, not permitting you freely to dispose of it as is known to pertain to you. And although our letters concerning this had been obtained to the beloved sons the dean and Masters G. Cornutus, a canon of Paris, and S., a canon of Reims, the cellarer finally appealed to us for the sake of frustration, so that he might burden you with labors and expenses.*] *The same* proctor of yours also proposed in opposition that, *since a certain number of canons had formerly been established in the church of Troyes and fortified by oath of the chapter, the aforesaid archbishop, who, although he had been legate in Germany, nevertheless had not been enjoined the office of legation in the province of Sens, could not make an institution of this kind as legate; indeed, even if he had been legate in that province,* it was not lawful for the aforesaid legate to institute two canons together to the one *individual* spiritual right that was vacant there, *contrary to the canonical sanctions.* For if two persons had one prebend, that would be contrary to the Council of Tours, which forbids the division of prebends. But if, after two persons had been received *as canons and brothers,* a prebend were given to one alone, the other would remain in expectation contrary to the Lateran Council. Furthermore, although in a church in which there is no certain number of prebends someone can be assumed as a canon even when no *prebend* is vacant, since he is understood to be elected to a certain right that is newly created by the consent of the electors, is born with the one elected as canon, and ends with the deceased, nevertheless in a church

that has a determined number of prebends, when only one *individual* right is vacant, two cannot be elected together to it, because a spiritual right of this kind cannot be divided or shared between them; although sometimes those to whom the election pertains can by common consent increase the number of prebends by newly creating a certain spiritual right, unless perhaps some statute fortified by oath stood in the way, or one to which confirmation of the Apostolic See had been added, with a clause of prohibition of this kind appended, that, if anything were done contrary to it, it would not be valid. On this account the said proctor asserted that the aforesaid institution was null, since in the church of Troyes, *as has been premised,* there is a certain number of prebends that the chapter or legate in no way intended to increase or to create any new right, [*which he proposed could be inferred from this: that one person was not instituted to the vacant prebend and the other simply, but both were received to the single prebend vacant in the aforesaid manner. Nor could the chapter of Troyes, to which the collation of prebends in no way pertained, or the said proctor of your predecessor approve a reception of this kind, as one attempted contrary to the canons. He said that it likewise in no way prejudiced you that you had admitted the aforesaid cellarer to the kiss among the canons of Troyes or that you had remained silent for some time concerning this business, since at that time you were ignorant of the customs of your church and of those things that had been done less lawfully in it. But to these things the cellarer answered thus: that, since the same archbishop had caused the letters of his legation to be read in the chapter of Troyes and at that time was held by all to be legate, whether he had been legate in that province ought not further to be called into doubt, especially since in the aforesaid letters that you had obtained against him you had thought that the aforesaid archbishop should be named legate. He added further that someone can lawfully be elected to spiritual fraternity as a canon and brother even when no prebend is vacant, adducing as an argument for this a certain decretal letter in which it is read that, when T., a cleric, while no prebend was vacant in the church of Lincoln, had been received as a canon and brother by the bishop and canons of Lincoln through the intervening authority of the aforesaid archbishop, a judge delegated by us, in such a way that he received the fruits of no prebend except in the place of the next one to become vacant, we, considering that the reception of the said T. as a canon and brother did not oppose canonical statutes and that there was no doubt that awaiting a vacant prebend opposed the Lateran Council, disapproving what was unlawful and approving what was lawful, since it seemed unworthy that one who had been received as a canon and brother should be defrauded of the benefice of a prebend, gave a mandate to the bishop and canons of Lincoln that, if the matter stood thus, they take care to assign to the same T. a prebend when the opportunity offered itself. He alleged further that letters of this kind are frequently obtained from the Apostolic See, that in a church in which there is a certain number of prebends, when no prebend is vacant, someone be received as a canon and brother and a prebend be conferred upon him when the opportunity offers itself. Likewise, although the Council of Tours forbids the division of prebends, nevertheless the Roman Church, by approving as canons the reception of those who were assumed to half prebends, sometimes commands that the divided prebends be made whole for them. But it was answered in opposition to this that, although the Roman Pontiff sometimes commands, contrary to the Council of Tours, that a prebend halved as regards temporal revenues be made whole for the one upon whom a vacant spiritual right had been conferred with due integrity, nevertheless, because someone was in fact received to a half prebend of this kind when he could not be so by law, he is in no way accustomed to command that; and from the fullness of power he can grant that someone be received to one spiritual right that is not vacant, utility or necessity having been weighed, as is found in the canon concerning Augustine, who, promoted and consecrated in a new manner, while Bishop Valerius of the church of Hippo remained unharmed, came into the episcopal chair but did not succeed him. And just as it is read in the decretal alleged above concerning a prebend not vacant but nevertheless granted and confirmed by the Roman Pontiff to a certain cleric in the church of Lincoln, and concerning his reception by the executor to that same prebend even though it was not vacant, nevertheless the*

aforesaid archbishop, even if he had been legate in the province, without at least our special license could not, contrary to the tenor of written law, institute his nephew and the aforesaid cellarer to the one spiritual right that was vacant in the aforesaid church, in which there was a certain number of prebends, since this opposed not only the Council of Tours but also the Lateran Council, especially since he intended neither to create a new right nor to increase the number of prebends, which is gathered from the fact that, after procuring the resignation of the cellarer, he instituted them to the one vacant prebend.] Hence, *after we had understood these and other things,* we thought that the aforesaid cellarer, *who it was established had first freely resigned the prebend,* should by definitive sentence be condemned, *by counsel of our brothers,* to restitution of those things that he held by reason of the aforesaid institution, imposing silence upon him concerning the prebend itself or a part of it, in such a way that through this no prejudice is generated against the aforesaid G., *especially* since a thing done between others regularly does not prejudice others, *according to canonical and lawful sanctions.* [*Let no one therefore, etc. Given at Rome, at Saint Peter's, on the Kalends of May, in the thirteenth year of our pontificate, 1210.*]

> Si ad unum canonicatum et praebendam duo sunt recepti simpliciter, receptio non tenet, etiam interveniente apostolica auctoritate. H. d. et est notabile cap., quare tene semper mente et nota ipsum.
>
> Idem Trecensi Episcopo.
>
> Dilecto filio *nostro* P. *tit.* sanctae Pudentianae presbytero cardinali *dilectis filiis R.* [*de Avalon*] cellerario Trecensi et R. [*de Noa*] *clerico* procuratori tuo auditore concesso, idem cellerarius proposuit coram eo, quod, quum in manibus Remensis archiepiscopi, tunc apostolicae sedis legati, intendentis providere G. nepoti suo in Trecensi ecclesia, praebendam, quam ibi obtinebat, liberaliter resignavit, dictus legatus praefatum G. et eundem cellerarium in canonicos Trecenses instituit, et ambobus capitulum Trecense stallum in choro, et locum in capitulo, et idem archiepiscopus supra dictae praebendae fructus dividendos communiter assignarunt, donec idem G. integrum esset *ecclesiae* praebendale stipendium assecutus, *+in eos, qui contra venire praesumerent, excommunicationis sententia promulgata*. Quorum receptionem procurator generalis [*bonae memoriae*] praedecessoris tui, in partibus Constantinopolitanis tunc agentis, postmodum approbavit. Dictus quoque cellerarius lectionem et evangelium in hebdomada sua [*postea*] legisse dignoscitur, et tam decani quam episcopi electioni et aliorum negotiorum tractatibus sicut canonicus Trecensis interfuit, et domum quandam per capitulum memoratum obtinuit, quae non nisi canonico consueverat assignari. Tuque, quum ad eandem accessisses ecclesiam consecratus, eum cum canonicis aliis ad osculum recepisti, quum *tamen* tunc *temporis* non nisi canonici ad osculum admittantur, et eidem super praedictis non movisti per biennium quaestionem. Propter quod petiit, ut te ab ipsius super hoc molestatione indebita compescere dignaremur. *+Verum dictus R. procurator tuus proposuit ex adverso, quod, quum idem cellerarius praebendam suam in praedicti archiepiscopi Remensis manibus resignasset, ipse de medietate* [*illius nepotem suum, et de medietate*] *alia dictum cellerarium investivit, * [*quam adhuc detinere praesumit in tuum praeiudicium et gravamen, non permittens te libere de ipsa disponere, prout ad te dignoscitur pertinere. Et licet ad dilectos filios decanum et magistros G. Cornutum Parisiensem et S. Remensem canonicos super hoc nostrae fuerint literae impetratae, cellerarius demum ad nos frustratorie appellavit, ut te posset gravare laboribus et expensis.*] *Idem quoque* Procurator tuus proposuit ex adverso, quod, *quum in Trecensi ecclesia institutus olim fuerit certus canonicorum numerus et capituli iuramento firmatus, supra dictus archiepiscopus, qui, etsi legatus fuisset in Teutonia, in Senonensi tamen provincia eidem non fuit officium legationis iniunctum, institutionem huiusmodi facere non potuit ut legatus, quin immo, etsi legatus in eadem provincia exstitisset,* ad unicum *tamen* ius spirituale, quod vacabat ibidem, insimul duos canonicos instituere praedicto legato non licuit *contra canonicas sanctiones*. Nam si duo unicam praebendam haberent, id esset contra Turonense concilium, quod praebendarum inhibet sectionem. Si vero duobus *in canonicos et fratres* receptis uni tantum praebenda daretur, sub exspectatione alius contra Lateranense concilium remaneret. Praeterea

licet in ecclesia, in qua non est certus numerus praebendarum, nulla etiam *praebenda* vacante in canonicum quis possit assumi, quum intelligatur ad quoddam ius eligi, quod ex electorum assensu de novo creatur, et cum electo in canonicum nascitur et desinit cum defuncto, in ecclesia tamen, quae determinatum habet numerum praebendarum, uno *duntaxat* individuo iure vacante, duo simul eligi non possunt ad illud eo, quod huiusmodi spirituale ius dividi seu communicari nequeat inter eos; quanquam interdum hi, ad quos spectat electio, de communi assensu augmentare valeant numerum praebendarum, quoddam ius spirituale de novo creando, nisi forte statutum aliquod obviaret, quod esset iuramento firmatum, vel cui sedis apostolicae confirmatio accessisset, huiusmodi clausula prohibitionis adiecta, ut, si quicquam contra id fieret, non valeret. Propter quod institutionem praefatam nullam fuisse dictus asseruit procurator, quum in Trecensi ecclesia, *sicut praemissum est*, certus sit praebendarum numerus, quem capitulum vel legatus augmentare minime intendebat vel ius aliquod de novo creare, [*quod ex eo argui proponebat, quia non fuit unus ad vacantem praebendam et alius simpliciter institutus, sed ad praebendam unicam supradicto modo vacantem exstiterunt ambo recepti. Sed nec Trecense capitulum, ad quod praebendarum collatio nullatenus pertinebat, vel dictus procurator praedecessoris tui receptionem huiusmodi approbare potuit, utpote contra canones attentatam. Tibi quoque nequaquam obfuisse dicebat, quod cellerarium praefatum ad osculum inter canonicos Trecenses admiseras, vel quod aliquanto tempore super hoc negotio siluisti, quum tunc temporis ecclesiae tuae consuetudines, et quae in ea minus legitime facta fuerant, ignorares. Ad haec autem cellerarius sic respondit, quod, quum idem archiepiscopus in Trecensi capitulo suae legationis literas legi fecerit, et legatus eo tempore ab omnibus haberetur, an legatus in illa provincia fuerit, non debebat ulterius in dubium revocari, maxime quum tu in praedictis literis, quas obtinueras contra eum, memoratum archiepiscopum legatum duxeris nominandum. Adiecit insuper, quod licite quis ad spiritualem fraternitatem eligi potest in canonicum et in fratrem, nulla etiam praebenda vacante, argumentum ad hoc cuiusdam epistolae decretalis inducens, in qua legitur, quod, quum T. clericus, nulla in Lingonensi ecclesia praebenda vacante, ab episcopo et canonicis Lingonensibus supradicti archiepiscopi iudicis delegati a nobis interveniente auctoritate in canonicum receptus fuisset et fratrem ita, quod nullius praebendae fructus perciperet, nisi loco proximo vacaturae, nos attendentes, quod dictum T. in canonicum et fratrem recipi non occurrebat canonicis institutis, et vacaturam exspectare praebendam Lateranensi concilio non esset dubium obviare, illicito reprobato quod licitum erat duximus approbandum. Unde quum videretur indignum, ut is, qui receptus erat in canonicum et in fratrem, praebendae beneficio fraudaretur, episcopo et canonicis Lingonensibus dedimus in mandatis, ut, si res taliter se haberet, eidem T. praebendam, quum se facultas offerret, assignare curarent. Allegavit insuper, quod ab apostolica sede frequenter huiusmodi literae impetrantur, ut in ecclesia, in qua certus est numerus praebendarum, nulla praebenda vacante recipiatur quis in canonicum et fratrem, et eidem praebenda, quum se facultas obtulerit, conferatur. Item, licet Turonense concilium sectionem inhibeat praebendarum, nihilominus tamen Romana ecclesia receptionem eorum, qui ad dimidias praebendas assumpti sunt, in canonicos approbando, nonnunquam sectas praebendas eis praecipit integrari. Sed ad hoc fuit ex adverso responsum, quod etsi Romanus Pontifex dimidiatam quoad temporales proventus praebendam contra concilium Turonense illi quandoque praecipiat integrari, cui ius spirituale vacans fuerat cum debita integritate collatum, pro eo tamen, quod ad huiusmodi dimidiam de facto, quum de iure non valeat, est receptus, id mandare minime consuevit, et ex plenitudine potestatis ad unicum ius spirituale non vacans aliquem recipi utilitate vel necessitate pensata valeat indulgere, sicut de Augustino in canone invenitur, qui novo modo provectus et consecratus episcopus, incolumi Valerio episcopo ecclesiae Hipponensis accessit in cathedra, non successit. Et sicut de non vacante praebenda, concessa tamen et confirmata per Romanum Pontificem cuidam clerico in ecclesia Lingonensi et per exsecutorem ipsius ad eandem etiam non vacantem recepto in praeallegata legitur decretali, praefatus tamen archiepiscopus, qui, etsi legatus fuisset in provincia, absque nostra saltem licentia speciali contra iuris scripti tenorem ad unicum ius spirituale, quod vacabat in ecclesia supradicta, in qua certus erat numerus praebendarum, instituere non potuit nepotem et cellerarium supradictos, quum hoc non solummodo Turonensi, sed etiam Lateranensi concilio obviaret, maxime quum nec novum ius creare intenderet, nec praebendarum numerum augmentare, quod inde colligitur, quia resignatione cellerarii procurata eosdem instituit ad unicam praebendam vacantem.*] Unde *nos, his et aliis intellectis, ante* dictum cellerarium, *quem praebendam constitit prius libere*

resignasse, ad restitutionem eorum, quae ratione praedictae institutionis tenebat, *de consilio fratrum nostrorum* sententialiter duximus condemnandum, ei super praebenda ipsa vel eius parte silentium imponentes ita, quod per hoc praedicto G. nullum praeiudicium generetur, *maxime* quum res inter alios acta regulariter aliis non obsistat *iuxta canonicas et legitimas sanctiones*. [*Nulli ergo etc. Dat. Romae ap. S. Petr. Kal. Mai. Pont. nostr. Ao. XIII.* 1210.]

Chapter XXVI

Latin source headnote: Two prebends can be made from one vacant prebend if its resources suffice; otherwise the one dividing it is bound to make them whole.

The same.

When a certain prebend in your church was vacant, you constituted two from it and, with the consent of your chapter, assumed two canons to them. When one of them entered *at the Apostolic See* upon the way of all flesh, the prebend that the deceased had held was obtained by authority of the Apostolic See by a certain cleric named Hippolytus. But since the same Hippolytus troubles you concerning the integrity of the prebend through certain letters of ours, and the other proposes that he has the same right against you, you have asked what you ought to do. Concerning this we have thought that this answer should be given to *your fraternity:* that, since the statutes of the Council of Tours forbid division of prebends, you are bound to make a whole prebend for each of them from those things that happen to become vacant, unless perhaps for a reasonable cause two were constituted from the aforesaid vacant prebend and the revenues of each are so great that through each, provision has been made for each in a competent benefice. [*You, finally, etc. Given at the Lateran, on the sixth day before the Ides of January, in the sixteenth year of our pontificate, 1214.*]

De una praebenda vacante possunt fieri duae, si eius suppetant facultates; alias dividens integrare tenetur.

Idem.

Vacante quadam praebenda in ecclesia tua, duas ex ea constituens, ad illas de consensu capituli tui duos canonicos assumpsisti, quorum altero *apud sedem apostolicam* viam universae carnis ingresso, praebendam, quam defunctus habuerat, quidam clericus nomine Hippolytus fuit auctoritate sedis apostolicae assecutus. Verum quum idem Hippolytus te super integritate praebendae per quasdam nostras literas inquietet, et alius idem ius adversus te se habere proponat, quid facere debeas requisisti. Super quo *fraternitati tuae* sic duximus respondendum, quod, quum Turonensis statuta concilii sectionem inhibeant praebendarum, teneris utrique de his, quae vacare contigerit, integrare praebendam, nisi *forte* rationabili causa de vacante praebenda supradicta duae fuerint constitutae, ac tot sint utriusque proventus, quod per utramque sit utrique provisum in beneficio competenti. [*Tu denique etc. Dat. Lat. VI. Id. Ian. Pont. nostr. Ao. XVI.* 1214.]

Chapter XXVII

Latin source headnote: If the Pope commands a chapter to receive someone as a canon and confer a prebend if any is vacant, and, knowing of the mandate, they confer it upon another, they are compelled to receive the first person and provide for him from the revenues of the church in place of a benefice until he has a prebend.

The same, to the Bishop of Vercelli.

The beloved son G., a cleric, *for whose reception as a canon in the church of Novara we had written, who did not obtain through our letters what he intended, against its canons,* explained to us by complaint that, when we had sent an apostolic mandate on his behalf to the chapter of Novara that they receive him as a canon and brother, conferring upon him a prebend if any *nevertheless* was then vacant, *they not only were unwilling to fulfill the apostolic mandate but even presumed to assign to another the vacant prebend that we commanded to be conferred upon him. Hence he petitioned us that we deign to execute what we had begun concerning him. But Master Gregory, proctor of the church of Novara, proposed in opposition that, since no prebend was vacant in that church, the aforesaid cleric, coming to the Apostolic See, falsely suggested to us that a prebend was vacant in that church and had procured letters concerning his reception upon a false suggestion. Hence, since a mendacious petitioner ought wholly to lack the things obtained, the same proctor petitioned that the church be absolved from his suit. Therefore, since they litigated longer concerning these things before our beloved son G., cardinal deacon of Saint George at the Golden Veil, whom we gave them as auditor, and the same cardinal diligently reported to us the things that had been proposed before him,* through apostolic writings we command your fraternity that, if it is established for you that a prebend was vacant in the church of Novara at the time when the canons of that church received our letters *concerning a prebend,* since they thought that it should be conferred *wholly* upon another in elusion of our mandate, you cause the same cleric, if he does not have a sufficient ecclesiastical benefice *elsewhere,* to be received as a canon by the aforesaid clerics *according to the tenor of our former mandate,* and *competent* revenues from *that* church to be assigned to him each year until he has been provided with a prebendal benefice.

> Si Papa mandat capitulo, ut aliquem in canonicum recipiant, et praebendam, si qua vacat, conferant, si de mandato scientes alii conferunt, coguntur primum recipere, et de reditibus ecclesiae loco beneficii providere, donec praebendam habeat.
>
> Idem Vercellensi Episcopo.
>
> Dilectus filius G. clericus, *pro quo canonicando in ecclesia Novariensi scripseramus, quod intendebat per nostras literas non obtento, contra canonicos eiusdem* nobis exposuit conquerendo, quod, quum pro eo ad Novariense capitulum mandatum apostolicum misissemus, ut eum in canonicum reciperent et in fratrem, praebendam, si qua *tamen* tunc vacabat, conferentes eidem, *+ipsi non solum mandatum apostolicum noluerunt adimplere, verum etiam praebendam vacantem, quam mandavimus illi conferri, alii praesumpserunt assignare. Unde petebat a nobis, ut quae de ipso inceperamus exsequi dignaremur. Magister autem Gregorius Novariensis ecclesiae procurator proponebat econtra, quia, quum in illa ecclesia nulla vacaret praebenda, praedictus clericus ad apostolicam sedem accedens falso in ecclesia ipsa nobis suggessit vacare praebendam, et ad suggestionem falsam super receptione sua literas impetrarat. Unde, quum mendax precator carere debeat impetratis penitus, idem procurator ab impetitione ipsius ecclesiam postulabat absolvi. Quum igitur coram dilecto filio nostro G. S. Gregorii ad Velum aureum diacono cardinali, quem eisdem dedimus auditorem, super his diutius litigarent, et idem cardinalis quae fuerant proposita coram eo nobis retulit diligenter,* Fraternitati tuae *per apostolica scripta* mandamus, quatenus, si tibi constiterit, quod in Novariensi ecclesia praebenda vacaret tempore, quo *super praebenda* eiusdem ecclesiae canonici nostras literas receperunt, quum eam *penitus* alii in elusionem mandati nostri duxerint conferendam, eundem clericum, si non *alibi* habet sufficiens beneficium ecclesiasticum, *iuxta tenorem prioris mandati nostri a praedictis clericis* in canonicum recipi, et sibi de reditibus *ipsius* ecclesiae singulis annis *competentes* assignari proventus, donec ei sit in beneficio praebendali provisum.

Chapter XXVIII

Latin source headnote: One having a personate or a benefice with cure, if he receives a second such benefice, vacates the first; but if he contends to retain it, he will also be deprived of the second. This

first. And the one to whom collation of the benefice with cure pertains lawfully confers it immediately when the person instituted receives another; and, if he does not confer it within six months, the collation devolves upon another, and it is otherwise set forth. This second. But concerning eminent and learned persons, the Pope alone dispenses regarding plurality of incompatible benefices. This third. This is what this useful and famous chapter says.

The same, in a general council.

With great providence it was forbidden in the Lateran Council that anyone receive diverse ecclesiastical dignities or several parish churches contrary to the statutes of the sacred canons; otherwise [*both*] the recipient would lose what was so received, and the one conferring would be deprived of the power of bestowing. But because, on account of presumptions and the cupidities of certain men, no fruit or a rare one has hitherto come from the aforesaid statute, we, desiring to oppose this more clearly and expressly, establish by the present decree that whoever receives some benefice having the cure of souls annexed, if he previously had such a benefice, is by the law itself deprived of it; and if perhaps he contends to retain it, let him also be despoiled of the other. Let the one to whom the donation of the first pertains freely confer it, after reception of the other, upon one to whom he sees it ought deservedly to be conferred; and if he delays beyond six months in conferring it, not only shall its collation devolve upon others according to the statute of the Lateran Council, but he shall also be compelled to assign from his own revenues, for the utility of the church whose benefice it is, as much as it is established was received *from it* from the time of its vacancy. We decree that this same thing is to be observed in personates, adding that no one presume to have several dignities or personates in the same church, even if they do not have the cure of souls. Nevertheless, concerning eminent and learned persons who are to be honored with greater benefices, when reason has demanded it, dispensation can be made through the Apostolic See.

> Habens personatum vel beneficium curatum, si secundo tale receperit, vacat primum; quod si retinere contenderit, etiam secundo privabitur. Hoc primo. Et is, ad quem spectat beneficii curati collatio, licite confert statim, quum institutus aliud recepit, et, si infra sex menses non conferat, devolvitur ad alium collatio, et aliter ponitur. Hoc secundo. Cum sublimibus vero et literatis personis circa pluralitatem beneficiorum incompatibilium solus Papa dispensat. Hoc tertio. Hoc dicit istud cap. utile et famosum.
>
> Idem in concilio generali.
>
> De multa providentia fuit in Lateranensi concilio prohibitum, ut nullus diversas dignitates ecclesiasticas vel plures ecclesias parochiales reciperet contra sacrorum canonum instituta; alioquin [*et*] recipiens sic acceptum amitteret, et largiendi potestate conferens privaretur. Quia vero propter praesumptiones et quorundam cupiditates nullus hactenus aut rarus de praedicto statuto fructus provenit : nos evidentius et expressius occurrere cupientes praesenti decreto statuimus, ut, quicunque receperit aliquod beneficium, curam habens animarum annexam, si prius tale beneficium habebat, eo sit ipso iure privatus, et, si forte illud retinere contenderit, etiam alio spolietur. Is quoque, ad quem prioris spectat donatio, illud post receptionem alterius libere conferat, cui merito viderit conferendum, et, si ultra sex menses conferre distulerit, non solum ad alios secundum Lateranensis concilii statutum eius collatio devolvatur, verum etiam tantum de suis cogatur proventibus in utilitatem ecclesiae cuius est illud beneficium, assignare, quantum a tempore vacationis ipsius *ex eo* constiterit esse perceptum. Hoc idem in personatibus esse decernimus observandum, addentes, ut in eadem ecclesia nullus plures dignitates aut personatus habere praesumat, etiamsi curam non habeant animarum. Circa sublimes tamen et

literatas personas, quae maioribus sunt beneficiis honorandae, quum ratio postulaverit, per sedem apostolicam poterit dispensari.

Chapter XXIX

Latin source headnote: A provincial council suspends from collation of benefices those who, after a second correction, confer benefices upon unworthy persons; it also provides who meanwhile is to confer the benefices, and that suspension is relaxed by the Pope alone or the patriarch alone.

The same, in the same council.

It is exceedingly grave and absurd that certain prelates of churches, although they can promote suitable men to ecclesiastical benefices, do not fear to assume unworthy men, whom neither honorable conduct nor knowledge of letters supports, following the affection of carnality, not the judgment of reason; no one of sound mind is ignorant how great are the losses that come to churches from this. Wishing, therefore, to remedy this disease, we command that, unworthy men having been passed over, they assume suitable men who wish and are able to render pleasing service to God and the churches; and let diligent inquiry concerning this be made annually in the provincial council, so that one who after the first and second correction is found culpable be suspended from conferring benefices by that council, a provident and honorable person being appointed in the same council to supply the defect of the suspended person in conferring benefices. And let this same thing be observed concerning chapters that have offended in these matters. But the offense of a metropolitan is to be left to the judgment of a superior and announced on behalf of the council. But so that this salutary provision may obtain fuller effect, let a sentence of suspension of this kind in no way be relaxed apart from the authority of the Roman Pontiff or of his own patriarch, so that in this matter also the four patriarchal sees may be specially honored.

Concilium provinciale a beneficiorum collatione suspendit eos, qui post secundam correctionem indignis beneficia conferunt: providet etiam, quis interim beneficia conferat, et illam suspensionem relaxat solus Papa, vel solus patriarcha.

Idem in eodem.

Grave nimis est et absurdum, quod quidam ecclesiarum praelati quum possint viros idoneos ad ecclesiastica beneficia promovere, assumere non verentur indignos, quibus nec morum honestas, nec literarum scientia suffragatur, carnalitatis sequentes affectum, non iudicium rationis; unde quanta ecclesiis damna proveniant, nemo sanae mentis ignorat. Volentes igitur huic morbo mederi, praecipimus, ut praetermissis indignis idoneos assumant, qui Deo et ecclesiis velint et valeant gratum impendere famulatum, fiatque de hoc in provinciali concilio diligens inquisitio annuatim ita, ut qui post primam et secundam correctionem fuerit repertus culpabilis, a beneficiis conferendis per ipsum concilium suspendatur, instituta in eodem concilio persona provida et honesta, quae suspensi suppleat defectum in beneficiis conferendis. Et hoc ipsum circa capitula, quae in his deliquerint, observetur. Metropolitani vero delictum superioris iudicio relinquatur, ex parte concilii nunciandum. Ut autem haec salubris provisio pleniorem consequatur effectum, huiusmodi suspensionis sententia praeter Romani Pontificis auctoritatem aut proprii patriarchae minime relaxetur, ut in hoc quoque quatuor patriarchales sedes specialiter honorentur.

Chapter XXX

Latin source headnote: A rector of a church, notwithstanding a custom of the bishop or patron, ought to have a sufficient portion from the revenues of the church. This it says as far as § *Who, however.* (*Who, however, etc.:*) A rector not residing in a parish church is deprived of it unless it is annexed to a dignity or prebend, in which case he ought to have a perpetual vicar there. And at the end it forbids, to the prejudice of rectors, a pension from its revenues to be given as a benefice. This it says. Or thus: one not residing in a parish church, or not appointing a vicar when it is annexed to a greater benefice, is deprived of it. This it says.

The same, in the same council.

A vice of custom that is to be extirpated has grown strong in certain regions: namely, that the patrons of parish churches and certain other persons, claiming for themselves [*almost*] wholly their revenues, leave to the presbyters assigned to their service so meager a portion that they cannot fittingly be sustained from it. For, as we have learned for certain, in some regions parish presbyters obtain for their sustenance only a quarter of a quarter, that is, a sixteenth of the tithes. Hence it happens that in these regions almost no parish priest is found who has any, even slight, learning in letters. Therefore, since the mouth of the ox that treads the grain ought not to be bound, but one who serves the altar ought to live from the altar, we establish that, notwithstanding any custom of the bishop, patron, or any other person, a sufficient portion be assigned to the presbyters themselves. But let one who has a parish church serve it not through a vicar but by himself in the order that the care of that church requires, unless perhaps the parish church is annexed to a dignity or prebend. In this case we grant that *the one* who has such a prebend or dignity, since he must serve in the greater church, have in the parish church itself a suitable and perpetual vicar canonically instituted who, as has been said, has a fitting portion from the revenues of that church; otherwise, let him know that by authority of this decree he is deprived of it, freely to be conferred upon another who wishes and is able to fulfill what has been said. But we wholly forbid that anyone presume fraudulently to confer upon another as though for a benefice a pension from the revenues of a church that ought to have the cure of its own priest.

> Rector ecclesiae, non obstante consuetudine episcopi, vel patroni, debet de reditibus ecclesiae sufficientem habere portionem. H. d. usque ad §. Qui vero. (Qui vero etc.:) Privatus est parochiali ecclesia rector in ea non residens, nisi sit annexa dignitati vel praebendae, quo casu debet ibi habere perpetuum vicarium. Et in fine prohibet in fraudem rectoribus de ipsius proventibus pensionem in beneficium dari. H. d. Vel sic: non residens in ecclesia parochiali, vel non ponens vicarium, quando est annexa beneficio maiori, privatus est ea. H. d.
>
> Idem in eodem.
>
> Exstirpandae consuetudinis vitium in quibusdam partibus inolevit, quod scilicet parochialium ecclesiarum patroni et aliae quaedam personae proventus ipsarum sibi [*paene*] penitus vindicantes, presbyteris earundem servitiis deputatis relinquunt adeo exiguam portionem, quod ex ea nequeant congrue sustentari. Nam, ut pro certo didicimus, in quibusdam regionibus parochiales presbyteri pro sua sustentatione non obtinent nisi quartam quartae, id est sextam decimam decimarum. Unde fit, ut in his regionibus paene nullus inveniatur sacerdos parochialis, qui ullam vel modicam habeat peritiam literarum. Quum igitur os bovis ligari non debeat triturantis, sed qui altario servit de altari vivere debeat, statuimus, ut, consuetudine qualibet episcopi vel patroni, seu cuiuslibet alterius non obstante, portio presbyteris ipsis sufficiens assignetur. Qui vero parochialem habet ecclesiam, non per vicarium,

sed per se ipsum illi deserviat in ordine, quem ipsius ecclesiae cura requirit, nisi forte dignitati vel praebendae parochialis ecclesia sit annexa. In quo casu concedimus, ut *is*, qui talem habet praebendam vel dignitatem, quum oporteat eum in maiori ecclesia deservire, in ipsa parochiali ecclesia idoneum et perpetuum habeat vicarium canonice institutum, qui, ut praedictum est, congruentem habeat de ipsius ecclesiae proventibus portionem; alioquin illa se sciat auctoritate huius decreti privatum, libere alii conferenda, qui velit et possit quod dictum est adimplere. Illud autem penitus interdicimus, ne quis in fraudem de proventibus ecclesiae, quae curam habere debet proprii sacerdotis, pensionem alii quasi pro beneficio conferre praesumat.

Chapter XXXI

Latin source headnote: Religious ought not to receive churches or tithes from laypersons without the consent of the diocesans, admit excommunicated or interdicted persons to divine offices, or institute or remove in churches that do not pertain to them by full right; rather, they will present suitable men to the diocesans for them.

The same, in the same council.

It is known to have been forbidden in the Lateran Council that any regulars presume to receive churches or tithes from the hand of a layperson without the consent of the bishops, or admit excommunicated persons or those interdicted by name in any way to divine offices. But we, forbidding it more strongly, have taken care to punish transgressors by worthy chastisement, establishing nevertheless that, in churches that do not pertain to them by full right, according to the statutes of the same council they present to the bishops the presbyters to be instituted, so that they answer to the bishops for the care of the people but render a competent account to the religious themselves for temporal property; but let them not dare to remove those instituted without consulting the bishops. Indeed, we add that they take care to present those whom either their manner of life renders known or credible testimony of prelates commends.

Non debent religiosi ecclesias vel decimas a laicis sine dioecesanorum consensu recipere, excommunicatos vel interdictos ad divina admittere, in ecclesiis quoque, quae ad eos non pleno iure pertinent, instituere vel destituere; sed praesentabunt dioecesanis ad eas viros idoneos.

Idem in eodem.

In Lateranensi concilio noscitur fuisse prohibitum, ne quilibet regulares ecclesias seu decimas sine episcoporum consensu de manu laici praesumant accipere, nec excommunicatos vel nominatim interdictos admittant aliquatenus ad divina. Nos autem id fortius inhibentes, transgressores digna curavimus animadversione punire, statuentes nihilominus, quatenus in ecclesiis, quae ad ipsos pleno iure non pertinent, iuxta eiusdem concilii statuta episcopis instituendos presbyteros repraesentent, ut illis de plebis cura respondeant, ipsis vero pro rebus temporalibus rationem exhibeant competentem, institutos vero removere non audeant episcopis inconsultis. Sane adiicimus, ut illos repraesentare procurent, quos vel conversatio notos reddit, vel commendat probabile testimonium praelatorum.

Chapter XXXII

Latin source headnote: One absent in the study of theology receives the fruits of his benefices in his absence, but not the daily distributions.

Honorius III, to the Abbot and Prior of Saint Geneviève.

Although we directed our writings to you that you cause the ecclesiastical revenues of *the beloved son* Master N., Archdeacon of York, who desires to study sacred scripture, to be ministered to him in full, nevertheless we do not wish, *nor was it our intention,* that you cause to be given to him *those* daily distributions that are furnished only to those residing in the churches and those who are present at the canonical hours.

> Absens in theologiae studio fructus beneficiorum suorum percipit in absentia, sed quotidianas distributiones non.
>
> Honorius III. Abbati et Priori sanctae Genovefae.
>
> Licet vobis direxerimus scripta nostra, ut *dilecto filio* magistro N. Eboracensi archidiacono, in sacra pagina cupienti studere, proventus suos ecclesiasticos faceretis integre ministrari : nolumus tamen, *nec nostrae intentionis exstitit*, ut quotidianas *illas* distributiones, quae tantum residentibus in ecclesiis, et his, qui intersunt horis canonicis, exhibentur, ei tribui faciatis.

Chapter XXXIII

Latin source headnote: Because of the poverty of the prebends of a cathedral church, chapels can be annexed to them, with a fitting portion reserved for their presbyters.

The same, to the Bishop of Veszprém.

You explained to us, *while established in our presence,* that the canons of your church, their provision having been diminished from the time of the general council, since from that time chapels have not been granted to them for their sustenance as was accustomed to be done before, cannot be sustained from the revenues of their prebends, *since these are exceedingly meager, on account of which several of them, after leaving the same church, are compelled, to the reproach of its clerical body, to bind themselves to the services of others. Hence you humbly supplicated that by our permission it be lawful for you to enlarge their provision from those chapels. But because through this derogation would be made from the statutes of the same council, which we wish to be observed unshaken, we were unable to hear you in this respect. Nevertheless, suffering with paternal affection for their poverty and desiring also to do you a favor as the merit of your devotion demands, by authority of the present letters we commit to your fraternity, in which we have full confidence, that,* if manifest necessity or utility demands, you can increase the prebends of your church by chapels to be annexed to them in perpetuity, as with prior discretion you shall see to be expedient, with a fitting portion nevertheless reserved for the presbyters of *each* chapel. [*Let no one therefore, etc. Given at the Lateran, on the fourth day before the Kalends of February, 1225.*]

> Propter paupertatem praebendarum ecclesiae cathedralis possunt eis annecti capellae, reservata ipsarum presbyteris congrua portione.
>
> Idem Vesprimensi Episcopo.
>
> Exposuisti nobis *in nostra praesentia constitutus*, quod ecclesiae tuae canonici, diminuta ipsorum provisione a tempore concilii generalis, quum eis extunc non fuerint ad eorum sustentationem concessae capellae, sicut ante fieri consuevit, de reditibus praebendarum suarum, *quum nimis sint exiles*, nequeunt sustentari, +*propter quod plures ipsorum eadem ecclesia relicta in eiusdem clericatus coguntur opprobrium aliorum se obsequiis mancipare. Unde humiliter supplicuisti, ut de capellis eisdem provisionem eorum de nostra permissione tibi ampliare liceret. Quia vero per hoc statutis derogaretur eiusdem concilii, quae servari volumus inconcusse, te in hac parte nequivimus exaudire. Verum illorum paupertati paterno compatientes affectu, et tibi etiam, prout exposcit devotionis tuae

meritum, gratiam facere cupientes, fraternitati tuae de qua plenam fiduciam obtinemus, praesentium auctoritate committimus, ut, * Si evidens necessitas vel utilitas exigat, praebendas ecclesiae tuae poteris de capellis in perpetuum annectendis eisdem, sicut discretione praevia expedire videris, augmentare, reservata tamen congrua *singularum* cap ellarum presbyteris portione. [*Nulli ergo etc. Dat. Later. IV. Kal. Febr.* 1225.]

Chapter XXXIV

Latin source headnote: Although a church confers a benefice by donation of a layperson, the procurement of that benefice holds even when no mention of this was made.

The same, to the Bishop, Prior, and Archdeacon of Hereford.

The beloved son G., a *poor* cleric, proposed to us that, when we directed requests and commands to the dean and chapter *of the Church of Saint Martin* of Angers that they receive him as a canon and brother as soon as the opportunity offered itself, with you given to him as executors concerning this, *two prebends meanwhile having become vacant in the aforesaid church, the said cleric insistently petitioned you to execute our mandate concerning him. But* because the proctor of *the same* dean and chapter proposed by way of exception that *our* letters *concerning this* were not valid because no mention was made in them that the aforesaid dean had the collation of the prebends of that church by donation of the king, you said by interlocutory decision that you were not executors of our mandate, and thus *those* two prebends that became vacant in the meantime were conferred upon others, *and the said cleric, on account of an occasion of this kind that you seem to have received maliciously, has remained until now frustrated of his provision, on account of which he appealed to our hearing, and you are said to have deferred to his appeal. Therefore, being unwilling that the often-mentioned cleric, frustrated by you of the benefit of our letters, be further suspended, we firmly* command you that, notwithstanding an occasion of this kind, which we regard as frivolous, you take care to execute our mandate *directed to you on his behalf in such a way, without any difficulty, that because of this he does not have recourse to us further and you cannot be reproved for disobedience, which is compared to idolatry.*

Licet ecclesia ex donatione laici beneficium conferat, tenet illius beneficii impetratio, de hoc mentione non habita.

Idem Episcopo et Priori et Archidiacono Herfordensibus.

Dilectus filius G. *pauper* clericus nobis proposuit, quod, quum decano et capitulo *ecclesiae beati Martini* Andegavensis preces direxerimus et praecepta, ut ipsum, quam cito facultas se offerret, in canonicum reciperent et in fratrem, vobis super hoc exsecutoribus sibi datis, *vacantibus interim duabus in ecclesia praefata praebendis, dictus clericus, ut mandatum nostrum exsequeremini circa ipsum, a vobis cum instantia postulavit. Sed* quia *ipsorum* decani et capituli procurator excipiendo proposuit, *nostras super hoc* literas non valere pro eo, quod in eis mentio non fiebat, quod praefatus decanus ex donatione regis praebendarum eiusdem ecclesiae collationem haberet, vos mandati nostri exsecutores non esse interloquendo dixistis, et sic *illae* duae praebendae, quae medio tempore vacaverunt, aliis sunt collatae, +*et dictus clericus occasione huiusmodi, quam vos malitiose recepisse videmini, remansit hactenus sua provisione frustratus, propter quod idem nostram audientiam appellavit, appellationi cuius dicimini detulisse. Nolentes igitur, ut saepe dictus clericus frustratus a vobis literarum nostrarum commodo ulterius suspendatur, vobis firmiter* Mandamus, quatenus, occasione huiusmodi, quam reputamus frivolam, non obstante, mandatum nostrum *ad vos pro ipso directum taliter sine difficultate qualibet* exsequi procuretis, *quod ipse propter hoc ad nos ulterius non recurrat, nec vos possitis de inobedientia reprehendi, quae idolatriae comparatur*.

Chapter XXXV

Latin source headnote: Children and those otherwise beneficed are not suitable to obtain benefices. This it says, adhering to the words of the letter.

Gregory IX, to the Bishop of Strasbourg.

Concerning disordered ordination—(*And below:*) But since those are to be reputed suitable in churches who can and wish to serve in them, we answer your consultation thus: that children and beneficed persons who cannot serve in the same church ought not to be reputed suitable in it.

> Pueri et alias beneficiati non sunt idonei ad beneficia consequenda. H. d. inhaerendo verbis literae.
>
> Gregorius IX. Argentinensi Episcopo.
>
> Super in ordinata ordinatione (*Et infra:*) Quum autem illi sint in ecclesiis idonei reputandi, qui servire possunt et volunt in ipsis, consultationi tuae taliter respondemus, quod pueri et beneficiati, qui non possunt in eadem ecclesia deservire, in ea non debent idonei reputari.

Chapter XXXVI

Latin source headnote: Another prebend ought not to be divided for the completion of one prebend.

The same, to the Archbishop and Master R. of Tours.

Since we thought that the cause being conducted between the Bishop of Orléans and I. de Blesis, canon of Holy Cross, concerning the completion of the prebend of that canon should be committed to you—(*And below:*) We answer your consultation thus: that it was not our intention that for the completion of the prebend of the aforesaid canon some prebend should be newly divided.

> Pro unius praebendae integratione alia dividi non debet.
>
> Idem Archiepiscopo et Magistro R. Turonensibus.
>
> Quum causam, quae inter Aurelianensem episcopum et I. de Blesis canonicum sanctae Crucis super integratione praebendae ipsius canonici vertebatur, vobis duxerimus committendam (*Et infra:*) Consultationi vestrae taliter respondemus, quod nostrae intentionis non exstitit, ut pro integratione praebendae supradicti canonici praebenda de novo aliqua scinderetur.

Chapter XXXVII

Latin source headnote: Clerics who are not noble and not of eminent learning ought not for this reason to be repelled from prebends, even in a church that has not been accustomed to admit such persons.

The same.

Our venerable brother the Bishop of Porto supplicated that, since, while he discharged the office of legation in those regions, he conferred upon I., a cleric, a certain prebend that had been vacant in the church of Strasbourg for so long that its donation had devolved upon the Apostolic See, we should pursue his collation with benign affection. But the proctor of the chapter of Strasbourg proposed in opposition that the same chapter, having heard this and alleging an ancient custom inviolably observed, according to which they had until now admitted into their fellowship no one unless noble and free, illustrious from each parent, of honorable manner of life, and of eminent learning, appealed to the Apostolic See before it received monitory or executory letters, lest anything be done contrary

to this, especially since no prebend was then vacant. (*And below:*) We therefore, considering that not nobility of lineage but of virtues and honorable conduct of life make a servant pleasing and suitable to God, for the governance of which he chose not many noble and powerful according to the flesh but ignoble and poor persons, because with him there is no acceptance of persons, and since men of eminent learning can scarcely be found for the summits of dignities, much less for prebends, have not thought that exceptions of this kind should be admitted. (*And below:*) We command your discretion that, if it is established for you that the aforesaid prebend was vacant when the aforesaid bishop conferred it upon the said I., you cause him to be received to it.

> Clerici ignobiles et non eminentis scientiae propter hoc non debent a praebendis repelli, etiam in ecclesia, quae tales admittere non consuevit.
>
> Idem.
>
> Venerabilis frater noster Portuensis episcopus supplicavit, ut, quum quandam praebendam, quae in Argentinensi ecclesia tamdiu vacaverat, quod donatio eius erat ad sedem apostolicam devoluta, I. clerico contulerit, dum in illis partibus legationis officio fungeretur, suam collationem benigno prosequeremur affectu. Verum procurator Argentini capituli proposuit ex adverso, quod idem capitulum, hoc audito, consuetudinem allegans antiquam inviolabiliter observatam, iuxta quam nullum, nisi nobilem et liberum, et ab utroque parente illustrem, honestae conversationis ac eminentis scientiae, in suum consortium hactenus admiserant, ne contra hoc fieret, maxime quum nulla tunc praebenda vacaret, antequam monitorias vel exsecutorias literas recepisset, ad sedem apostolicam appellavit. (*Et infra:*) Nos igitur attendentes quod non generis, sed virtutum nobilitas vitaeque honestas gratum Deo faciunt et idoneum servitorem, ad cuius regimen non multos secundum carnem nobiles et potentes elegit, sed ignobiles ac pauperes eo, quod non est personarum acceptio apud ipsum, et vix ad culmina dignitatum, nedum praebendas viri eminentis scientiae valeant reperiri, exceptiones huius modi non duximus admittendas. (*Et infra:*) Discretioni vestrae mandamus, quatenus, si vobis constiterit, praedictam praebendam vacasse, quando ipsam dicto I. contulit episcopus memoratus, ipsum ad eam recipi faciatis.

Chapter XXXVIII

Latin source headnote: If it is commanded that provision be made in a church, provision cannot be made by means of a church.

The same.

Since formerly we gave a mandate to the prior of Saint M. that by apostolic authority he provide for G., a deacon, in some church of the city or diocese of Lucca, the same prior, by authority of this kind, endeavored to designate the aforesaid G. rector of the Church of Saint Peter of Vico, in which the rector has been accustomed to be elected by the clerics of the same church, pronouncing nevertheless a sentence of excommunication against those resisting. Therefore, since a mandate of this kind does not extend to such things, nor is our intention directed to a rectorship or dignity, since our command proceeds for a simple benefice, we command that you declare that both an institution of this kind and the sentence of excommunication pronounced because of it do not hold.

> Si mandatur provideri in ecclesia, non potest de ecclesia provideri.
>
> Idem.
>
> Quum olim priori sanctae M. dederimus in mandatis, ut G. diacono in aliqua ecclesia civitatis vel dioecesis Lucanae auctoritate apostolica provideret, idem praefatum G. ecclesiae sancti Petri de Vico

rectorem auctoritate huiusmodi nisus est designare, in qua rector ab eiusdem ecclesiae clericis eligi consuevit, excommunicationis sententiam nihilominus proferens in rebelles. Quum igitur mandatum huiusmodi se ad talia non extendat, nec ad rectoriam vel dignitatem nostra feratur intentio, quum pro simplici beneficio iussio nostra manat : mandamus, quatenus tam institutionem huiusmodi quam excommunicationis sententiam propter hoc latam denuncies non tenere.

Title VI: On a Sick or Debilitated Cleric

Chapter I

Latin source headnote: A sick cleric receives the fruits of his benefice in full.

Gregory, to Candidus, Bishop of Orvieto.

Since, when there is bodily affliction, [*whether it happens for purgation or for vengeance, God's judgment in this is unknown, affliction ought not to be added by us to those scourged, lest, which may it not be, the offense of guilt regard us. And because Calumniosus, bearer of the present letters, asserts that on account of this affliction that he sustains the customary advantages are denied him by your church, therefore*] we exhort your fraternity *by the present letters* that his sickness ought not to impede the bearer of the present letters from receiving the *benefits* that are customary from your church; because, if others were deterred by his example, perhaps no one could be found who would serve the church. Rather, according to the order of *his place,* let your fraternity, *in contemplation of divine judgment,* furnish to the sick man, from the very small means that can come to the church, whatever could be ministered to him if he were healthy, [*so that, etc.*]

DE CLERICO AEGROTANTE VEL DEBILITATO.

Clericus infirmus integre percipit fructus beneficii sui.

Gregorius Candido Episcopo Urbevetano.

Quum percussio corporalis, +[*utrum pro purgatione an pro vindicta contingat, Dei in hoc iudicium ignoratur, non debet a nobis addi flagellatis afflictio, ne nos culpae,*] *quod absit, offensa respiciat. Et quia praesentium lator Calumniosus pro hac percussione, quam sustinet, consueta sibi commoda ab ecclesia vestra asserit negari, idcirco* Fraternitatem tuam *praesentibus* hortamur *epistolis*, quatenus latorem praesentium ad percipienda *beneficia*, quae consueta sunt ab ecclesia tua, aegritudo sua non debeat impedire; quia, si alii eius essent exemplo deterriti, forte non posset qui militaret ecclesiae inveniri, sed secundum *loci* eius ordinem quaecunque ei, si sanus esset, poterant ministrari, de ipsa exiguitate, quae ecclesiae potest accedere, fraternitas tua *divini contemplatione iudicii* praebeat aegrotanti, [*quatenus etc.*]

Chapter II

Latin source headnote: A presbyter from whom half the palm with two fingers has been cut off does not celebrate Mass, but he can perform the other priestly functions.

Pope Eugenius.

We do not permit the presbyter whose two fingers together with half his palm you signified *to have been* cut off by a robber to celebrate Mass, because we trust that this cannot be done safely because of the debility or without scandal because of the deformity of the member. But we in no way forbid him to perform the other priestly offices. [*Furthermore, etc.* (*Cf. c. 1, On Apostasy, V. 9.*)]

Presbyter, cui medietas palmae cum duobus digitis est abscissa, missam non celebrat, sed ceteris sacerdotalibus fungi potest.

Eugenius Papa.

Presbyterum, cuius duos digitos cum medietate palmae a praedone abscissos *esse* significasti, missam non permittimus celebrare, quia nec secure propter debilitatem, nec sine scandalo propter deformitatem membri hoc fieri posse confidimus. Ipsum autem ceteris officiis sacerdotal ibus fungi minime prohibemus. [*Praeterea etc.* (*cf. c.* 1. *de apostat. V.* 9.)]

Chapter III

Latin source headnote: If the rector of a church is leprous, a coadjutor is to be given to him.

Lucius III.

Concerning rectors of churches infected with the mark of leprosy to such a degree that they cannot serve at the altar or enter churches without great scandal to those who are healthy, we wish you to hold this: that a coadjutor is to be given to them who has the care of souls and receives from the resources of the church a fitting portion for his own sustenance.

Si rector ecclesia sit leprosus, dandus est ei coadiutor.

Lucius III.

De rectoribus ecclesiarum leprae macula usque adeo infectis, quod altari servire non possunt, nec sine magno scandalo eorum, qui sani sunt, ecclesias ingredi, hoc volumus te tenere, quod eis dandus est coadiutor, qui curam habeat animarum, et de facultatibus ecclesiae ad sustentationem suam congruam recipiat portionem.

Chapter IV

Latin source headnote: If the rector of a church is leprous, he is removed from the office of administration, but is sustained from the goods of the church.

Clement III.

Your fraternity has thought fit to consult us—(*And below:* [*Cf. c. 19, On the Sentence of Excommunication, V. 39.*]) But concerning a priest who, struck by divine judgment with the disease of leprosy, performs the office of prelacy in a parish church, we say that, because of the scandal and abhorrence of the people, he ought to be removed from the office of administration, in such a way *indeed* that necessities are ministered to him for as long as he lives according to the resources of the church.

Si rector ecclesiae sit leprosus, ab administrationis officio removetur; sed de bonis ecclesiae sustentatur.

Clemens III.

Tua nos duxi t fraternitas consulendos: (*Et infra:* [*cf. c. * 19. *de sent. exc. V.* 39.]) De sacerdote *vero*, qui divino iudicio leprae morbo repercussus in parochiali ecclesia praelationis officio fungitur, dicimus, quod pro scandalo et abominatione populi ab administrationis debet officio removeri, ita *quidem*, quod iuxta facultates ecclesiae sibi necessaria, quamdiu vixerit, ministrentur.

Chapter V

Latin source headnote: A coadjutor is to be given to a bishop who, because of an incurable illness, cannot exercise the pastoral office.

Innocent III, to the Archbishop of Arles.

It was proposed *before us* on your behalf that, since *our venerable brother* the Bishop of Orange has labored under a grave and incurable illness for almost *four years already,* so that he *has not been able and* is in no way able to exercise the pastoral office, *the noble man the lord of Baux,* the *consuls,* and the citizens of the same city incessantly petition you, since you are their metropolitan, that you take care to provide *both* for *them and for the Church of Orange*. But since *you* neither can nor ought in any way to compel him to resignation, nor ought affliction to be added to affliction, but rather *one ought* to pity his misery, because the same man has been good *and honorable* and governed the church committed to him in a salutary manner, *you have thought that the Apostolic See should be consulted as to what you ought to do concerning these things*. We, *therefore,* wishing to provide salutarily both for the *aforesaid* bishop and for *his* church, *answer your fraternity thus and through apostolic writings* command that you associate with him as coadjutor a provident and honorable man through whom both the bishop and the people *committed to him* may be usefully counseled. [*Given at Rome, at Saint Peter's, on the fourth day before the Nones of December, in the seventh year of our pontificate, 1204.*]

> Episcopo, qui propter morbum incurabilem pastorale officium exercere non potest, dandus est coadiutor.
>
> Innocentius III. Arelatensi Archiepiscopo.
>
> Ex parte fuit propositum *coram nobis*, quod, quum *venerabilis frater noster* Aurasiensis episcopus gravi et incurabili morbo fere *iam* per quadriennium labotaverit ita, quod pastorale officium non *potuit, nec* potest ullatenus exercere, *nobilis vir de Baucio* princeps terrae illius, *consules* ac cives civitatis eiusdem a te postulant incessanter, ut *tam* ipsis *quam Aurasicensi ecclesiae*, quum sis metropolitanus eorum, studeas providere. Verum quum *tu* ipsum ad cessionem compellere non possis, nec debeas ullo modo, nec afflictio afflictio sit addenda, immo potius *sit* ipsius miseriae miserendum, eo, quod idem vir bonus exstiterit *et honestus*, et ecclesiam salubri ter sibi commissam gubernaverit, *quid super his agere debeas, sedem duxisti apostolicam consulendam*. Nos *igitur* volentes tam *praefato* episcopo quam ecclesiae *suae salubriter* providere, *fraternitati tuae taliter respondemus et per apostolica scripta* mandamus, quatenus illi coadiutorem associes virum providum et honestum, per quem tam episcopo quam populo *sibi commisso* utiliter consulatur. [*Dat. Rom. ap. S. Petr. IV. Non. Dec. Pont. nostr. Ao. VII.* 1204.]

Chapter VI

Honorius III, to the Bishop of Aversa.

To the consultations—(*And below:*) But a coadjutor is deservedly to be assigned to the archdeacon who, you assert, laboring under paralytic disease, has lost the office of the tongue, *especially if this proceeds from his own will.*

> Honorius III. Episcopo Aversano.
>
> Consultationibus (*Et infra:*) Archidiacono autem, quem morbo paralytico laborantem officium linguae asseris amisisse, coadiutor est merito adhibendus, *maxime si de ipsius processerit voluntate*.

Title VII: On Institutions

Chapter I

Latin source headnote: The number of clerics ought to be established in collegiate churches according to their resources.

From the Council of Arles.

Let no more be received into a monastery of monks or clerics, or even of girls, than can maintain themselves from the goods of the church without impoverishment of the church.

> **DE INSTITUTIONIBUS.**
>
> Numerus clericorum debet institui in ecclesiis collegiatis secundum facultatem ipsarum.
>
> Ex concilio Arelatensi.
>
> Non amplius suscipiantur in monasterio monachorum aut clericorum, seu etiam puellarum, quam quot se regere de bonis ecclesiae absque penuria ecclesiae possint.

Chapter II

Latin source headnote: Laypersons cannot be instituted as canons.

Eugenius.

As has become known to us, you have taken care jointly to establish a certain number of canons in your church *and to fortify your institution by the binding force of an oath. Hence, because, with that number diminished in the course of time, you call into doubt whether you can fill that number by the institution of canons, counting the laypersons who are named by the title of canons in your church, and whether the established number is filled, so that this ambiguity may be removed from your hearts, it seems to us that,* since laypersons ought not to be counted among the number of canons, you ought not to delay to fill the established number, *confirmed by an oath taken,* with other suitable clerical persons *as canons. For your intention is not thought to have been other than that* you unanimously take care to find such persons to fill the number *when it should be necessary,* through whom God may fittingly be served in divine offices through ecclesiastical orders. *Furthermore, we more strictly forbid you henceforth to admit laypersons as canons.*

> Laici in canonicos non possunt institui.
>
> Eugenius.
>
> In ecclesia vestra certum numerum canonicorum, sicut nobis innotuit, comm uniter instituere curavistis, *+et institutionem vestram religione firmare iuramenti. Unde, quia numero illo successu temporum diminuto in dubitationem deducitis, utrum ipsum numerum de institutione canonicorum supplere possitis, laicis computatis, qui in ecclesia vestra canonicorum titulo nominantur, et statutus numerus sit impletus, ut haec ambiguitas a vestris cordibus auferatur, nobis videtur, quod,* Quum laici non debeant in canonicorum numero computari, nec vos debeatis differre, quo minus statutum numerum, *iuramento praestito roboratum*, de aliis clericorum personis idoneis *canonicos* suppleatis; *nec enim alia vestra intentio fuisse putatur, quam quod* tales ad supplendum numerum, *quum necesse foret*, invenire *unanimiter* curetis, per quos Deo in divinis officiis per ecclesiasticos ordines congrue serviatur. *Ad haec vero districtius prohibemus, ne de cetero laicos in canonicos admittatis*.

Chapter III

Latin source headnote: The institution of benefices pertains to bishops or their officials.

Alexander III, to the Archbishop of Canterbury and his Suffragans.

From the frequent complaints *of persons,* we have learned quite manifestly that in your regions an exceedingly depraved *and enormous custom, contrary in every way to the constitutions of the holy Fathers,* has grown strong for many past times: namely, that clerics, *led by blind cupidity, receive churches and* ecclesiastical benefices without the consent of the bishop of the diocese or of his officials who can do *this* by law, thinking less *solicitously* than is fitting how alien this is from the statutes of the holy Fathers and contrary to ecclesiastical honorable conduct. Hence, since you, brother archbishop, wish, as you ought, by the office committed to you, to root out so iniquitous a custom from your province, you pronounced a sentence of excommunication both against those *clerics* who knowingly retain *churches or* ecclesiastical benefices *henceforth* occupied in such a way, and against those who should henceforth presume to occupy *churches or ecclesiastical benefices in such a way, as we understood from your letters*. We therefore, holding that sentence ratified *and firm* and confirming it by apostolic authority, *through apostolic writings and by way of precept* command that *each of you, renewing the sentence in his episcopate at least four times a year, cause it to be inviolably observed, contradiction and appeal ceasing,* and that you in no way presume to absolve the clerics themselves who *have incurred or henceforth* incur that sentence unless they have made fitting satisfaction *and wholly desisted from their presumption.*

> Institutio beneficiorum spectat ad episcopos vel eorum officiales.
>
> Alexander III. Cantuariensi Archiepiscopo et eius Suffraganeis.
>
> Ex frequentibus querelis *personarum satis manifeste* didicimus, in partibus vestris consuetudinem pravam *admodum et enormem, et sanctorum Patrum constitutionibus omnimodo contrariam* a multis retro temporibus invaluisse, quod *videlicet* clerici, *caeca cupiditate ducti, ecclesias et* ecclesiastica beneficia sine consensu episcopi dioecesis vel officialium suorum, qui hoc de iure possunt *facere*, recipiunt, minus quam deceat *sollicite* cogitantes, quomodo id a Patrum sanctorum est institutionibus alienum et ecclesiasticae contrarium honestati. Unde, quum tu, frater archiepiscope, ex officio tibi commisso tam iniquam consuetudinem de provincia tua velis, sicut debes, radicitus exstirpare, tam in *clericos* illos, qui *ecclesias vel* ecclesiastica beneficia *de cetero* taliter occupata scienter detinent, quam in eos qui *ecclesias vel ecclesiastica beneficia* de cetero *taliter* occupare praesumpserint, *sicut ex literis tuis intelleximus*, excommunicationis sententiam protulisti. Nos itaque eandem sententiam ratam *et firmam* habentes, et eam auctoritate apostolica confirmantes, *per apostolica scripta praecipiendo* mandamus, quatenus *singuli vestrum, sententiam in suis episcopatibus saltem quater in anno innovantes, eam contradictione et appellatione cessante faciatis inviolabiliter observari*, clericos ipsos, qui ipsam sententiam *incurrerunt vel de cetero* incurrerint, nisi congrue satisfecerint, *et a praesumptione sua omnino destiterint*, absolvere minime praesumatis.

Chapter IV

Latin source headnote: No one ought to be instituted beyond the resources of a church against the will of its clerics.

Clement III, to the Clergy of Constantinople.

By the authority of the Apostolic See *and the duty of our office, we are compelled to regard ecclesiastical men with a more benign eye and to provide for them with pastoral solicitude, lest they be burdened by molestations. Therefore, induced by this reason, we forbid by apostolic authority that any of you be proceeded against by anyone in*

a civil or criminal business except in an ecclesiastical forum, or be in any way committed to prison or bonds through a secular person unless he has been cast out of clerical order by his archbishop, or without a reasonable and manifest cause suffer a burden from anyone in his office or his right. We also forbid the king's vicar or any person exercising the place of secular power to presume to inflict injury upon you in your houses or other property; rather, both in these and in other things we wish the privileges granted to you by kings or archbishops upon pious consideration to be preserved inviolate. We establish further that no one be instituted in your churches against your will beyond what their resources can sustain.

> Ultra facultates non debet quis institui invitis clericis ecclesiae.
>
> Clemens III. Clero Constantinopolitano.
>
> Auctoritate apostolicae sedis +*debitoque officii nostri compellimur, viros ecclesiasticos oculo benigniori prospicere, eisque, ne graventur molestiis, pastorali sollicitudine providere. Hac itaque ratione inducti auctoritate apostolica prohibemus, ne aliquis vestrum a quocunque in civili vel criminali negotio, nisi in foro ecclesiastico impetatur, nec per saecularem personam carceri aut vinculis, nisi ab archiepiscopo suo eiectus fuerit ex ordine clericali, aliquatenus mancipetur, nec absque rationabili et manifesta causa in officio suo, vel iure suo gravamen ab aliquo patiatur. Prohibemus etiam, ne vicarius repis seu quaecunque persona vicem saecularis potestatis gerens vobis in domibus vel aliis rebus vestris iniuriavm praesumat inferre; sed tam in his quam in aliis privilegia, vobis a regibus vel archiepiscopis pia consideratione concessa, inviolata volumus conservari*. Statuimus insuper, ut nullus in ecclesiis vestris ultra, quam facultates earum sustineant, vobis instituatur invitis.

Chapter V

Latin source headnote: When outsiders must be instituted in churches, clerics of only a certain origin ought not to be instituted, but from wherever they may be, provided that they are suitable.

Innocent III, to the Cardinals of Saint Marcellus and Saint Susanna, Legates of the Apostolic See.

It is known to pertain to the adornment *and advantage both of the Church of Hagia Sophia and of the other churches constructed in the city of Constantinople that learned men conspicuous for honorable conduct, coming from any parts of the world, ought to be instituted in them. But,* as has been suggested to our ears, *our venerable brother* the Patriarch of Constantinople, *unmindful of those things that we suggested to him by living voice and afterward commanded through writings, if nevertheless our letters reached him,* scorning clerics of other nations, strives to place only Venetians in the churches of Constantinople, not considering that in every nation one who does justice is acceptable to God, nor is it fitting that the sanctuary of God be possessed by hereditary right. Wherefore, through apostolic writings [*by way of precept*] we command your discretion that you admonish him not to postpone instituting in the aforesaid churches, and especially in the greater church, men who are *religious, honorable, and* learned, and otherwise suitable, from wherever they derive their origin; otherwise he will render himself unworthy for you to compel clerics of other nations to his obedience, *especially since because of this they have thought that they should appeal to our hearing.* Nor can you dissemble from intimating this to our ears, so that from this very thing we may be able to conjecture whether what he is said to have promised the Venetians concerning this is true. *But if any clerics have been instituted by you or one of you in the aforesaid churches, cause them, with appeal set aside, to enjoy peaceful possession, and cause those removed to be restored to the same churches, as shall be just, by ecclesiastical censure, with appeal removed.* [*But if not. Given, etc., at Ferentino, on the eleventh day before the Kalends of July, in the ninth year, 1206.*]

Quum in ecclesiis oportet extraneos institui, non debent institui clerici certae originis tantum, sed undecunque sint; dum tamen sint idonei.

Innocentius III. S. Marcelli et S. Susannae cardinali apostolicae sedis legato.

Ad decorem +*et commodum tam ecclesiae S. Sophiae, quam aliarum ecclesiarum, quae sunt in urbe Constantinopolitana constructae, noscitur pertinere, ut literati viri et morum honestate conspicui, de quibuslibet mundi partibus venientes, institui debeant in eisdem. Verum* Sicut nostris auribus est suggestum, *venerabilis frater noster* Constantinopolitanus patriarcha, *eorum immemor, quae sibi suggesimus viva voce ac postmodum per scripta mandavimus, si tamen ad ipsum nostrae literae pervenerunt*, aliarum nationum clericos spernens, Venetos tantum in Constantinopolitanis ecclesiis satagit collocare, non attendens, quod in omni gente qui facit iustitiam acceptus est Deo, nec sanctuarium Dei convenit iure hereditario possideri. Quocirca *discretioni vestrae per apostolica scripta* [*praecipiendo*] mandamus, quatenus moneatis eundem, ut viros *religiosos, honestos et* literatos, et alias idoneos, undecunque originem duxerint, in praedictis ecclesiis, et maxime in maiori, instituere non postponat; alioquin indignum se reddet, ut vos aliarum clericos nationum ad eius obedientiam compellatis; *praesertim quum ipsi propter hoc ad nostram duxerint audientiam appellandum*. Nec dissimulare potestis, quin hoc nostris auribus intimetis, ut ex hoc ipso, an verum sit quod super hoc Venetis dicitur promisisse, coniicere valeamus. *Si qui vero clerici per vos vel alterum vestrum sunt in praedictis ecclesiis instituti, appellatione postposita faciatis eos pacifica possessione gaudere, amotos sicut iustum fuerit per censuram ecclesiasticam appellatione remota facientes restitui ad easdem* [*Quod si non Dat. etc. Ferentini XI. Kal. Iul. Ao. IX.* 1206.]

Chapter VI

Latin source headnote: Institutions and custodianships can by special right pertain to one who is not the bishop, and while litigation with the diocesan is pending he is defended in possession. This it says. Or thus: if one to whom it does not pertain by common law possesses the right of instituting, while judgment concerning ownership is pending he is defended in possession.

The same, to the Bishop of Ely and the Archdeacon of Norwich.

When *the beloved sons Master Honorius,* Archdeacon of Richmond, and *Master Columbus our subdeacon, I. of York, R. Avenel, and* the proctors of *our venerable brother* the Archbishop of York came to the Apostolic See, *we thought that they should be heard in our consistory.* On behalf of the *aforesaid* archbishop it was proposed that the institution of persons and custody of vacant churches pertain to him in his diocese both by common law and by general custom. But certain of his predecessors personally committed both institution and custody to certain archdeacons of Richmond, *retaining them to themselves at the time of someone and freely using them, as pertained to them, in such a way that the archbishop who now presides over the church of York granted them by special grace to W. de Chimili, formerly Archdeacon of Richmond, at the requests of Richard, King of the English of illustrious memory, and, when he was afterward elected bishop, retained them for himself as his own.* [*And when he intended to assign that archdeaconry to the aforesaid master, both before its grant and in the grant itself he expressed that he reserved to himself both the institutions and custodianships. The archdeacon himself answered him that he would act against God and derogate from canonical law if he presumed to usurp for himself the institutions of churches, which belonged to the archbishop alone. Then, renouncing those liberties, he reduced his renunciation to writing and, for greater caution, fortified it with his own seal, and finally took a bodily oath that he would in no way involve himself in them.*] But among other things the archdeacon himself answered that, *when Henry I, King of England of illustrious memory, wished a new episcopal see to be created at Carlisle, because the Archdeaconry of Richmond was harmed by this, the king himself humbly petitioned T., Archbishop of York of good memory, that, in compensation for a certain part that was withdrawn from the*

aforesaid archdeaconry, he grant it the aforesaid dignities; and the archbishop, assenting to the requests of the petitioner, gave both the institutions and custodianships, not personally to the archdeacon who then existed, but perpetually to the archdeaconry, by a real *and free* grant with the consent of the *York* chapter. But since the archdeaconry itself had existed in continuous possession both of these and also of other liberties in the times of many archbishops, *kings,* and archdeacons, and the *often-mentioned* archbishop had granted it to him without any condition, after the grant he asserted that he had granted it *with all its liberties* except the institutions and custodianships of vacant churches. But he, [*fully knowing the custom of the same archbishop, namely that, just as he would give easily, so he was accustomed lightly to repent, and*] fearing that, if he expressly denied this, since he had not yet obtained possession as archdeacon, the archbishop would either wholly impede his act or it would be delayed longer, answered that he would do what pleased him not only concerning that but concerning all his revenues. [*But afterward, having entered possession of the archdeaconry, he freely used those liberties as his predecessors had been accustomed to do. Subsequently, when the archbishop had despoiled him of the archdeaconry itself contrary to justice and he could in no way obtain its restitution unless by charter he renounced the aforesaid liberties, he, knowing that his right endured, while still despoiled gave the archbishop himself letters of renunciation fortified with his own seal; but, as was proposed in opposition, he in no way abjured them. Indeed, after obtaining the benefit of restitution, he used the same liberties as before, although the same archbishop manifoldly burdened him and his clerics concerning them and other things after an appeal had been lawfully interposed. Hence, since the grant of the aforesaid liberties was not made to the person but rather as a real grant to the personate, they were not specially granted to anyone by grace but were rather delivered as owed together with the archdeaconry, to whose integrity they undoubtedly pertained as compensation by way of dowry. On this account, even if some archbishop perhaps used them while he retained the archdeaconry in his hands, no prejudice was generated thereby against the archdeaconry, since they are understood afterward to have been granted in it. Furthermore, since in the Council of Tours divisions of prebends, dignities, and benefices are forbidden, and the Lateran Council, where it forbids new assessments to be imposed and adds that old ones are not to be increased, says, "Let no persons presume to appropriate a portion of the revenues for their own uses," it is apparent that the archbishop neither ought nor was able to mutilate the archdeaconry of its dignities and liberties. Nor is it to be believed that, before the grant or in the grant itself, it was arranged that the archbishop should retain the aforesaid liberties for himself, because, if he had perhaps wished thus to usurp another's property for himself, he would seem to have committed simoniacal depravity. But the renunciation could not harm the archdeacon, since he renounced while despoiled, and Pope Alexander of good memory, our predecessor, asserted that a renunciation of this kind was not valid. Moreover, although collation of the archdeaconry should have come by surreption to the aforesaid archbishop, its integrity nevertheless pertains to the dignity of the church of York, and neither archbishop nor archdeacon could, apart from the assent and without the counsel of the York chapter, harm to such an extent the dignities or liberties of the archdeaconry itself.*] *Upon these matters the opposing party replied that, even if the renunciation or abjuration did not harm the archdeaconry, nevertheless by these the faculty of seeking recovery was taken away from the archdeacon. But the archdeacon answered that he was not seeking recovery of those liberties, since he freely used them, as before, when he began his journey to come to the Apostolic See and enjoyed possession of them. But against this they replied again that the same archdeacon would not have petitioned to be instituted by the archbishop in a certain church of his archdeaconry if such institution pertained to him and he then enjoyed possession of those liberties. To this the archdeacon himself answered that he petitioned not to be instituted by the archbishop but rather to be confirmed, although it seemed unfitting that he should institute himself.* We therefore, *having heard and more fully understood the things proposed on either side,* declared by interlocutory decision that the archdeacon is to be protected in full

possession of the liberties of the same archdeaconry until it has lawfully been proved in opposition that those liberties were personally granted to the archdeacons by the archbishops, since in this case both before and after, and even in the grant itself, the archbishop could lawfully have retained them *for himself* as his own, or until it has lawfully been proved that the archdeacon abjured those liberties. But in this case, if that grant was real, no right or utility would accrue to the archbishop, because either at the petition of the church of York or by ourselves we shall make provision concerning this for the *same* archdeaconry. Therefore, if either of these has been lawfully [*both proposed and*] proved, let silence be imposed upon the archdeacon concerning those liberties; if neither, upon the archbishop. [*Therefore strictly, etc.*]

> Institutiones et custodiae possunt de iure speciali ad non episcopum pertinere, et pendente lite cum diocesano defenditur in possessione. H. d. Vel sic: Si possidet ius instituendi is, ad quem de iure communi non spectat, pendente iudicio proprietatis in posessione defenditur.
>
> Idem Heliensi Episcopo et Archidiacono Norvicensi.
>
> Quum venissent ad apostolicam sedem *dilecti filii magister Honorius* archidiaconus Richemundiae, et *magister Columbus subdiaconus noster I. de Eboraco, et R. Avenel et* procuratores *venerabilis fratris nostri* Eboracensis archiepiscopi, *eos in consistorio nostro duximus audiendos*. Ex parte archiepiscopi *memorati* fuit propositum, quod institutio personarum et custodia ecclesiarum vacantium ad eum in dioecesi sua spectat tam de iure communi quam de consuetudine generali. Verum quidam praedecessores ipsius quibusdam archidiaconis Richemundiae tam institutionem quam custodiam personaliter commiserunt, *eas sibi alicuius tempore retinentes, et libere, sicut spectabat ad eos, utentes eisdem ita, quod archiepiscopus, qui Eboracensi ecclesiae modo praeest, W. de Chimil., quondam archidiacono Richemundiae, illas ad preces inclitae Recordationis Ricardi regis Anglorum de gratia speciali concessit, et eo in episcopum post electo sibi retinuit tanquam suas. +[Quumque archidiaconatum illum praedicto magistro intenderet assignare, tam ante concessionem, quam in concessione ipsius expressit, quod tam institutiones sibi quam custodias reservabat. Cui archidiaconus ipse respondit, quod contra Deum ageret et iuri canonico derogaret, si institutiones ecclesiarum sibi usurpare praesumeret, quae soli archiepiscopo competebant. Deinde libertatibus ipsis renuntians, renunciationem suam redegit in scriptis: et ad maiorem cautelam sigillo proprio roboravit, ac tandem quod eis se nullatenus immisceret, corporaliter praestitit sacramentum.*] Inter alia vero archidiaconus ipse respondit, quod, *quum inclytae recordationis primus Henricus rex Angliae apud Carleolum sedem episcopalem vellet de novo creari, quia ex hoc archidiaconatus Richemundiae laedebatur, rex ipse a bonae memoriae T. archiepiscopo Eboracensi humiliter postulavit, ut in recompensationem cuiusdam partis, quae subtrahebatur archidiaconatui memorato, ei praedictas concederet dignitates*, archiepiscopus *autem annuit precibus postulantis et* tam institutiones quam custodias, non personaliter archidiacono, qui tunc erat, sed perpetuo de consensu *Eboracensis* capituli archidiaconatui reali *et liberali* concessione donavit. Quum autem archidiaconatus ipse in continua possessione tam istarum quam aliarum *etiam* libertatum multorum archiepiscoporum, *regum* et archidiaconorum temporibus exstitisset, et *saepe dictus* archiepiscopus sine conditione qualibet concessisset ipsum eidem, post concessionem asseruit, quod ipsum *cum omnibus libertatibus suis* concesserat, institutionibus et custodiis vacantium ec clesiarum exceptis. Ipse vero [*consuetudinem eiusdem archiepiscopi plene noscens, scilicet quod sicut daret de facili, sic poenitere leviter consuerit, ac*] timens, ne, si negaret expresse, quum nondum esset archidiaconus possessionem adeptus, vel impediret penitus factum eius, vel diutius differretur, respondit, quod non solum de illo, sed de omnibus reditibus sui s faceret quod sibi placeret. [*Post modum vero possesionem archidiaconatus ingressus, libere libertatibus ipsis est usus, sicut praedecessores eius facere consueverant. Consequenter vero quum archiepiscopus eum archidiaconatu ipso contra iustitiam spoliasset, nec restitutionem eius potuisset aliquatenus obtinere, nisi per chartam renunciaret libertatibus memoratis, ipse ius suum durare cognoscens, literas renunciationis spoliatus adhuc archiepiscopo ipsi dedit sigillo proprio roboratas; sed illas, sicut est propositum ex*

adverso, nullatenus abiuravit; immo restitutionis beneficium assecutus, usus est eisdem libertatibus sicut prius, licet idem archiepiscopus ipsum et clericos eius super illis et aliis post appellationem legitime interpositam multipliciter aggravaret. Unde quum praedictarum concessio libertatum non fuerit personae, sed sicut realis personarii magis facta, non gratia specialiter concedebantur alicui sed ex debito potius cum archidiaconatu pariter tradebantur ad cuius integritatem tanquam in recompensationem dote proculdubio pertinebant. Propter quod, etsi aliquis archiepiscopus eis forsan usus fuerit, dum archidiaconatum in suis manibus retinebat, nullum propter hoc archidiaconatui est praeiudicium generatum, quum intelligantur postmodum in ipsa concessae. Praeterea, quum in Turonensi concilio praebendarum, dignitatum, beneficiorum sint inhibitae sectiones, et Lateranum concilium, ubi census novos imponi prohibet, et veteres augmentari subiungat, "Ne partem redituum aliqui suis usibus appropriare praesumant, "patet archiepiscopum nec debuisse nec potuisse archidiaconatum suis dignitatibus et libertatibus mutilare. Nec est credendum quod ante concessionem, vel in ipsa concessione actum fuerit, ut praedictas libertates sibi archiepiscopus retineret, quia si alienum sibi sic voluisset forsitan usurpare, commississe videretur simoniacam pravitatem. Renuntiatio autem archidiacono nocere non potuit, quum renunciaverit spoliatus, et bonae memoriae Alexander papa, praedecessor noster, renunciationem huiusmodi asseruerit non valere. Insuper quum, etsi collatio archidiaconatus surrepserit ad archiepiscopum memoratum, integritas tamen ad Eboracensis ecclesiae pertinet dignitatem, nec potuisset archiepiscopus vel archidiaconus praeter assensum et absque consilio Eboracensis capituli ipsius archidiaconatus in tantum laedere dignitates vel libertates.] *Super haec pars replicavit adversa, quod, etsi renunciatio vel abiuratio archidiaconatui non noceret, per haec tamen esset archidiacono repetendi facultas adempta. Sed archidiaconus libertates illas se non repetere respondebat, quum eis libere, sicut prius, quando iter arripuit ad sedem apostolicam veniendi, uteretur, et earum possessione gauderet. Sed contra hoc iterum replicabant, quod idem archidiaconus in quadam ecclesia sui archidiaconatus non per archiepiscopum institui postulasset, si talis institutio pertinebat ad ipsum, et ipse tunc ipsarum libertatum possessione gauderet. Ad quod archidiaconus ipse respondit, quod per archiepiscopum non institui, sed confirmari potius postulavit, licet, quod se ipsum instituere, incongruum videretur*. Nos igitur, *auditis quae fuerant hinc inde proposita, et plenius intellectis*, interlocuti fuimus, archidiaconum esse in plena libertatum eiusdem archidiaconatus possessione tuendum, donec probatum legitime fuerit ex adverso, libertates ipsas archidiaconis ab archiepiscopis personaliter fuisse concessas, quum in hoc casu tam ante quam post, et in ipsa etiam concessione archiepiscopus eas retinere *sibi* potuerit licite tanquam suas, vel donec legitime probatum fuerit, easdem libertates archidiaconum abiurasse. Sed in hoc casu, si concessio illa fuerit realis, archiepiscopo nihil iuris vel utilitatis accederet, quia nos vel ad petitionem Eboracensis ecclesiae, vel per nos ipsos super hoc archidiaconatui *eidem* consulemus. Si ergo alter utrum ipsorum fuerit legitime [*et propositum, et*] comprobatum, archidiacono super libertatibus ipsis, si neutrum, archi episcopo silentium imponatur. [*Ideoque districte etc.*]

Chapter VII

Latin source headnote: He to whom the collation of dignities pertains cannot institute himself.

The same, to the Bishop of Troyes and the Archdeacon of Paris.

When it [*had formerly come to our hearing that a certain dignity in the church of Péronne, which is commonly called the custodianship, had remained vacant for two years and more contrary to the statutes of the Lateran Council, we recall that we gave in command to our venerable brother the Archbishop of Tours, then Archdeacon of Paris, and our beloved son the Dean of Saint-Quentin that, if the matter stood thus, since the donation of that dignity had devolved upon us, they, supported by our authority, should assume it into their custody and should disclose the truth to us by their letters, so that, made more certain by them, we might confer the dignity itself upon a suitable person. But they peremptorily cited both the dean and chapter and also Matthew, abbot of the church of Péronne, who also conducted himself as custodian of that same church. And when the said archbishop, because he could not be present on the appointed day, had excused himself by his letters, the proctor of the aforesaid abbot*

appeared before the said dean, proposing that our letters directed to them were suspect for many reasons: both because in their salutation the name of the archdeacon had been placed before that of the dean, and the small mark that is customarily appended for the identification of the person obtaining the letters had not been written on the back but rather in the margin of the letters; and because the capital letter S in this word "salutem" was extended too far lengthwise on its rear part; and because in the same letters an adversary, accuser, or even denouncer had not been designated by name—all of which he alleged to be contrary to the custom of the Apostolic See. The same proctor also, alleging that it was necessary to proceed in that business according to judicial order, insistently requested a delay so that the said abbot might be able to be present personally in the same cause, interposing the obstacle of an appeal if the requested delay were denied him. But the said dean, treating the aforesaid allegations with contempt as superfluous, wholly denied the delay and assumed the aforesaid custodianship into his care, appointing suitable providers both in external and internal matters. And so that he might make us more certain about the truth of the business, he compelled the dean and certain canons of the church of Péronne to bear witness to the truth concerning that business; he sent their depositions, enclosed under his own seal, to our presence. We therefore, reviewing more diligently the proceeding of that dean, although we regarded certain exceptions proposed by the proctor of the aforesaid abbot as frivolous and empty, nevertheless, because according to lawful enactments, even if not cognizance but execution is committed, it is still necessary to inquire into the truth of the petitions, especially since that clause, namely, "if the matter stands thus," had been inserted in our letters, thought that the proceeding of the same dean—who assumed the custodianship into his care before he inquired into the truth—should be annulled. By apostolic writings we command your discretion that you restore the abbot himself to the aforesaid custodianship, since it is established that he was removed contrary to the form of the apostolic mandate, and then take care to proceed according to the tenor of the same mandate, nevertheless attending to this: unless the said abbot shows a reasonable cause why he can have the custodianship and the abbacy together in the same church, you, after removing him, are to assume the often-mentioned custodianship into your care, the obstacle of appeal having been removed, and are to keep it until you fulfill the apostolic mandate concerning it.] But we do not wish you to be ignorant that, after *the same* M. was made abbot, he could not by law obtain *the aforesaid* custodianship, because, since by reason of the abbacy the donation both of the custodianship and of the other dignities, and also of the prebends in the church of Péronne, pertains to him, he could not receive the custodianship itself from himself, since there ought to be personal distinction between giver and receiver; nor could he receive it from another, since another did not have the right of conferring it. [*Given at Viterbo, on the twelfth day before the Kalends of July, in the tenth year.* 1207.]

> Is, ad quem spectat collatio dignitatum, se ipsum instituere non potest.
>
> Idem Episcopo Trecensi et Archidiacono Parisiensi.
>
> Quum ad nostram +[*dudum audientiam pervenisset, quod in ecclesia Peronensi dignitas quaedam, quae custodia vulgariter appellatur, contra statuta Lateranensis concilii per duos annos et amplius vacavisset, venerabili fratri nostro Turonensi archiepiscopo, tunc archidiacono Parisiensi, et dilecto filio decano Sancti Quintini dedisse recolimus in praeceptis, ut, si res taliter se haberet, quum ad nos ipsius dignitatis esset donatio devoluta, ipsi auctoritate nostra suffulti eam in suam custodiam assumentes, insinuarent nobis per suas literas veritatem, ut per eas certiores effecti dignitatem ipsam personae idoneae conferremus. Ipsi vero tam decanum et capitulum quam etiam Matthaeum abbatem Peronensis ecclesiae, qui custodem etiam eiusdem ecclesiae se gerebat, peremptorie citaverunt. Quumque dictus archiepiscopus, quia die statuta interesse non poterat, per suas se literas excusasset, supradicti procurator abbatis coram decano comparuit memorato, proponens nostras literas directas ad illos multiplici ratione suspectas, tum quia in salutatione ipsarum prius positum fuerat nomen archidiaconi quam decani, et notula, quae ad assignationem personae literas impetrantis solet apponi, non erat a tergo scripta, sed in margine potius literarum; tum quia S. litera capitalis in hac dictione "salutem "nimis erat in longum a posteriori parte protensa; et quia in eisdem literis adversarius vel*

accusator seu etiam denunciator non erat ex nomine designatus, quae omnia obviare sedis apostolicae consuetudini proponebat. Idem quoque procurator, allegans, quod in eodem negotio erat ordine iudiciario procedendum, dilationem cum instantia postulavit, ut dictus abbas posset eidem causae personaliter interesse; obstaculum appellationis obiiciens, si eidem postulata dilatio negaretur. Dictus vero decanus, allegationes praedictas tanquam supervacuas vilipendens, dilatione penitus denegata, in suam curam assumpsit custodiam memoratam, idoneis provisoribus tam in exterioribus quam in interioribus deputatis. Qui ut de veritate negotii nos posset reddere certiores, decanum et quosdam canonicos Peronensis ecclesiae coegit super ipso negotio veritati testimonium perhibere; quorum depositiones inclusas sub sigillo proprio ad nostram praesentiam destinavit. Nos igitur eiusdem decani processum diligentius recensentes licet exceptiones quasdam ab abbatis praedicti procuratore propositas frivolas reputaverimus et inanes, quia tamen secundum legitimas sanctiones, etsi non cognitio, sed exsecutio demandetur, oportet tamen de veritate precum inquiri, maxime quum illa clausula, videlicet : "si res ita se habet, "literis nostris esset inserta, processum eiusdem decani, qui prius custodiam in suam curam accepit quam inquireret veritatem, duximus irritandum, discretioni vestrae per apostolica scripta mandantes, quatenus abbatem ipsum restituatis ad custodiam supradictam, quum constet ipsum contra formam mandati apostolici destitutum, ac deinde secundum eiusdem mandati tenorem procedere procuretis, illud nihilominus attendentes, ut, nisi dictus abbas rationabilem causam ostenderit, quod in eadem ecclesia custodiam simul et abbatiam possit habere, vos, eo destituto, in curam vestram sublato appellationis obstaculo saepedictam custodiam assumatis, custodientes eandem, donec de ipsa mandatum apostolicum impleatis.] Illud autem nolumus vos ignorare, quod, postquam *idem* M. fuit abbas effectus, *praedictam* custodiam de iure non potuit obtinere, quia, quum ratione abbatiae ad ipsum pertineat donatio tam custodiae quam aliarum dignitatum, ac etiam praebendarum in ecclesia Patranensi, custodiam ipsam recipere non potuit a se ipso, quum inter dantem et accipientem debeat esse distinctio personalis; sed nec ab alio, quum ius conferendi alius non haberet. [*Dat. Viterbii XII. Kal. Iul. Ao. X.* 1207.]

Title VIII: On Granting a Prebend and a Church Not Vacant

Chapter I

Latin source headnote: One knowingly instituted into the benefice of a living person is to be deposed.

Pope Gelasius I, to the Romans.

Those who are placed in the position of living priests are by that very fact, *according to the canons,* to be driven from ecclesiastical communion, because they permitted themselves to be appointed as successors to living priests.

DE CONCESSIONE PRAEBENDAE ET ECCLESIAE NON VACANTIS.

Institutus scienter in beneficium viventis deponendus est.

Gelasius I. Papa ad Romanos.

Qui in vivorum sacerdotum loco ponuntur, hoc ipso *secundum canones* sunt ab ecclesiastica communione pellendi, quo se passi sunt successores vivis sacerdotibus adhiberi.

Chapter II

Latin source headnote: Benefices not vacant ought not to be granted or promised; and, when they become vacant, they ought to be granted within six months. When these have elapsed, collation devolves from the bishop to the chapter, and conversely, and finally to the next superior.

From the Lateran Council.

Let no ecclesiastical ministries, or even benefices or churches, be bestowed upon or promised to anyone before they become vacant, lest someone seem to desire the death of his neighbor, into whose position and benefice he believes that he will succeed. For since [*this*] is found to have been forbidden even in the laws of the gentiles, it is [*exceedingly*] shameful and full of the chastisement of divine judgment if expectation of a future succession should have a place in the church of God, when even the gentiles *themselves* took care to condemn it. But when ecclesiastical prebends or any offices in some church happen to become vacant, *or if they are even now vacant,* let them not long remain in suspense, but within six months let them be conferred upon persons who are able worthily to administer them. But if the bishop, where it pertains to him, should delay conferring one, let it be ordered by the chapter. But if it pertains to the chapter and it has not done this within the prescribed term, let the bishop execute it according to God with the counsel of religious men. Or if perhaps all have neglected it, let the metropolitan dispose of them according to God without their contradiction. [*Furthermore, etc.* (*cf. c.* 4, *On Prebends, III.* 5.)]

> Beneficia non vacantia concedi vel promitti non debent, et, quum vacaverint, concedi debent infra sex menses, quibus elapsis de episcopo ad capitulum, et econtra, demum ad proximum superiorem devolvitur collatio.
>
> Ex concilio Lateranensi.
>
> Nulla ecclesiastica ministeria, seu etiam beneficia vel ecclesiae tribuantur alicui seu promittantur antequam vacent, ne desiderare quis mortem proximi videatur, in cuius locum et beneficium se crediderit successurum. Quum enim [*id*] in ipsis etiam legibus gentilium inveniatur inhibitum, turpe [*nimis*] est et divini plenum animadversione iudicii, si locum in ecclesia Dei futurae successionis exspectatio habeat, quam ipsi etiam gentiles *homines* condemnare curarunt. Quum vero praebendas ecclesiasticas seu quaelibet officia in aliqua ecclesia vacare contigerit, *vel si etiam modo vacant*, non diu maneant in suspenso sed infra sex menses personis, quae digne administrare valeant, conferantur. Si autem episcopus, ubi ad eum spectat, conferre distulerit, per capitulum ordinetur. Quod si ad capitulum pertinuerit, et infra praescriptum terminum hoc non fecerit, episcopus secundum Deum hoc cum religiosorum virorum consilio exsequatur. Vel si omnes forte neglexerint, metropolitanus de ipsis secundum Deum absque illorum contradictione disponat. [*Praetereae etc.* (*cf. c.* 4. *de praeb. III.* 5.)]

Chapter III

Latin source headnote: Vacant benefices are conferred notwithstanding the appeal of those to whom they had been promised before they became vacant.

Alexander III, to the Archbishop of York.

It has been reported to our ears *that certain clerics, possessing revenues of one hundred or two hundred marks in ecclesiastical benefices and alleging that the first churches to become vacant had been promised to them by monks or canons or others having the right of patronage, issue the voice of appeal so that others may not be instituted in those churches when they become vacant, and so that meanwhile they may be able by some artifice to fulfill their purpose.* We answer your consultation in this manner: since promises made concerning churches not vacant were annulled in the Lateran Council, it ought not, under pretext of the appeal of those who rely upon *the aforesaid* promises, to be omitted that churches, when they become vacant, be ordered concerning suitable persons.

> Beneficia vacantia conferuntur non obstante appellatione illorum, quibus promissa fuerant ante, quam vacarent.

Alexander III. Eboracensi Archiepiscopo.

Relatum est auribus nostris, *+quod quidam clerici in beneficiis ecclesiasticis C. vel CC. marcarum reditus possidentes, et proponentes primas vacantes ecclesias a monachis vel canonicis vel aliis ius patronatus habentibus sibi fuisse promissas, ne in illis, quum vacant, instituantur alii, vocem appellationis emittunt, ut interim arte aliqua propositum suum valeant adimplere*. Consultationi tuae taliter respondemus, quod, quum in Lateranensi concilio promissiones factae de ecclesiis non vacantibus sint cassatae, praetextu appellationis eorum, qui *iam* dictis promissionibus innituntur, omitti non debet, quin ecclesiae, quum vacaverint, de personis idoneis ordinentur.

Chapter IV

Latin source headnote: If a rescript is written to him to whom collation pertains, with an executor appointed to provide, by presentation of the letters made to the collator the prebend is so affected that a collation made to another is not valid. This it says according to the true understanding. See chapter *If to the chapter,* under the same title in the Sixth.

Innocent III, to the Provost and Chapter of Cambrai.

T. the priest, *our beloved son,* proposed to us that, when Pope C. *of good memory,* our predecessor, *after the requests that he had extended to you* for receiving him as a brother and assigning to him the prebend next to become vacant in your church, which pertained to your donation, *had sent you an apostolic mandate,* with the Dean of Reims appointed executor, the dean himself, finding you contumacious *and rebellious in the execution of the apostolic mandate,* invested him by apostolic authority with the first prebend to become vacant in your church that pertained to the donation of the chapter, [*commanding you that, receiving him as a canon and brother, you confer upon him a stall in the choir and a place in the chapter; entrance into churches was interdicted to you if you delayed beyond three days to fulfill what he commanded. But you neither wished to execute his mandate nor refrained from entrance into churches; rather, in evasion of the apostolic mandate, you appealed to the same dean as a means of escape.*] But when *the dean himself, overtaken by death, could proceed no further in that business, and* the prebend that pertained to your donation became vacant in the church of Cambrai, you assigned it to another, [*promulgating a sentence of excommunication against that priest because he had retained the letters of the same dean as testimony for himself.*] But that same predecessor of ours, wishing what had been done by the same dean to be held valid, wholly annulled the collation of the prebend made by you and, [*after absolving the priest from the bond of excommunication,*] invested him with it *by his own hand* through a ring. Although it is not our intention to hold valid investitures made concerning things to become vacant contrary to the statutes of the canons—we who, according to the plenitude of power, can by law dispense above the law—nevertheless, attending that the same priest was invested by our predecessor not with a thing to become vacant but with a vacant thing, inasmuch as it was understood to be vacant after the annulment of the grant made by you, *by apostolic writings we command* your discretion *and order* that, removing any holder from that prebend, you confer it upon *T., every delay, excuse, and appeal being set aside, and permit it to be possessed peacefully by him; and assign to him a stall in the choir and a place in the chapter* with the fullness of canonical honor. [*Otherwise, etc. Given at Rome at Saint Peter's.* 1198.]

Si scribitur ei, ad quem spectat collatio, dato exsecutore ad providendum, per praesentationem literarum collatori factam afficitur praebenda ita, quod collatio alteri facta non tenet. H. d. secundum verum intellectum. Vide cap. Si capitulo eod. tit. in VI.

Innocentius III. Praeposito et capitulo Cameracensibus.

Proposuit nobis *dilectus filius* T. presbyter, quod, quum *bonae memoriae* C. Papa praedecessor noster *post preces, quas vobis* pro receptione ipsius in fratrem et assignatione praebendae, ad donationem vestram spectantis, in ecclesia vestra proximo vacaturae, *eidem facienda porrexerat*, mandatum apostolicum vobis destinasset, decano Remensi exsecutore concesso, decanus ipse, vos *in exsecutione mandati apostolici* contumaces inveniens *et rebelles*, ipsum de praebenda primo vacatura in ecclesia vestra, quae ad donationem capituli pertinet, auctoritate apostolica investivit, +[*vobis praecipiens, ut eum in canonicum recipientes et in fratrem, ipsi stallum in choro et locum in capitulo conferretis, ecclesiarum vobis introitu interdicto, si quod mandabat differretis infra triduum adimplere. Vos autem nec mandatum eius exsequi voluistis, nec ab ecclesiarum cessastis ingressu, immo potius in elusionem mandati apostolici causa diffugii ad eundem decanum appellastis.*] Sed quum *ipse decanus morte praeventus in negotio ipso ulterius non potuisset procedere, et* praebenda, quae ad donationem vestram spectabat, in ecclesia Cameracensi vacasset, eam alii assignastis +[*in eundem presbyterum excommunicationis sententiam promulgantes, quia literas eiusdem decani sibi in testimonium reservavit.*] Idem autem praedecessor noster, quod ab eodem decano factum fuerat ratum volens haberi collationem praebendae factam a vobis penitus irritavit, et eum [*presbyterum ab excommunicationis vinculo absolutum*] de ipsa *manu propria* per annulum investivit. Licet autem intentionis nostrae non sit, investituras de vacaturis factas contra canonum instituta ratas habere, qui secundum plenitudinem potestatis de iure possumus supra ius dispensare : attendentes tamen, quod idem presbyter non de vacatura, sed de vacante per praedecessorem nostrum fuit investitus, utpote quae post cassationem concessionis a vobis factae intelligebatur vacare, *discretioni vestrae per apostolica scripta* mandamus *atque praecipimus*, quatenus, amoto ab ea praebenda quolibet detentore, eam ipsi *T. omni dilatione, excusatione et appellatione postpositis, conferatis, et permittatis ab ipso pacifice possideri, ei stallum in choro et locum in capitulo* cum plenitudine honoris canonici assignetis. [*Alioquin etc. Dat. Rom. ap. S. Petr. * 1198.]

Chapter V

Latin source headnote: The six-month period fixed by law for electing or conferring does not run against one lawfully impeded, nor does it begin to run except from the day of knowledge of the vacancy. This it says, and the text is very frequently alleged and of daily application.

The same, to P., Cardinal Deacon of Saint Mary in Via Lata, Legate of the Apostolic See.

Because diversity of minds often follows diversity of bodies, *lest the plenitude of ecclesiastical jurisdiction, distributed among many, grow cheap, but rather, conferred upon one, remain vigorous, the Lord conferred upon the Apostolic See in blessed Peter the mastership and primacy of all churches and of all the faithful of Christ. Retaining for itself the plenitude of power, for the more praiseworthy fulfillment of the pastoral office that made it a debtor to all, it called many into a share of its solicitude, so distributing its burden and honor to others that it subtracted nothing from its own right nor diminished its jurisdiction in anything. But since, by the office of the authority it has received, it neither can nor ought, as the mother of individuals, to deny justice to individuals justly petitioning, since justice and judgment are the preparation of its seat, we, who, although insufficient, have been assumed to its governance, cannot fail to assist our brothers and fellow bishops crying out to us in justice, or fail to hear what they have justly requested, lest, if perhaps we should be found remiss in exhibiting justice to them, they too should be found negligent in rendering the rights of their subjects, and should execute less praiseworthily the part of our solicitude committed* [*to them*] *if—which may it not be—they see us either turn aside from right or fail to hear those petitioning for justice. Therefore, diligently moved by this reason, we benignly received at the Apostolic See our venerable brother* [*G.,*] *the Archbishop of York, who came there, and took care to hear his manifold complaints.* Among other things the Archbishop of York complained [*that,*] since the collation of prebends in the church of York and *in* his other churches pertains to him, during the time of his suspension and

afterward certain persons intruded themselves into them apart from his authority, *and in this and other matters derogated not a little from his right. Certain persons also had crept into certain abbeys of the diocese of York after an appeal had been interposed to us, and had requested from him neither the gift of confirmation nor the grace of benediction. Wishing, therefore, that provision be made for the same archbishop through the industry of your solicitude, by the counsel of our brothers, by apostolic writings we* [*strictly*] *command*—we command you that, after previous admonition, you induce those who accepted prebends or dignities of the church of York or of other *churches* pertaining to his donation apart from his authority to resign them, *since they cannot retain them with a safe conscience. But if perhaps they should be unwilling to acquiesce in your admonitions, compel them to this,* through a sentence of excommunication and the withdrawal of their other benefices, *notwithstanding a confirmation obtained from the Apostolic See under the common form, which confirms benefices and prebends as they are justly and peacefully possessed, appeal being removed,* unless perhaps some obtained them either *by* a special mandate of the Apostolic See or by authority of the Lateran Council from the York chapter. Yet let the time of suspension in no way be computed within the six months, since that constitution of the Lateran Council was promulgated only against the negligent *and slothful,* and then, even if the archbishop himself wished, he was nevertheless unable to use his own power in conferring prebends. And although he was suspended from that power by his own fault, the donation of prebends did not by reason of that fault devolve upon the chapter itself, but during the time of his suspension the donation of prebends pertained to him who, apart from his sloth and negligence, could donate the prebends. Nor is the time during which he journeyed to the Apostolic See, remained there, or departed from it in any way to be computed within the six months. Moreover, we wish the six-month period to be computed not from the time of vacancy of the prebends, but rather from the knowledge of the *archbishop himself and from the admonition made to his person by the chapter, since mention is made in the privilege that the same chapter is said to have obtained from our predecessor of a canonical admonition to be sent beforehand. But we regard as altogether frivolous the claim, if perhaps some say that they obtained certain of those prebends by royal donation, as if the royal highness could by its own authority confer those prebends during the archbishop's suspension. But canonically punish the aforesaid abbots if, after an appeal* [*to us*] *was lawfully interposed, they received the benefit of confirmation and benediction, lest by their example others assume the haughtiness of pride against their prelates.* [*Given on the fourth day before the Kalends of May.* 1199.]

> Semestre ad eligendum seu conferendum a iure praefixum non currit legitime impedito, nec incipit currere nisi a die notitiae vacationis. H. d. et est textus multum allegabilis et quotidianus.
>
> Idem P. sanctae M. in Via lata Diacono cardinali apostolicae sedis Legato.
>
> Quia diversitatem corporum diversitas saepe sequitur animorum, +*ne plenitudo ecclesiasticae iurisdictionis in plures dispensata vilesceret, sed in uno potius collata vigeret, apostolicae sedi Dominus in B. Petro universarum ecclesiarum et cunctorum Christi fidelium magisterium contulit et primatum, quae retenta sibi plenitudine potestatis, ad implendum laudabilius officium pastorale, quod omnibus eam constituit debitricem, multos in partem sollicitudinis evocavit, sic suum dispensans onus et honorem in alios, ut nihil suo iuri subtraheret, nec iurisdictionem suam in aliquo minoraret. Quum autem ex susceptae auctoritatis officio singulis, tanquam singulorum mater, iusta petentibus iustitiam nec possit nec debeat denegare, quum iustitia et iudicium sit praeparatio sedis eius, nos, qui ad eius regimen sumus, licet insufficientes, assumpti, fratribus et coepiscopis nostris ad nos clamantibus non possumus in iustitia non adesse, aut quod iuste postulaverint non audire, ne, si forsan circa exhibendam eis iustitiam fuerimus inventi remissi, ipsi quoque negligentes inveniantur in reddendis iuribus subditorum, et commissam * [*sibi*] *nostrae sollicitudinis partem minus laudabiliter exsequantur, si, quod*

absit, nos viderint vel declinare a iure, vel non audire iustitiam postulantes. Hac autem ratione diligenter inducti, venientem ad apostolicam sedem venerabilem fratrem nostrum [*G.*] *Eboracensem archiepiscopum benigne recepimus, et multiplices curavimus eius querelas audire*. Conquerebatur [*autem*] inter cetera Eboracensis archiepiscopus, quod, quum ad eum in ecclesia Eboracensi et *in* aliis suis ecclesiis collatio pertineat praebendarum, tempore suspensionis ipsius et postmodum etiam quidam praeter eius auctoritatem se intruserunt in ipsas, +*et in hoc et aliis iuri eius non modicum derogarunt. Quidam etiam in quasdam abbatias dioecesis Eboracensis post interpositam ad nos appellationem irrepserant, qui ab eo nec confirmationis munus, nec benedictionis gratiam postularant. Volentes igitur eidem archiepiscopo per tuae sollicitudinis industriam provideri, de fratrum nostrorum consilio discretioni tuae per apostolica scripta* [*districte*] *praecipiendo* Mandamus, quatenus eos, qui praebendas vel dignitates ecclesiae Eboracensis vel aliarum *ecclesiarum* ad donationem eius spectantes praeter auctoritatem acceperunt ipsius, ad eas resignandas monitione praemissa *inducas, quum eas non possint salva conscientia detinere. Quodsi monitis tuis acquiescere forte noluerint, eos ad id* per excommunicationis sententiam et subtractionem aliorum beneficiorum *suorum* non obstante confirmatione a sede apostolica obtenta sub forma communi, quae confirmat beneficia et praebendas, sicut iuste et pacifice possidentur, appellatione remota compellas, nisi forte aliqui ea vel *ex* speciali mandato apostolicae sedis vel auctoritate Lateranensis concilii ab Eboracensi capitulo sint adepti; sic tamen, ut tempus suspensionis in sex mensibus nullatenus computetur, quum illa Lateranensis concilii constitutio contra negligentes tantum *et desides* fuerit promulgata, et tunc, si voluerit, non tamen valuerit archiepiscopus ipse in conferendis praebendis uti propria potestate; a qua etsi fuerit sua culpa suspensus, non tamen ad ipsum capitulum ex illa culpa praebendarum erat donatio devoluta, sed ad illum tempore suspensionis illius praebendarum donatio pertinebat, qui praeter eius desidiam et negligentiam poterat praebendas donare. Tempus etiam, quo ad apostolicam sedem accessit, et apud illam permansit, vel recessit ab illa, infra sex menses nullatenus computetur. Semestre autem tempus non a tempore vacationis praebendarum, sed notitiae ipsius *archiepiscopi* potius *et commonitionis ad personam eius a capitulo factae, quum in privilegio, quod a praedecessore nostro idem capitulum dicitur impetrasse, fiat mentio de commonitione canonica praemittenda*, volumus computari. *Illud autem omnino frivolum reputamus, si qui forte se dicant ex donatione regia quasdam ex illis obtinuisse praebendis, quasi regalis sublimitas tempore suspensionis archiepiscopi praebendas ipsas sua poterit auctoritate conferre. Abbates autem praedictos, si post appellationem* [*ad nos*] **legitime interpositam,* confirmationis et benedictionis beneficium susceperunt, canonice punias, ne alii eorum exemplo contra praelatos suos supercilium elationis assumant. * [*Dat. IV. Kal. Mai. * 1199.]

Chapter VI

Latin source headnote: Letters obtained for a benefice are not valid when they make no mention of another's colorable possession in fact. This it says according to the true and common understanding; the text is very frequently alleged, has matter of daily application, and was a very subtle decision.

The same, to the Bishop of Basel and the Abbot of Saint Mary.

When it was formerly intimated to our ears that the provostship of the church of Lausanne had been vacant for so long that, according to the statutes of the Lateran Council, its donation had devolved upon us, *we, wishing to exhibit a special grace to our venerable brother* the bishop and *our beloved sons* the canons of Lausanne, *and thereby to acquire merit for them from ourselves, commanded them by writings* that they confer that provostship, *without any difficulty,* upon *our beloved son B., our subdeacon,* the treasurer of Lausanne, certain executors being appointed concerning this; *and that, when he had been assumed by them as provost, they assign the treasury of that church, whose assignment was alleged to pertain by law to the same bishop and canons, to a suitable person. But lest the benefit of apostolic provision should remain in any respect imperfect, we commanded our beloved sons the Abbots of Hauterive and Fontaine-André and the Prior of Val-de-*

Travers that, if the aforesaid bishop and canons neglected to fulfill our mandate, they themselves, every obstacle of contradiction and appeal being removed, should not delay to execute it if they relied upon the truth of the premise, restraining by ecclesiastical censure, appeal being removed, those who rashly chose to oppose our mandate. But the aforesaid bishop and canons, upon receiving *our* letters, said that the aforesaid provostship was not vacant, because, although the man who had been provost had been assumed as bishop, he had nevertheless, after his consecration, again been elected by the canons themselves to that provostship and possessed it as before. The *aforesaid* executors, saying that this was contrary to law *unless it had been specially granted to them by the Apostolic See,* therefore assigned the provostship itself, vacant by law, to the aforesaid treasurer, by the apostolic authority *with which they appeared to be supported,* to be corporeally possessed, *interdicting entrance into the church to the canons themselves unless within eight days they humbly obeyed him as their provost.* (*And below:*) *When the aforesaid and other things had been related in his presence by the messenger of our said subdeacon, the messenger of the opposing party proposed that, after his lord the Bishop of Sion, who had been Provost of Lausanne, was consecrated bishop, the Lausanne chapter again conferred and granted that provostship upon him to have, attending in this to the utility and necessity of their church and also to ancient custom. The Bishop of Lausanne, seeing that he was exceedingly useful and necessary to his church, approved what had been done concerning this by his canons, and honor was rendered to him as provost by the canons and even by the treasurer himself. But afterward the aforesaid treasurer, approaching the Roman Church and suppressing everything that had been done both by the bishop and by the said canons, suggested to us that the provostship was vacant. Therefore he obtained from us letters concerning its assignment to him; the messenger alleged on many grounds that they had been obtained through suppression of the truth and suggestion of falsehood, alleging on behalf of his lord of Sion the utility, custom, and necessity that the aforesaid treasurer had suppressed.* (*And below:*) *Conversely, the messenger of the opposing party alleged, and endeavored by many reasons to show, that the provostship was vacant and had, while vacant, been granted to the treasurer of Lausanne by authority of the superior to whom its donation had devolved according to the statutes of the Lateran Council. He also endeavored by manifold reasoning to show further that the said Bishop of Sion could in no way have been elected after his consecration to the provostship of Lausanne, from which he had been assumed to the governance of the episcopate, since the statutes of the sacred canons opposed him concerning this. He also said that the provostship was vacant for another reason: those whose donation it was presumed, after he had been assumed as bishop, to grant it to him, since according to the statutes of the aforesaid council both he who received what he accepted contrary to the sacred canons ought to lose it, and he who gave it ought to be deprived of the power of granting. He also showed by many assertions that the utility, custom, and necessity that his messenger had alleged in support of the cause of the Bishop of Sion in no way aided him, since these appeared rather to be begged supports than true supports for his cause. Hence the messenger himself petitioned that we deign to confirm by apostolic authority what had been done by the aforesaid judges and to remove the Bishop of Sion from the provostship itself.* Therefore, an auditor appointed by us concerning this decreed by our mandate that what had been done by the aforesaid executors under color of our letters be held null and void, *namely* because they had been obtained by suggestion of falsehood and suppression of the truth, since that provostship was not vacant in fact, because such possession has more of fact than of law. But we, holding valid the sentence of the same *cardinal, by apostolic writings command you* that, unless the aforesaid *Bishop of Sion* sufficiently shows that the aforesaid provostship was granted to him after his consecration either by a special indulgence of the Apostolic See or for another just and necessary cause, you compel him to resign it, if he should be unwilling to do so voluntarily, *by ecclesiastical censure, appeal being removed, and* thereafter take care

diligently *to admonish* and induce the Lausanne chapter on our behalf to confer it upon the aforesaid treasurer.

> Non valent literae ad beneficium impetratae, quae de alterius colorata facti possessione non faciunt mentionem. Hoc dicit secundam verum et communem intellectum, et est textus multum allegabilis, et habet materiam quotidianam; et fuit decisio multum subtilis.
>
> Idem Basiliensi Episcopo et Abbati S. Mariae.
>
> Quum nostris fuerit olim auribus intimatum, quod praepositura ecclesiae Lausanensis tempore tanto vacasset, ut secundum statuta Lateranensis concilii ad nos esset eiusdem donatio devoluta, *nos volentes venerabili fratri nostro* episcopo et *dilectis filiis* canonicis Lausanensibus *specialem gratiam exhibere, atque de nostro eis meritum comparare, ipsis per scripta* mandavimus, ut praeposituram ipsam *dilecto filio B. subdiacono nostro* thesaurario Lausanensi *sine qualibet difficultate* conferrent, quibusdam super hoc exsecutoribus deputatis, *+et, quum in praepositum assumptus esset ab eis, thesaurariam ipsius ecclesiae, cuius ad eosdem episcopum et canonicos assignatio proponebatur de iure spectare, personae idoneae assignarent. Ne autem beneficium provisionis apostolicae remaneret aliquatenus imperfectum, dilectis filiis Altae ripae et fontis Andreae abbatibus et priori Vallis transversae dedimus in mandatis, ut, si praefati episcopus et canonici mandatum nostrum negligerent adimplere ipsi, sublato cuiuslibet contradictionis et appellationis obstaculo, si niterentur veritate praemissa, illud exsequi non tardarent, eos appellatione remota per districtionem ecclesiasticam cohibentes, qui se mandato nostro temere ducerent opponendos*. Verum praefati episcopus et canonici literis *nostris* receptis praedictam praeposituram non vacare dixerunt, quia, licet ille, qui praepositus fuerat, in episcopum fuisset assumptus, ad ipsam tamen praeposituram post consecrationem suam denuo fuerat ab ipsis canonicis electus, et eam, sicut antea, possidebat. Quod *iam* dicti executores dicentes contrarium esse iuri, *nisi hoc eis specialiter ab apostolica sede fuisset indultum, quare* ipsam praeposituram de iure vacantem auctoritate apostolica, *qua videbantur esse fulti*, praefato thesaurario assignarunt *+corporaliter possidendam, ipsis canonicis, nisi infra octo dies eidem, sicut suo praeposito, humiliter obedirent, ecclesiae interdicentes ingressum.* (*Et infra:*) *In cuius praesentia quum praedicta et alia fuissent per nuncium dicti subdiaconi nostri relata, nuncius partis adversae proposuit, quod, postquam dominus suus Sedunensis episcopus, qui praepositus fuerat Lausanensis, fuit in episcopum consecratus, Lausanense capitulum ei praeposituram illam iterato contulit et concessit habendam, in hoc utilitatem ecclesiae suae, necessitatem, nec non antiquam consuetudinem attendentes. Episcopus Lausanensis videns eum plurimum utilem et necessarium ecclesiae suae, quod a canonicis suis super hoc fuerat factum approbavit, cui tanquam praeposito a canonicis et etiam ab ipso thesaurario est honor impensus. Memoratus vero thesaurarius postmodum ad ecclesiam Romanam accedens, et supprimens omnia, quae fuerant tam ab episcopo, quam a canonicis dictis acta, nobis praeposituram illam vacare suggessit. Quare super assignanda sibi praepositura literas impetravit a nobis, quas multis ex causis proponebat esse per veri suppressionem et falsi suggestionem obtentas, pro parte domini sui Sedunensis utilitatem, consuetudinem et necessitatem allegans, quae thesaurarius suppresserat memoratus. * (*Et infra:*) *Econtra partis adversae nuncius proponebat, et rationibus multis praeposituram illam vacare monstrabat, et vacantem thesaurario Lausanensi auctoritate superioris, ad quem fuerat secundum statuta Lateranensis concilii donatio devoluta, concessam. Ratione etiam insuper monstrare multiplici conabatur, quod dictus Sedunensis episcopus ad praeposituram Lausanensem, a qua fuerat ad regimen episcopatus assumptus, post consecrationem suam eligi minime potuisset, quum super hoc ei sacrorum canonum instituta repugnent. Dicebat etiam, praeposituram illam alia ratione vacare eo, quod illi, quorum erat donatio, assumpto eo in episcopum, concedere praesumpserunt, quum et secundum statuta concilii praedicti qui receperit debeat quod contra sacros canones accepit amittere, et qui dedit largiendi potestate privari. Ostendebat etiam assertionibus multis, quod pro ipso Sedunensi episcopo utilitas, consuetudo et necessitas, quas nuncius eius in causae suae subsidium allegarat, minime faciebant, quum haec potius mendicata suffragia quam suae causae vera subsidia videantur. Unde nuncius ipse petebat, ut quod a supra dictis iudicibus factum fuerat dignaremur auctoritate apostolica confirmare, et ab ipsa praepositura*

Sedunensem episcopum amovere. Auditor igitur super hoc datus a nobis de mandato nostro decrevit, ut, quod a memoratis exsecutoribus factum fuerat obtentu literarum nostrarum, eo *videlicet*, quod per falsi suggestionem et veri suppressionem fuerant impetratae, quum praepositura illa non vacaret de facto, quia talis possessio plus habet facti quam iuris, haberetur irritum et inane. Nos vero sententiam *cardinalis* eiusdem ratam habentes, *per apostolica scripta vobis* mandamus, quatenus, nisi praedictus *Sedunensis* episcopus sufficienter ostenderit, quod vel ex indulgentia sedis apostolicae speciali, vel ex alia iusta causa et necessaria sibi post consecrationem suam praepositura concessa fuerit memorata, ipsum ad resignationem ipsius, si sponte noluerit, *per censuram ecclesiasticam appellatione remota* compellatis, *et* deinde Lausanense capitulum ad conferendam eam thesaurario supra dicto *ex parte nostra monere* diligentius *et* inducere procuretis.

Chapter VII

Latin source headnote: Where it is established that a benefice was conferred by one having power, possession ought not to be delayed by an exception of abjuration and renunciation.

The same, to the Archdeacon of Richmond.

After the election and confirmation of *our venerable brother* [*Eustace,*] Bishop of Ely, when the Archdeaconry of Richmond, which he had held, became vacant, the Archbishop of York granted it to you by his own liberality, giving a mandate to the York chapter *by his letters* that they take care to receive you as archdeacon, *as is customary.* They were unwilling to obey his mandate *for reasons of this kind,* because, among other things that Pope Celestine *of good memory,* our predecessor, is known to have granted to the dean and chapter of York by his privilege, he also decreed that the ordering of canons or persons should be free, *as had been observed until then from the very foundation of the place,* namely, so that a suitable and honorable person upon whom the archbishop *himself* should determine to confer a vacant prebend or dignity in the church of York would, according to the ancient custom of that church, be presented to the aforesaid dean and chapter; [*and, received by the chapter as a canon through the book and bread, he ought to be invested in the chapter by the hand of the dean; afterward, received with the kiss of the brethren, he would interpose the customary and due oath concerning preserving fidelity to the church itself, defending its liberties and customs consonant with law to the best of his ability, and not disclosing the secrets of the chapter; and then, by the mandate of the dean and chapter, as is customary, he would be installed by the hand of the cantor;*] *and* if anyone were introduced into that church by someone contrary to this *ancient and approved* custom, he would be held neither as a person nor as a canon. But if the archbishop *should not confer a vacant prebend or personate in that church,* within the term of the Lateran Council and according to the prescribed form, *after a canonical admonition had been sent beforehand,* upon a suitable person, it would be lawful for the dean and chapter, by apostolic authority, *notwithstanding any contradiction or appeal,* to confer it according to the statutes of that council. Therefore, since no mention of the dean had been made in the archbishop's letters directed to the chapter, by whose hand you ought to have been invested in the chapter, his mandate *rightly* met contradiction, [*and also for this reason: when that same predecessor of ours took care to invest I. of Saint Lawrence with the chancellorship of York by his own hand through a ring, commanding his messenger to assign in his name a stall in the choir and a place in the chapter and procession, together with the entirety of the revenues and everything pertaining to the chancellorship, you, because you presumed to retain those proceeds in contempt of the apostolic mandate, were ensnared in the bond of excommunication by the dean and chapter of York; hence you were not in the meantime to be admitted to a dignity. Moreover, this reason opposed you: before receiving investiture from the chapter, you intruded yourself into the*

archidiaconal office. Hence, according to the tenor of the privilege, you ought not to be held as a person, especially since homicides, sacrileges, arsons, and many other grave and enormous acts were objected against you, which, while striving to usurp that archdeaconry for yourself by armed force, you did not fear to perpetrate.] Therefore, when your institution had been rejected by the chapter for the foregoing *and other* reasons, they, *lest they sustain loss of their right,* understanding *also* that donation of *that* archdeaconry had devolved upon them both by authority of the Lateran Council and by the privilege granted to them, *having taken the counsel of prudent men,* unanimously conferred it upon *our beloved son* R. of Saint Edmund, investing him with it, *as is customary,* and solemnly installing him. But in the course of time, after the aforesaid archbishop *returned from the Apostolic See into Normandy,* and after the resignation and abjuration made by you and received by him, he conferred the aforesaid archdeaconry upon the same R., who petitioned that the archdeaconry itself, assigned to him *with reason* by virtue of both the first and the second grant, be confirmed by the Apostolic See.

To his objections you replied in order as follows: although mention of the dean was not expressly made in the archbishop's letters directed to the chapter, he nevertheless could not or ought not on that account to appear excluded, as the opposing party alleged; rather, he was contained in the chapter, just as a part is contained in the whole, of which the dean is an honorable part, while the archbishop is the head, nor does it happen that in one body [*without*] *a monstrous prodigy two heads are found.* [*You endeavored to show in many ways that the sentence of excommunication issued by the dean and chapter did not bind you: both because you had by no means received the fruits of the chancellorship, since you had been constituted by the archbishop proctor only of the spiritualities; and because neither you nor another could be coerced on occasion of a simple mandate, by which coercion is committed to no one, especially since that sentence, whatever it was, had been promulgated after an appeal interposed by you. Hence our venerable brother the Archbishop of Canterbury, then legate of the Apostolic See in England, having shared the counsel of many fellow bishops and other prudent men, pronounced that you were not bound by a sentence of this kind, as you endeavored to show from the rescript of the legate himself. Moreover, since you were absent at that time, you did not intrude yourself into the administration of the archdeaconry; but when you later saw investiture denied to you by the chapter contrary to justice, you entered the archdeaconry by mandate of the superior and began to minister in it as pertained to your office. But you wholly denied that homicides or other such things were perpetrated there by you, or that you had renounced or even abjured the archdeaconry, asserting that, at the time when the opposing party said that you had renounced or abjured it and that the archdeaconry had been conferred upon him, the archbishop regarded you as archdeacon and your adversary alike as excommunicated and as an intruder. Hence, by authority of our letters, at the mandate of our beloved son P., cardinal priest and then legate of the Apostolic See, before our venerable brother the Archbishop of Rouen and his fellow judges in Normandy, and thereafter before the Bishop of Lincoln of good memory and his fellow judges in England, that same archbishop drew your adversary into litigation concerning his intrusion; and we recall that we received the attestations taken concerning that business.*] *You further added that, even if you had done those things, they nevertheless could not effectually be objected against you by your adversary. Rather, silence should be imposed upon him concerning the archdeaconry itself and, your institution having been approved, restitution should be made to you; this you endeavored to show from the confession made in judgment and repeatedly reiterated by the opposing party. For Roger himself, when questioned by us in law as to the time from which the Archdeaconry of Richmond had been assigned to him by the chapter, answered that around the next feast of the Ascension three years would be complete. Therefore, since it was established from the date of our letters that at that time the archbishop was staying at the Apostolic See, and in them the ancient law had been declared by us, so that the time during which he approached the Apostolic See,* [*and*] *remained there, or departed from it was not to be computed within the six-month period, you said that it was*

plainly established that that period had by no means run against the archbishop. But even if four years had elapsed, as the opposing party, repenting of its earlier response, proposed in the last place—which on your behalf was said not to be possible in law—since even then he had begun the journey to come to the Apostolic See, although he had not pursued it continuously, having been delayed by manifold impediments, the interpretation of our rescript pertained also to a time of this kind; moreover, prescription could not harm one placed in exile. But the act of the chapter could not excuse that same R., because, since the institution made by the archbishop had preceded it, the chapter as inferior could not reject what the superior had ordered, for, even if you had not been admitted contrary to the statute of the privilege, they nevertheless could not proceed against you—especially while absent and not contumacious—because they had neither been constituted executors of the privilege nor could they be judges and actors at the same time. Therefore, if anything was to be proposed by them against the archbishop's act, a question of this kind was to be brought to the superior tribunal so that it might be ended by its authority. Consequently, while your institution made by him was pending—by him to whom it pertained both by common law and by authority of the aforesaid privilege, by which collation of personates and prebends was reserved to the archbishop—the same R. ought not to have crept into the place of a living person. [*For blessed Gregory says: "We depose from the honor of that archdeaconry the man who consented to be advanced to another's archdeaconry contrary to the rule of justice; and if he should presume thereafter to minister in the same place, let him know that he is deprived of participation in holy communion." By the authority of this decree, therefore, you asserted that your adversary was to be deposed from the office of the archdeaconry that he had received badly, especially since he vehemently insisted upon that first surreption and endeavored through an institution of this kind to prove his purpose; and you humbly petitioned that the archdeaconry itself be restored to you.*]

We therefore, having heard and more fully understood these and the other things that the parties wished to propose in our presence, because it was established to us that the aforesaid archdeaconry had first been granted to you by the Archbishop of York [*and*] that, the institution made by him not having been rejected according to the order of law, an archdeaconry not vacant could not and ought not duly to be transferred to another, thought that silence should be imposed concerning it upon the aforesaid R., who consented to be advanced to another's archdeaconry contrary to the rule of justice, decreeing by sentence that the institution made concerning you by the *Archbishop of York* take effect. But *thereafter,* if anyone who wishes and is able should determine to propose anything against you concerning the renunciation, abjuration, or any of the foregoing matters, he will be able to try it by judicial order. [*Therefore let no one, etc. Given at the Lateran, on the Kalends of June.* 1202.]

> Ubi constat beneficium collatum per habentem potestatem, per exceptionem abiurationis et renunciationis non debet possessio retardari.
>
> Idem Archidiacono Richemundiae.
>
> Post electionem et confirmationem *venerabilis fratris nostri* [*Eustachii*] episcopi Eliensis vacante archidiaconatu Richemundiae, quem tenuerat, Eboracensis archiepiscopus eum tibi propria liberalitate concessit, dans Eboracensi capitulo *suis literis* in mandatis, ut te in archidiaconum, *sicut moris est*, recipere procurarent; cuius noluerunt mandato parere *propter huiusmodi rationes*, quia *videlicet bonae memoriae Coelestinus Papa* praedecessor noster inter alias, quae decano et capitulo Eboracensi suo privilegio noscitur indulsisse, ordinationem *quoque* canonicorum seu personarum, *sicut ab ipsa fundatione loci erat hactenus observatum*, liberam esse decrevit, ut videlicet idonea et honesta persona, cui archiepiscopus *ipse* vacantem in ecclesia Eboracensi praebendam vel dignitatem duxerit conferendam, secundum antiquam ipsius ecclesiae consuetudinem, praesentaretur decan o et capitulo supra dictis, +[*receptus autem a capitulo in canonicum per librum et panem, per manum decani deberet in capitulo investiri, postmodum vero in osculo*

fratrum receptus, de conservanda fidelitate ipsi ecclesiae, libertatibus et consuetudinibus iuri consentaneis pro viribus defendendis, non detegendis secretis capituli, iuramentum consuetum et debitum interponeret, et tunc de mandato decani et capituli, prout moris est, per manum installaretur cantoris,] *et* Si quis contra consuetudinem huiusmodi *antiquam et approbatam* in ecclesia ipsa esset per aliquem introductus, nec pro persona, nec pro canonico haberetur. Quodsi archiepiscopus *vacantem in ecclesia ipsa praebendam vel personatum* infra terminum Lateranensis concilii secundum formam praescriptam, *canonica admonitione praemissa*, personae idoneae non conferret : liceret decano et capitulo auctoritate apostolica *nullius contradictione vel appellatione obstante illud* iuxta eiusdem concilii statuta conferre. Quum igitur in literis archiepiscopi directis capitulo de decano mentio nullatenus haberetur, per cuius manum debebas in capitulo investiri, eius mandato *merito* exstitit contradictum, +[*et illa praeterea ratione, quod, quum idem praedecessor noster I. de S. Laurentio de cancellaria Eboracensi curavit manu propria per annulum investire, mandans nuncio suo, ipsius nomine stallum in choro et locum in capitulo et processione cum integritate redituum et omnibus ad cancellariam pertinentibus assignari, tu pro eo, quod proventus ipsos in contemptum praesumpsisti mandati apostolici retinere, per decanum et capitulum Eboracense fuisti excommunicationis laqueo irretitus, unde non eras ad dignitatem interim admittendus. Cui praeterea illa ratio repugnabat, quod ante investituram a capitulo habitam archidiaconali te officio ingessisti. Unde iuxta privilegii continentiam pro persona non debebas haberi, praesertim quum tibi homicidia, sacrilegia, incendia et alia multa gravia et enormia obiicerentur, quae, archidiaconatum ipsum manu armata tibi usurpare contendens, perpetrare minime timuisti.*] Ipsius igitur institutione propter praemissas rationes *et alias* a capitulo reprobata, ipsi, *ne iuris sui dispendium sustinerent*, intelligentes *etiam*, archidiaconatus *ipsius* donationem ad eos tam auctoritate Lateranensis concilii quam indulti sibi privilegii devolutam, *habito prudentum consilio, dilecto filio* R. de sancto Cadmundo illum unanimiter contulerunt, investientes eundem de ipso, *prout moris est*, et solenniter installantes. Processu vero temporis praefatus archiepiscopus *ab apostolica sede rediens in Normanniam*, post resignationem et abiurationem a te factam et receptam ab ipso, eidem R. archidiaconatum contulit ante dictum, qui archidiaconatum ipsum tam ratione primae quam secundae concessionis sibi *rationabiliter* assignatum per sedem apostolicam petiit confirmari. +*Ad cuius obiectiones et ordine taliter respondebas, quod, licet decani mentio in literis archiepiscopi directis capitulo expresse facta non fuerit, non tamen ob hoc exclusus videri poterat vel debebat, sicut pars proponebat adversa, immo continebatur in capitulo, sicut pars continetur in toto, cuius decanus pars est honorabilis, archiepiscopus vero caput exsistit, nec in uno contingat corpore* [*non*] *sine monstruoso prodigio duo capita inveniri.* [*Quod autem te excommunicationis sententia lata per decanum et capitulum non ligaverit, multipliciter ostendere satagebas; tum quia fructus cancellariae nequaquam perceperas, quum tantum spiritualium procurator esses ab archiepiscopo constitutus, tum quia nec tu nec alius occasione mandati simplicis, per quod coercitio nemini mandatur, potuit coerceri, praesertim quum illa sententia qualiscunque post appellationem a te interpositam fuerit promulgata. Unde venerabilis frater noster Cantuariensis archiepiscopus, tunc apostolicae sedis legatus in Anglia, communicato multorum coepiscoporum et aliorum prudentium virorum consilio pronunciavit, te huiusmodi sententia non teneri, sicut ex rescripto ipsius legati ostendere satagebas. Administrationi autem archidiaconatus, quum tempore illo absens fueris, te minime ingessisti; sed, quum videres postmodum investituram tibi a capitulo contra iustitiam denegari, de mandato superioris archidiaconatum ingressus, coepisti in eo, prout ad tuum pertinebat officium, ministrare. Quod autem homicidia vel alia huiusmodi per te illic fuerint perpetrata, vel quod archidiaconatum renunciaveris aut etiam abiuraveris, penitus denegabas, asserens, quod eo tempore, quo pars adversa te renunciasse vel abiurasse dicebat, et sibi archidiaconatum fuisse collatum, archiepiscopus te pro archidiacono et adversarium pro excommunicato habuit pariter et intruso. Unde auctoritate literarum nostrarum, de mandato dilecti filii nostri P. presbyteri cardinalis tunc apostolicae sedis legati coram venerabili fratre nostro Rothomagensi archiepiscopo et suis coniudicibus in Normannia, et demum coram bonae memoriae Lincolniensi episcopo et coniudicibus suis in Anglia idem archiepiscopus super intrusione ipsum adversarium traxit in causam, nosque receptas attestationes super ipso negotio meminimus accepisse.*] *Adiecisti praeterea, quod, si etiam ea fecisses, per adversarium tamen tuum tibi non poterant obiici cum effectu, cui potius super ipso archidiaconatu esset silentium imponendum, et, approbata institutione tua, tibi restitutio facienda, ex confessione partis adversae in iudicio facta et*

saepius repetita ostendere nitebaris. Ipse namque Rogerius a nobis interrogatus in iure, ex quo tempore archidiaconatus Richemundiae sibi per capitulum fuerit assignatus, respondit, quod circa festum Ascensionis proximum triennium compleretur. Quum igitur ex data literarum nostrarum constaret, tempore illo archiepiscopum apud sedem apostolicam constitutum, et in eis per nos antiquum ius fuerit declaratum, ut tempus, quo ad apostolicam sedem accessit, [*et*] *apud illam permansit, vel recessit ab ipsa, non esset infra tempus sex mensium computandum: liquido constare dicebas tempus illud archiepiscopo minime cucurrisse. Sed si etiam quadriennium effluxisset, sicut prioris responsi poenitens ultimo loco proposuit pars adversa, quod ex parte tua de iure non posse fieri dicebatur, quum etiam tunc arripuisset iter ad sedem apostolicam veniendi, licet illud non fuerit continue prosecutus, impedimentis multiplicibus retardatus, interpretatio rescripti nostri ad tempus etiam huiusmodi pertinebat, cui praeterea praescriptio nocere non poterat in exsilio constituto. Factum autem capituli eundem R. non potuit excusare, quoniam, quum institutio facta per archiepiscopum praecessisset, quod superior ordinaverat capitulum tanquam inferius non poterat reprobare, quum, etsi contra statutum privilegii non fuisset admissus, ipsi tamen, quia nec fuerant exsecutores privilegii constituti, nec poterant simul esse iudices et actores, contra te praesertim absentem et non contumacem procedere non valebant. Si quid ergo per ipsos erat contra factum archiepiscopi proponendum, huiusmodi quaestio ad tribunal erat superius deferenda, ut auctoritate finiretur ipsius, pendente proinde institutione tua facta per illum, ad quem pertinebat tam iure communi quam auctoritate privilegii ante dicti, per quod collatio personatuum et praebendarum archiepiscopo reservatur, idem R. non debuit in locum viventis obrepere. * [*Ait enim B. Gregorius: " Eum, qui contra iustitiae regulam in archidiaconatum alterius provehi se consensit, ab eiusdem archidiaconatus honore deponimus; qui si ulterius in loco eodem ministrare praesumpserit, se participatione sacrae communionis noverit esse privatum. "Huius ergo auctoritate decreti adversarium tuum asserebas ab archidiaconatus officio, quem male receperat, deponendum; praesertim, quum illi primae irreptioni vehementer insisteret, et per institutionem eiusmodi suum niteretur propositum demonstrare, ipsumque archidiaconatum tibi restitui suppliciter postulabas.*] *Nos igitur, auditis his et aliis, quae partes in praesentia nostra proponere voluerunt, et plenius intellectis,* Quoniam constitit nobis, archidiaconatum praedictum tibi per Eboracensem archiepiscopum [*et*] primitus fuisse concessum et quod, institutione facta per ipsum secundum iuris ordinem minime reprobata, archidiaconatus non vacans non potuit nec debuit in alium rite transferri, memorato R., qui contra iustitiae regulam in archidiaconatum alterius provehi se consensit, super eo duximus silentium imponendum, sententialiter decernentes, ut institutio facta per *Eboracensem* archiepiscopum de te sortiatur effectum. Exinde *vero*, si super renunciatione, vel abiuratione vel aliquo praemissorum aliquis, qui velit et valeat, adversus te quicquam duxerit proponendum, ordine poterit iudiciario experiri. [*Nulli ergo etc. Dat. Later. Kal. Iun. * 1202.]

Chapter VIII

Latin source headnote: Once a person has been received as a canon, the chapter is bound to provide for him as soon as the faculty presents itself.

The same, to C., Canon of Tortona.

When, concerning the question of a prebend of Tortona *that was disputed between you on the one side and our venerable brother the bishop and our beloved sons the canons of Tortona on the other, you and the proctors of the other party were constituted in our presence, we appointed for you as auditor our beloved son Hugh, cardinal priest of the title of Saint Martin. Before him it was alleged on your behalf as follows: when Odo, Bishop of Tortona of good memory and your paternal uncle, having returned from the Apostolic See, earnestly requested the canons of Tortona to receive you as a canon and brother, they, cheerfully assenting to his requests, received you, no mention being made of a first or second* [*prebend.*] *From that time until now you have had a place in the choir and chapter like the other canons, have read lessons in the church and sung responsories, and houses in the canonry had been*

assigned to you by the aforesaid bishop [*in the name of a canon;*] *you possessed and possess them in quiet. And since, of those canons in that church of Tortona who possess no prebend in it, you were the first instituted and received, and now a benefice in it is vacant, you humbly petitioned us that we deign to give a strict mandate to the canons of Tortona that they assign the vacant benefice to you, every difficulty being set aside, and cause you to enjoy peaceful possession of it. But the proctors of the other party answered to the contrary that, since a fixed number of canons had been instituted in the church of Tortona and confirmed by writings of the Roman Pontiffs, and the canons were bound by an oath given to observe that constitution, we gave them a mandate by our letters to receive our beloved son B., our subdeacon and chaplain, as a canon and brother and assign him a prebend as to one of the other canons. But because the established number of canons was then full in that church, they could not put our mandate into execution. After no small time, however, the aforesaid O., formerly bishop, pressed the canons of Tortona by persuasions, threats, and terrors to receive you as a canon for the prebend next to become vacant, steadfastly promising them that he would free them both from the petition of the citizens of Tortona and from execution of the apostolic mandate that they had received for the reception of our same subdeacon; and thus, fraudulently circumventing them, he caused you to be received for the prebend next to become vacant.* [*But when our beloved son R., cardinal priest of the title of Saint Peter in Chains, was exercising the office of legation in the regions of Lombardy, he caused our same subdeacon to be instituted as a canon of the church of Tortona through a certain cleric of his, assigning to him a stall in the choir and a place in the chapter, in the presence of the aforesaid former bishop, who made no mention of your reception. But the aforesaid canons, although because of the insolence of the clerics they did not show it publicly, held wholly valid the institution made concerning B. When, around the past Easter, the said former bishop paid the debt of the flesh, and the aforesaid bishop who now exists—who had been Archdeacon of the church of Tortona—was substituted for him, those same canons unanimously decreed that the vacant prebend be conferred upon our aforesaid subdeacon, as we perceived was contained in their letters; and the proctors of the chapter itself granted the aforesaid vacant prebend to him in our presence. Hence it was humbly petitioned of us that, wholly annulling your institution as attempted contrary to the Lateran Council and absolving the church of Tortona from your impetition, we deign to confirm by apostolic authority the grant of the aforesaid prebend made to our same subdeacon.*] *We therefore, made more certain by the aforesaid cardinal of those things that were proposed on either side, holding valid by the counsel of our brothers the grant made by the aforesaid canons to our aforesaid subdeacon concerning the aforesaid prebend, thought that it should be confirmed by apostolic authority.* But since it is established *both by your assertion and by the confession of the other party* that you were received as *a brother and* canon of the church of Tortona, although the opposing party alleges that your reception was made contrary to the Lateran Council, nevertheless, because this was not proved, *the other party wholly denying it,* and the canons themselves did not appear able by law to object this against you, since they confess that they received you contrary to the statutes of the aforesaid council, we decree by sentence that a prebendal benefice be conferred upon you in the church of Tortona as soon as the faculty presents itself, since, from the time you were received as a canon, you ought not to lack a prebend. [*Willing, moreover, etc. Given at the Lateran, on the seventh day before the Ides of July.* 1202.]

> Recepto in canonicum tenetur capitulum providere, quam cito facultas se obtulerit.
>
> Idem C. Canonico Tridentino.
>
> Quum super quaestione Tridentinae praebendae, +*quae vertebatur inter te ex una parte, et venerabilem fratrem nostrum episcopum et dilectos filios canonicos Terdonenses ex alia, tu et procuratores partis alterius in nostra essetis praesentia constituti, vobis dilectum filium Hug. tit. S. Martini presbyterum cardinalem concessimus auditorem. Coram quo pro te fuit taliter allegatum, quod, quum bonae memoriae Odo Terdonensis episcopus, patruus tuus, ab apostolica sede reversus,

Terdonenses canonicos attentius rogavisset, ut te reciperent in canonicum et in fratrem, ipsis eius precibus annuentes hilariter te receperunt, nulla primae vel secundae * [*praebendae*] *habita mentione, qui ab illo tempore usque nunc locum in choro et in capitulo sicut alii canonici habuisti, lectiones legisti in ecclesia, et responsoria cantasti, ac per praedictum episcopum tibi fuerant domus in ipsa canonica* [*nomine canonici*] *assignatae, quas tu possedisti ac possides in quiete. Et, quum in eadem ecclesia Terdonensi ex illis canonicis, qui praebendam in ea non possident, tu primo institutus fueris et receptus, et nunc vacet beneficium in eadem, humiliter postulabas a nobis, ut Terdonensibus canonicis dare dignaremur districtius in mandatis, quod vacans beneficium tibi, omni difficultate postposita, assignarent et facerent pacifica possessione gaudere. Procuratores vero partis alterius e contrario respondebant, quod, quum in Terdonensi ecclesia certus sit numerus canonicorum institutus et scriptis Romanorum Pontificum confirmatus, canonicique constitutionem ipsam observare teneantur praestito iuramento, nos eis nostris literis dedimus in mandatis, ut dilectum filium B. subdiaconum et capellanum nostrum in canonicum reciperent et in fratrem, eique praebendam, sicut uni ex aliis canonicis, assignarent. Verum quia statutus numerus canonicorum tunc in eadem ecclesia plenus erat, mandatum nostrum non potuerunt exsecutioni mandare. Post non modicum vero temporis praedictus O. quondam episcopus persuasionibus, minis ac terroribus institit apud canonicos Terdonenses, ut te reciperent in canonicum ad praebendam proximo vacaturam, eis constanter promittens, quod eos tam a petitione civium Terdonensium quam ab exsecutione mandati apostolici, quod ipsi pro eiusdem subdiaconi nostri receptione receperant, liberaret, sicque eos circumveniens fraudulenter recipi te fecit ad praebendam proximo vacaturam.* [*Quum autem dilectus filius R. tit. S. Petri ad vincula presbyter cardinalis in Lombardiae partibus legationis officio fungeretur, eundem subdiaconum nostrum per quendam clericum suum institui fecit canonicum ecclesiae Terdonensis, assignans ei stallum in choro et locum in capitulo, praesente praedicto quondam episcopo, nec faciente de receptione tua aliquam mentionem. Sed praedicti canonici institutionem de ipso B. factam, licet in publico non ostenderent propter insolentiam clericorum, ratam omnimodis habuerant. Quumque circa praeteritum Pascha dictus quondam episcopus carnis debitum exsolvisset, et praedictus episcopus, qui nunc est, fuisset subrogatus eidem, qui fuerat archidiaconus ecclesiae Terdonensis, praebendam vacantem iidem canonici praedicto subdiacono nostro unanimiter decreverunt conferri, sicut in eorum literis perspeximus contineri, et ipsius procuratores capituli praedictam praebendam vacantem in nostra sibi praesentia concesserunt. Unde suppliciter petebatur a nobis, ut institutionem tuam, tanquam contra Lateranense concilium attentatam, penitus irritantes, et absolventes Terdonensem ecclesiam ab impetitione tua, concessionem eidem subdiacono nostro factam de praebenda praedicta dignaremur auctoritate apostolica confirmare.*] *Nos igitur ex iis, quae fuerunt hinc inde proposita, certiores effecti per cardinalem praedictum, concessionem praedicto subdiacono nostro a canonicis praedictis factam de praebenda praedicta de fratrum nostrorum consilio ratam habentes, eam auctoritate apostolica duximus confirmandam.* Quum autem *tam assertione tua quam confessione partis alterius* constet, te in *fratrem et* canonicum Tridentinae ecclesiae fuisse receptum, licet receptionem tuam factam contra Lateranense concilium pars adversa proponat, quia tamen probatum non exstitit, *parte altera penitus hoc negante*, nec ipsi canonici videbantur tibi hoc opponere posse de iure, qui se fatentur te contra statuta praefati concilii recepisse : sententialiter decernimus, ut tibi, quam cito se facultas obtulerit, praebendale beneficium in Tridentina ecclesia conferatur, quum, ex quo receptus es in canonicum, non debeas carere praebenda. [*Volentes autem etc. Dat. Lat. VII. Id. Iul.* 1202.]

Chapter IX

Latin source headnote: If one having a prebend in the same church receives a dignity with a prebend, or another prebend, the first becomes vacant. And although it is confirmed to him by a superior, nevertheless an impetration of it made by another is valid, even when the other's possession is not mentioned, because that possession is not colorable. This it says according to the true understanding. Panormitanus.

The same, to the Bishop and Master P., Canon of Hildesheim.

We have received your letters, *by which you took care to signify to us* that, when we wrote to you on behalf of *our beloved son* D. the cleric, that you should take care to invest him by apostolic authority with the vacant prebend of Saint Willehad at Bremen, which he said had devolved upon our donation according to the statutes of the Lateran Council, *if the canons to whom we wrote concerning this did not take care to execute it; and when Herbert the provost and certain canons of that church, together with Daniel himself and Master B., a canon of that church, were for this reason constituted in your presence,* it was proposed before us concerning the fact that *the same* H. the provost, formerly a simple [*existing*] canon of the same church, had been elected from that *church* as a canon in the greater church, and afterward, when the space of *one year or* a year *and a half* had elapsed, was assumed as provost in that church of Saint Willehad, nevertheless retaining the former prebend that he then had in that church; *and concerning this the parties agreed, saying to one another that these things stood thus. It was also proposed by one party that the provost himself had, in addition to that prebend, another prebend annexed to the provostship, which the same provost and his supporters denied to be a prebend. Furthermore, it was alleged in law that, from the time when the same provost had been called from the lesser church to the greater, the former prebend had begun to become vacant by law according to the statutes of the canons. Then it was alleged on behalf of the cleric that the first ordinance of that church had been that there should be thirteen persons in it, namely the provost with twelve brothers; this would in no way be observed unless that prebend were said to be vacant.* But the provost alleged to the contrary that it was *almost* of general custom that one man should have several prebends in the same church, and that, when the Archbishop of Bremen invested the provost himself with the provostship in full synod, he confirmed to him both that provostship and the prebend with the common assent of the canons, *binding with the bond of excommunication those who should trouble him concerning this. Hence it was objected against the aforesaid cleric that on this account he had incurred the sentence of excommunication; but he denied that such a confirmation had intervened, and asserted that, even if it had intervened, it was not valid by law, because that thing which cannot be obtained by law could reasonably be confirmed to no one. He also said that he had never been bound by a sentence of excommunication on this account, since he proceeded concerning these matters by authority of a superior.* Hence, because it appeared doubtful to you whether, when someone is elected from one prebend to another, the former at once begins to become vacant, or whether it ought to be adjudged away from him by sentence, or whether, on account of the confirmation of this kind that is expressed above, that prebend ought to be said not to be vacant, you wished to consult us *before you should determine anything concerning this.* Therefore, since, if it is thus, that prebend, even if not in fact, is nevertheless known to be vacant by law, *by apostolic writings we command* your discretion that, after previous admonition, you compel the *aforesaid* provost *to resign that prebend* without difficulty, *by ecclesiastical censure,* appeal being removed; and when it has become vacant in fact, take care, *supported by our authority and with the obstacle of appeal removed,* to confer it upon the aforesaid cleric, *inducting him into its corporal possession and defending him once inducted; but restrain by ecclesiastical censure those who rashly determine to oppose themselves.* [*But if, etc. Given on the fourteenth day before the Kalends of June.* 1205.]

> Si habens praebendam in eadem ecclesia recipit dignitatem cum praebenda vel aliam, vacat prima. Et quamvis a superiore sibi confirmetur, tamen valet impetratio per alium facta de ipsa, etiam tacito de possessione alterius, quae colorata non est. H. d. secundum verum intellectum. Panorm.
>
> Idem Episcopo et Magistro P. Canonico Hildesemensi.
>
> Literas vestras accepimus, *per quas nobis significare curastis*, quod, quum pro *dilecto filio* D. clerico vobis scripserimus, ut eum de praebenda vacante sancti Wiscardi Bremensis, quam dicebat ad donationem nostram fuisse iuxta Lateranensis concilii statuta devolutam, curaretis auctoritate apostolica investire,

+si canonici, quibus super hoc scribebamus, hoc exsequi non curarent, Herberto praeposito et quibusdam canonicis eiusdem ecclesiae cum ipso Daniele et magistro B. canonico ipsius ecclesiae in vestra propter hoc praesentia constitutis, sic De facto fuit propositum coram nobis, quod *idem* H. praepositus, quondam simplex [*exsistens*] canonicus eiusdem ecclesiae, de ipsa *ecclesia* in maiori ecclesia in canonicum est electus, et postmodum *unius anni vel* anni *et dimidii* spatio evoluto, in ipsa ecclesia sancti Wiscardi in praepositum est assumptus, priorem praebendam nihilominus retinens, quam in ipsa ecclesia tunc habebat, *et super hoc partes consentiebant, ad invicem haec ita fuisse dicentes. Fuit etiam ab una parte propositum, quod ipse praepositus praeter praebendam illam aliam praebendam habebat praepositurae annexam, quam idem praepositus et fautores ipsius inficiati sunt esse praebendam. Praeterea fuit allegatum de iure, quod, ex quo idem praepositus de minori ecclesia vocatus fuerat ad maiorem, prior praebenda de iure inceperat vacare iuxta canonum instituta. Deinde fuit ex parte clerici allegatum, primam fuisse ordinationem eiusdem ecclesiae, ut in ea tredecim essent personae, praepositus scilicet cum duodecim fratribus; quae nullatenus servaretur, nisi diceretur illa praebenda vacare.* Sed praepositus allegabat econtra, quod erat *fere* ex consuetudine generali, quod unus in eadem ecclesia plures haberet praebendas, et quum archiepiscopus Bremensis praepositum ipsum de praepositura in plena synodo investiret, tam praeposituram illam quam praebendam ei de communi canonicorum confirmavit assensu, *eos, qui super hoc inquietarent eundem, vinculo excommunicationis adstringens. Unde obiiciebatur clerico memorato, quod propter hoc sententiam excommunicationis incurrisset; sed ipse talem confirmationem intervenisse negabat, quae si etiam intervenit, asserebat eam non tenere de iure, quoniam nemini res illa rationabiliter poterat confirmari, quae de iure obtineri non potest. Dicebat etiam, se propter hoc excommunicationis sententia nunquam fuisse ligatum, quum super his experiretur auctoritate maioris.* Unde, quum vobis dubium videretur, utrum, quum aliquis de una praebenda eligitur ad aliam, statim prior vacare incipiat, an per sententiam debeat abiudicari eidem, an propter confirmationem huiusmodi, quae superius est expressa, praebenda illa dici debeat non vacare, nos consulere voluistis, *priusquam velletis super hoc aliquid diffinire.* Quum igitur, si ita est, praebenda illa, etsi non de facto, de iure tamen vacare noscatur, *discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus *iam* dictum praepositum, *ut praebendam* illam sine difficultate resignet, *monitione praevia per censuram ecclesiasticam* appellatione remota cogatis; quam, quum de facto vacaverit, clerico memorato *auctoritate nostra suffulti sublato appellationis obstaculo* conferre curetis, *eum in corporalem possessionem inducentes ipsius et defendentes inductum; eos autem qui se temere duxerint opponendos per districtionem ecclesiasticam compescatis. * [*Quod si etc. Dat. XIV. Kal. Iun. * 1205.]

Chapter X

Latin source headnote: In churches without a fixed number, vacancy of prebends or canonries is not possible, nor does devolution to the superior occur there from six months' negligence in not providing the church with ministers. This it says, and it is a notable case.

The same, to the Bishop and Archpriest of Pavia.

It was intimated to our ears on behalf of the church of Asti that, when certain prebends in it had been vacant for four years and more, *our venerable brother* the Bishop of Asti *diligently admonished his canons to order the church. When they did not admit his admonition,* the bishop instituted certain persons there, believing this to be lawful for him by the Lateran Council. But those instituted, knowing that an institution of this kind was not firm, had recourse to *our venerable brother* the Archbishop of Milan, who ordered them as canons of the church of Asti and inducted them into corporal possession of the prebends, with the chapter of that church furnishing assent, except only three, who took care to oppose themselves to an institution of this kind. *Those three said that the election ought to be annulled because neither the bishop nor the aforesaid archbishop could by the grant of the Lateran Council have ordered the aforesaid church, since each had been negligent and remiss in that ordering during the time granted to them by the*

canon. But the other party said to the contrary that, although the bishop's institution was not valid, nevertheless the archbishop's ordering was valid by law, because the time granted to him by the canon did not run except from the time when it had been made known to him; to prove this it introduced manifold reasons. When these things had been proposed on either side, finally both parties confessed in agreement that in the aforesaid church there were no distinct prebends, nor was the number of canons fixed. We therefore, *having diligently heard these and the other things that were proposed on either side,* clearly understood that the statute of the Lateran Council concerning benefices vacant beyond six months had no place at all in this matter, *since,* even if perhaps the church of Asti suffered a deficiency of canons, *nevertheless no prebends were vacant in it, since in it neither are there distinct prebends nor is the number of canons determined.* Hence the institution made by the archbishop or bishop on occasion of the aforesaid council ought to lack the strength of validity. But because the whole chapter, except *only* three, *approves and* desires the reception of the aforesaid persons, and nothing reasonable has been objected and shown against them by those three, *by apostolic writings we command* your discretion that, *after diligently inquiring into the truth,* if the resources of the church of Asti suffice, you cause the aforesaid clerics, *with every obstacle of contradiction and appeal removed,* to be held as canons according to the custom hitherto observed. [*As for contradictors, etc. Given at the Lateran, on the seventeenth day before the Kalends of July.* 1204.]

> In ecclesiis non numeratis vacatio praebendarum seu canonicatuum possibilis non est, nec fit ibi devolutio ad superiorem ex negligentia semestri in non providendo ecclesiae de ministris. H. d. et est casus notabilis.
>
> Idem Episcopo et Archipresbytero Papiensibus.
>
> Ex parte Astensis ecclesiae nostris est auribus intimatum, quod, quum quaedam praebendae in ipsa per quatuor annos, et amplius vacavissent, *venerabilis frater noster* Astensis *episcopus canonicos suos monuit diligenter, ut ecclesiam ordinarent. Quibus non admittentibus monitionem ipsius*, episcopus quosdam ibidem instituit, credens, sibi hoc ex Lateranensi concilio licere. Instituti autem scientes, non esse firmam institutionem huiusmodi, ad *venerabilem fratrem nostrum* Mediolanensem archiepiscopum recurrerunt, qui eosdem in canonicos Astensis ecclesiae ordinavit et in corporalem possessionem praebendarum induxit, capitulo eiusdem ecclesiae praebente assensum, tribus tantum exceptis, qui se institutioni huiusmodi opponere curaverunt. +*Tres illi dicebant, electionem debere cassari, quia nec episcopus nec archiepiscopus supra dictus de concessione Lateranensis concilii potuerat praefatam ecclesiam ordinare, quum uterque circa tempus eis indultum a canone in ordinatione illa negligens fuerit et remissus. Pars vero altera dicebat econtra, quod, licet institutio episcopi non valeret, archiepiscopi tamen ordinatio de iure valebat, quia ei tempus indultum a canone nisi a tempore, quo illi declaratum fuerat, non currebat, ad quod probandum inducebat multiplices rationes. His autem utrinque propositis,* Tandem utraque pars concorditer est confessa, quod in praedicta ecclesia non erant distinctae praebendae, nec canonicorum numerus erat certus. Nos igitur *his et aliis, quae fuerunt utrinque proposita, diligenter auditis*, intelleximus evidenter, statutum Lateranensis concilii de beneficiis ultra sex menses vacantibus locum in hoc articulo nullatenus habuisse, *quum*, etsi forte Astensis ecclesia canonicorum pateretur defectum, *nullae tamen in ea praebendae vacabant, quum in illa nec sint distinctae praebendae, nec canonicorum numerus diffinitus*. Unde institutio per archiepiscopum vel episcopum facta occasione concilii memorati carere debet robore firmitatis. Quia vero totum capitulum, tribus *tantum* exceptis, praedictorum receptionem *approbat et* affectat, nec ab illis tribus aliquid rationabile contra ipsos obiectum est et ostensum, *discretioni vestrae per apostolica scripta* mandamus, quatenus, *inquisita diligentius veritate*, si Astensis ecclesiae suppetant facultates, secundum consuetudinem hactenus observatam praedictos clericos *sublato cuiuslibet contradictionis et appellationis obstaculo* pro canonicis faciatis haberi. [*Contradictores etc. Dat. Lat. XVII. Kal. Iul.* 1204.]

Chapter XI

Latin source headnote: One having the power of conferring can by law deliver to another the power of conferring the first benefice that shall become vacant.

The same, to the Bishop and Chapter of Laon.

Constituted in our presence, *our beloved son* H., *subdeacon* [*of ours*] and canon of your church, humbly intimated *to us* that you, brother bishop, gave him power to confer the sacerdotal prebend that should first become vacant in your church, and that W., Archbishop of Reims *of good memory,* then legate of the Apostolic See, *strictly* commanded you, sons of the chapter, by our authority, *as appears through his letters directed to you, which were read before us,* that, when that prebend *in your church* became vacant, you receive to it, without the interposition of another person, that person upon whom the same H. should wish to confer it, *and take care to invest that person with it without any difficulty. The same subdeacon* [*also*] *asserted that, when he was about to approach the Apostolic See, he, taking precaution, appealed lest you, brother bishop, if perhaps meanwhile some sacerdotal prebend happened to become vacant, confer it upon anyone, or you, sons of the chapter, receive anyone presented to it except one whom the aforesaid subdeacon should determine to present*. Therefore, *by apostolic writings we command* your discretion that you admit without any contradiction that person upon whom the aforesaid H., when the sacerdotal prebend happens to become vacant, should determine canonically to confer it; and meanwhile you, brother bishop, are not to presume to confer a prebend of this kind upon anyone contrary to the form of your grant. *Otherwise, know that we have commanded our beloved sons the chancellor and Helvin and Adam, canons of Paris, to compel you to this by ecclesiastical censure, appeal being removed, reducing to invalidity anything that they learn was attempted, after the appeal lawfully interposed to us by the aforesaid subdeacon, contrary to the grant made to him concerning the sacerdotal prebend.* But because such grants, if drawn into a precedent, could be made in fraud of the canonical sanction by which ecclesiastical benefices are forbidden to be granted or promised before they become vacant, we do not wish that, on occasion of a mandate of this kind, which contains a personal grace, license be granted to those wishing to employ fraud. [*Given at the Lateran, on the tenth day before the Kalends of July, in the seventh year.* 1204.]

> Habens potestatem conferendi potest de iure alteri tradere potestatem conferendi primum beneficium, quod vacabit.
>
> Idem Episcopo et capitulo Laudunensi.
>
> Constitutus in praesentia nostra *dilectus filius* H. *subdiaconus* [*noster*] ecclesiae vestrae canonicus *nobis* humiliter intimavit, quod tu, frater episcope, potestatem ei dedisti sacerdotalem conferendi praebendam, quae primo in ecclesia vestra esset vacatura, et *bonae memoriae W.* Remensis archiepiscopus, tunc apostolicae sedis legatus, vobis, filii capituli, auctoritate nostra *districte* praecepit, *sicut per literas suas ad vos directas apparet, quae coram nobis lectae fuerunt*, ut, quum praebenda ipsa *in ecclesia vestra* vacaret, personam illam, cui vellet idem H. eam conferre, sine interpositione alterius personae reciperetis ad ipsam, +*et eandem personam curaretis de illa sine difficultate qualibet investire. Asseruit* [*etiam*] *idem subdiaconus, quod, quum esset ad sedem apostolicam accessurus, ipse praecavens appellavit, ne tu, frater episcope, si forte interim aliquam sacerdotalem contingeret vacare praebendam, eam ulli conferres, nec vos, fili capitulum, reciperetis aliquem praesentatum ad illam, nisi quem duxerit praefatus subdiaconus praesentandum*. Quocirca *discretioni vestrae per apostolica scripta* mandamus, quatenus personam illam, cui memoratus H. sacerdotalem praebendam, quum contigerit eam vacare, duxerit canonice conferendam, sine contradictione qualibet admittatis, et tu interim, frater episcope, praebendam huiusmodi contra formam concessionis tuae conferre alicui non praesumas; +*alioquin noveritis, nos dilectis filiis cancellario, et Helvin et Adae canonicis Parisiensibus in mandatis*

dedisse, ut vos ad hoc per censuram ecclesiasticam appellatione remota compellant, in irritum reducentes, si quid post appellationem a praefato subdiacono ad nos legitime interpositam contra concessionem sibi factam de sacerdotali praebenda noverint attentatum. Quia vero concessiones tales, si ad consequentiam traherentur, fieri possent in fraudem canonicae sanctionis, per quam prohibentur ecclesiastica beneficia concedi sive promitti ante, quam vacent, nolumus, quod huiusmodi occasione mandati, quod gratiam continet personalem, fraudem adhibere volentibus licentia concedatur. [*Dat. Lat. X. Kal. Iul. Ao. VII.* 1204.]

Chapter XII

Latin source headnote: The Lateran Council concerning benefices vacant beyond six months is not extended to bishoprics.

Innocent III.

Our beloved son Master G., your canon, *formerly* suggested to us that, when your bishop *of good memory* entered upon the way of all flesh, *the greater and sounder part of you had agreed upon him and proposed to elect him as bishop, but, because the noble man the Count of Crotone impeded it, the election was not celebrated. Afterward the same count, investing Madius his chaplain with that bishopric, enjoined you either to depart from his land or to elect that M. as pastor. When our venerable brother* the Archbishop of Santa Severina, *then elect, heard this, he summoned the aforesaid William to his presence and,* asserting that authority to elect had devolved upon him because of your negligence, elected him as your bishop. [*But after this became known to the aforesaid count, he caused you, summoned to his presence, to be detained in custody until you elected the aforesaid Madius in common. Approaching the presence of our beloved Gerard, cardinal deacon of Saint Adrian and legate of the Apostolic See, he obtained the benefit of confirmation from him. But afterward the aforesaid William, having gone to that cardinal, appealed to our hearing lest he cause him to be consecrated; and finally, constituted in our presence, he proposed that the same Madius had betrayed a certain castle, had received investiture from a lay hand by means of money, and even before obtaining confirmation had wasted many goods of the church by dissipating them. Hence we commanded our venerable brothers the Archbishop of Cosenza and the Bishops of Bisignano and Strongoli to compel you and others who might happen to be named to tell the truth concerning all these things, and, if they found the election concerning the aforesaid Madius irregularly celebrated, to declare it null and void, compelling him by means of justice to restore the things of the church, and afterward, after carefully inquiring into the truth concerning the election of the aforesaid William, to establish what was just, appeal being removed. As we perceived was contained in their letters, when they had peremptorily cited once, twice, and a third time both the aforesaid Madius and you, and also the abbots of the church of Gerace, the said Madius, though awaited for four months, neither approached them nor permitted you or the abbots to approach. But when, because of suspicion of dissipation, they suspended him from administration of the episcopal goods, and he nevertheless presumed to administer, they pronounced a sentence of excommunication against him; contemptuously disregarding it, he did not cease to celebrate. Hence, since it was established to them through the statements of sworn witnesses that the same Madius had received investiture of the bishopric from a lay hand, had incurred perjury, and had manifoldly perpetrated treason, homicides, and also simony; and that his election had been extorted, and his consecration attempted not only after an appeal but also otherwise contrary to the canons; finally, having taken the counsel of prudent men, they annulled by sentence what had been done concerning him.*] We therefore, [*having diligently heard these and the other things that were set forth to us concerning that business,*] attending that the canon of the Lateran Council, issued by Pope Alexander against the negligent, is not accustomed to be extended to an archbishopric or bishopric, but to be restricted to other personates and lesser ecclesiastical benefices, annulled an election of this kind, [*not because of the guilt of the person, but*]

because justice required it. [*The said person also, etc. Given at San Germano, on the sixth day before the Ides of July, in the eleventh year.* 1208.]

> Lateranense concilium de beneficiis ultra sex menses vacantibus ad episcopatus non extenditur.
>
> Innocentius III.
>
> Dilectus filius magister G. canonicus vester *olim* nobis suggessit, quod, *bonae memoriae* episcopo vestro viam universae carnis ingresso, *maior et sanior pars vestri convenerat in eundem, et ipsum eligere in episcopum proponebat; sed impediente viro nobili comite Cutronensi non fuit electio celebrata. Postmodum autem idem comes de ipso episcopatu Madium capellanum suum investiens vobis iniunxit, ut vel a terra recederetis ipsius, vel eligeretis eundem M. in pastorem. Quod quum venerabilis frater noster* archiepiscopus sanctae Severinae *tunc electus audisset, praedictum Guillelmum ad suam praesentiam accersivit, et* asserens, quod propter negligentiam vestram ad ipsum erat eligendi auctoritas devoluta, in episcopum vestrum elegit eundem. [*Verum postquam hoc innotuit comiti supradicto, vos ad suam praesentiam convocatos tamdiu fecit in custodia detineri, donec praefatum Madium communiter elegistis. Qui accedens ad praesentiam dilecti nostri Gerardi S. Adriani diaconi cardinalis apostolicae sedis legati, beneficium obtinuit confirmationis ab ipso. Sed memoratus Guillelmus postmodum ad eundem cardinalem profectus, ne illum faceret consecrari audientiam nostram appellavit, et tandem in nostra proposuit praesentia constitutus, quod idem Madius prodiderat quoddam castrum, et mediante pecunia investituram de manu receperat laicali, ac etiam ante confirmationem obtentam multa bona ecclesiae dilapidando vastarat. Unde nos venerabilibus fratribus nostris archiepiscopo Cusentino et Bisianensi et Geneocastrensi episcopis dedimus in mandatis, ut vos et alios, quos contingeret nominari, compellerent super iis omnibus dicere veritatem, et, si de praedicto Madio electionem invenirent irregulariter celebratam, denunciarent eam irritam et inanem, ipsum ad restitutionem rerum ecclesiae mediante iustitia compellentes, ac postmodum inquisita circa electionem praefati Guillelmi sollicite veritate, quod iustum esset statuerent appellatione remota. Qui, sicut in eorum literis perspeximus contineri, quum semel et secundo ac tertio peremptorio tam praenominatum Madium quam et vos, nec non etiam abbates ecclesiae Geruntinae ad suam praesentiam citavissent, dictus Madius per menses quatuor exspectatus nec accessit ad ipsos, nec vos permisit accedere vel abbates. Quum autem propter suspicionem dilapidationis ab episcopalium administratione suspendissent eundem, et ipse nihilominus administrare praesumeret, excommunicationis in eum sententiam protulerunt, qua ille contumaciter vilipensa non destitit celebrare. Unde quum eis per dicta iuratorum testium constitisset, quod idem Madius investituram episcopatus de manu susceperat laicali, et periurium incurrerat, ac proditionem et homicidia, nec non etiam simoniam multipliciter perpetrarat, quod etiam electio eius extorta fuerat, et consecratio non solum post appellationem, verum etiam alias contra canones attentata, demum habito prudentum consilio quod factum de ipso fuerat sententialiter cassaverunt.*] Nos igitur [*his et aliis, quae super ipso negotio nobis fuerunt exposita, diligenter auditis,*] attendentes, quod canon Lateranensis concilii, ab Alexandro Papa contra negligentes editus, ad archiepiscopatum vel episcopatum non solet extendi, sed ad personatus alios et minora ecclesiastica beneficia coarctari, electionem huiusmodi [*non reatu personae, sed*] iustitia cassavimus exigente. [*Dictum quoque etc. Dat. ap. S. Germanum VI. Id. Iul. Ao. XI.* 1208.]

Chapter XIII

Latin source headnote: A promise of a benefice that will become vacant is not valid.

The same, to the Prior of Hastings and the Superior of Saint Frideswide.

From the tenor of your letters we have received that, when the cause that was disputed concerning provision for I. the cleric on the one side and the abbot and convent of Battle on the other (*And below:*), after joinder of issue the said cleric exhibited before you a certain charter of *those* monks, *expressly* containing that they would assign to him the first church pertaining to their donation *worth ten or fifteen marks, nevertheless proving through suitable witnesses that, after a promise of this kind, although they*

were able, they had been unwilling to provide for him, though they had been admonished concerning this; wherefore he insistently petitioned that the said abbot and monks be compelled to assign him a revenue of at least ten marks. But to these things it was answered in opposition that he could not sue them by reason of the promise, inasmuch as it was made contrary to the statutes of the Lateran Council, which it appeared was proved through the charter exhibited, especially since mention was made in the letters not of any church but only of a promise. Therefore, when this had been disputed at length on either side before you, some asserting that they could be sued and others holding the contrary opinion, you, doubting what the law was in this matter, were unwilling to proceed further in the business until you received concerning this the good pleasure of our will, humbly supplicating us that we deign by our letters to make you more certain what was to be done in this regard. We therefore, attending that the aforesaid promise is not valid, inasmuch as it was attempted contrary to the statutes of the Lateran Council, *by apostolic writings command* your discretion that, imposing silence upon the aforesaid cleric concerning this, you absolve the said abbot and monks from his impetition. [*Given at the Lateran, on the second day before the Ides of December, in the eleventh year of our pontificate.* 1208.]

> Non valet promissio beneficii vacaturi.
>
> Idem Priori Hostiensi et Superiori S. Fridi.
>
> Ex tenore literarum vestrarum accepimus, quod, quum causa, quae inter I. clericum ex una parte, et abbatem et conventum de Bello ex altera, super provisione vertebatur ipsius (*Et infra:*) Dictus clericus post litem contestatam chartam quandam monachorum *ipsorum* exhibuit *coram vobis*, continentem *expresse*, quod primam ecclesiam ad donationem suam spectantem, *valentem X. marchas vel XV.* assignarent eidem, *+nihilominus per idoneos testes probans, ipsos post promissionem huiusmodi, licet potuerint, nolle sibi, quanquam super hoc admoniti fuerunt, providisse; quare dictos abbatem et monachos ad assignandum sibi reditum X. marcharum ad minus cogi cum instantia postulabat. Ad haec autem fuit ex adverso responsum, quod ratione promissionis, utpote factae contra Lateranensis concilii statuta, quae probari per chartam exhibitam videbatur, eos non poterat convenire; praesertim quum non de aliqua ecclesia, sed de promissione tantum in literis mentio haberetur. Quum igitur, aliis ipsos posse conveniri asserentibus, aliis vero in contrarium sentientibus, super hoc fuisset hinc inde coram vobis diutius disputatum, vos, quid iuris sit in hoc articulo dubitantes, in negotio ipso ulterius procedere noluistis, donec super hoc reciperetis nostrae beneplacitum voluntatis, nobis humiliter supplicantes, ut, quid sit in hac parte agendum, vos dignaremur per nostras literas reddere certiores*. Nos igitur attendentes, quod promissio praedicta non tenet, utpote contra statuta Lateranensis concilii attentata, *discretioni vestrae per apostolica scripta* mandamus, quatenus memorato clerico super hoc silentium imponentes, ab impetitione ipsius dictos abbatem et monachos absolvatis. [*Dat. Lat. II. Id. Dec. Pont. nostr. Ao. XI. * 1208.]

Chapter XIV

Latin source headnote: A prelate who promises to provide when he is able is bound.

The same.

Approaching the Apostolic See, *our beloved son* R. the cleric showed us by his intimation that, although you promised that you would provide for him in an ecclesiastical benefice when you were able, as clearly appeared through the letters of the delegated judges drawn up concerning it, *you have thus far not taken care to effect this, alleging before the aforesaid judges that such a promise in no way bound you, since it appeared to have been made contrary to the statutes of the Lateran Council, which forbids the promise of a benefice not vacant*. But we, considering that it is one thing for a prelate to promise the collation of a benefice when he is able, and another when it becomes vacant, since in many cases a faculty could present itself in which collation should not be deferred in expectation of a benefice that will become

vacant, *by apostolic writings command you* that, when you are able, you assign an ecclesiastical benefice to the aforesaid R.; [*otherwise, we have commanded by our letters the Abbot of Saint John and the Dean of Soissons to compel you to this by ecclesiastical censure, appeal being removed.*]

> Obligatur praelatus, qui promittit providere quum poterit.
>
> Idem.
>
> Accedens ad apostolicam sedem *dilectus filius* R. clericus sua nobis insinuatione monstravit, quod, quum promiseritis, vos provisuros eidem in ecclesiastico beneficio, quum possetis, sicut per literas iudicum delegatorum inde confectas liquido apparebat, *+vos id hactenus efficere non curastis, allegantes coram iudicibus memoratis, quod talis promissio vos nullatenus obligavit, quum videretur esse facta contra statuta Lateranensis concilii, quod promissionem inhibet beneficii non vacantis*. Nos autem considerantes, quod aliud est praelatum promittere beneficii collationem, quum poterit, aliud, quum vacabit, quum in multis casibus se facultas offerre posset, in quibus collatio non esset in exspectatione vacaturi beneficii differenda, *per apostolica vobis scripta* mandamus, quatenus memorato R. quum poteritis, ecclesiasticum beneficium assignetis; [*alioquin abbati sancti Ioannis et decano Suessionensi dedimus nostris literis in mandatis, ut vos ad id per censuram ecclesiasticam appellatione remota compellant.*]

Chapter XV

Latin source headnote: If the power of conferring pertains to the chapter and the prelate as prelate, it does not pass from one to the other by lapse of time; it is otherwise if the prelate participates as a canon, because then it passes from the chapter to the prelate, unless he commits fraud. This it says, and the text is very frequently alleged.

Innocent III.

You petitioned to be instructed by the Apostolic See whether, since the donation of the prebends of your church pertains to you and your archbishop together, the donation of a vacant prebend remains with the archbishop himself if you have neglected [*together*] to order it within the six-month period. To this we briefly answer *you* that, if you and the same archbishop have been negligent concerning this within the prescribed time, just as the power of conferring does not devolve from him to you, so neither does it devolve from you to him; rather, according to the statutes of the Lateran Council, the donation *of those prebends* passes to the superior, unless perhaps the archbishop has the right of conferring with you, not as prelate but as canon. And in this case, when he has *perhaps* fraudulently impeded it, fraud ought not to assist him. [*Given at the Lateran, on the fourth day before the Ides of January, in the fourteenth year of our pontificate.* 1212.]

> Si ad capitulum et praelatum, ut praelatum potestas conferendi pertinet, de uno ad alterum lapsu temporis non transit; secus, si praelatus intersit, ut canonicus; quia tunc de capitulo transit ad praelatum, nisi dolum committat. H. d. et est textus multum allegabilis.
>
> Innocentius III.
>
> Postulastis per sedem apostolicam edoceri, ut, quum ad vos et archiepiscopum vestrum simul donatio praebendarum ecclesiae vestrae pertineat, utrum praebendae vacantis donatio penes archiepiscopum ipsum remaneat, si eam infra semestre tempus neglexeritis [*pariter*] ordinare. Ad quod *vobis* breviter respondemus, quod, si vos et idem archiepiscopus infra tempus praescriptum circa hoc negligentes exstiteritis, sicut nec ab illo ad vos, ita nec a vobis ad illum potestas devolvitur conferendi, sed secundum statuta Lateranensis concilii ad superiorem transit donatio *earundem*, nisi forte archiepiscopus, non ut praelatus, sed ut canonicus, vobiscum ius habeat conferendi. Et in hoc casu,

quum dolose *forsitan* impedierit, dolus ei suffragari non debet. [*Dat. Lat. IV. Id. Ian. Pont. nostr. Ao. XIV.* 1212.]

Chapter XVI

Latin source headnote: Just as a patron cannot promise that he will present someone to a benefice that will become vacant, so neither can he give the power of presenting before the benefice becomes vacant.

Honorius III, to the Bishop and Provost of the Chapter of Cambrai.

Since our beloved daughter in Christ, *the noble woman Joan,* Countess of Flanders, *overcome by the importunate requests of certain persons,* has made *unlawful* promises concerning benefices of churches not vacant in which she holds the right of patronage, and has placed their donations in the hands of others, *as has been intimated to our ears, we command your discretion* that, decreeing this invalid, you forbid her *by our authority* to presume to attempt similar things henceforth.

> Sicut non potest patronus promittere, se praesentaturum aliquem ad beneficium vacaturum, ita nec dare potestatem praesentandi, antequam beneficium vacet.
>
> Honorius III. Episcopo et Praeposito capituli Cameracensis.
>
> Quum dilecta in Christo filia *nobilis mulier Ioanna* comitissa Flandrensis, *devicta quorundam precibus importunis,* fecerit promissiones *illicitas* de non vacantibus beneficiis ecclesiarum, in quibus ius obtinet patronatus, et donationes eorum in manibus posuerit alienis, *sicut est nostris auribus intimatum, discretioni vestrae* mandamus, quatenus, id irritum decernentes, *auctoritate nostra* inhibeatis eidem, ne similia de cetero attentare praesumat.

Title IX: That Nothing Be Innovated While the See Is Vacant

Chapter I

Latin source headnote: While a see is vacant, its status ought not to be changed.

Innocent III, to the Prior and Convent of Glastonbury.

He who is the searcher of hearts *and knower of secrets* knows that, although Pope C. *of good memory,* our predecessor, erected your church [*as a see*] into a cathedral, uniting it to the church of Bath so that the bishop of each would be the same, *and took care to confirm his constitution not only through his privilege but also through many other writings,* nevertheless, because you asserted that this union *was a confusion,* complaining that *it* redounded to the grave prejudice of the church of Glastonbury, since by it religion was dissolved, almsgiving was defrauded, and hospitality was taken away, we, *inclined by your supplications,* began diligently to direct our attention, *as much as was fitting,* to relieving the status of your church. *And because it appeared incongruous that we should suddenly annul the statute of our predecessor in this matter, since we wish to defer to him insofar as we can with God, just as we wish our successors to defer to us insofar as they will be able with God, while the union remained we so disposed of the other matters—however much this displeased Savaric, Bishop of Bath of good memory, who frequently labored on this account to the Apostolic See—that the status of your church appeared to have been relieved for the better. Hence, after diverse negotiations and manifold deliberations, at the petition of the same bishop, after he could obtain nothing else from us, we finally took care to strengthen by apostolic protection what had been ordained concerning this by provident and honorable men under authority of our mandate.* But after the death of the *aforesaid* Bishop of Bath, *having recourse to our*

presence, you humbly petitioned that, because the time had arrived when the ruin of your church could without scandal be raised *to its former state,* since both the church of Bath *and that of Wells* together petitioned the same thing, and the king with the magnates of the kingdom, and certain bishops with many abbots, also sought the same, we should wholly dissolve the union and reduce your monastery to its ancient state, to be governed under the rule of an abbot. We therefore, *attending diligently* that, while an episcopal see is vacant, nothing ought *concerning this* to be innovated, since there is no one to protect the episcopal right—especially lest we should appear to have favored the person more than the church if we suddenly changed after his death what we granted while he lived —could not hear your petition *in its entirety without harm to conscience and danger to reputation. But so that, according to the customary manner that you have experienced to be both useful to you and honorable to us, one may proceed gradually from the lowest to the highest,* granting *you* the aforesaid authority, we decree that, when the church of Bath has been ordered concerning a prelate, *if you wish to show that provision has not yet been made fully for your church to avoid detriment or prejudice,* you are to have free faculty to prosecute your right before the Apostolic See; meanwhile, however, let the same monastery be governed *freely* under the care of the prior. [*Therefore let no one, etc. Given at Rome at Saint Peter's, on the second day before the Ides of March, in the ninth year.* 1206.]

NE SEDE VACANTE ALIQUID INNOVETUR.

Vacante sede status eius mutari non debet.

Innocentius III. Priori et Conventui Glastonensi.

Novit ille, qui scrutator est cordium *et cognitor secretorum*, quod, licet *bonae memoriae* C. *Papa* praedecessor noster ecclesiam vestram [*in sedem*] erexerit cathedralem, ipsam Bathoniensi ecclesiae uniendo, ut idem esset episcopus utriusque, *suamque constitutionem non solum per privilegium suum, verum etiam per alia scripta multa curaverit confirmare;* quia tamen haec unio asserebatur a vobis *esse confusio, conquerentibus, eam* in grave praeiudicium Glastonensis ecclesiae redundare, quum per ipsam dissolveretur religio, et fraudaretur eleemosyna, et hospitalitas tolleretur nos *vestris supplicationibus inclinati* ad relevandum ecclesiae vestrae statum coepimus intendere, *quantum decuit*, diligenter. *+Et quoniam absonum videbatur, ut subito praedecessoris nostri evacuaremus in hac parte statutum, quum ei, quantum cum Deo possumus, deferre velimus, sicut et volumus, quod, quantum cum Deo poterunt, nostri nobis deferant successores, unione manente sic de ceteris disposuimus, quantumcunque bonae memoriae Savarico Bathoniensi episcopo displiceret, frequenter ob hoc ad sedem apostolicam laboranti, quod status ecclesiae vestrae videbatur in melius relevatus. Unde post diversos tractatus et deliberationes multiplices, quod per viros providos et honestos auctoritate mandati nostri super hoc exstitit ordinatum, ad petitionem eiusdem episcopi, postquam aliud a nobis non potuit obtinere, apostolico tandem curavimus munimine roborare*. Vos autem post obitum *praefati* Bathoniensis episcopi *ad nostram praesentiam recurrentes* humiliter postulastis, ut, quia tempus advenerat, quo sine scandalo ecclesiae vestrae ruina poterat *in statum pristinum* relevari, quum et Bathoniensis ecclesia *et Wellensis* id ipsum pariter postularet, rex quoque cum regni magnatibus, et quidam episcopi cum multis abbatibus deposcerent illud idem, ut unione penitus dissoluta monasterium vestrum reduceremus in statum antiquum, sub abbatis regimine gubernandum. *Nos* attendentes igitur *diligentius*, quod, episcopali sede vacante, non debet *super hoc* aliquid innovari, quum non sit qui episcopale ius tueatur, maxime ne plus favisse personae quam ecclesiae videremur, si quod eo vivente concessimus post obitum eius subito mutaremus, petitionem vestram *ex toto absque damno conscientiae ac periculo famae* nequivimus exaudire. *Ut autem solito more, quem et vobis utilem, et nobis honorabilem estis experti, gradatim ab imo procedatur ad summum*, auctoritate *vobis* praedicta indulgentes, ut, quum Bathoniensis ecclesia de praesule fuerit ordinata, *si ostendere volueritis, quod ecclesiae vestrae nondum sit ad detrimentum vel praeiudicium vitandum plene provisum*, ius vestrum apud sedem apostolicam

prosequendi facultatem liberam habeatis; interim autem sub cura prioris idem monasterium *libere* gubernetur. [*Nulli ergo etc. Dat. Rom. ap. S. Petr. II. Id. Mart. Ao. IX.* 1206.]

Chapter II

Latin source headnote: Benefices pertaining to the collation of a prelate cannot be conferred by the chapter while the see is vacant.

Honorius III, to the Bishop of Calvi and Masters V. and S., Canons of Sessa.

That sincerity of devotion *and sincere devotion that our beloved son Master R., Dean of Teano, is known to have had until now toward our person and the Apostolic See induce us, in consideration of his learning and probity, to bear him in the bowels of charity and to be unwilling to deny him those things that ought to be granted according to God. Hence we* thought that the church of Saint Leucius *of Capua, with all its appurtenances,* with which *our venerable brother R.,* Archbishop of Capua, by our mandate invested Master R. in the name of a prebend, the grace of our donation preceding, should be confirmed to him *by apostolic authority,* notwithstanding a grant made *concerning that church* to another by the chapter, or our confirmation, if any *perhaps* appears to have been obtained in common form; since it is nowhere found to be provided in law that, while the see is vacant, the chapter performs the function of the bishop in collations of prebends. Nor in the same case can the power of conferring prebends be said to have devolved upon the chapter by the negligence of the superior, since there was no superior there who could confer them in fact or in law. *Therefore we command your discretion that, with the obstacle of appeal removed, you induct the same master into corporal possession of that church and defend him once inducted.*

Beneficia spectantia ad collationem praelati non possunt conferri per capitulum sede vacante.

Honorius III. Episcopo Calmensi et Magistris V. et S. Canonicis Suessanensibus.

Illa devotionis sinceritas +*et sincera devotio, quam dilectus filius magister R. decanus Teanensis ad personam nostram et sedem apostolicam hactenus habuisse dignoscitur, nos inducunt, ut eum pro suae scientiae ac probitatis intuitu geramus in visceribus caritatis, et ei denegare nolimus quae secundum Deum fuerint concedenda. Unde nos* Ecclesiam sancti Leucini *de Capua cum omnibus pertinentiis suis,* de qua magistrum R. donationis nostrae gratia praecedente praebendae nomine de mandato nostro *venerabilis frater noster R.* Capuanus archiepiscopus investivit, sibi duximus *auctoritate apostolica* confirmandam, non obstante concessione per capitulum facta *de ipsa ecclesia* alii, seu confirmatione nostra, si qua *forte* in forma communi apparet obtenta; quum nusquam inveniatur cautum in iure, quod capitulum vacante sede fungatur vice episcopi in collationibus praebendarum. Nec in eodem casu potest dici potestas conferendi praebendas ad capitulum per superioris negligentiam devoluta, quum non fuerit ibi superior, qui eas posset de facto vel de iure conferre. *Quocirca discretioni vestrae mandamus, quatenus eundem magistrum in corporalem ipsius ecclesiae possessionem sublato appellationis obstaculo inducatis, et defendatis inductum.*

Chapter III

Latin source headnote: A judgment had against a church while the see is vacant is not valid.

The same, to the Bishop of Burgos.

When formerly the proctor of the church of Saint Mary of Castroforte and G., Bishop of Burgos *of good memory,* your predecessor, were constituted before Pope I. *of good memory,* our predecessor, the said proctor sought from that bishop restitution *both* concerning the freedom of electing a prelate for itself *and concerning the lands of that church and other things, of all of which his party had been despoiled, as he*

said. (*And below:*) *Therefore, after issue had lawfully been joined concerning the foregoing before that predecessor of ours, and afterward confessions had been made and witnesses received before delegated judges, the cause, having been instructed, was remitted to us.* We therefore, *when the proctors of the parties, constituted in our presence, had litigated at length before us concerning the foregoing,* thought that the depositions of the witnesses who had been received while the church of Burgos was vacant and lacked a lawful defender should be rejected.

> Sede vacante iudicium habitum contra ecclesiam non tenet.
>
> Idem Episcopo Burginensi.
>
> Constitutis *olim* coram *bonae memoriae* I. *Papa* praedecessore nostro procuratore ecclesiae sanctae Mariae de Castro forti et *bonae memoriae G.* Burginensi episcopo praedecessore tuo, dictus procurator petebat ab eodem episcopo restitutionem *tam* super libertate libere eligendi sibi praelatum, *+quam etiam super terris ipsius ecclesiae et rebus aliis, quibus omnibus pars sua spoliata fuerat, ut dicebat.* (*Et infra:*) *Lite igitur coram eodem praedecessore nostro super praemissis legitime contestata, et postmodum coram iudicibus delegatis, factis confessionibus et receptis testibus ab eisdem causa fuit ad nos instructa remissa.* Nos igitur *procuratoribus partium in nostra praesentia constitutis, quum super praemissis coram nobis diutius litigassent,* depositiones testium, qui vacante Burginensi ecclesia et carente legitimo defensore fuerint recepti, duximus reprobandas.

Title X: On Those Things Which Are Done by a Prelate Without the Consent of the Chapter

Chapter I

Latin source headnote: An alienation of ecclesiastical property without the approval of the chapter is not valid.

From the Council at Valencia.

A donation, sale, or exchange of ecclesiastical property by bishops will be invalid without the approbation and subscription of the clerics.

> **DE HIS, QUAE FIUNT A PRAELATO SINE CONSENSU CAPITULI.**
>
> Non tenet alienatio rei ecclesiasticae absque approbatione capituli.
>
> Ex concilio apud Valentiam.
>
> Irrita erit episcoporum donatio, vel venditio vel commutatio rei ecclesiasticae absque collaudatione et subscriptione clericorum.

Chapter II

Latin source headnote: In a temporal alienation that a prelate makes, the silence of the chapter is held as consent.

Alexander III, to the Bishop of Norwich.

It was contained [*in the letters transmitted by you to us that, when a question was disputed before you by our mandate between Master Hubert and Master N. concerning the tithe of W., it was established to you that Emma, Abbess of Saint Mary of Winchester, by common vote and unanimous consent, with the convent furnishing assent, granted that tithe to the aforesaid H., and Ralph, Archdeacon of Winchester, made investiture thereof to him through bread and a book; but Master N. proved before you by suitable witnesses that the aforesaid abbess had*

previously given the aforesaid tithe to him, the convent not contradicting, before she gave it to the aforesaid H., and that her grant had been confirmed by the diocesan bishop. Hence, because you wished to consult us as to which grant ought rather to be relied upon,] we answer your consultation in this manner: the grant of the tithe first made by the abbess, if it was made with the convent knowing and not contradicting, ought to have firm strength. But if *the aforesaid abbess,* while the convent was ignorant or contradicting, first granted *her* tithe to the aforesaid H., and not long afterward gave the same tithe to the same man with the assent of the convent, [*since it is established to you that it was given to him,*] the second grant ought to prejudice the first.

> In temporali alienatione, quam facit praelatus, taciturnitas capituli habetur pro consensu.
>
> Alexander III. Norvicensi Episcopo.
>
> Continebatur +[*in literis a te nobis transmissis, quod quum super decima de W. inter magistrum Hubertum et magistrum N. de mandato nostro coram te quaestio verteretur, constitit tibi, quod Emma abbatissa S. Mariae de Wintonia pro communi voto et unanimi consensu, conventu assensum praestante, decimam ipsam praedicto H. concessit et Rad. Wintoniensis archidiaconus per panem et librum sibi exinde investituram fecit, magister vero N. probavit coram te idoneis testibus, quod praefata abbatissa praescriptam decimam sibi prius dederat, conventu non contradicente, quam eam praefato H. dedisset, et quod a dioecesano episcopo eius fuerit concessio confirmata. Unde, quia nos consulere voluisti, cui concessioni potius sit innitendum,*] Consultationi tuae taliter respondemus, quod concessio decimae ab abbatissa prius facta, si conventusciente et non contradicente facta est, robur firmum debet habere. Verum si *praefata abbatissa* ignorante conventu aut contradicente decimam *suam* prius praedicto H. concessit, et non post multum temporis de assensu conventus eandem decimam dedit eidem, [*quum tibi eam datam fuisse constat,*] secunda concessio debet praeiudicare priori.

Chapter III

Latin source headnote: A temporal alienation made without the consent of the chapter is strengthened by its ratification.

The same, to the Bishop of Worcester.

Since some time ago, *if we remember correctly, we granted you by our letters that, if John your predecessor conferred the church of Bibury upon the abbot and brothers of Oseney while the chapter of your church protested, it would be lawful for you to revoke it; but, as you assert,* we granted [*letters directed to you*] *to the aforesaid brothers, so that you leave the church itself to be possessed peacefully by them, being forgetful of the writing that had been granted to you by us concerning this. Although we granted this to you, nevertheless we earnestly admonish and exhort your prudence that, from regard for God and reverence for blessed Peter and us, if you can in any way without grave detriment to your church, you leave that church to the aforesaid brothers in peace and quiet, because it befits your providence to direct attention to the advantage and advancement of religious places and to hold valid and firm what that predecessor of yours did from zeal for piety. But if perhaps you cannot be induced to leave the same church to them, notwithstanding the letters that the aforesaid brothers obtained concerning this, we wish the writing granted to you thereof to stand in its stability, because* it is certain that, by the rigor of law, that grant which it is established was made by *that* predecessor of yours while the chapter protested is not valid, unless *the same chapter* afterward held that *grant* valid.

> Alienatio temporalis facta sine consensu capituli per ratificationem eius roboratur.
>
> Idem Vigoriensi Episcopo.

Quum nos iam pridem, +*si bene meminimus, tibi per literas nostras indulserimus, ut, si Io. praedecessor tuus reclamante capitulo ecclesiae tuae, abbati et fratribus de Oseneia ecclesiam de Beibur contulit, eam tibi revocare liceret, iam dictis fratribus, sicut asseris,* [*ad te*] *literas nostras indulsimus, ut ipsis ecclesiam ipsam dimetteres pacifice possidendam, immemores exsistentes illius scripti, quod super hoc tibi fuerat a nobis indultum. Licet autem hoc tibi indulserimus, prudentiam tamen tuam monemus et exhortamur attentius, quatenus divino intuitu et pro reverentia B. Petri et nostra ecclesiam ipsam, si quo modo sine gravi detrimento ecclesiae tuae potes, iam dictis fratribus in pace et quiete dimittas, quia decet providentiam tuam ad commodum et profectum religiosorum locorum intendere, et quod idem praedecessor tuus pietatis studio fecit ratum et firmum habere. Si autem eandem ipsis ecclesiam dimittendam induci forte non poteris, non obstantibus literis, quas praedicti fratres super hoc impetraverunt, scriptum tibi exinde indultum in sua volumus stabilitate consistere, quoniam* Certum est, de rigore iuris concessionem illam non tenere, quam reclamante capitulo per *eundem* praedecessorem tuum constat factam fuisse, nisi *idem capitulum concessionem* eam ratam postmodum habuisset.

Chapter IV

Latin source headnote: A prelate ought not to institute or remove without the counsel of the chapter, or transact other business of the church. This it says together with the following chapter.

The same, to the Patriarch of Jerusalem.

The prudence of your discretion knows *more fully, as we believe,* how you and your brothers are one body, in such a way *indeed* that you are proved to be the head and they the members. Hence it does not become you, omitting the members, to use the counsel of others in the business of your church, since it is not doubtful that this is contrary both to your honor and to the institutions of the holy Fathers. Indeed, it became known to our ears that without the counsel of your brothers you institute and remove abbots and abbesses and other ecclesiastical persons, *not considering and attending how it is not doubtful that you transgress the statutes of the sacred canons, since in causes of this kind you are said to use the counsel of clerics and laymen dwelling around you, who are not of the body of that church, rather than that of your brothers*. Therefore we forbid this by apostolic authority. (*And below:*) For we annul by apostolic authority such institutions and removals, *if you make any henceforth,* and decree that they lack the strength of validity.

Praelatus sine consilio capituli instituere vel destituere, vel alia negotia ecclesiae tractare non debet. H. d. cum capitulo sequenti.

Idem Hierosolymitano Patriarchae.

Novit *plenius, sicut credimus,* tuae discretionis prudentia, qualiter tu et fratres tui unum corpus sitis, ita *quidem*, quod tu caput, et illi membra esse probantur. Unde non decet te omissis membris aliorum consilio in ecclesiae tuae negotiis uti, quum id non sit dubium et honestati tuae, et sanctorum Patrum institutionibus contraire. Innotuit siquidem auribus nostris, quod tu sine consilio fratrum tuorum, abbates et abbatissas, et alias ecclesiasticas personas instituis et destituis, +*non considerans et attendens, quomodo te non sit dubium statuta sacrorum canonum transgredi, quum in huiusmodi causis et clericorum et laicorum circa te commorantium, qui de corpore ipsius ecclesiae non sunt, potius quam fratrum tuorum consilio uti dicaris*. Ideoque id auctoritate apostolica prohibemus. (*Et infra:*) Nos enim tales institutiones et destitutiones, *si quas amodo feceris, auctoritate apostolica cassamus, et* carere decernimus robore firmitatis.

Chapter V

Latin source headnote: It is summarized above in the preceding chapter. A prelate ought not to institute or remove without the counsel of the chapter, or transact other business of the church. This it says together with the following chapter.

The same, to the same.

The more exalted the dignity in which, by the Lord's gift, you are preeminent, *the more it becomes and behooves you to have such diligence and gravity in all things that you may appear to perform everything without stain and reproach, and laudably administer the office of solicitude enjoined upon you. But we have heard, whereat we marveled, just as* [*also*] *we could rightly* [*thereat*] *marvel, that in grants and confirmations, omitting the canons of your church, you sometimes—indeed, often—seek the counsel of clerics and laymen dwelling around you who are not of the body of that church, and in those grants and confirmations you proceed according to their counsel and will; and also in privileges, which is wholly unbecoming to your honor, for greater authority and certainty you cause the names of your brothers who were absent to be subscribed as though they had been present. Therefore, because it does not become your prudence to set aside in the business of the church committed to you the counsel of your brothers, with whom you are proved to exist as one* [*body,*] *by apostolic writings we command* your fraternity that, in grants and confirmations and the other business of your church, you seek your brothers and transact and treat the same *business* with their counsel, or that of the sounder part, and establish the things that are to be established, correct errors, and scatter and root out the things that are to be rooted out. Nor are you in any way to permit the names of absent brothers to be inscribed, because such instruments are invalid and false, and on that account you could rightly fear a charge of forgery. *For we decree that all privileges in which the names of absent brothers were subscribed without their knowledge or while they were absent, or shall henceforth be written, are invalid, and we judge that they have no strength of validity.*

> Summatum est supra capitulo proximo. Praelatus sine consilio capituli instituere vel destituere, vel alia negotia ecclesiae tractare non debet. H. d. cum capitulo sequenti.
>
> Idem eidem.
>
> Quanto +*maiori dignitate dante Domino praeemines, tanto decet amplius et oportet te in omnibus eam diligentiam et gravitatem habere, quod omnia videaris sine nota et reprehensione peragere, et laudabiliter iniunctae tibi sollicitudinis officium dispensare. Audivimus autem, unde mirati sumus, sicut* [*et*] *merito* [*inde*] *mirari poteramus, quod in concessionibus et confirmationibus omissis canonicis ecclesiae tuae consilium clericorum et laicorum circa te commorantium, qui non sunt de corpore ecclesiae ipsius, interdum, immo saepe requiris, et in eisdem concessionibus et confirmationibus iuxta eorum consilium et voluntatem procedis, et in privilegiis etiam, quod tuam prorsus dedecet honestatem, ad maiorem auctoritatem et certitudinem nomina fratrum tuorum, qui absentes fuerint, tanquam si praesentes fuissent, facis subscribi. Quia igitur non decet prudentiam tuam in negotiis tibi commissae ecclesiae consilium fratrum tuorum postponere, cum quibus unum* [*corpus*] *existere comprobaris,* Fraternitati tuae *per apostolica scripta praecipiendo* mandamus, quatenus in concessionibus et confirmationibus et aliis ecclesiae tuae negotiis fratres tuos requiras, et cum eorum consilio, vel sanioris partis, *negotia* eadem peragas et pertractes, et quae statuenda sunt statuas, et errata corrigas, et evellenda dissipes et evellas. Absentium quoque fratrum nomina inscribi *aliquatenus* non sinas, quia talia munimenta sunt irrita et falsa, et tu exinde quaestionem falsi poteris merito formidare. *Nos enim universa privilegia in quibus absentium fratrum nomina ipsis ignorantibus vel absentibus subscripta sunt, vel amodo describentur irrita esse decernimus et nullius firmitatis robur habere censemus.*

Chapter VI

Latin source headnote: If a collegiate church has the presentation, the prelate shall present with the consent of the chapter or of its greater part, unless by custom or privilege it belongs to the prelate alone.

Celestine III.

That is known to be [*the dignity of the Apostolic See, granted to it by the Lord himself in blessed Peter, that, where some point of doubt arises, it is referred to its oracle, and what it establishes should be answered ought to be received and observed by all without any hesitation.*] *It has indeed been proposed to us on your behalf that,* since in your province it often happens that, to churches in which colleges are known to have the right of presentation, their abbots, either personally or through *their* letters, present suitable persons to the diocesan bishops, and after those presented have been *afterward* received, sometimes before *institution* and sometimes after, monks *or colleges of another order* contradict *and protest; concerning these things you seek to be certified by an open answer whether an institution already made or still to be made ought to be impeded on this account. To these things we* answer you in this manner: namely, that in the presentations of *such* prelates it ought to be understood that they are made with the assent of their colleges, without which they obtain no *manner of* validity. Hence, if it is established that the consent of the convent, or of its greater and sounder part, was not present, it is fitting that institutions of this kind be annulled, unless some of them prove by ancient and approved custom or granted liberty that the consent of the college committed to them ought not to be sought in collations of churches or benefices. [*Given at the Lateran.*]

> Si ecclesia collegiata habet praesentationem, praesentabit praelatus de consensu capituli vel maioris partis, nisi de consuetudine vel privilegio competat soli praelato.
>
> Coelestinus III.
>
> Ea noscitur +[*sedis apostolicae dignitas, eidem ab ipso Domino in B. Petro concessa, ut, ubi emergit alicuius dubitationis articulus, ad ipsius oraculum referatur, et quod ipsa statuerit respondendum, sine ulla debeat ab omnibus haesitatione recipi et servari.*] *Ex tua siquidem nobis est parte propositum, quod,* Quum in provincia tua saepe contingat, quod ad ecclesias, in quibus collegia ius praesentandi habere noscuntur, eorum abbates aut per se aut per literas *suas* personas idoneas episcopis dioecesanis praesentant, et eis praesentatis *postmodum* et receptis aliquando ante *institutionem*, aliquando post monachi *seu alterius ordinis collegia* contradicunt *et reclamant. Super quibus aperto tibi quaeris certificari responso, utrum institutio iam facta vel adhuc facienda propter huiusmodi debeat impediri. Ad quae tibi hoc modo* respondemus, quod *videlicet* in praesentationibus *talium* praelatorum intelligi debet, quod fiant de collegiorum suorum assensu, sine quo non obtinent *aliquatenus* firmitatem. Unde, si constiterit, conventus vel maioris et sanioris partis non adfuisse consensum, institutiones huiusmodi convenit evacuari, nisi ex antiqua et approbata consuetudine vel concessa libertate aliqui eorum probaverint, commissi sibi collegii non debere in ecclesiarum seu beneficiorum collationibus requiri consensum. [*Dat. Laterani.*]

Chapter VII

Latin source headnote: A donation that a layman makes to a church, with the consent of the diocesan alone, of tithes that he has held from another church in fief from of old, that is, before the Lateran Council, is valid.

Innocent III, to the Archpriest and Master of the Schools of Bourges.

Since the Apostolic See, *over which, although unworthy, we preside, is set above all churches throughout the world not by human but by divine institution, it is just and fitting that doubtful questions concerning diverse points of law be referred to it as mistress and mother, so that it which establishes laws may also distinguish those same laws, lest things that are seen to be diverse appear to be opposed.* Indeed, as we have received *from your letters,* when on the one side the Chapter of Saint Stephen *and the Chapter of Selles,* and on the other the monks of La Place, had submitted to your arbitration concerning a certain tithe *that they sought from those monks, and you, after summoning the parties, had taken cognizance of the cause,* the said monks alleged that donation of that tithe had been made to them by a certain knight and confirmed with the consent of *our venerable brother* the Archbishop of Bourges, the diocesan, acceding; and that they were fortified by the authority of Jerome, who, writing to Damasus, says: "If things that are known to be of divine right have at any time been wrongfully detained by laymen and have passed to the use of monks, with the bishop of the place *nevertheless* furnishing *them* consent, they will stand for them supported by perpetual validity." To the contrary, the opposing party alleged that the consent of the bishop without the consent of the clergy was insufficient, by the authority of Pope Leo, who says: "Let no bishop dare to donate, exchange, or sell anything from the property of the church, unless perhaps he should do one of these things so as to provide for something better, and with the consent and deliberation of all the clergy choose that which is not doubtful to be profitable to the church." But because, *doubting concerning these authorities,* you wished to consult us, *humbly inquiring* whether, when a tithe is held by a layman, if it is conferred upon a church, the consent of the bishop without the consent of the clergy suffices to confirm the donation, *we* answer your devotion in this manner: the layman who detains the tithe is to be admonished to restore it to the church to which it belongs. But if perhaps he cannot be induced and assigns it, with the consent of the diocesan, to another church—especially to a religious convent—the donation itself will stand supported by perpetual validity. For the aforesaid authorities, although diverse, are nevertheless not opposed, since it is one thing to alienate what is possessed by a church and another to recall to ecclesiastical use what is detained by a layman. In alienation, according to the decree of Pope Leo, the consent of the bishop without the consent of the clerics does not suffice. But in recalling, according to the writing of Jerome, the consent of the bishop suffices, since by each the utility of the church is consulted. For in the Lateran Council it is also forbidden that any religious person receive churches and tithes from the hands of laymen without the consent of the bishops, by which it is indirectly given to be understood that the consent of the bishop suffices for it to be lawful for a church to receive tithes from the hands of laymen. But we understand this concerning those tithes that have been granted to laymen perpetually in fief. [*Given at Rome, etc., on the Nones of July, in the first year of our pontificate.* 1198.]

> Tenet donatio, quam de solius dioecesani consensu facit laicus ecclesiae de decimis, quas ab alia ecclesia habet in feudum ab antiquo, i. e. ante Lateranense concilium.
>
> Innocentius III. Archipresbytero et Magistro scholarium Bituricensibus.
>
> Quum apostolica sedes, *+cui, licet immeriti, praesidemus, universis per orbem ecclesiis non humana, sed divina institutione sit praelata, iustum est et conveniens, ut ad eam tanquam ad magistram et matrem super diversis iuris articulis referantur dubiae quaestiones, quatenus quae iura constituit, eadem quoque iura distinguat, ne quae diversa cernuntur videantur adversa*. Sane, sicut *ex literis vestris* accepimus, quum ex una parte capitulum S. Stephani *et capitulum de Salis*, et ex altera monachi de Platea super decima quadam, *quam a monachis ipsis petebant*, in vestrum compromisissent arbitrium, *et vos partibus convocatis cognosceritis de causa*, dicti monachi proponebant, donationem ipsius decimae sibi a quodam milite factam, et *venerabilis fratris nostri*

Biturícensis archiepiscopi dioecesani eius accedente consensu confirmatam fuisse, seque auctoritate Hieronymi munitos exsistere, qui scribens ad Damasum ait : " Si aliquando fuerint a laicis male detenta quae divini iuris esse noscuntur, et in usum transierint monachorum, episcopo *tamen* loci *illis* praebente consensum, constabunt eis omnia perpetua firmitate subnixa. " E contrario pars allegabat adversa, consensum episcopi sine cleri consensu minus sufficere auctoritate Leonis Papae, dicentis : " Ne quis episcopus de rebus ecclesiae quicquam donare vel commutare vel vendere audeat, nisi forte aliquid horum faciat, ut meliora prospiciat, et cum totius cleri consensu atque tractatu id eligat, quod non sit dubium ecclesiae profuturum. " Quia vero *super his auctoritatibus dubitantes* nos consulere voluistis, *humiliter inquirentes*, utrum, quando decima tenetur a laico, si conferatur ecclesiae, ad confirmandam donationem consensus episcopi sine cleri consensu sufficiat, *nos devotioni vestrae* taliter respondemus, quod monendus est laicus, qui decimam detinet, ut eam restituat ecclesiae, ad quam spectat. Qui si forte induci nequiverit, et eam cum dioecesani consensu alteri ecclesiae assignaverit, praesertim religioso conventui, constabit ipsa donatio perpetua firmitate subnixa. Auctoritates enim praemissae, licet diversae sint, non tamen adversae, quum aliud sit alienare quod ab ecclesia possidetur, et aliud quod detinetur a laico ad usum ecclesiasticum revocare. In alienatione quoque iuxta Leonis Papae decretum consensus episcopi sine clericorum consensu non sufficit. In revocatione autem iuxta scriptum Hieronymi sufficit consensus episcopi, quum per utrumque utilitati ecclesiae consulatur. Nam et in Lateranensi concilio est inhibitum, ne quaelibet religiosa persona ecclesias et decimas de manibus laicorum sine consensu episcoporum recipiat, per quod indirecte datur intelligi, quod sufficit consensus episcopi, ut licitum ecclesiae sit decimas de manibus recipere laicorum. Hoc autem de illis decimis intelligimus, quae laicis in feudum perpetuo sunt concessae. [Dat . *Rom. etc. Non. Iul. Pont. nostr. Ao. I.* 1198.]

Chapter VIII

Latin source headnote: A bishop cannot without the consent of the chapter grant churches to other churches, even if he has the right of patronage in the churches granted.

The same, to the Archdeacon of Metz.

Recently yours *to us* (*And below:*) You also added whether it is lawful for a bishop or bishop-elect, together with the archdeacon alone apart from the assent of the greater church, since *both* the bishop is elected from it and the archdeacon is assumed from it, perpetually to confer vacant baptismal churches upon monasteries or conventual churches to which the right of patronage pertains. The solution of the other question is also clearly gathered from an epistle of Pope Leo, in which it is read to have been *established:* "Let no bishop dare to donate, exchange, or sell anything from the property of the church, unless perhaps he should do one of these things so as to provide for something better, and by the deliberation and consent of all the clergy choose that which is not doubtful to be profitable to the church." For a donation, sale, or exchange of ecclesiastical property by bishops will be invalid without the connivance and subscription of the clerics. By this you will know the question proposed in the second place to have been resolved, since it is not doubtful that perpetual grants of churches pertain to alienations.

Non potest episcopus sine consensu capituli concedere ecclesias aliis ecclesiis, etiamsi habeat ius patronatus in ecclesiis concessi.

Idem Metensi Archidiacono.

Tua nuper *nobis* (*Et infra:*) Adiecisti etiam, utrum episcopo vel electo cum solo archidiacono praeter assensum maioris ecclesiae, quum *et* ab ipsa eligatur episcopus, et archidiaconus assumatur de ipsa,

coenobiis vel ecclesiis conventualibus, ad quas ius pertinet patronatus, liceat conferre perpetuo vacantes ecclesias baptismales. +Alterius etiam quaestionis solutio ex epistola Leonis Papae colligitur evidenter, in qua legitur *constitutum*, " ne quis episcopus de rebus ecclesiae quicquam donare vel permutare vel vendere audeat, nisi forte aliquid horum faciat, ut meliora prospiciat, et totius cleri tractatu atque consensu id eligat, quod non sit dubium ecclesiae profuturum. " Irrita enim episcoporum donatio, venditio et commutatio rei ecclesiasticae erit absque conniventia et subscriptione clericorum. Per hoc enim noveris solutam secundo loco propositam quaestionem, quum concessiones ecclesiarum perpetuas ad alienationes non sit dubium pertinere.

Chapter IX

Latin source headnote: A bishop cannot, with the consent of the patron but without the consent of his chapter, confer parish churches or their revenues upon a monastery.

The same, to the Bishop of Ely.

The diligence of the pastoral office (*And below:* [*cf. c.* 28, *On the Office of a Delegated Judge, I.* 29]) Furthermore, you *carefully* asked, since parishes were delimited by the authority of Dionysius so that the proceeds of individual parishes might fall to the necessary uses of the church and the stipends of ministers, whether it is lawful for a bishop, without the authority of the Supreme Pontiff or at least without the will of his chapter, to confer upon religious men the revenues of some parish church, the support of a vicar being reserved. And since the statutes of the Lateran Council forbid a new pension to be imposed upon churches or an old one to be increased, you request to be instructed whether a bishop, with the patron consenting, can confer the whole church upon *religious places,* or confer some portion anew. To this we briefly answer that, saving the canonical constitution concerning the granting of a fiftieth portion to pious places, a bishop can do neither the first nor the second, without the will of his chapter, except by license of the Roman Pontiff. [*Furthermore yours, etc.* (*cf. c.* 7, *On Donations, III.* 27.) *Given at Rome at Saint Peter's, on the fourteenth day before the Ides of January.* 1204.]

Episcopus parochiales ecclesias, vel obventiones ipsarum, de consensu patroni sine consensu capituli sui monasterio conferre non potest.

Idem Episcopo Heliensi.

Pastoralis officii diligentia (*Et infra:* [*cf. c.* 28. *de off. iud. del. I.* 29]) *Sollicite* Praeterea quaesivisti, quum auctoritate Dionysii fuerint parochiae limitatae, quatenus singularum parochiarum proventus in usus ecclesiae cederent necessarios et stipendia ministrorum, si episcopo liceat sine auctoritate summi Pontificis vel saltem sine capituli sui voluntate viris religiosis conferre obventiones alicuius parochialis ecclesiae, sustentatione vicarii reservata. Et quum Lateranensis concilii statuta prohibeant ecclesiis novam imponi vel augeri veterem pensionem, postulas edoceri, an episcopus valeat *locis* religiosis consentiente patrono totam ecclesiam, vel de novo conferre aliquam portionem. Ad quod breviter respondemus, quod, salva constitutione canonica de concedenda piis locis quinquagesima portione, neque primum neque secundum facere potest episcopus, nisi de licentia Romani Pontificis, praeter capituli sui voluntatem. [*Tua insuper etc.* (*cf. c.* 7. *de don. III.* 27.) *Dat. Rom. ap. S. Pet. XIV. Id. Ian.* 1204.]

Chapter X

Latin source headnote: The chapters of cathedral churches ought to be summoned and admitted to provincial councils.

Innocent III, to the Archbishop of Sens and His Suffragans.

Although the members of the body *of Christ* (*And below:*), the chapters of the cathedral churches of the province of Sens transmitted *their* complaint to us that the Archbishop of Sens and his suffragans were unwilling to admit their proctors, recently summoned to a provincial council, to its deliberation, *although certain things are customarily treated in councils of this kind that are known to pertain to those chapters, for which reason they appealed to our hearing. Indeed, having heard and understood what their messengers wished to propose concerning these things, and likewise the letters that you took care to send us concerning the same business, we had diligent deliberation thereupon with our brothers, and indeed in agreement* it appeared to us and to those *same* brothers of ours that the chapters themselves ought to be invited to councils of this kind, and their messengers admitted to deliberation, especially concerning those things that are known to affect the chapters themselves.

> Ad concilia provincialia vocari debent et admitti cathedralium ecclesiarum capitula.
>
> Innocentius III. Archiepiscopo Senonensi et eius Suffraganeis.
>
> Etsi membra corporis *Christi* (*Et infra:*) Provinciae Senonensis capitula cathedralium ecclesiarum *suam* ad nos querimoniam transmiserunt, quod archiepiscopus Senonensis et eius suffraganei procuratores eorum nuper ad provinciale concilium convocatos ad tractatum eorum admittere noluerunt, *+licet nonnulla soleant in huiusmodi tractari conciliis, quae ad ipsa noscuntur capitula pertinere, quare nostram audientiam appellarunt. Sane nos, auditis quae ipsorum nuncii, super his proponere voluerunt, et intellectis nihilominus literis, quas nobis super eodem curatis negotio destinare, tractatum exinde cum fratribus nostris habuimus diligenter, et utique concorditer* Visum fuit nobis et *eisdem* fratribus nostris, ut capitula ipsa ad huiusmodi concilia debeant invitari, et eorum nuncii ad tractatum admitti, maxime super illis, quae ipsa capitula contingere dignoscuntur.

Title XI: On Those Things Which Are Done by the Greater Part of the Chapter

Chapter I

Latin source headnote: In ecclesiastical corporate bodies, what is done by the greater part regularly prevails, unless the lesser part reasonably contradicts. This it says.

From the Lateran Council.

Since in all churches that which has appeared good to the more numerous and sounder brothers ought to be observed without delay, it is exceedingly grave and most worthy of reproof that in certain churches a few sometimes, not so much from reason as from their own will, impede *the ordering of the many* [*and more prudent*] *and* do not permit an ecclesiastical ordering to proceed. Therefore, by the present decree we establish that, unless something has been reasonably objected and shown by the fewer and inferior, that which has been established by the greater and sounder part of the chapter shall always prevail, appeal being removed, and shall obtain its effect. Nor shall our constitution be impeded if perhaps someone says that he is bound by an oath to preserve the custom of his church; for those things that come against the utility of the church and the statutes of the holy Fathers are to be called not oaths but rather perjuries. But if anyone has presumed to swear to customs of this kind, which are neither supported by reason nor consonant with the sacred statutes, let him be excluded from reception of the Lord's body until he has done worthy penance.

> **DE HIS, QUAE FIUNT A MAIORI PARTE CAPITULI.**

In universitatibus ecclesiasticis praevalet regulariter quod fit a maiori parte, nisi minor pars rationabiliter contradicat H. d.

Ex concilio Lateranensi.

Quum in cunctis ecclesiis quod pluribus et sanioribus fratribus visum fuerit incunctanter debeat observari, grave nimis est et reprehensione dignissimum, quod per quasdam ecclesias pauci quandoque non tam de ratione, quam de propria voluntate *ordinationem multorum* [*et prudentiorum*] *impediunt, et* ad ordinationem ecclesiasticam procedere non permittunt. Quocirca praesenti decreto statuimus, ut, nisi a paucioribus et inferioribus aliquid rationabiliter obiectum fuerit et ostensum, appellatione remota praevaleat semper et suum consequatur effectum quod a maiori et saniori parte capituli fuerit constitutum. Nec constitutionem nostram impediat, si forte aliquis ad conservandam ecclesiae suae consuetudinem se iuramento dicat adstrictum; non enim iuramenta, sed potius periuria sunt dicenda, quae contra utilitatem ecclesiae et sanctorum Patrum veniunt instituta. Si quis autem huiusmodi consuetudines, quae nec ratione iuvantur, nec sacris congruunt institutis, iurare praesumpserit, donec dignam egerit poenitentiam, a perceptione sit dominici corporis alienus.

Chapter II

Latin source headnote: A canon does not interdict a church; rather, the bishop with the chapter ought to do this.

Celestine III, to the Bishop of Clermont.

The diligence of your probity asked *of us what you ought to observe and establish by the authority of an apostolic response* concerning the fact that certain of the canons *or even the least ones,* on *any occasion assumed,* subject your church to interdict without your assent and that of the other canons, either because a pension owed to the church is not rendered, *as is customary,* or *because sometimes* some cleric or parishioner has committed an offense, *through which the service of that church perishes and no small scandal is generated among the people. Concerning this* we answer your fraternity in this manner, *as we recall that we have answered in similar consultations:* namely, that you ought not to observe an interdict placed upon any church by one or some of your canons without your assent and that of your other *brothers, unless such an excess and one so grave has occurred that the church ought rightly to be silent,* nor permit that *an interdict under pretext of an occasion of this kind* be observed by others, *unless your consent and that of the other canons has acceded.* But if anyone has offended in these matters, let him be subject to ecclesiastical coercion, since sins ought to hold their authors, nor is punishment to be extended further than the offense has been found in the transgressor.

Canonicus non interdicit ecclesiam, sed hoc facere debet episcopus cum capitulo.

Coelestinus III. Claremontensi Episcopo.

Quaesivit *+a nobis tuae diligentia probitatis, quid observare debeas, et apostolicae responsionis auctoritate statuere* super eo, quod ecclesiam tuam quidam ex canonicis *vel* etiam minimis *qualibet occasione assumpta, vel* quia pensio ecclesiae debita, *sicut solitum est*, non redditur, vel *quia nonnunquam* clericus aliquis aut parochianus deliquit, sine tuo et aliorum canonicorum assensu interdicto supponunt, *per quod ipsius ecclesiae servitium deperit, et in populo scandalum non modicum generatur. Super quo* Fraternitati tuae taliter respondemus, *sicut in similibus consultationibus nos recolimus respondisse*, quod *videlicet* interdictum in aliqua ecclesia per aliquem vel aliquos de canonicis tuis sine tuo et aliorum *tuorum* fratrum assensu positum observare non debes, *nisi talis excessus et tam gravis exstiterit, propter quod merito ecclesia silere debeat*, nec sustinere, ut *praetextu occasionis huiusmodi interdictum* ab aliis observetur, *+nisi tuus et aliorum canonicorum*

consensus accesserit. Sed si quis in his deliquerit, ecclesiasticae coercitioni subiaceat, quum peccata suos auctores tenere debeant, nec poena sit ulterius protrahenda, quam delictum fuerit in excedente repertum.

Chapter III

Latin source headnote: The common ordering of a church ought not to be impeded by the contradiction and appeal of one who has no interest. This it says with regard to the title.

Innocent III, to the Provost of Augsburg.

From the mouth of the one sitting *upon the throne proceeded a two-edged sword. This is the sword of Solomon, which cuts on either side, rendering to each what is his own. We therefore, who, although unworthy, by divine favor hold the place of the true Solomon, prudently draw this sword when we determine, through justice, questions lawfully debated in our hearing. For to this end the perplexity of emerging questions and the difficult knots of causes are referred to the Apostolic See: so that, when their merits have been disclosed by the assertion of the parties, a sentence may proceed from the Apostolic See bringing doubtful things into certainty and producing obscure things into the light, so that, once the dissension of the litigants has been quieted, justice may protect and follow its author. Hence it was that,* when T. and *our beloved son* B., a canon of Augsburg, approached our presence on account of the question disputed between you concerning the provostship of the church of Augsburg, *we appointed as your auditors our venerable brother* [*Octavian,*] *Bishop of Ostia, and our beloved son Gratian, cardinal deacon of Saints Cosmas and Damian. In their presence* it was proposed on behalf of B. himself that, *when our beloved son E., Provost of Augsburg, had been elected Bishop of Brescia, he requested the Augsburg chapter not to elect another as provost for themselves before his election was confirmed. And when they had assented to his requests, and that elect, having obtained confirmation of his election through his metropolitan and coming to Tivoli, had been invested with the regalia, B., the knight,* his father, approaching the Apostolic See, obtained from C. *of good memory,* our predecessor, letters to be sent to *our beloved sons* the dean and chapter of Augsburg that, within the space of one month and *with the obstacle of appeal removed,* they elect and assume that man as Provost of Augsburg; a golden ring was sent to him as a sign of investiture, and certain executors of the apostolic mandate were appointed. But when the aforesaid *dean and* chapter heard that C., their former provost, had been elected and confirmed as Bishop of Brescia, although they had received the said letters, nevertheless, in contempt of them, after a term had first been assigned within which they ought to answer concerning the apostolic mandate, they elected H., then Dean of Augsburg, as provost. [*But lest his election be confirmed, the same B. appealed to the hearing of the Apostolic See. And although afterward various and manifold letters emanated from the Apostolic See concerning this on behalf of the said H., in which silence appeared to be imposed upon him, nevertheless this ought not to have been binding, because, absent and not summoned, he could not be condemned; and he nevertheless afterward contradicted the said H. concerning that provostship as much as he could, which he proved through witnesses. He also obtained apostolic letters by which it was commanded that he be inducted into possession of the provostship, notwithstanding any letters obtained from the Apostolic See before or afterward. Hence, when that man entered upon the way of all flesh and the dean and chapter of Augsburg wished to proceed to an election of a provost, he appealed to the Apostolic See lest this be done. But, not at all deferring to the appeal, after excluding certain canons and not summoning certain others, they elected you as their provost. Therefore he petitioned that your election, not made concordantly by all the canons but attempted after an appeal was interposed to us, be annulled, and that he be confirmed as provost, since he had first been invested with the provostship by our said predecessor, which he wished to prove through the ring transmitted to him by that predecessor.*

To these things it was answered on your behalf, son provost, in this manner: that which had been done concerning B. had been obtained before our predecessor held valid the election of the aforesaid E., which was also proved by witnesses; but even if the aforesaid letters had emanated from the Apostolic See after the said elect was confirmed as bishop, nevertheless no right had been acquired by him through this, since he had neither been invested with the provostship nor had the judges executed the apostolic mandate on his behalf. You proved this from the tenor of the letters themselves, in which it was expressly contained that the dean and chapter of Augsburg should elect and assume him as provost within a month, and that the ring was sent to him for receiving investiture. For if he had been invested by the Apostolic See, neither an election of the chapter nor an investiture of the executors would afterward have had any place. You also added that, when the said H. afterward approached the Apostolic See and fully explained to our aforesaid predecessor the manner of his election and the cause of the contradiction of the same B., our said predecessor, notwithstanding the investiture made to B., confirmed H.'s election, asserting that he had been circumvented by a false suggestion in what he had written on behalf of B., since it had not been expressed to him that B. was constituted below the sacred orders; rather, those who petitioned on his behalf had taken care to suggest to him that B. was suitable. And although letters on his behalf were presented to the said Bishops of Freising and Eichstätt and the greater Provost of Speyer, in which they were commanded by virtue of obedience to induct him into corporal possession of the provostship, notwithstanding any letters obtained from the Apostolic See before or afterward, nevertheless our said predecessor rescripted that they had by no means emanated with his knowledge; decreeing them null and void, he annulled anything done by their authority and commanded the same judges to detain the man who had obtained those letters in faithful custody until they should receive from him a mandate as to how they ought to proceed concerning this.

It was furthermore objected against the foregoing that, even if it were established—which was altogether false—that the aforesaid B. had been invested by the Apostolic See and that his investiture had by no means been revoked, nevertheless, because he exhibited to the said H. the reverence owed to a provost, which you proved through witnesses, and received a stipend from him like the other canons, he had renounced his right and was no longer to be heard concerning this. Moreover, when the said H. paid the debt of nature, and the dean and chapter, by the counsel of our venerable brother the Bishop of Augsburg, had established first a space of six weeks, secondly another six weeks, and then three days for celebrating an election of the provost, so that the absent canons might come together for the election, and when, after they had assembled, the election was treated, the same B. did not contradict until he learned that both he and others constituted in minor orders were to be excluded from the election. Indeed, when the dean, intending to investigate the wills of all, asked the assent of our beloved son Walter, a canon of Augsburg, concerning that election, he answered that he would not express his intention in the presence of those who were constituted below the sacred orders, since according to the canonical statutes they could neither be elected nor, according to the custom of the church, have any voice in the election. Hence, when the chapter in common established that they were by no means to be admitted to the election, the said B., hurling insults at the same dean, Ulrich the archdeacon, and Herman the canon, appealed to the Apostolic See, summoning them by the appeal to approach us. And although he departed from the chapter with certain of his canons, nevertheless ten others, more numerous in number and greater in dignity—since only nineteen who had the right in the election had assembled for this—attending that he had no interest, since he had no right in the provostship, elected you, the eleventh, as provost, saving the grace of the Apostolic See, namely, lest they appear to commit anything in contempt of the Apostolic See.

Therefore, since it was established from the foregoing that he had neither been invested by the Apostolic See nor elected or assumed as provost by the chapter or delegated judges; and even if that had been established, it had been sufficiently proved on your behalf that that investiture, if there had been any, was afterward revoked by our aforesaid predecessor; and even if these things had not been proved, it had sufficiently been shown through witnesses that he

rendered reverence to the said H.; nor was what had been proved in opposition—that he had always contradicted the aforesaid H.—contrary, since he could have contradicted in words and consented in deeds, especially since, although the witnesses said generally that the said B. always contradicted, nevertheless that generality ought to be restricted to suitable times, lest he be convicted of having spoken falsely if what they said were understood more generally; and since it followed from all these things that he had no interest for the purpose of appealing to the Apostolic See concerning this, you concluded that none of those things that had been done prevented your election from having to be confirmed.]

Therefore, when the said cardinals had faithfully reported to us and our brothers these and all the other things that had been proposed on either side, and the attestations, allegations, and reasons of both parties had been more fully heard and understood, because it was lawfully established that the aforesaid B. was not in any way invested with *that* provostship, although a mandate had been given that he be invested with it; and even if he had been invested with it, his investiture was annulled by our predecessor *once and a second time* for a certain reason; and even if it had not been annulled, he appears to have renounced his right through the fact that he *often* exhibited to the said H. the reverence that is owed to a provost: we, attending that it could not belong to him by law to impede the common ordering of the church through an appeal interposed on that account, and also understanding that you were canonically elected as provost by the greater part both in dignity and in number of those who were established to have the right of electing, *by the common counsel of our brothers* confirm your election by apostolic authority, imposing silence upon the aforesaid B. concerning *that* provostship. [*Therefore let no one, etc. Given at Rome at Saint Peter's, on the tenth day before the Kalends of July.* 1198.]

> Communis ordinatio ecclesiae per contradictionem et appellationem eius, cuius non interest, impediri non debet. H. d. quoad titulum.
>
> Innocentius III. Augustensi Praeposito.
>
> Ex ore sedentis +*in throno procedebat gladius bis acutus. Hic est gladius Salomonis, qui secat utrimque, reddens unicuique quod suum est. Nos igitur, qui, licet immeriti, locum veri Salomonis divina dignatione tenemus, gladium istum tunc prudenter exserimus, quum quaestiones in auditorio nostro legitime ventilatas mediante iustitia definimus. Ad hoc enim emergentium quaestionum perplexitas et difficiles nodi causarum ad sedem apostolicam referuntur, ut, quum earum merita fuerint assertione partium patefacta, prodeat ab apostolica sede sententia deducens in certitudinem dubia, et obscura producens in lucem, ut litigantium dissensione sopita suum iustitia tueatur et sequatur auctorem. Inde siquidem fuit, quod* Accedentibus ad praesentiam nostram T. ac *dilecto filio nostro* B. Augustensi canonico pro quaestione, quae inter vos super praepositura Augustensis ecclesiae vertebatur, *nos venerabilem fratrem nostrum * [*Octavianum*] *Hostien. episcopum, et dilectum filium Grat. sanctorum Cosmae et Damiani diaconum cardinalem vobis concessimus auditores, in quorum praesentia* ex parte ipsius B. fuit propositum, quod, *quum dilectus filius E. Augustensis praepositus fuisset in episcopum Brixiensem electus, rogavit capitulum Augustense, ne aliquem sibi prius eligerent in praepositum, quam eius esset electio confirmata, quumque ipsi eius precibus annuissent, et idem electus, electionis confirmatione per suum metropolitanum obtenta, veniens Tibur fuisset de regalibus investitus, B. miles* pater eiusdem ad *apostolicam sedem accedens a bonae memoriae* C. praedecessore nostro *dilectis filiis* decano et capitulo Augustensi literas obtinuit destinari, ut infra spatium mensis unius eundem *sublato appellationis obstaculo* eligerent et assumerent in praepositum Augustensem, in signum investiturae annulo ei aureo destinato, et quibusdam mandati apostolici exsecutoribus constitutis. *Decanus autem et* Capitulum memoratum quum audisset quod C. quondam eorum praepositus in episcopum Brixiensem electus et confirmatus fuisset, licet dictas literas recepissent, in contemptum tamen eorum assignato prius termino, infra quem ipsi deberent super mandato apostolico respondere, H. tunc Augustensem decanum in praepositum elegerunt. +[*Sed ne eius confirmaretur electio,*

idem B. ad apostolicae sedis audientiam appellavit. Et licet super hoc postmodum a sede apostolica pro dicto H. literae variae ac multiplices emanaverint, in quibus ei videbatur imponi silentium, id tamen tenere non debuit, quoniam absens et irrequisitus non potuit condemnari; et ipse nihilominus postmodum dicto H. super praepositura ipsa, quod per testes probavit, quantum potuit contradixit. Literas etiam apostolicas impetravit, per quas nullis literis obstantibus in possessionem praepositurae mandabatur induci. Unde quum, eo viam universae carnis ingresso, decanus et capitulum Augustense vellent in praepositi electione procedere, ne id fieret, ad sedem apostolicam appellavit. Sed ipsi appellationi minime deferentes, exclusis quibusdam canonicis, quibusdam etiam non vocatis, te sibi in praepositum elegerunt. Quare tuam electionem non ab omnibus canonicis concorditer factam, sed post appellationem ad nos interpositam attentatam, cassari petebat, et se in praepositum confirmari, quum a dicto praedecessore nostro de praepositura, quod per annulum sibi transmissum ab ipso probare volebat, fuisset primitus investitus. Ad haec ex parte tua, fili praeposite, taliter est responsum quod id, quod de B. factum fuerat, ante, quam praedecessor noster praefati E. electionem ratam haberet, fuisset obtentum, quod etiam fuit testibus comprobatum; sed etsi dicto electo in episcopum confirmato praedictae literae a sede apostolica emanassent, nullum tamen ius per hoc ei fuerat acquisitum, quum nec de praepositura investitus fuisset, nec iudices pro eo fuissent mandatum apostolicum executi. Hoc autem ex ipsarum literarum tenore probasti, in quibus continebatur expresse, quod decanus et capitulum Augustense ipsum eligerent et assumerent in praepositum infra mensem, et quod pro recipienda investitura annulus ei mittebatur. Nam si fuisset per sedem apostolicam investitus, locum postmodum electio capituli et investitura exsecutorum nullatenus habuissent. Adiecisti etiam, quod, quum dictus H. ad sedem postmodum apostolicam accessisset, et dicto praedecessori nostro electionis suae modum et causam contradictionis eiusdem B. exposuisset ad plenum, dictus praedecessor noster, non obstante investitura ipsi B. facta, electionem confirmavit ipsius, asserens, se per falsam suggestionem fuisse in eo, quod pro ipso B. scripserat, circumventum, quum, quod esset infra sacros ordines constitutus, ei non fuisset expressum, immo potius, quod idoneus esset, hi, qui pro eo petebant, ipsi suggerere curavissent. Et licet pro ipso dictis Frisingensi et Eistetensi episcopis et maiori Spirensi praeposito literae fuerint praesentatae, in quibus eis in virtute obedientiae mandabatur, ut ipsum in possessionem praepositurae inducerent corporalem, nullis literis obstantibus ante vel post a sede apostolica impetratis, dictus tamen praedecessor noster eas nullatenus de conscientia sua emanasse rescripsit, et ipsas decernens vacuas et inanes, si quid auctoritate ipsarum factum fuerat irritavit, mandans eisdem iudicibus, ut eum, qui easdem literas impetrarat, sub fideli custodia detinerent, donec ab eo reciperent in mandatis, qualiter super hoc procedere debuissent. Fuit praeterea praedictis obiectum, quod, etsi praedictum B. constaret, quod omnino falsum erat, fuisse per sedem apostolicam investitum, et investituram eius minime revocatam, quia tamen dicto H. reverentiam praeposito debitam, quod probasti per testes, exhibuit, et stipendium, sicut ceteri canonici, percepit ab eo, renunciaverit iuri suo, nec super hoc erat de cetero audiendus. Ceterum dicto H. naturae debitum exsolvente, quum decanus et capitulum de consilio venerabilis fratris nostri episcopi Augustensis primo sex hebdomadarum, ac secundo aliarum sex, et deinde trium dierum spatium electioni de praeposito celebrandae, ut absentes canonici ad electionem concurrerent, statuissent, et eis postmodum convenientibus fuisset de electione tractatum, idem B. non antea contradixit, quam ab electione tam se quam alios in minoribus ordinibus constitutos cognovit excludi. Sane quum decanus, perscrutaturus omnium voluntates, dilecti filii Walterii Augustensis canonici super electione ipsa requisisset assensum, ipse, quod eis praesentibus, qui erant infra sacros ordines constituti, suam non exprimeret intentionem, respondit, quum ipsi secundum statuta canonica nec eligi possent, nec iuxta ecclesiae consuetudinem in electione vocem aliquam obtinere. Unde quum capitulum communiter statuisset, eos ad electionem nullatenus admittendos, dictus B. eidem decano, Ulrico archidiacono et Erman. canonico convicia inferens, ad sedem apostolicam appellavit, ipsis, ut ad nos accederent, per appellationem indicens. Et licet ipse cum quibusdam canonicis suis de capitulo recessisset, decem tamen alii numero plures et dignitate maiores, quum decem et novem tantum, qui ius in electione habebant, ad hoc convenissent, attendentes quod eius non interesset, cui nihil iuris fuerat in praepositura, te undecimum salva sedis apostolicae gratia, ne videlicet in contemptum apostolicum aliquid committere viderentur, in praepositum elegerunt. Quum igitur ex praedictis constaret, eum nec investitum fuisse per sedem apostolicam, nec a capitulo vel iudicibus delegatis electum fuisse in praepositum vel assumptum, et si id etiam constitisset, sufficienter esset ex parte tua probatum, investituram illam, si qua fuerat, fuisse per dictum praedecessorem nostrum postmodum revocatam; et si haec etiam probata non

essent, sufficienter esset per testes ostensum, eum dicto H. reverentiam impendisse, nec esset contrarium, quod fuerat ex adverso probatum, eum praedicto H. semper contradixisse, quum verbis contradicere potuisset et operibus consentire; praesertim quum, etsi testes generaliter dixerint, quod dictus B. semper contradixit, generalitas tamen illa debeat ad competentes horas restringi, ne convincatur falsum dixisse, si generalius intelligatur quod dixerant, et ex his omnibus sequeretur, quod sua non intererat propter hoc ad sedem apostolicam appellare; concludebas, quod nihil eorum, quae facta fuerant, obesset, quominus tua deberet electio confirmari.] *Quum ergo dicti cardinales haec et alia, quaecunque fuerant hinc inde proposita, nobis et fratribus nostris fideliter retulissent, attestationibus, allegationibus et rationibus utriusque partis plenius auditis et cognitis*, Quia vero legitime constitit, quod praedictus B. de praepositura *ipsa* non fuit aliquatenus investitus, etsi mandatum fuit ut de ea investiretur, de qua etiamsi investitus fuisset, investitura eius per praedecessorem nostrum *semel et secundo* certa fuit ratione cassata, quae nec etiam si cassata fuisset, per hoc, quod *saepe* dicto H. reverentiam exhibuit, quae debetur praeposito, iuri suo renunciasse videtur : nos attendentes, sibi de iure non potuisse competere, ut per appellationem ob id interpositam communem ordinationem ecclesiae impediret, intelligentes etiam, te a maiori parte tam dignitate quam numero eorum, quos eligendi ius constabat habere, electum fuisse canonice in praepositum, *de communi fratrum consilio* electionem tuam auctoritate apostolica confirmamus, praefato B. super *ipsa* praepositura silentium imponentes. [*Nulli ergo etc. Dat. Romae ap. S. Petr. X. Kal. Iul. * 1198.]

Chapter IV

Latin source headnote: A prelate, with the greater part of the chapter and against the contradiction of the lesser, can establish that every canon is bound to contribute toward the necessary repair of the fabric.

The same.

It was intimated to us on your behalf, brother archbishop, that you held a common deliberation for restoring the fabric of the church of Rouen, with you, *brother archbishop,* requesting that every canon, equally with you, assign some portion of his revenues to so pious and necessary a work. *But because diverse and varying intentions concerning this existed among you, sons and canons, lest so praiseworthy a work be neglected through your dissension, by authority of the present letters* we establish that, if any of you should determine to resist the statutes *and ordinances* concerning this of you, brother archbishop, and of the greater and sounder part of the chapter, the judgment of the majority shall prevail. [*Given at Rome at Saint Peter's, on the fifth day before the Ides of June, in the first year of our pontificate.* 1198.]

Praelatus cum maiori parte capituli contradicente minori statuere potest quod ad necessariam reparationem fabricae quilibet canonicus conferre teneatur.

Idem.

Ex parte tua nobis fuit, frater archiepiscope, intimatum, quod ad restaurandam fabricam Rothomagensis ecclesiae tractatum communiter habuistis, te, *frater archiepiscope*, postulante, ut quilibet canonicorum tecum pariter aliquam suorum redituum portionem operi tam pio et necessario deputaret. +*Quia vero super hoc diversae fuerunt inter vos, filii canonici, et variae voluntates, ne tam laudabile opus ex vestra dissidentia negligatur, auctoritate praesentium* Statuimus, ut, si quis vestrum tuis, frater archiepiscope, et maioris et sanioris partis capituli statutis super hoc *constitutionibus* duxerit resistendum, obtineat sententia plurimorum. [*Dat. Rom. ap. S. Petr. V. Id. Iun. Pont. nostr. Ao. I. * 1198.]

Title XII: That Ecclesiastical Benefices Be Conferred Without Diminution

Sole Chapter

Latin source headnote: The rubric suffices for the summary, or the summary is thus according to the Abbot: A secret collation of a benefice, although suspect, is valid, provided that it is otherwise proved to have been lawfully made. This it says, and it is a notable case; nevertheless it does not pertain to the title, nor do all hold this without distinction, but the greater part concludes with this summary.

Innocent III, to the Archbishop of Milan.

So that our judgment may proceed from the countenance of God, *and our eyes may see equity, we ought to walk along the royal road and turn neither altogether to the left nor to the right, judging the great as the small, because with God there is no acceptance of persons.* [*Indeed, it had come to our hearing by the report of many that the chancellorship of the church of Milan had been vacant for more than a year, whence according to the statutes of the Lateran Council its donation had devolved upon us. But wishing to defer to you with accustomed dignity, we earnestly requested and commanded you benignly to confer that chancellorship upon our beloved son Henry of Settala, our subdeacon and a canon of the church of Milan, well deserving with you and suitable for obtaining this office; and if after receipt of our letters you should establish anything concerning that chancellorship contrary to the right acquired for us from the Lateran decree, we decreed it null and void. But, having received our letters, you are said to have answered, as is declared from a public authentic instrument, that you had not conferred that chancellorship upon another because its proceeds were exceedingly necessary to you on account of the burdens of debts; nevertheless, after our letters had been opened and their tenor inspected, you would answer on the next day what you believed ought to be answered. Furthermore, as we learned from another instrument, after you heard the tenor of our mandate, changing your speech, you said that you could not confer that chancellorship upon our aforesaid subdeacon according to our mandate because, with the proceeds reserved to yourself, you had granted that chancellorship to Henry of Lampugnano ten months previously. And when this variation of your answers became known to us from authentic writings, although according to the Apostle we are ready to avenge all disobedience, nevertheless, still wishing to defer to you—to whom both when constituted in a lesser office and, as pleased the Lord, promoted to greater things, we deferred in many and great matters—we commanded you to send to our presence a suitable proctor who should lawfully show us in your name that you had donated the said chancellorship to a suitable person in canonical manner and at the time belonging to you. The said H. of Lampugnano, to whom the donation was said to have been made, should also, if he wished, approach our presence to defend his justice.*

Therefore, coming to the presence of our apostolate, our beloved sons G., your proctor, and the often-mentioned H. endeavored manifoldly to excuse you concerning the variation of the answers, although credence is not easily derogated from public instruments, and according to the nature of things it could scarcely have been sufficiently shown that you had by no means answered what was said, even if perhaps it could have been shown that you had answered something else. But they produced before us two witnesses who, having been sworn, said that in the recently past January a year had elapsed since the Chancellor of Milan paid the debt of all flesh; and in the following May, when the kinsmen of Henry of Lampugnano repeatedly and vehemently pressed you to confer the chancellorship upon him, and you answered that you could not lack the proceeds of the chancellorship, nevertheless, after much insistence, it was obtained that you should retain the proceeds of the chancellorship and confer its right upon the aforesaid Henry. Therefore, with four present, among whom were the two aforesaid witnesses, in a more private chamber of your palace you invested that H. with the chancellorship by a book according to the aforesaid tenor, and

received fidelity from him, prohibiting all of them from revealing that word to anyone. One of the aforesaid witnesses also added that, after our mandate had come to you and H. himself had already returned from Bologna, you, in his sight, solemnly and publicly delivered the seal to him, commanding him to exercise the office of chancellor; the other witness also asserted this from hearsay, and your same proctor answered that he believed it to be true. Henry also confessed the fact but denied the solemnity of the fact.]

Therefore, because after our prohibition you presumed to deliver the bull to him, although you ought at least to have deferred [*that*] *delivery until you consulted our good pleasure, we commanded our beloved sons I., Archdeacon of Milan, and O. Lento, a canon of Milan, etc.* (*cf. c.* 56, *On Appeals, II.* 28.) [*But we tolerated for a time, so that the merits of the business might become more fully known to us, the investiture that was said to have been made secretly through a book, although ecclesiastical benefices are not to be conferred by a clandestine donation, as Truth testifies, saying: "He who does evil hates the light." Moreover, because the office of the aforesaid chancellorship was alleged to be spiritual or annexed to a spiritual thing, since the chancellor by his office ought to do many things that are known to be spiritual, and for this reason it was said that it ought not to have been conferred under the aforesaid tenor, since the Apostle commands abstinence from every appearance of evil; and because also the aforesaid Henry of Lampugnano, although received as a brother for a prebend that would become vacant, was nevertheless asserted not to be an ordinary, and for this reason the chancellorship ought not to have been conferred upon him, since by law or custom it ought to be committed only to an ordinary, as he is written to be Chancellor not of the Archbishop of Milan but of the church of Milan, nor when the see is vacant does the chancellor lose his office—for not even the seal itself is changed when the pontiff is replaced—we thought that inquiry into these matters should be committed to the aforesaid I., Archdeacon of Milan, and O. Lento, canon of Milan, commanding them by apostolic writings that, every contradiction and appeal ceasing, having God before their eyes, grace and fear being set aside, without acceptance of persons, they should inquire most diligently into the truth concerning the foregoing; and, lest the truth be concealed, should compel by ecclesiastical censure the witnesses who were named to them, if they withdrew themselves through favor or fear, to bear testimony to the truth; and should send to the Apostolic See under the testimony of their letters whatever they found concerning all these things, so that, sufficiently instructed through their inquiry, we might better decide the business itself.*

But they, faithfully executing the apostolic mandate, summoned the ordinaries of the church of Milan and compelled them under penalty of excommunication to tell under the sanctity of an oath the truth they knew concerning the foregoing articles from the fact of the chancellorship; they transmitted to our presence their attestations reduced to writing and fortified with a seal. They also interdicted the administration of the seal to the same H., as we received from their letters, according to the form of our mandate and by the counsel of wise men. And when the often-mentioned H. of Lampugnano presented himself to our sight with Roger his father on this account, we granted him free and benign opportunity to plead for himself in a common audience. Through his advocate he proposed that the aforesaid delegates, without an inquiry, despoiled him of execution of the seal contrary to the tenor of our mandate, since delivery of that seal had not been made after the second mandate; and therefore in the first place he petitioned that restitution be made to him. He endeavored manifoldly to excuse the form of the grant, alleging that simoniacal depravity in no way intervened in retention of the fruits: both because the office of chancellorship is neither spiritual nor annexed to a spiritual thing—for although the chancellor performs certain things that are known to be spiritual, as is clear from the attestations, he nevertheless does not perform them by the office of chancellor but by mandate of the archbishop, as is proved from the statements of the witnesses—and because he bought and sold nothing, since simony is described as the deliberate cupidity of selling or buying a spiritual thing or a thing annexed to a spiritual one; especially since before the delivery you separated the fruits, and thus retained for yourself what was yours, not receiving another's. He also alleged that he was suitable for obtaining the chancellorship, since by mandate of the

Roman Pontiff he was instituted as a canon of the church of Milan, having a voice in the chapter and a place in the choir, and was admitted as a true and full canon in the deliberations and contracts of that church. Nor was it an obstacle that he did not have a full prebend, since, as was proved by the statements of the witnesses, the archdeaconry of that church, concerning which it is in no way doubted that it is a dignity and spiritual office, had sometimes been granted to one who did not have a full prebend. But the fact that, according to the testimony of certain persons, for sixty years it had been granted only to an ordinary with a prebend from the number of twenty canons, who are properly called ordinaries, could not harm him, since no prejudice was thereby generated against you preventing you from being able to confer the same chancellorship upon one who was not of the number of twenty, especially a canon. He alleged further that, even if an agreement to retain the proceeds for a time had intervened—which he nevertheless denied—between you and his parents, nevertheless he himself had been invested with the aforesaid chancellorship purely and simply; and therefore such an agreement ought not to harm him, since his parents gave or promised you nothing on his behalf.]

Furthermore, you alleged that, since no one ought to be condemned without an accuser, and nothing concerning that business was transacted in the form of a judgment, the depositions of the witnesses could not generate prejudice against you. But because this allegation appeared to touch our person, we thought it worthy to explain more fully the cause and order of the committed inquiry, lest anyone suspect in any way that we proceeded wrongly in this business, especially since the reason to be assigned ought to benefit posterity. For since it is settled law that, when the claimant does not prove, the person sued ought to be absolved even if he has furnished nothing, it could appear that maliciously or indiscreetly we imposed upon you, who were sued by us, the burden of proof concerning the three foregoing articles, namely, that you should show that you had donated the aforesaid chancellorship to a suitable person, in canonical manner, and at the time belonging to you. Furthermore, since the donation was secret and therefore not free of suspicion, and a year had already elapsed while no chancellor at all appeared, we not undeservedly believed that, according to the statutes of the Lateran Council, donation of the chancellorship had devolved upon us, and therefore we could have conferred it without fault, since, although we hold the place of God on earth, we nevertheless could not divine hidden things. Therefore, because against that which at first sight was justly presumed in our favor—especially since you answered the first time that you had conferred the chancellorship upon no one—we granted you the faculty of proving on your behalf, it was not a burden but a grace, and proceeded not from malice but from benignity. You also furnished cause for the mandate that we commanded credibility to be made to us concerning the canonical manner, since you often intimated to us by your letters and finally proved through witnesses that, with the proceeds retained to yourself, you had granted the aforesaid office. From this we were not undeservedly suspicious against such a grant, *since it was also openly alleged that you had committed it to a person to whom, according to the custom of the church of Milan, it ought not in any way to have been committed.* And therefore we, who not so much from plenitude of power as from the duty of office can and ought to inquire into the truth concerning the excesses of subjects for their correction, especially since you furnished the cause and occasion, committed the inquiry to be made.

Therefore, after all things *that were to be proposed in our hearing had been diligently heard, we deliberated with our brothers, and in that deliberation* found you to have been culpable *principally* in three things: concerning the contrariety of your response, because not only to us, *who, although unworthy, hold the place of Jesus Christ,* but to no one should you knowingly have given contradictory answers; concerning carnality of mind, because not from carnal affection but by discerning judgment ought you to have

dispensed an ecclesiastical office and benefice to the more suitable person; and concerning the dishonor of the act, because it was not lawful by any pact or agreement, under the aforesaid mode or tenor, to grant the bare office and retain the proceeds for yourself, since *also* in the Lateran Council it is forbidden that anyone, in conferring an ecclesiastical benefice, presume to retain a part of the proceeds for his own uses, and elsewhere it is found provided in the canon that ecclesiastical benefices ought to be conferred without diminution. Hence we believe that a distinction must be drawn as to whether he who gives a spiritual benefice receives its proceeds before the donation. For if he himself did not receive the proceeds before the donation, but another did, and from the donation it follows that he himself receives the proceeds, there is no doubt that simoniacal depravity intervenes concerning these things. But if he himself received the proceeds before the donation, we believe *also* that a distinction must be drawn: whether before the donation he establishes that the proceeds be retained by him for a time for a just and necessary cause; or whether he agrees with the one who receives the benefice, or with any intermediary, that, when that office has been granted, he retain the proceeds for himself. For we believe the first member to be lawful, but we say that the second is not lawful, lest we open a way to those who endeavor to cloak their depravity. [*But because, etc.* (*cf. c.* 9, *On the Office of the Archdeacon, I.* 23.) *Given at Perugia, on the ninth day before the Kalends of October.* 1198.]

UT ECCLESIASTICA BENEFICIA SINE DEMINUTIONE CONFERANTUR.

Rubrum sufficit pro summario, vel summa sic secundum Abbatem: Occulta collatio beneficii, licet sit suspecta, bene valet, dummodo alias legitime facta probetur. H. d. est casus not.; non tamen facit ad titulum, nec omnes indistincte hoc tenent, sed maior pars concludit cum hoc summario.

Innocentius III. Mediolanensi Archiepiscopo.

Ut nostrum prodeat de vultu Dei iudicium, +*et oculi nostri videant aequitatem, regia via debemus incedere, nec ad sinistram omnino, neque ad dextram declinare, ita magnum iudicantes ut parvum, quia non est apud Deum acceptio personarum.* [*Ad audientiam sane nostram multorum relatione pervenerat, quod cancellaria Mediolanensis ecclesiae vacaverat ultra annum, unde secundum Lateranensis concilii statuta ad nos ipsius erat donatio devoluta. Volentes autem tibi solita dignitate deferre, rogavimus te attentius et mandavimus, ut cancellariam ipsam dilecto filio Henrico de Settara subdiacono nostro, Mediolanensis ecclesiae canonico, bene apud te merito et ad hoc officium obtinendum idoneo, benigne conferres; et si post receptionem literarum nostrarum quicquam de ipsa cancellaria contra ius acquisitum nobis ex Lateranensi decreto statueres, decernebamus illud irritum et inane. Tu vero literis nostris receptis diceris respondisse, sicut ex publico declaratur authentico, quod cancellariam ipsam alteri non contuleras, quia propter gravamina debitorum proventus ipsius tibi erant plurimum necessarii, literis tamen nostris apertis earumque tenore perspecto, responderes in crastino quod crederes respondendum. Porro, sicut ex alio comperimus instrumento, postquam mandati nostri audivisti tenorem, variata locutione dixisti, quod cancellariam ipsam non poteras iuxta mandatum nostrum praefato subdiacono nostro conferre, quia, reservatis tibi proventibus, eandem cancellariam decem mensibus iam elapsis Henrico de Lamp. concesseras. Quumque nobis huiusmodi responsionum varietas ex scriptis innotuisset authenticis, etsi secundum Apostolum omnem inobedientiam prompti simus ulcisci, adhuc tamen tibi deferre volentes, cui et in minori officio constituti, et promoti, sicut Domino placuit, ad maiora in multis et magnis detulimus, tibi dedimus in mandatis, ut ad praesentiam nostram procuratorem idoneum destinares, qui tuo nomine legitime nobis ostenderet, quod dictam cancellariam personae idoneae modo canonico tempore tibi competente donasses; dictus quoque H. de Lamp., cui dicebatur facta donatio, si vellet, ad praesentiam nostram accederet, suam iustitiam defensurus. Venientes igitur ad apostolatus nostri praesentiam dilecti filii G. procurator tuus et saepedictus H. super varietate responsionum nitebantur te multipliciter excusare, licet publicis instrumentis fides non facile derogetur, et secundum rerum naturam vix potuisset sufficienter ostendi, quod tu id, quod dictum est, minime responderes, etsi forte potuisset, quod aliud respondisses.*

Produxerunt autem in nostra praesentia duos testes, qui iurati dixerunt, quod in Ianuario nuper praeterito fuit annus, ex quo Mediolanensis cancellarius debitum universae carnis exsolvit, et in sequenti Maio, quum consanguinei Henrici de Lamp. frequenter apud te ac vehementer instarent, ut cancellariam ipsi conferres, te respondente, quod cancellariae proventibus carere non posses, ad multam tamen instantiam est obtentum, ut cancellariae tibi retineres proventus, et ius ipsius praefato conferres Henrico. Quatuor ergo praesentibus, inter quos duo testes memorati fuerunt, in secretiore palatii tui camera eundem H. secundum tenorem praescriptum de cancellaria investisti per librum, et recepisti fidelitatem ab eo, prohibens universis, ne verbum istud cuiquam revelarent. Adiecit autem unus testium praedictorum, quod, postquam ad te mandatum nostrum pervenerat, et ipse H. iam Bononia rediisset, tu ei solenniter et publice tradidisti se vidente sigillum, mandans ei, ut cancellarii officium exerceret; quod et alter testis asseruit de auditu, et idem procurator tuus, quod verum crederet esse, respondit. Henricus quoque confessus est factum, sed solennitatem facti negabat.] *Quia ergo post interdictum nostrum ei praesumpsisti tradere bullam, quum traditionem* [*ipsam*] *saltem debuisses differre, donec nostrum consuleres beneplacitum, dilectis filiis I. archidiacono et O. Lento canonico Mediolanensibus dedimus in mandatis etc.* (*cf. c.* 56. *de app. II.* 28.) [*Tolerabamus autem ad tempus, ut negotii merita nobis plenius innotescerent, investituram, quae dicebatur in occulto facta fuisse per librum, licet ecclesiastica beneficia non sint donatione clandestina conferenda, teste veritate, quae dicit: "Qui male agit odit lucem. "Ceterum quia cancellariae officium memoratae spirituale vel annexum spirituali proponebatur exsistere, quum cancellarius ex officio suo multa facere debeat, quae spiritualia esse noscuntur, ac per hoc sub tenore praescripto dicebatur non debuisse conferri, quum ab omni specie mala praecipiat Apostolus abstinere; quia etiam praefatus Henricus de Lamp., licet receptus sit in fratrem ad vacaturam praebendam, ordinarius tamen asserebatur non esse, ac per hoc cancellariam sibi non debuisse conferri, quae de iure vel consuetudine ordinario tantum debet committi, quum nec Mediolanensis archiepiscopi, sed Mediolanensis ecclesiae cancellarius esse scribatur, nec vacante sede cancellarii perdat officium, (nam nec ipsum sigillum substituto Pontifice variatur,) inquisitionem horum duximus praenominatis I. archidiacono et O. Lento canonico Mediolanensibus committendam, per apostolica scripta praecipiendo mandantes, quatenus omni contradictione et appellatione cessante Deum habentes prae oculis, gratia et timore postpositis, sine personarum acceptione inquirerent super praemissis diligentissime veritatem, et, ne veritas celaretur, testes, qui eis nominarentur, si se gratia vel timore subtraherent, per censuram ecclesiasticam compellerent perhibere testimonium veritati, et quod super omnibus invenirent sub literarum suarum testimonio ad sedem apostolicam destinarent, ut per inquisitionem ipsorum sufficienter instructi negotium ipsum melius decidere valeremus. Ipsi vero mandatum apostolicum fideliter exsequentes, convocatis Mediolanensis ecclesiae ordinariis, et per poenam excommunicationis compulsis dicere sub iurisiurandi religione de facto cancellariae, quia noverant, super praemissis articulis veritatem, attestationes suas redactas in scriptis sigillo munitas ad nostram praesentiam transmiserunt. Interdixerunt etiam eidem H. administrationem sigilli, sicut ex literis eorum accepimus, iuxta formam mandati nostri, de consilio sapientum. Quumque saepedictus H. de Lamp. cum patre suo Rogerio propter hoc nostro se conspectui praesentasset, copiam allegandi pro se liberam ac benignam in communi concessimus auditorio. Qui per advocatum proposuit, quod delegati praedicti sine inquisitione spoliaverunt eum exsecutione sigilli contra nostri mandati tenorem, quum ipsius sigilli traditio non fuerit facta post secundum mandatum; et ideo primo loco restitutionem sibi fieri postulabat. Formam vero concessionis nitebatur multipliciter excusare, proponens, quod in retentione fructuum simoniaca pravitas nullatenus intercessit; tum, quia officium cancellariae nec est spirituale, nec annexum spirituali; quia licet cancellarius quaedam agat, quae spiritualia esse noscuntur, sicut ex attestationibus liquet, ea tamen non agit ex officio cancellarii, sed de mandato archiepiscopi, sicut ex dictis testium comprobatur; tum etiam, quia nihil emit et vendidit, quum simonia describatur esse studiosa cupiditas vendendi vel emendi spirituale vel spirituali annexum; praesertim quum tu ante traditionem separaveris fructus, et ita quod tuum erat tibi retinuisti, non accipiens alium. Se quoque ad obtinendum cancellariam proponebat idoneum, quum de mandato Romani Pontificis sit Mediolanensis ecclesiae canonicus institutus, vocem habens in capitulo et locum in choro, et tanquam verus et plenus canonicus in tractatibus et contractibus ipsius ecclesiae admittatur. Nec obstat, quod integram praebendam non habet, quum, sicut per dicta testium est probatum, archidiaconatus eiusdem ecclesiae, de quo nullatenus dubitatur, quia sit dignitas et officium spirituale, quandoque fuerit concessus ei, qui praebendam integram non habebat. Quod autem a sexaginta annis iuxta*

quorundam testimonium concessa fuit tantum ordinario praebendato de numero viginti canonicorum, qui proprie ordinarii appellantur, sibi nocere non poterat, quum per hoc nullum sit tibi praeiudicium generatum, quin ei, qui de numero viginti non esset, praesertim canonico, eandem cancellariam potuisses conferre. Allegabat insuper, quod, etsi pactio de retinendis ad tempus proventibus intervenisset, quod ipse tamen negabat, inter te ac parentes ipsius, ipse tamen de praedicta cancellaria pure fuit et simpliciter investitus; et ideo talis pactio sibi non debet obesse, quum parentes nihil tibi pro eo dederint vel promiserint.] Praeterea proponebas, quod, quum nullus debeat sine accusatore damnari, nec aliquid circa negotium illud sit actum in forma iudicii, depositiones testium non poterant tibi praeiudicium generare. Quia vero haec allegatio personam nostram tangere videbatur, dignum duximus causam commissae inquisitionis et ordinem plenius explicare, ne quis quomodolibet suspicetur, quod nos in hoc negotio perperam processerimus; praesertim quum ratio assignanda debeat esse posteris profutura. Quum enim iuris sit explorati, quod actore non probante is, qui convenitur, etiamsi nihil praestiterit, debet absolvi, videri poterat, quod nos tibi, qui conveniebaris a nobis, malitiose vel indiscrete onus probationis super tribus praemissis articulis imposuimus, videlicet ut ostenderes, quod praedictam cancellariam personae idoneae, modo canonico et tempore tibi competenti donasses. Porro quum donatio fuisset occulta, et ideo suspicione non careat, et elapso iam anno, nullus omnino cancellarius appareret, non immerito credebamus, quod secundum Lateranensis concilii statuta ad nos esset ipsius cancellariae donatio devoluta, et ideo potuissemus ipsam sine culpa conferre, quoniam, etsi locum Dei teneamus in terris, non tamen de occultis potuimus divinare. Quia ergo contra illud, quod prima facie iuste praesumebatur pro nobis, praesertim quum responderis prima vice, quod cancellariam alicui non contuleras, facultatem tibi pro te probandi concessimus, non fuit gravamen, sed gratia, nec ex malitia, sed ex benignitate processit. Quod etiam de modo canonico fidem nobis fieri mandavimus, tu causam praestitisti mandato, qui saepe nobis per literas tuas intimasti et tandem probasti per testes, quod retentis tibi proventibus officium concesseras memoratum. Ex quo non immerito contra talem concessionem fuimus suspicati, *quum et proponeretur aperte, quod illud ei personae commiseras, cui secundum consuetudinem Mediolanensis ecclesiae non debuerat aliquo modo committi*. Et ideo nos, qui non tam ex plenitudine potestatis, quam ex officii debito possumus et debemus de subditorum excessibus ad correctionem inquirere veritatem, te maxime causam et occasionem praestante, inquisitionem commisimus faciendam. Omnibus ergo diligenter auditis, *quaecunque fuerunt in nostro auditorio proponenda, deliberavimus cum fratribus nostris, et in ipsa deliberatione* te in tribus *praecipue* comperimus fuisse culpabilem : circa contrarietatem responsi, quia non solum nobis, *qui, licet immeriti, locum Iesu Christi tenemus* sed nec cuiquam debuisses ex certa scientia contraria respondere; circa carnalitatem animi, quia non ex affectu carnali, sed discreto iudicio debuisti ecclesiasticum officium et beneficium in persona magis idonea dispensare; et circa inhonestatem facti, quia non licuit ex pactione vel conventione quacunque, sub modo vel tenore praescripto concedere nudum officium et tibi retinere proventus, quum *et* in Lateranensi concilio prohibitum sit, ne quis conferendo ecclesiasticum beneficium partem proventuum suis usibus retinere praesumat, et alibi cautum reperiatur in canone, quod ecclesiastica beneficia sine deminutione debent conferri. Unde credimus distinguendum, utrum qui dat spirituale beneficium proventus ipsius ante donationem percipiat. Nam si proventus ante donationem non perceperit ipse, sed alius, et ex donatione consequatur, ut ipse proventus percipiat; non est dubium circa haec intercedere simoniacam pravitatem. Si vero ante donationem perceperit ipse proventus, credimus *etiam* distinguendum, utrum ante donationem constituat, ut ipsi proventus retineantur ad tempus pro causa iusta et necessaria, an conveniat cum eo, qui accepit beneficium, seu cum mediatore quocunque, ut officio illo concesso retineat ipse sibi proventus. Primum enim membrum credimus esse licitum, secundum autem dicimus non licere, ne viam aperiamus his, qui pravitatem suam satagunt palliare. [*Quia vero etc.* (*cf. c.* 9. *de off. archid. I. * 23.) *Dat. Perusii IX. Kal. Oct.* 1198.]

Title XIII: On Whether the Property of a Church May Be Alienated

Chapter I

Latin source headnote: A prelate cannot give the property of one church to another, nor exchange their properties with one another, without the consent of both.

From the Fourth Council of Lyon.

It is not lawful for a bishop or abbot to transfer the land of one church to another, although both are in his power; nevertheless, if he wishes to exchange their lands, let him do so with the consent of both parties.

> **DE REBUS ECCLESIAE ALIENANDIS VEL NON.**
>
> Non potest praelatus res unius ecclesiae alteri dare, nec invicem res illas commutare, sine ambarum consensu.
>
> Ex concilio Lugdunensi IV.
>
> Non licet episcopo vel abbati terram unius ecclesiae vertere ad aliam, quamvis ambae in eius sint potestate; tamen, si commutare voluerit terras earum, cum consensu ambarum partium faciat.

Chapter II

Latin source headnote: Secular princes cannot donate the property of a church, and those who receive it from them are excommunicated and lose everything that they otherwise lawfully held from the church. This it says according to one understanding, which is sufficiently pleasing.

From the same.

Those who seek the property of a church from kings and, by the impulse of dreadful cupidity, seize the substance of the needy, let the things they obtain be held invalid, and let them be excluded from the communion of the church whose resources they desire to take away.

> Principes saeculares res ecclesiae donare non possunt, et qui ab eis recipiunt, excommunicantur, et perdunt omnia, quae ab ecclesia alias legitime obtinebant. H. d. secundum unum intellectum, qui satis placet.
>
> Ex eodem.
>
> Qui res ecclesiae petunt a regibus, et horrendae cupiditatis impulsu egentium substantiam rapiunt, irrita habeantur quae obtinent, et a communione ecclesiae, cuius facultatem auferre cupiunt, excludantur.

Chapter III

Latin source headnote: A rector of a church who gives the church property of twice the value can manumit slaves of the church; nevertheless, the person manumitted and his descendants will be under the patronage of the church. It is commonly summarized thus, although Panormitanus does not approve what is said concerning the valuation.

From the Council of Toledo.

The consent of the whole council determined that priests who either leave something to their church or, having nothing, nevertheless acquire certain estates or households for their churches may

manumit some persons from the household of that church according to the measure of the property conferred, as the ancient canons decreed, in such a way that, with their peculium and posterity, they remain *freeborn* under the patronage of the church, pursuing the services enjoined upon them according to their ability.

> Rector ecclesiae, qui dat ecclesiae rem duplae aestimationis, servos ecclesiae manumittere potest; ipse tamen manumissus et eius posteri erunt sub patrocinio ecclesiae. Ita communiter summatur, tamen non placet Panorm. id, quod dicitur de aestimatione.
>
> Ex concilio Toletano.
>
> Consensus totius concilii diffinivit, ut sacerdotes, qui aut aliquid ecclesiae suae relinquunt, aut nihil habentes aliqua *tamen* praedia vel familias ecclesiis suis acquirunt, liceat illis aliquos de familia eiusdem ecclesiae manumittere iuxta rei collatae modum, quem antiqui canones decreverunt, ita, ut cum peculio et posteritate sua *ingenui* sub patrocinio ecclesiae maneant, utilitates iniunctas sibi iuxta quod poterunt prosequentes.

Chapter IV

Latin source headnote: If a prelate, giving nothing of his own to the church, manumits a slave of the church, the manumission is not valid.

From the same.

Let bishops who contribute nothing of their own to the church of Christ [*fear this divine sentence and*] not presume, to their own condemnation, to make free persons from the servants of the church. For it is impious that one who has not brought his own property to the church *of Christ* should inflict loss *and intend to alienate the right of the church.* Therefore, without any opposition, a successor bishop shall recall such free persons to the right of the church, [*because not equity but wickedness absolved them.*]

> Si praelatus nil de suo dans ecclesiae servum ecclesiae manumittit, non tenet manumissio.
>
> Ex eodem.
>
> Episcopi, qui nihil ex proprio suo ecclesiae Christi conferunt, [*hanc divinam sententiam metuant et*] liberos ex famulis ecclesiae ad condemnationem suam facere non praesumant. Impium est enim, ut qui res suas ecclesiae *Christi* non attulerit damnum inferat *et ius ecclesiae alienare intendat*. Tales igitur liberos successor episcopus absque aliqua oppositione ad ius ecclesiae revocabit, [*quia eos non aequitas, sed improbitas absolvit.*]

Chapter V

Latin source headnote: The property of a church ought not to be alienated.

From the Council at Senlis.

Let no one be permitted to alienate immovable property of his church, whether *a house or* a field, *a garden or* a rural slave [*or civic loaves,*] or to obligate it to *creditors* by title of a special hypothec. The word "alienation" includes a conditional grant, donation, sale, exchange, and a perpetual contract of emphyteusis. Hence let all priests [*altogether*] abstain from alienation of this kind, fearing the penalties that the constitution of Leo threatens.

> Res ecclesiae alienari non debent.
>
> Ex concilio apud Silvanectim.

> Nulli liceat alienare rem immobilem ecclesiae suae, sive *domum sive* agrum, sive *hortum sive* rusticum mancipium [*vel panes civiles,*] neque *creditoribus* specialis hypothecae titulo obligare. Alienationis autem verbum continet conditionem, donationem, venditionem, permutationem et emphyteusis perpetuum contractum. Unde omnes [*omnino*] sacerdotes ab huiusmodi alienatione abstineant, poenas timentes, quas Leonina constitutio comminatur.

Chapter VI

Latin source headnote: An alienation made concerning the property of a church is not valid, and the alienators, unless they restore the property, are excommunicated; any cleric can contradict and reclaim the property with its fruits. This it says, and the text is notable and is alleged daily.

Pope Symmachus.

If any of the priests, deacons, or defenders has subscribed to one alienating an estate of the church, let him be struck by the anathema by which an angered God strikes souls, *the punishment that we premised against the alienator being preserved,* unless perhaps both the alienator, *while he reclaims it,* and the person who received it provide for themselves by swift restitution. But if, with less care for their soul, they *perhaps* neglect the offered remedy, in addition to the penalty prescribed concerning this, let the instrument drawn up therefrom be emptied of force, although from the beginning it had none. But it is also lawful for any ecclesiastical persons to offer the voice of contradiction, and for them to be supported by ecclesiastical authority so that they can reclaim alienated things with their fruits. *But we wish the law of this constitution to be observed only in the Apostolic See, with the custom preserved in all churches throughout the provinces that their rectors see to accord with their profession of religion.*

> Alienatio de rebus ecclesiae facta non tenet, et alienatores, nisi rem restituant, excommunicantur, et quilibet clericus potest contradicere, et rem cum fructibus repetere. H. d. et est textus notabilis, et quotidie allegatur.
>
> Symmachus Papa.
>
> Si quis presbyterorum, diaconorum seu defensorum alienanti praedium ecclesiae subscripserit, quo iratus Deus animas percutit anathemate feriatur, *servata, quam praemisimus, in alienatorem vindicta;* nisi forte et alienator, *dum repetit*, et qui acceperit celeri restitutione sibi prospexerint. Quod si minore animae suae cura remedium oblatum *forte* neglexerint, praeter poenam, super hoc adscriptam, confectum exinde documentum viribus, quamvis ab initio nullas habuerit, vacuetur. Sed etiam licet quibuscunque ecclesiasticis personis vocem contradictionis offerre, et ut cum fructibus possint alienata reposcere, et ecclesiastica auctoritate fulciri. *Huius autem constituti legem in apostolica tantum volumus sede servari, universis ecclesiis per provincias quae proposito religionis convenire rectores earum viderint more servato.*

Chapter VII

Latin source headnote: Unfertile land of a church can be given in emphyteusis to one by whose effort it may be reduced to cultivation.

Alexander III, to the Bishop of Worcester.

To the ears (*And below:*) But those lands that, cleared from woods, have been made arable, you will be able to grant under hereditary right, to be held under an annual payment, to those by whose labor, or that of their parents, it is established that *those lands* were cleared, unless perhaps they can then be conferred upon others with the same labor and burden for the greater utility of your church.

Terra non fertilis ecclesiae dari potest in emphyteusin ei, cuius studio reducatur ad culturam.

Alexander III. Vigoriensi Episcopo.

Ad aures (*Et infra:*) Illas *vero* terras, quae de silvis exstirpatae sunt arabiles factae, eis hereditario iure poteris concedere sub annuo censu tenendas, a quibus *ipsas* suo vel parentum suorum labore constiterit *fuisse* exstirpatas; nisi forte tunc aliis possint ad maiorem tuae ecclesiae utilitatem cum eodem labore et onere conferri.

Chapter VIII

Latin source headnote: One swearing not to alienate the goods of the church cannot alienate those that are of the table, or those concerning which it is doubted whether they are of the table. This it says, as far as § *Possessions*. The Abbot.—(*Possessions, etc.:*) A bishop can, with the consent of the chapter, exchange or alienate possessions of the church that are less useful for more useful ones. This it says.

Celestine III, to the Archbishop of Ravenna.

So that *the doubt of a proposed question may be untied by the providence of the Apostolic See, the Roman Church, over which although unworthy we preside, has been accustomed to answer the consultations of individuals*. Indeed, you asked us whether the possessions or revenues of royal tithes, and those proceeding from other certain places, which your predecessor *of good memory,* until he closed his last day, held in his hands and took or expended for his own use, and did not enfeoff to others, are to be understood as belonging to *his* archiepiscopal table; and whether any contract of alienation can intervene concerning them when by the oath of fidelity you are bound to alienate nothing from the Apostolic See. Therefore, *by the present page,* we answer your inquiry in this manner: whether they are understood to be of the table or not, we consider it more prudent that they not be alienated. But we grant you free faculty to alienate or exchange possessions that are less useful to your church for other more useful ones, with the counsel and assent of your brothers and of the sounder part *of the chapter.* [*You asked, etc.* (*cf. c.* 1, *On the Use and Authority of the Pallium, I.* 8.) *Given at the Lateran, in the third year.* 1193.]

Iurans non alienare bona ecclesiae, non potest alienare ea, quae sunt de mensa, vel ea, de quibus dubitatur, an sint de mensa. Hoc dicit, usque ad §. Possessiones. Abbas — (Possessiones etc.:) Possessiones ecclesiae minus utiles pro utilioribus de consensu capituli potest episcopus permutare vel alienare. H. d.

Coelestinus III. Ravennatensi Archiepiscopo.

Ut super aliqua +*repositae quaestionis dubietas apostolicae sedis providentia enodetur, Romana ecclesia, cui licet immeriti praesidemus, singulorum consultationibus consuevit respondere*. Sane quaesivisti a nobis, si possessiones sive reditus regalium decimationum, et aliunde ex certis locis provenientes, quos praedecessor tuus *bonae memoriae*, quousque diem clausit extremum, ad manus suas tenuit, et in proprium usum excepit vel expendit, nec aliis infeudavit, de mensa *sua* sint archiepiscopi intelligendi, et de eis, quum ex sacramento fidelitatis tenearis apostolicae sedi nihil alienare, contractus alienationis cuiuslibet possit intervenire. Tuae ergo inquisitioni *praesenti pagina* taliter respondemus, quod, sive intelligantur de mensa sive non, ut non alienentur, consultius existimamus. Possessiones vero, quae ecclesiae tuae minus sunt utiles, pro aliis utilioribus de fratrum tuorum et sanioris partis *capituli* consilio et assensu alienandi seu commutandi liberam concedimus facultatem. [*Quaesivisti etc.* (*cf. c.* 1. *de usu et auct. pall. I.* 8.) *Dat. Lat. Ao. III.* 1193.]

Chapter IX

Latin source headnote: A canon cannot lease an estate of the church in perpetuity.

The same, to the Bishop of Exeter.

Know that it has come to our hearing that certain canons of the church of Exeter, without consulting the other brothers, leased in perpetuity certain estates of that *church,* to its harm *and their detriment, after receiving money therefrom.* Therefore, *by apostolic writings we command* your fraternity that, if what is asserted is true, you take care lawfully to revoke those leases, in such a way *indeed* that, if those estates cannot otherwise be recalled, you compel, appeal being removed, those whom you know to be the authors of these leases to refund to the lessees the money received therefrom, *lest, if leases of this kind happen to persist in their stability, grave disadvantage could thereby come to that church.*

> Canonicus praedium ecclesiae perpetuo locare non potest.
>
> Idem Exonensi episcopo.
>
> Ad audientiam nostram noveris pervenisse, quod quidam de canonicis Exonensis ecclesiae, quaedam praedia eiusdem *ecclesiae*, inconsultis aliis fratribus, in damnum eius *et detrimentum eorum, accepta inde pecunia*, in perpetuum locaverunt. Ideoque *fraternitati tuae per apostolica scripta* mandamus, quatenus, si verum est quod asseritur, locationes illas legitime revocare procures, ita *quidem*, quod, si eadem praedia non aliter revocari potuerint, eos, quos noveris harum locationum auctores, ad susceptam inde pecuniam conductoribus refundendam appellatione remota compellas, *ne, si huiusmodi locationes in sua contigerit stabilitate persistere, inde gravis eidem ecclesiae incommoditas possit provenire*.

Chapter X

Latin source headnote: Possessions that are of the table cannot be alienated. And churches accustomed to be governed by regulars ought not to be conferred upon secular clerics. This it says. John of Imola.

Innocent III, to the Archbishop of Monreale.

You ought not to alienate possessions pertaining to your table or that of the chapter, or assign to clerics or lay *persons* churches in which monks have been accustomed to minister. *Therefore, by authority of the present letters, we forbid your fraternity to grant to anyone seeking them possessions, villages, or churches that have not been accustomed to be assigned as benefices. Rather, you are not to delay, appeal being set aside, to recall to their former uses the Church of Saint Clement of Messina, which you are said to have conferred upon Gerard the Teuton; likewise the Church of the Holy Sepulcher of Messina, which you are said to have conferred upon Falcon the canon; and the benefice that you are said to have conferred upon Thomas, son of I. Ferrarius, to the grave prejudice of your church.* [*Given at Rome at Saint Peter's, on the eleventh day before the Kalends of June, in the first year of our pontificate.* 1198.]

> Possessiones, quae sunt de mensa, non possunt alienari. Et ecclesiae consuetae regi per regulares saecularibus clericis conferri non debent. H. d. Ioann. de Imola.
>
> Innocentius III. Archiepiscopo Montis regalis.
>
> Possessiones ad mensam tuam vel capituli pertinentes, alienare non debes, aut ecclesias, in quibus monachi ministrare consueverunt, clericis vel laicis assignare *personis. Ideoque fraternitati tuae auctoritate praesentium inhibemus, ne possessiones, casalia vel ecclesias, quae non consueverunt in beneficium assignari, alicui petenti concedas, immo potius ecclesiam S. Clementis de Messana, quam Gerardo Teutonico et s. sepulchri ecclesiam*

similiter de Messana, quam Falconi canonico, et beneficium quod Thomae filio I. Ferrarii in grave praeiudicium ecclesiae tuae diceris contulisse, ad priores usus non differas, appellatione postposita, revocare. [*Dat. Romae ap. S. Petr. XI. Kal. Iun. Pont. nostr. Ao. I.* 1198.]

Chapter XI

Latin source headnote: A church is restored against an alienation through which it was enormously injured. This it says according to the truer reading.

The same, to the Bishop of Moriana and the Provost of Ulcinj.

Know that it has come to our hearing that, when the monastery of Tusia was oppressed by the greatest burden of debts, *our beloved sons* its abbot and convent, compelled by necessity, granted a certain village in fief to the layman B., with this condition added: that the same *layman* should pay eighty pounds for which the same *village* had been obligated, which *he* did not delay to carry into effect. Hence, *because the aforesaid monastery, as they say, was enormously injured in this, in that from the revenues of the aforesaid village the convent was accustomed to receive one course on individual days, and fish or another equivalent on feasts of twelve lessons, they* humbly supplicated us that we cause the aforesaid fief to be recalled for the utility of the monastery, especially since in the first year the same layman received from its proceeds beyond the aforesaid sum, and for many years afterward took its fruits. Therefore, *wishing so to provide for the burdens of the aforesaid monastery that we do not appear to inflict injury upon others, by apostolic writings we command* your discretion that, *after more fully inquiring into the truth,* if you find that the aforesaid monastery incurred enormous loss on this account, you compel the *often-mentioned* layman, *after previous admonition, by ecclesiastical censure,* appeal being set aside, to leave the aforesaid fief free and quiet to that monastery, once the money that he is known to have expended for discharging *the aforesaid* fief or even for the utility of that monastery has been received from the same abbot and convent, since the fruits received *until now* ought to suffice him for his labor. [*No letters, etc. Given at the Lateran, on the fourth day before the Kalends of April, in the ninth year.* 1206.]

Restituitur ecclesia contra alienationem, per quam enormiter fuit laesa. H. d. secundum lecturam veriorem.

Idem Episcopo Mauriensi et Praeposito Ulconensi.

Ad nostram noveritis audientiam pervenisse, quod, quum Tusiense monasterium depressum esset onere maximo debitorum, *dilecti filii* abbas et conventus eiusdem villam quandam necessitate coacti B. laico concesserunt in feudum, tali conditione apposita, quod idem *laicus* LXXX. libras persolveret, pro quibus eadem *villa* exstiterat obligata, quod *idem* non distulit effectui mancipare. Unde *+quia praedictum monasterium est, sicut dicunt, enormiter in hoc laesum eo, quod de reditibus villae praedictae conventus diebus singulis unum ferculum, et in festis duodecim lectionum pisces vel aliud aequivalens percipere consuevit, nobis* humiliter supplicarunt, ut feudum praedictum faceremus ad utilitatem monasterii revocari, praesertim quum idem laicus primo anno de ipsius proventibus ultra summam perceperit praetaxatam, et per multos postmodum annos sumpserit eius fructus. Quocirca *+nos, sic volentes gravaminibus praefati monasterii providere, quod alii non videamur iniuriam irrogare, discretioni vestrae per apostolica scripta* mandamus, quatenus, *inquisita plenius veritate*, si praedictum monasterium propter hoc inveneritis enorme dispendium incurrisse, *saepe* dictum laicum, ut pecunia, quam pro exoneratione *praedicti* feudi, seu etiam pro utilitate ipsius monasterii expendisse noscitur, ab eisdem abbate et conventu recepta, quum sibi fructus percepti *hactenus* sufficere debeant pro labore, praefatum feudum eidem monasterio dimittat liberum et

quietum, *monitione praemissa per censuram ecclesiasticam* appellatione postposita, compellatis. [*Nullis etc. Dat. Lat. IV. Kal. April. Ao. IX.* 1206.]

Chapter XII

Latin source headnote: An alienation of ecclesiastical property made without the lawful assent of ecclesiastical persons is not valid, although approved by a constitution of laymen.

The same, in the General Council.

Since no power of disposing of the property of a church is attributed to laymen, however religious, whom the necessity of obeying awaits, not the authority of commanding, we grieve that in certain of them charity grows so cold that they do not fear to attack by their constitutions—or rather, destitutions—the immunity of ecclesiastical liberty that not only the holy Fathers but also secular princes fortified with many privileges, unlawfully presuming not only concerning alienation of fiefs and other possessions of churches and usurpation of jurisdictions, but also concerning mortuaries and other things that appear annexed to spiritual right. Wishing therefore concerning these matters to consult the indemnity of churches and provide against such great burdens, with the approval of the sacred council we decree that constitutions and sales of this kind, concerning fiefs or other ecclesiastical goods presumed without the lawful assent of ecclesiastical persons on occasion of a constitution of lay power—which can be called not a constitution but a destitution or destruction—and also usurpation of jurisdictions, are not valid, with the presumers to be compelled by ecclesiastical censure.

Alienatio rei ecclesiasticae facta sine legitimo ecclesiasticarum personarum assensu non tenet, licet approbetur per constitutionem laicorum.

Idem in concilio generali.

Quum laicis, quamvis religiosis, disponendi de rebus ecclesiae nulla sit attributa potestas, quos obsequendi manet necessitas, non auctoritas imperandi : dolemus, in quibusdam ex illis sic refrigescere caritatem, quod immunitatem ecclesiasticae libertatis, quam non tantum sancti Patres, sed etiam principes saeculares privilegiis multis munierunt, non formidant suis constitutionibus, vel potius destitutionibus impugnare, non solum de alienatione feudorum, ac aliarum possessionum ecclesiarum et usurpatione iurisdictionum, sed etiam de mortuariis, nec non et aliis, quae iuri spirituali annexa videntur, illicite praesumendo. Volentes igitur super his indemnitatibus consulere ecclesiarum ac tantis gravaminibus providere, constitutiones et venditiones huiusmodi feudorum seu aliorum bonorum ecclesiasticorum sine legitimo personarum ecclesiasticarum assensu praesumptas occasione constitutionis laicae potestatis, quum non constitutio, sed destitutio vel destructio dici possit, nec non usurpatio iurisdictionum, sacri approbatione concilii decernimus non tenere, praesumptoribus per censuram ecclesiasticam compellendis.

Title XIV: On Precarious Grants

Chapter I

Latin source headnote: It is brief and cannot be summarized more briefly.

From the Council at Beauvais.

Precarious grants shall be renewed from five years to five years according to authority and ancient custom.

> **DE PRECARIIS.**
>
> Breve est, nec potest brevius summari.
>
> Ex concilio apud Belvacum.
>
> Precariae de quinquennio in quinquennium secundum auctoritatem et antiquam consuetudinem renoventur.

Chapter II

Latin source headnote: A successor revokes a precarious grant unreasonably made by his predecessor.

From the Council of Carthage.

Concerning precarious grants unreasonably made by rectors of churches who bind themselves and their successors under a grave penalty so that they cannot dissolve their acts, we command that no successor be bound by the penalty of his predecessor, but that it be granted to his providence that, if his predecessor unreasonably distributed the property of the church, it be recalled by him to the right of that church.

> Revocat successor precariam per praedecessorem irrationabiliter factam.
>
> Ex concilio Carthaginensi.
>
> De precariis, irrationabiliter factis a rectoribus ecclesiarum, se suosque successores poena gravi obligantibus, ut facta ipsorum dissolvere nequeant, praecipimus, ut nemo successor antecessoris sui poena sit obligatus, sed suae providentiae sit concessum, ut, si antecessor eius res ecclesiae irrationabiliter distribuit, ab eo ad ius eiusdem ecclesiae revocentur.

Chapter III

Latin source headnote: The grant of a loan for use is extinguished by the will of the grantor or his successor; but the grant of a precarium is not.

Gregory IX.

A thing loaned for use is granted for as long as the one who granted it permits. It is also dissolved by the death of the one to whom it was granted, but not by that of the grantor; or when it happens to be alienated to someone wishing to revoke it, because by an agreement of this kind it is not lawful for another's property to be possessed against the owner's will. But precarious grants that are sometimes customarily made from possessions of churches are not to be revoked at the will of the grantors.

> Concessio precarii extinguitur voluntate concedentis aut ei succedentis; precariae autem concessio non.
>
> Gregorius IX.
>
> Precarium utendum conceditur, quamdiu patitur qui concessit. Solvitur quoque obitu eius, cui concessum est, non etiam concedentis; aut quum ipsum alienari contingit alicui hoc revocare volenti, quia per conventionem huiusmodi non licet rem alienam invito domino possideri. Porro precariae, quae quandoque de ecclesiarum possessionibus fieri solent, non sunt pro voluntate concedentium revocandae.

Title XV: On Loan for Use

Sole Chapter

Latin source headnote: A borrower for use who receives solely for his own benefit is liable even for the slightest fault, but not for accident except in the three cases placed here. And a loan for use is not revoked before completion of the use. This it says.

Gregory IX.

When someone receives a loan for use solely for his own benefit, he is liable even for the slightest fault, although a fortuitous accident ought not to be imputed to him unless it occurred through his fault, or an agreement intervened, or he was in delay. Nor is an action on loan for use rightly brought against him except after completion of the use for whose sake the thing had been lent, since it behooves us not to be deceived but to be assisted by a benefit.

> **DE COMMODATO.**
>
> Commodatarius gratia sui tenetur etiam de levissima culpa non de casu, nisi in tribus casibus hic positis. Et commodatum ante usum completum non revocatur. H. d.
>
> Gregorius IX.
>
> Quum gratia sui tantum quis commodatum accepit, de levissima etiam culpa tenetur, licet casus fortuitus, nisi acciderit culpa sua, vel intervenerit pactum, seu in mora fuisset, sibi non debeat imputari. Contra eum quoque recte commodati non agitur, nisi post usum expletum, cuius gratia res fuerat commodata, quum non decipi beneficio nos oporteat, sed iuvari.

Title XVI: On Deposit

Chapter I

Latin source headnote: A church is not liable for a deposit made with a cleric of the church unless it was turned to the utility of the church.

Alexander III, to the Bishop of London.

That grave *and hateful* complaint *which* has reached us concerning your deposit hitherto denied to you *constrains us with twofold anxiety, in that we can neither fail you in this nor effectively assist you as you would wish.* For since it is not established *to us* that your money, which that man of Belial stole by *impious and detestable surreption,* was turned to the utility of the church, we ought not by law, *nor can we,* direct a peremptory insistence of command against the canons of that church that they return to you the same money, committed, *as is said,* to a person, not to the church. Therefore, *we counsel your discretion, and with the diligence of inward charity* persuade you to direct your action *meanwhile* against that *robber and* thief, because, as we have heard, he has the purses and carried away the things stolen from you. For *we ourselves* also commanded judges to bring that wicked man to account under *severe* examinations and, *even* if necessary, to torment *and afflict* him, bound with chains, so that he may be compelled to return the said money. *But we wish you to have such affection toward the church that you seek nothing undue from it.* If, however, you can amicably make an agreement with them concerning receipt of revenues, know that this is acceptable to us.

> **DE DEPOSITO.**

Ex deposito, facto apud clericum ecclesiae, non tenetur ecclesias, nisi in utilitatem ecclesiae sit versum.

Alexander III. Londonensi Episcopo.

Gravis illa *et odibilis* querimonia, *quae* usque ad nos super deposito tuo tibi hactenus denegato pervenit, *+duplici nos anxietate perstringit eo, quod tibi in hoc et deesse non possumus, et adesse, prout velles, efficaciter non valemus*. Quum enim non constet *nobis*, pecuniam tuam, quam ille vir Belial *impia et detestabili surreptione* furatus est, in ecclesiae utilitatem conversam, non debemus de iure, *nec possumus* contra canonicos eiusdem ecclesiae praecise intentare iussionis instantiam, ut tibi eandem reddant pecuniam, personae, *ut dicitur*, non ecclesiae commendatam. Quocirca *discretioni tuae consulimus, et internae caritatis diligentia* suademus, ut in *raptorem* illum *et* furem tuam *interim* dirigas actionem, eo, quod, ut audivimus, loculos habet, et ea, quae tibi surrepta sunt, asportavit. Nam et *nos ipsi* iudicibus dedimus in mandatis, ut illum iniquum sub *duris* quaestionibus ad rationem ponant, *et* etiam, si oportuerit, vinculis *macerent* alligatum *et affligant*, ut dictam pecuniam reddere compellatur. *+Ceterum circa ecclesiam illum affectum te habere volumus, ut nil ab ea requiras indebitum*. Si autem cum eis amicabiliter poteris de redituum perceptione pacisci, noveris id nobis acceptum.

Chapter II

Latin source headnote: It states for what a depositary is liable and how a deposit is reclaimed.

Gregory IX.

Good faith is presumed absent if, while your own property remained safe, you lost the things deposited. You are also liable for fault if you offered yourself for the deposit, or if you received something for safekeeping. But when agreement, fault, or delay has preceded, even a fortuitous accident is imputed. Indeed, it was lawful for the depositor to revoke the deposit at his own will, against which there was no place for setoff or deduction, so that a contract that arises from good faith may in no way be referred to bad faith, although setoff is admitted in other matters if the cause from which it is sought is liquid in such a way that it is believed to have an easy outcome.

Dicit, ad quid tenetur depositarius, et quomodo repetatur depositum.

Gregorius IX.

Bona fides abesse praesumitur, si, rebus tuis salvis exsistentibus, depositas amisisti. De culpa quoque teneris, si te ipsum deposito obtulisti, vel si aliquid pro custodia recepisses. Pacto vero, culpa vel mora praecedentibus, casus etiam fortuitus imputatur. Sane depositori licuit pro voluntate sua depositum revocare, contra quod compensationi vel deductioni locus non fuit, ut contractus, qui ex bona fide oritur, ad perfidiam minime referatur, licet compensatio admittatur in aliis, si causa, ex qua postulatur, sit liquida ita, quod facilem exitum credatur habere.

Title XVII: On Purchase and Sale

Chapter I

Latin source headnote: A bishop compels that goods not be sold more dearly to travelers than they would be sold in the market.

From the Council at Valence.

It pleased [*us and our faithful*] that priests admonish their peoples that they too be hospitable, [*that they deny lodging to no traveler,*] and, [*so that every occasion of robbery may be removed,*] that they not sell

more dearly to travelers than they can sell in the market; otherwise, let the travelers report this to the priest, so that at his command they sell to them with humanity.

> **DE EMPTIONE ET VENDITIONE.**
>
> Cogit episcopus, ne carius vendatur transeuntibus, quam in mercato venderetur.
>
> Ex concilio apud Valentias.
>
> Placuit [*nobis et nostris fidelibus,*] ut presbyteri plebes suas admoneant, ut et ipsi hospitales sint, [*ut nulli iter facienti mansionem denegent*] et, [*ut omnis occasio rapinae tollatur,*] non carius vendant transeuntibus, quam in mercato vendere possunt, alioquin ad presbyterum transeuntes hoc referant, ut illius iussu cum humanitate sibi vendant.

Chapter II

Latin source headnote: One who falsifies measures and weights ought to do penance for thirty days on bread and water.

From the Council of Mainz.

So that measures and weights may be just, *as has been enacted in the divine laws, is contained in the lordly capitulary, and is established by this sacred assembly, thus it pleases all of us to observe. And* if anyone has presumed to alter just measures and just weights for the sake of gain, let him do penance for thirty days on bread and water.

> Fraudans mensuras et pondera triginta diebus in pane et aqua poenitere debet.
>
> Ex concilio Maguntino.
>
> Ut mensurae et pondera iusta fiant, +*sicut in divinis legibus sancitum est, et in capitulari dominico continetur, et iste sacer conventus statuit, sic omnibus nobis observare placet. Et* Si quis iustas mensuras et iusta pondera causa lucri mutare praesumpserit, XXX. dies in pane et aqua poeniteat.

Chapter III

Latin source headnote: A sale is valid although the seller was deceived beyond half the just price; nevertheless, the seller can bring an action so that the thing is restored or the just price supplied, and if he seeks one of them peremptorily, he fails.

Alexander III, to the Bishop of Arras.

When *our beloved sons* the canons of Beauvais proposed a complaint against the *religious men,* the abbot and brothers of Chaalis, that they had purchased from certain of them, while the chapter was ignorant, for ten pounds the forest called Black Valley, then worth forty marks, *after many commissions we finally* committed the cause itself, *under a certain form,* to *our venerable brother* the Bishop of Thérouanne and *our beloved son* the Dean of Reims to be terminated, adding *in the letters* that, if each could not be present for cognizance of *that* cause, the other, *associating with himself prudent and honorable men,* should not delay to proceed in the same business. *Therefore, when the dean summoned the parties to his presence on this account, the abbot and monks sent messengers not to act or answer but to seek delays, asserting that they had sent to us and appealed to our hearing. But because appeal had been removed in the letters,* the dean finally proceeded in cognizance of that cause. And when it was established to him through witnesses *of the canons of Beauvais* that the aforesaid brothers had purchased the forest for less than half the just price, he pronounced that the sale was not valid and, adjudging *the forest* to the church of Beauvais,

inducted the canons into possession. *Therefore, when messengers of both parties were constituted in our presence on this account, and confirmation of the sentence by apostolic authority was insistently and earnestly sought on behalf of the canons, after deliberation with our brothers and other wise men who, sworn to the laws, give judgment, we understood that sentence to be contrary to law.* But because it is in the choice of the purchaser, when a thing is bought for less than half the just price, whether he wishes to supply the just price or rescind the sale, annulling that sentence as contrary to law, we adjudged that possession should be restored to the monks, saving to the canons *every* question concerning deception in the price, lack of consent of the chapter in the sale, or any other reasonable cause that the canons should determine to propose against the monks.

> Tenet venditio, licet venditor sit deceptus ultra dimidiam iusti pretii; potest tamen venditor agere, ut restituatur res vel iustum pretium suppleatur, et, si alterum praecise petit, succumbit.
>
> Alexander III. Attrebatensi Episcopo.
>
> Quum dilecti filii *nostri* Belvacenses canonici contra *religiosos viros* abbatem et fratres Cariloci proponerent querimoniam, quod silvam, quae Nigra vallis dicitur, a quibusdam eorum ignorante capitulo pro X. libris, XL. marchas tunc valentem, comparassent, *post multas commissiones tandem* causam ipsam *venerabili fratri nostro* Morinensi episcopo et *dilecto filio* decano Remensi *sub certa forma* commisimus terminandam, adiicientes *in literis*, quod, si uterque *eiusdem* causae cognitioni interesse nequiret, alter *adhibitis sibi viris prudentibus et honestis* in eodem negotio procedere non differret. +*Quum itaque decanus partes ad suam propter hoc praesentiam convocasset, abbas et monachi non ad agendum vel respondendum, sed ad quaerendum dilationes nuncios destinarunt, asserentes, quod ad nos miserant et ad audientiam nostram appellaverant. Verum quia in literis appellatio remota fuerat,* Tandem decanus in illius causae cognitione processit. Et quum ei per testes *canonicorum Belvacensium* constitisset, quod praedicti fratres silvam minus dimidia iusti pretii comparassent, pronunciavit, venditionem non tenere, et silvam *ipsam* Belvacensi ecclesiae adiudicans, canonicos in possessionem induxit. +*Nunciis igitur utriusque partis in nostra propter hoc praesentia constitutis, dum ex parte canonicorum instanter et sollicite sententia peteretur auctoritate apostolica confirmari, habita deliberatione cum fratribus nostris et aliis sapientibus, qui legibus iurati iudicant, eandem sententiam iuri contrariam intelleximus*. Quia vero in arbitrio emptoris est, si velit supplere iustum pretium, aut venditionem rescindere, quum res minus dimidia iusti pretii comparatur : sententiam ipsam tanquam iuri contrariam irritantes possessionem monachis iudicavimus esse reddendam, salva *omni* quaestione canonicis super deceptione pretii, vel consensu capituli in venditione non habito, et alia causa rationabili, quam canonici contra monachos duxerint proponendam.

Chapter IV

Latin source headnote: If a husband has other goods from which a wife can provide for herself, and with the wife's consent sells a thing donated to the wife on account of marriage, the wife cannot trouble concerning it a purchaser who possessed the thing for a period of thirty years, especially if the price was turned to the common use of husband and wife. This it says according to the understanding held by Panormitanus, and it is a notable case limiting civil law. According to John Andrew, it is unnecessary to add "especially," but all three things are necessarily required.

Celestine III.

It has come to us *from your intimation* that *formerly* P. the knight sold to the woman B., for a certain quantity of money, a certain house assigned to his wife A. as a donation on account of marriage, with the woman herself giving express consent, *which B. possessed freely and peacefully from that sale for thirty*

years while the aforesaid marriage endured. But when the aforesaid knight entered upon the way of all flesh, his widow presumes to proceed against this, alleging that the said house, granted to her by title of donation on account of marriage, could not have been alienated, although her consent is known to have acceded to that contract. But the aforesaid *woman* B. endeavors to protect herself on the ground that for thirty years, while their marriage endured, she possessed the house itself in good faith and under a just title; that its price was turned to the common uses of that husband and wife; and that at the time of the sale there existed among the husband's resources that from which the aforesaid woman could *advantageously* provide for herself. Therefore, because you took care to consult us concerning these things, we answer *your solicitude* that, if the things we have premised are true, the aforesaid purchaser ought not to be further troubled concerning that house on the aforesaid occasions.

> Si vir habeat alia bona, unde uxor possit sibi consulere, et consentiente uxore rem propter nuptias donatam uxori vendiderit, emptorem, qui spatio triginta annorum rem possederit, non potest uxor inquietare super ea, maxime si pretium fuit conversum in communem usum viri et uxoris. H. d. secundum intellectum, quem tenet Panorm. et est casus notab. limitans ius civile. Secundum Io. Andr. non oportet adiicere: " maxime, " sed omnia illa tria necessario requiruntur.
>
> Coelestinus III.
>
> Pervenit ad nos *ex insinuatione tua*, quod *olim* P. miles A. uxori suae quandam domum in donationem propter nuptias assignatam, muliere ipsa expressum dante consensum, B. mulieri vendidit pro certa pecuniae quantitate, *+quam ex eadem venditione B. matrimonio supra dicto constante XXX. annis libere pacificeque possedit*. Praenominato vero milite viam universae carnis ingresso, relicta eius venire contra hoc praesumit, allegans, dictam domum titulo donationis propter nuptias sibi concessam alienari non potuisse, licet eius consensus ipsi noscatur contractui accessisse. Praefata vero B. *mulier* ex eo nititur se tueri, quod triginta annis constante illorum matrimonio domum ipsam bona fide tituloque iusto possedit, et quia in communes usus viri et uxoris illius pretium est conversum, ac factae venditionis tempore, unde sibi praefata mulier *utiliter* consulere potuisset, in viri facultationibus consistebat. Quia igitur super his nos consulere curasti, *tuae sollicitudini* respondemus, praedictam emptricem, si vera sunt quae praemisimus, praescriptis occasionibus super ipsa domo non debere ulterius fatigari.

Chapter V

Latin source headnote: If in a sale an agreement is added concerning recovery of the thing after a certain time, with a small price established, a pledge and not a sale is presumed.

Innocent III, to the Bishop of Patti.

Know that it has come to our hearing that, when the layman R., bearer of the present letters, wished to receive a loan from M., the creditor *of the diocese of Trani,* lest in the future he could be sued under the canon issued against usurers, received from him by title of purchase *his* houses and olive trees, when in truth a usurious contract was being transacted. This is apparent from the fact that the creditor, *as the public instrument contains,* promised the debtor that, whenever between the seventh and ninth years he should give forty ounces of tarins, which scarcely attained half the just price, he would restore his houses and olive trees. Therefore, because fraud and deceit ought to furnish patronage to no one, *by apostolic writings we command* your fraternity that, if the matter stands thus, notwithstanding the instrument of sale drawn up in fraud of the canon promulgated against usurers, you compel the aforesaid M., by the penalty promulgated against usurers in the Lateran Council, appeal being

removed, to restore *the aforesaid* houses and olive trees to him upon whom they ought to devolve by hereditary right, since the debtor has entered upon the way of all flesh. [*Given at the Lateran, on the fourth day before the Nones of March.* 1203.]

> Si in venditione apponitur pactum de recuperanda re post certem tempus, modico constituto pretio, praesumitur pignus, et non venditio.
>
> Innocentius III. Episcopo Palliensi.
>
> Ad nostram noveris audientiam pervenisse, quod, quum R. laicus lator praesentium ab M. mutuum recipere voluisset, creditor *Tranensis dioecesis*, ne per canonem contra usurarios editum posset in posterum conveniri, domos et olivas *ipsius* recepit ab eodem titulo emptionis, quum re vera contractus usurarius ageretur, quod patet ex eo, quod creditor, *sicut publicum continet instrumentum*, debitori promisit, quod, quandocunque a septennio usque ad novennium daret XL. uncias Tarenorum, quae vix dimidiam iusti pretii contingebant, domos eius restitueret et olivas. Quia igitur fraus et dolus cuiquam patrocinari non debent, *fraternitati tuae per apostolica scripta* mandamus, quatenus, si res ita se habet, instrumento venditionis confecto in fraudem canonis promulgati contra usurarios non obstante, praedictum M. ad restituendas domos et olivas *praedictas* ei, ad quem debent hereditario iure devolvi, quum debitor sit viam universae carnis ingressus, per poenam in Lateranensi concilio contra usurarios promulgatam appellatione remota compellas. [*Dat. Lat. IV. Non. Mart.* 1203.]

Chapter VI

Latin source headnote: A seller deceived beyond half the just price can bring an action so that the thing is restored to him upon returning the price received, or that the just price is supplied; and in this the choice belongs to the purchaser. This it says according to Antonius.

The same, to the Bishop and Archdeacon of Urbino.

When the cause disputed between the steward of the monastery of Saint Martin on the Mount *of Viterbo* on one side, and *F. and R.,* citizens of Viterbo, on the other, concerning the tenements *formerly of Tornaparte, the lands of Densiare, the willow groves, and the mill where the fullery was made,* had been debated *before us* for some time, *we, having understood the reasons of both parties and diligently inspected the attestations,* since it was established to us that *the monastery* had been deceived beyond half the just price in the sale *of the aforesaid things,* decreed by sentence that the aforesaid citizens either restore the aforesaid possessions upon receiving the price, or supply as much as was established to have been lacking from the just price at the time of the lawful sale. *Therefore, when* (*cf. c.* 42, *On Witnesses, II.* 20.)

> Venditor, deceptus ultra dimidiam iusti pretii, agere potest, ut res sibi, reddenti pretium acceptum, restituatur, vel iustum pretium suppleatur; et in hoc electio est emptoris. H. d. secundum Antonium.
>
> Idem Episcopo et Archidiacono Urbinatensibus.
>
> Quum causa, quae inter oeconomum monasterii sancti Martini de monte *Viterbiensis* ex parte una, ac *F. et R.* cives Viterbienses ex altera super casamentis *quondam Tornampartis et terris Densiare ac salicetis, et molendino, ubi facta est Galcheria*, vertebatur, *coram nobis* fuisset aliquamdiu ventilata, *nos, intellectis rationibus utriusque partis, et attestationibus diligenter inspectis*, quum constitisset nobis, monasterium *ipsum* in *praedictarum rerum* venditione ultra dimidiam iusti pretii fuisse deceptum, sententiando decrevimus, ut praefati cives aut recepto pretio possessiones restituerent memoratas, aut supplerent quantum constaret legitimae venditionis tempore iusto pretio defuisse. *Quum igitur* (*cf. c.* 42. *de test. II.* 20.)

Chapter VII

Latin source headnote: It sets forth three cases in which, after the thing has been evicted, the seller is not liable to the purchaser for eviction.

Gregory IX.

If, after judgment was instituted against the seller, someone omitted to notify him to defend the thing sold to him, or was contumaciously absent at the time the sentence was promulgated, or the sentence was issued through injustice, he will not be able to bring an action concerning eviction according to the lawful sanctions.

> Ponit tres casus, in quibus re evicta non tenetur venditor emptori de evictione.
>
> Gregorius IX.
>
> Si venditori post institutum contra se iudicium quis omiserit, ut rem venditam sibi defenderet, nunciare, vel contumaciter abfuit tempore sententiae promulgatae, seu per iniuriam sententia lata fuit : de evictione iuxta legitimas sanctiones agere non valebit.

Title XVIII: On Letting and Hiring

Chapter I

Latin source headnote: Masters and scholars at Bologna who, before the term of the letting, hire the lodgings of other masters or scholars without their consent are excommunicated.

Clement III.

It became known to us from the rescript of the letters of P., formerly Bishop of Tusculum *of pious memory,* that, when he entered the city of Bologna during the time of his legation, *he found that it had been established there by W., formerly Bishop of Porto of good memory, and forbidden under excommunication, that any scholars* [*of others*] *should hire lodgings by the promise of a greater rent, so that they might claim them for themselves either from zeal for empty glory, wishing to appear more powerful in expenditures, or for the advantage of private utility. Hence he himself, considering with solicitous providence that the wickedness of a condition of this kind would engender both a tinder of discord and no small impediments to studies,* decreed valid the constitution made by the Bishop of Porto, legate of the Apostolic See, and afterward confirmed by the aforesaid Bishop of Tusculum, namely: that none of the masters or scholars should dare to make an agreement with a landlord concerning the hiring of others' lodgings, to the injury or prejudice of the inhabitants, unless it was first established that the term of the letting had elapsed or the tenants had furnished their favor and consent in this; since the Bishop of Porto forbade this under excommunication, and the other decreed the same to be observed under penalty of anathema. We confirm *it* by apostolic authority, establishing that this be recited each year by you, brother bishop, and by every successor of yours, in a common hearing of the masters and scholars, *and that the aforesaid wickedness of an improper hiring be expressed by a renewed* [*each year*] *sentence of excommunication. Therefore, let it be lawful for no person whatsoever to infringe the page of our confirmation, etc.*

> **DE LOCATO ET CONDUCTO.**
>
> Excommunicati sunt magistri et scholares Bononienses, qui ante tempus conductionis conducunt hospitia aliorum magistrorum vel scholarium sine eorum consensu.

Clemens III.

Ex rescripto literarum *piae recordationis P. quondam* Tusculanensis episcopi nobis innotuit, quod, quum civitatem Bononiensem tempore suae legationis intrasset, *invenit, ibi fuisse a bonae memoriae W. quondam Portuensi episcopo constitutum et sub excommunicatione prohibitum, ne aliqui scholares* [*aliorum*] *hospitia maioris mercedis promissione conducerent, ut ea sibi vel inanis gloriae studio, quasi potentiores in expensis apparere volentes, vel privatae utilitatis commodo vindicarent. Unde ipse sollicita provisione considerans, quod huiusmodi conditionis improbitas et discordiae fomitem, et impedimenta non modica pareret studiorum, praedictam* Constitutionem, factam ab episcopo Portuensi apostolicae sedis legato et a praedicto Tusculanensi episcopo postmodum confirmatam, videlicet ut nullus magistrorum sive scholarium super conducendis aliorum hospitiis in laesionem vel praeiudicium habitantium audeat hospitem convenire, nisi prius constiterit tempus conductionis elapsum, vel inquilini in hoc suum favorem praestiterint et consensum, quum idem Portuensis sub excommunicatione hoc prohibuerit, et alter sub poena anathematis idem decreverit observandum, ratam esse decernimus, et *eam* auctoritate apostolica confirmamus, statuentes, ut a te, frater episcope, et tuo quolibet successore hoc singulis annis in communi audientia magistrorum atque scholarium recitetur, *et praetaxata pravae conductionis improbitas innovata * [*per annos singulos*] *excommunicationis sententia exprimatur. Nulli ergo omnino hominum liceat paginam nostrae confirmationis infringere etc. *

Chapter II

Latin source headnote: Ecclesiastical persons can lease the proceeds of tithes to those with whom the condition of the church is made better, notwithstanding a contrary statute of the diocesan; and the same reasoning applies to other property of the church.

Innocent III, to the Abbot and Convent of Saint Peter of Préaux in the Diocese of London.

Your report declared to us that, although you have been accustomed to give the fruits of your tithes at farm, *the diocesans of the places issued a certain statute concerning tithes of this kind to be leased to parish priests, by which your utility is not a little impeded; wherefore you implore concerning this the remedy of apostolic provision.* Notwithstanding a contrary statute of the diocesan bishops, you can freely lease the proceeds of your tithes to those *whom you see to be expedient for you and* with whom you will be able to make the condition of your church better, yet in such a way that a letting of this kind does not appear to extend to a fief or alienation.

Personae ecclesiasticae locare possunt proventus decimarum his, cum quibus conditio ecclesiae fit melior, statuto dioecesani contrario non obstante; et eadem ratio est de aliis rebus ecclesiae.

Innocentius III. Abbati et Conventui S. Petri de Pratel. Londoniensis dioecesis.

Vestra nobis relatio declaravit, quod, quum ad firmam fructus vestrarum dare consueveritis decimarum, *+diocesani locorum statutum quoddam de huiusmodi decimis locandis parochialibus presbyteris ediderunt, per quod utilitas vestra non modicum impeditur; quare super hoc apostolicae provisionis remedium imploratis*. Dioecesanorum episcoporum statuto contrario non obstante vestrarum decimarum proventus illis libere locare potestis, *quibus vobis expedire videritis, et* cum quibus ecclesiae vestrae conditionem poteritis facere meliorem, ita tamen, quod huiusmodi locatio ad feudum vel alienationem non videatur extendi.

Chapter III

Latin source headnote: On account of grave sterility happening to the lessee without his fault, the rent is remitted proportionally, unless it can be set off against the abundance of the preceding or

following period. This it says as far as § *But.*—(*But, etc.*:) Four cases are placed here in which a tenant can lawfully be expelled before the term of the letting has ended. The Abbot.

Gregory IX.

On account of sterility affecting the lessees with great disadvantage, happening through a defect of the property without fault of the cultivator or by a fortuitous accident, remission of rent is to be made proportionally to the cultivators of your church, unless the sterility can be set off against the abundance of the preceding or following year. But you will be able, against the tenant's will, to inhabit or repair the house if necessity—which nevertheless was not imminent at the time of letting —requires it, with the rent for the remaining time remitted to him. He is also reasonably removed therefrom if he conducted himself wickedly there, or, when he had not paid the rent for two years, did not provide for himself by swift satisfaction.

> Propter sterilitatem gravem, conductori sine culpa sua contingentem, remittitur pensio pro rata, nisi possit cum ubertate praecedentis vel sequentis temporis compensari. H. d. usque ad §. Verum. —(Verum etc.:) Ponuntur hic quatuor casus, in quibus inquilinus potest ante tempus conductionis finitae licite expelli. Abbas.
>
> Gregorius IX.
>
> Propter sterilitatem, afficientem magno incommodo conductores, vitio rei sine culpa coloni, seu casu fortuito contingentem, colonis ecclesiae tuae pro rata est pensionis remissio facienda, nisi cum ubertate praecedentis vel subsequentis anni valeat sterilitas compensari. Verum invito inquilino domum inhabitare vel reficere poteris, si necessitas, quae tamen non imminebat locationis tempore, id exposcat, remissa sibi pro residuo temporis pensione; qui etiam inde rationabiliter amovetur, si perverse ibi fuerit conversatus, vel quum canonem per biennium non solvisset, si sibi satisfactione celeri non providit.

Chapter IV

Latin source headnote: An emphyteuta of a church cannot sell his improvements unless the things stated here are observed. And if he acts contrary to them, or has not paid the rent for two years and has not afterward swiftly purged the delay, he can justly be expelled.

The same.

An emphyteuta, after first asking the church and notifying it how much is offered to him by others, could sell his improvements and the right belonging to him to others who are in no way prohibited from a purchase of this kind, if the church said that it was unwilling to buy or if the space of two months elapsed from the time of notification. An emphyteuta also, by presuming otherwise or ceasing payment of the rent for two years, unless he afterward endeavored to provide for himself by swift satisfaction, could justly be expelled, notwithstanding that he was not notified to pay the rent, since in this case the appointed day makes demand for the lord.

> Emphyteuta ecclesiae meliorationes suas vendere non potest, nisi servatis his, de quibus hic. Et si contra fecerit, vel canonem per biennium non solverit, nec moram postea celeriter purgaverit, iuste potest expelli.
>
> Idem.
>
> Potuit emphyteuta, ecclesia primitus requisita, eique nunciato quantum sibi ab aliis offertur, si nolle se emere dixerit, vel a denunciationis tempore duorum mensium spatium sit elapsum, meliorationes et ius

> sibi competens aliis vendere, qui ab emptione huiusmodi minime prohibentur. Emphyteuta quoque secus praesumendo, vel cessando in solutione canonis per biennium, nisi celeri satisfactione postmodum sibi consulere studuisset, iuste potuisset expelli, non obstante, quod ei, ut canonem solveret, non exstitit nunciatum, quum in hoc casu dies statuta pro domino interpellet.

Title XIX: On Exchange of Things

Chapter I

Latin source headnote: A prince can acquire immovable property of a church by exchange, after giving better or equal property. This it says, and in what it says, "or equal," there is a notable case.

From the Council at Silvanum.

If a prince wishes to furnish immovable property to holy places and receive from them another immovable *thing,* and in that manner contract an exchange by common will, it is lawful for him to do this if a reasonable cause requires it and the thing that he furnishes is greater or equal, a *divine* pragmatic sanction concerning this having been promulgated *by him*.

> **DE RERUM PERMUTATIONE.**
>
> Princeps potest rem ecclesiae immobilem per permutationem acquirere, data re meliori vel aequali. H. d. et in hoc, quod dicit, vel aequali, est casus notabilis.
>
> Ex concilio apud Silvan.
>
> Si princeps voluerit rem immobilem sanctis locis praestare, et accipere ab eis aliam immobilem *rem*, eoque modo de communi voluntate permutationem contrahere, liceat ei hoc facere, si causa rationabilis id exposcat, et res, quam praestiterit, maior fuerit vel aequalis, *divina* pragmatica sanctione super hoc *ab eo* promulgata.

Chapter II

Latin source headnote: An exchange of ecclesiastical property made in a case not permitted, or without observance of the solemnity of law, is to be revoked by a successor.

From the Council of Beauvais.

Let exchanges of ecclesiastical property *be guarded against greatly and, if in any way they ought to be made, inspected most subtly;* but those that were made imprudently by a predecessor *according to the canonical decree of Pope Hilary, or were unlawfully committed by others,* shall be corrected by the one who is successor.

> Permutatio rerum ecclesiasticarum, facta in casu non concesso, seu non servata solennitate iuris, est revocanda per successorem.
>
> Ex concilio Belvacensi.
>
> Ut commutationes rerum ecclesiasticarum *valde caveantur et subtilissime, si aliquo modo fieri debent, inspiciantur;* quae *autem* ab antecessore inconsulte factae sunt *iuxta decretum canonicum Hilarii Papae, vel ab aliis illicite commissae sunt*, ab eo, qui successor est, emendentur.

Chapter III

Latin source headnote: Slaves of a church ought not to be exchanged except for freedom, or unless they are fugitives. This it says together with the following chapter.

From the Council at Senlis.

It is not fitting that ecclesiastical slaves be exchanged except for freedom, namely, so that the slaves who are given for an ecclesiastical man remain in servitude to the church, and the ecclesiastical man who is exchanged enjoy perpetual freedom. For that which has once been consecrated to God ought not *now* to be transferred to human uses.

> Mancipia ecclesiae non debent permutari, nisi ad libertatem, vel nisi sint fugitiva H. d. cum c. sequenti.
>
> Ex concilio apud Silvanectum.
>
> Mancipia ecclesiastica nisi ad libertatem non convenit commutari, videlicet ut mancipia, quae pro ecclesiastico homine dabuntur, in ecclesiae servitute permaneant, et ecclesiasticus homo, qui commutatur, fruatur perpetua libertate. Quod enim semel Deo consecratum est ad humanos usus *iam* transferri non decet.

Chapter IV

Latin source headnote: Slaves of a church cannot be exchanged with profane persons or alienated unless they are fugitives.

From the same.

It appears unjust and impious that slaves whom faithful *men or women* consecrated to God and his saints for the remedy of their soul should, for slavery to any gift or by commerce of exchange, again be reduced to the servitude of secular persons, since canonical authority permits only fugitive slaves to be sold. Therefore let *all* rectors of churches take the greatest care lest the alms of one become the sin of another. And it is absurd that a slave departing from ecclesiastical dignity should be subject to human servitude.

> Servi ecclesiae cum profanis permutari non possunt nec alienari, nisi sint fugitivi.
>
> Ex eodem.
>
> Iniustum videtur et impium, ut mancipia, quae fideles *viri seu feminae* Deo et sanctis eius pro remedio animae suae consecrarunt, cuiuscunque muneris mancipio vel commutationis commercio iterum in servitutem saecularium redigantur, quum canonica auctoritas servos tantummodo permittat distrahi fugitivos. Et ideo *omnes* ecclesiarum rectores summopere caveant, ne eleemosyna unius alterius peccatum fiat. Et est absurdum, ut ab ecclesiastica dignitate servus discedens humanae sit obnoxius servituti.

Chapter V

Latin source headnote: Prebends cannot be exchanged when an agreement precedes; nevertheless, a bishop can exchange persons from place to place.

Urban III.

It was asked on your behalf whether exchanges of prebends can be made, since exchange of dignities was interdicted in the Council of Tours. *For there are certain persons who yield their prebend and renounce their right so that they may obtain a greater prebend or thereby obtain a certain sum of money, which indeed is contrary to honor and undoubtedly contains simoniacal depravity.* Therefore hold generally that exchanges of prebends cannot be made by law, especially when an agreement has been sent beforehand, which concerning spiritual things or things connected with spiritual ones always contains the stain of

simony. But if the bishop has inspected a necessary cause, he will lawfully be able to transfer persons from one place to another, so that those who are less useful to one place may be able to exercise themselves more usefully elsewhere.

> Praebendae pacto praecedente permutari non possunt; episcopus tamen potest de loco ad locum permutare personas.
>
> Urbanus III.
>
> Quaesitum est ex parte tua, si commutationes fieri valeant praebendarum, quum commutatio dignitatum in Turonensi concilio fuerit interdicta. +*Sunt enim quidam, qui praebendae suae cedunt et iuri renunciant, ut maiorem praebendam obtineant, vel ex hoc certam summam pecuniae consequantur, quod quidem honestati est contrarium, et simoniacam procul dubio continet pravitatem*. Generaliter itaque teneas, quod commutationes praebendarum de iure fieri non possunt, praesertim pactione praemissa, quae circa spiritualia vel connexa spiritualibus labem semper continet simoniae. Si autem episcopus causam inspexerit necessariam, licite poterit de uno loco ad alium transferre personas, ut quae uni loco minus sunt utiles alibi se valeant utilius exercere.

Chapter VI

Latin source headnote: Churches can be exchanged with one another by right of ownership, and their possessions can also be exchanged, and a price can be supplied for those of lesser value.

Clement III.

For resolving questions [*that are extended to the Apostolic See by our brothers and fellow bishops, it befits us to apply solicitude according to the duty of our office.*] We have understood *therefore* from your letters that two conventual churches are constituted in your diocese, each of which has a parish church with possessions nearer to the other than to itself. But because they desire to exchange them, and one of them abounds more by reason of better revenues, and therefore requests that a certain sum of counted money be added to *its church* so that they may thus be able to arrive at equality of exchange, it was doubted whether this could lawfully be done; *for which reason you wished to consult the Apostolic See. Therefore, although we in no way think that the industry of your discretion is ignorant of what is to be done concerning that matter, nevertheless* we answer [*thus*] *your prudence:* since an exchange can be celebrated concerning the *aforesaid* parish churches by themselves, and in an exchange of possessions it is not forbidden by itself, if one outweighs the other by reason of possessions, for money to be refunded also from their possessions to one another, as shall appear expedient, a contract of exchange can be entered after a certain quantity of money has been refunded, yet in such a way that those contracts are in no way mixed with one another.

> Ecclesiae iure proprietatis possunt ad invicem permutari, et possesiones earum etiam permutari possunt, et pro minus valentibus pretium suppleri.
>
> Clemens III.
>
> Ad quaestiones solvendas [*quae per fratres et coepiscopos nostros sedi apostolicae porriguntur, iuxta officii nostri debitum nos convenit sollicitudinem adhibere.*] Intelleximus *itaque* ex literis tuis, quod duae conventuales ecclesiae sunt in tua dioecesi constitutae, quarum utraque parochialem habet ecclesiam cum possessionibus magis alteri quam sibi vicinam. Illis autem eas desiderantibus permutare, quum illarum altera respectu meliorum proventuum plus abundet, et ideo *suae ecclesiae* sibi postulet adiici certam summam pecuniae numeratae, ut sic ad aequalitatem permutationis valeant pervenire, utrum possit id

licite fieri exstitit dubitatum; *+quam ob causam sedem apostolicam consulere voluisti. Licet itaque tuae discretionis industriam ignorare minime putemus, quid super eodem articulo sit agendum, nihilominus* [*sic*] *tuae prudentiae* Respondemus, quod, quum de *iam* dictis parochialibus ecclesiis per se queat commutatio celebrari, et in permutatione possessionum per se non sit inhibitum, si altera ratione possessionum alteri praeponderet, pecuniam posse refundi de ipsarum *quoque* possessionibus ad invicem, prout visum fuerit expedire, refusa certa pecuniae quantitate, poterit contractus permutationis iniri, sic tamen, quod illi contractus nequaquam sibi invicem misceantur.

Chapter VII

Latin source headnote: Those who exchange their benefices by their own authority lose them.

Innocent III, to the Archbishop of Sens.

When formerly *it came to our hearing that our beloved sons* Master S. and B. had exchanged an archdeaconry and a provostship with one another, *at the request of that master* [*B.,*] *we thought that the cause concerning this should be delegated to the Bishop of Mâcon of good memory. And when that same B. afterward approached our presence, so that the business might proceed without suspicion, at his request we thought that our beloved son the Abbot of Cluny should be joined to that bishop. But because, on account of the abbot's absence, the delegated judges had not proceeded together in the cause, each party presented itself to our sight and obtained a hearing before us. And* although the aforesaid master from the beginning voluntarily confessed the exchange, that same B. nevertheless wholly denied it, *assertively* alleging that *both* he had resigned the provostship without any condition, and after the *free* resignation of the aforesaid master had obtained the archdeaconry; *although the master himself* [*G.*] *alleged in opposition that B. had treated with him at length concerning the exchange and finally completed in the hands of our venerable brother the Bishop of Autun what he had treated.* (*And below:* [*cf. c.* 33, *On the Office of a Delegated Judge, I.* 29.]) Therefore, when it was established to us, *both through public report and through valid presumption and even manifest proof,* that B. himself furnished his assent to the exchange, while the aforesaid master publicly confessed his error, we took care to despoil the one of the provostship and the other of the archdeaconry, issuing concerning this a definitive sentence against them. [*But finally, etc. Given at the Lateran, on the Ides of January, in the fifth year.* 1203.]

Beneficia sua perdunt qui ea propria permutant auctoritate.

Innocentius III. Senonensi Archiepiscopo.

Quum olim *ad nostram audientiam pervenisset, quod dilecti filii* magister S. et B. archidiaconatum et praeposituram ad invicem commutassent, *+magistri eiusdem* [*B.*] *obtentu causam super hoc bonae memoriae Matisconensi episcopo duximus delegandam. Quumque idem B. ad praesentiam nostram postmodum accessisset, ut in negotio sine suspicione procederet, obtentu ipsius dilectum filium abbatem Cluniacensem eidem episcopo duximus adiungendum. Verum quum propter abbatis absentiam non fuisset a delegatis ipsis pariter in causa processum, utraque partium se nostro conspectui praesentavit, et audientiam obtinuit coram nobis. Et* Licet praedictus magister ab initio sponte fuerit de permutatione confessus, idem tamen B. eam inficiabatur omnino, *assertive* proponens, quod *et* ipse praepositurum sine conditione qualibet resignavit, et post *liberam* resignationem praedicti magistri archidiaconatum fuerat assecutus: *+licet magister ipse* [*G.*] **proponeret ex adverso, ipsum secum diutius de permutatione tractasse, et complevisse tandem in manibus venerabilis fratris nostri Eduensis episcopi quod tractaverat. * (Et infra:* [*cf. c.* 33. **de off. iud. del. I. ** 29.]) Quum ergo nobis *tum per publicam famam, tum per validam praesumptionem et probationem etiam manifestam* constaret, quod ipse B. suum praestiterit permutationi consensum, praedictus autem

magister suum publice fateretur errorem, et hunc praepositura, et illum archidiaconatu curavimus spoliare, super hoc diffinitivam contra eos sententiam proferentes. [*Tandem vero etc. Dat. Lat. Id. Ian. Ao. V. * 1203.]

Chapter VIII

Latin source headnote: If an exchange of benefices has been completed on one side, and it is due to the other that it is not fulfilled, the party is restored to his benefice, and to this extent the law contains this.

The same, to the Archbishop and Provost of Saint Andrew of Cologne.

Since pastoral care of all *the faithful has been committed to us by the Lord Jesus Christ himself, it is known to be expedient for our solicitude that we ought so to support all persons in their reasons that the rights of some do not sustain loss in the sight of the church, but ought to remain firm and unimpaired.* We have understood, *from the report of our beloved son* G., a canon *of Saint John in Liège,* that, when he and the cleric L., *led by a certain lightness of mind,* began to treat between themselves concerning an exchange of their prebends, which they believed to threaten the utility of each, nevertheless, *on occasion of the said exchange,* after the prebend of that G., *which he had had in the church of Saint Mary of Namur,* had been assigned to a certain kinsman of his, that same *cleric* L. was unwilling to resign his prebend to G. as he had promised, *and thus the same G., as he asserts, remained altogether frustrated of his hope. And when there had been litigation concerning this for a long time in the presence of our venerable brother the Bishop of Liège, that same L. finally appealed to the Apostolic See; and when the said G.* [*approached our presence*] *not without great danger and labor, the same L. neither came nor took care to send a sufficient respondent on his behalf.* Therefore, since the laws assist those deceived and not those deceiving, and fraud and deceit ought to furnish patronage to no one, although by themselves they could not by law exchange ecclesiastical benefices, nevertheless, so that pardon may be granted to simplicity, *by apostolic writings we command* your discretion that, if it is established that the aforesaid G. was thus deceived, after removing from his prebend, *which he is said to have possessed for a long time,* the kinsman of L. himself or any other unlawful holder, you cause it, *with the obstacle of appeal removed,* to be restored to him *and cause him to enjoy its peaceful possession* [*etc.*]

Si permutatio beneficiorum completa est ex una parte, et per alteram stat, quo minus impleatur, restituitur pars ad suum beneficium, et secundum hoc continet ius.

Idem Archiepiscopo et Praeposito sancti Andreae Coloniensibus.

Quum universorum +*fidelium ab ipso Domino Iesu Christo pastoralis sit nobis cura commissa, sollicitudini nostrae dignoscitur expedire, ut sic debeamus quoslibet in suis rationibus confovere, quod aliquorum iura in conspectu ecclesiae dispendium non sustineant, sed firma et illibata debeant permanere*. Intelleximus *siquidem dilecto filio* G. canonico *S. Ioannis in Leodio* referente, quod, quum ipse et L. clericus *ducti quadam animi levitate* de permutatione praebendarum suarum inter se tractare coepissent, quam utilitati utriusque imminere credebant, tamen idem L. *clericus occasione dictae permutationis* praebenda eiusdem G., *quam in ecclesia S. Mariae Namurcensis habuerat*, cuidam consanguineo suo assignata, praebendam suam ei, sicut promiserat, noluit resignare, +*et sic idem G., ut asserit, sua spe remansit omnino frustratus. Quumque super hoc in praesentia venerabilis fratris nostri Leodiensis episcopi fuisset diutius litigatum, tandem idem L. sedem apostolicam appellavit, et, quum dictus G. * [*ad nostram praesentiam*] *non sine magno periculo et labore accessisset, idem L. nec venit, nec pro se curavit sufficientem mittere responsalem*. Quum igitur deceptis, et non decipientibus iura subveniant, fraus etiam et dolus nemini debeant patrocinium impertiri, licet ipsi per se de iure non possent ecclesiastica beneficia permutare, ut tamen simplicitati venia tribuatur, *discretioni*

vestrae per apostolica scripta mandamus, quatenus si constiterit, praetaxatum G. taliter fuisse deceptum, amoto a praebenda sua, *quam diu dicitur possedisse*, consanguineo ipsius L. vel quolibet alio illicito detentore, eam *sublato appellationis obstaculo* restitui faciatis eidem *et eundem ipsius pacifica possessione gaudere* [*etc.*].

Chapter IX

Latin source headnote: A spiritual thing cannot be exchanged for a temporal thing.

Gregory IX, to the Abbots of Bél and Pannonhalma.

A petition exhibited to us by [*our beloved sons*] the abbot and convent of Saint Martin of Pannonia contained that, when concerning the cause disputed between them on one side and the Provost of Alba on the other concerning certain tithes [*and a certain arbitral award issued concerning them,*] [*after diverse commissions to our beloved son E., subdeacon,*] they obtained our letters to C., our chaplain then dwelling in Hungary, [*finally*] he and Master M., [*Archdeacon of Sásvár,*] to whom on each side, [*with the other party procuring it,*] the matter was submitted as to arbiters, [*thus*] arbitrated: if the said provost obtained from [*our dearest son in Christ, the illustrious*] King of Hungary that ten thousand royal solidi [*which they hold at Pressburg*] be granted [*by him*] to the aforesaid monastery, [*in such a way that in the same place they should place its aforesaid abbot and convent in possession of the aforesaid salt revenues,*] they would cease from seeking the same tithes. [*But afterward, although the king himself granted those salt revenues to the said monastery by his letters, nevertheless the aforesaid provost and chapter, neither at the appointed term nor after it, though awaited through many other terms, gave them possession of those salt revenues; although the aforesaid abbot, after first protesting that he had not been inducted into possession by them, induced by the requests of certain persons and compelled by certain threats and terrors, received fifty marks of Friesach money for the revenue of the salt for one year. And when, after a further space of a year had been granted to them, they determined to wait uselessly as before, finally, after manifold complaints, he issued the voice of appeal to us, fixing for himself as a term the octaves of the blessed Apostles Peter and Paul most recently past. Finally constituted in our presence, he humbly supplicated that, since the same provost and chapter had not obeyed the condition contained in the arbitral award, we command, notwithstanding it, that answer be made in full to that monastery concerning the aforesaid tithes.*] Therefore, [*by apostolic writings we command*] your discretion that, if the foregoing is established to you, since an exchange of spiritual things for temporal things is disapproved, you, [*by our authority without the loss of delay and with the impediment of appeal removed,*] decree invalid the aforesaid arbitral award and whatever followed from it or on account of it, [*and afterward concerning the tithes, etc. Given at Rieti, on the thirteenth day before the Kalends of November, in the fifth year.* 1231.]

Spirituale cum temporali permutari non potest.

Gregorius IX. Beton. et Fungin. Abbatibus.

Exhibita nobis [*dilectorum filiorum*] abbatis et conventus sancti Martini de Pannonia petitio continebat, quod, quum super causa, quae inter ipsos ex una parte, et praepositum Albanensem ex altera super quibusdam decimationibus [*et arbitrio quodam super his prolata*] vertebatur, [*post diversas commissiones ad dilectum filium E. subdiaconum*] ad C. capellanum nostrum, tunc in Hungaria commorantem, nostras literas impetrassent, [*demum*] ipse ac magister M. [*archidiaconus de Saswar*] in quos utrinque tanquam in arbitros [*procurante parte altera*] exstitit compromissum, [*taliter*] arbitrati fuerunt, quod, si dictus praepositus obtineret decem millia solidorum regalium [*quae tenent in Posonio*] a [*carissimo in Christo filio nostro illustri*] rege Hungariae [*ab ipso*] concedi monasterio memorato, [*ita quod in eodem loco ponerent eius praefatos abbatem et conventum in possessionem salium praedictorum*] ipsi ab earundem decimationum

petitione cessarent. +[*Postmodum vero licet sales ipsos dicto monasterio rex ipse per literas suas concesserit; tamen praepositus et capitulum supradicti nec in termino constituto, nec post illum et plures alios exspectati possessiones ipsorum salium dederunt eisdem, quamvis iam dictus abbas protestatione praemissa, quod non erat in possessionem inductus ab eis, L. marcas frisaticorum pro reditu salium unius anni, precibus quorundam inductus et compulsus quibusdam minis et terroribus recepisset. Quumque indulto adhuc ipsis anni spatio inutiliter, sicut prius, duxerint exspectandum; demum post querelas multiplices vocem ad nos appellationis emisit, octavas BB. App. Petri et Pauli proximo praeteritas sibi terminum praefigendo; qui tandem in nostra praesentia constitutus humiliter supplicavit, ut quum iidem praepositus et capitulum conditioni non paruerint, quae in arbitrio continetur, mandaremus, eo non obstante de iam dictis decimationibus eidem monasterio integre responderi.*] Quocirca [*discretioni vestrae per apostolica scripta*] mandamus, quatenus, si vobis constiterit de praemissis, quum permutatio de spiritualibus ad temporalia improbetur, praedictum arbitrium, et quicquid secutum est ex eo vel ob id, [*absque morae dispendio auctoritate nostra, sublato appellationis impedimento,*] irritum decernatis, [*super decimis postmodum etc. Dat. Reate XIII. Kal. Nov. Ao. V.* 1231.]

Title XX: On Fiefs

Chapter I

Latin source headnote: If a lord receives a fief from a vassal in pledge, abstaining from his service, he is not bound to compute the fruits toward the principal. This it says according to the common understanding, and it is a singular case not read elsewhere.

Innocent III, to the Bishop of Marsico.

By the intimation of the present letters, we declare *to you* that the pledge which you are known to have received from M. concerning a fief of your church, *with the consent of his brother Wifred acceding,* can be freely retained by you without the fruits being computed toward the principal, namely, in such a way that, for as long as you receive those fruits without their being computed toward the principal, that same M. is meanwhile immune from the service in which he is bound to you and your church for the fief itself. [*Given at Rome at Saint Peter's, on the Kalends of March, in the ninth year of our pontificate.* 1206.]

DE FEUDIS.

Si dominus a vasallo recipit feudum in pignus, abstinendo ab eius servitio, non tenetur computare fructus in sortem. H. d. secundum intellectum communem, et est casus singularis, qui alibi non legitur.

Innocentius III. Mariensi Episcopo.

Insinuatione *tibi* praesentium declaramus, quod gageria, quam de feudo ecclesiae tuae ab M. dignosceris recepisse, *Wiffredi fratris eius accedente consensu*, a te potest libere detineri, fructibus non computatis in sortem, ita videlicet, ut, quam diu fructus illos perceperis in sortem minime computandos, idem M. a servitio, in quo tibi et ecclesiae tuae pro feudo ipso tenetur, interim sit immunis. [*Dat. Rom. ap. S. Petr. Kal. Mart. Pont. nostr. Ao. IX. * 1206.]

Chapter II

Latin source headnote: It sets forth three cases in which, notwithstanding an oath not to enfeoff, a bishop can grant to a new vassal an ancient fief reverted to the church. This it says, and it is a notable case interpreting the oath concerning alienation.

Innocent III, to the Archbishop of Milan.

It was disclosed to our apostolate on your behalf that you have often doubted whether, when it happens that your vassal dies and his fief reverts to you, it is lawful for you to give his fief to another, although you are bound by oath not to enfeoff anew without consulting the Roman Pontiff. Furthermore, if it should happen that your vassal alienates a fief, whether you can invest his son or kinsman, a partner in that fief, with it. Another *of your* doubts also contained whether, when you find an alienated fief that you cannot easily recover by yourself, you can grant that fief to a layman who may both recover it and acknowledge it as a fief through the church. (*And below:*) Therefore, in the first case, freely grant the fief of the deceased if you see it to be expedient; in the second, invest the son or kinsman of the alienator; and in the third, you will lawfully be able to grant the alienated fief to him through whom the church itself can recover it. [*Given at Ferentino, on the tenth day before the Kalends of November, in the eleventh year of our pontificate.* 1208.]

> Ponit tres casus, in quibus, non obstante iuramento de non infeudando, potest episcopus antiquum feudum ad ecclesiam reversum novo vasallo concedere H. d. et est casus notabilis, interpretans iuramentum de alienando.
>
> Innocentius III. Mediolanensi Archiepiscopo.
>
> Ex parte tua nostro est apostolatui reseratum, quod saepius dubitasti, utrum, quum contingit vasallum tuum decedere, et ad te feudum ipsius redire, feudum eius alii liceat tibi dare, quamvis iuramento tenearis adstrictus non infeudare de novo Romano Pontifice inconsulto. Ad haec, si vasallum tuum feudum alienare contingat, an ipsius filium vel consanguineum eiusdem feudi consortem de ipso valeas investire. Alia quoque *tua* dubitatio continebat, ut, quum feudum alienatum repereris, quod per te facile recuperare non potes, utrum possis alicui laico in feudum illud concedere, qui et illud recuperet, et in feudum per ecclesiam recognoscat. (*Et infra:*) In primo ergo casu feudum decedentis libere, si videris expedire, concedas, atque in secundo filium vel consanguineum alienantis investiens, in tertio feudum alienatum poteris ei licenter concedere, per quem ipsa ecclesia valeat rehabere. [*Dat. Ferentini X. Kal. Nov. Pont. nostr. Ao. XI. * 1208.]

Title XXI: On Pledges and Other Securities

Chapter I

Latin source headnote: Property of a church ought not to be pledged except from necessity and for a reasonable cause.

From the Council of Reims.

Let no priest presume to give a chalice, paten, *altar cloth,* priestly vestment, or ecclesiastical book as a pledge to an innkeeper, merchant, or any layman or woman, unless the most just necessity presses, [*because so great is the sanctity of the sacred ministry, etc.*]

> **DE PIGNORIBUS ET ALIIS CAUTIONIBUS.**
>
> Res ecclesiae pignorari non debent nisi ex necessitate et rationabili causa.
>
> Ex concilio Remensi.
>
> Nullus presbyter praesumat calicem, vel patenam, *aut pallam altaris*, vel vestimentum sacerdotale, aut librum ecclesiasticum tabernario, vel negotiatori, aut cuilibet laico vel feminae in vadium dare, nisi iustissima necessitate urgente, [*quia tanta est sanctitas sacri ministerii etc.*]

Chapter II

Latin source headnote: A free man cannot be pledged.

Gregory III, to the Bishop of Exeter.

The bearer of the present letters, [*Cosmas the Syrian, reported that he contracted a debt in the business he conducted, which, with many others and his tears attesting it, we believed to be true. And because he owed one hundred and fifty solidi, I wished his creditors to agree upon something with him,*] *because also* the law holds that a free man is not to be detained for a debt, even if property that can be assigned for the debt is lacking. *Therefore the creditors, etc.*

> Liber homo non potest pignorari.
>
> Gregorius III. Exonensi Episcopo.
>
> Lator praesentium +[*Cosmas Syrus in negotio, quod agebat, debitum se contraxisse perhibuit, quod et multis aliis et lacrimis eius attestantibus verum esse credidimus. Et quia CL. solidos debebat, volui, ut creditores illius cum eo aliquid paciscerentur,*] *quoniam et* Lex habet, ut homo liber pro debito non teneatur, etsi res defuerint, quae possint pro debito addici. *Creditores ergo etc.*

Chapter III

Latin source headnote: If a rector of a church obligated property of the church for his own act, his heir is compelled to redeem the property and restore it to the church.

Alexander III, to the Bishop of Exeter.

We received from the intimation of the bearer of the present letters that *Alexander, formerly* priest of the church of Offiton, pledged a [*certain*] silver chalice and half of one breviary of that church for his own necessity, and, overtaken by death, did not recover them. Hence, because it is unworthy that its property, *and* especially things assigned to sacred ministries, ought thus to perish from the same church, *by apostolic writings we command* your fraternity that, if what is asserted is true, you diligently admonish *and* compel his son *Walter,* who is said to obtain a right from succession to his patrimony, to recover those things and restore them to the aforesaid church. *But if he is unwilling to do this, do not delay to restrain him with the bond of anathema.*

> Si rector ecclesiae pro facto proprio rem ecclesiae obligavit, cogitur eius heres rem redimere, et ecclesiae restituere.
>
> Alexander III. Episcopo Exoniensi.
>
> Ex praesentium latoris insinuatione accepimus, quod *Alexander quondam* sacerdos ecclesiae de Offitona calicem [*quendam*] argenteum, et medietatem unius breviarii eiusdem ecclesiae pro sua necessitate pignori obligavit, et ea morte praeventus minime recollegit. Unde quoniam indignum est, ut eidem ecclesiae res suae, *et* praesertim quae sacris ministeriis deputatae sunt, taliter debeant deperire, *fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus, si verum est quod asseritur, filium eius *Walterum*, qui ex successione ipsius patrimonii ius dicitur obtinere, moneas *diligenter* et compellas, ut ea recolligat et restituat ecclesiae memoratae. *Quod si facere noluerit, eum vinculo anathematis non differas coercere*.

Chapter IV

Latin source headnote: If a usurer buys a thing under an agreement that after a time he will restore it to the seller, receiving something beyond the principal, but with its fruits computed toward it, the contract is adjudged a loan at interest.

Innocent III, to G., Our Subdeacon, and P., Canon of Pisa.

We believe you to flourish with that gift of knowledge *by which you clearly know what the law is concerning that about which you wished to consult us. Nevertheless, because you petitioned to be instructed by our response, lest decision of the business be prolonged under expectation of that response, we thought that we should answer you by the present letters.* Indeed, you intimated to us *by your letters* that, *when* we thought that the cause disputed between H. and B., sons of G. de Cosa, on one side, and G., daughter of Tebert, and her heirs on the other, concerning certain lands pledged to the aforesaid persons for twenty-three pounds, should be committed to you, *giving you a mandate by our letters that you take care, by the penalty promulgated against usurers in the Lateran Council, to compel G. herself and her heirs to restore to the complainants the vineyards and whatever they had received from them beyond the principal, you took care to cite the parties so that you might proceed in the aforesaid business according to our mandate. And when they were constituted in your presence,* it was proposed *before you* on behalf of the aforesaid G. and her heirs that the lands that H. and B. sought from them were not obligated as a pledge but sold purely, as was contained *more fully* in the instrument drawn up therefrom. But the aforesaid H., on behalf of himself and his brother, firmly asserted that the lands were not sold purely but obligated as a pledge, since such a condition had been added to the aforesaid sale: if from the time of the contract until the next two years the purchase displeased the aforesaid T., G., father of H., ought from then until *one* year to give twenty-six pounds, with the fruits received computed in them, *as he firmly asserted was contained in the same instrument.* But because, *as you indicated in the same letters,* you doubt whether it is a pure and absolute sale or the aforesaid contract ought to be adjudged a pledge, *you petitioned to be instructed by our letters. But we* answer your consultation in this manner: whatever the intention of the contracting parties was, and although from the form of the contract the sale appears not conditional but pure, even if it can be dissolved by a condition, nevertheless from the two things that were expressed in the agreement—namely, that the fruits received ought to be counted in payment of the money, and that sixty solidi ought to be paid beyond the sum received—a strong presumption arises against the purchaser himself, especially since he has been accustomed to practice usury *and commit the fraud of usury.* [*Given at Ferentino, on the fifth day before the Nones of July.* 1203.]

> Si usurarius emit rem eo pacto, quod post tempus restituat eam venditori, recipiendo aliquid ultra sortem, fructibus tamen in ea computatis iudicatur contractus foeneratitius.
>
> Innocentius III. G. Subdiacono nostro et P. Canonico Pisano.
>
> Illo vos credimus scientiae dono vigere, *+quod super eo, de quo nos consulere voluistis, quid iuris sit liquido cognoscatis. Quia tamen nostro postulastis edoceri responso, ne sub ipsius exspectatione responsi decisio negotii prorogetur, praesentibus vobis literis duximus respondendum*. Sane *per vestras literas* intimastis nobis, quod, *quum* causam, quae vertitur inter H. et B. filios G. de Cosa ex una parte, et G. filiam Teberti et heredes ipsius ex altera super quibusdam terris, praefatis personis pro viginti tribus libris pignori obligatis, vobis duximus committendam, *+dantes vobis per literas nostras in mandatis, ut ipsam G. et heredes ipsius ad restituendas vineas, et quicquid ultra sortem perceperant ex eisdem, restituere conquerentibus per poenam in Lateranensi concilio contra usurarios promulgatam cogere curaretis, vos, ut iuxta mandatum nostrum procederetis in*

negotio memorato, partes citare curastis. Quumque essent in praesentia vestra constitutae, Ex parte praedictae G. et heredum eius fuit propositum *coram vobis,* terras, quas iidem H. et B. repetebant ab eis, non esse pignori obligatas, sed pure venditas, sicut in instrumento confecto exinde *plenius* continebatur. Praefatus vero H. pro se ac fratre suo firmiter asserebat, terras non esse pure venditas, sed pignori obligatas, quum venditioni praedictae talis fuerit adiecta conditio, ut, si a tempore contractus usque ad duos proximos annos praefato T. emptio displiceret, G. pater H. ab inde usque ad annum *unum* viginti sex libras, perceptis fructibus computatis in ipsis, dare deberet, *sicut in eodem instrumento asserebat firmiter contineri.* Verum quia, *sicut in eisdem literis denotastis,* ambigitis, utrum pura sit et absoluta venditio, an praefatus contractus pignus debeat iudicari, *per nostras postulastis literas edoceri. Nos autem consultationi vestrae taliter* respondemus, quod, qualiscunque fuerit intentio contrahentium, et ex forma contractus venditio non appareat conditionalis, sed pura, quamvis per conditionem possit resolvi, ex duobus tamen, quae in pacto fuerunt expressa, videlicet, quod fructus percepti deberent in solvenda pecunia numerari, et quod ultra summam receptam LX. solidi deberent persolvi, contra ipsum emptorem praesumitur vehementer, praesertim quum usuras consueverit exercere, *fraudemque committere usurarum. * [*Dat. Ferentini V. Non. Iul.* 1203.]

Chapter V

Latin source headnote: A woman proceeds for her dowry against anyone detaining the husband's goods.

The same, to the Bishop of Aquino.

We received from the letters of your fraternity that, *when* we thought that the cause disputed between R. *of* [*Saint*] *George* and the woman A. [*of Saint*] *Germano* should be committed to you, *when for almost two years you had endeavored that the cause be ended by agreement, but the parties did not acquiesce, after summoning prudent men and examining more diligently the merits of the aforesaid cause, you thought, by the counsel of prudent men, that the same business should be remitted to our presence, especially for this reason: that it appeared specially to pertain to royal judgment.* Indeed, it was *clearly* proved that, after an offense was committed by the husband of the aforesaid woman and he sought flight, both the husband's brother, namely, the aforesaid R., and the woman herself, although less justly, were captured by R., then Count of Caserta and royal justiciar; and that at his mandate all the goods of the offender *were* sold, and money [*was*] paid to the merchant who had been wounded by the husband of *the said* woman and despoiled of his own goods. *But the sale of those goods was made through the aforesaid R., although at the mandate of the aforesaid justiciar.* Yet certain possessions of that man remained with the same R., *the woman's brother-in-law,* which that *R.* retained at the mandate of the court, after paying money for them to the aforesaid merchant, because, *as he says,* no other purchaser existed on account of the smallness of the possessions. But the woman's party *firmly alleged that, since a dowry is preferred to all creditors, and all the husband's goods were obligated to that woman on account of her dowry, since the woman was not culpable in this, she ought not to lose her dowry; on this account* she insistently sought that the valuation of the dowry be restored to her, or that by virtue of the delegation she be inducted into the possessions that had belonged to her husband, *asserting that her husband's fault ought in no way by law to harm her. But the man's party answered to the contrary that he was not bound* [*to her*] *to answer in any way concerning these things, because nothing had been sold from the goods of the woman's husband by his will or authority, but the fisc had caused them to be seized and commanded them to be sold, which he also proved by the assertion of witnesses. Indeed, when the woman's party said that some possessions of her husband remained that had not been sold, and petitioned to be satisfied from them, you diligently inquired of each party how great the sum of*

money was that had been paid to the merchant, and from the confession of each it was established to you that immovables up to twenty-four ounces of gold had been alienated. But the aforesaid R. said that he had added eighteen [*ounces*] *to those twenty-four ounces and completed for the merchant the number of forty-two ounces of gold. The aforesaid R. also alleged that, since there were five sons of one father and all succeeded to the paternal goods, when the whole inheritance had been valued, nothing came to the husband of that woman from the paternal inheritance worth beyond twenty-four ounces of gold.*

But because the same cause remitted to us was not sufficiently instructed, nor was it established to us whether the woman had given as dowry the ten pounds of tarins that she sought, or whether R. himself possessed anything from the goods pertaining to his brother, the husband of the aforesaid woman; nor could we have insisted upon examination of the cause, both because, as you say, allegations and proofs had been renounced in your presence, and because suitable and sufficient respondents had not come to our presence: we thought that the same cause should be remitted to your examination. By apostolic [*writings we command you*] that, if it is established to you from the things proposed and proved in your presence that the woman gave to the man as dowry what she says and that the aforesaid R. possesses some of his brother's goods—since much favor is owed to women in recovering dowries, and it is *also* provided in law that a woman ought not to remain without dowry on account of the wrongdoing of her husband, since the husband's goods are also tacitly obligated to the woman for her dowry and have passed with their burden to any possessor—you condemn the aforesaid R., *appeal being removed,* to restitution of the dowry to that woman to the extent that he is known to possess goods of his aforesaid brother. [*Given at Rome at Saint Peter's, on the second day before the Ides of February.* 1205.]

> Mulier agit pro dote contra quemlibet detinentem bona mariti.
>
> Idem Episcopo Aquinati.
>
> Ex literis fraternitatis tuae accepimus, quod, *quum* causam, quae vertitur inter R. *de* [*sancto*] *Georgio* et A. mulierem [*de sancto*] *Germano*, tibi duximus committendam, *+quum fere per biennium studuisses, ut eadem causa concordia finiretur, partibus non acquiescentibus, adscitis viris prudentibus, praedictae causae meritis diligentius examinatis, idem negotium de prudentum consilio ad nostram duxisti praesentiam remittendum, ea maxime ratione, quia videtur hoc ad regium iudicium specialiter pertinere*. Si quidem probatum est *evidenter*, quod pro facinore a marito praedictae mulieris commisso eo fugam petente, tam frater mariti, praefatus videlicet R., quam ipsa mulier, licet minus iuste, ab *R. comite Casertano tunc* regio iustitiario capti fuerint, et de ipsius mandato bonorum omnium delinquentis *fuit* facta distractio, et soluta [*est*] pecunia mercatori, qui a marito *dictae* mulieris vulneratus fuerat et rebus propriis spoliatus; *per praedictum autem R. illorum bonorum venditio facta fuit, de mandato tamen iustitiarii ante dicti;* sed quaedam possessiones illius penes eundem R. *mulieris sororium* remanserant, quas idem *R.* de mandato curiae retinuit, soluta pro eis pecunia praedicto mercatori, quia emptor alius, *sicut dicit*, propter possessionum minutias non exstabat. Pars vero mulieris *firmiter allegabat, quod, quum dos omnibus creditoribus praeferatur, et omnia bona mariti eidem mulieri propter dotem fuerint obligata, quum mulier in hoc non fuisset culpabilis, dotem suam amittere non debebat; propter quod* aestimationem dotis instantius petebat sibi restitui, vel in possessiones, quae mariti fuerant, ex officio delegationis induci, +*asserens culpam viri sui nequaquam ei de iure debere nocere. Pars autem viri e contrario respondebat, se non debere * [*ipsi*] *super his aliquo modo respondere, quia nihil voluntate vel auctoritate sua distractum fuerat de bonis mariti mulieris ipsius, sed fiscus ea capi fecerat et mandaverat distrahenda, quod et testium assertione probavit. Sane quum pars mulieris diceret, de possessionibus viri sui aliqua remansisse, quae distracta non fuerant, et ex eis sibi satisfieri postularet, ab utroque studiosius inquisisti, quanta fuisset pecunia, quae soluta fuerat mercatori, et ex confessione tibi constitit utriusque, quod de immobilibus usque ad XXIV. uncias auri alienatum exstiterat, sed praescriptus R. dicebat, se XVIII.* [*uncias*] *illis XXIV. unciis addidisse, et XLII.

unciarum auri complevisse numerum mercatori. Allegabat quoque praedictus R., quod, quum quinque filii essent unius patris, et omnes in bonis paternis succederent, facta aestimatione totius hereditatis non proveniebat ad maritum mulieris ipsius de hereditate paterna quod ultra XXIV. uncias auri valeret. Quia vero ad nos eadem causa remissa non fuit sufficienter instructa, nec nobis constitit, utrum X. libras Tarenorum, quas petebat mulier, dedisset in dotem, aut idem R. aliquid possideat de bonis, pertinentibus ad fratrem suum, virum mulieris praedictae, nec potuissemus examinationi causae insistere, tum quia in praesentia tua renunciatum fuerat allegationibus et probationibus, sicut dicis, tum quia idonei et sufficientes ad nostram praesentiam non venerant responsales: eandem causam tuo duximus examini remittendam; per apostolica * [*tibi*] *scripta praecipiendo* Mandamus, quatenus, si tibi constiterit ex his, quae in praesentia tua fuere proposita et probata, quod mulier dicit viro dedisse in dotem, et praedictum R. de bonis fratris aliqua possidere, quum mulieribus favor multus in recuperandis dotibus debeatur, et cautum *etiam* sit in iure, quod propter maleficium viri mulier remanere non debeat indotata, quum etiam bona viri mulieri sint pro dote tacite obligata, et cum suo onere transierint ad quemlibet possidentem; R. praedictum eidem mulieri ad restitutionem dotis eatenus *appellatione remota* condemnes, quatenus de bonis fratris sui praefati noscitur possidere. [*Dat. Rom. ap. S. Petr. II. Id. Febr.* 1205.]

Chapter VI

Latin source headnote: If the creditor, or one who has a cause from him, has received so many fruits from the pledge that the principal has been satisfied, the pledge ought to be restored to the debtor.

The same, to R. of Montefortino.

When you moved a question in our presence against *the noble man* G., a citizen of Anagni, concerning certain possessions that formerly L. de Saul, your father, had obligated for a certain quantity of money and the heirs of that creditor had pledged to the aforesaid G., *we appointed for you and him as auditor our beloved son P. de Saron., our subdeacon and chaplain. Therefore, constituted in our presence,* you lawfully proved that *the possessions themselves had been obligated by title of pledge,* and that so much had been received from their proceeds, both by that G. and by others who held them from the time when they were obligated, that the fruits could be equated with the principal. We therefore, attending that in such matters receipt of the fruits accrues toward payment of the principal, since according to the canonical sanctions the fruits ought to be restored and computed toward the principal, and also considering that the possessions themselves had already wholly exhausted the entire burden and annulled the debt, *by the counsel of our brothers* decreed that they were to be restored to you, and caused you to be inducted into corporal possession through our messenger.

Si creditor vel is, qui ab eo causam habet, tot fructus percepit ex pignore, quod satisfactum est sorti, debet pignus restitui debitori.

Idem R. de Monte Fortino.

Quum contra *nobilem virum* G. a civem Anagninum super quibusdam possessionibus, quas quondam pater tuus L. de Saul pro certa quantitate pecuniae obligaverat, et ipsius creditoris heredes praedicto G. pignoraverant, movisses in nostra praesentia quaestionem, *tibi et ei dilectum filium P. de Saron. subdiaconum et capellanum nostrum concessimus auditorem. Constitutus igitur in nostra praesentia* legitime probavisti, quod *possessiones ipsae pignoris titulo fuerunt obligatae, ac* ex earum proventibus tantum fuerat tam ab eodem G. quam ab aliis, qui eas tenuerant, a tempore, quo fuerant obligatae, perceptum, quod fructus sorti poterant adaequari. Nos igitur attendentes, quod in talibus perceptio fructuum in solutione sortis accedat, quum secundum canonicas sanctiones fructus restitui, et in sortem debeant computari,

considerantes etiam, quod possessiones ipsae iam extenuassent penitus totum onus et debitum annullassent, *de consilio fratrum nostrorum* ipsas tibi restituendas esse decrevimus, et te per nuncium nostrum in possessionem induci fecimus corporalem.

Chapter VII

Latin source headnote: If one who pledged his property under an agreement of a forfeiture clause and swore not to contravene was justly impeded from redeeming it within the appointed day, he will be able to redeem it after the day.

The same.

It became known to us from the signification of *our beloved son* R., a citizen of Pisa, that, when he had pledged his house *with a garden* to G., a citizen of Pisa, for two hundred and fifty pounds, and had promised under oath that, unless he recovered the house itself within the term appointed *between them,* he would not thereafter trouble *the same* creditor concerning it, within the appointed time he remitted counted money to the creditor through a certain and faithful messenger, as it appeared to him. Acting unfaithfully, that messenger did not pay it as had been enjoined upon him, and afterward the same R., *captured and* detained by the emperor, could not satisfy the said G. as he ought. *Now, restored by God's grace to his former liberty, he is prepared to return the money to the creditor, although the latter wholly* refused [*to receive it,*] *because it was not paid to him at the appointed term.* Therefore, since an agreement of a forfeiture clause is disapproved in pledges, and the aforesaid R., insofar as it lay with him, fulfilled the debt of his oath, since through one whom he hoped to be a certain [*and faithful*] messenger he remitted the money at the appointed term, but, *while* detained in *imperial* captivity, could not satisfy the creditor, *by authority of the present letters we command* your discretion that, if it is thus, you compel by ecclesiastical censure, *after previous admonition and with the obstacle of contradiction and appeal removed,* the aforesaid creditor to be *content with his* principal, with the revenues of *the aforesaid* pledge computed toward it, and to resign *that house and garden* to the aforesaid R., every delay being set aside, notwithstanding such an agreement or oath. [*Given at the Lateran.* 1198.]

Si is, qui sub pacto legis commissoriae pignoravit rem suam, et iuraverit non contravenire, iuste impeditus infra diem statutum non redemit, post diem redimere poterit.

Idem.

Significante *dilecto filio* R. cive Pisano nobis innotuit, quod quum domum suam *cum horto* G. Pisano civi pro CCL. libris pignori obligasset, ac promisisset praestito iuramento, quod, nisi domum ipsam statuto *inter eos* termino recolligeret *eundem* creditorem ulterius super ea minime molestaret, infra statutum tempus per certum et fidelem nuncium, prout ei videbatur, creditori pecuniam numeratam remisit, quam idem nuncius, infideliter agens, sicut ei iniunctum fuerat non persolvit, et postmodum idem R. ab imperatore *captus pariter et* detentus, dicto G. satisfacere non potuit ut debebat. +*Nunc per Dei gratiam libertati pristinae restitutus, paratus est pecuniam reddere creditori, licet ipse prorsus* [*eam*] *recusaret recipere, quia ei non fuit statuto termino persoluta*. Quum igitur pactum legis commissoriae sit in pignoribus improbatum, et praedictus R., quantum in eo fuit, iuramenti debitum adimplevit, quum per eum, quem certum [*et fidelem*] nuncium esse sperabat, pecuniam remiserit termino statuto, sed, *dum fuit* in *imperiali* captione detentus, satisfacere non potuit creditori, *discretioni vestrae praesentium auctoritate* mandamus, quatenus, si est ita, praedictum creditorem, ut sorte *sua* contentus *exsistat*, pensionibus *praefati* pignoris computatis in eam, *et domum* illam *et hortum* praefato R. omni dilatione postposita resignet, pacto tali vel iuramento

nequaquam obstante, censura ecclesiastica *admonitione praemissa, sublato contradictionis et appellationis obstaculo*, cogatis. [*Datum Laterani* 1198.]

Chapter VIII

Latin source headnote: A usufructuary gives security that he will enjoy immovable things with their substance preserved, and, when the usufruct has ended, restores the money and valuation of movables that are consumed by use.

Gregory IX.

Since it is established that the woman I., wife of Ogerius, succeeded her son as to usufruct in goods whose ownership is known to pertain to the woman M., wife of C., we command that you compel her by ecclesiastical censure to exhibit suitable security that, according to the judgment of a good man, she will use and enjoy immovable things that are not consumed by use with the substance of the things preserved; but that she will restore at her death to the said woman or her heirs the money, if she had or shall have any, and the valuation of goods that are consumed by use and were found in the inheritance.

Usufructuarius cavet, quod fruetur rebus immobilibus salva ipsarum substantia, et pecuniam et aestimationem mobilium, quae consummuntur usu, finito usufructu restituit.

Gregorius IX.

Quum constet I. mulierem uxorem Ogerii quoad usumfructum filio suo successisse in bonis, quorum proprietas ad M. mulierem uxorem C. dignoscitur pertinere, mandamus, quatenus eam ad cautionem idoneam exhibendam, quod utatur et fruatur salva rerum substantia rebus immobilibus, quae usu non consumuntur, ad arbitrium boni viri, pecuniam vero, si quam habuit vel habebit, ac aestimationem bonorum, quae consumuntur usu, et in hereditate inventa fuerint, in morte sua dictae mulieri vel heredibus eius restituat, per censuram ecclesiasticam compellatis.

Title XXII: On Sureties

Chapter I

Latin source headnote: It is brief and cannot be summarized more briefly.

From the Council of Canterbury.

Let a cleric serving in suretyships be cast out.

DE FIDEIUSSORIBUS.

Breve est, nec potest brevius summari.

Ex concilio Cantuariensi.

Clericus fideiussionibus inserviens abiiciatur.

Chapter II

Latin source headnote: A cleric is compelled to preserve a surety harmless through assignment of his revenues.

Lucius III, to the Bishop of Ely and the Archdeacon of Norwich.

It came to us from the complaint *transmitted to us* by R., a cleric *of Saint Albans,* that, when at their insistence he became surety for C. and F., clerics *of London—for one of them, namely Elias, in six, and for the other in seven additional marks of silver—to merchants of Bologna,* and they did not pay the aforesaid money *as one had promised under faith and the other under oath,* he was compelled *to satisfy the aforesaid creditors for them, as had been agreed between them,* concerning it. Therefore, lest *the aforesaid R.* suffer loss whence he appears to have deserved reward, we commanded *our venerable brother I.,* Bishop of Bologna, to inspect the instruments concerning those debts that are with the creditors and not delay to send you transcripts of them marked with his seal. Therefore, *we command and order* your discretion that, if from the confession of the aforesaid clerics or otherwise it is lawfully established to you that the matter stands thus, you admonish them to restore to the aforesaid R., *delay and appeal ceasing,* the money that he paid for them, and to preserve him harmless. Otherwise, *supported by apostolic authority,* cause the aforesaid debts to be paid *in full, appeal being removed,* from their revenues, and also the losses that *the same R.* sustained on this account to be repaired; or assign the aforesaid revenues to him to be retained without molestation until those losses have been repaired and the debts paid without diminution. But if it is established that the aforesaid clerics violated the sanctity of their faith and oath, suspend them *from office and benefice with the obstacle of appeal removed. Moreover, because, etc.* (*cf. c.* 5, *On the Oath of Calumny, II.* 7.) [*Given at Rome at Saint Peter's, on the fifth day before the Ides of December.*]

> Compellitur clericus servare fideiussorem indemnem per assignationem redituum suorum.
>
> Lucius III. Eliensi Episcopo et Archidiacono Norvicensi.
>
> Pervenit ad nos ex *transmissa nobis* conquestione R. clerici *de sancto Albano*, quod, quum ipse pro C. et F. clericis *Lundoniensibus ad eorum instantiam pro altero eorum Helia videlicet in sex, et pro altero in septem aliis marchis argenti* mercatoribus Bononiensibus fideiusserit, illis, *sicut unus fide, alter iuramento promiserant*, praescriptam pecuniam non solventibus, coactus est *praedictis creditoribus pro ipsis, sicut inter eos convenerat*, satisfacere de eadem. Ne igitur *supra dictus R.* dispendium patiatur unde videtur praemium meruisse, *venerabili fratri nostro I.* Bononiensi episcopo dedimus in mandatis, ut super debitis illis instrumenta, quae sunt apud creditores, inspiciat, et eorum transscripta suo sigillo signata vobis mittere non postponat. Mandamus itaque discretioni vestrae *atque praecipimus*, quatenus, si ex confessione praedictorum clericorum vel alias legitime vobis rem ita se habere constiterit, moneatis eosdem, ut memorato R. pecuniam, quam pro eis solvit, *dilatione et appellatione cessante* restituant, ipsumque servent indemnem; alioquin *vos, auctoritate apostolica freti*, de reditibus eorum praescripta debita faciatis *appellatione remota in integrum* exsolvi, et damna etiam, quae *idem R.* propter hoc pertulit, resarciri, aut praedictos reditus sibi assignetis tamdiu sine molestia detinendos, donec ipsa damna resarcita fuerint, et debita sine deminutione soluta. Praefatos vero clericos, si religionem fidei et iuramenti sui eos violasse constiterit, *sublato appellationis obstaculo* ab officio et beneficio suspendatis. *Ceterum, quia etc.* (*cf. c.* 5. *de iur. cal. II.* 7.) [*Dat. Rom. ap. S. Petr. V. Id. Dec.*]

Chapter III

Latin source headnote: A debtor is compelled by canonical censure to absolve from suretyship a surety who is troubled by creditors.

The same, to the Archbishop of Canterbury.

Constituted in our presence, *our beloved son* Master S. showed us by his assertion that, at *the requests* of *Master P. of Blois,* your chancellor, at the time of the Lateran Council, he interceded for him in a certain

sum of money. Because the debtor has not paid it until now, *this man* asserts that he has suffered many troubles from merchants of Bologna, and that the *ancient* debt has been *greatly* increased. Therefore, *because by reason of our office we wish to provide that one who deserved favor not sustain punishment, by apostolic writings we command* your fraternity that, if the truth of an assertion of this kind is lawfully established to you, you compel the aforesaid debtor by ecclesiastical censure, *every favor and fear being set aside and notwithstanding anyone's appeal,* wholly to absolve him from the aforesaid intercession without delay. *But because diverse experiences of diseases compel us to find varied remedies,* by authority of the present letters we also enjoin that, if *perhaps* he denies the debt or its accruals, notwithstanding a custom contrary to law, he be compelled to undergo the oath of calumny. Furthermore, because it would be difficult for the intercessor to bring his witnesses to England, after suitable security has been received from the chancellor himself by the judges of Bologna that he will go or send to hear the witnesses within a competent term, signify to them by your letters that in your stead they receive and examine them, *and question them* diligently; and, transmitting their depositions enclosed, signify how much credence can be given to the instruments or witnesses. *Moreover, if the aforesaid P., having been cited, should contemn to approach your presence or stand in judgment, within thirty days after receipt of these letters render him deprived of his benefice and convert its revenues to payment of the debts until the creditors have been satisfied.*

> Per districtionem canonicam compellitur debitor a fideiussione absolvere fideiusssorem, qui a creditoribus molestatur.
>
> Idem Cantuariensi Archiepiscopo.
>
> Constitutus in praesentia nostra *dilectus filius noster* magister S. sua nobis assertione monstravit, quod pro *magistro P. Blesensi* cancellario tuo tempore Lateranensis concilii *ad preces ipsius* in quadam summa pecuniae intercessit, quam quoniam usque modo debitor non persolvit, *iste* se asserit plurimas a creditoribus Bononiensibus molestias pertulisse, et *antiquum* debitum *plurimum* augmentatum. Ideoque, *quia pro nostro volumus officio providere, ne qui gratiam meruit poenam sustineat, fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus, si legitime tibi de huiusmodi assertione constiterit, praefatum debitorem, ut eum a praedicta intercessione sine dilatione prorsus absolvat, *omni gratia et timore postposito, nullius appellatione obstante* ecclesiastica censura compellas. *Quia vero diversa experimenta morborum varia nos compellunt remedia invenire,* Praesentium quoque auctoritate iniungimus, ut, si *forte* debitum vel accessiones ille negaverit, consuetudine, quae est legi contraria, non obstante, iuramentum calumniae subire cogatur. Praeterea, quia difficile foret intercessori suos testes in Angliam ducere, iudicibus Bononiensibus satisdatione idonea a cancellario ipso accepta, quod ad testes audiendos vadat, vel mittat infra terminum competentem, literis tuis significes, ut eos vice tua recipiant, et examinent *et interrogent* diligenter, et depositiones eorum transmittentes inclusas significent, quanta fides possit instrumentis vel testibus adhiberi. *Ceterum si iam dictus P. citatus praesentiam tuam adire vel iudicio stare contempserit eum infra XXX. dies post harum literarum susceptionem reddas beneficio alienum et reditus eius in debitorum solutionem convertas, quousque fuerit creditoribus satisfactum*.

Chapter IV

Latin source headnote: If without license of the prelate and greater part of the chapter a religious person becomes surety or receives a loan, the church is not liable and the recipient himself is punished, unless the loan was turned to the utility of the church.

Innocent III, in the General Council.

What has been prohibited to certain religious by the Apostolic See we wish and command to be extended to all: namely, that no religious person, without license of the greater part of the chapter and of his abbot, become surety for anyone or receive from anyone a loan of money beyond the sum established by common providence. Otherwise, let the convent in no way be bound to answer for these things, unless perhaps it is manifestly established that it redounded to the utility of that house. And let one who has presumed to come against this statute be subjected to graver discipline.

> Si sine licentia praelati et maioris partis capituli religiosus fideiusserit, vel mutuum acceperit, non tenetur ecclesia, et ipse recipiens punitur, nisi mutuum sit versum in utilitatem ecclesiae.
>
> Innocentius III. in concilio generali.
>
> Quod quibusdam religiosis a sede apostolica est prohibitum, volumus et mandamus ad universos extendi, ne quis videlicet religiosus absque maioris partis capituli et abbatis sui licentia pro aliquo fideiubeat, vel ab aliquo pecuniam mutuam accipiat ultra summam communi providentia constitutam; alioquin non teneatur conventus pro his aliquatenus respondere, nisi forte in utilitatem domus ipsius manifeste constiterit redundasse. Et qui contra istud statutum venire praesumpserit, graviori disciplinae subdatur.

Chapter V

Latin source headnote: It sets forth three cases in which a surety proceeds against a debtor before he pays, so that he may be freed from the suretyship.

Gregory IX.

If the person for whom you obligated yourself as surety has long ceased from payment of the debt, has begun to dissipate his goods, or you have been condemned concerning it, you will by law be able to sue him so that he ought to free you from the suretyship.

> Ponit tres casus, in quibus fideiussor contra debitorem agit, antequam solvat, ut a fideiussione liberetur.
>
> Gregorius IX.
>
> Eum, pro quo te fideiussorem obligasti, si diu in debiti solutione cessavit, aut dissipare bona sua coepit, seu super hoc condemnatus fuisti, iure poteris convenire, ut te a fideiussione debeat liberare.

Title XXIII: On Payments

Chapter I

Latin source headnote: A successor in a benefice is bound to pay debts contracted by his predecessor for the necessity of the church.

Alexander III, to the Dean and Chapter of Thérouanne.

For this purpose we have been constituted, [*although unworthy, by the Lord's ordering upon the watchtower of the Apostolic See: that we extend the acuity of our consideration to all churches and direct our full attention to their advantages and advancement. But it came to our hearing on behalf of your venerable brother the bishop that he is heavily burdened by a great load of debts for the necessities of your church. Hence, as a provident and honorable man, he earnestly requested us to make you solicitous for their repayment. But because it becomes you to be diligent and vigilant for the utility and increase of the church, we command your dignity that, if it should happen that the same bishop migrates from this light before payment of the debts that he contracted for the utility and necessity of*

the church committed to him, until another is substituted in his place you endeavor to pay those debts from the revenues pertaining to his table. When he has been substituted, you shall altogether induce the bishop to payment of those same debts; and] just as a son is bound to pay the debts of his father, so a prelate is bound to pay those of his predecessor contracted for the necessity of the church.

DE SOLUTIONIBUS.

Successor in beneficio tenetur solvere debita praedecessoris pro necessitate ecclesiae contracta.

Alexander III. Decano et Capitulo Morinensibus.

Ad hoc in apostolicae +[*sedis specula sumus, licet immeriti, Domino disponente constituti, ut aciem nostrae considerationis ad universas ecclesias extendamus, et earum commodis et profectibus omnino intendamus. Pervenit autem ad audientiam nostram ex parte venerabilis fratris episcopi vestri, quod ipse pro ecclesiae vestrae necessitatibus magno sit onere debitorum praegravatus. Unde quasi vir providus et honestus nos obnixe rogavit, ut vos pro eis reddendis sollicitos redderemus. Quia vero decet vos pro utilitate ecclesiae et incremento diligentes et vigiles exsistere, dignitati vestrae mandamus, quod, si contigerit eundem episcopum ante solutionem debitorum, quae pro utilitate et necessitate ecclesiae sibi commissae contraxerit, ex hac luce migrare, de reditibus, qui spectant ad mensam eius, donec alius loco eius substituatur, eadem debita solvere studeatis. Quo substituto episcopum ad eorundem debitorum solutionem omnino adducetis, et*] Sicut filius debita patris solvere tenetur, ita praelatus sui praedecessoris pro ecclesiae necessitate contracta.

Chapter II

Latin source headnote: If a prelate obligates the church for the debts of others, he is suspended by the act itself from administration of spiritual and temporal things, and the church is not liable.

Gregory IX, to All Prelates of Churches.

If we wished justly to weigh the [*presumption of certain prelates, to be abhorred by God and men, scarcely any delay should be employed, but the severity of swift vengeance should be exercised against the transgressors. For, as it has reached us by a strong and astounding clamor, certain persons, not content that, adhering to their own advantages and seeking what is their own rather than what is Christ's, they enormously dissipate and consume the churches committed to them, presume, by inventing a new kind of alienation and dissipation, to burden them with the debts of others: granting their seals or sealed letters for contracting loans to certain clerical and lay friends of theirs, on occasion of which they have obligated the aforesaid churches in so great a quantity of money that they are afterward compelled to its payment and can scarcely or never be freed from the burden of debts. Wishing therefore to provide for the indemnity of churches with paternal solicitude, by authority of the present letters*] we firmly forbid anyone to presume [*henceforth*] to burden the church committed to him with the debts of others, or to grant letters or seals to anyone by which churches could be obligated, decreeing that, if the contrary, [*which we do not believe,*] should be attempted, the churches are not bound to payment of such debts. But if anyone should presume henceforth to come against the foregoing, let him know himself to be suspended from administration of spiritual and temporal things. [*Given at Rieti, on the second day before the Ides of February, in the fifth year.* 1232.]

Si praelatus obligat ecclesiam pro alienis debitis, est suspensus ipso facto ab administratione spiritualium et temporalium, et ecclesia non tenetur.

Gregorius IX. universis ecclesiarum Praelatis.

Si quorundam +[*praelatorum praesumptionem deo et nominibus exhorrendam iuste pensare vellemus, pene non esset adhibenda dilatio, sed in transgressores celeris vindictae severitas exercenda. Sicut enim ad nos valido et stupendo*

clamore pervenit, quidam non contenti, quod, propriis commodis inhaerentes et quaerentes potius quae sua sunt, quam quae Christi, commissas sibi ecclesias enormiter dilapidant et consumant, dum novo alienationis et dilapidationis genere adinvento eas praesumant alienis debitis onerare: sigilla sua, seu literas sigillatas de contrahendo mutuo quibusdam amicis suis clericis et laicis concedendo, quarum occasione praedictae ecclesiae in tanta obligarunt pecuniae quantitate, ad cuius solutionem postea compelluntur, quod vix aut numquam liberari possunt ab onere debitorum. Volentes igitur Ecclesiarum indemnitatibus paterna sollicitudine providere praesentium auctoritate] Firmiter inhibemus, ne quis praesumat [*de cetero*] ecclesiam sibi commissam pro alienis gravare debitis, aut literas alicui seu sigilla concedere, quibus possent ecclesiae obligari, decernentes, si secus [*quod non credimus,*] fuerit attentatum, ad solutionem talium debitorum ecclesias non teneri. Si quis autem contra praemissa de cetero venire praesumpserit, ab administratione spiritualium et temporalium noverit se suspensum. [*Dat. Reate II. Id. Febr. A. V.* 1232.]

Chapter III

Latin source headnote: If a cleric does not have means to satisfy his creditors, he ought not to be excommunicated or otherwise troubled; nevertheless, he shall furnish security, at least by oath, to pay when he comes to a richer fortune.

The same, to the Dean and I., Canon of Toul.

The cleric Odoard proposed that, when the cleric P., the layman D., and certain others sued him before the official of the Archdeacon of Reims concerning certain debts, that official promulgated a sentence of excommunication against him when he acknowledged such debts but was unable to pay because of poverty of resources. (*And below:*) We command that, if it is established that the aforesaid Odoard cannot pay the aforesaid debts in whole or in part, you relax that sentence without any difficulty, after first receiving from him suitable security that, if he comes to a richer fortune, he will pay the aforesaid debts.

Si clericus non habeat unde satisfaciat suis creditoribus, non debet excommunicari nec aliter molestari; praestabit tamen cautionem saltem iuratoriam de solvendo, quum venerit ad pinguiorem fortunam.

Idem Decano et I. Canonico Tullentibus.

Odoardus clericus proposuit, quod, quum P. clericus, D. laicus et quidam alii ipsum coram officiali archidiaconi Remensis super quibusdam debitis convenissent, idem in eum recognoscentem huiusmodi debita, sed propter rerum inopiam solvere non valentem, excommunicationis sententiam promulgavit. (*Et infra:*) Mandamus, quatenus, si constitent, quod praedictus Odoardus in totum vel pro parte non possit solvere debita supra dicta, sententiam ipsam sine difficultate qualibet relaxetis, recepta prius ab eo idonea cautione, ut, si ad pinguiorem fortunam devenerit, debita praedicta persolvat.

Chapter IV

Latin source headnote: One complaining that he paid what was not owed ought to prove this, except in the case placed here.

The same.

One who complains that he paid money not owed is bound to prove that it was paid without being owed, unless his adversary, denying the payment, is convicted thereof. For then the burden lies upon the denier of proving that he received a debt.

Conquerens se indebite solvisse, hoc probare debet, nisi in casu hic posito.

Idem.

Is, qui conqueritur, indebitam pecuniam se solvisse, probare tenetur, quod indebite sit soluta, nisi eius adversarius solutionem inficians exinde convincatur. Tunc enim diffitenti onus incumbit probandi, quod debitum recepisset.

Title XXIV: On Donations

Chapter I

Latin source headnote: It can be understood in two ways, and according to the first understanding this it says: One who is liberal in giving considers himself to owe what he gives. Or thus, according to the other understanding: Those promising to give something are bound to fulfill it as a debt.

Gregory the Great, to the Patrician of the Gauls.

For prudent [*men such as you to adhere to kings is the consolation of many. For while they understand that a more excellent place has been given to them for the utility of the soul, it is certain that, where they find a cause of reward, they do not set it aside. With how much affection and how great devotion your glory has expended itself in the causes of the poor through zeal for piety, we learned from the report of our dearest son Candidus the priest. But because*] nobility in a certain manner imposes this law upon itself, that it considers itself to owe what it voluntarily bestows and, unless it has increased in its benefices, thinks that it has furnished nothing, [*saluting your glory with paternal love, we confidently commend to you the aforesaid priest and the patrimony of our church, so that, fortified by the aid of your favor, he may sustain no troubles or burdens. If therefore care for good endeavor advances in you, so that with your assistance the utilities of the poor are nourished and we perceive what we presume concerning your charity, increase the safeguards of your favor, because*] *in the minds of nobles a good is seen as half-complete when it is left without addition.*

DE DONATIONIBUS.

Potest intelligi duobus modis et secundum primum intellectum h. d.: Liberalis in donando existimat se debere quod donat. Vel sic secundam alium intellectum: Promittentes aliquid donare, illud tanquam debitum adimplere tenentur.

Gregorius A. Patricio Gallorum.

Prudentes +[*viros, sicut estis, regibus adhaerere, multorum solamen est. Nam dum praestantiorem sibi locum ad animae utilitatem datum intelligunt, certum est, quia mercedis causam, ubi inveniunt, non postponunt. Quanto igitur affectu quantaque devotione gloria se vestra in causis pauperum studio pietatis impenderit, dilectissimo filio nostro Candido presbytero renunciante comperimus. Sed quoniam*] Hanc sibi quodammodo nobilitas legem imponit, ut debere se quod sponte tribuit existimet, et, nisi in beneficiis suis creverit, nihil se praestitisse putet, [*paterna dilectione salutantes gloriae vestrae supra scriptum presbyterum et patrimonium ecclesiae nostrae fiducialiter commendamus ut ope gratiae vestrae praemunitum molestias et onera nulla sustineat. Si igitur boni studii in vobis cura proficiat ut utilitates pauperum vobis annitentibus nutriantur et sentiamus quod de caritate vestra praesumimus. Augete favoris vestri praesidia quid*] *apud nobilium mentes semiplenum bonum videtur, quod sine adiectione relinquitur*.

Chapter II

Latin source headnote: A donation made by a prelate without consulting the chapter and to the harm of the church is not valid.

Alexander III, to the Bishop of Paris.

We believe it is not hidden from your fraternity that, since a bishop and every *other ecclesiastical* prelate is a proctor, not owner, of ecclesiastical property, he can improve the condition of the church but ought not to make it worse. But we have received that P. *of good memory,* your predecessor, *at the insistence of certain persons* made grave donations *burdensome to the church* from the property of the bishopric, to the detriment of the church, without consulting his *Catholic* canons. Hence, because donations of this kind are not valid by law, *by apostolic authority* we grant you that it be lawful *for you* lawfully to revoke donations of this kind from both clerics and laymen.

> Non valet donatio, quam facit praelatus inconsulto capitulo et in damnum ecclesiae.
>
> Alexander III. Parisiensi Episcopo.
>
> Fraternitatem tuam credimus non latere, quod, quum episcopus et quilibet praelatus *alius ecclesiasticus* ecclesiasticarum rerum sit procurator, non dominus, conditionem ecclesiae meliorare potest, facere vero deteriorem non debet. Accepimus autem, quod *bonae memoriae P.* praedecessor tuus graves donationes *et onerosas ecclesiae* in rebus episcopatus *ad quorundam instantiam* fecit in detrimentum ecclesiae, suis canonicis *catholicis* inconsultis. Unde quoniam donationes huiusmodi de iure non tenent, *auctoritate apostolica* indulgemus tibi, ut liceat *tibi* donationes huiusmodi tam a clericis quam a laicis legitime revocare.

Chapter III

Latin source headnote: In considering whether a donation made by a prelate is valid, the quantity of the thing donated and the custom of the place ought to be attended. This it says by adhering to the letter.

The same, to the Bishop of Worcester.

Moreover, if it should happen that an abbot *of your diocese* makes a donation with the prior and certain members of *his* convent, or the abbot alone makes one, and afterward a part of the convent protests, the quantity of the thing given and the custom of that land—which nevertheless does not *manifestly* oppose the sacred canons—are to be attended more diligently, and according to this the gift is to be adjudged valid or invalid. *But when to someone, etc.* (*cf. c.* 4, *On Conditions Apposed, IV.* 5.)

> In considerando, an valeat donatio facta per praelatum, debet attendi quantitas rei donatae et loci consuetudo. H. d. inhaerendo literae.
>
> Idem Vigoriensi Episcopo.
>
> Ceterum, si abbatem *tuae dioecesis* donationem cum priore et quibusdam de conventu *suo*, vel solum abbatem facere contigerit, et postea conventus pars reclamaverit, datae rei quantitas, et illius terrae consuetudo, quae tamen sacris canonibus *manifeste* non obviet, est diligentius attendenda, et secundum hoc est donum ratum vel irritum iudicandum. *Verum quum alicui etc.* (*cf. c.* 4. *de cond. appos. IV.* 5.)

Chapter IV

Latin source headnote: A church not vacant cannot be granted as a benefice, but it can be granted in ownership, yet by authority of the bishop and without prejudice to the prelate.

The same, to the Abbot of Saint Albert.

To consultations (*And below:*) *Furthermore, if any cleric has been instituted in some church by the ordinary judge upon presentation of one who was believed to be patron of that church, and afterward another has evicted the right of patronage in judgment, the cleric who was instituted ought not on this account to be removed from the church itself if, at the time of his presentation, the one who presented him possessed the right of patronage of the church. But if he did not possess the right of patronage but was only believed to be patron when he was not and did not have possession of the patronage, according to English custom he will be able to be removed from that church.* But donations or grants of churches, if any are made to private persons while those who possess the churches themselves are living, ought to be of no moment. If they are made to religious places by the bishop or by his authority, they ought to be held valid, in such a way *indeed* that the persons who possess the aforesaid churches ought not to be despoiled of them during their life without their assent.

> Ecclesia non vacans in beneficium concedi non potest, sed in proprietatem sic; de auctoritate tamen episcopi, et sine praeiudicio praelati.
>
> Idem Abbati S. Alberti.
>
> Consultationibus (*Et infra:*) *De cetero si aliquis clericus ab ordinario iudice in ecclesia aliqua institutus fuerit ad repraesentationem illius qui eiusdem ecclesiae credebatur esse patronus et postea ius patronatus alius evicerit in iudicio, clericus qui institutus est non debet ab ecclesia ipsa propter hoc removeri, si tempore praesentationis suae ille qui eum praesentavit ius patronatus ecclesiae possidebat. Si vero non possidebat ius patronatus sed tantum credebatur esse patronus, quum non esset, nec possessionem patronatus haberet secundum consuetudinem anglicam poterit ab eadem ecclesia removeri*. Donationes vero vel concessiones ecclesiarum, si quae fiant privatis personis, viventibus illis, qui ipsas ecclesias possident, nullius debent esse momenti. Si religiosis fiant locis ab episcopo vel eius auctoritate, ratae debent haberi, ita *quidem*, quod personae, quae iam dictas ecclesias possident, sine ipsorum assensu eis in vita sua non debeant spoliari.

Chapter V

Latin source headnote: Notwithstanding an oath not to enfeoff anew, a prelate can complete a fief if it appears that the vassal was deceived in the measure.

Innocent III, to the Bishop of Florence.

By *your* letters you took care to propose to us that, when certain noble Florentines, *powerful, ready for service, and devoted,* during the time of schism kept J., Bishop of Florence *of good memory,* in their house *against the attacks of the emperor and his supporters,* that bishop, after the storm of schism was quieted, at the mandate of Pope Alexander *of happy memory,* our predecessor, granted them four modii of land in fief; and, *after he afterward entered upon the way of all flesh, B. of good memory,* his successor, invested the aforesaid nobles with the certain fief, as is customary. But when they caused the land assigned *to them* to be measured, they found only two modii, and insistently petitioned that the fief be completed. Concerning this you doubt, because they are not in possession of it, lest you appear to confer it anew, *although they took care to exhibit fidelity to you and were invested with four modii; before you determined to assent to their petition, you thought that the Apostolic See should be consulted.* We therefore, attending that the church ought not to employ any fraud in its acts, answer *your fraternity in this manner:* you will safely be able to complete the fief *for those nobles,* since that land was assigned to them *under the name* of four modii, *and the aforesaid bishop promised that he would give four.* [*Given at Rome at Saint Peter's, on the second day before the Ides of December.* 1205.]

Non obstante iuramento de non infeudando de novo praelatus integrare potest feudum, si appareat vasallum in mensura fuisse deceptum.

Innocentius III. Episcopo Florentino.

Per tuas *nobis* literas proponere procurasti, quod, quum quidam nobiles Florentini *et potentes, prompti ad servitium et devoti*, tempore schismatis *bonae memoriae Iustum* episcopum Florentinum in domo sua tenuerint *contra imperatoris suorumque fautorum insultus*, idem episcopus, sedata schismatis tempestate, de mandato *felicis recordationis* Alexandri Papae *praedecessoris nostri* quatuor modios terrae in feudum concessit eisdem, et, *eo postmodum viam universae carnis ingresso, bonae memoriae B.* successor ipsius, prout est moris, de certo feudo praefatos nobiles investivit. Verum quum ipsi assignatam *sibi* terram mensurari fecissent, non nisi duos modios invenerunt, feudum integrari cum instantia postulantes. Super quo dubitas eo, quod non sunt in possessione ipsius, ne de novo videaris illud conferre, *+licet tibi fidelitatem curaverint exhibere, et de quatuor modiis fuerint investiti, antequam eorum petitioni duceres annuendum, sedem duxisti apostolicam consulendam*. Nos igitur attendentes, quod ecclesia in actibus suis fraudem non debet aliquam adhibere, *fraternitati tuae taliter* respondemus, quod feudum ipsum secure poteris *eisdem nobilibus* integrare, quum terra illa *nomine* quatuor modiorum ipsis fuerit assignata, *et iam dictus episcopus quatuor promiserit se daturum*. [*Dat. Rom. ap. S. Petr. II. Id. Dec.* 1205.]

Chapter VI

Latin source headnote: In donations the fullest interpretation is made, and on this account a burdensome clause apposed after many donations regards only the nearest donation. This it says, and it is a singular case.

The same, to R. de Burg. and G. Berbur., Abbots.

When our beloved sons the abbot and monks of Melrose proposed before us that the noble man Alan wished violently to reduce into forest certain lands assigned in alms to their church *of Machelin* by *William,* formerly his father, *we recall that we commanded you to compel that A. by ecclesiastical censure, appeal being set aside, to desist from undue molestation of them concerning those lands. But, in order that you might fulfill the apostolic mandate concerning that cause, proceeding more diligently in the cause, when the parties were constituted in your presence, you received witnesses on either side and, after lengthy disputes and debates had been held in the cause itself concerning their attestations and also the instruments, you proceeded as far as the pronouncement of sentence,* [*and,*] *remitting the cause itself sufficiently instructed to our hearing,* [*you assigned to the parties as a term the octaves of Saint Andrew most recently past. Therefore, when the party of the abbot and monks came at that term, finally, because the opposing party, though awaited for a long time, did not come, we had diligent deliberation with our brothers concerning the aforesaid instruments, the depositions of witnesses, and the allegations of each party; and, after the truth had been more diligently inquired into and discussed, we clearly recognized that sentence concerning that cause was to be given for the aforesaid monastery.*] *But so that through your diligence an end may be imposed upon the same cause, we remit to you, enclosed under our bull, the tenor of the instruments, the depositions of the witnesses, and also the allegations, as we had received them, marked with the protection of your seals; by apostolic writings we command you*—we command that, *supported by our authority,* you proceed, appeal being set aside, to issue sentence for that monastery, *compelling contradictors by ecclesiastical censure and causing what you adjudge to be firmly observed by our authority,* since from the tenor of the instrument it clearly appears that this was the mind and intention of the donor: that the clause concerning the forest placed at the end of the instrument ought, according to a sound understanding, to be referred not to the earlier donation, which was so free and pure as to be immune from secular

vexation and custom, but to the later grant, which has a pension and delimitation inserted; because in contracts a full, in testaments a fuller, and in benefices the fullest interpretation is to be employed. [*But if not all, etc. Given at Anagni, on the second day before the Nones of March.* 1204.]

> In donationibus plenissima fit interpretatio, et ob hoc clausula onerosa post multas donationes apposita proximam donationem tantum respicit. H. d. et est casus singularis.
>
> Idem R. de Burg. et G. Berbur. Abbatibus.
>
> Quum dilecti filii abbas et monachi de Melios proposuerint coram nobis, quod nobilis vir Alanus quasdam terras, ab *Willelmo quondam* patre ipsius eorum ecclesiae *de Machelin* in eleemosynam assignatas, violenter redigere cupiat in forestam, +*vobis dedisse recolimus in mandatis, ut ipsum A. ab ipsorum super illis terris indebita molestatione desistere per censuram ecclesiasticam appellatione postposita cogeretis. Verum ut super causa ipsa mandatum apostolicum impleretis, diligentius procedentes in causa, partibus in praesentia vestra constitutis, testes recepistis hinc inde, ac super attestationibus eorum, ut etiam instrumentis, diu disputationibus ac disceptationibus habitis in causa ipsa, usque ad sententiae calculum processistis, * [*et*] *causam ipsam sufficienter instructam ad nostram audientiam remittentes * [*octavas S. Andreae proximo praeteritas pro termino partibus assignastis. Parte igitur abbatis et monachorum ad ipsius terminum veniente, tandem, quia pars adversa diutius exspectata non venit, super instrumentis iam dictis, depositionibus testium et partis allegationibus utriusque cum fratribus nostris tractatum habuimus diligentem, et inquisita veritate diligentius et discussa evidenter agnovimus, super ipsa causa sententiam pro iam dicto monasterio esse dandam.*] *Ut autem per diligentiam vestram finis causae imponatur eidem, instrumentorum tenorem, depositiones testium, allegationes etiam, prout ea receperamus, sigillorum vestrorum munimine consignata vobis sub bulla nostra remittimus interclusa, per apostolica vobis scripta praecipiendo* Mandamus, quatenus *auctoritate nostra suffulti* ad sententiam pro ipso monasterio proferendam appellatione postposita procedatis, *contradictores per censuram ecclesiasticam cogentes, et facientes quod iudicaveritis auctoritate nostra firmiter observari,* quum ex tenore instrumenti evidenter appareat, quod haec fuit mens et intentio donatoris, ut clausula de foresta, quae in fine ponitur instrumenti, non ad superiorem donationem, quae tam libera et pura fuit, ut immunis esset a vexatione et consuetudine saeculari, sed ad inferiorem concessionem, quae pensionem et determinationem habet insertam, iuxta sanum referri debeat intellectum, quia in contractibus plena, in testamentis plenior, in beneficiis quoque plenissima est interpretatio adhibenda. [*Quod si non omnes etc. Dat. Anagniae II. Non. Mart.* 1204.]

Chapter VII

Latin source headnote: If a bishop receives certain proceeds in a church that he granted to a pious place with the consent of the chapter, he is seen to have donated those; otherwise, all proceeds apart from the cathedraticum fall to the pious place. And if the bishop granted it with the consent of the patron, the patron is understood to have donated the right of patronage.

The same, to the Bishop of Ely.

Of the pastoral office (*And below:* [*cf. c.* 28, *On the Office of a Delegated Judge, I.* 29.]) Your discretion *further* led you to consult us whether, if a bishop, with the patron consenting, grants some church to religious men using this simplicity of words, "We grant you that church," by that very fact *that church* is seen to have been granted to their uses, or only the right of patronage. But we thought that we should answer your inquiry *in this manner:* if the bishop confers the church upon them with the consent of the patron, assuredly the patron is seen to confer what is his, namely, the right of patronage; and the bishop *confers that* which *he himself* temporally obtains in it, so that, if he receives some portion of the fruits of that church, that portion is converted to their uses. But if the *bishop*

ought to have no portion of its proceeds, we believe all the proceeds apart from the cathedraticum are to be converted to their uses; but, for the bishop's donation to be lawful, the consent of his chapter is to be sought. [*To explain, etc.* (*cf. c.* 28, *On Tithes, III.* 30.) *Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January.* 1204.]

> Si episcopus in ecclesia, quam de consensu capituli pio loco concessit, percipiat certos proventus, illos donasse videtur; alioquin omnes proventus praeter cathedraticum cedunt pio loco. Et si episcopus concessit de consensu patroni, intelligitur patronus donasse ius patronatus.
>
> Idem Episcopo Heliensi.
>
> Pastoralis officii (*Et infra:* [*cf. c.* 28. *de off. iud del. I.* 29.]) Tua *insuper* nos duxit discretio consulendos, si episcopus, consentiente patrono viris religiosis aliquam ecclesiam concedendo, hac utatur simplicitate verborum " concedimus vobis illam ecclesiam : " utrum eo ipso videatur *ecclesia illa* in eorum usus fuisse concessa, vel ius tantummodo patronatus. Nos autem inquisitioni tuae *taliter* duximus respondendum, quod, si episcopus ecclesiam illis conferat de consensu patroni, profecto patronus quod suum est conferre videtur, ius videlicet patronatus, et episcopus *confert illud*, quod *ipse* temporaliter obtinet in eadem, ut, si fructuum ecclesiae eiusdem aliquam recipiat portionem, in eorum usus illa portio convertatur. Quodsi ex ipsius proventibus nullam debeat *episcopus* portionem habere, omnes proventus praeter cathedraticum in eorum usus credimus convertendos; sed, ut episcopi donatio sit legitima, consensus est sui capituli requirendus. [*Explicari etc.* (*cf. c.* 28. *de dec. III.* 30.) *Dat. Rom. ap. S. Petr. XIV. Kal. Ian. * 1204.]

Chapter VIII

Latin source headnote: Hospitallers can, to their own prejudice, subject and donate themselves and their house to another religious house. This it says according to the understanding of the gloss.

The same, to the Bishops of Florence and Fiesole.

When a question arose concerning the same hospital between our beloved sons, the Hospitallers of the Holy Sepulcher *of Pisa of the Hospital of Jerusalem on the one side,* and the brothers of the Hospital of Saint Allucius *of the diocese of Lucca on the other,* after those Hospitallers had received an adverse sentence in the possessory action that they attempted once and a second time, although for dissimilar causes, then, recurring to the petitory action, *through their proctor before our beloved son Andrew, our subdeacon and chaplain, whom we appointed as auditor for him and the proctor of the other party,* they took care to propose that, when G., formerly rector, and the brothers and patrons of that Hospital *of Saint Allucius,* having held a common deliberation, decided to subject the hospital itself to the aforesaid Hospitallers, they committed their functions in this to three proctors, establishing in common that they would accept what was done *concerning this* through them. These, *afterward approaching the aforesaid Hospitallers,* established with them that some persons should be sent to that hospital who would receive assignment of it in their name. And when they sent two of their brothers there *for this purpose,* they, *in the chamber of the aforesaid rector,* received the donation and assignment of the *aforesaid* hospital both from the *aforesaid* master and from the aforesaid proctors and other brothers of that house. (*And below:*) But the proctor of the other party answered in opposition that the aforesaid donation deserved to be retracted because it had been celebrated by the aforesaid rector and the fewer brothers, without consulting many of the brothers, who were moreover excommunicated and perjured, *and* concerning a thing in litigation *and* in fraud of the parish priest of Pescia, who had moved a question concerning that hospital. *And he alleged that all these things were*

sufficiently proved by the depositions of the witnesses produced. But when the other party answered manifoldly to these things, it was disputed on either side for some time. Therefore, *having understood these and the other things that the parties took care to propose before the aforesaid chaplain, and having diligently inspected their attestations,* attending that the brothers and patrons of Saint Allucius alleged for themselves—or rather against themselves—their *own* turpitude, namely, perjury, excommunication, and fraud committed not indeed against them but by them; and understanding that the donation made by them to the *aforesaid* Hospitallers was pure and simple, because laws assist not deceivers but the deceived, whence through the things proposed above they could not lawfully defend themselves against their own act; *and since certain of those things were not proved, by the counsel of our brothers* we took care to adjudge the aforesaid Hospital *of Saint Allucius,* with its appurtenances, to the Hospitallers of the Holy Sepulcher, in such a way that through this sentence *of our determination* no prejudice is generated against the diocesan bishop and the parish priest of Pescia, since a thing transacted between some ought not to generate prejudice against others.

> Possunt hospitalarii in praeiudicium suum se et domum suam alteri religiosae domui subiicere et donare. Hoc dicit secundum intellectum glossae.
>
> Idem Florentino et Fesulano Episcopis.
>
> Inter dilectos filios hospitalarios sancti sepulcri *de Pisis hospitalis Hierosolymitani ex una parte*, ac fratres hospitalis S. Allucii *Lucanae dioecesis ex altera* super eodem hospitali *S. Allucii* quaestione suborta, quum iidem hospitalarii super possessorio, quod semel et iterum, ex causis tamen dissimilibus, intentarunt, contrariam sententiam reportassent, deinde ad petitorium recurrentes, *per procuratorem suum coram dilecto filio Andreae subdiacono et capellano nostro, quem sibi et procuratori partis alterius auditorem concessimus*, proponere curarunt, quod, quum G. quondam rector, et fratres ac patroni eiusdem hospitalis *S. Allucii* habito communi tractatu deliberassent hospitale ipsum hospitalariis supponere supra dictis, commiserunt in hoc tribus procuratoribus vices suas, communiter statuentes, ut quod per ipsos *super hoc* fieret acceptarent. Qui *postmodum ad praedictos hospitalarios accedentes* cum eisdem taliter statuerunt, ut ad ipsum hospitale aliqui mitterentur, qui eorum nomine acciperent assignationem ipsius. Quum autem duos illuc de suis fratribus *propter hoc* transmisissent, ipsi *in camera praedicti rectoris* donationem et assignationem hospitalis *praedicti* tam a *praefato* magistro quam a supra dictis procuratoribus et aliis eiusdem domus fratribus receperunt. (*Et infra:*) Procurator autem partis alterius ex adverso respondit, quod praedicta donatio debebat non immerito retractari, quoniam, multis ex fratribus inconsultis, a praedicto rectore ac paucioribus fratribus, excommunicatis *nihilominus* et periuris, *ac* de re litigiosa *et* in fraudem plebani de Piscia, qui super eodem hospitali moverat quaestionem, fuerat celebrata. *+Et haec omnia proponebat sufficienter esse probata per depositiones testium productorum. Ad haec vero parte altera multipliciter respondente, hinc inde fuit aliquamdiu disputatum.* Attendentes igitur *his et aliis intellectis, quae coram capellano praedicto partes proponere curaverunt, et ipsarum attestationibus diligenter inspectis*, quod fratres et patroni S. Allucii pro se, immo potius contra se *suam* turpitudinem allegabant, videlicet periurium, excommunicationem et fraudem, non utique contra ipsos, sed ab ipsis commissam, et intelligentes, donationem ab eis *praefatis* hospitalariis factam puram ac simplicem exstitisse, quia non deceptoribus, sed deceptis iura subveniunt, unde per ea, quae superius proposita sunt, se contra factum proprium legitime defendere non valebant, *quum et quaedam ex ipsius non fuerint comprobata, de consilio fratrum nostrorum* hospitale praedictum *S. Allucii* cum pertinentiis suis hospitalariis sancti sepulcri adiudicare curavimus ita, quod per hanc *nostrae diffinitionis* sententiam dioecesano episcopo et plebano de Piscia nullum praeiudicium generetur, quum res inter alios acta non debeat aliis praeiudicium generare.

Chapter IX

Latin source headnote: A donation of a fiftieth or hundredth part that a bishop makes with grave detriment to his church can lawfully be revoked; nor can he confer beyond a fiftieth or hundredth part without authority of the superior, even when injury to the church is absent.

The same, to the Bishop of Saint Andrews.

The oracle of the Apostolic See (*And below:*) [*Moreover,*] *since it often happens that bishops successively confer upon religious places from revenues pertaining to them beyond a fiftieth portion, in such a way that sometimes revenues of this kind are diminished to a third or fourth part, and sometimes more or less, your fraternity consulted us whether it is in any way lawful for their successors to revoke the things that have thus been granted beyond the fiftieth portion. We therefore* answer your inquiry in this manner: although it is determined in the canon that, if any bishop should perhaps wish to construct a monastery in his parish and endow it from the property of the church over which he presides, he ought to bestow there no more than a fiftieth part; but upon a church that he wishes to form under monastic rules or magnify for his own burials, no more than a hundredth part of the revenue of the church over which he presides; nevertheless, because it is consequently added in the same canon that this equity of moderation is to be observed —that he confer a suitable subsidy upon the one to whom he gives, and not inflict grave harms upon the one from whom he takes—with this caution observed, that he assume only one of these two rewards, whichever he pleases, this is always to be observed: one bishop or another ought not only not to confer more, but neither so much nor less, with grave detriment to his church, whether he wishes to do it together and once, or repeatedly by conferring successively upon the same or diverse churches. Hence, when it is established that grave detriment was conferred in any portion whatsoever, whether from possessions or proceeds pertaining to the episcopal table or cathedral church, it can lawfully be revoked unless an action of this kind is excluded by prescription or another lawful exception. For even if at first sight it is presumed that collation of a fiftieth or hundredth part does not inflict grave detriment, nevertheless, because not only if this is done often but even if it is done once, from various circumstances it can sometimes be apprehended *to be* very harmful—which indeed can be known more from demonstration *of the* fact than from expression of any statute—neither a fiftieth nor a hundredth part ought to be conferred, once or successively, with grave harm to the church. But if the bishop abounds to such an extent that without harm to his church he can assist the necessity of another church by even more than a fiftieth or hundredth part, although by himself he ought not to exceed the limit predefined by the canon, by which those wishing incautiously to give lavishly were restrained, nevertheless, by authority of the superior pontiff provision can be made for another's poverty in an even greater sum [*from his abundance.*] [*Given at the Lateran, on the eighth day before the Ides of April, in the tenth year.* 1207.]

> Donatio quinquagesimae vel centesimae, quam facit episcopus cum gravi ecclesiae suae detrimento, potest legitime revocari; nec etiam potest ultra quinquagesimam vel centesimam conferre, etiam cesssante laesione ecclesiae, sine auctoritate superioris.
>
> Idem Episcopo sancti Andreae.
>
> Apostolicae sedis oraculum (*Et infra:*) [*Ceterum*] *quum plerumque contingat, quod episcopi successive locis religiosis de reditibus, qui pertinent ad eosdem, ultra quinquagesimam conferant portionem ita, quod interdum usque ad tertiam partem vel quartam, interdum vero plus minusve huiusmodi reditus minuantur, tua fraternitas nos consuluit, utrum successoribus eorundem ea, quae taliter fuerint ultra quinquagesimam portionem concessa, liceat aliquatenus*

revocare. *Nos igitur* Inquisitioni tuae taliter respondemus, quod, licet sit in canone diffinitum, ut, si quis episcoporum in parochia sua monasterium *forte* construere voluerit, et de rebus ecclesiae, cui praesidet, ipsum dotare, non amplius ibidem quam quinquagesimam, ecclesiae vero, quam monasticis regulis informare vel pro suis magnificare voluerit sepulturis, non amplius quam centesimam partem census ecclesiae, cui praeest, debeat elargiri; quia tamen in eodem canone consequenter adiungitur, ut haec temperamenti aequitas observetur, quod cui tribuit competens subsidium conferat, et cui tollit damna gravia non infligat, ea quidem cautela servata, ut unam tantummodo, quae placuerit ex his duabus, remunerationem assumat, hoc semper est observandum, quod unus episcopus vel alius non solum non debet amplius, sed nec tantum, nec minus cum gravi ecclesiae suae detrimento conferre, sive simul et semel id facere velit, sive pluries successive eisdem vel diversis ecclesiis conferendo. Unde quum grave detrimentum, sive de possessionibus sive de proventibus, vel ad episcopalem mensam vel cathedralem ecclesiam pertinentibus, in quantalibet portione constiterit esse collatum, poterit legitime revocari, nisi praescriptione vel alia exceptione legitima actio huiusmodi excludatur. Nam, etsi prima facie praesumatur, quod collatio quinquagesimae vel centesimae partis grave non inferat detrimentum, quia tamen non solum si saepe, sed etiam, si semel id fiat, ex variis circumstantiis deprehendi potest interdum *esse* valde damnosum, quod quidem magis potest ex ostensione *ipsius* facti, quam expressione alicuius statuti cognosci : nec quinquagesima, nec centesima semel aut successive debet cum gravi ecclesiae damno conferri. Si vero in tantum abundet episcopus, ut sine damno ecclesiae suae possit amplius etiam quam per quinquagesimam vel centesimam partem necessitati alterius ecclesiae subvenire, quamvis per se non debeat summam excedere a canone praefinitam per quam incaute largiri volentibus est occursum : de superioris tamen auctoritate pontificis potest etiam in maiori summa [*ex eius copia*] inopiae alterius provideri. [*Dat. Lat. VIII. Id. Apr. Ao. X. * 1207.]

Chapter X

Latin source headnote: A donation can be revoked by the donor, but not by his heir who remained silent, on account of the ingratitude of the donee in the cases expressed here.

Gregory IX.

On account of the ingratitude of the person upon whom liberality was conferred, the person of the donor could by rigor of law revoke it if perhaps he laid impious hands upon him, presumed to inflict upon him atrocious injuries, grave damage to his property, or danger to his life; this nevertheless is not extended to the successors of the donor who remained silent concerning it.

Donatio potest per donatorem, non per heredem eius, qui tacuit, ob ingratitudinem donatarii revocari in casibus hic expressis.

Gregorius IX.

Propter eius ingratitudinem, in quem liberalitas est collata, donatoris persona de rigore iuris eam potuit revocare : si forte in ipsum impias manus iniecerit, aut sibi atroces iniurias, seu grave rerum suarum damnum vel vitae periculum inferre praesumpserit; quod tamen ad donatoris, qui hoc tacuit, non extenditur successores.

Title XXV: On the Peculium of Clerics

Chapter I

Latin source headnote: What was acquired by a rector of a church who had nothing at the time of his promotion is presumed to have been acquired from the goods of the church.

From the Council of Arles.

It must be investigated, if a priest who possessed no patrimony, when he was promoted to an ecclesiastical order, afterward purchased estates, to whose right they belong, since according to canonical authority they ought to belong to the church to which he was promoted while possessing nothing.

> **DE PECULIO CLERICORUM.**
>
> Quaesitum a rectore ecclesiae, tempore promotionis nihil habente, praesumitur de bonis ecclesiae quaesitum.
>
> Ex concilio Arelatensi.
>
> Investigandum est, si nihil patrimonii habens presbyter, quando promotus est ad ecclesiasticum ordinem, postea emerit praedia, cuius iuris sint, quoniam ecclesiae, ad quam nihil habens promotus est, esse debent iuxta canonicam auctoritatem.

Chapter II

Latin source headnote: Concerning things purchased by a prelate from the goods of the church, an instrument ought to be drawn up in the name of the church; otherwise the prelate ought to be removed from the administration.

From the same.

When a priest holds a diocese, concerning those things that he shall have acquired in addition he shall make a written instrument in the name of that church, or he shall withdraw from the governance of the church *which he held*.

> De emptis per praelatum de bonis ecclesiae debet instrumentum confici nomine ecclesiae; alias debet praelatus ab administratione removeri.
>
> Ex eodem.
>
> Presbyter, quum dioecesim tenet, de eis, quae superemerit, ad ipsius ecclesiae nomen scripturam faciat, aut ab eius, *quam tenuit, ecclesiae* ordinatione discedat.

Chapter III

Latin source headnote: Things acquired by a bishop after his consecration are to be left to the church.

From an epistle of Pope Pius.

That every priest leave to his own church the things that he shall have acquired after the days of consecration.

> Quaesita per episcopum post consecrationem suam ecclesiae relinquenda sunt.
>
> Ex epistola Pii Papae.
>
> Ut unusquisque presbyter res, quas post dies consecrationis acquisierit, propriae ecclesiae relinquat.

Chapter IV

Latin source headnote: Things purchased by a prelate from the emoluments of the church become the church's, although the prelate purchased them in another's name.

From the Council of Rheims.

It must be inquired whether any of the priests purchased property in another's name from the revenues of the church, or from offerings, or from the vows of the faithful, *and erected structures there, or placed there things that pertain to the church;* [*and permitted the frequenting of women to occur there, or, what is more shameful, kept there such women as exercise his benefice and conduct the care of the house, and resorted to, frequented, or remained at their places unbecomingly, since action is taken contrary to the decrees by those by whom it is perpetrated, because just as the same priest, coming frequently, remained. This evil is done contrary to the decrees of the canons,*] because, just as neither in his own name, so neither in another's name ought a priest [*or anyone under a rule*] *to practice usury, much less* to commit fraud concerning ecclesiastical resources; for this is sacrilege, and equal to the crime [*of Ananias and Sapphira and*] of Judas the thief, who carried away and stole the sacred offerings [*that were being sent for the uses of the faithful and of the poor.*]

> Empta per praelatum ex emolumentis ecclesiae efficiuntur ecclesiae, licet praelatus emerit nomine alieno.
>
> Ex concilio Remensi.
>
> Inquirendum est, si quis presbyterorum de reditibus ecclesiae, vel oblationibus, vel votis fidelium alieno nomine res comparavit *et ibi structuras fecerit, vel quae ad ecclesiam pertinent ibidem collocaverit; * [*et mulierum frequentationem inibi fieri permiserit, vel quod turpius est, tales mulieres ibidem habuerit, quae beneficium suum exerceant et curam domus agant et ad eorum loca incongrue recurrerit, frequentaverit vel manserit, quoniam contra decreta agitur, a quibus perpetratur, quia sicut eodem presbyter frequenter veniens manserit. Contra decreta canonum hoc malum agitur,*] quia, sicut nec suo, ita nec alieno nomine presbyter [*vel quilibet sub regula*] *foenus exercere, multo minus* fraudem facere de facultatibus ecclesiasticis debet : quoniam hoc sacrilegium est, et par crimini [*Ananiae et Sapphirae et*] Iudae furis, qui sacras oblationes [*quae ad usus fidelium ac pauperum mittebantur*] asportabat et furabatur.

Chapter V

Latin source headnote: Improvements made by a prelate to the property of the church are his during his life, even if he relinquishes the benefice; but he cannot make a testament concerning them. This it says according to a sufficiently notable understanding.

From the Council of Toledo.

If any of the clerics is indeed proved to have made small fields or vineyards for himself on the land of the church for the sake of sustaining his life, he may possess them until the day of his death; but after his departure *from this light, according to the constitutions of the earlier canons,* he shall restore *its right* to the *holy* church, nor shall he leave it by testamentary or successory right to any of his heirs or successors, unless perhaps to one upon whom the bishop shall wish to bestow it for services and prestation to the church.

> Meliorationes, factae per praelatum in rebus ecclesiae, sunt suae in vita, etiamsi dimittat beneficium; sed de his testari non potest. H. d. secundum intellectum satis notabilem.
>
> Ex concilio Toletano.
>
> Si quis sane clericorum agella vel vincolas in terra ecclesiae sibi fecisse probabitur sustentandae vitae causa, usque ad diem obitus sui possideat; verum post suum *de hac luce* decessum *iuxta priorum canonum constitutiones ius suum* ecclesiae *sanctae* restituat, nec testamentario aut successorio iure cuiquam

heredum proheredumve relinquat, nisi forsan cui episcopus pro servitiis ac praestatione ecclesiae largiri voluerit.

Title XXVI: On Testaments and Last Wills

Chapter I

Latin source headnote: A bishop can make a testament concerning patrimonial property; but concerning the property of the church or property acquired by reason of the church, he cannot make a testament.

Gregory IX, to Antony the Subdeacon.

It has come to us by the report of certain persons that I., bishop of the city of Atella, *when he was departing from this light,* by a testament made, instituted his *own* daughter-in-law heir to eight ounces of his *whole* substance, *and* his church to the remaining four. We therefore exhort *your experience* that you diligently investigate this, and in no way permit whatever he is shown to have possessed to be detained by any person, except only that which it is established he had as his own before the order of the episcopate. But whatever you shall know either to have belonged to the church *before* his consecration or to have been acquired by the aforesaid bishop while in the episcopal order is to be preserved in the ownership of the same church, [*lest anyone presume on any occasion to usurp anything therefrom.*]

DE TESTAMENTIS ET ULTIMIS VOLUNTATIBUS.

Episcopus de rebus patrimonialibus testari potest; de rebus vero ecclesiae seu intuitu ecclesiae quaesitis testari non valet.

Gregorius IX. Antonio Subdiacono.

Quorundam ad nos relatione pervenit, quod I. Attellanae civitatis episcopus, *dum de hac luce migraret*, condito testamento in octo unciis *totius* substantiae suae nurum *suam* heredem instituit, *et* ecclesiam suam in residuis quatuor. Hortamur ergo *experientiam tuam*, ut sollicite hoc discutias, et, quicquid ipsum habuisse patuerit, a qualibet persona detineri nullatenus patiaris, nisi hoc solum, quod eum ante episcopatus ordinem proprium habuisse constiterit. Quicquid vero ecclesiae *vel* ante ipsius consecrationem fuisse cognoveris, vel in episcopatus ordine praedictum episcopum acquisivisse, in eiusdem ecclesiae dominio conservetur. [*ne quisquam exinde aliquid usurpare qualibet occasione praesumat.*]

Chapter II

Latin source headnote: An abbess cannot make a testament even if she never put on the monastic habit.

The same.

Because for those entering [*a monastery for the sake of conversion there is thereafter no license to make a testament, but their property becomes that of the same monastery, it has been decreed by the clear definition of the law.*] The abbess Gabina complained that S., formerly abbess of her monastery, after she undertook the office of governing, made a testament and left legacies to certain persons, saying that up to the day of her death she had not put on the monastic habit, but had remained in the garments that the priests of that place use, just as she who had been abbess before her had also done, and that this had

been permitted almost by custom. *(And below:)* It therefore seemed necessary *to discuss with both our counselors and other learned men of this city what was* [*to be done*] *according to law; and, discussing it, they answered* that, after she was ordained abbess [*in solemn manner*] *by the bishop* and presided in the monastery for many years until her death, the character of her garment perhaps pertained to the fault of the bishop who permitted her to be so, yet could not have inflicted prejudice upon the monastery, but that her property belonged by law to the same place from the time when she entered there and was constituted abbess. *And therefore* [*because concerning the property illicitly left, etc.*]

> Abbatissa testari non potest etiamsi nunquam induisset habitum monachalem.
>
> Idem.
>
> Quia ingredientibus +[*monasterium convertendi gratia ulterius nulla sit testandi licentia, sed res eorum eiusdem monasterii fiant, aperta legis definitione decretum est.*] Gabina abbatissa conquesta est, S. quondam abbatissam monasterii sui, postquam regendi suscepit officium, condito testamento legata quibusdam reliquisse, dicens, eam usque in diem obitus sui non induisse habitum monachalem, sed in vestibus, quibus utuntur loci illius presbyteri, permansisse, sicut et illa, quae ante ipsam fuerat abbatissa, et hoc paene ex consuetudine licuisse. (*Et infra:*) Necessarium ergo visum est, *tam cum consiliariis nostris, quam cum aliis huius civitatis doctis viris, quid esset* [*agendum*] *de lege tractare; qui tractantes responderunt*, postquam [*solenni more*] abbatissa *ab episcopo* ordinata est et in monasterio per annos plurimos usque ad obitum praefuit, vestis qualitatem ad culpam forte episcopi pertinere, qui eam sic esse permisit, non tamen potuisse praeiudicium monasterio irrogare, sed res ipsius eidem loco, ex quo illic ingressa, et abbatissa constituta est, de iure competere. *Et ideo* [*quia ex dimissis illicite rebus etc.*]

Chapter III

Latin source headnote: If, within a year from the day of admonition, a testament is not executed by the person who ought to execute it, its execution devolves upon the bishop.

The same.

We indeed [*judge that your order itself sufficiently compels you toward the imminent fulfillment of pious matters. But lest the intervention of anyone's remission soften your zeal, we have judged that you should also be specially exhorted concerning these things.*] It has [*indeed*] come to us that S., when departing from this light, by a written declaration of his last will commanded a monastery to be founded, whose desire is being delayed by T., a religious woman and his heir. Wherefore we exhort you to admonish her that within a year she ought to establish the monastery that was commanded and to construct all things according to the will of the deceased without dispute. But if within the aforesaid time [*she should delay through negligence or cunning to complete anything, so that*] whether in the [*same*] place in which it had been established, or *certainly,* if it cannot be there and it is pleasing that it be established elsewhere, she should neglect to fulfill it with you, then let it be built by you, and let all things be assigned by you to that *venerable* place without any diminution. For thus *you will both escape before your dreadful Judge a sentence of remission, and,* according to the most pious laws, it is fitting that the delayed pious wills of the dead be fulfilled by episcopal zeal.

> Si infra annum a die monitionis non fit exsecutio testamenti per debentem exsequi, devolvitur exsecutio ad episcopum.
>
> Idem.

Nos quidem +[*arbitramur, quod ad imminentiam expletionis piarum rerum ipse te tuus satis ordo compellat. Sed ne zelum tuum cuiuslibet interventus remissionis emolliat, de his etiam te specialiter iudicavimus exhortandum.*] Pervenit [*siquidem*] ad nos, S. de hac luce migrantem supremae voluntatis elogio monasterium praecepisse fundari, cuius desiderium a T. religiosa femina eius herede protrahitur. Quamobrem te hortamur, ut eam commoneas, quatenus infra annum monasterium, quod iussum est, debeat ordinare, et cuncta secundum voluntatem defuncti sine altercatione construere. Quod si infra praedictum tempus [*aliqua perficere negligentia vel calliditate distulerit, ut*] sive in loco [*eo*] quo constitutum fuerat, seu *certe*, si ibi non potest, et alibi placet ordinari, tecum implere neglexerit, tunc per te aedificetur, et omnia per te loco ipsi *venerabili* sine diminutione qualibet assignentur. Sic enim *et ante tremendum iudicem tuum sententiam remissionis effugies, et* secundum piisimas leges dilatas defunctorum pias voluntates episcopali decens est studio adimpleri.

Chapter IV

Latin source headnote: A legacy is owed although it was left by the testator in bare words. The same, to Peter the Subdeacon.

The same, to Peter the Subdeacon.

Upon the indication—*(And below:)* We learned, *moreover,* from the report of R. that, when the wife of Redemptus was dying, she ordered *one* silver basin to be sold in bare words and the proceeds to be given to her freedmen, and that she left a silver dish to a certain monastery; in *both* of these matters we will that her will be fulfilled in all respects, [*lest from the smallest matters we incur greater sins.*]

Debetur legatum, quamvis nudis verbis a testatore sit relictum Idem Petro Subdiacono.

Idem Petro Subdiacono.

Indicante (*Et infra:*) Cognovimus *autem* R. referente, quod moriens uxor Redempti *unam* concham argenteam nudis verbis iussit venundari, et suis dari libertis, et scutellam argenteam cuidam monasterio reliquisse; in quibus *utrisque* voluntatem eius per omnia volumus adimpleri, [*ne ex rebus minimis peccata maiora capiamus.*]

Chapter V

Latin source headnote: A legacy is not owed when the testator bequeathed a thing that was not his own but the church's. This it says by adhering simply to the letter.

The same, to Bishop T.

Our son F., [*a most eloquent man coming to us,*] complained *to us* that the late P., his father, left to your church, for the sake of his burial, certain things subject to another's right. And indeed the laws of the age hold that an heir is compelled to make payment if his author bequeathed a thing belonging to another. But because we live by the law of God and not by the law of this age, it seems to me greatly unjust that the things bequeathed to you, which are said to belong to a certain church, should be retained by you, who ought to have restored things belonging to another.

Non debetur legatum, quum testator rem non suam, sed ecclesiae legavit. H. d. simpliciter inhaerendo literae.

Idem T. Episcopo.

Filius noster F. [*vir eloquentissimus ad nos veniens*] conquestus est *nobis*, quod quondam P. pater suus aliqua ecclesiae vestrae, sepulturae suae gratia, iuris alieni reliquit. Et quidem leges saeculi hoc habent, ut

heres ad solvendum cogatur, si auctor eius rem legaverit alienam. Sed quia lege Dei, non autem lege huius saeculi vivimus, valde mihi videtur iniustum, ut res tibi legatae, quae cuiusdam ecclesiae esse perhibentur, a te teneantur, qui aliena restituere debuisti.

Chapter VI

Latin source headnote: An heir who does not fulfill the commands of the testator is interdicted by the bishop from the property left by the testator. This it says by adhering to the letter.

From the Council of Mainz.

If the heirs do not fulfill the commands of the testator, all the property that was left to them, together with its fruits and other emoluments, is to be canonically interdicted by the bishop of that place, so that the wishes of the deceased may be fulfilled.

Heredi, non adimplenti iussa testatoris, ab episcopo interdicitur res a testatore relicta. H. d. inhaerendo literae.

Ex concilio Maguntino.

Si heredes iussa testatoris non adimpleverint, ab episcopo loci illius omnis res, quae eis relicta est, canonice interdicatur cum fructibus et ceteris emolumentis, ut vota defuncti adimpleantur.

Chapter VII

Latin source headnote: Clerics cannot make a testament concerning goods acquired through the church.

From the Lateran Council.

Since in duties of charity we are bound in the first place to those from whom we know that we have received a benefit, certain clerics, on the contrary, when they have received many benefices from their churches, presume to transfer to others goods acquired through them. Therefore, because it is established that this was also prohibited by the ancient canons, we *nevertheless also prohibit it,* [*and,*] wishing to provide for the indemnity of churches, whether they have died intestate or wished to confer them upon others, we command those goods to remain with the churches. Moreover, etc. (*cf. c.* 1, *That Prelates Not Delegate Their Powers, V.* 4.)

De bonis per ecclesiam acquisitis clerici testari non possunt.

Ex concilio Lateranensi.

Quum in officiis caritatis primo loco illis teneamur obnoxii, a quibus beneficium nos cognoscimus recipisse, econtra quidam clerici, quum ab ecclesiis suis multa beneficia perceperint, bona per eas acquisita in alios transferre praesumunt. Hoc igitur, quia et antiquis canonibus constat inhibitum, nos *etiam nihilominus prohibemus* [*et*] indemnitati ecclesiarum providere volentes, sive intestati decesserint, sive aliis conferre voluerint, penes ecclesias eadem bona praecipimus remanere. Praeterea etc. (*cf. c.* 1. *Ne prael. vices suas V.* 4.)

Chapter VIII

Latin source headnote: Clerics can make moderate alms from goods acquired through the church, even when placed in sickness.

Alexander III.

In addition, let it be known to you by the present *letter* that clerics cannot by law make a testament concerning movables that they have acquired through the church; nevertheless, while living and in possession of themselves, they can moderately dispense some things from those goods, not by reason of a testament but with a view to alms, even when placed *in sickness*.

> Moderatam eleemosynam de bonis per ecclesiam acquisitis clerici facere possunt, etiam in aegritudine constituti.
>
> Alexander III.
>
> Ad haec praesentibus *literis tibi* innotescat, quod clerici de mobilibus, quae per ecclesiam sunt adepti, de iure testari non possunt; viventes tamen et sui compotes moderate valent aliqua de bonis ipsis non ratione testamenti, sed eleemosynae intuitu erogare in aegritudine *etiam* constituti.

Chapter IX

Latin source headnote: Clerics can make a testament concerning their own goods or those acquired by reason of their person, but not concerning those acquired by reason of the church.

The same, to the Bishop of Vigevano.

Because *your prudence led you to consult us as to whether secular clerics can make a testament concerning movable or immovable property,* we answer your consultation in this manner: although clerics may freely dispose of those things that they obtained by paternal succession, by reason of kinship, or from a craft, or that came to them by a gift of *their* relatives or friends without respect being had to the church, nevertheless by law they can make no testament concerning those things that they received in consideration of the church.

> De bonis propriis vel acquisitis intuitu personae clerici testari possunt, de acquisitis intuitu ecclesiae non.
>
> Idem Vigilensi Episcopo.
>
> Quia nos *+tua duxit prudentia consulendos, utrum clerici saeculares de mobilibus vel immobilibus rebus possint condere testamentum*, Consultationi tuae taliter respondemus, quod licet clerici de his, quae paternae successionis vel cognationis intuitu aut de artificio sunt adepti, seu dono consanguineorum aut amicorum *suorum*, non habito respectu ad ecclesiam, pervenerunt ad ipsos, libere disponere valeant. De his tamen, quae consideratione ecclesiae perceperunt, nullum de iure possunt facere testamentum.

Chapter X

Latin source headnote: A testament that a parishioner makes before the parish priest and two witnesses is valid, and a contrary custom is not valid. This it says by adhering to the words of the letter.

The same, to the Bishop of Ostia.

When you, *brother bishop,* were constituted in our presence, you proposed *to us in a diligent account* that such a custom obtains in your bishopric: testaments that are made as a last will *by those who have power over others* are utterly rescinded unless they are made with the subscription of seven or five witnesses, according to what human laws decree. But because this is known to be alien to divine law, the institutes of the holy Fathers, and the general custom of the church, since it is written, "In the mouth of two or three witnesses let every word stand," we *utterly* disapprove the aforesaid custom;

and we decree that testaments that *your* parishioners shall *henceforth* make as a last will before their priest and three or two other suitable persons are to remain firm *and possess the strength of perpetual firmness,* prohibiting under threat of anathema that anyone dare, *by any presumption,* to rescind testaments of this kind. [*Moreover, since princes, etc.*]

> Valet testamentum, quod parochianus facit coram presbytero parochiali et duobus testibus, nec valet contraria consuetudo. H. d inhaerendo verbis literae.
>
> Idem Hostiensi Episcopo.
>
> Quum esses, *frater episcope*, in nostra praesentia constitutus, *diligenti nobis narratione* proposuisti, talem in tuo episcopatu consuetudinem obtinere, quod testamenta, quae fiunt in ultima voluntate *ab iis, qui potestatem habent super alios*, penitus rescinduntur, nisi cum subscriptione septem vel quinque testium fiant, secundum quod leges humanae decernunt. Quia vero a divina lege et sanctorum Patrum institutis, et a generali ecclesiae consuetudine id noscitur esse alienum; quum scriptum sit : " In ore duorum vel trium testium stet omne verbum, " praescriptam consuetudinem *penitus* improbamus, et testamenta, quae parochiani *vestri* coram presbytero suo et tribus vel duabus aliis personis idoneis in extrema *de cetero* fecerint voluntate, firma decernimus permanere *et robur obtinere perpetuae firmitatis*, sub interminatione anathematis prohibentes, ne quis *praesumptione qualibet* huiusmodi rescindere audeat testamenta. [*Praeterea quum principes etc.*]

Chapter XI

Latin source headnote: A last will for pious causes made before two witnesses is valid, and it is a singular case.

The same, to the Judges of Velletri.

It has been reported *to our ears* that, when *some* cause concerning *testaments* left to a church is brought to your examination, you *wish to proceed in it according to human and not divine law and,* unless seven or five suitable witnesses have intervened, you *wholly* postpone judging thereupon. *Wherefore, because causes of this kind concerning the judgments of the church ought to be treated not according to the laws but according to the canons, and for these, as divine scripture attests, two or three suitable witnesses suffice, by apostolic writings we* command your discretion that, when any such cause has been brought to your examination, you treat it not according to the laws but according to the statutes of the decrees, *and,* after requiring three or two lawful witnesses, [*be content,*] since it is written: "In the mouth of two or three witnesses every word stands." [*Given at Benevento, on the Kalends of January.*]

> Valet ultima voluntas ad pias causas coram duobus testibus, et est casus singularis.
>
> Idem Iudicibus Velletrensibus.
>
> Relatum est *auribus nostris*, quod, quum ad vestrum examen *aliqua* super *testamentis* relictis ecclesiae causa deducitur, vos *secundum humanam, et non divinam legem in ea vultis procedere et*, nisi septem vel quinque idonei testes intervenerint, *omnino* inde postponitis iudicare. +*Unde, quia huiusmodi causae de iudiciis ecclesiae, non secundum leges, sed secundum canones debent tractari, et his, divina scriptura testante, duo aut tres idonei testes sufficiunt, discretioni vestrae per apostolica scripta* Mandamus, quatenus, quum aliqua causa talis ad vestrum fuerit examen deducta, eam non secundum leges, sed secundum decretorum statuta tractetis, *et* tribus aut duobus legitimis testibus requisitis [*sitis contenti*] quoniam scriptum est : " In ore duorum vel trium testium stat omne verbum. " [*Dat. Beneventi Kal. Ian.*]

Chapter XII

Latin source headnote: A cleric can make a testament concerning his own goods; as to goods acquired through the church, even if they are movable, the church or the successor succeeds; nevertheless, he can bestow some things upon servants or the poor. But if the deceased has several churches or benefices, an equal division will be made among them.

The same, to the Bishop-elect and Chapter of Cassano.

It has been reported to our ears that, because we established in the Lateran Council that goods acquired through the church devolve upon it at the death of clerics, you doubt whether this is to be understood only of immovables or also of movables. *You also seek to be taught by our answer whether the aforesaid goods pass by law to the use of the bishop or of him who succeeds the dying cleric, or ought to be applied to the common utility of the church. To these things, therefore, briefly* we answer that in general any goods acquired through a church ought, according to the Lateran Council, to remain with it after the death of the acquirer. By the name of the church, however, not *only* the bishop or the successor of the dying cleric, where there is a college of clerics, but the common congregation is understood, which ought to have the canonical distribution and care of those things. But where only one person is to be ordained in place of the deceased, let him dispense those goods, just as the other goods of that church, in the fear of God. Although movables acquired through the church, *as we have determined,* cannot by law be transferred to others at the choice of the dying person, nevertheless it is a custom not to be disapproved that some things from them be conferred upon the poor, religious places, and those who had served the living person, whether they are relatives or others, according to the merit of their service. But the things that come from inheritance, a craft, or learning are to be distributed according to the choice of the person dying. Since, however, some persons possess benefices in different churches, *we distinguish thus:* the things they had are to be divided among them according to a fitting valuation.

> De propriis potest testari clericus; in acquisitis per ecclesiam etiamsi sint mobilia, succedit ecclesia vel successor; potest tamen aliqua servitoribus vel pauperibus elargiri. Si autem defunctus habet plures ecclesias vel beneficia, fiet aeque divisio inter illa.
>
> Idem Electo et Capitulo Cassanensibus.
>
> Relatum est auribus nostris, quod, quia statuimus in Lateranensi concilio, ut bona per ecclesiam acquisita ad eam in clericorum obitu devolvantur, dubitatis, an hoc sit de immobilibus tantum, vel de mobilibus sentiendum. +*Responso quoque nostro quaeritis edoceri, si praescripta bona in usus episcopi vel eius, qui clerico decedenti successeritis, de iure transeant, vel communi ecclesiae utilitati debeant applicari. His itaque breviter* Respondemus, quod generaliter bona quaelibet per ecclesiam acquisita eis debent iuxta Lateranense concilium post acquirentis obitum remanere. Nomine autem ecclesiae non *solum* episcopus vel successor clerici morientis, ubi est collegium clericorum, sed communis congregatio intelligitur, quae rerum illarum debet canonicam distributionem et curam habere. Ubi autem in loco defuncti tantum unus est ordinandus, is ea bona, sicut et alia ipsius ecclesiae, in Dei timore dispenset. Licet autem mobilia per ecclesiam acquisita, *ut duximus*, de iure in alios pro morientis arbitrio transferri non possint consuetudinis tamen est non improbandae, ut de his pauperibus, et religiosis locis, et illis, qui viventi servierant sive consanguinei sint sive alii, aliqua iuxta servitii meritum conferantur. Ceterum, quae ex hereditate, vel artificio aut doctrina proveniunt, distribuantur pro arbitrio decedentis. Quia vero nonnulli in diversis ecclesiis beneficia possident, *ita distinguimus, ut* dividantur quae habuerant per aestimationem congruam inter ipsos.

Chapter XIII

Latin source headnote: A testament is valid if someone commits his last will to the disposition of another, and he is said to have made a testament for pious causes. This it says according to the more notable understanding.

Innocent III, to the Bishop of Auxerre.

When to you concerning kindness—*(And below:* [*cf. c.* 18, *On the Meaning of Words, V.* 40.]) But on the second question we say that one who commits his last will to the disposition of another is not seen to die intestate. [*Given at the Lateran.* 1202.]

> Tenet testamentum, si quis extremam voluntatem suam alterius dispositioni committit, et dicitur testatus ad pias causas. H. d. secundum intellectum notabiliorem.
>
> Innocentius III. Altissiodorensi Episcopo.
>
> Quum tibi de benignitate (*Et infra:* [*cf. c.* 18. *de verb. sign. V.* 40.]) In secunda *vero* quaestione dicimus, quod qui extremam voluntatem in alterius dispositionem committit non videtur decedere intestatus. [*Dat. Laterani* 1202.]

Chapter XIV

Latin source headnote: The bishop seeks his portion from things left to the church, although something was left to him by the testator, unless it was left by the testator in such a way, and not in fraud, that he should remain content with that portion, and he acknowledged the legacy.

The same, to C., Cardinal Priest of the title of Saint Lawrence in Lucina.

Of the office—*(And below:* [*cf. c.* 38, *On Election, I.* 6.]) Secondly, you asked: when someone in a testament leaves his own portion to the bishop and leaves *many other things to monasteries or churches and others,* whether the bishop can seek his lawful portion from those things; *adding whether, when someone by testament, in fraud, has established a small mortuary and has left many other things for his soul, the bishop can nevertheless exact from the other things the portion established by the canon. But concerning these matters,* we answer your consultation in this manner: if he bequeathed that portion to the bishop with the condition that he be content with it alone, and the bishop accepted *it,* because through this he is seen to have renounced the other things, he will not be able to exact a portion from the rest. But if he left it to him absolutely, he will nevertheless be able to vindicate from the rest the portion owed to him. If, however, it is established that he established a small mortuary in fraud so that in the rest the bishop would be defrauded of the portion owed, because fraud and deceit ought to afford patronage to no one, the bishop will be able to exact from those things the portion established by the canon, saving the indulgences of the Roman Pontiff that have been granted to certain regulars. [*You asked, etc.; cf. the following chapter.*]

> De relictis ecclesiae petit episcopus partem suam, licet aliquid fuerit sibi a testatore relictum; nisi eo modo et non in fraudem fuerit relictum a testatore, quod maneret ea parte contentus, et legatum agnoverit.
>
> Idem C. tit. S. Laurentii in Lucina Presbytero cardinali.
>
> Officii (*Et infra:* [*cf. c.* 38. *de elect. I.* 6.]) Secundo quaesivisti, quum quis in testamento relinquit episcopo propriam portionem, et alia multa monasteriis vel ecclesiis *aliisque dimittit,* utrum episcopus ex illis legitimam possit petere portionem, *+adiiciens, an, quum aliquis ex testamento in fraudem modicum constituerit*

mortuarium, et alia dimiserit pro anima sua plura, nihilominus possit episcopus exigere portionem de aliis a canone constitutam. Nos autem super his Consultationi tuae taliter respondemus, quod, si portionem illam cum conditione legavit episcopo, ut esset ea sola contentus, et *eam* episcopus acceptavit, quia per hoc aliis renunciasse videtur, de ceteris non poterit exigere portionem. Quodsi eam ipsi absolute reliquit, portionem sibi debitam poterit nihilominus de ceteris vindicare. Si vero constiterit, quod in fraudem modicum constituit mortuarium, ut in ceteris episcopus portione debita fraudaretur, quia fraus et dolus alicui patrocinari non debent, episcopus portionem ex illis poterit exigere a canone constitutam, salvis indulgentiis Romani Pontificis, quae quibusdam regularibus sunt concessae. [*Requisisti etc. cf. cap. seq.*]

Chapter XV

Latin source headnote: A thing left to a bishop in consideration of his person is not divided with the cathedral church; otherwise, if it is left in consideration of the church, whether nothing is left to the church or something is, whether jointly or separately. But if a bequest is made to the church alone, the bishop will have the canonical portion. A bequest is presumed to have been made in consideration of the church when it is made to an outsider having an administration; otherwise, if it is made to one not having an administration. But with inferior churches the bishop does not divide what is left to him, because he does not have as great a communion with inferior churches as with the cathedral.

The same.

You asked how those things that a testator bequeaths for his soul in his last will are to be divided between the bishop and the church. And indeed it is regularly true that the bishop ought to have from them a third or fourth portion according to diverse customs; but it must be diligently considered whether the testator bequeaths in this manner: "I leave," *he says,* "this to the bishop"; or, "I leave this to the church"; or, "I leave this to the bishop and the church"; or, "I leave this to the bishop, and *I leave* that to the church." In the first case a distinction must be made as to whether *that* is left to the bishop by an outsider or by a relative. If by an outsider, it is generally true that it is presumed to have been left in consideration of the church, not of the person. Hence the cathedral church can seek a canonical portion from it, just as his own portion belongs to the bishop if something is left to the church *itself.* And this indeed is true unless the testator expresses that he wishes it to belong only to the bishop, not to the church. In that case the disposition of the testator is to be observed; but otherwise if he expresses that he wishes it to belong only to the church, not to the bishop, because the private disposition of the testator cannot alter the general constitution of the canon. Nor is what is read in the canon contrary to this, namely, that pontiffs to whom something is left or donated by outsiders either together with the church or separately—because he who donates is proved to offer this for the redemption of his soul, not for the advantage of the priest—shall reckon it among the resources of the church not as their own property but as something left to the church; for this is true when the testator bequeaths that thing separately to the bishop in such a way that he does not express whether he wishes it to pertain only to the bishop and not to the church. But if that is left to the bishop by a relative, it is presumed to have been left not in consideration of the church but of the person, unless perhaps the contrary were proved, and the church can seek nothing from it during his life. But if it is left to the bishop and the church, a canonical division of it is to be made between them. If, however, this is left to the bishop and that to the church, whether the things left are equal or unequal, they are to be reduced to a canonical division between the bishop and the

cathedral church, unless both wish to be content with the disposition of the testator; which, on account of the favor accorded a last will, it is sufficiently fitting to observe where neither fraud nor deceit intervenes and no one is excessively defrauded of the portion owed. But it is otherwise if something is bequeathed to the bishop and some things to chapels, monasteries, or other pious places. For in this case what is bequeathed to the bishop is his preferentially together with the cathedral church, just as if it were bequeathed to any other person. And from those things that are bequeathed to others, he will nevertheless obtain the canonical portion, since there is not as great a communion between the bishop and chapels, monasteries, or other pious places as there is between the bishop and the cathedral church, to which he is joined in spiritual marriage. Hence those things that the bishop acquires he acquires not for them but for this church alone. But this is generally to be observed concerning one who can possess property of his own and does not have a prelacy or administration of a church: if something is specially left to him, not only by a relative but also by an outsider, it is understood to have been left not in consideration of the church but of the person, unless proof to the contrary should appear. And therefore neither the bishop nor the church can vindicate anything from it for itself during his life. And this is understood to be true when fraud is not at all procured; if it is detected, it ought not to afford patronage. [*You signified, moreover, etc.; cf. c.* 9, *On Penance, V.* 38.]

> Relictum episcopo contemplatione personae, non dividitur cum ecclesia cathedrali; secus, si contemplatione ecclesiae, sive nihil relinquatur ecclesiae sive aliquid, sive coniunctim sive separatim. Si autem soli ecclesiae est factum relictum, episcopus habebit portionem canonicam. Praesumitur autem relictum contemplatione ecclesiae factum, quando fit ab extraneo habente administrationem, secus, si fiat ab administrationem non habente. Cum ecclesiis vero inferioribus episcopus non dividit sibi relictum, quia non est sibi tanta communio cum ecclesiis inferioribus, sicut cum cathedrali.
>
> Idem.
>
> Requisisti de his, quae testator pro anima sua legat in ultima voluntate, qualiter sint inter episcopum et ecclesiam dividenda. Et quidem regulariter verum est, quod episcopus debet de his secundum diversas consuetudines tertiam vel quartam portionem habere; sed considerandum est diligenter, utrum testator leget hoc modo : " relinquo, *inquit*, istud episcopo, " an : " relinquo istud ecclesiae; " vel : " relinquo istud episcopo et ecclesiae; " an : " relinquo istud episco po et *relinquo* illud ecclesiae. " In primo casu distinguendum est, utrum relinquatur *illud* episcopo ab extraneo, an a propinquo. Si ab extraneo, generaliter verum est, quod praesumitur esse relictum intuitu ecclesiae, non personae. Unde cathedralis ecclesia de illo potest canonicam petere portionem, quemadmodum episcopo competit sua portio, si aliquid *ipsi* ecclesiae relinquatur. Et hoc utique verum est, nisi testator exprimat, quod velit illud tantum esse episcopi, non ecclesiae. In quo casu servanda est dispositio testatoris; secus autem, si exprimat, quod velit esse illud tantum ecclesiae, non episcopi, quia privata dispositio testatoris non potest generalem constitutionem canonis immutare. Nec est contrarium, quod in canone legitur, videlicet quod pontifices quibus ab extraneis aliquid aut cum ecclesia aut sequestratim dimittitur aut donatur, quia hoc ille, qui donat, pro redemptione animae suae, non pro commodo sacerdotis probatur offerre, non quasi suum proprium, sed quasi dimissum ecclesiae inter facultates ecclesiae computabunt, quoniam hoc est verum, quum testator ita sequestratim legat illud episcopo, quod non exprimit, utrum velit ad episcopum tantum, et non ad ecclesiam pertinere. Si vero relinquatur illud episcopo a propinquo, praesumitur esse relictum non intuitu ecclesiae, sed personae, nisi forte contrarium probaretur, et de isto nihil potest ecclesia petere in vita eius. Quod si relinquatur episcopo et ecclesiae, de illo canonica inter ipsos est divisio facienda. Si vero istud episcopo, et illud ecclesiae relinquatur, sive aequalia sive inaequalia sint relicta, reducenda sunt ad divisionem canonicam inter episcopum et ecclesiam

cathedralem, nisi ambo velint esse testatoris dispositione contenti; quam propter ultimae voluntatis favorem satis decens est observare, ubi neque fraus intervenit, neque dolus, neque quisquam nimium defraudatur debita portione. Secus autem est, si aliquid legetur episcopo, et aliqua capellis vel monasteriis aut aliis piis locis. Nam in hoc casu quod legatur episcopo eius est praecipuum cum ecclesia cathedrali, quemadmodum si cuilibet alii legaretur. Et de illis quae aliis legantur, portionem canonicam nihilominus obtinebit, quoniam non est tanta communio inter episcopum et inter capellas et monasteria seu alia pia loca, quanta est inter episcopum et ecclesiam cathedralem, cui est spirituali coniugio copulatus. Unde quae acquirit episcopus non illis, sed isti tantum acquirit. Illud autem est generaliter observandum circa eum, qui potest proprium possidere, praelationem vel administrationem ecclesiae non habentem, quod si ei aliquid specialiter relinquatur, non solum a propinquo, verum etiam ab extraneo, intelligitur esse relictum non intuitu ecclesiae, sed personae, nisi probatio in contrarium appareret. Et idcirco de illo nec episcopus, nec ecclesia potest in vita eius sibi aliquid vendicare. Et hoc intelligitur esse verum, quum fraus minime procuratur, quae, si detecta fuerit, patrocinari non debet. [*Significasti praeterea etc. cf. c.* 9. *de poenit. V.* 38.]

Chapter XVI

Latin source headnote: In the goods of a father, mother, and grandmother, a person has what is owed by the law of nature, in which he cannot be burdened; and a son who is asked to restore an inheritance under a condition deducts what is owed by the law of nature and the Trebellianic fourth, in which the fruits received after joinder of issue are computed.

The same, to the Bishop of Tuscania.

Raynutius de Clera, having two daughters, namely Alterocha and Adiecta, as well as a mother, Clera, and a wife named Adelasia, made a testament when placed at the end of life, leaving to his adult daughter Alterocha, beyond the dowry he had given her, a house and a certain garden in the same testament. But to the minor Adiecta he left his remaining goods, adding that Alterocha and the offspring whom she was carrying in her womb, *since she was pregnant at that time,* should succeed the same minor if she died without children. *The same testator further enjoined the tutors whom he had given to his minor daughter Adiecta to join her in marriage with all her goods.* Therefore, after the testator died, the tutors of the minor, according to Lombard law, delivered her with all *her* goods left to her by her father to a certain man named Peter. And she, *after she had cohabited with him for four years* and had conceived a son by him, finally died without children; her husband, the same P., surviving for some time, possessed her goods in peace. He, contracting marriage with another woman and conceiving sons by her, closed his last day.

Afterward, *however,* when matter for a question concerning the aforesaid goods of the same Adiecta arose between Alterocha and *Montanellus,* her son, on one side, and the sons of the same P. and Raynerius, their tutor, on the other, they began to litigate with one another before G., judge of Tuscania. Before him Alterocha and *M.,* her son, sought the goods of the late Raynutius, *the father of the same Alterocha,* as owed to them by reason of a fideicommissum or substitution, while *Raynerius,* tutor of the aforesaid sons of P., said in opposition that prescription of a year, usucaption on account of dowry, and prolonged silence for a long time obstructed them. He alleged further that, before all else, both a third of Clera, mother of the *aforesaid R.,* the testator, and a third of Adelasia, his wife, as well *as* a fourth by the Trebellianic right in the name of Adiecta herself were to be deducted from those goods. But the said judge, *after diligently examining the allegations and reasons of each party,*

condemned the aforesaid Raynerius, in the name of the tutorship of the wards, to restitution of the goods of the *late* Raynutius, after first deducting the third of Clera that she had donated to Adiecta and her husband, concerning which he did not appear in any way to have thought in the substitution that Raynutius made; and after also deducting the third of Adelasia that she had sold to the aforesaid P. The same judge also commanded that those thirds be deducted from those things from which they could be deducted according to the custom of the city of Tuscania. The same judge further enjoined that the fourth be deducted by the Trebellianic right, since even any outsider burdened with restitution could have deducted it; but each party appealed from that sentence. *(And below:)* When, however, there had been lengthy litigation before G., cardinal deacon appointed by us as auditor, he, *after taking counsel with learned men,* by our mandate pronounced unjust the sentence of the aforesaid judge *Guezius,* namely, in that he said that the third of Clera and the third of Adelasia were to be deducted in full, *and the same cardinal* pronounced that an appeal had lawfully been made from it, defining that those thirds were to be deducted in such a way that the legitimate portion owed by the law of nature to Alterocha should remain safe to her in each; to the restitution of this he then condemned the said *Raynerius*. But in that the same judge held that the *fourth part* was to be retained by the Trebellianic right, he confirmed that judge's sentence, namely in such a way that the fruits received from his goods, from the time of joinder of issue, by the aforesaid Peter and his sons after the death of Adiecta should be computed in it. If these suffice for the fourth and its fruits, let no other deduction be made under that name; otherwise, an account of computation is to be had according to the quantity of fruits received. Since, however, Adiecta's father could not burden her in her legitimate portion, he held that the legitimate portion itself, namely of the part that would have been owed to her on intestacy, was to be deducted and also retained, *namely* in such a way that the deduction be made only from those things from which it is accustomed to be made according to the custom of the city of Tuscania. But in that the aforementioned judge condemned Raynerius in the name of *his* wards to make restitution of the residue to Alterocha and her son, he confirmed his sentence. We therefore, holding valid the sentence of the same cardinal, *promulgated as justice required,* confirm it by apostolic authority.

> In bonis patris, matris et aviae habet quis debitum iure naturae, in qua gravari nequit; et filius, rogatus de restituenda hereditate sub conditione, detrahit debitum iure naturae et Trebellianicam, in qua computantur fructus post litis contestationem percepti.
>
> Idem Episcopo Tuscano.
>
> Raynutius de Clera, duas habens filias, Alterocham videlicet et Adiectam, matrem insuper Cleram, et uxorem nomine Adelasiam, in extremis positus condidit testamentum, Alterochae filiae puberi ultra dotem, quam ei dederat, domum et quendam hortum in eodem testamento relinquens. Adiectae vero impuberi reliquit cetera bona sua, adiiciens, ut Alterocha et soboles, quam gestabat in utero, *quum eo tempore praegnans esset*, eidem impuberi succederent, si absque liberis moreretur. *Tutoribus insuper, quos Adiectae impuberi filiae dederat, idem testator iniunxit, ut eandem cum omnibus bonis suis matrimonio copularent*. Mortuo itaque testatore tutores impuberis eam cum omnibus bonis *suis*, eidem relictis a patre, iure Lombardo cuidam Petro nomine tradiderunt. Quae, *quum per quadriennium cohabitasset eidem*, filium ex eo suscipiens, tandem sine liberis est defuncta cuius bona idem P. maritus eius, superstes aliquanto tempore, possedit in pace. Qui, cum alia muliere matrimonium contrahens, et filios suscipiens ex eadem, diem clausit extremum. Postmodum *vero* inter Alterocham et filium eius *Montanellum* ex una parte, ac filios eiusdem P. et Raynerium tutorem eorum ex altera super bonis praedictis eiusdem Adiectae suscitata materia quaestionis, coeperunt coram G. iudice Tuscanensi ad invicem litigare, coram

quo Alterocha et *M.* filius eius bona quondam Raynutii, *patris eiusdem Alterochae*, tanquam ex causa fideicommissi vel substitutionis sibi debita petierunt, *Rainerio* tutore filiorum praedicti P. ex adverso dicente, quod obstabat illis annalis praescriptio, usucapio pro dote ac longi temporis silentium diuturnum. Insuper allegabat, quod de bonis illis tam tertia Clerae, *praedicti R.* matris testatoris, et tertia Adelasiae uxoris eiusdem, quam *etiam* quarta per Trebellianum nomine ipsius Adiectae erant ante omnia deducendae. Dictus vero iudex, *utriusque partis allegationibus et rationibus diligenter inspectis*, supra dictum Raynerium tutorio nomine pupillorum in restitutione bonorum *quondam* Raynutii condemnavit, tertia Clerae primo deducta, quam Adiectae ac viro suo donaverat, de qua in substitutione, quam fecit Raynutius, non videtur aliquatenus cogitasse; deducta quoque tertia Adelasiae, quam ipsa P. vendiderat supra dicto. Praecepit etiam idem iudex, de his rebus illas tertias deducendas, de quibus deduci poterant secundum Tuscanae consuetudinem civitatis. Deduci praeterea quartam per Trebellianum idem iudex iniunxit, quum etiam quilibet extraneus restitutione gravatus eam deducere potuisset; sed utraque pars ab illa sententia provocavit. (*Et infra:*) Quum autem coram G. diacono cardinali auditore a nobis concesso fuisset diutius litigatum, ipse *habito consilio peritorum* de mandato nostro sententiam supra dicti *Guezii* iudicis, videlicet in eo, quod dixit, tertiam Clerae, et tertiam Adelasiae integraliter deducendas, *idem cardinalis* pronunciavit iniustam, et ab ea legitime provocatum, diffiniens, sic illas tertias deducendas, ut legitima portio, iure naturae debita Alterochae, illi salva sit in utraque; ad cuius restitutionem dictum *deinde* Raynerium condemnavit. In eo vero, quod quartam *partem* per Trebellianum idem iudex censuit retinendam, sententiam confirmavit eiusdem, ita videlicet, quod fructus, de bonis ipsius a tempore litis contestatae percepti a praedicto Petro et filiis eius post mortem Adiectae, computentur in ea. Qui si suffecerint ad quartam et fructus eius, eo nomine alia deductio nulla fiat; alioquin iuxta quantitatem fructuum perceptorum computationis ratio habeatur. Quia vero pater Adiectae ipsam in legitima non potuit aggravare, legitimam ipsam, videlicet eius partis, quae sibi debebatur ab intestato, deducendam censuit, et etiam retinendam, ita *videlicet*, quod deductio fiat tantummodo de his rebus, de quibus secundum Tuscanae consuetudinem civitatis fieri consuevit. In eo autem, quod praenominatus iudex condemnavit Raynerium nomine pupillorum *suorum* ad residui restitutionem Alterochae ac eius filio faciendam, ipsius sententiam confirmavit. Nos igitur, eiusdem cardinalis sententiam *exigente iustitia promulgatam* ratam habentes, ipsam auctoritate apostolica confirmamus.

Chapter XVII

Latin source headnote: A bishop compels fideicommissaries or executors of a testament to execute the pious wills of the deceased, even if the testator had forbidden this.

Gregory IX, to the Bishop of Noyon.

Your fraternity intimated to us that some persons, religious as well as secular clerics and laymen, do not hesitate to apply to other uses money and other goods that ought through their hands to be expended for pious uses under the testaments of persons dying. Since, therefore, in all pious wills provision is to be made by the bishops of the places that all things proceed according to the will of the deceased, even though it should happen that this was forbidden by the testators, we command that, after admonition, you compel executors of testaments of this kind to expend those goods faithfully and fully for the aforesaid uses.

Episcopus compellit fideicommissarios seu executores testamenti ad exsequendas pias voluntates defunctorum, etiamsi testator hoc interdixisset.

Gregorius IX. Nomon. Episcopo.

> Tua nobis fraternitas intimavit, quod nonnulli, tam religiosi quam clerici saeculares et laici, pecuniam et alia bona, quae per manus eorum ex testamentis decedentium debent in usus pios expendi, non dubitant aliis usibus applicare. Quum igitur in omnibus piis voluntatibus sit per locorum episcopos providendum, ut secundum defuncti voluntatem universa procedant, licet etiam a testatoribus id contingeret interdici; mandamus, quatenus exsecutores testamentorum huiusmodi, ut bona ipsa fideliter et plenarie in usus praedictos expendant, monitione praemissa compellas.

Chapter XVIII

Latin source headnote: A son who is asked to restore an inheritance deducts a third by the law of nature and a Trebellianic fourth, in which he can leave legacies, institute heirs, and impose a penalty.

The same.

Raynaldus, son of Pepo, was instituted heir by him in this manner: that he should restore the inheritance to his paternal uncles if he died without male children. After Pepo died, Raynaldus submitted to three arbiters with them concerning certain goods of the same inheritance. After one of them died, the other two, proceeding as they could according to the form of the submission, arbitrated in this manner: neither party should have license to transfer the aforesaid things in any manner to another except to their male children lawfully descending from them, and whatever was done contrary to this should not be valid. Thereafter the said R., having no offspring, made a testament in which he bequeathed half of his share in the aforesaid things to certain maternal uncles of his, but the other half and the remaining paternal goods to one of his paternal uncles and his sons; adding that, if the said heirs of R. should act contrary to the legacy owed to his said maternal uncles, the goods in which they could succeed R. by testament or on intestacy should devolve upon those maternal uncles in determined portions.

Finally, when the same R. paid the debt of nature and one of the paternal uncles entered upon the aforesaid inheritance, the said maternal uncles moved a question against the same paternal uncle and his sons before the judge of the community of Orvieto, seeking the aforesaid legacy according to the share that fell to them, and seeking that, if those men acted contrary to it, whatever had come or could have come to them by occasion of the testament of the same R. be restored to the maternal uncles. The aforesaid judge, absolving those men from their impleading concerning the legacy, condemned them by sentence to restitution of the other goods. When both parties appealed from his sentence to our hearing, each party seeking that the sentence of the said judge be annulled insofar as it had been promulgated against itself and be committed to execution insofar as it operated for itself, our beloved son O., cardinal deacon of Saint Nicholas in the Tullian Prison, after issue had lawfully been joined before him, pronounced that—because the same R. had in the goods of the late Pepo, his father, a third part owed by the law of nature, in which he could not be burdened, and also a Trebellianic fourth, which any outsider burdened with restitution could have deducted, on account of which the aforesaid R. had those portions in the aforesaid things bequeathed to his maternal uncles and could bequeath them in his last will, and through this the legacy was valid up to the aforesaid third and fourth, although he had not expressed them in making the legacy—the aforesaid award notwithstanding, which could not prevent the legacy from being valid, the judge himself had judged wrongly in wholly absolving the said paternal uncle concerning this, who confessed that he possessed half of the aforesaid things. He condemned him to restitution of half of the third and fourth part of

that legacy according to the share of it that fell to the said maternal uncles, and confirmed the sentence of the aforesaid judge as to the residue.

But as to the fact that the same judge had condemned the said paternal uncle and his sons entirely concerning the other things sought in the second article, he decreed that the judge had pronounced wrongly, because his sons were not found to have committed anything contrary to the will of the testator, since they were found to possess none of the things sought. But as to the portion that the paternal uncle had in those goods by reason of the aforesaid fourth and third that R. had in the same goods, in which his institution, legacy, and addition of a penalty were valid, for the share falling to the same maternal uncles, he confirmed the sentence of the aforesaid judge concerning the aforesaid legacy, absolving the same paternal uncle and his sons as to the residue; and saving nevertheless to him, by the law of institution, the benefit of the Falcidian law in the restitution of the aforesaid legacy if he obeyed the will of the testator within the lawful time, since he made an inventory and the Falcidian law is introduced against the will of a testator. We therefore, holding valid the sentence of the cardinal himself, confirm it by apostolic authority.

> Filius, rogatus restituere hereditatem, detrahit tertiam iure naturae, et quartam Trebellianicam, in quibus potest legata relinquere, heredes instituere, et poenam imponere.
>
> Idem.
>
> Raynaldus Peponis filius, heres ab ipso institutus hoc modo, ut patruis suis hereditatem restitueret, si absque filiis masculis moreretur, cum eis mortuo Pepone super quibusdam bonis hereditatis eiusdem in tres arbitros compromisit, quorum duo, mortuo reliquo, prout ex forma compromissi poterant, procedentes, taliter arbitrati fuerunt, quod neutra pars haberet licentiam transferendi quocunque modo in alium res praedictas, nisi in eorum filios masculos ex ipsis legitime descendentes, et quod contra hoc fieret non valeret. Porro dictus R., prolem non habens, condidit testamentum in quo medietatem partis suae de rebus praedictis quibusdam avunculis suis, aliam vero medietatem et reliqua bona paterna uni ex patruis suis et eius filiis legavit, adiiciens, ut bona, in quibus ex testamento vel ab intestato dicti heredes R. possent succedere, si venirent contra legatum dictis avunculis suis debitum, ad ipsos pro determinatis portionibus devenirent. Demum eodem R. naturae debitum persolvente, ac uno ex patruis hereditatem adeunte praedictam, quum dicti avunculi adversus eundem patruum ac filios eius coram iudice communitatis Urbenatensis moverunt quaestionem, petendo pro rata, quae ipsos contingit, legatum praedictum, et restitui eis, si contra ipsum illi venirent, quaecunque occasione testamenti eiusdem R. ad ipsos pervenerant vel poterant pervenisse, praefatus iudex, ab illorum impetitione super legato ipsos absolvens, ad restitutionem aliorum bonorum sententialiter condemnavit eosdem. A cuius sententia quum ambae partes ad nostram audientiam appellassent, petente utraque parte dicti iudicis sententiam infirmari, quatenus contra se fuerat promulgata, et quatenus pro se faciebat, exsecutioni mandari, dilectus filius noster O. sancti Nicolai in carcere Tulliano diaconus cardinalis lite coram se legitime contestata, quoniam idem R. habebat in bonis quondam Peponis patris sui tertiam partem debitam iure naturae, in qua gravari nequivit, nec non quartam Trebellianicam, quam quilibet extraneus restitutione gravatus deducere potuisset, propter quod in rebus praedictis avunculis legatis portiones easdem habuit R. praefatus, easque potuit in ultima voluntate legare, ac per hoc legatum tenuit usque ad tertiam et quartam praefatas, licet ipsas non expresserit in legando, pronunciavit, non obstante praemisso arbitrio, quod nec legatum teneret, non poterat impedire, iudicem ipsum in eo, quod super hoc dictum patruum in totum absolvit, qui confessus est, se pro medietate possidere praedicta, perperam iudicasse, condemnavitque ipsum ad restitutionem medietatis tertiae et quartae partis ipsius legati pro rata, quae dictos avunculos de ipso contingit, et in residuo praefati iudicis sententiam

confirmavit. Ceterum in eo, quod idem iudex dictum patruum et eius filios totaliter in aliis, quae in secundo articulo petita fuerant, condemnarat, male ipsum pronunciasse decrevit, quia filii eius contra voluntatem testatoris non inveniuntur aliquid commisisse, quum nihil de petitis reperti fuerint possidere. Verum in portione, quam patruus habebat in bonis illis ratione quartae et tertiae praedictorum, quas R. habuit in bonis eisdem, in quibus eius institutio et legatio ac adiectio poenae tenebat, pro rata eosdem avunculos contingente, de praedicto legato confirmavit sententiam iudicis supra dicti, eodem patruo et eius filiis in residuo absolutis, et salvo nihilominus ei ex iure institutionis beneficio legis Falcidiae, in restitutione praefati legati, si infra tempus legitimum voluntati paruerit testatoris, quum inventarium fecerit, et contra voluntatem testatoris lex Falcidia inducatur. Nos itaque, ipsius cardinalis sententiam ratam habentes, eam auctoritate apostolica confirmamus.

Chapter XIX

Latin source headnote: A testamentary executor who undertook that office is compelled to execute it.

The same.

John, a cleric, and P., a layman, executors of the last will of O., a cleric of Holy Cross, who in his last will bequeathed from his goods to venerable and pious places, further commanding that his creditors be satisfied through them, ought, after undertaking the mandate, to be compelled by the diocesan bishop to fulfill the testator's last will.

Exsecutor testamentarius, qui suscepit illud officium, exsequi compellitur.

Idem.

Ioannes clericus et P. laicus, exsecutores ultimae voluntatis O. clerici S. Crucis, qui venerabilibus et piis locis de bonis suis in ultima voluntate legavit, mandans insuper, satisfieri creditoribus per eosdem, post mandatum susceptum per dioecesanum cogi debent testatoris explere ultimam voluntatem.

Chapter XX

Latin source headnote: It sets forth certain legacies from which the canonical portion is not paid unless it is done in fraud.

The same.

From those things that are bequeathed to churches or other pious places in ornaments or for them, or for the fabric, lights, an anniversary, the seventh, twentieth, or thirtieth day, or for other things pertaining to perpetual divine worship, the canonical portion ought not to be deducted, provided it is not done in fraud so that the bishop or parish church ought to be defrauded of it.

Ponit quaedam legata, in quibus non solvitur canonica portio, nisi fiat in fraudem.

Idem.

De his, quae in ornamentis vel pro eis, seu fabrica, luminaribus, anniversario, septimo, vigesimo, tricesimo die, sive aliis ad perpetuum cultum divinum legantur ecclesiis vel reliquis piis locis, canonica portio, dummodo in fraudem non fiat, ut ea episcopus seu parochialis ecclesia debeat defraudari, deduci non debet.

Title XXVII: On Intestate Successions

Chapter I

Latin source headnote: A cleric can give his own goods to whomever he wishes; but if he dies intestate and has no relatives, the church succeeds. This it says when joined with the gloss.

From a council held at Alten.

But [*also*] this was established there concerning bishops, priests, and clerics: if by inheritance or in another manner they have acquired something by reason of their person, it is lawful for them, while they live, to donate *these things* to whomever they wish, *for the remedy of their soul, to whatever church they choose, or to their relatives or friends*. But if they die before they have done this, let all things be perpetually consecrated to the altar that they serve and be delivered into its right. [*That the same was established concerning priests who serve laymen, etc.*]

> **DE SUCCESSIONIBUS AB INTESTATO.**
>
> Clericus bona propria dare potest cui vult; sed, si decedat intestatus, et non habet consanguineos, succedit ecclesiae. H. d. iuncta gl.
>
> Ex concilio apud Alten. habito.
>
> Sed [*et*] hoc ibidem inventum est de episcopis, presbyteris et clericis, ut, si per hereditatem vel alio modo intuitu personae aliquid acquisierint, donare eis liceat *haec*, cui voluerint, dum vivunt, *pro remedio animae suae ad ecclesiam, quamcunque elegerint, vel consanguineis suis vel amicis*. Si autem ante obierint, quam hoc fecerint altari, cui serviunt, omnia perpetuo sanctificentur, et in ius eius tradantur. [*Similiter de presbyteris, qui laicis deserviunt, statutum esse etc.*]

Chapter II

Latin source headnote: If one formerly a slave, having been made a priest, dies intestate, his goods are divided according to the form contained here. This it says according to the singular understanding, which also holds today.

From the Council of Tribur.

It was brought before the holy council that certain laymen act wickedly against their priests, so that they vindicate shares for themselves from the substance of dying priests as from their own slaves. We therefore forbid *by canonical authority* that this be done hereafter; but, just as they were made free to receive the grade and perform the divine office, so let nothing be exacted from them apart from the divine office. Their peculium, however, is to be divided into four parts, of which one is to be assigned to the bishop, another to the church, a third to the poor, and a fourth to the relatives. And if there are no suitable relatives, let the bishop receive it and diligently distribute it for the use of the church. And if anyone presumes *to act* contrary to this, let him be anathematized.

> Si olim servus, presbyter factus, intestatus decedat, eius bona dividuntur secundum formam hic contentam. H. d. secundum intellectum singularem, qui hodie etiam tenet.
>
> Ex concilio Triburiensi.
>
> Sancto concilio allatum est, quod quidam laici improbe agunt contra presbyteros suos ita, ut de morientium presbyterorum substantia partes sibi vendicent sicut de propriis servis. Interdicimus itaque *canonica auctoritate*, ne hoc ulterius fiat; sed, sicut liberi facti sunt ad suspiciendum gradum et agendum

officium divinum, ita nil ab eis praeter divinum officium exigatur; peculium vero ipsorum dividatur in quatuor partes, quarum una episcopo, altera ecclesiae, tertia pauperibus, quarta parentibus assignetur. Et, si non sint idonei parentes, episcopus eam recipiat, et in usum ecclesiae diligenter distribuat. Et si quis contra hoc *facere* praesumpserit, anathematizetur.

Chapter III

Latin source headnote: Touching upon two notable and singular understandings of this chapter, it is summarized according to each understanding, and first thus: A testament made for pious causes by declarative words, even words uttered on account of another matter, is valid, although the succession or testament comes to the exclusion of another church. Or otherwise, according to the other understanding, thus: An offering is proved by one witness to the truth and also by a confession made incidentally, even with respect to the effect of obtaining the goods offered.

Innocent III, to the Bishop of Maurienne.

When our beloved son the abbot of Brusia *had* [*recently*] *come to our presence and* had waited there for a long time on account of the cause he had against *our venerable brother* the Bishop of Autun, *finally* a messenger of the same bishop arrived. When they wished to litigate with one another, we appointed as auditor our venerable brother I., Bishop of Viterbo and cardinal of Saint Clement. Therefore, when they were constituted in his presence, the aforesaid abbot proposed that, *when* the archpriest of Alerio offered himself and his goods to the monastery of Brusia for participation in its prayers *with a view to piety,* certain of his goods being reserved for his simple use, he received from the hand of a certain brother of the same coenobium an enlargement of the crown as a sign of that offering; and that he had often declared in the common chapter that he had made this grant in this manner, and that he possessed not in his own name but [*in the name*] *of the monastery, and acquired for the monastery whatever he acquired.* The same archpriest also continued publicly in this for almost twenty years, with no one contradicting or protesting, in such a way that through public fame it had become known to all. For the abbot of Buxeria who was in office at the time, and the monks themselves, with the knowledge of the Bishop of Autun who was in office at the time and with him making no protest at all, publicly used his goods no otherwise than the other goods belonging to the monastery. Moreover, what the said archpriest, in possession of his mind, had done between the living, he confirmed in his last will, sound in mind although sick in body. And when the same abbot and monks wished to bring back to their monastery the things thus lawfully given and other things that they had granted to the archpriest himself for use, the aforesaid bishop, bringing violence upon them, occupied not only the things of the archpriest but also the things of the monastery itself. When they sought these back in good peace, he, so that fuller matter for raging over those things might be granted to him, appealed to the Apostolic See, fixing the octaves of blessed Martin most recently past as the term for his appeal.

On the contrary, the aforesaid messenger of the bishop alleged that, when that donation was made, the archpriest was out of his mind to such an extent that, when he had been asked by the monks, "Do you wish to receive the monastic habit?" and had answered, "I do," immediately, when asked by another, "Do you wish to be an ass?" he answered likewise, "I do." And thus the aforesaid monks carried him off to their monastery, which the same messenger offered to prove. [*Indeed, when the aforesaid abbot immediately produced certain witnesses for the assertion of his party, we caused them to be received and diligently heard. When we had interlocutorily decreed that their attestations ought to be published, because the*

bishop's party did not wish to produce witnesses concerning those articles concerning which the same abbot had produced witnesses, and when those attestations had been publicly recited and diligent disputation had been held concerning them, many things were alleged against the statements of the witnesses. And when the parties had renounced further pleading, the said cardinal faithfully recited to us and our brothers whatever had been proposed on each side.] *Having heard and learned these things,* we sufficiently understood it to have been proved that the said archpriest, acting at the end of life as though expressing his last will, asserted that he had conferred himself and his goods upon the monastery *of Buxeria.* Hence, when he was asked to make a testament, he answered that he could not make a testament because he had conferred himself and his goods upon the aforesaid monastery. And although only one witness said that he had seen when *the aforesaid archpriest* offered himself and his goods to the monastery, nevertheless, because other witnesses said that they had heard the *archpriest himself,* in the presence of the abbot, confessing *and attesting* what has been aforesaid, they greatly assisted the assertion of the abbot, not as proving sufficiently but as giving it powerful support.

But because the bishop's party asserted that it wished to prove that the said archpriest, laboring at the end of life as though delirious, had been alienated *from* his mind, whence what he expressed was not valid, we, *after diligent prior deliberation with our brothers concerning these and the other things proposed on each side,* thought that cause should be committed to you under this form: unless the aforesaid bishop lawfully proves that the often-mentioned archpriest was not in possession of his mind when he expressed his last will, perpetual silence is to be imposed upon him concerning his impleading of the monastery, and he is to be compelled to restore to the monastery whatever he occupied from the goods of the archpriest himself or even of the monastery. But if he lawfully proves that *the aforesaid* archpriest said with an alienated mind the things premised concerning his last will, the monastery is to be condemned to make restitution to him, in the name of the parish church whose administration the archpriest had conducted while he lived, of the goods that had belonged to that archpriest, since the same archpriest died intestate; and silence is to be imposed upon the monastery concerning its impleading of the bishop. [*No letters, etc. Given at Rome, on the fourth day before the Nones of June.* 1198.]

> Attingendo duos notabiles et singulares intellectus, huius capituli, summatur secundum quemlibet intellectum, et primo sic: Valet testamentum ad pias causas conditum per verba enunciativa, etiam propter aliud prolata, quanquam successio seu testatio veniat ad exclusionem alterius ecclesiae. Vel aliter secundum alium intellectum et sic: Per unum testem de veritate et per confessionem etiam incidenter factam probatur oblatio, etiam quoad effectum consequendi bona oblata.
>
> Innocentius III. Murnensi Episcopo.
>
> Quum dilectus filius abbas de Brusia *ad nostram* [*nuper*] *praesentiam accessisset, et* pro causa, quam adversus *venerabilem fratrem nostrum* episcopum Eduensem habebat, *ibidem* diutius exspectasset, *tandem nuncius eiusdem episcopi supervenit, quibus volentibus ad invicem litigare, venerabilem fratrem nostrum I. Viterbiensem episcopum sancti Clementis cardinalem concessimus auditorem. Ipsis igitur in eius praesentia constitutis,* abbas proposuit ante dictus, quod, *quum* archipresbyter de Alerio ad participationem orationum monasterio de Brusia *pietatis intuitu* obtulit se et sua, *+quibusdam rebus suis usui suo simplici reservatis, de manu cuiusdam fratris eiusdem coenobii augmentationem coronae in signum illis oblationis accepit, et quod hanc concessionem hoc modo fecisset, et non suo nomine sed* [*nomine*] *monasterii possideret, et monasterio quicquid acquirebat acquireret, saepe fuit in communi capitulo protestatus, in hoc etiam publice per viginti annos fere idem archipresbyter nullo contradicente vel reclamante permansit ita, quod per publicam famam id omnibus notum fuerat. Nam abbas de Buxeria, qui pro tempore fuerat, et ipsi monachi, rebus

ipsius non secus, quam aliis rebus propriis monasterii, sciente episcopo Eduensi, qui pro tempore erat, et in nullo penitus reclamante publice utebantur. Id autem, quod mente compoti dictus archipresbyter fecerat inter vivos, et in ultima voluntate mente sanus, licet aeger corpore, confirmavit. Quumque idem abbas et monachi res, sic legitime datas, et alias, quas archipresbytero ipsi concesserant ad utendum, ad suum monasterium reducere vellent, praedictus episcopus, eis violentiam inferens, non solum res archipresbyteri, sed etiam res ipsius monasterii occupavit. Quas quum in bona pace repeterent, ipse, ut rebus illis ei posset grassandi materia plenior indulgeri, sedem apostolicam appellavit, in octavis B. Martini proxime praeteriti suae terminum appellationi praefigens. Econtra praedictus nuncius episcopi allegavit, quod, quando illa donatio facta fuit, archipresbyter erat positus extra mentem ita, quod, quum interrogatus fuisset a monachis: "vis tu habitum suscipere monachalem? "et respondisset: "volo, "statim interrogatus ab alio: "vis tu esse asinus? "respondit similiter: "volo. "Sicque praedicti monachi eum ad suum monasterium deportarunt, quod idem nuncius se obtulit probaturum. * [*Praefatus siquidem abbas, quum ad assertionem partis suae quosdam testes in continenti produceret, nos ipsos recipi fecimus et diligenter audiri, quorum attestationes quum interloquendo decrevissemus publicari debere, quoniam super illis capitulis pars episcopi nolebat testes producere, super quibus idem abbas testes produxerat, ipsaeque fuissent in publico recitatae, disputatione super attestationibus ipsis habita diligenti, multa fuere contra dicta testium allegata. Quumque renunciatum fuisset a partibus, dictus cardinalis quaecunque fuerunt hinc inde proposita nobis et fratribus nostris fideliter recitavit.*] *Quibus auditis et cognitis* Sufficienter intelleximus esse probatum, quod dictus archipresbyter, agens in extremis, velut ultimam exprimens voluntatem, asseruit, se et sua monasterio *de Buxeria* contulisse. Unde, quum requisitus esset, ut conderet testamentum, respondit, se non posse testari, quia se et sua contulerat monasterio supra dicto. Et licet unus testis solus dixerit se vidisse quando *praefatus archipresbyter* se et sua obtulit monasterio, quia tamen alii testes dixerunt, se audivisse, ipsum *archipresbyterum* in abbatis praesentia quod praedictum est confitentem *et attestantem*, non tanquam sufficienter probantes, sed tanquam vehementer adminiculantes assertionem abbatis plurimum adiuvabant. Quia vero pars episcopi asserebat, se velle probare, quod dictus archipresbyter in extremis laborans tanquam phreneticus alienatus erat *a* mente, unde non valuit quod expressit, nos, super *his et aliis, quae fuerunt hinc inde proposita, cum fratribus nostris diligenti deliberatione praehabita*, causam illam tibi sub hac forma duximus committendam, quod, nisi praefatus episcopus legitime probaverit, saepe dictum archipresbyterum suae mentis compotem non fuisse, quum ultimam voluntatem expressit, super impetitione monasterii perpetuum ei silentium imponatur, et compellatur restituere monasterio quaecunque de bonis ipsius archipresbyteri vel etiam monasterii occupavit. Si vero legitime probaverit, *praedictum* archipresbyterum quae super ultima voluntate praemissa sunt alienata mente dixisse, ad faciendam ei nomine parochialis ecclesiae, cuius ipse administrationem gesserat, dum vixisset, restitutionem bonorum, quae ipsius archipresbyteri fuerant, monasterium condemnetur, quum idem archipresbyter ab intestato decesserit, ipsique monasterio super impetitione episcopi silentium imponatur. [*Nullis literis etc. Dat. Rom. IV. Non. Iun. * 1198.]

Title XXVIII: On Burials

Chapter I

Latin source headnote: One dying intestate is buried in the tomb of his ancestors, or where burial is chosen; nevertheless, the parish church will have the canonical portion of what he left to the church of burial. This it says according to the truer understanding.

Leo III.

We, considering the institutes of the earlier fathers, *and also confirming their decrees,* establish, *as is most holy,* that everyone *namely* lie in the tombs of his ancestors, as the passing of the patriarchs teaches. Nevertheless, we deny no one the choice of his own burial place, and even one belonging to another. For the Lord and Master, *who was without sin,* chose one belonging to another as his own. But because the worker is worthy of his wage, we hold that by *right* he should give a third part of his disposition to that church in which he was accustomed to be refreshed with heavenly nourishment *daily from the beginning of his origin,* so that according to the Apostle [*thus*] they may be partners in consolations as they were also in sufferings; and then, finally, let him choose burial wherever he pleases. Lest it be done otherwise, by the authority of our Lord *Jesus Christ,* who spoke through the Prophet, saying, "Do not transgress the ancient boundaries that your fathers established," *and of the Apostles Peter and Paul and all the saints,* we denounce and forbid it under the bond of anathema, *because it is neither ours, nor has it ever been lawful for any priest or faithful layman, for any reason, to inflict prejudice in such matters without manifest guilt of an offense.*

> **DE SEPULTURIS.**
>
> Decedens intestatus sepelitur in sepulcro maiorum, vel ubi eligitur sepultura; parochialis tamen ecclesia habebit canonicam portionem eius, quod reliquerit ecclesiae sepulturae. H. d. secundum veriorem intellectum.
>
> Leo III.
>
> Nos instituta maiorum patrum considerantes, *illorum quoque decreta firmando* statuimus, *quod sanctissimum est*, unumquemque *videlicet* in maiorum suorum sepulcris iacere, ut patriarcharum exitus docet. Nulli tamen negamus propriam eligere sepulturam, et etiam alienam. Dominus enim et magister alienam elegit, ut propriam, *qui sine peccato erat*. Sed quia dignus est operarius mercede sua, tertiam partem sui iudicii illi ecclesiae *iure* dare censemus, in qua coelesti pabulo *a principio sui exordii quotidie* refici consuevit, ut iuxta Apostolum [*sic*] sint consolationum socii, ut fuerunt et passionum, et sic demum ubicunque libitum fuerit eligat sepulturam. Aliter ne fiat, auctoritate Domini nostri *Iesu Christi*, qui per Prophetam locutus est, dicens : " Ne transgrediaris terminos antiquos, quos posuerunt patres tui, " *et Apostolorum P. et P. omniumque sanctorum* sub anathematis vinculo detestamur et contradicimus, *quia nec nostrum est, nec alicui unquam sacerdoti vel fideli laico unquam licuit, qualicunque ratione sine manifesta delicti culpa in talibus inferre praeiudicium*.

Chapter II

Latin source headnote: One who is converted to a monastery is bound to leave to the parish church half of the goods that he disposed of for his soul.

Pope Leo, to all the faithful constituted throughout Dardania.

It has been reported to our ears *that there are certain persons acting perversely who strive to overturn and attempt to divide the unity of the church, namely abbots and monks who keep watch and teach not from the pursuit of charity but from the zeal of rapacity, and do not cease to seduce secular persons whom they can ensnare, so that they deliver their property and possessions, whether in death or in life, to their monasteries, and leave nothing from* [*their*] *goods to the churches to which they are seen to be subject and from which they received or receive baptism, penance, the eucharist, and also the nourishment of life with the milk of the flesh. Therefore, observing this tinder of discord, we wish to inhibit it in every way and utterly prohibit it from being done further, considering that it is not good if those who formerly were partners in suffering, according to the Apostle, are exempt from the partnership of consolations. And because the hireling is worthy of his wage, therefore we command and* mandate that whoever

from now on wishes to be converted in a monastery, whether in death or in life, leave half of all the property and possessions that he decreed to dispose of for the salvation of his soul to the church to which he is known to pertain, *and thus have license to go and be converted in the monastery as he pleases. But whoever shall be an opponent, overthrower, and violator of this enactment shall lie under the sword of anathema.* [*Given at Rome, on the twentieth day of the month of April, in the fifth indiction.*]

> Qui convertitur ad monasterium, medietatem bonorum, quae pro anima sua disposuit, tenetur relinquere ecclesiae parochiali.
>
> Leo Papa omnibus fidelibus per Dardaniam constitutis.
>
> Relatum est auribus nostris, +*esse quosdam perverse agentes, qui subvertere nituntur atque dividere conantur ecclesiae unitatem, videlicet abbates et monachi, qui non studio caritatis, sed zelo rapacitatis invigilant et docent, atque seducere non cessant saeculares homines, quos illaqueare possunt, ut res suas atque possessiones sive in morte sive in vita monasteriis suis tradant, et ecclesiis, quibus subiecti esse videntur, et a quibus baptismum, poenitentiam, eucharistiam, nec non pabulum vitae cum lacte carnis acceperunt vel accipiunt, nihil de bonis* [*suis*] *relinquant. Hunc denique fomitem discordiae nos animadvertendo modis omnibus inhibere volumus, et, ne amplius fiat, omnino prohibemus, considerantes, non esse bonum, si illi, qui olim fuerunt socii passionis secundum Apostolum, sint immunes a societate consolationum. Et quia dignus est mercenarius mercede sua, ideo praecipimus atque* Mandamus, ut quicunque amodo in monasterio converti voluerit, sive in morte sive in vita omnium rerum et possessionum, quas pro salute animae suae decreverit disponere, medietatem ecclesiae, ad quam dignoscitur pertinere, relinquat, *et sic in monasterio, prout libitum fuerit, eundi convertendique habeat licentiam. Quicunque autem huius electi contradictor, convulsor ac temerator exstiterit, gladio anathematis subiaceat.* [*Dat. Rom. mens. April. die XX. Ind. V.*]

Chapter III

Latin source headnote: Where someone, leaving the tomb of his ancestors, chooses a tomb in a less religious place, induced by fraud, or from contempt, or without the canonical portion being left to his church expressly or tacitly, the choice does not hold. This it says, preserving this text so far as can be done.

Innocent III, to the Archbishop of Genoa.

We do not believe your fraternity to be ignorant that from antiquity the tombs and cemeteries of the dead have been disposed at those churches and monasteries in which convents of religious brothers are constituted, and prayers and solemnities of masses are more frequently celebrated for the living as well as the dead. Hence the devotion and last will of those who desire to be buried at churches of this kind are in no way to be contradicted. But those who, leaving the ancient churches and the tombs of their fathers and other relatives, transfer themselves to new and less religious places, contrary to the custom of the Fathers of the Old Testament, who are read to have been buried with their fathers, are seen to act unreasonably and contrary to the ancient institution. Hence, if *perhaps* P. de Castello commanded anything concerning the burial of his body contrary to *so* ancient and reasonable a custom, this does not prejudice reason but ought to lack force. Wherefore, *by the present writing* we command, *and by commanding direct,* that you cause the body of P. himself to be returned to *our beloved sons,* the monks of Saint Stephen, and to be buried with his fathers.

> Ubi quis sepulcro maiorum relicto eligit sepulcrum in loco minus religioso, dolo inductus, seu ex contemptu seu non dimissa ecclesiae suae canonica portione expresse vel tacite non tenet electio. H. d. salvando istum textum, quantum fieri potest.

Innocentius III. Genuensi Archiepiscopo.

Fraternitatem tuam non credimus ignorare, mortuorum sepulcra et coemeteria apud illas ecclesias et monasteria ex antiquo esse disposita, in quibus religiosorum fratrum conventus sunt constituti, et orationes atque missarum solennia tam pro vivis quam pro defunctis frequentius celebrantur. Unde ipsorum devotioni et extremae voluntati, qui apud huiusmodi ecclesias sepeliri desiderant, minime contradicendum est. Qui vero relictis antiquis ecclesiis et patrum aliorumque parentum suorum sepulcris contra consuetudinem Patrum veteris testamenti, qui cum patribus suis sepulti esse leguntur, ad nova et minus religiosa loca se transferunt, irrationabiliter et contra antiquam institutionem facere videntur. Unde, si *forte* P. de Castello contra *tam* antiquam et rationabilem consuetudinem aliquid de corpore suo sepeliendo mandavit, hoc non praeiudicat rationi, sed viribus debet carere, Quocirca *per praesentia scripta* mandamus, *et mandando praecipimus*, quatenus corpus ipsius *P. dilectis filiis nostris* monachis sancti Stephani reddi facias, et cum suis patribus sepeliri.

Chapter IV

Latin source headnote: If someone in the sickness from which he dies offers himself and his goods to a monastery, the parish church has a canonical portion from them; otherwise if he does so in health.

Alexander III, to the Bishop of Spalato.

Concerning those who transfer themselves with their goods to religious places in sickness or in health, leaving nothing to you or to the churches from which they received the nourishment of salvation, we wish this to be made known to your prudence: if they pass to religion in the sickness itself, provided that they die from that sickness, a canonical portion from their goods ought to be furnished to those churches by which they had been received. But if they have transferred themselves to religious places while in health, they cannot be compelled to impart to the aforesaid churches anything from the things that they confer upon those places, because they are then free to confer their goods not only upon *religious places* but also upon any private persons.

Si quis in aegritudine, de qua decedit, offert se et sua monasterio, ecclesia parochialis habet inde canonicam portionem; secus si in sanitate.

Alexander III. Episcopo Spalensi.

De his, qui in infirmitate vel sanitate cum bonis suis ad religiosa loca se transferunt, nihil tibi vel ecclesiis, a quibus receperunt salutis pabula, relinquentes, hoc tuae volumus prudentiae innotescere, quod, si in aegritudine ipsa ad religionem transeant, dummodo de aegritudine illa decedant, de bonis suis ipsis ecclesiis, a quibus assumpti fuerint, canonica debet portio exhiberi. Si vero ad religiosa loca se in sanitate transtulerint, de his, quae locis ipsis conferunt, cogi non possunt aliquid praescriptis ecclesiis impertiri, quia liberum est eis tunc bona sua, non solum religiosis *locis*, sed etiam quibuslibet privatis conferre personis.

Chapter V

Latin source headnote: Those who bury another's parishioner, whom they ought not to bury, are compelled to restore the body and the things they obtained by reason of him. This it says together with the following chapter.

The same.

It was intimated to us on the part of the canons of Obrigen that the prior of Insula buried a certain parishioner of theirs in his church after an appeal had been made to us. *Wherefore, because this is known to be contrary to ecclesiastical discipline and wholly alien to the path of reason, that someone should put his sickle into another's harvest, by apostolic writings, directing your fraternity,* we command that you *admonish and strictly* compel the aforesaid prior to restore to the aforesaid canons the body of *their* aforesaid parishioner and thereupon agree *peacefully and* amicably with them, *or not defer presenting himself in our presence.*

> Qui sepeliunt parochianum alienum, quem sepelire non debent, coguntur restituere corpus, et quae ratione ipsius obtinuerunt. Hoc dicit cum cap. sequenti.
>
> Idem.
>
> Ex parte canonicorum Obrigensium nobis est intimatum, quod prior de Insula quendam parochianum suum post appellationem ad nos factam in sua ecclesia sepelivit. *Unde, quoniam hoc ecclesiasticae disciplinae contrarium esse dignoscitur, et a rationis tramite penitus alienum, ut quis falcem mittat in messem alienam, fraternitati tuae per apostolica scripta praecipiendo* Mandamus, quatenus praefatum priorem *moneas et districte* compellas, ut memoratis canonicis praedicti parochiani *sui* corpus restituat, et exinde *pacifice et* amicabiliter conveniat cum eisdem, *aut in praesentia nostra se non differat exhibere.*

Chapter VI

Latin source headnote: It is summarized above, in the chapter immediately preceding.

The same, to the Dean and Master R. of Ravenna.

Since it is free, *by all the institutes of the holy Fathers, to choose burial for oneself in a last will at religious places, he who presumes in this respect to contradict the devotion of the last will of persons dying undoubtedly opposes canonical reason.* It has come to our hearing from the complaint of the abbot and brothers of Saint Martin of Laon that, when a certain priest was carrying the body of a certain woman to the same church for burial, as she had disposed in *her* last will, the monks of Saint Vincent of Laon did not at all hesitate violently to seize her body and bury it in their *own* church. *And they presumed to do the same concerning the son of Ralph Canis. Concerning this we are indeed moved with vehement wonder, since the same monks both act contrary to the institutes of the holy Fathers and strive to violate the privileges of our predecessors and our own, which the aforesaid brothers propose that they have concerning free burial. Hence it is that by apostolic writings* we command your fraternity that, *after summoning each party before you, you inquire into the truth of the matter concerning this and,* if you find it to be so, you compel the aforesaid monks to restore in their entirety to the aforesaid brothers the bones of the aforesaid woman and the benefactions that they are known to have received by occasion of her burial, and not to presume to do such things hereafter.

> Summatum est supr. cap. prox.
>
> Idem Decano et Magistro R. Ravennatensibus.
>
> Quum liberum sit *+de universis institutionibus sanctorum Patrum, apud religiosa loca in ultima voluntate sibi eligere sepulturam, canonicae procul dubio obviat rationi, qui devotioni extremae voluntatis decedentium in hac parte contradicere praesumit.* Ad audientiam nostram pervenit ex conquestione abbatis et fratrum sancti Martini Laudonensis, quod, quum presbyter quidam corpus cuiusdam mulieris, prout in ultima voluntate *sua* disposuit, ad eandem ecclesiam sepeliendum deferret, monachi S. Vincentii Laudonensis corpus ipsius violenter rapere et in ecclesia sua sepelire minime dubitarunt. *+Et hoc idem de filio Radulfi Canis praesumpserunt. Super quo utique vehementi sumus admiratione commoti, quum iidem monachi et sanctorum Patrum*

institutionibus contrairent, et privilegia praedecessorum nostrorum et nostra, quae praedicti fratres de libera se habere sepultura proponunt, satagunt violare. Inde est, quod fraternitati vestrae per apostolica scripta Mandamus, quatenus, *utraque parte ante vos convocata rei veritatem super hoc inquiratis, et*, si ita esse inveneritis, praefatos monachos compellatis, ut ossa praefatae mulieris, et beneficia, quae occasione sepulturae ipsius recepisse noscuntur, memoratis fratribus cum integritate restituant, et de cetero talia facere non praesumant.

Chapter VII

Latin source headnote: A married woman can freely choose a burial place for herself.—(Whether, etc.:) A father can cause his minor children to be buried where he wishes, if the custom of the place so holds. This it says.

Lucius III.

But concerning a wife, whether she, just as *also* the husband, ought to have free choice of burial, it seems to us that no distinction is to be made in this respect between husband and woman, but we believe the faculty of each to be equal in this case, since that choice pertains rather to the state in which a woman is released from the law of her husband. But whether a father can bury his minor children where he prefers, we do not find defined by the holy Fathers, and therefore we decree that it is to be left to the custom of the land.

Mulier nupta libere potest sibi eligere sepulturam. — (Utrum etc.:) Pater filios inpuberes, ubi voluerit, potest sepeliri facere, si hoc habet consuetudo loci. H. d.

Lucius III.

De uxore vero, utrum, quemadmodum *et* vir, liberam debeat habere sepulturam, nobis videtur, quod nulla super hoc inter virum et mulierem sit facienda distinctio, sed utrique in casu isto aequalem esse credimus facultatem, quum electio ista ad eum potius statum pertineat, in quo mulier solvitur a lege viri. Utrum autem pater, quo magis voluerit, minores filios valeat sepelire, non invenimus a sanctis Patribus diffinitum, et propterea terrae consuetudini decernimus relinquendum.

Chapter VIII

Latin source headnote: If a parishioner of the cathedral church is buried elsewhere, a fourth of his funeral offerings or of the things left to the church of burial is owed to the chapter of the cathedral church.

The same, to the Provost and Chapter of Faenza.

Since concerning a certain chapter, *which by favor of religion* [*is granted by the Apostolic See to certain churches—namely, that when some persons choose burial with them, canonical justice is reserved to the churches from which the bodies of the dead are taken—scandal sometimes arises among ecclesiastical men, who devise a diverse and varying interpretation of that justice, we have thought, from the clemency of the Apostolic See and with the counsel of our brothers, that provision should be made for you and your church, which, as we have learned, suffers grave injury in this matter through certain religious men exceeding what was granted to them by the Apostolic See in the aforesaid chapter.*] *Hence it is that,* [*inclining to your just petitions,*] by the authority of the present writing we establish that, if it should happen that any of your parishioners chooses burial elsewhere, *according to the statutes of blessed Gregory* a fourth portion from his testament is to be left to you. [*In addition, etc. Given at Verona, on the fifteenth day before the Kalends of April.* 1186–87.]

Si parochianus ecclesiae cathedralis alibi sepelitur, de ipsius funeralibus seu relictis ecclesiae sepulturae debetur quarta capitulo ecclesiae cathedralis.

Idem Praeposito et Capitulo Faventinis.

Quum super quodam capitulo, +*quod religionis favore* [*a sede apostolica quibusdam ecclesiis indulgetur, ut videlicet, quum aliqui apud eas eligunt sepulturam, Ecclesiis, a quibus mortuorum corpora assumuntur, canonica iustitia reservetur, nonnunquam inter viros ecclesiasticos scandalum suscitetur, interpretationem ipsius iustitiae diversam et variam configentes; vobis et ecclesiae vestrae, quae in hoc gravem, sicut accepimus, patitur laesionem, quibusdam religiosis viris excedentibus, quod eis in praedicto capitulo a sede apostolica est indultum, de clementia sedis apostolicae et fratrum nostrorum consilio duximus providendum.*] *Inde siquidem est, quod* [*vestris iustis postulationibus inclinati*] Praesentium auctoritate statuimus, ut, si aliquem parochianorum vestrorum alibi contigerit eligere sepulturam, *secundum statuta B. Gregorii* de testamento ipsius quarta vobis portio relinquatur. [*Ad haec etc. Dat. Veronae XV. Kal. April.* 1186- 7.]

Chapter IX

Latin source headnote: As to the quantity of the canonical portion owed to the parish church, the custom of the place is followed.

Clement III.

You wished to be made certain by us how that clause that is customarily apposed in *our* privileges *concerning* the justice of those churches from which the bodies of the dead are taken ought to be understood and expounded. But since diverse institutes of our predecessors have issued concerning this article, Leo holding that justice to be sometimes a third part and sometimes *half a part,* and Urban *III* holding it to be a fourth, we furnish such a response amid this variation: as blessed Jerome says, let each province abound in its own understanding; according to the reasonable custom of the region, let that justice be observed at a half, a third, or a fourth part according to the diversities of places. [*Given at the Lateran, in the second year.*]

In quantitate canonicae, quae debetur ecclesiae parochiali, statur loci consuetudini.

Clemens III.

Certificari voluisti a nobis, quomodo illa clausula, quae in privilegiis *nostris* solet opponi *de* salva iustitia illarum ecclesiarum, a quibus mortuorum corpora assumuntur, intelligi debeat et exponi. Quum autem super hoc articulo diversa antecessorum nostrorum manaverint instituta, Leone iustitiam illam quandoque tertiam partem, quandoque *vero* mediam *partem*, et Urbano *III*. quartam fore censentibus, nos tale praebemus in hac varietate responsum, ut, sicut beatus Hieronymus inquit, unaquaeque provincia in suo sensu abundet, secundum rationabilem consuetudinem regionis illa iustitia circa medietatem, vel tertiam aut quartam partem pro locorum diversitatibus attendatur. [*Dat. Laterani Ao. II.*]

Chapter X

Latin source headnote: Those privileged concerning the right of conducting funerals can bury those who choose burial with them, nevertheless paying the canonical portion to the parish church. But if they bury others, they are bound to restore whatever they received by occasion of the funeral.

Innocent III, to the Bishop of Clermont and the Abbot of Mauriac.

When *our beloved son,* the prior of the church of Montferrand, and *B.,* the proctor of the Hospitallers of the diocese of Clermont, were constituted in our presence, *we appointed our venerable brother the Bishop*

of Sabina as auditor, before whom the same prior proposed that the aforesaid Hospitallers had received for ecclesiastical burial certain of his parishioners, two of whom were under the lawful years, *on account of which the same church sustained damage of more than five thousand solidi. Wherefore the same prior humbly supplicated that we deign to forbid the Hospitallers themselves from attempting such things hereafter to his prejudice, and to compel them to repair the damages that he sustained therefrom.* On the contrary, the aforesaid proctor proposed that, by privilege as well as by special indulgence, it is lawful for the Hospitallers to receive indiscriminately for ecclesiastical burial all persons except the excommunicated and interdicted who have chosen to be buried with them, and that they can lawfully accept fideicommissa left in a last will, only a fourth being paid to the parish church from whose parish the bodies of the dead are taken, except from horses and arms, which were granted to them in aid of the Holy Land, from which they are not bound to deduct a fourth. *Therefore, when the same bishop had faithfully reported to you these and the other things proposed before him, all the attestations and allegations having been heard and understood, with the counsel of our brothers,* we thought that such a sentence should be rendered concerning these matters: the aforesaid Hospitallers are hereafter not to receive parishioners of the aforesaid church for ecclesiastical burial unless they have chosen to be buried with them. And then the parish church is to receive a fourth part from the offerings, beds, and other things that the deceased left for his soul in his last disposition, except from horses and arms, and the Hospitallers are to have the residue, unless the deceased was induced by their deceit or fraud to make a disposition of this kind. We nevertheless enjoin upon the Hospitallers themselves that they satisfy the aforesaid prior concerning the fourth *part* of three thousand solidi, since it is established that they received those solidi from his parishioners and it is not sufficiently shown that they had been their oblates or converts. We further thought it should be enjoined upon them that, unless they prove that G., a parishioner of the prior who was killed in the fields, had chosen burial with them, they restore to the aforesaid prior all things that they received in consideration of him; otherwise, they are bound to restore only a fourth part. But for those who are established to have died under the lawful years, *we enjoined upon them that* they restore all the things they received for the sake of their burial. *Wherefore, by apostolic writings we command your discretion that, appeal being removed, you cause by ecclesiastical censure what was judicially determined by you to be firmly observed.* [*Given at Ferentino, on the second day before the Ides of June, in the ninth year.* 1206.]

> Privilegiati super iure funerandi sepelire possunt illos, qui apud eos eligunt sepulturam solvendo tamen canonicam portionem ecclesiae parochiali. Si vero alios sepeliunt, tenentur restituere quicquid occasione funeris receperunt.
>
> Innocentius III. Episcopo Claremontensi et Abbati Mauriensi.
>
> In nostra praesentia constitutis *dilecto filio* priore ecclesiae Montis Ferrandi, et *B.* procuratore hospitalariorum Claremontensis dioecesis, *venerabilem fratrem nostrum Sabinensem episcopum concessimus auditorem, coram quo* idem prior proposuit, quod praedicti hospitalarii quosdam parochianos suos, quorum duo erant infra annos legitimos, receperunt ad ecclesiasticam sepulturam, *propter quod ecclesia eadem damnum sustinuit plus quam quinque millium solidorum. Quare idem prior humiliter supplicavit, ut ipsis hospitalariis interdicere, ne de cetero talia in eius praeiudicium attentarent, et ad resarcienda damna, quae exinde sustinuit, eos compellere dignaremur*. Econtra praedictus proposuit procurator, quod tam ex privilegio quam ex indulgentia speciali licet hospitalariis omnes passim, praeter excommunicatos et interdictos, ad ecclesiasticam sepulturam recipere, qui apud illos elegerint sepeliri, fideique commissa in ultima voluntate relicta possunt licenter accipere, soluta tantummodo quarta parochiali ecclesiae, de cuius parochia mortuorum corpora assumuntur, praeterquam de equis et armis, quae indulta sunt ipsis in

subsidium terrae sanctae, de quibus quartam deducere non tenentur. +*Quum igitur haec et alia, quae coram episcopo fuerunt proposita, idem vobis fideliter retulisset, auditis et intellectis attestationibus et allegationibus universis, de fratrum nostrorum consilio*, Talem super his duximus sententiam proferendam, quod praedicti hospitalarii de cetero non recipiant parochianos ecclesiae supra dictae ad ecclesiasticam sepulturam, nisi apud eos elegerint sepeliri. Et tunc parochialis ecclesia de oblationibus, lectis et aliis, quae defunctus pro anima sua in ultima dispositione reliquit, praeterquam de equis et armis, recipiat quartam partem, et hospitalarii residuum habeant, nisi dolo vel fraude eorum defunctus inductus fuerit ad dispositionem huiusmodi faciendam; nihilominus ipsis hospitalariis iniungentes, ut de quarta *parte* trium millium solidorum priori satisfaciant memorato, quum constet, eos a parochianis eius illos solidos recepisse, nec sit sufficienter ostensum, quod eorum oblati vel conversi fuissent. Eisdem praeterea duximus iniungendum, quod, nisi probaverint, quod G. parochianus prioris, qui fuit interfectus in campis, apud ipsos elegerit sepulturam, universa, quae ipsius intuitu receperunt, priori restituant memorato; alioquin quartam partem solummodo restituere teneantur. Pro illis vero, quos constat infra annos legitimos decessisse, *eisdem iniunximus, ut* quae sepulturae eorum gratia receperunt restituant universa. *Quocirca discretioni vestrae per apostolica scripta mandamus, quatenus quod a vobis est sententialiter diffinitum, vos appellatione remota per censuram ecclesiasticam faciatis firmiter observari*. [*Dat. Ferentini II. Id. Iun. Ao. IX.* 1206.]

Chapter XI

Latin source headnote: One who died accidentally ought not to be deprived of ecclesiastical burial.

The same, to the Archbishop of Tours.

It was intimated to us on the part of the relatives of M., *a young woman now deceased,* that, when *in the twilight of night* the noble man *N.,* lord I. of Île-Bouchard *in the diocese of Tours,* had laid an ambush for the *young woman, wishing to violate her,* whom he had often solicited for fornication, and she encountered upon a certain bridge the servants who were endeavoring to seize her, finally, *she herself,* fleeing their hands, fell from the bridge into the river and was accidentally drowned. *But after she was drawn from the river, the chaplains of that place hesitated to deliver her body for burial, and you also, having been consulted, thought that an apostolic response should be sought concerning this.* Wherefore, *by apostolic writings* we command your fraternity that, since that *young woman* did not voluntarily cast herself down from the bridge but, *fleeing the hands of those who,* as was expressed above, *were endeavoring to seize her,* fell by accident, you cause her body to be delivered to ecclesiastical burial, especially since she is known to have fled for an honorable cause, and communion is to be given to her now dead, to whom it was given while living. [*Given at Saint Peter's, on the fourth day before the Nones of March, in the ninth year of our pontificate.* 1206.]

Casualiter mortuus privari non debet ecclesiastica sepultura.

Idem Archiepiscopo Turonensi.

Ex parte parentum M. *quondam iuvenculae* nobis est intimatum, quod, quum *in crepusculo noctis* nobilis vir *N.* dominus I. de insula Butardi *dioeceseos Turonensis* eidem *iuvenculae* posuisset insidias, *volens eam opprimere*, quam sollicitaverat saepe de stupro, et ipsa gartionibus, qui eam rapere nitebantur, super quendam pontem occurreret, tandem *ipsa* fugiens manus illorum, in amnem de ponte cadens, fuit casu submersa. *Ipsa vero extracta de amne, dubitaverunt capellani eiusdem loci corpus tradere sepulturae, et tu etiam requisitus duxisti super hoc responsum apostolicum requirendum*. Quocirca *fraternitati tuae per apostolica scripta* mandamus, quatenus, quum illa *iuvencula* non sponte praecipitaverit se de ponte, sed, *fugiens manus illorum, qui eam*, sicut superius est expressum, *rapere nitebantur*, casu ceciderit, corpus eius tradi facias

> ecclesiasticae sepulturae, praesertim quum ex honesta causa fugisse noscatur, et cui communicabatur viventi communicandum sit iam defunctae. [*Dat. ap. S. Petr. IV. Non. Mart. Pontif. nostr. Ao. IX.* 1206.]

Chapter XII

Latin source headnote: If the bones of excommunicated persons are buried in an ecclesiastical cemetery and can be distinguished, they ought to be exhumed and cast out; otherwise, it is otherwise.

The same, to the Archbishop of Nidaros.

It is established by the sacred canons, *and approved by the custom of those observing them,* that we not communicate with the dead with whom we did not communicate while living, and that those who were previously cut off from ecclesiastical unity and were not reconciled to the church at the moment of death are to lack ecclesiastical burial. Hence, if it sometimes happens that either the bodies of excommunicated persons through the violence of certain persons, or by some other event, are buried in an ecclesiastical cemetery, if they can be distinguished from the bodies of others, they ought to be exhumed and cast far from ecclesiastical burial. But if they cannot be distinguished, we do not believe it expedient that the bodies of the faithful be disinterred together with the bones of excommunicated persons, since, although no burial or a base one does not harm the just, a celebrated or splendid one does not benefit the impious. [*We distinguish, etc.; cf. c.* 5, *Concerning Things Done by Force, I.* 40.]

> Si ossa excommunicatorum sunt sepulta in ecclesiastico coemeterio, et discerni possunt, debent exhumari et proiici; alias secus.
>
> Idem Nidrosiensi Archiepiscopo.
>
> Sacris est canonibus institutum, *et utentium consuetudine approbatum*, ut quibus non communicavimus vivis non communicemus defunctis, et ut careant ecclesiastica sepultura qui prius erant ab ecclesiastica unitate praecisi, nec in articulo mortis ecclesiae reconciliati fuerint. Unde, si contingat interdum, quod vel excommunicatorum corpora per violentiam aliquorum, vel alio casu in coemeterio ecclesiastico tumulentur, si ab aliorum corporibus discerni poterunt, exhumari debent et procul ab ecclesiastica sepultura iactari. Quodsi discerni non poterunt, expedire non credimus, ut cum excommunicatorum ossibus corpora extumulentur fidelium, quum, licet non obsit iustis sepultura nulla vel vilis, impiis tamen celebris vel speciosa non prosit. [*Distinguimus etc. cf. c.* 5. *de his, quae vi I.* 40.]

Chapter XIII

Latin source headnote: Consecrated cemetery ground to be dug for burial ought not to be sold.

Innocent III, to the Bishop of Maguelone.

The perversity of a custom to be abolished, *indeed of an abominable corruption,* has, as is said, grown established at Montpellier, so that, *namely,* when persons die, permission is not given to dig a grave until a certain price is paid to the church for the ground in which they are to be buried. *Therefore, because this is far from the rule of piety and the honor of the church, by the authority of the present writing* we command you that, since you are the diocesan bishop of the place, you forbid clerics to presume to exact anything at all for this cause, *enjoining upon the laity that they observe the laudable custom introduced through the pious devotion of the faithful toward the church of God, and that they not appear to corrupt it with the leaven of heretical depravity under the pretext of ecclesiastical purity.*

> Terra coemeteriata pro sepultura fodienda vendi non debet.

Innocentius III. Episcopo Magalonensi.

Abolendae consuetudinis, *immo abominabilis corruptelae* perversitas apud montem Pessulanum, ut dicitur, inolevit, ut *videlicet* decedentibus non prius permittatur effodi sepultura, quam pro terra, in qua sepeliendi sunt, certum pretium ecclesiae persolvatur. +*Quia igitur id longe est a regula pietatis et ab ecclesiae honestate, praesentium tibi auctoritate* Mandamus, quatenus, quum loci dioecesanus exsistas, inhibeas clericis, ne quicquam omnino praesumant exigere hac de causa, *iniungens laicis, ut laudabilem consuetudinem, erga Dei ecclesiam pia devotione fidelium introductam, observent nec fermento haereticae pravitatis illam corrumpere videantur sub praetextu ecclesiasticae puritatis*.

Chapter XIV

Latin source headnote: An excommunicated person who was absolved at death by his priest ought to be buried in a cemetery, and the heirs are compelled to make satisfaction.

Gregory IX, to Bishop N.

A parishioner of yours who, excommunicated for manifest offenses—namely, homicide, arson, violent laying of hands upon ecclesiastical persons, violation of churches, or incest—was absolved by his priest according to the form of the church while he was at the end of life, ought not to be denied a cemetery and the other suffrages of the church; but his heirs and relatives, to whom his goods came, are to be compelled by ecclesiastical censure to make satisfaction for him.

Excommunicatus, qui per suum presbyterum fuit absolutus in morte, in coemeterio sepeliri debet, et ad satisfaciendum coguntur heredes.

Gregorius IX. Episcopo N.

Parochiano tuo, qui excommunicatus pro manifestis excessibus, videlicet homicidio, incendio, violenta manuum iniectione in personas ecclesiasticas, ecclesiarum violatione vel incestu fuit, dum ageret in extremis, per presbyterum suum iuxta formam ecclesiae absolutus, non debent coemeterium et alia ecclesiae suffragia denegari, sed eius heredes et propinqui, ad quos bona pervenerunt ipsius, ut pro eodem satisfaciant, censura sunt ecclesiastica compellendi.

Title XXIX: On Parish Priests and Another's Parishioners

Chapter I

Latin source headnote: Between a bishop substituted for a heretical bishop and the heretical bishop himself who returned and was received by dispensation, the bishopric is divided in the manner expressed here.

From the African Council.

If a bishop from the Donatists is converted to Catholic unity, let them divide equally between themselves those places that shall be found thus, where both parties have existed; that is, so that some places pertain to one and others to the other, in such a way that he who has more time in the episcopate makes the division, and the junior chooses. But if perhaps there is one place, *let it pertain to him to whom it is found to be nearer. But if it is equally near to both sees,* let it pertain to him whom the people choose. But if *perhaps* the ancient Catholics wish their own [*bishop,*] and those converted from the Donatists wish theirs, let the will of the greater number be preferred to the fewer. But if the parties are equal, let it be assigned to the bishop of greater time. But if there are found to be so many

places in which both parties have existed that they cannot be divided equally, as if they are an odd number, after *those* places that have an equal number have been distributed, as to whatever place remains, let what was said when one place was treated above be observed concerning it.

> **DE PAROCHIS, ET ALIENIS PAROCHIANIS.**
>
> Inter episcopum substitutum episcopo haeretico, et ipsum episcopum haereticum reversum et ex dispensatione receptum, dividitur episcopatus modo hic expresso.
>
> Ex concilio Africano.
>
> Si episcopus ex Donatistis ad catholicam unitatem est conversus, aequaliter inter se dividant eas, quae sic inventae fuerint, ubi ambae partes fuerint, id est, ut alia loca ad illum, alia ad alium pertineant, ita, ut ille dividat, qui amplius temporis in episcopatu habet, et minor eligat. Quodsi forte unus fuerit locus, *ad eum pertineat, cui vicinior invenitur. Quod si ambabus cathedris aequaliter vicinus est*, ad eum pertineat, quem plebs elegerit. Sed si *forte* antiqui catholici suum [*episcopum*] voluerint, et illi suum, qui ex Donatistis conversi sunt, plurimorum voluntas paucioribus praeferatur. Si autem partes aequales sunt, maioris temporis episcopo deputetur. Si autem ita plurima loca inveniuntur, in quibus ambae partes fuerint, ut non possint aequaliter dividi, velut si in impari numero fuerint, distributis *eis* locis, qui parem habent numerum, quicunque locus remanserit, hoc in eo servetur, quod dictum est, quum de uno loco superius tractaretur.

Chapter II

Latin source headnote: On Sundays and feast days parish priests ought not admit the parishioners of others to mass if they come to their church from contempt.

From the Council of Nantes.

That on Sundays or feast days priests, before they celebrate mass, question the people whether there is in the church a parishioner of another who, having despised his own priest, wishes to hear mass there; and if they find him, let them immediately cast him out of the church.

> Presbyteri parochiales dominicis diebus et festivis parochianos alienos ad missam admittere non debent, si ex contemptu ad eorum ecclesiam accedunt.
>
> Ex concilio Manetensi.
>
> Ut dominicis vel festivis diebus presbyteri, antequam missam celebrent, plebem interrogent, si alterius parochianus in ecclesia sit, qui proprio contempto presbytero ibi velit missam audire, quem si invenerint, statim ab ecclesia abiiciant.

Chapter III

Latin source headnote: A bishop cannot ordain another's parishioner without that bishop's license, nor otherwise judge him.

Pope Hadrian.

Let no bishop presume to judge another's parishioner, [*retain him, or ordain him without the other's will, or judge him, because, just as his ordination will be invalid, so also will his adjudication, since we hold that no one is bound by the sentence of a judge other than his own.*] For he who could not ordain him can in no way *at all* judge him.

> Episcopus parochianum alterius sine ipsius licentia ordinare non potest, nec eum aliter iudicare.

> Hadrianus Papa.
>
> Nullus episcopus alterius parochianum iudicare praesumat, +[*retinere, aut ordinare absque eius voluntate vel iudicare, quia, sicut irrita erit eius ordinatio, ita et diiudicatio, quoniam censemus nullum alterius iudicis, nisi sui, sententia teneri.*] Nam qui eum ordinare non potuit, nec iudicare *ullatenus* potest.

Chapter IV

Latin source headnote: The boundaries of parishes that are established, or things adhering to the boundaries, cannot be acquired by prescription.

Urban III.

But concerning that as to which we have understood there to be doubt among you—whether what is known to have been established by the canons concerning boundaries and things adhering to boundaries not being subject to prescription is to be admitted in the limits of parishes as in those of provinces—*we* answer you that it seems well to be observed in each, if the boundaries *of the provinces* are established by lawful proof or otherwise by undoubted faith to have been fixed by ecclesiastical ordinance.

> Fines parochiarum, de quibus constat, vel finibus cohaerentia, praescribi non possunt.
>
> Urbanus III.
>
> Super eo vero, quod apud vos intelleximus dubitatum, an quod de finibus et his, quae finibus cohaerent, non praescribendis statutum per canones esse dignoscitur, sit in parochiarum limitibus, sicut in provincialibus, admittendum, *illud vobis* respondemus, quod bene videtur in utroque servandum, si *provinciarum* fines legitima probatione vel alias indubitata fide constiterit ecclesiastica ordinatione statutos.

Chapter V

Latin source headnote: If a parishioner or diocesan transfers his domicile, the former prelate does not vindicate episcopal or diocesan rights over him for himself; nevertheless, predial tithes are owed to him from that parish, unless they are owed to another by custom.

Celestine III.

Our *venerable brother,* the Bishop of Acre, signified to us that, since after the recovery of the city of Acre a great many persons transferred themselves to dwell in it who before the general occupation of the Holy Land had chosen a [*permanent*] dwelling in other cities of the Kingdom of Jerusalem, *and had made some residence in it and still even reside in the same, the prelates of the aforesaid cities compel them to pay ecclesiastical rights to themselves.* But because we ought not to transgress the boundaries established by the fathers or *put the sickle into another's harvest,* [*by apostolic writings*] we command your fraternity that, after [*prior admonition,*] you compel the prelates of the aforesaid places, with the severity that is fitting, to usurp no jurisdiction over the aforesaid inhabitants of Acre for themselves, nor to exact temporal things from those to whom they do not minister spiritual things; in such a way, *nevertheless,* that, if they receive fruits from fields constituted in the prelates' parish and in the regions overseas tithes are paid by reason of estates, they henceforth pay those *tithes* to them in their entirety, but are compelled to answer to the said Bishop of Acre concerning the other things as to their own diocesan bishop. [*But if not all, etc. Given at the Lateran, on the tenth day before the Kalends of January.* 1198.]

Si parochianus seu dioecesanus domicilium transfert, primus praelatus in eo iura episcopalia seu dioecesana sibi non vendicat; decimae tamen praediales illius parochiae sibi debentur, nisi alteri debeantur ex consuetudine.

Coelestinus III.

Significavit nobis *venerabilis frater noster* Aconensis episcopus, quod, quum post recuperationem Aconensis civitatis ad habitandum in ea se quam plurimi contulissent, qui ante generalem occupationem terrae sanctae in aliis civitatibus regni Hierosolymitani [*perpetuam*] elegerant mansionem, *+et in ea residentiam fecerint aliquantam, et adhuc etiam resident in eadem, praelati praedictarum civitatum eos ad solvendum sibi iura ecclesiastica compellunt. Quia vero transgredi non debemus terminos a patribus constitutos, aut falcem in messem mittere alienam*, Fraternitati tuae [*per apostolica scripta*] mandamus, quatenus praedictorum locorum praelatos, ut sibi nullam in praedictos Aconenses habitatores iurisdictionem usurpent, nec ab eis temporalia exigant quibus spiritualia non ministrant, [*monitione praemissa*] districtione, qua convenit, compellatis ita *tamen*, quod, si de agris in eorum parochia constitutis fructus percipiunt, et in ultramarinis partibus ratione praediorum decimae persolvuntur, deinceps eis ipsas *decimas* cum integritate persolvant, dicto vero Aconensi tanquam dioecesano suo cogantur de ceteris respondere. [*Quod si non omnes etc. Dat. Lat. X. Kal. Ian. * 1198.]

Title XXX: On Tithes, First Fruits, and Offerings

Chapter I

Latin source headnote: It expresses four kinds of tithes that were owed under the Old Law.

Jerome, on Ezekiel.

Under the law the people owed a tenth part of all produce to the Levitical tribe. Again, from those tithes the Levites—that is, the rank of inferior ministers—gave tithes to the priests. There were also other tithes that each person from the people of Israel separated in his storehouses, so that he might eat them when he went to the temple in the city of Jerusalem and invite the priests and Levites to a banquet in the vestibule of the temple. There were also other *tithes* that they stored up for the poor. But the first fruits that they offered from the produce were not defined by a specific designation but left to the choice of those making the offering. We have also received a tradition of the Hebrews, not commanded by law but grown established by the choice of the teachers, that those who gave the most gave a fortieth part to the priests, while those who gave the least gave a sixtieth; between the fortieth and the sixtieth it was lawful to offer whatever they wished. Therefore, what was left doubtful in the Pentateuch is specifically defined here on account of the avarice of the priests, lest they exact more from the people in the offering of first fruits, *that is, that a sixtieth part be offered of the things produced from the earth. For if the cor, which in Hebrew is called gomor and by the Septuagint is termed gomor, contains thirty modii in dry kinds as well as liquid, while the cophi and the bath are a tenth part of a cor, it is also commanded that a sixth part of the cor, the cophi, and the bath be given to the priests in offering first fruits. It is clearly calculated that this makes half a modius from three modii, which sixtieth part of the first fruits the priests ought to receive. Meanwhile, concerning these things, according to the letter and the Hebrew truth, let it suffice both to have understood and to have heard.*

DE DECIMIS, PRIMITIIS ET OBLATIONIBUS.

Exprimit quatuor genera decimarum, quae ex veteri lege debebantur.

Hieronymus super Ezechielem.

Decimam partem omnium frugum Leviticae tribui populus ex lege debebat. Rursus ex ipsis decimis Levitae, hoc est inferiorum ministrorum gradus, decimas dabant sacerdotibus. Erant quoque et aliae decimae, quas unusquisque de populo Israel in suis horreis separabat, ut comederet eas, quum iret in templum in urbe Hierusalem, et in vestibulo templi sacerdotes et Levitas ad convivium invitaret. Erant autem et aliae *decimae*, quas pauperibus recondebant. At vero primitiae, quas de frugibus offerebant, non erant speciali nomine diffinitae, sed offerentium arbitrio derelictae. Traditionem quoque accepimus Hebraeorum, non lege praeceptam, sed arbitrio magistrorum inolitam, quod qui plurimum, quadragesimam partem dabant sacerdotibus, qui minimum, sexagesimam; inter quadragesimam et sexagesimam licebat quodcunque voluissent offerre. Quod igitur in Pentateucho dubium derelictum est, hic specialiter diffinitur propter sacerdotum avaritiam, ne amplius a populo exigant in primitiis offerendis, *id est, ut sexagesima pars offeratur eorum, quae gignuntur a terra. Si enim chorus qui Hebraice appellatur gomor et a Septuaginta dicitur gomor, XXX. habet modios tam in aridis speciebus quam in liquentibus, cophi quoque et batus decima pars est chori. Praecipitur quoque, quod ut sexta pars tam chori quam cophi, quam bati detur sacerdotibus in primitiis offerendis quae de tribus modiis dimidium facit modium, perspicue supputatur, quam sexagesimam partem primitiarum sacerdotes accipere deberent. Haec interim iuxta literam et Hebraicam veritatem et sensisse sufficiat et audisse*.

Chapter II

Latin source headnote: It cannot fittingly be summarized on account of the variety of readings.

Paschal II.

It is a new kind of exaction that clerics exact tithes *of produce or animals* from clerics, since nowhere do we read this in the law of the Lord. For the Levites are not read to have received *or extorted* tithes from Levites. Assuredly, those clerics who receive from clerics the labors of spiritual ministries owe them tithes [*of their labors*.]

Non potest congrue summari propter varietatem lecturarum.

Paschalis II.

Novum genus exactionis est, ut clerici a clericis *frugum* decimas *vel animalium* exigant, quum nusquam in lege Domini hoc legamus. Non enim Levitae a Levitis decimas accepisse *vel extorsisse* leguntur. Illi profecto clerici, qui a clericis spiritualium ministeriorum labores accipiunt, [*laborum suorum*] decimas eis debent.

Chapter III

Latin source headnote: An agreement concerning tithes is not taken away by a subsequent privilege if it makes no mention of that agreement.

Hadrian IV, to the Bishops of Worcester and Hereford.

We have learned from the manifold complaint of V., priest *of Cretona,* that, *although he had peacefully possessed the church of Cretona for thirty years and more, within these four years the monks of Brueria entirely withdrew from him and the church all the tithes that the same church had always been accustomed to receive from the cultivated lands from its first foundation,* although, more than *twenty years and more having elapsed,* such an agreement had intervened between the abbot of Brudeia, *named W.,* with the consent of the whole convent, and the aforesaid priest, confirmed by an authentic writing of the monks: the monks would

pay in full to the *said* priest and his church, for as long as he lived, the tithes of grain and all legumes, except the lesser tithes, which the same priest had declared quit *for the advancement of the monks' church. And although the agreement had been observed during the times of three abbots of the aforesaid place,* the same abbot, *coming to our presence,* obtained from us a privilege *in which it was granted to his monastery* that they should be bound to pay tithes to no one from the labors they cultivated by their own hands or expenses. *Indeed, after he returned home, he found so much favor with Henry, the illustrious King of England, that the king conferred upon his monastery in perpetual alms the whole land of that village in which the church of the aforesaid priest is situated. This having been done, the aforesaid abbot, after expelling all the tenants of that village and cultivating at his own expense the whole land of the aforesaid parish, withdrew the revenues owed to the church.* Hence, because it was not our intention through our [*aforesaid*] privilege to derogate from the aforesaid agreement, *by apostolic writings directing* your fraternity, we command that, *after summoning each party before you, you inquire more fully into the truth of the matter; and, if such an agreement was made between the predecessor of the aforesaid abbot and the aforementioned priest with the consent of the monks, and was observed for a year,* you compel the same abbot and monks inviolably to hold and observe the same agreement *or composition,* notwithstanding the said privilege unless, *which we do not believe,* that *transaction* is contained in it, or peacefully to reach an agreement with him thereupon, *and to pay him the revenues* [*in full*] *according to the form of the composition,* occasion and appeal being set aside; *you are by our authority to admonish and more strictly* compel them. *But if both of you, etc.*

> Compositio super decimis non tollitur per privilegium sequens, si de illa mentionem non facit.
>
> Hadrianus IV. Vigorensi et Herfordensi Episcopis.
>
> Ex multiplici conquestione V. presbyteri *de Cretona* accepimus, quod, *quum ecclesiam de Cretona triginta annis et eo amplius pacifice possedisset, monachi de Brueria decimas universas, quas de terris cultis eadem ecclesia a prima fundatione sui semper percipere consuevit, infra hoc quadriennium sibi et ecclesiae penitus subtraxerunt*, quum inter abbatem de Brudeia. *W. nomine*, de consensu totius conventus, et praedictum presbyterum *viginti annis et eo amplius elapsis* talis intercesserit conventio scripto monachorum authentico roborata, quod monachi *iam* dicto presbytero et ecclesiae suae *in integrum* de blado et universis leguminibus, quamdiu viveret, decimas persolverent, exceptis minutis decimis, quas idem presbyter *ob exaltationem ecclesiae monachorum* quietas clamavit; *quumque conventio temporibus trium abbatum praescripti loci servata fuisset*, idem abbas, *ad praesentiam nostram accedens*, a nobis privilegium obtinuit, *in quo monasterio suo indultum est*, ut de laboribus, quos propriis manibus aut sumptibus excolunt, nulli decimas solvere tenerentur. *+Qui quidem, reversus ad propria, tantum apud Henricum regem illustrem Angliae favorem invenit, quod rex totam terram istius villae, in qua ecclesia praefati presbyteri sita est, monasterio ipsius in perpetuam eleemosynam contulit, quo facto praedictus abbas, universis istius villae colonis expulsis, totam terram praedictae parochiae excolens propriis sumptibus, ecclesiae debitos reditus subtraxit*. Unde quia non fuit nostrae intentionis per [*praedictum*] privilegium nostrum conventioni derogare praedictae, *fraternitati vestrae per apostolica scripta praecipiendo* mandamus, quatenus *utraque parte ante vos convocata rei veritatem plenius inquiratis, et, si inter praedecessorem memorati abbatis et praenominatum presbyterum consensu monachorum talis conventio facta fuerit, et per annum servata, eundem* abbatem et monachos, ut eandem conventionem *vel compositionem*, non obstante dicto privilegio, nisi, *quod non credimus*, de *transactione* ipsa contineatur in eo, inviolabiliter teneant et observent, vel exinde secum pacifice conveniant, *et secundum formam compositionis reditus ipsi* [*integre*] *solvant, occasione et* appellatione postposita, *auctoritate nostra moneatis et districtius* compellatis. *Si autem uterque vestrum etc.*

Chapter IV

Latin source headnote: Monks are bound to pay predial tithes from newly cultivated estates from which tithes were paid previously.

The same, to Thomas, Archbishop of Canterbury.

The office of dispensation committed to us *by God admonishes and exhorts us in many ways that we ought usefully to provide for all the churches of Christ and that we must preserve their rights whole and unimpaired.* It has [*indeed*] come to us that the monks of Bosse do not pay tithes in full to the church of Saint Mary, in whose parish they dwell, *and contradict rendering them* [*according to the canons.*] Therefore, *our brother, by apostolic writings* we command *and direct* you to compel them, *with all severity by our authority and without the obstacle of appeal,* to pay to the aforesaid church *those* tithes *also* from cultivated lands on which houses had once been constructed, with the same integrity with which they were accustomed to be paid before they dwelt in the same parish. And just as tithes were also formerly paid from pastures, so now we will that tithes be paid without diminution from those same lands converted to the fertility of crops.

> Monachi tenentur solvere decimas praediales de praediis noviter cultis, de quibus decimae prius solvebantur.
>
> Idem Thomae Cantuariensi Archiepiscopo.
>
> Commissum nobis *+a Deo dispensationis officium admonet et hortatur multipliciter, ut universis Christi ecclesiis debeamus utiliter providere, atque integra iura sua nos oportet atque illibata servare*. Pervenit [*quidem*] ad nos, quod monachi de Bosse ecclesiae sanctae Mariae, in cuius parochia commorantur, decimas ex integro non persolvunt, *et eas* [*secundum canones*] *reddere contradicunt*. Ea propter *frater noster, tibi per apostolica scripta* mandamus, *et praecipimus* quatenus eos, ut *ipsas* decimas *etiam* de terris cultis, in quibus olim domus constructae fuerant, praefatae ecclesiae cum ea integritate persolvant, qua prius, quam in eadem parochia morarentur, solebant persolvi, *sine appellationis obstaculo nostra auctoritate cum omni districtione* compellas. Et sicut etiam de pascuis olim decimae persolvebantur, ita nunc de eisdem, ad frugum fertilitatem translatis, decimas volumus absque deminutione persolvi.

Chapter V

Latin source headnote: A person is compelled by excommunication to pay tithes from mills and the other things contained here and in the following chapter. This it says together with the following chapter.

Alexander III, to the Archbishop of Canterbury and his Suffragans.

It has come to us *that, although your parishioners were accustomed to pay in full to the churches to which they are owed the tithes of their goods, now, nevertheless, the laudable custom being omitted, certain of them do not fear to withhold from those churches tithes from wool and hay and from the revenues of mills and fisheries. Therefore, because those who do not pay tithes to those churches more manifestly oppose the divine institution, by apostolic writings directing* your fraternity, we command that you take care to admonish your parishioners and, if there is need, compel them under the severity of excommunication to pay in full to the churches to which they are owed the tithes from the revenues of mills *and* fisheries, *from* hay and wool, *all contradiction* [*and appeal*] *ceasing*.

Per excommunicationem compellitur quis ad solvendas decimas de molendinis et aliis hic contentis et cap. sequ. Hoc dicit cum sequ.

Alexander III. Cantuariensi Archiepiscopo et eius Suffraganeis.

Pervenit ad nos, +*quod, quum parochiani vestri decimas bonorum suorum consueverint, ecclesiis, quibus debentur, cum integritate persolvere, nunc tamen laudabili consuetudine praetermissa quidam ex ipsis de lana et foeno et de proventibus molendinorum et piscariarum ipsis ecclesiis, subtrahere non verentur. Quoniam igitur institutioni divinae manifestius obviant, qui decimas ipsis ecclesiis non persolverint, fraternitati vestrae per apostolica scripta praecipiendo* Mandamus, quatenus parochianos vestros monere curetis, et, si opus fuerit, sub excommunicationis districtione compellere, ut de proventibus molendinorum *et* piscariarum, *de* foeno et lana decimas ecclesiis, quibus debentur, *omni contradictione* [*et appellatione*] *cessante*, cum integritate persolvant.

Chapter VI

Latin source headnote: It is summarized together with the preceding chapter, and explain it as was said in the preceding chapter.

The same, to the Bishop of Winchester.

We received the messengers *and letters of your fraternity with the kindness that was fitting, and, so far as was lawful, we took care to hear your petitions, as those of a person whom we love in the Lord with pure and fervent charity and to whose advantages and advancement we wish diligently to attend. Since, therefore, those things in which you desire to be fortified by the authority of our command pertain to your office, you ought to have been heard the more easily in these matters insofar as they more specially regard the salvation of those concerning whom you will render an account at the final judgment. Hence it is that by apostolic writings directing* your fraternity, we command that you compel your parishioners by ecclesiastical severity to pay tithes from bees and from every fruit.

Summatum est cum praecedenti, et declara ut in praecedenti dictum est.

Idem Vintoniensi Episcopo.

Nuncios +*et literas tuae fraternitatis ea, qua decuit, benignitate recepimus, et petitiones tuas, quoad licuit, curavimus exaudire, sicut illius personae, quam pura in Domino et ferventi caritate diligimus, et cuius commodis et profectibus intendere volumus diligenter. Quum igitur ad officium tuum spectent ea, in quibus praecepti nostri desideras auctoritate muniri, tanto in his debuisti facilius exaudiri, quanto ipsam eorum specialius salutem respiciunt, de quibus in extremo iudicio redditurus es rationem. Inde est, quod fraternitati tuae per apostolica scripta praecipiendo* Mandamus, quatenus parochianos tuos de apibus et de omni fructu decimas persolvere ecclesiastica districtione compellas.

Chapter VII

Latin source headnote: A tithe of fruits ought to be paid immediately when they are gathered, expenses not being deducted.

Alexander III, to the Bishop of Exeter.

Since the men of Horton, *according to the general custom of the English church,* are bound to pay without diminution to the church *of Saint Michael,* whose parishioners they are, a tithe from *their crops in autumn,* nine parts being retained for themselves, and before they do this they pay to their servants and hirelings from the untithed crops what is owed for their service during the whole year, only then paying a tithe from the residue, *by apostolic writings directing* your discretion, we command that you

compel them *under the severity of anathema* to pay the tithe, *both from crops and from the increase of their animals, without fraud or any diminution in autumn, as is customary,* immediately after the fruits have been gathered, *and at other times according as they are owed,* and to take care to furnish worthy satisfaction concerning the things withheld and retained.

> Decima fructuum statim, quum collecti sunt, solvi debet non deductis expensis.
>
> Alexander III. Exoniensi Episcopo.
>
> Quum homines de Hortona *secundum generalem Anglicanae ecclesiae consuetudinem* de frugibus *suis in auctumno*, IX. partibus sibi retentis, decimam ecclesiae *sancti Michaelis*, cuius parochiani sunt, sine deminutione solvere teneantur, et, antequam id faciant, servientibus et mercenariis suis de frugibus non decimatis debita totius anni pro servitio suo impendant, tunc demum de residuo decimam persolventes, *discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus *sub anathematis districtione* eos cogatis ut decimam *tam de frugibus quam de nutrimentis animalium suorum sine fraude et diminutione aliqua in auctumno, sicut moris est*, statim fructibus collectis, *et aliis temporibus, prout debentur*, persolvant, atque de subtractis et retentis dignam satisfactionem exhibere procurent.

Chapter VIII

Latin source headnote: Those privileged concerning not paying tithes are bound to pay a tithe from those estates that they lease from others.

The same, to the Monks of Neuclen.

Our beloved sons the abbot and brothers of Holy Cross showed us by their complaint that you have leased from many laymen and received at farm estates from which they were accustomed to have tithes and a great part of their sustenance. Hence, because the same brothers are burdened *immoderately and* enormously by this, and it was not our intention or that of our predecessors that you should not pay tithes from possessions you leased, *directing your whole body,* we command that you pay in full *to the same brothers* the tithes from the estates you leased in their parishes, from which they were accustomed to receive tithes, or make such a *peaceful and* amicable composition with them *that no matter of scandal ought to arise between you and you do not appear to extend your hands beyond what was granted to you.*

> Privilegiati super decimis non solvendis, de iis praediis, quae ab aliis conducunt, decimam solvere tenentur.
>
> Idem Monachis de Neuclen.
>
> Dilecti filii abbas et fratres sanctae Crucis sua nobis conquestione monstrarunt, quod praedia, unde decimas et in magna parte sustentationem consueverunt habere, a plerisque laicis conduxistis et recepistis ad firmam. Unde, quoniam iidem fratres ex hoc gravantur *immoderate et* enormiter, nec fuit intentionis nostrae aut antecessorum nostrorum, ut de possessionibus, quas conduxistis, decimas non solvatis, *universitati vestrae praecipiendo* mandamus, quatenus *eisdem fratribus* de praediis, quae conduxistis in parochiis suis, de quibus consueverunt decimas percipere, plenarie solvatis eisdem, vel cum ipsis *tam pacifice vel* amicabiliter componatis, *quod nulla inter vos debeat scandali materia suscitari, et videamini ultra, quod vobis indultum est, manus extendere*.

Chapter IX

Latin source headnote: A privilege is revoked if afterward it begins to be enormously harmful.

The same, to the Abbot and Brothers of Dol.

It was suggested *to us* on your part that the abbot and brothers of the monastery of Ursin endeavor to take tithes away from you *and do not cease to inflict other damages and burdens upon you. But because it does not become monastic honor or religion to attend to lawsuits and contentions, by apostolic writings* we command, *counsel, and exhort* your discretion to make a *peaceful* composition with the aforesaid abbot and brothers concerning those tithes *and the other things concerning which there is controversy between you, lest the reputation of your religion be blackened because of contentions of this kind.* For when the Roman church had given privileges concerning tithes to your order, the abbeys of your order were so rare [*and very poor*] that no scandal could rightly arise to anyone therefrom; but now, *by the grace of God,* they have been increased to such a degree and enriched with possessions that many ecclesiastical men frequently propose a complaint against you before us.

> Revocatur privilegium, si ex post facto incipit enormiter nocivum esse.
>
> Idem Abbati et Fratribus Dolon.
>
> Suggestum est *nobis* ex parte vestra, quod abbas et fratres monasterii de Ursin. decimas a vobis auferre conantur, *+et alia damna et gravamina vobis irrogare non cessant. Quia vero non decet honestatem sive religionem monasticam litibus et contentionibus intendere,* Discretioni vestrae *per apostolica scripta* mandamus, *consulimus et hortamur,* quatenus cum praedicto abbate et fratribus super ipsis decimis *et aliis unde inter vos est controversia, pacifice* componatis, *ne pro huiusmodi contentionibus fama vestrae religionis valeat denigrari.* Nam quando Romana ecclesia ordini vestro privilegia de decimis dederat, ita erant rarae [*et pauperrimae*] abbatiae vestri ordinis, quod exinde nulli poterat de iure scandalum suboriri; sed nunc *per gratiam Dei* in tantum augmentatae sunt ac possessionibus ditatae, quod multi viri ecclesiastici de vobis apud nos querelam saepe proponunt.

Chapter X

Latin source headnote: Cistercians, Templars, and Hospitallers are not bound to pay the tithe of their estates that they cultivate by their own hands or expenses; but other religious do not pay tithes from gardens and the increase of animals, nor from newly cultivated lands that they cultivate by their own hands and expenses.

The same, to the Archbishop of Tarragona.

You should know that it has come to us on your part that white monks and black monks, and certain other *religious* men, presume, by occasion of privileges that the Roman church granted them, to despoil churches of your jurisdiction of revenues from tithes. Indeed, we do not wish you to be unaware that our predecessors *of holy memory* had granted to almost all religious tithes from their labors. But our predecessor of good memory Hadrian granted only to the brothers of the Cistercian order, the Templars, and the Hospitallers tithes from their labors that they cultivate by their own hands or expenses; but to the others he *granted* that they not pay tithes from their newly cultivated lands that they cultivate by their own hands or expenses, from the increase of their animals, and from their gardens; and we have imitated him concerning these things. Wherefore those to whom this was granted neither *ought* nor can, by this occasion, withhold from their church tithes from other things or vindicate anything further for themselves.

> Cistercienses, templarii et hospitalarii decimam praediorum suorum, quae propriis manibus aut sumptibus excolunt, solvere non tenentur; alii vero religiosi non solvunt decimas de hortis et

nutrimentis animalium, nec de novalibus, quae propriis manibus ac sumptibus excolunt.

Idem Terraconensi Archiepiscopo.

Ex parte tua ad nos noveris pervenisse, quod albi monachi et nigri, et quidam alii religiosi *viri* ecclesias tuae iurisdictionis reditibus decimarum, occasione privilegiorum, quae sibi Romana indulsit ecclesia, spoliare praesumunt. Sane nolumus te latere, quod *sanctae memoriae* praedecessores nostri fere omnibus religiosis decimas laborum suorum concesserant. Sed bonae memoriae praedecessor noster Hadrianus solis fratribus Cisterciensis ordinis, et templariis et hospitalariis decimas laborum suorum, quos propriis manibus vel sumptibus colunt, indulsit; ceteris vero, ut de novalibus suis, quae propriis manibus vel sumptibus excolunt, et de nutrimentis animalium suorum, et de hortis suis decimas non persolvant, *concessit;* quem sumus super his imitati. Quare hi quibus hoc indultum est, hac occasione decimas de aliis rebus ecclesiae suae non *debent*, nec possunt subtrahere, vel sibi aliquid ulterius vendicare.

Chapter XI

Latin source headnote: A privilege concerning tithes from labors does not extend to lands that are delivered to others to be cultivated.

The same.

Although by the kindness of the Apostolic See it was granted to you that you be bound to pay tithes to no one from *your* labors that you cultivate by your own hands or expenses, nevertheless on account of this it is not lawful for you to withhold tithes *from anyone* from your lands that you deliver to others to be cultivated. *Indeed, it has been reported to our ears that, although you give to your peasants to be cultivated certain lands that you have within the tithing district of our beloved son the treasurer of Sens, you do not pay him the tithes therefrom as you ought, nor cause them to be paid by the peasants themselves. Therefore, insofar as we more closely love you and your order, we wish the less to effect things contrary to honor or opposed to reason, or things through which you appear to transgress the tenor of our privileges, since he who abuses the power permitted to him is seen to lose his privilege. We command your fraternity that you in no way presume to usurp for yourselves the tithes from those lands within the tithing district of the aforesaid treasurer that you do not cultivate by your own hands but deliver to peasants to be cultivated, but cause them first of all to be paid in full to the same treasurer; knowing for certain that if you contemn our command, we have given mandate to our venerable brother the Archbishop of Sens that, appeal ceasing, he strictly compel the peasants to whom you shall have given lands within the tithing district of the aforesaid treasurer to be cultivated to pay* [*the*] *tithes therefrom to the same treasurer.*

Privilegium super decimis laborum non extenditur ad terras, quae aliis traduntur excolendae.

Idem.

Licet de benignitate sedis apostolicae sit vobis indultum, ut de laboribus *vestris*, quos propriis manibus vel sumptibus colitis, nemini decimas solvere teneamini; propter hoc tamen non est licitum vobis, *cuilibet* decimas de terris vestris subtrahere, quas aliis traditis excolendas. *Relatum est siquidem auribus nostris, quod, quum terras quasdam quas in decimatione dilecti filii nostri thesaurarii Senonensis habetis detis rusticis vestris excolendas et ei exinde decimas sicut debetis non solvitis, nec facitis a rusticis ipsis exsolvi. Quum igitur quanto arctius vos et ordinem vestrum diligimus, tanto minus volumus efficere quae sunt honestati contraria vel obvia rationi, aut ex quibus privilegiorum nostrorum tenorem transgredi videamini, quum privilegium videatur amittere qui permissa sibi abutitur potestate, fraternitati vestrae mandamus, quatenus de terris illis quas in decimatione praedicti thesaurarii propriis manibus non excolitis sed rusticis traditis excolendas decimas vobis usurpare nullatenus praesumatis, sed eas*

inprimis eidem thesaurario faciatis cum integritate persolvi sciturі pro certo, quodsi praeceptum nostrum contempseritis nos venerabili fratri nostro archiepiscopo Senonensi dedimus in mandatis, ut rusticos, quibus in decimatione praefati thesaurarii terras dederitis excolendas, ad solvendum [*inde*] *decimas eidem thesaurario appellatione cessante districte compellat*.

Chapter XII

Latin source headnote: A privilege concerning tithes from labors comprehends even those things that are not newly cultivated lands.

The same.

You should know that it has come *to our hearing that certain of you endeavor to exact and extort tithes from our beloved sons the abbot and brothers* [*of Pipennella, who are*] *of the Cistercian order, from the labors that they cultivate by their own hands or expenses,* perverting by a *malicious and* depraved interpretation that chapter of the privilege *of the Apostolic See* by which it is granted to the Cistercians that no one exact tithes from them from the labors that they cultivate by their own hands or expenses. For *they* assert that newly cultivated lands ought to be understood by "labors." *Hence, because we wish to foster the brothers of the aforesaid order by apostolic kindness, and to provide more attentively that no one have matter for acting malignantly against them or for molesting them in any manner contrary to justice, by apostolic writings directing* your fraternity, we command that you not permit this to be done. For if we meant only newly cultivated lands where we put "labors," we would put "newly cultivated lands," *as we put it in the privileges of certain others.*

Privilegium super decimis laborum etiam ea, quae non sunt novalia, comprehendit.

Idem.

Ad audientiam nostram +*noveritis pervenisse, quod quidam vestrum a dilectis filiis nostris abbate et fratribus * [*de Pipennella, qui sunt*] *Cisterciensis ordinis, de laboribus, quos propriis manibus aut sumptibus excolunt, decimas exigere et extorquere conantur*, Illud privilegii capitulum *apostolicae sedis* prava interpretatione *ac malitiosa* pervertentes, quo Cisterciensibus indulgetur, ne de laboribus, quos propriis manibus aut sumptibus excolunt, aliquis decimas ab eis exigat. Asserunt *enim*, quod pro laboribus novalia intelligi debent. +*Unde quoniam fratres praescripti ordinis benignitate apostolica fovere volumus, et, ne ullus contra eos materiam habeat malignandi, vel ipsos contra iustitiam molestandi quamlibet, attentius providere: fraternitati vestrae per apostolica scripta praecipiendo* Mandamus, quatenus non permittatis hoc fieri. Nam, si intelligeremus tantummodo de novalibus, ubi ponimus de laboribus, de novalibus poneremus, *sicut in privilegiis quorundam aliorum ponimus*.

Chapter XIII

Latin source headnote: Tithes of newly cultivated lands are owed to the church in whose parish they arise; but if they are not in a certain parish, they are owed to the diocesan bishop, who can retain them for himself or grant them to another church.

The same, to the Bishop of Brescia.

Since your solicitude asked of us what is to be established for you concerning the tithes of newly cultivated lands in your diocese, *by intimation of the present writing to your fraternity* we answer that, if *those* lands that are arable are within the definite parish of some church, *you,* retaining your portion, are to cause their tithes to be assigned to the same church; otherwise you can, according to the

discretion given to you by God, assign them to another church or retain them for your own use, *in such a way indeed that, if anyone presumes to act contrary to these things, you strike him with ecclesiastical censure until worthy satisfaction. But you are to decree invalid the sentences given by consuls concerning tithes, especially since they oppose the institutes of the holy Fathers, and revoke them, every contradiction and appeal being set aside. If any layman seeks tithes from priests or clerics from their labors in your diocese, you are to compel him wholly to cease from an exaction of this kind; and those laymen who receive from tenants a third or fourth part of their labors before payment of the tithes, you are to cause, without any diminution, to furnish to those to whom they are owed by right a tithe from their own portion, according as the tenant was accustomed to pay it from the part falling to him.*

> Decimae novalium debentur ecclesiae, in cuius parochia surgunt; si vero non sunt in certa parochia, debentur dioecesano; qui potest sibi retinere, rei alteri ecclesiae concedere.
>
> Idem Brixiensi Episcopo.
>
> Quoniam a nobis sollicitudo tua requisivit, quid de decimis novalium tuae dioecesis tibi sit statuendum, *tuae fraternitati significatione praesentium* respondemus, ut, si terrae *illae*, quae arabiles sunt, infra certam alicuius ecclesiae parochiam fuerint, *tu* decimas earum, tua parte retenta, eidem ecclesiae facias assignari; alioquin ipsas secundum discretionem a Deo tibi datam alii ecclesiae deputare, vel ad opus tuum poteris retinere, *ita quidem, quod, si quis in his contraire praesumpserit, tu eum ecclesiastica censura usque ad dignam satisfactionem percellas. Sententias vero super decimis a Consulibus datas praesertim quum sanctorum patrum institutionibus obvient, irritas esse decernas et eas omni contradictione et appellatione postposita revoces. Quod si laicus aliquis a sacerdotibus vel clericis decimas de laboribus suis in tua dioecesi requisiverit eum ab exactione huiusmodi prorsus cessare compellas et laicos illos, qui a colonis tertiam vel quartam partem laborum suorum ante solutionem decimarum recipiunt, decimam de portione sua secundum quod colonus de parte quae illum contingit exsolvere consueverit, absque diminutione aliqua iis, quibus iure debentur facias exhibere.*

Chapter XIV

Latin source headnote: Tithes can be exacted.

The same, to the Archbishop of Rheims.

You ought, *however, to compel your parishioners by ecclesiastical severity to pay tithes to the churches to which they owe them, because,* since tithes were instituted not by man but by the Lord himself, they can be exacted as a debt.

> Decimae possunt exigi.
>
> Idem Remensi Archiepiscopo.
>
> Parochianos *+vero tuos ad solvendas decimas ecclesiis, quibus eas debent, ecclesiastica debes severitate compellere; quia,* Quum decimae non ab homine, sed ab ipso Domino sint institutae, quasi debitum exigi possunt.

Chapter XV

Latin source headnote: A tithe cannot be granted to a layman by hereditary right.

The same, to the Bishop of Amiens.

In addition, because the sanctuary of God ought not to be possessed by hereditary right, you are to *revoke as utterly invalid and* decree to lack force the donation of a tithe that the abbot of Saint S. de Monstral granted to a certain layman to be held by succession; and you are to bind the layman with

the bond of excommunication unless he has freely *and absolutely* resigned that tithe to the church itself.

> Decima laico iure hereditario concedi non potest.
>
> Idem Ambianensi Episcopo.
>
> Ad haec donationem decimae, quam abbas sancti S. de Monstrali cuidam laico concessit per successionem tenendam, quoniam sanctuarium Dei iure hereditario possideri non debet, *in irritum penitus revoces et* viribus carere decernas, et laicum, nisi decimam ipsam ipsi ecclesiae libere *et absolute* resignaverit, vinculo excommunicationis adstringas.

Chapter XVI

Latin source headnote: Jews are compelled to pay predial tithes or relinquish the estates.

The same, to the Bishop of Marseille.

But concerning the lands that Jews cultivate, we answer your prudence that you compel them with all severity to pay tithes or utterly to renounce the possessions, lest perhaps by that occasion the churches be defrauded of their right.

> Iudaei coguntur praediales decimas solvere, aut praedia dimittere.
>
> Idem Marsiliensi Episcopo.
>
> De terris vero, quas Iudaei colunt, tuae prudentiae respondemus, ut eos ad decimas persolvendas, vel ad possessiones penitus renunciandas cum omni districtione compellas, ne forte occasione illa ecclesiae valeant suo iure fraudari.

Chapter XVII

Latin source headnote: Tithes or offerings of a church cannot be granted to laymen, and a prelate who acts contrary to this is to be punished.

The same.

Although it is held to be exceedingly grave and worthy of the retribution of divine judgment that certain laymen usurp in ecclesiastical matters what belongs to priests, nevertheless they incur greater fear *and sorrow* because they are said sometimes to find the tinder of their error in the clergy itself, when certain *of our brothers and fellow bishops and other* prelates grant them the disposal of the tithes and churches [*themselves*] of the church, and impel into the byways of death those who ought to have been recalled to the way of life by their preaching. *Concerning them the Lord says through the Prophet: "They eat the sins of my people and provoke their souls to iniquity." Hence* we establish that, if anyone grants to any layman remaining in the world a church, tithe, or offering, he is to be cut down from his station like a tree that uselessly occupies the earth, and, until he makes amends, is to lie prostrate in grief at his own ruin.

> Decimae vel oblationes ecclesiae laicis concedi non possunt, et praelatus contra faciens est puniendus.
>
> Idem.
>
> Quamvis sit grave nimis et divini dignum animadversione iudicii habeatur, quod laici quidam quod sacerdotum est in ecclesiasticis rebus usurpant : maiorem tamen incurrunt formidinem *ac dolorem*, quod fomitem sui erroris dicuntur in ipso clero aliquoties invenire, dum quidam *fratrum et coepiscoporum*

nostrorum aliorumque praelatorum ecclesiae decimas et ecclesias [*ipsas*] disponere eis indulgent, et eos in devia mortis impellunt, qui praedicatione eorum ad viam vitae fuerant revocandi. +*De quibus dicit Dominus per Prophetam: "Peccata populi mei comedunt, et ad iniquitatem provocant animas eorum. "Unde* Statuimus, ut, si quis alicui laico in saeculo remanenti ecclesiam, decimam oblationemque concesserit, a statu suo, sicut arbor, quae inutiliter terram occupat, succidatur, et, donec emendet, dolore suae iaceat ruinae prostratus.

Chapter XVIII

Latin source headnote: Custom is followed as to whether a tenant pays a tithe to the church in whose parish the estates are situated, or to the church where he hears divine services and receives the ecclesiastical sacraments.

The same.

Since, as you assert, there are men in the parish of one church who cultivate lands in another parish, your discretion consulted us as to which church they ought to pay tithes from those lands: *whether to that in whose parish they are constituted or to that in which they hear divine services and receive the other ecclesiastical sacraments*. Indeed, *since a question of this kind was moved rather often in the times of our predecessors and was terminated by none, some asserting that they ought to be paid by consideration of territory, others by consideration of persons,* it is not easy for us to give a certain response concerning this, since the authorities of the holy Fathers are also diverse. And therefore in a doubt of this kind we have thought recourse should be had to custom; and it must also be considered whether those churches are constituted in one bishopric or in different bishoprics, because it seems exceedingly difficult that one church should receive tithes in the bishopric of another, since from this the boundaries of bishoprics would not unreasonably appear to be confused. [*But that, etc.; cf. c.* 8, *On Prescription, II.* 26.]

Statur consuetudini, an colonus solvat decimam ecclesiae, in cuius parochia sita sunt praedia, an ecclesiae ubi audit divina et percipit ecclesiastica sacramenta.

Idem.

Quum sint homines in parochia unius ecclesiae, sicut asseris, qui terras in alia parochia excolunt : tua discretio nos consuluit, cui ecclesiae de terris illis decimas solvere debeant, +*an ei, in cuius parochia sint constituti, an illi, in qua divina audiunt et alia ecclesiastica percipiunt sacramenta*. Sane, *quum huiusmodi quaestio temporibus praedecessorum nostrorum saepius mota fuerit, nec ab aliquo terminata, aliis intuitu territorii, aliis personarum obtentu asserentibus debere persolvi*, non est nobis facile super hoc certum dare responsum, quum auctoritates sanctorum Patrum etiam sint diversae. Et ideo in huiusmodi dubitatione ad consuetudinem duximus recurrendum, et attendendum etiam, si illae ecclesiae in uno sint vel in diversis episcopatibus constitutae; quia difficile nimis videtur, ut una ecclesia in episcopatu alterius recipiat decimas, quum ex hoc episcopatuum fines confundi non immerito viderentur. [*Illud autem etc. cf. c.* 8. *de praescr. II.* 26.]

Chapter XIX

Latin source headnote: A layman cannot transfer a tithe to another layman, even if he possesses it with title. This it says together with the gloss.

From the Lateran Council.

We *further* prohibit laymen who detain tithes at peril to their souls from transferring them in any manner to other laymen. But if anyone receives one and does not return it to the church, let him be deprived of Christian burial.

> Non potest laicus transferre decimam in alium laicum, etiamsi cum titulo illam possideat. H. d. cum gloss.
>
> Ex concilio Lateranensi.
>
> Prohibemus *insuper*, ne laici, decimas cum animarum suarum periculo detinentes, in alios laicos possint aliquo modo transferre. Si quis vero receperit, et ecclesiae non reddiderit, Christiana sepultura privetur.

Chapter XX

Latin source headnote: A personal tithe is owed to the church where someone receives the sacraments, although profit occurs elsewhere; but as to a predial tithe, custom is followed if a tenant cultivated an estate in another parish.

Lucius III, to the Archbishop of Esztergom.

Called to the governance of the Apostolic See *by divine favor, although undeserving, we are debtors to all the sons of the church and are compelled, according to the measure of our knowledge, to answer the consultations of each*. We have *moreover understood from your letters* that a certain custom has grown established in Hungary: a multitude of people is very often transferred from the parish of one bishop into the diocese of another. Although it remains in the latter for many periods of time, each of the bishops—both he whose parish they left and he whose parishioners they have become—nevertheless seeks the tithe, [*and subjects them to interdict unless they pay according to his will,*] *whence envy and* [*very many*] *contentions arise*. And therefore your fraternity led you to consult us as to whom the tithes should rather be rendered. You should therefore know that, *if tithes are paid from a craft, trade, and agriculture that one exercises within the boundaries of the parish in which he dwells, or from other things of this kind,* it is equitable that personal tithes be rendered by them to that church in which they receive the ecclesiastical sacraments. *For the Apostle says: "If we have sown spiritual things for you, etc."* But as to tithes from crops or the fruits of trees, if they have cultivated them in another parish than the one in which they dwell, since a different custom is maintained by different persons, in this case you are to choose what you know to have been observed there through long-established custom.

> Decima personalis debetur ecclesiae, ubi quis percipit sacramenta, licet alibi lucrum contigerit; in praediali vero statur consuetudini, si in aliena parochia colonus praedium coluit.
>
> Lucius III. Strigoniensi Archiepiscopo.
>
> Ad apostolicae sedis regimen, *+licet immeriti, dignatione divina vocati, omnibus sumus ecclesiae filiis debitores, et pro scientiae nostrae modo respondere cogimur consultationibus singulorum*. Intelleximus *autem ex literis tuis*, quod quaedam consuetudo in Hungaria inolevit, ut multitudo populi plerumque de parochia unius episcopi in dioecesim alterius transferatur. In qua licet per multa tempora moram traxerit, uterque tamen episcoporum, tam is, cuius parochiam reliquerunt, quam is, cuius parochiani sunt facti, decimationem requirit, [*et eos, nisi ad voluntatem ipsius solvant, interdicto supponit,*] *unde invidiae et* [*plurimae*] *contentiones oriuntur*. Ideoque tua nos duxit fraternitas consulendos, cui potius decimae sint reddendae. Noveris igitur, quod, *si de artificio, vel negotiatione et agricultura, quam infra terminos parochiae, in qua moratur, exercet, vel aliis huiusmodi decimae solvantur* ; aequum est, ut illi ecclesiae decimae personales reddantur ab eis, in qua ecclesiastica percipiunt sacramenta. *Apostolus enim dicit: "Si vobis seminavimus spiritualia etc.* " Decimas

vero messium vel fructuum arborum, si coluerint in alia parochia, quam in ea, in qua habitant, quoniam a diversis diversa consuetudo tenetur, tu eligas in hoc casu quod per consuetudinem diu obtentam ibidem noveris observatum.

Chapter XXI

Latin source headnote: Tithes are to be paid from every fruit of an estate.

Clement III.

A complaint was proposed to us on the part of *our beloved sons,* the canons of your church, that certain farmers, when together or [*at*] diverse times of the year they have scattered diverse seeds in the same garden or field, pay a tithe to it only from the fruits of one of those seeds; *certain persons also do not take care to pay tithes from the produce of fields unless certain expenses that they incur in carrying them to the barn or threshing floor have* [*first*] *been deducted. Therefore, because through this no small injury is inflicted upon the canons themselves and the church of God, since it is enjoined that tithes be paid to the Levites without expenses,* we command that, *after inquiring more diligently into the truth,* if you know the matter to stand thus, you compel those farmers by ecclesiastical censure, *all contradiction and appeal ceasing,* to pay tithes from all the fruits of the estates, *no expenses being subtracted, but rather whole* tithes *and* without diminution; *and by our authority strictly forbid them from attempting such things hereafter through any greed or presumption.* [*Given at the Lateran, in the third year.*]

De omni fructu praedii solvendae sunt decimae.

Clemens III.

Ex parte *dilectorum filiorum nostrorum* canonicorum ecclesiae tuae nobis est querela proposita, quod quidam agricultores, quum simul vel [*in*] diversis temporibus anni in eodem horto vel agro diversa semina sparserint, non nisi de unius illorum seminum fructibus decimas illi persolvunt, +*quidam etiam decimas de agrorum proventibus non curant exsolvere, nisi quibusdam * [*prius*] *deductis expensis, quas faciunt pro illis ad horreum vel ad aream deportandis. Quia igitur per hoc canonicis ipsis et ecclesiae Dei non modica irrogatur iniuria, quum Levitis absque expensis decimas sit iniunctum persolvi*, Mandamus, quatenus, *inquisita diligentius veritate*, si noveris, rem taliter se habere, agricultores illos, ut de omnibus praediorum fructibus, *nullis subtractis expensis, sed integras potius* decimas *et* absque diminutione persolvant, ecclesiastica censura *omni contradictione et appellatione cessante compellas, et auctoritate nostra districte inhibeas, ne talia de cetero aliqua cupiditate seu praesumptione attentent*. [*Dat. Laterani Ao. III.*]

Chapter XXII

Latin source headnote: Predial tithes are to be paid without expenses being deducted.

Celestine III.

It is not in the power of men, when they plant trees or commit any seeds to the earth, *what the sowing or planting will return to them, since, according to the word of the Apostle, to be expounded according to the letter, neither does he who plants do anything well, nor he who waters, but God, who gives the increase. But we have heard that certain of you take care to furnish tithes to the churches from vineyards, olive groves, sugar canes, and crops only after the expenses of seed, labor, and cultivation have first been deducted.* In truth, as the holy Fathers handed down in their writings, tithes are to be given to the ministers of the church from wine, grain, fruits of trees, flocks, gardens, *and* trade, even from military service itself, *and* from hunting, and from all goods; *also* in such a way that those who have neglected to pay them from these things ought to be

struck with ecclesiastical severity. *Moreover, if anyone does not give the Lord tithes, which are the tributes of needy souls and are required as a debt, he deserves, as Augustine teaches, to be reduced to a tenth part.* We therefore will and strictly command that, before you deduct any expenses from *all your* aforesaid goods, *saving the privileges of the Roman church,* you pay in full the tithes owed to the churches to which they pertain.

> Decimae praediales solvendae sunt expensis non deductis.
>
> Coelestinus III.
>
> Non est in potestate hominum, quum plantant arbores vel aliqua semina terrae mandant, *+quid eis satio vel plantatio sit redditura, quum iuxta verbum Apostoli, ad literam exponendam, neque qui plantat bene aliquid faciat, neque qui rigat, sed Deus, qui tribuit incrementum. Audivimus autem, quod quidam vestrum de vineis, olivetis, cannamellis et frugibus non nisi primo deductis expensis seminum laboris et agriculturae decimas curant ecclesiis exhibere*. Re vera, sicut sancti Patres in suis tradiderunt scripturis, de vino, grano, fructibus arborum, pecoribus, hortis, *et* negotiatione, de ipsa etiam militia, *et* de venatione, et de omnibus bonis decimae sunt ministris ecclesiae tribuendae; ita *etiam*, ut, qui de his eas solvere neglexerint, ecclesiastica districtione debeant percelli. *+Praeterea si quis Domino decimas non dederit, quae sunt tributa egentium animarum, et ex debito requiruntur ad decimam partem, ut docet Augustinus, revocari meretur*. Volumus ergo et districte praecipimus, quatenus, antequam ullas deducatis de *cunctis vestris* bonis praedictis expensas, *salvis privilegiis Romanae ecclesiae* decimas ecclesiis, ad quas pertinent, cum integritate debita persolvatis.

Chapter XXIII

Latin source headnote: Tithes are to be paid from the revenues of a windmill.

Celestine III.

From the transmitted complaint *of Bertrand, Archdeacon of Dol,* rector of the church of N., we understood *that, although M., a knight, constructed a certain windmill on certain land within the boundaries of his parish, from the produce of which land the aforesaid church was accustomed to receive tithes, he, contradicting payment to him of tithes from the proceeds of the mill itself, does not fear to retain them at peril to his salvation.* Therefore, because a faithful man is bound to dispense tithes *without diminution* from all things that he can lawfully acquire, *by apostolic writings* we command your discretion that, *through ecclesiastical censure, the obstacle of appeal being removed,* you compel the knight H. to pay tithes without any diminution from the things that proceed from the *aforesaid* windmill.

> De reditibus molendini ad ventum solvendae sunt decimae.
>
> Coelestinus III.
>
> Ex transmissa querela *Bertrandi Dolensis archidiaconi* rectoris ecclesiae de N. intelleximus, *+quod, quum M. miles molendinum quoddam ad ventum in terra quadam infra fines parochiae suae, de cuius terrae proventibus decimas solebat ecclesia percipere memorata, construxit, de ipsius molendini obventionibus decimas ei solvere contradicens, in salutis suae periculum detinere non veretur*. Quia *igitur* fidelis homo de omnibus, quae licite potest acquirere, *sine diminutione* decimas erogare tenetur : *discretioni vestrae per apostolica scripta* mandamus, quatenus H. militem ad solutionem decimarum de his, quae de *praedicto* molendino ad ventum proveniunt, sine diminutione aliqua *per censuram ecclesiasticam sublato appellationis obstaculo* compellatis.

Chapter XXIV

Latin source headnote: The lessor or lessee of possessions is bound for tithes unless they show themselves exempt.

Innocent III, to the Bishop of Pistoia.

Your fraternity asked of us *whether you ought to exact tithes from those who give or receive possessions at rent, since each endeavors to excuse himself through the other so that they are not compelled to pay tithes.* Since, therefore, everyone is bound to pay tithes unless he is specially exempt from furnishing them, we answer your fraternity in this manner: tithes are to be paid from the fruits they receive by those giving and receiving possessions at farm, unless *something* is shown by them as to why they are immune from such tithes. [*With clerics, etc.; cf. c.* 9, *On the Cohabitation of Clerics, III.* 2. *Given at the Lateran, on the fourth day before the Nones of December.* 1199.]

> Locator vel conductor possessionum tenentur ad decimas, nisi se immunes ostendant.
>
> Innocentius III. Pistoriensi Episcopo.
>
> A nobis tua fraternitas requisivit, *+utrum ab illis decimas exigere debeas, qui possessiones dant vel recipiunt ad affictum, quum alii se conentur per alios excusare, quo minus cogantur ad decimas persolvendas*. Quum igitur quilibet decimas solvere teneatur, nisi a praestatione ipsarum specialiter sit exemptus, fraternitati tuae taliter respondemus, quod a dantibus et recipientibus possessiones ad firmam de fructibus, quos percipiunt, decimae sunt solvendae, nisi ab eis *aliquid* ostendatur, quare ab huiusmodi sint immunes. [*Cum clericis etc. cf. c.* 9. *de cohab. cler. III.* 2.] *Dat. Lat. IV. Non. Dec. 1199.*

Chapter XXV

Latin source headnote: An imperial grant under whatever form cannot exempt from the payment of tithes.—(Nor by occasion, etc.:) Tithes of newly cultivated lands do not pertain to a layman who has tithes in fief. This it says.

The same, to the Bishop of Vercelli.

Your—(*And below:* [*cf. the chapter immediately following.*]) Moreover, since no faculty of granting or disposing *of* spiritual things has been attributed to laymen, an imperial grant, however generally it may be made, cannot exempt anyone from payment of tithes that are owed by divine constitution. Nor, by occasion of an ancient tithe, although tithes have been granted in fief, are tithes of newly cultivated lands to be usurped, since in such matters license is not to be extended but rather restricted. [*Therefore, since, etc.; cf. the chapter immediately following.*]

> Imperialis concessio sub quacunque forma a solutione decimarum eximere non potest. — (Nec occasione etc.:) Decimae novalium non pertinent ad laicum, qui decimas habet in feudum. H. d.
>
> Idem Vercellensi Episcopo.
>
> Tua (*Et infra:* [*cf. c. prox. seq.*]) Porro quum laicis nulla sit de spiritualibus concedendi vel disponendi *attributa* facultas, imperialis concessio, quantumcunque generaliter fiat, neminem potest a solutione decimarum eximere, quae divina constitutione debentur. Nec occasione decimationis antiquae, licet in feudum decimae sint concessae, sunt decimae novalium usurpandae, quum in talibus non sit extendenda licentia, sed potius restringenda. [*Quoniam igitur etc. cf. c. prox. seq.*]

Chapter XXVI

Latin source headnote: Without deduction of seed and expenses, the lord and the tenant ought to pay a tithe, and not to whatever church or poor persons they wish, but to the church to which they are owed; nor are they excused from this because of the wickedness of the clerics.

The same, to the same.

Your fraternity intimated to us that certain laymen *of your diocese, and many others of the neighboring bishoprics,* endeavor by perverse machinations to withdraw tithes from your churches and clerics, *and do not take care to amend by due satisfaction the audacity of the perversity they conceived.* For some of them say that the seed and the expenses incurred in cultivation are first to be deducted, and assert that a tithe is *to be* furnished from the residue. But others, separating a part of the tithe from the portion of fruits that they receive from tenants, confer it upon their chapels, other clerics *or churches,* or even the poor, or convert it to other uses according to their will. Some also, detesting the life of the clerics as abominable, do not fear on this account to withhold tithes from them. *Certain persons further, asserting that they acquired their possessions and all their rights with every burden and jurisdiction through an imperial grant, presume to detain tithes under a generality of this kind. Moreover, by occasion of an old tithe that they assert was granted to them, some do not fear to usurp for themselves the tithes of newly cultivated lands.*

But if assertors of this kind had due regard for God, from whom all good things proceed, they would not contend to diminish ecclesiastical right, nor presume to detain tithes, which are the tributes of needy souls. For since God—to whom belong the earth and its fullness, the world and all who dwell in it—ought not to be of a worse condition than a temporal lord, whose established *due* from the lands that he furnishes to others to be cultivated is necessarily paid in full, without expenses indeed being deducted or seed separated, it assuredly seems exceedingly iniquitous if tithes, which God commands to be rendered to himself as a sign of universal dominion, affirming tithes and first fruits to be his own, can *perhaps* be diminished by the aforesaid occasion or rather by devised fraud, since payment of tithes is owed to God to such a degree that laymen, if after being admonished they *perhaps* refuse to render them, are to be compelled by ecclesiastical severity to furnish them to the clerics to whom he granted them for his worship. And since tithes are to be rendered from absolutely all proceeds, just as the tenant is bound to render without diminution a tithe from the part of the fruits that remains to him by reason of cultivation, so also is the lord bound to render it from the portion he receives by reason of the land. Under pretext of the wickedness of the clerics they cannot dispense them *to others,* except those to whom they are owed by divine mandate, according to their own judgment, since it is lawful for no one to grant another's property to anyone apart from the will of the lord, *although through the solicitude of the pastoral office the clerics are to be restrained from their wickedness. (And below:* [*cf. the chapter immediately preceding.*]) Therefore, since we do not wish, *nor ought we,* to permit the rights of churches and clerics to be diminished by any presumption, *by the authority of the present writing* we command your fraternity that, appeal being removed, you compel *by apostolic authority through a sentence of excommunication or interdict* all those who are bound by reason of persons or even estates to furnish tithes to the churches and clerics of your diocese to render them in full. *Moreover, so that you may be able to compel the clerics of your diocese concerning whom a complaint has been proposed in your court to do full justice under your examination concerning the aforesaid tithes and fruits received, notwithstanding the objection of an appeal interposed to elude ecclesiastical discipline, we have thought that this should be granted to your devotion by the page of the present writing.*

Sine deductione seminis et sumptuum debent dominus et colonus decimam solvere, et non cui voluerint ecclesiae vel pauperibus, sed ecclesiae, cui debentur, nec ab hoc excusantur propter malitiam clericorum.

Idem eidem.

Tua nobis fraternitas intimavit, quod quidam laici *tuae dioecesis, et alii plures episcopatuum adiacentium*, decimas ecclesiis et clericis tuis perversis machinationibus subtrahere moliuntur, *et conceptae perversitatis audaciam non curant satisfactione debita emendare*. Quidam enim ex eis semen et sumptus, qui fiunt in agricultura, dicunt primitus deducendos, et de residuo impendendam *esse* decimam asseverant. Alii vero de portione fructuum, quam a colonis accipiunt, partem decimae separantes, eam capellis suis, aut aliis clericis *seu ecclesiis*, aut etiam pauperibus conferunt, vel in usus alios pro sua voluntate convertunt. Nonnulli etiam vitam clericorum tanquam abominabilem detestantes, decimas eis ob hoc subtrahere non verentur. +*Quidam insuper asserentes, se possessiones et omnia iura sua cum omni onere et districtu per imperialem concessionem adeptos, decimas sub huiusmodi generalitate detinere praesumunt*. *Occasione praeterea veteris decimationis, quam asserunt sibi concessam, aliqui decimas novalium sibi non metuunt usurpare*. Verum, si ad Deum, a quo cuncta bona procedunt, assertores huiusmodi debitum respectum haberent, ius ecclesiasticum diminuere non contenderent, nec decimas, quae tributa sunt egentium animarum, praesumerent detinere. Quum enim Deus, cuius est terra, et plenitudo eius, orbis terrarum, et universi, qui habitant in eo, deterioris conditionis esse non debeat, quam dominus temporalis, cuius statutum *debitum* de terris, quas exhibet aliis excolendas, non quidem deductis sumptibus aut semine separato, necessario, cum integritate persolvitur : nimis profecto videtur iniquum, si decimae, quas Deus in signum universalis dominii sibi reddi praecipit, suas esse decimas et primitias asseverans, occasione praemissa vel excogitata magis fraude diminui *forte* valeant, quum Deo debita sit solutio decimarum in tantum, ut ad eas clericis exhibendas, quibus eas ipse pro suo cultu concessit, laici, si moniti reddere *forte* noluerint, ecclesiastica sunt districtione cogendi. Et quum de cunctis omnino proventibus decimae sint reddendae, sicut colonus de parte fructuum, quae sibi remanet ratione culturae, sic et dominus de portione, quam percipit ratione terrae, decimam reddere sine diminutione tenetur. Praetextu vero nequitiae clericorum nequeunt eas *aliis*, nisi quibus ex mandato divino debentur, pro suo arbitrio erogare, quum nulli sit licitum aliena cuiquam concedere praeter domini voluntatem, +*quanquam per sollicitudinem officii pastoralis clerici sint a sua nequitia coercendi* (*Et infra:* [*cf. c. prox. anteced.*]) Quoniam igitur pati nolumus, *nec debemus*, ut ecclesiarum et clericorum iura praesumptione qualibet minuantur, *fraternitati tuae auctoritate praesentium* mandamus, quatenus omnes, qui ratione personarum aut etiam praediorum decimas ecclesiis et clericis tuae dioecesis exhibere tenentur, ad eas cum integritate reddendas, appellatione remota, *auctoritate apostolica per excommunicationis vel interdicti sententiam* compellas. *Praeterea, ut clericos tuae dioecesis de quibus fuerit in auditorio tuo querela proposita, de decimis ante dictis et fructibus perceptis et eis ad plenam sub tuo examine iustitiam faciendam compellere valeas, non obstante appellationis obiectu interpositae in elusionem ecclesiasticae disciplinae, devotioni tuae praesentis scripti pagina duximus indulgendum*.

Chapter XXVII

Latin source headnote: A privilege concerning tithes not to be paid, granted to an ecclesiastical person, comprehends newly cultivated lands. This it says according to the understanding that pleases Panormitanus.

The same, to the Abbot of Saint Columba of Sens.

On your part *it was petitioned of us that, since, as you assert, it was granted to you to receive in full the tithes from the labors of your parishes, we mercifully grant you that from lands within your parishes that are newly reduced to*

cultivation you have, by our indulgence, the faculty of exacting tithes. Since, *therefore,* the greater thing was granted to you—namely, to receive in full tithes from the labors of the land of your parishes—you can sufficiently exact them from newly cultivated lands, because where the greater is granted *to you,* the lesser *also in this case* is seen to have been granted. [*Given at Rome at Saint Peter's, on the sixth day before the Ides of March, in the ninth year of our pontificate.* 1206.]

> Privilegium super decimis non solvendis, ecclesiasticae personae concessum, novalia comprehendit. H. d. secundum intellectum, qui placet Panorm.
>
> Idem Abbati sanctae Columbae Senonensis.
>
> Ex parte tua +*fuit postulatum a nobis, quod, quum tibi de laboribus tuarum parochiarum, sicut asseris, sit indultum decimas cum integritate percipere, tibi vellemus misericorditer indulgere, ut de terris, quae infra parochias tuas rediguntur noviter ad culturam, de indulgentia nostra exigendi decimas facultatem haberes*. Quum *igitur* tibi quod maius est sit concessum, ut videlicet decimas de laboribus terrae parochiarum tuarum cum integritate percipias, de novalibus eas exigere satis potes; quia, ubi maius *tibi* conceditur, minus *etiam in hoc casu* concessum esse videtur. [*Dat. Rom. ap. S. Petr. VI. Id. Mart. Pont. nostr. Ao. IX. * 1206.]

Chapter XXVIII

Latin source headnote: A merchant pays a tithe from profit after deducting expenses that he incurs from tithed money; but expenses incurred for obtaining fruits are not deducted, and a tithe is paid from the fruits even without deducting expenses incurred for restoring the thing.

The same, to the Bishop of Ely.

Of the pastoral office—*(And below:* [*cf. c.* 28, *On the Office of a Delegated Judge, I.* 29.]) You asked *further* that it be explained whether someone can deduct necessary expenses from mills and fisheries before he pays tithes from them, as is granted in trade. To this, *without prejudice to a better opinion,* we answer that, although concerning things acquired or made from tithed money, when they are sold, we believe expenses are to be deducted and tithes paid from the residue as from profit—as if a house, field, vineyard, oven, mill, flock, or any merchandise is sold—nevertheless, we do not believe that expenses incurred for receiving fruits are to be deducted from those things from which the fruits proceed, even if they have been tithed, since, saving the tithe, the fruits become those of the persons who incur those expenses. But we do not believe the fruits themselves can be alienated except with the burden of tithes. Nor do we believe expenses are to be deducted from proceeds to be tithed for restoring damage to any things from which tithes are paid, because the restored things remain with the owner, as if some part of a herd dies, a vineyard deteriorates, a portion of merchandise perishes, or an entire oven is destroyed. [*You asked, etc.—cf. c.* 8, *On the Faith of Instruments, II.* 22.—*Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January.* 1204.]

> Negotiator de lucro decimam solvit, deductis expensis, quas facit de pecunia decimata; expensae vero, quae fiunt pro habendis fructibus, non deducuntur, et de fructibus solvitur decima, etiam non deductis expensis factis pro re restauranda.
>
> Idem Heliensi Episcopo.
>
> Pastoralis officii (*Et infra:* [*cf. c.* 28. *de off. iud. del. I.* 29.]) Explicari *praeterea* postulasti, utrum quis possit de molendinis et piscariis necessarias expensas deducere prius, quam solvat decimas ex eisdem, sicut est in negotiatione concessum. Ad quod *sine praeiudicio melioris sententiae* respondemus, quod, licet circa res acquisitas vel factas de pecunia decimata, quum ipsae venduntur, credamus deducendas expensas, et

de residuo quasi de lucro decimas persolvendas, ut, si vendatur domus, ager, vinea, clibanus, molendinum, grex aut quaelibet merces, expensas tamen, quae fiunt pro fructibus percipiendis, ex illis, de quibus fructus proveniunt, non credimus deducendas, etiamsi fuerint decimatae, quoniam salva decima fructus efficiuntur eorum, qui faciunt ipsas expensas. Fructus autem ipsos alienari posse, non credimus, nisi cum onere decimarum. Nec pro restaurando detrimento quarumlibet rerum, ex quibus decimae persolvuntur, credimus deducendas expensas de proventibus decimandis, quia penes dominum res permanent restauratae, ut si pars aliqua moriatur armenti, deterioretur vinea, portio mercis depereat, vel totus clibanus destruatur. [*Quaesivisti etc. — cf. c.* 8. *de fide instr. II.* 22. *— Dat. Rom. ap. S. Petr. XIV. Kal. Ian.* 1204.]

Chapter XXIX

Latin source headnote: One who acquires by prescription a tithe in another's parish will not have their tithes if newly cultivated lands arise there.

The same.

When it sometimes happens in your diocese—*(And below:* [*cf. c.* 28, *On Oaths, II.* 24.]) *Moreover, you asked whether, when any estates from which tithes were paid to churches or ecclesiastical persons devolve upon the Cistercian order by donation, purchase, or another title, the same brothers are bound to pay tithes from such estates to those churches or persons. Concerning this we give you such a response: since it was granted to the aforesaid brothers by the Apostolic See that they are bound to pay tithes to no one at all from their labors that they cultivate by their own hands or expenses, they are not bound to pay tithes from estates acquired in this manner to churches or ecclesiastical persons, provided they are cultivated by their own hands or expenses.* But since from antiquity the receipt of tithes in certain parishes pertains to certain churches or ecclesiastical persons, and newly cultivated lands are made anew in the same parishes, you ask us to whom the tithe of such newly cultivated lands begins to pertain. Hence we answer your inquiry in this manner: since the receipt of tithes pertains by the common law to parish churches, the tithes *also* of newly cultivated lands that are made in their parishes are undoubtedly known to pertain to them, unless a reasonable cause is shown by those who otherwise receive the tithes, through which it appears that the tithes of the newly cultivated lands pertain to them. [*Given at the Lateran, on the sixteenth day before the Kalends of June, in the third year.* 1210.]

Qui praescribit decimam in aliena parochia, si ibi insurgunt novalia, ipsorum decimas non habebit.

Idem.

Quum contingat interdum in tua dioecesi (*Et infra:* [*cf. c.* 28. *de iurei. II.* 24.]) *Praeterea requisisti, quum aliqua praedia, de quibus ecclesiis aut personis ecclesiasticis decimae solvebantur, ad Cisterciensem ordinem donationis vel emptionis aut alio titulo devolvuntur, an iidem fratres de talibus praediis ipsis ecclesiis vel personis decimas solvere teneantur. Super quo tibi tale damus responsum, quod, quum praedictis fratribus a sede apostolica sit indultum, ut de laboribus suis, quos propriis manibus aut sumptibus excolunt, decimas nulli prorsus persolvere teneantur, de praediis taliter acquisitis, ecclesiis vel personis ecclesiasticis decimas solvere non tenentur; dummodo propriis manibus eorum seu sumptibus excolantur*. Quum *autem* in quibusdam parochiis ad quasdam ecclesias vel personas ecclesiasticas ab antiquo pertineat perceptio decimarum, et de novo fiant novalia in eisdem : quaeris a nobis, ad quem huiusmodi novalium decima incipiat pertinere. Unde inquisitioni tuae taliter respondemus, quod, quum perceptio decimarum ad parochiales ecclesias de iure communi pertineat, decimae *quoque* novalium, quae fiunt in parochiis earundem, ad ipsas procul dubio pertinere noscuntur,

nisi ab his, qui alias percipiunt decimas, rationabilis causa ostendatur, per quam appareat, novalium ad eos decimas pertinere. [*Dat. Later. XVI. Kal. Iun. A. III.* 1210.]

Chapter XXX

Latin source headnote: The tithe of all fruits of an estate is owed to him who acquired the tithes there by prescription; but prescription is not extended to another estate.

The same, to the Bishop of Beauvais.

Since in your diocese certain monasteries and conventual churches receive greater and lesser tithes in many parishes, [*and*] tithes were not paid from certain fruits received annually [*that are now, however, paid,*] *you asked to be taught by the Apostolic See whether the tithes of the aforesaid fruits ought to pertain to the parish churches, which receive neither greater nor lesser tithes, or to the monasteries and those conventual* [*churches*] *that receive other tithes from antiquity. To this we* answer thus: if the aforesaid fruits proceed from that land from which the monasteries or conventual churches received some revenues by reason of tithes, the tithes of those fruits are undoubtedly owed to them, since that land was titheable to them from antiquity and one and the same church ought not to be assessed under diverse law; otherwise, let them be paid to the parish churches, to which the receipt of tithes pertains by the common law. [*Indeed, because it happens, etc.—cf. c.* 27, *On Betrothals, IV.* 1.—*Given at the Lateran, on the fourth day before the Kalends of November, in the fifteenth year of our pontificate.* 1212.]

Decima omnium fructuum praedii debetur ei, qui decimas ibi praescripsit: sed ad aliud praedium praescriptio non extenditur.

Idem Episcopo Belvacensi.

Quum in tua dioecesi quaedam monasteria et conventuales ecclesiae in multis parochiis maiores decimas percipiant et minutas, [*et*] de quibusdam fructibus, annuatim perceptis, non fuerunt decimae persolutae +[*quae tamen modo persolvuntur,*] *quaesivisti per sedem apostolicam edoceri, utrum decimae fructuum praedictorum ad parochiales ecclesias, quae nec maiores percipiunt nec minutas, an ad monasteria et illas * [*ecclesias*] *conventuales, quae decimas alias percipiunt ab antiquo, debeant pertinere. Ad quod sic* Respondemus, quod, si fructus praedicti de illa terra proveniunt, de qua monasteria vel conventuales ecclesiae aliquos percipiebant ratione decimarum proventus, eis proculdubio decimae fructuum debentur eorum, quum ipsis terra illa ab antiquo fuerit decimalis, et non debeat una eademque ecclesia diverso iure censeri; alioquin parochialibus ecclesiis exsolvantur, ad quas de iure communi spectat perceptio decimarum. [*Sane quia contingit etc.* — *cf. c. * 27. *de spons. IV.* 1. — *Dat. Lat. IV. Kal. Nov. Pont. nostr. Ao. XV.* 1212.]

Chapter XXXI

Latin source headnote: Laymen cannot donate churches or tithes, even if they are kings, nor is a basis for prescription furnished by their title.

The same, to the Bishop of Veszprém.

Some time ago, when in our presence you proposed a question against the brothers of the Jerusalem Hospital of Saint Stephen *of Alba,* because they did not permit the tithes owed to the church of Veszprém from the labors of their peasants to be paid to you, *we cited them, fixing the general council as their term, at which they should present themselves before us with their instruments and reasons, prepared to answer you.* Therefore, when you and they appeared before us at the appointed term, we appointed *our beloved*

son G., cardinal priest *of the title of Saint Martin,* as auditor for you and them. Before him you sought the tithes of the lands that are cultivated by the peasants of the hospital in the diocese of Veszprém, and the churches of Ciroga and Novacularia that are detained by those Hospitallers, *as pertaining to you,* your intention being founded upon the common law. But the prior of the *same* hospital, alleging prescription as to the aforesaid tithes and churches, proposed that he was in no way bound to answer you concerning them. When this came to our hearing through the *same* auditor, we commanded that the same prior prove the title of prescription that he alleged. *Finally, after prior deliberation, before our venerable brother the Bishop of Albano, who heard the cause after the departure of the aforesaid cardinal,* he exhibited privileges of B., king of Hungary *of illustrious memory,* and of *E., his mother,* the queen, who granted by title of donation in perpetual alms to the hospital the church of Saint Stephen, to which the said churches with the same tithes pertained. He also exhibited a writing of confirmation of our predecessor Pope Clement *of good memory,* through which he wished to prove that the aforesaid grant had full force, *and asserted nevertheless that it was afterward confirmed by our predecessor Pope Lucius of happy memory.*

But on your part it was proposed *in opposition* that, as to the tithes and *the* churches donated by the king and queen, the opposing party could not plead prescription, which could neither take its beginning from their donation, nor had so much time elapsed from the aforesaid confirmation that prescription could be confirmed; and thus the alleged title of the donation of the king and queen was null, since according *to the canonical sanctions* he incurs the crime of sacrilege who receives churches or anything ecclesiastical from the hand of a layman. *Hence, if it happens that a layman uses such words in the donation of a church, "I give you such a church," he is understood to grant nothing other than only the right of patronage that he has in it, as is expressly contained in a constitution issued by us. But against the confirmation it was answered in this manner: since the church of Saint Stephen itself is confirmed indiscriminately with all tithes, churches, and other things that pertain to it, episcopal right is not taken away, since it is not expressed there, but only the due portion of tithes conferred within the parish of Saint Stephen is reserved to the same Hospitallers according to the custom of the land; especially since the tithes sought by you do not lie in the parish of Saint Stephen, which the opposing party confessed openly. On the contrary, it was replied by the other party that, since you had remained silent for a space of thirty years, you were seen tacitly to have renounced your right. But your party appeared to repel this also by alleging that silence of thirty years is known to obtain not under the common law but under privileges; hence a bishop is deprived of the common-law right he has in the tithes or churches of his diocese only by silence of forty years.*

We therefore, *having understood more fully these and the other things proposed on each side,* since the aforesaid donors could not confer upon others things that they could not themselves possess by law, and *since from the confession of the opposing party it is clearly established to us that the tithes and churches sought are not contained within the parish of Saint Stephen, even if the aforesaid donation holds, and since* through the aforesaid confirmation of Clement made to the hospital concerning the church of Saint Stephen with its tithes and other appurtenances, even if it appeared authentic, there is no derogation at all from episcopal right, *with the counsel of our brothers, by apostolic authority,* we prohibit by sentence the brothers of the hospital from presuming further to impede you from receiving the aforesaid tithes and peacefully possessing them in the future.

> Laici ecclesias vel decimas donare non possunt, etiamsi sunt reges, nec ex eorum titulo praestatur causa praescribendi.

Idem Vesprimensi Episcopo.

Dudum adversus fratres Hierosolymitani hospitalis sancti Stephani *Albensis* te proponente in nostra praesentia quaestionem, quod ipsi decimas, de laboribus rusticorum suorum Vesprimensis ecclesiae debitas, non permitterent tibi solvi, *+eosdem citavimus, praefigentes eis terminum concilium generale, quo cum instrumentis et rationibus suis nostro se conspectui praesentarent, tibi respondere parati*. Comparentibus igitur te ac ipsis statuto termino coram nobis, *dilectum filium nostrum* G. *tit. S. Martini* presbyterum cardinalem tibi et eis concessimus auditorem, coram quo decimas terrarum, quae per rusticos hospitalis Vesprimensis dioecesis excoluntur, et de Ciroga et de Novacularia ecclesias, quae per ipsos hospitalarios detinentur, *easdem, tanquam ad te spectantes*, intentione tua de iure communi fundata petisti. Prior autem hospitalis *eiusdem* in praedictis decimis et ecclesiis praescriptionem allegans, proposuit, se tibi non teneri super his *aliquatenus* respondere. Quod quum per auditorem *eundem* ad nostram audientiam pervenisset, mandavimus, quod idem prior praescriptionis titulum, quem allegavit, probaret, qui *tandem post deliberationem praehabitam coram venerabili fratre nostro Albanensi episcopo, qui post recessum memorati cardinalis de causa cognovit, inclytae recordationis* B. regis ac *E. matris ipsius* reginae Hungariae privilegia exhibuit, qui ecclesiam sancti Stephani, ad quam dictae ecclesiae cum eisdem decimis pertinebant, in perpetuam eleemosynam hospitali donationis titulo concesserunt, confirmationis *bonae memoriae* Clementis Papae praedecessoris nostri scriptum exhibens, per quod probare volebat, concessionem praedictam plenum habere vigorem, *+et asserens nihilominus, ipsam a felicis recordationis Lucio Papa praedecessore nostro postmodum confirmatam*. Ceterum ex parte tua fuit propositum *ex adverso*, quod in decimis et *in* ecclesiis a rege et regina donatis praescriptionem non poterat opponere pars adversa, quae nec a donatione ipsorum initium habere poterat, nec a confirmatione praefata tantum effluxit temporis, quod possit praescriptio confirmari, et sic donationis regis ac reginae allegatus titulus nullus erat; quum sacrilegii crimen incurrat *secundum canonicas sanctiones*, qui ecclesias vel ecclesiasticum aliquid de manu receperit laicali. *+Unde si contingat, laicum in donatione ecclesiae talibus verbis uti: "do tibi ecclesiam talem: "nihil aliud concedere intelligitur, nisi ius patronatus tantum, quod habet in ipsa, prout in constitutione a nobis edicta continetur expresse. Contra confirmationem autem fuit hoc modo responsum, quod, quum confuse ipsa ecclesia S. Stephani cum omnibus decimis et ecclesiis et aliis quae ad eandem pertinent, confirmetur, ius episcopale non tollitur; quum de illo non exprimatur ibidem, sed tantum debita decimarum portio, intra parochiam S. Stephani collatarum, secundum terrae consuetudinem eisdem hospitalariis reservetur; praesertim quum petitae decimae a te in parochia S. Stephani non consistant, quod de plano confessa est pars adversa. Econtra vero fuit a parte altera replicatum, quod, quum spatio XXX. annorum tacueris, iuri tuo tacite renunciasse videris. Sed et hoc pars tua visa est repellere allegando, quod XXX. annorum taciturnitas non in iure communi, sed in privilegiis noscitur obtinere, unde iure communi, quod habet episcopus in decimis vel ecclesiis suae dioecesis, non nisi XL. annorum taciturnitate privatur*. Nos igitur *his et aliis, quae hinc inde fuerunt proposita, plenius intellectis*, quum donatores praedicti conferre non potuerint aliis quae ipsi de iure non poterant possidere, et *ex confessione partis adversae liquido nobis constat, petitas decimas et ecclesias intra parochiam sancti Stephani non concludi, etiamsi praefata donatio teneat, quum* per confirmationem praedicti Clementis super ecclesia sancti Stephani hospitali cum decimis et aliis pertinentibus ad se factam, etiamsi authenticum appareret, iuri episcopali nullatenus derogetur, *de fratrum nostrorum consilio auctoritate apostolica* sententialiter prohibemus, ne fratres hospitalis praesumant ulterius impedire, quo minus decimas percipias memoratas, et pacifice possideas in futurum.

Chapter XXXII

Latin source headnote: Lords of estates can be compelled to give the estates for cultivation to such persons from whom the church can obtain tithes without contradiction. This it says as far as the section “Those.”—(Those, etc.:) This section is not summarized on account of its brevity.

The same, in the General Council.

In certain regions some peoples are intermingled who according to their rites do not customarily pay tithes, although they are designated by the Christian name. Certain lords of estates give them those estates to cultivate so that, by defrauding the churches of tithes, they may obtain greater revenues therefrom. Wishing, therefore, to provide in these matters for the indemnity of the churches, we establish that the lords themselves commit their estates to such persons and in such a manner to be cultivated that they pay tithes in full to the churches without contradiction, and, if necessary, that they be compelled to this through ecclesiastical censure. For those tithes must necessarily be paid that are owed under divine law or the approved custom of the place.

> Domini praediorum cogi possunt, ut praedia dent colenda talibus, a quibus sine contradictione ecclesia possit decimas consequi. H. d. usque ad §. Illae — (Illae etc.:) Iste §. propter sui brevitatem non summatur.
>
> Idem in concilio generali.
>
> In aliquibus regionibus quaedam permixtae sunt gentes, quae secundum suos ritus decimas de more non solvunt, quamvis censeantur nomine Christiano. His nonnulli domini praediorum ea tribuunt excolenda, ut decimis defraudantes ecclesias, maiores inde reditus assequantur. Volentes igitur super his ecclesiarum indemnitatibus providere, statuimus, ut ipsi domini, talibus personis et taliter sua praedia excolenda committant, quod absque contradictione ecclesiis decimas cum integritate persolvant, et ad id, si necesse fuerit, per censuram ecclesiasticam compellantur. Illae quippe decimae necessario solvendae sunt, quae debentur ex lege divina vel loci consuetudine approbata.

Chapter XXXIII

Latin source headnote: Tithes are to be paid before rents or taxes, and if the latter are paid first, they ought afterward to be tithed.

The same, in the same council.

Since it is not in man what will answer the one sowing seed, because according to the word of the Apostle, "Neither he who plants is anything, nor he who waters, but God who gives the increase," certain persons strive too avariciously to defraud in tithes him who brings forth abundant fruit from deadened seed, first deducting from the crops rents and taxes, which sometimes pass away untithed. But since, as a sign of universal dominion, the Lord reserved tithes to himself as though by a certain special title, we, wishing to meet both the losses of churches and the perils of souls, establish that, by prerogative of general dominion, payment of tithes precede the exaction of taxes and rents; or at least that those to whom untithed rents or taxes have come—since a thing passes with its burden—be compelled by ecclesiastical censure to tithe them to the churches to which they are owed by law.

> Prius solvendae sunt decimae, quam census seu tributa, et, si prius illa solvuntur, postea decimari debent.
>
> Idem in eodem.
>
> Quum non sit in homine, quid semen serenti respondeat, quoniam iuxta verbum Apostoli, " neque qui plantat, est aliquid, neque qui rigat, sed qui incrementum dat, Deus, " ipsum, qui de mortificato semine plurimum fructum affert, nimis avare quidam in decimis defraudare nituntur, census et tributa, quae interdum indecimata praetereunt de frugibus primitus deducentes. Quum autem in signum universalis dominii quasi quodam titulo speciali sibi Dominus decimas reservaverit, nos, et ecclesiarum dispendiis et animarum periculis obviare volentes, statuimus, ut in praerogativam dominii generalis exactionem

tributorum et censuum praecedat solutio decimarum, vel saltem hi, ad quos census vel tributa indecimata pervenerint, quoniam res cum onere suo transit, ea per censuram ecclesiasticam decimare cogantur ecclesiis, quibus de iure debentur.

Chapter XXXIV

Latin source headnote: Cistercians, Templars, and Hospitallers are bound to pay tithes from the fruits of possessions that they acquired after the general council mentioned here, if tithes were previously paid from those possessions.

The same, in the same council.

Recently the abbots of the Cistercian order, assembled at the general council, prudently established at our admonition that hereafter the brothers of that order not purchase possessions from which tithes are owed to churches, unless perhaps for monasteries newly to be founded; and that, if such possessions are conferred upon them by the pious devotion of the faithful, or purchased for monasteries to be founded anew, they be committed to others to be cultivated, by whom tithes are paid to the churches, lest the churches be further burdened by occasion of their privileges. We [*therefore*] decree that from the lands of others and those to be acquired from now on, even if they cultivate them by their own hands or expenses, they pay tithes to the churches to which they were previously paid by reason of the estates, unless they have thought that another composition should be made with those churches. And we will and command that this same thing be extended to other regulars who enjoy similar privileges, so that the prelates of the churches may exist more ready and effective in furnishing them the completion of justice concerning their malefactors, and may take care to observe their privileges more diligently and perfectly.

Cistercienses, templarii et hospitalarii de fructibus possessionum, quas acquisierunt post concilium generale, de quo hic, decimas solvere tenentur, si de illis possessionibus prius solvebantur decimae.

Idem in eodem.

Nuper abbates Cisterciensis ordinis in generali concilio congregati ad commonitionem nostram provide statuerunt, ne de cetero fratres ipsius ordinis emant possessiones, de quibus decimae debeantur ecclesiis, nisi forte pro monasteriis noviter fundandis, et si tales possessiones eis fuerint pia fidelium devotione collatae, aut emptae pro monasteriis de novo fundandis, committantur aliis excolendae, a quibus ecclesiis decimae persolvantur, ne occasione privilegiorum suorum ecclesiae ulterius praegraventur. Decernimus [*ergo,*] ut de alienis terris et amodo acquirendis, etiamsi eas propriis manibus aut sumptibus excolant, decimas persolvant ecclesiis, quibus ratione praediorum antea solvebantur nisi cum ipsis ecclesiis aliter duxerint componendum. Et hoc ipsum ad alios regulares, qui gaudent similibus privilegiis, extendi volumus et mandamus, ut ecclesiarum praelati promptiores et efficaciores exsistant ad exhibendum eis de suis malefactoribus iustitiae complementum, eorumque privilegia diligentius et perfectius studeant observare.

Chapter XXXV

Gregory IX.

We forbid all ecclesiastical persons from presuming to receive as a pledge from laymen tithes detained by those laymen that pertain to other churches.

Gregorius IX.

> Interdicimus universis personis ecclesiasticis, ut decimas, detentas a laicis, ad alienas ecclesias pertinentes, in pignus recipere ab eisdem laicis non praesumant.

Title XXXI: On Regulars and Those Passing to Religion

Chapter I

Latin source headnote: A person cannot be admitted to religion unless willing and of suitable age.

From the Council of Mainz.

Let no one be tonsured unless of lawful age and spontaneous will.

> **DE REGULARIBUS ET TRANSEUNTIBUS AD RELIGIONEM.**
>
> Non potest quis ad religionem admitti, nisi volens et in aetate idoneus.
>
> Ex concilio Maguntino.
>
> Nullus tondeatur, nisi in legitima aetate et spontanea voluntate.

Chapter II

Latin source headnote: A prepubescent person who entered a monastery cannot be recalled by his parents after a year. This it says first. A pubescent person who entered by force cannot leave or be recalled by his parents after a year. This it says second. The Sicilian Abbot.

From the same.

If anyone was tonsured before the lawful years without the consent of his parents, [*and*] if his parents have not *themselves* protested within a year to the prince, his own bishop, or a *missus dominicus,* let him remain in *that* clerical state. But if after the lawful years he was made a cleric by force, and neither he nor his parents protested within a year to the aforesaid persons, let him remain *thus* in the clerical state, like him concerning whom it was said above. [*But if the aforesaid persons, etc.*]

> Impubes monasterium ingressus post annum a parentibus revocari non potest. H. d. primo. Pubes per vim ingressus post annum exire vel a parentibus revocari non potest. H. d. secundo. Abbas Siculus.
>
> Ex eodem.
>
> Si quis ante annos legitimos tonsuratus est sine consensu parentum suorum, [*et*] si parentes ipsius infra annum non *se* reclamaverint ad principem, aut ad proprium episcopum vel ad missum dominicum : in *ipso* clericatu permaneat. Si vero post legitimos annos per vim clericus factus est, et nec ipse, nec parentes eius infra annum ad memoratas personas reclamaverint, in clericatu *ita* permaneat, sicut is, de quo superius dictum est. [*Si vero praefatae personae etc.*]

Chapter III

Latin source headnote: A secular cleric using the habit and name of a monk is compelled to become a monk or to desist from this.

From the Council of Toledo.

That clerics who pretend themselves *to be* monks in habit and name, and are not, be corrected *in every way and amended,* so that they are *either* true monks or true clerics.

> Clericus saecularis, utens habitu et nomine monachali, cogitur, ut fiat monachus, vel ab hoc desistat.

Ex concilio Toletano.

Ut clerici, qui se fingunt habitu et nomine monachos *esse*, et non sunt, *omnimodis* corrigantur *atque emendentur*, ut *vel* veri monachi sint, vel veri clerici.

Chapter IV

Latin source headnote: A female novice who voluntarily introduces herself into the acts of professed women is thereby deemed professed. This it says, and it is a very notable case.

From the Council of Arles.

If a widow voluntarily placed upon herself the veil of conversion, although not a sacred one, and offered an offering to God in the church among the veiled women, willing or unwilling she ought thereafter to have the habit of sanctimony, although she wishes to affirm by oath that she placed the veil upon herself with this tenor *and reason,* that she could *again* lay it aside.

Novitia, quae sponte se ingerit actibus professarum, per hoc censetur professa. H. d. et est casus multum notabilis.

Ex concilio Arelatensi.

Vidua, si sponte velum conversionis, quamvis non sacrum, sibi imposuerit, et in ecclesia inter velatas oblationem Deo obtulerit, velit nolit, sanctimoniae habitum ulterius debet habere, licet sacramento firmare velit, eo tenore *et ratione* velamen sibi imposuisse, ut *iterum* deponere posset.

Chapter V

Latin source headnote: A monk cannot rashly pass to another monastery or have a peculium.

Gregory, to Anthemius the Subdeacon.

John, our *brother and fellow bishop,* [*having sent*] *through Justus his cleric* [*a capitulary, is known to have intimated this to us among many other things: certain monks of the monasteries situated in the diocese of Sorrento migrate from monastery to monastery as they please and depart from the rule of their own abbot from desire for a secular thing; but also, what is known not to be lawful, each of them takes care for his own private property.*] *Therefore, by the present command we* mandate [*your experience*] that you permit neither a monk rashly to migrate *further* from monastery to monastery, nor any of them to have anything as private property. But if [*anyone*] presumes this, let [*him*] be returned by fitting coercion *in* the monastery in which he was first converted *and* under the rule of his abbot, *from which he had fled,* [*lest, if so great an iniquity, etc.*]

Monachus temere ad aliud monasterium transire vel peculium habere non potest.

Gregorius Anthemio Subdiacono.

Ioannes frater +*et coepiscopus noster* [*directo*] *per Iustum clericum* [*suum capitulari inter alia plura hoc nobis noscitur intimasse, aliquos monachos monasteriorum in Surrentina dioecesi positorum de monasterio in monasterium, prout eis libuerit, transmigrare, et a proprii abbatis regula desiderio rei saecularis abscedere, sed et, quod non licere notum est, peculiaritati eorum singulos studere.*] *Propterea * [*experientiae*] *tuae* Praesenti iussione mandamus, ut neque monachum *ulterius* de monasterio in monasterium temere migrare liceat, nec eorum aliquem peculiare quicquam habere *permittas*. Sed si [*quilibet*] hoc praesumpserit, *in* monasterio, in quo ab initio conversatus est, *et* sub abbatis sui regula, *de qua fugerat* [*eum*] competenti coercitione reddatur, [*ne si tantam iniquitatem etc.*]

Chapter VI

Latin source headnote: Where a congregation or religion is harsh, full puberty—namely, the age of eighteen years—is required in one making profession. This it says, having regard to the mind of the letter, and it is a singular text.

From the Register of Gregory.

Because the congregation of monks on the islands is harsh, we prohibit the reception of boys into their monasteries before their eighteenth year *also. Or if there are any there now, let your experience remove them and send them to the city of Rome. We will that you observe this in all respects on Palmaria and the other islands.*

> Ubi est dura congregatio vel religio, requiritur in profitente plena pubertas, scilicet tempus XVIII. annorum. H. d. habito respectu ad mentem literae, et est textus singularis.
>
> Ex Registro Gregorii.
>
> Quia in insulis dura est congregatio monachorum, *etiam* pueros in eorum monasteriis ante XVIII. annum suscipi prohibemus. *Vel si qui nunc sunt, tua eos experientia auferat, et in urbem Romanam transmittat. Hoc in Palmaria aliisque insulis te per omnia volumus custodire.*

Chapter VII

Latin source headnote: If a Cistercian passes to another monastery without the license of his abbot, he is compelled to return to his own monastery.

Alexander III, to the Archbishops and Other Prelates of Churches Constituted throughout Gaul.

It is not doubtful *or uncertain to you how the religious brothers of the Cistercian order excel in such religion and virtue that, by the institution of the Fathers and our predecessors, those who make profession in their monasteries are prohibited from departing from the cloister without the license of their abbot, and those departing are prohibited from being received in other monasteries. Hence it is that we, wishing solicitously to preserve the same institution as not only friendly to religion but also consonant with reason, by apostolic writings directing* your whole body, command that you in no way permit monks or converts of the Cistercian order, after *profession made in the monasteries,* to be received throughout your bishoprics without the license of their abbots. And if there are any among them *who* presume to leave without the license of their abbots the monastery *in which they made profession,* and after being admonished do not quickly return *to their monasteries,* you are to strike them *so long with ecclesiastical censure, appeal being removed, until you compel them to return to the monasteries from which they departed.*

> Si Cisterciensis sine licentia sui abbatis ad aliud monasterium transit, ad proprium monasterium regredi cogitur.
>
> Alexander III. Archiepiscopis et aliis ecclesiarum Praelatis per Galliam constitutis.
>
> Non est vobis dubium +*aut incertum, quomodo fratres religiosi Cisterciensis ordinis ea praeemineant religione et virtute, quod ex institutione Patrum et praedecessorum nostrorum hi, qui in eorum monasteriis professionem faciunt, sine abbatis sui licentia prohibentur de claustro discedere, et discedentes in aliis monasteriis recipi. Inde est, quod nos eandem institutionem non solum amicam religioni, sed etiam rationi consonam sollicite conservare volentes,* Universitati vestrae *per apostolica scripta praecipiendo* mandamus, quatenus monachos vel conversos Cisterciensis ordinis post *factam in monasteriis* professionem sine licentia abbatum suorum per

episcopatus vestros recipi nullatenus permittatis. Et si qui ex eis *fuerint, qui* sine licentia abbatum suorum de monasterio, *in quo professionem fecerint*, exire praesumpserint, et commoniti *ad sua monasteria* celeriter non redierint, eos *tam diu appellatione remota censura ecclesiastica percellatis, donec ad monasteria, unde exierint*, regredi compellatis.

Chapter VIII

Latin source headnote: A profession made before the fourteenth year does not bind; but after the fourteenth year, if made through reception of the habit of the professed, it also does not bind unless perseverance for three days is given.

The same, to Master F., Canon of Città.

You should know that it has come to our hearing that the hermits of Montefoll. seduced certain boys *under the fourteenth year* to such an extent that certain *of them,* giving assent to their persuasions, immediately received the habit of religion in their monasteries. One of them, named T., immediately repented that he had put on the habit, *intimated to his parents what he had done, and they, coming to that place without delay, drew him out from there. And although, as we have learned, he had remained there for only one night, the aforesaid hermits and certain others do not permit him to take as wife a certain girl whom he swore to take as wife and, as is said, betrothed.* Wherefore, *by apostolic writings directing* your discretion, we command that, *after the truth of the matter has been diligently inquired into and learned,* if it is established *to you* that the aforesaid T. laid aside the habit he had received before completion of his fourteenth year, or if after his fourteenth year he received the habit without probation and laid it aside within three days, you declare him, occasion and appeal ceasing, to be *wholly* absolved from the impleading of the aforesaid hermits *or others in this respect,* and freely able to marry her whom, after he left, he swore to take as wife, if no other reasonable cause obstructs.

Professio, facta ante XIV. annum, non obligat; post XIV. vero, si fit per susceptionem habitus professorum, etiam non obligat, nisi detur perseverantia tridui.

Idem Magistro F. Civitatensi Canonico.

Ad nostram noveris audientiam pervenisse, quod eremitae de Montefoll. quosdam pueros *infra XIV. annum* seduxerunt in tantum, quod quidam *illorum*, suasionibus eorum assensum praebentes, statim religionis habitum in ipsorum monasteriis susceperunt, quorum unus T. nomine statim poenituit, quod habitum induisset, *+id, quod fecerat, suis parentibus intimavit, qui ad locum ipsum mora postposita accedentes, eum exinde traxerunt. Et quum non stetisset ibi nisi per unam noctem, ut accepimus, praefati eremitae et quidam alii non permittunt eum quandam puellam ducere in uxorem, quam ipse iuravit in uxorem accipere, ac, sicut dicitur, desponsavit*. Quocirca *discretioni tuae per apostolica scripta praecipiendo* mandamus, quatenus, *rei veritate diligenter inquisita ac cognita*, si *tibi* constiterit, quod praefatus T. ante consummationem XIV. anni susceptum habitum deposuerit, aut si post XIV. annum habitum ipsum sine probatione susceperit, et infra triduum deposuerit, eum ab impetitione praedictorum eremitarum *vel aliorum in hac parte, occasione et appellatione cessante denuncies penitus* absolutum, et eam, quam, postquam exivit, iuravit accipere in uxorem, libere posse traducere, si alia causa rationabilis non obsistat.

Chapter IX

Latin source headnote: One who receives the habit of the professed, where the habits are distinct, is compelled to be a religious there or elsewhere; but if he receives the habit of novices, he can return to the world.

The same, to the Bishop of Ely.

Concerning what was asked *of us on your part* about clerics who received the habit of religion and returned to their former state before profession, we answer *your fraternity in this manner:* if they are unwilling to observe the austerity of the religion to which they are known to have migrated, they are to be compelled to pass to a lesser religion. Nor ought they any longer to be received in secular churches, lest they be proved to act contrary to *their* vow, which they made to the Lord, *at peril to their souls*. But if, while placed on probation, they wished to depart before receiving a habit of this kind, according to the Rule of blessed Benedict they do not appear to be prohibited from returning to their former state, which seems to command that they return in the same clothing in which they came. [*Moreover, etc.; cf. c.* 1, *On the Conversion of Spouses, III.* 32.]

> Qui recipit habitum professorum, ubi distincti sunt habitus, compellitur ibi vel alibi esse religiosus; sed, si recipit habitum novitiorum, potest ad saeculum redire.
>
> Idem Eliensi Episcopo.
>
> Super eo, quod quaesitum fuit *a nobis ex parte tua* de clericis, qui religionis habitum susceperunt, et ante professionem ad priorem statum sunt reversi, *fraternitati tuae taliter* respondemus, quod, si austeritatem religionis, ad quam migrasse noscuntur, servare noluerint, ad minorem religionem sunt cogendi transire. Nec amplius in ecclesiis saecularibus debent assumi, ne contra votum *suum*, quod Domino fecerunt, *in animarum suarum periculum* venire probentur. Verum si ante susceptum huiusmodi habitum in probatione positi recedere voluerint, secundum regulam beati Benedicti non videtur prohiberi ad priorem statum redire, quae videtur praecipere, ut in eadem veste, in qua veniunt, revertantur. [*Praeterea etc. cf. c.* 1. *de conv. coni. III.* 32.]

Chapter X

Latin source headnote: A regular canon can become a monk if the religion to which he passes is stricter than his own; otherwise, it is otherwise.

The same, to the Bishop of Amiens.

Indeed, concerning the canon who had made profession in the church of Aromat and had fled from it, and was received as a monk by a certain abbot, we signify this to your fraternity: if the place where he now remains is of a greater religion than the church of Aromat, permit him to remain in the same place with a pure conscience; otherwise, compel him to return to his former church. [*Moreover, etc.; cf. c.* 3, *On Consecration, IV.* 19.]

> Canonicus regularis potest effici monachus, si religio, ad quam transit, est strictior sua; alias secus.
>
> Index Ambianensi Episcopo.
>
> Sane de canonico, qui in ecclesia Aromatensi professionem fecerat, et fugerat ab eadem, in monachum a quodam abbate recepto id tuae fraternitati significamus, quod, si locus, ubi nunc permanet, maioris religionis, quam ecclesia Aromatensis exsistat, ipsum in eodem loco cum pura conscientia remanere permittas; alioquin eum ad priorem ecclesiam redire compellas. [*Porro etc. cf. c.* 3. *de div. IV.* 19.]

Chapter XI

Latin source headnote: A person younger than fourteen years is not bound to religion by making profession unless, having become older, he ratified it.

The same, to the Bishop of Beauvais.

It was signified to us *and shown for certain that Guiboldus, not yet beginning to be fourteen years old, from fear of the master who was instructing him in letters, received the habit of religion at the church of Resone, and departed from there like a boy within a year, and now for six years and more wanders about through the vanities of the world. Hence, because the truth of this matter is not established to us, by apostolic writings directing* your fraternity, we command that *you diligently inquire into the matter itself and,* if you find that G. had not been offered by his parents, *nor had begun to be fourteen years old when he entered religion,* and, repenting within his fourteenth year of the vow made, departed from religion, *if he wishes to remain in the world,* you declare him absolved *by pontifical authority* from that vow of profession that he made, *and take care to publish his absolution both to the church of Resone and to the people of your city.* But if *perhaps* he was offered by his parents, or had completed his fourteenth year when he entered religion, or after his fourteenth year ratified the profession previously made by him, compel him *with all severity* to pass to the same or another religion.

> Minor XIV. annis profitendo non obligatur religioni, nisi factus maior ratum habuerit.
>
> Idem Belvacensi Episcopo.
>
> Significatum est nobis, *+et pro certo monstratum, quod Guiboldus, nondum incipiens esse XIV. annorum, timore magistri, qui eum literis erudiebat, habitum religionis apud ecclesiam de Resone suscepit, et inde sicut puer infra annum exivit, et per saeculi vanitates iam sex annis et eo amplius vagabundus discurrit. Unde, quoniam huius rei veritas nobis non constat, fraternitati tuae per apostolica scripta praecipiendo* Mandamus, quatenus *rem ipsam diligenter inquiras, et*, si inveneris, quod G. non fuisset a parentibus oblatus, *+nec inceperit esse XIV. annorum, quando ad religionem accessit*, et infra XIV. annum facti voti poenitens a religione recesserit, *si in saeculo voluerit remanere, eum* ab illo voto professionis, quod fecit, *auctoritate pontificali* denuncies absolutum, *et absolutionem eius tam ecclesiae de Resone quam populo tuae civitatis studeas publicare*. Si autem a parentibus *forte* fuerit oblatus, seu XIV. annum compleverit, quum religionem intravit, seu post decimum quartum annum professionem a se prius factam ratam habuerit, eum ad eandem vel ad aliam religionem *cum omni districtione* transire compellas.

Chapter XII

Latin source headnote: If a daughter younger than twelve years, delivered by her parents to a monastery, after becoming older is voluntarily veiled, she cannot return to the world.

Clement III.

Since *we know you to be a prudent and discreet man, if in matters in which you doubt you seek counsel from us with pastoral solicitude, and we respond to you concerning canon law as far as we can, and commend your prudence with worthy praises in the Lord. Indeed, you took care to propose to us by your intimation* whether she who *was* delivered to a monastery by her parents below the years of discretion, *and,* putting on the habit of religion, received the blessing, and afterward, leaving, joined herself to a certain knight, *by whom she also conceived offspring,* is to be compelled to return to the monastery, *since she asserts that after she had the age of consenting she dissented, and recalls that she received the gift of blessing unwillingly. Concerning this* we answer your consultation in this manner: since, according to the censure of the Council of Toledo, either paternal devotion or one's own profession makes a monk, whichever of these is alleged will hold, with access to return to the world utterly interdicted. For she does not appear able to cast off from herself the yoke of monastic profession, since it is not clearly established that she contradicted

it when she received the blessing, which *indeed* those who are veiled receive only at the age of discretion; especially if, ratification following, even if it were established that she once contradicted it, what had previously been done is strengthened. Nor does what is taken in a contrary sense from the constitution of our predecessor Pope Leo, *a holy man,* speak against this—that girls who received the habit of virginity when compelled by the command of their parents can abandon it without transgression—since it can rightly be understood of one who is known to have been constituted at marriageable age. For then, because she has free choice, she is not compelled to follow the will of her parents in the choice of her state.

> Si filia, minor XII. annis a parentibus monasterio tradita, maior facta sponte veletur, ad saeculum redire non potest.
>
> Clemens III.
>
> Quum virum +*te prudentem fore noverimus et discretum, si in quibus dubitas consilium a nobis sollicitudine pastorali requiris, et tibi de iure canonico, quod possumus, respondemus, et prudentiam tuam dignis in Domino laudibus commendamus. Curasti siquidem tua nobis insinuatione proponere*, Utrum ea, quae infra discretionis annos a parentibus monasterio tradita *est, et* habitum religionis induens, benedictionem accepit, et exiens postmodum se cuidam militi copulavit, *ex quo etiam prolem suscepit*, ad monasterium redire cogatur, *quum illa se asserat, postquam consentiendi habuerit aetatem, dissensisse, et benedictionis munus invitam se suscepisse commemorat. Super hoc* Consultationi tuae taliter respondemus, quod, quum iuxta concilii Toletani censuram monachum aut paterna devotio aut propria professio faciat, quicquid horum fuerit allegatum, tenebit, revertendi ad saeculum aditu penitus interdicto. Non enim videtur illa monasticae professionis a se posse iugum excutere, quum eam non constet evidenter contradixisse, quum benedictionem accepit, quam *utique* non nisi in aetate discretionis recipiunt quae velantur, praesertim si ratihabitione secuta, etsi eam quandoque contradixisse constiterit, quod ante gestum fuerat roboratur. Nec obloquitur quod de *sancti viri* praedecessoris nostri Leonis Papae constitutione per contrarium sensum sumitur, ut puellae, quae coactae parentum imperio virginitatis habitum susceperunt, ipsum possint sine praevaricatione deserere, quum de ea recte possit intelligi, quae in aetate nubili noscitur constituta. Tunc enim, quia liberum habet arbitrium, in electione propositi sequi parentum non cogitur voluntatem.

Chapter XIII

Latin source headnote: A profession made without reception of the religious habit is valid.

The same.

A petition presented to us on your part contained that I., a canon of Acerenza, burdened by sickness, asserts that he emitted a vow that he would become a monk; whence, fearing that he might die with the vow unfulfilled, with joined hands he surrendered himself to you as a monk and brother. *Others also, in your absence, vowing themselves into the hands of priests to become monks, returned to their vomit when made healthy; and although they had formerly been familiars of your monastery, because they were not admitted to their ancient familiarity, they became adversaries in place of friends. Therefore, whether you can disregard the deeds of such persons lest they become worse, or whether they are to be compelled to fulfill what they promised, you seek to be taught by us. We therefore* answer your inquiry in this manner: since it is not the habit but regular profession that makes a monk, from the time a vow is emitted by one converting and received by the abbot, such a person is indeed *not undeservedly* to be compelled to become a monk and render to the Lord what he promised. [*Given at the Lateran, on the third day before the Ides of January.* 1199.]

Valet professio facta sine susceptione habitus religionis.

Idem.

Porrectum nobis ex parte tua petitorium continebat, quod I. canonicus Acherontinus, infirmitate gravatus, votum, ut fieret monachus, se asserit emisisse; unde metuens, ne voto decederet non completo, iunctis manibus tibi se reddidit in monachum et in fratrem. +*Alii quoque in tua absentia sese in sacerdotum manibus monachos fieri devoventes, sani facti ad vomitum redierunt, et, quum familiares monasterii tui antea exstitissent, quia non fuerunt ad antiquam familiaritatem admissi, adversarii facti sunt pro amicis. Utrum ergo talium facta dissimulare valeas, ne fiant deteriores, an compellendi sint ad complenda promissa, per nos postulas edoceri. Nos ergo* Inquisitioni tuae taliter respondemus, quod, quum monachum non faciat habitus, sed professio regularis, ex quo a convertendo votum emittitur, et recipitur ab abbate, talis, ut fiat monachus, et reddat Domino quae promisit, erit utique *non immerito* compellendus. [*Dat. Lat. III. Id. Ian.* 1199.]

Chapter XIV

Latin source headnote: If a father offered himself, with his goods and his prepubescent son, to a monastery, the son, having become older, can leave religion and seek his legitimate portion from the monastery.

Celestine III.

Since we are—*(And below:)* Indeed, it was *recently* reported to our ears that, when B., a knight, *had by the Lord's permission been sprinkled with the disease of leprosy,* he conferred himself, together with his son who had in no way reached the years of discretion, upon a certain monastery, together also with his goods *that he had held from the monastery itself,* and caused his said son to receive the monastic habit. *And when monastic discipline displeased the boy himself on account of the harshness of the rule, within the space of ten weeks he withdrew from the monastery and the habit thus received and began insistently to seek his father's goods from that abbey. And when a question concerning this had been brought to the diocesan bishop and debated before him for some time, because many appeared to disagree concerning the rigor of the canons—if the relatives of the said boy could prove by witnesses that he was below the years of discretion when he was offered, he was in no way bound by such a vow—the said abbot appealed to the hearing of the See of Mainz, and certain relatives of the same boy transferred the appeal to the Roman church, as we learned from the letters of Bishop Aug. Therefore,* we answer your discretion in this manner: if the said boy has reached the years of discretion and is unwilling to retain the monastic habit, if he cannot be induced *to this,* he is in no way to be compelled, because it will then be free for him to lay it aside and to seek the paternal goods that come to him by succession.

Si pater se cum bonis suis et filio impubere obtulit monasterio, filius factus maior exire potest religionem et legitimam a monasterio petere.

Coelestinus III.

Quum simus : (*Et infra:*) Sane *nuper* nostris auribus est relatum, quod, quum B. miles *leprae morbo Domino permittente esset respersus*, se cum filio suo discretionis annos nullatenus attingente ad quoddam monasterium, cum bonis suis etiam, *quae a monasterio ipso tenuerat*, contulisset, dictum filium suum fecit habitum suscipere monachalem. +*Quumque ipsi puero disciplina monastica propter asperitatem regulae displiceret, infra X. hebdomadarum spatium a monasterio et habitu taliter suscepto resiliens, bona patris ab abbatia illa coepit cum instantia postulare. Et quum super hoc ad dioecesanum episcopum quaestio delata fuisset, et coram eo aliquamdiu disceptatum, quia plerique dissentire de rigore canonum videbantur, si consanguinei dicti pueri possent testibus comprobare, illum, quando fuit

oblatus, infra annos discretionis exsistere, ipsum tali voto nullatenus obligari: dictus abbas ad Maguntinae sedis audientiam appellavit, et quidam de consanguineis eiusdem pueri ad Romanam ecclesiam appellationem, sicut ex literis Aug. episcopi comperimus, transtulerunt. Ideoque *Discretioni tuae taliter respondemus, quod, si dictus puer ad annos discretionis pervenerit, et habitum retinere noluerit monachalem, si ad hoc *ipsum* induci nequiverit, non est ullatenus compellendus, quia tunc liberum sibi erit, eum dimittere, et bona paterna, quae ipsi ex successione proveniunt, postulare.

Chapter XV

Latin source headnote: An insane person is not bound by making profession unless, having become of sound mind, he ratified it.

Innocent III, to the Bishop and Chapter of Targile.

As the tenor of *your letters disclosed to us, when the bearer of the present writing was constituted in the priestly office and labored under such want of temporal things that he could provide in no way for himself or his parents or brothers in their own necessities, he did not hesitate to expose himself to the labors of his own body and many perils of the sea, so that from his labor and honest acquisition he might relieve his own want and that of his family. But it happened after these things that, while he was staying far from your city, he began to labor under so grave a sickness that, placed outside himself, he despaired of the present life; and while he was constituted at such a point, he was clothed in the monastic habit by a certain simple monk and carried to a monastery. Then, after a few days had elapsed, when he was already at the beginning of his convalescence, he laid aside the habit and, with the license of the abbot of that place, left the monastery; and, wishing to aid the wants of his family, he humbly petitioned you that he might minister in the priestly office as before and dwell together with you. You humbly seek to be taught by the sacred oracle of the Apostolic See what is to be done by you concerning these things. We therefore* answer your consultation in this manner: although these two things appear mutually repugnant—namely, that someone is placed outside himself and despairs of the present life—nevertheless, if at the time when P., the priest and bearer of the present writing, is asserted to have been placed outside his mind, he was clothed in the monastic habit, since one who is alienated does not perceive and through this cannot consent, declare him absolved from observance of the monastic order, unless, after he became possessed of his mind, he made monastic profession by spontaneous will. [*Given at the Lateran.* 1198.]

Furiosus profitendo non obligatur; nisi factus sanae mentis ratum habuerit.

Innocentius III. Episcopo et Capitulo Targilensibus.

Sicut tenor literarum +*vestrarum nobis aperuit, quum lator praesentium in sacerdotali esset officio constitutus, et tanta rerum temporalium indigentia laboraret, quod nec sibi nec suis progenitoribus seu fratribus in necessitatibus propriis posset aliquatenus providere: proprii corporis laboribus et maris periculis multis se non dubitavit exponere, ut de suo labore et acquisitione honesta suam et suorum posset indigentiam relevare. Contigit autem post haec, quod ipse, longe a vestra civitate consistens, tam gravi coepit aegritudine laborare, quod extra se positus desperaret de vita praesenti, et dum in tali esset articulo constitutus, a quodam simplici monacho indutus fuit habitu monachali, et ad monasterium deportatus. Deinde, paucis diebus elapsis, quum iam esset in principio suae convalescentiae, deposuit habitum, et licentia eiusdem loci abbatis monasterium dereliquit, et cupiens progenitorum suorum indigentiis subvenire, a vobis suppliciter postulavit, ut posset, sicut prius, in sacerdotali officio ministrare et vobiscum pariter conversari. Quid autem super his vobis fuerit faciendum, sacro apostolicae sedis oraculo humiliter petitis edoceri. Nos igitur* Consultationi vestrae taliter respondemus, quod, licet ista duo inter se repugnantia videantur ut quisquam scilicet sit extra se positus et de praesenti vita desperet, si tamen eo tempore, quo P. sacerdos lator praesentium positus extra mentem asseritur, indutus fuit habitu monachali, quum alienatus non

sentiat, ac per hoc non valeat consentire, eum denuncietis ab observatione monastici ordinis absolutum, nisi postquam mentis suae factus est compos, spontanea voluntate professionem fecerit monachalem. [*Dat. Laterani.* 1198.]

Chapter XVI

Latin source headnote: Profession ought neither to be made nor received within the time of probation; but, if made and received, it holds. This it says, and it is a notable case and is alleged daily.

The same, to the Archbishop of Pisa.

To the Apostolic See, *which by the Lord's disposition is the mother and teacher of all the faithful, doubtful questions concerning diverse articles are referred, so that what shall have been answered by it concerning their solution may be held without doubt by all. Indeed, on your part we recently received such questions:* since the regular institute interdicts anyone from being made a monk before a probation of one year, *monks and nuns constituted in your diocese receive clerics as well as laypersons of each sex, the healthy and the infirm alike, who wish to assume the habit of religion, even professing by some nod, sometimes without any profession, sometimes causing them to make profession immediately. Hence many evils are known rather often to arise, since the infirm, already transferred to a monastery and having emitted profession, cast off the religious habit after they recover from their infirmities and return to their own property. It also happens that such persons remain in their own houses, since the monks do not wish their monasteries to be burdened by them while they live. The healthy also, thus received without probation, looking back, contract marriages after casting off the regular habit. Concerning them you petitioned to be made certain by the Apostolic See whether persons who assume the religious habit before the probation of one year or a competent time ought, when profession has been made or abandoned by them, to be reputed monks, and whether a married person desiring to be converted is to be received as a monk unless his wife promises perpetual continence. We therefore* answer *in order* your questions in this manner: although the time of probation was granted by the holy Fathers not only in favor of the person converting but also of the monastery, so that both he may test its harshness and it may test his character—which on each side is diligently to be observed, especially when certain knowledge of each has not otherwise been obtained—nevertheless, if before the regularly prescribed time of probation one who desires to be converted receives the habit and emits profession, the abbot personally or through another receiving the monastic profession and granting the monastic habit, each is seen to renounce what is known to have been introduced for himself. And therefore he is *indeed* obligated by the profession emitted and received to regular observance and is truly to be deemed a monk, because many things are prohibited from being done that, if done, obtain the firmness of force. But abbots are to be prohibited from indiscriminately receiving anyone to profession before the time of probation; and if, contrary to the aforesaid form, they have indiscreetly received any persons, they are to be corrected by due retribution, since the space of probation was regularly instituted in aid of human frailty. *But when a husband, etc.* (*cf. c.* 13, *On the Conversion of Spouses, III.* 32.) [*Given at the Lateran, on the ninth day before the Kalends of December.* 1198.]

Professio nec fieri, nec recipi debet infra tempus probationis; sed facta et recepta tenet. Hoc dicit, et est casus notabilis, et quotidie allegatur.

Idem Pisano Archiepiscopo.

Ad apostolicam sedem, *+quae disponente Domino cunctorum fidelium mater est et magistra, super diversis articulis quaestiones dubiae referuntur, ut quod ab ea fuerit super earum solutione responsum indubitanter ab omnibus teneatur.*

Ex parte siquidem tua tales nuper suscepimus quaestiones, quod, Quum monachum fieri ante unius anni probationem regularis institutio interdicat, *+monachi et moniales in tua dioecesi constituti tam clericos quam laicos utriusque sexus, sanos pariter et infirmos, religionis habitum volentes assumere, nutu etiam aliquo profitentes, interdum absque omni professione recipiunt, quandoque professionem illico facientes. Unde multa mala noscuntur saepius provenire, quum infirmi ad monasterium iam translati, et, emissa professione, postquam de infirmitatibus convaluerint, habitum religionis abiiciant, et ad propria revertantur. Contingit etiam tales in propriis domibus remanere, quum monachi per eos, dum vivunt, nolunt sua monasteria praegravari. Sani etiam sic sine probatione recepti, retro adspicientes matrimonia contrahunt, reiecto habitu regulari; de quibus si habitum religionis assumunt ante unius anni probationem vel temporis competentis, utrum facta professione a talibus vel amissa monachi debeant reputari, et, si coniugatus converti desiderans recipiendus sit in monachum, nisi uxor perpetuam continentiam repromittat, certificari a sede apostolica postulasti. Nos igitur* Quaestionibus tuis taliter *ex ordine* respondemus, quod licet tempus probationis a sanctis Patribus sit indultum non solum in favorem conversi, sed etiam monasterii, ut et ille asperitates istius, et istud mores illius valeat experiri, (quod utrumque diligenter est observandum, praesertim quum ab utroque de reliquo facta certa notitia non habetur), si tamen ante tempus probationis regulariter praefinitum is, qui converti desiderat, habitum recipit et professionem emittit, abbate per se vel per alium professionem recipiente monasticam, et monachalem habitum concedente : uterque renunciare videtur ei, quod pro se noscitur introductum. Ideoque obligatur *quidem* per professionem emissam pariter et acceptam ad observantiam regularem, et vere monachus est censendus, quia multa fieri prohibentur, quae, si facta fuerint, obtinent roboris firmitatem. Prohibendum est autem abbatibus, ne passim ante tempus probationis quoslibet ad professionem recipiant, et, si contra formam praescriptam quoslibet indiscrete receperint, animadversione sunt debita corrigendi, quum in subsidium fragilitatis humanae spatium probationis sit regulariter institutum. *Quum autem vir etc.* (*cf. c.* 13. *de conv. coni. III.* 32.) [*Dat. Lat. IX. Kal. Dec.* 1198.]

Chapter XVII

Latin source headnote: One who made profession, although he never remained in the cloister but remained in the world and used his own goods, is compelled to regular observance.

The same, to the Bishop of Acre.

As was proposed to us *on your part,* a certain cleric, when laboring under excessive sickness, as though certain of death and despairing of recovering health, sought and received the habit of regular canons, *expressing and promising in the reception of the habit those things that are customarily promised in a matter of this kind.* But he neither passed to the church, *as one burdened by sickness,* nor ceased to use his goods. *But afterward, health having been received, after fifteen years and more,* while *our venerable brother* the bishop and *our beloved son the prior and* canons of the church of Nazareth, from whom he had received the regular habit, saw and knew it, *you, although at the time when he received the habit in the church of Nazareth you exercised the solicitude of the prior, unmindful of the things that had been done concerning him, received him as a canon of Acre. But because you petition through our letters to be taught what you ought to do concerning this,* we answer your fraternity in this manner: if at his own request he received the regular habit and bound himself by his profession to observance of canonical religion, he is to be compelled by ecclesiastical severity to reassume the habit, since the fact that he remained outside the canonry for so long can deservedly be alleged not in his excuse but as an increase of greater transgression. [*Given at the Lateran, on the tenth day before the Kalends of January.* 1198.]

Qui professionem fecit, licet in claustro nunquam permanserit, sed in saeculo, et suis bonis usus fuerit, ad observantiam regularem compellitur.

Idem Aconensi Episcopo.

Sicut nobis *ex parte tua* fuit propositum, quidam clericus, quum aegritudine nimia laboraret, quasi de morte securus, et de recuperanda sanitate desperans, habitum canonicorum regularium petiit et accepit, *ea in susceptione habitus exprimens et promittens, quae solent in huiusmodi re promitti*. Sed nec ad ecclesiam transiit, *utpote infirmitate gravatus*, nec bonis suis uti cessavit. *Postmodum vero sospitate suscepta post XV. annos et ultra*, videntibus et scientibus *venerabili fratri nostro* episcopo et *dilecto filio priore, et* canonicis ecclesiae Nazarensis, a quibus habitum susceperat regularem, *+tu, licet eo tempore, quo habitum susceperat in ecclesia Nazarensi, prioris sollicitudinem exerceres, immemor eorum, quae facta fuerant circa ipsum, in Acconensem eum canonicum suscepisti. Quia vero quid super hoc facere debeas per nostras postulas literas edoceri*, Fraternitati tuae taliter respondemus, quod, si regularem habitum se postulante suscepit, et ad observationem religionis canonicae sua se professione ligavit, ad resumendum habitum ecclesiastica est districtione cogendus, quum, quod tanto tempore extra canoniam mansit, non in excusationem eius, sed in maioris transgressionis augmentum merito valeat allegari. [*Dat. Lat. X. Kal. Ian. * 1198.]

Chapter XVIII

Latin source headnote: A religious can, from zeal for a holier life, pass to a stricter religion after first seeking the license of his prelate, although it was not obtained, even if the first monastery is privileged that one cannot pass from it to another, even a stricter one. This it says, and it is a notable case and is alleged daily.

The same, to the Prior and Convent of Dimol.

Although it was granted by the Apostolic See to certain monks and canons, and also to Hospitallers and Templars, that, after someone has been professed with them, he cannot, against their will, pass to another place even with a view to a stricter religion, so that each person according to the Apostle remains in the calling in which he is known to have been called; nevertheless, because where the Spirit of God is, there is liberty, and those who are led by the Spirit of God are not under law, because law is not laid down for the just, this appears to have been granted to them for this reason: that no one from rashness or levity should fly over to another order, to the loss or injury of his own order, under pretext of greater religion, as it is established to have been frequently presumed by many; not indeed so that license to pass should be denied to him who has thought it should be sought with humility and purity, so that he may be able to migrate not feignedly but truly to the fruit of a better life.

Such a person, therefore, after he has sought from his prelate license to pass, absolved by the private law that prejudices the public law, can freely fulfill the purpose of a holier life, notwithstanding the insolent contradiction of an undiscerning prelate, because he deserves to lose a privilege who abuses the power granted to him; since even the Roman Pontiff, who obtains supreme power in the church, grants without difficulty to archbishops and bishops seeking for just cause license to resign. Wherefore let all those to whom a privilege of this kind was granted know that they are bound by law to grant license to pass to those seeking in this manner, because, just as a subject ought with humility and purity to seek from the prelate license to pass, lest he appear to contemn the good of obedience, so assuredly the prelate ought without difficulty or any depravity to grant the subject license to pass, lest he appear to impede a divinely inspired purpose. But if it is probably doubted whether someone wishes from charity or from rashness to pass to a stricter or a more lax order, the judgment of the superior is to be sought, lest perhaps an angel of Satan transform himself into an

angel of light; this rule always being inviolably observed: that no [*bishop*] presume on any occasion to abandon his prelacy without the license of the Roman Pontiff, because, just as a greater good is preferred to a lesser good, so common utility is preferred to particular utility. And in this case teaching is rightly preferred to silence, solicitude to contemplation, and labor to rest. Indeed, to signify this, the only-begotten Son of God, Jesus Christ, was born according to the flesh not of Rachel but of Leah; nor is Mary read to have received him into her house, but Martha. Hence, when a bishop can both preside and profit, he ought neither to seek nor even to obtain license to resign.

Therefore, since *our beloved son* R., your monk, migrated to the brothers of the Cistercian order not that he might derogate in any way from your order but that he might lead a stricter life with them, *by apostolic writings directing* your discretion, we command that you in no way molest him concerning what he is known to have done from a pure heart, a good conscience, and unfeigned faith, because charity is a proper fountain in which an outsider does not share. [*Given at Rome at Saint Peter's, on the third day before the Kalends of May, in the ninth year.* 1206.]

> Potest religiosus zelo sanctioris vitae ad religionem transire strictiorem, petita prius licentia praelati sui, licet non obtenta, etiam si primum monasterium sit privilegiatum, quod de illo ad aliud etiam arctius transire non possit. H. d., et est casus notabilis, et quotidie allegatur.
>
> Idem Priori et Conventui Dimoliensi.
>
> Licet quibusdam monachis et canonicis, nec non hospitalariis et templariis a sede apostolica sit indultum, ne, postquam aliquis professus fuerit apud eos, ad alium locum possit ipsis invitis arctioris etiam religionis obtentu transire, ut unusquisque secundum Apostolum in ea vocatione permaneat, in qua dignoscitur esse vocatus; quia tamen, ubi spiritus Dei est, ibi libertas, et qui Dei spiritu aguntur non sunt sub lege, quia lex non est posita iusto : ea ratione videtur hoc illis fuisse concessum, ne quis ex temeritate vel levitate in iacturam vel iniuriam sui ordinis sub praetextu maioris religionis ad alium ordinem transvolaret, sicut frequenter a multis constat esse praesumptum, non quidem ut ei transeundi licentia denegetur, qui eam cum humilitate ac puritate duxerit postulandam, ut non ficte, sed vere ad frugem melioris vitae valeat transmigrare. Talis ergo, postquam a praelato suo transeundi licentiam postulaverit, ex lege privata, quae publicae legi praeiudicat, absolutus, libere potest sanctioris vitae propositum adimplere, non obstante proterva indiscreti contradictione praelati, quia privilegium meretur amittere qui concessa sibi abutitur potestate; quum etiam Romanus Pontifex, qui supremam in ecclesia obtinet potestatem, archiepiscopis et episcopis cedendi licentiam ex iusta causa petentibus sine difficultate concedat. Quocirca noverint universi, quibus huiusmodi privilegium est concessum, se ad concedendam licentiam transeundi taliter postulantibus de iure teneri, quia, sicut subditus a praelato cum humilitate et puritate debet transeundi licentiam postulare, ne bonum obedientiae contemnere videatur, sic profecto praelatus subdito sine difficultate et pravitate qualibet debet transeundi licentiam indulgere, ne videatur propositum impedire divinitus inspiratum. Si vero probabiliter dubitetur, utrum quis velit ad ordinem arctiorem aut laxiorem ex caritate, an ex temeritate transire : superioris est iudicium requirendum, ne forte angelus satanae in lucis angelum se transformet : illa semper regula inviolabiliter observata, ut nullus [*episcopus*] absque licentia Romani Pontificis praesumat occasione quacunque deserere praesulatum, quoniam, sicut maius bonum minori bono praeponitur, ita communis utilitas speciali utilitati praefertur. Et in hoc casu recte praeponitur doctrina silentio, sollicitudo contemplationi, et labor quieti. Ad quod utique designandum unigenitus Dei filius Iesus Christus non de Rachele secundum carnem natus est, sed de Lia, nec legitur eum in domum suam Maria recepisse, sed Martha. Unde, quando potest episcopus praeesse pariter et prodesse, non debet cedendi licentiam postulare, aut etiam obtinere. Quum ergo *dilectus filius* R. monachus vester ad fratres Cisterciensis

ordinis transmigraverit, non ut ordini vestro aliquatenus derogaret, sed ut apud eos vitam duceret arctiorem, *discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus super eo, quod de corde puro, et conscientia bona et fide non ficta fecisse dignoscitur, eum nullatenus molestetis, quia caritas est fons proprius, cui non communicat alienus. [*Dat. Rom. ap. S. Petr. III. Kal. Mai. Ao. IX.* 1206.]

Chapter XIX

Latin source headnote: Spouses can withdraw from one another by professing religion; it is otherwise if they forswear one another and do not remain continent, for the oath is illicit.

The same, to the Provost, Dean, and Scholasticus of Demeren in the Diocese of Cologne.

Coming to the Apostolic See, the woman G., *bearer of the present writing,* showed us by a suppliant intimation that, when she had contracted marriage in the face of the church with E. *de Hard., of the diocese of Cologne,* and had cohabited with him for a long time, discord arose between them to such an extent that each furnished a corporal oath that thereafter neither would seek the other; the man himself assigning as the cause of this separation that he had known carnally a certain aunt of that woman before he took her as wife. Although very many asserted this, *nevertheless* faith concerning it was not made to the church. But when afterward each flew to second vows, and the second husband entered the way of all flesh while the *former* husband was *still* surviving, the said woman caused herself to be enclosed in a strict place to do penance. *After six years had been passed there in devotion, hearing from certain discreet and religious persons that she could not be saved thus, she came to the Apostolic See, humbly and devoutly* petitioning that we deign to impart salutary counsel to her. We therefore, considering that that oath was illicit, *by apostolic writings* command your discretion that, after prior admonition, you compel the aforesaid man, after excluding her whom he took in addition, to receive the aforesaid woman; afterward to hear if there is any question, *and, appeal being removed, to decide it with a due conclusion.* But if nothing [*sufficient*] is shown against the marriage and the man, after abandoning the world, prefers to migrate to the regular life, you are to grant him license concerning this, so that she may *thus* be able to remain in her own purpose, *as she desires.* [*No letters, etc. Given on the second day before the Kalends of July.* 1205.]

Coniuges religionem profitendo ab invicem devertere possunt; aliter si se abiurant et non continent, illicitum est iuramentum.

Idem Praeposito, et Decano, et Scholastico Demerensibus Coloniensis dioecesis.

Veniens ad apostolicam sedem G. mulier *latrix praesentium* supplici nobis insinuatione monstravit, quod, quum matrimonium cum E. *de Hard. Coloniensis dioeceseos* in facie ecclesiae contraxisset, et diutius cohabitasset eidem, orta est dissensio inter ipsos in tantum, ut, quod deinceps alter non requireret alterum, uterque corporaliter praestitit iuramentum, hanc vir ipse divortii causam assignans, quod quandam ipsius mulieris amitam cognovisset, antequam eam duceret in uxorem. Quod licet assererent quamplurimi, non *tamen* fuit super hoc ecclesiae facta fides. Quum autem postmodum ad secunda vota convolasset uterque, secundo viro viam universae carnis ingresso, *adhuc* priore *viro* superstite, dicta mulier se fecit in arcto loco ad poenitentiam agendam includi, *ubi, sex annis in devotione peractis, audiens a quibusdam discretis et religiosis personis, quod sic salvari non posset, ad apostolicam sedem accessit, humiliter* postulans *et devote,* ut ei dignaremur impendere consilium salutare. Nos igitur attendentes, quod illud fuit illicitum iuramentum *discretioni vestrae per apostolica scripta* mandamus, quatenus praefatum virum monitione praevia compellatis ut, ea, quam superduxit, exclusa, praefatam mulierem recipiat, audituri postmodum, si quid fuerit quaestionis, *et illud appellatione remota debito fine decisuri.* Si vero contra

matrimonium nihil fuerit [*sufficienter*] ostensum, et vir saeculo derelicto maluerit ad regularem vitam migrare, vos ei super hoc licentiam tribuatis, ut et illa *sic* possit in suo, *sicut desiderat*, proposito permanere. [*Nullis literis etc. Dat. II. Kal. Iul.* 1205.]

Chapter XX

Latin source headnote: One who is converted to a monastery by taking the habit of a novice can return to the world within the time of probation unless it appears that he wished absolutely to change his life.

The same, to the Abbot of Affligem and Masters R. and G., Canons of Utrecht.

We have frequently been consulted by many as to whether one who entered a monastery by taking the habit of a novice, if before emitting profession he wishes to leave within the time of probation, can lawfully return to the world without the mark or fault of apostasy, especially with due correction of morals. Although diverse persons have held diverse views concerning this, we nevertheless believe a distinction must be made as to whether the person converting proposed absolutely to change his life so that under a regular habit he might thereafter serve almighty God, or conditionally to test regular observance so that, if it pleased him within a year, he would then profess the discipline of the order, or, if perhaps it did not please him, return with reformed morals to his former state. In the first case, in order to live regularly he ought to pass at least to a more lax rule. In the second, he can return to the world, yet not so as to live secularly. Therefore, so that his intention may be more fully known, let him declare his purpose at the beginning. *Therefore, after weighing this distinction with diligent meditation, inquire solicitously concerning our beloved son the Dean of Utrecht into what you see is to be inquired into, and canonically establish what you know is to be established,* [*causing, etc. Given at the Lateran, on the Ides of May.* 1204.]

Qui ad monasterium convertitur sumendo habitum novitii, potest infra tempus probationis redire ad saeculum, nisi appareat, eum vitam voluisse mutare omnino.

Idem Abbati de Affligen. et Magistro R. et G. Canonicis Traiectensibus.

Consulti sumus frequenter a multis, utrum is, qui monasterium ingressus est habitum sumendo novitii, si ante professionem emissam infra tempus probationis exire voluerit, licite possit absque apostasiae nota vel noxa, praesertim cum debita morum correctione ad saeculum remeare. Licet autem super hoc senserint diversi diversa, nos tamen credimus distinguendum, utrum is, qui convertitur, proposuerit absolute vitam mutare, ut sub habitu regulari omnipotenti Deo de cetero famuletur, an conditionaliter experiri observantiam regularem, ut ita demum, si infra annum sibi placuerit, profiteatur ordinis disciplinam, aut, si forte non placuerit, moribus emendatus ad statum revertatur pristinum. In primo casu debet, ut regulariter vivat, ad laxiorem saltem regulam pertransire. In secundo potest ad saeculum, non tamen, ut vivat saeculariter, remeare. Ut ergo quae sit eius intentio plenius agnoscatur, propositum suum in principio protestetur. *Hac ergo distinctione diligenti meditatione pensata, circa dilectum filium Traiectensem decanum inquiratis sollicite quae videritis inquirenda, et statuatis canonice quae statuenda noveritis,* [*facientes etc. Dat. Lat. Id. Mai.* 1204.]

Chapter XXI

Latin source headnote: One who, within the year of probation and without making profession, returns to the world can lawfully be promoted to orders and benefices.

The same.

You petitioned—*(And below:* [*cf. c.* 14, *On Jews, V.* 6.]) Thirdly, you asked whether those who, constituted in their younger years, received the habit of novices and afterward returned to the world within a year without making profession, and were promoted to sacred orders by their bishops [*who knew*] this, ought to be sustained in ministering in those churches in which they were instituted by the same bishops. We *therefore* answer your fraternity in this manner: on account of this they are not to be removed from those churches, but can freely minister in them, *unless perhaps prudence supplied age in them so that* [*at least*] *they ought to pass to a more lax rule, because by assuming the religious habit without a declaration they are presumed to have proposed to change their life.* [*Given at the Lateran, on the seventh day before the Ides of June, in the twentieth year of our pontificate.* 1212.]

> Qui, infra annum probationis non facta professione, redit ad saeculum, licite potest ad ordines et beneficia promoveri.
>
> Idem.
>
> Postulasti (*Et infra:* [*cf. c.* 14. *de Iud. V.* 6.]) Tertio quaesivisti, utrum illi, qui in annis minoribus constituti novitiorum habitum susceperunt, et infra annum postmodum non facta professione ad saeculum sunt reversi, et [*ab*] episcopis suis hoc scientibus ad sacros ordines sunt promoti, sustineri debeant in illis ecclesiis ministrare, in quibus sunt ab eisdem episcopis instituti. Nos *ergo* fraternitati tuae taliter respondemus, quod propter hoc non sunt ab ecclesiis ipsis amovendi, sed in eis possunt libere ministrare, *nisi prudentia forte suppleverit in illis aetatem, ut* [*saltem*] *transire debeant ad regulam laxiorem, quia quum ipsi absque protestatione religionis habitum assumendo vitam praesumantur proposuisse mutare.* [*Dat. Lat. VII. Id. Iun. Pont. nost. Ao. XX.* 1212.]

Chapter XXII

Latin source headnote: One who wears the monastic habit for more than a year in a monastery where the habits are not distinct is deemed professed.

Honorius III, to the Bishop of Venice.

It was proposed *before us* on your part that there are certain persons *in the diocese of Venice* who, although they have worn the monastic habit for many years, have nevertheless not made monastic profession. Hence, when they are reproved by you or others because they have private property and otherwise live irregularly, they do not blush to say that they are not bound to the lack of private property, *to* continence, and to other regular observances, since the habit does not make a monk, but rather regular *profession. Wherefore you petitioned that apostolic remedy be furnished concerning these matters, since the disordered life of transgressors of this kind brings not only peril to them but also scandal to the minds of others.* And therefore we command your fraternity that, after prior *admonition,* you compel by ecclesiastical censure, *appeal being removed,* any persons subject to you by diocesan law who do not fear to enter the earth by two paths in the aforesaid manner, after they have worn the monastic habit for a year, also to profess and observe the rule according to the form of the order.

> Qui ultra annum portat habitum monachalem in monasterio, ubi sunt habitus indistincti, censetur professus.
>
> Honorius III. Venetensi Episcopo.
>
> Ex parte tua fuit propositum *coram nobis,* quod nonnulli sunt *in dioecesi Venetensi,* qui, licet pluribus annis gestaverint habitum monachalem, professionem tamen monasticam non fecerunt. Unde, quum super eo, quod habent proprium et alias irregulariter vivunt, a te vel ab aliis arguuntur, non erubescunt dicere,

se ad carentiam proprii, et *ad* continentiam, ac alias regulares observantias non teneri, quum habitus non faciat monachum, sed professio *potius* regularis. +*Quare super his apostolicum postulasti remedium exhiberi, quum inordinata vita praevaricatorum huiusmodi non solum eis periculum, sed etiam scandalum inferat mentibus aliorum*. Ideoque fraternitati tuae mandamus, quatenus quoslibet tibi lege dioecesana subiectos, qui praedicto modo terram duabus viis ingredi non verentur, ut, postquam per annum gestaverint habitum monachalem, regulam *quoque* secundum formam ordinis profiteantur et servent, *monitione praemissa*, ecclesiastica censura *appellatione remota* compellas.

Chapter XXIII

Latin source headnote: Within the year of probation a person freely returns to the world unless he made profession tacitly or expressly, or it appears that he wished to change his life. This first. Secondly, it says that, so that novices may be distinguished from the professed, the habit of the professed ought to be blessed in places where the habit is not distinct.

Gregory IX.

We establish that novices placed on probation can freely return to their former state within a year before receiving the religious habit that is customarily given to those professing, or before profession has been emitted, unless it clearly appears that such persons wished absolutely to change their life and serve the Lord perpetually in religion, since anyone can renounce what is known to have been introduced for himself. We nevertheless establish, for the utter removal of all ambiguity, that, since in certain places the religious habit of novices is not distinguished from the habit of the professed, at the time of profession the garments that are granted to those professing are to be blessed, so that the habit of novices may be distinguished from the habit of the professed.

Infra probationis annum libere quis redit ad saeculum, nisi professionem fecerit tacite vel expresse, vel appareat, eum vitam mutare voluisse. Hoc primo. Secundo dicit, quod ad hoc, ut dignoscantur novitii a professis, debet habitus professorum benedici in locis, ubi habitus non est distinctus.

Gregorius IX.

Statuimus, novitios in probatione positos ante susceptum religionis habitum, qui dari profitentibus consuevit, vel ante professionem emissam, ad priorem statum redire posse libere infra annum, nisi evidenter appareat, quod tales absolute voluerint vitam mutare et in religione perpetuo Domino deservire, quum quilibet renunciare valeat ei, quod pro se noscitur introductum. Nihilominus statuentes ad omnem ambiguitatem penitus amovendam, quod, quum in quibusdam locis religionis novitiorum habitus non distinguatur ab habitu professorum, professionis tempore benedicantur vestes, quae profitentibus conceduntur, ut novitiorum habitus a professorum habitu discernatur.

Chapter XXIV

Latin source headnote: Fugitive religious are to be sought annually and compelled to return to the monastery.

The same.

Lest religious, having occasion to wander, incur detriment to their own salvation and their blood be required from the hands of the prelates, we establish that those presiding over chapters to be celebrated according to the statute of the general council, or fathers, abbots, or priors, solicitously seek their fugitives and those expelled from their order annually. If they can be received in their

monasteries according to regular order, their abbots or priors, after prior admonition, are to be compelled through ecclesiastical censure to receive them, saving the discipline of the order. But if regular order does not permit this, let them provide by our authority that the necessities of life be ministered to such persons for doing penance there, at the same monasteries in suitable places if it can be done without grave scandal, otherwise in other religious houses of the same order. But if they find fugitives or expelled persons of this kind disobedient, let them excommunicate them and cause them to be publicly announced as excommunicated by the prelates of the churches until they humbly return to their mandate.

> Religiosi fugitivi annuatim sunt requirendi, et cogendi, ut ad monasterium revertantur.
>
> Idem.
>
> Ne religiosi, vagandi occasionem habentes, salutis propriae detrimentum incurrant, et sanguis eorum de praelatorum manibus requiratur : statuimus, ut praesidentes capitulis celebrandis secundum statutum concilii generalis, seu patres, abbates seu priores fugitivos suos et eiectos de ordine suo requirant sollicite annuatim. Qui si in monasteriis suis recipi possunt secundum ordinem regularem, abbates seu priores eorum monitione praevia per censuram ecclesiasticam compellantur ad receptionem ipsorum, salva ordinis disciplina. Quod si hoc regularis ordo non patitur, auctoritate nostra provideant, ut apud eadem monasteria in locis competentibus, si absque gravi scandalo fieri poterit, alioquin in aliis religiosis domibus eiusdem ordinis ad agendam ibi poenitentiam talibus vitae necessaria ministrentur. Si vero huiusmodi fugitivos vel eiectos inobedientes invenerint, eos excommunicent, et tamdiu faciant ab ecclesiarum praelatis excommunicatos publice nunciari, donec ad mandatum ipsorum humiliter revertantur.

Title XXXII: On the Conversion of Spouses

Chapter I

Latin source headnote: If a husband makes profession with his wife's license, and the wife herself is suspect and neither vows continence nor enters religion, the bishop will restore the husband to the wife. This it says according to the letter.

Alexander III, to the Bishop of Uber.

Moreover, as to whether a married layman who, in the presence of priests and monks but without the knowledge of the bishop, entered a monastery with the license and permission of *his* wife *and perhaps* made profession, while his wife remained in secular habit and neither passed to religion nor vowed perpetual continence, can be recalled by his bishop to his wife's bed, or she is to be compelled to observe continence, we say that, unless the wife has passed to religion or promised to preserve chastity perpetually, the man can and ought to be recalled [*to her*] *by the bishop* from the monastery, *because, since they have been made one flesh, one part ought not to remain in the world and the other to pass to religion and chastity. Nevertheless, the wife is to be admonished and more earnestly exhorted to pass to religion and promise to preserve chastity.*

> **DE CONVERSIONE CONIUGATORUM.**
>
> Si vir de uxoris licentia profitetur, et uxor ipsa suspecta nec continentiam vovet, nec religionem ingreditur, episcopus uxori virum restituet. H. d. iuxta literam.
>
> Alexander III. Ubergensi Episcopo.

Praeterea, utrum laicus uxoratus, qui, praesentibus sacerdotibus et monachis, ignorante episcopo, de licentia et permissione uxoris *suae* monasterium *est* ingressus, *et forte* professionem fecit, uxore in saeculari habitu remanente, nec transeunte ad religionem, aut perpetuam continentiam vovente, ab episcopo suo possit ad torum revocari uxoris, an illa compellenda sit continentiam observare, dicimus, quod, nisi uxor ad religionem transierit, aut perpetuo castitatem servare promiserit, vir [*ad eam*] potest et debet *ab episcopo* de monasterio revocari, *quia, quum una caro sint effecti, non debet una pars in saeculo manere, et altera ad religionem et castitatem transire. Verumtamen uxor commonenda est, et propensius exhortanda, ut ad religionem transeat et castitatem servare promittat*.

Chapter II

Latin source headnote: Before a marriage is consummated, either spouse can enter religion even against the will of the other; but the one remaining in the world can pass to second vows.

The same, to the Archbishop of Salerno.

But after [*that*] lawful consent in words of the present, it is lawful for either, even with the other resisting, to choose a monastery, just as *also* certain saints were called from nuptials, provided carnal commingling did not intervene between them; and it is lawful for the other remaining, if after being admonished that person is unwilling to preserve continence, to pass to second vows, because, since they had not been made one flesh together, one can sufficiently pass to God and the other remain in the world.

Ante matrimonium consummatum potest alter coniugum, etiam altero invito, religionem ingredi; sed remanens in saeculo potest ad secunda vota transire.

Idem Salernitano Archiepiscopo.

Verum post [*illum*] consensum legitimum de praesenti licitum est alteri, altero etiam repugnante eligere monasterium, sicut *etiam* sancti quidam de nuptiis vocati fuerunt, dummodo carnalis commixtio non intervenerit inter eos, et alteri remanenti, si commonitus continentiam servare noluerit, licitum est ad secunda vota transire, quia, quum non fuissent una caro simul effecti, satis potest unus ad Deum transire, et alter in saeculo remanere.

Chapter III

Latin source headnote: One who made profession against his wife's will and afterward is restored to her is not compelled, after the wife dies, to return to the monastery; nevertheless, he ought not contract marriage.

The same, to the Archbishop of Pisa.

A certain man entered a monastery against his wife's will and, when she sought him back, he was compelled to return to her. After she died, you ask whether he is compelled to return to the monastery or can take another as wife. We answer your consultation in this manner: the vow did not hold, whence he is not bound by reason of the vow to return to the monastery; but he will not be able to take a wife thereafter. For he promised not to exact the debt, which was in his power, and therefore as to this the vow held. But not to render it was not in his power but in the woman's. Hence the Apostle: “The husband does not have power over his own body, but the woman.”

Qui invita uxore professionem fecit, et ei postea restituitur, non compellitur mortua uxore ad monasterium redire; matrimonium tamen contrahere non debet.

Idem Pisano Archiepiscopo.

Quidam intravit monasterium invita uxore, qua ipsum repetente coactus est ad eam redire. Ea mortua quaeris, an ipse cogatur reverti ad monasterium, an aliam possit ducere in uxorem. Consultationi tuae taliter respondemus, quod votum non tenuit, unde ratione voti ad monasterium non tenetur redire; ulterius vero non poterit uxorem accipere. Promisit enim se non exigere debitum, quod in eius potestate erat, et ideo quoad hoc votum tenuit. Non reddere autem non erat in eius, sed mulieris potestate. Unde Apostolus : " Vir non habet potestatem sui corporis, sed mulier. "

Chapter IV

Latin source headnote: A married man cannot enter religion unless his wife also enters, or unless she is not suspect and promises continence. This it says, and it is one of the principal chapters of the title.

The same, to the Bishop of Exeter.

Since you are endowed with knowledge of letters, you cannot *nor* ought to be ignorant that it is contrary to the constitution of the holy Fathers that a man, *while his wife remains in the world,* or a wife, while her husband does not assume the religious habit, ought to pass to religion, *because, since husband and wife are one flesh, as the Apostle teaches, one cannot be converted to God and the other remain in the world.* Hence it is that by apostolic authority we prohibit *you* from permitting a husband or wife in your bishopric to pass unless each has migrated to religion; *but, if they wish to be converted to God, let each pass to the fruit of a better life.* But if the wife is so old and sterile that she can be in the world without suspicion, you will be able to dissemble so that, while she remains in the world and promises chastity, her husband may pass to religion.

Uxoratus religionem intrare non potest, nisi etiam uxor ingrediatur, vel nisi suspecta non sit, et continentiam promittat. H. d. et est unum cap. de principalioribus tit.

Idem Exonensi Episcopo.

Quum sis praeditus scientia literarum, ignorare non *potes, nec* debes, sanctorum Patrum constitutioni esse contrarium, ut vir, uxore sua *in saeculo remanente*, aut uxor, viro eius non assumente religionis habitum, debeat ad religionem transire, *+quia, quum vir et uxor una caro sint, sicut docet Apostolus, non potest unus ad Deum converti, et alter in saeculo remanere*. Inde est, quod auctoritate apostolica *tibi* prohibemus, ne in episcopatu tuo virum vel uxorem, nisi uterque ad religionem migraverit, transire permittas, *sed, si voluerint ad Deum converti, uterque ad frugem melioris vitae transeat*. Verum si ita uxor senex est et sterilis, quod sine suspicione possit esse in saeculo, dissimulare poteris, ut, ea in saeculo remanente et castitatem promittente, ad religionem transeat vir eiusdem.

Chapter V

Latin source headnote: A married person is not to be ordained to sacred orders unless his wife promises continence.

The same, to the Archbishops of Esztergom and Cologne.

A married man *desiring to be converted to a monastery is prohibited from being received unless his wife* [*likewise*] *is converted. For while one body of the two has been made by the union of marriage, it is unfitting for one part to be converted and the other to remain in the world; nor will the conversion of that man be received before God if the prostitution of the conjugal covenant follows from it. Since, therefore, the assembly of clerics far excels the assembly*

of monks, such that sometimes a good monk scarcely makes a good cleric, no married person is to be promoted to sacred orders unless he has been released by his wife professing continence, *so that thereafter a spiritual marriage may be made from carnal union.* [*Indeed, etc.; cf. the chapter immediately following.*]

> Coniugatus non est ordinandus ad sacros ordines, nisi uxor continentiam promittat.
>
> Idem Strigoniensi et Colonensi Archiepiscopis.
>
> Coniugatus +*ad monasterium converti desiderans, prohibetur suscipi, nisi uxor eius* [*similiter*] *convertatur. Nam, dum unum utrorumque corpus coniugii copulatione sit factum, incongruum est, partem converti, et partem in saeculo remanere; nec recipietur apud Deum illius viri conversio, cuius sequitur coniugalis foederis prostitutio. Quum igitur coetus clericorum longe praeemineat coetui monachorum, ita, ut aliquando bonus monachus vix bonum clericum faciat,* Nullus coniugatorum est ad sacros ordines promovendus, nisi ab uxore continentiam profitente fuerit absolutus, *ut fiat deinceps de carnali copula spirituale coniugium*. [*Sane etc. cf. c. prox. seq.*]

Chapter VI

Latin source headnote: A married man cannot be promoted as bishop unless his wife professes religion.

The same, to the same.

Indeed, if married men have consented to be ordained, the *wife's* will must first be sought *also, so that, the chamber of their dwelling having been separated and religion promised, they may be ordained after they have been converted together. But if in any ecclesiastical grades it must be providently and knowingly attended to that nothing in the house of God be disordered and nothing out of proper order, much more must labor be expended that no error be made in the promotion of him who is placed over all grades. Hence it is that* by apostolic authority we prohibit your fraternity from presuming to ordain a married man as bishop unless his wife, having first professed continence, places the sacred veil upon herself and assumes religious clothing. *For we do not wish the promotion of the man to be able to become an occasion of perdition for the wife left in the world.*

> Uxoratus in episcopum promoveri non potest, nisi uxor religionem profiteatur.
>
> Idem eisdem.
>
> Sane, si coniugati consenserint ordinari, uxoris *etiam* voluntas prius requirenda est, +*ut sequestrato mansionis cubiculo religione promissa, postquam pariter conversi fuerint ordinentur. Quodsi in quibuslibet ecclesiasticis gradibus providenter scienterque curandum est, ut in domo Dei nil sit inordinatum, nihilque praeposterum, multo magis laborandum est, ut in eius promotione, qui super omnes gradus continetur, non erretur. Inde est, quod* Fraternitati vestrae auctoritate apostolica prohibemus, ne uxoratum praesumatis in episcopum ordinare, nisi uxor prius professa continentiam sacrum sibi velamen imponat, et religiosam vestem assumat. *Nolumus enim, ut viri promotio uxori relictae in saeculo fieri perditionis possit occasio*.

Chapter VII

Latin source headnote: A spouse by present consent, not carnally known, who says that she wishes to enter religion, is compelled within a certain time to profess or adhere to her husband.

The same, to the Bishop of Brescia.

From the public instrument *that was presented to us, and from the tenor of your letters,* it became known to us that, when *the venerable brother* [*our O.*], the Bishop of Verona, *by our mandate* undertook the matrimonial cause disputed between the man A. and the woman M. to be terminated *by a canonical*

conclusion, after hearing the reasons and allegations of each party, he approved the marriage between them by judicial sentence and commanded the same woman to return to *her* husband and exhibit conjugal affection to him. When she refused, *by our mandate, as we have learned,* she was bound by the bond of excommunication. But because *the aforesaid woman,* although she was espoused by the aforesaid man, nevertheless still, as she asserts, has not been known by him, *by apostolic writings directing* your fraternity, we command that, if the aforesaid man has not carnally known the *woman* herself and the same *woman, as is proposed to us on your part,* wishes to pass to religion, after receiving from her sufficient security that within the space of two months she ought either to pass to religion or return to her husband, you absolve her from the sentence by which she is bound, *contradiction and appeal ceasing,* in such a way that, if she passes to religion, each restores to the other what each is known to have received from the other, *and the man himself, when she assumes the religious habit, has license to pass to other vows*. Indeed, what the Lord says in the Gospel—that it is not lawful for a man to dismiss his wife except on account of fornication—is to be understood, according to the interpretation of sacred scripture, of those whose marriage is consummated by carnal union, without which *marriage* cannot be consummated; *and therefore, if the aforesaid woman was not known by her husband, it is lawful* [*for her*] *to pass to religion.*

> Sponsa de praesenti, non cognita, quae dicit, se velle religionem ingredi, compellitur infra certum tempus profiteri, vel adhaerere marito.
>
> Idem Brixiensi Episcopo.
>
> Ex publico instrumento, *quod nobis est praesentatum, et ex tuarum literarum tenore* nobis innotuit, quod, quum *venerabilis frater* [*noster O.*] Veronensis episcopus *de mandato nostro* causam matrimonii, quae inter A. virum et M. mulierem vertebatur, suscepisset *fine canonico* terminandam, *auditis utriusque partis rationibus et allegationibus, inter eos* iudiciali sententia matrimonium approbavit, et eidem mulieri praecepit, ut ad virum *suum* rediens exhiberet eidem coniugalem affectum. Quod quum renueret, *de mandato nostro, sicut accepimus,* fuit vinculo excommunicationis adstricta. Ceterum, quia *praefata mulier,* licet a praefato viro desponsata fuerit, adhuc tamen, sicut asserit, ab ipso est incognita, *fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus, si praedictus vir *mulierem* ipsam carnaliter non cognoverit, et eadem *mulier, sicut ex parte tua nobis proponitur,* ad religionem transire voluerit, recepta ab ea sufficienti cautione, quod vel ad religionem transire, vel ad virum suum redire infra duorum mensium spatium debeat, ipsam *contradictione et appellatione cessante* a sententia, qua tenetur, absolvas ita, quod, si ad religionem transierit, uterque restituat alteri quod ab eo noscitur recepisse, *+et vir ipse, ea religionis habitum assumente, ad alia vota licentiam habeat transeundi*. Sane, quod Dominus in evangelio dicit, non licere viro, nisi ob causam fornicationis uxorem suam dimittere, intelligendum est secundum interpretationem sacri eloquii de his, quorum matrimonium carnali copula est consummatum, sine qua *matrimonium* consummari non potest, *et ideo, si praedicta mulier non fuit a viro suo cognita, licitum est* [*sibi*] *ad religionem transire*.

Chapter VIII

Latin source headnote: The summary is as above in this title, chapter "Since you are."

The same, to G., Prior, and the Brothers of Saint John.

But let no married man be received among you in any way without the license of *his own* wife. If she is [*of*] such unimpaired *reputation and* standing that her husband has no suspicion that she wishes to migrate to second vows or that she is likely to live with less continence, if she is such, *as aforesaid,*

after her husband has been received into your fellowship, she, having publicly professed continence in the sight of the church, can remain in her own house with her children and household. But if she is such a person as is not free from suspicion, after celebrating the vow of continence, let her withdraw herself from association with secular persons and dwell perpetually in a religious place where she may serve God. Let none of you *dare* to tonsure any woman or presume to take *her* to dwell with him.

> Summa ut supra eod. cap. Quum sis.
>
> Idem G. Priori et Fratibus sancti Ioannis.
>
> Uxoratus *autem* sine licentia *propriae* uxoris inter vos nullatenus recipiatur, quae [*si*] integrae *famae et* opinionis ita exsistat, quod nulla marito suspicio habeatur, eam ad secunda vota velle migrare, vel quod minus continenter debeat vivere; quae si, *ut praedictum est*, talis exstiterit, marito eius in consortio vestro recepto, ipsa publice in conspectu ecclesiae continentiam professa, in domo propria cum filiis suis et familia poterit permanere. Si autem talis fuerit, quae suspicione non careat, voto continentiae celebrato a saecularium hominum se conversatione removeat, et in loco religioso, ubi Deo serviat, perpetuo commoretur. Nullus vestrum mulierem aliquam *audeat* tonsurare vel *eam* ad habitandum secum praesumat assumere.

Chapter IX

Latin source headnote: A married man who makes profession with his wife consenting, although he never entered the monastery, if after the spouse dies he contracts with another, the marriage is not valid and he is compelled to enter the monastery.

Urban III, to the Prior of Holy Cross.

It came to our hearing on the part of *our beloved son,* the abbot of Saint Peter *of Romandine,* that, when D. *de Cel.,* placed in sickness, with *his* wife consenting, vowed a vow of chastity and received the monastic habit, afterward, *freed from the trouble of his sickness,* he both retained *his aforesaid* wife and, after she died, rashly joined another to himself. But because, although the aforesaid D. could not by law have proceeded to religion while his wife remained in the world, nevertheless, after she was removed from their midst, he could not violate the *vow made* without peril to his salvation, we command that, if what is asserted is true, you compel the aforesaid D. through excommunication to dismiss the woman and return to his monastery, thereafter to serve the Lord under a regular habit. *Given at Verona.*

> Coniugatus, faciens professionem uxore consentiente, licet nunquam intravit monasterium, si mortua coniuge cum alia contrahat, non valet matrimonium, et monasterium intrare compellitur.
>
> Urbanus III. Priori sanctae Crucis.
>
> Ex parte *dilecti filii nostri* abbatis sancti Petri *de Romandine* ad audientiam nostram pervenit, quod, quum D. *de Cel.,* in infirmitate positus, consentiente uxore *ipsius* votum vovens castitatis, monachalem habitum suscepisset, postmodum *ab infirmitatis ipsius* liberatus *molestia, et praedictam suam* uxorem retinuit, et aliam ea defuncta sibi temere copulavit. Quia vero, licet praedictus D. uxore sua remanente in saeculo de iure ad religionem nequiverit proficisci, ea tamen sublata de medio votum *quidem factum* sine salutis suae periculo non potuit violare, mandamus, quatenus, si verum est quod asseritur, praedictum D. per excommunicationem compellas, ut muliere dimissa ad suum monasterium revertatur, sub regulari habitu de cetero Domino serviturus. *Dat. Veronae.*

Chapter X

Latin source headnote: One professed in religion with his wife knowing and dissembling cannot return to the world after she dies. This it says according to the truer and singular understanding in the matter.

Clement III.

G., priest *of Saint Columba,* consulted us as to whether a man, *a merchant, renouncing trade and his wife for the sake of God,* passing to religion and remaining in it for a year and more, his wife having been removed from the present life after he passed to the regular house, can resume the secular habit *that he cast aside* and take another as wife, or whether it is lawful for him to retain one taken. We answer a consultation of this kind in this manner: the aforesaid man can neither cast off the habit that he assumed nor join any woman to himself in marriage. But if he has contracted, we decree that marriage to be dissolved.

> Professus religionem uxore sciente et dissimulante, ea mortua ad saeculum redire non potest. H. d. secundum intellectum veriorem et singularem in materia.
>
> Clemens III.
>
> Consuluit nos G. sacerdos *de sancta Columba*, utrum vir *mercator, negotiationi et uxori propter Deum renuncians*, ad religionem transiens, et in ea per annum et amplius moram faciens, uxore sua, postquam ad domum transierat regularem, de praesenti vita sublata, saecularem habitum resumere valeat, *quem dimisit*, et aliam ducere in uxorem, vel si ductam ei liceat retinere. Consultationi huiusmodi taliter respondemus, quod praedictus vir nec habitum potest abiicere, quem assumpsit, nec aliquam sibi matrimonio copulare. Quodsi contraxerit, matrimonium ipsum decernimus dirimendum.

Chapter XI

Latin source headnote: A spouse who vowed continence is bound to render the debt to the other spouse, although the latter consented to the vow for a time.

Celestine III.

Our dearest *son in Christ, R., illustrious King of the Swabians, humbly announced to our apostolate by letter and messenger that, when he was an adolescent and his beloved wife a young woman, binding themselves by mutual faith with a vow of contracting lawful marriage, they strengthened their mutual consent, with the will of their parents acceding, by the gift of earnest money. But afterward, when N., his father of renowned memory, was killed by enemies, and he was pressed on all sides through the adversity of wars and, after an encounter with his enemies, had been defeated and put to flight, because he feared that the betrothed woman herself might be violently seized by his enemies, and that another like her whom he could join to himself in marriage could not be found in the kingdom, by the counsel of his own parents and those of the same betrothed woman it was done that she received the monastic habit in a convent of nuns without the purpose of retaining it perpetually, and remained there for some years, lest she suffer any injury from the enemies. After peace had been restored and triumph obtained over his enemies, he solemnly took her as wife with great exultation and had sons by her; one of them, by the common consent and election of the princes of Swabia, he instituted his successor in the kingdom. But as time went on, the aforesaid wife, struck by grave sickness, when she believed she was about to depart from this life, induced by fear of death, vowed continence; and when the king himself did not wish to sadden her, he consented for a time. But now he proposes that he cannot remain continent and wishes to return to his wife's bed, which he judges can lawfully be done. And to restrain the*

detractions and reproaches of his rivals, he petitioned us that mandate be given to him that by our authority he treat his wife with marital affection, notwithstanding the vow of continence incautiously emitted by her and approved for a time by the same king.

But because we could not elicit the truth fully concerning these matters, we have thought that knowledge of them and a canonical decision should be committed to your fraternity, commanding by apostolic writings that you inquire more diligently into the truth concerning these matters; and, if it is established to you that the aforesaid woman was first received among the nuns from fear of violence and seizure and declared that she had the purpose of marrying while she remained among them—especially since afterward she publicly married the king in the face of the church and, cohabiting up to these times, he had sons by her—you are to declare that she is not bound to the aforesaid monastery. For that deed cannot dissolve a marriage contracted, even if perhaps it could impede a marriage to be contracted. But concerning the other matter, we command your fraternity that, if you find that the wife of the King of the Swabians, weighed down by grave sickness, vowed continence and her husband furnished consent for a time, especially if the same husband did not *equally* vow perpetual continence, you cause her to cohabit with her husband and each to treat the other with marital affection.

> Coniux, quae continentiam vovit, tenetur reddere debitum coniugi, licet ad tempus voto consenserit.
>
> Coelestinus III.
>
> Carissimus +*in Christo filius noster, R. illustris rex Suevorum, apostolatui nostro literis et nuncio humiliter nunciavit, quod, quum esset adolescens, et dilecta uxor eius iuvencula mutua fide voto contrahendi legitimi matrimonii se adstringentes, invicem suum consensum, accedente voluntate parentum, arrarum donatione roboraverunt. Postmodum vero, clarae memoriae N. patre suo ab inimicis occiso, quum per bellorum adversitatem undique premeretur, et habito cum hostibus suis congressu victus fugatusque fuisset, quia timebat, ne ipsa sponsa ab inimicis suis per violentiam raperetur, et alia similis ei non inveniretur in regno, quam sibi posset matrimonialiter copulare, de suorum et eiusdem sponsae parentum consilio factum est, quod in conventu sanctimonialium habitum monasticum sine proposito perpetualiter suscepit retinendi, et ibidem per aliquot annos moram fecit, ne quid ab inimicis iniuriae pateretur, quam quum, pace reddita et obtento ab inimicis triumpho, solenniter duxisset cum grandi exsultatione uxorem, et ab ea filios suscepisset, unum eorum de communi consensu et electione principum Sueviae sibi in regnum instituit successorem. Procedente vero tempore praedicta uxor, gravi infirmitate correpta, quum se de hac vita crederet recessuram, timore mortis inducta continentiam vovit, quumque rex ipse nollet eam contristare, concessit ad tempus; nunc autem se continere non posse proponit, et, quod licite posse fieri arbitratur, ad torum uxoris suae redire cupit. Et ad reprimendas aemulorum suorum detractationes et obloquia petiit a nobis sibi dari in mandatis, ut uxorem suam auctoritate nostra maritali affectione pertractet, non obstante voto continentiae incaute ab ipsa emisso, et ab eodem rege ad tempus approbato. Verum, quia super his ad plenum nos non potuimus elicere veritatem, fraternitati vestrae cognitionem horum et decisionem canonicam duximus committendam, per apostolica scripta mandantes, ut super his inquiratis diligentius veritatem, et, si vobis constiterit, quod praedicta mulier primo fuit inter moniales recepta timore violentiae et rapinae, et propositum se habuisse nubendi profitebatur, quum inter eas moram faceret, praesertim quum postmodum in facie ecclesiae publice regi nupserit, et usque ad haec tempora cohabitando filios ex ea suscepit, eam denuncietis praefato monasterio non teneri. Non enim factum illud matrimonii potest contractum dirimere, etsi forte posset matrimonium contrahendum impedire. De alio vero* Fraternitati vestrae mandamus, quatenus, si inveneritis, uxorem regis Sueviae gravi infirmitate depressam continentiam vovisse, et virum eius ad tempus praebuisse consensum, maxime si non idem vir *peraeque* continentiam vovit perpetuam, eandem viro cohabitare faciatis, et utrumque invicem maritali affectione tractare.

Chapter XII

Latin source headnote: If one spouse, while the other is ignorant, professes religion and on account of this is led out of the monastery, after the other dies that spouse is not compelled to return to the monastery.

The same.

It pleases us, *and we commend your prudence because in doubtful causes you seek the counsel of the Apostolic See. For although you are endowed with knowledge of letters, you devoutly have recourse to your mother, the Roman church, so that, after receiving a fitting response concerning that of which you doubt, you may clearly recognize what form you ought to observe in similar matters. Through our beloved* [*moreover*] *son G., Dean of Catalonia, your solicitude* consulted our apostolate whether a woman who, believing her husband dead, assumed the religious habit and, when he returned, was led out of the monastery, is to be compelled after the death of the man to regular observance. Concerning this we answer *your discretion thus:* although her vow did not hold in every respect, nevertheless it was obligatory to the extent that she could obligate herself. For by entering the monastery she promised that she would not exact the carnal debt, which was in her power; but to return to the world was not in her power, but in the power of her husband. And therefore, as much as pertained to her, the vow held, which did not cease to hold after the death of her husband, since it is known to have reached the case from which it could have an efficacious beginning. Therefore we say it is more prudent and more fitting for her salvation, *imitating the footsteps of our predecessor Pope Alexander of happy memory,* that, *after abandoning the vanities of the world,* she return to the monastery where with good intention she made profession and received the religious habit. But if she cannot be induced to this, we believe she should not be compelled against her will.

> Si alter coniugum altero ignorante religionem profitetur, et propter hoc de monasterio educitur, illo mortuo ad monasterium redire non cogitur.
>
> Idem.
>
> Placet nobis, +*et tuam prudentiam commendamus quod in causis dubiis sedis apostolicae consilium requiris. Licet enim praeditus sis scientia literarum, ad matrem tuam ecclesiam Romanam idcirco devote recurris, ut, habita super quo dubitas responsione condigna, quam in similibus formam servare debeas evidenter agnoscas. Per dilectum* [*autem*] *filium G. decanum Catalanensem apostolatum nostrum* Solicitudo tua consuluit, utrum mulier, quae, credens mortuum maritum, habitum religionis assumpsit, et eo reverso de monasterio educta fuit, post obitum viri sit ad regularem observantiam compellenda. Super quo *discretioni tuae sic* respondemus, quod, licet votum eius usquequaque non tenuerit, eatenus tamen fuit obligatorium, quatenus se poterat obligare. Promisit enim intrando monasterium se non exacturam carnis debitum, quod erat in potestate ipsius, redire vero ad saeculum, in eius potestate non erat, sed in potestate mariti. Et ideo, quantum ad ipsam, tenuit votum, quod post viri obitum tenere non desiit, quum ad eum casum, a quo poterat efficax habere principium, pervenisse noscatur. Consultius itaque dicimus et ei congruentius ad salutem, *praedecessoris nostri felicis memoriae Alexandri Papae vestigia imitantes*, ut *vanitatibus saeculi derelictis* ad monasterium redeat, ubi bona ducta intentione professionem fecit et habitum religionis accepit. Si vero ad hoc induci non poterit, ipsam invitam credimus non cogendam.

Chapter XIII

Latin source headnote: The summary is as above in this title, chapter IV, "Since you are."

Innocent III, to the Archbishop of Pisa.

To the Apostolic See—*(And below:* [*cf. c.* 16, *On Regulars, III.* 31.]) But since husband and wife have been made one flesh through conjugal union, and one part cannot be converted to the Lord while the other remains in the world, assuredly neither spouse is to be received into regular observance unless the remaining one promises perpetual continence. But that person also ought to change his or her manner of life, unless perhaps of such an age as to be able to remain in the world without suspicion of incontinence. [*Given at the Lateran, on the ninth day before the Kalends of December.* 1198.]

> Summa ut supra eod. cap. IV. Quum sis.
>
> Innocentius III. Pisano Archiepiscopo.
>
> Ad apostolicam sedem (*Et infra:* [*cf. c.* 16. *de regul. III.* 31.]) Quum autem vir et uxor una caro sint per copulam coniugalem effecti, nec una pars converti possit ad Dominum, et altera in saeculo remanere, profecto non est alter coniugum recipiendus ad observantiam regularem, nisi reliquus perpetuam continentiam repromittat. Sed et vitam debet mutare, nisi forte sit eius aetatis, ut sine suspicione incontinentiae valeat in saeculo remanere. [*Dat. Lat. IX. Kal. Dec.* 1198.]

Chapter XIV

Latin source headnote: Betrothal by present consent is dissolved through religious profession, but not through a purpose of preserving chastity in the world.

The same, to the Archbishop of Lyon.

It was intimated to *our ears* on your part that, when a certain woman *of your diocese* had assumed the veil of widowhood before two abbots, with a solemn blessing accompanied by celebration of mass and a litany, as was proper, *afterward* a certain nobleman proposed that he had previously espoused the woman herself through intermediaries by words of the present, earnest money *also* having been interposed. *Hearing that the woman herself had assumed the veil, he sent to her that carnal union should follow the espousal made. But you, after the matter was brought to your hearing, took care to prohibit them from commingling carnally before discussion of the business. Afterward, when the woman herself was constituted in your presence, you asked whether she had consented to him and why she sought to be separated from him.* But she, confessing that she had consented to him, said that she had heard that he was struck by leprosy and on account of this had abominated his embrace. *But when afterward fuller faith had been made to you through suitable witnesses that before reception of the veil mutual consent by words of the present had intervened between them, you thought the Apostolic See should be consulted as to whether reception of the veil impeded the marriage between them.*

We answer your inquiry in this manner: although it can seem, not without consideration, that from the time a marriage between lawful persons is contracted by words of the present, while they live it can in no case be dissolved so that one may migrate to second vows while the other remains alive—even if one of the faithful between whom there is a ratified marriage became a heretic and was unwilling to remain with the other without insult to the Creator—unless perhaps it were done otherwise by divine revelation, which surpasses every law, as it is read to have been done by certain saints; nevertheless, we, unwilling *in this article suddenly* to depart from the footsteps of our predecessors, who, when consulted, answered that before a marriage has been consummated by carnal union it is lawful for either spouse, even without consulting the other, to pass to religion in such a way that the other can from then on lawfully be joined to another, counsel you to observe this same thing in the aforesaid article, although the cause by which the aforesaid woman was induced to

receive the veil is false, since without any such cause she could have done this same thing with a view to religion. Moreover, although the aforesaid woman appears in receiving the veil to have assumed the religious habit, nevertheless, if she wishes to remain in her own house as though intending to preserve chastity in the world, the marriage already contracted is nonetheless to be consummated, unless she bound herself by vow to regular observance; in that case she can be compelled to leave the world and execute the religious purpose. [*Given on the second day before the Ides of January.* 1206.]

> Per religionis professionem, non per propositum castitatis servandae in saeculo, dissolvuntur sponsalia de praesenti.
>
> Idem Lugdunensi Archiepiscopo.
>
> Ex parte tua *nostris* est *auribus* intimatum, quod, quum quaedam mulier *dioecesana tua* velum viduitatis coram duobus abbatibus assumpsisset, benedictione solenni cum celebratione missae ac litania, sicut debuit, accedente, *postmodum* quidam nobilis proponebat, se prius mulierem ipsam mediantibus internunciis per verba de praesenti, arrha etiam interposita desponsasse. +*Audito, quod mulier ipsa velum assumpserat, misit ad eam, ut desponsationem factam carnalis copula sequeretur. Tu vero, postquam fuit ad tuam audientiam res perlata, inhibere curasti, ne ante discussionem negotii se carnaliter commiscerent. Postmodum autem a muliere ipsa in tua praesentia constituta quaesivisti, utrum consensisset in illum, et quare ab illa quaereret separari.* At illa, se in illum consensisse confessa, dixit, quod audierat, eum esse lepra percussum, et ob hoc eius fuerat abominata complexus. +*Quum autem postmodum per testes idoneos tibi fuerat plenior facta fides, quod ante susceptionem veli mutuus intervenerat inter ipsos per verba de praesenti consensus, sedem duxisti apostolicam consulendam, utrum veli susceptio impediat matrimonium inter ipsos.* Nos autem inquisitioni tuae taliter respondemus, quod, etsi possit non inconsulte videri, quod, ex quo matrimonium inter legitimas personas per verba de praesenti contrahitur, illis viventibus in nullo casu possit dissolvi, ut vivente reliquo alter ad secunda vota transmigret, etiamsi unus fidelium, inter quos est ratum coniugium, fieret haereticus, et nollet permanere cum altero sine contumelia creatoris, nisi forte secus fieret ex revelatione divina, quae superat omnem legem, sicut a quibusdam sanctis legitur esse factum, nos tamen nolentes a praedecessorum nostrorum vestigiis *in hoc articulo subito* declinare, qui respondere consulti, antequam matrimonium sit per carnalem copulam consummatum, licere alteri coniugum reliquo *etiam* inconsulto ad religionem transire, ita, quod reliquus ex tunc legitime poterit alteri copulari, hoc ipsum tibi consulimus observandum in articulo praenotato, quamvis falsa sit causa, per quam ad susceptionem veli praedicta mulier est inducta, quum sine qualibet tali causa id ipsum religionis obtentu facere potuisset. Porro, licet praedicta mulier videatur in veli susceptione religionis habitum assumpsisse, si tamen velit in domo propria remanere, quasi propositum castitatis in saeculo servatura, nihilominus consummandum est matrimonium iam contractum, nisi se voto adstrinxerit ad observantiam regularem, in quo casu compelli potest, ut relicto saeculo religionis propositum exsequatur. [*Dat. II. Id. Ian. * 1206.]

Chapter XV

Latin source headnote: A husband who has become a monk cannot be recalled by an adulterous wife.

The same, to the Bishop of Rudina.

H. *Vitalis, the bearer of the present letters*, constituted in our presence, showed us by his own confession that, *when he was* constituted in the order of acolyte, he took a certain girl named R. as wife in the face of the church. When he had known her carnally, a discord having arisen between him and the girl's

friends, *after diligent discussion was held before you,* she was joined to a certain other man named V., and you ordained the aforesaid H. up to the grade of the priesthood *and granted him a church*. But when his conscience reproached him, he assumed the habit of the Cistercian order; *at length* [*N.*] *he revealed all the aforesaid things to his abbot, who diligently admonished him to provide in this matter for the salvation of his soul*. Therefore we command *your fraternity by apostolic writings* that, if the matter stands thus, you do not omit to compel the aforesaid woman, through ecclesiastical censure, *the obstacle of appeal having been removed*, to withdraw from the said V., to whom she is joined through adultery, and not to assail the aforesaid monk so as to prevent him from being able to fulfill his regular vow.

> Maritus, factus monachus, a coniuge adulterata revocari non potest.
>
> Idem Rudinensi Episcopo.
>
> Constitutus in praesentia nostra H. *Vitalis, lator praesentium,* sua nobis confessione monstravit, quod, *quum esset* in acolythatus ordine constitutus, quandam puellam R. nomine in facie ecclesiae duxit uxorem. Quam quum carnaliter cognovisset, orta discordia inter eum et amicos puellae, *coram te habito diligenti tractatu* ipsa fuit cuidam alii V. nomine copulata, et tu memoratum H. usque ad gradum sacerdotii ordinasti, *et eidem ecclesiam concessisti*. Quum autem eum sua conscientia remorderet, habitum ordinis Cisterciensis assumpsit; *+tandem* [*N.*] *abbati suo omnia praedicta revelavit, qui eum commonuit diligenter, ut super hoc saluti animae suae provideret*. Ideoque *fraternitati tuae per apostolica scripta* mandamus, quatenus, si res ita se habet, praedictam mulierem, ut a dicto V. recedat, cui per adulterium est coniuncta, nec praedictum monachum impetat, quo minus regulare votum valeat adimplere, per censuram ecclesiasticam *sublato appellationis obstaculo* cogere non omittas.

Chapter XVI

Latin source headnote: A wife cannot reclaim a husband who entered religion with her permission if, after his entry, she did not observe continence, although she was induced by fraud to consent or to give permission.

The same, to the Bishop of Poitiers and the Abbot of Boribarden in the diocese of Poitiers.

L., *our beloved son and the bearer of the present letters,* coming to our presence, *humbly* intimated to us that, when once he had conceived a purpose of entering a monastery, in the presence of several priests, *knights, and other men,* he pressed his wife *with entreaties* to impart her assent to him upon this matter, *having first entreated the same priests not to explain to the aforesaid woman that she too would have to abandon the world if she gave her husband permission to fly to a monastery. And when the woman in turn entreated him not to depart from her, he asserted that, unless he could obtain permission from her upon this matter, he would render himself useless not only to her but also to the whole world.* At length she, overcome by the entreaties and tears both of him and of the many standing by, placed his head beneath the altar with her own hand; and he, having been tonsured there in her presence, entered the monastery and, when the time of probation had ended, solemnly made monastic profession. She, however, remaining in the world, admitted dishonorable lovers; *wherefore the same L., fearing lest her incontinence be imputed to his continence, sought counsel from us as to whether he ought to persevere in the monastery*. Therefore we command *your discretion by apostolic writings* that, if it is thus, you freely permit the aforesaid L. to persevere *without disturbance from anyone* in the monastery that he entered. For although he appears to have offended not a little in this, that he craftily asserted that, unless the same woman consented to him, he would render himself useless both to her and to the whole world, and in that he entreated the priests not to explain to the aforesaid woman that she would have to leave the world if perhaps she gave her

husband permission, nevertheless, since the same *woman* voluntarily placed her husband's head beneath the altar and afterward, *as is asserted*, did not observe continence, she is not to be heard in any way concerning his recall; since her claim, *if perhaps she were to reclaim him*, can be defeated by the exception of fornication committed, especially since, before she had fornicated, she did not consider that he ought to be reclaimed. [*Given at the Lateran, on the third day before the Nones of April, in the twelfth year.* 1209.]

> Uxor non potest repetere maritum, de cuius licentia religionem intravit, si post ingressum non continuit, licet ad consentiendum seu ad dandam licentiam dolo fuit inducta.
>
> Idem Pictaviensi Episcopo et Abbati de Boribarden Pictaviensis dioecesis.
>
> Veniens ad praesentiam nostram *dilectus filius* L. *lator praesentium* nobis *humiliter* intimavit, quod, quum olim intrandi monasterium propositum concepisset, pluribus sacerdotibus, *militibus et aliis viris* praesentibus, apud uxorem suam *precibus* institit, ut super hoc suum impertiretur assensum, *+eisdem presbyteris primitus exoratis, ne praefatae mulieri exponerent, quod et ipsam oporteret derelinquere saeculum, si viro suo daret licentiam ad monasterium convolandi. Quumque ipsum mulier, ne ab ea discederet, vice mutua precaretur, ipse asserens, quod, nisi ab ea posset super hoc obtinere licentiam, non solum ei se inutilem redderet, sed etiam toti mundo,* Ipsa demum tam ipsius quam multorum adstantium precibus fletibusque devicta, caput eius altari supposuit manu sua; qui, ea praesente tonsuratus, ibidem monasterium adiit et finito probationis tempore professionem fecit solenniter monachalem. Illa vero, in saeculo remanens, inhonestos amatores admisit, *+unde idem L. metuens, ne suae continentiae illius incontinentia imputetur, an in monasterio perseverare debeat, a nobis consilium postulavit*. Quocirca *discretioni vestrae per apostolica scripta* mandamus, quatenus, si ita est, praedictum L. in monasterio, quod intravit, *absque inquietatione cuiusquam* perseverare libere permittatis. Licet enim in hoc videatur non modicum deliquisse, quod captiose asseruit, quia, nisi sibi eadem mulier consentiret, tam sibi quam toti mundo se inutilem redderet, et quum presbyteros exoravit, ne praedictae mulieri exponerent, quod eandem relinquere saeculum oporteret, si forte licentiam daret viro; ex quo tamen eadem *mulier* caput viri altari sponte supposuit, et postmodum, *sicut asseritur*, non continuit, super revocatione ipsius non est aliquatenus audienda; quum ipsius intentio, *si eundem forte repeteret*, exceptione possit commissae fornicationis elidi, maxime quum, antequam fuerit fornicata, ipsum non duxerit repetendum. [*Dat. Lat. III. Non. Apr. Ao. XII.* 1209.]

Chapter XVII

Latin source headnote: A wife can reclaim a husband who has made profession, notwithstanding permission to make profession extorted from her by fear.

The same.

I., a woman coming to our presence, *lamentably* proposed *before us* that, when V., her husband *of the diocese of Ely*, had *lawfully* joined her to himself in marriage, *and, cohabiting with her for the space of nearly twenty years, had received offspring from her*, at length the same husband, wishing to assume the monastic habit, humbly sought from her that she favor his pious purpose. She, because of the many blows and other burdens *of molestations* that the said husband inflicted upon her, and because he asserted that he would dismiss her, assented to his wishes. And when the same husband had assumed the habit of religion in the house of Vaudey of the Cistercian order, the *woman herself* remained *there* in a house of nuns, having assumed no religious habit there or emitted any vow of conversion; and the same nuns ministered the necessities of life to her in return for the labor of her hands. But in the course of time, when the same husband, returning to the world, had cast aside the habit of religion, the same woman

insistently sought to be taken back by him. He, utterly refusing to receive her, in addition to the blows with which he often afflicted her, inflicted upon her very many reproaches and grave injuries. Therefore we command your discretion *by apostolic writings* that, if the matter stands thus, *and the said woman is of such an age that doubt concerning a lapse of her flesh can deservedly be entertained*, you compel the said husband, after prior admonition, through ecclesiastical censure, appeal having been removed, to receive her and to exhibit conjugal affection toward her. [*No letters, etc. Given at Rome, at Saint Peter's, on the fifth day before the Ides of April.* 1205.]

> Uxor maritum professum repetere potest, non obstante licentia profitendi ab ea metu extorta.
>
> Idem.
>
> Accedens ad praesentiam nostram I. mulier *lacrimabiliter* proposuit *coram nobis*, quod, quum V. vir eius *Eliensis dioecesis* eam sibi *legitime* matrimonio copulasset, *et per viginti fere annorum spatium eidem cohabitans, prolem suscepisset ex ea*, volens tandem idem vir habitum assumere monachalem, postulabat humiliter ab eadem, ut tam pio proposito faveret ipsius; quae propter multa verbera et alia *molestationum* gravamina, quae dictus vir inferebat eidem, se ipsam asserens dimissurum, annuit votis eius. Quumque idem vir in domo de Vader Cisterciensis ordinis religionis habitum assumpsisset, mulier *ipsa* in domo monialium, nullo ibi habitu religionis assumpto vel voto conversionis emisso, permansit *ibidem, cui pro labore manuum suarum eaedem moniales vitae necessaria ministrabant*. Processu vero temporis, quum idem vir ad saeculum rediens religionis habitum reliquisset, eadem mulier se instanter ab ipso petiit reassumi, *+ipse illam recipere penitus contradicens, praeter verbera, quibus saepius affecit eandem, sibi plurima convitia et graves iniurias irrogavit*. Quocirca discretioni vestrae *per apostolica scripta* mandamus, quatenus, si res ita se habet, *et dicta mulier illius aetatis exsistit, ut de lapsu carnis illius merito valeat dubitari*, dictum virum, ut eam recipiat, eique affectum exhibeat coniugalem, *monitione praemissa per censuram ecclesiasticam* appellatione remota cogatis. [*Nullis literis etc. Dat. Rom. ap. S. Petr. V. Id. Apr.* 1205.]

Chapter XVIII

Latin source headnote: The wife of a professed religious, who gave her husband permission to make profession, is not compelled to enter religion if she is continent and not suspect.

Innocent III, to the Bishop, Dean, and Treasurer of Lincoln.

A. woman signified to us that, when she had granted her husband F., *a knight*, before the dean of Saint Quiriacus *of Provins*, acting in this matter in the place *of P. of good memory*, Archbishop of Sens, permission to enter religion, nevertheless with a vow of continence enjoined upon her, and when assurance had been received from her that she would remain perpetually continent, the same dean, after profession had been made by the aforesaid husband in the monastery in which he had assumed the monastic habit, asserted that she ought to enter religion, although he had not at first expressed this to her and, if this had been expressed, *she* would not have given him permission; *and he caused her to be admonished concerning this several times through our venerable brother the Archbishop of Sens, on account of which she, with the consent of the said archbishop, implored our counsel upon this matter*. Therefore we command that, if it is thus, and she is of such an age concerning which suspicion cannot be entertained, you do not permit her, while observing the vow of continence, to be compelled against her will to enter a monastery.

> Uxor professi, quae dedit viro licentiam profitendi, non compellitur ingredi religionem, si continens est, et non suspecta.

Innocentius III. Episcopo, Decano et Thesaurario Linconiensibus.

Significavit nobis A. mulier, quod, quum ipsa F. *militi* viro suo coram decano S. Quiriaci *Pruvinensis*, vices *bonae memoriae P.* archiepiscopi Senonensis in hac parte fungente, licentiam concesserit religionem intrandi, continentiae tamen voto eidem iniuncto, et recepta fide ab ipsa, quod perpetuo contineret, idem decanus post factam professionem a viro praedicto in monasterio, in quo habitum assumpserat monachalem, asseruit, ipsam debere religionem intrare, quanquam id primo non expressisset eidem, et hoc expresso *ipsa* illi licentiam non dedisset, *+ac eam ad hoc per venerabilem fratrem nostrum archiepiscopum Senonensem fecit pluries commoneri, propter quod eadem de consensu dicti archiepiscopi nostrum super hoc consilium imploravit*. Quocirca mandamus, quatenus, si est ita, et est talis aetatis, de qua suspicio haberi non possit, ipsam votum continentiae observantem intrare monasterium compelli non permittatis invitam.

Chapter XIX

Latin source headnote: An adulteress whom her husband is unwilling to reconcile is placed in some cloister to do penance.

Gregory IX.

We rejoice in the Lord. (*And below:*) But women who, having left the marital bed, have fallen through a lapse of the flesh—if their husbands, diligently admonished by you, are unwilling for God's sake to receive them after they have turned to the fruit of a better life—you shall take care to place in cloisters with religious women, so that they may do perpetual penance there.

Adultera, quam maritus reconciliare non vult, ad agendum poenitentiam in aliquo claustro collocatur.

Gregorius. IX.

Gaudemus in Domino (*Et infra:*) Mulieres vero, quae relicto maritali toro lapsu carnis ceciderunt, si mariti earum, a te diligenter commoniti, eas ad frugem melioris vitae conversas noluerint recipere propter Deum, in claustris cum religiosis mulieribus studeas collocare, ut perpetuam poenitentiam ibi agant.

Chapter XX

Latin source headnote: If spouses have released each other by promising continence, and both or one of them makes religious profession, one cannot reclaim the other.

The same, to I., a nun of the monastery of Plauda.

Some time ago, when the subject matter of a question was raised against you by C., a layman, who said that you were his wife, we appointed R., cardinal deacon of Saint Mary in Cosmedin, as auditor. Before him the said C., proposing by way of complaint that you unduly refused to adhere matrimonially to him, whose wife you were by consent in the present tense and the carnal union that followed, sought that you be restored to him. To this it was answered that he, for the remedy of his soul, by a pure and spontaneous will, in the presence of two religious priests and with five trustworthy witnesses adduced, had wholly renounced every right that he had in you, resigning it into the hands of one of the aforesaid priests, who took care to receive a resignation of this kind in the person of the church; and that the same C. promised that he would preserve chastity and devoted himself to the service of the hospital of the poor at Ponte, promising by solemn vow all and each of the aforesaid things and granting you permission to pass to a monastery, while you in turn similarly

promised and granted him permission and resigned every right—as all these things were said to have been proved by a public instrument drawn up by the hand of B., a notary of Arezzo.

But the aforementioned C. proposed that, after the aforesaid instrument had been lost by accident, it was fashioned by him in the first person, though it had formerly been in the third person, with many things inserted in the one otherwise than they had been in the other. And since he had been angry with you, as words and blows indicated, while the heat of his anger had not yet subsided, certain persons deceitfully enticed him, proposing to him that in the aforesaid hospital he could use foods according to his pleasure and retain private property, while the aforesaid B. promised him nonetheless that he would extinguish in him not only the burning but also the appetite of lust. On account of this, he asserted that whatever he is known to have done in this matter was done by him while angry, deceived and enticed alike, and under hope of the promise, and under this condition or manner: if he could observe continence.

But to these things it was answered to the contrary that it seems to make no difference whether a notary draws up an instrument in the third person or in the first, provided that the substance of the truth is not changed. Moreover, although at some time a hope had been given to the aforesaid C. by which he proposed that he had been induced to this, nevertheless, at the time when such things were done, he is known to have proceeded purely, simply, and voluntarily, solely for the love of God and the remedy of his soul, to the vow and the other aforesaid things. On account of this he ought to withdraw from the fellowship of secular persons and change his life, since he proposes that he is of such an age that he cannot remain in the world without suspicion of incontinence. We therefore, after taking counsel with our brothers, have held that you are to be absolved by sentence from the action of the said C., imposing perpetual silence upon him concerning this matter.

> Si coniuges se ad invicem absolverunt continentiam promittendo, et uterque vel alter eorum religionem profitetur, alter alterum repetere non potest.
>
> Idem I. Moniali monasterii de Plauda.
>
> Dudum a C. laico mota contra te, quam uxorem suam dicebat, materia quaestionis, R. sanctae M. in Cosmidin diaconum cardinalem dedimus auditorem. Coram quo dictus C. conquerendo proponens, quod indebite recusabas eidem, cuius uxor eras per consensum de praesenti et carnis copulam subsecutam, matrimonialiter adhaerere, te sibi restitui postulavit. Ad quod fuit responsum, quod ipse pro animae suae remedio pura et spontanea voluntate, praesentibus duobus religiosis sacerdotibus, et adhibitis quinque testibus fide dignis, omni iuri, quod in te habuerat, renunciavit omnino, resignando illud in manibus alterius ex sacerdotibus supra dictis, qui in personam ecclesiae resignationem huiusmodi recipere procuravit, et quod idem C. se castitatem servaturum promisit, pauperumque hospitalis de Ponte obsequio se devovit, promittens voto solenni omnia et singula supra dicta, et tribuens tibi licentiam ad monasterium transeundi, te versa vice similiter promittente, ac tribuente illi licentiam, et ius quodlibet resignante : sicut haec omnia dicebantur per publicum instrumentum esse probata, manu B. notarii Aretinensis confectum. Verum praenominatus C. proposuit, quod, casu amisso instrumento praefato, illud in prima persona, quod prius erat in tertia, insertis pluribus in uno, aliter quam in alio fuit ab ipso formatum. Et quum tibi iratus fuisset, sicut verba et verbera indicabant, nondum calore iracundiae quiescente, quidam ipsum deceptorie allexerunt, proponentes eidem, quod in hospitali praedicto cibis ad libitum posset uti, ac proprium retinere, praefato B. sibi nihilominus promittente, quod non solum ardorem, sed etiam appetitum libidinis exstingueret in eodem : propter quod quicquid in hac parte fecisse dignoscitur, iratus, seductus pariter et illectus, et sub spe

promissionis, ac sub ea conditione vel modo, si posset continentiam observare, asseruit a se factum. Sed ad ista respondebatur econtra, quod, an tabellio in tertia persona instrumentum conficiat, vel in prima, dummodo non mutetur substantia veritatis, nihil interesse videtur. Insuper, quamvis aliquando spes memorato C. data fuisset, per quam ad hoc se proposuit inductum, eo tamen tempore, quo talia facta fuerunt, pure, simpliciter ac voluntarie, pro amore Dei et remedio animae suae solummodo ad votum et ad alia supra dicta noscitur processisse. Propter quod a consortio saecularium hominum debet discedere, vitamque mutare, quum se illius aetatis esse proponat, ut sine suspicione incontinentiae non valeat in saeculo remanere. Nos itaque, habito fratrum nostrorum consilio, te ab impetitione dicti C. sententialiter duximus absolvendam, perpetuum illi super hoc silentium imponentes.

Chapter XXI

Latin source headnote: It is brief, but in other words it can be summarized thus: After a sentence of separation from the marital bed, rendered on account of the husband's spiritual fornication, the wife can freely enter religion.

The same.

A woman who remained in the faith can, against the will of her husband who returns from the infidelity on account of which she had been separated from him by the judgment of the church, freely fly to religion.

Breve est, sed per alia verba sic potest summari: Post sententiam divortii quoad torum, latam ob fornicationem spiritualem mariti, potest uxor libere religionem intrare.

Idem.

Mulier, quae in fide remansit, potest, nolente viro, qui ab infidelitate revertitur, propter quam ab eo fuerat iudicio ecclesiae separata, ad religionem libere convolare.

Title XXXIII: On the Conversion of Infidels

Chapter I

Latin source headnote: No one can have as wife the woman whose husband he killed through the machination of the woman herself; it is otherwise if he acted without machination. And it is a beautiful and everyday case.

Celestine III.

A laudable—(*And below:*) *But as for what* you asked concerning Saracens who, while they were in captivity, killed the husbands of certain Christian women through the plots and machinations of those women—whether, because they were afterward converted through the women themselves to the Christian faith, they can by law take them as wives, or, if they have taken them, whether *the* marriage of the same persons holds—we are here content with the rule of the Council of Tribur, which asserts that, if the women maliciously machinated the death of their *husbands*, although by their zeal the Saracens approached the *ecclesiastical* faith, nevertheless they ought neither to adhere to them nor, if they have even adhered, are they to be tolerated. *For a dispensation could not be admitted here without peril*, since the church is unwilling to compensate such a loss by such a gain.

In addition to this, certain Saracens *who* are noted to have killed Christians in war, and Christians likewise Saracens, but afterward the Saracens, converted *from the error of paganism* to the *catholic* faith, joined to themselves in marriage the wives of those whom they killed in the contest of war; and Christians are known to have done the same with Saracen women converted to the faith. *Nevertheless, those women,* after they learned the truth concerning the death of their former husbands, insistently demand judicial separation. In these matters, therefore, we answer that, since such persons did not procure the destruction of the deceased husbands, marriage can lawfully be contracted between persons of this kind, and those joined in this manner, *of whichever sex they may be,* cannot seek judicial separation *after the death of their spouses*.

Indeed, the same law will apply in the following case that you took care to propose. When S., a Christian man, denied Christ because of hatred for his wife, joined a pagan woman to himself, and begot sons by her, the Christian woman, abandoned in reproach of Jesus Christ, flew to second nuptials with the assent of her archdeacon and received sons from them. For it does not appear to us that, if the first husband returns to ecclesiastical unity, she ought to withdraw from the second and be restored to the first, especially since she is seen to have departed from him by the judgment of the church, and, as Gregory bears witness, insult to the Creator dissolves the law of marriage with respect to the one who is abandoned from hatred of the Christian faith. Moreover, whether the woman can, against the will of the first husband who has returned to the faith, return to the monastic life; or whether he, having returned, can, after the death of the first wife, have as wife the woman whom he joined to himself by the pagan rite and who on account of him was converted to our faith with her children; and whether the children begotten before conversion are to be held legitimate by virtue of the nuptials that after conversion were celebrated by the ecclesiastical rite; and similarly whether the children of her who, with the license of her archdeacon, married a catholic man while her first husband was alive but had become an infidel, are to be held legitimate—the rule as well as the teaching of the Apostle, by which it is said, "If the unbeliever departs, let him depart; for a brother or sister is not subject to servitude of this kind," and likewise that decree of the aforesaid Gregory, "It is not a sin if one dismissed on account of God has joined herself to another; for the unbeliever, in departing, sins both against God and against marriage," and, moreover, the fact that our predecessor Alexander III of good memory spoke thus, "So great is the force of marriage that those who were begotten beforehand are held legitimate after marriage has been contracted," do not permit us to doubt in matters of this kind that in these cases free access lies open to the one wishing to migrate to religion; that he who returns to the faith can lawfully join to himself the woman who was converted, after the first wife has died; and that the children also are to be deemed legitimate in each of the two aforesaid cases. Moreover, etc. [*cf. c.* 27, *On Witnesses, II.* 20.]

DE CONVERSIONE INFIDELIUM.

Non potest quis illam habere in uxorem, cuius maritum occidit machinatione ipsius mulieris; secus, si sine machinatione. Et est pulcher et quotidianus casus.

Coelestinus III.

Laudabilem (*Et infra:*) *Ceterum quod* Interrogasti de Sarracenis, qui, dum in captivitate essent, quarundam Christianarum viros earum insidiis et machinationibus occiderunt, utrum, quia postea per ipsas ad fidem Christianam conversi sunt, eas de iure possint accipere in uxores, vel, si duxerint, *ipsum* coniugium teneat eorundem : hic Triburiensis concilii regula contenti sumus, asserentis, quod, si in mortem ipsorum *virorum* malitiose fuerint machinatae, licet earum studio ad *ecclesiasticam* fidem accesserint, tamen nec eis adhaerere debent, nec sunt, si adhaeserint etiam, tolerandi. *Non enim hic dispensatio sine periculo posset admitti,* quum tale damnum tali lucro ecclesia compensare non velit. Ad hoc Sarraceni quidam, *qui* in bello sunt Christianos interfecisse notati, et Christiani similiter Sarracenos,

postea vero Sarraceni, ad *catholicam* fidem *a gentilitatis errore* conversi, uxores eorum quos in belli certamine occiderunt, sibi matrimonialiter copularunt, et id ipsum Christiani de Sarracenis mulieribus conversis ad fidem fecisse noscuntur : quae *tamen*, postquam de priorum virorum morte compererint veritatem, divortium instanter exposcunt. In his igitur respondemus, quod, quum tales non procuraverint virorum interitum defunctorum, matrimonium inter huiusmodi personas licite potest contrahi, et taliter copulati, *cuiuscunque sexus exsistant*, divortium *post mortem coniugum* nequeunt postulare. *Idem si quidem iuris erit in sequenti casu, quem proponere studuisti, quum S. Christiano viro propter odium uxoris Christum negante et sibi copulante paganam et ex ea filios procreante Christiana in opprobrium Iesu Christi relicta, cum assensu archidiaconi sui ad secundas nuptias convolavit et filios suscepit ex ipsis; non enim videtur nobis, quod si prior maritus redeat ad unitatem ecclesiasticam, eadem a secundo debeat recedere et resignari priori, maxime quum ab eo visa fuerit ecclesiae iudicio discessisse et teste Gregorio contumelia creatoris solvat ius matrimonii circa eum qui relinquitur odio fidei Christianae. Quod autem mulier possit primo viro qui ad fidem reversus est nolente ad vitam monasticam remeare, vel utrum ille reversus ad eam, quam ritu gentili sibi coniunxit, et quae propter eum ad fidem nostram cum liberis suis est conversa, mortua prima possit habere uxorem, et an filii ante conversionem geniti obtentu nuptiarum, quae post conversionem ritu ecclesiastico celebratae fuerunt, et similiter si filii illius, quae cum licentia archidiaconi sui marito priore vivente sed facto infideli nupsit viro catholico, legitimi sint habendi, tam regula quam doctrina Apostoli, qua dicitur: "si infidelis discedit discedat; non enim frater aut soror subiectus est in huiusmodi servituti, "quam illud decretum memorati Gregorii: "non est peccatum dimisso propter Deum si alii se copulaverit; infidelis enim discedens et in Deum peccat et in matrimonium; "nihilominus, quod praedecessor noster bonae memoriae Alexander III. ita dixerit: "tanta est vis matrimonii, ut qui antea sunt geniti post contractum matrimonium legitimi habeantur: "Nos in huiusmodi dubitare non sinunt, quin in his et liber aditus pateat ad religionem migrare volenti, et ille qui ad fidem revertitur, eam, quae conversa est defuncta prima sibi licite possit copulare, filii etiam in supradicto utroque casu legitimi censeantur. Praeterea etc.* [*cf. c.* 27. *de test. II.* 20.]

Chapter II

Latin source headnote: If one of two unbelieving spouses comes to the faith while the other remains in the error of unbelief, their common child is assigned to the convert.

Gregory IX, to the Bishop of Strasbourg.

We learned from your letters [*that a question of this kind had been brought to your synod*]: a certain man, brought from the error of Jewish blindness to Christ, the true light [*and the way of truth*], having left his wife in Judaism, insistently petitioned in court that their four-year-old son be assigned to him, to be brought to the catholic faith that he himself had received. To this she answered that, since the boy is still an infant, on account of which he needs maternal solace more than paternal, and is known to have been burdensome to her before birth, painful in birth, [*and*] laborious after birth, and since from this the lawful union of male and female is called marriage, as if "motherage," rather than "fatherage," the said boy ought more fittingly to remain with her [*than to pass to the father newly brought to the Christian faith, or at least to follow neither before he reaches lawful age. Many other things having been alleged on each side, you, meanwhile retaining the aforesaid boy in your power, wished to consult us as to what you should do in this case.*]

But since a son is constituted in the power of his father, whose family he follows, and not that of his mother; and at such an age one ought not remain with persons concerning whom there can be suspicion that they would plot against his salvation or life; and boys after their third year ought to be nourished and remain with a father who is not suspect; and the boy's mother, if it should happen that he remained with her, could [*easily*] lead him to the error of unbelief—we answer [*your fraternity*],

especially in favor of the Christian faith, that the same boy is to be assigned to the father. [*Given at Perugia, on the seventeenth day before the Kalends of June, in the second year.* 1229.]

Si alter infidelium coniugum venit ad fidem, altero remanente in infidelitatis errore, communis proles assignatur converso.

Gregorius IX. Argentinensi Episcopo.

Ex literis tuis accepimus, [*perlatam fuisse ad synodum tuam huiusmodi quaestionem*], quod quidam de Iudaicae caecitatis errore ad Christum verum lumen [*et viam veritatis*] adductus, uxore sua in Iudaismo relicta, in iudicio postulavit instanter, ut eorum filius quadriennis assignaretur eidem, ad fidem catholicam, quam ipse susceperat, perducendus. Ad quod illa respondit, quod, quum puer adhuc infans exsistat, propter quod magis materno indiget solatio quam paterno, sibique ante partum onerosus, dolorosus in partu, [*ac*] post partum laboriosus fuisse noscatur, ac ex hoc legitima coniunctio maris et feminae magis matrimonium quam patrimonium nuncupetur, dictus puer apud eam debet convenientius remanere, +[*quam apud patrem ad fidem Christianam de novo perductum transire debebat, aut saltem neutrius sequi, priusquam ad legitimam aetatem perveniat. Hinc inde multis aliis allegatis: tu autem praedicto puero medio tempore in tua potestate retento, quid tibi faciendum sit in hoc casu nos consulere voluisti.*] Quum autem filius in patris potestate consistat, cuius sequitur familiam, et non matris, et in aetate tali quis non debet apud eas remanere personas, de quibus possit esse suspicio, quod saluti vel vitae insidientur illius, et pueri post triennum apud patrem non suspectum ali debeant et morari, materque pueri, si eum remanere contingeret apud eam, [*facile*] posset illum adducere ad infidelitatis errorem : [*fraternitati tuae*] in favorem maxime fidei Christianae respondemus, patri eundem puerum assignandum. [*Dat. Perusii XVII. Kal. Iun. A. II.* 1229.]

Title XXXIV: On a Vow and the Redemption of a Vow

Chapter I

Latin source headnote: Vows can be redeemed by alms or commuted into something else, with the authority of a superior intervening and a just cause for redeeming or changing them.

Alexander III, to the Bishop of Exeter.

Concerning vows of pilgrimage *also*, whether they can be redeemed by alms or commuted into something else on account of necessity, we answer *you* that it depends upon the judgment of the one who presides, so that he may consider more diligently *and attend to* the quality of the person and the cause of the commutation—namely, whether *this happens* from infirmity or an abundance of riches, whether the pilgrimage rests upon another probable cause, or whether a recompense would be better and more acceptable to God—and according to this he ought to dispense concerning it.

DE VOTO ET VOTI REDEMPTIONE.

Vota possunt eleemosynis redimi, vel in aliud commutari, intercedente superioris auctoritate, et iusta causa redimendi vel mutandi.

Alexander III. Exonensi Episcopo.

De peregrinationis *quoque* votis, an eleemosynis redimi possint vel pro necessitate in aliud commutari, *tibi* respondemus, quod ab eius, qui praesidet, pendet arbitrio, ut consideret diligentius *et attendat* qualitatem personae, et causam commutationis, scilicet an *id* ex infirmitate, seu affluentia divitiarum

contingat, an alia causa probabili peregrinatio, an recompensatio melior fuerit et Deo magis accepta; et secundum hoc debet exinde dispensare.

Chapter II

Latin source headnote: The Pope commutes a vow to go overseas, especially in the case of those who vowed at a boyish age.

The same, to the Bishop of Norwich.

We learned from the account of R., the *cleric* coming to us, that, *when he had been* constituted at a boyish age, he resolved to proceed to Jerusalem. He also gave his pledge to a certain *companion* of his, who had *likewise* proposed to visit the Lord's sepulchre, and received that man's pledge from him, that they would stand by one another on the way as faithful companions *and preserve good fellowship. He, indeed, turning the matter over with a solicitous mind, approached us so that we might disclose our counsel to him concerning it.* But we, *understanding that he labors under grave infirmity, as he asserts, and attending more diligently to the fact that his coming would confer little utility in the regions of the East, especially since it is not lawful for a cleric constituted within sacred orders to take up arms or devote himself to the shedding of blood*, absolve him from the vow that at a tender age he promised from facility rather than from the judgment of discretion, *and send him back absolved to his own place*, yet in such a way that he redeem the same vow with alms and, according to our counsel, throughout the whole time of his life ought to provide for one of Christ's poor, *both in food and in clothing*, provided his means suffice for this.

Commutat Papa votum ultramarinum, in his maxime, qui in puerili aetate voverunt.

Idem Norvicensi Episcopo.

Venientis ad nos R. *clerici* narratione accepimus, quod, *quum* in puerili aetate constitutus *fuisset* Hierosolymam disposuit proficisci, cuidam quoque *consocio suo*, qui *nihilominus* sepulcrum dominicum proposuerat visitare, fidem dedit, et suam recepit ab eo, quod sibi invicem in via socii fideles exsisterent, *+et bonam societatem servarent. Qui utique sollicita mente revolvens, ad nos accessit, ut sibi nostrum super hoc consilium aperiremus*. Nos autem *ipsum gravi infirmitate laborare, sicut asserit, intelligentes, et, quod in partibus orientis eius adventus parum utilitatis conferret, diligentius attendentes, praesertim quum non sit licitum, clericum infra sacros ordines constitutum arma sumere, vel sanguinis effusioni vacare*, ipsum a voto, quod in aetate tenera, facilitate potius quam ex arbitrio discretionis promisit, absolvimus, *et ad propria remittimus absolutum*, ita tamen, quod idem votum eleemosynis redimat, et iuxta consilium nostrum toto vitae suae tempore uni pauperum Christi, *tam in victu quam in vestitu*, dummodo ad hoc suae facultates sufficiant, debeat providere.

Chapter III

Latin source headnote: From the conception alone of a good to be carried out, no one is bound to execute the good conceived.

The same, to Master A. of Mandeforde.

We have *long since known your learning and prudence through the report of fame, and we wish and ought to consult your salvation the more attentively, the more, in consideration of your honorable conduct and life, we embrace your person with the arms of more fervent charity. It was reported to our ears on your part that*, when you had been terrified by excessive fear of death as a result of a certain bloodletting, you uttered these words *to yourself*: "I shall not remain here long," proposing in your mind that at some time you would

assume the religious habit. *But on account of frequent infirmities, which very greatly impede the strictness of religious life, and because you exhibit hospitality to travelers and furnish many salutary things, you have not yet fulfilled in deed what you once conceived in mind, and through this you doubt whether you ought to be called to account in the strict examination for the broken faith of a vow.* Therefore, *although we do not believe that what the canons establish in matters of this kind is hidden from your prudence, in response to your consultation* we answer *briefly what we think, commanding by the signification of the present letters* that, if no further progress was made in the vow *than we have said above*, you cannot be judged a transgressor *even* if you do not fulfill what you said. *We admonish your prudence more attentively, however, and exhort you to do that which you know will conduce more to your salvation and, remaining mindful of your condition, to hold firmly in memory that Lot, when he feared the ascent of the mountain, sought and received the little city of Zoar.*

> Ex sola conceptione boni explicandi non obligatur quis ad bonum conceptum exsequendum.
>
> Idem Magistro A. de Mandeforde.
>
> Literaturam tuam +*et prudentiam iam dudum referente fama cognovimus, et saluti tuae tanto attentius consulere volumus et debemus, quanto personam tuam consideratione tuae honestae conversationis et vitae ferventioris caritatis brachiis amplectimur. Relatum est auribus nostris ex parte tua, quod,* Quum ex quadam minutione nimio fuisses mortis pavore perterritus, haec verba *tecum* protulisti : " non diu hic morabor, " proponens in animo, quod religionis habitum esses aliquando suscepturus. +*Sed propter frequentes infirmitates, quae plurimum vitae religiosae districtionem impediunt, et quia transeuntibus hospitalitatem exhibes, et plura salutaria impendis, quod concepisti olim in animo opere nondum implevisti, ac per hoc dubitas, ne pro fracta fide voti in districto debeas examine conveniri*. Tibi igitur, *licet prudentiam tuam latere non credamus, quid canones in huiusmodi statuant, consulenti* respondemus *breviter quod sentimus, praesentium significatione mandantes*, quod, si plus non est in voto processum, *quam praediximus*, transgressor iudicari non poteris, *et* si non impleas quod dixisti. *Monemus autem prudentiam tuam attentius et hortamur quatenus id facias quod tuae saluti amplius cognoveris provenire et conditionis tuae memor exsistens memoriter teneas, quod Loth dum montis timeret ascensum, Segor civitatem parvulam petiit et accepit*.

Chapter IV

Latin source headnote: Every vow can be changed into a vow of religion.

The same.

It is *declared by the testimony of sacred scripture that a spiritual man does not change his purpose when he meditates upon something more useful for the salvation of his soul. Hence it is that, inclining to your just petitions, we have granted you that, if anyone has proposed to visit the Lord's sepulchre or other shrines of the saints and, upon the occurrence of infirmity or another reasonable cause, wishes to assume the religious habit among you and serve God, you may be able freely to receive such persons.* One who is known to change temporal service into perpetual observance of religion is in no way held guilty of a broken vow.

> Omne votum mutabile est in votum religionis.
>
> Idem.
>
> Scripturae +*sacrae testimonio declaratur, quod spiritualis homo propositum non mutat, quum pro salute animae suae utilius aliquid meditatur. Inde est, quod, vestris iustis postulationibus inclinati, vobis indulsimus, quatenus, si quis sepulcrum dominicum vel alia sanctorum limina proposuerit visitare, et infirmitate vel alia rationabili causa occurrente apud vos habitum religionis assumere atque Deo servire voluerit, libere eos recipere valeatis*. Reus fracti voti aliquatenus non habetur, qui temporale obsequium in perpetuam noscitur religionis observantiam commutare.

Chapter V

Latin source headnote: Execution of a vow to go overseas can for cause be deferred by authority of the Pope.

Innocent III, to the Archbishop of Esztergom.

One is not to be called a transgressor of a vow who, by authority of the Apostolic See, *yet for a just cause*, deferred fulfilling what he vowed. Indeed, *our dearest son in Christ Henry, the illustrious* King of Hungary, signified to us that, since he has perceived that your counsel and aid have until now profited him amid the disturbance of the kingdom, it would derogate not a little from his utility if you were to proceed to Jerusalem, as you are bound by vow, while the kingdom remains unpacified. *Since, therefore, it is incumbent upon us to think solicitously about the honor of the king himself and the condition of the Kingdom of Hungary, by apostolic writings* we command your fraternity that you not begin the journey to Jerusalem before the kingdom itself has, *by the Lord's agency*, been restored to its former tranquility, or you have received a mandate concerning this from the Apostolic See. [*Given at the Lateran.* 1198.]

> Exsecutio voti ultramarini auctoritate Papae potest ex causa differri.
>
> Innocentius III. Strigonensi Archiepiscopo.
>
> Non est voti dicendus transgressor, qui quod vovit *de* auctoritate sedis apostolicae, *iusta tamen ex causa*, distulit adimplere. Sane, significavit nobis *carissimus in Christo filius noster Henricus illustris* rex Hungariae, quod, quum in regni perturbatione consilium et auxilium tuum sibi senserit hactenus profuisse, utilitati eius non modicum derogaret, si Hierosolymam, sicut ex voto teneris, regno pergeres impacato. +*Quum igitur nobis immineat de honore ipsius regis et statu regni Hungariae sollicite cogitare, fraternitati tuae per apostolica scripta* mandamus, quatenus non prius iter arripias Hierosolymam adeundi, quam regnum ipsum fuerit tranquillitati pristinae *faciente Domino* restitutum, vel super hoc receperis ab apostolica sede mandatum. [*Dat. Laterani.* 1198.]

Chapter VI

Latin source headnote: The church compels a lay heir, through excommunication and deprivation of goods, to execute a vow to go overseas to which he obligated himself on behalf of the deceased.

The same, to Duke Andrew.

Although all have free choice in vowing, *and necessity has no place in vows, but will does*, nevertheless fulfillment after a vow is necessary to such a degree that no one may withdraw *from those things that he spontaneously and solemnly promised* without loss to his own salvation. Indeed, we learned that, when *B. of illustrious memory, formerly* King of Hungary, your father, acting in his last moments, entrusted to your fidelity, under threat of a paternal curse, the execution of the vow that he had vowed to the Lord —to visit the province of Jerusalem with a mighty hand *and outstretched arm*, yet with a humble *heart* and *humbled spirit*—you, *having understood the pious will of your parent*, assumed the sign of the cross and promised that you would fulfill it without any delay. *But, after your same father was removed from your midst, although you feigned that you were beginning the journey to Jerusalem, forgetful of the pilgrimage undertaken, you turned against your brother and the Kingdom of Hungary the battle line that you ought to have directed against the enemies of the cross, and, employing the counsel of evil men, committed many things against the royal serenity. But we, whom in these days the Lord, though undeserving, has called to the pontifical office, wishing to consult both the peace of the Kingdom of Hungary and your salvation, ask, admonish, and exhort your nobility in the Lord, and by apostolic writings directing* you, we command that, laying aside other concerns, no later

than the next approaching feast of the Exaltation of the Holy Cross, discharging the debt of the cross you received, you begin the proposed journey and humbly pursue it, lest, if on any occasion you refuse the burden enjoined upon you by your father and spontaneously undertaken by you, you render yourself unworthy of the paternal succession and be deprived of the advantage of the inheritance whose burdens you refused to support; knowing that from then you will lie under the bond of anathema and are to be deprived of the right that, if the said king were to die without offspring, belonged to you in the Kingdom of Hungary by order of birth, and that the kingdom itself, appeal being set aside, is to devolve upon your younger brother. [*Given at the Lateran, on the fourth day before the Kalends of February.* 1198.]

> Ecclesia compellit heredem laicum per excommunicationem et bonorum subtractionem ad exsecutionem voti ultramarini, ad quod se obligavit pro defuncto.
>
> Idem Andreae Duci.
>
> Licet universis liberum sit arbitrium in vovendo, *nec necessitas in votis locum habeat, sed voluntas*, usque adeo tamen solutio necessaria est post votum, ut sine proprio salutis dispendio alicui non liceat resilire *ab his, quae sponte ac solenniter repromisit*. Accepimus siquidem, quod, quum *inclytae recordationis B. quondam* rex Hungariae, pater tuus, agens in extremis, votum, quod voverat Domino, Hierosolymitanam provinciam in forti manu *et brachio extenso*, humili *tamen* corde *et humiliato spiritu* visitare, sub interminatione maledictionis paternae commiserit tuae fidei exsequendum, et tu, *intellecta pia voluntate parentis*, assumpto crucis signaculo, te id impleturum sine dilatione qualibet promisisti. *+Verum, eodem patre tuo sublato de medio, quum Hierosolymitanum iter te arripere simulasses, assumptae peregrinationis oblitus, quam contra inimicos crucis dirigere debueras, in fratrem tuum et regnum Hungariae convertisti aciem bellatorum, et multa contra serenitatem regiam malignorum usus consilio commisisti. Nos autem, quos diebus istis ad pontificatus officium, licet immeritos, Dominus evocavit, tam paci regni Hungariae, quam tuae volentes saluti consulere, nobilitatem tuam rogamus, monemus et exhortamur in Domino, ac per apostolica tibi scripta praecipiendo* Mandamus, quatenus, postpositis ceteris sollicitudinibus, neque ad festum exaltationis sanctae Crucis *proximo venturum* debitum acceptae crucis exsolvens, propositum iter arripias et humiliter prosequaris, ne, si onus tibi a patre iniunctum et a te sponte susceptum occasione qualibet detrectaveris, paterna te reddas successione indignum, et hereditatis emolumento priveris, cuius recusaveris onera supportare; sciturus, extunc anathematis te vinculo subiacere, et iure, quod tibi, si dictus rex sine prole decederet, in regno Hungariae competebat ordine geniturae, privandum, et regnum ipsum ad minorem fratrem tuum appellatione postposita devolvendum. [*Dat. Lat. IV. Kal. Febr.* 1198.]

Chapter VII

Latin source headnote: The Pope commutes a vow to go overseas into vigils, prayers, and fasts, especially when the cause that induced the vowing has ceased; in such a way also that the expenses to be incurred in going, remaining, and returning are sent in full for the aid of the Holy Land.

The same, to the Bishop of Troyes.

We believe it to be [*a judgment of great devotion and a proof of your sincere faith in Christ that, so that you might consecrate your last years to the Lord, neither the inconveniences of old age already approaching, nor the dangers of the way, nor the doubtful faith and constant inconstancy of the sea terrified you from resolving, for the salvation of your soul, the liberty of the church of Troyes, and devotion to the land of the Lord's nativity, to visit the province of Jerusalem.*]

For when the church of Troyes, *as we learned from your account*, was burdened contrary to ecclesiastical liberty by *undue* straits and oppressions, and you believed that the same church could not easily be aided through anyone other than *H., formerly* Count of Champagne, *then* constituted in the regions overseas, *trusting in the liberality of him who, if you approached him, you believed would humbly provide for you concerning the necessities of your church*, contrary to the counsel of your dear ones you proposed to approach him, and as a sign of pilgrimage and devotion to the eastern land you assumed the Lord's cross. [*Moreover, although, so that you might not appear empty in the sight of the Lord but carry with exultation some sheaves with you into the Lord's threshing floor, you delivered a sermon to the people so that some, having assumed the sign of the cross with you, would undergo the burden of the journey, scarcely one among all appeared who would receive and fulfill the word with you. But you, so that you might close your laudable purpose with a better end, began the way and, when you had reached Piacenza, received sad reports concerning the death of the same count. Nevertheless, concealing your fear on account of your household, you advanced into Tuscany and encountered certain familiars of yours who wished to recall you from the journey even against your will, asserting that your journey was expedient neither for you nor for the regions overseas, since, with all the French returning from there, that land had remained in the hands of the Germans to be defended.*]

Although, upon hearing of the death of the same *count, you conceived immeasurable sadness* and perceived that your *principal* intention was now frustrated, you were nevertheless unwilling to return to your own place without the counsel of the Apostolic See, *which by the Lord's disposition is the mother and teacher of all the faithful*. But, *afterward* entering the City *and constituted in our presence*, you humbly explained to us the purpose of your intention and the condition of the church of Troyes, *seeking with devotion our counsel and that of our brothers. Our venerable brother the Archbishop of Sens, your metropolitan, also intimated to us once and again through his letters the condition of the church of Troyes and the loss that it could incur from your absence. On account of this we resolved to deliberate with our brothers whether we should show mercy to the same church of Troyes by sending you back to exercise solicitude for it, or whether, as you were bound by vow, we should permit you to complete the journey begun, and which of these two would be more expedient both for your salvation and for the eastern land.*

And indeed we thought that three things principally ought to be attended to in this business: *what is lawful, what is fitting, and what is expedient*—what is lawful according to equity, what is fitting according to honor, and what is expedient according to utility. Indeed, it did not appear lawful for you to have come contrary to the vow *and so laudable a purpose*, since the prophetic voice cries: "Vow and render to the Lord your God," so that the first is referred to counsel and the second *to* command; *and in the Gospel: "Render to God the things that are God's." For it is not doubtful that this vow belongs to God, to whom you had obligated yourself by vowing.* Nor did it appear fitting *in any way*, since it is written in the Gospel: "No one putting *his* hand to the plough and looking back is fit for the kingdom of God"; *and in Genesis the wife of Lot, who looked back, is read to have been turned into a statue of salt; and in the Acts of the Apostles Ananias and Sapphira, who went backward lying to the Holy Spirit, are written to have been successively carried dead from the sight of the prince of the Apostles.*

Moreover, it did not appear *in any way* expedient, since from your absolution, *if it were made*, scandal could be generated in the minds of laypersons, saying, "Where is the God of the clerics?" and believing by this example that they were not bound to observance of a vow *that they saw laid aside by the rulers of churches with the authority of the Apostolic See, through which it would happen that grave loss came to the eastern land.* For what is done by prelates is easily drawn into an example by subjects, according to

what the Lord says to Moses in Leviticus: "If the priest who is anointed sins, he will cause the people to transgress."

But the failing and gray hair of a life growing old, which can scarcely tolerate their own labors and pains *even at rest*, alleged the contrary, as did the sighs of the church of Troyes, to which you are bound by the bond of pastoral solicitude and without whose assent you perhaps ought not to have emitted the vow of pilgrimage; *and the insistence of your said metropolitan, who solicitously invited us to have mercy upon the church of Troyes, induced us not a little toward the contrary part.* The vow itself also, which in its form was holy and honorable, appeared less lawful from the person of the one vowing, *because, although it has wings with which it strives to fly away, they are nevertheless so bound by the bonds of the one presiding that they do not have free flight without his permission.* For since, according to canonical institutes, a cleric ought not make pilgrimage without the license of his bishop, and a bishop is no less—indeed, rather more—bound to the Apostolic See, it could deservedly appear that without its general or special license you ought not to have emitted a vow of pilgrimage by which you would be absent for so long.

The vow itself also appeared less expedient for the eastern land, which in the necessity of the pressing crisis requires the aid of fighters more than the ministry of clerics, whom both office and lack of practice render unwarlike. For although that land vehemently needs your prayers and those of others, nevertheless, since the word of God who says, "The hour comes, and now is, when neither on this mountain nor in Jerusalem will you adore the Father," has now been fulfilled, and below, "God is spirit, and those who adore him must adore in spirit and truth," it could appear that by pious prayers before God you would profit no less in your church than in the eastern land in those things that you would justly and humbly petition for its liberation. And would that you could ascend the mountain with Moses, so that, while you prayed with hands extended, Joshua, fighting in the wilderness, might overcome the Amalekites by the edge of the sword. It was also believed that it would profit the eastern land more if what you would have spent on procurations for yourself and your clerics were transferred, according to the judgment of some religious man, to the aid of the fighters.

Since, therefore, in the old law, in which the precept of the Lord bound no less than a vow binds today in the church, of the firstborn that were commanded to be offered to the Lord some were rendered to the Lord, as the firstborn of the Levites; some were redeemed, as those of the other tribes; and some were commuted into another thing, as the firstborn of an ass, which was commuted for a sheep—attending from this to the fact that a vow can *also* be commuted into another work of piety, *especially since our predecessor Pope Alexander of good memory, when asked, answered that a vow of pilgrimage can also be redeemed or commuted into another thing*, not caring that the mouth of those speaking iniquities should speak, provided that we do not withdraw from the path of truth, *since according to the Apostle our glory is the testimony of our conscience, and not caring for scandal, especially because we proceed not in darkness but in light*, secure in the authority of him who, when he heard from the disciples, "*Do you not* know that the Pharisees, having heard this word, were scandalized?" answered, "Let them alone; they are blind and leaders of the blind"; *and according to the Apostle, "If I pleased men, I would not be the servant of Christ"*—we grant you, for yourself and *six* of your servants, *by the common counsel of our brothers and of the archbishops, bishops, and other prudent men whom by the mercy of God we had many present with us*, license to commute the vow of pilgrimage in such a way that you entrust to some religious man *all* the expenses that you would have incurred in going, remaining, and returning, to be transferred without any diminution to the necessary uses of that land. *For thus you will profit the eastern province, which in the*

crisis of pressing necessity needs your goods more than you, by your assistance, and we provide more usefully for the church of Troyes by your presence and governance, and through this your soul will be consulted more salutarily.

You shall also recompense labor with labors, insisting more solicitously upon vigils, devoting yourself more devoutly to prayers, and exercising yourself more strongly in fasts, *and watching over your flock with pastoral solicitude*. Moreover, this specially induced us to make this indulgence for you *from the benignity of the Apostolic See*: that *your journey now did not appear fruitful to the province overseas, from which almost all the French had returned; and*, since you had principally emitted the vow of pilgrimage for *the salvation of your soul and* the liberty of the church of Troyes to be obtained through the said count, after he was removed from your midst, because the causes ceased, the effect could also cease more easily. [*Therefore let no one, etc. Given at the Lateran, on the Ides of March.* 1198.]

> Commutat Papa votum ultramarinum in vigilias, orationes et ieiunia, tunc maxime, quum cessat causa, quae induxit ad vovendum; ita etiam quod expensae fiendae in eundo, morando et redeundo, integraliter mittantur in terrae sanctae subsidium.
>
> Idem Trecensi Episcopo.
>
> Magnae devotionis +[*iudicium et sincerae in Christo tuae fidei esse credimus argumentum, quod, ut novissima tua Domino consecrares, nec senectutis iam imminentis incommoda, nec discrimina viae, nec dubia fides et constans inconstantia pelagi terruerunt, quin pro salute animae tuae, ac libertate Trecensis ecclesiae et devotione terrae nativitatis Domini Hierosolymitanam provinciam disponeres visitare.*] Quum *enim* Trecensis ecclesia, *sicut ex tua relatione didicimus*, contra libertatem ecclesiasticam *indebitis* gravaretur *angustiis et pressuris*, nec per alium, quam per *H. quondam* Campaniae comitem, *tunc* in ultramarinis partibus constitutum, eidem ecclesiae crederes posse de facili subveniri, *confisus de liberalitate ipsius, quem, si ad eum accederes, tibi super necessitatibus ecclesiae tuae credebas humiliter provisurum, praeter consilium carorum tuorum* ad ipsum proposuisti accedere, ac in signum peregrinationis et devotionis terrae orientalis crucem dominicam assumpsisti. +[*Licet autem, ut non vacuus in conspectu Domini appareres, sed aliquos tecum manipulos in aream Domini cum exsultatione deferres, sermonem ad populum feceris, ut aliqui tecum assumpto crucis signaculo subirent itineris gravitatem, vix unus inter omnes apparuit, qui verbum tecum reciperet et impleret. Tu vero, ut laudabile propositum fine clauderes meliori, viam aggressus, quum Placentiam pervenisses, super morte ipsius comitis tristes recepisti rumores. Propter familiam tamen dissimulato timore progressus in Tusciam, quosdam familiares tuos obvios habuisti, qui te volebant invitum etiam ab itinere revocare, asserentes, iter tuum nec tibi nec ultramarinis partibus expedire, quum, Gallicanis omnibus exinde redeuntibus, terra illa defensanda in Teutonicorum manibus remansisset.*] Quamvis autem audita morte ipsius *comitis immensam tristitiam concepisses, et praecipuam* intentionem tuam *esse* conspiceres iam frustratam, noluisti tamen sine consilio apostolicae sedis, *quae disponente Domino cunctorum fidelium mater est et magistra*, ad propria remeare. Sed ingressus *postmodum* Urbem, *et in nostra praesentia constitutus*, intentionis tuae propositum ac statum Trecensis ecclesiae nobis humiliter expressisti, +*nostrum et fratrum nostrorum consilium cum devotione requirens. Venerabilis etiam frater noster Senonensis archiepiscopus metropolitanus tuus statum Trecensis ecclesiae, ac dispendium, quod ex absentia tua incurrere poterat, semel et iterum per suas nobis literas intimavit, propter quod disposuimus deliberare cum fratribus nostris, an cum eadem Trecensi ecclesia misericordiam faceremus, te ad agendam ipsius sollicitudinem remittentes, an, sicut tenebaris ex voto, te iter arreptum perficere pateremur, et utrum horum tam saluti tuae quam terrae orientali potius expediret*. Et quidem tria praecipue duximus in hoc negotio attendenda, *quid liceat, quid deceat, quid expediat:* quid liceat secundum aequitatem, quid deceat secundum honestatem, et quid expediat secundum utilitatem. Sane, non videbatur contra votum *et tam laudabile propositum* licitum, ut venires, quum vox clamet prophetica : " Vovete et reddite Domino Deo vestro, " ut primum ad consilium, secundum *vero* ad imperium referatur, *et in evangelio:* "*Reddite quae sunt Dei Deo*. "*Votum enim istud non est dubium esse Dei, cui te obligaveras in vovendo*. Sed nec decens *quomodolibet* videbatur, quum sit scriptum in

evangelio : " Nemo mittens manum *suam* ad aratrum, et respiciens retro, aptus est regno Dei, " *et in Genesi uxor Loth, quae retro respexit, in salis statuam legatur fuisse conversa, et in actibus Apostolorum Anania et Saphira, qui abierunt retrorsum sancto Spiritui mentientes, a conspectu Apostolorum principis mortui scribantur successive delati*. Praeterea non videbatur *aliquatenus* expedire, quum ex absolutione tua, *si fieret*, scandalum posset laicorum mentibus generari, dicentium : " ubi est Deus clericorum? " et hoc exemplo credentium, se ad voti observantiam non teneri, *quod viderent per ecclesiarum rectores apostolicae sedis auctoritate deponi, per quod grave dispendium terrae orientali contingeret provenire*. Quod enim agitur a praelatis, facile trahitur a subditis in exemplum, iuxta quod Dominus inquit ad Moysen in Levitico : " Si sacerdos, qui est unctus peccaverit, faciet delinquere populum. " Verum aetatis vitae senescentis defectus atque canities, quae vix labores et dolores suos tolerare possunt *etiam in quiete*, in contrarium allegabant, et ecclesiae Trecensis suspiria, cui vinculo pastoralis sollicitudinis es ligatus, sine cuius assensu votum peregrinationis emittere forsitan non debueras, *+et dicti metropolitani tui, qui nos, ut Trecensis ecclesiae misereremur, sollicite invitabat, instantia nos in partem contrariam non modicum inducebant*. Ipsum etiam votum, quod ex sui forma sanctum et honestum erat, ex persona voventis minus licitum videbatur, *quod, licet pennas habeat, quibus satagat avolare, ita tamen adstrictae sunt nexibus praesidentis, ut liberum non habeant absque ipsius permissione volatum*. Quum enim iuxta canonica instituta clericus absque sui episcopi licentia peregrinari non debeat, et episcopus non minus, immo potius sedi apostolicae sit adstrictus, videri merito poterat, quod absque eius generali vel speciali licentia votum peregrinationis, qua te tamdiu absentares, emittere non deberes. *+Minus etiam votum ipsum terrae orientali videbatur expediens, quae plus pugnatorum subsidium, quam clericorum, quos et officium et dissuetudo reddit imbelles, ministerium in instantis articuli necessitate requirit. Quamvis enim orationibus tuis et aliorum terra illa vehementer indigeat, quia tamen iam impletum est verbum Dei dicentis: "Venit hora, et nunc est, quando nec in monte hoc, neque in Hierosolymis adorabitis Patrem, "et infra: "Spiritus est Deus, et eos, qui adorant eum, in spiritu et veritate oportet adorare: "videri poterat, quod non minus in ecclesia tua quam in orientali terra proficeres piis orationibus apud Deum in his, quae pro liberatione ipsius iuste ac humiliter postulares. Et utinam cum Moyse posses in montem ascendere, ut, te manibus extensis orante, Iosue pugnans in solitudine Amalechitas in ore gladii superaret. Credebatur etiam, quod terrae orientali magis accederet, si, quod in tuis et tuorum clericorum procurationibus fueras impensurus, secundum alicuius religiosi arbitrium transferretur in subsidium bellatorum*. Quum igitur in lege veteri, in qua non minus praeceptum Domini obligabat, quam votum hodie obliget in ecclesia, primogenita, quae Domino mandabantur offerri, quaedam Domino redderentur, ut primogenita Levitarum; quaedam redimerentur, ut aliarum tribuum; quaedam commutarentur in aliud, sicut primogenitum asini, qui pro ove commutabatur : ex hoc attendentes, quod votum *etiam* commutari possit in opus aliud pietatis, *praesertim quum bonae memoriae Alexander Papa praedecessor noster votum peregrinationis etiam redimi posse vel in aliud commutari responderit requisitus*, non curantes, quod os loquentium iniqua loquatur, dum tamen non recedamus a tramite veritatis, *quum secundum Apostolum gloria nostra sit testimonium conscientiae nostrae, et scandalum non curantes, praesertim, quia non in tenebris, sed in luce procedimus*, de illius auctoritate securi, qui, quum audisset a discipulis; " *Nonne* scis, quia Pharisaei, audito hoc verbo, scandalizati sunt? " respondit : " Sinite illos, caeci sunt, et duces caecorum : " *et iuxta Apostolum: "Si hominibus placerem, Christi servus non essem,* " tibi pro te et *sex* famulis tuis *de communi fratrum nostrorum et tam archiepiscoporum, quam episcoporum et aliorum prudentium consilio, quos per Dei misericordiam multos nobiscum praesentes habuimus*, licentiam concedimus, votum peregrinationis taliter commutare, ut *omnes* expensas, quas fueras in eundo, morando et redeundo facturus, alicui religioso committas, in necessarios usus terrae illius sine diminutione qualibet transferendas. *+Si enim et orientali provinciae, quae plus tuis quam te in articulo necessitatis instantis indiget, tua subventione proficies, et Trecensi ecclesiae tua praesentia et regimine utilius providemus, ac per hoc animae tuae salubrius consuletur*. Laborem etiam laboribus recompenses, sollicitius instando vigiliis, devotius vacans orationibus, et in ieiuniis fortius te exercens, *ac super grege tuo vigilans sollicitudine pastorali*. Ad hanc autem indulgentiam tibi *de benignitate sedis apostolicae* faciendam *id etiam* specialiter nos induxit, quod *iter tuum*

iam non videbatur ultramarinae provinciae fructuosum, a qua fere omnes Gallici remearant, et quum pro *salute animae tuae ac* libertate Trecensis ecclesiae per dictum comitem assequenda praecipue votum peregrinationis emiseris, eo sublato de medio, quia cessavere causae, facilius cessare potuit et effectus. [*Nulli ergo etc. Dat. Lat. Id. Mart.* 1198.]

Chapter VIII

Latin source headnote: To one temporarily impeded from executing a vow to go overseas a delay is granted; but upon one perpetually impeded a redemption is enjoined in that which is more expedient for the Holy Land.

The same, to the Archbishop of Canterbury.

Because you *resolved to consult the Apostolic See concerning those matters whose execution pertains to the pastoral office, we commend your fraternity in the Lord, hoping that, instructed through our response, you will execute them more diligently.* You asked *indeed* what is to be done by you concerning those who, having assumed the sign of the cross for the succor of the Holy Land, cannot usefully fulfill the vow *of pilgrimage* on account of infirmity, poverty, or another just cause, since *through apostolic writings* you received a mandate without distinction to compel, *through ecclesiastical censure with appeal removed*, those who cast aside the sign of the cross they had assumed to resume it and execute the vow, *notwithstanding any indulgence, if perhaps one had been obtained by surreption from our predecessor*.

We answer your inquiry in this manner: the weak and the poor approach that place more to its deficiency than to its advantage, since the former cannot fight and the latter are compelled to beg, unless perhaps they are nobles and magnates who bring fighters with them at their own expense, or craftsmen and farmers who can acquire necessities for themselves by their labors and minister aid to the land—although not many such persons are useful there on account of the smallness of the possessions and the fewness of the inhabitants. Hence we believe a distinction must be made between those who are believed to have a temporary cause of impediment and those who have a perpetual one: delay is to be granted to the former, but redemption is to be enjoined upon the latter; and, after the extent of their resources has been weighed, let them transmit for the aid of the Holy Land the expenses that they can make or would have made, the labor of the persons also having been compensated, executing through others what they cannot fulfill through themselves.

Again, between those who emit a vow of pilgrimage for the defense of the Holy Land and those upon whom a journey of pilgrimage is enjoined in satisfaction for their crimes, we believe a distinction must be made: concerning the former, the succor of the Holy Land, and concerning the latter, the labor of the journey, ought to be attended to more according to the intention of the one vowing or doing penance. Hence, if one vowing in this manner is useless for fighting, although fit for going, it is better to redeem the vow than to consume the expenses. This can properly be understood also of a penitent who on account of weakness cannot fulfill the journey of pilgrimage enjoined; but not of one who, although powerless to fight, is nevertheless able to go. *Moreover, diligent discretion is to be applied concerning these matters, lest anything through entreaty or payment, love or hatred, or any occasion whatever be attempted in any way against the salvation of the soul or the utility of the land. Hence we wish that a dispensation of this kind be provided through religious and provident men.*

Concerning women, moreover, we believe this is to be observed: that those who are unwilling to remain should follow their husbands *as they go*; but the others, unless perhaps they are rich women

who can take fighters with them at their own expense, should redeem the vow that they vowed, *the others having each been diligently induced according to their own means to aid the Holy Land*.

> Impedito ad tempus exsequi votum ultramarinum conceditur dilatio; perpetuo vero impedito indicitur redemptio in eo, quod magis expediat terrae sanctae.
>
> Idem Cantuariensi Archiepiscopo.
>
> Quod super his +*sedem apostolicam consulere decrevisti quorum exsecutio spectat ad officium pastorale, fraternitatem tuam in Domino commendamus, sperantes, quod per responsionem nostram instructus ea diligentius exsequaris*. Quaesivisti *sane* de his, qui pro succursu terrae sanctae signo crucis assumpto, propter infirmitatem vel paupertatem, vel aliam iustam causam votum *peregrinationis* non possunt utiliter adimplere *quid tibi sit faciendum;* quum *per apostolica scripta* sine distinctione receperis in mandatis, ut eos, qui signum crucis assumptum abiecerunt ad resumptionem ipsius et exsecutionem voti *per censuram ecclesiasticam appellatione remota* compellas, *non obstante aliqua indulgentia, si qua forte per surreptionem a praedecessore nostro fuerat impetrata*. Nos autem inquisitioni tuae taliter respondemus, quod debiles et inopes magis illuc in defectum, quam ad profectum accedunt, quum isti pugnare non possint, et illi mendicare cogantur, nisi forte sint nobiles et magnates, qui suis secum expensis bellatores adducant, vel artifices et agricolae, qui de laboribus suis sibi possint acquirere necessaria et terrae subsidia ministrare; quamvis non multi talium propter brevitatem possessionum et paucitatem inhabitantium ibi sint opportuni. Unde credimus distinguendum inter illos, qui temporalem, et eos, qui perpetuam impedimenti causam creduntur habere, quod primis indulgenda est dilatio, secundis autem est redemptio iniungenda, ac rerum facultate pensata, quas possunt aut quas facturi essent expensas, personarum praeterea compensato labore, in subsidium terrae sanctae transmittant, exsequentes per alios quod per se nequeunt adimplere. Rursus inter illos, qui pro defensione terrae sanctae votum peregrinationis emittunt, et eos, quibus pro satisfactione suorum criminum iter peregrinationis iniungitur, credimus distinguendum, quod circa primos plus terrae sanctae succursus, et circa secundos plus labor itineris secundum intentionem voventis vel poenitentis debet attendi. Unde, si quis hoc modo voventium est inutilis ad pugnandum, quamvis habilis sit ad eundum, melius est redimere votum quam expensas consumere. Quod et de poenitente, qui propter debilitatem non potest iter iniunctae peregrinationis implere, sane valet intelligi; non autem de illo, qui, quamvis sit impotens ad bellandum, potens tamen est ad eundum. +*Super his autem diligens est discretio adhibenda, ne quid prece vel pretio, amore vel odio sive occasione quacunque contra salutem animae vel utilitatem terrae quomodolibet attentetur. Unde per viros religiosos et providos dispensationem huiusmodi volumus provideri*. De mulieribus autem hoc credimus observandum, ut quae remanere noluerint viros suos sequantur *euntes* ; ceterae vero, nisi forte sint divites, quae secum in suis expensis possint ducere bellatores, votum redimant, quod voverunt, *aliis ad terrae sanctae subsidium singulis secundum proprias facultates diligenter inductis*.

Chapter IX

Latin source headnote: A vow to go overseas can in certain cases be redeemed and commuted, yet not by anyone other than the Pope or one acting with his special mandate. This it says as far as § "Secondly, you asked." — (*Secondly, etc.*:) Those fit for going but unfit for fighting, if they are vigorous in counsel or can take fighting knights with them, do not redeem a vow to go overseas. This it says, the Sicilian Abbot. — (*But as for, etc.*:) Wives can follow their husbands overseas if they wish, but they are not bound unless they themselves also vowed. This it says, the Abbot. — (*In so great, etc.*:) Husbands can emit a vow to go overseas without the consent of their wives. This it says, the Sicilian Abbot. — (*Concerning clerics, etc.*:) Clerics, as being unfit to fight, redeem a vow to go overseas except in certain cases. This it says, the Sicilian Abbot.

The same, to the same.

We believe that it *proceeds from the great providence of your solicitude that, although we have answered what we think to your many and frequent consultations, you elicit new questions from our response.* Indeed, from the consultation that we formerly issued in answer to your inquiry concerning the business of those signed with the cross, you found a way to other questions and solicitously asked whether what is said in it establishes a general law, so that it is lawful indiscriminately for any prelates to absolve according to the expressed form those who are committed to their jurisdiction. Therefore we answer *your inquiry briefly* that in our consultation a *common* law is issued, and, although it in no way explains to what sort of persons, *and* specifically to whom, its execution pertains, nevertheless execution of this law is incumbent only upon those who have received from the Apostolic See our special mandate concerning it.

Thus, therefore, answer is made to the inquiry by which your fraternity consequently asked of which religious this was to be understood, *which was contained around the middle of our consultation in these words: "We wish a dispensation of this kind to be provided through religious and provident men"*—namely, whether there only those who have assumed the religious habit are called religious, many of whom are unlearned and ignorant of law, *although in your consultation it is said, "through religious and provident men"*, or bishops, who, just as they excel in dignity, so ought to excel others in religion. For execution of that law pertains to neither unless it is specially delegated to them by the Apostolic See.

Secondly, you asked whether what is said—"If any of those vowing is useless for fighting, although fit for going, it is better that he redeem the vow than consume the expenses"—ought to be taken generally, so as to include *also* nobles and magnates who are vigorous in counsel and can bring many fighters with them, or whether a *general* expression of this kind comprehends only lesser persons. But, if you extend the eye of your consideration *for a little while* to what precedes, you will find that question solved in the course of our consultation, where it is said that the weak and the poor approach more to the deficiency of the Holy Land than to its advantage, *since the former cannot fight and the latter must beg, unless perhaps they are nobles and magnates who bring fighters with them at their own expense; and the other things that follow. For those who are called weak here are below called useless for fighting. Hence an equal exception ought to be understood in each place,* although it can be answered otherwise that those who, even if they cannot fight through themselves, can nevertheless assist those fighting by maturity of counsel and relieve their personal deficiency through others, are not useless for fighting.

In the third place also your fraternity asked how what is subjoined concerning women ought to be understood: that those who are unwilling to remain should follow their husbands as they go; but the others, unless they are rich women who can take fighters with them at their own expense, should redeem the vow that they vowed. For what is said in the final place appears to have been said only of those vowing. But what is placed above—"women who are unwilling to remain, etc."—appears to be understood of those who bound themselves to the purpose of pilgrimage by no bond of a vow, *which was not doubtful to be so. From the same expression you also say that it appears to certain persons that husbands are permitted in this article to be able to vow without the assent of their wives and to accomplish what they vowed. To this we say that*, in so great a necessity of the Christian people, lest aid to the Holy Land be *utterly impeded or deferred longer*, husbands, without the assent of their wives, *so that they may fight for the King of kings*, can freely vow the purpose of this pilgrimage and freely fulfill what they vowed. But the wives are to be admonished more attentively to consent.

Concerning clerics, moreover, we thought that *your inquiry* should be answered in this manner: since the office of the clergy renders them unfit for fighting, unless they are either vigorous in counsel or instructed in the office of preaching, or deputed to the service of magnates, or rich and powerful to such a degree that they can take some fighters with them at their own expense, it is more expedient to receive redemption from them than to compel them to pursue the vow, if necessity requires or utility persuades. We say these things, however, of those vowing, not of those upon whom the labor of pilgrimage was enjoined as penance.

> Votum ultramarinum certis casibus redimi et commutari potest, non tamen per alium, quam per Papam, vel cum ipsius speciali mandato. H. d. usque ad §. Secundo quaesivisti. — (Secundo etc.:) Habiles ad eundum, sed inhabiles ad pugnandum, si sunt strenui consilio, vel milites bellatores possunt secum ducere, votum ultramarinum non redimunt. H. d. Abbas Siculus. — (Quod autem etc.:) Uxores possunt sequi viros ultra mare, si volunt; sed non tenentur, nisi et ipsae voverint. H. d. Abbas. — (In tanta etc.:) Viri sine consensu uxorum emittere possunt votum ultramarinum. H. d. Abbas Siculus. — (De clericis etc.:) Clerici, tanquam inhabiles ad pugnandum, redimunt votum ultramarinum, nisi in certis casibus. H. d. Abbas Siculus.
>
> Idem eidem.
>
> Ex multa tuae sollicitudinis providentia +*credimus provenire, quod, quum ad consultationes tuas multiplices et frequentes responderimus quod sentimus, ex responsione nostra novas elicias quaestiones*. Ex consultatione *siquidem*, quam ad inquisitionem tuam super negotio cruce signatorum olim edidimus, viam invenisti ad alias quaestiones, et utrum, quod in ea dicitur, ius constituat generale, ut passim praelatis quibuslibet illos secundum formam expressam absolvere liceat, qui eorum sunt iurisdictioni commissi, sollicite requisisti. Ad hoc igitur *inquisitioni tuae breviter* respondemus, quod in consultatione nostra ius *commune* editur, et, licet ad quales, *et* ad quos tamen specialiter spectet eius exsecutio, nullatenus explicatur : illis autem solummodo ius hoc exsequendum incumbit, qui super hoc mandatum *nostrum* receperint a sede apostolica speciale. Sic ergo illi est inquisitioni responsum, qua consequenter tua fraternitas requisivit, de quibus religiosis intelligendum hoc esset, *quod continebatur circa consultationis nostrae medium, in haec verba: "per viros religiosos et providos dispensationem huiusmodi volumus provideri;* " utrum scilicet ibi religiosi vocentur hi tantum, qui religionis habitum susceperunt, quorum plures idiotae sunt et iuris ignari, *quum tamen in consultatione vestra dicatur: per religiosos et providos;* an episcopi, qui, sicut dignitate praecellunt, sic et religione debent aliis praeeminere. Nam ad neutros illius exsecutio iuris spectat, nisi per apostolicam sedem eis specialiter delegetur. Secundo quaesivisti, utrum quod dicitur : " si quis voventium est inutilis ad pugnandum, quamvis sit habilis ad eundum, melius est, ut redimat votum, quam consumat expensas, " generaliter accipi debeat, ut nobiles *etiam* et magnates, qui sunt consilio strenui, et multos secum possunt trahere bellatores, an minores tantummodo verbum huiusmodi *generale* comprehendat. Verum, si ad superiora oculum tuae considerationis *paulisper* extendas, quaestionem istam invenies in serie consultationis nostrae solutam, ubi dicitur, quod debiles et inopes magis in defectum terrae sanctae, quam ad eius profectum accedunt, +*quum hi pugnare nequeant, et illi necesse habeant mendicare, nisi forte sint nobiles et magnates, qui suis secum expensis bellatores adducunt. Et cetera, quae sequuntur. Qui enim debiles hic dicuntur, appellantur inferius inutiles ad pugnandum. Unde par exceptio debet intelligi utrobique*, quamvis possit aliter responderi, quod non sunt inutiles ad pugnandum, qui, etsi per se pugnare non possunt, maturitate tamen consilii adesse valent pugnantibus, et personae defectum per alios relevare. +*Tertio quoque loco tua fraternitas requisivit, qualiter intelligi debeat quod de mulieribus subinfertur, ut quae remanere noluerint viros suos sequantur euntes; ceterae vero, nisi sint divites, quae secum in suis expensis possint ducere bellatores, votum redimant, quod voverunt. Hoc enim, quod ultimo loco dicitur, videtur tantum de voventibus esse dictum*. Quod autem superius ponitur : " mulieres, quae remanere noluerint etc., " de illis

intelligendum esse videtur, quae se ad peregrinationis propositum nullius voti vinculo adstrinxerunt, *+quod sic esse dubium non exstitit. Ex eodem quoque verbo dicis videri quibusdam, quod viris liceat in hoc articulo sine uxorum suarum assensu vovere posse, ac perficere quod voverunt. Ad hoc dicimus, quod* In tanta quoque necessitate populi Christiani, ne terrae sanctae impediatur subsidium *penitus vel diutius differatur*, viri praeter uxorum assensum, *ut militent regi regum*, huius peregrinationis propositum vovere libere valent et quod voverint libere adimplere. Ut autem consentiant, sunt attentius commonendae. De clericis vero *inquisitioni tuae taliter* duximus respondendum, quod, quum clericatus officium eos reddat inhabiles ad pugnandum, nisi vel consilio strenui, vel officio praedicationis instructi, aut magnatum sint obsequio deputati, aut usque adeo divites fuerint et potentes, ut in expensis suis aliquos secum ducere valeant bellatores, magis ab eis expedit redemptionem accipere, quam ad votum illos cogere prosequendum, si necessitas exigit vel utilitas persuadet. Haec autem de voventibus dicimus, non de his, quibus labor peregrinationis in poenitentia est iniunctus.

Chapter X

Latin source headnote: One who vowed to enter religion, if, with the vow complete, he becomes a bishop, ought to resign and fulfill the vow. Thus it is commonly summarized.

The same.

Through your letters you intimated to us that you had solemnly emitted a vow of receiving the regular habit in the church of Grenoble, and afterward promised in the hands of the prelate of the same church that within two months after you had returned from the Apostolic See, *to which you were then approaching*, you would fulfill the vow that you had emitted. And when, after the term itself had passed, you took no care to fulfill what you had vowed, at length, existing as a transgressor of the vow, you were called to the governance of the church of Geneva, *concerning which you petition us to provide for your salvation*. We therefore, *answering briefly*, counsel your discretion that, if you desire *wholly* to heal your conscience, you resign the governance of the aforesaid church and render your vows to the Most High, *showing you grace in this*: that, if the chapter of the same church of Geneva should afterward think that you ought canonically to be elected, you will be able to receive the election *thus* made of you. [*Given at Segni, on the sixth day before the Ides of August, in the sixteenth year of our pontificate.* 1213.]

Qui vovit religionem ingredi, si voto completo fiat episcopus, renunciare debet, et votum implere, Sic communiter summatur.

Idem.

Per tuas nobis literas intimasti, te in Gratianopolitana ecclesia suscipiendi habitum regularem votum solenniter emisisse, et postea promississe in manibus praelati eiusdem ecclesiae, te infra duos menses, postquam ab apostolica sede rediisses, *ad quam eo tempore accedebas*, votum, quod emiseras, impleturum. Quumque termino ipso transacto non curasses quod voveras adimplere : tandem exsistens voti transgressor, vocatus fuisti ad regimen ecclesiae Gebennensis, *+super quo a nobis tuae saluti postulas provideri*. Nos igitur tuae discretioni *breviter respondendo* consulimus, ut, si tuam *omnino* sanare desideras conscientiam, regimen resignes ecclesiae memoratae, ac reddas Altissimo vota tua, *in hoc tibi gratiam facientes*, quod, si capitulum eiusdem Gebennensis ecclesiae te postmodum canonice duxerit eligendum, electionem recipere poteris *taliter* de te factam. [*Dat. Signiae VI. Id. Aug. Pont. nostr. Ao. XVI. * 1213.]

Chapter XI

Latin source headnote: A prelate, even one professed, can emit a vow to go overseas and convert the twentieth of the revenues of the church to his own uses.

Honorius III, to the Provosts of Haresben and Bengad.

You ask us whether it is lawful for you, professed in a regular order, one of whom is signed with the cross and the other desires to be marked with the character of the cross, to carry with you the twentieth of the revenues of your churches deputed to the succor of the Holy Land, *so that through you it may advance the succor of that land, since you are prepared to expose your persons to the service of Jesus Christ; especially since many, provoked by an example of laudable emulation, are manfully girded to run after you, intending to fight the battle of the Lord against the nations. But because we aspire with all our strength to the liberation of that land*, we answer your discretion in this manner: if your churches are not *otherwise* injured enormously through your absence, and you will be useful to the Holy Land alike by word and example—which we have thought ought to be left to your consciences—after suitable procurators have been left in your churches, you can and are bound to fulfill the vow of pilgrimage, and thus the twentieth of your churches deputed to the aid of the Holy Land can pass to your uses.

> Praelatus, etiam professus, potest votum ultramarinum emittere, et in suos usus vigesimam proventuum ecclesiae convertere.
>
> Honorius III. Haresben. et Bengad. Praepositis.
>
> Postulatis a nobis, an vobis, professis ordinem regularem, quorum alter cruce signatus est, et reliquus charactere crucis desiderat insigniri, liceat vigesimam proventuum ecclesiarum vestrarum deputatam succursui terrae sanctae deferre vobiscum, *+ut per vos proficiat terrae illius succursui, qui parati estis personas vestras exponere servitio Iesu Christi; praesertim quum multi exemplo aemulationis laudabilis provocati ad currendum post vos viriliter accingantur, proeliaturi proelium Domini contra gentes. Quia vero liberationi terrae illius totis viribus adspiramus*, Discretioni vestrae taliter respondemus, quod, si ecclesiae vestrae *alias* per absentiam vestram enormiter non laedantur, et vos utiles fueritis terrae sanctae verbo pariter et exemplo, quod conscientiae vestrae duximus relinquendum, dimissis procuratoribus idoneis in ecclesiis vestris, potestis et tenemini votum peregrinationis implere, et sic potest in usus vestros transire vicesima ecclesiarum vestrarum, terrae sanctae subsidio deputata.

Title XXXV: On the Status of Monks and Regular Canons

Chapter I

Latin source headnote: A diocesan ought not molest monasteries except for the purpose of correction, nor claim for himself things offered to them.

Gregory, to the Archbishop of Naples.

Theodosius [*abbot of the monastery of Saint Martin suggested to us by a petitionary intimation the matters contained below: that in the house once belonging to Martin, by his will, his predecessor Andrew, abbot of the monastery, constructed a monastery in which monks ought to dwell. And because he petitions that it be dedicated in honor of blessed Peter, prince of the Apostles, and Saint Michael the Archangel, we have thought your charity should be exhorted by the present writing that, when he petitions, you approach the aforesaid place without reluctance and furnish the venerable solemnities of dedication. And as often as it shall be necessary, let the venerable sacrifices of masses be celebrated by the priests of your church serving in the holy place, in such a way that*] neither you nor

your priests inflict any molestation upon any monastery beyond the diligence of discipline, or think that you may claim for yourselves anything that has come there [*as an advantage*] from the devotion of diverse persons, since whatever happens to be offered in this manner by the faithful ought to profit the monks serving there.

> **DE STATU MONACHORUM ET CANONICORUM REGULARIUM.**
>
> Dioecesanus non debet molestare monasteria, praeterquam pro causa correctionis nec eis oblata sibi vendicare.
>
> Gregorius Archiepiscopo Neapolis.
>
> Theodosius +[*abbas monasterii S. Martini petitoria nobis insinuatione suggessit, quae habetur in subditis, in domo quondam Martini ex eius voluntate decessorem suum Andream abbatem monasterium, in quo monachi habitare debeant, construxisse. Et quia id in honorem B. Petri, Apostolorum principis, et S. Archangeli Michaelis postulat dedicari, dilectionem tuam praesentibus apicibus duximus adhortandum, quatenus ad praedictum locum, quum postulaverit, ingravanter accedas, venerandae solennia dedicationis impendens. Et quoties necesse fuerit, a presbyteris ecclesiae tuae, in loco sancto deservientibus, celebrentur sacrificia veneranda missarum, ita, ut*] Alicui monasterio nec tu, nec presbyteri tui, praeter diligentiam disciplinae aliquid molestiae inferatis, aut, si quid illic pro diversorum devotione [*commoditatis*] accesserit, vobis vendicare aestimetis quum monachis ibi servientibus debeat proficere quicquid a fidelibus taliter offerri contingit.

Chapter II

Latin source headnote: Monks ought not be placed singly throughout parishes. This first. If anything is given for becoming a monk, the one received is prohibited from sacred orders, and the one receiving is suspended from office. This second. A monk having private property without the license of the abbot is removed from communion of the altar and, dying thus, is deprived of burial and the communion of the brothers. This third. If money is conferred for having some office in a monastery, the giver and receiver are deposed. This fourth. In conventual priories those instituted by election are not to be removed without reasonable cause, and it gives three examples of reasonable cause. This it says, comprehending the substance.

From the Lateran Council.

Let monks not be received in a monastery for a price, nor be permitted to have private property, nor be placed singly throughout villages and towns *or* throughout any parochial churches whatever; but let them remain in a larger convent or with some brothers, and not await alone among secular persons the conflict of spiritual enemies, Solomon saying: "Woe to one alone! For when he falls, there is no one to raise him." But if anyone, having been exacted from, gave something for his reception, let him not ascend to sacred orders; and let the one who received him be punished by suspension from his office. Moreover, one who has private property, unless it was permitted to him by the abbot for an administration enjoined upon him, is to be removed from communion of the altar; and one who at his last moments is found with private property and did not worthily repent, let no offering be made for him, nor let him receive burial among the brothers—which we command to be observed also concerning all religious. Moreover, let the abbot who does not diligently guard against these things know that he will incur the loss of his office.

Likewise, let priories or obediences be entrusted to no one by the gift of a price; otherwise [*both*] givers and receivers are to become strangers to ecclesiastical ministry. But priors, when they have

been canonically instituted in conventual churches by election of their chapters, are not to be changed except for a manifest and reasonable cause: namely, if they have been dissipators, if they have lived incontinently, or if they have done something of such a kind on account of which they deservedly appear to be removed, or if also they are to be transferred for the necessity of a greater office by the counsel of the brothers.

> Monachi non debent poni singuli per parochias. Hoc primo. Si pro monachatu aliquid detur, receptus a sacris ordinibus prohibetur, et recipiens ab officio suspenditur. Hoc secundo. Monachus, habens peculium sine licentia abbatis, ab altaris communione removetur, et, sic decedens sepultura et fratrum communione privatur. Hoc tertio. Si pecunia confertur pro habendo aliquod officium in monasterio, dans et recipiens deponuntur. Hoc quarto. In prioratibus conventualibus per electionem instituti non sunt removendi sine causa rationabili, et de causa rationabili tria ponit exempla. H. d. comprehendendo substantiam.
>
> Ex concilio Lateranensi.
>
> Monachi non pretio recipiantur in monasterio, nec peculium permittantur habere, nec singuli per villas et oppida, *sive* per quascunque parochiales ponantur ecclesias, sed in maiori conventu, aut cum aliquibus fratribus maneant, nec soli inter saeculares homines spiritualium hostium conflictum exspectent, Salomone dicente : " Vae soli! quia, quum ceciderit, non est qui sublevet eum. " Si quis autem exactus pro sua receptione aliquid dederit, ad sacros ordines non ascendat, is vero, qui eum receperit, officii sui suspensione mulctetur. Qui vero peculium habuerit, nisi ab abbate fuerit ei pro iniuncta administratione permissum, a communione removeatur altaris, et qui in extremis cum peculio inventus fuerit, et digne non poenituerit, nec oblatio pro eo fiat, nec inter fratres accipiat sepulturam; quod etiam de universis religiosis praecipimus observari. Abbas autem, qui diligenter ista non caverit, officii sui iacturam se noverit incursurum. Prioratus quoque seu obedientiae pretii donatione nulli tradantur; alioquin [*et*] dantes et accipientes a ministerio fiant ecclesiastico alieni. Priores autem, quum in ecclesiis conventuatibus per electionem capitulorum suorum canonice fuerint instituti, nisi pro manifesta et rationabili causa non mutentur videlicet si fuerint dilapidatores, si incontinenter vixerint, aut tale aliquid egerint, pro quo amovendi merito videantur, aut si etiam pro necessitate maioris officii de consilio fratrum fuerint transferendi.

Chapter III

Latin source headnote: He admonishes the Cistercians to observe the rule according to its original institution. This it says first. And a religious house aggregated to the Cistercians is bound to observe their customs. This it says second.

Alexander III, to the Abbots and Convents of the Cistercian Order.

Recalling how this holy plantation, *this fruitful vine, and finally this vineyard of the Lord of Hosts budded under the first fathers of the order and, producing branches far and wide, brought forth flowers and poured out fragrances to drive away deadly poisons on every side, with most vigilant custody take care to adhere in all things to the footsteps of those through whom, with the Lord cooperating, a flower of honor of this kind was planted in the wilderness of this world. For these men, most content with monastic frugality, placing the best beginning in poverty, attained the complement of all sufficiency, dear to the church, acceptable to bishops and prelates, and glorious in reputation and merit in the sight of kings and princes. But now, what* we say with sorrow is that, although not by all nor in all things, nevertheless by very many and in many things there is said to have been a departure from that holy institution to such a degree that some of you, *utterly forgetful or ignorant* of

the first institution, contrary to the rule of your order possess villages, *mills*, churches, and altars; benignly receive fealties and homages; hold jurisdictions and tributaries; *and apply every effort so that their boundaries may be enlarged on earth, although their conversation ought to be in heaven. Hence the order is utterly injured and corrupted, and it is not a change of the right hand of the Most High; indeed, rather, those pass from the right hand to the left who, after they decreed to serve God under the habit of poverty when they abandoned the world, are again entangled in secular affairs. From this, contentions and litigations are stirred up against you by those who are outside; and, while the abbots are occupied in forensic causes, torpor of the order and dissolution of charity arise exceedingly in the houses committed to them—especially because charity advances more in poverty and, disdainful of fellowship with cupidity, unless the latter is restrained, the former grows cold.*

And therefore, with the entreaties and admonitions *that we can*, we exhort *your holy and venerable college* that those houses that were founded in that order from their first origin be content with boundaries established *and ordained, and not wish inordinately to extend their hands toward those things that they will not be able to retain without many labors and dangers and thereafter without crimes and great confusion.* For if, after abandoning the original institutes of the order, you wish to turn aside toward the common laws of other monasteries, *you also* will have to be judged by common law, because it is fitting that those *who* assume a life similar to others should experience a similar discipline under the laws.

But let those houses that have transferred themselves from other institutes to your order strive wholly to conform themselves to your usages; and, after abandoning or even exchanging possessions that your institute does not receive, let them so adapt themselves in all things to your religion that, just as they rejoice that they themselves have been assumed into fellowship of the order and identity of habit *and regular observance*, so also in the poverty of secular things they may rejoice that they have been conformed to your institutes, *so that from this they ought to become both more lovable to the heavenly Creator and deservedly dearer to us and the universal church. Indeed, if the authority of the Apostolic See has dispensed concerning these possessions in the case of any one of your monasteries, no example is to be taken from this by any of you, because it is rash and unworthy for anyone to presume by his own authority for himself what, after attending to a certain reason, the Roman church wished to grant to some monastery by singular benefits.*

> Monet Cistercienses, ut servent regulam secundum primaevam institutionem. H. d. primo. Et domus religiosa aggregata Cisterciensibus eorum mores servare tenetur. H. d. secundo.
>
> Alexander III. Abbatibus et Conventibus Cisterciensis ordinis.
>
> Recolentes, qualiter haec sancta plantatio, *+haec vitis fructifera, haec denique vinea Domini Sabaoth sub primis ordinis patribus pullulavit, et, palmites longe lateque producens ad mortifera pellenda circumquaque venena flores protulit et odores effudit, pervigili custodia custodiatis eorum in omnibus inhaerere vestigiis, per quos cooperante Domino in deserto mundi huius flos huiuscemodi plantatus est honestatis. Hi enim monasticae frugalitatis contentissimi, optimum ponentes in paupertate principium, totius sufficientiae assecuti sunt complementum, ecclesiae cari, episcopis et praelatis accepti, atque in conspectu regum ac principum fama et merito gloriosi. Nunc autem, quod* Dolentes dicimus, quod, etsi non ab omnibus neque in omnibus, a plerisque tamen et in pluribus ab illa sancta institutione dicitur declinatum in tantum, ut aliqui ex vobis, primae institutionis obliti *penitus vel ignorantes*, contra ordinis vestri regulam villas, *molendina*, ecclesias et altaria possident, fidelitates et hominia benigne suscipiunt, iustitiarias et tributarias tenent, *+et omne studium adhibent, ut termini eorum dilatentur in terris, quorum conversatio in coelis debet esse. Laeditur hinc ordo penitus et vitiatur, nec est mutatio dexterae excelsi, quin immo potius de dextera transeunt in sinistram, qui, quum relicto saeculo sub paupertatis habitu Deo militare decreverunt, negotiis denuo saecularibus implicantur. Inde est, quod vobis ab iis, qui foris sunt, contentiones et litigia suscitantur, et, abbatibus in causis forensibus occupatis, plurimum in commissis domibus et tepor*

ordinis et dissolutio nascitur caritatis; maxime quia in paupertate caritas plus proficit, et cupiditatis dedignata consortium, nisi illa restringatur, haec tepescit. Ideoque *sanctum ac venerabilem collegium vestrum* precibus et monitis, *quibus possumus*, exhortamur, quatenus domus illae, quae a prima sui origine in ipso ordine sunt fundatae, constitutis *et ordinatis* terminis sint contentae; *+nec velint inordinate ad ea manus extendere, quae sine laboribus et periculis multis, et deinde sine criminibus et magna confusione non poterunt retinere*. Si enim relictis originalibus ordinis institutis ad communia volueritis aliorum monasteriorum iura divertere, oportebit *et* vos communi iure censeri, quia dignum est, ut, *si* qui similem cum aliis vitam suscipiunt, similem sentiant in legibus disciplinam. Ceterum domus illae, quae de aliis institutionibus ad vestrum ordinem se transtulerint, vestris omnino se satagant usibus conformare, et relictis possessionibus vel etiam commutatis, quas institutio vestra non recipit, sic se in omnibus religioni vestrae coaptent, ut, quemadmodum gaudent se in societatem ordinis, et habitus *et observantiae regularis* identitatem assumptas sic etiam in paupertate saecularium rerum se laetentur vestris institutionibus conformatas, *quatenus inde et superno conditori magis amabiles, et nobis atque universae ecclesiae merito debeant fieri cariores. Sane si super possessionibus ipsis in aliquo de monasteriis vestris Apostolicae sedis auctoritas dispensarit a nullo vestrum sumendum est inde exemplum quia temerarium est et indignum aliquem sua sibi auctoritate praesumere quod Romana ecclesia alicui monasterio certa ratione inspecta, singularibus voluit indulgere beneficiis*.

Chapter IV

Latin source headnote: A regular canon who did not resign his private property at death ought not be buried in the cemetery; and if he was in fact buried, he ought to be exhumed from it if this can be done without scandal.

Clement III.

Concerning a certain regular canon who, acting at the point of death, although admonished by his prior, was unwilling to resign the private property that he had secretly held contrary to the rule, and thus closed his last day and was given burial among the other brothers, *you thought it necessary that we be consulted. But because we do not believe that you are ignorant of what is held established concerning such persons in the Rule of blessed Augustine, and that it is manifestly established that this same thing was prohibited at the Lateran synod*, we answer your inquiry in this manner: that canon was not only to be deprived of Christian burial, but even, if it could be done without the greatest scandal, is worthy to be cast out of the church itself *and buried outside the church's cemetery, since, as is expressed in the same synod, neither is an offering to be made for him nor ought he to have burial among the brothers*. Moreover, when perhaps this happens, it is to be done in similar cases.

Regularis canonicus, qui non resignavit proprium in morte, non debet in coemeterio sepeliri; et, si de facto sepultus fuit, inde debet exhumari, si sine scandalo fieri potest.

Clemens III.

Super quodam canonico regulari, qui, in articulo mortis agens, licet a priore suo commonitus, proprium, quod contra regulam latenter habuerat, noluit resignare, et sic diem clausit extremum, et fuit inter alios fratres traditus sepulturae, *+nos duxisti necessario requirendos. Quia vero te ignorare non credimus, quid de talibus in regula beati Augustini habeatur statutum, et quod id ipsum in Lateranensi synodo constet inhibitum manifeste*, Inquisitioni tuae taliter respondemus, quod ille canonicus non tantum fuit Christiana sepultura privandus, verum etiam, si sine maximo scandalo potuit fieri, de ipsa proiici dignus est ecclesia, *et extra coemeterium ecclesiae sepeliri, quum, sicut in ipsa synodo habetur expressum, nec oblatio pro eo facienda sit, nec inter fratres debeat sepulturam habere*. Hoc autem, quum forte contigerit, in similibus est agendum.

Chapter V

Latin source headnote: A regular canon can be placed over a parochial church, even a secular one; but he ought to have with him a companion of his order, if it can conveniently be done.

Innocent III, to V., Pleban of Saint Gavinius.

That you hold the fear of God before your eyes is evidently gathered from your fruits, since the works that you do bear witness to the truth. *Hence we commend your purpose in the Lord.* Indeed, *as it sounded in our ears long ago*, once, desiring to pass to the fruit of a better life, after resigning the office of pleban, you made a promise concerning your conversion before the brothers of Saint Victor of Bologna, neither emitting solemn profession nor assuming the religious habit. But *the nobleman Count Albert and* the parishioners of the same parish, attending to the fact that you had presided laudably *and that no small loss threatened the same place from your departure, have until now delayed your desire; and they obtained from our venerable brother* the Bishop of Florence that you minister there. *Our beloved son* P., cardinal priest *of the basilica of the Twelve Apostles*, then legate of the Apostolic See, *after weighing the utility of the parish*, is also said to have assented to this, which the aforesaid *count and* parishioners humbly petitioned us to hold ratified, especially since you are known until now to have done it with the license of the prior of Saint Victor *of Bologna*.

Although it is provided concerning monks at the Lateran Council that they are not to be placed singly throughout villages and towns *or* throughout any parochial churches, *but are to remain in a larger convent or with some brothers, lest they await alone among secular persons the conflict of spiritual enemies, Solomon saying: "Woe to one alone! For if he falls, there is no one to raise him"*; nevertheless, because this is not specially provided concerning regular canons, who, although they are not thought separated from the fellowship of holy monks, nevertheless serve a more lax rule, and because according to the ancient canons even monks can be ordained priests for the governance of parochial churches, from which they ought to exercise the office of preaching, which is privileged, we have thought that assent should be given to the petitions in this manner: that, while exercising the office of pleban, if it can conveniently be done, you have one regular canon with you for security, so that in those things that belong to God and regular observance you may enjoy both his fellowship and his solace.

> Canonicus regularis potest praefici ecclesiae parochiali etiam saeculari; sed debet habere socium secum sui ordinis, si commode fieri potest.
>
> Innocentius III. V. Plebano sancti Gavinii.
>
> Quod Dei timorem prae oculis habeas, ex fructibus tuis colligitur evidenter, quum opera, quae facis, testimonium perhibeant veritati. *Unde tuum in Domino propositum commendamus*. Sane, *sicut iam dudum auribus nostris insonuit*, quondam desiderans ad frugem melioris vitae transire, officium plebani resignans, coram fratribus S. Victoris Bononiensis promissionem de tua conversione fecisti, neque professionem solennem emittens, neque habitum religionis assumens; sed *nobilis vir, comes Albertus, et* parochiani plebis eiusdem, attendentes, te laudabiliter praefuisse, *ac de recessu tuo eidem loco iacturam non modicam imminere, desiderium tuum hactenus retardarunt, a venerabili fratre nostro* Florentino episcopo impetraverunt, ut ministrares ibidem. Hoc etiam *dilectus filius noster* P. *basilicae duodecim Apostolorum* presbyter cardinalis, tunc apostolicae sedis legatus, *pensata utilitate plebis* proponitur annuisse, quod iam dicti *comes et* parochiani a nobis ratum haberi suppliciter postularunt; praesertim quum de licentia prioris sancti Victoris *Bononiensis* noscaris hactenus id fecisse. Licet autem in Lateranensi concilio de monachis caveatur, ne singuli per villas et oppida, *seu* per quascunque parochiales ponantur ecclesias, *+sed in*

maiori conventu, aut cum aliquibus fratribus maneant, ne soli inter saeculares homines spiritualium hostium conflictum expectent, Salomone dicente: "Vae soli! Quia, si ceciderit, non est qui sublevet eum; " quia tamen istud de canonicis regularibus specialiter non cavetur, qui, etsi a sanctorum monachorum consortio non putentur seiuncti, regulae tamen inserviunt laxiori, et per antiquos canones etiam monachi possunt ad ecclesiarum parochialium regimen in presbyteros ordinari, ex quo debent praedicationis officium, quod privilegiatum est, exercere : sic annuendum duximus postulatis, ut exercens plebani officium, si commode fieri poterit, unum canonicum regularem tecum habeas ad cautelam, cuius in his, quae Dei sunt et regularis observantiae, tam consortio quam solatio perfruaris.

Chapter VI

Latin source headnote: First it treats of the clothing of monks. Secondly, of the renunciation of property. Thirdly, of silence. Fourthly, of foods. Fifthly, of offices in general and in particular.

The same, to the Abbot and Convent of Subiaco.

When we had come to the monastery of Subiaco *in person:* (*And below:*) We firmly prohibited any of the monks from henceforth using linen shirts. *Moreover, to supply the defect of hospitality, he granted the multure of one mill, intending for the time being to grant greater things, yet in such a way that alms be conferred from the cellarer's office to relieve the necessity of the poor. But we recalled to the use of the sick the aforesaid churches that had been assigned as benefices to secular clerics, decreeing void the grant of the hospital that had been made to the Bishop of Anagni, and establishing that they should not thereafter be granted to anyone as a benefice; but let the infirmarian dispose of those churches as he knows will be more expedient for the necessities of the sick.*

We also strictly prohibit, by virtue of obedience under attestation of divine judgment, that any monk *henceforth* possess private property in any way; but, if anyone has any private property, let him resign it all immediately. But if after this he is detected to have any property, after prior regular admonition let him be expelled from the monastery and not received thereafter unless he repents according to monastic discipline. But if property is found with anyone at death, let it be buried beneath the ground with him outside the monastery in a dunghill as a sign of perdition, according to what blessed Gregory narrates in the *Dialogues* that he did. *Nevertheless, let the abbot and prior inquire frequently and investigate diligently, lest any of the brothers be able to have private property.* Hence, if anything has been specially destined for anyone, let him not presume to receive it, but let it be assigned to the abbot, prior, or cellarer.

Moreover, in the oratory, refectory, and dormitory let continual silence always be observed, and in the cloister also at certain hours and places, according to the ancient custom of the monastery laudably observed, *but henceforth to be observed more laudably*. In the refectory, moreover, let no one eat flesh at all. Nor on certain solemnities, as was once customary to be done, let the convent go out with the abbot, a few being left there, to eat flesh outside the refectory, since *on* those days especially regular discipline is to be observed more studiously. Nor let them believe that eating flesh is lawful for them outside the refectory, except *only* in the infirmary, although by indulgence the abbot can sometimes call some of the brothers—now these, now those, as necessity demands—and furnish them better and more fully with food with him in his chamber.

Furthermore, let the weak and sick who need bloodletting or some medicine receive competently, not separately in chambers but all in the infirmary, whatever is necessary for them, both in flesh and in other things. But if any of them is so weak or even delicate that he cannot be content with the

common foods, let provision be made for him without scandal to the others in such a way that, if the abbot or prior wishes to show him special mercy in the refectory, he cause some suitable food to be brought not before that man but before himself, from which he himself may make him a pittance for the sustenance of nature.

Let those who will be faithful and discreet be deputed to perform the offices of the monastery. Nor let any obedience be committed to anyone to be possessed perpetually, as though it were leased to him for his life; but, when he ought to be removed, let him be recalled without any contradiction. Moreover, above the others after the abbot, let the prior be powerful in work and speech, so that by the example of his life and the word of doctrine he may both instruct his brothers in good and recall them from evil; having zeal for religion according to conscience, so that he may reprove and chastise offenders, but *cherish* and strengthen the obedient. Moreover, let the abbot, whom all are reverently to obey in all things, be with the brothers in convent as frequently as he can, bearing vigilant care and diligent solicitude concerning all things, so that he may be able to render to God a worthy account of the office committed to him. But if he is a transgressor or contemner of the order, or negligent or remiss, let him know for certain that he is not only to be deposed from office but also to be chastised in another manner according to the rule [*gravely*], since not only his own offense but also another's will be required from his hands. Nor let the abbot think that he can dispense with any monk concerning the possession of property, because renunciation of property, just like the guarding of chastity, is annexed to the monastic rule to such a degree that not even the Supreme Pontiff can grant license contrary to it.

> Primo tractat de vestibus monachorum. Secundo de abdicatione proprietatis. Tertio de silentio. Quarto de cibis. Quinto de officiis in genere et in specie.
>
> Idem Abbati et Conventui Sublacensibus.
>
> Quum ad monasterium Sublacense +*personaliter venissemus:* (*Et infra:*) Firmiter inhibuimus, ne quis de cetero monachorum lineis camisiis uteretur. +*Ad defectum autem hospitalitatis supplendum mouturam unius molendini, concessit, ampliora pro tempore concessurus, ita tamen, quod ad necessitatem pauperum sublevandam eleemosyna de cellerario conferatur. Nos autem praefatas ecclesias, quae clericis saecularibus fuerant in beneficium assignatae, ad usum revocavimus infirmorum, concessionem hospitalis, quae facta fuerat episcopo Anagnino, irritam decernentes, et statuentes, ne cuiquam ulterius in beneficium concedantur; sed infirmarius disponat de illis ecclesiis, prout ad necessitates infirmorum magis noverit expedire.* Prohibemus quoque districte in virtute obedientiae sub obtestatione divini iudicii, ne quis *de cetero* monachorum proprium aliquo modo possideat; sed, si quis aliquid habeat proprii, totum in continenti resignet. Si vero post hoc proprietatem aliquam fuerit deprehensus habere, regulari monitione praemissa de monasterio expellatur, nec recipiatur ulterius, nisi poeniteat secundum monasticam disciplinam. Quodsi proprietas apud quemquam inventa fuerit in morte, ipsa cum eo in signum perditionis extra monasterium in sterquilinio subterretur, secundum quod beatus Gregorius narrat in Dialogo se fecisse. *Abbas tamen et prior frequenter inquirant et diligenter explorent, ne quis fratrum proprietatem possit habere*. Unde, si quicquam alicui fuerit specialiter destinatum, non praesumat illud accipere, sed abbati, vel priori vel cellerario assignetur. In oratorio vero, refectorio et dormitorio continuum semper silentium observetur, in claustro quoque certis horis et locis, secundum antiquam consuetudinem monasterii laudabiliter observatam, *sed amodo laudabilius observandam*. In refectorio vero nullus omnino carne vescatur. Nec in quibusdam solennitatibus, sicut aliquando fieri consuevit, conventus exeat cum abbate, paucis ibi relictis, ut extra refectorium edant carnes; quum *in* illis diebus praecipue regularis disciplina sit studiosius observanda. Sed nec extra refectorium, nisi *tantum* in infirmitorio, esum carnium credant sibi licere, quamquam ex indulgentia

possit abbas interdum aliquos fratrum, nunc hos, nunc illos, prout necessitas postulaverit, advocare, ipsosque secum in camera sua melius et plenius exhibere. Porro debiles et infirmi, qui minutione indigent vel aliquamedicina, non seorsum in cameris, sed omnes in infirmitorio quae necessaria fuerint sibi tam in carnibus quam in aliis recipiant competenter. Quodsi quis eorum debilis fuerit, aut etiam delicatus, ut non possit communibus cibis esse contentus, sic ei provideatur sine scandalo aliorum, ut, si abbas vel prior voluerit in refectorio misericordiam *ei* facere specialem, cibum aliquem competentem, non ante illum, sed ante se faciat apportari, de quo ipse illi faciat pitantiam pro sustentatione naturae. Tales autem ad agenda officia monasterii deputentur, qui fideles fuerint et discreti. Nec alicui committatur aliqua obedientia perpetuo possidenda, tanquam in sua sibi vita locetur; sed, quum oportuerit amoveri, sine contradictione qualibet revocetur. Prior autem prae ceteris post abbatem potens sit in opere et sermone, ut exemplo vitae verboque doctrinae fratres suos et instruere possit in bono, et a malo etiam revocare; zelum religionis habens secundum conscientiam, ut delinquentes corripiat et castiget, obedientes *vero* foveat et confortet. Abbas vero, cui omnes in omnibus reverenter obediant, quanto frequentius poterit, sit cum fratribus in conventu, vigilem curam et diligentem sollicitudinem gerens de omnibus, ut de officio sibi commisso dignam Deo possit reddere rationem. Quodsi praevaricator ordinis fuerit aut contemptor, seu negligens aut remissus, pro certo se noverit non solum ab officio deponendum, sed et alio modo secundum regulam [*graviter*] castigandum : quum offensa non solum propria, verum etiam aliena de suis manibus requiratur. Nec aestimet abbas, quod super habenda proprietate possit cum aliquo monacho dispensare; quia abdicatio proprietatis, sicut et custodia castitatis, adeo est annexa regulae monachali, ut contra eam nec summus Pontifex possit licentiam indulgere.

Chapter VII

Latin source headnote: First, it establishes that provincial councils of regulars are to be celebrated every three years. Secondly, it moderates the number of mounts and persons coming. Thirdly, it disposes concerning the instructors and those presiding over the chapter. Fourthly, concerning the time for which the chapter is to last and what will be done there. Fifthly, that what is done there be observed. Sixthly, concerning the following chapter. Seventhly, concerning leading a common life. Eighthly, concerning the visitors to be elected and their office. Ninthly, it extends this to regular canons. Tenthly, it provides concerning a disagreement among the visitors. Eleventhly, it exhorts diocesans to the reformation of monasteries. Twelfthly, it commands that the insolent and similar persons be restrained from offenses against monasteries. And this division suffices for a summary.

The same, in the General Council.

In each kingdom or province, saving the right of the diocesan pontiffs, let a common chapter of abbots and of priors who do not have their own abbots and who have not been accustomed to celebrate such a chapter be held every three years. Let all who do not have a canonical impediment come to it at one of the monasteries suitable for this, with this moderation applied: that none of them bring more than six mounts and eight persons. Moreover, [*charitably*] let them invite, at the beginnings of an innovation of this kind, two neighboring abbots of the Cistercian order to furnish them suitable counsel and aid, since they are more fully instructed by long custom in celebrating chapters of this kind. Without contradiction, let these associate with themselves two from among them whom they see to be expedient, and let these four preside over the whole chapter in such a way that none of them assume for himself from this the authority of prelacy, whence, when it is expedient, he can be changed by provident deliberation.

Let a chapter of this kind be celebrated continuously for some certain days according to the custom of the Cistercian order, in which diligent discussion is to be had concerning reformation of the order and regular observance. And let what has been established with the approval of those four be inviolably observed [*by all*], every excuse, [*and*] contradiction, and appeal having been removed, provision nonetheless having been made as to where the chapter ought to be celebrated at the following term. And let those who have come lead a common life and together make all common expenses proportionately, in such a way that, if all cannot stay in the same buildings, at least several may stay together in different houses.

Let religious and circumspect persons also be appointed in the same chapter who, according to the form prescribed for them, should take care in our place to visit the individual abbeys of the same kingdom or province, not only of monks but also of nuns, correcting and reforming those things that they see to need the office of correction and reformation. If they recognize that the ruler of a place is to be removed entirely from administration, let them announce it to his own bishop so that he may take care to remove him. But if he does not do this, let the *visitors themselves* report it to the examination of the Apostolic See. We will and command regular canons to observe this same thing according to their order.

But if in this innovation any difficulty emerges that cannot be resolved through the aforesaid persons, let it be referred without scandal to the judgment of the Apostolic See, the other things that have been provided by concordant deliberation being irrefragably observed. Furthermore, let diocesan bishops take care so to reform the monasteries subject to them that, when the aforesaid visitors approach them, they may find in them more that is worthy of commendation than of correction, most attentively taking care lest the said monasteries be burdened by them with undue burdens; because, just as we wish the rights of superiors to be observed, so we are unwilling for inferiors to sustain injuries.

In addition to this, we strictly command both diocesan bishops and the persons who will preside over the chapters to be celebrated that, through ecclesiastical censure, appeal having been removed, they restrain advocates, patrons, vicedomini, rectors and consuls, magnates and knights, or any others, lest they presume to offend monasteries in persons or things; and if perhaps they have offended, let them not omit to compel them to satisfaction, so that the monks may be able more freely and quietly to serve almighty God.

> Primo statuit de conciliis regularium provincialibus celebrandis singulis trienniis. Secundo moderatur numerum evectionum et personarum venientium. Tertio disponit de instructoribus et praesidentibus capitulo. Quarto de tempore, quo duret capitulum, et quid ibi fiet. Quinto quod observetur quod ibi fiet. Sexto de capitulo sequenti. Septimo de communi vita ducenda. Octavo de visitatoribus eligendis et ipsorum officio. Nono extendit ad canonicos regulares. Decimo providet super discordia visitatorum. Undecimo hortatur dioecesanos ad monasteriorum reformationem. Duodecimo praecipit protervos et similes compesci ab offensis monasteriorum. Et haec divisio sufficit pro summario.
>
> Idem in concilio generali.
>
> In singulis regnis sive provinciis fiat de triennio in triennium, salvo iure dioecesanorum pontificum, commune capitulum abbatum atque priorum, abbates proprios non habentium, qui non consueverunt tale capitulum celebrare; ad quod universi conveniant, praepeditionem canonicam non habentes, apud unum de monasteriis ad hoc aptum; hoc adhibito moderamine, ut nullus eorum plus quam sex

evectiones et octo personas adducat. Advocent autem [*caritative*] in huiusmodi novitatis primordiis duos Cisterciensis ordinis vicinos abbates ad praestandum sibi consilium et auxilium opportunum, quum sint in huiusmodi capitulis celebrandis ex longa consuetudine plenius informati; qui absque contradictione duos sibi de ipsis associent, quos viderint expedire, ac ipsi quatuor praesint capitulo universo ita, quod ex hoc nullus eorum sibi auctoritatem praelationis assumat, unde, quum expedierit, provida possit deliberatione mutari. Huiusmodi vero capitulum aliquot certis diebus continue iuxta morem Cisterciensis ordinis celebretur, in quo diligens habeatur tractatus de reformatione ordinis et observantia regulari. Et quod statutum fuerit illis quatuor approbantibus, [*ab omnibus*] inviolabiliter observetur omni excusatione [*et*] contradictione et appellatione remotis, proviso nihilominus, ubi sequenti termino debeat capitulum celebrari. Et qui convenerint vitam ducant communem, et faciant proportionabiliter simul omnes communes expensas ita, quod, si non omnes poterunt in eisdem, saltem plures simul in diversis domibus commorentur. Ordinentur etiam in eodem capitulo religiosae ac circumspectae personae, quae singulas abbatias eiusdem regni seu provinciae non solum monachorum, sed etiam monialium, secundum formam sibi praefixam, vice nostra studeant visitare, corrigentes et reformantes quae correctionis et reformationis officio viderint indigere, ita, quod, si rectorem loci cognoverint ab administratione penitus amovendum, denuncient episcopo proprio, ut illum amovere procuret. Quod si non fecerit, *ipsi* visitatores hoc referant ad apostolicae sedis examen. Hoc ipsum regulares canonicos secundum ordinem suum volumus et praecipimus observare. Si vero in hac novitate quicquam difficultatis emerserit, quod per praedictas personas nequeat expediri, ad apostolicae sedis iudicium absque scandalo referatur, ceteris irrefragabiliter observatis, quae concordi fuerint deliberatione provisa. Porro dioecesani episcopi monasteria sibi subiecta ita studeant reformare, ut, quum ad ea praedicti visitatores accesserint, plus in illis inveniant, quod commendatione, quam quod correctione sit dignum, attentissime praecaventes, ne per eos dicta monasteria indebitis oneribus aggraventur, quia, sicut volumus superiorum iura observari, ita inferiores nolumus iniurias sustinere. Ad hoc districte praecipimus tam dioecesanis episcopis quam personis, quae praeerunt capitulis celebrandis, ut per censuram ecclesiasticam appellatione remota compescant advocatos, patronos, vicedominos, rectores et consules, magnates et milites, seu quoslibet alios, ne monasteria praesumant offendere in personis aut rebus, et, si forsitan offenderint, eos ad satisfactionem compellere non omittant, ut liberius et quietius omnipotenti Deo valeant famulari.

Chapter VIII

Latin source headnote: First it treats of the correction of monks. Secondly, of the correction of abbots; thirdly, of visitors. Fourthly, of secular persons beneficed in monasteries. Fifthly, it extends the constitution to nuns. Let this suffice for a summary.

Honorius III, to the Abbots and Monks Constituted in Lombardy and the March of Treviso.

Those things that are providently ordained for the honor of religion *and the salvation of religious are to be strengthened by apostolic protection, so that they may be received more devoutly and observed more diligently. Since, therefore, through our beloved son the Abbot of Montisbellus certain chapters were presented to us that, for chastising the manifold transgressions and excesses he had found in certain monasteries, appeared laudably to be established for your salvation and honor, we caused them to be examined and corrected, and we command you to observe inviolably those that, for security, we caused to be fortified with the seals of our venerable brothers H., Bishop of Ostia, and N., Bishop of Tusculum. In addition to these things, we will and command by the authority of the present letters that the visitors summon to the general chapter the abbots and the priors not having their own abbots, both exempt and non-exempt, of Lombardy and the March, who have not been accustomed to celebrate a chapter of this kind; providing that, every canonical impediment having been removed, in the general chapter itself*

they compel by ecclesiastical censure, the obstacle of any contradiction and appeal having been removed, those who have contemned or neglected to come, and not relax until fitting satisfaction the sentence that they have duly rendered against them; and by the same censure they are to cause what has been ordained in the same chapter by provident deliberation to be firmly observed. Both they themselves and the visitors and others, according to the ministry of each, will render an account at the final examination to the Lord, in whose sight all things are naked and open, if they neglect to apply all the solicitude and diligence that ought to be expended upon the correction and reformation of the order and the visitation of the monasteries.

Furthermore, when the visitors appointed by the general chapter of abbots according to the statute of the general council proceed to execute the office of visitation, let them inquire diligently concerning the condition of the monks and regular observances, and correct and reform in both spiritual and temporal matters what they see is to be corrected; yet in such a way that they cause offending monks to be corrected through the abbot of the place and salutary penance to be enjoined upon them according to the Rule of blessed Benedict and the apostolic institutes, not according to the norm of a depraved custom that has grown strong as though law in certain churches. Let the visitors themselves also strike, in our place, by regular censure and according to the measure of the fault, without preference of persons, those monks whom they find contumacious and rebellious, not sparing the rebellious because of their obstinacy or the power of their friends, but casting the diseased sheep out of the sheepfold, lest it infect the healthy sheep.

But if abbots are found negligent in correcting themselves or their monks according to the mandate of the visitors and the regular institutes, let them be denounced and reproved and so punished publicly in the general chapter that their punishment may be an example to others. But if any non-exempt abbot is found by the visitors to be excessively negligent and remiss, let them announce it without delay to the diocesan of the place, and through him let a faithful and provident coadjutor be given to the abbot until the general chapter. But if he is found to be a dissipator or otherwise deservedly to be removed, after this has been announced to him by the visitors, let him be removed by the diocesan from governance of the abbey without the clamor of judicial proceedings, and meanwhile let a suitable administrator be provided for the monastery to bear care of its temporal things until the monastery itself has been provided with an abbot. But if perhaps the bishop is unwilling or neglects to fulfill this, let the visitors or those presiding in the general chapter not defer intimating the bishop's default to the Apostolic See.

We command these same things to be done concerning exempt abbots through the visitors or those presiding *in* the general chapter, *only* their deposition being reserved to the Apostolic See, so that, when an abbot who appears ought to be removed has meanwhile been suspended from administration by the visitors or those presiding in the chapter, a suitable administrator may be deputed to the monastery. Moreover, let those presiding over the chapter announce to us through faithful and prudent messengers their excesses and the other matters that appear should be intimated; to these messengers let sufficient expenses be ministered from the common contribution of the abbots according to the means of each. Moreover, let the succeeding visitors diligently seek out the footsteps of the previous visitors and report their negligences and excesses to the following general chapter, so that according to the fault they may publicly bear the punishment due. We command this same thing also to be observed concerning the abbots presiding over the general chapter.

We also command that henceforth in no monastery are abbots and monks to receive secular clerics to prebends; nor let those who have already been received strive to claim for themselves a place or voice in the chapter, dormitory, refectory, or cloister, or presume importunately to mingle themselves with the assemblies of the monks; but, content with the benefices granted to them, let them conduct themselves honorably, faithfully furnishing appropriate services in the monasteries, and demand or usurp nothing further in spiritual or temporal matters in the monasteries themselves. But if any such persons are found criminal by the visitors, let them be deprived of the same benefices through the diocesan bishop in non-exempt monasteries, and through the visitors or those presiding over the general chapter in exempt *monasteries*. Moreover, we command all these things to be observed also in monasteries that do not have their own abbots but priors, and also in monasteries of nuns, as to the articles fitting abbesses and nuns.

> Primo tractat de correctione monachorum. Secundo de correctione abbatum, tertio visitatorum. Quarto de saecularibus in monasteriis beneficiatis. Quinto constitutionem extendit ad moniales. Hoc sufficiat pro summario.
>
> Honorius III. Abbatibus et Monachis in Lombardia et Marchia Tervisina constitutis.
>
> Ea, quae pro religionis honestate +*ac religiosorum salute provide ordinantur, apostolico munimine sunt roboranda, ut suscipiantur devotius et diligentius observentur. Quum ergo per dilectum filium abbatem Montisbelli quaedam capitula nobis fuerint praesentata, quae ad castigandum transgressiones multiplices et excessus, quos in quibusdam coenobiis invenerat, videbantur pro salute et honestate vestra laudabiliter statuenda: nos ea examinari et corrigi fecimus, et praecipimus, ut inviolabiliter observetis, quae sigillis venerabilium fratrum nostrorum H. Ostiensis et N. Tusculanensis episcoporum muniri fecimus ad cautelam. Ad haec volumus et praesentium auctoritate praecipimus, ut visitatores ad generale capitulum convocent abbates et priores non habentes abbates proprios tam exemptos, quam non exemptos Lombardiae et Marchiae, qui non consueverunt huiusmodi capitulum celebrare, providentes, ut in ipso capitulo generali, canonico impedimento sublato, eos, qui contempserint vel neglexerint convenire, sublato cuiuslibet contradictionis et appellationis obstaculo censura ecclesiastica compellant, et usque ad satisfactionem condignam sententiam, quam in eos rite tulerint, non relaxent, eadem censura facturi quae in eodem capitulo deliberatione provida fuerint ordinata firmiter observari, reddituri tam ipsi quam visitatores et alii iuxta cuiuslibet ministerium Domino, in cuius conspectu nuda sunt omnia et aperta, in extremo examine rationem, si omnem sollicitudinem et diligentiam, quae circa correctionem et reformationem ordinis ac visitationem coenobiorum impendendae fuerint, neglexerint adhibere*. Porro, quum visitatores, secundum statutum generalis concilii ordinati a generali abbatum capitulo, processerint ad visitationis officium exsequendum, de statu monachorum et observantiis regularibus diligenter inquirant, et tam in spiritualibus quam in temporalibus corrigant et reforment quae viderint corrigenda, ita tamen, quod monachos delinquentes per abbatem loci corrigi faciant, eisque iniungi poenitentiam salutarem iuxta beati Benedicti regulam et apostolica instituta, non secundum normam pravae consuetudinis, quae quasi pro lege in quibusdam ecclesiis inolevit. Ipsi etiam visitatores monachos, quos contumaces invenerint et rebelles, iuxta modum culpae vice nostra regulari censura percellant absque personarum delectu, non parcendo rebellibus ob suam pertinaciam vel potentiam amicorum, quin ovem morbidam eiiciant ab ovili, ne inficiat sanas oves. Si vero abbates in corrigendis iuxta visitatorum mandatum et regularia instituta in se ipsis seu monachis inventi fuerint negligentes, proclamentur et corripiantur, et ita puniantur publice in capitulo generali, quod poena ipsorum sit aliis in exemplum. Quod si abbas *aliquis* non exemptus fuerit a visitatoribus nimis negligens et remissus inventus, id loci dioecesano denuncient sine mora, et per illum detur ei fidelis et providus coadiutor usque ad capitulum generale. Si autem dilapidator inventus fuerit vel alias merito amovendus, per dioecesanum, postquam hoc sibi a visitatoribus denunciatum fuerit, amoveatur absque iudiciorum strepitu a regimine abbatiae, ac monasterio provideatur interim administrator idoneus, qui temporalium

curam gerat, donec ipsi monasterio fuerit de abbate provisum. Quodsi forsitan episcopus hoc adimplere noluerit vel neglexerit, visitatores vel praesidentes in capitulo generali defectum episcopi apostolicae sedi non differant intimare. Haec eadem circa exemptos abbates fieri praecipimus per visitatores vel praesidentes *in* capitulo generali, depositione *tantum* ipsorum sedi apostolicae reservata, ita, ut abbate, qui amovendus videbitur, interim per visitatores vel in capitulo praesidentes ab administratione suspenso administrator idoneus monasterio deputetur. Illorum autem excessus et alia, quae visa fuerint intimanda, capitulo praesidentes nobis denuncient per fideles nuncios et prudentes, quibus de communi contributione abbatum iuxta cuiuslibet facultatem sufficienter ministrentur expensae. Sequentes autem visitatores perquirant priorum visitatorum vestigia diligenter, et eorum negligentias et excessus referant sequenti capitulo generali, ut iuxta culpam publice debitam poenam portent. Idem etiam de abbatibus praesidentibus generali capitulo praecipimus observari. Praecipimus quoque, ut in nullo monasterio ad praebendas recipiant de cetero abbates et monachi clericos saeculares, nec hi, qui iam recepti sunt, locum vel vocem in capitulo, dormitorio vel refectorio seu claustro sibi vindicare contendant, seu monachorum coetibus importune se praesumant miscere, sed beneficiis sibi concessis contenti conversentur honeste, opportuna obsequia in monasteriis fideliter impendentes, nihilque ultra in spiritualibus aut temporalibus exigant in ipsis monasteriis vel usurpent. Si qui vero talium a visitatoribus inventi fuerint criminosi, per dioecesanum episcopum in non exemptis, et per visitatores vel praesidentes, generali capitulo in exemptis *monasteriis* beneficiis priventur eisdem. Haec autem omnia etiam in monasteriis, quae non habent abbates proprios, sed priores, nec non in monasteriis monialium, quoad articulos abbatissis et monialibus congruentes, praecipimus observari.

Title XXXVI: On Religious Houses, That They Be Subject to the Bishop

Chapter I

Latin source headnote: If it is doubtful in whose diocese a basilica to be consecrated is situated, that bishop who previously exercised episcopal rights in that place will consecrate it.

Gregory, to Victor, Archbishop of Naples.

But now, concerning *this* basilica that is to be dedicated, *this* ought to be investigated: *who—that is,* the bishop of which city—before *the basilica that has recently been constructed* was founded, baptized the inhabitants, and to whose confirmation they resorted with annual devotion. For it is not fitting that these things be determined by boundaries or places, but *that the diocese be made his who is described above, so that it may be established by whom the inhabitants were cleansed through the laver of regeneration. And therefore, dearest brothers, all ambiguities having been removed and every circumlocution set aside, it is fitting that you investigate these things by every means, so that* he *especially* may be called to the consecration to whom it is established that permission ought to be granted by the method we have written.

DE RELIGIOSIS DOMIBUS, UT EPISCOPO SINT SUBIECTAE.

Si dubitatur, in cuius dioecesi sit basilica consecranda, ille episcopus consecrabit, qui prius in illo loco episcopalia exercebat.

Gregorius Victori Archiepiscopo Neapolis.

Nunc autem ad *hanc* basilicam, quae dedicanda est, *illud* debet disquiri, *quis, id est* cuius civitatis episcopus, antequam *basilica, quae nuper fabricata est*, fundaretur, baptizaverit incolas, et ad cuius consignationem sub annua devotione concurrerint. Non enim terminis haec aut locis convenit definiri, sed *illius facere dioecesim, qui superius continetur, ut constet, commanentes a quo fuerint lavacri regeneratione*

purgati, et ideo, fratres carissimi, amotis ambagibus et omni circuitione semota haec vos modis omnibus convenit investigare, ut ille *maxime* ad consecrationem vocetur, cui per hunc modum, quem scripsimus, constat debere permitti.

Chapter II

Latin source headnote: No right is lost by the bishop in whose diocese a church is situated when the Pope unites that church to a church of another diocese. And it is an everyday case.

The same, to Abbot Agapitus.

Because the monastery situated on the Marcian estate *in the province of Campania* is said, through the action of hostility, to have been [*so*] *utterly* desolated [*of its community*] [*that not even one monk remained from it who ought to apply any solicitude or care there,*] we have considered it *useful* that it be united to your monastery with all its things and the actions that belong to it, [*so that you may have free and wholly unquestioned license to hold its things or vindicate them from those detaining them. Let it also belong to your diligence to depute monks there who, at a time when there is a respite from the enemy, ought both to celebrate the work of God there and to serve fittingly. Nor may you presume to neglect it under any pretext, since it is committed to your care for this reason, that you ought to apply solicitude there.*] Nevertheless, know that we have committed that monastery to your ordering in such a way that jurisdiction there is to be held not by the Bishop of Sorrento, in whose city your monastery is situated, but by the Bishop of Nocera, whose diocese it is. For we dispose the ordering of this place in such a way that nevertheless we preserve inviolate for each bishop his own rights.

Nihil iuris deperit episcopo, in cuius dioecesi sita est ecclesia, quam Papa unit ecclesiae alterius diocesis. Et est casus quotidianus.

Idem Agapito Abbati.

Quia monasterium quod in fundo Marciano *provinciae Campaniae* situm est, [*ita*] hostilitate faciente [*a congregatione*] *funditus* dicitur desolatum, [*ut ne unus exinde monachus, qui aliquam illic sollicitudinem vel curam debeat adhibere, remanserit,*] illud tuo monasterio cum omnibus rebus suis, vel quae ei competunt actionibus, *utile* perspeximus uniendum, +[*ut res eius tenendi vel a detinentibus vindicandi libera tibi sit et sine aliqua dubietate licentia. In quo etiam studii tui sit monachos deputare, qui illic tempore, quo intervallum de hoste fuerit, et opus Dei celebrare, et decenter debeant deservire. Nec aliqua illud praesumas excusatione negligere, quod ideo curae tuae, ut sollicitudinem illic debeas adhibere, committitur.*] Ipsum autem monasterium sic tuae nos ordinationi commisisse cognoscas, ut tamen iurisdictionem illic non episcopus Surrentinus, in cuius civitate monasterium tuum est situm, sed Nucerinus, cuius est dioecesis, habeat. Nam sic huius loci ordinationem disponimus, ut tamen iura sua singulis episcopis inviolata servemus.

Chapter III

Latin source headnote: All pious places are subject to the bishop, and through his solicitude they ought to be ordered for the use for which they were destined.

From the decrees of Pope Eugenius.

Concerning hospices and other similar places, through the solicitude of the bishops in whose dioceses they exist, let them be ordered toward those same useful purposes for which they were established.

Episcopo subsunt omnia loca pia, et ad eius sollicitudinem debent ordinari ad usum destinatum.

Ex decretis Eugenii Papae.

De xenodochiis et aliis similibus locis per sollicitudinem episcoporum, in quorum dioecesi exsistunt, ad easdem utilitates, quibus constituta sunt, ordinentur.

Chapter IV

Latin source headnote: A place deputed by authority of the bishop to the use of hospitality is religious and ought not return to worldly uses.

Urban III, to the Bishop of Rimini.

To these things, *concerning what was asked of us—whether a hospital house can be changed to a secular condition* —we respond to your inquiry in this way: if *that* place was destined by authority of the pontiff for the use of hospitality and the provision of the poor, as is customary, since it is religious it ought not be deputed to worldly uses, just as ancient custom unquestionably observes concerning vestments and wooden vessels and other utensils deputed by the pontiff to the cultivation of religion, and the sanctions of the venerable Fathers teach.

Locus, auctoritate episcopi ad usum hospitalitatis deputatus, est religiosus, et ad mundanos usus redire non debet.

Urbanus III. Ariminensi Episcopo.

Ad haec +*super eo, quod quaesitum est a nobis, utrum hospitalis domus possit in saecularem habitum commutari*, inquisitioni tuae taliter respondemus, quod, si locus *ille* ad hospitalitatis usum et pauperum provisionem fuerit, sicut moris est, auctoritate pontificis destinatus, quum sit religiosus, non debet mundanis usibus deputari, sicut de vestibus et ligneis vasis, et aliis utensilibus ad cultum religionis per pontificem deputatis, antiqua consuetudo indubitanter observat, et venerabilium Patrum edocent sanctiones.

Chapter V

Latin source headnote: A religious place ought to be reformed with religious persons only, not with secular persons, unless religious persons are lacking.

Innocent III, to the Patriarch of Constantinople.

Among four (*And below:* [*cf. c.* 8, *On Majority and Obedience,* I. 33.]) *Concerning also the monasteries of the Greeks to be converted into secular canonries, we respond to your fraternity in this way:* As long as the monasteries can remain ordered through regular men, *whether Greeks or Latins*, they are not to be transferred to secular clerics. But if regulars are lacking, secular clerics will be able to be ordained in them because of their deficiency. [*Furthermore, etc. Given at Ferentino, on the fourth day before the Nones of August, in the ninth year.* 1206.]

Locus religiosus debet reformari de religiosis duntaxat, non de saecularibus, nisi in defectum religiosorum.

Innocentius III. Constantinopolitano Patriarchae.

Inter quatuor (*Et infra:* [*cf. c.* 8. *de mai. et ob. I.* 33.]) *De monasteriis quoque Graecorum, in saeculares canonicos convertendis, fraternitati tuae taliter respondemus, quod*, Quamdiu monasteria per regulares *viros, sive Graecos sive Latinos*, remanere potuerint ordinata, non sunt ad saeculares clericos transferenda. Sed si regulares

defuerint, propter eorum defectum in eis saeculares clerici poterunt ordinari [*Praeterea etc. Dat. Ferentini IV. Non. Aug. Ao. IX.* 1206.]

Chapter VI

Latin source headnote: A church situated in the diocese of a bishop is bound to answer to him in episcopal rights unless they appear to have been lawfully remitted; and the bishop, when remitting episcopal rights, can retain a payment for himself.

The same, to the Abbot and Brothers of Grottaferrata.

Constituted in our presence, *our venerable brother* the Bishop of Albano sought episcopal right from you on two grounds in the church of the castle called Paul's, in which he acknowledged the right of patronage to your monastery: *first*, because it was situated in the diocese of Albano and therefore by common law was bound to answer to him in episcopal rights; *second, because in many privileges of the Roman Pontiffs distinguishing the boundaries of the diocese of Albano, among the other churches in which he exercises jurisdiction, this church is confirmed to the church of Albano by apostolic authority.* But your administrator proposed to the contrary that, although the church was situated in the diocese of Albano, *and its name had been inscribed in the privilege of that bishop not without the vice of surreption*, it nevertheless was not bound to answer to him in anything, since *Alberic, formerly its founder, with the assent of Pope B. of happy memory, our predecessor, had conferred the often-mentioned church upon the monastery of Grottaferrata. Furthermore,* Dominic, Bishop of Labico, *concerning whom there was no contention between the parties*, who had been Bishop of Albano, granted in emphyteusis to your monastery, under an annual payment of eight current denarii—*which the public instrument names "annatas in capite"*—all the churches pertaining to your monastery that were situated in his diocese, and whatever right he had both in your *Grottaferrata* monastery and in those churches; namely, so that it would be lawful for the abbot and brothers *of the same monastery* to obtain from whatever bishop they wished both the ordination of clerics and the consecration of altars in the monastery itself and the aforesaid churches. In them he also granted you a third part of the mortuary dues; and Pope C., our predecessor, confirmed by *his privilege* what had been done by him, *and from certain knowledge established that it was to be observed perpetually*. But, even if that church had at some time been subject to the church of Albano, your monastery *nevertheless* could defend itself by lawful prescription, since it had possessed it peacefully for forty years, *which the same administrator endeavored to prove through witnesses*.

The administrator of the aforesaid bishop, however, *responded to the objections that the grant of the founder did not harm the church of Albano, since the founder had granted only the right of patronage to the aforesaid monastery, and he himself was not moving a controversy against you concerning the right of patronage. But* he said that the grant of the Bishop of Labico was not valid, as containing simoniacal depravity. For since he had granted *the same* monastery a third part of the mortuary dues and had granted it full liberty both in the ordinations of clerics and in the consecrations of altars—*namely, so that it could obtain them from whatever bishop it wished without anyone's contradiction*—there is no doubt that, since these things are spiritual, by the very fact that he received for them the recompense of a fixed payment he committed the vice of simony. Hence a contract of this kind, *as simoniacal*, obtains no firmness. Moreover, the confirmation of the Apostolic See had been obtained *concerning this* through surreption, since no mention of the payment was made in it.

(*And below:*) Since, however, it is neither unusual nor new that, when bishops have granted *some churches in both spiritual and temporal matters* to pious places, they reserve something for themselves in them under the name of a payment, we also, when we grant *either* the privilege of liberty or the protection of defense to some churches, gratuitously receive a payment gratuitously offered, and in our letters, for the memory of our successors, express the payment and also its amount. (*And below:*) *We therefore*, after hearing *these and other things proposed on both sides*, by definitive sentence condemn the administrator of your monastery to the administrator of that bishop, in the name of the church *of Labico*, for payment of the aforesaid pension according to the proportion that falls upon the aforesaid church and for restitution, according to the same proportion, of what was withheld for forty years; and we absolve the same administrator of yours from the prosecution of the administrator of that bishop concerning the other matters, imposing perpetual silence upon him. *Although a fixed penalty that the party not observing the contract would pay to the party observing it was expressed in the instrument of grant of the aforesaid Bishop of Labico, nevertheless, since each party is proved by its own confession to have acted contrary to it—since your party withheld the payment from the bishop, and the bishop exacted a procuration from the same church, as the aforesaid administrator proposed—we absolve each party from it.*

> Ecclesia, sita in diocesi episcopi, tenetur sibi in episcopalibus respondere, nisi appareant remissa legitime; et potest episcopus remittendo episcopalia censum sibi retinere.
>
> Idem Abbati et Fratribus Cryptae ferratae.
>
> Constitutus in praesentia nostra *venerabilis frater noster* episcopus Albanensis in ecclesia Castri, quod Pauli dicitur, in qua ius patronatus monasterio vestro recognoscebat, a vobis ius episcopale duplici ratione petebat; *primo*, quoniam sita erat in dioecesi Albanensi, et ideo de iure communi ei tenebatur in episcopalibus respondere; *+secundo, quoniam in multis privilegiis Romanorum Pontificum, distinguentibus fines dioecesis Albanensis, inter alias ecclesias, in quibus iurisdictionem exercet, haec Albanensi ecclesiae auctoritate apostolica confirmatur*. Verum oeconomus vester proposuit ex adverso, quod, etsi ecclesia sita esset in dioecesi Albanensi, *et in privilegio ipsius episcopi non sine subreptionis vitio eius esset nomen inscriptum*, ei tamen non tenebatur in aliquo respondere, quum *Albericus, quondam fundator ipsius, de assensu felicis recordationis B. Papae praedecessoris nostri monasterio Cryptae ferratae saepe dictam ecclesiam contulisset. Praeterea bonae memoriae* Dominicus Lavitanus episcopus, *de quo non erat contentio inter partes*, qui fuerat episcopus Albanensis, universas ecclesias, ad vestrum monasterium pertinentes, in dioecesi eius sitas, et quicquid iuris tam in monasterio vestro *Cryptae ferratae*, quam in eis habebat, in emphyteusim sub annua octo denariorum usualium pensione *quos annatas in capite publicum nominat instrumentum* monasterio vestro concessit, ita videlicet, ut liceret abbati et fratribus *eiusdem monasterii* a quocunque vellent episcopo tam ordinationem clericorum quam consecrationem altarium in monasterio ipso et praedictis ecclesiis obtinere, in quibus etiam vobis tertiam partem mortuariorum indulsit, et C. Papa praedecessor noster quod ab eo factum fuerat *suo privilegio* confirmavit, *et ex certa scientia statuit in perpetuum observandum*. Verum, etsi ecclesia ipsa fuisset aliquando ecclesiae Albanensi subiecta, monasterium *tamen* vestrum nihilominus legitima se poterat praescriptione tueri, quum per quadraginta annos ipsam pacifice possedisset, *quod per testes idem nisus est oeconomus comprobare*. Ceterum oeconomus episcopi *memorati ad obiecta respondit, quod concessio fundatoris Albanensi ecclesiae non nocebat, quum fundator solum ius patronatus monasterio concesserit memorato, et ipse super iure patronatus vobis controversiam non moveret;* concessionem *autem* episcopi Lavitani non tenere dicebat, utpote continentem simoniacam pravitatem. Quum enim tertiam partem mortuariorum monasterio concessisset *eidem*, et tam in ordinationibus clericorum quam altarium consecrationibus indulsisset ei plenariam libertatem, *sic videlicet, ut ea possent a quocunque mallent episcopo sine contradictione cuiuslibet obtinere:* non est dubium, quin quum spiritualia haec exsistant eo ipso, quod super his recompensationem certae pensionis accepit, commiserit vitium simoniae. Unde contractus huiusmodi,

velut simoniacus, nullam obtinet firmitatem. Confirmatio autem apostolicae sedis fuerat *super hoc* per subreptionem obtenta, quum in ea de pensione nulla mentio habeatur. (*Et infra:*) Quum autem nec insolitum sit, nec novum, ut, quum episcopi ecclesias *aliquas tam in spiritualibus quam in temporalibus* concesserint piis locis, aliquid sibi reservent in eis nomine pensionis, nos quoque, quum *vel* libertatis privilegium, vel protectionis praesidium aliquibus ecclesiis indulgemus, gratis accipiamus censum gratis oblatum, et in literis nostris ad successorum nostrorum memoriam census exprimamus et etiam quantitatem : (*Et infra:*) *Nos igitur*, auditis *his et aliis hinc inde* propositis, oeconomum monasterii vestri oeconomo eiusdem episcopi ecclesiae *Lavicanae* nomine in solutionem pensionis praedictae, iuxta ratam, quae contingit ecclesiam praedictam, et restitutionem subtractae a quadraginta annis, secundum ratam eandem, per diffinitivam sententiam condemnamus, et eundem oeconomum vestrum ab impetitione oeconomi eiusdem episcopi super aliis reddimus absolutum, perpetuum illi silentium imponentes. *Licet autem in instrumento concessionis praedicti episcopi Lavicani expressa fuerit certa poena quam pars contractum non servans solveret observanti, quum tamen utraque pars venisse contra illum ex confessione propria convincatur, quum et pars vestra episcopo subtraxerit pensionem et episcopus procurationem exegerit ab eadem ecclesia sicut oeconomus proposuit memoratus utramque partem ab ea reddimus absolutam*.

Chapter VII

Latin source headnote: A bishop seeking a church as to temporal and spiritual matters prevails in spiritual matters by the very fact that he proves it to be in his diocese, if it does not appear to be exempt; but in temporal matters he loses unless the other party establishes his right. And in this last point it is a notable case.

The same, to the Abbot and Convent of Farfa.

When our venerable brother I., Bishop of Sabina, *before our beloved sons Roger, cardinal priest of the title of Saint Anastasia, and Pelagius, cardinal deacon of Saint Lucia at Septisolium, whom we granted as auditors to him and to Richard, your proctor*, had sought the church of Sant'Angelo de Cauceia with its appurtenances and possessions, asserting that it pertained to him in both spiritual and temporal matters, [*advancing first the possessory and afterward the petitory action,*] he alleged before all else the common law: because, since it was constituted in the diocese of Sabina, *as he said*, it ought to stand under his power [*according to the canonical sanctions. But when it was denied on your side that the same church was constituted in the aforesaid diocese, the same bishop, in order to prove this, exhibited before them a privilege of Pope Anastasius of good memory, our predecessor, in which Mount Tancia is set down as a boundary of the bishopric of Sabina, and the same church of Sant'Angelo is numbered among the other churches of the diocese of Sabina and is said to have been constructed on the aforesaid mountain. He showed this same thing through a public instrument that your proctor was using, in which it is said that the said church is situated in the territory of Sabina, since the diocese of Sabina extends much farther than the territory of Sabina.*]

The *same bishop* also endeavored to show that the said church pertained to him in temporal matters through a public instrument in which it was expressly contained that I., Bishop of Sabina, had leased the said church with its appurtenances to H., Abbot of Farfa, and to two persons after him, for an annual payment of four Pavia solidi, *to be paid on the Assumption of the Blessed Virgin*. But your party proposed that no faith at all should be placed in the aforesaid instrument because of interlinear writing and an erasure made [*in*] a suspicious place, namely where the notation of the time is recited. *It was furthermore proposed on the bishop's side that, since for a long time a fixed payment had been paid from the church of Sant'Angelo in the name of your monastery to the church of Sabina, it was manifestly clear that [the*

aforesaid church] belonged by proprietary right to that same church by which the lease had been made. [*Furthermore, since Pope Lucius of good memory, our predecessor, had enjoined the people of Sabina to labor for the recovery of Tancia, which you held at that time, and through them both Tancia and the church of Sant'Angelo had been restored to Peter de Bono, then proctor of the bishopric of Sabina, and you afterward caused the same church to be occupied, restitution of it had to be made to the same bishop, as that bishop asserted that all these things had been proved by suitable witnesses.*]

To these things the aforesaid proctor responded that, even though certain witnesses deposed that they had seen the church of Sant'Angelo pay a payment of four solidi to the Bishop of Sabina, nevertheless no prejudice could thereby be generated against your monastery, since it does not appear that the payment itself was made on behalf of the monastery; and although the witnesses also assert that they had seen the specified payment discharged many times, it is nevertheless not shown to have been furnished for so much time that it extends to lawful prescription. Likewise, just as a lease made is not sufficient for ownership of the thing, neither is payment nor receipt of a payment. [*Although the same Pope Lucius, our predecessor, had also given the above-written mandate to the people of Sabina after having been misled, believing, as had been suggested to him, that the aforesaid place and church pertained to the bishopric of Sabina, and the monks of Farfa, repelling the injury inflicted by those people of Sabina, took care to retain the aforesaid church, restitution on this account was not to be made to the bishop, especially since he would immediately suffer an adverse judgment in the petitory action, and he who seeks what he is going to return is known to act fraudulently, as is contained in the civil laws. The same bishop also vindicated for himself in that church half the special offerings of certain days, which the proctor of your monastery plainly acknowledged to him.*]

Therefore, *after these and other things that each party took care to propose before the aforesaid cardinals had been understood*, because it was established for us that the aforesaid *church of Sant'Angelo was* constituted in the diocese of Sabina, *with the counsel of our brothers* we adjudged episcopal right in all spiritual matters in it to the same bishop, only those things excepted that are known to have been withdrawn from him through authentic writings, [*this being expressed for caution: that he is to receive annually in the same church half the offerings of the aforesaid days, which, as was said, the aforesaid proctor acknowledged to him.*] But because we recognized the aforesaid instrument, through which the bishop intended to vindicate [*for himself*] the *aforesaid* church as to temporal matters, to be invalid for producing proof concerning this, as being suspect at law because of the aforesaid matters, we held that you were to be absolved *by sentence* from his prosecution as to the temporal matters of the same church, *imposing silence upon him concerning this.* [*Let no one therefore, etc. Given at Viterbo, on the second day before the Nones of August, in the twelfth year.* 1209.]

> Episcopus, petens ecclesiam quoad temporalia et spiritualia, obtinet in spiritualibus eo ipso, quod probat esse in sua dioecesi, si non appareat exempta; sed in temporalibus succumbit, nisi alter doceat de iure suo. Et in hoc ultimo est casus notabilis.
>
> Idem Abbati et Conventui Farbensibus.
>
> Quum venerabilis frater noster I. Sabinensis episcopus *coram dilectis filiis nostris Rogerio tit. sanctae Anastasiae presbytero et Pelagio sanctae Luciae ad septa solis diacono cardinalibus, quos sibi et Ricardo procuratori vestro concessimus auditores,* ecclesiam sancti Angeli de Cauceia cum suis pertinentiis et possessionibus petiisset, asserens, eam ad se tam in spiritualibus quam in temporalibus pertinere, [*primo possessorium et postea petitorium intentando,*] allegavit ante omnia ius commune : quia, quum constituta sit in dioecesi Sabinensi, *ut dicebat,* sub ipsius debebat consistere potestate [*iuxta canonicas sanctiones. Verum, quum ex vestra fuisset parte negatum, eandem ecclesiam in praedicta dioecesi constitutam, idem episcopus ad hoc probandum privilegium bonae memoriae Anastasii Papae praedecessoris nostri coram ipsis exhibuit, in quo mons Tancia pro*

Sabinensis episcopatus termino ponitur, et inter alias ecclesias Sabinensis dioecesis eadem ecclesia S. Angeli numeratur, ac in praedicto monte dicitur esse constructa, hoc idem per publicum instrumentum, quo procurator vester utebatur, ostendens, in quo dicitur, quod dicta ecclesia sita est in territorio, Sabinensi, quum Sabinensis dioecesis longe amplius quam Sabinense territorium extendatur.] In temporalibus quoque ad se dictam ecclesiam pertinere, *idem episcopus* nitebatur ostendere per publicum instrumentum, in quo continebatur expresse, I. Sabinensem episcopum H. Farbensi abbati et duabus personis post ipsum dictam ecclesiam cum suis pertinentiis locavisse pro annua quatuor solidorum Papiensium pensione, *in assumptione beatae Virginis persolvenda*. Sed pars vestra proposuit, instrumento praedicto nullam fidem penitus adhibendam propter superlinearem scripturam et rasuram [*in*] loco suspecto factam, ubi videlicet annotatio temporis recensetur. *+Fuit insuper ex episcopi parte propositum, quod, quum ab ecclesia S. Angeli nomine monasterii vestri multo tempore fuerit certa pensio ecclesiae Sabinensi soluta, manifeste liquebat, ad eandem ecclesiam, a qua locatio facta fuerat, [supradictam ecclesiam] iure proprietario pertinere.* [*Praeterea quum bonae memoriae Lucius Papa praedecessor noster iniunxerit Sabinensibus, ut ad recuperationem Tanciae, quam eo tempore tenebatis, intenderent, et per eosdem Petro de Bono, tunc Sabinensis episcopatus procuratori, tam Tancia quam ecclesia S. Angeli fuerit restituta, et vos eandem ecclesiam postea duxeritis occupandam, eiusdem erat episcopo restitutio facienda, sicut idem episcopus ea omnia per idoneos testes esse asserebat esse probata.*] *Ad haec autem procurator respondebat praedictus, quod, etsi quidam testes se vidisse deponant, ecclesiam S. Angeli pensionem IV. solidorum Sabinensi episcopo persolvisse, nullum tamen ex hoc monasterio vestro poterat praeiudicium generari, quum non appareat, pensionem ipsam ex parte monasterii fuisse solutam, et quamquam etiam testes asserant, se vidisse multoties praetaxatam pensionem exsolvi, non tamen ostenditur tanto tempore praestita, quod usque ad praescriptionem legitimam porrigatur. Item, sicut ad rei proprietatem locatio facta non sufficit, ita nec solutio, nec perceptio pensionis.* [*Licet etiam idem Lucius praedecessor noster suprascriptum mandatum Sabinensibus dederit circumventus, credens, prout ei suggestum fuerat, ad Sabinensem episcopatum praedictum locum et ecclesiam pertinere, ac Farfenses monachi propulsantes iniuriam ab eisdem Sabinensibus irrogatam retinere curaverint ecclesiam memoratam, propter hoc non erat episcopo restitutio facienda, maxime quum a vicino contrariam esset sententiam super petitorio excepturus, et qui petit quod redditurus est, dolum facere dignoscatur, sicut in civilibus legibus continetur. Medietatem quoque oblationum specialium quorundam dierum idem episcopus in eadem sibi ecclesia vendicabat, quam eidem de plano procurator vestri monasterii recognovit.*] Quia *igitur his et aliis intellectis, quae coram cardinalibus supra dictis pars utraque proponere procuravit*, nobis constitit, ecclesiam supra dictam *sancti Angeli* constitutam *esse* in dioecesi Sabinensi, *de consilio fratrum nostrorum* episcopale ius in omnibus spiritualibus eidem episcopo adiudicavimus in eadem, illis tantum exceptis, quae per authentica scripta ei dignoscuntur esse subtracta, *+*[*hoc ad cautelam expresso, ut medietatem oblationum praedictarum dierum, quam sicut dictum est, ipsi procurator recognovit iam dictus, in eadem ecclesia percipiat annuatim.*] Quia vero instrumentum praedictum, per quod episcopus *supra dictam* ecclesiam intendebat [*sibi*] quoad temporalia vindicare, ad faciendam super hoc fidem invalidum esse cognovimus, utpote propter praedicta de iure suspectum : vos ab impetitione ipsius quoad temporalia eiusdem ecclesiae duximus *sententialiter* absolvendos, *eidem super hoc silentium imponentes*. [*Nulli ergo etc. Dat. Viterbi II. Non. Aug. Ao. XII. * 1209.]

Chapter VIII

Latin source headnote: A monastery is subject to the bishop in whose diocese it is situated unless it is proved exempt. This it says with regard to the title.

The same.

When our beloved son [*F., Dean of Orense, messenger of our venerable brother the Bishop of Orense, and Master Robert, monk of Celanova and messenger of his abbot, had approached the Apostolic See, we granted them our beloved son P., cardinal deacon of Santa Maria in Via Lata, as auditor. Before him it was proposed on the bishop's*

side that, when the same bishop had summoned to the synod the abbot who was subject to him by diocesan law, the abbot not only did not come to him but even prohibited the priors of Saint Peter and Saint Columba and the archpriest of Cauci, constituted in the diocese of Orense, from attempting to come to that bishop's synod, although they too were summoned. And when the said bishop, so that he might at least humbly recall the abbot to the good of obedience and overcome evil with good, had commanded him to await him in the monastery at an appointed time, although the bishop came there as he had promised, he did not find the abbot, found the gates of the monastery closed, and was granted no access to the monks. On this account he suspended the abbot and placed the monastery under interdict. But when the abbot himself did not even on this account withdraw from his purpose of contumacy or observe the sentences rendered against him and the monastery, he promulgated a sentence of excommunication against him, which the said bishop's messenger petitioned us to confirm. But the messenger of the opposing party proposed that his petition was not to be admitted because, although the monastery itself was constructed within the boundaries of the diocese of Orense, it had nevertheless always been free and exempt from every jurisdiction and yoke of the church of Orense from the time of its foundation. Furthermore, if the bishop had any jurisdiction in it—which was not true—the same messenger asserted that the sentence subsequently rendered against him and the monastery obtained no firmness, because the abbot had previously appealed to the Apostolic See from every grievance. The same messenger also complained on behalf of the chapter of Celanova that the said bishop had so circumvented their abbot that, without their knowledge and contrary to the immunity of that church, he promised obedience to him anew.] *We therefore, instructed concerning the aforesaid matters through the aforesaid cardinal,* because *that* cause could not be terminated in our presence, *inasmuch as* the messenger of the monastery did not have letters concerning procuration or ratification, held that it should be committed to your examination, *commanding your discretion through apostolic writings* that, if it is established *for you* that the *same* abbot lawfully appealed *concerning this* to the Apostolic See before the bishop rendered sentences of suspension or excommunication against him and of interdict against the monastery, or that the monastery *is* exempt from the jurisdiction of the same bishop—notwithstanding that the abbot, circumvented by him, *as is said*, promised obedience to him anew without the assent of his brothers, since fraud and deceit ought not assist him—you are to judge, *all appeal having been entirely removed*, that those sentences are not valid; *otherwise, through ecclesiastical censure, you are to cause them to be inviolably observed until suitable satisfaction.*

But if *perhaps* the *same* abbot fails in proof of exemption and cannot defend himself by lawful prescription, although he proves that he appealed before the aforesaid sentences, you are nevertheless to judge that the *same* monastery is subject to the church of Orense, in whose diocese it was founded. Similarly, if he fails in proof of the appeal, but exemption or lawful prescription is established for you, you are to absolve both the abbot and the monastery entirely from the prosecution of the *same* bishop *and of that church,* [*and cause what you decree, etc. Given at the Lateran, on the seventh day before the Kalends of April.* 1198.]

> Monasterium subiectum est episcopo, in cuius dioecesi situm est, nisi probetur exceptum. H. d. quoad titulum.
>
> Idem.
>
> Quum dilectus filius +[*F. Auriensis decanus nuncius venerabilis fratris nostri Auriensis episcopi, et magister Robertus monachus Cellae novae et abbatis sui nuncius, ad sedem apostolicam accessissent, nos eis dilectum filium P. sanctae Mariae in Via lata diaconum cardinalem concessimus auditorem, coram quo fuit ex episcopi parte propositum, quod, quum idem episcopus abbatem sibi lege dioecesana subiectum vocasset ad synodum, ipse non solum non accessit ad ipsum, immo etiam sancti Petri et sanctae Columbae prioribus et archipresbytero Cauci in Auriensi dioecesi constitutis*

prohibuit, ne ad ipsius episcopi synodum accedere attentarent, licet etiam vocarentur. Quumque dictus episcopus, ut saltem humiliter abbatem ad bonum obedientiae revocaret, et vinceret in bono malum, ipsi mandasset, ut eum ad statutum terminum in monasterio exspectaret, licet episcopus illuc, iuxta quod promiserat, accessisset, abbatem non reperit, et portas monasterii clausas invenit, nec ad monachos aditus ei est concessus. Propter quod abbatem suspendit, et monasterium interdixit. Verum quum nec propter hoc abbas ipse a suo contumaciae proposito resiliret, nec latas in se ac monasterium sententias observare, in eum excommunicationis sententiam promulgavit, quam dictus episcopi nuncius a nobis petiit confirmari. Ceterum nuncius partis adversae petitionem eius non esse admittendam proposuit, quia, licet monasterium ipsum infra metas Auriensis dioecesis sit constructum, liberum tamen semper exstitit, et ab omni iurisdictione ac iugo Auriensis ecclesiae a tempore suae fundationis exemptum. Praeterea si episcopus aliquam in eo, quod verum non erat, iurisdictionem haberet, quia tamen abbas ab omni gravamine prius ad sedem apostolicam appellarat, sententiam in eum et monasterium postmodum latam nullam idem nuncius obtinere asseruit firmitatem. Conquestus est etiam idem nuncius ex parte capituli Cellae novae, quod dictus episcopus abbatem eorum adeo circumvenit, quod contra immunitatem ipsius ecclesiae ipsis nescientibus ei obedientiam repromisit.] *Nos igitur super praedictis per memoratum cardinalem instructi*, Quia causa *ipsa* non poterat in nostra praesentia terminari, *utpote* quum nuncius monasterii super procuratione vel ratihabitione literas non haberet : eam vestro duximus examini committendam, *discretioni vestrae per apostolica scripta* mandantes, quatenus, si *vobis* constiterit, abbatem *ipsum* ad sedem apostolicam *super hoc*, antequam episcopus in eum suspensionis vel excommunicationis, et in monasterium interdicti sententias tulerit, legitime appellasse, vel monasterium a iurisdictione episcopi eiusdem *esse* exemptum, eo non obstante, quod abbas, ab eo, *sicut dicitur*, circumventus, praeter fratrum suorum assensum ei obedientiam repromisit, quum fraus et dolus ei patrocinari non debeant, iudicetis illas sententias *appellatione remota penitus* non tenere, *alioquin faciatis eas per censuram ecclesiasticam inviolabiliter usque ad satisfactionem congruam observari*. Quodsi *forsan* abbas, *ipse* in exemptionis probatione defecerit, nec legitima se poterit praescriptione tueri, licet probet, se ante praedictas sententias appellasse, nihilominus tamen monasterium *ipsum* iudicetis Auriensi ecclesiae subiacere, in cuius est dioecesi fundatum. Similiter, eo in probatione appellationis deficiente, si vobis constiterit de exemptione vel legitima praescriptione, tam abbatem, quam monasterium ab impetitione *eiusdem* episcopi *et ecclesiae ipsius penitus* absolvatis, [*et faciatis quod decreveritis etc. Dat. Lat. VII. Kal. Apr.* 1198.]

Chapter IX

Latin source headnote: It is not lawful to establish a new religious order without the authority of the Roman Pontiff, nor can anyone be an abbot or monk in different monasteries. Thus it is principally summarized, although it contains several statements.

The same, in the general council.

Lest excessive diversity of religious orders induce grave confusion in the church of God, we firmly prohibit anyone henceforth from devising a new religious order; rather, whoever wishes to be converted to religion is to assume one of the approved orders. Similarly, whoever wishes to found a new religious house is to receive a rule and institution from the [*religious orders*] approved. We also prohibit anyone from presuming to hold the place of a monk in different monasteries, or one abbot from presiding over several monasteries.

Novam religionem non licet constituere sine auctoritate Romani Pontificis nec in diversis monasteriis potest quis esse abbas vel monachus. Sic principaliter summatur, licet plura dicta habeat.

Idem in concilio generali.

> Ne nimia religionum diversitas gravem in ecclesiam Dei confusionem inducat, firmiter prohibemus, ne quis de cetero novam religionem inveniat, sed quicunque ad religionem converti voluerit, unam de approbatis assumat. Similiter qui voluerit religiosam domum de novo fundare, regulam et institutionem accipiat de [*religionibus*] approbatis. Illud etiam prohibemus, ne quis in diversis monasteriis locum monachi habere praesumat, nec unus abbas pluribus monasteriis praesidere.

Title XXXVII: On the Chapels of Monks and Other Religious

Chapter I

Latin source headnote: Not monks but secular clerics are placed over a cure subject to a monastery, and they are subject to the bishops.

Urban III.

In churches where monks dwell, let the people not be governed through a monk; rather, let a chaplain who is to govern the people be instituted by the bishop with the counsel of the monks, yet *in such a way* that both his ordination and deposition and the entire conduct of his life depend upon the judgment of the bishop alone.

> **DE CAPELLIS MONACHORUM ET ALIORUM RELIGIOSORUM.**
>
> Ad curam monasterio subiectam non monachi, sed saeculares clerici praeficiuntur, et episcopis subsunt.
>
> Urbanus III.
>
> In ecclesiis, ubi monachi habitant, populus per monachum non regatur; sed capellanus, qui populum regat, ab episcopo per consilium monachorum instituatur, ita *tamen*, ut ex solius episcopi arbitrio tam ordinatio eius quam depositio, et totius vitae pendeat conversatio.

Chapter II

Latin source headnote: If a non-cathedral church vindicates a right for itself in another church, it will prevail only as to those things that it proves are owed to it by prescription or in another lawful manner. This it says according to the common and true understanding.

Innocent III, to the Archpriest and Clerics of Saint Cecilia.

Your beloved son M., syndic of your church, *constituted in our presence*, advancing both the possessory and the petitory action, sought from the administrator of San Lorenzo in Piscinula subjection in scrutinies, baptism, *processions*, chapters, and similar matters. For since the church of San Lorenzo is situated in your parish, by common law, *as the same syndic proposed*, it ought to be subject to your church in all the aforesaid matters, *unless it could defend itself either by special privilege or by lawful prescription*, because it has no privilege of exemption, nor could it allege prescription for itself, since that church of Saint Cecilia had prescribed against it, as he said was lawfully proved through witnesses. Furthermore, when *formerly* a question concerning the aforesaid matters was being litigated between your church and the aforesaid church before Pope C. *of good memory*, our predecessor, M., priest of the same church, spontaneously confessed that he owed scrutiny and baptism to the church of Saint Cecilia, *and thus acknowledged your right as to ownership*. And when your party had produced witnesses *sufficient and suitable* who *firmly* asserted that they had summoned him to chapter at different times and that he had come, and they were prepared to swear, the aforesaid

priest confessed that he had gone to chapter when summoned. Hence our aforesaid predecessor took care to reinvest your church with possession of chapter, of which it had complained that it was despoiled, saving the right of ownership of the church of San Lorenzo, as is contained in his letters. Through this, therefore, your syndic wished to prove *both* ownership as to scrutiny and baptism and possession as to chapter.

To these things, *however*, the administrator of San Lorenzo responded to the contrary, asserting that this church pertained immediately to the Roman Church. For since it had been a monastery of nuns, *as is taught from many authentic writings*, and since it is generally observed in the City that no monastery is subject to a titular church, it seemed incongruous that regulars should be subjected to seculars. Furthermore, even to this day we freely exercise institution and removal in it, *since Pope C. of good memory, our predecessor, also established in it without anyone's contradiction our beloved son M., our scribe, as archpriest. Thus the said administrator wished to prove that the church itself was free and existed in possession of liberty. Therefore, since he has common law in his favor in this—that, namely, all the monasteries of the City pertain immediately to the Roman Church—faith is not in any way to be placed in one affirming the contrary unless he introduces a special privilege concerning this. Moreover, the same administrator entirely denied what was said, that it was situated in your parish. But even if this were true, he could nevertheless defend himself sufficiently by the aforesaid reason. The confession of the priest M. concerning scrutiny and baptism could not prejudice the same church, since issue had not been joined concerning these things in the presence of that same predecessor of ours, as is apparent from the form of the petition and conclusion. Nor had your church used this sentence until now, but had caused it to be suppressed up to these times.* (*And below:*) We therefore, after hearing the things proposed, *the reasons and allegations, instruments and attestations having been more fully understood, and counsel having been deliberated with our brothers*, condemn the administrator *of the same church* of San Lorenzo to your syndic as to baptism, scrutiny, *and processions*, yet *in such a way* that through this no prejudice is generated against the Roman Church if at some time it should decide to prosecute its own right. But in institution, removal, and chapter we absolve the same administrator entirely from the prosecution of your syndic, imposing perpetual silence upon your syndic concerning this.

> Si ecclesia non cathedralis vindicat sibi ius in alia ecclesia obtinebit solum quoad ea, quae probabit sibi deberi praescriptioni vel alio legitimo modo. H. d. secundum communem et verum intellectum.
>
> Innocentius III. Archipresbytero et Clericis sanctae Caeciliae.
>
> Dilectus filius M. syndicus ecclesiae vestrae, *in nostra praesentia constitutus*, ab oeconomo sancti Laurentii de Piscinula in scrutiniis, baptismate, *processionibus*, et capitulis et similibus subiectionem postulans, possessorium et petitorium intentabat. Quum enim ecclesia sancti Laurentii sit in parochia vestra sita, debet de iure communi, *sicut idem syndicus proponebat*, ecclesiae vestrae in praedictis omnibus subiacere, *nisi se posset vel speciali privilegio, vel legitima praescriptione tueri*, quia nec privilegium exemptionis habet, nec praescriptionem pro se poterat allegare, quum illa ecclesia sanctae Caeciliae praescripsisset, sicut per testes dicebat legitime comprobatum. Praeterea, quum *olim* coram *bonae memoriae* C. Papa praedecessore nostro super praedictis inter vestram et praedictam ecclesiam quaestio verteretur, M. presbyter eiusdem ecclesiae fuit sponte confessus, quod ecclesiae sanctae Caeciliae scrutinium et baptisma debebat, *sicque ad proprietatem vestram iustitiam recognovit*. Quumque pars vestra testes *sufficientes et idoneos*, qui se illum diversis temporibus ad capitulum vocasse, ipsumque venisse *firmiter* asserebant, in medium produxisset, eis iurare paratis, praedictus presbyter se vocatum ivisse ad capitulum est confessus. Unde praedictus praedecessor noster ecclesiam vestram capitulo, quo se conquesta fuerat spoliatam, salvo iure proprietatis ecclesiae sancti Laurentii revestire curavit, sicut in eius literis continetur. Per hoc ergo

et proprietatem quoad scrutinium et baptisma, et possessionem quoad capitulum vester voluit syndicus comprobare. Ad haec *autem* sancti Laurentii oeconomus ex adverso respondit, quod ecclesia illa nullo medio ad Romanam ecclesiam pertinebat. Quum enim monasterium monialium fuerit, *sicut ex multis scriptis authenticis edocetur*, et generaliter servetur in Urbe, ut nullum monasterium titulo sit subiectum, incongruum videbatur, ut regulares saecularibus supponantur. Praeterea usque hodie nos in ea institutionem et destitutionem liberam exercemus, *+quum et bonae memoriae C. Papa praedecessor noster dilectum filium M. scriptorem nostrum archipresbyterum in ea sine contradictione cuiuslibet statuisset. Sic ergo ecclesiam ipsam liberam et in possessione libertatis exsistere dictus voluit oeconomus comprobare. Quum ergo pro eo habeat ius commune, in eo videlicet, quod universa monasteria Urbis ad Romanam ecclesiam nullo pertinent mediante, affirmanti contrarium fides non est aliquatenus adhibenda, nisi super hoc privilegium induxerit speciale. Quod autem dicitur in parochia vestra sita, idem oeconomus penitus denegavit. Sed etsi hoc verum esset, sufficienter tamen se poterat praedicta ratione tueri. Confessio autem M. presbyteri super scrutinio et baptismo eidem ecclesiae praeiudicare non poterat, quum super his lis contestata in eiusdem praedecessoris nostri praesentia non fuisset, sicut ex forma petitionis et conclusionis apparet. Hac etiam sententia non fuerat hactenus ecclesia vestra usa, sed eam duxerat usque ad haec tempora supprimendam.* (*Et infra:*) Nos igitur, auditis propositis, *rationibus et allegationibus, instrumentis et attestationibus plenius intellectis, et cum fratribus nostris deliberato consilio*, oeconomum *eiusdem ecclesiae* sancti Laurentii syndico vestro in baptismo, et scrutinio *et processionibus* condemnamus, ita *tamen*, ut per hoc ecclesiae Romanae nullum praeiudicium generetur, si quando forte ius suum duxerit prosequendum. In institutione autem et destitutione et capitulo oeconomum ipsum ab impetitione syndici vestri prorsus absolvimus, syndico vestro super hoc perpetuum silentium imponentes.

Chapter III

Latin source headnote: Individual monks cannot dwell alone in monastic priories, even if they have an apostolic rescript concerning this, unless mention of the Lateran Council is made in it.

Honorius III, to the Bishop of Vannes.

It was proposed on your part *before us that, when the abbot and convent of Rivensis in the diocese of Vannes formerly complained that you were endeavoring to compel them to establish several monks in certain of their priories in your diocese, in each of which individual monks had hitherto remained, since their means did not suffice for more, we commanded the Abbot of Saint-Aubin of Angers and his colleagues through our letters that, upon inquiring into the means of those places, they were to cause several monks to be established in each of them if their means sufficed for several; otherwise, by our present authority, they were to prohibit you from troubling the aforesaid abbot and convent concerning the establishment of several monks in them. Hence the same* Abbot and Convent of Rivensis in the diocese of Vannes assert that, by occasion of the letters of the Apostolic See, it was granted to them that individual monks may dwell in each of the priories *of their places* if their means do not suffice for several. But since this is contrary to the Lateran Council, of which no mention is made in the aforesaid letters, *you petitioned to be instructed by our response whether it had been our intention through such letters to dispense with the aforesaid abbot and convent contrary to that council. We therefore* respond briefly to your fraternity that we do not believe letters *of this tenor* to have emanated from the Apostolic See. But if perhaps they did emanate through preoccupation, we do not will the aforesaid council to be derogated through this.

In prioratibus monachorum non possunt singuli monachi commorari; etiamsi super hoc habeant rescriptum apostolicum, nisi in illo fiat mentio de Lateranensi concilio.

Honorius III. Episcopo Venetensi.

Ex parte tua fuit propositum *+coram nobis, quod, conquerentibus olim abbate ac conventu Rivensi Venetensis dioecesis, quod tu compellere moliebaris eosdem, ut instituerent plures monachos in quibusdam suis prioratibus tuae dioecesis, in quorum singulis singuli monachi hactenus steterant, quum pluribus facultates non suppetant eorundem, nos abbati S. Albini Andegavensis et collegis eius per literas nostras dedimus in mandatis, ut de ipsorum locorum facultatibus inquirentes, in eorum singulis facerent plures institui monachos, si pluribus illorum sufficiunt facultates; alioquin tibi auctoritate praesentium inhiberent, ne abbatem et conventum praedictos molestares super instituendis pluribus in eisdem. Unde idem* Abbas et conventus Rivenses Venetensis dioecesis occasione literarum apostolicae sedis asserunt sibi esse concessum, ut in singulis *locorum* ipsorum prioratibus singuli monachi commorentur, si pluribus non suppetunt facultates eorundem. Quum autem id obviet Lateranensi concilio, de quo nulla mentio est in literis ante dictis, *postulasti nostro edoceri responso, utrum nostrae intentionis fuerit per huiusmodi literas cum abbate et conventu praedictis contra ipsum concilium dispensare. Nos ergo* Fraternitati tuae breviter respondemus, quod *tenoris* huiusmodi literas ab apostolica sede non credimus emanasse. Quodsi per occupationem forsitan emanaverint, nolumus per hoc derogari concilio supra dicto.

Chapter IV

Latin source headnote: The ordinary compels an abbot either to recall monks from priories to the cloister or to join companions to them.

The same, to the Archbishop of Bordeaux.

It has reached our hearing, *as you signified*, that certain monks subject to you by diocesan law dwell alone in certain priories contrary to the statute of the general council. Therefore we command *your fraternity* that, warning having been premised, you are to compel through ecclesiastical censure, *appeal having been removed*, the abbots or priors of the *same monks* either to recall them to the cloister, causing service in those churches to be performed through secular clerics, or to associate other monks with them, with whom they may be able to lead the regular life, *provided that you do not extend your hand against exempt persons by occasion of a mandate of this kind*.

Ordinarius compellit abbatem, ut monachos a prioratibus revocet ad claustrum, vel eis socios adiungat.

Idem Burdegalensi Archiepiscopo.

Ad audientiam nostram *te significante* pervenit, quod nonnulli monachi, lege tibi dioecesana subiecti, in quibusdam prioratibus habitant solitarii contra statutum generalis concilii. Ideoque *fraternitati tuae* mandamus, quatenus ipsorum *monachorum* abbates seu priores, ut vel ipsos ad claustrum revocent, facientes in ipsis ecclesiis deserviri per clericos saeculares, vel alios monachos eisdem associent, cum quibus vitam possint ducere regularem, monitione praemissa per censuram ecclesiasticam *appellatione remota* compellas, *proviso, quod ad exemptos manum occasione mandati huiusmodi non extendas*.

Title XXXVIII: On the Right of Patronage

Chapter I

Latin source headnote: If through the discord of the patrons a church lacks an administrator, divine services cease in the church, the relics are removed, and the doors are closed, if provision cannot otherwise be made for the church without scandal. This it says together with the following chapter.

From the Council of Milan.

It has been reported *to us that churches established on private property are divided among the heirs, and so great a dissension arises through the same division that four parts are made of one altar and each part has its individual priests, which can in no way be conducted without discord and dissension. Hence* it has seemed to us that a church ought not be divided among the heirs of the patron. And if *they come into contention and* dissensions arise among them on account of which a priest cannot canonically perform his office there, if provision cannot be made otherwise, let it be commanded by the bishop *of the city* that the solemnities of Mass are in no way to be celebrated there until *they* return to concord and *by equal vote and counsel* that *church* canonically has a priest who may be able freely to exercise his ministry.

> **DE IURE PATRONATUS.**
>
> Si propter discordiam patronorum ecclesia caret administratore, cessatur in ecclesia a divinis, tolluntur reliquiae, et ostia clauduntur, si aliter sine scandalo ecclesiae provideri non potest. H. d. cum cap. sequenti.
>
> Ex concilio Mediolanensi.
>
> Perlatum est +*ad nos, quod inter heredes ecclesiae, in rebus propriis constitutae, dividantur, et tanta per eandem divisionem simultas oriatur, ut unius altaris quatuor partes fiant, et singulae partes singulos habeant presbyteros, quod sine discordia et simultate nullo modo geri potest. Unde* Nobis visum est, quod ecclesia inter heredes patroni dividi non debeat. Et si *in contentionem venerint, et* simultates inter eos surrexerint, propter quas sacerdos suo ibi officio canonice fungi non possit, si aliter provideri non poterit, praecipiatur ab episcopo *civitatis*, ut nullo modo ibi missarum solennia celebrentur, donec *illi* ad concordiam redeant, et *pari voto atque consilio* ecclesia *illa* sacerdotem canonice habeat, qui libere suum ministerium valeat exercere.

Chapter II

Latin source headnote: It is summarized in the preceding chapter.

From the Council of Tribur.

Whatever church *is held by several coheirs is to be administered on every side with concordant unanimity, lest through any disputes the service of God be diminished and the care of the people be conducted irreligiously*. But if it happens that patrons disagree *concerning* a church, so that they are unwilling for it to be administered under one priest, *and on this account quarrels and contentions begin to become frequent both among themselves and among the clerics, because according to the Apostle it does not befit the servants of God to quarrel*, the bishop, if he cannot otherwise provide for it, is to remove the relics from there, *place them honorably with great care*, and close the doors of the same church, *sealing them under his seal*, so that no one may celebrate the sacred mystery in it before *with concordant unanimity* they *all* elect one priest who is suitable to administer the sacred things *and usefully to preside over the people of God*.

> Summatum est in cap. proximo.
>
> Ex concilio Triburiensi.
>
> Quaecunque ecclesia +*a compluribus coheredibus sit obsessa, concordi unanimitate undique procuretur, ne propter aliquas disceptationes servitium Dei minuatur, et cura populi irreligiose agatur*. Si *vero* contingat pro ecclesia dissidere patronos, ut eam nolint sub uno presbytero procurari, *et propterea iurgia et contentiones tam inter ipsos quam inter clericos incipiant frequentare, quia iuxta Apostolum servos Dei non oportet litigare*, episcopus, si aliter non poterit ipsi consulere, tollat inde reliquias, *et sub magna cura honorifice collocet eas*, atque eiusdem ecclesiae claudat ostia, *et sub sigillo consignet ea*, ut sacrum mysterium nullus in ea celebret,

antequam *concordi unanimitate* unum *omnes* eligant presbyterum, qui sacrosancta sit idoneus procurare, *et populo Dei utiliter praeesse*.

Chapter III

Latin source headnote: If the patrons disagree in presenting, the person presented by the greater part is preferred if he is suitable; and if this cannot be done without scandal, or the patrons do not present within the due time, the bishop will order the church.

From the Lateran Council.

Because in certain places the founders of churches or their heirs abuse the power in which the church has hitherto sustained them, *and, although there ought to be one in the church of God who presides, they themselves endeavor to elect several without regard for subjection*, and, although one church ought to belong to one rector, through their disagreement they present several: *therefore* we establish by the present decree that, if perhaps the votes of the founders have divided into several parties, he is to be placed over the church who is supported by greater merits and is elected and approved by the assent of more persons. But if this cannot be done without scandal, let the bishop order the church as he sees that it can best be ordered according to God. And let him also do this same thing if a question concerning the right of patronage has arisen among some persons and it has not been definitively decided within four months to whom it belongs.

Si patroni in praesentando discordant, praefertur praesentatus a maiori parte, si est idoneus, et, si hoc sine scandalo fieri non potest, vel patroni infra tempus debitum non praesentant, episcopus ordinabit ecclesiam.

Ex concilio Lateranensi.

Quoniam in quibusdam locis fundatores ecclesiarum aut heredes eorum potestate, in qua eos ecclesia hucusque sustinuit, abutuntur, *et, quum in Dei ecclesia usus debeat esse qui praesit, ipsi plures sine respectu subiectionis moliuntur eligere*, et, quum una ecclesia unius debeat esse rectoris, pro sua dissensione plurimos repraesentant : *quocirca* praesenti decreto statuimus, ut, si forte in plures partes fundatorum se vota diviserint, ille praeficiatur ecclesiae, qui maioribus iuvatur meritis et plurimorum eligitur et approbatur assensu. Si autem hoc sine scandalo esse nequiverit, ordinet antistes ecclesiam, sicut melius eam secundum Deum viderit ordinandam. Et id ipsum etiam faciat, si de iure patronatus quaestio emerserit inter aliquos, et, cui competat, infra quatuor menses non fuerit diffinitum.

Chapter IV

Latin source headnote: Lay patrons who institute and remove clerics in churches, even patronal churches, or otherwise administer their goods, are excommunicated. And clerics who receive institution from laymen are deprived of communion.

From the same council.

Furthermore, because the audacity of certain laymen has advanced so far that, the authority of the bishops having been disregarded, they institute clerics in churches and remove them [*even*] when they wish, and generally distribute the possession and other ecclesiastical goods according to their will, *and presume to burden both the churches themselves and their men with tallages and exactions*, we decree that *those who henceforth presume to do these things* are to be struck with anathema. Moreover, *a priest or* cleric who receives a church through laymen without the authority of his own bishop is to be

deprived of communion; and, if he persists, he is to be deposed from ecclesiastical ministry and order. [*Indeed, because laymen, etc.*]

> Excommunicantur patroni laici, qui clericos instituunt et destituunt in ecclesiis etiam patronatis, vel bona ipsarum aliter administrant. Et clerici, qui institutionem laicorum recipiunt, communione priventur.
>
> Ex eodem.
>
> Praeterea, quia in tantum quorundam laicorum processit audacia, ut, episcoporum auctoritate neglecta, clericos instituant in ecclesiis, et removeant [*etiam,*] quum voluerint, possessionem quoque atque alia ecclesiastica bona pro sua voluntate plerumque distribuant, *et tam ecclesias ipsas quam homines earum talliis et exactionibus gravare praesumant*, ipsos, *qui amodo ista praesumpserint*, anathemate decernimus feriendos. *Presbyter autem sive* Clericus, qui ecclesiam per laicos sine proprii episcopi auctoritate receperit, communione privetur, et, si perstiterit, a ministerio ecclesiastico et ordine deponatur. [*Sane quia laici etc.*]

Chapter V

Latin source headnote: If a lay patron successively presents two persons and the second is instituted by the bishop, the institution is valid. This it says first. A patron cannot confer a patronal church upon a cleric or another church, or donate it to another.

Alexander III, to the Archbishop of York.

Concerning what you consult us—if a suitable cleric presented to a vacant church was not admitted by the diocesan bishop, and afterward another suitable cleric was presented and, having been instituted by the bishop, held corporal possession, whether, when the first cleric seeks the church, the later one ought to be removed or the later one preferred to the first—there is no doubt that in this case the condition of the possessor is better, because, before the presentation is approved by the diocesan bishop, what had been begun by the patron is not ratified. For the rest, we respond to your prudence that, if laymen draw up instruments for clerics or colleges concerning grants or donations in these or similar words, "I have granted or given the church and confirmed it by the present charter," if the bishop's consent has not acceded, nothing appears to have been done, because that is held as not given which is given by one who by law cannot donate it.

> Si patronus laicus successive praesentat duos, et secundus instituitur ab episcopo, valet institutio. Hoc dicit primo. Patronus non potest clerico vel alteri ecclesiae conferre ecclesiam patronatam, vel alteri donare.
>
> Alexander III. Eboracensi Archiepiscopo.
>
> Quod autem consulis, si clericus idoneus ad vacantem ecclesiam praesentatus non fuerit ab episcopo dioecesano admissus, et postmodum alius idoneus praesentatus, et institutus ab episcopo possessionem tenuerit corporalem, an, primo clerico ecclesiam petente, debeat posterior removeri, vel posterior priori praeferri, dubium non est, quin in casu isto melior sit conditio possidentis, quoniam, antequam praesentatio per dioecesanum episcopum approbetur, ratum non est quod a patrono fuerat inchoatum. De cetero tuae prudentiae respondemus, quod, si laici clericis vel collegiis de concessionibus vel donationibus instrumenta confecerint in haec verba vel similia " concessi vel dedi ecclesiam, et praesenti charta firmavi ", si consensus episcopi non accesserit, nihil agi videtur, quia pro non dato habetur, quod ab illo datur, qui non potest de iure donare.

Chapter VI

Latin source headnote: One who purchases or buys a right of patronage ought to be despoiled of it. Or thus: One who buys a right of patronage so that he may present a son or nephew, or whomever he wishes, ought to be deprived of it. This it says, and either reading can be sustained.

The same, to the Bishop of Exeter.

Because certain clerics *of your jurisdiction, as we have learned,* purchase advowsons of churches, or acquire them in whatever way they can, so that afterward their sons or nephews may be presented to the same churches, *we, wishing entirely to eradicate so depraved a custom, nevertheless command and* enjoin you by authority of the presents that you take care to prohibit this more strictly, despoiling them, appeal having been postponed, of advowsons acquired in this way.

> Comparans vel emens ius patronatus, eo spoliari debet. Vel sic: Qui emit ius patronatus, ut possit praesentare filium vel nepotem, seu quem vult, eo privari debet. H. d. et utraque lectio potest sustentari.
>
> Idem Exoniensi Episcopo.
>
> Quia clerici quidam *vestrae iurisdictionis* advocatias ecclesiarum, *sicut accepimus*, comparant, vel quocunque modo possunt acquirunt, ut postmodum eorum filii vel nepotes ad easdem ecclesias praesententur, *nos, tam pravam consuetudinem penitus eradicare volentes, nihilominus praesentium vobis auctoritate mandamus atque* praecipimus, ut id arctius inhibere procures, eosdem advocationibus taliter acquisitis appellatione postposita spoliando.

Chapter VII

Latin source headnote: A right of patronage contained in some aggregate of temporal things passes with that aggregate, even if the aggregate passes only as to beneficial ownership, unless the right of patronage is specifically excepted. This it says, and it is a notable case and is alleged daily.

The same, to the Bishop of Hereford and the Abbot of Forde.

We learned from the letters of I., Bishop of Salisbury, that, when the parson of the church of Laton had died, G., a knight who held at farm from the monastery of Winton the vill in which the church is situated, presented the cleric G. to the aforesaid bishop for that vacant church. Afterward, the abbess of the aforesaid monastery, *coming to the bishop,* presented another to him for the above-written church. When he was unwilling to receive the person presented by her, she lodged a grave complaint against the bishop before the Archbishop of Canterbury. *The archbishop, because it seemed to him that the knight's act concerning the aforesaid presentation was of no moment, enjoined the aforesaid bishop by virtue of obedience to receive and induct into possession that person whom the abbess had determined to present to him.* (*And below:*) We command that, if it is established for you that the aforesaid vill was granted at farm to the aforesaid knight without the right of patronage having been excepted, or that, before a controversy concerning the right of patronage arose between the abbess and the knight, the aforesaid G. *of Leicester* had been instituted in the aforesaid church by the bishop upon the knight's presentation, you are to adjudge *that church* to him, provided he is otherwise suitable, in such a way that, if the abbess prevails against the knight, he ought to answer to her concerning the temporalities.

> Ius patronatus, consistens in aliqua universitate temporalium, transit cum ipsa universitate, etiamsi universitas transeat tantum quoad utile dominium; nisi ius patronatus specifice sit exceptum. H. d. et

est notabilis casus, et quotidie allegatur.

Idem Herfordensi Episcopo et Abbati de Forde.

Ex literis I. Salabriensis episcopi accepimus, quod defuncta persona ecclesiae de Laton. G. miles, qui villam, in qua ecclesia sita est, a monasterio de Vinton. ad firmam tenebat, ad eandem vacantem G. clericum praedicto episcopo praesentavit. Postmodum abbatissa praedicti monasterii, *ad episcopum veniens*, alium praesentavit eidem ad ecclesiam supra scriptam, quo nolente praesentatum ab ea recipere, apud Cantuariensem archiepiscopum gravem de episcopo deposuit quaestionem. +*Archiepiscopus, quia visum sibi erat, quod factum militis super praesentatione praefata nullius esset momenti, praedicto episcopo in virtute obedientiae iniunxit, quod personam illam reciperet et in possessionem induceret, quam abbatissa sibi decreverat praesentandam.* (*Et infra:*) Mandamus, quatenus, si vobis constiterit, quod praefato militi praescripta villa fuerit non excepto iure patronatus ad firmam concessa, vel, antequam de iure patronatus inter abbatissam et militem controversia esset suborta, praefatus G. *de Leicestria* in praescripta ecclesia per episcopum ad praesentationem militis institutus fuisset, ei, dummodo alias sit idoneus, adiudicetis *ipsam ecclesiam* ita, quod, si abbatissa obtineat adversus militem, illi de temporalibus debeat respondere.

Chapter VIII

Latin source headnote: If a layman grants a church to a cleric or religious place without the bishop's consent, notwithstanding such a grant, which is invalid, he will be able to present to that same church when it becomes vacant and to grant it to another church with the bishop's consent. This it says together with the chapters *When Laymen* and *It Was Suggested,* below, in the same title.

The same, to the Bishop of Winchester.

We did not consider, [*however*], that this should be passed over, *concerning which we understood you to be doubtful*: if *some* layman, without consulting the bishop, grants a church that is not vacant to *some* religious house, and afterward, when it becomes vacant, *some* cleric is instituted there by the diocesan bishop upon the presentation of the same layman, the prior grant cannot *and ought not* in any way impede the second institution from being held ratified and firm, since that grant can by law be of no moment: both because it was made concerning a thing not vacant, and because a layman without the bishop's authority can give churches to no one, although he has free power to confer the right of patronage upon a religious place. But if, while the church is vacant, he confers the right of patronage upon a religious place, and *afterward* someone is instituted in that church without the presentation of the brothers of the same place, according to the rigor of law his institution is to be invalidated.

Si laicus clerico vel religioso loco concedit ecclesiam sine consensu episcopi, non obstante tali concessione, quae non valet, ad ipsam ecclesiam, quum vacaverit, poterit praesentare, et eam alteri ecclesiae de consensu episcopi concedere. H. d. cum cap. Quum laici, et cap. Suggestum, infra eod.

Idem Vintoniensi Episcopo.

Illud [*vero*] praetereundum non duximus, *super quo te intelleximus dubitare*, quod, si *aliquis* laicus episcopo inconsulto ecclesiam non vacantem concedit *alicui* religiosae domui, et postea, quum vacaverit, ad praesentationem eiusdem laici *aliquis* clericus ibi fuerit per dioecesanum episcopum institutus, prior concessio secundam institutionem, quo minus habeatur rata et firma, non potest *nec debet* aliquatenus impedire, quum illa concessio de iure nullius possit esse momenti, tum quia de re non vacante facta est, tum quia laicus sine auctoritate episcopi nemini potest ecclesias dare, licet religioso loco ius patronatus conferendi liberam habeat facultatem. Si vero ius patronatus vacante ecclesia religioso loco contulerit, et

aliquis *postea* sine praesentatione fratrum eiusdem loci fuerit in ipsa ecclesia institutus, eius secundum rigorem iuris est institutio irritanda.

Chapter IX

Latin source headnote: Those instituted in patronal churches cannot be changed by new patrons, nor may alternations of churches be made through them.

The same, to the same.

We have heard, through a complaint *sent to us by letter from the prior and brothers of Lauth, that R., formerly Earl of Hereford, acknowledged before I., formerly Bishop of Worcester of good memory, the right that the same prior and brothers ought to have in the church of Wic. from the donation of H. de Lacy, founder of their church and father-in-law of R. himself. Hence the bishop afterward invested the aforesaid prior and brothers with it, no one objecting or contradicting, and they thereafter possessed it quietly and peacefully. Then, when a separation had been pronounced by ecclesiastical judgment between the aforesaid earl and C., his wife, in whose patrimony that church is contained, the same C. married W. of Poitiers, who entirely withdrew the fruits of the aforesaid church from the aforesaid prior and brothers and converted them, without episcopal authority, to the uses of R., priest of the same place. And when afterward, W. having been removed from their midst, the aforesaid C. was joined in marriage to a third husband, namely W. de Mediran, the same W., persisting in the same temerity as the other W., began to maintain and foster the aforesaid R. in the aforesaid church against the aforesaid prior, saying that what the above-named Bishop I.* [*did*] *concerning the church, which exists under the advowson of his wife, while she was in the power of that man from whom she is known afterward to have been separated, ought to have no firmness, especially since, as he asserts, his wife's patrimony would not have been restored to him in full unless he could fulfill his will concerning that church. Hence, because* it seems altogether absurd, *and to be entirely eliminated from the church of God*, that at each change of patrons according to human circumstance the orderings of churches should be changed, *and it was not lawful for any of the successors to revoke what had thus been done by the above-written H., we command your fraternity by apostolic writings, enjoining that you diligently and studiously inquire into the truth of the matter and, if you find it to be as narrated above, restore the aforesaid church to the often-mentioned prior and brothers, every pretext and appeal ceasing, and cause them to possess it in peace.* And let [not] *alternations of this kind* in churches be presumed by advocates or others, *but, delay having been removed, strike those who presume them with the bond of excommunication until worthy satisfaction.*

Instituti in ecclesiis patronatis per novos patronos mutari non possunt, nec vicissitudines ecclesiarum per eos fieri.

Idem eidem.

Querimonia, *+prioris et fratrum de Lauth nobis literis destinata audivimus, quod R. quondam Herfordensis comes ius, quod idem prior et fratres in ecclesia de Wic. ex donatione H. de Laci fundatoris ecclesiae suae, et ipsius R. soceri habere debebant, bonae memoriae I. quondam Wigorniensi episcopo recognovit. Unde episcopus postea iam dictos priorem et fratres nullo reclamante aut contradicente exinde investivit, quam illi deinde quiete et pacifice possederunt. Demum quum inter comitem praefatum et C. uxorem suam, in cuius patrimonio ecclesia illa consistit, divortium per ecclesiasticum iudicium celebratum fuisset, eadem C. W. Pictaviensi nupsit, qui ecclesiae praescriptae fructus memorato priori et fratribus subtraxit omnino, et eos in usus R. sacerdotis eiusdem loci sine episcopali auctoritate convertit. Quumque postmodum, W. de medio sublato, praefata C. tertio viro W. scilicet de Mediran, esset matrimonio copulata, idem W. in ea, qua et W., temeritate persistens, iam dictum R. in ecclesia praetaxata contra priorem supra dictum manutenere et fovere incepit, dicens, quod praenominatus episcopus I.* [*fecit*] *super ecclesia, quae de uxoris suae advocatione exsistit, dum erat in potestate illius viri, a quo postmodum separata fuisse dignoscitur, nullam debere*

firmitatem habere, praesertim quum patrimonium uxoris suae, sicut asserit, integre sibi restitutum non esset, nisi de ecclesia illa suam posset adimplere voluntatem. Unde, quoniam Absurdum videtur omnino, *et ab ecclesia Dei penitus eliminandum*, ut ad singulas patronorum secundum humanam conditionem mutationes ecclesiarum ordinationes mutentur, *nec quod a suprascripto H. taliter factum fuit alicui successorum licuit revocare, fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus rei veritatem diligenter et studiose inquiras, et si ita inveneris esse, prout superius est narratum saepe dictis priori et fratribus, ecclesiam praelibatam omni occasione et appellatione cessante restituas et in pace facias possidere*. Et [ne] vicissitudines *etiam huiusmodi* ecclesiarum ab advocatis vel aliis praesumantur *sed earum praesumptores usque ad dignam satisfactionem dilatione sublata, vinculo excommunicationis percellas*.

Chapter X

Latin source headnote: A patron cannot confer a church upon a cleric, and, if he confers it, notwithstanding this he can present a rector to the church.

The same, to the Archbishop of York.

When laymen, without the bishops' knowledge or consent, grant to clerics churches in which they have the right of patronage and, afterward, moved by repentance, present others to the same churches *to the bishops*, and those persons are instituted in the same churches by the bishops upon their presentation, the institution of those who are instituted by the bishop's authority ought to stand *and be firmly observed*, the prior grant, which is null, having been altogether annulled. For it is not lawful for laymen to ordain clerics in churches by their own presumption.

Patronus ecclesiam clerico conferre non potest, et, si contulerit, potest hoc non obstante ad ecclesiam praesentare rectorem.

Idem Eboracensi Archiepiscopo.

Quum laici episcopis nescientibus aut non consentientibus ecclesias clericis concedunt, in quibus habent ius patronatus, et postea poenitentia ducti alios ad easdem ecclesias *episcopis* repraesentant, et illi ad eorum praesentationem in eisdem ecclesiis ab episcopis instituuntur, eorum debet institutio stare *et firmiter observari*, qui auctoritate sunt episcopi instituti, concessione priori, quae nulla est, omnino evacuata. Non enim licet laicis clericos in ecclesiis praesumptione propria ordinare.

Chapter XI

Latin source headnote: Religious cannot vindicate or retain churches granted to them by laymen without the diocesan's consent, unless they have lawfully prescribed or the diocesan afterward consented.

The same, to the Abbots, Priors, and Clerics Constituted throughout the Archbishopric of York.

By pastoral care *we are constrained by necessity and provoked by the authority of the office enjoined upon us to labor with vigilant diligence for the condition of churches, and to provide with more attentive solicitude that they not be conferred upon anyone contrary to the order of law. Hence, commanding through apostolic writings,* we command your whole body that none of you presume to vindicate for himself any churches from the donation of laymen, or to retain those acquired in this way, unless the authority and consent of the diocesan bishop are present, unless he is fortified by lawful prescription or has *perhaps* afterward obtained the consent of the diocesan bishop. For since laymen cannot transfer to others anything

except the right they possess, *we decree that* grants of this kind *lack force and* judge them to be entirely void.

> Religiosi vindicare vel retinere non possunt ecclesias sibi concessas a laicis sine dioecesani concessu, nisi legitime praescripserint, vel postea dioecesanus consenserit.
>
> Idem Abbatibus, Prioribus et Clericis per archiepiscopatum Eboracensem constitutis.
>
> Cura pastorali +*necessitate constringimur, et auctoritate iniuncti nobis officii provocamur, pro statu ecclesiarum vigili studio satagere, et, ne contra iuris ordinem alicui conferri valeant, attentiori sollicitudine providere. Inde est, quod universitati vestrae per apostolica scripta praecipiendo* Mandamus, quatenus ex donatione laicorum, nisi auctoritas dioecesani episcopi et consensus adsit, nullus vestrum aliquas sibi ecclesias vindicare praesumat, vel retinere taliter acquisitas, nisi legitima fuerit praescriptione munitus, aut dioecesani episcopi *forte* habuerit postea consensum. Quum enim laici non possint in alios nisi ius, quod habent, transferre, *nos* huiusmodi concessiones *viribus carere decernimus, et* irritas penitus esse censemus.

Chapter XII

Latin source headnote: If the patrons of a vacant church do not present within the time granted by law, the bishop will order the church.

The same, to the Bishop of Langres.

But if *at any time* the ordering of some church belongs to your institution and is *maliciously* prolonged by a controversy among laymen disputing with one another concerning the right of patronage, let it be lawful for you, *by our authority*, appeal having been removed, to institute a suitable person in that *church*, in such a way that *the same person* is to be presented by the one who prevails in the right of patronage.

> Si patroni ecclesiae vacantis infra tempus, a iure concessum, non praesentant, episcopus ordinabit ecclesias.
>
> Idem Lingonensi Episcopo.
>
> Si vero *aliquando* ordinatio alicuius ecclesiae ad tuam institutionem spectat et pro controversia laicorum de iure patronatus inter se disceptantium *malitiose* prorogatur : fas tibi sit *de auctoritate nostra* appellatione remota in eadem *ecclesia* personam idoneam instituere, ita, quod *ipsa eadem* repraesentetur ab eo, qui ius evicerit patronatus.

Chapter XIII

Latin source headnote: If the right of patronage of a church comes to exempt persons, through this the episcopal right ought not be harmed in anything.

The same, to the Hospitallers.

Since you have left the world, *so that you may be able to please our Creator in the citadel of contemplation, it befits you to abstain from those things that are contrary to reason, or that are subject to reproach or can blacken your reputation or fame. Hence, through apostolic writings, we more strictly* prohibit your whole body, when by reason of fiefs bought or otherwise acquired, or even in some other manner, you acquire the right of patronage in parochial churches, from *instituting priests in them except through the bishop, or* presuming to diminish *or in any way remove* the bishop's parochial right. *Nor are you to dare, contrary to the authentic*

writings of the Roman Church, to receive at divine offices in your chapels persons excommunicated by that bishop or by your archdeacons.

> Si ius patronatus ecclesiae devenit ad exemptos, per hoc in nullo debet laedi ius episcopale.
>
> Idem Hospitalariis.
>
> Quum saeculum reliqueritis, *+ut Creatori nostro possitis in arce contemplationis placere, decet vos ab his, quae sunt obvia rationi, abstinere, vel quae reprehensioni subiaceant, aut vestram opinionem aut famam valeant denigrare. Inde est, quod universitati vestrae districtius per apostolica scripta* Prohibemus, ne, quum ratione feudorum emptorum aliterve acquisitorum, vel etiam alio modo ius patronatus in ecclesiis parochialibus acquisieritis, *in eis presbyteros nisi per episcopum instituatis, nec* episcopo ius parochiale minuere *aut auferre aliquatenus* praesumatis. *Excommunicatos quoque ipsius episcopi vel archidiaconorum tuorum contra authentica scripta Romanae ecclesiae ad divina officia in capellis vestris recipere non audeatis.*

Chapter XIV

Latin source headnote: Without the patron's consent no one can occupy a church.

The same.

We learned from the intimation of *our beloved son* O., a cleric, that, when his brother had liberally conferred upon him the right of patronage that he held in certain churches *constituted in the bishoprics of Lincoln and Salisbury*, certain *priests and others, by occasion of the aforesaid brother of O.*, occupied those *churches by violence* without his *will and* assent, and unjustly keep *them* occupied. *Therefore, because it belongs to us to recall to the path of rectitude those things that are attempted less orderly by some subjects, commanding your fraternity through apostolic writings,* we command that, after diligently investigating and learning the truth of the matter, if it is so *as has been said*, warning having been premised, you are to compel the *aforesaid priests who detain those churches* to restore them to the aforesaid cleric, to be ordered freely and peacefully through him. *But if the aforesaid priests should perhaps be unwilling to acquiesce in your admonition, every pretext and appeal ceasing, you are to subject them to excommunication and their lands, if they have any, to interdict, and cause divine offices to cease in the aforesaid churches as long as they remain occupied by any persons under the authority of the aforesaid knights. But if the detainers of the same churches still do not recover their senses, appeal ceasing, strike them with ecclesiastical censure.*

> Sine consensu patroni non potest quis ecclesiam occupare.
>
> Idem.
>
> Ex insinuatione *dilecti filii nostri* O. clerici accepimus, quod, quum ei frater eius ius patronatus, quod in quibusdam ecclesiis, *in Linconiensi et Salisberiensi episcopatibus constitutis*, habebat, liberaliter contulisset, eas *ecclesias* quidam *presbyteri et alii occasione fratris praedicti O.* sine ipsius *voluntate et* assensu *per violentiam* occuparunt, et *eas iniuste* detinent occupatas. *+Quia igitur nostra interest, ea, quae minus ordinate ab aliquibus subiectis attentantur, ad rectitudinis tramitem revocare, fraternitati tuae per apostolica scripta praecipiendo* Mandamus, quatenus, *rei veritate diligenter inquisita et cognita*, si est ita, *sicut dictum est, memoratos presbyteros ecclesiarum* earum detentores, ut easdem praedicto clerico restituant, per eum libere et pacifice ordinandas, monitione praemissa compellas. *Quodsi praedicti presbyteri commonitioni tuae acquiescere forte noluerint, tu ipsos excommunicatione, et terras si quas habeat, omni occasione et appellatione cessante interdicto subiicias, et in memoratis ecclesiis divina facias cessare officia, quamdiu ab aliquibus praedictorum auctoritate militum occupatae detinebuntur. Quodsi nec earundem ecclesiarum detentores resipuerint, ipsos, appellatione cessante, ecclesiastica censura percellas.*

Chapter XV

Latin source headnote: A patron cannot retain a church for himself or even grant it to another by his own authority.

The same, to the Bishop of Adonensis.

Your fraternity consulted us as to what you should do concerning clerics who vindicate for themselves by hereditary right churches constructed by their parents and are unwilling to answer to you concerning them, and concerning laymen who endeavor to give the aforesaid churches to their sons or nephews. But since the sanctuary of God cannot be held by hereditary right, *and it is entirely unworthy and absurd for anyone to occupy a church by his own authority or to detain churches thus occupied*, it is not fitting in any way to tolerate that *in your bishopric* clerics detain by their own authority churches founded by their parents, or that laymen grant those same churches to sons or any others.

> Non potest patronus ecclesiam sibi retinere, vel etiam alteri concedere propria auctoritate.
>
> Idem Adonensis Episcopo.
>
> Consuluit nos *+tua fraternitas, quid tibi faciendum sit de clericis, qui ecclesias constructas hereditario iure sibi vindicant, nec tibi volunt exinde respondere, et de laicis, qui praescriptas ecclesias filiis vel nepotibus suis dare nituntur*. Quum *autem* sanctuarium Dei iure hereditario teneri non possit, *et indignum sit penitus et absurdum, ut quilibet auctoritate propria ecclesiam occupet, vel taliter occupatas detineat:* non decet aliquatenus sustineri, ut *in episcopatu tuo vel* clerici ecclesias a parentibus suis fundatas propria auctoritate detineant, aut laici filiis vel aliquibus aliis ecclesias concedant easdem.

Chapter XVI

Latin source headnote: A right of patronage cannot be sold by itself.

The same.

But concerning the right of patronage *in the aforesaid chapel, we* command your discretion that, if R. *Brito* purchased it, since it is incongruous *and entirely dishonorable* for a right of patronage, which is annexed to a spiritual thing, to be sold, you are to decree that contract void, *the remedy of appeal having been removed*, and, *supported by apostolic authority, you are not to defer revoking it*.

> Ius patronatus per se vendi non potest.
>
> Idem.
>
> De iure vero patronatus *in praescripta capella hoc tuae discretioni* mandamus, quatenus, si R. *Brito* illud comparavit, quum inconveniens sit *et penitus inhonestum* vendi ius patronatus, quod est spirituali annexum, contractum illum *sublato appellationis remedio* irritum esse decernas, *ipsumque apostolica auctoritate fretus non differas revocare*.

Chapter XVII

Latin source headnote: A patron cannot confer upon even a religious place the tithes of a church or another spiritual thing without the consent of the bishop or Pope.

The same.

Let no layman confer tithes, a church, or anything of ecclesiastical right upon monasteries or canons without the grant of his pontiff. And if any bishop is unwilling to consent because of wickedness or

avarice, let it be announced to the Roman Pontiff, and then let what is to be offered be offered with his license.

> Patronus non potest sine episcopi vel Papae consensu etiam loco religioso conferre ecclesiae decimas vel aliud spirituale.
>
> Idem.
>
> Nullus laicus decimas, aut ecclesiam, aut quicquid ecclesiastici iuris est, sine concessione sui pontificis monasteriis vel canonicis conferat. Et si quis episcopus improbitatis vel avaritiae causa consentire noluerit, Romano pontifici nuncietur, et quod offerendum est tunc eius licentia offeratur.

Chapter XVIII

Latin source headnote: If a bishop is patron in a church of another diocese, the person presented by him ought to be admitted if he is suitable.

The same.

You signified (*And below:*) *Moreover,* if bishops, after their promotion, have obtained from the patrons of churches the presentations of persons to those churches for churches committed to them, suitable persons whom they present to them when vacant are to be admitted.

> Si quis episcopus in ecclesia alterius dioecesis est patronus, praesentatus ab eo debet admitti, si est idoneus.
>
> Idem.
>
> Significasti (*Et infra:*) *Ceterum* Si episcopi post promotionem suam praesentationes personarum ad ecclesias a patronis earum pro ecclesiis sibi commissis adepti fuerint, personae idoneae, quas ad eas vacantes praesentaverint, sunt admittendae.

Chapter XIX

Latin source headnote: One instituted upon the presentation of a person who then possessed the right of patronage of a church ought not be removed, although that right is afterward evicted from him; it is otherwise if he did not possess it but was only believed to be the patron.

The same, to the Abbot of Saint Albert.

To the consultations (*And below:* [*cf. c.* 10, *On the Office of a Delegated Judge,* I. 29.]) *For the rest,* if any cleric was instituted by the ordinary judge in *some* church upon the presentation of one who was believed to be patron of that church, and afterward another person evicts the right of patronage in a judgment, the *cleric who was* instituted ought not for this reason to be removed from that *church* if, at the time of his presentation, the one who presented him possessed the right of patronage of the church, since from this no prejudice is generated in the future against the one who ought to have it by right. But if at that time he did *not* possess *the right of patronage*, but was only believed to be the patron, when [*nevertheless*] he was not *and did not have possession of the patronage*, he will be able to be removed from the same church *according to English custom*. *But donations, etc.* (*cf. c.* 4, *On Donations,* III. 24.)

> Institutus ad praesentationem eius, qui tunc ius patronatus ecclesiae possidebat, removeri non debet, licet illud ius ab eo postmodum evincatur; secus, si non possidebat, sed tantum credebatur esse patronus.

Idem abbati S. Alberti.

Consultationibus (*Et infra:* [*cf. c. * 10. *de off. iud. del. I.* 29.]) *De cetero* Si aliquis clericus ab ordinario iudice in *aliqua* ecclesia fuerit institutus ad praesentationem illius, qui eiusdem ecclesiae credebatur esse patronus, et postea ius patronatus alius evicerit in iudicio, *clericus, qui* institutus *est*, non debet ab ipsa *ecclesia* propter hoc removeri, si tempore praesentationis suae ille, qui eum praesentavit, ius patronatus ecclesiae possidebat, quum ex hoc ei, qui de iure debet habere, nullum in posterum praeiudicium generetur. Si vero *tunc* non possidebat *ius patronatus*, sed tantum credebatur esse patronus, quum [*tamen*] non esset, *nec possessionem patronatus haberet: secundum consuetudinem Anglicanam* poterit ab eadem ecclesia removeri. *Donationes vero etc.* (*cf. c.* 4. *de don. III.* 24.)

Chapter XX

Latin source headnote: A second grant of a church made to another church by the bishop and patron is valid notwithstanding a prior grant made by the patron alone.

The same, to the Archbishop of York.

It was suggested *to our ears* that, when certain churches, with the assent of the lord of the soil *and* by authority of the Archbishop of York, had been granted and assigned as a prebend to the church of blessed P. of York, the canons of Newburgh endeavor to *weaken and* invalidate that grant by occasion of a donation that they assert *was* made to them previously. Hence, although the consent of the patrons is to be sought and awaited in donations of churches, nevertheless, because the *churches themselves* cannot be canonically granted unless pontifical authority intervenes, we signify *to your whole body* that the prior grant, if made with the patron's assent and by authority of the diocesan bishop, or if his assent afterward followed, is preferred to the later grant; otherwise, although it *was* made later, that grant ought to be preferred which is supported by the consent of the lord of the soil and the bishop's authority.

Valet secunda concessio ecclesiae, facta alteri ecclesiae per episcopum et patronum, non obstante priori, facta per patronum solum.

Idem Eboracensi Archiepiscopo.

Suggestum est *auribus nostris*, quod, quum ecclesiae quaedam de assensu domini fundi *et* auctoritate Eboracensis archiepiscopi ecclesiae beati P. Eboracensis concessae et assignatae sint in praebendam, canonici de Novoburgo concessionem illam *attenuare et* irritare nituntur occasione donationis, quam sibi asserunt prius factam *fuisse*. Unde, licet in donationibus ecclesiarum requirendus sit et exspectandus patronorum consensus, quia tamen ecclesiae *ipsae*, nisi auctoritas intervenerit pontificalis, canonice concedi non possunt : *universitati vestrae* significamus, quod prior concessio, si cum assensu patroni et auctoritate dioecesani episcopi facta est, aut eius assensus fuerit postea subsecutus, posteriori concessioni praefertur; alioquin illa debet praeferri, quamvis posterius facta *sit*, quae consensu domini fundi et episcopi auctoritate fulcitur.

Chapter XXI

Latin source headnote: One who, after being warned, does not relinquish a church granted to him without the bishop's consent is removed from office and benefice. This it says. — (*To this, etc.:*) Laymen despoiling a church are excommunicated. This it says.

The same, to the Archbishops and Bishops Constituted throughout England.

It has been reported to us that certain persons, *drawn by excessive ambition*, by occasion of lay recognition *or secular power in the secular forum*, without seeking the bishop's hearing, presume to vindicate for themselves in your parishes *the patronage of churches and* ecclesiastical benefices. Therefore, since persons of this kind do not enter through the door but climb up by another way, and for this reason are unworthy to rejoice in the name or prerogative of a pastor, *commanding your fraternity through apostolic writings*, we command that, if those *who are established to have obtained the patronage of churches or ecclesiastical benefices in the aforesaid manner* do not resign the aforesaid things after being admonished, unless they are fortified by *prescription or* an episcopal grant, you are to render them, *the evasion of appeal having been removed*, strangers to office and benefice; *and, if they do not desist even thus, bind them with the bond of anathema and hold and cause them to be held bound until worthy satisfaction.*

To this, because certain laymen despoil churches of *lands and other* possessions so that they may thus cause ecclesiastical men to litigate before a secular judge, we enjoin you *by authority of the presents* to take care to prohibit this publicly under threat of anathema. But if anyone is a contemner of your prohibition, *if it is manifest, appeal ceasing*, subject him to excommunication, *and until worthy satisfaction cause him attentively to be avoided as an excommunicated person*.

> Ab officio et beneficio removetur qui monitus non dimittit ecclesiam sine consensu episcopi sibi concessam. H. d. — (Ad hoc etc.:) Laici, spoliantes ecclesiam, excommunicantur. H. d.
>
> Idem Archiepiscopis et Episcopis per Angliam Constitutis.
>
> Relatum est nobis, quod nonnulli, *ambitione nimia tracti*, occasione laicae recognitionis *vel potentiae saecularis in saeculari foro*, non requisita episcopi audientia, *patronatus ecclesiarum et* beneficia ecclesiastica sibi praesumunt in vestris parochiis vindicare. Quoniam igitur huiusmodi personae non intrant per ostium, sed aliunde conscendunt, ac per hoc indigni sunt pastoris nomine vel praerogativa gaudere, *fraternitati vestrae per apostolica scripta praecipiendo* mandamus quatenus eos, *quos patronatus ecclesiarum vel ecclesiastica beneficia constiterit praedicto modo adeptos*, si commoniti praedicta minime resignaverint, nisi *praescriptione aut* episcopali concessione muniti fuerint, *sublato appellationis diffugio* ab officio reddatis et beneficio alienos, *+et si nec sic destiterint, vinculo anathematis innodetis, et usque ad dignam satisfactionem teneatis et teneri faciatis adstrictos*. Ad hoc, quoniam quidam laici ecclesias *terris et aliis* possessionibus spoliant, ut sic viros ecclesiasticos faciant coram saeculari iudice litigare, vobis *praesentium auctoritate* iniungimus, ut id publice sub interminatione curetis anathematis prohibere. Si quis autem prohibitionis vestrae contemptor exstiterit, eum, *si manifestum fuerit, appellatione cessante* excommunicationi subdatis, *et usque ad dignam satisfactionem sicut excommunicatum faciatis attentius evitari*.

Chapter XXII

Latin source headnote: If a question of the right of patronage is not terminated within six months from the time of vacancy, the bishop can freely institute a rector there without presentation. This it says. But understand this of ecclesiastical patrons, for in the case of laymen four months suffice.

The same.

It befits you (*And below:* [*cf. c.* 4, *On Age and Quality,* I. 14.]) But as for those churches concerning whose patronage there is a controversy, if the controversy has not been terminated within six months after they become vacant, let it be lawful for you to order them with a suitable person, *the obstacle of appeal having been removed. To these things, etc.* (*cf. c.* 27, *On Appeals,* II. 28.)

Si quaestio iuris patronatus infra sex menses non terminatur a tempore vacationis, libere potest episcopus sine praesentatione ibidem instituere rectorem. H. d. Sed intellige de patronis ecclesiasticis; nam in laicis sufficiunt quatuor menses.

Idem.

Eam te decet (*Et infra:* [*cf. c.* 4. *de aet. et qual. I.* 14.]) Illas autem ecclesias, de quarum patronatu controversia fuerit, si infra sex menses, postquam vacaverint, non fuerit controversia terminata, licitum tibi sit de persona idonea *sublato appellationis obstaculo* ordinare. *Ad haec etc.* (*cf. c.* 27. *de app. II.* 28.)

Chapter XXIII

Latin source headnote: A patron cannot alienate a right of patronage by his own authority, nor exact anything temporal from the church unless at the time of foundation it was reserved to him by the diocesan.

Lucius III.

Furthermore, because advocates of churches *are known to have burst forth into such insolence that they institute and remove priests and other ecclesiastical men in those churches according to the judgment of their own will, and* presume to transfer the right of advowson to others under title of donation or purchase and by other contracts *even* according to their own will, extorting fodrum, lodging dues, regal dues, and similar things from the *same* churches as though from their own peasants, *and reducing to nothing according to their own judgment what the ministers of the churches do without consulting them*, we establish by the present decree that they—whether they are called advocates, patrons, vice-lords, custodians, or those having guardianships, or are designated by whatever other name—are to cease from burdens upon churches and exact nothing in them beyond the ancient and moderate revenues instituted by the bishops of the places; otherwise, if they exact anything else, they are to be subjected to excommunication. We also annul by the present constitution contracts of this kind that they have made or will make in the future, and decree *that they* have no force. *Moreover, lest the authority of the present decrees be eluded through the obstacle of appeal either in those things that have been said concerning heretics or in the coercion of advocates that we have described, we deny every remedy of appeal in the aforesaid chapters, intending to furnish no hearing at all to any persons appealing against these things.*

Patronus ius patronatus propria auctoritate alienare non potest, nec ab ecclesia aliquid temporale exigere, nisi tempore fundationis a dioecesano illud fuerit sibi reservatum.

Lucius III.

Praeterea, quoniam advocati ecclesiarum *in tantam noscuntur insolentiam prorupisse, ut sacerdotes et alios ecclesiasticos viros pro suae voluntatis arbitrio ecclesiis ipsis instituant atque destituant, et* ius advocationis donationis vel emptionis titulo, aliisque pro sua voluntate contractibus *etiam* in alios transferre praesumunt, fodrum, albergarias, regium et similia, tanquam a propriis rusticis, ab *ipsis* ecclesiis extorquentes, *et quod ministri ecclesiarum eis inconsultis faciunt iuxta proprium arbitrium in irritum deducentes*, praesenti decreto statuimus, eos, sive advocati, sive patroni, vel vicedomini, sive custodes, vel guardias habentes, seu quocunque alio nomine censeantur, a gravaminibus ecclesiarum cessare, nihilque in ipsis praeter antiquos et moderatos reditus a locorum episcopis institutos exigere, aut, si aliud exegerint, excommunicationi subdantur. Contractus quoque huiusmodi, quos fecerunt vel facient in futurum, *praesenti constitutione cassamus, et eos* vim aliquam decernimus non habere. *Ne autem per appellationis obstaculum aut in his quae de haereticis dicta sunt aut in advocatorum coercione quam diximus, praesentium deludatur*

> *auctoritas decretorum, totius appellationis remedium in praescriptis capitulis denegamus, nullam penitus audientiam quibuslibet contra haec appellantibus praebituri.*

Chapter XXIV

Latin source headnote: When several persons are successively presented by a lay patron, a choice is given to the bishop; but among those presented by an ecclesiastical person, the person presented first is preferred. This it says specifically, and it is one of the more principal chapters of the title.

The same, to the Bishop of Norwich.

But when an advocate has presented *one* suitable cleric to the bishop and afterward, that person not having been rejected, has petitioned that another equally suitable cleric be admitted to the same church, which of them is to be preferred to the other we believe should be left to the bishop's judgment, if the one to whom the right of presenting belongs is a layman. But if a college or ecclesiastical person held the presentation, he who is earlier in time appears to be stronger in right.

> In pluribus successive praesentatis a patrono laico, episcopo datur gratificatio; sed in praesentatis a persona ecclesiastica potior est primo praesentatus. H. d. specialiter, et est unum de principalioribus cap. tituli.
>
> Idem Norvicensi Episcopo.
>
> Quum autem advocatus clericum *unum* idoneum episcopo praesentaverit, et postulaverit postmodum, eo non refutato, alium aeque idoneum in eadem ecclesia admitti : quis eorum alteri praeferatur, iudicio episcopi credimus relinquendum, si laicus fuerit, cui ius competit praesentandi. Verum si collegium vel ecclesiastica persona praesentationem haberet, qui prior est tempore, iure potior esse videtur.

Chapter XXV

Latin source headnote: From the construction of a church made with the bishop's consent, a right of patronage is acquired. This first. A patron does not elect a prelate in a conventual church, but he does so in a chapel. This second. The honor of procession is owed to the patron, and he is supported by the church if he inclines toward poverty. This third. And this text is one of the more principal ones.

Clement III.

It was for us (*And below:* [*cf. c.* 27, *On Simony,* V. 3.]) *Furthermore, you asked us whether someone becomes patron by the construction of a church alone, or whether he is to be admitted with the clerics to the election of a pleban, or altogether repelled from it, even if he has alleged that by long custom he ought to participate in the election.* To your inquiry we give this response: if anyone has constructed a church with the assent of the diocesan *bishop*, he thereby acquires the right of patronage. But in a conventual church the patron's assent is more properly requested not for an election of a prelate to be made, but for one already made, unless the *patron* otherwise obtains from his jurisdiction that he ought to interpose his part in the election to be considered. It is otherwise, however, in a chapel, in which one priest *to be instituted* is *sometimes* elected by the patron and presented to the bishop of the place in order to obtain institution. For the foundation of a church, the honor of procession is also reserved to the founder; and if he inclines toward poverty, he is modestly aided by the church, as is established in the sacred canons. [*As to the last, etc.* (*cf. c.* 27, *On Simony,* V. 3.) *Given at the Lateran, on the eighth day before the Ides of May.*]

Ex constructione ecclesiae, facta de consensu episcopi, acquiritur ius patronatus. Hoc primo. Patronus non eligit praelatum in conventuali ecclesia, sed in capella sic. Hoc secundo. Patrono debetur processionis honor, et alimentatur ab ecclesia, si vergat ad inopiam. Hoc tertio. Et iste textus est de principalioribus.

Clemens III.

Nobis fuit (*Et infra:* [*cf. c.* 27. *de simon. V.* 3.]) *Praeterea quaesivisti a nobis, si aliquis efficiatur sola ecclesiae constructione patronus, vel si ad electionem plebani sit cum clericis admittendus, seu ab ipsa repellendus omnino, tametsi de longa consuetudine allegaverit se electioni interesse debere*. Inquisitioni tuae tale damus responsum, quod, si quis ecclesiam cum assensu dioecesani *episcopi* construxit, ex eo ius patronatus acquirit. Ceterum in conventuali ecclesia non electioni praelati faciendae, sed iam factae honestius patroni postulatur assensus, nisi *patronus* aliter de sua iurisdictione obtineat, ut partes suas interponere debeat electioni tractandae. Secus tamen est in capella, in qua unus presbyter *instituendus* a patrono *quandoque* eligitur, et pro institutione habenda loci episcopo praesentatur. Pro fundatione quoque ecclesiae honor processionis fundatori servatur, et, si ad inopiam vergat, ab ecclesia illi modeste succurritur, sicut in sacris est canonibus institutum. [*Ad. ultimum etc.* (*cf. c.* 27. *de simon. V.* 3.) *Dat. Lat. VIII. Id. Maii.*]

Chapter XXVI

Latin source headnote: The patron of a vacant church, although he is a cleric, cannot present himself to it.

Innocent III, to the Archbishop of Rouen.

You petitioned to be instructed through our letters whether *some* cleric can present himself, if he is suitable, to a vacant church in which he holds the right of patronage. Therefore, since no one ought to intrude himself into offices of ecclesiastical prelacy, we respond *to your inquiry in this way*: no one can present himself to the parsonship of any church, however suitable he may be and by whatever learning and merits he may be aided. [*Given at Rome, on the third day before the Ides of June, in the first year of our pontificate.* 1198.]

Patronus ecclesiae vacantis, quanquam sit clericus, ad eam se praesentare non potest.

Innocentius III. Rothomagensi Archiepiscopo.

Per nostras postulasti literas edoceri, utrum clericus *aliquis* ad vacantem ecclesiam, in qua ius obtinet patronatus, se ipsum, si est idoneus, valeat praesentare. Quum igitur nullus se ingerere debeat ecclesiasticae praelationis officiis, *inquisitioni tuae taliter* respondemus, quod nullus se potest ad personatum alicuius ecclesiae praesentare, quantumcunque idoneus sit, et quibuscunque studiis et meritis adiuvetur. [*Dat. Rom. III. Id. Iun. Pont. nostri Ao. I. * 1198.]

Chapter XXVII

Latin source headnote: If a question concerning the right of patronage among patrons is not definitively decided within four months, the bishop will order the church without prejudice to them.

The same, to the Bishop of Coventry.

Since prejudice *ought not be generated against churches through the disagreements of laymen, we consider it grave and unworthy that, as has been reported to our apostolate, by occasion of the disagreement that is litigated among them concerning the right of patronage, churches remain widowed of rectors longer than is due, which is known to redound to their grave detriment. But because, according to the Apostle, our daily burden is continual solicitude for*

all the churches, wishing by the debt of the pontifical office to confront those things we have premised, we command your fraternity *through apostolic writings* that, if a question concerning the right of patronage has arisen among some persons and it has not been definitively decided within four months by the one to whom it belongs, from then onward, *appeal having been removed*, you are not to defer ordering that church with a suitable person, in such a way that no prejudice ought thereby to be generated in the future against the one who prevails in the right of patronage. [*Given at the Lateran, on the third day before the Ides of January.* 1199.]

> Si quaestio iuris patronatus inter patronos non diffinitur infra quatuor menses, episcopus ordinabit ecclesiam sine praeiudicio eorundem.
>
> Idem Conventrensi Episcopo.
>
> Quum propter discordias laicorum +*non debeat ecclesiis praeiudicium generari, grave gerimus et indignum, quod, sicut nostro est apostolatui reseratum, occasione dissensionis, quae de iure patronatus vertitur inter eos, ecclesiae plus debito remanent rectoribus viduatae, quod in ipsarum grave dispendium noscitur redundare. Verum quia secundum Apostolum instantia nostra quotidiana est omnium ecclesiarum sollicitudo continua: volentes his, quae praemisimus, ex debito pontificalis officii obviare*, Fraternitati tuae *per apostolica scripta* mandamus, quatenus, si de iure patronatus quaestio emerserit inter aliquos, et ab eo, cui competit, infra quatuor menses non fuerit diffinitum, extunc ecclesiam ipsam *appellatione remota* de persona non differas idonea ordinare, ita, quod illi ex hoc non debeat in posterum praeiudicium generari, qui ius evicerit patronatus. [*Dat. Lat. III. Id. Ian.* 1199.]

Chapter XXVIII

Latin source headnote: A legate *a latere* can reserve to his own collation a church of which another church is patron, although it is not vacant, and confer it when it becomes vacant. This first. From two persons presented by a lay patron, the superior can institute the second. This second. And thus, as to its meaning, this text contains two different statements, although as to the letter both are intermingled.

The same, to the Archdeacon and Chancellor of Auxerre.

When our beloved son *Master Walter de Picerei on his own behalf, and Master Hugh de Feverniaco on behalf of the Dean of Alveoli, were litigating with one another concerning the church of Beauville, we granted to both as auditor our beloved son G., cardinal deacon of Santa Maria in Portico. In his presence the same master, by proposing, showed that*, when *formerly our venerable brother* the Bishop of Ostia, then legate of the Apostolic See *in the regions of Gaul, had marked William de Montibus with the clerical character, he commanded our beloved son* the Archdeacon of Chartres to reserve for his donation the first church that happened to become vacant in his archdeaconry, prohibiting him from conferring it upon anyone, since he had resolved to provide for the cleric G. from it; and when the church of Berovilla became vacant there, the same archdeacon, contrary to the mandate of that legate, presented the subdeacon G. to it. After his act was quashed by the same legate, the legate granted the church thus vacant to the aforesaid G., [*as is contained in his authentic instrument. To this afterward both our venerable brother ...., the bishop, and the said Archdeacon of Chartres, who was patron of the church, furnished assent, as their letters testify; and thus the aforesaid William held the church itself for almost four years and more, and was in no way drawn into a suit by the dean, who equally knew and saw this.*]

But when a certain prebend became vacant in the church of Saint Martin in the diocese of Chartres, the bishop took care to assign the said church to the cleric H. upon the archdeacon's presentation, and the prebend to the aforesaid G. Hence H. himself petitioned [*humbly*] that the same church be confirmed to him, as one which he said he had obtained *canonically* [*without contradiction*] *and also* upon the presentation of the archdeacon, the true patron, [*and that perpetual silence concerning it be imposed upon his adversary. The proctor of the said dean, denying this, added that when, at the death of C., formerly Dean of Alveoli, the churches of Franconville and Beauville became vacant, ..., Archdeacon of Chartres, to whom their donation belonged, granted the church of Beauville to his brother G. and, by mandate of the diocesan bishop, corporally invested him with it, as is contained in the letters both of the bishop and also of the archdeacon. But after these things William de Montibus presented to the same archdeacon the letters of the aforesaid legate, in which it was contained that the same legate had retained for himself the donation of one church, whichever should first happen to become vacant in the archdeaconry of Chartres; and through this the same William petitioned that he either confer upon him the other of those churches or reserve it for the donation of the legate. He responded that he could fulfill neither, because he had already assigned both to others. But William himself, approaching the same legate a second time and falsely suggesting that the church of Beauville was vacant, obtained from him that he granted the said church to him in fact and commanded that he be instituted in it. Learning this, the same G., lest anyone disturb him in his possession, appealed to the Apostolic See and, coming personally to the Apostolic See, obtained that the cause itself be delegated to judges. When he afterward returned to his own region, the aforesaid William, distrusting his own justice, renounced in the hand of the said Bishop of Chartres whatever right, if any, he had obtained through the same legate in the aforesaid church. This having been done, the above-named archdeacon presented Master G. de Picerel to the same bishop and caused him, to the prejudice of the aforesaid absent G., to be invested with the aforesaid church. Learning this, the same G., in defense of his right, subjected both himself and that church to the protection of the Apostolic See and, not permitting himself to be cast from possession, appealed to our hearing, adding that all things were to remain in that condition in which they then were. And especially for this reason—namely, because the said archdeacon, by mandate of the Archbishop of Chartres, wished to induct the aforesaid master into corporal possession of the aforesaid church—he appealed to the hearing of the metropolitan; but the same archdeacon nevertheless, after an appeal of this kind, attempted to induct the master himself into possession of that church. Hence, when at the complaint of G. himself our venerable brother ...., Archbishop of Sens, ..., Subdean, and ...., Cantor of Chartres, had committed the same cause, the aforesaid master, cited by them and constituted in their presence, was unwilling to respond; but, immediately interposing an appeal to the Apostolic See, he withdrew from them contumaciously. Nevertheless, proceeding further, they received lawful witnesses against him, through whom it was shown clearly that, after the appeal interposed to the court of Sens, the same master was inducted into corporal possession of that church, as was read in the letters of the same judges. And thus the often-mentioned master, after his custodian had been driven from that church, was reasonably despoiled of it; the church was at length committed to the care of another who, not by authority of the said master but in the name of the aforesaid dean, celebrated in it and received its revenues. Hence, because the same G. said that he had obtained that church in this way, he petitioned that writings be sent to judges who would protect him from the undue molestation of the aforesaid master. But to the contrary the said master replied against him, saying that it was altogether false that the dean had been invested with that church upon the presentation of the true patron and by mandate of the bishop, especially since the bishop confessed in his letters that the same dean had been invested neither with the cure of that church nor with the church itself. Moreover, concerning what the opposing party said—that the aforesaid William, fearing the dean's return, had renounced his right in the hand of the Bishop of Chartres—the same master asserted that it was altogether a lie, since after his return he had possessed that church for three years and more*

without suit, while the dean himself saw and knew it. But the master himself was unwilling to deny this: namely, that his adversary had appealed to the court of Sens, while the master himself appealed to the Apostolic See and prohibited the dean from presuming to molest him concerning his right. Yet the dean, nevertheless approaching the aforesaid metropolitan, caused the master to be cited. Appearing before him on the appointed day, the master was unwilling to join issue but, renewing his appeal, withdrew. Yet the archbishop nevertheless, as the adversary also confessed, delegated the cause to judges after the appeal. Hence the same master said that, both through his own allegations and also through those things the opposing party had proposed, it was established that he himself had been despoiled after the appeal to the Apostolic See was interposed. Moreover, to what the adversary proposed—that after the dean's appeal to the Archbishop of Sens was interposed the same master had been inducted into possession of that church—the same master said that, if the dean had appealed lest the archdeacon fulfill the execution committed to him, an appeal of this kind was null, since appeal was not to be made from an executor where he was not attempting to exceed the limits of the mandate. He added furthermore that, since the same dean had no right in the church, it was not his concern to appeal; but if he had in any way been able to appeal, because the same master destroyed the appeal that he had interposed to the metropolitan by objecting that an appeal to the Apostolic See had been interposed, he ought not to have been despoiled in the meantime.]

To the contrary the dean's proctor responded that, although the said legate commanded that the first church to become vacant in the archdeaconry of Chartres be reserved for his own donation, nevertheless he could not by law do this concerning the aforesaid church, because such power did not belong to him, since presentation of a cleric to that church belonged to the same archdeacon not as a cleric but as though to a layman by reason of patronage, not by right of the archdeaconry. Hence, since the same archdeacon was in no way bound to observe his prohibition in this, he [*indeed*] *could by law present another to the same church, and his presentation, because it was made concerning a suitable person, ought to be judged firm,* [*because, even if it were true—which is nevertheless altogether false—that the right of presenting a cleric to that church belonged to the aforesaid archdeacon by reason not of the archidiaconal office but of temporal lordship, and that the legate's prohibition had no force in this respect, since he could not prohibit it to a lay patron, nevertheless for another reason he asserted that the archdeacon's presentation made concerning the aforesaid dean was void and empty: because, when he presented him, the archdeacon had already long before been suspended by our beloved son P., cardinal priest of the title of Saint Marcellus, then cardinal deacon of Santa Maria in Via Lata and legate of the Apostolic See; and that suspension lasted until after the return of the aforesaid Bishop of Ostia, through whose intervention the same archdeacon, constituted in our presence, merited to be absolved from the bond of suspension, as is proved through the letters of the same bishop. But the dean's proctor rejoined to the contrary that, although the archdeacon was held by the bond of suspension, nevertheless, as to a layman, the donation of that church could belong to him by right of patronage, of which he could not be deprived by any reason either through the legate's prohibition or through his suspension, especially since only the archidiaconal office had been interdicted to him.*]

We therefore, *after those and other things that were proposed before the same auditor and faithfully reported to us through him had been more diligently understood*, considering that, even if the aforesaid archdeacon had presented the aforesaid G. to that church as a layman, nevertheless, because *the dean himself* was not admitted by the diocesan bishop, but the said H., [*afterward*] presented by the same archdeacon, *was* instituted by the diocesan bishop, according to the statute of Pope Alexander *of good memory, our predecessor*, not the first but the second obtained right in the aforesaid church; and even if the *aforesaid* archdeacon presented the aforesaid G. as a cleric, since in what he did as a cleric he was subject to the legate's jurisdiction, whence, after the same legate had decreed that the donation of that church be reserved for himself, he could not present anyone to it as a cleric, we decree that his presentation

made less canonically *was* void. And, notwithstanding it *entirely*, we pronounced that the grant of the same church made to the above-named H. had been canonical, *nevertheless quashing what was attempted through the delegates of the aforesaid Archbishop of Sens after an appeal was lawfully interposed to us, and adjudging to the same master* the aforesaid church, together with the fruits received from it in the meantime, to be possessed fully and peacefully, imposing perpetual silence upon the aforesaid G. concerning this. [*Wherefore, to your discretion, etc. Given at Rome, on the ninth day before the Kalends of April, in the ninth year.* 1206.]

Legatus de latere ecclesiam, cuius alia ecclesia est patrona, collationi suae reservare potest, licet non vacet, et conferre quum vacat. Hoc primo. Ex duobus, praesentatis a patrono laico, potest superior instituere secundum. Hoc secundo. Et sic quoad intellectum iste textus habet duo dicta diversa, licet quoad literam ambo commisceantur.

Idem Archidiacono et Cancellario Altissiodorensibus.

Quum dilectus filius, *magister Gualterus de Picerei pro se ipso, et magister Hugo de Feverniaco pro decano de Alveoli super ecclesia de Beavilla invicem litigarent, utrique dilectum filium G. sanctae Mariae in porticu diaconum cardinalem concessimus auditorem. In cuius praesentia idem magister proponendo monstravit, quod*, Quum *olim venerabilis frater noster* Hostiensis episcopus, tunc sedis apostolicae legatus *in partibus Gallicanis, et Guillelmum de Montibus insignisset charactere clericali, dilecto filio* archidiacono Carnotensi mandaverit, ut ecclesiam, quam in archidiaconatu suo primo vacare contingeret, donationi suae servaret, inhibens, ne alicui conferret eandem, de qua G. clerico disposuerat providere, et ecclesia de Berovilla ibi vacasset, idem archidiaconus contra mandatum eiusdem legati ad ipsam G. subdiaconum praesentavit, cuius facto ab eodem legato cassato, ipse praefato G. concessit ecclesiam sic vacantem, +[*sicut in ipsius authentico continetur. In quo postmodum tam venerabilis frater noster .... episcopus, quam dictus archidiaconus Carnotensis qui patronus erat ecclesiae praebuerunt assensum, quemadmodum literae testantur ipsorum, et sic memoratus Guillelmus ecclesiam ipsam per quatuor fere annos et ultra tenuit, et a decano qui hoc sciebat pariter et videbat nequaquam fuit fractus in causam.*] Vacante vero quadam praebenda in ecclesia sancti Martini Carnotensis dioecesis, episcopus dictam ecclesiam ad praesentationem archidiaconi H. clerico, praebendam vero praefato G. assignare curavit. Unde ipse H. supplicabat [*humiliter*], eandem sibi ecclesiam confirmari, utpote quam *canonice* [*sine contradictione*] *ac etiam* ad praesentationem archidiaconi veri patroni se dicebat adeptum, [*et adversario suo imponi perpetuum silentium super ea. Quod utique dicti decani procurator infitiatus adiecit quod, quum in obitu C. quondam decani de Alveoli, de Franconvilla et de Beavilla ecclesiae vacavissent .... Carnotensis archidiaconus, ad quem illarum donatio pertinebat, G. fratri suo ecclesiam de Beavilla concessit, ac eum de mandato dioecesani episcopi de ipsa corporaliter investivit, sicut in litteris tam episcopi, quam etiam archidiaconi continetur. Post haec autem Guillelmus de Montibus litteras supradicti legati eidem archidiacono praesentavit, in quibus continebatur, eundem legatum sibi retinuisse donationem unius ecclesiae, quam primo contingeret in archidiaconatu Carnotensi vacare; et per hoc idem Guillelmus petebat ut vel alteram illarum ecclesiarum sibi conferret vel donationi legati reservaret eandem; qui respondit quod neutrum implere poterat eo, quod utramque iam aliis assignarat. Ipse vero Guillelmus, iterato ad eundem legatum accedens et falso suggerens ecclesiam de Beavilla vacare, obtinuit apud ipsum quod dictam ecclesiam de facto sibi concessit et mandavit, ut institueretur in ea. Quod comperiens idem G. ne quis eum in possessione sua turbaret sedem apostolicam appellavit, et, personaliter ad sedem apostolicam veniens, causam ipsam obtinuit iudicibus delegari, quo postmodum ad propria revertente, praefatus Guillelmus, de iustitia sua diffidens iuri, si quod per eundem legatum in iam dicta ecclesia fuerat consecutus, in manu renuntiavit dicti episcopi Carnotensis, et hoc facto, praenominatus archidiaconus magistrum G. de Picerel eidem episcopo praesentavit, ipsumque, in praeiudicium praefati G. absentis, de praescripta fecit ecclesia investiri. Quod intelligens idem G. in sui iuris defensionem se pariter et ecclesiam ipsam apostolicae sedis protectioni supposuit, et, a possessione se deiici non permittens, ad nostram audientiam appellavit; adiiciens, ut in statu illo, in quo tunc erant,*

omnia permanerent, et specialiter hac de causa, quia videlicet dictus archidiaconus, de mandato archiepiscopi Carnotensis, iam dictum magistrum in corporalem possessionem ecclesiae memoratae volebat inducere, ad metropolitani audientiam appellavit; sed idem archidiaconus nihilominus, post appellationem huiusmodi magistrum ipsum in possessionem ipsius ecclesiae inducere, attentavit. Unde quum ad querelam ipsius G. venerabili fratri nostro .... Senonensi archiepiscopo .... subdecano et .... cantori Carnotensibus, causam commisisset eandem, praedictus magister citatus ab eis, et in eorum praesentia constitutus noluit respondere; sed, statim appellationem ad sedem apostolicam interponens, contumaciter recessit ab eis. Illi vero, nihilominus procedentes, testes contra ipsum legitimos receperunt per quos fuit evidenter ostensum quod, post appellationem ad Senonensem curiam interpositam, idem magister fuit in corporalem eiusdem ecclesiae possessionem inductus, sicut in eorundem iudicum litteris legebatur; et sic saepe fatus magister, custode suo ab ecclesia ipsa depulso, ea fuit rationabiliter spoliatus, quae tandem fuit alterius curae commissa, qui, non auctoritate dicti magistri, sed nomine memorati decani, celebrabat in ipsa, recipiebatque obventiones eiusdem. Unde, quoniam idem G. taliter se dicebat illam ecclesiam assecutum, petebat scribi iudicibus, qui eum a praedicti magistri molestatione indebita tuerentur. E contra vero dictus magister replicavit in illum, dicens penitus falsum esse quod decanus, ad praesentationem veri patroni, et de mandato episcopi, de ipsa fuerit ecclesia investitus, praesertim, quum episcopus in suis litteris fateretur eundem decanum nec de cura illius ecclesiae nec de ipsa fuisse penitus investitum. Quod autem praefatum Guillelmum, de reditu decani timentem, abrenuntiasse iuri suo in manu Carnotensis episcopi pars adversa dicebat, idem magister prorsus esse mendacium astruebat, quum, post reditum eius per tres annos et amplius, ipso vidente ac sciente, illam ecclesiam possederit absque lite. Illud vero magister ipse noluit diffiteri, qui videlicet adversarius, ad Senonensem curiam appellasset, ipso quidem magistro sedem apostolicam provocante, ac inhibente, ne decanus ipsum super iure suo praesumeret molestare. At ipse, nihilominus ad metropolitanum accedens memoratum fecit citari magistrum, qui coram eo statuta die comparens, litem noluit contestari, sed appellatione innovata, recessit. Archiepiscopus vero nihilominus causam, sicut etiam adversarius fatebatur, post appellationem iudicibus delegavit; unde dicebat idem magister, quod, tam per allegationes suas, quam etiam per ea, quae proposuerat pars adversa, constabat ipsum fuisse post appellationem ad sedem apostolicam interpositam spoliatum. Ad illud autem, quod adversarius proponebat, post appellationem decani ad Senonensem archiepiscopum interpositam, idem magister fuerat in eiusdem ecclesiae possessionem inductus; dicebat idem magister quod, si decanus appellaverat, ne archidiaconus commissam sibi exsecutionem impleret, huiusmodi appellatio nulla erat, quum ab exsecutore non fuerit appellandum, ubi mandati fines excedere non tentabat. Adiecit insuper quod, quum idem decanus nullum in ecclesia ius haberet, sui non intererat appellare, sed, si appellare aliquatenus potuisset, quia idem magister appellationem, quam ille ad metropolitanum interposuerat, appellationis ad sedem apostolicam interpositae peremit obiectu, medio tempore non debuit spoliari.] *E contra procurator decani respondit, quod, etsi dictus legatus donationi suae reservari mandaverit primo in archidiaconatu Carnotensi ecclesiam vacaturam, circa praedictam tamen ecclesiam hoc facere de iure non potuit, quia talis potestas sibi minime competebat, quum praesentatio clerici ad illam ecclesiam non tanquam clerico, sed quasi laico ratione patronatus, non iure archidiaconatus eidem archidiacono pertineret. Unde quum inhibitionem ipsius in hoc idem archidiaconus custodire minime teneretur, alium* [*quidem*] *ad eandem ecclesiam de iure potuit praesentare, ac praesentatio eius debet, ex quo de persona idonea facta est, firma censeri,* [*quoniam, et si verum exsisteret, quod tamen est falsum omnino, ius videlicet praesentandi clericum ad ipsam ecclesiam, non archidiaconalis officii, sed temporalis dominii ratione, ad memoratum archidiaconum pertinere, nec in hac parte valuisse prohibitionem legati, tanquam, qui non poterat id laico prohibere patrono, ex alia tamen causa, praesentationem archidiaconi factam de praedicto decano asseruit esse irritam et inanem, quia, quando praesentavit eundem, iam erat longe ante suspensus per dilectum filium, P. tituli Sancti Marcelli presbyterum, tum Sanctae Mariae in via lata diaconum cardinalem, apostolicae sedis legatum, et duravit illa suspensio usque post reditum praefati episcopi Hostiensis, ad cuius interventum idem archidiaconus, in nostra praesentia constitutus, meruit a vinculo suspensionis absolvi sicut per eiusdem episcopi literas comprobatur. Procurator vero decani subiunxit econtra quod, etsi archidiaconus suspensionis vinculo teneretur, poterat tamen ei, tanquam laico, donatio ipsius ecclesiae iure competere patronatus, quo nec per prohibitionem, nec per suspensionem legati potuisset aliqua ratione privari, praesertim quum archidiaconale tantum officium sibi fuerit interdictum.*] Nos igitur, *his et aliis, quae coram eodem*

auditore fuere proposita nobisque relata fideliter per eundem, diligentius intellectis, attendentes, quod, etsi praefatus archidiaconus memoratum G. tanquam laicus ad illam ecclesiam praesentasset, quia tamen *ipse decanus* per dioecesanum episcopum admissus non fuit, sed dictus H. ab eodem archidiacono [*postmodum*] praesentatus, a dioecesano *fuit* episcopo institutus, iuxta statutum *bonae memoriae* Alexandri Papae *praedecessoris nostri* non primus, sed secundus ius est assecutus in ecclesia memorata, etsi *memoratus* archidiaconus praefatum G. tanquam clericus praesentavit, quoniam in eo, quod tanquam clericus faciebat, suberat iurisdictioni legati, unde, postquam idem legatus donationem illius ecclesiae sibi decreverat reservandam, ad eam tanquam clericus non potuit quempiam praesentare, praesentationem ipsius minus canonice factam *fuisse* decernimus irritam, et, ea *penitus* non obstante, concessionem eiusdem ecclesiae, factam praenominato H., pronunciavimus canonicam exstitisse, *cassantes nihilominus quod per delegatos a supra dicto archiepiscopo Senonensi post appellationem ad nos legitime interpositam exstitit attentatum, et adiudicantes eidem magistro* praefatam ecclesiam cum fructibus, medio tempore perceptis ex ea, plene ac pacifice possidendam, praedicto G. super hoc perpetuum silentium imponendo. [*Quocirca discretioni etc. Dat. Romae IX. Kal. Apr. A. IX. * 1206.]

Chapter XXIX

Latin source headnote: If a lay patron successively presents two persons, the institution of the second is valid notwithstanding an appeal first made by the first; nevertheless, a bishop who maliciously rejected the first is compelled to provide for him in a suitable benefice. And in the final point it is a singular case.

The same, to the Bishop of Ely.

Of the pastoral office (*And below:* [*cf. c.* 28, *On the Office of a Delegated Judge,* I. 29.]) *But since it often happens that lay patrons of churches present now one person, now another, to vacant churches, solicitously* you petitioned to be instructed *through the Apostolic See* whether a cleric presented by a lay patron to some church, if the diocesan bishop has not considered that he should be admitted, obtains any right in it from a presentation of this kind; and, if perhaps he has appealed to the Apostolic See, and after the appeal interposed by him the same patron takes care to present another, and the bishop institutes the second person presented, whether the same person ought *deservedly* to be removed from that church. We therefore, adhering to the footsteps of Pope Alexander *of good memory, our predecessor, out of reverence for him,* who, distinguishing between persons presented by clerical and lay patrons, judged the condition of the possessor better among those presented by a layman, say that the institution of the person presented in the second place by a lay patron obtains the force of firmness. Nevertheless, we establish that a bishop who maliciously refused to admit a suitable person presented is to be compelled to provide for him in a suitable benefice, so that he may be punished in that respect in which there is no doubt that he offended against him. [*You asked, etc.* (*cf. c.* 19, *On Privileges,* V. 33.) *Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January.* 1204.]

Si laicus patronus duos successive praesentet, valet institutio de secundo non obstante appellatione prius facta per primum; episcopus tamen, qui malitiose primum repulit, eidem in competenti beneficio providere compellitur. Et in ultimo est casus singularis.

Idem Eliensi Episcopo.

Pastoralis officii (*Et infra:* [*cf. c.* 28. *de off. iud. del. I.* 29.]) *Quum autem saepe contingat, patronos ecclesiarum laicos nunc unum, nunc alium ad vacantes ecclesias praesentare, sollicite* Postulasti *per sedem apostolicam* edoceri, an clericus, ad aliquam ecclesiam a patrono laico praesentatus, si dioecesanus episcopus ipsum non

duxerit admittendum, ex huiusmodi praesentatione aliquid iuris assequatur in illa; et, si forte idem ad sedem apostolicam appellaverit, et post appellationem ab ipso interpositam idem patronus alium curaverit praesentare, ac secundum instituit episcopus praesentatum, idem ab ipsa ecclesia *merito* debeat amoveri. Nos igitur *bonae memoriae* Alexandri Papae *praedecessoris nostri pro sua reverentia* vestigiis inhaerentes, qui inter praesentatos a clerico et laico patronis distinguens, inter praesentatos a laico conditionem possidentis censuit meliorem, dicimus, quod institutio praesentati secundo loco a laico patrono robur obtinet firmitatis. Verumtamen constituimus, ut episcopus, qui praesentatum idoneum malitiose recusavit admittere, ad providendum eidem in competenti beneficio compellatur, quatenus puniatur in eo, in quo ipsum non est dubium deliquisse. [*Interrogasti etc.* (*cf. c. * 19. *de priv. V.* 33.) *Dat. Rom. ap. S. Petr. XIV. Kal. Ian.* 1204.]

Chapter XXX

Latin source headnote: If someone has been ordained at the presentation of the rector to the title of a church, the patron who did not consent will be able to present to that church when it becomes vacant.

The same, to the Bishop of Orense.

You petitioned to be instructed through the Apostolic See whether, when rectors of parochial churches *sometimes* present certain persons to be ordained to the titles of their churches, the election of such persons belongs to the rectors themselves or also to the patrons; and, if the patrons' assent is not to be sought in these matters, whether their right of electing remains safe, so that, when those churches happen to become vacant, persons titled in this manner are not to be preferred to others. To this we respond briefly *to your fraternity* that through intitulation of this kind no prejudice is generated against patrons that would prevent them from presenting others to those churches when they become vacant, unless it proceeded from the patrons' assent. [*Given at the Lateran, on the second day before the Ides of February, in the eleventh year of our pontificate.* 1209.]

Si ad praesentationem rectoris ad titulum ecclesiae aliquis fuerit ordinatus, patronus, qui non consensit, ad ipsam, quum vacabit, poterit praesentare.

Idem Auriensi Episcopo.

Postulasti per sedem apostolicam edoceri, ut, quum rectores parochialium ecclesiarum *quandoque* quosdam praesentent ad suarum ecclesiarum titulos ordinandos, utrum electio talium ad ipsos rectores pertineat, vel etiam ad patronos; et, si in his patronorum non est requirendus assensus, utrum ius illis salvum maneat eligendi, ut, quum ipsas ecclesias vacare contigerit, intitulati huiusmodi non sint aliis praeferendi. Ad quod *fraternitati tuae* breviter respondemus, quod per intitulationem huiusmodi nullum patronis praeiudicium generatur, quin possint alios ad illas ecclesias, quum vacaverint, praesentare, nisi de patronorum processisset assensu. [*Dat. Lat. II. Id. Febr. Pont. nostr. Ao. XI.* 1209.]

Chapter XXXI

Latin source headnote: Even a patron who is a cleric cannot confer a vacant church, and, if he conferred it, he can nevertheless present to it.

Gregory IX, to the Archbishop of York.

Your letters transmitted to us contained that, when the chapter of York had granted the vacant church of Gameforde, in which they hold the right of patronage, to the cleric R., they afterward

presented the cleric L. to you for the same church after an appeal interposed by that R. to the Apostolic See. (*And below:*) We respond to your consultation in this way: since by force of the right of patronage not collation but presentation belongs to the patron, you will be able to institute in that church the person presented, provided no canonical impediment stands against him, as being the stronger.

> Patronus etiam clericus vacantem conferre non potest, et, si contulit, potest nihilominus ad illam praesentare.
>
> Gregorius IX. Archiepiscopo Eboracensi.
>
> Transmissae ad nos tuae literae continebant, quod, quum capitulum Eboracense ecclesiam de Gameforde vacantem, in qua ius obtinent patronatus, R. clerico concessissent, ipsi postmodum L. clericum tibi ad eandem ecclesiam praesentarunt post appellationem ab eodem R. ad sedem apostolicam interiectam. (*Et infra:*) Consultationi tuae taliter respondemus, quod, quum ex vi iuris patronatus non concessio, sed praesentatio pertineat ad patronum, praesentatum, si ei aliquid non obsistat canonicum, instituere in ipsa ecclesia poteris utpote potiorem.

Title XXXIX: On Censuses, Exactions, and Procurations

Chapter I

Latin source headnote: For the endowment of a church to be founded, one mansus, free from every temporal service, ought to be assigned; nevertheless it is bound to ecclesiastical service. But if anything beyond the mansus is conferred upon the church, the church is bound to pay the customary burdens from it. This it says by adhering to the letter.

From the Council at Worms.

It was sanctioned that one entire mansus without any service is to be assigned to each church. And the priests constituted in them are to render no service other than ecclesiastical service from the tithes, the offerings of the faithful, the houses, the yards or gardens situated next to the church, or the aforesaid mansus. And if they possess anything more, from it let them furnish the service owed to their lords.

> **DE CENSIBUS, EXACTIONIBUS ET PROCURATIONIBUS.**
>
> Ecclesiae fundandae debet pro dote tribui mansus, liber a quolibet servitio temporali; ad ecclesiasticum tamen tenetur. Sed si aliquid confertur ecclesiae ultra mansum, tenetur ecclesia ex eo solvere onera consueta. H. d. inhaerendo literae.
>
> Ex concilio apud Guarmaciam.
>
> Sancitum est, ut unicuique ecclesiae unus mansus integer absque ullo servitio tribuatur. Et presbyteri in eis constituti non de decimis, neque de oblationibus fidelium, non de domibus, neque de areis vel de hortis iuxta ecclesiam positis, neque de praedicto manso aliquod servitium faciant praeter ecclesiasticum. Et si aliquid amplius habuerint, inde senioribus suis debitum servitium impendant.

Chapter II

Latin source headnote: Payment of tribute demonstrates subjection.

Augustine, on the Epistle to the Romans.

"Let every soul be subject to higher powers." (*And below:*) And you ought to be subject. For you furnish tribute for this reason, because this is proof of subjection.

> Solutio tributi arguit subiectionem.
>
> Augustinus super epistola ad Romanos.
>
> " Omnis anima sublimioribus potestatibus subdita sit. " (*Et infra:*) Et vos subditi esse debetis. Ideo enim tributa praestatis, quia haec est probatio subiectionis.

Chapter III

Latin source headnote: A bishop cannot impose a new census upon a monastery.

Gregory, to Stephen the Cantor.

Knowing (*And below:*) The aforesaid abbot *also* asserted that the priest of the *aforesaid* Massa wished to impose new customs upon *that* monastery, *which have not existed up to this time during the three-year period since the monastery was founded,* [*since, if anything has been offered there to God by faithful men by grace of munificence, he asserts that he ought to receive a portion.*] We command that, if this did not exist from the beginning, you are not to permit anything new to be imposed even as time passes, [*especially since it is of slight substance, etc.*]

> Non potest episcopus novum censum imponere monasterio.
>
> Gregorius Stephano Cantori.
>
> Scientes (*Et infra:*) Asseruit *autem* praedictus abbas, presbyterum *praedictae* Massae novas monasterio *illi* consuetudines velle imponere, +*quae ex tempore conditi monasterii per triennale tempus hactenus non fuerunt,* [*siquidem si quid Deo illic munificentiae gratia a fidelibus viris oblatum fuerit, portionem se asserat debere percipere.*] Mandamus, quatenus, si ab initio hoc non fuerit, etiam labentibus temporibus aliquid noviter non permittas imponi, [*maxime quum exiguae substantiae etc.*]

Chapter IV

Latin source headnote: A blind and poor person is not bound to contribute to collections.

The same, to Bishop Constantine.

Although greatly (*And below:* [*cf. c.* 1, *On the Restitution of the Despoiled,* II. 13.]) The aforesaid blind man also said that he too is equally compelled to contribute to collections among the other *inhabitants of the city of Genoa*. [*And we marvel that one who is more worthy of mercy is burdened in your presence.*] You are not to permit this to be done, because it is exceedingly inhuman to afflict in a collection one whom his blindness burdens and upon whom, if there were [*great*] necessity, mercy ought to have been shown from the collections.

> Caecus et pauper ad collectas non tenentur.
>
> Idem Constantino Episcopo.
>
> Licet multum (*Et infra:* [*cf. c.* 1. *de rest. spol. II.* 13.]) Dixit quoque praedictus caecus, quod ad collectas inter alios *civitatis Ianuensis habitatores et ipse* pariter compellatur. [*Et miramur, quod qui magis misericordia dignus est, vobis praesentibus praegravetur.*] Quod fieri non permittas, quia eum, quem caecitas sua gravat, inhumanum est nimis in collectione affligere, cui debuerat ex collectis, si esset [*magna*] necessitas, misereri.

Chapter V

Latin source headnote: One seeking a census ought to state its basis.

Paschal II, to Countess Matilda.

It reached us *that the Abbot of Fraxinorensis despoiled the church of Carpi by occasion, namely, of a certain census, for what purpose it ought to be paid being unknown.* To your inquiry we respond in this way: a census of unknown purpose is found to be defined neither by divine nor by human laws; for it is necessary that it be known beforehand for what purpose and when every census ought to be paid. *We therefore command your belovedness to cause the plunder itself to be restored to the church of Carpi, and henceforth not to permit the Abbot of Fraxinorensis or anyone else to trouble it.*

> Petens censum debet rationem exprimere.
>
> Paschalis II. Comitissae Mathildae.
>
> Pervenit ad nos, *+quod Fraxinorensis abbas Carpensem ecclesiam fuerit depraedatus, occasione videlicet cuiusdam census, qui, ad quid solvi debeat, ignoratur*. Inquisitioni tuae taliter respondemus, quod census ignorantiae nec divinis, nec humanis legibus invenitur diffinitus; oportet quippe, ut omnis census ad quid et quando persolvi debeat praesciatur. *Mandamus ergo dilectioni tuae, ut praedam ipsam Carpensi ecclesiae restitui facias, nec deinceps Fraxinorensem abbatem aut quemlibet alium eam inquietare permittas*.

Chapter VI

Latin source headnote: The council determines the number of mounts that visiting prelates can take with them, and prohibits them from then engaging in hunting and seeking costly banquets. This first, as far as the words "We also prohibit." — (*We prohibit, etc.:*) Prelates ought not burden subjects with tallages and exactions; nevertheless, for a just cause, they are permitted to seek moderate aid from them. This it says, as far as "Indeed." — (*Indeed, etc.:*) In effect it is said that the number of mounts established at the beginning of the chapter ought not be drawn upon to increase another number previously customary. The Abbot.

From the Lateran Council.

Since the Apostle determined that he and his companions were to be maintained by their own hands so that he might remove an opportunity for preaching from false apostles and not be burdensome to those to whom he preached, it is known to be exceedingly grave *and worthy of correction* that certain prelates are so burdensome to *their subjects* in procurations that, *for a cause of this kind,* the subjects are sometimes compelled to expose ecclesiastical ornaments, and a brief hour consumes the sustenance of a long time. Therefore we establish that archbishops visiting parishes are never to exceed, according to the diversity of the provinces and the means of the churches, the number of forty or fifty mounts; bishops, however, twenty or thirty; cardinals, *however*, twenty-five; archdeacons, five or seven; and deans constituted under bishops are to be content with two horses. Nor are they to travel with hunting dogs and birds, but are so to proceed that they appear to seek not the things that are their own but those of Jesus Christ. Nor are they to seek costly banquets, but with thanksgiving receive what has been ministered to them honorably and suitably.

We also prohibit bishops from presuming to burden their subjects with tallages and exactions. Yet for the many necessities that sometimes supervene, we tolerate that, if a manifest and reasonable cause exists, they may be able with charity to petition moderate aid from them. For since the Apostle says,

"Children ought not lay up treasure for parents, but parents for children," it appears very far from paternal piety if superiors are burdensome to their subjects, whom they ought to cherish after the manner of a shepherd in all necessities. But archdeacons or deans are to presume to exercise no exactions or tallages against priests or clerics.

Indeed, what has been said by way of toleration concerning the aforesaid number of mounts can be observed in those places in which revenues and ecclesiastical means are more ample. But in poorer places we will such a measure to be kept that lesser persons do not deservedly grieve that they are burdened by the arrival of greater persons. Nor, under such an indulgence, are those who have hitherto been accustomed to use fewer horses to believe that the power of using more has been granted to them.

> Determinat concilium numerum equorum, quos secum ducere possunt praelati visitantes, et prohibet eis tunc uti venationibus, et sumptuosas epulas quaerere. Hoc primo usque ad vers. Prohibemus. — (Prohibemus etc.:) - Praelati non debent gravare subditos talliis et exactionibus, permittitur tamen ex iusta causa petere ab eis moderatum auxilium. H. d. usque ad §. Sane. — (Sane etc.:) In effectu dicitur, quod numerus equorum statutus in princ. cap. non debet trahi ad augendum numerum, alias solitum. Abbas.
>
> Ex concilio Lateranensi.
>
> Quum Apostolus se ac suos propriis manibus decreverit exhibendos, ut locum praedicandi auferret pseudoapostolis, et illis, quibus praedicabat, non exsisteret onerosus : grave nimis *et emendatione dignum* esse dignoscitur, quod quidam praelatorum ita in procurationibus graves *suis subditis* exsistant, ut *pro huiusmodi causa ipsa* interdum ecclesiastica ornamenta subditi exponere compellantur, et longi temporis victum brevis hora consumat. Quocirca statuimus, quod archiepiscopi, parochias visitantes, pro diversitate provinciarum, et facultatibus ecclesiarum XL. vel L. evectionum numerum, episcopi autem XX. vel XXX., cardinales *autem* XXV. nunquam excedant, archidiaconi vero V. vel VII., decani constituti sub episcopis duobus equis contenti exsistant. Nec cum canibus venatoriis et avibus proficiscantur, sed ita procedant, ut non quae sua sunt, sed quae Iesu Christi quaerere videantur. Nec sumptuosas epulas quaerant, sed cum gratiarum actione recipiant quod honeste ac competenter illis fuerit ministratum. Prohibemus etiam, ne subditos suos talliis et exactionibus episcopi gravare praesumant. Sustinemus autem pro multis necessitatibus, quae aliquoties superveniunt, ut, si manifesta ac rationabilis causa exstiterit, cum caritate moderatum ab eis valeant auxilium postulare. Quum enim dicat Apostolus : " Non debent filii thesaurizare parentibus, sed parentes filiis : " multum longe a paterna pietate videtur, si praepositi subditis suis graves exsistant, quos in cunctis necessitatibus pastoris debent more fovere. Archidiaconi vero sive decani nullas exactiones sive tallias in presbyteros seu clericos exercere praesumant. Sane, quod de praedicto numero evectionis secundum tolerantiam dictum est, in illis locis poterit observari, in quibus ampliores sunt reditus et ecclesiasticae facultates. In pauperioribus autem locis tantam volumus teneri mensuram, ut ex accessu maiorum minores merito non doleant se gravari. Nec sub tali indulgentia illi, qui paucioribus equis uti solebant hactenus, plurium sibi credant potestatem indultam.

Chapter VII

Latin source headnote: A new census cannot be imposed upon churches, nor can an old one be increased. This it says, and it is one of the more principal chapters of this title.

From the same council.

We prohibit furthermore that new censuses be imposed upon churches by abbots, bishops, or other prelates, that old ones be increased, or that they presume to appropriate a part of the revenues to their own uses; rather, let superiors preserve with good will for their inferiors also the liberty that they desire to preserve for themselves. But if anyone acts otherwise, let what he did be held void.

> Novus census ecclesiis imponi non potest, nec antiquus augeri. H. d. et est de principalioribus huius tituli.
>
> Ex eodem.
>
> Prohibemus insuper, ne ab abbatibus, vel episcopis vel aliis praelatis novi census imponantur ecclesiis, nec veteres augeantur, nec partem redituum suis usibus appropriare praesumant; sed libertatem, quam sibi maiores conservare desiderant, minoribus quoque suis bona voluntate conservent. Si quis vero aliter fecerit, irritum quod egerit habeatur.

Chapter VIII

Latin source headnote: A prelate or rector of a church cannot, especially after death, make his church subject to a census by his own authority.

Alexander III, to the Bishop of Worcester.

Furthermore, concerning those who, without the bishop's knowledge, by their own authority have paid or received an annual pension from churches by a certain subterfuge: after their deaths they are in no way to be heard in the receipt of the pension, *unless they received from those who, through the bishop or his officials, have authority to institute persons having the right to receive the canon, especially* if it is established that the authority and assent of the pontiff or of another who could do this by law did not intervene concerning it. For simple priests or clerics cannot by their own authority make the churches over which they preside subject to census, especially after their own death.

> Praelatus seu rector ecclesiae non potest, praesertim post mortem, ecclesiam suam propria auctoritate constituere censualem.
>
> Alexander III. Vigoriensi Episcopo.
>
> Praeterea illi, qui, episcopo ignorante, auctoritate sua pensionem annuam de ecclesiis quadam illusione solverint sive receperint, eis defunctis, *nisi ab iis, qui per episcopum vel ministeriales eius auctoritatem instituendi personas habentes ius recipiendi canonem receperint*, in receptione pensionis non sunt aliquatenus audiendi; *praesertim* si pontificis aut alterius, qui de iure id facere potuerit, auctoritatem et assensum super hoc non intervenisse constiterit. Non enim simplices sacerdotes vel clerici possunt ecclesias, quibus praesunt, auctoritate sua, praesertim post decessum suum, efficere censuales.

Chapter IX

Latin source headnote: It is brief, or in other words is summarized thus: A bishop cannot on this account impose a census upon a church wrested by him from the hand of a layman.

The same, to the Bishop of Chartres.

But upon churches that bishops newly wrest from the hands of laymen, beyond the cathedraticum and all the rights that are imposed upon other churches, we prohibit an exaction from being imposed, *since by our decree we generally prohibit churches henceforth from being burdened by new exactions*. [*To these things, etc.; cf. c.* 8, *On Testaments,* III. 26.]

Breve est, vel per alia verba summatur sic: Episcopus ecclesiae, de manu laici per se ereptae, non potest ob hoc censum imponere.

Idem Carnotensi Episcopo.

Ecclesiis *autem*, quas de novo episcopi de manibus laicorum eripiunt, praeter cathedraticum et iura omnia, quae aliis ecclesiis imponuntur, exactionem prohibemus imponi, *quin novis exactionibus decreto nostro prohibemus generaliter amodo ecclesias praegravari*. [*Ad haec etc. cf. c.* 8. *de testam. III.* 26.]

Chapter X

Latin source headnote: One who imposes new tolls without the prince's consent is deprived of communion.

The same.

We renew (*And below:* [*cf. c.* 2, *On Truce,* I. 34.]) Nor may anyone presume in any way to establish new exactions of tolls against another without the authority and consent of kings and princes, [*or to retain those established, or to increase old ones.*] But if anyone acts contrary to this and does not desist after being admonished, let him lack Christian communion until he makes satisfaction.

Nova pedagia sine consensu principis imponens, communione privatur.

Idem.

Innovamus (*Et infra:* [*cf. c.* 2. *de treuga I.* 34.] Nec quisquam alicui novas pedagiorum exactiones sine auctoritate et consensu regum et principum statuere, [*aut statutas tenere aut veteres augmentare*] aliquo modo praesumat. Si quis autem contra hoc fecerit, et commonitus non destiterit, donec satisfaciat communione careat Christiana.

Chapter XI

Latin source headnote: One who through collusion makes a church subject to census will be deprived of it.

The same, to the Archbishop of Canterbury and His Suffragans.

When clerics (*And below:* [*cf. c.* 6, *On Agreements,* I. 35.]) To this, because there *are* certain clerics *who*, after collusion has been made with religious *men*, without the authority of the diocesan bishop make the churches that they hold subject to a census in their favor, so that after their deaths the same churches may, through the presentation of the same religious *men*, be transferred to the sons or nephews of those clerics, we command you *by authority of the presents* that, if any *of your clerics* are found to do such things, appeal having been postponed, you are not to defer removing them *by apostolic authority* from the aforesaid churches, *lest they appear to carry away fruit from their fraud or deceit*.

Qui per collusionem constituit ecclesiam censualem, illa privabitur.

Idem Cantuariensi Archiepiscopo et eius Suffraganeis.

Quum clerici (*Et infra:* [*cf. c.* 6. *de pact. I.* 35.]) Ad hoc, quia *sunt* clerici quidam, *qui* cum religiosis *viris* collusione facta, citra auctoritatem dioecesani episcopi ecclesias, quas tenent, eis constituunt censuales, ut post decessum eorum eaedem ecclesiae per repraesentationem eorundem religiosorum *virorum* ad filios vel nepotes clericorum ipsorum possint transferri : *praesentium auctoritate vobis* praecipimus, ut, si qui *clericorum vestrorum* inventi fuerint facere talia, eos a praescriptis ecclesiis *auctoritate apostolica* non differatis appellatione postposita removere, *ne de sua fraude vel dolo videantur fructum reportare*.

Chapter XII

Latin source headnote: If collectors burden churches, they ought to be deprived of office.

The same.

Those things that from avarice (*And below:* [*cf. c.* 16, *On Simony,* V. 3.]) *Nevertheless, we also* enjoin [*you*] *by authority of the presents that, when you visit the churches themselves, you exercise the office of visitation according to what the canons command and not burden the churches by your visitation, so that you may appear to visit them more with a view to instruction and correction than with a desire for feasting.* But when you make a collection of denarii throughout your archdeaconries on account of the visitation of blessed Peter, do not burden the *aforesaid* churches or parishes *in making the collection otherwise or more than your predecessors are known to have done in the time of the Roman Pontiffs Innocent and Eugenius of holy memory*. But if you presume otherwise, that which you appear to possess will be taken from you.

> Si collectores gravant ecclesias, privari debent officio.
>
> Idem.
>
> Ea, quae de avaritiae (*Et infra:* [*cf. c.* 16. *de sim. V.* 3.]) *Nihilominus etiam* [*vobis*] *praesentium auctoritate iniungimus, ut, quum ecclesias ipsas visitaveritis, secundum quod canones praecipiunt visitationis officium exerceatis, nec ecclesias visitatione vestra gravetis, ut eas magis intuitu informationis et correctionis, quam affectu comessationis videamini visitare*. Quum autem propter B. Petri visitationem denariorum collectam per archidiaconatus vestros feceritis, *in collectione facienda praedictas* ecclesias vel parochias non gravetis *aliter, sive magis, quam praedecessores vestri tempore sanctae recordationis Innocentii, Eugenii Romanorum Pontificum fecisse noscuntur*. Quod si secus praesumpseritis, id, quod videmini habere, auferetur a vobis.

Chapter XIII

Latin source headnote: One who receives an oath to pay a new census imposed upon a church is compelled to absolve the person swearing.

Lucius III.

T., rector of the church of Fulsig., signified to us that, when he had been elected to the governance of that church by our *beloved sons*, the [*same*] *abbot and* monks of Castig., he *corporally* furnished an oath to pay them an annual census of three marks, which his predecessor had paid. Afterward the diocesan bishop, *our venerable brother R., Bishop of Worcester*, prohibited him, at peril to his order *and under threat of anathema*, from paying that census to the monks unless it were first established that it had been imposed by episcopal authority. *Hence the aforesaid rector fears on this side the guilt of perjury and on that side fears the imminent peril of disobedience.* Therefore we command *your fraternity through apostolic writings* that, *the parties having been summoned before you*, if it is established that the aforesaid census was imposed by authority *of* the prelate and not newly, you are to command the bishop *by our authority* to relax *his* prohibition without delay. But if the census was newly imposed, whether this was done [*by*] authority of the bishop or not, appeal having been removed, compel the same monks *by ecclesiastical constraint* to absolve the cleric from the oath. *For we* [*do not will*] *nor ought we permit churches to be vexed by the exaction of a new census.*

> Qui recipit iuramentum de novo censu imposito ecclesiae persolvendo, compellitur iurantem absolvere.
>
> Lucius III.

Significavit nobis T. rector ecclesiae de Fulsig., quod quum a *dilectis filiis* [*nostris*] *abbate et* monachis de Castig. ad regimen ipsius ecclesiae fuisset electus, de solvendo eis annuo censu trium marcharum, quas praedecessor eius solverat, praestitit *corporaliter* sacramentum; postmodum *venerabilis frater noster R. Wigorniensis* episcopus dioecesanus, ne ipsum censum monachis solveret, nisi prius constaret, quod episcopali auctoritate fuisset impositus, in periculum ordinis sui *et sub interminatione anathematis* interdixit. +*Unde praedictus rector hinc periurii reatum metuit, inde timet inobedientiae periculum imminere*. Quocirca *fraternitati tuae per apostolica scripta* mandamus, quatenus, *partibus ante praesentiam vestram convocatis*, si praefatum censum *de* auctoritate praesulis, et non de novo impositum fuisse constiterit, episcopo *auctoritate nostra* praecipias, ut prohibitionem *suam* sine dilatione relaxet. Si vero census sit de novo impositus, sive [*de*] auctoritate episcopi hoc factum fuerit sive non, eosdem monachos, ut clericum a iuramento absolvant, appellatione remota *ecclesiastica districtione* compellas. *Pati enim* [*nolumus*] *nec debemus, ut ecclesiae census novi exactione vexentur*.

Chapter XIV

Latin source headnote: An archbishop visiting his province ought to be furnished a procuration even by the monasteries of the province.

The same, to the Archbishop of Ravenna.

Questions settled *by the judgment of the Apostolic See are committed to writing for perpetual memory, lest through forgetfulness they be able to be raised over the course of time. Moreover, so that a sentence may have greater firmness, it is strengthened by the protection of an apostolic writing.* Indeed, when a controversy was being litigated between you and the monasteries of Bologna, *of both monks and nuns*, concerning the procurations that you had exacted from them, *we committed the cause to our venerable brother H., Bishop of Albano, to be heard. But afterward our beloved son* the Abbot of Saint Proculus, proctor of all the others, as appeared from the letters that he carried, *and as he himself affirmed by giving faith in the hand of the aforesaid bishop, litigated at length before us and our brothers on behalf of all the other monks, except those of Saint Damian and Saint Bartholomew, who were in no way referring the question concerning this. But he exhibited no privileges of the Roman Church or of Ravenna on his side, nor showed that he was fortified by long custom.* But you, *firmly* asserting that those procurations were furnished to you without contradiction in the other monasteries of your province, proved through suitable witnesses that they were furnished to your predecessors in the monasteries of Bologna. Hence, indeed, *after deliberation was held with our brothers*, we saw that your intention was aided by common law and the custom of your predecessors. On this account, *assenting to your just petitions, with the common consent of our brothers* we condemned the aforesaid monasteries to furnish a procuration to you and your successors according to their means.

Archiepiscopus, visitans provinciam, etiam a monasteriis provinciae procurari debet.

Idem Ravennatensi Archiepiscopo.

Sopitae +*iudicio sedis apostolicae quaestiones scripto ad memoriam perpetuam commendantur, ne per oblivionem processu temporis valeant suscitari. Ut autem sententia maiorem habeat firmitudinem, apostolici scripti munimine roboratur*. Sane, quum inter te et monasteria Bononiae, *tam monachorum quam monialium*, super procurationibus, quas ab eis exege ras, controversia verteretur, +*causam venerabili fratri nostro H. Albanensi episcopo commisimus audiendam. Postmodum vero dilectus filius noster* abbas sancti Proculi, omnium aliorum procurator, sicut ex literis, quas portavit, apparuit, *et ipse in manu episcopi iam dicti data fide firmavit, coram nobis et fratribus nostris pro omnibus aliis monachis, sancti Damiani et sancti Bartholomaei exceptis, qui super hoc quaestionem minime referebant*, diutius litigavit. +*Verum nulla pro parte sua privilegia Romanae ecclesiae vel*

Ravennatis exhibuit, nec ostendit, longa consuetudine se munitum. Sed tu *firmiter* procurationes ipsas in aliis monasteriis tuae provinciae asserens tibi sine contradictione praestari, eas praedecessoribus tuis in monasteriis Bononiensibus exhibitas per testes idoneos probavisti. Inde utique *fuit, quod, deliberatione cum fratribus habita,* vidimus, intentionem tuam iure communi et praedecessorum tuorum consuetudine adiuvari. Ea propter, *tuis iustis petitionibus annuentes*, monasteria supra dicta *de communi consensu fratrum* condemnavimus ad procurationem secundum facultates eorum tibi tuisque successoribus exhibendam.

Chapter XV

Latin source headnote: Patrons, even clerical patrons, cannot impose a new census upon a church or increase an old one; and if they exacted oaths or securities concerning this, they are compelled to absolve them.

Clement III.

A very grave complaint, *and one most worthy of correction, was recently proposed in our hearing, which with a safe conscience we cannot pass over under dissimulation.* When churches happen to become vacant, ecclesiastical persons are unwilling to call anyone to their governance otherwise than by imposing a new census upon those churches or increasing an old one contrary to the constitution of the Lateran Council, compelling the priest to be instituted to its payment by an *occasional* caution through oath or surety; *they also strive to apply a certain part of the revenues to their own uses. Hence it often happens that, while the diocesan bishop is ignorant of excesses of this kind, or while he is in no way consulted, they introduce priests into those churches according to the judgment of their own will. Therefore, because we neither will nor ought to permit the constitutions of the aforesaid council to be violated by the injury of any persons*, we command *and enjoin* your discretion *through apostolic writings* that, *when you have been requested concerning this, the parties having been summoned into your presence*, revoking as void, *contradiction and appeal ceasing*, whatever is established to have been attempted *by any persons* contrary to the aforesaid constitution concerning *those* churches or their census from the time of that constitution, *you are entirely to absolve the churches from the increase of censuses and reduce them to their due condition, and* cause the priests whom you know to have furnished unlawful oaths concerning these things to be absolved after suitable satisfaction has been imposed, *also* canonically punishing those who henceforth presume to act contrary to the form of the canons concerning these things, *without preference for any person, the obstacle of appeal having been removed*.

Patroni etiam clerici novum censum ecclesiae imponere non possunt, nec veterem augere, et, si super hoc iuramenta vel cautiones exegerunt, coguntur absolvere.

Clemens III.

Gravis admodum *+et correctione dignissima nuper querela in audientia nostra est proposita, quod salva conscientia sub dissimulatione transire non possumus*. Ecclesiasticae personae, quum ecclesias vacare contingit, non aliter quenquam ad ipsarum regimen volunt vocare, nisi aut novum censum ecclesiis illis imponant, aut veterem contra constitutionem concilii Lateranensis augmentent, ad ipsius solutionem instituendum presbyterum iuratoria *quandoque* vel fideiussoria cautione cogentes; *+quandam etiam partem suis usibus redituum applicare contendunt. Unde saepe contingit, ut, dioecesano episcopo excessus huiusmodi ignorante, vel eo minime requisito, in ecclesiis illis inducant pro suae voluntatis arbitrio sacerdotes. Quoniam igitur constitutiones praedicti concilii pati nolumus neque debemus aliquorum iniuria violari,* Discretioni vestrae *per apostolica scripta* mandamus *atque praecipimus*, quatenus, *quum super hoc fueritis requisiti, partibus ad vestram praesentiam convocatis*, quaecunque constiterit contra constitutionem praedictam super ecclesiis *illis* vel earum censu *ab aliquibus* a tempore constitutionis huiusmodi attentata, *contradictione et appellatione cessante in* irritum

revocantes, *ab augmentatione censuum ecclesias penitus absolvatis et ad statum debitum reducatis, et* presbyteros, quos super his iuramenta illicita praestitisse noveritis, congrua satisfactione imposita, faciatis absolvi, eos *etiam* qui de cetero contra formam canonum super his venire praesumpserint, *sine cuiuscunque personae acceptione sublato appellationis obstaculo* canonice punientes.

Chapter XVI

Latin source headnote: One who is bound to furnish a procuration to the brothers of some house is obligated to furnish a procuration to all, although their number has now grown; but if he were thereby burdened excessively, provision will be made for him through the office of the judge. This it says according to the more common reading.

Innocent III, to the Abbot and Convent of Bellevaux.

The more devoutly you are bound *under the religious habit to serve your Creator, the more solicitously it befits us to provide that the advancement of the monastic order cannot in any way be impeded in you through the weight of an immoderate burden.* We learned, *as you signified to us*, that from the very beginning *of the foundation* of your house it proceeded from the founder's will that it should liberally furnish one procuration each year to the brothers of Saint Irenaeus, although you hold nothing from them on account of which a procuration of this kind ought to be furnished to them. But at that *time*, because of the small number of brothers and servants, such a procuration did not burden *your house, since it did not exceed the limits of light expenses*. But now their number has increased so greatly that scarcely four marks of silver would *now* suffice for *furnishing* the procuration, which used to be furnished *sufficiently* for one. We therefore grant, *so that through the care of apostolic solicitude provision may be made in this matter for your burdens, by authority of the presents*, that you are not henceforth to be obligated to the aforesaid brothers beyond the first measure in that procuration, but let them be content with *those* expenses that used to suffice, unless *perhaps* the means of the church have increased so much that, without burden, when the number of brothers has been increased, the amount of expenses can be extended to discharge the debt of procuration. [*Given at Rome, at Saint Peter's, on the Nones of May, in the first year of our pontificate.* 1198.]

Qui tenetur procurare fratres alicuius domus, obligatur ad procurandum omnes, licet illorum numerus nunc creverit, sed, si ex hoc gravaretur nimium, per iudicis officium sibi providebitur, H. d. secundum lecturam magis communem.

Innocentius III. Abbati et Conventui Bellae villae.

Quanto creatori *+vestro sub religionis habitu adstricti estis devotius famulari, tanto sollicitius nos convenit providere, ne per immoderati oneris gravitatem aliquatenus possit in vobis monastici profectus ordinis impediri*. Accepimus *autem vobis significantibus* quod ab ipso domus *fundationis* vestrae primordio de fundatoris voluntate processit, ut fratribus sancti Irenaei procurationem unam annis singulis liberaliter exhiberet, quum nihil teneatis ab eis, propter quod huiusmodi procuratio ipsis debeat exhiberi. Verum tunc *temporis* propter fratrum et servientium paucitatem *domum vestram* talis procuratio non gravabat, *quum fines levium non excederet expensarum*. Sed nunc in tantum excrevit numerus eorundem, quod ad *faciendam* procurationem vix *modo* quatuor marchae argenti sufficerent, quae pro una *sufficienter* fieri consuevit. Indulgemus igitur, *ut per apostolicae sollicitudinis curam vestris possit in parte ista gravaminibus provideri, auctoritate vobis praesentium*, ne ultra primam mensuram in procuratione ipsa sitis ulterius praedictis fratribus obligati, sed expensis *illis*, quae consueverunt sufficere, sint contenti nisi *forte* facultates ecclesiae in tantum excreverint, quod sine gravamine ampliato fratrum numero ad solvendum debitum

procurationis extendi possit quantitas expensarum. [*Dat. Rom. ap. S. Petr. Non. Mai. Pont. nostr. Ao. I.* 1198.]

Chapter XVII

Latin source headnote: All churches, except those exempt from this by an apostolic privilege, are bound to furnish procurations to legates of the Apostolic See or even its messengers, nor are they aided by prescription in this. This it says as far as "Indeed." — (*Indeed, etc.*) It treats of the manner of furnishing procurations to the legates and messengers themselves. The Abbot.

The same, to the Primicerius and Clergy of Milan.

Since our daily burden *according to the debt of apostolic service is continual solicitude for all the churches, whenever we cannot personally attend to advancing their affairs, we are compelled to dispatch them through our brothers whom we send from our side, following in this matter the example of him who, after his disciples had been sent into the whole world, himself personally wrought salvation in the midst of the earth. Hence it is that, when we recently held that our beloved son B., cardinal of the title of Saint Peter in Chains and legate of the Apostolic See, should be sent to Lombardy for the affairs of the church, and he, entering your city, exacted procurations* [*from you*] *that were accustomed to be furnished to legates and messengers of the Apostolic See, you, not attending to what is said by the Apostle, "If we have sown spiritual things for you, it is no great thing if we reap your carnal things," appealed to the Apostolic See lest he bind you to the burden of procuration unless he first caused himself to be furnished a procuration by the canons of the greater church; and, as the same cardinal intimated to us through his letters, you were not a little injurious in other matters also. On this account our beloved sons the Provost of Saint Nazarius and A., canon of Saint Stephen, your syndics and proctors, coming to the Apostolic See with our beloved son the Abbot of Saint Vincent, petitioned suppliantly on your behalf that we establish an order and measure concerning these things. Although, because, contumaciously resisting the aforesaid cardinal—or rather us in him—you denied necessities according to the word of the Lord, "He who receives you receives me, and he who rejects you rejects me," you deserved to be heard not for yourselves but rather against yourselves, nevertheless, because we cannot, even when offended, put aside the paternal affection by which it is proper for us always to pity and spare through the clemency of the Roman See, with the counsel of our brothers* we respond to your petition *in matters of this kind* in this way: since all churches are bound to furnish procurations to legates and messengers of the Apostolic See, we will that no church *at all* be excused from furnishing them unless perhaps it is exempt by special privilege of the Apostolic See, which we do not believe, even if for a very long time it has not furnished the service of procuration, since prescription cannot vindicate a place for itself in such things, because we never cease altogether from the provision of pastoral solicitude concerning all churches.

Indeed, in exacting these things we will such manner and order to be observed that no church or prelate may reasonably complain of being unduly burdened. But if you determine that the expenses of our legates and messengers are to be made from a common collection—which we have not considered should be prohibited to you—we will that from this no prejudice be generated against us or ours that would prevent them from petitioning from whomever they prefer the procurations owed to them, in such a way that, if the person from whom it is exacted has been burdened beyond his means, it is to be restored to him by the others. Nevertheless, whoever is requested is to obey our messengers in furnishing necessary expenses *humbly and devoutly*, yet *in such a way* that nothing at all is attempted fraudulently and they are not compelled, if they are unwilling, to receive the service of

procuration through common ministers. But those who decide to resist them contumaciously are to be compelled by ecclesiastical constraint, *every appeal having been entirely removed*. [*But concerning the injuries, etc. Given at the Lateran, on the twelfth day before the Kalends of March.* 1199.]

> Omnes ecclesiae, nisi quae ab hoc per privilegium apostolicum sint exemptae, procurare tenentur legatos sedis apostolicae seu etiam eius nuncios, nec in hoc praescriptione iuvantur H. d. usque ad §. Sane. — (Sane etc.) Tractat de modo procurationis ipsorum et legatorum et nunciorum. Abbas.
>
> Idem Primicerio et Clero Mediolanensibus.
>
> Quum instantia nostra quotidiana +*sit secundum debitum apostolicae servitutis omnium ecclesiarum sollicitudo continua, quoties ipsarum negotiis promovendis non possumus personaliter imminere, per fratres nostros ea expedire compellimur, quos a nostro latere destinamus, illius exemplum in hac parte secuti, qui, discipulis suis in mundum universum transmissis, ipse in medio terrae salutem fuit personaliter operatus. Hinc est, quod, quum nuper dilectum filium B. tit. S. Petri ad Vincula cardinalem apostolicae sedis legatum pro negotiis ecclesiae in Lombardiam duximus destinandum, et is, vestram civitatem ingressus, procurationes* [*a vobis*] *exigeret, quae consueverunt apostolicae sedis legatis et nunciis exhiberi, vos, non attendentes, quod dicitur ab Apostolo: "Si vobis spiritualia seminavimus, non est magnum, si carnalia vestra metamus, "ne vos ad onus procurationis arctaret, nisi a canonicis maioris ecclesiae se faceret antea procurari, sedem apostolicam appellastis, et, sicut idem cardinalis per suas nobis literas intimavit, in aliis etiam non modicum iniuriosi fuistis. Propter quod dilecti filii nostri praepositus S. Nazarii et A. canonicus S. Stephani, syndici et procuratores vestri, cum dilecto filio abbate S. Vincentii ad sedem apostolicam venientes, ut super his statueremus ordinem et mensuram, ex parte vestra suppliciter postulabant. Licet autem pro eo, quod praedicto cardinali vel potius nobis in ipso contumaciter resistentes, iuxta verbum dominicum: "Qui vos recipit me recipit, et qui vos spernit me spernit, "necessaria denegastis, non pro vobis, sed contra vos potius meruerint exaudiri: quia tamen paternam affectionem, qua nobis proprium est de Romanae sedis clementia misereri semper et parcere, offensi etiam deponere non valemus; de consilio fratrum nostrorum* Postulationi vestrae taliter *in huiusmodi* respondemus, quod, quum omnes ecclesiae legatis et nunciis sedis apostolicae procurationes impendere teneantur, ab earum praestatione nullam *prorsus* habere volumus excusatam, nisi forte per speciale privilegium sedis apostolicae, quod non credimus, sit exempta, etiamsi longissimo tempore procurationis obsequium non impenderint quum in talibus praescriptio sibi locum nequeat vindicare, quia nos a provisione pastoralis sollicitudinis circa omnes ecclesias nunquam omnino cessamus. Sane in his exigendis eum modum et ordinem volumus observari, ut nulla ecclesia vel praelatus se indebite praegravari rationabiliter conqueratur. Si vero de communi collecta legatorum et nunciorum nostrorum expensas duxeritis faciendas, quod vobis non duximus inhibendum, ex hoc nobis et nostris nullum praeiudicium volumus generari, quo minus possint a quocunque maluerint procurationes sibi debitas postulare, ita, quod, si exactus ultra suam gravatus fuerit facultatem, sibi ab aliis restauretur. Nunciis tamen nostris in necessariis expensis exhibendis pareat quicunque fuerit requisitus *humiliter et devote*, ita *tamen*, quod in fraudem nihil penitus attentetur, nec per communes ministros procurationis obsequium, si noluerint, recipere compellantur. Qui vero contumaciter eis duxerint resistendum, *omni prorsus appellatione remota* districtione sunt ecclesiastica compellendi. [*Super iniuriis autem etc. Dat. Lat. XII. Kal. Mart.* 1199.]

Chapter XVIII

Latin source headnote: If what is owed from a vow is customarily paid according to a single measure, it will have to be paid according to that measure in the future; but if according to different measures, the person paying will be discharged even according to the smaller.

The same, to the Bishops of Zamora and Salamanca.

It was proposed *before us* on the part of *our venerable brother* the Archbishop of Compostela that, although those who continuously paid the vows of blessed James have hitherto paid and do pay them according to the common measure of their land, with which, namely, they buy and sell, certain persons, because in times long *past* they ceased from paying them, now, *having been compelled through you by authority of the Apostolic See to pay them*, exhibit a certain very small and unknown measure, *not even deputed to common uses, and endeavor to pay the aforesaid vows according to it. Hence you petitioned us to deign to render you certain concerning this: whether those who exhibit the unknown measure are to be compelled to pay the aforesaid vows according to the common measure of their land, in accordance with what those who paid them continuously did.* Therefore, since it is not established according to what measure their predecessors paid the aforesaid vows, we believe a distinction is to be made: whether the inhabitants of that region who paid them continuously paid vows of this kind according to one and the same measure, or according to varied and different ones. For in the first case those persons also are to be compelled to pay according to the same measure. In the second, those wishing to pay according to the smaller are certainly *not* to be compelled to pay according to the greater, because, since vows of this kind were gratuitous from the beginning, they are to be exacted more benignly by ecclesiastical men, lest they appear as exactors to gape excessively after temporal gains. [*Given at Rome, at Saint Peter's, on the tenth day before the Kalends of April, in the ninth year.* 1206.]

> Si ad unicam mensuram solvi solet quod debetur ex voto, ad illam in posterum solvi debebit; si vero ad diversas, liberabitur solvens etiam, ad minorem.
>
> Idem Zamorensi et Salamantino Episcopis.
>
> Ex parte *venerabilis fratris nostri* Compostellani archiepiscopi fuit propositum *coram nobis*, quod, quum hi, qui vota beati Iacobi continue persolverunt, ad communem terrae suae mensuram, cum qua videlicet emunt et vendunt, ipsa persolverint hactenus et persolvant, quidam, quia longis *retro* temporibus ab eorum solutione cessarunt, nunc, *per vos apostolicae sedis auctoritate ad solutionem eorundem coacti*, quandam mensuram exhibent parvissimam et ignotam, *+nec etiam communibus usibus deputatam, et ad eandem vota praedicta persolvere moliuntur. Unde postulastis a nobis, ut super hoc vos certos reddere dignaremur, utrum hi qui mensuram ignotam exhibent, ad solvendum vota praescripta sint ad communem terrae suae mensuram, secundum quod illi, qui ea persolverunt continue, fecerunt, compellendi*. Quum ergo non constet, ad quam mensuram antecessores eorum praedicta vota persolverint, credimus distinguendum, utrum habitatores regionis ipsius, qui ea continue persolverunt, ad unam et eandem mensuram huiusmodi vota persolverint, an ad varias et diversas. In primo enim casu ad eandem et illi solvere sunt cogendi. In secundo volentes solvere ad minorem, non sunt *utique* cogendi, ut ad maiorem persolvant; quoniam, quum huiusmodi vota gratuita fuerint ab initio, benignius sunt a viris ecclesiasticis exigenda, ne tanquam exactores nimium videantur lucris temporalibus inhiare. [*Dat. Rom. ap. S. Petr. X. Kal. Apr. Ao. IX.* 1206.]

Chapter XIX

Latin source headnote: Churches are bound to answer to the bishop in whose diocese they are concerning procurations, the fourth of tithes, and other episcopal rights. This it says with regard to the title.

The same, to the Bishop of Zaragoza.

When formerly [*you had sent your complaint to our ears that our beloved son the Abbot of San Juan de la Peña was defrauding you in many ways of the fourths of the tithes that you ought to receive in the churches of Luna and Taust., we held that the cause itself should be committed to our beloved

sons ...., Provost of Jaca, and P... of Montearagón, Archdeacon of Tarazona. In their presence your party petitioned that the abbot pay you without diminution a fourth of all tithes, which you were accustomed to receive in the aforesaid churches. Against this it was responded on behalf of the abbot that, since the aforesaid churches pertain to the monastery by full right, you could vindicate no right in them. But on your part it was proposed to the contrary that both the fourth of the tithe and other episcopal rights pertained to you in many ways in the aforesaid churches, since, indeed, because those churches are constituted in your diocese, by common law you can seek in them both the fourth of the tithe and other episcopal rights. You also proposed a composition entered into between your church and the monastery of Peña through the mediation of B., Archbishop of Tarragona of good memory, and R., Count of Barcelona, through which you affirmed that both a supper and the fourth of the tithe and other episcopal rights belonged to you in those churches. To prove this you presented an authentic instrument, asserting that the same composition was confirmed by authority of Pope Alexander III of good memory, our predecessor, as is perceived to be contained in his authentic instrument. You likewise firmly introduced another composition entered into through the mediation of G., Bishop of Pamplona of good memory, and our beloved sons F. de Otiien and D., monk of Saint John, through which you asserted that the fourth was owed to you, exhibiting a public instrument concerning it. Also, to strengthen your intention more forcefully, you alleged a prescription of forty years, asserting that, even if you had no other aids of defense, a right of receiving the fourth of the often-mentioned tithe had been acquired for you through a span of long time.

But on the abbot's part it was responded to these things that the aforesaid churches pertain by full right, according to common law, to the monastery of Peña; since King Sancho of Aragon of illustrious memory merited to obtain an indulgence from the Apostolic See that, if it happened that any places in his kingdom were newly populated or liberated from the hands of the Saracens, he might freely grant the churches to be constructed in them to whomever he wished. And when he had afterward brought inhabitants into the castle of Luna, he conferred upon the monastery of Peña the churches of Luna and Taust. constructed there; to prove these things, the abbot produced instruments drawn up concerning the aforesaid donations. Peter, Bishop of Pamplona of good memory, in whose diocese the aforesaid churches were said to be constituted, also granted them to the aforesaid monastery with tithes and other episcopal rights, as is contained in the authentic instrument of the same bishop; and to prove this the aforesaid abbot introduced witnesses that those churches are constituted in the diocese of Pamplona. The same abbot also proposed that García of good memory, your predecessor, granted those churches to his monastery with every episcopal right except the consecrations of basilicas and certain other things that are more fully contained in the authentic instrument drawn up thereupon, on account of which the abbot himself responded that by law you could seek nothing in the aforesaid churches.

Furthermore, the monastery's party proposed that both the first and the second composition proposed on your part were to be rejected for this reason: because each composition was violently extorted through coercion and fear of a secular prince, which it endeavored to show through the depositions of witnesses. It nevertheless alleged that the confirmation obtained concerning so unlawful a composition could not bring you the benefit of defense, since through confirmation a right is by no means acquired, but one already acquired is preserved more securely. Against the forty-year prescription that you took care to allege, the monastery's party responded that a prescription of this kind, even if it had been proved, was shown by this to have been interrupted many times: because, on

account of the frequent controversies arising concerning those churches, it is proved that two compositions were interposed within periods of forty years. Furthermore, since according to the canonical sanctions the periods of one who unlawfully transacts or alienates ought to be deducted from prescription, it is established that the forty-year prescription was in no way completed if the periods during which the abbot who unlawfully transacted afterward lived are subtracted.

To these things it was firmly replied on your part that the aforesaid indulgence alleged to have been granted to King Sancho was never presented in the judgment; but even if it had been exhibited or most certain proof of it had been made, it could generate no prejudice against you, since the abbot himself had confessed at law before us that the same indulgence was granted to the aforesaid king saving episcopal right, and he asserted that he had confessed this same thing before the delegated judges. Moreover, your party proposed steadfastly that the donation of the Bishop of Pamplona could not prejudice you, since it was not sufficiently shown through witnesses that the aforesaid churches were constituted in his diocese. Against the donation of your predecessor it was responded on your part that, since the abbot, interrogated at law, responded that the same predecessor had not had power to confer those spiritual things, it is unworthy that he obtain an advantage by occasion of the instrument that he did not blush to impugn in the judgment; especially since it was in no way established that it was authentic, and most especially since, after that donation is proposed to have been made, it is certain that for those churches the monastery itself answered to your church for many periods of time in tithes and other episcopal rights. But also concerning the fear through which the above-named compositions are proposed to have been interposed, your party proposed that the abbot himself was in no way to be heard. For even if it were established that fear was applied at the time of the composition, nevertheless, because spontaneous and free payment of both the tithe and the other episcopal rights afterward followed, the same abbot could not reasonably excuse himself under pretext of coercion.*]

After these and other things that were proposed before the aforesaid judges and before us had been more fully understood, because *full* proof was made for us that the churches of Luna and Bes. are constituted in your diocese—not only through other things, but even through this very thing, which is contained expressly in the instruments of the compositions: that the Abbot of San Juan de la Peña ought to answer to you both concerning the fourth of the tithes, *concerning which alone he asserted that violence had been done*, and concerning the other episcopal *rights*, [*concerning which he did not complain that any violence had been inflicted upon him*]—*with the counsel of our brothers*, we condemn the abbot himself to full payment of the fourth of all tithes, no deductions having been made, and to the furnishing of procurations and of other episcopal rights in the aforesaid churches. For although according to the form of the second composition some deductions were to be made, nevertheless, because the same abbot in no way approved *that* composition but endeavored to impugn it in many ways, he ought not to obtain a benefit from that which he appeared tacitly to have renounced. It was furthermore discordant for him to deny that the church was constituted in your diocese concerning which he showed at law that the instruments of your predecessor had granted it to *his* monastery, through which he expressly sought episcopal right. [*Given at Ferentino, on the second day before the Nones of August, in the ninth year.* 1206.]

> Ecclesiae tenentur episcopo, in cuius dioecesi sunt, respondere de procurationibus, quarta decimarum et aliis episcopalibus. H. d. quoad titulum.

Idem Caesaraugustensi Episcopo.

Quum olim + [*ad aures nostras tuam querimoniam destinasses, quod te dilectus filius abbas S. Ioannis Pinnatensis quartis decimarum, quas in ecclesiis de Luna et de Taust. debes percipere, multipliciter defraudaret, dilectis filiis .... praeposito Iaccensi et P.. Montis Aragonum archidiacono Tirasonensi causam ipsam duximus committendam, in quorum tua pars praesentia postulavit, ut abbas tibi quartam omnium decimarum sine diminutione persolveret, quam consuevisti percipere in ecclesiis antedictis. Contra quod fuit pro abbate responsum, quod, quum ecclesiae supradictae ad monasterium pertineant pleno iure, nihil iuris in eis tibi poteras vendicare. Ex parte autem tua fuit propositum ex adverso, quod tam quarta decimae, quam alia iura episcopalia, pertinebant ad te multipliciter in ecclesiis memoratis, quum siquidem eaedem ecclesiae in tua sint dioecesi constitutae, de iure communi tam quartam decimae quam alia episcopalia vales petere in eisdem. Compositionem quoque, inter ecclesiam tuam et Pinnatense monasterium mediantibus bonae memoriae B. archiepiscopo Terraconensi et R. comite Barchinonensi initam proponebas, per quam tibi tam coenam quam quartam decimae ac alia episcopalia in ipsis ecclesiis competere fatebaris, ad quod probandum instrumentum authenticum praesentasti, asserens, quod auctoritate bonae memoriae Alexandri Papae tertii, praedecessoris nostri, eadem exstitit compositio confirmata, sicut in eiusdem authentico perspicitur contineri. Aliam similiter compositionem bonae memoriae G. Pampilonensi episcopo, et dilectis filiis F. de Otiien, et D. monacho sancti Iohannis mediantibus initam, per quam deberi tibi quartam asseruisti, firmiter inducebas, super ea publicum exhibens instrumentum. Ad tuam quoque intentionem fortius roborandam praescriptionem quadragenariam allegasti, asserens, quod, etsi alia defensionis adminicula non haberes, longi temporis spatio percipiendi quartam decimae saepedictae ius tibi fuerat acquisitum. Ex parte vero abbatis fuit ad ista responsum, quod ecclesiae supradictae de iure communi ad Pinnatense monasterium pertinent pleno iure; si quidem illustris memoriae Sancius Aragonum rex a sede apostolica indulgentiam meruit obtinere, ut, si qua loca in regno suo de novo populari contingeret, vel de Saracenorum manibus liberari, ecclesias construendas in ipsis libere concederet cui vellet. Quumque in castrum de Luna habitatores postmodum induxisset, ecclesias de Luna et de Taust. ibidem constructas monasterio contulit Pinnatensi, ad quae probandum instrumenta super dictis confecta donationibus producebat. Petrus quoque bonae memoriae Pampilonensis episcopus, in cuius dioecesi praedictae dicebantur ecclesiae constitutae, cum decimis et aliis iuribus episcopalibus concessit easdem monasterio memorato, sicut in eiusdem episcopi authentico continetur, et ad hoc probandum supradictus abbas testes induxit, quod in Pampilonensi dioecesi sunt eaedem ecclesiae constitutae. Proposuit etiam idem abbas, quod bonae memoriae Garsias praedecessor tuus suo monasterio ipsas ecclesias cum omni episcopali iure concessit, praeter consecrationes basilicarum et quaedam alia, quae in authentico exinde confecto plenius continentur, propter quae abbas ipse nihil in praedictis ecclesiis te posse de iure petere respondebat. Compositionem praeterea, tam primam quam secundam, ex tui parte propositam, ea ratione pars monasterii proposuit reprobandam, quia per impressionem et metum principis saecularis utraque compositio exstitit violenter extorta, quod per depositiones testium ostendere nitebatur; allegans nihilominus, quod confirmatio super tam illicita compositione obtenta non poterat tibi beneficium defensionis afferre; confirmatione siquidem ius nequaquam acquiritur, sed acquisitum securius conservatur. Contra praescriptionem quadragenariam, quam tu allegare curasti, pars monasterii respondebat, quoniam huiusmodi praescriptio, etiamsi probata fuisset, ex eo convincitur saepius interrupta, quia propter frequentes super illis ecclesiis controversias emergentes infra quadraginta annorum spatia duae compositiones interpositae comprobantur. Praeterea, quum secundum canonicas sanctiones illicite transigentis vel alienantis tempora debeant de praescriptione deduci, constat praescriptionem quadragenariam minime consummatam, si tempora, quibus postmodum vixit abbas illicite transigens, subducantur. Ad haec fuit ex parte tua firmiter replicatum, quoniam praedicta indulgentia, quae Sancio regi allegatur indulta, nunquam fuit in iudicio praesentata, sed, etsi fuisset exhibita, vel de ipsa certissima facta fides, nullum tibi poterat praeiudicium generare, quum abbas ipse coram nobis fuerit in iure confessus, quod eadem indulgentia, salvo iure episcopali, fuerit praedicto regi concessa, et hoc ipsum asseruit se coram delegatis iudicibus fuisse confessum. Porro, donationem Pampilonensis episcopi tibi praeiudicare non posse, tua pars proponebat constanter, quum non sit per testes sufficienter ostensum, quod ecclesiae supradictae in eius sint dioecesi constitutae. Contra donationem praedecessoris tui ex tua fuit parte responsum, quod, quum abbas interrogatus in iure responderit, quod idem praedecessor non habuerat potestatem illa spiritualia conferendi, indignum est, ut illius instrumenti occasione*

commodum consequatur, quod in iudicio non erubuit impugnare, praesertim, quum illud authenticum esse minime constitisset, et maxime, quum, postquam donatio illa proponitur esse facta, monasterium ipsum ecclesiae tuae in decimis et aliis episcopalibus iuribus pro illis ecclesiis certum sit per multa tempora respondisse. Sed et super metu, per quem praenominatae compositiones interpositae proponuntur, tua pars proponebat abbatem ipsum nullatenus audiendum. Nam, etsi compositionis tempore metum adhibitum fuisse constaret, quia tamen postmodum tam decimae quam aliorum iurium episcopalium spontanea fuit ac libera subsecuta solutio, coactionis obtentu nequeat se idem abbas rationabiliter excusare.] *His et aliis, quae coram praedictis iudicibus et coram nobis fuere proposita, plenius intellectis,* Quia nobis *plena* fides facta fuit, quod ecclesiae de Luna et de Bes. in tua sunt dioecesi constitutae, non solum per alia, verum etiam per hoc ipsum, quod in instrumentis compositionum continetur expresse, ut abbas sancti Ioannis Prilatensis tam de quarta decimarum, *circa quas tantum asserebat violentiam esse factam,* quam de ceteris episcopalibus *rationibus,* [*circa quas nullam querebatur sibi violentiam irrogatam,*] tibi debeat respondere : *de consilio fratrum nostrorum* abbatem ipsum ad integram solutionem quartae omnium decimarum, nullis factis deductionibus, et ad praestationem procurationum, et aliorum episcopalium iurium in praedictis ecclesiis condemnamus. Licet enim ex forma secundae compositionis deductiones essent aliquae faciendae, quia tamen compositionem *illam* idem abbas nullatenus approbavit, sed studuit multipliciter impugnare, ex ea non debuit beneficium consequi, cui renunciasse tacite videbatur. Absonum erat praeterea, ut negaret, illam ecclesiam in tua dioecesi constitutam, super qua instrumenta praedecessoris tui ostendebat in iure monasterio *suo* fuisse concessa, per quae episcopale ius petebat expresse. [*Dat. Ferentini II. Non. Aug. Ao. IX. * 1206.]

Chapter XX

Latin source headnote: Censuses are to be paid in the old coinage in which they were instituted, unless payment in another coinage has been prescribed. This it says; it is a notable and very frequently allegeable case.

The same, to the Bishop of Spoleto.

Formerly we committed to *our venerable brother* the Bishop of Todi and his colleagues for determination the cause that you proposed against the clerics of the parish of Rupina concerning the synodaticum. Before them it was proposed on your part that, although the same clerics *formerly* paid your predecessors three Pavia denarii on the feast of the Nativity and three on the feast of the Lord's Resurrection for the synodaticum, they now paid only three Lucca denarii for each Pavia denarius, although one Pavia denarius is worth six Lucca denarii. Hence you petitioned that they be compelled to payment in Pavia denarii, *by our authority, namely, for this,* since, although you received *those* Lucca denarii in the first year, you nevertheless always thereafter protested your right. *But the party of the clerics proposed to the contrary that, although Pavia denarii had at one time been paid to your predecessors for the synodaticum, for forty-five years and less they had paid Lucca denarii both to you and to others, and thus they endeavored to protect their party by prescription.* (*And below:*) *We therefore granted to James, your proctor, and John the priest, proctor of the opposing party, our beloved son P., cardinal priest of the Basilica of the Twelve Apostles, as auditor. When they were unwilling or unable to propose anything new before him, because renunciation had been made on both sides, and when he had reported all the proceedings in our presence and that of our brothers, we understood that it had been proved through your witnesses that in the time of Lothair of good memory, your predecessor, and also after his death, Pavia denarii had been paid for the synodaticum, and that thereafter three Lucca denarii, two of which were worth five of those now in use, had been furnished for some time. And because a period of thirty-three or thirty-four or thirty-five years has elapsed since the time of Lothair, we also inspected the statements of the opposing party's witnesses, through whom it wished to prove that for forty years and less three*

Lucca denarii or three medaliae had been paid as synodaticum for each Pavia denarius, although Pavia denarii had been paid previously. The advocate of that party had also confessed at law—and his confession was reduced to writing and was neither corrected nor revoked by the aforesaid clerics—that the same clerics, in the times of Henry and Lothair, your predecessors, paid three Pavia denarii as synodaticum twice a year, and thereafter three Lucca denarii for each Pavia denarius. Since, therefore, it is established *for us fully through the witnesses of both parties* that Pavia denarii were formerly paid for the synodaticum—which also follows from the fact that Lucca denarii were afterward paid in their place—since from the statements of *your* witnesses and the confession of the other party's advocate, not afterward revoked, it appears clearly that in the time of L., your predecessor, Pavia coinage was paid for the synodaticum; *since it is held from the attestations of both parties that* no more than thirty-six years have elapsed since the time of the said L.; and since *through your witnesses* it has been lawfully proved that the three Lucca denarii that were paid for one Pavia denarius after the death of L. were worth five or six of those now in use: understanding from this that through debasement of the coinage it happened that Lucca denarii, as they were in use, were given for the synodaticum down to your time, *with the counsel of our brothers*, by definitive sentence we condemn the proctor of the opposing party, in the name of the clerics of the aforesaid parish, to pay you Pavia denarii or their value for the synodaticum.

> Solvendi sunt census ad antiquam monetam, in qua instituti fuerint, nisi sit in alterius monetae solutione praescriptum. H. d. est casus not. et multum allegabilis.
>
> Idem Spoletano Episcopo.
>
> Olim causam, quam adversus clericos plebis Rupinae super synodatico proponebas, *venerabili fratri nostro* Tudertino episcopo et collegis suis commisimus terminandam, coram quibus ex parte tua fuit propositum, quod, quum iidem clerici *olim* praedecessoribus tuis tres in festo Nativitatis, et tres in festo Resurrectionis dominicae pro synodatico solverint denarios Papienses, nunc tantum tres Lucenses pro singulis denariis Papiensibus persolvebant, quum tamen unus denarius Papiensis valeat sex Lucenses. Unde petebas, eos ad Papiensium solutionem *nostra pro eo videlicet auctoritate* compelli, quum, etsi tu Lucenses *ipsos* primo anno receperis, semper tamen ius tuum postmodum fueris protestatus. +*Verum pars clericorum proposuit ex adverso, quod, etsi aliquando praedecessoribus tuis denarii Papienses pro synodatico fuerint persoluti, a XLV. annis et infra tam tibi quam aliis Lucenses exsolverant, sicque partem suam nitebantur praescriptione tueri* (*Et infra:*) *Nos igitur Iacobo tuo et Ioanni presbytero adversae partis procuratoribus dilectum filium nostrum P. Basilicae XII. Apostolorum presbyterum cardinalem concessimus auditorem. Quibus coram eo nil volentibus aut valentibus de novo proponere, quoniam fuerat renunciatum utrinque, quum ipse gesta omnia in nostra et fratrum nostrorum praesentia retulisset, intelleximus per testes tuos fuisse probatum, quod tempore bonae memoriae Lotharii praedecessoris tui, et etiam post decessum ipsius denarii Papienses fuerant pro synodatico persoluti, et exinde tres Lucenses, quorum duo valebant V. de his, qui hoc tempore sunt in usu, aliquamdiu fuissent exhibiti. Et quia a tempore Lotharii XXXIII. vel XXXIV. aut XXXV. annorum spatium est elapsum, dicta etiam testium partis adversae inspeximus, per quos voluit comprobare, quod a XL. annis et infra tres Lucenses vel tres medaliae in synodaticum solutae fuerant pro singulis Papiensibus, quum Papienses fuissent antea persoluti. Confessus quoque fuerat advocatus ipsius partis in iure, ac eius confessio in scriptis redacta, nec correcta vel revocata per clericos supra dictos, quod iidem clerici Henrici et Lotharii praedecessorum tuorum temporibus tres Papienses pro synodatico solverent bis in anno, et exinde pro singulis Papiensibus tres Lucenses*. Quum igitur constet *nobis ad plenum per testes utriusque partis*, quod Papienses olim pro synodatico solvebantur; quod ex eo etiam sequitur, quod Lucenses soluti sunt postmodum pro eisdem, quum ex dictis testium *tuorum*, et confessione advocati alterius partis non revocata postmodum appareat evidenter, quod tempore L. praedecessoris tui pro synodatico Papiensis fuit moneta soluta, *quum ex utriusque partis attestationibus habeatur, quod* a tempore dicti L. non nisi triginta sex annorum ad plus tempus effluxerit, et *per testes tuos* sit legitime comprobatum, quod tres Lucenses,

qui pro uno Papiensi post mortem ipsius L. solvebantur, quinque vel sex valebant ex illis, qui hodie sunt in usu : intelligentes ex hoc, quod per monetae declinationem acciderit, ut usque ad tempus tuum Lucenses dati fuerint pro synodatico, sicut erant in usu, *de consilio fratrum nostrorum* procuratorem adversae partis nomine clericorum plebis praedictae tibi ad solutionem denariorum Papiensium vel aestimationem eorum pro synodatico per diffinitivam sententiam condemnamus.

Chapter XXI

Latin source headnote: A bishop who remits to a church the services that it owed him and establishes that another service is not to be imposed is not understood to have remitted a procuration.

The same, to the Prior of Saint Stephen.

When our venerable brother [*M.*], Bishop of Fano, *and you were constituted in our presence and wished to litigate with one another concerning the question that was being litigated between you over the church of Saint Stephen of Fano, we granted you as auditors our beloved sons John, cardinal priest of the title of Saint Prisca, and John, cardinal deacon of Santa Maria in Cosmedin. Before them you took care to allege in opposition that, when the aforesaid church of Saint Stephen had been reduced almost to desolation through the malice of certain nuns who appeared to dwell in it under the religious habit, C., Bishop of Fano of good memory, by authority of Pope Eugenius of happy memory, our predecessor, removed them from the aforesaid church and instituted canons regular in it, establishing that the canonical order ought to be observed there in perpetuity; and he entirely absolved it from every exaction both of himself and of his successors and of the church of Fano, reserving to himself and his church one candle of three pounds to be paid by it each year.* [*And because the aforesaid bishop burdened you in many ways concerning the aforesaid liberty, which was confirmed both by Pope Celestine of happy memory, our predecessor, and also by us, you petitioned that apostolic protection assist you. But the aforesaid bishop proposed to the contrary that the privilege of his aforesaid predecessor inflicted no prejudice upon himself and his church, because at the time when he granted it to the aforesaid church he had renounced the episcopate and had received the regular habit in that church, and, repenting after three days, revoked that privilege. Furthermore, you and the canons of that church did not use that privilege, but, just as before the privilege was granted, so also afterward, you took care to furnish all services without any difficulty to all the successors of that bishop, and especially to himself, in hospitality down to the present time. He asserted that the confirmation of our aforesaid predecessor had been elicited by surreption and concealed until now; on account of which, if perhaps the church of Fano had been injured in any respect, he humbly petitioned that restitution be made to it. But you took care to respond to the proposals in this way: that the privilege itself was valid by law, because the bishop, when he granted it, had neither resigned the episcopate nor received the regular habit, and had granted it by the will of his canons, as would appear clearly from the same instrument, in which the names of the canons of the church of Fano are subscribed, and which was given in the palace of Fano, as is expressly contained in it.*] *But when the said cardinals had faithfully reported to us the things they had heard, and the said instrument had been diligently inspected, in truth* we recognized that the aforesaid bishop remitted to the aforesaid church the spallae that both he and his predecessors had been accustomed to receive from that church, and established that he would not impose another service upon it, reserving to himself and his church annually, under the name of a pension, a candle of three pounds. Therefore, because a procuration is annexed to visitation, *since no one ought to serve as a soldier at his own expense, nor ought the mouth of the ox that treads out grain to be muzzled*, and because the bishop, by reason of the episcopal jurisdiction that he has in it, is bound to visit the aforesaid church for the sake of correction, and that which was imposed by common law from the foundation itself is not understood

to be imposed as something new, *with the counsel of our brothers* we decree that the same bishop, when he approaches that church for the sake of correction, is to receive a moderate procuration from it twice a year; but *the same bishop* is to presume to exact or extort nothing else from that church beyond the aforesaid pension and procurations. [*We therefore decree, etc. Given at Anagni, on the fifth day before the Kalends of March.* 1204.]

> Episcopus, remittens ecclesiae servitia, quae sibi debebat, et statuens, quod aliud servitium non imponatur, procurationem non intelligitur remisisse.
>
> Idem Priori sancti Stephani.
>
> Quum venerabilis frater noster [*M.*] Favensis episcopus, *+et tu in nostra essetis praesentia constituti, et de quaestione, quae inter vos super ecclesia S. Stephani Fanensis vertebatur, velletis ad invicem litigare, dilectum filium Ioannem tit. S. Priscae presbyterum et Ioannem S. Mariae in Cosmedino diaconum cardinales vobis concessimus auditores. Coram quibus allegando opponere curavistis, quod, quum praedicta ecclesia S. Stephani quarundam monialium, quae in ea videbantur sub religionis habitu conversari, malitia faciente, fuerit fere ad desolationem redacta, illas bonae memoriae C. Fanensis episcopus auctoritate felicis recordationis Eugenii Papae praedecessoris nostri ab ecclesia memorata removit, et canonicos in ipsa instituit regulares, statuens, ut ordo canonicus perpetuis in ea temporibus debeat observari, et eam ab omni exactione tam sua quam successorum suorum et Fanensis ecclesiae prorsus absolvit, retento sibi et ecclesiae suae uno cereo trium librarum, ab ea annis singulis exsolvendo.* [*Et quia praedictus episcopus te super libertate praedicta tam a felicis memoriae Coelestino Papa praedecessore nostro quam a nobis etiam confirmata multipliciter aggravabat, apostolicum tibi petivisti patrocinium suffragari. Praedictus vero episcopus proposuit ex adverso, quod privilegium praedicti praedecessoris sui et ecclesiae suae nullum praeiudicium inferebat, quia eo tempore, quo illud indulsit ecclesiae memoratae, episcopatui renunciaverat, et habitum in ipsa ecclesia receperat regularem, et post tres dies poenitens illud privilegium revocavit; praeterea tu et canonici illius ecclesiae non estis privilegio illo usi, sed omnia obsequia, sicut ante indultum privilegium, sic et post universis successoribus illius episcopi, et sibi praesertim, in hospitiis usque ad haec tempora curavistis sine difficultate qualibet exhibere, asserens confirmationem praedicti praedecessoris nostri fuisse per subreptionem elicitam, et hactenus occultatam; propter quod, si forsitan in aliquo laesa erat Fanensis ecclesia, restitutionem sibi fieri humiliter postulabat. Ceterum ad proposita sic respondere curavisti, quod ipsum privilegium de iure valebat, quia episcopus, dum illud concessit, nec episcopatui resignaverat, nec habitum receperat regularem, et ipsum de canonicorum suorum indulserat voluntate, sicut ex eodem instrumento evidenter appareret, in quo nomina canonicorum ecclesiae Fanensis sunt subscripta, et idem in palatio Fanensi datum fuerit, sicut in eo continetur expressum.*] *Nos autem, quum dicti cardinales ea, quae audierant, nobis fideliter retulissent, dicto instrumento diligenter inspecto, re vera* Cognovimus, quod praefatus episcopus spallas, quas ab eadem ecclesia tam ipse quam praedecessores sui recipere consueverant, ecclesiae praefatae remisit, et statuit, quod aliud ei servitium non imponeret, sibi et ecclesiae suae annuatim trium librarum cereo pensionis nomine reservato. Quia ergo visitationi annexa est procuratio, *quum nemo suis stipendiis debeat militare, nec os bovi alligandum sit trituranti*, et episcopus ratione episcopalis iurisdictionis, quam habet in ea, teneatur causa correctionis ecclesiam visitare praefatam, nec intelligatur quasi novum imponi quod ab ipsa fundatione de communi fuerat iure impositum, *de consilio fratrum nostrorum* decernimus, quod idem episcopus, quum ad ipsam ecclesiam causa correctionis accesserit, moderatam ab ea procurationem recipiat bis in anno, sed nihil aliud praeter pensionem et procurationes praescriptas *idem episcopus* ab eadem ecclesia exigere vel extorquere praesumat. [*Decernimus ergo etc. Dat. Anagniae V. Kal. Mart.* 1204.]

Chapter XXII

Latin source headnote: Churches newly converted will observe the custom of neighboring churches in procurations and other matters.

The same, to the Archbishop of Compostela.

Concerning that on which your fraternity wished to consult us—namely, because almost the whole province of Compostela has newly been converted to the jurisdiction of your church, in what manner it ought to obey and serve you when visiting the province or part of the province, and also to provide procurations, and that *we deign to instruct you*—we have considered that this response should be given to you *in this way*: it is bound to observe that which is observed in the neighboring provinces. [*Given at Viterbo, on the tenth day before the Kalends of July, in the tenth year.* 1207.]

> Ecclesiae de novo conversae in procurationibus et aliis servabunt consuetudinem vicinarum.
>
> Idem Compostellano Archiepiscopo.
>
> Super eo, quod fraternitas tua nos consulere voluit, ut, quia fere tota provincia Compostellana de novo est ad iurisdictionem ecclesiae tuae conversa, qualiter tibi provinciam vel partem provinciae visitanti obsequi debeat et servire, nec non et in procurationibus providere, *te instruere dignaremur*, tibi *taliter* duximus respondendum, quod illud observare tenetur, quod in vicinis provinciis observatur. [*Dat. Viterbii X. Kal. Iul. Ao. X.* 1207.]

Chapter XXIII

Latin source headnote: Prelates are to be furnished procurations when they visit personally, and they ought then to observe the Lateran Council and devote themselves to preaching, correction, and reformation. Apostolic legates and messengers ought to be furnished procurations only for those days during which they make a stay, and what is exacted contrary to this constitution is restored twofold.

The same, in the general council.

Procurations that are owed by reason of visitation to bishops, archdeacons, or any others, including legates or messengers of the Apostolic See, are in no way to be exacted without manifest and necessary cause except when they personally perform the office of visitation. And then let them observe the moderation of mounts and persons defined in the Lateran Council, with this qualification applied concerning legates and messengers of the Apostolic See: when it is necessary for them to make a necessary stay at some place, lest that place be burdened excessively on their account, let them receive moderate procurations from other churches or persons that have not yet been burdened by their procurations, in such a way that the number of procurations does not exceed the number of days during which they make a stay of this kind; and when one has not sufficed by itself, let two or more be joined into one. Moreover, let those exercising the office of visitation seek not the things that are their own but those of Jesus Christ, devoting themselves to preaching and exhortation, correction and reformation, so that they may bear fruit that does not perish. But whoever attempts to act contrary to this is both to return what he received and to furnish as much again to the church that he burdened in this way.

> Praelati tunc sunt procurandi, quum personaliter visitant, et debent tunc servare concilium Lateranense et praedicationi, correctioni et reformationi vacare. Legati et nuncii apostolici pro his diebus tantum, pro quibus moram trahunt, procurari debent, et contra hanc constitutionem exactum restituitur duplicatum.
>
> Idem in concilio generali.

Procurationes, quae ratione visitationis debentur episcopis, vel archidiaconis vel quibuslibet aliis, etiam apostolicae sedis legatis aut nunciis, absque manifesta et necessaria causa nullatenus exigantur, nisi quando personaliter officium visitationis impendunt. Et tunc evectionum et personarum mediocritatem observent in Lateranensi concilio diffinitam, hoc adhibito moderamine circa legatos et nuncios apostolicae sedis, ut, quum oportuerit eos apud aliquem locum moram facere necessariam, ne locus ille propter illos nimium aggravetur, procurationes recipiant moderatas ab aliis ecclesiis vel personis, quae nondum fuerant de suis procurationibus aggravatae, ita, quod numerus procurationum numerum dierum, quibus huiusmodi moram fecerint, non excedat, et, quum aliqua non suffecerit per se ipsam, duae vel plures coniungantur in unam. Porro visitationis officium exercentes non quaerant quae sua sunt, sed quae Iesu Christi, praedicationi et cohortationi, correctioni et reformationi vacando, ut fructum referant, qui non perit. Qui autem contra hoc venire tentaverit et quod accepit reddat, et ecclesiae, quam taliter aggravavit, tantundem impendat.

Chapter XXIV

Latin source headnote: A church, even one situated in a city, is bound to furnish a procuration to a visiting bishop, although it has never furnished him one.

Honorius III, to the Abbots of Tiron and Josaphat.

We received the complaint of our venerable brother the Bishop of Le Mans that, although the cause known to be litigated between him on one side and the abbot and convent of La Couture *in the diocese of Le Mans* on the other, concerning the procurations that the same bishop seeks from them *both in the head and in the members*, was committed to you by the Apostolic See *with the consent of the parties*, the said abbot and convent endeavor to frustrate the intention of the same bishop on the ground that their monastery is known to be situated in the city of Le Mans and that they have not hitherto paid a procuration, *although they show no privilege of exemption and common right belongs to the same bishop. Wishing, therefore, that an end be imposed upon the lawsuits*, we command your discretion that, unless *the said abbot and convent* show something else reasonable *and prove why they ought not to furnish the aforesaid things to the bishop himself*, you are to compel them to furnish it as right shall dictate, *according to the tenor of the former apostolic letters, reason having been considered*.

Ecclesia, etiam civitatensis, tenetur procurare episcopum visitantem quanquam ipsum nunquam procuravit.

Honorius III. de Tiro et Iosaphat Abbatibus.

Venerabili fratre nostro Cenomanensi episcopo accepimus conquerente, quod, quum causa, quae inter ipsum ex parte una, et abbatem et conventum de Cultura *Cenomanensis dioecesis* ex altera super procurationibus, quas ab eis petit idem episcopus *tam in capite quam in membris*, noscitur agitari, *de consensu partium* vobis fuerit ab apostolica sede commissa, dicti abbas et conventus ex eo frustrari intentionem eiusdem episcopi moliuntur, quod eorum monasterium in Cenomanensi villa situm esse dignoscitur, et ipsi procurationem hactenus non solverunt, +*quanquam exemptionis privilegium non ostendant, et eidem episcopo competat ius commune. Volentes igitur, ut finis litibus imponatur*, Discretioni vestrae mandamus, quatenus, nisi *dicti abbas et conventus* aliud rationabile ostenderint *et probaverint, propter quod ipsi episcopo exhibere non debeant supra dicta*, vos eos ad exhibendum eam, sicut ius dictaverit, *iuxta priorum apostolicarum literarum tenorem ratione praevia* compellatis.

Chapter XXV

Latin source headnote: One who visits a province by metropolitan right or by right of legation can pronounce a sentence against provincials who deny him procurations.

Gregory IX.

When recently the Archbishop of Benevento was visiting the province of Benevento (*And below:*), we command that, when it happens that the same archbishop visits the province of Benevento either by his own authority or by ours, you furnish him the procurations owed by reason of visitation according to the means of your churches. Otherwise, we will hold ratified the sentence that he lawfully pronounces against the rebellious and, with the Lord as author, will cause it to be inviolably observed.

> Qui iure metropolitano vel legationis visitat provinciam, in provinciales, qui sibi procurationes denegant, potest ferre sententiam.
>
> Gregorius IX.
>
> Quum nuper archiepiscopus Beneventanus Beneventanam provinciam visitaret (*Et infra:*) Mandamus, quatenus, quum eundem archiepiscopum sive auctoritate propria sive nostra Beneventanam provinciam contigerit visitare, procurationes, ratione visitationis debitas, iuxta facultates ecclesiarum vestrarum exhibeatis eidem; alioquin sententiam, quam ipse rite tulerit in rebelles, ratam habebimus, et faciemus auctore Domino inviolabiliter observari.

Chapter XXVI

Latin source headnote: Old pensions are to be paid in the old coinage or, if it is not in use, at its value.

The same.

Since for some years you have paid to the canons of the greater church a certain sum of money owed as a pension of your church, and the same persons exact that the entire sum be paid to them in better coinage, through our letters we command you to cause those canons to remain content with payment of the former money or, if it is not in use, with the value of the old pension.

> Ad antiquam monetam, vel, si non est in usu, ad eius aestimationem solvendae sunt pensiones antiquae.
>
> Idem.
>
> Quum canonicis maioris ecclesiae quandam summam pecuniae pro pensione ecclesiae tuae debitam aliquot annis persolveris, et iidem summam illam ex integro de meliori moneta exigant sibi solvi, tibi damus nostris literis in mandatis, ut canonicos illos solutione prioris pecuniae vel, si non sit in usu, aestimatione pensionis antiquae facias manere contentos.

Chapter XXVII

Latin source headnote: A procuration by reason of visitation is not owed on account of a private oratory.

The same.

By authority of the presents we prohibit anyone from presuming to exact or extort from you the procurations that are owed by reason of visitation on the ground that some of you sometimes celebrate in the oratories that you have in your granges.

> Propter privatum oratorium procuratio ratione visitationis non debetur.
>
> Idem.
>
> Auctoritate praesentium inhibemus, ne quis pro eo, quod in oratoriis, quae in grangiis vestris habetis, interdum aliqui vestrum celebrant, procurationes, quae ratione visitationis debentur, a vobis exigere vel extorquere praesumat.

Title XL: On the Consecration of a Church or Altar

Chapter I

Latin source headnote: When the altar or the stone containing the seal has been removed, the altar, but not the church, will be reconsecrated.

Alexander III.

To these things, if the altar has been moved, or only that stone placed upon it that contains the seal has been broken or even *diminished*, it ought to be consecrated anew. But on account of this the church is by no means accustomed to repeat its consecration, although certain canons appear to intimate it. *Nevertheless, it is not prohibited from doing so.*

> **DE CONSECRATIONE ECCLESIAE VEL ALTARIS.**
>
> Amoto altari vel lapide, continente sigillum, reconsecrabitur altare, non autem ecclesia.
>
> Alexander III.
>
> Ad haec, si altare motum fuerit, aut lapis ille solummodo supra positus, qui sigillum continet, confractus, aut etiam diminutus *exstiterit*, debet denuo consecrari. Propter hoc vero nequaquam reiterare suam consecrationem ecclesia consuevit, licet id quidam canones innuere videantur. *Non tamen id facere prohibetur*.

Chapter II

Latin source headnote: Churches can be consecrated even on non-feast days.

Innocent III, to the Bishop of Tournai.

Your fraternity *caused us to be asked whether it was lawful for you to celebrate dedications of churches on both Sundays and ordinary days; concerning which* we respond to your inquiry in this way: in your diocese it is lawful for you to impart dedication to churches on both Sundays and ordinary days. [*Given at Rome, on the seventh day before the Ides of February, in the seventh year.* 1205.]

> Diebus etiam non festis possunt ecclesiae consecrari.
>
> Innocentius III. Tornacensi Episcopo.
>
> Tua fraternitas *+requiri fecit a nobis, utrum tibi dedicationes ecclesiarum tam diebus dominicis quam privatis liceret celebrare; super quo* Inquisitioni tuae taliter respondemus, quod in dioecesi tua licet tibi ecclesiis dedicationem impendere tam diebus dominicis quam privatis. [*Dat. Romae VII. Id. Febr. A. VII.* 1205.]

Chapter III

Latin source headnote: It contains two statements, and first it says the same as the preceding chapter in this title. The second statement says that unconsecrated oil can be mixed with consecrated oil, and the whole becomes consecrated.

The same, to the Bishop of Nidaros.

That in doubtful matters (*And below:* [*cf. c.* 30, *On the Sentence of Excommunication,* V. 39.]) But an altar on which the slab to which the blessing of consecration is applied by pontifical ministry has been moved or enormously broken ought not undeservedly to be consecrated. Nor do we deny that unconsecrated oil can be mixed with consecrated oil. [*But the clerics, etc. Given near Civita Castellana, on the sixth day before the Ides of October.* 1198.]

> Habet duo dicta, et primo idem dicit, quod cap. supr. eod. Secundum dictum dicit, quod oleum non consecratum potest commisceri oleo consecrato, et totum fit consecratum.
>
> Idem Nidrosiensi Episcopo.
>
> Quod in dubiis (*Et infra:* [*cf. c.* 30. *de sent. exc. V.* 39.]) Altare vero, in quo tabula, cui consecrationis benedictio pontificali ministerio adhibetur, si mota vel enormiter fracta fuerit, debet non immerito consecrari. Nec negamus, quin oleum non consecratum consecrato possit oleo commisceri. [*Clerici autem etc. Dat. ap. civitatem Castellanam VI. Id. Oct. * 1198.]

Chapter IV

Latin source headnote: A church polluted by homicides and wounds inflicted upon persons there is reconciled.

The same, to the Archbishop of Compostela.

You proposed, *while constituted in our presence,* that when pilgrims from diverse regions come to the church of Saint James, and some wish to vindicate against others through contentions and quarrels the keeping of the altar at night, homicides sometimes happen and wounds are sometimes inflicted; *on account of which you humbly petitioned that we deign to provide for that church by another manner than through the benefit of reconsecration.* We respond to your fraternity in this way: while the church and altar remain, it can be reconciled through water blessed with wine and ashes. [*Given at Viterbo, on the twelfth day before the Kalends of July, in the tenth year.* 1207.]

> Reconciliatur ecclesia, quae propter homicidia et vulnera hominum ibidem perpetrata polluta est.
>
> Idem Compostellano Archiepiscopo.
>
> Proposuisti *nobis in nostra praesentia constitutus,* quod, venientibus ad ecclesiam sancti Iacobi ex diversis regionibus peregrinis, et volentibus aliis ab aliis per contentiones et rixas altaris de nocte custodiam vindicare, homicidia contingunt fieri interdum, et aliquando vulnera inferuntur; *+propter quod humiliter postulasti, ut alio modo, quam per reconsecrationis beneficium, dignaremur ipsi ecclesiae providere.* Fraternitati tuae taliter respondemus, quod, manente ecclesia et altari, ipsa reconciliari poterit per aquam cum vino et cinere benedictam. [*Dat. Viterbii XII. Kal. Iul. Ao. X.* 1207.]

Chapter V

Latin source headnote: Several altars can be consecrated simultaneously in the same church; and the same applies to several bishops.

The same.

Since you are (*And below:* [*cf. c.* 6, *On the Use and Authority of the Pallium,* I. 8.]) You should therefore know that, *where necessity demands, both* several altars in one church and several bishops simultaneously you will be able to consecrate.

> Plura altaria simul in eadem ecclesia consecrari possunt; et idem in pluribus episcopis.
>
> Idem.
>
> Quum sis (*Et infra:* [*cf. c.* 6. *de usu et auct. pall. I.* 8.]) Noveris igitur, quod, *ubi exposcit necessitas, et* plura in ecclesia una altaria et plures episcopos simul poteris consecrare.

Chapter VI

Latin source headnote: When the roof has fallen while the walls remain unharmed, and the altar-table has not been enormously broken, neither the altar nor the church is consecrated anew.

The same.

After the wooden structures of your church were consumed by a *certain fire* that occurred, although the walls remained unharmed and the table of the principal altar suffered a small fracture at its extremity, *you sought to be instructed through the Apostolic See whether on account of this the consecration of that altar, or even of the entire church, ought to be renewed. To this* we have considered that this response should be given to your inquiry: since the walls remained in their integrity and the slab of the altar was not moved or enormously damaged, on account of the aforesaid cause neither the church nor the altar ought to be consecrated anew. [*Given at the Lateran, on the Nones of October, in the fifteenth year of our pontificate.* 1212.]

> Corruente tecto parietibus illaesis, et mensa altaris non enormiter fracta, nec altare, nec ecclesia consecratur.
>
> Idem.
>
> Ligneis aedificiis ecclesiae vestrae casu *quodam igne* consumptis, parietibus tamen illaesis, ac mensa principalis altaris in sua extremitate modicam passa fracturam, *+quaesivisti per sedem apostolicam edoceri, si propter hoc ipsius altaris, vel etiam totius ecclesiae debeat consecratio innovari. Ad quod* Inquisitioni tuae taliter duximus respondendum, quod, quum parietes in sua integritate permanserint, et tabula altaris mota vel enormiter laesa non fuerit, ob causam praedictam nec ecclesia, nec altare debet denuo consecrari. [*Dat. Lat. Non. Oct. Pont. nostr. Ao. XV.* 1212.]

Chapter VII

Latin source headnote: A church or cemetery is polluted if an excommunicated person is buried in it.

The same, to the Bishop of Sens.

You consulted us (*And below:* [*cf. c.* 14, *On the Competent Forum,* II. 2.]) But cemeteries *in which* the bodies of excommunicated persons happen to be buried *through the violence of their relatives* will have to be reconciled by the sprinkling of solemnly blessed water, as is accustomed to be done in dedications of churches. [*But the procurations, etc. Given at the Lateran, on the third day before the Kalends of May, in the sixteenth year of our pontificate.* 1213.]

Polluitur ecclesia vel coemeterium, si excommunicatus in ea sepelitur.

Idem Senonensi Episcopo.

Consuluisti (*Et infra:* [*cf. c.* 14. *de foro comp. II.* 2.]) Coemeteria *vero*, in quibus excommunicatorum corpora sepeliri contingit *per suorum violentiam propinquorum*, reconcilianda erunt aspersione aquae solenniter benedictae, sicut in dedicationibus ecclesiarum fieri consuevit. [*Procurationes autem etc. Dat. Lat. III. Kal. Mai. Pont. nostr. Ao. XVI. * 1213.]

Chapter VIII

Latin source headnote: One who caused a church to be consecrated is bound to endow it. This it says, and keep this case in mind.

Honorius III, to the Queen of Hungary.

Since, as became known to us from the report of the *beloved sons* of the chapter of Oradea, *kindled by the zeal of devotion* you caused their church to be consecrated, *we assuredly hope that the zeal which induced you to the consecration of that church ought also to animate you to confer an endowment upon it, and indeed*, since a church is not to be consecrated unless provision has been made for it from an endowment, you ought the more liberally to open the hands of your munificence to endow the aforesaid church, inasmuch as *you can do it more easily and* are now more strongly bound to it as though by a debt.

Qui fecit ecclesiam consecrari, tenetur eam dotare. H. d. et tene mente hunc casum.

Honorius III. Reginae Hungariae.

Quum, sicut ex relatione *dilectorum filiorum* capituli Oradiensis nobis innotuit, *devotionis zelo succensa* eorum feceris ecclesiam consecrari, *+profecto speramus, quod zelus, ille, qui te ad eiusdem ecclesiae consecrationem induxit, te quoque, ut et dotem ei conferas, debeat animare, et quidem*, Quum non sit ecclesia, nisi de dote provisum ei fuerit, consecranda, eo liberalius ad dotandam praedictam ecclesiam aperire manus munificentiae tuae debes, quo *et facilius potes id facere, et* ad hoc fortius, tanquam ex debito, iam teneris.

Chapter IX

Latin source headnote: A polluted church cannot be reconciled by a simple priest, even if the water was blessed by a bishop.

Gregory IX, to the Bishop of Astorga.

We do not deny that a church can be reconciled by another bishop with water blessed by a bishop, while prohibiting this from henceforth being done by simple priests, notwithstanding the custom of the province of Braga, which ought rather to be called a corruption; for although a bishop can commit those things that belong to jurisdiction, he cannot entrust to clerics of an inferior grade those things that belong to the episcopal order. But what has hitherto been done by the same persons concerning reconciliation at the command of bishops we mercifully tolerate. [*Churches, etc.* (*cf. c.* 9, *On the Immunity of Churches,* III. 49.) *Given at the Lateran, on the twelfth day before the Kalends of June, in the seventh year of our pontificate.* 1233.]

Ecclesia polluta per sacerdotem simplicem reconciliari non potest, etiamsi aqua fuerit per episcopum benedicta.

Gregorius IX. Astoricensi Episcopo.

> Aqua per episcopum benedicta ecclesiam reconciliari posse per alium episcopum, non negamus, per sacerdotes simplices hoc fieri de cetero prohibentes, non obstante consuetudine provinciae Bracharensis, quae dicenda est potius corruptela; quia, licet episcopus committere valeat quae iurisdictionis exsistunt, quae ordinis tamen episcopalis sunt non potest inferioris gradus clericis demandare. Quod autem mandantibus episcopis super reconciliatione factum est hactenus per eosdem, misericorditer toleramus. [*Ecclesiae etc.* (*cf. c.* 9. *de imm. eccl. III.* 49.) *Dat. Lat. XII. Kal. Iun. Pont. nostr. Ao. VII.* 1233.]

Chapter X

Latin source headnote: A church, even one not consecrated, is to be reconciled if it is polluted.

The same, to the same.

If an unconsecrated church has been polluted by anyone's semen or by the shedding of blood, let it immediately be washed with exorcized water, lest the instruments of divine praise be suspended [*in it*]; nevertheless, it is to be consecrated as soon as it can be. [*Given at the Lateran, on the twelfth day before the Kalends of June, in the seventh year of our pontificate.* 1233.]

> Ecclesia, etiam non consecrata, si polluitur, reconcilianda est.
>
> Idem eidem.
>
> Si ecclesia non consecrata cuiuscunque semine fuerit aut sanguinis effusione polluta, aqua protinus exorcizata lavetur, ne divinae laudis [*in ea*] organa suspendantur; est tamen, quam citius fieri poterit consecranda. [*Dat. Lat. XII. Kal. Iun. Pont. nostr. Ao. VII. * 1233.]

Title XLI: On the Celebration of Masses, the Sacrament of the Eucharist, and the Divine Offices

Chapter I

Latin source headnote: A priest is bound to say the canonical hours at the due hours; nevertheless, for a cause he is permitted to say them through Vespers inclusive. This it says according to one understanding.

From the Council of Agde.

After the morning office has been completed in the morning, let a priest discharge the due task of his service, namely, *by chanting* Prime, Terce, Sext, None, and Vespers, yet in such a way that they are completed publicly at the suitable *and appointed* hours, according to possibility, either by himself or by the scholars. Then, after the hours have been completed and the sick visited, if he wishes, let him go out fasting to rural work so that he may again be able to assist the necessities of pilgrims and guests, or of diverse travelers, *also* of the sick and the dead, until the appointed hour, according to the quality *and opportunity* of the time. From the sayings of Benedict: The Prophet says, "Seven times in the day I have spoken praise to you"; which sevenfold number is fulfilled by us *in this way*, if we discharge the offices of our service at the time of Matins, Prime, Terce, Sext, None, Vespers, and Compline, *because, as the Prophet says: seven times in the day, etc* For concerning the night watches the same Prophet says: "At midnight I arose *to confess to you*, etc." Therefore, at these times let us render praises to our Creator for the judgments of his justice.

DE CELEBRATIONE MISSARUM, ET SACRAMENTO EUCHARISTIAE ET DIVINIS OFFICIIS.

Presbyter tenetur horis debitis dicere horas canonicas, permittitur tamen sibi ex causa dicere eas usque ad vesperas inclusive. H. d. secundum unum intellectum.

Ex concilio Agathensi.

Presbyter, mane matutinali officio expleto, pensum servitutis suae, *canendo* videlicet primam, tertiam, sextam, nonam vesperamque persolvat, ita tamen, ut horis competentibus *et signatis* iuxta possibilitatem aut a se, aut a scholaribus publice compleantur. Deinde peractis horis et infirmis visitatis, si voluerit, exeat ad opus rurale ieiunus, ut iterum necessitatibus peregrinorum et hospitum, sive diversorum commeantium, infirmorum *quoque* atque defunctorum succurrere possit usque ad statutam horam, pro temporis qualitate, *et opportunitatis*. Ex dictis Benedicti : Propheta dicente : " septies in die laudem dixi tibi; " qui septenarius numerus a nobis *sic* impletur, si matutini, primae, tertiae, sextae, nonae, vesperae et completorii tempore nostrae servitutis officia persolvamus, *quia, sicut Propheta ait: septies in die etc*. Nam de nocturnis vigiliis idem ipse Propheta ait : " Media nocte surgebam *ad confitendum tibi*, etc. " Ergo his temporibus laudes creatori nostro super iudicia suae iustitiae referamus.

Chapter II

Latin source headnote: On account of a special Mass, the Mass of the feria is not to be omitted.

From the Council of Tribur.

Certain persons *also* among the laity, *and especially matrons*, have as a custom that on each day they hear the Gospel "In the beginning was the Word" and particular Masses, that is, of the Holy Trinity and of Saint Michael; and therefore it was sanctioned in the same council that this is not to be done further except at its own time, and unless one of the [*faithful*] should wish to hear it on account of reverence for the Holy Trinity, not from another devotion. But if they wish Masses to be chanted for them, let them hear Masses of that same day for the salvation of the living and also of the dead.

Propter missam specialem missa de feria dimittenda non est.

Ex concilio Triburiensi.

Quidam *etiam* laicorum *et maxime matronae* habent in consuetudine, ut per singulos dies audiant evangelium : " In principio erat verbum, " et missas peculiares, hoc est de sancta Trinitate et de sancto Michaele; et ideo sancitum est in eodem concilio, ut ulterius hoc non fiat, nisi suo tempore, et nisi aliquis [*fidelium*] velit propter reverentiam sanctae Trinitatis, non pro alia devotione audire. Sed si voluerint, ut sibi missae cantentur, de eodem die missas audiant pro salute vivorum et etiam defunctorum.

Chapter III

Latin source headnote: It suffices for a priest to celebrate once a day, and it excepts two cases, namely necessity and the feast of the Nativity.

Innocent III, to the Bishop of Worcester.

You consulted *us whether a priest can celebrate two Masses on the same day; concerning which we* respond to you that, except on the day of the Lord's Nativity, unless a cause of necessity counsels it, it suffices for a priest to celebrate only one Mass once a day. [*Given on the seventh day before the Kalends of February.* 1206.]

> Sufficit sacerdoti semel in die celebrare, et excipit duos casus, scilicet necessitatem et festum Nativitatis.
>
> Innocentius III. Vigorensi Episcopo.
>
> Consuluisti *+nos, utrum presbyter duas missas in eadem die valeat celebrare; super quo tibi* Respondemus, quod, excepto die Nativitatis dominicae, nisi causa necessitatis suadeat, sufficit sacerdoti semel in die unam missam solummodo celebrare. [*Dat. VII. Kal. Febr. * 1206.]

Chapter IV

Latin source headnote: In a Mass of commemoration, although the proper preface is said, neither the angelic hymn nor the creed is said.

The same, to the Archbishop of Braga.

Our counsel (*And below:* [*cf. c.* 2, *On the Observance of Fasts,* III. 46.)] *Furthermore*, you inquired whether on ordinary days, on which it happens that Mass is celebrated in honor of the Holy Spirit, the Blessed Virgin, and the holy cross, the angelic hymn, the creed, and the proper preface ought to be chanted, *especially since in your regions Mass is solemnly celebrated in honor of the Blessed Virgin on Saturdays. To which indeed* we respond to your inquiry in this way: among us on ordinary days, when the solemnities of Masses are celebrated in honor of the Blessed Virgin, neither the angelic hymn nor the creed is chanted, although the proper preface is chanted in the Mass, so that the difference between a commemoration and a solemnity may be shown. Hence "We praise you, God" is more regularly omitted than said at morning Lauds. [*But since you asked, etc. Given at Rome, at Saint Peter's, on the ninth day before the Kalends of March, in the eighth year of our pontificate.* 1206.]

> In missa commemorationis, licet dicatur propria praefatio, non tamen dicitur hymnus angelicus, nec symbolum.
>
> Idem Archiepiscopo Bracharensi.
>
> Consilium nostrum (*Et infra:* [*cf. c.* 2. *de obs. iei. III.* 46.)] *Insuper* Requisisti, utrum in diebus profestis, in quibus ad honorem S. Spiritus, B. Virginis, et sanctae crucis missam celebrari contingit, hymnus angelicus, symbolum ac praefatio propria debeat decantari, *+praesertim quum in partibus tuis in honorem B. Virginis in sabbatorum diebus missa solenniter celebratur. Ad quod utique* Inquisitioni tuae taliter respondemus, quod apud nos in diebus profestis, quum missarum solennia in honorem B. Virginis celebrantur, neque hymnus angelicus, neque symbolum decantatur, licet in missa propria praefatio decantetur, ut inter commemorationem et solennitatem differentia ostendatur. Unde " Te Deum laudamus " regularius dimittitur, quam dicatur in laudibus matutinis. [*Quum autem quaesieris etc. Dat. Rom. ap. S. Petr. IX. Kal. Mart. Pont. nostr. Ao. VIII.* 1206.]

Chapter V

Latin source headnote: A priest is to take an ablution after receiving the Eucharist, unless he is going to say another Mass.

The same, to the Clerics of Saint Peter of Maguelone.

On your part (*And below:* [*cf. c.* 1, *On the Observance of Fasts,* III. 46.]) *Furthermore, you petitioned to be instructed through apostolic letters how a priest ought to take an ablution in the Mass. To which* we respond to your petition in this way: a priest ought always to take an ablution with wine after he has received the whole sacrament of the Eucharist, unless he is to celebrate another Mass on the same day, lest, if

perhaps he received the wine of ablution, he impede the other celebration. [*Given at Rome, at Saint Peter's, on the Nones of November.* 1204.]

> Sacerdos post sumptam eucharistiam perfundat, nisi aliam missam sit dicturus.
>
> Idem Clericis sancti P. Magalonensis.
>
> Ex parte vestra (*Et infra:* [*cf. c.* 1. *de obs. iei. III.* 46.]) *Insuper postulastis, quomodo sacerdos in missa perfundere debeat, per literas apostolicas edoceri. Ad quod* Postulationi vestrae taliter respondemus, quod semper sacerdos vino perfundere debet, postquam totum acceperit eucharistiae sacramentum, nisi quum eodem die aliam missam debuerit celebrare; ne, si forte vinum perfusionis acciperet, celebrationem aliam impediret. [*Dat. Rom. ap. S. Petr. Non. Nov.* 1204.]

Chapter VI

Latin source headnote: If there are any words in the canon of the Mass that were not spoken by the Evangelists, we ought to believe that the Apostles received them from Christ, and their successors from the Apostles. And this it says as far as § "You asked." — (*You asked, etc.:*) In the sacrament of the altar water is transubstantiated with wine into blood. This it says as far as § "In the third place." The Sicilian Abbot. — (*In the third place, etc.:*) The prayer that is said in the secret on the feast of Saint Leo has been changed, because where it used to be said, "Grant us, Lord, that this offering may profit the soul of your servant Leo," today it is said, "that through the intercession of blessed Leo this offering may profit us"; and this change occurs because the saints do not need our prayers, but we need theirs. This it says as far as the end. The Abbot.

The same, to J., formerly Archbishop of Lyon.

Since, *renouncing for the greater part in the care of pastoral governance the office of Martha, who was busy about many things, you have chosen to dwell in the house of the Lord as though an abject with those who chose the best part, sitting with Mary at the feet of the Lord so that they may meditate continually in his law, preferring the beauty of Rachel to the weak eyes of Leah, we believe such understanding of the scriptures flourishes in you that you can not only break bread for little ones, but also minister solid food to the advanced and untie the knots of difficult questions. But because, recognizing in the primacy of the prince of the Apostles the teaching authority of the Apostolic See, you believe that the greater causes of the Church are to be referred to it, we gladly respond, as the Lord inspires us, to your consultations, which we know you raised not for the advantage of earthly utility, since they contain no civil question, but for the advancement of souls, namely so that obscure scriptures may come forth into the light*. For you asked *indeed* who added to the form of words that Christ himself expressed, when he transubstantiated bread and wine into his body and blood, that which no Evangelist is read to have expressed in the canon of the Mass used by the universal Church. For since it is thus read in the Gospel: "Taking the chalice, giving thanks, he blessed it and gave it to his disciples, saying: Drink from this, all of you; for this is my blood of the new testament, which shall be poured out for you and for many others unto the remission of sins," in the canon of the Mass this phrase, namely "the mystery of faith," is found interposed among those words. Hence, since no Evangelist testifies that Christ said this, *you are moved not a little and* marvel that anyone has attempted to assert that he said anything more than any of the Evangelists asserts.

But if you diligently inspect the form of the canon itself, beyond this concerning which your fraternity inquired, you will be able to find in the same canon two other things, namely "with his eyes raised to heaven" and "of the eternal testament," which are not read in the Gospel text. Indeed, we find many

things, both words and deeds of the Lord, omitted by the Evangelists that the Apostles are read either to have supplied in word or expressed in deed. For Paul says thus in the Acts of the Apostles: "You ought to remember the word of the Lord Jesus, who said: It is *more* blessed to give than to receive." None of the four Evangelists wrote this. Nor did any of them express what Paul, writing to the Corinthians concerning Christ, says: "He was seen by more than five hundred brothers at once; then he was seen by James; but last of all, as though by one born out of due time, he was seen also by me." The Evangelists themselves are also read mutually to have supplied among themselves those things omitted by one or some of them. Hence, while three Evangelists placed "this is my body," Luke alone added "which shall be delivered for you"; and while Matthew and Mark say "for many," Luke says "for you." But Matthew added "unto the remission of sins." Furthermore, those things that are added in the canon of the Mass can be proved from other places in the Gospel. For John, describing the raising of Lazarus, asserts that Jesus lifted his eyes upward and said: "Father, I give thanks to you because you have heard me." *Elsewhere the same also says: "Jesus spoke these things and, lifting his eyes to heaven, said: Father, glorify your Son."* Therefore, if at that time he lifted his eyes to the Father in heaven when he recalled the soul of Lazarus to the lifeless body, it appears more probable that he lifted his eyes to the Father in heaven when he changed bread and wine into his own body and blood.

Furthermore, as was expressed above, while "of the new testament" is placed in the Gospel text, "and eternal" is interposed here. For the old testament, which was dedicated with the blood of goats and calves, promised temporal things; but the new, which was consecrated with the blood of Christ, promises eternal things. And therefore that testament was old and transitory, but this is new and eternal. Or, to use another reason, from the same ground on which it is described as new, that is, last, it is proved to be eternal, that is, perpetual. For the last testament of a man remains unalterable because it is confirmed by the death of the testator; according to which the Apostle asserts that a testament is confirmed in death, otherwise it is not valid while the one who makes the testament lives. Furthermore, not only a writing but also a promise is called a testament, according to which the Apostle himself writes: "Therefore he is the mediator of the new testament, so that those who are called may receive the promise of the eternal inheritance." Thus, therefore, what is found in the canon itself ought to be understood: "For this is my blood of the new and eternal testament," that is, the confirmer of the new and eternal promise, just as the Lord promises, saying: "He who eats my flesh and drinks my blood has eternal life."

But from that word concerning which your fraternity raised a question, namely "the mystery of faith," certain persons thought to draw a defense of error, saying that in the sacrament of the altar there is not the truth of the body and blood of Christ, but only an image, appearance, and figure, because scripture sometimes commemorates that what is received at the altar is a sacrament, mystery, and example. But such persons fall into the snare of error from the fact that they neither understand the authorities of scripture fittingly nor receive the sacraments of God reverently, *knowing alike neither the scriptures nor the power of God*. For if *for this reason*, because the sacrament of the altar is a figure, it is denied to be truth, then neither the death nor the resurrection of Christ, since it is a figure, is to be believed as truth, since the Apostle manifests the death and resurrection of Christ to be a likeness and image: "Christ," he says, "died for our offenses and rose again for our justification." Peter, the prince of the Apostles, also writes thus in his epistle: "Christ suffered for us, leaving you an example, that you may follow his footsteps." Therefore, if both the death of Christ and his

resurrection are an example, so that we also, dead to sin, may now live to justice, why, if it was not truth because it was an example, then Christ neither truly died nor truly rose from the dead. But may this error be far from the hearts of the faithful, since the Prophet testifies concerning him that he himself truly bore our infirmities and himself carried our sorrows. Nevertheless, it is called the mystery of faith because one thing is believed there other than what is seen, and one thing is seen other than what is believed. For the appearance of bread and wine *is* seen, and the truth of Christ's flesh and blood and the power of unity and charity are believed. *But what is called the mystery of faith in this place is elsewhere, according to John, described as spirit and life. For spirit is mystery according to this: "The letter kills, but the spirit gives life"; and faith is life, according to what is read: "My just man lives by faith," on account of which the Lord himself says: "The words that I have spoken to you are spirit and life."*

Nevertheless, a subtle distinction is to be made among the three things that are distinct in this sacrament, namely the visible form, the truth of the body, and the spiritual power. The form is of bread and wine, the truth is of flesh and blood, and the power is of unity and charity. The first is sacrament and not reality. The second is sacrament and reality. The third is reality and not sacrament. But the first is the sacrament of a twofold reality. The second *however* is the sacrament of one and exists as the reality of the other. The third *indeed* is the reality of a twofold sacrament. We therefore believe that the Apostles received from Christ, and their successors from them, the form of words as it is found in the canon. *For, as was expressed above, the Apostles both supplied in words many things omitted by the Evangelists concerning the words and deeds of the Lord and expressed them in works.*

§ 1. You also asked whether water with wine is converted into blood. Concerning this, opinions vary among the scholastics. For it appears to some that, since two principal sacraments flowed from the side of Christ—of redemption in the blood and of regeneration in the water—the two things, wine and water, which are mixed in the chalice, are changed by divine power into those two, so that in this sacrament there may fully be truth and figure. But others hold that the water with the wine is transubstantiated into blood, since, mixed with wine, it passes into wine, although natural philosophers assert the contrary, who say that water can be separated from wine by art. Furthermore, it can be said that the water does not pass into blood, but remains surrounded by the accidents of the prior wine in such a way that it assumes the taste of wine. This is proved from the fact that, if other wine is placed in the chalice after the consecration of the chalice, it indeed does not pass into blood or become mixed with the blood, but, mixed with the accidents of the prior wine, it is poured all around the body that lies hidden under them, without wetting that which is surrounded. Nevertheless, those accidents appear to affect the wine added, because, if *pure* water has been added, it assumes the taste of wine. It therefore happens that accidents change the subject, just as it happens that the subject changes the accidents; for nature yields to miracle, and power works beyond custom. Nor is it believed unfitting or absurd if water is believed to be in the body of Christ, since it is read to have issued from his side. *But it is wicked to opine what certain persons presumed to say, namely that the water is converted into phlegm. For they also lie that not water but watery humor issued from the side of Christ, not attending that two sacraments flowed from the side of Christ and that persons are baptized not in phlegm but in water, according to what the Lord declares: "Unless anyone is born again of water and the Holy Spirit, he shall not enter the kingdom of God."*

But among the aforesaid opinions that one is judged more probable which asserts that the water with the wine is changed into blood, so that the property of the sacrament may shine forth more expressly.

For since many waters are many peoples, according to what is read elsewhere, "Blessed are you who sow upon all waters," water is therefore united to wine so that the people may be united to Christ. For through this, that he *both* assumed from what is ours and we received from what is his, we are joined by so indissoluble a bond that he who is one with the Father through ineffable unity becomes one with us through admirable union, and through this, with him himself mediating in common, we are made one with the Father. "Holy Father," he says, "preserve in *your name* those whom you have given me, that they may be one, as we also are; but I ask not for these alone, but for those who will believe in me through their word, that they also may be one in us, and that the world may believe that you have sent me."

§ 2. In the third place *indeed*, your fraternity inquired *who changed, or when, or* why that which is contained in older codices in the secret of blessed Leo was changed, namely thus: "Grant us, Lord, that this offering may profit the soul of your servant Leo," when in modern sacramentaries it is held: "Grant us, we beseech you, Lord, that through the intercession of blessed Leo this offering may profit us." Concerning this we respond to you *in this way*: *we do not know who changed it or when it was changed. We know, however, on what occasion it was changed, because*, since the authority of sacred scripture says that one who prays for a martyr does injury to the martyr, the same is to be thought by similar reason concerning the other saints, because they do not need our prayers, on account of the fact that, since they are perfectly blessed, all things fall out for them according to their wishes. But we rather need their prayers, for, since we are wretched, our evils disturb us on every side. Hence, what is contained in very many prayers—"may such an offering," *namely*, "profit or benefit this or that saint unto glory and honor"—ought *assuredly* to be understood in this way: that it profits to this end, that he is glorified more and more by the faithful on earth, *or even honored*, although very many judge it not unfitting that the glory of the saints is increased until the judgment, and therefore that in the meantime the Church can soundly desire an increase of their glorification. But whether in this article that distinction has a place by which it is taught that some of the dead are very good, others very evil, others moderately good, and others moderately evil—whence the suffrages made by the faithful in the Church for the very good are acts of thanksgiving; for the very evil, consolations of the living; but for the moderately good, expiations; and for the moderately evil, propitiations—let your discretion investigate. *Henceforth we petition to be aided before God by your prayers.* [*Given at the Lateran, on the third day before the Kalends of December, in the fifth year.* 1202.]

> Si qua verba sunt in canone missae, quae ab Evangelistis dicta non fuerunt, credere debemus, quod a Christo Apostoli, et ab Apostolis eorum successores acceperunt. Et hoc dicit usque ad §. Quaesivisti — (Quaesivisti etc.:) In sacramento altaris aqua cum vino transsubstantiatur in sanguinem, H. d. usque ad §. Tertio loco. Abbas Siculus. — (Tertio loco etc.:) Oratio, quae dicitur in secreta in festo sancti Leonis, immutata est, quia ubi dicebatur: " annue nobis Domine, ut, animae famuli tui Leonis haec prosit oblatio: " hodie dicitur: " ut intercessione B. Leonis haec nobis prosit oblatio: " et haec mutatio contingit, quia sancti nostris orationibus non indigent, sed nos suis. H. d. usque ad finem. Abbas.
>
> Idem I. quondam Archiepiscopo Lugdunensi.
>
> Quum Marthae *+circa plurima satagentis officio in cura regiminis pastoralis pro maiori parte renuncians, in domo Domini quasi abiectus elegeris habitare cum illis, qui partem optimam elegerunt, sedentes ad pedes Domini cum Maria, ut in lege eius iugiter meditentur, lippitudini Liae Rachelis pulchritudinem praeferentes: eam in te vigere credimus intelligentiam scripturarum, ut non solum parvulis frangere possis panem, sed profectis etiam cibum solidum ministrare, ac nodos solvere difficilium quaestionum. Verum, quoniam in primatu Apostolorum principis apostolicae*

sedis magisterium recognoscens, ad eam credis maiores causas ecclesiae referendas: consultationibus tuis, quas non ob commodum utilitatis terrenae, quum civilem non contineant quaestionem, sed animarum profectum, ut videlicet in lucem prodeant obscurae scripturae, novimus te movisse libenter, quod nobis inspirat Dominus respondemus. Quaesivisti *siquidem*, quis formae verborum, quam ipse Christus expressit, quum in corpus et sanguinem suum panem transsubstantiavit et vinum, illud in canone missae, quo ecclesia utitur generalis, adiecerit, quod nullus Evangelistarum legitur expressisse. Quum enim in evangelio sic legatur : " Accipiens calicem, gratias agens benedixit, et dedit discipulis suis, dicens : bibite ex hoc omnes; hic est enim sanguis meus novi testamenti, qui pro vobis, et pro multis aliis effundetur in remissionem peccatorum : " in canone missae sermo iste, videlicet " mysterium fidei, " verbis ipsis interpositus invenitur. Unde quum non Evangelista Christum hoc dixisse testetur, *moveris non modicum et* miraris, quod aliquis asseverare tentaverit, eum aliquid plus dixisse, quam aliquis Evangelistarum asseveret. Verum, si formam ipsius canonis inspicias diligenter, praeter hoc, de quo tua fraternitas requisivit, alia duo, videlicet : " elevatis oculis in coelum " et " aeterni testamenti, " poteris in ipso canone reperire, quae in textu evangelico non leguntur. Sane multa tam de verbis quam de factis dominicis invenimus ab Evangelistis omissa, quae Apostoli vel supplevisse verbo, vel facto expressisse leguntur. Paulus enim in actibus Apostolorum sic ait : " Meminisse vos oportet verbi Domini Iesu, qui dixit : beatius est *magis* dare quam accipere. " Haec nullus quatuor Evangelistarum descripsit. Nullus etiam horum expressit, quod Paulus de Christo ad Corinthios scribens ait : " Visus est plus quam quingentis fratribus simul, deinde visus est Iacobo; novissime autem, tanquam abortivo, visus est et mihi. " Ipsi etiam Evangelistae mutuo inter se supplevisse leguntur quae ab eorum aliquo vel aliquibus sunt omissa. Unde quum tres Evangelistae posuerint : " hoc est corpus meum, " solus Lucas adiecit : " quod pro vobis tradetur, " et quum Matthaeus et Marcus dicant : " pro multis, Lucas dicit : pro vobis. " Matthaeus autem : " in remissionem peccatorum, " adiunxit. Ceterum ea, quae adduntur in canone missae, possunt ex aliis locis evangelii comprobari. Ioannes enim suscitationem Lazari describens, Iesum sursum oculos levasse asserit, et dixisse : " Pater, gratias ago tibi, quoniam audisti me. " +*Alibi etiam idem dicit: "Haec locutus est Iesus, et sublevatis oculis in coelum dixit: Pater, clarifica filium tuum.* " Si tunc igitur in coelum oculos levavit ad Patrem, quum ad corpus exanime animam Lazari revocavit, probabilius esse videtur, quod tunc oculos levaverit ad Patrem in coelum, quum panem et vinum in corpus et sanguinem proprium commutavit. Ceterum, sicut superius est expressum, quum in textu evangelico " novi testamenti " ponatur, hic interponitur : " et aeterni. " Nam vetus testamentum, quod hircorum et vitulorum fuit sanguine dedicatum, temporalia promittebat : novum autem, quod est Christi sanguine consecratum, promittit aeterna. Et ideo testamentum illud fuit vetus et transitorium; hoc autem novum est et aeternum. Vel, ut utamur alia ratione, unde novum, id est ultimum, esse describitur, inde aeternum, id est perpetuum, comprobatur. Novissimum etenim hominis testamentum immobile perseverat, quia testatoris obitu confirmatur; iuxta quod Apostolus testamentum in morte asserit confirmatum, alioquin non valet, dum vixerit qui testatur. Praeterea non solum scriptura, sed etiam promissio dicitur testamentum, iuxta quod Apostolus ipse scribit : " Ideo novi testamenti mediator est, ut repromissionem accipiant qui vocati sunt hereditatis aeternae. " Sic ergo intelligi debet quod in ipso canone reperitur : " Hic est enim sanguis meus novi et aeterni testamenti, " id est, novae ac aeternae promissionis, scilicet confirmator, sicut Dominus repromittit : " Qui manducat, " inquiens, " carnem meam, et sanguinem meum bibit, habet vitam aeternam. " Ex eo autem verbo, de quo movit tua fraternitas quaestionem, videlicet " mysterium fidei, " munimentum erroris quidam trahere putaverunt, dicentes, in sacramento altaris non esse corporis Christi et sanguinis veritatem, sed imaginem tantum, et speciem et figuram, pro eo, quod scriptura interdum commemorat, id, quod in altari suscipitur, esse sacramentum, et mysterium et exemplum. Sed tales ex eo laqueum erroris incurrunt, quod nec auctoritates scripturae convenienter intelligunt, nec sacramenta Dei suscipiunt reverenter, *scripturas et virtutem Dei pariter nescientes*. Si enim *ideo*, quia figura est sacramentum altaris, veritas esse negatur, ergo nec mors, nec resurrectio Christi,

quum figura sit, veritas est credenda, siquidem mortem et resurrectionem Christi similitudinem et imaginem esse Apostolus manifestat : " Christus, " inquiens, " mortuus est pro delictis nostris, et resurrexit propter iustificationem nostram. " Apostolorum etiam princeps Petrus sic in epistola sua scribit : " Christus passus est pro nobis, relinquens vobis exemplum, ut sequamini vestigia eius. " Si ergo tam mors Christi quam eius resurrectio est exemplum, ut et nos, peccato mortui, iustitiae iam vivamus. Quare, si non fuit veritas, quia fuit exemplum : ergo nec vere mortuus fuit Christus, nec vere a mortuis resurrexit. Sed absit a fidelium cordibus error iste, quum Propheta de ipso testetur, quod vere languores nostros ipse tulit, et dolores nostros ipse portavit. Dicitur tamen mysterium fidei, quoniam et aliud ibi creditur quam cernatur, et aliud cernitur, quam credatur. Cernitur *enim* species panis et vini, et creditur veritas carnis et sanguinis Christi, ac virtus unitatis et caritatis. +*Quod autem mysterium fidei dicitur in hoc loco, alibi secundum Ioannem spiritus et vita narratur. Nam spiritus est mysterium iuxta illud: "litera occidit, spiritus autem vivificat; "fides autem est vita, secundum quod legitur: "Iustus meus ex fide vivit, propter quod ipse Dominus dicit: Verba, quae locutus sum vobis, spiritus et vita sunt*. " Distinguendum est tamen subtiliter inter tria, quae sunt in hoc sacramento discreta, videlicet formam visibilem, veritatem corporis, et virtutem spiritualem. Forma est panis et vini, veritas carnis et sanguinis, virtus unitatis et caritatis. Primum est sacramentum, et non res. Secundum est sacramentum et res. Tertium est res et non sacramentum. Sed primum est sacramentum geminae rei. Secundum *autem* est sacramentum unius, et alterius res exsistit. Tertium *vero* est res gemini sacramenti. Credimus igitur, quod formam verborum, sicut in canone reperitur, et a Christo Apostoli, et ab ipsis eorum acceperint successores. *Nam, sicut superius est expressum, multa de verbis et factis dominicis ab Evangelistis omissa, et sermonibus suppleverunt Apostoli et operibus expresserunt*. §. 1. Quaesivisti etiam, utrum aqua cum vino in sanguinem convertatur. Super hoc autem opiniones apud scholasticos variantur. Aliquibus enim videtur, quod, quum de latere Christi duo praecipua fluxerint sacramenta redemptionis in sanguine; ac regenerationis in aqua, in illa duo, vinum et aqua, quae commiscentur in calice, divina virtute mutantur, ut in hoc sacramento plene sit veritas et figura. Alii vero tenent, quod aqua cum vino transsubstantiatur in sanguinem, quum in vinum transeat mixta vino, licet physici contrarium asseverent, qui aquam a vino per artificium posse asserunt separari. Praeterea potest dici, quod aqua non transit in sanguinem, sed remanet prioris vini accidentibus circumfusa ita, quod vini saporem assumit. Quod inde convincitur, quia, si post calicis consecrationem aliud vinum mittatur in calicem, illud quidem non transit in sanguinem, nec sanguini commiscetur; sed accidentibus prioris vini commixtum corpori, quod sub eis latet, undique circumfunditur, non madidans circumfusum. Ipsa tamen accidentia vinum appositum videntur afficere, quia, si aqua *pura* fuerit apposita, vini saporem assumit. Contingit igitur accidentia mutare subiectum, sicut et subiectum contingit accidentia permutare; cedit quippe natura miraculo, et virtus supra consuetudinem operatur. Sed nec inconveniens creditur aut absurdum, si aqua in corpore Christi esse credatur, quum legatur de ipsius latere processisse. +*Illud autem est nefarium opinari, quod quidam dicere praesumpserunt, aquam videlicet in phlegma converti. Nam et de latere Christi non aquam, sed humorem aquaticum mentiuntur exisse, non attendentes, quod de latere Christi duo fluxerunt sacramenta, et quod non baptizantur in phlegmate, sed in aqua, iuxta quod Dominus protestatur: "Nisi quis renatus fuerit ex aqua et Spiritu sancto, non intrabit in regnum Dei*. " Verum inter opiniones praedictas illa probabilior iudicatur, quae asserit, aquam cum vino in sanguinem transmutari, ut expressius eluceat proprietas sacramenti. Nam quum aquae multae sint populi multi, iuxta quod alibi legitur : " Beati, qui seminatis super omnes aquas : " ideo vino aqua unitur, ut Christo populus adunetur. Per hoc enim, quod *et* suscepit ipse de nostro, et accepimus ipsi de suo, tam insolubili nexu coniungimur, ut, qui est unum cum Patre per ineffabilem unitatem, fiat unum nobiscum per admirabilem unionem, ac per hoc ipso communiter mediante cum Patre unum efficimur. " Pater, " inquit " sancte, serva eos, *in nomine tuo* quos dedisti mihi, ut sint unum, sicut et nos, non pro his autem roga tantum, sed pro eis, qui credituri sunt per verbum eorum in me, ut et ipsi in nobis unum sint, et mundus credat, quia tu me misisti. " §. 2. Tertio *vero* loco fraternitas tua requisivit,

quis mutaverit, vel quando, aut quare fuerit mutatum, quod in secreta B. Leonis secundum antiquiores codices continetur, sic videlicet : " Annue nobis, Domine, ut animae famuli tui Leonis haec prosit oblatio : " quum in modernis sacramentariis habeatur : " Annue nobis, quaesumus, Domine, ut intercessione B. Leonis haec nobis prosit oblatio. " Super quo *tibi taliter* respondemus, quod, *quis illud mutaverit, aut quando mutatum fuerit, ignoramus. Scimus tamen, qua fuerit occasione mutatum; quia*, quum sacrae scripturae dicat auctoritas, quod iniuriam facit martyri qui orat pro martyre, idem est ratione consimili de aliis sanctis sentiendum, quia orationibus nostris non indigent pro eo, quod quum sint perfecte beati, omnia eis ad vota succedunt. Sed nos potius orationibus eorum indigemus, quos, quum miseri simus, undique mala nostra perturbant. Unde, quod in plerisque orationibus continetur : " prosit " *videlicet* " vel proficiat huic sancto vel illi talis oblatio ad gloriam et honorem, " ita *sane* debet intelligi, ut ad hoc prosit, quod magis ac magis a fidelibus glorificetur in terris, *aut etiam honoretur*, licet plerique reputent non indignum, sanctorum gloriam usque ad iudicium augmentari, et ideo ecclesiam interim sane posse augmentum glorificationis eorum optare. Verum, utrum in hoc articulo locum habeat illa distinctio, qua docetur, quod defunctorum alii sunt valde boni, alii sunt valde mali, alii mediocriter boni, alii mediocriter mali, unde suffragia, quae fiunt a fidelibus in ecclesia pro valde bonis, actiones sunt gratiarum, pro valde malis consolationes vivorum, expiationes vero pro mediocriter bonis, et propitiationes pro mediocriter malis, tua discretio investiget. *De cetero tuis orationibus adiuvari petimus apud Deum*. [*Dat. Lat. III. Kal. Dec. Ao. V.* 1202.]

Chapter VII

Latin source headnote: One who simulates confecting and does not confect sins more gravely than one who confects while in mortal sin.

The same, to the Rectors of the Roman Fraternity.

Concerning a man (*And below:*) For you asked *of us* what is to be thought concerning an incautious priest who, when he knows that he is constituted in mortal sin, doubts on account of the consciousness of his offense whether to celebrate the solemnities of Masses, which he cannot omit on account of some necessity, *and, being gravely constrained between two things, while he fears to carry out the divine ministry lest he offend the people awaiting it, and dreads to confect the body of Christ lest, receiving it unworthily, he eat and drink judgment to himself*, after all the other circumstances have been performed, feigns that he celebrates Mass and, suppressing the words by which the body of Christ is confected, simply consumes only bread and wine, believing that through what he outwardly presents he satisfies the people, so that through what he intends he ought not provoke God. Therefore, since false remedies, which are more grave than true perils, are to be cast aside, although one who on account of consciousness of his crime considers himself unworthy *ought reverently to abstain from a sacrament of this kind, and therefore* sins gravely if he irreverently intrudes himself upon it, nevertheless he who has presumed fraudulently to simulate it in this way appears *without doubt* to offend more gravely: for the former, *by avoiding a fault while he acts*, falls into the hand of the merciful God alone; but the latter, *by committing a fault while he avoids one*, binds himself not only to God, whom he does not fear to mock, but *also* to the people, whom he deceives. [*Given at Sora, on the tenth day before the Kalends of October, in the year of our pontificate.* 1208.]

Gravius peccat qui simulat conficere, et non conficit, quam ille, qui conficit in mortali.

Idem Rectoribus Romanae fraternitatis.

De homine (*Et infra:*) Quaesivistis *enim a nobis*, quid de incauto presbytero videatur, qui, quum se sciat in mortali crimine constitutum, missarum solennia, quae non potest propter necessitatem quamlibet intermittere, propter sui facinoris conscientiam dubitat celebrare, *arctatusque graviter e duobus, dum divinum exsequi ministerium metuit, ne populum illud exspectantem offendat, et corpus Christi perficere perhorrescit, ne sumens ipsum indigne iudicium sibi manducet et bibat*, peractisque ceteris circumstantiis missam celebrare se fingit, et suppressis verbis, quibus conficitur corpus Christi, panem et vinum tantummodo pure sumit, ita credens, per id, quod praetendit, populo satisfacere, ut per hoc, quod intendit, Deum non debeat provocare. Quum ergo falsa sint abiicienda remedia, quae veris sunt periculis graviora, licet is, qui pro sui criminis conscientia reputat se indignum, *ab huiusmodi sacramento reverenter debeat abstinere, ac ideo* peccet graviter, si se ingerat irreverenter ad illud; gravius tamen *procul dubio* videtur offendere, qui sic fraudulenter illud praesumpserit simulare, quum ille *culpam vitando, dum facit*, in solius misericordis Dei manum incidat, iste vero *culpam faciendo, dum vitat*, non solum Deo, cui non veretur illudere, sed *et* populo, quem decipit, se adstringat. [*Dat. Sorae X. Kal. Oct. Pont. nostr. Ao.* 1208.]

Chapter VIII

Latin source headnote: Here he disproves the opinion which holds that in the sacrament of the altar water is converted into phlegm, and proves that Christ was true God and true man, and that true water issued from his side.

The same, to the Bishop of Ferrara.

You assert that you read in a certain decretal epistle of ours that it is a wicked thing to opine what certain persons presumed to say, namely that in the sacrament of the Eucharist water is converted into phlegm. For they lie that *also* not water but watery humor issued from the side of Christ. *Although you recount that great and authoritative men held this, whose opinion you have hitherto followed in speech and writings, nevertheless, since we hold the contrary, you are compelled to consent to our opinion. But you confess that the word of John the Apostle greatly moves you, saying: "There are three that give testimony on earth: the spirit, the water, and the blood, and these three are one"; although this last phrase is not found in many codices, which you say is thus expounded by all: that they are one, that is, testify concerning one and the same thing, namely concerning the humanity of Christ. Moreover, if that which flowed from the side of Christ was true water and not a humor of the human body, you do not see how it is proved through it that Christ is man. For the gloss upon that place has thus: "The spirit, that is, the human soul which he emitted in the Passion; the water and blood that flowed from the side of Christ," which could not happen if he did not have the true nature of flesh. Thus, therefore, you propose from both the text and the gloss that through that water it is proved that Christ is true man; and therefore, if it is said that it was not true water but the watery humor of the human body, the words of both the expositor and the Apostle appear intelligible to you. But if it is said that it was true water, as we believe and confess, you sufficiently understand neither the former nor the latter. Hence you humbly petitioned us that, for the general utility of readers and for removing the cloud from your heart, we deign to expound this sufficiently and clearly.* Therefore, in response to the insistence of your supplication, we answer that certain persons said—but erred—that Christ was not true God but an adopted God, as the wretched Arians; others *however* said that Christ was not true man but a phantom, as the impious Manichaeans. But against heresies of this kind John the Apostle speaks in his epistle, saying: "There are three that give testimony in heaven: the Father, the Word, and the Holy Spirit, and these three are one," intending through this to show that Christ is true God. "And there are three that give testimony on earth: the spirit, the water, and the blood," intending through this to show that Christ is true man. For two things are principally required for the being of a man, namely body and soul, from the conjunction of which a true man

subsists. Moreover, through the fact that at the moment of death Christ, having inclined his head, delivered up the spirit, concerning which he had cried with a great voice, "Father, into your hands I commend my spirit," it is manifestly proved that he had a spirit, not only vital breath but *also* a rational soul, concerning which he had foretold: "My soul is sorrowful even unto death," and: "I have power to lay down my soul and again to take it up." Moreover, through the fact that one of the soldiers opened his side with a lance and immediately blood and water came out, it is openly proved that Christ had a true body. For neither blood nor water could have issued from a phantasmal body; hence "he who saw it *indeed* furnished testimony, and his testimony is true, because there are three that give testimony on earth: the spirit, the water, and the blood." Namely, that Christ is true man, subsisting from a rational soul and human flesh, is proved from the fact that he emitted the vital spirit; and it is proved concerning the true body because blood and water issued from it, for a rational soul could vivify only a human body, from which things true man consists. Furthermore, just as there was true spirit and true blood, so without doubt there was true water, since Christ is truth and every falsehood is altogether alien to truth. For if what issued from the side of the Savior had not been water but phlegm, he who saw and furnished testimony to the truth would assuredly have said not "water" but "phlegm." Nor would the true sacrament of regeneration have been shown in this, since through the sacrament of baptism we are regenerated not in phlegm but in water. Nor could it be proved by a true argument through this that in the sacrament of the Eucharist water is to be mixed with wine, if not water but phlegm had flowed with the blood from the side of Christ. Nor would the figure that preceded concerning this matter in the Old Testament have been true, when *namely* Moses struck the rock with a rod and from it *indeed* not phlegm but water flowed. It remains, therefore, that whatever the nature of that water—whether natural or miraculous, whether newly created by divine power or resolved in some part from the component things—it was without doubt true water, since both a composite can naturally be resolved into its components and an elemented thing into the elements, just as his sweat was true, like drops of blood running down upon the earth. Moreover, since four elements concur in the composition of the human body, namely earth *and* water, air and fire, and four humors similar to them concur in the vegetation of the same body, namely blood *and* yellow bile, phlegm, and black bile, in order to demonstrate more expressly the truth of the human body, John expressed one of the former and one of the latter, and from the former and the latter especially those that were more congruent with the mystery: from the elements, water, and from the humors, blood; in which two especially shine forth the two sacraments, namely of redemption and regeneration. [*Given on the third day before the Nones of March, in the twelfth year.* 1209.]

> Hic improbat opinionem, quae habet, quod in sacramento altaris aqua convertatur in phlegma, et probat, Christum fuisse verum Deum et verum hominem, et quod de ipsius latere exivit vera aqua.
>
> Idem Ferrariensi Episcopo.
>
> In quadam nostra decretali epistola asseris te legisse, illud esse nefarium opinari, quod quidam dicere praesumpserunt, in sacramento videlicet eucharistiae aquam in phlegma converti. Nam *et* de latere Christi non aquam, sed humorem aquaticum mentiuntur exisse. *+Licet autem hoc magnos et authenticos viros sensisse recenseas, quorum opinionem dictis et scriptis hactenus es secutus, ex quo tamen in contrarium nos sentimus, nostrae compelleris sententiae consentire. Sed verbum Ioannis Apostoli te multum movere fateris, dicentis: "Tres sunt, qui testimonium dant in terra, spiritus, aqua et sanguis, et hi tres unum sunt; "quamvis hoc ultimum in plerisque codicibus minime habeatur, quod dicis ab omnibus sic exponi, illos videlicet esse unum, id est de una et eadem re, scilicet de humanitate Christi testari. Porro si vera fuit aqua, quae fluxit de latere Christi, et non humani corporis*

humor, qualiter per illam probetur, quod Christus sit homo, non vides. Glossa namque super illum locum sic habet: "Spiritus, id est humana anima, quam emisit in passione; aqua et sanguis, quae fluxerunt de latere Christi, "quod fieri non posset, si non haberet veram carnis naturam. Sic ergo tam ex textu quam ex glossa proponis, per illam aquam probari, quod Christus sit verus homo, et ideo, si dicatur, quod illa non exstitit vera aqua, sed aquaticus humani corporis humor, tam expositoris quam Apostoli verba intelligibilia tibi esse videntur. Sed dicto, quod fuerit vera aqua, sicut nos credimus et fatemur, nec ista, nec illa sufficienter intelligis. Unde nobis humiliter supplicasti, quatenus ad generalem utilitatem legentium, et nebulam de tuo corde tollendam, sufficienter et evidenter hoc exponere dignaremur. Nos igitur ad tuae supplicationis instantiam respondemus, quod quidam dixerunt, sed erraverunt, Christum non fuisse verum Deum, sed adoptivum, ut miseri Arriani; alii *vero* Christum non fuisse verum hominem, sed phantasticum, ut impii Manichaei. Sed adversus huiusmodi haereses Ioannes Apostolus in epistola sua loquitur, dicens : " Tres sunt, qui testimonium dant in coelo, Pater, verbum, et Spiritus sanctus, et hi tres unum sunt : " per hoc intendens ostendere, quod Christus sit verus Deus. " Et tres sunt, qui testimonium dant in terra, spiritus, aqua et sanguis; " per hoc intendens ostendere, quod Christus sit verus homo. Nam ad esse hominis duo principaliter exiguntur, videlicet corpus et anima, ex quorum coniunctione verus homo subsistit. Per hoc autem, quod in articulo mortis Christus inclinato capite tradidit spiritum, de quo voce magna clamaverat : " Pater, in manus tuas commendo spiritum meum ", manifeste probatur, quod ipse spiritum habebat, non solum flatum vitalem, sed animam *quoque* rationalem, de qua praedixerat : " Tristis est anima mea usque ad mortem, " et : " Potestatem habeo ponendi animam meam, et iterum sumendi eam. " Per hoc autem, quod unus militum lancea latus eius aperuit, et continuo sanguis exivit et aqua, probatur aperte, quod Christus verum corpus habebat. Nam de phantastico corpore, nec sanguis, nec aqua potuisset exire, unde " ille, qui vidit, testimonium *quidem* perhibuit, et testimonium eius est verum, quia tres sunt, qui testimonium dant in terra, spiritus, aqua et sanguis. " Quod videlicet Christus sit verus homo, ex anima rationali et humana carne subsistens, probatur ex eo, quod spiritum vitalem emisit; et de vero corpore probatur, quoniam ex eo sanguis exivit et aqua; rationalis quippe anima non posset vivificare, nisi corpus humanum, ex quibus verus homo consistit. Ceterum sicut fuit verus spiritus et verus sanguis, ita procul dubio vera aqua, quum Christus sit veritas, et a veritate omnis fallacia sit penitus aliena. Nam si non fuisset aqua, sed phlegma, quod de latere Salvatoris exivit, ille, qui vidit, et testimonium veritati perhibuit, profecto non " aquam, " sed " phlegma " dixisset. Nec in hoc verum regenerationis sacramentum fuisset ostensum, quum per sacramentum baptismi non regeneremur in phlegmate, sed in aqua. Neque per hoc posset vero argumento probari, quod in sacramento eucharistiae admiscenda sit aqua vino, si de latere Christi non aqua, sed phlegma cum sanguine profluxisset. Sed nec vera fuisset figura, quae super hac re praecessit in veteri testamento, quando *videlicet* Moyses virga percussit silicem, et ex ea *quidem* non phlegma, sed aqua manavit. Restat igitur, ut, qualiscunque fuerit illa aqua, sive naturalis sive miraculosa, sive de novo divina virtute creata, sive de componentibus ex parte aliqua resoluta, procul dubio vera fuit; quum naturaliter possit et compositum in componentia, et elementatum in elementa resolvi, quemadmodum verus exstitit sudor ipsius, sicut guttae sanguinis decurrentis in terram. Quum autem ad compositionem humani corporis quatuor elementa concurrant, videlicet terra *et* aqua, aer et ignis, et ad vegetationem eiusdem corporis quatuor humores illis consimiles conveniant, videlicet sanguis *et* cholera, phlegma et melancholia, ut veritatem humani corporis expressius demonstraret, unum ex illis et unum ex istis Ioannes expressit, illaque potius ex illis et ex istis, quae magis mysterio congruebant, ex elementis aquam, et ex humoribus sanguinem; in quibus duobus duo maxime sacramenta, redemptionis videlicet et regenerationis, elucent. [*Dat. III. Non. Mart. Ao. XII.* 1209.]

Chapter IX

Latin source headnote: It commands prelates and clerics, in virtue of obedience, to celebrate the nocturnal and diurnal office diligently and devoutly.

The same, in the general council.

We report with grief that not only certain lesser clerics but even some prelates of churches spend almost half the night on excessive banquets and unlawful tales, to be silent concerning other things, and, leaving the remainder to sleep, are scarcely awakened at the diurnal song of the birds, running through Matins everywhere with continual cutting-short. There are also others who scarcely celebrate the solemnities of Masses four times a year and, what is worse, disdain to be present. And if sometimes they are present while these are celebrated, fleeing the silence of the choir, they attend outside to conversations of laymen; and while they pour out their hearing upon improper discourses, they do not extend attentive ears to divine things. We therefore entirely prohibit these and similar things under penalty of suspension, strictly commanding in virtue of obedience that they diligently and devoutly celebrate alike the nocturnal and diurnal divine office, so far as God shall have granted them.

> Praecipit praelatis et clericis in virtute obedientiae, ut nocturnum officium et diurnum studiose celebrent et devote.
>
> Idem in concilio generali.
>
> Dolentes referimus, quod non solum quidam minores clerici, verum etiam aliqui ecclesiarum praelati, circa commessationes superfluas et fabulationes illicitas, ut de aliis taceamus, fere medietatem noctis expendunt, et somno residuum relinquentes, vix ad diurnum concentum avium excitantur, transcurrendo undique continua syncopa matutinum. Sunt et alii, qui missarum solennia vix celebrant quater in anno, et, quod deterius est, interesse contemnunt. Et si quando, dum haec celebrantur, intersint, chori silentium fugientes intendunt exterius collocutionibus laicorum, dumque auditum ad indebitos sermones effundunt, aures intentas non porrigunt ad divina. Haec igitur et similia sub poena suspensionis penitus inhibemus, districte praecipientes in virtute obedientiae, ut divinum officium nocturnum pariter et diurnum, quantum eis Deus dederit, studiose celebrent pariter et devote.

Chapter X

Latin source headnote: The Eucharist ought to be kept cleanly, and at its elevation and carrying the people ought to incline themselves; and when it is carried to a sick person, it ought to be carried in decent attire and with a light; but transgressors are to be gravely punished.

Honorius III.

Indeed, since formerly [*a golden vessel full of manna, prefiguring the body of Christ's divinity, was placed in the ark of the covenant covered with gold within the holy of holies so that it might be kept cleanly in a venerable place, we grieve and are exceedingly saddened that in very many provinces priests, contemning the canonical sanctions, indeed the divine judgment, guard the sacred Eucharist carelessly and handle it uncleanly and indevoutly, as though they neither feared the Creator, loved the Re-creator, nor dreaded the Judge of all, although the Apostle threatens terribly that one who has trampled upon the Son of God, regarded the blood of the testament as polluted, or done insult to the Spirit of grace merits worse punishments than a transgressor of the Mosaic law, who was punished by a sentence of death.*] Lest [*therefore*] *henceforth* divine indignation blaze more gravely *against the indevout* on account of the carelessness of priests, we command by strict precept that the Eucharist always be

placed honorably by priests in a separate place, clean *also* and sealed, and be preserved devoutly and faithfully. Moreover, let every priest frequently teach his people that, when the saving host is elevated in the celebration of Masses, *each person* is reverently to incline himself, doing the same when the priest carries it to a sick person. Let him carry it in decent attire, with a clean veil placed over it, and carry it openly and honorably before his breast with every reverence and fear, with a light *nevertheless* always preceding, since it is the brightness of eternal light, so that from this faith and devotion may be increased among all. But let prelates not defer gravely to punish transgressors of a mandate of this kind if they themselves wish to escape divine and our vengeance. *But you are to cause the aforesaid things to be observed in such a way that you do not become participants in the vengeance, but in the crown.* [*Given at Viterbo, on the tenth day before the Kalends of December, in the fourth year of our pontificate.* 1219.]

> Eucharistia debet munde servari, et in eius elevatione et delatione populus debet se inclinare; et, quum defertur ad infirmum, debet deferri in decenti habitu et cum lumine; transgressores vero graviter sunt puniendi.
>
> Honorius III.
>
> Sane, quum olim +[*vas aureum, manna plenum, Christi corpus deitatem praefigurans, in arca foederis auro tecta infra sancta sanctorum fuerit collocatum, ut munde in loco venerabili servaretur, dolemus plurimum et tristamur, quod in plerisque provinciis sacerdotes sanctiones canonicas, immo divinum iudicium contemnentes, sacram eucharistiam incaute custodiunt, et immunde ac indevote contrectant, quasi nec creatorem timeant, vel recreatorem diligant, aut iudicem omnium expavescant, quamquam Apostolus terribiler comminetur, deteriora illum mereri supplicia, qui filium Dei conculcaverit, vel sanguinem testamenti pollutum duxerit, aut spiritui gratiae contumeliam fecerit, quam transgressorem legis Mosaicae, qui mortis sententia plectebatur.*] Ne [*igitur*] *de cetero* propter incuriam sacerdotum *in indevotos* divina indignatio gravius exardescat, districte praecipiendo mandamus, quatenus a sacerdotibus eucharistia in loco singulari, mundo *etiam* et signato semper honorifice collocata, devote ac fideliter conservetur. Sacerdos vero quilibet frequenter doceat plebem suam, ut, quum in celebratione missarum elevatur hostia salutaris, *quilibet* se reverenter inclinet, idem faciens, quum eam defert presbyter ad infirmum. Quam in decenti habitu superposito mundo velamine ferat, et referat manifeste ac honorifice ante pectus cum omni reverentia et timore, semper *tamen* lumine praecedente, quum sit candor lucis aeternae, ut ex hoc apud omnes fides et devotio augeatur. Praelati autem huiusmodi mandati graviter punire non differant transgressores, si et ipsi divinam et nostram volunt effugere ultionem. *Vos autem sic observari faciatis praedicta, quod non efficiamini vindictae participes, sed coronae.* [*Dat. Viterbii X. Kal. Dec. Pont. nostr. Ao. IV.* 1219.]

Chapter XI

Latin source headnote: In collegiate churches two Masses ought to be celebrated collegially, one for the dead, the other according to the requirement of the day, as for a feast if a feast occurs, or for the feria if it is a feria.

The same, to All Prelates of Churches.

Since the creature does not have that which he may render to the Creator according to his merits (*And below:*), *since, therefore, the Gallican Church, through the grace of God placed as a lamp upon a lampstand, shines upon others by example, who, seeing its good works, glorify the heavenly Father, lest, which may it not be, it be overshadowed by the darkness of so great a negligence and consequently overshadow others, we have considered that your universality should be requested and admonished, and through apostolic writings we* command you that, *all and each providently attending that to serve God is to reign,* you permit no torpor of negligence to

creep upon you, *as hitherto*, by which you might fail to celebrate conventually the solemnities of Masses both for anniversaries of the dead and for a feast or feria according to the congruence of the times, *and cause them to be celebrated conventually, so that thus, as though praying without interruption, you may merit to be heard by him who is present to all who invoke his name in truth.* [*Given at Anagni, on the fourth day before the Nones of July.* 1217.]

> In ecclesiis collegiatis debent celebrari duae missae collegialiter, una pro defunctis, alia secundum exigentiam diei, ut pro festo, si festum occurrit, vel pro feria, si feria.
>
> Idem universis ecclesiarum Praelatis.
>
> Quum creatura non habeat, quid pro meritis respondeat creatori (*Et infra:*) *Quum igitur ecclesia Gallicana, per Dei gratiam tanquam lucerna super candelabrum posita, luceat aliis per exemplum, qui videntes opera eius bona glorificant patrem coelestem, ne, quod absit, tantae negligentiae tenebris obumbretur, et alias consequenter obumbret: universitatem vestram rogandam duximus et monendam, per apostolica scripta vobis* Mandamus, quatenus *universi et singuli provide attendentes, quod servire Deo regnare est*, nullum in vos torporem negligentiae, *sicut hactenus*, obrepere permittatis, quo minus et pro anniversariis defunctorum, et pro festo vel feria secundum temporum congruentiam, missarum solennia conventualiter celebretis, *et faciatis conventualiter celebrari, ut sic quodammodo sine intermissione orantis ab eo mereamini exaudiri, qui adest omnibus in veritate invocantibus nomen suum*. [*Dat. Anagniae IV. Non. Iul. * 1217.]

Chapter XII

Latin source headnote: On the day of the Lord's Supper a bishop ought to celebrate Mass and confect chrism only in his own church.

The same.

From your report *we learned that on the day of the Lord's Supper you are held by ancient custom to confect chrism in the church of Siponto; but, when on the morning of that same day you approach the church of Monte Gargano so that there, as is customary, you may receive the pilgrims, the clergy and people of that place compel you to celebrate Mass in that church of Monte Gargano before you return to Siponto, concerning which you implored our counsel and that of the Apostolic See.* But since *chrism is confected on that day within the solemnities of Masses, and* it suffices for any priest, whatever dignity in which he shines, to celebrate one Mass a day—for he is also very happy who worthily celebrates one—we command your fraternity that on the day of the Lord's Supper you endeavor to celebrate the solemnities of Masses only in the church of Siponto, in which you are bound to confect chrism.

> In die coenae Domini episcopus tantum in sua ecclesia debet missam celebrare et chrisma conficere.
>
> Idem.
>
> Te referente *+didicimus, quod in die coenae Domini de antiqua teneris consuetudine chrisma conficere in ecclesia Sipontina, sed, quum mane diei eiusdem ad Garganicam ecclesiam accedas, ut ibi, prout moris est, recipias peregrinos, ipsius loci clerus et populus celebrare missam in eadem ecclesia Garganica, priusquam ad Sipontinam redeas, te compellunt, super quo nostrum et apostolicae sedis consilium implorasti*. Quum *autem chrisma eo die intra missarum conficiatur solennia, et* cuilibet sacerdoti, quacunque dignitate praefulgeat, unam in die celebrare missam sufficiat, (nam et valde est felix, qui celebrat digne unam) : fraternitati tuae mandamus, quatenus die coenae Domini in ecclesia Sipontina duntaxat, in qua teneris chrisma conficere, missarum studeas solennia celebrare.

Chapter XIII

Latin source headnote: In the sacrifice of the altar more wine than water is to be placed.

The same, to the Archbishop of Ablas.

A very pernicious abuse, *as we have heard*, has become established in your regions, namely, that a greater quantity of water than of wine is placed in the sacrifice, although according to the reasonable custom of the universal Church more wine than water is to be placed in it. Therefore we command your fraternity [*through apostolic writings*] that you do not do this *henceforth* or permit it to be done in your province. [*Given on the Ides of December, in the fifth year.* 1220.]

> In sacrificio altaris plus de vino quam de aqua ponendum est.
>
> Idem Archiepiscopo Ablasensi.
>
> Perniciosus *valde, sicut audivimus*, in tuis partibus inolevit abusus, videlicet, quod in maiori quantitate de aqua ponitur in sacrificio, quam de vino, quum secundum rationabilem consuetudinem ecclesiae generalis plus in ipso sit de vino quam de aqua ponendum. Ideoque fraternitati tuae [*per apostolica scripta*] mandamus, quatenus id non *de cetero* facias, nec in tua provincia fieri patiaris. [*Dat. Id. Decemb. Ao. V.* 1220.]

Chapter XIV

Latin source headnote: A priest who sacrifices without water and fire, or with leavened bread or in a wooden vessel, is deposed from office and benefice.

The same, to the Bishop of Brescia.

We received your letters, containing that, when you inquired concerning the excesses of *Master Maurus*, priest of the church of Saint Bridget of Brescia, *according to the duty of the pastoral office*, he confessed that, when on a certain day he had neither host nor chalice, he presumed to celebrate the solemnities of Masses in leavened bread and in a wooden cup *while the people stood by. On this account you subjected him to perpetual interdict, counseling that he change his life for the better in some regular church. But afterward, when he petitioned before our venerable brother the Bishop of Ostia, then legate of the Apostolic See, that he act mercifully with him, the same bishop, restoring the aforesaid priest to the celebration of divine things, delegated the cause concerning the suspension of the benefice to the provosts of Saint Salvator and Saint Luke of Brescia, who restored him to the benefice. But afterward, having returned from the regions beyond the sea*, and understanding again that the aforesaid church was being injured in many ways through the malice of the said priest, you, repeating the office of inquiry, discovered from his confessions that the same man sacrificed without fire and water, *on account of which you petitioned to be instructed by our response what is to be done concerning him.* Therefore, since he is proved to have sinned either from manifest malice or *from* excessive folly, we command *your fraternity* that, *if truth supports the premises*, you deprive him perpetually of office and benefice, *the obstacle of appeal having been removed*.

> Ab officio et beneficio deponitur presbyter, qui sine aqua et igne, vel in pane fermentato vel vase ligneo sacrificat.
>
> Idem Episcopo Brixiensi.
>
> Literas tuas recepimus, continentes, quod, quum super excessibus *magistri Mauri* presbyteri ecclesiae sanctae Brigidae Brixiensis *iuxta debitum officii pastoralis* inquireres, confessus est, quod, quum quadam die hostiam et calicem non haberet, in pane fermentato et in scypho ligneo *adstante populo* missarum

solennia celebrare praesumpsit. +*Quare ipsum supposuisti perpetuo interdicto, consulens, ut in aliqua ecclesia regulari mutaret in melius vitam suam. Postmodum autem, illo coram venerabili fratre nostro Hostiensi episcopo, tunc apostolicae sedis legato, ut secum misericorditer ageret, supplicante, idem, ad celebrationem divinorum presbyterum restituens memoratum, super suspensione beneficii causam S. Salvatoris et S. Lucae praepositis Brixiensibus delegavit, qui ad beneficium restituerunt eundem. Deinde vero reversus de partibus transmarinis*, Intellecto iterum, quod praedicta ecclesia per malitiam dicti presbyteri multipliciter laedebatur, inquisitionis officium iterans, ex eius confessionibus invenisti, quod idem sine igne sacrificabat et aqua, +*quare, quid de ipso agendum sit, nostro petiisti edoceri responso*. Quum igitur vel ex aperta malitia, vel *ex* nimia desipientia peccasse probetur, *fraternitati tuae* mandamus, quatenus, *si praemissis veritas suffragatur*, officio et beneficio *sublato appellationis obstaculo* perpetuo ipsum prives.

Title XLII: On Baptism and Its Effect

Chapter I

Latin source headnote: Although a boy has been immersed three times in water in the name of the Father, and of the Son, and of the Holy Spirit, if it has not been said, "I baptize you in the name of the Father, etc.," he has not been baptized.

Alexander III.

If someone *indeed* has immersed a boy three times in water in the name of the Father, and of the Son, and of the Holy Spirit, amen, and has not said: "I baptize you in the name of the Father, and of the Son, and of the Holy Spirit, amen," the boy has not been baptized.

DE BAPTISMO ET EIUS EFFECTU.

Licet puer sit ter mersus in aqua in nomine Patris, et Filii et Spiritus sancti, si non sit dictum: " Ego te baptizo in nomine Patris, etc., " non est baptizatus.

Alexander III.

Si quis *sane* puerum ter in aqua immerserit in nomine Patris, et Filii et Spiritus sancti, amen, et non dixerit : " Ego baptizo te in nomine Patris, et Filii et Spiritus sancti, amen : " non est puer baptizatus.

Chapter II

Latin source headnote: If it is probably doubted whether someone has been baptized, he can be baptized with the form expressed here.

The same.

Those concerning whom there is doubt whether they have been baptized are baptized after these words have been set forth: "If you are baptized, I do not baptize you; but, if you have not yet been baptized, I baptize you, etc."

Si probabiliter dubitatur, an quis fuerit baptizatus, potest baptizari forma hic expressa.

Idem.

De quibus dubium est, an baptizati fuerint, baptizantur his verbis praemissis : " Si baptizatus es, non te baptizo, sed, si nondum baptizatus es, ego te baptizo, etc. "

Chapter III

Latin source headnote: The sacrament of baptism is usefully conferred upon little children although they neither believe nor understand, and original sin is remitted to them. This is what it says as far as § "But." — (But etc.:) Original sin, which is contracted without consent, is remitted in baptism even to one not consenting, as to little children; it is otherwise concerning actual sin, because, just as it is not committed without consent, so it is not remitted. This is what it says as far as § "But it is still." Abbas. — (But it is still:) Although original sin is forgiven in baptism to little children, who nevertheless cannot consent, yet in adults who are insane or sleeping, who do not consent to baptism, actual sin is not forgiven, and likewise not even original sin. This is what it says. — (Likewise etc.:) Insane or sleeping persons who have been baptized, if before insanity or sleep they wished to be baptized, receive the character; otherwise it is otherwise; but those coerced receive it causatively. This is what it says as far as the end.

Innocent III, to the Archbishop of Arles.

He will understand that the greater causes of the Church, especially those touching articles of faith, are to be referred to the see of Peter who notes that, when the Lord asked him whom the disciples said that he was, he answered: "You are the Christ, the Son of the living God," and that the Lord prayed for him that his faith might not fail. You therefore ask us to respond to certain questions that heretics had raised against Catholics. For they assert that baptism is conferred uselessly upon little children, which they strive to prove *both by reason and by authority*, adducing first and principally that, since, according to the word of James the Apostle, saying in his epistle, "Charity covers a multitude of sins," and according to that testimony of the Truth in the Gospel concerning the sinful woman who had washed his feet, declaring, "Many sins are forgiven her, because she loved much," crimes are forgiven only through charity and in charity, sin is not forgiven in baptism to little children, who neither perceive nor consent and do not have charity, which is infused only into those who perceive and consent. *And thus baptism does not profit them, because it is not to be conferred upon such persons. In the Gospel also it is read: "He who has believed and has been baptized will be saved; but he who has not believed will be condemned"; whence little children, whether or not they have been baptized, will be condemned, as being unbelievers.*

To this, however, we respond in this manner: baptism succeeded circumcision. For far be it from us to fall into that condemned heresy which wrongly affirmed that the law together with the Gospel, and circumcision together with baptism, must be observed, because according to the Apostle, saying to the Galatians: "If you are circumcised, Christ profits you nothing." Since therefore circumcision was conferred by command of the Lord upon adults as well as little children, lest baptism, which succeeded *in* its place and nevertheless exists more generally, since both males and females are baptized, should seem to have a lesser effect, it must be conferred upon adults as well as little children. For just as *formerly*, without any distinction, the Mosaic law proclaimed: "The soul whose flesh of the foreskin has not been circumcised shall perish from his people," so now the evangelical voice thunders without distinction: "Unless one has been reborn from water and the Holy Spirit, he shall not enter the kingdom of God," excluding from this generality neither sex nor age. *Whence, just as the soul of the circumcised did not perish from his people, so he who has been reborn from water and the Holy Spirit will obtain entrance into the kingdom of heaven.*

Nevertheless, it must carefully be noted how much more baptism confers upon Christians today than circumcision once conferred upon the Jews. At the end of the aforesaid authority adduced from the

Old Law it was said, "shall perish from his people"; but in the evangelical authority it was added, "shall not enter the kingdom of God"; because, although original guilt was remitted through the mystery of circumcision and the danger of damnation was avoided, nevertheless there was no arrival at the kingdom of heaven, which until the death of Christ was closed to all. But through the sacrament of baptism, made red with the blood of Christ, guilt is remitted, danger is avoided, and the kingdom of heaven is also reached, the gate of which the blood of Christ mercifully reopened to his faithful. For far be it that all little children should perish, so great a multitude of whom dies daily, without the merciful God, who wishes no one to perish, having provided some remedy for their salvation also.

Moreover, from the force of the letter it is sufficiently clear that the aforesaid authorities are to be understood only of adults, who have a multitude of sins, since they cannot be understood of little children, who are held only by original sin. Similarly that *other* authority is to be resolved: "He who has believed and has been baptized, etc.," since little children cannot believe, but adults can. And for this reason the whole authority is to be understood here *only* of adults, and the first clause is not to be referred to some and the second to others; although some concede that little children believe, not through the use but through the habit of faith that they receive in baptism, just as many other words according to common usage are referred not to act but to aptitude.

But what the objectors adduce—that faith or charity and the other virtues are not infused into little children, as persons not consenting—is not conceded absolutely by very many; since on this account a question is recounted among doctors of theology, some asserting that through the virtue of baptism guilt indeed is remitted to little children, but grace is not conferred, while others say that sin *both* is forgiven and the virtues are infused into those having them as to habit, not as to use, until they reach adult age.

But certain persons believe that from this solution they have found a way to other questions, arguing from the fact that we say original sin is forgiven to little children in baptism that, by a similar reason, sin is also forgiven to adults who are sleeping or insane if they are baptized. For since neither then perceives or consents, they say that the same judgment must be made in similar cases. Here, however, we say that a distinction must be made, because sin is twofold, namely original and actual: original, which is contracted without consent, *and* actual, which is committed with consent. Original sin, therefore, which is contracted without consent, is by the power of the sacrament remitted without consent; but actual sin, which is contracted *with* consent, is by no means remitted without consent.

But it is still asked why at least original sin is not forgiven in baptism to the insane and the sleeping, as it is to little children. To this it is to be answered in this manner: the Lord, who made the whole man sound on the Sabbath, does not know a work of imperfection, and for this reason forgives sins not in part but in whole. Furthermore, the punishment of original sin is deprivation of the vision of God; but the punishment of actual sin is the torment of perpetual Gehenna. Whence, if the first were forgiven to someone while the other was not forgiven, such a person would not be deprived of the vision of God on account of original sin forgiven, and would be tormented perpetually in Gehenna on account of the guilt of actual crime. But these things, as incompatible, by no means allow one another; indeed, they are mutually opposed.

Likewise, however, it is asked whether at least the character of the sacrament is impressed in baptism upon *such* sleeping and insane persons, so that, when awakened from sleep or freed from sickness, they are not to be baptized again. Now there are some who say that the sacraments which obtain their effect of themselves, such as baptism and order and other similar things, are conferred not only upon sleeping and insane persons but *even* upon the unwilling and contradicting, although not as to the reality, yet as to the character, since not only little children, who do not consent, but also the deceitful, who, although not in mouth, nevertheless dissent in heart, receive the sacrament.

But it is objected against such persons that those who had been immersed unwilling and resisting would at least by reason of the sacrament pertain to ecclesiastical jurisdiction, whence they would reasonably have to be compelled to observe the rule of the Christian faith. But it is contrary to the Christian religion that anyone always unwilling and wholly contradicting should be compelled to receive and observe Christianity. For this reason others distinguish, not absurdly, between one unwilling person and another unwilling person, one coerced person and another coerced person: that he who is violently drawn by terrors and punishments, and, lest he incur loss, receives the sacrament of baptism, such a one *indeed*, just like him who approaches baptism deceitfully, receives the impressed character of Christianity, and he, as one conditionally willing, although absolutely he does not will, is [*nevertheless*] to be compelled to the observance of the Christian faith.

In this case that decree of the Council of Toledo is to be understood, where it is said that those who long since were coerced to Christianity, as was done in the times of the most religious prince Sisebut, because it is now established that they have been associated with the divine sacraments, have received the grace of baptism, have been anointed with chrism, and have become participants in the body of the Lord, must also be compelled to hold the faith which they received by necessity, lest the name of the Lord be blasphemed and the faith which they received be held cheap and contemptible.

But he who never consents and wholly contradicts receives neither the reality nor the character of the sacrament, because expressly to contradict is more than not to consent at all; just as neither does he incur the mark of any guilt who, wholly contradicting and protesting, is violently compelled to burn incense to idols. But sleeping and insane persons, if, before they incurred insanity or fell asleep, they persisted in contradiction, because in them the purpose of contradiction is understood to endure, do not receive the character of the sacrament even if they have been immersed thus. But it is otherwise if they formerly existed as catechumens and had the purpose of being baptized; whence the Church has been accustomed to baptize such persons at the point of necessity. Therefore the sacramental operation then impresses the character when it does not find the obstacle of a contrary will standing against it.

> Sacramentum baptismi utiliter confertur parvulis licet non credant nec intelligant, et remittitur eis peccatum originale. H. d. usque ad §. Verum. — (Verum etc.:) Originale peccatum, quod sine consensu contrahitur, remittitur in baptismo etiam non consentienti, ut parvulis; secus de actuali, quia, sicut non committitur sine consensu, ita non relaxatur. Hoc dicit usque ad §. Sed adhuc. Abbas. — (Sed adhuc:) Licet in baptismo dimittatur originale peccatum parvulis, qui tamen consentire non possunt, in adultis tamen, amentibus vel dormientibus, qui non consentiunt baptismo, non dimittitur actuale, et item etiam nec originale. H. d. - (Item etc.:) Amentes vel dormientes baptizati, si ante dementiam vel dormitionem baptizari volebant, characterem suscipiunt, alias secus; coacti vero causative suscipiunt. H. d. usque ad finem.

Innocentius III. Arelatensi Archiepiscopo.

Maiores ecclesiae causas, praesertim articulos fidei contingentes, ad Petri sedem referendas intelliget qui eum quaerenti Domino, quem discipuli dicerent ipsum esse, respondisse notabit : " Tu es Christus filius Dei vivi, " et pro eo Dominum exorasse, ne deficiat fides eius. Quibusdam igitur quaestionibus, quas contra catholicos haeretici moverant, nos postulas respondere. Asserunt enim, parvulis inutiliter baptisma conferri, quod nituntur *tam ratione quam auctoritate* probare, illud primo et praecipue inducentes, quod, quum secundum verbum Iacobi Apostoli, dicentis in epistola sua : " Caritas operit multitudinem peccatorum, " et iuxta illud testimonium veritatis in evangelio de peccatrice, quae ipsius pedes laverat, perhibentis : " Dimissa sunt ei peccata multa, quoniam dilexit multum : " non nisi per caritatem et in caritate crimina dimittantur, parvulis, qui nec sentiunt, nec consentiunt, et caritatem non habent, quae sentientibus et consentientibus tantum infunditur, peccatum non dimittitur in baptismo. +*Et sic eis baptisma non confert, quia non est talibus conferendum. In evangelio quoque legitur: "Qui crediderit et baptizatus fuerit, salvus erit, qui autem non crediderit, condemnabitur; unde parvuli, sive fuerint sive non fuerint baptizati, condemnabuntur, utpote non credentes*. " Ad id autem taliter respondemus, quod baptisma circumcisioni successit. Absit enim, ut in illam damnatam haeresim incidamus, quae perperam affirmabat, legem cum evangelio, et circumcisionem cum baptismo servandam, quoniam secundum Apostolum, dicentem ad Galatas : " Si circumcidimini, Christus vobis nihil prodest. " Quum ergo circumcisio tam adultis quam parvulis ex praecepto Domini conferretur, ne baptismus, qui successit *in* loco ipsius, et generalior tamen exsistit, quum tam viri quam feminae baptizentur, minoris videatur effectus, tam adultis, quam parvulis est conferendus. Sicut enim *olim* sine distinctione qualibet Mosaica lex clamabat : " Anima, cuius praeputii caro circumcisa non fuerit, peribit de populo suo, " ita nunc indistincte vox intonat evangelica : " Nisi quis renatus fuerit ex aqua et Spiritu sancto, non intrabit in regnum Dei; " ab hac generalitate nec sexum, nec aetatem excludens. *Unde, sicut anima circumcisi de populo suo non peribat, sic, qui ex aqua fuerit et Spiritu sancto renatus, regni coelorum introitum obtinebit*. Caute tamen notandum est, quantum plus baptismus hodie conferat Christianis, quam quondam Iudaeis circumcisio contulisset, dictum est in fine praedictae auctoritatis inductae de veteri lege : " peribit de populo suo : " in evangelica vero auctoritate subiunctum est; " non intrabit in regnum Dei : " quoniam, etsi originalis culpa remittebatur per circumcisionis mysterium, et damnationis periculum vitabatur, non tamen perveniebatur ad regnum coelorum, quod usque ad mortem Christi fuit omnibus obseratum; sed per sacramentum baptismi Christi sanguine rubricati culpa remittitur, vitatur periculum, et ad regnum coelorum etiam pervenitur, cuius ianuam Christi sanguis fidelibus suis misericorditer reseravit. Absit enim, ut universi parvuli pereant, quorum quotidie tanta multitudo moritur, quin et ipsis misericors Deus, qui neminem vult perire, aliquod remedium procuraverit ad salutem. Ceterum ex vi literae satis patet, praedictas auctoritates intelligendas esse tantummodo de adultis, qui habent multitudinem peccatorum; quum de parvulis non possit intelligi, qui peccato tantum originali tenentur. Similiter et illa *alia* auctoritas est solvenda : " Qui crediderit, et baptizatus fuerit etc., " quum non possint credere parvuli, sed adulti. Et ob hoc tota auctoritas hic intelligenda est *solummodo* de adultis, nec ad alios prima, et ad alios secunda clausula referatur; quamvis nonnulli concedant, quod parvuli credunt non per usum, sed per habitum fidei, quem suscipiunt in baptismo, sicut et alia multa verba secundum communem usum loquendi non ad actum, sed ad aptitudinem referuntur. Illud vero, quod opponentes inducunt, fidem aut caritatem, aliasque virtutes parvulis, utpote non consentientibus, non infundi, a plerisque non conceditur absolute; quum propter hoc inter doctores theologos quaestio referatur, aliis asserentibus, per virtutem baptismi parvulis quidem culpam remitti, sed gratiam non conferri; nonnullis vero dicentibus, *et* dimitti peccatum, et virtutes infundi habentibus illas quoad habitum, non quoad usum, donec perveniant ad aetatem adultam. Verum quidam ex hac solutione invenisse se credunt viam ad alias quaestiones, argumentantes ex eo, quod dicimus, parvulis in baptismate peccatum originale dimitti, quod et adultis dormientibus vel amentibus peccatum, si baptizentur, ratione simili

dimittatur. Quum enim neutri sentiant tunc vel consentiant, dicunt, idem in consimilibus iudicandum. Hic vero dicimus distinguendum, quod peccatum est duplex, originale scilicet et actuale; originale, quod absque consensu contrahitur, *et* actuale, quod committitur cum consensu. Originale igitur, quod sine consensu contrahitur, sine consensu per vim remittitur sacramenti; actuale vero, quod *cum* consensu contrahitur, sine consensu minime relaxatur. Sed adhuc quaeritur, quare non saltem originale peccatum amentibus, et dormientibus in baptismo sicut parvulis dimittatur. Ad hoc est taliter respondendum, quod Dominus, qui totum hominem salvum fecit in sabbato, opus imperfectionis non novit, et ob hoc peccata non ex parte, sed ex toto dimittit. Praeterea poena originalis peccati est carentia visionis Dei; actualis vero poena peccati est gehennae perpetuae cruciatus. Unde, si dimitteretur alicui primum, altero non dimisso, talis non careret visione Dei propter originale dimissum, et cruciaretur in gehenna perpetuo propter reatum criminis actualis; sed haec tanquam incompassibilia sese minime patiuntur, immo sibi mutuo adversantur. Item vero quaeritur, utrum *huiusmodi* dormientibus et amentibus sacramenti saltem character in baptismate imprimatur, ut excitati a somno vel ab aegritudine liberati non sint denuo baptizandi. Sunt autem nonnulli, qui dicunt, quod sacramenta, quae per se sortiuntur effectum, ut baptismus et ordo ceteraque similia, non solum dormientibus et amentibus, sed invitis *etiam* et contradicentibus, etsi non quantum ad rem, quantum tamen ad characterem conferuntur, quum non solum parvuli, qui non consentiunt, sed et ficti, qui quamvis non ore, corde tamen dissentiunt, recipiant sacramentum. Sed opponitur talibus, quod, qui fuissent inviti et reluctantes immersi, saltem ratione sacramenti ad iurisdictionem ecclesiasticam pertinerent, unde ad servandam regulam fidei Christianae forent rationabiliter compellendi. Verum id est religioni Christianae contrarium, ut semper invitus et penitus contradicens ad recipiendam et servandam Christianitatem aliquis compellatur. Propter quod inter invitum et invitum, coactum et coactum alii non absurde distinguunt, quod is, qui terroribus atque suppliciis violenter attrahitur, et, ne detrimentum incurrat, baptismi suscipit sacramentum, talis *quidem*, sicut et is, qui ficte ad baptismum accedit, characterem suscipit Christianitatis impressum, et ipse, tanquam conditionaliter volens, licet absolute non velit, cogendus est [*tamen*] ad observantiam fidei Christianae. In quo casu debet intelligi decretum *illud* concilii Toletani, ubi dicitur, quod, qui iam pridem ad Christianitatem coacti sunt, sicut factum est temporibus religiosissimi principis Sisibuti, quia iam constat eos sacramentis divinis associatos, et baptismi gratiam suscepisse, et chrismate unctos esse, et corporis Domini exstitisse participes, oportet etiam, ut fidem, quam necessitate susceperunt, tenere cogantur, ne nomen Domini blasphemetur, et fides, quam susceperunt, vilis ac contemptibilis habeatur. Ille vero, qui nunquam consentit, sed penitus contradicit, nec rem, nec characterem suscipit sacramenti, quia plus est expresse contradicere quam minime consentire : sicut nec ille notam alicuius reatus incurrit, qui contradicens penitus et reclamans thurificare idolis cogitur violenter. Dormientes autem et amentes, si, priusquam amentiam incurrerent aut dormirent, in contradictione persisterent, quia in eis intelligitur contradictionis propositum perdurare, etsi fuerint sic immersi, characterem non suscipiunt sacramenti. Secus autem, si prius catechumeni exstitissent, et habuissent propositum baptizandi; unde tales in necessitatis articulo consuevit ecclesia baptizare. Tunc ergo characterem sacramentalis imprimit operatio, quum obicem voluntatis contrariae non invenit obsistentem.

Chapter IV

Latin source headnote: No one can baptize himself, even when the point of necessity is imminent.

The same, to the Bishop of Metz.

You discharge the obligation *of the pastoral office when you ask to be instructed by a response of the Apostolic See concerning doubtful points of law*. Indeed, *by your letters to us* you intimated that a certain Jew, placed at

the point of death, since he was among Jews only, immersed himself in water, saying: "I baptize myself in the name of the Father, and of the Son, and of the Holy Spirit, amen." *But now you ask whether the same Jew, persevering in devotion to the Christian faith, ought to be baptized. We, however, respond to your fraternity in this manner:* Since there ought to be a distinction between the one baptizing and the one baptized, as is *clearly* gathered from the words of the Lord saying to the Apostles, "Go, baptize all nations in the name of the Father, and of the Son, and of the Holy Spirit," the aforesaid Jew must be baptized anew by another, so that it may be shown that one is he who is baptized and another he who baptizes.

To signify this also, Christ himself willed to be baptized not by himself but by John; although, if such a man had died immediately, he would at once have flown to the heavenly homeland on account of faith in the sacrament, even if not on account of the sacrament of faith. For in baptism that spiritual generation is celebrated concerning which the Truth says: "You must be born anew, because, unless one has been reborn from water and the Holy Spirit, he shall not enter the kingdom of heaven." Therefore, just as in carnal generation, by which offspring is born from man and woman, one is he who carnally begets and another *is* he who is carnally begotten, so *also* in sacramental generation, by which offspring is reborn from water and the Holy Spirit, one ought to be he who spiritually generates and another he who is spiritually generated. Indeed, whether the exterior body or the interior heart is baptized, it is necessary that in each case paternity and filiation be capable of being found, by which the one baptizing and the one baptized are referred to each other. [*But the second, etc.* (*cf. c.* 5, *On Bigamists I.* 21.) *Given at Ferentino, on the fifth day before the Kalends of September, in the ninth year* 1206.]

> Nemo potest se ipsum baptizare, etiam instante necessitatis articulo.
>
> Idem Metensi Episcopo.
>
> Debitum +*pastoralis officii exsolvis, quum super dubiis iuris articulis responso sedis apostolicae postulas edoceri*. Sane *per tuas nobis literas* intimasti, quod quidam Iudaeus, in mortis articulo constitutus, quum inter Iudaeos tantum exsisteret, in aquam se ipsum immersit, dicendo : " ego baptizo me in nomine Patris, et Filii, et Spiritus sancti, amen. " *Nunc autem quaeris, utrum idem Iudaeus, in devotione Christianae fidei perseverans, debeat baptizari. Nos autem fraternitati tuae taliter* Respondemus, quod, quum inter baptizantem et baptizatum debeat esse discretio, sicut ex verbis Domini colligitur *evidenter*, dicentis Apostolis : " Ite, baptizate omnes gentes in nomine Patris, et Filii et Spiritus sancti, " memoratus Iudaeus est denuo ab alio baptizandus, ut ostendatur, quod alius est, qui baptizatur, et alius, qui baptizat. Ad quod etiam designandum ipse Christus non a se ipso, sed a Ioanne voluit baptizari, quamvis, si talis continuo decessisset, ad coelestem patriam protinus evolasset propter sacramenti fidem, etsi non propter fidei sacramentum. In baptismo quippe illa spiritualis generatio celebratur, de qua Veritas ait : " Oportet vos nasci denuo, quia, nisi quis renatus fuerit ex aqua et Spiritu sancto, non intrabit in regnum coelorum. " Sicut ergo in carnali generatione, qua proles ex viro et femina nascitur, alius est, qui carnaliter gignit, et alius *est*, qui carnaliter gignitur, sic *et* in sacramentali generatione, qua soboles ex aqua et Spiritu sancto renascitur, alius debet esse, qui spiritualiter generet, et alius, qui spiritualiter generetur. Sane, quum corpus exterius, sive quum cor interius baptizatur, oportet, ut utrobique paternitas et filiatio valeat inveniri, quibus baptizans et baptizatus adinvicem referantur. [*Secundus autem etc.* (*cf. c.* 5. *de big. I. * 21.) *Dat. Ferentini V. Kal. Sept. Ao. IX.* 1206.]

Chapter V

Latin source headnote: Where the word or the element of water is lacking, there is no sacrament of baptism.

The same, to the Bishop of Moros.

Not that you might add *knowledge to yourself, as we believe, but that through the oracle of our word you might better instruct the ignorance of your subjects, you asked that an apostolic response be made* as to whether those little children are to be held as Christians whom, placed at the point of death, the simplicity of certain persons, on account of a scarcity of water and the absence of a priest, anointed upon the head and breast and between the shoulders by sprinkling saliva in place of baptism. We respond that, since in baptism two things, namely the word and the element, are always required of necessity, according as the Truth says concerning the word, "Going into the whole world, preach the Gospel to every creature, and baptize all nations in the name of the Father, and of the Son, and of the Holy Spirit," and the same says concerning the element, "Unless one has been reborn from water and the Holy Spirit, he shall not enter the kingdom of heaven," you ought not to doubt that those in whom not only both of the aforesaid things but one of them has been omitted do not have true baptism. [*Given at Rome, at Saint Peter's, on the Kalends of March, in the ninth year of our pontificate.* 1206.]

> Ubi deest verbum vel elementum aquae, non est baptismi sacramentum.
>
> Idem Morosiensi Episcopo.
>
> Non ut apponeres +*tibi scientiam, sicut credimus, sed ut per oraculum verbi nostri tuorum ignorantiam subditorum melius erudires, apostolicum tibi responsum fieri* Postulasti, utrum parvuli sint pro Christianis habendi, quos, in articulo mortis constitutos, propter aquae penuriam et absentiam sacerdotis aliquorum simplicitas in caput et pectus ac inter scapulas pro baptismo salivae conspersione linivit. Respondemus, quod, quum in baptismo duo semper, videlicet verbum et elementum, necessario requirantur, iuxta quod de verbo Veritas ait : " Euntes in mundum universum praedicate evangelium omni creaturae, et baptizate omnes gentes in nomine Patris, et Filii et Spiritus sancti, " eademque dicat de elemento : " Nisi quis renatus fuerit ex aqua et Spiritu sancto, non intrabit in regnum coelorum : " dubitare non debes, illos verum non habere baptismum, in quibus non solum utrumque praedictorum, sed eorum alterum est omissum. [*Dat. Rom. ap. S. Petr. Kal. Mart. Pont. nostr. Ao. IX.* 1206.]

Chapter VI

Latin source headnote: Greeks ought not to rebaptize those baptized by Latins.

The same, in the General Council.

Although we wish to cherish and honor Greeks returning [*in*] our days to the obedience of the Apostolic See, sustaining their customs and rites insofar as we can with the Lord, nevertheless we neither wish nor ought to defer to them in those things which generate danger to souls and derogate from ecclesiastical honor. For after the Greek Church, with certain accomplices and supporters of its own, withdrew itself from the obedience of the Apostolic See, the Greeks began to abominate the Latins to such an extent that, among other things which they impiously committed in derogation of them, if at any time Latin priests had celebrated upon their altars, they themselves did not sacrifice upon them before they had washed them, as though polluted by this. The Greeks themselves also presumed with rash daring to rebaptize those baptized by Latins, and even now, as we have received, certain persons do not fear to do this. Wishing therefore to remove so great a scandal from the

Church of God, at the persuasion of the sacred council we strictly command that henceforth they not presume such things, conforming themselves as sons of obedience to the sacrosanct Roman Church, their mother, so that there may be one fold and one shepherd. But if anyone presumes anything such, struck by the sword of excommunication, let him be deposed from every ecclesiastical office and benefice.

> Baptizatos a Latinis Graeci rebaptizare non debent.
>
> Idem in concilio generali.
>
> Licet Graecos [*in*] diebus nostris ad obedientiam sedis apostolicae revertentes fovere ac honorare velimus, mores ac ritus eorum, in quantum cum Domino possumus, sustinendo : in his tamen illis deferre non volumus, nec debemus, quae periculum generant animarum et ecclesiasticae derogant honestati. Postquam enim Graecorum ecclesia cum quibusdam complicibus et fautoribus suis ab obedientia sedis apostolicae se subtraxit, in tantum Graeci coeperunt abominari Latinos, quod inter alia, quae in derogationem eorum impie committebant, si quando sacerdotes Latini super eorum celebrassent altaria, non prius ipsi sacrificabant in ipsis, quam ea, tanquam per hoc inquinata, lavissent. Baptizatos etiam a Latinis ipsi Graeci rebaptizare ausu temerario praesumebant, et adhuc, sicut accepimus, quidam hoc agere non verentur. Volentes igitur tantum scandalum ab ecclesia Dei amovere, sacro suadente concilio districte praecipimus, ut talia de cetero non praesumant, conformantes se tanquam filii obedientiae sacrosanctae Romanae ecclesiae matri suae, ut sit unum ovile et unus pastor. Si quis autem tale quid praesumpserit, excommunicationis mucrone percussus ab omni officio et beneficio ecclesiastico deponatur.

Title XLIII: On an Unbaptized Priest

Chapter I

Latin source headnote: If one not baptized is ordained, he does not receive the character of order.

From the Council at Compiègne.

If anyone ordained a priest discovers that he has not been baptized, let him be baptized and ordained again.

> **DE PRESBYTERO NON BAPTIZATO.**
>
> Si non baptizatus ordinatur, ordinis characterem non recipit.
>
> Ex concilio apud Compendium.
>
> Si quis presbyter ordinatus deprehenderit, se non esse baptizatum, baptizetur, et iterum ordinetur.

Chapter II

Latin source headnote: Omission of baptism does not harm one who probably believes himself to have been baptized.

Innocent III, to the Bishop of Cremona.

You resolved to consult the Apostolic See, *our venerable brother, as you ought*. (And below:) Whence we respond to your inquiry in this manner: we assert without hesitation, *from the authority of the holy Fathers Augustine and Ambrose*, that the priest whom you signified *by your letters* to have closed his last day without the water of baptism, because he persevered in the faith of holy Mother Church and in

confession of the name of Christ, was freed from original sin and attained the joy of the heavenly homeland. Read, *brother*, in the eighth book of Augustine's *City of God*, where among other things it is read: "Baptism is ministered invisibly to him whom not contempt of religion but the limit of necessity excludes." Examine also the book of Blessed Ambrose on the death of Valentinian, asserting the same. Therefore, with the questions put to rest, hold the opinions of the learned Fathers, and command continual prayers and sacrifices to be offered to God in your church for the aforesaid priest.

> Omissio baptismi non nocet credenti probabiliter, se esse baptizatum.
>
> Innocentius III. Episcopo Cremonensi.
>
> Apostolicam sedem, *venerabilis frater noster, ut debuisti*, consulere decrevisti. (*Et infra:*) Unde inquisitioni tuae taliter respondemus, presbyterum, quem sine unda baptismatis extremum diem clausisse *literis tuis* significasti, quia in sanctae matris ecclesiae fide et Christi nominis confessione perseveravit, ab originali peccato solutum, et coelestis patriae gaudium esse adeptum, *ex auctoritate sanctorum Patrum Augustini atque Ambrosii* asserimus incunctanter. Lege, *frater*, super octavo libro Augustini de civitate Dei, ubi inter cetera legitur : " Baptismus invisibiliter ministratur, quem non contemptus religionis, sed terminus necessitatis excludit. " Librum etiam B. Ambrosii de obitu Valentiniani idem asserentis revolve. Sopitis igitur quaestionibus doctorum Patrum sententias teneas, et in ecclesia tua iuges preces hostiasque Deo offerri iubeas pro presbytero memorato.

Chapter III

Latin source headnote: One not baptized cannot be ordained, and, if in fact he is ordained, he does not receive the character of order, although he was believed to have been baptized.

The same, to the Bishop of Ferrara.

Coming to the Apostolic See, *the beloved son* I., bearer of the present letters, explained to us that, after he had ascended *through each order as far as* the grade of priesthood, he finally discovered *for certain* that he had not been baptized according to the form of the Gospel; whence we caused him to be duly baptized *by our venerable brother N., Bishop of Tusculum*. And when there had been a rather lengthy disputation *before us* concerning the orders, certain persons inclined to this opinion: that, since baptism is the foundation of all the sacraments, another sacrament is not received before the reception of baptism, because, where there is no foundation, nothing can be built upon it.

But on the contrary it could seem otherwise. For since someone is made beyond doubt a member of Christ not only through the sacrament of faith but also through faith in the sacrament, and he who has Christ through faith, even if he does not have baptism, certainly has the foundation other than which no other can be laid, which is Christ Jesus, he appears able to build upon it both saving works and any ecclesiastical sacraments. For it is not generally true, either of the new or of the old sacraments, that baptism is their foundation, because both the sacrament of marriage and *also the sacrament* of the Eucharist can be received by the unbaptized. Furthermore, the sacrament of order, not only pontifical but also priestly and Levitical, by its institution preceded baptism, from which it perhaps appears that before baptism orders of this kind could duly be conferred, especially upon those who are believed to be baptized.

For what if perhaps he who is believed to have been baptized, and has not been, has at least in fact been consecrated a bishop? Will all who were ordained by him have to be reordained? And since concerning many bishops it is not known whether they were reborn by the water of baptism, because neither they themselves remember this nor do

others, is it therefore doubted whether such men were truly consecrated as bishops? Whence it is better to be silent than to say how many and how great things follow that are not only incongruous but absurd.

But because in the Council at Compiègne it is read to have been established that, if anyone ordained a priest discovers that he has not been baptized, he is to be baptized and ordained again, we, following in this doubtful case what is safer concerning the bearer of the present letters, command *your fraternity by apostolic writings* that you take care to promote him through each order as far as the priesthood, and permit him to minister in the priesthood, because that is not understood to be repeated which it is uncertain was done. Nor is there a bad judgment concerning the sacrament when not contempt of religion but the point of necessity excludes it. And certainly, concerning one who, born of Christian parents, has lived faithfully among Christians, it is so forcibly presumed that he was baptized that this presumption is to be held as certainty until perhaps the contrary is proved by the most evident arguments. [*Given at Rome, at Saint Peter's, on the Ides of April, in the ninth year.* 1206.]

> Non baptizatus ordinari non potest, et, si de facto ordinetur, non recipit ordinis characterem, licet credebatur baptizatus.
>
> Idem Ferrariensi Episcopo.
>
> Veniens ad apostolicam sedem *dilectus filius* I. lator praesentium nobis exposuit, quod, quum *per singulos ordines usque* ad gradum sacerdotii adscendisset, comperit tandem *pro certo*, quod non fuerit secundum formam evangelii baptizatus, unde nos eum *per venerabilem fratrem nostrum N. Tusculanum episcopum* rite fecimus baptizari. Quumque super ordinibus *coram nobis* fuisset diutius disputatum, quidam in eam declinaverunt sententiam, ut, quum baptismus sit fundamentum omnium sacramentorum, ante susceptionem baptismi non suscipiatur aliud sacramentum, quoniam, ubi fundamentum non est, superaedificari non potest. Porro econtra videri posset. Nam quum quis non solum per sacramentum fidei, sed per fidem etiam sacramenti efficiatur procul dubio membrum Christi, et qui Christum habet per fidem, etiamsi baptismum non habeat, habet utique fundamentum, praeter quod aliud poni non potest, quod est Christus Iesus : superaedificare posse videtur, sicut salutifera opera, sic et quaelibet ecclesiastica sacramenta, quum illud non sit generaliter verum, neque de novis, neque de veteribus sacramentis, quod baptismus sit fundamentum illorum, quoniam et sacramentum coniugii et *sacramentum etiam* eucharistiae a non baptizatis recipi potest. Praeterea sacramentum ordinis non solum pontificalis, sed sacerdotalis etiam et levitici ex institutione sua praecessit baptismum, per quod forsitan videtur, quod ante baptismum huiusmodi ordines possent rite conferri, maxime his, qui baptizati esse creduntur. *Quid enim, si forsitan is, qui baptizatus esse creditur, et non est, in episcopum saltem de facto fuerit consecratus? Eruntne reordinandi omnes, qui ab eo fuerint ordinati? Et quum de pluribus episcopis nesciatur, an renati fuerint aqua baptismatis, quum hoc nec ipsi reminiscantur, nec alii: dubitatur igitur, an tales sint veraciter in episcopos consecrati? Unde quot et quanta sequantur non solum absona, sed absurda, silendum est potius quam dicendum*. Quia vero in concilio apud Compendium legitur constitutum, quod, si quis in presbyterum ordinatus deprehenderit, se non esse baptizatum, baptizetur, et iterum ordinetur : nos circa latorem praesentium in hoc dubitabili casu quod tutius est sequentes, *fraternitati tuae per apostolica scripta* mandamus, quatenus ipsum per singulos ordines usque ad sacerdotium promovere procures, et permittas, eum in sacerdotio ministrare, quia non intelligitur iteratum quod ambigitur esse factum. Nec male de sacramento sentitur, quum illud non religionis contemptus, sed articulus necessitatis excludit. Et certe de illo, qui natus de Christianis parentibus, et inter Christianos est fideliter conversatus, tam violenter praesumitur, quod fuerit baptizatus, ut haec praesumptio pro certitudine sit habenda, donec evidentissimis forsitan argumentis contrarium probaretur. [*Dat. Rom. ap. S. Petr. Id. April. Ao. IX.* 1206.]

Title XLIV: On the Custody of the Eucharist, Chrism, and the Other Sacraments

Chapter I

Latin source headnote: The Eucharist and chrism ought faithfully to be kept under keys, and those acting contrary are to be punished.

Innocent III, in the General Council.

We establish that in all churches chrism and the Eucharist are to be preserved under faithful custody with keys applied, lest a rash hand be capable of being extended to them for the perpetration of any horrible or nefarious things. But if he to whom the custody pertains should leave them incautiously, let him be suspended from office for three months; and, if through his carelessness any nefarious thing should happen from this, let him be subject to a graver punishment.

> **DE CUSTODIA EUCHARISTIAE, CHRISMATIS ET ALIORUM SACRAMENTORUM.**
>
> Eucharistia et chrisma debent fideliter sub clavibus custodiri, et contra fecientes sunt puniendi.
>
> Innocentius III. in concilio generali.
>
> Statuimus, ut in cunctis ecclesiis chrisma et eucharistia sub fideli custodia clavibus adhibitis conserventur, ne possit ad illa temeraria manus extendi ad aliqua horribilia vel nefaria exercenda. Si vero is, ad quem spectat custodia, ea incaute reliquerit, tribus mensibus ab officio suspendatur, et, si per eius incuriam aliquid nefandum inde contigerit, graviori subiaceat ultioni.

Chapter II

Latin source headnote: Household goods ought not to be placed in churches unless necessity presses. This it says first. Churches ought to keep their vessels and vestments clean. This second.

The same, in the same council.

We do not wish to leave uncorrected the fact that certain clerics so fill churches with their own household goods, and even those of others, that they appear to be lay houses rather than basilicas of God, not considering that the Lord did not permit a vessel to be carried through the temple. There are also others who leave not only the churches uncared for, but also the vessels of ministry, the vestments of the ministers, the altar cloths, and even *the* corporals themselves so unclean that at times they are a horror to some. But because zeal for the house of God consumes us, we firmly prohibit household goods of this kind from being admitted into churches, unless on account of hostile incursions, sudden fires, or other pressing necessities it is necessary to take refuge in them, yet in such a way that, when the necessity ceases, the things are carried back to their former places. We command also that the aforesaid oratories, vessels, corporals, and vestments be preserved clean and bright. For it appears excessively absurd to neglect in sacred things filth that would be unbecoming even in profane things.

> Supellectilia in ecclesiis poni non debent, nisi necessitas urgeat. Hoc dicit primo. Ecclesiae debent sua vasa et vestimenta munde tenere. Hoc secundo.
>
> Idem in eodem.
>
> Relinqui nolumus incorrectum, quod quidam clerici ecclesias sic exponunt suppellectilibus propriis, et etiam alienis, ut potius domus laicae, quam Dei basilicae videantur, non considerantes, quod Dominus non sinebat, ut vas transferretur per templum. Sunt et alii, qui non solum ecclesias dimittunt incultas,

verum etiam vasa ministerii, et vestimenta ministrorum, ac pallas altaris, nec non *et* ipsa corporalia tam immunda relinquunt, quod interdum aliquibus sunt horrori. Quia vero zelus nos comedit domus Dei, firmiter prohibemus, ne huiusmodi suppellectilia in ecclesiis admittantur, nisi propter hostiles incursus, aut incendia repentina, seu alias necessitates urgentes ad eas oporteat haberi refugium, sic tamen, ut necessitate cessante, res in loca pristina reportentur. Praecipimus quoque, ut oratoria, vasa, corporalia et vestimenta praedicta munda et nitida conserventur. Nimis enim videtur absurdum in sacris sordes negligere, quae dedecerent etiam in profanis.

Title XLV: On Relics and the Veneration of Saints

Chapter I

Latin source headnote: Without the Pope's permission it is not lawful to venerate anyone as a saint.

Alexander III.

We have heard that there are certain persons among you *who*, deceived by diabolical fraud, venerate after the manner of unbelievers as though a saint a certain man killed in drinking and drunkenness, although the Church scarcely permits prayer for such persons killed in drunkenness. For the Apostle says *that drunken men* will not possess the kingdom of God. Therefore do not presume henceforth to honor *that man*, since, even if *very many* miracles were done through him, it would not be lawful for you *publicly* to venerate him as a saint without the authority of the Roman Church.

DE RELIQUIIS ET VENERATIONE SANCTORUM.

Sine Papae licentia non licet aliquem venerari pro sancto.

Alexander III.

Audivimus, quod quidam inter vos *sint, qui* diabolica fraude decepti, hominem quendam in potatione et ebrietate occisum quasi sanctum more infidelium venerantur, quum vix pro talibus in ebrietatibus peremptis ecclesia permittat orare. Dicit enim Apostolus : " *quod* ebriosi *homines* regnum Dei non possidebunt. " Illum ergo *hominem* non praesumatis de cetero colere, quum, etiamsi per eum miracula *plurima* fierent, non liceret vobis ipsum pro sancto absque auctoritate Romanae ecclesiae *publice* venerari.

Chapter II

Latin source headnote: Relics of saints cannot be sold, nor ought they to be displayed indiscriminately, lest the people be capable of being deceived concerning them.

Innocent III, in the General Council.

Since the Christian religion has often been disparaged by the fact that certain persons expose relics of saints for sale and display them indiscriminately, lest it be disparaged in the future, by the present decree we establish that from now on ancient relics are by no means to be displayed outside a reliquary or exposed for sale. But let no one presume publicly to venerate those newly discovered unless they have first been approved by authority of the Roman Pontiff. Moreover, let prelates *henceforth* not permit those who approach their churches for the sake of veneration to be deceived by various inventions or false documents, as [*also*] has been accustomed to occur in very many places on the occasion of gain. [*Of alms, etc.* (*cf. c.* 14, *X. On Penance V.* 38.)]

Sanctorum reliquiae vendi non possunt, vel passim ostendi non debent, ne circa illas populus decipi possit.

Innocentius III. in concilio generali.

Quum ex eo, quod quidam sanctorum reliquias exponunt venales, et eas passim ostendunt, Christianae religioni detractum sit saepius, ne in posterum detrahatur, praesenti decreto statuimus, ut antiquae reliquiae amodo extra capsam nullatenus ostendantur, nec exponantur venales. Inventas autem de novo nemo publice venerari praesumat, nisi prius auctoritate Romani Pontificis fuerint approbatae. Praelati vero *de cetero* non permittant eos, qui ad eorum ecclesias causa venerationis accedunt, variis figmentis aut falsis documentis decipi, sicut [*et*] in plerisque locis occasione quaestus fieri consuevit. [*Eleemosynarum etc.* (*cf. c.* 14. *X. de poenit. V.* 38.)]

Title XLVI: On the Observance of Fasts

Chapter I

Latin source headnote: A vigil falling on Sunday ought to be fasted on Saturday, and the vigil of Blessed Matthias is to be fasted.

Innocent III, to the Clerics of Saint Peter of Maguelonne.

It was asked on your part *of us* whether, if the Nativity of the Lord, the Assumption of Blessed Mary, or the feast of one of the Apostles happens to fall on the second day of the week, the vigil ought to be fasted on the preceding Saturday, and whether a fast is to be enjoined on the vigil of Blessed Matthias the Apostle. To this we respond briefly that [*both*] on Saturday the vigils of the aforesaid feasts preceding the second day of the week and the vigil of Blessed Matthias the Apostle ought to be fasted. [*Moreover, etc.* (*cf. c.* 5, *On the Celebration of Masses III.* 41.) *Given at Rome, at Saint Peter's, on the Nones of November.* 1204.]

DE OBSERVATIONE IEIUNIORUM.

Vigilia, occurens in dominica, ieiunari debet in sabbato, et ieiunanda est vigilia B. Matthiae.

Innocentius III. Clericis S. Petri Magalonensis.

Ex parte vestra quaesitum fuit *a nobis*, utrum, si Nativitatem Domini, vel Assumptionem beatae Mariae, vel festivitatem alicuius Apostolorum in secunda feria contigerit evenire, die sabbati praecedentis vigilia debeat ieiunari, et utrum in vigilia B. Matthiae Apostoli sit ieiunium iniungendum. Ad quod breviter respondemus, quod [*et*] die sabbati festivitates praelibatas secundae feriae praecedentis et B. Matthiae Apostoli debet vigilia ieiunari. [*Insuper etc.* (*cf. c.* 5. *de celebr. miss. III.* 41.) *Dat. Rom. ap. S. Petr. Non. Nov. * 1204.]

Chapter II

Latin source headnote: It does not admit of a fitting summary, and the text is sufficiently clear in itself, and many things are stated which are clear through the §§.

The same, to the Archbishop of Braga.

You sought our counsel *concerning certain articles: whether* [*namely*] *fasting is required on the vigils of all the Apostles, since many assert that fasting is not required on all, but only on six. Whether fasting is also required in Advent, since different persons think different things concerning this, some, but fewer, saying that fasting is required*

at that time, but more asserting that they are not held to this. Whether, moreover, if the feast of those whose vigils we fast happens to be celebrated on the second day of the week, the vigils are to be observed on the preceding Saturday. We, however, concerning this respond to your consultation in this manner: *among us* the vigils of all the Apostles are to be celebrated in the observance of fasting, except the vigils of the Apostles Philip and James and of Blessed John the Evangelist, because the solemnity of the former is celebrated within the Easter solemnity, but that of the latter within the Nativity of the Lord. A fast is also observed among us during the Advent of the Lord. The vigils of saints whose feasts must be celebrated on the second day of the week are also to be fasted on the preceding Saturday. But concerning the feast of Blessed Bartholomew the Apostle, concerning the celebration of which doubt arises among certain persons, *we respond to you seeking counsel* that in this you are to observe the custom of your region.

(And below: [*cf. c.* 4, *On the Celebration of Masses III.* 41.]) But since you asked what penance is to be enjoined upon those who during the days of Lent, at which time the privation of so great a famine pressed that a great part of the people perished on account of scarcity of grain, were compelled to eat meat, *we respond to you briefly* that we do not believe those persons are to be punished in such a case *whom so pressing a necessity excused*. Nevertheless, pour forth prayers to the Lord for them and with them, lest it be imputed to them in any way, because it belongs to good minds to fear guilt where guilt is not found at all.

Likewise, concerning those who, on account of the weakness *which they feel in themselves*, eat meat on Saturday *according to the custom of other lands*, which is by no means accustomed to be done in your parts, since this is borne with difficulty by others and from it arises for them an occasion of disparaging, we respond that concerning this you are to cause the custom of your region to be observed, yet in such a way that danger does not arise on this account for the weak and infirm.

Furthermore, *you asked to have an apostolic response* concerning those who become ill in Lent or on other solemn fasts and petition that the eating of meat be indulged to them, *some of whom promise that on this account they will give alms, but others, on account of the necessity of pressing illness, require that this be conceded to them by you as though from a debt. Concerning this we* respond to you that, since necessity is not subject to law, you can and ought to support the desire of the infirm when pressing necessity requires it, so that greater danger in them may be avoided. [*Given at Rome, at Saint Peter's, on the ninth day before the Kalends of March, in the eighth year of our pontificate.* 1206.]

> Non capit congruam summationem, et textus in se satis clarus est, et multa sunt dicta, quae patent per §§.
>
> Idem Bracharensi Archiepiscopo.
>
> Consilium nostrum +*super quibusdam articulis requisisti, utrum* [*videlicet*] *sit in omnibus Apostolorum vigiliis ieiunandum, quum plures asserant, non esse ieiunandum in omnibus, sed sex tantum. Utrum etiam ieiunandum sit in Adventu, quum inde sentiant diversi diversa, quibusdam dicentibus, sed paucioribus, ieiunandum esse tunc temporis, pluribus vero se ad hoc asserentibus non teneri. Utrum insuper, si festum illorum, quorum vigilias ieiunamus, secunda feria celebrari contingat, in praecedenti sabbato sint vigiliae faciendae. Nos autem super hoc* Consultationi tuae taliter respondemus, quod *apud nos* omnium Apostolorum vigiliae sunt in observatione ieiunii celebrandae, praeter vigilias Apostolorum Philippi et Iacobi, et B. Ioannis Evangelistae, quoniam ipsorum solennitas infra solennitatem paschalem, istius autem infra natalem Domini celebratur. Ieiunium etiam apud nos in adventu Domini agitur. Sanctorum quoque vigiliae, quorum festivitates

oportet secunda feria celebrari, in praecedenti sunt sabbato ieiunandae. De festivitate vero beati Bartholomaei Apostoli, de cuius celebratione dubietas oritur apud quosdam, *tibi petenti consilium* respondemus, quod in hoc consuetudinem tuae regionis observes. (*Et infra:* [*cf. c.* 4. *de cel. miss. III.* 41.]) Quum autem quaesieris, quae sit illis poenitentia iniungenda, qui diebus quadragesimalibus, quo tempore tantae famis inedia ingruebat, quod magna pars populi propter inopiam annonae periret, carnes comedere sunt coacti, *tibi breviter* respondemus, quod in tali articulo illos non credimus puniendos, *quos tam urgens necessitas excusavit*, preces tamen Domino pro illis et cum illis effundas, ne ipsis aliquatenus imputetur, quia bonarum mentium est, ibi timere culpam, ubi culpa minime reperitur. Item de illis, qui propter debilitatem, *quam in se sentiunt*, in sabbato *iuxta terrarum consuetudinem aliarum* carnes sumunt, quod in partibus tuis nullatenus fieri consuevit, quum hoc ab aliis moleste feratur, et oriatur inde illis occasio detrahendi, respondemus, quod super hoc consuetudinem tuae regionis facias observari, sic tamen, quod debilibus et infirmis propter hoc periculum non emergat. Praeterea *postulasti apostolicum responsum habere* de illis, qui in quadragesima vel in aliis ieiuniis solennibus infirmantur, et petunt sibi esum carnium indulgeri, *quorum quidam promittunt propter hoc eleemosynam se facturos, quidam vero propter necessitatem infirmitatis urgentis hoc a te sibi, quasi ex debito, concedi requirunt. Super quo tibi* respondemus, quod, quum non subiaceat legi necessitas, desiderium infirmorum, quum urgens necessitas exigit, supportare potes et debes, ut maius in eis periculum evitetur. [*Dat. Rom. ap. S. Petr. IX. Kal. Mart. Pont. nostr. Ao. VIII.* 1206.]

Chapter III

Latin source headnote: If the feast of the Nativity falls on the sixth day of the week, it is lawful for all to eat meat, except those professed and those making a vow.

Honorius III, to the Bishop of Prague.

You asked it to be explained through the Apostolic See *whether it is lawful for those who are bound neither by vow nor by regular observance to eat meat when the day of the Lord's Nativity falls on the sixth day of the week. To this* we respond that those who are bound neither by vow nor by regular observance, if the feast of the Lord's Nativity happens to come on that day, can eat meat on the sixth day of the week on account of the excellence of the feast, according to the custom of the universal Church. Nor nevertheless are those to be reproved who out of devotion wish to abstain. [*Given at the Lateran, on the fourth day before the Kalends of November, in the first year of our pontificate.* 1216.]

Si festum Nativitatis occurrit sexta feria, licitum est omnibus carnes comedere, exceptis professis et voventibus.

Honorius III. Pragensi Episcopo.

Explicari per sedem apostolicam postulasti, *+utrum sit licitum illis, qui nec voto, nec regulari observantia sunt adstricti, carnes comedere, quando in sexta feria dies dominicae Nativitatis occurrit. Ad hoc* Respondemus, quod illi, qui nec voto, nec regulari observantia sunt adstricti, in sexta feria, si festum nativitatis dominicae die ipso venire contigerit, carnibus propter festi excellentiam vesci possunt secundum consuetudinem ecclesiae generalis. Nec tamen hi reprehendendi sunt, qui ob devotionem voluerint abstinere. [*Dat. Lat. IV. Kal. Nov. Pont. nostr. Ao. I.* 1216.]

Title XLVII: On Purification after Childbirth

Sole Chapter

Latin source headnote: A woman after childbirth can enter a church immediately, and is not held to abstain for any days according to the Mosaic law.

Innocent III, to the Archbishop of Armagh.

Wishing *to be instructed by an apostolic response, your fraternity humbly requested of us whether women ought to enter churches immediately after childbirth or to abstain from entering them for some days*. Although *indeed*, according to the Mosaic law, certain days had been determined during which women after childbirth refrained from entering the temple, nevertheless, because the law was given through Moses, but grace and truth were made through Jesus Christ, *we, adhering to the footsteps of the holy Fathers*, respond to your inquiry in this manner: after the shadow of the law vanished and the truth of the Gospel shone forth, if women, after bringing forth offspring, wish to enter a church to give thanks, they are burdened by no weight of sin on that account, nor is access to churches to be denied to them *in any way*, lest punishment seem to be turned into guilt for them. If nevertheless out of reverence they wish to abstain for a time, we do not believe their devotion is to be disapproved. [*Given at the Lateran.* 1198.]

> **DE PURIFICATIONE POST PARTUM.**
>
> Mulier post partum statim potest ingredi ecclesiam, nec tenetur abstinere per aliquos dies secundum legem Mosaicam.
>
> Innocentius III. Armachano Archiepiscopo.
>
> Volens +*fraternitas tua per responsum apostolicum edoceri, humiliter a nobis expetiit, utrum mulieres statim post partum debeant ecclesias ingredi, vel ab earum ingressu per dies aliquot abstinere*. Licet *autem* secundum legem Mosaicam certi dies determinati fuissent, quibus mulieres post partum a templi cessarent ingressu : quia tamen lex per Moysen data est, gratia et veritas per Iesum Christum facta est, *nos, sanctorum Patrum vestigiis inhaerentes*, inquisitioni tuae taliter respondemus, quod, postquam umbra legis evanuit, et illuxit veritas evangelii, si mulieres, post prolem emissam acturae gratias ecclesiam intrare voluerint, nulla proinde peccati mole gravantur, nec est ecclesiarum eis aditus *aliquatenus* denegandus, ne poena illis converti videatur in culpam. Si tamen ex veneratione voluerint aliquamdiu abstinere, devotionem earum non credimus improbandam. [*Dat. Laterani.* 1198.]

Title XLVIII: On Churches to Be Built or Repaired

Chapter I

Latin source headnote: Those having a benefice in a church are held to contribute to its repair.

From the Council of Mainz.

Whoever have an ecclesiastical benefice are altogether to give assistance toward restoring the roofs of the church or repairing the churches themselves, *and are to render the ninth and the tenth*.

> **DE ECCLESIIS AEDIFICANDIS VEL REPARANDIS.**
>
> Habentes beneficium in ecclesia tenentur contribuere ad ipsius reparationem.
>
> Ex concilio Maguntino.

> Quicunque ecclesiasticum beneficium habent, omnino adiuvent ad tecta ecclesiae restauranda, vel ipsas ecclesias emendandas, *et nonam et decimam reddant*.

Chapter II

Latin source headnote: Lepers ought to be permitted, without prejudice to ancient parishes, to have their own church and priest, and they are not held to pay tithes from gardens or the nourishment of animals.

From the Lateran Council.

Since the Apostle says *that more abundant honor is to be shown to the lower members, certain persons, on the contrary, seeking the things that are their own, not those of Jesus Christ, do not permit lepers, who cannot dwell with the healthy or assemble at church with others, to have churches and cemeteries, nor to be assisted by the ministry of their own priest. Because this is known to be far from Christian piety, from the kindness of the Apostolic See* we establish that, wherever so many lepers have been gathered together under a common life that they are able to build a church with a cemetery for themselves and rejoice in their own priest, they are to be permitted to have them without any contradiction. Nevertheless, let them take care that they by no means exist as injurious to old churches in parochial right. For we do not wish that what is conceded to them for the sake of piety redound to the injury of others. We establish also that they are not to be compelled to render tithes from the gardens and nourishment of their animals.

> Leprosi permitti debent, sine praeiudicio antiquarum parochiarum, habere ecclesiam propriam et presbyterum, nec tenentur solvere decimas de hortis vel nutrimentis animalium.
>
> Ex concilio Lateranensi.
>
> Quum dicat Apostolus, *+abundantiorem honorem membris inferioribus deferendum, e contra quidam, quae sua sunt, non quae Iesu Christi, quaerentes, leprosis, qui cum sanis habitare, non possunt vel ad ecclesiam cum aliis convenire, ecclesias et coemeteria non permittunt habere, nec proprii iuvari ministerio sacerdotis. Quod quia procul a pietate Christiana esse dignoscitur, de benignitate sedis apostolicae* Constituimus, ut ubicunque tot simul leprosi sub communi vita fuerint congregati, quod ecclesiam cum coemeterio sibi construere, et proprio gaudere valeant presbytero, sine contradictione aliqua permittantur habere. Caveant tamen, ut iniuriosi veteribus ecclesiis de iure parochiali nequaquam exsistant. Quod enim eis pro pietate conceditur, ad aliorum iniuriam nolumus redundare. Statuimus etiam, ut de hortis et nutrimentis animalium suorum decimas tribuere non cogantur.

Chapter III

Latin source headnote: On account of the excessive distance of a church, a new church can be built in its parish, and a certain portion from the old one assigned to it.

Alexander III, to the Archbishop of York.

Know that it has come to our hearing that the village which is called H. is said to be so far distant from the parochial church that *in* wintertime, when the rains overflow, the parishioners cannot approach it without great difficulty, whence they are unable to attend ecclesiastical offices at a suitable time. Therefore, because the said church is said so to abound *in* revenues that its minister can suitably have support apart from the proceeds of that village, we command *your fraternity by apostolic writings* that, if the matter is thus, you build a church there and, with the obstacle of appeal removed, institute in it a priest upon the presentation of the rector of the greater church with the

canonical assent of the founder, who is to receive for his support the ecclesiastical revenues of the same village; nevertheless providing that suitable honor in it, according to the means of the place, be preserved for the mother church. This indeed appears capable of being done, since the lord of the same village wishes to confer twenty acres of fruitful land for the use of the priest. But if the person of the mother church should delay presenting a suitable man, or should wish to impede that work, you are nevertheless to cause the same work to be brought to completion, and not omit to institute a good man when the subterfuge of appeal has ceased.

> Propter nimiam distantiam ecclesiae potest nova ecclesia in ipsius parochia aedificari, et certa portio de antiqua sibi deputari.
>
> Alexander III. Eboracensi Archiepiscopo.
>
> Ad audientiam nostram noveris pervenisse, quod villa, quae dicitur H., tantum perhibetur ab ecclesia parochiali distare, ut *in* tempore hiemali, quum pluviae inundant, non possint parochiani sine magna difficultate ipsam adire, unde non valent congruo tempore ecclesiasticis officiis interesse. Quia igitur dicta ecclesia ita dicitur *in* reditibus abundare, quod praeter illius villae proventus minister illius convenienter valeat sustentationem habere, *fraternitati tuae per apostolica scripta* mandamus, quatenus si res ita se habet, ecclesiam ibi aedifices, et in ea sacerdotem, sublato appellationis obstaculo, ad praesentationem rectoris ecclesiae maioris cum canonico fundatoris assensu instituas, ad sustentationem suam eiusdem villae obventiones ecclesiasticas percepturum providens tamen, ut competens in ea honor pro facultate loci matrici ecclesiae servetur, quod quidem fieri posse videtur, quum eiusdem villae dominus viginti acras terrae frugiferae velit ad usus sacerdotis conferre. Si vero persona matricis ecclesiae virum idoneum praesentare distulerit, vel opus illud voluerit impedire, tu nihilominus facias idem opus ad perfectionem deduci, et virum bonum appellationis cessante diffugio instituere non omittas.

Chapter IV

Latin source headnote: Rectors of churches can be compelled to be held to contribute, from the revenues which remain over, to the construction or repair of a church.

The same, to the Bishop of Lisieux.

Concerning those *indeed* who have parochial churches, we have considered that response should be made *to your fraternity in this manner*: when there is need, they ought to be compelled to contribute to the repair and construction of the churches from the goods which belong to the church itself, if any remain over for them, so that by their example the others may be invited.

> Rectores ecclesiarum possunt compelli, ut de reditibus, qui supersunt teneantur conferre ad constructionem seu reparationem ecclesiae.
>
> Idem Lexoviensi Episcopo.
>
> De his *sane*, qui parochiales ecclesias habent, *fraternitati tuae taliter* duximus respondendum, quod ad reparationem et institutionem ecclesiarum cogi debent, quum opus fuerit, de bonis, quae sunt ipsius ecclesiae, si eis supersint, conferre, ut eorum exemplo ceteri invitentur.

Chapter V

Latin source headnote: A secular church can be restored to a regular state without prejudice to the clerics, and a privilege is not conferred upon a college that does not yet exist.

Urban III.

It came to our hearing *some time ago* that you desire to establish regular canons in the church *of Cologia*, from which you were called *and elected* to be bishop, *and suitably to provide for their institution from the goods conferred upon you*. Hence it is that, *commending in the Lord with praises in many ways your desire and purpose*, by apostolic authority we grant this to your devotion: *that, according to your vow, you may establish regular canons in the aforesaid church*, if the diocesan bishop consents to you in this matter, *to the honor of God and of your church according to the rule of Blessed Augustine, and institute them there with no one's contradiction or appeal standing in the way*. But if there *are* secular clerics in it *who* are known still to survive, we wish the necessities to be provided for them there or elsewhere, *according to the customs*, as long as they live. Although, moreover, you have petitioned us more insistently that we make a privilege of confirmation *concerning the canons* for the aforesaid church, we cannot by law defer to you, since no canons as yet exist there to whom a privilege may be conceded. *Indeed, when they have been instituted, both in these and in other things in which with God we shall be able, we shall more willingly defer to them in consideration of your prayers*.

> Saecularis ecclesia sine praeiudicio clericorum ad statum regularem potest reparari, et collegio, quod nondum est, privilegium non confertur.
>
> Urbanus III.
>
> Ad audientiam nostram *iam pridem* pervenit, quod tu in ecclesia *de Cologia*, de qua in episcopum vocatus *et electus* fuisti, regulares canonicos desideras ordinare, *et eorum institutioni de bonis tibi collatis congrue providere*. Inde siquidem est, quod *tuum nos desiderium atque propositum multis modis in Domino laudibus commendantes*, hoc devotioni tuae auctoritate apostolica indulgemus, *ut iuxta votum tuum canonicos regulares in ecclesia praescripta*, si tibi episcopus dioecesanus consenserit in hac parte, *ad honorem Dei et ecclesiae tuae secundum beati Augustini regulam valeas ordinare, et eos ibidem nullius contradictione et eos appellatione obstante instituere*. Verum si clerici saeculares in ea *fuerint, qui* adhuc superesse noscuntur, volumus eis, dum vixerint, ibi vel alibi necessaria *secundum consuetudines* provideri. Licet autem nobis instantius supplicaveris, ut ecclesiae praedictae confirmationis privilegium faceremus *de canonicis*, tibi non possumus de iure deferre, quum nulli canonici adhuc ibidem exsistant, quibus privilegium concedatur. *Eis utique, quum fuerint instituti, tam in his quam in aliis precum tuarum obtentu in quibus cum Deo poterimus libentius deferemus*.

Chapter VI

Latin source headnote: Notwithstanding an oath not to alienate the things of the church, a bishop can build a new church on account of need.

Celestine III.

Your [letter] has led us—(And below:) Furthermore, because, on the occasion of the oath which you assert that you furnished concerning not alienating the things of the church, you fear to erect churches in places of your episcopate in which the peoples dwelling there appear to need oratories *very greatly*, lest under pretext of new churches the church committed to you appear to be deprived, we command your fraternity *by notification of the present letters* that, on the occasion of that oath, you by no means omit salubriously to take care to provide for the needy people concerning the establishment of basilicas.

Non obstante iuramento de rebus ecclesiae non alienandis, potest episcopus propter indigentiam novam ecclesiam aedificare.

Coelestinus III.

Tua nos duxit (*Et infra:*) Praeterea, quia occasione iuramenti, quod de rebus ecclesiae non alienandis te asseris praestitisse, in locis tui episcopatus, in quibus populi habitantes oratoriis *plurimum* egere videntur, ne praetextu novarum ecclesiarum commissa tibi ecclesia destitui videatur, ecclesias formidas erigere, fraternitati tuae *praesentium significatione* mandamus, quatenus illius iuramenti occasione nullatenus praetermittas, quin populo indigenti super basilicarum institutione studeas salubriter providere.

Title XLIX: On the Immunity of Churches, Cemeteries, and Things Pertaining to Them

Chapter I

Latin source headnote: In houses of churches a lay judge ought neither to judge nor seek lodging.

From the Synod of Pope John.

In houses of churches, let neither an envoy, nor a count, nor a public judge, nor a minister claim a court session or lodging as though by custom; but let them establish houses in public places, in which they may hold court and also be lodged *according to ancient custom*.

DE IMMUNITATE ECCLESIARUM, COEMITERII, ET RERUM, AD EAS PERTINENTIUM.

In domibus ecclesiarum non debet iudex laicus iudicare, nec hospitium quaerere.

Ex synodo Ioannis Papae.

Ut in domibus ecclesiarum neque missus, neque comes vel iudex publicus, vel minister quasi pro consuetudine placitum vel hospitium vindicent, sed in publicis locis domos constituant, in quibus placitum teneant, et etiam *secundum antiquam consuetudinem* hospitentur.

Chapter II

Latin source headnote: In a time of great necessity no one ought to be excused from the watch of the walls or of the city. This is what it says according to the understanding of Panormitanus.

Gregory, to the Archbishop of Tricensis.

It has come—(And below:) Let your fraternity permit no one to be excused from the watches of the walls *either* by our name or that of his church, or in *any* other way; but let all be compelled generally to this, so that, with all keeping watch, the custody of the city may better be provided for [*with the Lord assisting*].

Tempore magnae necessitatis non debet aliquis excusari a murorum seu civitatis custodia H. d. secundum intellectum Panorm.

Gregorius Archiepiscopo Tricensi.

Pervenit (*Et infra:*) Fraternitas tua nullum *neque* per nostrae vel ecclesiae suae nomen aut *quolibet* alio modo excusari a murorum vigiliis patiatur; sed omnes ad hoc generaliter compellantur, quatenus cunctis vigilantibus melius [*auxiliante Domino*] valeat civitatis custodia procurari.

Chapter III

Latin source headnote: A peasant bound to cultivation of the fields of a church cannot abandon it. This is what it says, summarizing generally.

The same, to Vitalis, Defender of Sardinia.

It has been reported—(And below:) It has *also* been told to us that the peasants of the [*possession*] *of the same* [*church of Cagliari*], abandoning its fields, furnish the cultivation *of labor* upon the possessions of private persons, *from which circumstance* [*it is brought about that the possessions of the church, its own cultivator being occupied on the lands of others, waste away and do not exist as capable of paying their taxes;*] which let your experience not permit to occur.

> Rusticus, adstrictus ad culturam agrorum ecclesiae, non potest illam deserere H. d. summando generaliter.
>
> Idem Vitali Defensori Sardiniae.
>
> Indicatum est (*Et infra:*) Dictum est nobis *etiam*, quod rustici [*possessionis*] *eiusdem* [*Caralitanae*] ecclesiae, rura eius deserentes, in privatorum possessionibus culturam *laboris* exhibeant, *ex qua re* [*agitur, ut possessiones ecclesiae, proprio in aliis occupato cultore, depereant, atque ad tributa sua persolvenda idoneae non exsistant;*] quod experientia tua fieri non permittat.

Chapter IV

Latin source headnote: Lay persons imposing collections upon clerics or churches, or usurping their jurisdiction, if after being warned they do not desist, are excommunicated with their supporters; nevertheless a bishop with the clergy can furnish them subsidies in necessity.

From the Lateran Council.

No less *on account of the sin of those who do it than on account of the loss of those who sustain it, it is known to be exceedingly grave that*, in diverse parts of the world, consuls of cities and rectors, as well as others who appear to have power, frequently impose so many burdens upon churches, [*and*] *so press them with grave and repeated exactions*, that under them the priesthood appears to have been made of worse condition than it was under Pharaoh, who did not have knowledge of the divine law. He indeed, after all others had been subjected to servitude, left *his* priests and their possessions in their former freedom and administered sustenance to them from the public treasury. But these men impose nearly all their burdens upon churches and afflict them with so many forced services that *that* which Jeremiah laments appears to apply to them: "The princess of the provinces has been made tributary." Whether indeed they judge that ditches, expeditions, or any other things are to be carried out for them, they wish nearly all of them to be accomplished from the goods of churches and clerics assigned to the uses of the poor of Christ. They so nullify also the jurisdiction and authority *of bishops and other* prelates that no power appears to have remained to them over their own men. *Concerning this there is cause for grief* [*both*] *for the churches, and there is nonetheless cause for grief also for those very persons who appear wholly to have cast aside the fear of God and reverence for ecclesiastical order*.

Wherefore, under the rigor of anathema, we *more severely* prohibit things of this kind from being done henceforth, unless the bishop and clergy perceive so great a necessity or utility that, without any exaction, they judge that subsidies should be conferred through the churches toward relieving common utilities or necessities where the resources of lay persons do not suffice. But if the consuls

or others should commit these things henceforth, and, after being admonished, should *perhaps* be unwilling to desist, let them know that both they and their supporters are subject to excommunication, and let them not be restored to the communion [*of the faithful*] until they have made suitable satisfaction.

> Laici, collectas imponentes clericis vel ecclesiis, seu iurisdictionem eorum usurpantes, si moniti non desistunt, sunt excommunicati cum suis fautoribus; potest tamen episcopus cum clero eis in necessitate praebere subsidia.
>
> Ex concilio Lateranensi.
>
> Non minus +*pro peccato eorum, qui faciunt, quam pro illorum detrimento, qui sustinent, grave nimis esse dignoscitur, quod* In diversis mundi partibus consules civitatum et rectores, nec non et alii, qui potestatem habere videntur, tot onera frequenter imponunt ecclesiis, [*et*] *ita gravibus eas et crebris exactionibus premunt*, ut deterioris conditionis factum sub eis sacerdotium videatur, quam sub Pharaone fuerit, qui legis divinae notitiam non habebat. Ille quidem omnibus aliis servituti subactis sacerdotes *suos* et possessiones eorum in pristina libertate dimisit, et eis alimoniam de publico administravit. Isti vero onera sua fere universa imponunt ecclesiis, et tot angariis eas affligunt, ut eis *illud*, quod Hieremias deplorat, competere videatur : " Princeps provinciarum facta est sub tributo; " sive quidem fossata, sive expeditiones, seu alia quaelibet sibi arbitrentur agenda, de bonis ecclesiarum et clericorum et pauperum Christi usibus deputatis volunt fere cuncta compleri. Iurisdictionem etiam et auctoritatem *episcoporum et aliorum* praelatorum ita evacuant, ut nihil potestatis eis in suis videatur hominibus remansisse. *Super quo dolendum* [*est*] *pro ecclesiis, dolendum etiam est nihilominus pro ipsis, qui timorem Dei et ecclesiastici ordinis reverentiam videntur penitus abiecisse*. Quocirca sub anathematis districtione fieri de cetero talia *severius* prohibemus, nisi episcopus et clerus tantam necessitatem vel utilitatem adspexerint, ut absque ulla exactione ad relevandas communes utilitates, vel necessitates, ubi laicorum non suppetunt facultates, subsidia per ecclesias existiment conferenda. Si autem consules aut alii de cetero ista commiserint, et commoniti desistere *forte* noluerint, tam ipsi quam fautores eorum excommunicationi se noverint subiacere, nec [*fidelium*] communioni reddantur, donec satisfactionem fecerint competentem.

Chapter V

Latin source headnote: Causes of blood ought not to be conducted in a church or cemeteries.

Lucius III.

Since, according to evangelical truth, the Church of God ought to be a house of prayer, not a den of robbers or a forum of blood, under threat of anathema we prohibit secular judges from conducting in churches or cemeteries causes in which the shedding of blood and corporal punishment are at issue. For it is absurd and cruel that a judgment of blood be exercised where the protection of refuge is established.

> Causae sanguinis in ecclesia vel coemiteriis agitari non debent.
>
> Lucius III.
>
> Quum ecclesia Dei secundum evangelicam veritatem domus orationis esse debeat, non spelunca latronum aut sanguinis forum : saeculares iudices causas, ubi de sanguinis effusione et corporali poena agitur, in ecclesiis vel coemiteriis agitare sub interminatione anathematis prohibemus. Absurdum enim est et crudele, ibi iudicium sanguinis exerceri, ubi est tutela refugii constituta.

Chapter VI

Latin source headnote: One guilty of a crime who flees to a church is not to be drawn out of it violently, nor ought he any longer, under pretext of the crime committed, to be condemned to death or to another corporal punishment; nevertheless he is otherwise to be punished lawfully. It fails in the two cases expressed here. This is what it says first. A slave fleeing to a church out of fear of his master is to be restored to his master when the latter swears to his impunity. This is what it says second.

Innocent III, to the Illustrious King of Scotland.

Among other things *which royal providence intimated to us by its letters, it solicitously asked what ought to be done concerning those who, perpetrating crimes, flee to a church so that, through reverence for the sacred place, they may be able to avoid the punishments due. We therefore,* responding to your questions, according to the statutes of the sacred canons and the traditions of the civil laws, have considered that a distinction *in a matter of this kind* is to be made thus: one fleeing to a church exists either as a free man or a slave.

If free, however grave the crimes he has perpetrated, he is not to be drawn violently from the church, nor ought he thence to be condemned to death or to punishment; but the rectors of the churches ought to obtain his limbs and life for him. Nevertheless, concerning that which he did wickedly, he is otherwise to be punished lawfully. And this is true unless he was a public robber or a nocturnal devastator of fields, who, while he besets frequented ways or public roads with the snares of attack, *on account of the magnitude of the crime,* [*since he both impedes common utility and strives altogether to do harm,*] can be drawn from the church without impunity being furnished, according to the canonical sanctions.

But if it was a slave who fled to a church, after his master has furnished an oath to the clerics concerning his impunity, he is compelled to return to the service of his master even unwilling; otherwise he can be seized by the master. *Therefore, dearest son, when anything of these things happens in your kingdom, take care to proceed according to the aforesaid distinction in such a way that the honor and immunity of churches is preserved unharmed and the opportunity for acting wickedly is taken away from men of perverse will.* [*Given at the Lateran.* 1200.]

> Reus criminis, ad ecclesiam fugiens, non est violenter ab ea extrahendus, nec debet amplius praetextu criminis commissi damnari ad mortem vel ad aliam poenam corporalem: est tamen aliter legitime puniendus. Fallit in duobus casibus hic expressis. H. d. primo. Servus, fugiens ad ecclesiam timore domini sui, est domino, de eius impunitate iuranti, restituendus. H. d. secundo.
>
> Innocentius III. illustri Regi Scotiae.
>
> Inter alia, *+quae nobis regalis providentia suis literis intimavit, quid de illis fieri debeat, qui maleficia perpetrantes confugiunt ad ecclesiam, ut pro reverentia sacri loci debitas poenas valeant evitare, sollicite requisivit. Nos ergo,* Tuis quaestionibus respondentes, iuxta sacrorum statuta canonum et traditiones legum civilium ita duximus *in huiusmodi* distinguendum, quod fugiens ad ecclesiam aut liber, aut servus exsistit. Si liber, quantumcunque gravia maleficia perpetraverit, non est violenter ab ecclesia extrahendus, nec inde damnari debet ad mortem vel ad poenam; sed rectores ecclesiarum sibi obtinere debent membra et vitam. Super hoc tamen, quod inique fecit, est alias legitime puniendus; et hoc verum est, nisi publicus latro fuerit, vel nocturnus depopulator agrorum, qui, dum itinera frequentata vel publicas stratas obsidet aggressionis insidiis, *pro facinoris magnitudine,* [*quum et communem utilitatem impediat, et nocere omnino moliatur,*] ab ecclesia extrahi potest, impunitate non praestita, secundum canonicas sanctiones. Si

vero servus fuerit, qui confugerit ad ecclesiam, postquam de impunitate sua dominus eius clericis iuramentum praestiterit, ad servitium domini sui redire compellitur etiam invitus; alioquin a domino poterit occupari. *Tu ergo, fili carissime, quum in regno tuo aliquid horum contigerit, iuxta praemissam distinctionem sic procedere studeas quod honor ecclesiarum et immunitas servetur illaesa et malignandi facultas pravae voluntatis hominibus auferatur.* [*Dat. Laterani* 1200.]

Chapter VII

Latin source headnote: Clerics ought not to give assistance to the necessities or utilities of cities or other places, even where the resources of lay persons do not suffice, unless the Roman Pontiff is first consulted. This first. Judgments and constitutions issued by lay persons collecting from a church are void by the law itself and acquire no validity at any time. This second. Rectors excommunicated on account of the aforesaid burdens remain excommunicated even after office has been laid down; nonetheless their successors are excommunicated unless they have made satisfaction within a month. This third. It says this for greater explanation and for novices.

The same, in the General Council.

Wishing to provide for ecclesiastical immunity against consuls and rectors of cities, or others, who strive to burden churches and ecclesiastical men with tallages or collections and other exactions, the Lateran Council prohibited presumption of this kind under the rigor of anathema, and commanded transgressors and their supporters to be subject to excommunication until they have furnished suitable satisfaction. But if at any time perhaps a bishop together with the clerics perceives so great a necessity or utility that, without any compulsion, he considers that subsidies should be conferred through the churches toward relieving common utilities or necessities where the resources of lay persons do not suffice, let the aforesaid lay persons receive them humbly and devoutly with thanksgiving. Nevertheless, on account of the imprudence of certain persons, let the Roman Pontiff first be consulted, whose concern it is to provide for common utilities.

But because not even thus has the malice of certain persons against the Church of God grown quiet, we add that constitutions and judgments which have been promulgated by such persons or at their command are to be held vain and void, never to have force at any time. Moreover, because fraud and deceit ought to patronize no one, let no one be deceived by the vain error that he may sustain anathema during the term of his government as though after it he were not to be compelled to the debt of satisfaction. For we decree that both he himself who has refused to make satisfaction and his successor, unless he has made satisfaction within a month, remain enclosed by ecclesiastical censure until he has made suitable satisfaction, since he who is substituted in honor succeeds to the burden.

Clerici non debent necessitatibus seu utilitatibus civitatum seu aliorum locorum, etiam ubi laicorum non suppetunt facultates, subvenire, nisi prius Romanus Pontifex consulatur. Hoc primo Sententiae et constitutiones, editae a laicis collectantibus ecclesiam, sunt ipso iure irritae, nec ullo tempore convalescunt. Hoc secundo. Rectores, excommunicati ob gravamina praemissa, remanent excommunicati, etiam post depositum officium; nihilominus excommunicati sunt successores, nisi satisfecerint infra mensem. Hoc tertio. Hoc dicit ad maiorem declarationem et pro novitiis.

Idem in concilio generali.

Adversus consules et rectores civitatum, vel alios, qui ecclesias et ecclesiasticos viros talliis seu collectis et exactionibus aliis aggravare nituntur, volens immunitati ecclesiasticae Lateranense concilium

providere, praesumptionem huiusmodi sub anathematis districtione prohibuit, transgressores et fautores eorum excommunicationi subiacere praecepit, donec satisfactionem impenderint competentem. Verum, si quando forte episcopus simul cum clericis tantam necessitatem vel utilitatem perspexerit, ut absque ulla coactione ad relevandas utilitates vel necessitates communes, ubi laicorum non suppetunt facultates, subsidia duxerit per ecclesias conferenda, praedicti laici humiliter et devote recipiant cum gratiarum actione. Propter imprudentiam tamen quorundam Romanus Pontifex prius consulatur, cuius interest communibus utilitatibus providere. Quia vero nec sic quorundam malitia contra Dei ecclesiam conquievit, adiicimus, ut constitutiones et sententiae, quae a talibus vel de ipsorum mandato fuerint promulgatae, inanes et irritae habeantur, nullo unquam tempore valiturae. Ceterum, quia fraus et dolus alicui patrocinari non debent, nullus vano decipiatur errore, ut infra tempus regiminis sustineat anathema, quasi post illud non sit ad satisfactionis debitum compellendus. Nam et ipsum, qui satisfacere recusaverit, et successorem ipsius, nisi satisfecerit infra mensem, manere decernimus ecclesiastica censura conclusum, donec satisfecerit competenter, quum succedat in onere qui substituitur in honore.

Chapter VIII

Latin source headnote: Prelates extorting from subjects more than is due, under pretext of procuration or another service furnished to a legate or another, will restore it and bestow as much upon the poor.

The same, in the same council.

Because very many prelates, in order to furnish procuration or some service to a legate or another, extort more from their subjects than they pay, and, pursuing profits in their losses, seek booty rather than subsidy from subjects, we prohibit this from being done henceforth. But if anyone should perhaps presume to do it, let him both restore the things thus extorted and be compelled to bestow as much upon the poor. But the superior with whom a complaint [*concerning this*] has been lodged, if he has been negligent in the execution of this statute, is to be subject to canonical punishment.

Praelati, plus debito a subditis extorquentes, praetextu procurationis vel alterius servitii impensi legato vel alteri, illud restituent, et tantundem pauperibus erogabunt.

Idem in eodem.

Quia plerique praelati, ut procurationem aut servitium aliquod impendant legato vel alii, plus extorquent a subditis quam solvant, et in eorum damnis lucra sectantes quaerunt praedam potius quam subsidium in subiectis, id de cetero fieri prohibemus. Quod si quis forte praesumpserit, et sic extorta restituat, et tantundem cogatur pauperibus elargiri; superior autem, cui [*super hoc*] fuerit querela deposita, si negligens fuerit in huiusmodi exsecutione statuti, canonicae subiaceat ultioni.

Chapter IX

Latin source headnote: An unconsecrated church in which divine offices are celebrated enjoys immunity.

Gregory IX, to Astoricensis.

The privilege of immunity is taken away by no law from a church in which the divine mysteries are celebrated, although it has not yet been consecrated, because one dedicated to divine observances is to be profaned by no one's rash daring. [*If a church, etc.* (*cf. c.* 10, *On the Consecration of a Church III.* 40.) *Given at the Lateran, on the twelfth day before the Kalends of June.* 1233.]

Ecclesia non consecrata, in qua divina officia celebrantur, gaudet immunitate.

Gregorius IX. Astoricensi.

Ecclesiae, in qua divina mysteria celebrantur, licet adhuc non exstiterit consecrata, nullo iure privilegium immunitatis adimitur : quia obsequiis divinis dedicata nullius est temerariis ausibus profananda. [*Si ecclesia etc.* (*cf. c.* 10. *de cons. eccl. III.* 40.) *Dat. Lat. XII. Kal. Iun. * 1233.]

Chapter X

Latin source headnote: Those who commit offenses in churches or cemeteries under hope of immunity do not enjoy immunity.

The same, to the Archbishops of Toledo and Compostela.

Ecclesiastical immunity—(And below:) Certain persons, hoping to obtain impunity for their excesses through the protection of a church, do not fear to commit homicides and mutilations of limbs in the churches themselves or their cemeteries; which they would by no means have committed unless they believed themselves to be defended by the church to which they flee. (And below:) Since someone ought to be punished in that in which he offends, and he who commits an offense against the law invokes the aid of the law in vain, we command that you announce publicly that such persons ought not to enjoy the privilege of immunity, of which they make themselves unworthy.

Qui sub spe immunitatis in ecclesiis vel coemeteriis delinquunt, immunitate non gaudent.

Idem Toletano et Compostellano Archiepiscopis.

Immunitatem ecclesiasticam (*Et infra:*) Nonnulli, impunitatem suorum excessuum per defensionem ecclesiae obtinere sperantes, homicidia et mutilationes membrorum in ipsis ecclesiis vel earum coemiteriis committere non verentur : qui, nisi per ecclesiam, ad quam confugiunt, crederent se defendi, nullatenus fuerant commissuri. (*Et infra:*) Quum in eo, in quo delinquit, puniri quis debeat, et frustra legis auxilium invocet qui committit in legem : mandamus, quatenus publice nuncietis, tales non debere gaudere immunitatis privilegio, quo faciunt se indignos.

Title L: Lest Clerics or Monks Involve Themselves in Secular Business

Chapter I

Latin source headnote: The council enumerates many secular businesses from which it commands clerics and monks to abstain. And they are fourteen, if they are counted correctly.

From the Council of Mainz.

There are many secular businesses, of which let us touch briefly upon a few, to which all carnal concupiscence pertains. Whatever a man seeks beyond what is just is shameful gain. To receive or even give unjust gifts. To hire someone for payment for some secular gain. To love contentions, lawsuits, or quarrels. To argue in secular courts, except in defense of orphans or widows. To be lessees of secular things or procurators. To be a jester in shameful word or deed, or to love secular jest. To love games of chance. To seek adornment unfitting to one's profession. To wish to live in delights. To pursue gluttony and drunkenness. To have unjust weights or measures. To exercise unjust business.

Nevertheless, just business is not to be forbidden on account of diverse necessities, because we read that the holy Apostles engaged in business, and in the Rule of Blessed Benedict it is commanded that provision be made for those through whose hands the businesses of the monastery are administered. To follow dogs and birds for hunting, and to be engaged in any superfluous causes whatsoever. Behold, things such as these and similar things we altogether forbid to the ministers of the altar of the Lord, as well as to monks, concerning whom the Apostle says: "No one, serving as a soldier for God, involves himself in secular businesses."

> **NE CLERICI VEL MONACHI SAECULARIBUS NEGOTIIS SE IMMISCEANT.**
>
> Enumerat concilium multa saecularia negotia, a quibus iubet clericos et monachos abstinere. Et sunt XIV., si recte numerentur.
>
> Ex concilio Maguntino.
>
> Multa sunt negotia saecularia, de quibus pauca perstringamus, ad quae pertinet omnis carnalis concupiscentia. Quicquid plus iusto appetit homo, turpe lucrum est. Munera iniusta accipere vel etiam dare. Pro aliquo saeculari quaestu pretio aliquem conducere. Contentiones, vel lites, vel rixas amare. In placitis saecularibus disputare, excepta defensione orphanorum aut viduarum. Conductores saecularium rerum aut procuratores esse. Turpis verbi vel facti esse ioculatorem, vel iocum saecularem diligere. Aleas amare. Ornamentum inconveniens proposito suo quaerere. In deliciis vivere velle. Gulam et ebrietatem sequi. Pondera iniusta vel mensuras habere. Negotium iniustum exercere. Nec tamen iustum negotium est contradicendum propter necessitates diversas, quia legimus, sanctos Apostolos negotiatos fuisse, et in regula B. Benedicti praecipitur provideri, per quorum manus negotia monasterii procurentur. Canes et aves sequi ad venandum, et omnibus quibuslibet causis superfluis interesse. Ecce talia et his similia ministris altaris Domini, nec non et monachis omnino contradicimus, de quibus ait Apostolus : " Nemo, militans Deo, implicat se negotiis saecularibus. "

Chapter II

Latin source headnote: Clerics ought not to be ministers or procurators of lay persons; but if they act contrary and are detected in fraud, they are not assisted by the Church.

Pope Eugenius, to the Bishop of Lucca.

Moreover, you are to announce publicly to your priests and clerics that they are not to become ministers of lay persons, nor to exist as procurators in their affairs. But if afterward they presume to do this and, on the occasion of that administration, are detected in fraud concerning a pecuniary cause, it is unworthy that they be assisted by the Church, through whom it is established that scandal is generated in the Church.

> Clerici non debent esse ministri vel procuratores laicorum; quod si contra fecerint, et deprehendantur in fraude, non subvenitur eis ab ecclesia.
>
> Eugenius Papa Lucanensi Episcopo.
>
> Sacerdotibus *autem* et clericis tuis denuncies publice, ne ministri laicorum fiant, nec in rebus eorum procuratores exsistant. Quod si postmodum facere praesumpserint, et occasione ipsius administrationis propter pecuniariam causam deprehendantur in fraude, indignum est eis ab ecclesia subveniri, per quos constat in ecclesia scandalum generari.

Chapter III

Latin source headnote: Professed religious who go out to hear laws or medicine, unless they return to the cloister within two months, are excommunicated, and can act as advocate in no cause, and in choir, chapter, and other things they will be last, and without dispensation of the Pope they are not promoted.

Alexander III, in the Council of Tours.

The envy of the ancient enemy does not greatly labor *to cast down the weak members of the Church, but it puts its hand to her more desirable ones and strives also to supplant the elect, Scripture saying: "His foods are the elect." Indeed, it reckons that it accomplishes the fall of many where some more precious member of the Church has been brought down by its cunning. And* hence surely it is that, transfiguring itself in its accustomed manner into an angel of light, under pretext of taking counsel for the bodies of ailing brothers and of treating ecclesiastical businesses more faithfully, it leads certain regulars out of their cloisters to read laws and weigh medical preparations.

Whence, lest *under* occasion of knowledge spiritual men again be involved in worldly actions, *and fail in interior things from the very thing from which they think they provide for others in exterior things, with the assent of the present council* we establish that no persons whatsoever, after a vow of religion and after profession made in some religious place, are to be permitted to go out to read medicine or worldly laws. But if they have gone out and have not returned to their cloister within the space of two months, let them be avoided by all as excommunicates, and let them be heard in no cause if they wish to furnish advocacy. But, having returned, in choir, chapter, refectory, and other things let them [*always*] exist as last among the brothers, and, unless perhaps from the mercy of the Apostolic See, let them lose hope of every promotion.

> Religiosi professi, exeuntes ad audiendas leges vel physicam, nisi infra duos menses ad claustrum redeant, excommunicati sunt, et in nulla causa patrocinari possunt, et in choro, et in capitulo et ceteris erunt ultimi, et sine dispensatione Papae non promoventur.
>
> Alexander III. in concilio Turonensi.
>
> Non magnopere antiqui hostis invidia *+infirma membra ecclesiae praecipitare laborat, sed manum mittit ad desiderabiliora eius, et electos quoque nititur supplantare, dicente scriptura: "Escae eius electi. "Multorum siquidem casum operari se reputat, ubi pretiosius aliquod membrum ecclesiae sua fuerit calliditate detractum. Et* Inde nimirum est, quod in angelum lucis se more solito transfigurans, sub obtentu languentium fratrum consulendi corporibus et ecclesiastica negotia fidelius pertractandi, regulares quosdam ad legendas leges et confectiones physicales ponderandas de claustris suis educit. Unde, ne *sub* occasione scientiae spirituales viri mundanis rursus actionibus involvantur, *et in interioribus ex eo ipso deficiant, ex quo se aliis putant in exterioribus providere, per praesentis concilii assensum* statuimus, ut nulli omnino post votum religionis, et post factam in aliquo loco religioso professionem ad physicam legesve mundanas legendas permittantur exire. Si vero exierint, et ad claustrum suum infra duorum mensium spatium non redierint, sicut excommunicati ab omnibus evitentur, et in nulla causa, si patrocinium praestare voluerint, audiantur. Reversi autem in choro, capitulo, mensa et ceteris ultimi fratrum [*semper*] exsistant, et, nisi forte ex misericordia sedis apostolicae, totius spem promotionis amittant.

Chapter IV

Latin source headnote: A cleric who is the general procurator or justiciar of a secular prince is to be deposed, and, if he is a religious, he will be punished more gravely.

The same, in the Lateran Council.

But neither let any cleric presume to exercise the procurations of villages or even secular jurisdictions under any princes and secular men, so that he becomes their justiciar. But if anyone should attempt to act against these things, because, contrary to the teaching of the Apostle saying, "No one, serving as a soldier for God, is to involve himself in secular businesses," he acts secularly, let him be made alien from ecclesiastical ministry, because, neglecting clerical office, he immerses himself in the waves of the world so that he may please the powers [*of the world*]. We decree, however, that he is to be punished more rigorously if any one of the religious should dare to attempt any of the aforesaid things.

> Clericus, generalis procurator vel iustitiarius principis saecularis deponendus est, et, si religiosus est, gravius punietur.
>
> Idem in concilio Lateranensi.
>
> Sed nec procurationes villarum aut iurisdictiones etiam saeculares sub aliquibus principibus et saecularibus viris, ut iustitiarius eorum fiat, clericorum quisquam exercere praesumat. Si quis autem adversus haec venire tentaverit, quia contra doctrinam Apostoli, dicentis : " Nemo, militans Deo, implicet se saecularibus negotiis, " saeculariter agit ab ecclesiastico fiat ministerio alienus pro eo, quod, officio clericali neglecto fluctibus saeculi, ut potestatibus [*saeculi*] placeat, se immergit. Districtius autem decernimus puniendum, si religiosorum quisquam aliquid praedictorum ausus fuerit attentare.

Chapter V

Latin source headnote: A cleric exercising a judgment of blood is deposed from office and benefice, and one having the office of a secular provost is excommunicated if after being warned he does not desist.

The same, to the Archbishop of Canterbury.

According to the Council of Toledo, it is not lawful for clerics constituted in sacred orders to conduct a judgment of blood. Whence we prohibit them either from carrying out mutilations of limbs themselves or from judging that they are to be inflicted. But if anyone should do any such thing, let him be deprived of honor and place. We command also, under threat of anathema, that no priest is to have the office of sheriff or secular provost. (And below: [*cf. c.* 7, *On Life and Honorable Conduct III.* 1.]) But if anyone should presume to act contrary to this and, having been admonished, should be unwilling to amend, let him be subject to excommunication.

> Clericus, iudicium sanguinis exercens, ab officio et beneficio deponitur et excommunicatus est habens officium praepositi saecularis, si monitus non desistat.
>
> Idem Cantuariensi Archiepiscopo.
>
> Clericis, in sacris ordinibus constitutis, ex concilio Toletano iudicium sanguinis agitare non licet. Unde prohibemus, ne aut per se truncationes membrorum faciant, aut iudicent inferendas. Quodsi quis tale quid fecerit, honore privetur et loco. Iubemus etiam sub interminatione anathematis, ne quis sacerdos officium habeat vicecomitis aut praepositi saecularis. (*Et infra:* [*cf. c.* 7. *de vita et hon. III.* 1.]) Si quis

autem contra hoc venire praesumpserit, et commonitus emendare noluerit, excommunicationi subiaceat.

Chapter VI

Latin source headnote: It is not lawful for clerics or monks to engage in business for the sake of profit. This first. Monks cannot have leased possessions in their own name. This second. A church ought not to be conceded to lay persons under title of lease. This third.

The same, to the Bishop of London.

According to the statutes of our predecessors, under threat of anathema we prohibit monks or clerics from engaging in business for the sake of profit, and monks from having farms in their own name *either* from clerics or *from* lay persons, and lay persons from holding churches at farm.

> Non licet clericis vel monachis lucri causa negotiari. Hoc primo Monachi nequeunt nomine proprio conductas possessiones habere. Hoc secundo. Laicis non debet ecclesia titulo conductionis concedi. Hoc tertio.
>
> Idem Londonensi Episcopo.
>
> Secundum instituta praedecessorum nostrorum sub interminatione anathematis prohibemus, ne monachi vel clerici causa lucri negotientur, et ne monachi *vel* a clericis vel *a* laicis suo nomine firmas habeant, neque laici ecclesias ad firmam teneant.

Chapter VII

Latin source headnote: Incorrigible monks are expelled from a monastery, and the monastery will be reformed with brothers of another order if it cannot be reformed with monks of the same order.

The same, to the same.

It has been reported *to our ears* that the monks of H. live secularly and corrupt others by their example. And therefore we command that, with appeal removed, you compel them to observance of the *monastic* rule, or, if with rash daring they resist you, after they have been expelled, introduce into it brothers of another order if the aforesaid monastery cannot be reformed in its own order, so that the just may eat the labors of the impious and those men at last, covered with shame, may return to the observance of their order.

> Monachi incorrigibiles de monasterio expelluntur, et reformabitur monasterium de fratribus alterius ordinis, si de monachis eiusdem ordinis reformari non potest.
>
> Idem eidem.
>
> Relatum est *auribus nostris*, quod monachi de H. saeculariter vivunt, et alios exemplo suo corrumpunt. Ideoque mandamus, quatenus eos ad observantiam *monasticae* regulae appellatione remota compellas, vel, si tibi restiterint ausu temerario, eis eiectis, fratres alterius ordinis, si non potest praescriptum monasterium in suo ordine reformari, in illud inducas, ut labores impiorum iusti edant, et illi tandem rubore perfusi ad sui ordinis observantiam revertantur.

Chapter VIII

Latin source headnote: Clerics in sacred orders are to be compelled, through subtraction of benefices, to desist from exercise of the office of notary.

Innocent III, to the Bishop of Ascoli.

As we received from your report, *when our venerable brother the Bishop of Ostia, formerly passing through your city, gave you a command that you bind with the bond of excommunication the priests, deacons* [*and subdeacons*] *whom he found there indiscriminately exercising the office of notary, and those who received public instruments from them, you, although you did this, afterward* [*nevertheless*] *dissembled concerning the subdeacons from the command of the said bishop, until you considered that the Apostolic See should be consulted as to how you ought to proceed against them and others constituted in sacred orders. Wherefore* we command *your fraternity by apostolic writings* that, with appeal set aside, through subtraction of [*their*] benefices you forbid clerics constituted in sacred orders the office of notary. [*Given at the Lateran, on the sixth day before the Kalends of December, in the fourteenth year of our pontificate.* 1211.]

> Clerici in sacris compellendi sunt per beneficiorum subtractionem, ut desistant a tabellionatus exercitio.
>
> Innocentius III. Esculano Episcopo.
>
> Sicut te accepimus referente, +*quum venerabilis frater noster Hostiensis episcopus olim per tuam transiens civitatem tibi dederit in mandatis, ut presbyteros, diaconos* [*et subdiaconos,*] *quos ibidem invenit passim tabellionatus officium exercentes, excommunicationis vinculo innodares, et eos, qui ab illis publica reciperent instrumenta, tu, licet id feceris, ex mandato* [*tamen*] *episcopi dicti dissimulasti postmodum de subdiaconis, donec qualiter contra ipsos et alios in sacris ordinibus constitutos deberes procedere, sedem duceres apostolicam consulendam. Quocirca* Fraternitati tuae *per apostolica scripta* mandamus, quatenus clericis in sacris ordinibus constitutis tabellionatus officium per beneficiorum [*suorum*] subtractionem appellatione postposita interdicas. [*Dat. Lat. VI. Kal. Dec. Pont. nostr. Ao. XIV.* 1211.]

Chapter IX

Latin source headnote: A cleric ought neither to dictate nor pronounce a sentence of blood, nor to exercise anything else through which there is a tendency toward vengeance of blood, nor ought he to furnish assistance in a vulgar purgation.

The same, in the General Council.

Let no cleric dictate or pronounce a sentence of blood; neither let him exercise vengeance of blood nor be present where it is exercised. But if anyone on the occasion of a statute of this kind should presume to inflict any loss upon churches or ecclesiastical persons, let him be restrained through ecclesiastical censure. Nor let any cleric dictate or write letters to be sent for vengeance of blood; whence in the courts of princes let this responsibility be committed not to clerics but to lay persons. Likewise, let no cleric be placed over routiers or crossbowmen, or men of blood of this kind; nor let a subdeacon, deacon, or priest exercise any art of surgery which brings burning or cutting. Nor let anyone bestow a rite of any blessing or consecration upon a purgation by boiling or cold water or glowing iron, the prohibitions concerning single combats or duels previously promulgated nevertheless remaining intact.

> Clericus nec dictare nec proferre sententiam sanguinis debet, nec quicquam aliud exercere, per quod ad vindictam sanguinis tendatur, vel purgatione vulgari opem praestare non debet.
>
> Idem in concilio generali.
>
> Sententiam sanguinis nullus clericus dictet aut proferat, sed nec sanguinis vindictam exerceat, aut ubi exerceatur intersit. Si quis autem huiusmodi occasione statuti ecclesiis vel ecclesiasticis personis aliquod praesumpserit inferre dispendium, per censuram ecclesiasticam compescatur. Nec quisquam

clericus literas dictet aut scribat pro vindicta sanguinis destinandas, unde in curiis principum haec sollicitudo non clericis, sed laicis committatur. Nullus quoque clericus ruptariis vel ballistariis, aut huiusmodi viris sanguinum praeponatur, nec ullam chirurgiae artem subdiaconus, diaconus vel sacerdos exerceat, quae adustionem vel incisionem inducit. Nec quisquam purgationi aquae ferventis vel frigidae seu ferri candentis ritum cuiuslibet benedictionis aut consecrationis impendat, salvis nihilominus prohibitionibus, de monomachiis sive duellis antea promulgatis.

Chapter X

Latin source headnote: The constitution of the Council of Tours, punishing religious who hear laws or medicine, is a canon of a sentence incurred by the act itself, and those falling under it ought to be punished by the ordinaries. This first. Second, it extends the said constitution to those having dignities and personatus, and to priests.

Honorius III.

Upon the watchtower—(And below: [*cf. c.* 5, *On Masters V.* 5.]) *Indeed, although the grace of the other sciences is deceitful and their beauty also vain, since the grain of the elect and the wine bringing forth virgins, according to the Prophet, is good above all things and is beautiful, nevertheless, because certain regulars, rejecting cloistral silence and the law of the Lord, converting souls and giving wisdom to little children, which they ought to have loved above gold and topaz, go away after the footprints of the flocks and turn themselves unlawfully to embrace the handmaids who desire the applause of peoples,* against religious persons going out from cloisters to hear laws or medicine, our predecessor *of happy memory* Alexander formerly established in the Council of Tours that, unless they returned to the cloister within the space of two months, they were to be avoided by all as excommunicates and were to be heard in no cause if they wished to furnish advocacy. But, having returned, in choir, refectory, chapter, and other things let them exist as last among the brothers and, unless perhaps from the mercy of the Apostolic See, let them lose hope of every promotion.

But because some of such persons, on account of the diverse opinions of certain persons, assumed something of an excuse, we, wishing that *such persons* henceforth incur by the act itself a sentence of excommunication, by strictly commanding order that such persons, *with the obstacle of appeal removed*, be publicly announced as excommunicated *and* liable to the aforesaid punishments, both by the diocesans and their chapters and *also* by the other bishops in whose dioceses they study in this manner. [But because we desire the study of theology to be enlarged, so that, after the place of its tent has been enlarged, it may make its cords longer, so that the Catholic faith may be surrounded by an impregnable wall of warriors through whom it may be able to resist those ascending from the opposite side, we wish and command that this be extended to archdeacons, deans, plebani, provosts, cantors, and other clerics having personatus, as well as *also* to priests, unless they desist from these things within the aforesaid space, and that, with appeal set aside, it be firmly observed. *For since there are many, etc. Given at Viterbo, on the tenth day before the Kalends of December, in the fourth year of our pontificate.* 1219.]

Constitutio Turonensis concilii, puniens religiosos audientes leges vel physicam, est canon latae sententiae, et incidentes in illam debent per ordinarios puniri. Hoc primo. Secundo extendit dictam constitutionem ad habentes dignitates et personatus, et ad presbyteros.

Honorius III.

Super specula (*Et infra:* [*cf. c.* 5. *de mag. V.* 5.]) *Sane, licet fallax sit gratia ceterarum scientiarum, et vana etiam pulchritudo, quum frumentum electorum et vinum germinans virgines iuxta prophetam sit bonum super omnia et sit pulchrum: quia tamen regulares quidam, claustrale silentium et legem Domini, animas convertentem et sapientiam dantem parvulis, quam super aurum et topazion amare debuerant, respuentes, abeunt post vestigia gregum, et illicite se convertunt ad pedissequas amplectendas, quae plausum desiderant populorum*, Contra religiosas personas, de claustris exeuntes ad audiendum leges vel physicam, *felicis memoriae* Alexander praedecessor noster olim statuit in concilio Turonensi, ut, nisi infra duorum mensium spatium ad claustrum redierint, sicut excommunicati ab omnibus evitentur, et in nulla causa, si patrocinium praestare voluerint, audiantur. Reversi autem in choro, mensa, capitulo et ceteris ultimi fratrum exsistant, et, nisi forte ex misericordia sedis apostolicae, totius spem promotionis amittant. Verum, quia nonnulli ex talibus propter quorundam opiniones diversas excusationis aliquid assumebant, nos, volentes, ut *tales* de cetero ipso facto sententiam excommunicationis incurrant, districte praecipiendo mandamus, quatenus tam a dioecesanis et capitulis ipsorum, quam *etiam* a ceteris episcopis, in quorum dioecesibus in huiusmodi student, tales *sublato appellationis obstaculo* excommunicati *et* praedictis poenis obnoxii publice nuncientur. [Quia vero theologiae studium cupimus ampliari, ut dilatato sui tentorii loco et funiculos suos faciat longiores, ut sit fides catholica circumcincta muro inexpugnabili bellatorum, quibus resistere valeat adscendentibus ex adverso : ad archidiaconos, decanos, plebanos, praepositos, cantores et alios clericos personatus habentes, nec non *et* presbyteros, nisi ab his infra spatium praescriptum destiterint, hoc extendi volumus et mandamus, et appellatione postposita firmiter observari. *Nam quum sint multi etc. Dat. Viterbii X. Kal. Dec. Pont. nostr. Ao. IV. * 1219.]

Book IV

Compilation of the Decretals of Lord Pope Gregory IX

Book Four

> **DECRETALIUM**
>
> **D. GREGORII PAPAE IX.**
>
> **COMPILATIO**
>
> **LIBER QUARTUS.**

Title I: On Betrothals and Marriages

Chapter I

Latin source headnote: Marriage is contracted by consent alone, nor is it invalidated if the custom of the homeland is not observed.

From the Council of Tribur.

A certain *noble man* from Francia took a noble woman from Saxony as wife according to the law of the Saxons, *and kept her for many years and begot sons from her*. But because the Saxons and the Frankish people do not use the same laws, he alleged that he had not betrothed her according to his own law, that is, the law of the Franks, *or received her or endowed her*, and, dismissing her, he brought in another. Concerning this the holy synod determined that the transgressor of the evangelical law is to be subjected to penance, separated from the second wife, and compelled to return to the first.

> **DE SPONSALIBUS ET MATRIMONIIS.**
>
> Matrimonium solo consensu contrahitur, nec invalidatur, si consuetudo patriae non servetur.
>
> Ex concilio Triburiensi.
>
> De Francia *nobilis* quidam *homo* nobilem mulierem de Saxonia lege Saxonum duxit in uxorem, *tenuitque eam multis annis, et ex ea, filios procreavit*. Verum quia non eisdem utuntur legibus Saxones et Francigenae, causatus est, quod eam non sua, id est Francorum lege desponsaverat, *vel acceperat, vel dotaverat*, dimissaque illa aliam superduxit. Diffinivit super hoc sancta synodus, ut ille transgressor evangelicae legis subiiciatur poenitentiae, et a secunda coniuge separetur, et ad priorem redire cogatur.

Chapter II

Latin source headnote: Betrothals for the future are dissolved if the betrothed dissolve them, even if they were sworn.

Innocent III, to the Bishop of Exeter.

Furthermore, those who purely and without any condition gave their pledge [*or*] *made an oath* concerning contracting marriage are to be admonished *and more diligently exhorted*, and by every means induced to observe the pledge furnished *or the oath made, and to join themselves as they promised*. But if they are unwilling to admit one another, lest perhaps something worse happen from it—namely, that he take one whom he [*always*] hates—it appears that, after the manner of those who contract a

partnership *by oath or* by the interposition of a pledge and afterward remit the same to one another, this can be tolerated with patience.

> Sponsalia de futuro dissolvuntur, si sponsi se dissolvunt, etiamsi fuerint iurata.
>
> Innocentius III. Exonensi Episcopo.
>
> Praeterea hi, qui de matrimonio contrahendo pure et sine omni conditione fidem dederunt [*aut*] *iuramentum fecerunt*, commonendi sunt *et diligentius exhortandi*, et modis omnibus inducendi, ut praestitam fidem *vel iuramentum factum* observent, *et se, sicut promiserint coniungant*. Si autem se adinvicem admittere noluerint; ne forte deterius inde contingat, ut talem scilicet ducat, quam [*semper*] odio habet: videtur, quod ad instar eorum, qui societatem *iuramento vel* interpositione fidei contrahunt, et postea eandem sibi remittunt, hoc possit in patientia tolerari.

Chapter III

Latin source headnote: If one older than seven years took as wife one younger than seven years and conducted her to his house, the justice of public honesty arises from such a contract. This is what it says by adhering to the letter. Panormitanus.

Pope Eugenius.

That *young man* who took a girl not yet seven years old, although age opposed it, nevertheless from human frailty perhaps attempted what he could not complete. Therefore, because in those things which are doubtful we ought to hold what we consider more certain, both on account of the honesty of the Church, since she is said to have been his wife, and on account of the aforesaid doubt, we command *you* to separate from him the cousin of the girl whom he afterward took.

> Si maior septennio duxit in uxorem minorem septennio, et eam traduxit ad domum, oritur ex tali contractu publicae honestatis iustitia. H. d. inhaerendo literae. Panorm.
>
> Eugenius Papa.
>
> Iuvenis *ille*, qui puellam nondum septennem duxit, quamvis aetas repugnaret, ex humana tamen fragilitate forsan tentavit quod complere non potuit. Quia igitur in his, quae dubia sunt, quod certius existimamus tenere debemus, tum propter honestatem ecclesiae, quia ipsa coniux ipsius fuisse dicitur, tum propter praedictam dubitationem, mandamus *tibi*, quatenus consobrinam ipsius puellae, quam postmodum duxit, dividas ab eodem.

Chapter IV

Latin source headnote: From betrothals contracted with a blood relative arises the justice of public honesty.

Alexander III, to the Bishop of Pavia.

It came to the hearing of our apostolate that, when H. *Albericus*, a citizen of Pavia, wished to give his daughter as wife to a certain one of the sons of L., he swore that, if he *to whom she was betrothed* could not have her because some eventuality intervened, he would join the same *girl* in marriage to another son whom L. had begotten of another wife. But after betrothals had been contracted by the first son, certain persons, *approaching the church*, affirmed with oaths interposed that consanguinity existed between them. And therefore the aforesaid H. strives to give the same *woman* to the other son, as he swore. But because it is written that a brother cannot have his brother's betrothed, we command *your*

discretion by apostolic writings, instructing that you not permit him to fulfill his purpose, *which opposes canonical reason*, but, after admonition has been given, compel him by ecclesiastical rigor to do penance for the unlawful oath.

> Ex sponsalibus, contractis cum consanguinea, oritur publicae honestatis iustitia.
>
> Alexander III. Papiensi Episcopo.
>
> Ad audientiam nostri apostolatus pervenit, quod, quum H. *Albericus*, Papiensis civis, filiam suam cuidam filiorum L. dare vellet uxorem, iuravit, quod, si ille, *cui desponsabatur*, eam habere casu aliquo interveniente non posset, alteri filio, quem de alia uxore genuerat, eandem *puellam* matrimonio copularet. Contractis autem a filio priore sponsalibus, quidam, *ad ecclesiam accedentes*, consanguinitatem inter eos esse iuramentis interpositis firmaverunt. Ideoque praefatus H. eandem *feminam* dare alteri filio nititur, ut iuravit. Sed quoniam scriptum est, quod sponsam fratris frater habere non potest: *discretioni tuae per apostolica scripta praecipiendo* mandamus, quatenus eum suum implere propositum, *quod canonicae rationi obviat*, non permittas, sed, ut poenitentiam agat de illicito iuramento, monitione praemissa, ecclesiastica districtione compellas.

Chapter V

Latin source headnote: If one betrothed for the future transfers himself to distant places before union, the betrothed woman freely contracts with another; nevertheless, if it stood through her that the marriage was not perfected, penance is imposed upon her.

The same, to the Archbishop of Palermo.

Concerning those who, after furnishing an oath, promise that they will take certain women and afterward, without the women's knowledge, leave the land, transferring themselves to other regions, we wish this to become known to you: that it will be free for the women themselves, if the deed has not proceeded further, to transfer themselves to other vows, yet after receiving penance for perjury if it stood through them that the marriage was not consummated. *But if, etc.* (*cf. c.* 3, *On Conditions Appended IV.* 3.)

> Si sponsus de futuro ante copulam ad remota se transfert, sponsa libere cum alio contrahit: si tamen per eam stetit, quo minus matrimonium perficeretur, sibi poenitentia imponitur.
>
> Idem Panormitano Archiepiscopo.
>
> De illis autem, qui praestito iuramento promittunt, se aliquas mulieres ducturos, et postea eis incognitis dimittunt terram, se ad partes alias transferentes, hoc tibi volumus innotescere, quod liberum erit mulieribus ipsis, si non est amplius in facto processum, ad alia se vota transferre, recepta tamen de periurio poenitentia, si per eas steterit, quo minus fuerit matrimonium consummatum. *Si vero etc.* (*cf. c.* 3. *de cond. app. IV.* 3.)

Chapter VI

Latin source headnote: Not every violence impedes the contract of marriage. This is what it says as to the title.

The same, to the Bishop of Padua.

Concerning a woman who was unwillingly delivered to and detained by a man, since there is a difference between one kind of force and another, and you thereafter expressed nothing certain to us

as to whether consent afterward intervened, we can answer you nothing certain concerning it. *But those, etc.* (*cf. c.* 3, *On a Marriage Contracted IV.* 16.)

> Non omnis violentia impedit contractum matrimonii. H. d. quoad titulum.
>
> Idem Paduano Episcopo.
>
> De muliere quae est invita tradita viro et detenta, quum inter vim et vim sit differentia, et utrum postea consensus intercesserit, certum nobis nihil postea expressisti, nihil certum inde tibi possumus respondere. *Illos autem etc.* (*cf. c.* 3. *de matr. contr. IV.* 16.)

Chapter VII

Latin source headnote: If persons fit for marriage contract through obscure words, they are held to follow the common understanding of the words.

The same, to the Archbishop of Canterbury.

From the letters *which you transmitted concerning the matrimonial cause of a certain young man named R. and Mary, daughter of Gilbert of Saint-Léger, the solicitude which you observed in the examination of that business became known to us. But because, with the parties absent, we could not investigate the truth fully, nor remit the cause itself to you, from whom the woman's party is known to have appealed to our hearing, we considered that it should be committed to our venerable brothers the Bishops of Winchester, Hereford, and Bath. And therefore we command your fraternity by apostolic writings, instructing that, when the parties have been summoned by them, you compel the parties to approach their presence and, with contradiction and appeal ceasing, inviolably to observe what they shall judge.*

But concerning that which you consulted *near the end of the letters*—what ought to be observed when betrothals are contracted between certain persons and one does not understand what the other proposes—we respond that the judge must examine whether those about to contract marriage are fit to do so in knowledge and age. Once this is known, if one did not understand what the other proposed, recourse is to be had to the common understanding of the word, and each is to be compelled to retain the words uttered in that sense which they are accustomed to produce in those understanding correctly. *But as to what you asked—whether deference ought to be given to an appeal where, under its pretext, adultery or another crime is known to be about to be committed—we respond briefly to your consultation that, where it would be notorious that adultery or another crime would be committed if deference were given to an appeal interposed, we would not wish deference to be given. For we do not wish to furnish to anyone material for incest or adultery.*

> Si aliqui, apti ad matrimonium, contrahunt per verba obscura, communem verborum intellectum sequi tenentur.
>
> Idem Cantuariensi Archiepiscopo.
>
> Ex litteris, *quas super causa matrimonii cuiusdam iuvenis R. nomine, et Mariae filiae Gileberti de sancto Leodegario transmisisti, sollicitudo nobis innotuit, quam in ipsius negotii examine servasti. Quia vero absentibus partibus veritatem nequivimus plenarie indagare, nec causam ipsam ad te remittere, a quo pars mulieris ad audientiam nostram noscitur appellasse: eam venerabilibus fratribus nostris Wintoniensi, Herfordensi et Bathorniensi episcopis duximus committendam. Ideoque fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus partes adire eorum praesentiam, quum ab eis fuerint evocatae, et quod ipsi iudicaverint inviolabiliter observare contradictione et appellatione cessante compellas*. De hoc autem, quod *circa finem literarum* consuluisti, quid debeat observari, quando inter aliquos sponsalia contrahuntur, nec intelligit alter quod alter proponit, respondemus,

quod inspiciendum est iudici, si matrimonium contracturi ad id faciendum sint idonei scientia et aetate. Quo cognito, si alter non intellexerit, quod alter proposuit, ad communem verbi intelligentiam recurratur, et cogatur uterque verba prolata in eo, sensu retinere, quem solent recte intelligentibus generare. *Quod vero quaesivisti, an debeat appellationi deferri, ubi sub eius praetextu noscitur adulterium vel aliud crimen committendum consultationi tuae breviter respondemus, quod ubi notorium esset adulterium vel aliud crimen committendum, si appellationi interpositae deferretur, deferri nollemus. Nolumus enim incestus vel adulterii materiam aliquibus ministrare*.

Chapter VIII

Latin source headnote: Between a betrothed woman and the blood relatives of the betrothed man arises an impediment of public honesty, impeding and dissolving a marriage to be contracted between them.

The same, to the Bishop of Vigevano.

No blood relative can in any way join to himself in marriage the betrothed woman of another, especially if she is near marriageable age.

Inter sponsam et consanguineos sponsi oritur impedimentum publicae honestatis, impediens et dirimens matrimonium inter eos contrahendum.

Idem Vigiliensi Episcopo.

Sponsam autem alterius, maxime si est nubili aetati proxima, nullus consanguineorum aliquo modo sibi potest matrimonio copulare.

Chapter IX

Latin source headnote: If a man and a woman promise one another that from that time they will hold themselves as spouses, a marriage of the present has been contracted. This is what it says, and it is a notable case.

The same, to the Abbots of Saint Edmund and Demer.

It was intimated to us on the part of the woman C. that Andrew *before a certain priest and deacon, and very many others, clerics as well as lay persons, summoned for this purpose*, furnished her an oath that from that time he would hold her as wife and preserve fidelity to her as to his wife. She likewise swore to the same Andrew that she would have him as husband and preserve fidelity to him as to her own man. This having been done, *living together for a long time in the same house, they begot children for themselves. But as time proceeded*, the aforesaid A., *contrary to the oath furnished*, left her *and the children begotten of her and withdrew from living together with them*.

Therefore, because it is lawful for no one to dismiss his wife without manifest cause of fornication, and even then he ought either to reconcile her to himself [*or*] to remain continent while she is living, *nor ought we to sustain that the aforesaid Andrew violate the religious obligation of the oath furnished, we command your discretion by apostolic writings, instructing* that, *after the truth of the matter has been more diligently investigated, if you find it to be so as was said above*, after the woman brought in, *whom he has*, has first been dismissed, you compel the same *Andrew*, that, *taking counsel for his salvation*, he return to his wife and treat her with marital affection, *and take care to expiate his guilt by worthy penance*, by ecclesiastical censure after admonition has been given. *But if perhaps he should be unwilling to acquiesce in*

your admonition, with every occasion and appeal removed, bind him and the woman brought in with the bond of excommunication, and command that they be more carefully avoided by all as excommunicates until worthy satisfaction.

> Si vir et mulier invicem promittunt, quod ab eo tempore se pro coniugibus habebunt, contractum est matrimonium de praesenti. H. d. et est casus notabilis.
>
> Idem Abbatibus sancti Eadmundi et Demer.
>
> Ex parte C. mulieris nobis intimatum est, quod Andreas *sibi coram sacerdote quodam et diacono, et aliis plerisque tam clericis quam laicis ad hoc convocatis,* iuramentum praestitit, quod eam ab eo tempore pro coniuge teneret, et ei sicut uxori suae fidem servaret. Ipsa quoque eidem Andreae iuravit, se illum pro marito habituram, et fidem ei tanquam viro proprio servaturam. Quo facto *in eadem domo diu cohabitantes sibi liberos procreaverunt. Procedente vero tempore* praenominatus A. *contra iuramentum praestitum* reliquit eandem *et filios ex ea procreatos, et ab eorum cohabitatione recessit*. Quia igitur nemini licet uxorem suam sine manifesta causa fornicationis dimittere, et tunc eam sibi [*vel*] reconciliare debet, aut ipsa vivente continere, *nec nos sustinere debemus, ut praedictus Andreas iuramenti praestiti religionem infringat, discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus, *rei veritate diligentius inquisita, si, prout superius dictum est, ita esse inveneritis,* eundem *Andream,* ut *suae saluti consulens,* et superinducta, *quam habet, prius* dimissa, ad uxorem suam redeat, et eam maritali affectione pertractet, *et reatum suum condigna satagat poenitentia expiare,* monitione praemissa per ecclesiasticam censuram cogatis. *Quodsi commonitioni vestrae acquiescere forte noluerit vos eum et superinductam omni occasione et appellatione remota excommunicationis vinculo innodetis, et usque ad dignam satisfactionem praecipiatis ab omnibus sicut excommunicatos cautius evitari.*

Chapter X

Latin source headnote: He who swore to contract with a certain woman, if no impediment exists, is compelled by ecclesiastical censure to contract.

The same, to the Bishop of Poitiers.

We received from the letters *of our venerable brother,* Silvanus the bishop, that, when two noble men of his episcopate, namely G. of Monstra and B. *of Mauritania,* had sons and daughters who were approaching puberty, *and in hope of reconciling peace between them thus* agreed with one another that they would join them to one another in *mutual* marriages. And both the fathers and the children promised under oath that they would do this; among them, indeed, G., with the father consenting, swore *once and again* that he would take the daughter of the other as wife. When he wished to pass to other vows, the bishop wished to compel him to fulfill what he had sworn. *He appealed to our hearing, and, although the other party sent its messenger to us, he neither came nor transmitted any representative for himself.*

Therefore, because it is dangerous for the aforesaid G. to act against his oath, we command your fraternity *by apostolic writings, instructing* that, *when you have been requested concerning this, you summon each party before your presence and, after the arguments on each side have been more fully heard and discussed,* if this is established to you, admonish him and, if he does not acquiesce in the admonitions, compel him by ecclesiastical censure to receive her as wife and treat her with marital affection, unless a reasonable cause stands in the way. *But if he should wish to advance a reasonable cause, hear it with every diligence and care, and decide it by a canonical conclusion with every appeal ceasing. Moreover, if, after being lawfully admonished, he should contemn obeying your judgment, bind him and his father, if the father should presume to support him in his malice, with the bond of excommunication, and prohibit all divine offices, except the baptism of little children and the penances of the dying, from being celebrated throughout all their land.*

Qui iuravit cum aliqua contrahere, si non subest impedimentum, per censuram ecclesiasticam contrahere compellitur.

Idem Pictaviensi Episcopo.

Ex literis *venerabilis fratri nostri* Silvani episcopi accepimus, quod, quum duo nobiles viri sui episcopatus, G. scilicet de Monstra et B. *de Mauritania* filios et filias impubescentes haberent, *et spe pacis inter eos conciliandae ita* inter se convenerunt, quod eos *mutuis* adinvicem matrimoniis copularent. Et hoc tam patres, quam filii sub iuramento se promisere facturos, inter quos siquidem G. filiam alterius, consentiente patre, se *semel et iterum* iuravit ducere in uxorem. Quo volente ad alia vota migrare, eum episcopus compellere voluit, ut quod iuraverat adimpleret. *Ipse ad audientiam nostram appellavit, et, altera parte nuncium suum ad nos destinante, ipse nec venit, nec responsalem aliquem pro se transmisit*. Quia igitur praedicto G. periculosum est, contra suum iuramentum venire, fraternitati tuae *per apostolica scripta praecipiendo* mandamus, quatenus, *quum exinde fueris requisitus, utramque partem ante tuam convoces praesentiam, et, rationibus hinc inde plenius auditis et agitatis* si hoc tibi constiterit, eum moneas, et, si non acquieverit monitis, ecclesiastica censura compellas, ut ipsam, nisi rationabilis causa obstiterit, in uxorem recipiat, et maritali affectione pertractet. *Si vero rationabilem causam praetendere voluerit, eam cum omni diligentia et studio audias, et fine canonico omni appellatione cessante decidas. Ceterum si legitime monitus iudicio tuo parere contemserit eum et patrem, si fovere ipsum in sua malitia praesumserit, excommunicationis vinculo astringas et in tota terra ipsorum omnia divina praeter baptisma parvulorum et poenitentias morientium prohibeas officia celebrari*.

Chapter XI

Latin source headnote: By ecclesiastical censure a father is compelled to restore to his son the latter's wife, whom he unjustly detained or detains.

The same, to the Archbishops, Bishops, and Other Prelates Constituted throughout England.

It is not unknown to you, as we judge, how *Henry, the illustrious* King of the English, on account of the discord which, *as sins demanded*, has arisen between him and his sons, detains their wives [*namely, the daughters of our dearest son in Christ Louis, the illustrious King of the Franks*], *for whose restoration to them* [*the same*] *King of the Franks* [*and the sons of the aforesaid King of the English*] *and his sons-in-law offered solicitous prayers to us*. We therefore, [*more earnestly*] considering that it is just and honorable that husbands should seek their wives, *and wishing with ready spirit to acquiesce in the prayers of the same* [*King of the Franks and his sons-in-law not only in those things which we are held to effect from the obligation of office, but also*] *in all things which do not disagree with justice, admonished the aforesaid King of England earnestly enough and attentively, and gave him a command that, at the admonition of* [*our venerable brothers*] *the Archbishop of Tarentaise and the Bishop of Clermont, and of* [*his beloved son*] *the Prior of the Carthusians, or in his place the Prior of Mont-Dieu if he cannot be present, or of two of these if three cannot be present, he not postpone restoring the wives to his sons within forty days after receipt of our letters. But if he does not restore them to their husbands within the aforesaid term, by apostolic authority we command that the whole province within which they are detained, and to which they are transferred, for as long as they are there and until they are restored to their husbands, cease from all divine offices except the baptism of little children and the penance of the dying. Hence it is that by apostolic writings, instructing,* we command [*and by commanding instruct*] all of you that you solicitously admonish the same King *of the English* to restore them *and induce him by exhortations, setting before him that it is no less expedient for him to restore them than for their husbands to receive them*.

And if, according to *the command and* your admonition, he does not restore their wives to his sons within a certain term, from then on, in whichever of your provinces they are detained or [*to which*] they are transferred, for as long as they are there, celebrate no divine offices except the baptism of little children and the penances of the dying, nor permit them in any way to be celebrated, *with every* [*contradiction concerning these things and*] *appeal ceasing; knowing for certain that, if any should attempt to act against our interdict, which we do not believe, by the Lord's authority they will carry away the punishment due for their rashness and transgression.*

> Per censuram ecclesiasticam pater compellitur restituere filio eius uxorem, quam iniuste detinuit vel detinet.
>
> Idem Archiepiscopis, Episcopis et aliis Praelatis per Angliam constitutis.
>
> Non est vobis, sicut arbitramur, incognitum, qualiter *Henricus illustris* rex Anglorum pro discordia, quae inter ipsum et filios suos *peccatis exigentibus* est suborta, uxores eorum [*filias videlicet carissimi in Christo filii nostri Ludovici illustris regis Francorum*] detineat, *pro quibus sibi restituendis* [*idem*] *rex Francorum* [*et filii praedicti regis Angliae*] *et generi sui preces sollicitas nobis porrexerunt*. Nos itaque [*studiosius*] attendentes, iustum et honestum esse, ut viri suas petant uxores, *et precibus eiusdem* [*regis Francorum et generorum suorum non solum in his quae ex officii debito tenemur efficere, sed etiam*] *in omnibus, quae a iustitia non discordant, volentes prompto animo acquiescere, praefatum regem Angliae studiose satis et attente monuimus, eique dedimus in mandatis, ut ad commonitionem* [*venerabilium fratrum nostrorum*] *archiepiscopi Tarentasiensis et episcopi Claremontensis, et* [*dilecti filii sui*] *Carthusiani prioris, vel loco eius prioris de Monte Dei si ipse adesse non poterit, vel duorum ex his, si tres non potuerint interesse, uxores filiis suis infra XL. dies post nostrarum literarum susceptionem restituere non postponat. Si vero eas infra praescriptum terminum viris suis non restituerit, apostolica auctoritate praecipimus, ut tota provincia, infra quam detinentur, et ad quam transferentur, quamdiu ibi fuerint, donec viris suis restituentur, ab omnibus divinis officiis praeter baptisma parvulorum et poenitentia morientium cesset. Inde est, quod universitati vestrae per apostolica scripta praecipiendo* Mandamus [*et mandando praecipimus*], quatenus eundem regem *Anglorum* ad eas restituendas sollicite moneatis *et exhortationibus inducatis, proponentes ei, quod non minus expedit sibi eas restituere, quam viris suis ipsas recipere*. Et, si iuxta *mandatum et* commonitionem vestram filiis suis uxores suas infra certum terminum non restituerit, ex tunc, in quacunque provinciarum vestrarum detinentur vel [*ad quas*] transferuntur, donec ibi fuerint, nulla divina officia praeter baptismum parvulorum et poenitentias morientium celebretis vel permittatis aliquatenus celebrari *omni* [*super his contradictione et*] *appellatione cessante, sciturі pro certo, quia si qui contra interdictum nostrum, quod non credimus, venire tentaverint, suae temeritatis et transgressionis poenam debitam auctore Domino reportabunt*.

Chapter XII

Latin source headnote: The statement of one person asserting an impediment impedes an unsworn marriage from being contracted.

The same, to the Bishop of Saint Agatha.

Furthermore, concerning the woman who is sought by a man, whose blood relative proposes that he sinned with her but refuses publicly to confess this on account of the woman's fear and power, we respond *to your providence* in this manner: that, unless an oath had intervened, you are strictly to prohibit the marriage itself from being made, lest something worse occur from it.

> Dictum unius, asserentis impedimentum, impedit matrimonium contrahendum non iuratum.
>
> Idem Episcopo sanctae Agathae.

> Praeterea de muliere, quae a viro impetitur, cuius consanguineus cum ea se deliquisse proponit, sed, hoc publice confiteri recusat propter metum et potentiam mulieris, *providentiae tuae* taliter respondemus, ut matrimonium ipsum fieri, nisi iuramentum intervenisset, districte prohibeas, ne deterius inde contingat.

Chapter XIII

Latin source headnote: If a woman unwillingly contracts with someone and does not afterward consent to him, the marriage holds if she afterward marries another. Thus it is commonly summarized. And according to this understanding this would be an open case that a marriage contracted through fear is void by the law itself. Nevertheless, this is not clearly gathered from the letter.

The same, to the Procurator and Canons of Sora.

Coming to the Apostolic See, Mariota, *bearer of the present letters*, showed to us by a suppliant *to us* intimation that, *while she was constituted in adolescence*, she loved a certain young man [*named E.*] to such an extent that each of them *between themselves* furnished an oath concerning contracting marriage under the testimony of three persons. Her parents, ignorant of this, delivered her, unwilling and protesting, as wife to a *certain* other man, whom she so abhorred that she by no means permitted herself to be known by him. And when she publicly confessed that she had been known by and sworn to the former man, the Bishop of Sora, *who then existed, caused them to come before his presence, and*, it being known *and proved* that so close a line of consanguinity existed between them *that they could not and ought not by law to be joined together*, separated them from one another.

Moreover, when the cause itself was being treated and she was unwilling to consent to the man to whom she had been delivered by her parents, he took another as wife, and she publicly married in the sight of the Church a certain *man* named T. At last, when she had begotten a son by him, the father of T., *seeking an occasion for obtaining a judicial separation*, objected to her that she could not have his son as husband because she had first been betrothed to the other man, who is *now* dead. *But because we did not apply faith to his assertion, as neither ought we to have done, nor could we pass this over in silence, we considered that she should be remitted to you, and we command your discretion by apostolic writings, instructing* that, *after the truth of this matter has been more fully ascertained*, if you find that the aforesaid woman was separated from the former man by judgment of the Church, was taken as wife by the same T. without contradiction of the Church, and that the man to whom she was joined by her parents *unwilling and resisting* has departed from the present life, after admonition has been given, compel the aforesaid T. to receive the aforesaid Mariota *with the occasion set aside*, and to take care *to love her as his wife and* treat her with marital affection. Otherwise, subject him, the woman brought in, and *also* his father, if they resist this, to excommunication, *and cause the sentence itself to be inviolably observed until worthy satisfaction*.

> Si mulier invita cum aliquo contrahat, nec in eum postea consentiat, tenet matrimonium, si alteri postea nubit. Ita communiter summatur. Et secundum hunc intellectum esset hic casus apertus, quod matrimonium metu contractum esset ipso iure nullum. Hoc tamen clare non colligitur ex litera.
>
> Idem Procuratori et Canonicis Soranis.
>
> Veniens ad apostolicam sedem Mariota *latrix praesentium* supplici *nobis* insinuatione monstravit, quod, *dum esset in adolescentia constituta*, quendam adolescentem [*E. nomine*] adamavit in tantum, quod uterque

inter se de matrimonio contrahendo sub trium personarum testimonio praestitit iuramentum. Quod parentes mulieris ipsius ignorantes, eam invitam et reclamantem in uxorem *cuidam* alii tradiderunt, quem ita exhorruit, quod se ab eo nullo modo cognosci permisit. Quumque publice fateretur, quod a priori viro cognita esset atque iurata, episcopus Soranus, *qui tunc erat, eos ante praesentiam suam fecit venire, et*, cognito *atque probato*, quod *ita* proxima inter eos esset linea consanguinitatis, *quod insimul non possunt, nec debent de iure coniungi*, ipsos ab invicem separavit. Ceterum quum causa ipsa tractaretur, et viro, cui tradita fuerat a parentibus, consentire nollet, ipse aliam in uxorem traduxit, et illa cuidam *viro* T. nomine publice in conspectu ecclesiae nupsit. Tandem quum de illo filium genuisset, pater ipsius T., *quaerens occasionem divortium faciendi*, ei opposuit, quod filium suum non potuit in virum habere eo, quod alii, qui *nunc* defunctus est, prius desponsata fuisset. +*Quia vero assertioni eius fidem, sicut nec debuimus, non adhibuimus, nec hoc potuimus sub silentio praeterire, eam ad vos duximus remittendam, et discretioni vestrae per apostolica scripta praecipiendo* Mandamus, quatenus, *huius rei veritate plenius comperta*, si inveneritis, quod praedicta mulier a priori viro iudicio ecclesiae fuerit separata, et ab eodem T. sine contradictione ecclesiae in uxorem traducta, et ille, cui a parentibus *invita et renitens* fuit copulata, de praesenti vita decessit, praedictum T. monitione praemissa compellatis, ut praefatam Mariotam *postposita occasione* recipiat, et *sicut uxorem suam diligere* studeat *et* maritali affectione tractare. Alioquin eum et superinductam, et patrem *etiam* eius, si huic rei restiterint, excommunicationi subdatis, *et usque ad dignam satisfactionem sententiam ipsam faciatis inviolabiliter observari*.

Chapter XIV

Latin source headnote: If it is feared that violence will be inflicted upon a girl concerning whose marriage there is litigation, the judge ought to provide for her a safe and honorable place until the cause is terminated. This is what it says, and it is a text very capable of being alleged.

The same, to the Bishop of Pavia.

Since consent has no place where fear or coercion intervenes, it is necessary that, where someone's assent is required, the material of coercion be repelled. But marriage is contracted by consent alone, and, where inquiry is made concerning it, the person whose intention is to be investigated ought to enjoy full security, lest through fear that person say that what is hated is pleasing, and there follow the outcome which is accustomed to proceed from unwilling nuptials. Wherefore we command *your fraternity by apostolic writings, instructing* that you cause the girl, concerning whose marriage *between your citizens the Siderii and the Canes* a question is debated, to be kept honorably in the house in which *you placed her in such a way that* she need fear nothing, until the aforesaid cause has been terminated *by a canonical conclusion*, and the sentence can be put into execution without anyone's contradiction.

Si timetur inferri violentia puellae, de cuius matrimonio agitur, debet iudex sibi providere locum tutum et honestum, donec causa terminetur. H. d. et est textus multum allegabilis.

Idem Papiensi Episcopo.

Quum locum non habeat consensus, ubi metus vel coactio intercedit, necesse est, ut, ubi assensus cuiusquam requiritur, coactionis materia repellatur. Matrimonium autem solo consensu contrahitur, et, ubi de ipso quaeritur, plena debet securitate ille gaudere, cuius est animus indagandus, ne per timorem dicat sibi placere quod odit, et sequatur exitus, qui de invitis solet nuptiis provenire. Quocirca *fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus puellam, de cuius matrimonio *inter Siderios et Canes cives tuos* quaestio ventilatur, in domo, in qua *eam posuisti ita, quod* nihil eam timere oporteat, facias honeste teneri, donec praedicta causa *fine canonico* terminata fuerit, et sententia sine contradictione cuiusquam valeat exsecutioni mandari.

Chapter XV

Latin source headnote: Betrothals for the future, if intercourse followed, are not dissolved by betrothals of the present; otherwise the betrothals of the present hold, unless they were contracted through fear which could have befallen a steadfast man.

The same.

Coming to us, G., *bearer of the present letters*, showed to us by his report that he received a certain woman in his house, by whom he had offspring, and to whom he furnished a pledge before many persons that he would take her as wife. Meanwhile, however, when he spent the night at the house of his neighbor, the latter's daughter lay with him that night; finding them together in one bed, the girl's father compelled him to betroth her through words of the present. *Recently constituted in our presence, he consulted us as to which one he ought rather to adhere to. But because it by no means became known to us whether he knew the first woman after the pledge was furnished*, we therefore command that you *diligently inquire into the truth of the matter, and*, if you find that he knew the first woman after furnishing the pledge, cause him to remain with her; otherwise, cause him to adhere as wife to the second, unless he betrothed her after being coerced by fear which could befall a steadfast man.

> Sponsalia de futuro, si secuta est copula, non solvuntur per sponsalia de praesenti; alias tenent sponsalia de praesenti, nisi per metum, qui potuisset cadere in constantem virum, contracta sint.
>
> Idem.
>
> Veniens ad nos G. *lator praesentium* sua nobis relatione monstravit, quod in domo sua mulierem quandam recepit, de qua prolem habuit, et cui fidem coram pluribus praestitit, quod eam duceret in uxorem. Interim autem, quum apud domum vicini sui pernoctaverit, eius filia nocte illa secum concubuit, quos pater puellae simul in uno lecto inveniens, ipsum eam per verba de praesenti desponsare coegit. *Qui nuper in praesentia nostra constitutus nos consuluit, cui potius adhaerere deberet. Quia vero nequaquam innotuit nobis, utrum post fidem praestitam primam cognoverit*, Ideoque mandamus, quatenus *rei veritatem diligenter inquiras, et*, si inveneris, quod primam post fidem praestitam cognoverit, ipsum cum ea facias remanere; alioquin secundae, nisi metu coactus, qui posset in virum constantem cadere, eam desponsaverit, adhaerere facias ut uxori.

Chapter XVI

Latin source headnote: He who swore to contract with a certain woman, if he wishes to enter religion, ought first to contract so that the oath may be observed, and before carnal union he will be able to enter a monastery.

The same, to the Bishop of Exeter.

Committed—(And below:) Your fraternity signified to us that a certain *learned and noble man, when the paternal inheritance devolved upon him*, gave a *noble* woman a pledge concerning contracting marriage *in the presence of certain persons*, and affirmed by an oath furnished *upon the sacrosanct Gospels* that within two years he would contract with her through words of the present. But now, led by a private law, he sighs to pass to the fruit of a better life, *and, consulting your prudence concerning this, suspects that before the marriage has been contracted he can lawfully pass to the habit of monastic religion, because, if he had contracted, he could, with her unwilling, pass within two months to the religion of a stricter life, according to the statutes of the ancient canons renewed by our constitution. Therefore, because your fraternity considered that we should be consulted concerning this*, we respond to your fraternity in this manner: it is safer for him, with the

religious obligation of the oath observed, first to contract and afterward, if he chooses, to migrate to religion, provided that carnal union is not known to have intervened after the *first* betrothal.

> Qui iuravit cum aliqua contrahere, si vult religionem ingredi, debet primo contrahere, ut iuramentum servetur, et ante copulam carnalem monasterium ingredi poterit.
>
> Idem Exonensi Episcopo.
>
> Commissum (*Et infra:*) Significavit nobis fraternitas tua, quod quidam *literatus et nobilis, quum ad eum paterna hereditas devolveretur*, cuidam mulieri *nobili* de contrahendo matrimonio fidem dedit *quibusdam praesentibus*, et se cum ea infra biennium per verba de praesenti contracturum, praestito iuramento *super sacrosancta evangelia* firmavit; nunc autem privata lege ductus ad frugem melioris vitae transire suspirat, *tuamque super hoc consulens prudentiam, ante matrimonium contractum ad monasticae religionis habitum licite posse transire suspicatur, quia, si contraxisset, ea invita infra duos menses, iuxta veterum canonum statuta nostra constitutione innovata, ad arctioris vitae religionem posset transire. Quia igitur super hoc tua nos duxit fraternitas consulendos*, Fraternitati tuae taliter respondemus, quod tutius est ei, religione iuramenti servata, prius contrahere, et postea, si elegerit, ad religionem migrare; si tamen post *primam* desponsationem copula non dignoscitur intervenisse carnalis.

Chapter XVII

Latin source headnote: One who swore to contract with a certain person ought rather to be admonished than compelled to contract. This is what it says by adhering to the letter.

Lucius III, to the Bishop of Rapallo.

Your fraternity asked us by what censure a woman ought to be compelled who, neglecting the religious obligation of an oath, refuses to marry him whom she affirmed by an oath interposed that she would marry. *You asked also whether she whose husband polluted the bed of her mother can, since she desires to become a mother, pass to other vows while her husband is living*. To this we respond *to you* briefly that, *since marriages ought by law to be free, the woman who swore that she would marry* is to be admonished rather than compelled, *especially* since coercions [*of this kind*] are accustomed frequently to have difficult outcomes. *Indeed, she whose husband committed adultery and incest with her mother ought neither to be joined carnally to her husband nor, while he is living, to enter marriage with another.*

> Qui iuravit cum aliqua contrahere, moneri potius debet, quam compelli, ut contrahat. H. d. inhaerendo literae.
>
> Lucius III. Rapalensi Episcopo.
>
> Requisivit a nobis tua fraternitas, qua censura mulier compelli debeat, quae, iurisiurandi religione neglecta, nubere renuit cui se nupturam interposito iuramento firmavit. *Quaesivisti etiam, utrum ea, cuius vir matris torum polluit, ad alia vota, quum mater fieri desideret, viro possit vivente transire*. Ad quod *tibi* breviter respondemus, quod *mulier, quae se nupturam iuravit*, quum libera debeant esse *de iure* matrimonia, monenda est potius quam cogenda, *maxime* quum coactiones [*huiusmodi*] difficiles soleant exitus frequenter habere. *Illa sane, cuius vir cum matre adulterium et incestum commisit, nec viro suo coniungi carnaliter, nec eo vivente cum alio matrimonium inire debebit*.

Chapter XVIII

Latin source headnote: Pendency of litigation concerning a marriage does not impede a second marriage from being contracted if the first was void.

Urban III.

Since in the Apostolic *See, over which, although undeserving, we preside, resides the mastery of all ecclesiastical discipline, it is worthy and consonant with reason that, as often as any doubt arises concerning a business of the Church, recourse be had to the judgment of its deliberation.* We understood *indeed* that, when a matrimonial question between the bailiff of N. and his wife was being treated *before you, after witnesses had been produced and their attestations discussed by diligent examination,* before publication of the testimony the *same* bailiff, returning to his own region, publicly alleged that a sentence of separation between him and his wife had [*been*] promulgated by judgment of the Church; and thus, after falsehood had been suggested *to all,* he presumed to join to himself a certain *other woman* ignorant of the deed. But afterward, when letters *from the Apostolic See* had been obtained concerning the question of the prior marriage, the delegated judges pronounced a sentence of separation.

But because you assert that the bailiff and the woman whom he brought in consented to one another while the litigation concerning the former wife was pending, *your fraternity considered that we should be consulted as to whether such persons are to be admitted to marriage. We therefore, by authority of the present letters,* respond to your consultation in this manner: after suitable penance has been imposed upon the man and carnal intercourse forbidden during the time *of that* penance, afterward they can remain in marital union. [*But concerning, etc.; cf. c.* 5, *On Conditions Appended IV.* 5.]

> Litispendentia super matrimonio non impedit secundum matrimonium contrahi, si primum erat nullum.
>
> Urbanus III.
>
> Quum in apostolica *sede, cui licet immeriti praesidemus, magisterium resideat totius ecclesiasticae disciplinae, dignum est et consonum rationi, ut, quoties circa negotium ecclesiae aliquid dubietatis emerserit, ad ipsius deliberationis arbitrium recurratur*. Intelleximus *siquidem*, quod, quum inter villicum de N. et uxorem eius *coram te* matrimonii quaestio tractaretur, *productis testibus et attestationibus eorum diligenti examine discussis*, ante publicationem testium *idem* villicus reversus ad propria, publice inter se et uxorem suam proposuit sententiam divortii iudicio ecclesiae [*esse*] promulgatam, et sic, falsitate *omnibus* suggesta, quandam aliam *mulierem* facti nesciam sibi copulare praesumpsit. Postmodum vero super prioris matrimonii quaestione literis *a sede apostolica* impetratis, delegati iudices sententiam divortii protulerunt. Verum quia villicum et mulierem, quam superinduxit, pendente lite prioris uxoris invicem asseris consensisse, *tua nos duxit fraternitas consulendos, utrum tales sint ad matrimonia admittendi. Nos igitur auctoritate praesentium* Consultationi tuae taliter respondemus, quod, imposita viro poenitentia competenti, et infra *ipsius* poenitentiae tempus carnali commercio interdicto, postmodum in maritali copula poterunt remanere. [*Super eo vero etc. cf. c.* 5. *de cond. app. IV.* 5.]

Chapter XIX

Latin source headnote: A wife not made certain of the death of her husband cannot contract, although she does not know what has become of a husband who has been absent for a long time.

Clement III, to the Bishop of Zaragoza.

Placed in our presence, you asked *of us* what is to be done *by you* concerning *certain* women *constituted in your diocese* who, *although* they have now waited beyond seven years for their husbands absent on account of captivity or pilgrimage, cannot be made certain concerning their life or death, although they have applied diligent solicitude concerning this, and, on account of youthful age or the frailty of

the flesh, cannot remain continent, and petition to be joined to others in marriage. *But since the Apostle says, "A woman is bound to her husband for as long as her husband lives,"* we therefore respond to your consultation in this manner: however great a number of years they remain thus, while their husbands live they cannot canonically pass over to union with others, nor are *you* by authority of the Church to permit *them* to contract until they receive certain report of the death of their husbands. [*Given at the Lateran.*]

> Uxor, non certificata de morte viri, contrahere non potest, quamvis ignoret, quid sit de marito, qui longo tempore abfuit.
>
> Clemens III. Caesaraugustensi Episcopo.
>
> In praesentia nostra *positus a nobis* quaesivisti, quid agendum *tibi* sit de *quibusdam* mulieribus *in tua dioecesi constitutis*, quae, *quum* viros suos causa captivitatis vel peregrinationis absentes *iam* ultra septennium praestolatae fuerint, nec certificari possunt de vita vel de morte ipsorum, licet super hoc sollicitudinem adhibuerint diligentem, et pro iuvenili aetate seu fragilitate carnis nequeunt continere, petentes aliis matrimonio copulari. *Quum autem dicat Apostolus: "Mulier tam diu alligata est viro, quam diu vir eius vivit,"* Consultationi ergo tuae taliter respondemus, quod, quantocunque annorum numero ita remaneant, viventibus viris suis non possunt ad aliorum consortium canonice convolare, nec *tu eas* auctoritate ecclesiae permittas contrahere, donec certum nuncium recipiant de morte virorum. [*Dat. Laterani.*]

Chapter XX

Latin source headnote: The contract of marriage with a female sinner wishing to correct herself profits toward remission of sins.

The same.

Among the works of charity *which are set before us by authority of sacred Scripture to be imitated, as evangelical authority testifies*, it is not the least to call one who errs back from the path of her error*, and especially to invite women living voluptuously and admitting indiscriminately any persons whatsoever to intercourse of the flesh to the lawful fellowship of the bed, so that they may live chastely. Therefore, considering this, by apostolic authority* we establish that, for all who draw public women from the brothel and take them as wives, what they do shall profit toward remission of sins. [*Given at Rome, at Saint Peter's, on the third day before the Kalends of May, in the first year of our pontificate.* 1198.]

> Contractus matrimonii cum peccatrice, volente se corrigere, proficit ad remissionem peccatorum.
>
> Idem.
>
> Inter opera caritatis, *quae imitanda nobis auctoritate sacrae paginae proponuntur, sicut evangelica testatur auctoritas*, non minimum est, errantem ab erroris sui semita revocare, *+ac praesertim mulieres voluptuose viventes et admittentes indifferenter quoslibet ad commercium carnis, ut caste vivant, ad legitimum tori consortium invitare. Hoc igitur attendentes, auctoritate apostolica* Statuimus, ut omnibus, qui publicas mulieres de lupanari extraxerint et duxerint in uxores, quod agunt in remissionem proficiat peccatorum. [*Dat. Rom. ap. S. Petr. III. Kal. Maii Pont. nostr. Ao. I.* 1198.]

Chapter XXI

Latin source headnote: A marriage contracted by force acquires validity through voluntary cohabitation. This is what it says, and it is alleged daily.

The same.

To that which you intimated *to us* by your letters concerning a certain female parishioner of yours whom her stepfather joined matrimonially to a certain German, we respond in this manner: although, when she was *still* eleven years old, she had at the beginning been delivered to him unwilling and resisting, nevertheless, because afterward, by living with him for a year and a half, she appears to have consented, she is to be compelled to return to him. Nor henceforth are witnesses to be received if the aforesaid woman should name any to be produced in order to prove that she did not consent to him, since the delay of so much time excludes proof of this kind. We therefore command that on this account you not omit to compel *by ecclesiastical censure, with appeal removed*, each to treat the other with marital affection, unless perhaps they wish together to pass to religion, with penance enjoined upon them because each passed to alien and unlawful sexual unions. [*Given at the Lateran.*]

> Matrimonium, per vim contractum, cohabitatione spontanea convalescit. H. d. et quotidie allegatur.
>
> Idem.
>
> Ad id, quod per tuas literas *nobis* intimasti de quadam parochiana tua, quam suus vitricus cuidam Teutonico matrimonialiter copulavit, taliter respondemus, quod, quamvis undecim annos *adhuc* habens, ab initio invita fuisset ei tradita et renitens, tamen, quia postmodum per annum et dimidium sibi cohabitans consensisse videtur, ad ipsum est cogenda redire. Nec de cetero recipiendi sunt testes, si quos memorata mulier ad probandum, quod non consenserit in eundem, nominaverit producendos, quum mora tanti temporis huiusmodi probationem excludat. Mandamus igitur, ut propter hoc non omittas, quo minus *appellatione remota per censuram ecclesiasticam* utrumque compellas ad alterum maritali affectione tractandum, nisi forte vellent ad religionem pariter convolare, poenitentia eis iniuncta pro eo, quod ad alienos et illicitos concubitus uterque transivit. [*Dat. Laterani.*]

Chapter XXII

Latin source headnote: Betrothals for the future, even if sworn, are dissolved by second betrothals of the present, but not by second betrothals for the future.

Innocent III, to the Bishop of Ferentino.

As we received from the letters of your fraternity, when L., your parishioner, had affirmed by his own oath into the hands of the father of the woman P. that he would take P. as wife, her father swearing that he would deliver her to him as wife, and it did not stand through the man, but rather through the woman, that matrimonial solemnity did not follow between them, after four or five years had later elapsed, the same L. betrothed the woman E. through words of the present, as her blood relatives assert, *on account of which the brother of the aforesaid P. lodged his question in your presence. But because you ask to be instructed by our response as to what is to be done concerning these things*, we respond to your petition in this manner: if it is established to you that the same L. betrothed the woman *P.* through words of the future, but E. through words of the present, after suitable penance has been imposed upon him because he made the first pledge void—unless perhaps in his oath he fixed a certain term within which he would take the said P. as wife, and it was not owing to him that he did not consummate the marriage at the appointed term—judge the marriage contracted in the second place lawful and compel him *by ecclesiastical rigor, if there is need*, to observe it, *unless perhaps something else should stand in the way which ought to impede him*.

But if perhaps he contracted betrothals with each through words of the future, compel him to observe the first oath, just as it was lawfully made, being about to enjoin penance upon him for the second. But if these things are not fully established *to you*, continue to take cognizance of the cause until you are sufficiently instructed concerning them. *For what is contained in the attestations which you sent to the Apostolic See concerning co-parenthood does not pertain to the cause, since neither of the contracting persons is that person through whose mediation co-parenthood was contracted between their parents.* [*Given at the Lateran, on the fifth day before the Kalends of March, in the first year of our pontificate.* 1198.]

> Sponsalia de futuro, etiam iurata, solvuntur per secunda sponsalia de praesenti, non autem per secunda de futuro.
>
> Innocentius III. Fernatino Episcopo.
>
> Sicut ex literis tuae fraternitatis accepimus, quum L. parochianus tuus P. mulierem se ducturum in coniugem, in manus patris eiusdem P. iurantis, quod eam sibi traderet in uxorem, proprio firmaverit iuramento, nec per virum steterit, sed per mulierem potius, quo minus inter eos matrimonialis solennitas sit secuta, quatuor postmodum vel quinque annis elapsis, idem L. E. mulierem per verba de praesenti, ut eius consanguinei asserunt, desponsavit, *propter quod frater praedictae P. suum deposuit in tua praesentia quaestionem. Quia vero, quid super his agendum sit, nostro postulas responso edoceri*, Postulationi tuae taliter respondemus, quod, si tibi constiterit, quod idem L. P. *mulierem* per verba de futuro, E. vero desponsaverit per verba de praesenti, imposita ei poenitentia competenti, quia primam fidem irritam fecit, nisi forsan in iuramento suo certum terminum, infra quem dictam P. duceret in uxorem, praefixit, nec per eum stetit, quin ad statutum terminum matrimonium consummaverit, matrimonium secundo loco contractum legitimum iudices, et ad illud servandum, *si opus fuerit, ecclesiastica districtione* compellas eundem: *nisi forsan aliud quid obstiterit, quod ipsum debeat impedire*. Quodsi forte per verba de futuro sponsalia cum utraque contraxit, iuramentum primum, sicut licite factum est, ipsum servare compellas, de secundo ei poenitentiam iniuncturus. Quodsi de his *tibi* non constat ad plenum, tamdiu adhuc cognoscas de causa, donec super his sufficienter instruaris. *Quod enim in attestationibus quas ad sedem apostolicam destinasti de compaternitate habetur non facit ad causam quum neutra contrahentium sit illa persona qua mediante inter parentes eorum compaternitas est contracta.* [*Dat. Lat. V. Kal. Martii Pont. nostr. Ao. I.* 1198.]

Chapter XXIII

Latin source headnote: A mute and a deaf person, and all who are not prohibited, can contract marriage.

The same, to the Archbishop of Arles.

Since at the Apostolic See, *over which, although undeserving, we preside, resides the magistracy of all ecclesiastical discipline, it is worthy and consonant with reason that, as often as any doubt arises concerning various and diverse businesses, recourse be had to the judgment of that see which, by the Lord's ordering, merited to obtain primacy among all churches.* Indeed, you consulted us *through your messengers and letters* as to whether a mute and a deaf person can be joined matrimonially to another. To this we respond *to your fraternity* in this manner: since the edict concerning contracting marriage is prohibitory, so that whoever is not prohibited is consequently admitted, and the consent alone of those men and women concerning whose joining there is litigation suffices for marriage, it appears that, if such a person wishes to contract, it neither can nor ought to be denied to him, since what he cannot declare by words he can declare by signs. [*Given at Rome, at Saint Peter's, on the Ides of July.* 1198.]

> Mutus et surdus, et omnes, qui non prohibentur, matrimonium contrahere possunt.

Idem Arelatensi Episcopo.

Quum apud sedem apostolicam, *cui, licet immeriti, praesidemus, totius ecclesiasticae disciplinae resideat magistratus, dignum et consonum est rationi, ut, quoties circa negotia varia et diversa quicquam dubitationis emerserit, ad ipsius iudicium recurratur, quae disponente Domino inter omnes ecclesias obtinere meruit principatum*. Sane, consuluisti nos *per nuncios et literas tuas*, utrum mutus et surdus alicui possint matrimonialiter copulari. Ad quod *fraternitati tuae* taliter respondemus, quod, quum prohibitorium sit edictum de matrimonio contrahendo, ut, quicunque non prohibetur, per consequentiam admittatur, et sufficiat ad matrimonium solus consensus illorum, de quorum quarumque coniunctionibus agitur, videtur, quod, si talis velit contrahere, sibi non possit vel debeat denegari, quum quod verbis non potest signis valeat declarare. [*Dat. Rom. ap. S. Petr. Id. Iul.* 1198.]

Chapter XXIV

Latin source headnote: An insane person cannot contract marriage.

The same, to the Bishop of Vercelli.

The beloved son R., *a knight of Alessandria*, proposed *before us* that he joined his daughter *Rufina* matrimonially to a certain *Opizo Lancavecla, ignorant that Opizo was insane. Whence he humbly petitioned us that we deign to take counsel for both him and his daughter.* But since the same woman cannot remain with the man himself, who labors under continual madness, and lawful consent could not intervene on account of the derangement of madness, we command *your fraternity by apostolic writings* that, *after the truth has been more fully investigated*, if you know the matter to be so, you take care to separate the aforesaid persons from one another *with the subterfuge of appeal removed*. [*Given at Rome, at Saint Peter's, on the fifth day before the Kalends of January.* 1205.]

Furiosus matrimonium contrahere non potest.

Idem Vercellensi Episcopo.

Dilectus filius R. *miles Alexandrinus* proposuit *coram nobis*, quod *Rufinam* filiam suam cuidam *Opizoni Lancaveclae* matrimonialiter copulavit, *ignorans, quod Opizo esset furiosus. Unde humiliter postulavit a nobis, ut tam eidem quam ipsius filiae consulere dignaremur*. Quum autem eadem mulier cum ipso viro, qui continuo furore laborat, morari non possit, et propter alienationem furoris legitimus non potuerit intervenire consensus, *fraternitati tuae per apostolica scripta* mandamus, quatenus, *inquisita plenius veritate*, si rem noveris ita esse, praefatas personas cures *sublato appellationis diffugio* ab invicem separare. [*Dat. Rom. ap. S. Petr. V. Kal. Ian.* 1205.]

Chapter XXV

Latin source headnote: Marriage is contracted by lawful consent alone, but words are required as to proof; and understand: or other equivalent signs. This is what it says according to the understanding which Panormitanus holds.

The same, to the Bishop of Brescia.

To your fraternity—(And below: [*cf. c.* 10, *On Him Who Knew IV.* 13.]) You asked *in addition to be instructed* whether marriage is contracted from words alone and from which words, *since it is doubted by some that a spiritual bond is contracted by words alone*. We therefore respond to your inquiry in this manner: in truth marriage is contracted through the lawful consent of a man and a woman; but, as regards the Church, words expressing present consent are necessary. For the deaf and mute can

contract marriage through mutual consent without words, and children before the lawful years do not contract by words alone, since they are understood not at all to consent. [*Given at Rome, etc.* 1206.]

> Solo consensu legitimo contrahitur matrimonium, sed verba requiruntur quoad probationem, et intellige: vel alia signa aequipollentia. H. d. secundum intellectum, quem tenet Panormitanus.
>
> Idem Brixiensi Episcopo.
>
> Tuae fraternitati (*Et infra:* [*cf. c.* 10. *de eo, qui cogn. IV.* 13.]) Postulasti *insuper edoceri*, utrum ex solis verbis, et ex quibus matrimonium contrahatur, *quum ab aliquibus dubitetur spirituale contrahi solis verbis*. Nos igitur inquisitioni tuae taliter respondemus, quod matrimonium in veritate contrahitur per legitimum viri et mulieris consensum; sed necessaria sunt, quantum ad ecclesiam, verba consensum exprimentia de praesenti. Nam surdi et muti possunt contrahere matrimonium per consensum mutuum sine verbis, et pueri ante annos legitimos per verba sola non contrahunt, quum intelligantur minime consentire. [*Dat. Romae etc.* 1206.]

Chapter XXVI

Latin source headnote: If one of the contracting persons uses doubtful words with the intention of deceiving the woman, and afterward knows her carnally, judgment is given for marriage in the judicial forum; it is otherwise in the penitential forum. This is what it says according to the true and common understanding.

The same.

Your fraternity considered that we should be consulted—(And below: [*cf. c.* 7, *On Consanguinity and Affinity IV.* 14.]) Consecutively, *however*, you asked [*that*], when a certain man could not otherwise induce a certain woman to mingle carnally with him unless he betrothed her, with no solemnity applied or anyone present, he said to her, "John betroths you," although he was not called John but pretended that he was called John, not believing there to be marriage because he was not called by this name and did not have the purpose of contracting but only of accomplishing carnal union: whether marriage was celebrated between the aforesaid persons, since the woman consented *and consents* to him, and he dissented and dissents, and did nothing else except [*that which*] was expressed above, apart from knowing her.

Concerning this we respond to you that, since the aforesaid man betrothed the aforesaid woman in his own person and under an alien name by which he then pretended that he was called, and carnal union followed between them, it perhaps appears that there is a presumption for marriage, unless you had written to us expressly that he neither purposed nor consents to take her as wife—which we do not see how was established to you. But we, rescribing what the law is, say [*this*]: that, if the matter is thus—namely, that he did not purpose to take her as wife and never consented to the aforesaid person—marriage ought not to be adjudged from that deed, since neither the substance of the conjugal contract nor [*even*] the form of contracting marriage can be found in it, because on the one side only fraud was present and consent was wholly absent, without which the other things cannot perfect a conjugal covenant. [*Third, you asked, etc.; cf. c.* 19, *On Homicide V.* 12. *Given at the Lateran, on the Ides of February, in the fourteenth year of our pontificate.* 1212.]

> Si alter contrahentium utitur verbis dubiis, animo decipiendi mulierem, et eam postmodum cognoscit carnaliter, iudicatur pro matrimonio in foro iudiciali; secus in poenitentiali. H. d. secundum verum et

communem intellectum.

Idem.

Tua nos duxit fraternitas consulendos (*Et infra:* [*cf. c.* 7. *de cons. et aff. IV.* 14.]) Consequenter *autem* quaesivisti, [*ut*] quum quandam mulierem quidam aliter inducere nequivisset, ut sibi commisceretur carnaliter, nisi desponsasset eandem, nulla solennitate adhibita vel alicuius praesentia, dixit illi: "te Ioannes desponsat," quum ipse Ioannes non vocaretur, sed finxit se vocari Ioannem, non credens esse coniugium eo, quod ipse non vocaretur hoc nomine, nec haberet propositum contrahendi, sed copulam tantum exsequendi carnalem, utrum inter praedictos sit matrimonium celebratum, quum mulier consenserit *et consentiat* in eundem, et ille dissenserit et dissentiat, nec aliud quicquam egerit, quam [*quod*] superius est expressum, nisi quod cognoverit eandem. Super quod tibi respondemus, quod, quum praefatus vir praedictam desponsaverit mulierem in propria persona et sub nomine alieno, quo tunc vocari se finxit, et inter eos sit carnalis copula subsecuta, videtur forte pro coniugio praesumendum, nisi tu nobis expresse scripsisses, quod ille nec proposuit, nec consentit illam ducere in uxorem, quod qualiter tibi constiterit non videmus. Nos autem, quid iuris sit rescribentes, [*hoc*] dicimus, quod, si res ita se habuerit, videlicet, quod ille eam non proposuit ducere in uxorem, nec unquam consensit in praedictam personam, non debet ex illo facto coniugium iudicari, quum in eo nec substantia coniugalis contractus, nec [*etiam*] forma contrahendi coniugium valeat inveniri, quoniam ex altera parte dolus solummodo adfuit, et defuit omnino consensus, sine quo cetera nequeunt foedus perficere coniugale. [*Tertio quaesivisti etc. cf. c.* 19. *de hom. V.* 12. *Dat. Lat. Id. Febr. Pont. nostr. Ao. XIV.* 1212.]

Chapter XXVII

Latin source headnote: At the denunciation of one honorable man who reports consanguinity and gives information concerning reputation or scandal, a marriage is impeded from being contracted.

The same, to the Bishop of Beauvais.

When in your diocese—(And below: [*cf. c.* 36, *On Tithes III.* 30.]) Indeed, because it sometimes happens that, when certain persons wish to contract marriage, banns, to use your words, have been issued in the churches *according to the custom of the Gallican Church*, and no objector publicly appears, although report relates a private impediment of kinship, while oaths of the elders concerning their relationship are offered on the part of the contracting persons so that material for suspicion may be removed, you asked what is to be done by you in cases of this kind.

To this we respond in this manner: if a grave person to whom faith is to be applied denounces to you that those who are to be joined in marriage touch one another by kinship, and gives information concerning report or scandal, or if you can even be made certain immediately through yourself, not only ought you not to receive the oaths of the parents spontaneously offered, but you ought also to compel those who thus strive to contract, if they cannot be induced after being admonished, either [*to*] desist from such a contract or, according to the judgment of your discretion, to furnish oaths of their relatives against report of this kind. Otherwise, if the person denouncing does not exist as such as we have said, or cannot give information concerning report or scandal, you will be able to admonish those contracting to desist, but not compel them. [*But if, etc.; cf. c.* 6, *Who May Accuse a Marriage IV.* 18. *Given at the Lateran, on the fourth day before the Kalends of November, in the fifteenth year of our pontificate.* 1212.]

Ad denunciationem unius honesti viri, qui defert consanguinitatem, et de fama vel scandalo docet, impeditur matrimonium contrahendum.

Idem Episcopo Belvacensi.

Quum in tua dioecesi (*Et infra:* [*cf. c.* 36. *de decim. III.* 30.]) Sane, quia contingit interdum, quod, aliquibus volentibus matrimonium contrahere, bannis, ut tuis verbis utamur, in ecclesiis editis *secundum consuetudinem ecclesiae Gallicanae*, ac nullo contradictore publice comparente, licet fama privatum impedimentum deferat parentelae, quum ex parte contrahentium iuramenta maiorum de sua propinquitate, ut suspicionis tollatur materia, offeruntur, quid tibi sit faciendum in casibus huiusmodi quaesivisti. Ad quod taliter respondemus, quod, si persona gravis, cui fides sit adhibenda, tibi denunciet, quod hi, qui sunt matrimonio copulandi, se propinquitate contingant, et de fama vel scandalo doceat, aut etiam per te ipsum possis certificari de plano, non solum debes iuramenta parentum sponte oblata non recipere, verum etiam eos, qui sic contrahere nituntur, si moniti induci nequiverint, compellere, ut [*vel*] a tali contractu desistant, vel contra famam huiusmodi secundum tuae discretionis arbitrium iuramenta exhibeant propinquorum. Alioquin, si persona denuncians non exstiterit talis, ut diximus, vel de fama vel de scandalo non poterit edocere, ad desistendum monere poteris, non compellere, contrahentes. [*Si vero etc. cf. c.* 6. *Qui matrim. acc. IV.* 18. *Dat. Lat. IV. Kal. Nov. Pont. nostr. Ao. XV.* 1212.]

Chapter XXVIII

Latin source headnote: A woman who denies that she consented to marriage is not believed when the husband proves the contrary; it is otherwise if she proves that she consented through fear which can befall a steadfast man.

Honorius III, to the Bishop of Bergen.

We respond briefly to your consultation that women who *according to custom* come with betrothed men to the doors of the church to be blessed, and there, protesting, affirm that they never consented to marriage with them, ought not to be heard when the betrothed men lawfully prove the contrary, since the simple assertion of the women ought not to prevail over lawful and suitable witnesses. Indeed, a hearing is not immediately to be denied to those who, after receiving the blessing, soon flee from the betrothed men before carnal union has followed, asserting that they never truly consented to them but, compelled by fear inflicted, uttered words of consent although they dissented in intention. Rather, inquiry is to be made with diligence concerning the fear inflicted; and, if such fear is found to have been inflicted as could befall a steadfast man, they will not undeservedly be heard.

Mulieri, quae negat, se in matrimonium consensisse, non creditur marito probante contrarium; secus, si probat, se consensisse per metum, qui potest cadere in constantem virum.

Honorius III. Episcopo Berguensi.

Consultationi tuae breviter respondemus, quod mulieres, quae *de more* veniunt ad valvas ecclesiae benedicendae cum sponsis, et ibi reclamantes affirmant, se nunquam in eorum matrimonium consensisse, audiri sponsis legitime probantibus contrarium non oportet, quum legitimis et idoneis testibus non debeat illarum simplex assertio praevalere. Sane illis, quae benedictione accepta mox a sponsis aufugiunt ante carnis copulam subsecutam, asserentes, se nunquam in illos veraciter consensisse, sed metu illato compulsas verba protulisse consensus, licet animo dissentirent, non statim est audientia deneganda; sed de illato metu est cum diligentia inquirendum; et, si talis metus inveniatur illatus, qui potuit cadere in constantem virum, erunt non immerito audiendae.

Chapter XXIX

Latin source headnote: In marriages and betrothals there ought to be freedom; whence in them a promise of a penalty does not bind.

Gregory IX.

The woman Gemma explained to us that, when T., her daughter, contracted marriage with C., B. of Alferio, on the occasion that betrothals were contracted between his son P. and the aforesaid girl while they were constituted under seven years, strives to extort from her the penalty placed in the stipulation, to be paid by the party who should contravene. Therefore, since marriages ought to be free and for this reason such a stipulation is deservedly to be disapproved on account of the interposition of a penalty, we command that, if it is so, you compel the same B. by ecclesiastical censure to desist from extortion of the aforesaid penalty.

> In matrimoniis et sponsalibus debet esse libertas, unde in eis promissio poenae non obligat.
>
> Gregorius IX.
>
> Gemma mulier nobis exposuit, quod, quum T. filia eius cum C. contraxit matrimonium, B. de Alferio ea occasione, quod inter P. filium suum et praedictam puellam infra septennium constitutos sponsalia contracta fuerunt, poenam solvendam a parte, quae contraveniret, in stipulatione appositam, ab ipsa nititur extorquere. Quum itaque libera matrimonia esse debeant, et ideo talis stipulatio propter poenae interpositionem sit merito improbanda, mandamus, quatenus, si est ita, eundem B., ut ab extorsione praedictae poenae desistat, ecclesiastica censura compellas.

Chapter XXX

Latin source headnote: Betrothals for the future pass into marriage through carnal union following, but not through an attempt at carnal union alone. This is what it says with the final chapter below under the same title.

The same, to the Bishop of Le Mans.

He who gave a pledge to the woman M. concerning contracting marriage, with carnal union following, even if in the face of the Church he takes another and knows her, is held to return to the first; because, although the first marriage appears to be presumed, nevertheless proof against a presumption of this kind is not to be admitted. From this it follows that the marriage which afterward followed in fact is considered neither a true marriage nor any marriage.

> Sponsalia de futuro transeunt in matrimonium per carnalem copulam subsecutam, sed non per nisum carnalis copulae tantum. H. d. cum c. fin. infra eodem.
>
> Idem Episcopo Cenomanensi.
>
> Is, qui fidem dedit M. mulieri super matrimonio contrahendo, carnali copula subsecuta, etsi in facie ecclesiae ducat aliam et cognoscat, ad primam redire tenetur, quia, licet praesumptum primum matrimonium videatur, contra praesumptionem tamen huiusmodi non est probatio admittenda. Ex quo sequitur, quod nec verum, nec aliquod censetur matrimonium, quod de facto est postmodum subsecutum.

Chapter XXXI

Latin source headnote: Betrothals of the present are not dissolved by a following marriage, even one consummated by carnal union; but betrothals for the future, even if sworn, are dissolved by following betrothals of the present.

The same.

If lawful consent of the present intervenes between a man and a woman so that one receives the other by mutual consent expressed in customary words, each saying, "I receive you as mine," and, "I receive you as mine," or other words expressing present consent, whether an oath has been interposed or not, it is not lawful for either to pass to other vows. But if either does so, the second marriage contracted in fact, even if carnal union followed, ought to be separated, and the first remain in its firmness.

But if only a promise of the future was made between them, each saying to the other, "I will receive you as mine," and, "I will receive you as mine," or similar words, if another should betroth that woman through words of the present, even if an oath concerning the future, as we have said, intervened between her and the first, the second marriage cannot be separated in view of a betrothal of this kind; but penance is to be enjoined upon them for violation of the pledge.

> Sponsalia de praesenti non solvuntur per sequens matrimonium, etiam carnali copula consummatum; sed sponsalia de futuro etiam iurata solvuntur per sequentia de praesenti.
>
> Idem.
>
> Si inter virum et mulierem legitimus consensus interveniat de praesenti ita, quod unus alterum mutuo consensu, verbis consuetis expresso, recipiat, utroque dicenti: "ego te in meam accipio," et: "ego te accipio in meum," vel alia verba consensum exprimentia de praesenti, sive sit iuramentum interpositum sive non: non licet alteri ad alia vota transire. Quod si fecerit, secundum matrimonium de facto contractum, etiamsi sit carnalis copula subsecuta, separari debet, et primum in sua firmitate manere. Verum si inter ipsos accessit tantummodo promissio de futuro, utroque dicente alteri: "ego te recipiam in meam," et: "ego te in meum," sive verba similia, si alius mulierem illam per verba de praesenti desponsaverit, etiamsi inter ipsam et primum iuramentum intervenerit, sicut diximus, de futuro: huiusmodi desponsationis intuitu secundum matrimonium non poterit separari, sed eis est de violatione fidei poenitentia iniungenda.

Chapter XXXII

Latin source headnote: An attempt at intercourse does not cause betrothals for the future to pass into marriage.

The same.

A young man who, although he often attempted it, did not know carnally the woman betrothed to him through words of the future, and afterward contracted with another through words of the present, ought to have as wife not the first, with whom there was neither a true marriage from the form of the contract nor a presumed marriage, since the attempt had no effect, but the second.

> Nisus ad copulam non facit sponsalia de futuro transire in matrimonium.
>
> Idem.

> Adolescens, qui desponsatam sibi per verba de futuro, licet saepe nisus fuerit, carnaliter non cognoscens, cum alia postmodum per verba de praesenti contraxit, non primam, cum qua nec fuit verum matrimonium ex forma contractus, nec praesumptum, quum conatus non habuisset effectum, sed secundam debet habere uxorem.

Title II: On the Betrothal of Minors

Chapter I

Latin source headnote: A father contracts betrothals for an underage son, but not for one of age unless he consents.

Hormisdas, to Bishop Eusebius.

Your fraternity asked us concerning an adult son for whom the father wishes to contract a marriage, whether he can do it without the will of the adult son. To this we say that, if the son does not consent in any way, it cannot be done; but a father can deliver in marriage to whom he wishes a son not yet adult, whose will cannot be discerned. And after the son has reached perfect age, he ought altogether to fulfill this.

> **DE DESPONSATIONE IMPUBERUM.**
>
> Pater pro filio impubere sponsalia contrahit, pro pubere vero non, nisi consentiat.
>
> Hormisda Eusebio Episcopo.
>
> Tua nos requisivit fraternitas de filio adulto, quem pater matrimonium vult contrahere, si sine voluntate adulti filii facere potest. Ad quod dicimus, si aliquo modo non consentit filius, fieri non posse; potest autem filium nondum adultum, voluntas cuius discerni non potest, pater cui vult matrimonio tradere. Et postquam filius pervenerit ad perfectam aetatem, omnino debet hoc adimplere.

Chapter II

Latin source headnote: Minors, whether both or one, ought not to be joined except for the good of peace.

Pope Nicholas.

Where there is no consent—(And below:) *By authority of this decree, therefore,* we more strictly prohibit any persons *henceforth* from being joined where either or both have not reached the age determined by laws or canons, unless perhaps, with some most urgent necessity intervening, such as for the good of peace, such a union is tolerated.

> Impuberes ambo vel alter, nisi pro bono pacis, coniungi non debent.
>
> Nicolaus Papa.
>
> Ubi non est consensus (*Et infra:*) *Huius ergo decreti auctoritate* Districtius inhibemus, ne *de cetero* aliqui, quorum uterque vel alter ad aetatem legibus vel canonibus determinatam non pervenerit, coniungantur, nisi forte aliqua urgentissima necessitate interveniente, utpote pro bono pacis, talis coniunctio toleretur.

Chapter III

Latin source headnote: With respect to marriage, those are pubescent who from the condition of the body can conceive and beget.

Isidore.

The pubescent are called from the pubes, that is, named from the modesty of the body, because these places *then* first put forth down. Certain persons, however, reckon puberty from years, that is, that he is pubescent who has completed fourteen years, although he matures most slowly. But it is certain that he is pubescent who *both* shows puberty from the condition of the body and can now beget. And child-bearing girls are those who give birth in childish years.

> Puberes sunt quoad matrimonium, qui ex habitu corporis concipere et generare possunt.
>
> Isidorus.
>
> Puberes a pube sunt vocati, id est a pudentia corporis nuncupati: quia haec loca *tunc* primo lanuginem ducunt. Quidam tamen ex annis pubertatem existimant, id est, eum esse puberem, qui XIV. annos implevit, quamvis tardissime pubescat. Certum autem est, eum puberem esse, qui *et* ex habitu corporis pubertatem ostendit, et generare iam potest. Et puerperae sunt, quae in annis puerilibus pariunt.

Chapter IV

Latin source headnote: From betrothals contracted with one younger than seven years, an impediment of public honesty does not arise; it is otherwise if they are contracted with one older, or with one younger who consents after seven years. And affinity following dissolves preceding betrothals for the future.

Alexander III, to the Bishop of Hereford.

We received the letters of your fraternity, from the tenor of which we perceived that, when a certain *parishioner of yours named A.* was of perfect age, he betrothed a certain girl in the cradle; but, as time proceeded, *the same A.* knew the girl's mother and received her as wife. *Whence, because you doubt whether a marriage of this kind ought to stand, you sought counsel from us concerning it. Concerning this* we respond to your consultation in this manner: if the aforesaid man received the mother of the *aforesaid* girl as wife before *the girl herself* completed her seventh year, do not dissolve *the* marriage, *but permit the same man freely to keep the aforesaid woman as wife*, since betrothals of this kind which occur in the cradle are null. But if, after the *aforesaid* girl completed her seventh year, the aforesaid man received her mother *as* wife, since betrothals are from then accustomed to have force, do not defer pronouncing a sentence of separation between them, nor permit him to have either daughter or mother *as wife*.

> Ex sponsalibus, contractis cum minore septennio, non oritur impedimentum publicae honestatis; secus, si cum maiore vel minore, consentiente post septennium. Et affinitas sequens dissolvit sponsalia praecedentia de futuro.
>
> Alexander III. Herfordensi Episcopo.
>
> Literas tuae fraternitatis accepimus, ex quarum tenore perpendimus, quod, quum quidam *parochianus tuus A. nomine* esset perfectae aetatis, quandam puellam in cunabulis desponsavit; procedente vero tempore *idem A.* matrem puellae cognovit, et eam in uxorem accepit. *Unde quia dubitas, an huiusmodi matrimonium stare debeat, a nobis exinde consilium postulasti. Super quo* Consultationi tuae taliter

respondemus, quod, si praefatus vir matrem *praefatae* puellae, antequam *puella ipsa* septimum annum complesset, in uxorem accepit, matrimonium *ipsum* non dissolvas *sed eundem virum praefatam mulierem, sicut uxorem, libere tenere permittas*, quum desponsationes huiusmodi nullae sint, quae in cunabulis fiunt. Verum si, postquam *praefata* puella septimum annum complevit, praedictus vir matrem eius accepit *in* uxorem, quum sponsalia extunc placere consueverint, inter eos sententiam divortii non differas promulgare, nec ipsum filiam seu matrem *in uxorem* habere permittas.

Chapter V

Latin source headnote: Betrothals which are null from defect of consent do not create the justice of public honesty; but some betrothals do so, even though they have been dissolved in a lawful manner.

The same, to the Archbishop of York.

The *noble man W., son of G., approached our presence with your letters, from the tenor of which we perceived that, when he had betrothed the daughter of a certain noble man while she was of lesser age, and afterward, when she did not furnish assent in this matter, before she reached marriageable years a separation was celebrated between them. But as time proceeded, after the girl's father died,* [*the aforesaid*] *W. joined her mother to himself in marriage. Since you were unwilling to sustain this deed, you solicitously admonished him to dismiss her; and, because he was unwilling to acquiesce in your admonitions in this matter, you bound him with the bond of excommunication. At last, after receiving security from him that he would approach our presence and firmly observe our statute concerning this, you announced that the same man had been absolved at our command and sent him to our presence with your letters. But the aforesaid W., constituted in our presence, proposed to us by his assertion that he betrothed the girl herself while she was under her seventh year; afterward,* [*however*]*, before she reached marriageable years, she was unwilling in any way to consent to receive the aforesaid W. as husband, and thus she approached your presence with her father, in whose power she had remained, and with the aforesaid W. And when you heard from the girl's mouth, and knew through her and through her father, that she did not wish the aforesaid W. as husband, you immediately announced publicly in full synod that he was absolved from a betrothal of this kind. But after many years had elapsed and the girl's father also had died, our dearest son in Christ H., King of the English, delivered the mother of the aforesaid girl to the aforesaid W. as wife. The same W., so that discord arisen between his blood relatives and the woman's blood relatives might be quieted, received and solemnly betrothed her, took her without contradiction of the Church, and begot children from her; and the girl was joined to another man. But although it is contained in your letters that the girl herself was of lesser age when a betrothal of this kind was made, nevertheless it matters whether, when she was of lesser age,* [*she was*] *near an age fit for marriage or under seven years. And therefore* we command your fraternity *by apostolic writings, instructing* that, *after the truth of the matter has been diligently investigated and known*, if it is established to you that the *aforesaid* girl was not seven years old when she was betrothed to the *aforementioned* G., and that afterward she did not consent to him, and that the same G. was absolved by you from a betrothal of this kind, you command the marriage celebrated between the same G. and the girl's mother to be inviolably observed and announce their offspring to be legitimate; because, *as your discretion is not ignorant*, betrothals and marriages cannot occur before seven years, *especially* if consent does not afterward accede.

Indeed, if the aforesaid girl had completed her seventh year before [*a betrothal of this kind*], although the aforesaid man was absolved by law itself from betrothal to the girl because she was unwilling to consent to him, nevertheless it appears dishonorable that he should have the mother of her whose daughter was betrothed to him. *But if it has appeared to you that he should remain with the girl's mother, lest discord formerly arisen between the blood relatives of each, but now quieted, be stirred anew, you will be able to*

dissemble this and tolerate it with equanimity. But the sons whom he received from her, if he took her as wife while the Church tolerated it, cannot be prohibited from succession to the paternal or maternal inheritance.

> Sponsalia, nulla ex defectu consensus, non creant publicae honestatis iustitiam: sponsalia vero aliqua sic, licet legitimo modo fuerint dissoluta.
>
> Idem Eboracensi Archiepiscopo.
>
> Accessit ad praesentiam nostram *nobilis vir W. filius G. cum literis tuis, ex quarum tenore perpendimus, quod, quum filiam cuiusdam nobilis viri, dum esset minoris aetatis, desponsasset, et postmodum ipsa assensum in hac parte non praebente, antequam ad nubiles annos pervenisset, celebratum est inter eos divortium. Procedente vero tempore, defuncto patre puellae, matrem eius * [*praedictus*] *W. sibi matrimonio copulavit. Quod quidem factum quum sustinere nolles, eum sollicite monuisti, ut ipsam dimitteret, et quia monitis tuis in hac parte noluit acquiescere, ipsum excommunicationis vinculo innodasti. Tandem, accepta ab eo cautione, quod nostram adiret praesentiam, et super hoc statutum nostrum firmiter observaret, eundem mandato nostro absolutum denunciasti, et cum literis tuis ad praesentiam nostram misisti. Verum praefatus W. in nostra praesentia constitutus sua nobis assertione proposuit, quod puellam ipsam, dum esset infra septimum annum, desponsavit, postea* [*vero*], *antequam ad nubiles annos pervenisset, noluit aliquatenus consentire, ut praefatum W. in virum acciperet, et ita cum patre suo, in cuius potestate remanserat, et cum praefato W. ad praesentiam tuam accessit. Et quum ab ore puellae audisses, et per eam cognosceres et per patrem eius, quod memoratum W. in virum nolebat, statim illum in plena synodo ab huiusmodi desponsatione publice absolutum denunciasti. Elapsis vero pluribus annis post, mortuo etiam patre puellae, carissimus in Christo filius noster H. Anglorum rex matrem supradictae puellae memorato W. tradidit in uxorem, quam idem W., ut discordia orta inter consanguineos suos et consanguineos mulieris sopiretur, accepit et solenniter desponsavit, et sine contradictione ecclesiae duxit, et ex ea liberos procreavit, et puella fuit alteri viro copulata. Verum licet contineatur in literis tuis, quod puella ipsa erat minoris aetatis, quando huiusmodi desponsatio facta fuit, tamen refert, utrum, quum esset minoris aetatis,* [*fuerit*] *proxima aetati aptae matrimonio, aut infra septem annos. Ideoque* Fraternitati tuae *per apostolica scripta praecipiendo* mandamus, quatenus, *rei veritate inquisita diligenter et cognita,* si tibi constiterit, quod *praefata* puella non esset septennis, quando *praememorato* G. desponsata fuit, et postea in eum non consenserit, et quod idem G. ab huiusmodi desponsatione per te fuerit absolutus, matrimonium, inter eundem G. et matrem puellae celebratum, praecipias inviolabiliter observari, et eorum prolem denuncies esse legitimam, quia, *sicut discretio tua non ignorat*, desponsationes et matrimonia ante septem annos fieri non possunt, *praesertim* si consensus postea non accedit. Sane, si praefata puella ante [*huiusmodi*] desponsationem septimum annum compleverat, licet praedictus vir a desponsatione ipsius puellae ipso iure fuerit absolutus, quum ea in eum consentire noluerit, inhonestum tamen videtur, ut matrem eius habeat, cuius filia fuit sibi desponsata. *Verum si tibi visum fuerit, ut cum matre puellae remaneat, ne discordia inter utriusque consanguineos olim exorta nunc autem sopita denuo suscitetur id dissimulare poteris et aequanimiter tolerare. Filii autem quos de ipsa suscepit, si eam tolerante ecclesia in uxorem duxit a successione paternae vel maternae, hereditatis prohiberi non possunt.*

Chapter VI

Latin source headnote: If an underage girl, betrothed and conducted home, seeks permission after becoming of age to marry another, she is not heard if the man swears that he knew her; nor is she heard if, not yet of age but near puberty, she is proved to have been known. And from betrothals contracted with a minor older than seven years, public honesty arises.

The same, to the Bishop of Norwich.

It was contained in your letters that, when a certain girl under marriageable years had been delivered to a certain man as wife and conducted home by him, *her parents asserting that she existed as of lawful age*, on reaching marriageable years she sought permission to marry another, asserting that she had by no means consented to the same man. *But the aforesaid man proposed to the contrary that, although the same girl perhaps had not yet reached her twelfth year when she was delivered to him as wife, nevertheless she was so close to the age that he knew her by carnal commingling. Hence it is that, since she says that she was not known by the same man, and you consulted us whether she can marry another*, we respond to your consultation in this manner: since it is expressly contained in the decrees that, if a man says that he knew his wife and the woman denies it, one must stand by the man's truth, faith is to be applied to the aforesaid man who says that he knew the woman herself, if he affirms it by oath.

But if she was near the age, as in the eleventh or about the twelfth year, and with her assent *and the will of her parents* was betrothed *and blessed*, and known by the same man, she ought not to be separated, especially since her parents confessed that she had been of lawful age. But if a girl under marriageable years *and near the age* was betrothed to someone, *blessed and conducted home*, it is not lawful for anyone of the blood relationship of the man to whom she was betrothed to take her as wife, nor is it permitted for the same betrothed man to join to himself anyone of the blood relationship of the betrothed woman [*in marriage*].

> Si impubes, desponsata et traducta, petit licentiam pubes facta alteri nubendi, non auditur, si vir iurat, se eam cognovisse; nec auditur, si nondum pubes, sed proxima pubertati probetur cognita. Et ex sponsalibus, contractis cum impubere maiore septennio, oritur publica honestas.
>
> Idem Norvicensi Episcopo.
>
> Continebatur in literis tuis, quod, quum quaedam puella infra nubiles annos cuidam viro in uxorem tradita fuerit, et ab ipso traducta, *suis parentibus asserentibus, eam legitimae aetatis exsistere*, haec, ad nubiles annos perveniens, alii nubendi licentiam postulavit, asserens, se in eundem virum nullatenus consensisse. *Praedictus vero vir econtra proponit, quod, licet eadem puella nondum forte annum XII. attigisset, quum ei tradita fuisset in uxorem, usque adeo tamen aetati fuit proxima, quod ipsam carnali commixtione cognovit. Inde est, quod, quum ipsa dicit ab eodem viro se incognitam, et tu nos consuluisti, utrum alii possit nubere*, Consultationi tuae taliter respondemus, quod, quum in decretis habeatur expressum, quod, si vir dixerit, quod uxorem suam cognoverit, et mulier negaverit, viri standum est veritati, unde praefato viro, qui dicit, se mulierem ipsam cognovisse, fides est adhibenda, si id firmaverit iuramento. Si autem fuerit aetati proxima, ut in undecimo vel circa XII. annum, et cum suo assensu *et voluntate parentum* desponsata *et benedicta fuerit*, et cognita ab eodem viro, separari non debet, praesertim quum parentes eius ipsam fuisse aetatis legitimae faterentur. Si vero puella infra nubiles annos *et aetati proxima* alicui desponsata fuerit, *benedicta atque traducta*, non licet alicui de consanguinitate ipsius, cui desponsata fuerit, eam ducere in uxorem, nec fas est eidem sponso de consanguinitate sponsae sibi aliquam [*matrimonio*] copulare.

Chapter VII

Latin source headnote: If persons older than seven years contract betrothals, neither can withdraw before puberty. This first. And the one who first reaches puberty will wait for the other. This second. But if at the time of the contract one was of age and the other was not, not the former but the latter, upon becoming of age, can withdraw. This third.

The same, to the Bishop of Bath.

Concerning those who, [*existing*] under the years fit *for contracting* marriages, contract betrothals, whether both or one should protest before they reach years fit *for contracting* marriages and should petition to be separated, they are by no means to be heard. But if either of them reached the years of puberty while the other existed under the same years when those betrothals were contracted, if the one who is of lesser age protests when reaching those years and is unwilling to consent to the other, they can be separated from one another by judgment of the Church. But a woman who, after she reaches marriageable years, married one who had not yet reached years fit *for contracting* marriages, since she once consented to him, will no longer be able *in any way* to dissent *or depart*, unless *perhaps* he whom she married, after he reaches lawful age, *altogether* refuses to furnish his consent to her.

> Si maiores septennio contrahunt sponsalia, neuter antepubertatem resilire potest. Hoc primo. Et ille, qui primo it pubes, alterum exspectabit. Hoc secundo. Quod si tempore contractus aliter erat pubes, non ille, sed alter factus pubes resilire potest. Hoc tertio.
>
> Idem Bathoniensi Episcopo.
>
> De illis, qui infra annos aptos matrimoniis *contrahendis* [*exsistentes*] sponsalia contrahunt, sive uterque sive alter reclamet antequam ad annos matrimoniis *contrahendis* aptos pervenerint, et postulent separari, non sunt ullatenus audiendi. Si vero alteruter istorum ad annos pubertatis pervenerit, infra eosdem annos altero exsistente, quum eadem sponsalia contrahuntur; si is, qui minoris aetatis est, quum ad annos illos pervenerit, reclamaverit, nec in alterum voluerit consentire, iudicio ecclesiae poterunt ab invicem separari. Mulier autem, quae, postquam annos nubiles attingit, ei, qui nondum ad annos aptos matrimoniis *contrahendis* venerat, nupsit, quum in eum semel consenserit, amplius non poterit *aliquatenus* dissentire *vel divertere*, nisi *forte* ipse, cui nupsit, postquam ad legitimam aetatem pervenerit, in eam suum *omnino* negaverit praestare consensum.

Chapter VIII

Latin source headnote: Minors contracting betrothals ought not to be separated before puberty, but can be after puberty if they contradict the betrothals, unless carnal union intervened.

The same, to the same.

Your discretion asked us whether it is lawful for those who are joined in the name of marriage below marriageable years, or for one of them, to depart from such a marriage before they reach years fit for marriage. To this we respond *to your inquiry in this manner*: because before marriageable years they do not have conjugal consent *by authority of the holy Fathers*, they are held to wait until lawful age, and then either let the marriage be confirmed or, if they are unwilling to be together, let them be separated, unless *perhaps* carnal commingling intervened beforehand, since it is sometimes accustomed to anticipate the time of puberty. *But if one of them reaches the years, etc., as above in the preceding chapter.*

> Impuberes, sponsalia contrahentes, ante pubertatem separari non debent, sed post pubertatem possunt, si contradicunt sponsalibus, nisi copula carnalis intervenerit.
>
> Idem eidem.
>
> A nobis tua discretio requisivit, utrum iis qui infra annos nubiles matrimonii nomine coniunguntur, vel eorum alteri, antequam ad annos aptos matrimonio perveniant, liceat a matrimonio tali discedere. Ad quod *inquisitioni tuae taliter* respondemus, quod pro eo, quod ante nubiles annos coniugalem consensum *de sanctorum Patrum* non habent *auctoritate*, usque ad legitimam aetatem exspectare tenentur, et tunc aut

confirmetur matrimonium, aut, si simul esse noluerint, separentur; nisi *forte* carnalis commixtio ante intervenerit, quum interdum illa tempus anticipare soleat pubertatis. *Si vero alter eorum ad annos etc. ut supra prox. c.*

Chapter IX

Latin source headnote: Minors fit for marriage are bound by the contract of marriage unless violence intervenes.

The same, to the Archbishop of Genoa.

Concerning those, *however*, who are betrothed at a lesser age, *are delivered and joined, and in the course of time petition for judicial separation, alleging their lesser age or force done to them by their parents, by the present letters* we respond to your inquiry that, if they were so near the age that they could be joined by carnal union, they ought not to be separated *from one another* in view of their lesser age if one appears to have consented to the other, since malice appears to have supplied age in them. But of whatever age they may be, they can excuse themselves by violence inflicted unless consent accedes after the violence. [*That also, etc.* (*cf. c. On Presumptions II.* 23.)]

Minores, apti ad matrimonium, ex contractu matrimonii obligantur, nisi violentia intercedat.

Idem Genuensi Archiepiscopo.

De illis *autem*, qui in minori aetate desponsantur, *traduntur et coniunguntur, et processu temporis divortium postulant, minorem allegantes aetatem, aut vim sibi a parentibus factam, hoc inquisitioni tuae praesentibus literis* Respondemus, quod, si ita fuerint aetati proximi, quod potuerint copula carnali coniungi, minoris aetatis intuitu *ab invicem* separari non debent, si unus in alium visus fuerit consensisse, quum in eis aetatem supplevisse malitia videatur. Sed cuiuscunque sint aetatis, se possunt per illatam violentiam excusare, nisi post violentiam consensus accedat. [*Illud quoque etc.* (*cf. c. de praes. II.* 23.)]

Chapter X

Latin source headnote: A contract before puberty, even with an attempt at carnal union, does not make a marriage.

Urban III, to the Bishop of Le Mans.

We received the attestations *transmitted to us by your fraternity* concerning the matrimonial cause which is debated between the young man H. and the woman G.; and, after they had been *diligently* inspected *and more fully understood, it manifestly* became known to us that the aforesaid young man had not yet reached his twelfth year when he received the aforesaid G. as wife. And although he had attempted, as each confessed, to deflower her, nevertheless the woman believes that she escaped as a virgin. But before he reached his fourteenth year, he departed from the aforesaid woman, who, since he is seventeen years old, contends to claim him for herself as husband. *But since the man is seventeen years old, he refuses to receive her. Whence, because, until you consulted us concerning the cause itself, you did not consider that you should proceed to pronouncement of sentence*, we respond to your consultation in this manner: if the woman is unable to prove by suitable witnesses that after his fourteenth year or around the end of his fourteenth year the aforesaid young man consented to her, after receiving from him an oath that, after he reached lawful age, he did not consent to have her as wife, you can and ought to absolve him from the woman's claim and give permission to each to pass to other vows.

Contractus ante pubertatem, etiam cum nisu carnalis copulae, non facit matrimonium.

Urbanus III. Cenomanensi Episcopo.

Attestationes super causa matrimonii, quae inter H. iuvenem et G. mulierem vertitur, *a tua nobis fraternitate transmissas* accepimus, et, ipsis *diligenter* inspectis *et plenius intellectis, manifeste* nobis innotuit, quod praedictus iuvenis nondum duodecimum annum attigerat, quum praefatam G. accepit uxorem. Et licet nisus fuisset, sicut uterque confessus est, ipsam corrumpere, mulier tamen credit, se virginem evasisse. Verum ipse, antequam ad annum XIV. pervenisset, a memorata muliere recessit, quem, quum XVII. annos habeat, eadem pro viro sibi vindicare contendit. *Sed quum vir XVII. annos habeat, ipsam recipere contradicit. Unde, quia, donec nos super causam ipsam consuleres, non duxisti in prolatione sententiae procedendum,* Consultationi tuae taliter respondemus, quod, si mulier per idoneos testes probare nequiverit, quod post XIV. annum aetatis suae vel circa finem XIV. anni praedictus iuvenis consensisset in eam, ab ipso iuramento recepto, quod, postquam ad legitimam aetatem pervenit, ipsam habere non consensit in uxorem, ab impetitione mulieris eum potes et debes absolvere, et ad alia vota utrique dare licentiam transeundi.

Chapter XI

Latin source headnote: If an older girl unwillingly contracted betrothals with a younger boy, she is not held to wait for him until he reaches adult age.

The same, to the Archbishop of Pisa.

We received from the letters of your fraternity that a certain girl in her twelfth year was sworn and betrothed to a certain boy of nine or ten years, and, as time proceeded, by the will of her parents rather than her own, as she asserts, was led to the house of the father of the *aforesaid* boy. There, unwilling and against her will, *as you propose that you heard from her own mouth, and driven both by the persuasions and* threats of her parents, she remained for a year and more; and at last, departing thence, she returned to her own house. *But when admonished by her mother, and afterward by you, as you assert, she wholly refuses to return to him, asserting that she never wished and does not wish to have him as husband, but petitions for the faculty of marrying another.*

But since the *aforementioned* boy, *as your letters contained*, has not yet reached his fourteenth year *of age*, nor *ever* had carnal access to the same *girl*, we respond to your discretion in this manner: if the *aforesaid* girl, *after being earnestly admonished by you for this purpose* that she wait until the same boy completes his fourteenth year *of age*, has not considered that she should wait *at your admonition*, according to those things which have been proposed, grant her the free faculty of receiving another man *as husband by our authority*. *Given at Verona.*

Si maior invita contraxit sponsalia cum minore, non tenetur ipsum exspectare, donec veniat ad aetatem adultam.

Idem Pisano Archiepiscopo.

Ex literis tuae fraternitatis accepimus, quod puella quaedam anno XII. iurata fuit et desponsata cuidam puero IX. vel X. annorum, et tempore procedente de voluntate parentum potius, quam de sua, sicut asserit, ad domum patris *praedicti* pueri adducta, ubi nolens et invita, *sicut ab ore ipsius te audisse proponis, et tam persuasionibus quam* minis parentum impulsa, moram fecit per annum et amplius, et tandem inde recedens, ad domum propriam est regressa. *Commonita vero a matre sua, et a te postmodum, sicut asseris, ad eum redire penitus contradicit, asserens, quod nunquam eum voluit; nec vult in virum habere, sed nubendi alii postulat facultatem*. Quum autem *iam* dictus puer, *sicut tuae literae continebant*, nondum ad XIV. annum *aetatis suae*

pervenerit, nec *unquam* ad eandem *puellam* carnaliter accessum habuerit, discretioni tuae taliter respondemus, quod, si *memorata* puella *per te ad hoc studiose* commonita, ut, donec compleat idem puer annum XIV. *suae aetatis*, exspectet, *ad commonitionem tuam* non duxerit exspectandum, ei secundum ea, quae proposita sunt, accipiendi alium virum *in maritum auctoritate nostra* liberam tribuas facultatem. *Dat. Veronae*.

Chapter XII

Latin source headnote: Betrothals contracted with one younger than seven years acquire validity through mutual cohabitation after seven years and induce the justice of public honesty; nevertheless, they are dissolved by a marriage of the present.

Clement III.

Two children, William and Guilielma, *in your diocese, as we received*, were joined matrimonially, the boy being in his sixth year but the girl in her seventh; they remained together for three years. Then, *however*, the girl's father, withdrawing her from *her* betrothed, joined her to another named M., with whom she remained peacefully for seven years. But he then left her because he believed that she had another husband, namely him to whom she had first been betrothed. But the first betrothed man, reaching years of discretion, obtained from *P.*, your predecessor, permission to contract with another; he received as wife a certain woman named S., cousin of the first woman, and, remaining with her for some time, *nevertheless*, as he himself confesses, did not know her carnally, although she asserts that she was known by him.

But when the father of the aforesaid Guilielma saw her abandoned by the second man, he compelled by *force* the aforesaid William, to whom he had first betrothed her, altogether to dismiss his niece S. and return to his betrothed Guilielma; afterward he cohabited with her for two years, *as it is reported*. Therefore, because you ask to be instructed what is to be done by you *in these things*, we respond briefly that, because childish age impeded it, there was no marriage between G. and G. And although the same man, after she married another, could have taken another as wife, nevertheless, because he took the said S., the cousin of the same woman, whether he knew her or not, he ought not to remain with the same S. on account of the justice of public honesty, nor to have recourse to the first woman, because she was lawfully joined to another.

(And below:) But since the man is the head of the woman, and William says that he did not know the aforesaid S. before, he will be able, if he wishes, to take another as wife, and S. to be joined to a lawful husband; but after separation, penance is to be enjoined upon each for a time to avoid scandal of the people. But if it were lawfully established that S. herself had been known by him either afterward or before, permission to contract will be given to neither while the other is living. Guilielma therefore will remain with M., *nevertheless* with suitable penance for a time imposed upon M. himself, who, on his opinion alone, without seeking the judgment of the Church, *perniciously* dismissed Guilielma.

Sponsalia, contracta cum minore septennio, per cohabitationem mutuam post septennium convalescunt, et inducunt publicae honestatis iustitiam; solvuntur tamen per matrimonium de praesenti.

Clemens III.

Duo pueri Guilielmus et Guilielma *in tua dioecesi, quemadmodum accepimus*, matrimonialiter sunt coniuncti, puero VI., puella vero VII. annum agente; qui simul per tres annos manserunt. Tunc *vero* pater puellae, subtrahens eam sponso *suo*, ipsam alteri, M. nomine, copulavit, cum quo per VII. annos quiete permansit. Ipse vero tunc reliquit eandem, quia credebat, eam alium virum habere, illum scilicet, cui prius fuerat desponsata. Prior autem sponsus, ad annos discretionis perveniens, a *P.* praedecessore tuo contrahendi cum alia licentiam impetravit, qui quandam nomine S. consobrinam prioris in uxorem accepit, et cum ea per aliquod tempus exsistens, eam *tamen*, ut ipse fatetur, carnaliter non cognovit, licet illa se ab eo cognitam asseveret. Quum autem pater memoratae Guilielmae eam vidisset a secundo viro relictam, *vi* praenominatum Guilielmum, cui prius eam desponsaverat, compulit, ut S. neptem suam omnino dimitteret, et ad Guilielmam suam desponsatam rediret: qui postmodum per biennium cohabitavit eidem, *ut fertur*. Quia igitur *in his* quid tibi faciendum sit, postulas edoceri, breviter respondemus, quod impediente puerili aetate matrimonium inter G. et G. non fuit. Et licet idem, postquam illa nupsit alii, potuerit aliam ducere in uxorem, tamen, quia dictam S. duxit consobrinam mulieris eiusdem, sive eam cognoverit sive non, non debet tamen cum eadem S. propter publicae honestatis iustitiam remanere, nec ac primam habere regressum, quia alteri fuit legitime copulata. (*Et infra:*) Quum vero vir caput sit mulieris, et Guilielmus dicat, se non cognovisse prius S. supra dictam: aliam, si voluerit, poterit ducere in uxorem, et S. viro legitimo copulari; post separationem vero pro vitando populi scandalo utrique ad tempus est poenitentia iniungenda. Si vero legitime constaret, ipsam S. ab eo sive post sive antea cognitam exstitisse, neutri vivente altero dabitur licentia contrahendi. Remanebit ergo Guilielma cum M., imposita *tamen* ipsi M. ad tempus poenitentia competenti, qui pro sua opinione sola Guilielmam, iudicio ecclesiae non requisito, *perniciose* dimisit.

Chapter XIII

Latin source headnote: A marriage which does not exist cannot be accused, as if it was contracted with one younger than seven years; nevertheless, an impediment can be denounced lest it be contracted in the future.

Innocent III, to C. and P., Former Sons of Malebranca.

In order to dissolve what had been done between I., *son of the noble man Leo* [*de Monumento*], and S., *daughter of the late Matthew* [*de Fortebrachio*], *concerning contracting marriage, it was proposed on your part in our presence and that of our brothers that, since the said girl had not yet reached seven years, neither marriage nor betrothals could be contracted with her. The assent of the blood relatives, who are principally to be required in such matters, was also lacking. Even if sufficient age had existed and the assent of the blood relatives had intervened, the persons nevertheless are not lawful for contracting marriage, because a line of consanguinity stands in the way.*

But after an accusation concerning consanguinity had been proposed *for the girl, and the degrees of consanguinity had been computed both on the part of the young man and on the part of the girl, when she wished to prove it by suitable witnesses*, the aforesaid I. proposed many exceptions through which he strove in many ways to remove you from the accusation. *And when disputation had continued for a long time on each side concerning his exceptions, after all things proposed on either side had been heard and understood, by the counsel of our brothers*, by interlocutory judgment we pronounce that neither marriage nor betrothals were contracted between the *said* young man and girl, since it is established that the girl had not yet reached seven years. Wherefore an accusation had no place, since there was nothing which could lawfully be accused; nevertheless, consanguinity could be denounced so that the marriage to be contracted would be prohibited.

Therefore, for the denunciation to be lawfully proved, we assign as the term *the feast of All Saints next to come*, saving not only the exceptions proposed but also those to be proposed. But lest anything meanwhile be attempted against the girl, by apostolic authority we *firmly* prohibit further new proceedings in the *same* business until either the denunciation is abandoned or, after it has been proved, proceedings are conducted by judicial order. But if anything is attempted against our prohibition to her prejudice, we decree it to be void and altogether to lack force.

> Accusari non potest matrimonium, quod non est, ut si cum minori septennio sit contractum; denunciari tamen potest impedimentum, ne contrahatur in posterum.
>
> Innocentius III. C. et P. quondam filiis Malebrancae.
>
> Ad dissolvendum quod factum fuerat inter I. *filium nobilis viri Leonis* [*de Monumento*] et S. *filiam quondam Matthaei* [*de Fortebrachio*] *super matrimonio contrahendo, in nostra et fratrum nostrorum praesentia fuit ex parte vestra propositum, quod, quum dicta puella nondum ad septennium pervenisset, cum ipsa nec matrimonium contrahi nec sponsalia potuere. Defuit etiam consanguineorum assensus, qui praecipue sunt in talibus requirendi. Quodsi et aetas sufficiens exstitisset, et consanguineorum intervenisset assensus, personae tamen non sunt legitimae ad matrimonium contrahendum, linea consanguinitatis obstante*. Accusatione *vero*, pro puella super consanguinitate proposita, *et tam ex parte iuvenis quam ex parte puellae consanguinitatis gradibus computatis, quum eam vellet idoneis testibus comprobare*, praefatus I. multas exceptiones proposuit, per quas nitebatur vos ab accusatione multipliciter removere. *Quumque super exceptionibus ipsius fuisset utrinque diutius disputatum, auditis et intellectis, quaecunque fuerunt hinc inde proposita, de consilio fratrum nostrorum* Interloquendo pronunciamus, inter *dictos* iuvenem et puellam nec matrimonium, nec sponsalia fuisse contracta, quum constet, puellam nondum ad septennium pervenisse. Quocirca nec accusatio locum habebat, quum non esset quod posset legitime accusari; denunciari tamen poterat consanguinitas, ut interdiceretur matrimonium contrahendum. Ad denunciationem ergo legitime probandam *festum omnium Sanctorum, proxime venturum*, terminum assignamus salvis exceptionibus, non solum propositis, sed etiam proponendis. Ne vero quicquam in puellam interim attentetur, auctoritate apostolica interdicimus *firmiter*, ne in *ipso* negotio de novo procedatur ulterius, donec vel a denunciatione cessetur, vel ea probata ordine iudiciario procedatur. Quodsi contra interdictum nostrum in praeiudicium ipsius aliquid fuerit attentatum, id irritum esse decernimus et viribus omnino carere.

Chapter XIV

Latin source headnote: If someone contracts through words of the present with a minor in whom malice does not supply age, he is understood to have contracted not marriage but betrothals, even if earnest-money giving intervened.

The same, to the Bishop of Abbatis.

Your letters exhibited to us contained that a certain *noble man* betrothed his daughter, about twelve years old, to a certain noble *man*, who gave earnest money to her, with mutual consent acceding. *But after the nuptials had been deferred for a little while, the girl's father entered the way of all flesh. When he had been taken from human affairs, the maternal uncle of the aforesaid girl joined her in marriage to another, and the man who had first betrothed her contracted with her mother. But your predecessor, considering that he could not remain with her whose daughter he had lawfully betrothed, promulgated a sentence of separation between them. Afterward, when the second man, who had taken the aforesaid girl as wife, had died, she joined herself to a third while he who had first betrothed her was living. Moreover, both she and the same man considered that you should be humbly consulted as to whether they could lawfully* [*together*] *remain; but you, after deliberation had been had, responded*

that, while the first betrothed man was living, she could not lawfully be joined to another. But because your church petitioned that you consult the Apostolic See concerning this, you deferred proceeding further, humbly supplicating us that we deign to rescribe to you concerning this.

But because, *through those things expressed above*, it could not *for certain* be established to us what age the girl was when she was betrothed to the same man, since it is said that she was about twelve years old, and whether prudence then supplied age in her, we respond *to your fraternity in this manner*: if the girl *was then of marriageable age, and lawful consent of the present intervened between her and the first man, without doubt a lawful marriage was contracted between them, even if carnal commingling did not follow. But if the girl* was not of marriageable age when the often-mentioned man betrothed her, and prudence did not supply age in her, beyond doubt not marriage but betrothals were contracted between them, although the same *girl* received earnest money from the man himself. *Wherefore, if according to the first manner she contracted marriage with him, while he lives she could not duly contract a conjugal covenant with another; but if according to the second manner betrothals alone were contracted, the marriage which was celebrated between her and the other ought to be reputed lawful, provided another canonical impediment does not stand in the way.* [*Given at Rome, at Saint Peter's, on the sixth day before the Ides of May, in the ninth year.* 1206.]

> Si quis per verba de praesenti contrahit cum impubere, in qua aetatem malitia non supplet, intelligitur non matrimonium, sed sponsalia contraxisse, etiamsi subarrhatio intercesserit.
>
> Idem Episcopo Abbatensi.
>
> Tuae nobis exhibitae literae continebant, quod quidam *vir nobilis* filiam suam, circiter XII. annos habentem, cuidam *viro* nobili desponsavit, qui subarrhavit eandem consensu mutuo accedente. *Sed nuptiis aliquantulum prorogatis, pater puellae viam est universae carnis ingressus. Eo autem rebus humanis exempto, puellae avunculus supra dictae ipsam alteri matrimonio copulavit, et ille, qui prius desponsaverat eandem, cum ipsius matre contraxit. Tuus autem praedecessor attendens, quod cum ea non poterat permanere, cuius filiam legitime desponsaverat, inter eos divortii sententiam promulgavit. Postmodum autem mortuo viro secundo, qui supra dictam puellam duxerat in uxorem, ipsa se tertio copulavit, illo vivente, qui eam primitus desponsarat. Ceterum tam ipsa, quam idem te duxerunt humiliter consulendum, utrum licite* [*simul*] *valeant commorari; tu vero, deliberatione habita, respondisti, quod, sponso primo vivente, alteri non potuit legitime copulari. Sed quia tua ecclesia postulavit, ut super hoc apostolicam sedem consuleres, procedere ulterius distulisti, nobis humiliter supplicans, ut super hoc tibi rescribere dignaremur*. Quia vero *per ea, quae superius sunt expressa*, nobis *pro certo* constare non potuit, cuius aetatis esset puella, quum eidem viro exstitit desponsata, quum dicatur, quod circiter XII. annos habebat, utrumne prudentia tunc in illa suppleret aetatem: *fraternitati tuae taliter* respondemus, quod, si puella *tunc nubilis erat aetatis, et inter eam et primum virum legitimus intervenit de praesenti consensus, absque dubio inter eos erat legitimum matrimonium contractum, etsi carnalis commixtio non fuerit subsecuta. Si vero puella* nubilis non erat aetatis, quum saepe fatus vir desponsavit eandem, et aetatem in ea prudentia non supplebat, procul dubio inter eos non coniugium, sed sponsalia contracta fuerunt, quamvis ab ipso viro eadem *puella* fuerit subarrhata. *Quocirca, si iuxta primum modum matrimonium cum illo contraxit; eo vivente non potuit rite cum alio foedus contrahere coniugale; quod si iuxta modum secundum sponsalitia solummodo contracta fuerunt coniugium, quod inter illam et alium exstitit celebratum, debet legitimum reputari, dummodo aliud canonicum non obsistat.* [*Dat. Rom. ap. S. Petr. VI. Id. Maii Ao. IX.* 1206.]

Title III: On Clandestine Betrothal

Chapter I

Latin source headnote: A clandestine marriage is not presumed; rather, the burden of proving it rests upon the one alleging it.

From the Council of Arles.

If anyone has secretly betrothed a woman and the woman or the man denies a betrothal of this kind, proof rests upon the man *alone*.

> **DE CLANDESTINA DESPONSATIONE.**
>
> Pro clandestino matrimonio non praesumitur, sed illud alleganti incumbit onus probandi.
>
> Ex concilio Arelatensi.
>
> Si quis clam desponsaverit aliquam, et mulier vel vir negat huiusmodi desponsationem, viro *tantum* incumbit probatio.

Chapter II

Latin source headnote: Those who contracted marriage clandestinely, if one or both deny it and lawful proof thereof does not appear, are not compelled by the Church to cohabit; and, if they make it public, it will be approved as though done in the sight of the Church, unless a reasonable cause exists which impedes it. This is what it says by adhering to the letter.

Alexander III, to the Bishop of Beauvais.

As to what *was signified to us on your part, that we ought to dispense concerning clandestine marriages, we do not see what dispensation is to be applied concerning them*. *For* if marriages are contracted so secretly that lawful proof thereof does not appear, those who contract them are not in any way to be compelled by the Church. But if the persons contracting wish to make this public, unless a reasonable *and lawful* cause hinders it, they are to be received and approved by the Church as though contracted from the beginning in the sight of the Church. *But if any, etc.* (*cf. c.* 9, *Which Sons IV.* 17.)

> Qui matrimonium clandestine contraxerunt, altero negante vel utroque, non apparente legitima exinde probatione, simul cohabitare ab ecclesia non compelluntur; et, si illud publicaverint, tanquam in conspectu ecclesiae factum comprobabitur, nisi rationabilis causa subsit, quae impediat. H. d. literae inhaerendo.
>
> Alexander III. Belvacensi Episcopo.
>
> Quod nobis *ex tua parte significatum est, ut de clandestinis matrimoniis dispensare deberemus, non videmus, quae dispensatio super his sit adhibenda*. Si *enim* matrimonia ita occulte contrahuntur, quod exinde legitima probatio non appareat, ii, qui ea contrahunt, ab ecclesia non sunt aliquatenus compellendi. Verum si personae contrahentium hoc voluerint publicare, nisi rationabilis *et legitima* causa praepediat, ab ecclesia recipienda sunt et comprobanda, tanquam a principio in ecclesiae conspectu contracta. *Si qui autem etc.* (*cf. c.* 9. *Qui filii IV.* 17.)

Chapter III

Latin source headnote: When marriages are to be contracted, edicts ought to be proposed publicly in the church by priests, with a term assigned within which anyone who wishes to impede may

oppose an impediment; and, if there is a probable conjecture of an impediment, the marriage is to be prohibited until cognizance is taken concerning this. This first, as far as § "But if anyone." — (But if anyone, etc.:) If a marriage has been contracted in a prohibited degree clandestinely or contrary to the prohibition mentioned above, even by those ignorant of the impediment, those born of that marriage are illegitimate. The same applies if both parents know the impediment to the marriage, although they contract in the sight of the Church. This is what it says as far as § "Indeed." Abbas. — (Indeed, etc.:) A priest who contemns prohibiting forbidden marriages, and any cleric, even a regular, who was present, are suspended from benefice for three years and, if the fault demands, are punished even more gravely; the contracting persons themselves acting contrary to this chapter are also otherwise lawfully to be punished, and the same applies to those denouncing calumniously. This is what it says as far as the end. Abbas.

Innocent III, in the General Council.

Since the prohibition of conjugal union has been revoked in the last three degrees, we wish it to be strictly observed in the others. Whence, adhering to the footsteps of our predecessors, we prohibit clandestine marriages altogether, prohibiting also that any priest presume to be present at such marriages. Therefore, extending generally to other places a special custom of certain places, we establish that, when marriages are to be contracted, they are to be publicly announced in the churches by priests, with a suitable term fixed in advance, so that within it whoever wishes and is able may oppose a lawful impediment; and the priests themselves are nonetheless to investigate whether any impediment stands in the way. But when a probable conjecture against the union to be contracted appears, the contract is to be expressly prohibited until it is established by manifest proofs what ought to be done concerning it.

§ 1. But if anyone presumes to enter clandestine or prohibited marriages of this kind in a prohibited degree, even ignorantly, let the offspring received from such a union be considered altogether illegitimate, to have no assistance from the ignorance of the parents, since by contracting thus they appear not to be devoid of knowledge, or at least to be affecters of ignorance. In like manner let the offspring be considered illegitimate if both parents, knowing a lawful impediment, presume to contract despite every prohibition, even in the sight of the Church.

§ 2. Indeed, if a parochial priest contemns prohibiting such unions, or any person, even a regular, presumes to be present at them, let him be suspended from office for three years, to be punished more gravely if the quality of the fault demands it. But suitable penance is *also* to be enjoined upon those who have presumed to be joined in such manner even in a permitted degree. But if anyone maliciously objects an impediment in order to impede a lawful union, he will not escape canonical punishment.

> Quum matrimonia sunt contrahenda, debent per presbyteros in ecclesia edicta proponi, assignato termino, infra quem qui voluerit impedire impedimentum opponat, et, si probabilis coniectura fuerit de impedimento, interdicatur testimonium, donec de hoc cognoscatur. Hoc primo usque ad §. Si quis. - (Si quis etc.:) Si in gradu prohibito matrimonium clandestine vel contra interdictum, de quo supra, contractum fuerit, etiam per ignorantes de impedimento, nati ex illo matrimonio sunt illegitimi. Idem est, si ambo parentes sciunt impedimentum matrimonii, licet in conspectu ecclesiae contrahant. H. d. usque ad §. Sane. Abbas. - (Sane etc.:) Sacerdos, qui contempserit prohibere matrimonia interdicta, et quilibet clericus etiam regularis, qui interfuit, per triennium a beneficio suspenduntur, et, si culpa

exegerit, etiam gravius puniuntur; ipsi etiam contrahentes contra hoc cap. etiam alias licite puniendi sunt, et idem in calumniose denunciantibus. H. d. usque ad finem. Abbas.

Innocentius III. in concilio generali.

Quum inhibitio copulae coniugalis sit in ultimis tribus gradibus revocata, eam in aliis volumus districte servari. Unde praedecessorum nostrorum vestigiis inhaerendo, clandestina coniugia penitus inhibemus, prohibentes etiam, ne quis sacerdos talibus interesse praesumat. Quare specialem quorundam locorum consuetudinem ad alia generaliter prorogando statuimus, ut, quum matrimonia fuerint contrahenda, in ecclesiis per presbyteros publice proponantur, competenti termino praefinito, ut infra illum, qui voluerit et valuerit, legitimum impedimentum opponat, et ipsi presbyteri nihilominus investigent, utrum aliquod impedimentum obsistat. Quum autem apparuerit probabilis coniectura contra copulam contrahendam, contractus interdicatur expresse, donec, quid fieri debeat super eo, manifestis constiterit documentis. §. 1. Si quis vero huiusmodi clandestina vel interdicta coniugia inire praesumpserit in gradu prohibito, etiam ignoranter, soboles de tali coniunctione suscepta prorsus illegitima censeatur, de parentum ignorantia nullum habitura subsidium, quum illi taliter contrahendo non expertes scientiae, vel saltem affectatores ignorantiae videantur. Pari modo proles illegitima censeatur, si ambo parentes, impedimentum scientes legitimum, praeter omne interdictum, etiam in conspectu ecclesiae contrahere praesumpserunt. §. 2. Sane, si parochialis sacerdos tales coniunctiones prohibere contempserit, aut quilibet etiam regularis, qui eis praesumpserit interesse, per triennium ab officio suspendatur, gravius puniendus, si culpae qualitas postulaverit. Sed *et* his, qui taliter praesumpserint etiam in gradu concesso copulari, condigna poenitentia iniungatur. Si quis autem ad impediendam legitimam copulam malitiose impedimentum obiecerit, canonicam non effugiet ultionem.

Title IV: On the Betrothed Woman of Two Men

Chapter I

Latin source headnote: One who contracts successively through words of the present with two women is held to adhere to the first. But if he first contracted through words of the future and second through words of the present, he will adhere to the second.

Augustine, On the Pledge of Pact and Consent.

The pledge of pact and of consent is spoken of in two ways. If someone has given a certain woman a pledge of pact, he ought not to take another. If he has taken another, he ought to do penance for the pledge falsified; nevertheless, let him remain with her whom he took. For so great a sacrament ought not to be broken. But if he has given a pledge of consent, it is not lawful for him to take another. But if he has taken another, he will dismiss her and adhere to the prior *wife*. Now there is a pledge of pact when someone promises a certain woman his pledge that he will take her if she permits him to have intercourse with her, or even in place of consent. But a pledge of consent exists when, even if he does not clasp her hand, he nevertheless consents in heart and mouth to take her, and they mutually grant themselves, one to the other, and mutually receive one another.

DE SPONSA DUORUM.

Contrahens successive per verba de praesenti cum duabus, tenetur adhaerere primae. Si autem primo contraxit per verba de futuro, secundo per verba de praesenti, adhaerebit secundae.

Augustinus de fide pactionis et consensus.

> Duobus modis dicitur fides pactionis et consensus. Si aliquis alicui mulieri fidem fecerit pactionis, non debet aliam ducere. Si aliam duxerit, poenitentiam debet agere de fide mentita; maneat tamen cum illa, quam duxit. Non enim rescindi debet tantum sacramentum. Si autem fecerit fidem consensus, non licet ei aliam ducere. Si autem duxerit, dimittet ipsam, et adhaerebit *uxori* priori. Est autem fides pactionis, quando aliquis promittit alicui fidem, quod eam ducet, si permiserit eum rem secum habere, vel etiam pro consensu. Fides autem consensus est, quando, etsi non stringit manum, corde tamen et ore consentit ducere, et mutuo se concedunt unus alii, et mutuo se suscipiunt.

Chapter II

Latin source headnote: It sets forth the penance of him who received as wife for himself the betrothed woman of another by words of the present; nor can he ever have her as wife. This is what it says according to the letter.

From Burchard, Book XXX.

You received as wife for yourself her whom another had held as betrothed to him. Dismiss her, because she can never become lawful for you, and do penance for forty days on bread and water, which they call a carina, with the seven following years.

> Ponit poenitentiam illius, qui alterius sponsam de praesenti sibi accepit in uxorem; nec unquam in uxorem eam habere potest. H. d. iuxta literam.
>
> Ex Brocardo libro XXX. Accepisti illam in uxorem tibi, quam alter sibi desponsatam habuerat. Dimitte illam, quia nunquam potest tibi fieri legitima, et XL. dies in pane et aqua, quod carinam vocant, cum septem sequentibus annis poeniteas.

Chapter III

Latin source headnote: Betrothals of the present are not dissolved by a following marriage, even one consummated by carnal union.

Alexander III, to the Archbishop of Salerno.

Although beyond the customary *and more than customarily we are impeded by many and various businesses in such a way that it is not easy for us to respond to the consultations of some, nevertheless by that special favor which we have toward your person and by fraternal charity we are compelled to disclose to you by the present letters, however much we are intent upon other things, what we think concerning those things about which your prudence consulted us. You indeed consulted us whether, if lawful consent of the present intervened between a man and a woman, with an oath furnished or not furnished, but carnal union did not follow, it is lawful for the woman to marry another; or, if she married another and carnal union followed, whether she ought to be separated from him. But concerning this* we respond to your consultation in this manner: if lawful consent of the present intervenes between a man and a woman *under that solemnity which is accustomed to occur, namely, with a priest or even a notary present, as is also still observed in certain places, before suitable witnesses*, in such a way indeed that one expressly receives the other by customary words in their mutual consent, each saying, "I receive you as mine," and, "I receive you as mine," whether an oath has been interposed or not, it is not lawful for the woman to marry another. And if she has married, even if carnal union followed, she ought to be separated from him and compelled by ecclesiastical rigor to return to the first, although *others* think otherwise, and *otherwise also* it has at times been judged by certain of our predecessors. *But, etc.* (*cf. c.* 2, *On the Conversion of a Spouse III.* 32.)

Sponsalia de praesenti non solvuntur per sequens matrimonium, etiam carnali copula consummatum.

Alexander III. Salernitano Archiepiscopo.

Licet praeter solitum +*et amplius solito multis simus et variis negotiis praepediti ita, quod non sit nobis facile aliquorum consultationibus respondere, illa tamen speciali gratia, quam ad personam tuam habemus, et caritate cogimur fraterna, quid sentiamus de his, super quibus consuluit nos prudentia tua, tibi, quantumcunque aliis simus intenti, praesentibus literis aperire. Consuluisti nos siquidem, utrum, si inter virum et mulierem, praestito vel non praestito sacramento, legitimus consensus intervenerit de praesenti, carnali copula non secuta, liceat mulieri alii nubere, vel, si nupserit alii, et carnalis fuerit copula subsecuta, an ab ipso debeat separari. Super hoc autem *Consultationi tuae taliter respondemus, quod, si inter virum et mulierem legitimus consensus *sub ea solennitate, quae fieri solet, praesente scilicet sacerdote aut etiam notario, sicut etiam in quibusdam locis adhuc observatur, coram idoneis testibus*, interveniat de praesenti, ita quidem, quod unus alterum in suo mutuo consensu verbis consuetis expresse recipiat, utroque dicente: "ego te accipio in meam," et: "ego te accipio in meum," sive sit iuramentum interpositum sive non, non licet mulieri alii nubere. Et si nupserit, etiamsi carnalis copula sit secuta, ab eo separari debet, et, ut ad primum redeat, ecclesiastica districtione compelli, quamvis *alii* aliter *sentiant, et aliter etiam* a quibusdam praedecessoribus nostris sit aliquando iudicatum. *Verum etc.* (*cf. c.* 2. *de conv. coni. III.* 32.)

Chapter IV

Latin source headnote: He who appeals in a matrimonial cause ought to be prohibited from contracting another marriage while the litigation is pending; and if he contracts, he ought to be separated.

The same, to the Archbishop of Genoa.

Your fraternity consulted us *as to what you ought to do concerning those who betroth certain women and, in the course of time, before they take or know them, receive others as wives. Concerning this, indeed, we respond to your consultation in this manner: if a man and a woman receive one another by express mutual consent of the present, neither of them, while the other survives, will be able to pass to other vows, although either can migrate to a monastery. But if mutual consent of the present did not occur between them, but a promise of the future—namely, that each said to the other, "I will receive you as mine," and, "I will receive you as mine"—if another has betrothed and conducted home that woman, even if between the first persons there was an oath, as we have said, of the future, the second marriage cannot be separated in view of this betrothal, but penance is to be enjoined upon them for violation of the pledge.*

But concerning those who before you raise a controversy over a betrothal made by mutual consent of the present and, while an appeal is pending which they interpose to the Apostolic See before sentence or cognizance of the cause, receive others as wives, we judge that this is to be done: if henceforth they consider that they should appeal in such a case, you are publicly to prohibit them *more strictly* in church from contracting another marriage before decision of the cause. And if they presume to act contrary to the prohibition of the Church *thus* publicly made, you will be able to annul the marriage so presumptuously contracted. [*But concerning those, etc.; cf. c.* 9, *On the Betrothal of Minors IV.* 2.]

Ei, qui appellat in causa matrimoniali, interdici debet, ne aliud matrimonium contrahat lite pendente, et si contraxerit, debet separari.

Idem Genuensi Archiepiscopo.

Tua fraternitas nos consuluit, *quid de his agere debeas, qui desponsant aliquas mulieres, et processu temporis, antequam eas ducant vel cognoscant, accipiunt alias in uxores. Super quo utique consultationi tuae taliter respondemus, quod, si vir et mulier sese recipiunt expresso consensu de praesenti mutuo, neuter eorum altero superstite poterit ad alia vota transire, etsi possit ad monasterium transmigrare. Verum si inter ipsos non accessit consensus mutuus de praesenti, sed promissio de futuro, videlicet quod uterque dixit alteri: "ego te recipiam in meam," et: "ego te in meum," si alius mulierem illam desponsaverit et traduxerit, etiamsi inter primos iuramentum fuerit, sicut diximus, de futuro, huius desponsationis intuitu secundum non poterit matrimonium separari, sed eis est de violatione fidei poenitentia iniungenda. *De his vero, qui coram te super desponsatione, facta per consensum mutuum de praesenti, controversiam movent, et appellatione pendente, quam ante sententiam vel cognitionem causae ad sedem apostolicam interponunt, accipiunt alias in uxores, hoc arbitramur agendum, ut, si amodo in tali casu duxerint appellandum, eis in ecclesia publice interdicas *arctius*, ne ante decisionem causae aliud contrahant matrimonium. Et si contra interdictum ecclesiae *ita* publice factum venire praesumpserint, matrimonium tam praesumptuose contractum poteris irritare. [*De illis autem etc. cf. c.* 9. *de desp. imp. IV.* 2.]

Chapter V

Latin source headnote: He who betroths two women through words of the present will have the first betrothed as wife, even if he knew the second first; nor does a contrary custom have force. And this last point is added to the chapter "Although" above under the same title.

Innocent III, to the Bishop of Modena.

Your letters some time ago—(And below:) Concerning the custom which long obtained in the city of Modena, that, if someone swore he would take a certain woman and betrothed her short of carnal union, and if afterward he betrothed another and knew the other, the one first known, not the one first betrothed, would be adjudged to the man. (And below:) But lest a part be base which does not agree with its whole, and because the Church of Modena ought humbly to hold and observe what it sees the See of Blessed Peter and its metropolis follow and teach, in marriages to be contracted henceforth we wish you to observe this: after lawful consent of the present, which suffices in such matters according to the canonical sanctions, has intervened between lawful persons—and, if it alone is lacking, the other things, even when celebrated with intercourse itself, are frustrated—if persons lawfully joined afterward contract in fact with others, what was done first by law cannot be annulled.

Qui duas per verba de praesenti desponsat, primam desponsatam habebit in uxorem, etiamsi prius secundam cognoverit: nec valet contraria consuetudo. Et hoc ultimum additur ad cap. Licet supra eodem.

Innocentius III. Mutinensi Episcopo.

Tuas dudum (*Et infra:*) De consuetudine, quae diu in Mutinensi obtinuit civitate, ut, si quis iuraret se aliquam ducturum, et citra carnis copulam desponsasset, si consequenter desponsasset aliam et aliam cognovisset, primo cognita adiudicaretur viro, non quae prius exstitit desponsata. (*Et infra:*) Ne vero turpis sit pars, quae suo non congruit universo, et ecclesia Mutinensis tenere debeat humiliter et servare quod beati Petri sedem et suam metropolim sequi viderit et docere: in matrimoniis de cetero contrahendis illud te volumus observare, ut, postquam inter legitimas personas consensus legitimus intervenerit de praesenti, qui sufficit in talibus iuxta canonicas sanctiones, et, si solus defuerit, cetera, etiam cum ipso coitu celebrata, frustrantur, si personae iunctae legitime cum aliis postea de facto contrahant, quod prius de iure factum fuerat non poterit irritari.

Title V: On Conditions Appended in Betrothal or in Other Contracts

Chapter I

Latin source headnote: The failure of a shameful condition appended in the contract of marriage does not vitiate the marriage, but the condition is vitiated.

From the African Council.

Whoever shall have betrothed a woman under the name of a condition, and shall *afterward* have wished to leave her, we say that the condition is to be broken and the betrothal is to be held irrefragably.

> **DE CONDITIONIBUS APPOSITIS IN DESPONSATIONE VEL IN ALIIS CONTRACTIBUS.**
>
> Defectus turpis conditionis, in contractu matrimonii appositae, non vitiat matrimonium, sed vitiatur.
>
> Ex concilio Africano.
>
> Quicunque sub conditionis nomine aliquam desponsaverit, et eam *postea* relinquere voluerit, dicimus quod frangatur conditio, et desponsatio irrefragabiliter teneatur.

Chapter II

Latin source headnote: A slave manumitted upon this condition, that he become a monk and serve a monastery, otherwise returning into servitude, is compelled, if, having accepted this, he became a monk, to observe the will of the manumitter.

Gregory, to the Bishop of Spoleto.

Since it is proper—(And below:) [*But*] *if perchance someone complains that he was unjustly excommunicated*, [*let your fraternity*] *ascertain it by subtle investigation; and, once the truth is known, so dispose the case that* [*neither may injustice long prevail unto the affliction of an innocent person,*] *nor may the vigor of discipline* [*either*] *be broken, or* [*by an indiscreet presumption be able to be*] *dissolved*. (And below:) The priest H. complained [*to us*] that a certain deacon had manumitted two bondservants [*of his right*] upon this condition, that they become monks and remain in the monastery in which he himself had been, adding that, if either acted contrary to it, he should again [*in every respect*] be subjected to servitude; and that one of them, having despised this condition, had deserted the monastery [*with rash audacity*] and joined himself among the clerics. You, therefore, if you find it to be so, conduct yourself in such a way that neither may he have the faculty of deserting the monastery, nor may the will of the manumitter, *being nevertheless preserved*, be able to be passed over.

> Servus manumissus ea conditione, ut fiat monachus et monasterio serviat, alias in servitutem redeat, si, hoc acceptato, monachus factus sit, manumittentis voluntatem cogitur observare.
>
> Gregorius Episcopo Spoletano.
>
> Quum sit proprium (*Et infra:*) [*Sed*] *si forte iniuste se excommunicatum quis quaeritur*, [*fraternitas vestra*] *subtili indagatione cognoscat; et ita causam cognita veritate disponat, ut* [*nec iniustitia diu in insontis afflictionem praevaleat,*] *nec disciplinae vigor* [*aut*] *frangi, aut* [*indiscreta valeat praesumptione*] *dissolvi* (*Et infra:*) H. presbyter [*nobis*] conquestus est, diaconum quendam manumisisse duo [*iuris sui*] mancipia sub hac conditione, ut monachi fierent, et in eo monasterio, ubi ipse fuerat, permanerent, adiiciens, ut, si quis contra faceret, servituti iterum [*per omnia*] subderetur; atque unum ex his hac conditione despecta monasterium [*temerario ausu*] deseruisse, et se inter clericos sociasse. Tu ergo, si ita esse repereris, sic te

exhibe, ut nec illi monasterium deserendi sit facultas, et manumittentis voluntas *nihilominus conservata* non valeat praeteriri.

Chapter III

Latin source headnote: He who swore to take a woman as wife if she gave him one hundred is not bound, if the one hundred are not given, to take her, unless afterward he consented purely or knew her.

Alexander III, to the Archbishop of Palermo.

Concerning those—(And below:) [*Compare chapter* 5, *On Betrothals, IV.* 1.] But if someone shall have furnished an oath to a woman under words of this kind: "I shall take you as wife if you give me so much," he will not be held guilty of perjury if he does not take as wife the woman who is unwilling to pay him what he asked to be given to him *under oath*, unless consent of the present or carnal commingling has afterward intervened between them.

Qui iuravit aliquam in uxorem accipere, si centum sibi donaverit, centum non datis, recipere non tenetur, nisi postea pure consenserit, vel eam cognoverit.

Alexander III. Panormitano Archiepiscopo.

De illis (*Et infra:*) [*cf. c.* 5. *de spons. IV.* 1.] Si vero aliquis sub huiusmodi verbis iuramentum alicui mulieri praestiterit: "Ego te in uxorem accipiam, si tantum mihi donaveris," reus periurii non habebitur, si eam, nolentem sibi solvere quod *iuramento* sibi dari petiit, non acceperit in uxorem, nisi consensus de praesenti aut carnalis sit inter eos commixtio subsecuta.

Chapter IV

Latin source headnote: A thing donated to a church under a mode immediately belongs to the church, nor is it revoked when the mode is not observed, unless this is expressed in the contract. This the chapter says according to the truer understanding, and it is a very notable and highly citable text. Abbas.

The same.

But when any possession is donated to a church with a condition interposed, the gift cannot afterward be revoked by the donor, unless perhaps it was conferred upon such a condition that, when it ceases, the *possession* ought to be revoked.

Res, donata ecclesiae sub modo, statim est ecclesiae, nec revocatur modo non servato, nisi hoc in contractu sit expressum. H. d. secundum veriorem intellectum, et est textus multum notabilis, et valde allegabilis. Abbas.

Idem.

Verum quum alicui ecclesiae possessio quaelibet interposita conditione donatur, a donatore donum postea revocari non potest, nisi forte tali sit conditione collatum, quod, ea cessante, *possessio* debeat revocari.

Chapter V

Latin source headnote: One contracting marriage under a condition that is not disapproved is not compelled to consummate the marriage before the condition occurs.

Urban III.

But concerning that which *you similarly asked of us*, whether he who consented to a certain woman if her father *namely* furnished his assent is to be compelled to consummate the marriage, we *nevertheless* respond that, since consent which is reserved in another's judgment cannot be said to be free, and canonical institutions do not disapprove the condition itself, *which is consonant with honorable conduct*, unless the will of the father afterward intervenes, he is by no means to be compelled to contract the marriage. For although *of happy memory* Pope Alexander, *our predecessor, in his consultations,* responded that betrothals contracted with a condition interposed, if consent of the present intervenes or carnal union follows, ought not to be dissolved, even though *the condition* itself was not fulfilled, but ought firmly to be observed, this is by no means adverse to our determination, since consent of this kind is not to be held as consent of the present, although it is expressed more evidently through words of the present, because it consists in another's judgment, not already had but to be had.

> Contrahens matrimonium sub conditione non improbata non compellitur matrimonium consummare ante conditionis eventum.
>
> Urbanus III.
>
> Super eo vero, quod *a nobis similiter* postulasti, utrum ille, qui in quandam mulierem consensit, si pater eius *videlicet* suum praestaret assensum, sit ad consummandum matrimonium compellendus, *nihilominus* respondemus, quod, quum consensus liber dici non possit, qui in alieno arbitrio reservatur, ac conditionem ipsam canonica non improbent instituta, *quae consonet honestati*, nisi voluntas patris postmodum intercedat, nequaquam cogendus est ad matrimonium contrahendum. Nam licet *felicis memoriae* Alexander Papa *antecessor noster in suis consultationibus* responderit quod sponsalia, interposita conditione contracta, *conditione* ipsa non impleta, si consensus de praesenti intercedat, vel carnalis copula subsequatur, dissolvi non debent, sed firmiter observari: nequaquam est nostrae definitioni adversum, quum huiusmodi consensus non sit de praesenti habendus, licet per verba de praesenti evidentius exprimatur, qui in alieno arbitrio, non habito, sed habendo, consistit.

Chapter VI

Latin source headnote: He who contracts betrothals under an honorable condition and knows the betrothed woman before the condition occurs withdraws from the condition.

Innocent III, to the Bishop of Masicano.

Through your letters you intimated to us that, when *in your presence* a certain woman named P. claimed as husband *a certain man named* N., asserting that mutual consent of the present had intervened between them and that carnal union had followed, the man himself, although he did not deny the contracted betrothals and the carnal union, nevertheless asserted that he was not bound to take her as wife, because the betrothals between them had been contracted under this condition, if *namely* his father and paternal uncle consented to the betrothals, but, as soon as they learned of them, they contradicted both the bridegroom and the bride, *which the same man endeavored to prove by suitable witnesses*. But the woman replied that, although faith had been pledged by each under the aforesaid condition, nevertheless no contradiction had ever been made to her by the man's father or paternal uncle, and she said that both before the time of the contradiction expressed by the witnesses and after *it*, carnal union had intervened between them. *She added, moreover, that, although in the beginning they had contracted conditionally, nevertheless in the course of time they consented purely to marriage without the*

addition of a condition, and she asserted that she would prove this by witnesses. Therefore, after the witnesses of each party had been received, when you caused the attestations of the woman to be published before you in the presence of two examiners, the witnesses whose statements were being read immediately cried out that they had not said the things that were being read and that the things they had deposed were not written. But one of the examiners then strongly opposed them. And because of this the woman petitioned that the same witnesses or others be heard again upon the same articles. But you, moved by this novelty, fixed the following day for the parties; when they had been constituted in your presence, you ordered all the examiners to be summoned, adjuring them under threat of anathema to say whether those were the true attestations which the witnesses had opposed; and they immediately produced other attestations in their midst. When these had been objected to through the man's advocate, just as the former ones had been opposed by the witnesses, after manifold allegations the second attestations were admitted by the parties, and the attestations of the man were afterward published. Moreover, the woman insisted chiefly upon this article, that both before and after the renunciation of the betrothals the same man had known her carnally and had begotten a daughter from her; this she endeavored to demonstrate by her own oath. But because upon these matters you received not only various but contrary opinions, recurring to the teaching authority of the Apostolic See, you humbly asked to be instructed as to what is to be thought in such matters. But we, having inspected the attestations admitted by the parties, which you sent to us enclosed in your letters, respond to your consultation in this manner: since it is manifestly established *through the confession of both the man and the woman* that, after the betrothals were contracted, carnal union followed between them, there is *indeed a strong* presumption in favor of marriage, because he appears to have withdrawn from the appended condition. For even if *each point is* proved by witnesses, that, after the father and paternal uncle of the man contradicted the betrothals, the same man knew that woman by carnal union, nevertheless it is in no way proved that, before he himself knew her, his father and paternal uncle had taken care to contradict. [*Given at Ferentino, on the second day before the Ides of July.* 1203.]

> Qui sub honesta conditione sponsalia contrahit, et ante conditionis eventum desponsatam cognoscit, a conditione recedit.
>
> Innocentius III. Masicano Episcopo.
>
> Per tuas nobis literas intimasti, quod, quum *in praesentia tua* quaedam mulier, P. nomine, *quendam nomine* N. postularet in virum, asserens, inter se mutuum de praesenti consensum intervenisse, et carnalem copulam accessisse, vir ipse, quamvis contracta sponsalia et carnalem copulam non negaret, asserebat tamen, se illam in uxorem ducere non teneri, quia sponsalia inter ipsos sub hac fuerunt conditione contracta, si *videlicet* pater eius et patruus sponsalibus consentirent, sed ipsi, quam cito noverunt, et sponso contradixerunt et sponsae, *quod idem vir idoneis nitebatur testibus comprobare*. Verum mulier replicabat, quod, licet fides praestita fuerit ab utroque sub conditione praescripta, non tamen sibi fuerat a patre viri vel patruo aliquando contradictum, et ante tempus contradictionis, expressum a testibus, et post *illud* dicebat inter se carnalem copulam accessisse. *Addebat praeterea, quod, licet a principio conditionaliter contraxissent, temporis tamen processu sine conditionis adiectione pure in matrimonium consenserunt, et hoc asserebat se testibus probaturam. Receptis itaque testibus utriusque, quum attestationes mulieris coram te praesentibus duobus examinatoribus faceres publicari, testes, quorum dicta legebantur, illico proclamaverunt, quod ipsi quae legebantur non dixerant, et quae deposuerant scripta non erant. Sed ab uno examinatorum tunc contra eos fuit fortiter obviatum. Et ob hoc mulier postulabat, ut iidem testes vel alii super iisdem capitulis iterum audirentur. Tu autem, hac novitate commotus, sequentem diem partibus praefixisti, quibus in tua praesentia constitutis, omnes examinatores convocari iussisti, sub interminatione anathematis illos obtestans, ut dicerent, si essent illae verae attestationes, quibus obviaverant testes; qui continuo alias attestationes in medium produxerunt. Quibus quum per advocatum viri fuisset obiectum, sicut prioribus fuerat a testibus obviatum, post allegationes multiplices secundae*

attestationes a partibus admissae fuerunt, et attestationes viri postea publicatae. Porro mulier illi praecipue articulo insistebat, quod ante renunciationem sponsalium et post idem vir carnaliter eam cognoverat, et ex ea filiam procreaverat; quod proprio nitebatur ostendere iuramento. Quia vero super his non solum opiniones varias, sed contrarias accepisti, ad magisterium sedis apostolicae recurrens, humiliter postulasti, quid sentiendum sit in talibus edoceri. Nos autem, inspectis attestationibus, admissis a partibus, quas nobis tuis misisti literis interclusas, Consultationi tuae taliter respondemus, quod, quum liquido constet *per confessionem tam viri quam mulieris*, quod post contracta sponsalia carnalis est inter eos copula subsecuta, pro matrimonio est *vehementer quidem* praesumendum, quia videtur conditione apposita recessisse. Nam etsi probatum sit *utrumque per testes*, quod, postquam pater et patruus viri contradixere sponsalibus, idem vir mulierem illam carnali coniunctione cognoverit, non est tamen aliquo modo probatum, quod, antequam ipse cognovisset eandem, pater eius et patruus contradicere curavissent. [*Dat. Ferentini II. Id. Iul.* 1203.]

Chapter VII

Latin source headnote: If a shameful or impossible condition is appended in a contract of marriage, it is held as not added, unless it is contrary to the substance of marriage, because then it vitiates the contract. This the chapter says; it is notable and highly citable.

Gregory IX. If conditions contrary to the substance of marriage are inserted, as, for example, if one says to the other, "I contract with you if you avoid the generation of offspring," or, "until I find another more worthy in honor or resources," or, "if for gain you hand yourself over to be adulterously used," the matrimonial contract, however favorable it may be, lacks effect; although other conditions appended in marriage, if they are shameful or impossible, ought, because of the favor shown to it, to be held as not added.

Si in contractu matrimonii apponitur conditio turpis vel impossibilis, habetur pro non adiecta, nisi sit contra substantiam matrimonii, quia tunc vitiat contractum. H. d. hoc capitulum notabile et multum allegabile.

Gregorius IX. Si conditiones contra substantiam coniugii inserantur, puta, si alter dicat alteri: "contraho tecum, si generationem prolis evites," vel: "donec inveniam aliam honore vel facultatibus digniorem," aut: "si pro quaestu adulterandam te tradas," matrimonialis contractus, quantumcunque sit favorabilis, caret effectu; licet aliae conditiones appositae in matrimonio, si turpes aut impossibiles fuerint, debeant propter eius favorem pro non adiectis haberi.

Title VI: Which Clerics or Persons under Vows Can Contract Marriage

Chapter I

Latin source headnote: A deacon or subdeacon cannot contract marriage and, if they have contracted, even if they have become irregular, they ought to be separated.

Alexander III, to the Archbishop of Reims.

Concerning the deacon *indeed* who on Holy Saturday wounded *a certain* other deacon and took a wife, we respond this to your prudence: if, with contrite and humbled heart, he wishes to return to the Church, after dismissing her whom he took as wife and obtaining absolution, and after penance has been enjoined upon him for each transgression, once he has performed it you will be able by dispensation to restore to him the office of the diaconate and, if he has been of perfect life and conduct, to ordain him as priest. But that a subdeacon, whether he has killed a man or not, cannot

contract marriage, the censure of the sacred canons demonstrates. [*The parishioners, etc.* (*Compare chapter* 26, *On Tithes, III.* 30.)]

QUI CLERICI VEL VOVENTES MATRIMONIUM CONTRAHERE POSSUNT.

Diaconus vel subdiaconus matrimonium contrahere non possunt et, si contraxerint, etiamsi sint facti irregulares, debent separari.

Alexander III. Remensi Archiepiscopo.

De diacono *vero*, qui in sabbato sancto *quendam* alium diaconum vulneravit, et uxorem accepit, hoc tuae prudentiae respondemus, quod, si contrito et humiliato corde ad ecclesiam redire voluerit, dimissa illa, quam accepit in uxorem, et absolutione obtenta, iniuncta sibi poenitentia de utroque excessu, post eam peractam dispensative poteris ei diaconatus officium reddere, et, si perfectae vitae et conversationis fuerit, eum in presbyterum ordinare. Subdiaconum autem, sive hominem interfecerit sive non, matrimonium non posse contrahere, sacrorum canonum censura demonstrat. [*Parochianos etc.* (*cf. c.* 26. *de dec. III.* 30.)]

Chapter II

Latin source headnote: A subdeacon cannot contract marriage.

The same, to the Bishop of Le Mans.

From the tenor of your letters we received that *F.*, bearer of the present letters, while constituted in the office of the subdiaconate, joined a certain woman to himself as spouse. *Whence you, as a provident and discreet man,* caused him to abjure the woman whom *he had taken as wife*. Concerning this *deed* we commend your prudence in the Lord, *commanding you through the present writing* that, if he wishes to pass to a *canonical or* monastic order, and if after his praiseworthy conduct it seems good to you, you permit him to be promoted to the higher orders. But if he is unwilling to transfer himself to religion, permit him neither to minister in the subdiaconate nor to be promoted to higher orders; nevertheless, he will be able to minister in the minor orders.

Subdiaconus matrimonium contrahere non potest.

Idem Cenomanensi Episcopo.

Ex literarum tuarum tenore accepimus quod *F.* lator praesentium, in subdiaconatus officio constitutus, quandam sibi in coniugem copulavit. *Unde tu, sicut vir providus et discretus*, quam *in uxorem duxerat*, eundem abiurare fecisti. Super quo *facto* prudentiam tuam in Domino commendamus, *per praesentia tibi scripta* mandantes, quatenus, si ad *canonicam vel* monasticum ordinem transire voluerit, et tibi post laudabilem conversationem ipsius visum fuerit, eum ad maiores ordines promoveri concedas. Quod si ad religionem se transferre noluerit, eum neque in subdiaconatu ministrare, neque ad altiores permittas ordines promoveri; in minoribus tamen ordinibus poterit ministrare.

Chapter III

Latin source headnote: A solemn vow impedes and dissolves marriage after it has been contracted; a simple vow only impedes a marriage to be contracted but does not dissolve it after it has been contracted.

The same, to the Bishop of Worcester.

We remember *that on your part we heard a question of this kind, namely whether those who before a bishop devoted themselves to passing to religion and receive the habit of religion, if afterward they take wives, are to be compelled to dismiss them and to return to the church to which they had conveyed themselves. Concerning this, therefore,* We respond that, if anyone who devoted himself to religion and, having received the habit, made profession, afterward joined a woman to himself, he is to be compelled to withdraw from her, and *ought* to pass without contradiction to the church to which he conveyed himself. But if he neither received the habit nor made profession, but made only a vow and promised that he would pass to religion, although he afterward contracted marriage, he is not to be compelled to pass to religion and to break the matrimonial vow.

> Votum solenne impedit et dirimit matrimonium post contractum; votum simplex tantum impedit contrahendum, sed non dirimit post contractum.
>
> Idem Vigoriensi Episcopo.
>
> Meminimus, *nos ex parte tua quaestionem huiusmodi audivisse, scilicet utrum illi, qui se ad religionem coram episcopo devoverunt transituros, et habitum religionis suscipiunt, si postmodum uxores duxerint, cogendi sint eas dimittere, et ad ecclesiam, cui se contulerint, redire. Super hoc utique* Respondemus quod, si quisquam, qui se religioni devovit, et habitu suscepto professionem fecit, postmodum sibi aliquam copulaverit, est cogendus ab ea recedere, et ad ecclesiam, cui se contulit, *debet* sine contradictione transire. Verum, si nec habitum suscepit, nec professionem, sed votum solummodo fecit, et se ad religionem transiturum promisit, licet postea matrimonium contraxerit, non est cogendus ad religionem transire, et matrimoniale votum rescindere.

Chapter IV

Latin source headnote: The reception outside a religious house of the habit of professed persons from one who does not have the power of incorporating into religion impedes, in a doubtful case, a marriage to be contracted, but does not dissolve one already contracted. This the chapter says according to the understanding which Panormitanus holds.

The same, to the Bishop of Lucca.

Your fraternity consulted us as to what is to be done concerning a noble woman who, *after the death of her husband,* having cast aside precious garments, changed her habit and received a veil from the hand of a priest, but did not renounce her own property, enter a cloister, make profession into the hand of any bishop, abbot, or abbess, or upon an altar, or promise obedience; but afterward, when a year had elapsed, *because she could not bear the disturbances of many persons and feared a lapse of incontinence,* having cast aside the religious habit, she married a certain nobleman *solemnly by license of the Church. Concerning this, therefore,* We respond to your consultation in this manner: just as a simple vow impedes a marriage to be contracted and does not dissolve one already contracted, so the habit, received without profession, impedes one from being contracted, but by no means dissolves one contracted. [*Concerning the rest, etc.* (*Compare chapter* 11, *On Homicide, V.* 12.)]

> Susceptio habitus professorum extra religionem a non habente potestatem incorporandi religioni, impedit in dubio matrimonium contrahendum, sed non dirimit contractum. H. d. secundum intellectum, quem tenet Panormitanus.
>
> Idem Lucensi Episcopo.

Consuluit nos tua fraternitas, quid faciendum sit de nobili muliere, quae *post mortem mariti*, vestibus pretiosis abiectis, mutavit habitum, et de manu presbyteri velamen assumpsit, sed non renunciavit propriis, nec intravit claustrum, nec in manu alicuius episcopi, abbatis vel abbatissae, aut super altare professa est, vel obedientiam promisit; postmodum vero, elapso anno, *quum multorum inquietationes ferre non posset, et lapsum incontinentiae formidaret*, abiecto religionis habitu, cuidam nobili *solenniter per licentiam ecclesiae* nupsit. *Super hoc itaque* Consultationi tuae taliter respondemus, quod sicut simplex votum matrimonium impedit contrahendum, et non dirimit iam contractum, ita habitus, sine professione susceptus, ne contrahatur impedit, sed contractum nequaquam dissolvit. [*De cetero etc.* (*cf. c.* 11. *De homic. V.* 12.)]

Chapter V

Latin source headnote: A vow of chastity made in the present impedes a marriage to be contracted; nevertheless, for cause the Church sometimes permits marriage to be contracted. This the chapter says by adhering to the letter.

The same.

Coming to our presence, M. the hermit proposed *by his assertion to us* that the woman I., with faith pledged to a certain absent man, promised that she would marry him, but afterward, hearing many things about the severity *and inhumanity* of the *man* himself, she was unwilling to be joined to him. Therefore, since she feared that she might be compelled to marry him, in his hands she *simply* promised a vow of continence, but did not change her place or garment. Upon hearing this, the *aforesaid* man joined another woman to himself, *and received offspring from her*. We, therefore, considering that it is safer that the aforesaid woman, after the pledge of faith and the vow simply offered, contract marriage than incur the guilt of fornication, *by commanding through apostolic writings* order your fraternity that, if she proceeded no further, *and neither changed her garment or place nor made profession*, you enjoin upon her fitting satisfaction for the faith falsified and the vow violated, and do not postpone granting her license in the Lord to marry whom she wishes.

Votum castitatis de praesenti impedit matrimonium contrahendum; ecclesia tamen ex causa matrimonium contrahi quandoque permittit. H. d. inhaerendo literae.

Idem.

Veniens ad praesentiam nostram M. eremita *sua nobis assertione* proposuit, quod I. mulier cuidam viro absenti fide data se nupturam promisit, sed postmodum, audiens plura de severitate *et inhumanitate* ipsius *viri*, ei noluit copulari. Quum itaque timeret, ne illi nubere cogeretur, in manibus suis *simpliciter* continentiae votum promisit, non tamen locum aut vestem mutavit. Quo audito *praedictus* vir aliam sibi copulavit, *et ex ea prolem suscepit*. Nos itaque, attendentes, tutius esse, ut praefata mulier post fidem et votum simpliciter oblatum matrimonium contrahat, quam fornicationis reatum incurrat, *fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus, si plus non processit, *nec vestem aut locum mutavit, nec professionem fecit*, sibi de fide mentita et voto violato congruam satisfactionem indicas, et ei, cui vult, nubendi in Domino licentiam tribuere non postponas.

Chapter VI

Latin source headnote: A simple vow impedes betrothals of the future but does not dissolve the marriage that follows; it is otherwise in a solemn vow.

Celestine III.

Again, a certain man, *as you say*, having emitted a vow of chastity, swore that he would afterward take a certain woman as wife. Whence, having been asked by your fraternity, *after consulting prudent men*, we judge that, since a simple vow binds no less before God than a solemn one, he should do penance for the fact that he swore rashly, and should endeavor to observe the vow that he made to God. But if, after he furnished an oath of this kind, he had hastened to nuptials *already* by his own motion, since a simple vow [*although*] it impedes a marriage to be contracted, nevertheless does not dissolve one already contracted, your question appears to contain no ambiguity. [*Moreover, as to that which, etc. Compare chapter* 1, *On the Conversion of Infidels, III.* 33.]

> Votum simplex impedit sponsalia de futuro, non autem dirimit matrimonium sequens; secus in voto solenni.
>
> Coelestinus III.
>
> Rursus quidam, *ut dicis*, votum castitatis emittens, iuravit, se quandam ducturum postea in uxorem. Unde a fraternitate tua requisiti, *consultis viris prudentibus*, arbitramur, quod, quum simplex votum apud Deum non minus obliget quam solenne, pro eo, quod iuravit temere, poenitentiam agat, et votum, quod Deo fecit, studeat observare. Quodsi, postquam huiusmodi praestitit iuramentum, ad nuptias *iam* proprio motu convolasset, quum votum simplex [*licet*] matrimonium impediat contrahendum, non tamen dirimat iam contractum: nihil ambiguitatis quaestio tua continere videtur. [*Ceterum quod etc. cf. c.* 1. *de convers. inf. III.* 33.]

Chapter VII

Latin source headnote: A solemn vow impedes and dissolves marriage after it has been contracted.

Innocent III, to the Bishops of Lisbon and Coimbra.

It was represented to our apostolate by the intimation of the noble woman I. that, *long ago, when she was a girl and constituted in tender years, she took M. Sancii as husband, who a short time afterward was killed by the enemies of the cross of Christ. After his death,* supplication was made by certain courtiers to the King of León for union with her. When this came to the knowledge of her blood relatives, they urged her, under a royal adjuration, to take a husband. But she, protesting that she was then unwilling to marry, received counsel from them that she emit a vow of chastity, which she made into the hands of a certain one of the brothers of Saint Augustine, with this tenor added: that she would remain in her own house with all her substance. Indeed, she afterward remained for two years in the habit of the same order, although she asserts that she did this unwillingly and under compulsion, not so much from fear of the king as of her parents. *After these things she indicated to the same king what she had done; approving it, he forbade anyone, against her will, to enter her house or to carry anything away from it. But meanwhile, after a little time had elapsed, the courtier P., carrying royal letters with him, and F. Ferdinandi entered the house of the said woman in order that the same P. might take her as wife at least by force, and they received from her the answer that, if the same P. took her, he would perish by her hands. But after these things, having abandoned her house and all the things that she had, she lay hidden for three weeks in the house of a certain Jew, and for six weeks in the church of Saint Mary of Veiga, in such a way that she did not dare even to go out from there on account of human necessities.* At last, *seeing herself compelled and destitute of all things, and* considering *nevertheless* that she had emitted the vow unwillingly, having laid it aside, by the counsel of her parents she was publicly joined matrimonially to P. Michael, from whom in the course of time she bore four sons. *But because she desires to prefer the salvation of her soul to all things, and fears that a union of this kind is not lawful,*

she humbly petitioned to be instructed by our response as to what she ought to hold concerning these things. We, therefore, considering that in the emission of the vow which preceded, no compulsion, or only slight compulsion, had been present, which the patience and perseverance of the time that followed entirely put to flight, and that the subsequent union was rather wrongful and violently extorted, *through apostolic writings* order your fraternity that, *after the truth has been investigated more diligently*, if the truth supports the foregoing, you take care to admonish and induce the aforesaid woman to resume the religious habit wrongfully cast aside and to observe what she vowed, and, if there is need, to coerce her through ecclesiastical censure. [*But if not both, etc. Given at the Lateran, on the Kalends of December.* 1199.]

> Votum solenne impedit et dirimit matrimonium post contractum.
>
> Innocentius III. Ulisbonensi et Colimbriensi Episcopis.
>
> Insinuante I. nobili muliere nostro est apostolatui reseratum, quod *dudum puella et in annis teneris constituta, M. Sancii accepit in virum, qui ab inimicis crucis Christi fuit parvo post tempore interfectus. Post cuius obitum* a quibusdam curialibus fuit regi Legionensi pro ipsius copula supplicatum. Quod quum ad consanguineorum eius notitiam pervenisset, ut maritum acciperet ei sub obtestatione regia suggesserunt. Ipsa vero, quod tunc nollet nubere protestans, consilium accepit ab eis, quod votum emitteret castitatis, quod in manibus cuiusdam de fratribus sancti Augustini fecit, eo adiecto tenore, ut in domo propria cum omni substantia sua remaneret. Sane in eiusdem ordinis habitu biennio post permansit, licet id se invitam fecisse asserat et coactam, non tam metu regio quam parentum. *Post haec eidem regi quod fecerat indicavit; quod approbans vetuit, ne quis ea nolente domum intraret ipsius, vel exinde aliquid asportaret. Interim vero, tempore modico elabente, P. curialis, regias literas secum portans, et F. Ferdinandi dictae mulieris domum intrantes, ut ipse P. vi saltem eam duceret in uxorem, acceperunt ab ipsa, quod, si eam idem P. duceret, ipsius manibus interiret. Post haec vero, dimissis domo et omnibus, quae habebat, in domo cuiusdam Iudaei per tres, in ecclesia vero S. Mariae de Veiga per sex latuit septimanas, ita, quod exinde propter necessitates humanas etiam egredi non auderet*. Tandem *se coactam videns et omnibus destitutam, et* attendens *nihilominus*, quod invita votum emiserit, eo dimisso, de parentum consilio P. Michaëli publice fuit matrimonialiter copulata, de quo quatuor sustulit filios tempore procedente. *Verum, quia salutem animae desiderat omnibus anteferre, ac metuens, quod huiusmodi coniunctio licita non exsistat, quid super his tenere debeat, edoceri responso nostro suppliciter postulavit*. Nos igitur, attendentes, quod in emissione voti, quod praecessit, nulla vel modica coactio adfuisset, quam patientia et perseverantia sequentis temporis penitus profugavit, et quod sequens coniunctio potius iniqua fuit et violenter extorta, *fraternitati vestrae per apostolica scripta* mandamus, quatenus, *inquisita diligentius veritate*, si praemissis veritas suffragatur, praefatam mulierem ad male dimissum religionis habitum resumendum et servandum quod vovit monere et inducere procuretis, et, si opus fuerit, per censuram ecclesiasticam coërcere. [*Quod si non ambo etc. Dat. Lat. Kal. Dec.* 1199.]

Title VII: On One Who Took as Wife Her Whom He Polluted by Adultery

Chapter I

Latin source headnote: If someone, while his wife is living, contracts with a second woman who is ignorant of this, after the first wife has died he will not, at his own petition, be separated from the second.

Alexander III, to the Abbot of Saint Albans.

It was proposed to us that a certain man *O.*, while having a wife, joined to himself another woman who was ignorant of a matter of this kind, *from whom he had several sons*; but after the first wife died, he endeavors to withdraw from the second, *asserting that while his wife was living it was not lawful for him to join her to himself*. Although it is held in the canons that no one is to join *in* marriage her whom he had first polluted by adultery, and especially her to whom he had pledged faith while his wife was living, or who had plotted the death of the wife, nevertheless, because the aforesaid woman was ignorant that he had another wife living, and it is not worthy that the aforesaid man, who knowingly acted contrary to the canons, should carry away profit from his own fraud, we respond to your consultation in this manner: unless the *aforesaid* woman seeks judicial separation, they are not in any way to be separated at the petition of the man, *since he would appear to carry away advantage from his own offense*.

DE EO, QUI DUXIT IN MATRIMONIUM QUAM POLLUIT PER ADULTERIUM.

Si quis vivente uxore contrahit cum secunda hoc ignorante, prima mortua ad sui petitionem non separabitur a secunda.

Alexander III. Abbati sancti Albani.

Propositum est nobis, quod vir quidam *O.* uxorem habens sibi aliam, huiusmodi rei insciam, copulavit, *de qua plures filios habuit*; sed prima mortua nititur discedere a secunda, *asserens, quod uxore sua vivente eam non licuit sibi copulare*. Licet autem in canonibus habeatur, ut nullus copulet *in* matrimonio quam prius polluerat adulterio, et illam maxime, cui fidem dederat uxore sua vivente, vel quae machinata est in mortem uxoris: quia tamen praefata mulier erat inscia, quod ille aliam haberet uxorem viventem, nec dignum est, ut praedictus vir, qui scienter contra canones venerat, lucrum de suo dolo reportet: consultationi tuae taliter respondemus, quod, nisi *praedicta* mulier divortium petat, ad petitionem viri non sunt aliquatenus separandi, *quum ex suo delicto videretur commodum reportare*.

Chapter II

Latin source headnote: If, while the first wife is living and has not been known carnally, someone knowingly contracts with a second and knows her, even after the first has died he cannot have the second; it is otherwise if the first was not a lawful wife.

The same, to the Abbot of Fountains.

O. of Anjou signified to us, *through his brother W., that he, a parishioner of the church of York, was seized by W. de Romar., who has been taken from this light, and was held by him so long in iron chains and prison that he compelled him to swear that he would take the woman H. as wife. But when he had escaped the chains and prison, he took another as wife, from whom he begot sons. Afterward, the same O., having been drawn into a suit by the aforesaid H. before our venerable brother the Archbishop of York, legate of the Apostolic See, was compelled by him to affirm by oath that he would not approach her whom he had voluntarily taken as wife until the suit was terminated by ecclesiastical judgment. But because, before the case was lawfully heard, the aforementioned H. closed her last day, the aforesaid O. does not dare to return to her from whom he had sons. It is for this reason that, by commanding through apostolic writings,* We order your discretion that, *after the truth of the matter has been diligently investigated and ascertained*, if it is established *to you* that so great a force was brought to bear upon the same O. *that he swore to take the aforesaid H. as wife, and* that he did not consent voluntarily to the first woman, nor after furnishing the oath did he know her carnally, on account of this you do not fail to grant him the free faculty, *with appeal removed*, of returning to the other whom he afterward

took as wife. Otherwise, forbidding him under threat of anathema to return to the second, give him license to take another, *if he wishes*, as wife.

> Si, vivente prima uxore et non cognita, quis contraxit cum secunda scienter, et eam cognovit, etiam mortua prima secundam habere non potest; secus, si prima erat non legitima uxor.
>
> Idem Abbati de Fontibus.
>
> Significavit nobis O. Andegavensis, *parochianus Eboracensis ecclesiae, per W. fratrem suum, quod W. de Romar., qui est ex hac luce subtractus, capiens eum tamdiu in vinculis ferreis et carcere tenuit, donec ipsum iurare coëgit, quod H. mulierem duceret in uxorem. Quum autem vincula et carcerem evasisset, aliam in uxorem accepit, de qua filios procreavit. Postea vero idem O. a praefata H. coram venerabili fratre nostro Eboracensi archiepiscopo apostolicae sedis legato tractus in causam, ab eo coactus est iuramento firmare, quod ad illam, quam sponte in uxorem acceperat, non accederet, donec lis esset iudicio ecclesiastico terminata. Ceterum quia, priusquam de causa cognosceretur legitime, praenominata H. diem clausit extremum, praedictus O. ad eam, de qua filios habuit, reverti non audet. Inde est quod discretioni vestrae per apostolica scripta praecipiendo* Mandamus, quatenus, *rei veritate diligenter inquisita et cognita*, si *vobis* constiterit, quod eidem O. tanta vis illata fuerit, *ut praedictam H. iuraret in uxorem accipere, et*, quod non sponte in primam consenserit, nec post praestitum iuramentum ipsam carnaliter cognoverit, propter hoc non dimittas, quin ad aliam, quam postea in uxorem accepit, revertendi liberam *appellatione remota* tribuas facultatem. Alioquin sibi, ne ad secundam revertatur, sub interminatione anathematis inhibens, des ei licentiam ducendi aliam, *si voluerit*, in uxorem.

Chapter III

Latin source headnote: A man cannot contract with her whom he knew while his wife was living if she plotted the death of the wife.

The same, to the Bishop of Baranum.

Concerning this *indeed*, which *through your letters you asked concerning the bearer of the present letters*, whether it is lawful for someone to contract marriage with her whom, while his *other* wife was living, he joined to himself in a de facto marriage, we respond *to your solicitude* in this manner: if the adulteress plotted anything toward the death of the wife, whether *that man* pledged faith or not that, after the latter had died, he would take the former as wife, according to the canons he is *perpetually* prohibited from her consortium, and this prohibition is to be perpetually observed.

> Non potest quis cum illa contrahere, quam uxore vivente cognovit, si machinata fuit in mortem uxoris.
>
> Idem Baranensi Episcopo.
>
> Super hoc *vero*, quod *de latore praesentium tuis literis* quaesivisti, an liceat alicui cum ea contrahere matrimonium, quam, *alia* uxore sua vivente, sibi de facto matrimonio copulavit, *tuae sollicitudini* taliter respondemus, quod, si adultera est in mortem uxoris aliquid machinata, sive *iste* fidem dederit sive non, quod ea defuncta hanc esset ducturus, secundum canones ab eius consortio *perpetuo* prohibetur, et haec prohibitio perpetuo est servanda.

Chapter IV

Latin source headnote: He who, while his wife was living, even though separated from him as to the marriage bed, took a second wife who was aware of the matter will, after the first has died, be separated from the second; but he will be able to contract with another.

Clement III.

From the intimation of your letters we received that T., *bearer of the present letters, your parishioner, formerly* cast off his wife, who had been caught in adultery, with the assent of your predecessor, and that she afterward received the monastic habit; but the said T., before she died, brought in another woman, *and lived with her for twelve years*, and received several sons from her. *But because the above-mentioned woman died and you considered that the Apostolic See should be consulted as to what ought to be done concerning the second union,* we therefore respond to your fraternity, *by the counsel of our brothers*, that you ought *without delay* to separate them from one another; but the same man, after penance for the adultery has been enjoined upon him, will be able to take another as wife.

> Qui, vivente uxore, etiam ab eo separata quoad torum, secundam consciam duxit uxorem, prima mortua separabitur a secunda; sed cum alia contrahere poterit.
>
> Clemens III.
>
> Ex literarum tuarum insinuatione accepimus, quod T. *lator praesentium, parochianus tuus, olim* uxorem suam, in adulterio deprehensam, de tui antecessoris assensu abiecit, quae postmodum accepit habitum monachalem; sed dictus T., antequam illa decederet, aliam superinduxit, *et cum ea XII. annis vixit*, et plures suscepit filios ex eadem. *Ceterum quia supra dicta mulier decessit, et quid super secunda copula fieri debeat sedem duxisti apostolicam consulendam*, Fraternitati tuae igitur *de fratrum nostrorum consilio* respondemus, quod illos debes *sine delatione* abinvicem separare; idem vero vir, indicta ei de adulterio poenitentia, aliam ducere poterit in uxorem.

Chapter V

Latin source headnote: He who, while his lawful wife is living, contracts adulterously with a second woman will, even after the first has died, be separated from the second, even if he cohabited with her for a long time and received sons from her.

The same.

While I., bearer of the present letters, had a lawful wife named A., he committed adultery with M., *which he disclosed to you in public confession, as your letters demonstrated to us*. And when he had been called into court concerning this, he abjured *the adulteress M. herself in court*, and afterward, *putting aside and* contemning the oath, while the lawful wife was living, he presumed to contract *a marriage of whatever kind* with her and to cohabit for a long time with the *adulteress*. At last, after the aforesaid A. was taken from the present light, the aforementioned I. *nevertheless* remained for a decade with the *aforesaid* adulteress, from whom he *also* begot ten sons. *Therefore, because you consult whether the aforesaid John and that woman can remain together or, if they ought to be separated, whether it is lawful for them to hasten to other nuptials,* we consequently give this response to your consultation: let them be separated altogether, and, after *fitting* penance has been enjoined upon them, let perpetual continence be prescribed, especially since they have both advanced in their days and, having so long persisted publicly in adultery and perjury with certain knowledge, have disturbed the Church with grave scandal. For you know that Pope Leo established that no one is to take in marriage her whom he polluted by adultery, and that in this case matters proceeded further than if faith alone had been furnished to the adulteress that, when the lawful wife had died, he would take her as wife, since, even while that first wife was living, as if matrimonially, the adulterer presumed to adhere to the adulteress and rashly to violate his oath. Both Pope Gregory and the Synod of Tribur detest such a marriage, in which even no sacred bond of an oath intervened, and commanded each person joined in

this manner to be subjected to public penance and to remain perpetually without any hope of marriage. Nor *certainly* does the fact that they cohabited with one another for a decade and received ten sons furnish any support to the same I. and M. so that they might remain together, since the multiplicity of offspring thus received aggravates their crime the more, and length of time does not diminish sin but increases it. It will nevertheless belong to your solicitude that each provide for his or her sons *who have been begotten and*, according to the resources that are available to them, supply the things necessary *for their sustenance*.

> Qui vivente uxore legitima cum secunda contrahit adultera, etiam prima mortua separabitur a secunda, etiamsi longo tempore ei cohabitavit, et filios ex ea suscepit.
>
> Idem.
>
> Quum haberet uxorem legitimam A. nomine I. lator praesentium, cum M. adulterium perpetravit, *quod ipse tibi publica confessione detexit, sicut nobis tuae literae demonstrarunt*. Quumque super hoc fuisset in ius vocatus, *ipsam M. in iure* abiuravit adulteram, et postmodum, iuramento *posthabito et* contempto, vivente legitima cum ea matrimonium *qualecunque* contrahere, et ipsi *moechae* diu cohabitare praesumpsit. Demum, praedicta A. de praesenti luce subtracta, *nihilominus* memoratus I. cum *praefata* adultera per decennium est moratus de qua *etiam* decem filios procreavit. *Quia igitur consulis, an praedicti Ioannes et illa simul manere possint, vel, si debeant separari, utrum liceat eis ad alias nuptias convolare:* Tale ergo damus consultationi tuae responsum, ut separentur omnino, et *competenti* eis iniuncta poenitentia, perpetua continentia indicatur, praesertim quum in dies suos ambo processerint, et, tamdiu publice in adulterio et periurio ex certa scientia perdurantes, ecclesiam in gravi scandalo perturbaverint. Nosti enim, quod Leo Papa statuit, ut nullus ducat in matrimonium quam adulterio polluit, et quod hic plus processum fuit, quam si fides praestita duntaxat fuisset adulterae, ut defuncta legitima eam duceret in uxorem, quum, eadem etiam prima vivente, quasi matrimonialiter moechae moechus adhaerere praesumpsit, et sacramentum suum temere violare. Quod utique connubium, ubi etiam nulla intercessit religio iuramenti, tam Gregorius Papa quam Triburiensis synodus detestatur, et utrumque hoc modo coniunctum praecepit publicae poenitentiae subiici, ac perpetuo sine ulla spe coniugii permanere. Nec *certe* aliquod eisdem I. et M. adminiculum adferunt, ut simul maneant, quod decennio cohabitaverunt adinvicem, ac decem filios susceperunt, quum multiplicitas prolis ita susceptae magis eorum crimen exaggeret, et diuturnitas temporis peccatum non minuat, sed augmentet. Sollicitudinis tamen tuae intererit, ut uterque liberis suis *procreatis provideat, et* secundum quod eis suppetunt facultates, *sustentationi eorum* necessaria subministret.

Chapter VI

Latin source headnote: If someone, after his wife has died, contracts with her whom he knew while his wife was living without a pledge of faith, the marriage holds, provided neither plotted the death of the deceased wife.

Innocent III, to the Bishop of Spoleto.

You signified to us that, when P., a citizen of Spoleto, had lawfully taken a certain woman as wife, having abandoned her he adhered to a certain prostitute, *and, when he could not be recalled from her cohabitation to his lawful marriage bed, you promulgated a sentence of excommunication against him*. But when *in the meantime* his wife had entered the way of all flesh, he betrothed the prostitute to whom he had adhered. We, therefore, respond to your inquiry *according to canonical form* in this manner: unless either of them plotted the death of the deceased wife, or while she was living pledged faith to the

other concerning contracting marriage, you are to adjudge the above-mentioned marriage lawful, being about to impart to the excommunicated man the gift of absolution, if he seeks it, according to the form of the Church. [*Given at Rome, at Saint Peter's, on the eighth day before the Kalends of May.* 1198.]

> Si quis mortua uxore contrahit cum ea, quam vivente uxore sine fidei datione cognoverat, tenet matrimonium, dummodo in mortem defunctae neuter fuerit machinatus.
>
> Innocentius III. Episcopo Spoletano.
>
> Significasti nobis, quod, quum P. civis Spoletanus quandam mulierem duxisset legitime in uxorem, ea relicta cuidam meretrici adhaesit, *+et quum ab eius contubernio ad torum non posset legitimum revocari, vos in eum excommunicationis sententiam protulistis*. Verum quum *medio tempore* uxor ipsius esset viam universae carnis ingressa, meretricem, cui adhaeserat, desponsavit. Nos igitur inquisitioni tuae *secundum formam canonicam* taliter respondemus, quod, nisi alter eorum in mortem uxoris defunctae fuerit machinatus, vel ea vivente sibi fidem dederit de matrimonio contrahendo, legitimum iudices matrimonium supra dictum, excommunicato munus absolutionis, si petierit, iuxta formam ecclesiae impensurus. [*Dat. Rom. ap. S. Petr. VIII. Kal. Maii* 1198.]

Chapter VII

Latin source headnote: If someone, while the first wife is living, takes a second wife who is ignorant of this matter, after the first has died he lawfully remains with the second when new consent intervenes.

The same, to the Chapter of Messina.

Coming to our presence, the layman G., *bearer of the present letters*, showed *to us* by humble intimation that, when *formerly* in the city of Limoges he had joined a certain woman matrimonially to himself, *and had cohabited with her for two years*, afterward withdrawing from her *through levity of mind*, he came to Messina, where he solemnly joined to himself the woman M., who was *entirely* ignorant that the *same G.* had another wife, *from whom he is known to have received two sons*. But when penance had been enjoined upon him that he return to his lawful wife, and on account of this he had returned to his homeland, finding that his wife had paid the debt of the flesh, he returned to the city of Messina and cohabited with the above-mentioned M. as with a lawful wife. *But now, humbly and devoutly doing the penance imposed upon him for the former transgression, he petitioned from us license to cohabit with the same M.* Although the *aforesaid G.*, while his lawful wife was living, could not join the aforesaid M. to himself as wife, nevertheless, because, after his wife died, as one released from her law, he could anew consent matrimonially to the same M., provided he had not pledged faith to the adulteress or [*had not*] plotted the death of his wife, we [*through apostolic writings*] order your discretion that, if it is so, you grant the same G. license to adhere to the above-mentioned M. with conjugal affection, *with the obstacle of any contradiction and appeal removed, not permitting him to be unduly troubled concerning this by anyone*.

> Si quis, vivente prima, secundam huius rei insciam duxerit uxorem, mortua prima licite remanet cum secunda, novo consensu interveniente.
>
> Idem Messanensi Capitulo.
>
> Veniens ad praesentiam nostram G. laicus *lator praesentium* humili *nobis* insinuatione monstravit, quod, quum *olim* in civitate Lemovicensi quandam sibi matrimonialiter copulasset, *et per biennium cohabitasset eidem*, ab ea *demum animi levitate* recedens Messanam advenit, ubi M. mulierem, insciam *penitus*, quod

idem G. aliam haberet uxorem, sibi solenniter copulavit, *ex qua duos filios dignoscitur suscepisse*. Verum quum eidem poenitentia fuisset iniuncta, ut ad legitimam rediret uxorem, et ipse propter hoc in suam patriam rediisset, uxorem suam inveniens carnis debita persolvisse, ad Messanam rediit civitatem, et supra dictae M. tanquam legitimae cohabitavit uxori. *Nunc autem impositam sibi pro priori excessu poenitentiam agens humiliter et devote, cohabitandi eidem M. a nobis licentiam postulavit*. Licet autem *praefatus G.* vivente uxore legitima praedictam M. sibi copulare nequiverit in uxorem, quia tamen, uxore defuncta, utpote a lege ipsius solutus, in eandem M. de novo potuit matrimonialiter consentire, dummodo non praestiterit fidem adulterae, vel machinatus [*non*] fuerit in mortem uxoris: [*discretioni vestrae per apostolica scripta*] mandamus, quatenus, si est ita, eidem G. ut supra dictae M. affectu adhaereat coniugali, *sublato cuiuslibet contradictionis et appellationis obstaculo* licentiam concedatis, *non permittentes, eundem super hoc ab aliquibus indebite molestari*.

Chapter VIII

Latin source headnote: One contracting with a second woman while the first is living, whom, however, he knew neither before nor after the contract, can, after the first has died, contract with the second.

Gregory IX, to Brother R.

If someone, while his wife was living, with faith pledged promised that he would take another woman, or contracted in fact with her, if neither before nor afterward, while his lawful wife survived, he knew that woman, although penance is to be enjoined upon each of them for the fact that they gravely transgressed in this, nevertheless the marriage which he contracted with her is not to be dissolved after the death of the wife. But it ought not to be tolerated if, either before or afterward, while his wife lived, he had polluted the other woman by adultery.

Contrahens cum secunda, vivente prima, quam tamen non cognovit nec ante contractum, nec post, mortua prima potest contrahere cum secunda.

Gregorius IX. Fratri R.

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

Title VIII: On the Marriage of Lepers

Chapter I

Latin source headnote: Leprosy supervening does not dissolve marriage or the effect of marriage; therefore, those joined to one another by marital affection ought to care for one another, or to be induced to vow perpetual continence.

Alexander III, to the Archbishop of Canterbury.

It has come to us that, although those who incur the disease of leprosy are by general custom separated from the communion of men *and transferred outside cities and villages to solitary places*, neither wives follow husbands nor husbands their *own* wives when they are thus ill, *but presume to remain*

without them. Therefore, since husband and wife are one flesh, one ought not to be without the other any longer; *by commanding through apostolic writings* we order your fraternity not to postpone inducing, by solicitous exhortations, wives to follow husbands and husbands their wives who incur the disease of leprosy, and to minister to them with conjugal affection. But if they cannot be induced to this, more strictly enjoin upon them that each observe continence while the other is living. But if they contemn observing your mandate, bind them with the bond of excommunication.

> **DE CONIUGIO LEPROSORUM.**
>
> Lepra superveniens non dissolvit matrimonium, nec matrimonii effectum, ideo adinvicem maritali affectione coniuncti se tractare debent, aut ad perpetuam continentiam vovendam induci.
>
> Alexander III. Cantuariensi Archiepiscopo.
>
> Pervenit ad nos, quod, quum hi, qui leprae morbum incurrunt, de consuetudine generali a communione hominum separentur, *et extra civitates et villas ad loca solitaria transferantur*, nec uxores viros, nec viri uxores *suas* taliter aegrotantes sequuntur, *sed sine ipsis manere praesumunt*. Quoniam igitur, quum vir et uxor una caro sint, non debet alter sine altero esse diutius, *fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus, ut uxores viros, et viri uxores, qui leprae morbum incurrunt, sequantur, et eis coniugali affectione ministrent, sollicitis exhortationibus inducere non postponas. Si vero ad hoc induci non poterunt, eis arctius iniungas, ut uterque altero vivente continentiam servet. Quodsi mandatum tuum servare contempserint, vinculo excommunicationis adstringas.

Chapter II

Latin source headnote: Spouses are not to be separated from marriage because of leprosy, and lepers can contract marriage, and spouses are bound to render the debt to each other.

The same, to the Bishop of Bayonne.

Since *from many authorities, and especially from evangelical truth*, it is lawful for no one, except for the cause of fornication, to dismiss his *own* wife, it is established that, whether a woman has been struck by leprosy or detained by another grave infirmity, she is not for that reason to be separated from [*her*] husband or even dismissed. *But concerning this,* [*which concerning the bearer, etc.*] (And below: [*Compare chapter* 3, *On One Who Took as Wife, IV.* 7.]) But if lepers are unwilling to be continent and find someone willing to marry them, they are free to hasten to marriage. But if by *divine judgment* it happens that the husband or wife becomes leprous, and the infirm spouse demands the carnal debt from the healthy one, by the general precept of the Apostle that which is demanded is to be paid, and no exception to that precept is found in this case.

> Coniuges propter lepram separandi non sunt a coniugio, et contrahere possunt matrimonium, et invicem sibi reddere debitam tenentur.
>
> Idem Baionensi Episcopo.
>
> Quoniam *ex multis auctoritatibus et praecipue ex evangelica veritate* nemini licet, excepta causa fornicationis, uxorem *suam* dimittere: constat, quod, sive mulier lepra percussa fuerit, seu alia gravi infirmitate detenta, non est a viro [*suo*] propterea separanda, vel etiam dimittenda. *Super hoc vero,* [*quod de latore etc.*] (*Et infra:* [*cf. c.* 3. *De eo, qui duxit IV.* 7.]) Leprosi autem si continere nolunt, et aliquam, quae sibi nubere velit, invenerint, liberum est eis ad matrimonium convolare. Quodsi virum sive uxorem *divino iudicio* leprosum fieri contigerit, et infirmus a sano carnale debitum exigat, generali praecepto Apostoli quod exigitur est solvendum, cui praecepto nulla in hoc casu exceptio invenitur.

Chapter III

Latin source headnote: Betrothals of the future do not absolutely compel one to contract marriage with a leper when leprosy supervenes after the betrothals.

Urban III, to the Bishop of Florence.

We received the letters *of your fraternity with due kindness; through them, having been made more certain of the sincerity of your faith and devotion, we are more abundantly moved toward your honor and advantage. But* because you asked [*us*] whether, if, after betrothals of the future were contracted between *certain* lawful persons, before the woman is conducted home by the man, one of them incurs the disease of leprosy, the other ought to be compelled to consummate the marital union, *or can transfer himself or herself to second vows, we respond to your solicitude* that he ought not to be compelled to receive her, since marriage has not yet been consummated between them. [*But concerning her, etc.* (*Compare chapter* 6, *On the Separation of Spouses, IV.* 19.)]

> Sponsalia de futuro praecise non compellunt ad contrahendum matrimonium cum leproso, lepra post sponsalia superveniente.
>
> Urbanus III. Episcopo Florentino.
>
> Literas *fraternitatis tuae debita benignitate suscepimus, quibus certiores de sinceritate tuae fidei et devotionis effecti, ad honorem et commodum tuum abundantius provocamur. Verum* Quia [*a nobis*] postulasti, utrum, si, post sponsalia de futuro inter *aliquas* legitimas personas contracta, antequam a viro mulier traducatur, alter eorum leprae morbum incurrat, alius ad consummandam copulam maritalem compelli debeat, *vel se possit ad secunda vota transferre, tuae sollicitudini* respondemus, quod ad eam accipiendam cogi non debet, quum nondum inter eos matrimonium fuerit consummatum. [*De illa vero etc.* (*cf. c.* 6. *de divort. IV.* 19.)]

Title IX: On the Marriage of Slaves

Chapter I

Latin source headnote: A slave can contract marriage when his lord contradicts it; but on account of this he is not freed from the services owed to his lord.

Adrian, to the Archbishop of Sancteburg.

It is worthy *and does not disagree with the path of reason that those matters which appear to contain within themselves a scruple of doubt be referred to the judgment of the Apostolic See, so that from that source the faithful of Christ may rejoice that they find certainty in doubtful matters from which they are known to have received the teaching authority of the faith. But your fraternity, if we remember well, asked our apostolate what ought to be done concerning marriages of slaves which are contracted when their lords are unwilling and contradict them; concerning this we considered that this response should be made to you*. Indeed, according to the word of the Apostle, *as your discretion recognizes*, just as in Christ Jesus there is neither free person nor slave *who* is *to be* removed from the sacraments of the Church, so *also* marriages among slaves ought not in any way to be prohibited. And, if they were contracted when their lords contradicted and were unwilling, they are for this reason by no means to be dissolved *by ecclesiastical judgment*; nevertheless, the owed and customary services ought no less to be rendered to their own lords.

> **DE CONIUGIO SERVORUM.**

Servus, contradicente domino, matrimonium contrahere potest; sed propter hoc non liberatur a servitiis domino debitis.

Adrianus Sancteburgensi Archiepiscopo.

Dignum est *et a rationis tramite non discordat, quod ea, quae dubietatis in se videntur scrupulum continere, et ad apostolicae sedis iudicium referantur, ut inde Christi fideles in dubiis certitudinem se gaudeant invenire, unde noscuntur magisterium fidei suscepisse. Tua vero fraternitas de servorum coniugiis, quae invitis et contradicentibus dominis contrahuntur, quid fieri debeat, ab apostolatu nostro, si bene meminimus, requisivit; super quo tibi duximus taliter respondendum*. Sane, iuxta verbum Apostoli, *prout tua discretio recognoscit*, sicut in Christo Iesu neque liber, neque servus est, *qui* a sacramentis ecclesiae *sit* removendus, ita *quoque* nec inter servos matrimonia debent ullatenus prohiberi. Et, si contradicentibus dominis et invitis contracta fuerint, nulla ratione sunt propter hoc *ecclesiastico iudicio* dissolvenda; debita tamen et consueta servitia non minus debent propriis dominis exhiberi.

Chapter II

Latin source headnote: A marriage is separated when a free man unknowingly contracted with a female slave, unless afterward, knowing this, he knew her carnally.

Alexander III, to the Provost and Prior of Mortara.

The woman M., *bearer of the present letters*, proposed to us that, after her husband had remained with her for a rather long time, he cast against her the reproach of servile condition, asserting that she was a female slave whom he believed to be free when he took her as wife. *But when a matter of this kind was being treated in the presence of our venerable brother the Bishop of Asti, the woman, because she feared that she would be burdened there, appealed to our hearing. Therefore, because after a little delay the aforesaid man withdrew with the suit unshaken, while both she and her husband were living, through apostolic writings* We order your discretion that, *when you have been required on account of this, you summon the parties before your presence and, after the truth concerning these matters has been investigated more diligently*, if it is established *to you* that the same man knew the aforesaid woman carnally after he heard that she was a female slave, after prior admonition you compel him to *receive* her as wife and to treat her with marital affection. But if it was otherwise, and it happens that a sentence of separation is pronounced, cause the money that the woman granted to the aforesaid man as dowry to be restored to her, *as shall be just*.

Separatur matrimonium, quando liber ignoranter cum ancilla contraxerit, nisi postea hoc sciens illam cognovit.

Alexander III. Praeposito et Priori Mortariensi.

Proposuit nobis M. mulier *latrix praesentium*, quod quum vir eius cum ea diutius permansisset, notam ei servilis conditionis obiecit, asserens, eam esse ancillam, quam liberam esse credebat, quum eam duxit in uxorem. *Quum autem in praesentia venerabilis fratris nostri Astensis episcopi huiusmodi negotium tractaretur, mulier, quia ibi gravari timebat, ad nostram audientiam appellavit. Quia igitur, tam ea quam viro suo vivente, post aliquantulam moram praefatus vir inconcusso lite recessit, discretioni vestrae per apostolica scripta* Mandamus, quatenus, *quum propter hoc fueritis requisiti, partes ante vestram praesentiam convocetis, et, veritate super his diligentius inquisita*, si *vobis* constiterit, quod idem vir praefatam mulierem, postquam illam audivit esse ancillam, carnaliter cognovit, ipsum monitione praemissa compellatis, ut eam sicut uxorem *accipiat* et maritali affectione pertractet. Si vero aliter fuerit, et sententiam divortii proferri contingat, mulieri pecuniam, quam praefato viro pro dote concessit, *sicut iustum fuerit*, restitui faciatis.

Chapter III

Latin source headnote: If the custom in the place is that offspring follow the condition of the father, one born from a free man and a female slave is free, and contracts marriage as a free person.

Urban III, to the Bishop of Rimini.

Although *we judge you sufficient for those matters concerning which your fraternity wished to consult us, nevertheless, because with pastoral solicitude you seek our judgment for greater certainty, we respond to your inquiries by the duty of our office*. Indeed, concerning the matter which was proposed *on your part*, whether a woman can seek judicial separation because the man with whom she contracted, in ignorance of his condition, is alleged to be a slave of a monastery, while on the contrary the same man steadfastly affirms that his father, whose condition he would follow according to the laws of the province, conducted himself as a free man at the time of his death, and that, with a decade now elapsed, he suffered no controversy of status either in the name of his father or in his own name, it appears to us that, by reason of time and in favor of liberty, judgment is more safely to be given for the man's side. [*To these things, etc.* (*Compare chapter* 4, *On the Religious Houses, III.* 36.)]

> Si consuetudo est in loco, quod partus conditionem patris sequatur, natus ex libero et ancilla liber est, et ut liber matrimonium contrahit.
>
> Urbanus III. Ariminensi Episcopo.
>
> Licet *ad ea, super quibus nos fraternitas tua consulere voluit, te sufficere arbitremur, quia tamen ad maiorem certitudinem iudicium nostrum pastorali sollicitudine requiris: nos ad inquisitiones tuas officii nostri debito respondemus*. Sane, super eo, quod *ex parte tua* fuit propositum, an mulier possit divortium postulare, pro eo, quod vir, cum quo suae conditionis ignara contraxit, servus monasterii proponatur, quum econtra idem vir, patrem suum, cuius conditionem secundum leges provinciae sequeretur, tempore mortis pro libero se gessisse, et iam elapso decennio nec patris, nec suo nomine se status controversiam passum, constanter affirmet, videtur nobis ratione temporis et favore libertatis pro parte viri securius iudicandum. [*Ad haec etc.* (*cf. c.* 4. *de rel. dom. III.* 36.)]

Chapter IV

Latin source headnote: If a free man contracted with a female slave unknowingly and, from the time he knew, did not consent, the marriage is separated, and he will be able to contract with others.

Innocent III, to Bishop H.

You should know that it has come to our hearing that *our beloved son* G., cardinal priest *of the title of Saint Mary in Trastevere*, legate of the Apostolic See, separated *our beloved son, the noble man* R., a knight, from a certain woman on account of an error of condition. Therefore, *through apostolic writings* we order your fraternity that you *investigate the truth concerning these things more diligently and*, if it is established *to you* that the *same* knight unknowingly contracted with a female slave, in such a way that, after he understood her condition, he consented to her neither by deed nor by word, on account of which he was separated from her consortium by the same cardinal, by apostolic authority grant him the free faculty of contracting with another.

> Si liber contraxit cum ancilla ignoranter, et, ex quo scivit, non consensit, separatur matrimonium, et cum aliis contrahere poterit.
>
> Innocentius III. H. Episcopo.

Ad nostram noveris audientiam pervenisse, quod *dilectus filius noster* G. *tituli sanctae Mariae trans Tiberim* presbyter cardinalis apostolicae sedis legatus *dilectum filium nobilem virum* R. militem a muliere quadam propter conditionis separavit errorem. Ideoque *fraternitati tuae per apostolica scripta* mandamus, quatenus *inquiras super his diligentius veritatem, et*, si *tibi* constiterit, quod miles *ipse* ignoranter contraxit cum ancilla, ita, quod, postquam intellexit conditionem ipsius, nec facto nec verbo consenserit in eandem, propter quod per cardinalem eundem ab eius fuerit consortio separatus, contrahendi cum alia liberam ipsi concedas auctoritate apostolica facultatem.

Title X: On Those Born from a Free Womb

Sole Chapter

Latin source headnote: One born from a freeborn or freed woman is free.

Gregory.

We believe it to be indecent that sons begotten from a freed or freeborn woman should be drawn back into servitude. Therefore, we command you [*by the present authority*] that *with these very documents, as we too have learned,* [*with your mind freed from cares*,] *you attend diligently, so that*, if there are no documents on the part of the Church that ought to oppose documents of this kind, you restrain that woman from molesting him without any reconsideration. For it is harsh that, if others confer liberties for *their* reward, they should be revoked by the Church, by which they ought to be made free. [*Again therefore, etc.*]

DE NATIS EX LIBERO VENTRE.

Natus ex libera vel liberta liber est.

Gregorius.

Indecens esse credimus, ut progeniti ex liberta sive libera filii ad servitium retrahantur. Propterea tibi [*praesenti auctoritate*] praecipimus, ut *his ipsis documentis, sicut et nos didicimus,* [*exuto a curis animo*] *diligenter intendas, quatenus*, si documenta nulla sint ab ecclesiae parte, quae documentis huiusmodi debeant obviare, ab eius molestia sine aliqua retractatione compescas eandem. Durum est enim, ut, si alii pro mercede *sua* libertates tribuunt, ab ecclesia, a qua fieri debent, revocentur. [*Iterum ergo etc.*]

Title XI: On Spiritual Kinship

Chapter I

Latin source headnote: The sons of two coparents, through neither of whom coparenthood was reached, lawfully contract, unless custom is opposed; but they are separated if coparenthood was contracted through either or both of them. This the chapter says together with the chapter "Concerning This," below under the same title.

Alexander III, to the Archbishop of Salerno.

But as to whether sons or daughters begotten before or after coparenthood can be joined to one another, canons contrary to one another are found according to the customs of different places. And although the first canon issued concerning this prohibits those born after coparenthood from being joined to one another, nevertheless another canon issued later appears to correct the first, by which it

is established that, whether they were begotten before or after coparenthood, they can be joined together, with the sole exception of that person through whom coparenthood is reached. Whence it appears *more tolerable* to us that observance ought to be according to the later canon, unless the custom of the church, which would generate scandal, is known to be otherwise.

> **DE COGNATIONE SPIRITUALI.**
>
> Filii duorum compatrum, per quorum neutrum deventum est ad compaternitatem, licite contrahunt, nisi consuetudo repugnet; separantur autem, si per eorum alterum vel utrumque compaternitas est contracta. H. d. cum cap. Super eo, infra eod.
>
> Alexander III. Salernitano Archiepiscopo.
>
> Utrum autem filii aut filiae ante vel post compaternitatem geniti possint adinvicem copulari, canones secundum diversorum locorum consuetudines contrarii inveniuntur. Et licet primus canon exinde editus natos post compaternitatem adinvicem copulari prohibeat, alter tamen canon posterius editus primum videtur corrigere, per quem statuitur, ut, sive ante sive post compaternitatem geniti sunt, simul possint coniungi, excepta illa persona duntaxat, per quam ad compaternitatem venitur. Unde *tolerabilius* nobis videtur, ut secundum posteriorem canonem debeat observari: nisi consuetudo ecclesiae, quae scandalum generet, aliter se habere noscatur.

Chapter II

Latin source headnote: Coparenthood supervening between spouses, knowingly or unknowingly, does not dissolve the marriage.

The same, to the same.

Because you wished to consult us whether, if a man or woman knowingly or unknowingly received his or her child from the sacred font, they ought *to be separated from each other* on account of this *and joined to others*, we respond to your consultation in this manner: although it is generally established that they ought to be separated, nevertheless certain persons, thinking more humanely *and rather*, have established otherwise. Therefore, it appears to us that, whether they did this from ignorance or malice, they are not to be separated from each other, nor ought either to withhold the debt from the other, unless they can be induced to observe continence; because, if it was done from ignorance, ignorance appears to excuse them, but if from malice, their fraud or deceit ought not to patronize them.

> Compaternitas, scienter vel ignoranter superveniens inter coniuges, coniugium non dissolvit.
>
> Idem eidem.
>
> Si vir vel mulier scienter vel ignoranter filium suum de sacro fonte susceperint, an propter hoc *ab invicem* separari debeant *et alii copulari, quia nos consulere voluisti*, Consultationi tuae taliter respondemus, quod, quamvis generaliter sit institutum, ut debeant separari, quidam tamen, humanius *et potius* sentientes, aliter statuerunt. Ideoque nobis videtur, quod, sive ex ignorantia sive ex malitia id fecerint, non sunt ab invicem separandi, nec alter alteri debitum debet subtrahere, nisi ad continentiam servandam possint induci: quia, si ex ignorantia id factum est, eos ignorantia excusare videtur; si ex malitia, eis sua fraus non debet patrocinari vel dolus.

Chapter III

Latin source headnote: The sons of two coparents, through neither of whom coparenthood was reached, lawfully contract marriage with one another; nevertheless, if a custom exists that impedes and dissolves such marriages, the custom of the place is to be observed. This the chapter says according to the more common understanding, by touching upon the intent of the chapter.

The same, to the Bishop of Vigilia.

Concerning that which your fraternity asked of us about the sons of two coparents, we respond that, if they are such sons through either or both of whom the parents came to coparenthood, you are by no means to permit them to be joined, and do not postpone separating *them from one another* by pontifical authority if they are joined. But if coparenthood was reached through neither of them, concerning these we wish you to inquire into and more diligently imitate the custom of your metropolitan church or of other surrounding churches, in such a way *indeed* that, if the custom of the same church is not to permit a marriage to be made between them, nor one made to have the strength of firmness, you likewise do not permit a marriage of this kind to be made in the church committed to you; and, if you find any thus joined, do not omit separating them from one another according to the custom of the same churches. But if custom has it that such marriages *are permitted and* sustained, you will be able to dissemble this in your church in such a way that you do not appear to furnish your assent, because, just as it is grave to contemn the ancient custom of surrounding churches concerning these matters, so too it appears graver if, on account of it, you grant your assent to marriages of this kind, since in this way it could be taken as an example.

> Filii duorum compatrum, per quorum neutrum deventum est ad compaternitatem, licite invicem contrahunt matrimonium; si tamen subest consuetudo, impediens et dirimens talia matrimonia, servanda est loci consuetudo. H. d. secundum intellectum magis communem, attingendo mentem capituli.
>
> Idem Vigiliensi Episcopo.
>
> Super eo, quod a nobis tua fraternitas requisivit de duorum compatrum filiis, respondemus, quod si tales filii fuerint, per quorum alterum vel utrumque parentes ad compaternitatem venerunt, eos coniungi nulla ratione sustineas, et coniunctos pontificali auctoritate *ab invicem ipsos* non differas separare. Ceterum si per neutrum eorum ad compaternitatem ventum fuerit, de his te volumus consuetudinem tuae metropolitanae ecclesiae vel aliarum circumpositarum inquirere et diligentius imitari, ita *quidem*, quod, si eiusdem ecclesiae consuetudo habeat inter eos non sustinere coniugium fieri, nec factum firmitatis robur habere, tu simili modo in ecclesia tibi commissa coniugium huiusmodi fieri non permittas, et, si quos taliter coniunctos inveneris, iuxta earundem ecclesiarum consuetudinem ipsos separare ab invicem non omittas. Verum si de consuetudine habeatur, ut talia coniugia *sustineantur et* permittantur, id in ecclesia tua dissimulare poteris ita, quod nec tuum videaris praestare assensum, quia, sicut grave est antiquam consuetudinem circumadiacentium ecclesiarum super his contemnere, sic quoque gravius videtur, si propter eam huiusmodi coniugiis tuum indulges assensum, quum posset sic in exemplum assumi.

Chapter IV

Latin source headnote: Between the father of the baptized person and the wife of the person lifting the baptized person, previously known by him, coparenthood is contracted that is effective for dissolving marriage.

Clement III.

Martin took Bertha *as* wife; Lothair joined Teberga to himself, and he received the son of Bertha and Martin from the sacred font. But after L. and B. were taken from their midst, M. contracted with the aforesaid T.; *your fraternity asks us whether such persons are to be separated from each other*. But we have considered that this response should be made to your consultation: since according to the word of the Lord man and woman are made one flesh through marriage, it is clear that Teberga cannot be joined matrimonially to Martin, who had been her coparent, since Teberga *herself* is known to have been one flesh with him. [*Concerning another matter, etc.* (*Compare chapter* 5, *On One Who Knew, IV.* 13.) *Given at the Lateran.*]

> Inter patrem baptizati et uxorem levantis, prius ab eo cognitam, contrahitur compaternitas efficax ad matrimonium dirimendum.
>
> Clemens III.
>
> Martinus Bertham duxit *in* uxorem, Tebergam sibi copulavit Lotharius, qui Berthae et Martini filium de sacro fonte suscepit. L. vero et B. sublatis de medio, M. cum T. praefata contraxit; *quaerit a nobis tua fraternitas, utrum tales sint ab invicem separandi*. Nos autem consultationi tuae duximus respondendum, quod, quum secundum verbum Domini vir et mulier efficiantur per connubium una caro, liquidum est, Tebergam non posse matrimonialiter copulari Martino, qui compater eius fuerat, cum quo una caro *ipsa* Teberga noscitur exstitisse. [*Super alio etc.* (*cf. c.* 5. *de eo, qui cogn. IV.* 13.) *Dat. Laterani*.]

Chapter V

Latin source headnote: Coparenthood contracted through catechism impedes a marriage to be contracted, but does not dissolve one contracted.

The same.

After marriage was contracted between P. *de Rigale* and A. his wife, *as the complaint of the same P. disclosed to us, when they had lived together for two years and the aforementioned P. had received a son from the same wife*, certain blood relatives of the same A., *wishing her to be separated from her husband*, objected against the marriage, *asserting* that the same *A*., at the first nourishment of consecrated salt, held a son of a former concubine of P. himself *when he was first led into the church; and on account of this, coming to your presence, they said that she ought to be separated from her husband by your judgment. But your fraternity, as we received, without hearing the case, prohibited carnal commerce to them, forbidding P. himself to seek the debt from his wife*. But if it were established *to the Church* that the things we have said were true, nevertheless the contracted marriage would not for that reason be dissolved, and this matter would *indeed* scarcely bring an impediment to contracting marriage. Therefore, *through apostolic writings* We order your discretion to *firmly* enjoin upon the aforesaid P. by our authority that he treat the aforementioned A. as his *own* wife with marital affection and lawfully demand and pay the carnal debt from and to her, whether, *as was said above*, it is established that *A*. herself did this before marriage was contracted with P. or afterward; provided, nevertheless, that, if she did this in fraud for the purpose of separating the marriage, she receive penance for her presumption, with the marriage remaining in its firmness.

> Compaternitas, per catechismum contracta, impedit matrimonium contrahendum, sed contractum non dirimit.
>
> Idem.

Contracto matrimonio inter P. *de Rigale* et A. uxorem suam, *sicut eiusdem P. nobis conquestio patefecit, quum per biennium insimul habitassent, et filium ex ipsa uxore memoratus P. suscepisset*, quidam consanguinei eiusdem A., *volentes eam separari a viro*, contra matrimonium obiecerunt, *asserentes*, quod eadem *A.* in primo sacrati salis pabulo filium quondam concubinae ipsius P. tenuit, *quum fuit primum in ecclesia inductus; et propter hoc tuam praesentiam adeuntes dicebant, ipsam debere a viro per tuum iudicium separari. Tua vero fraternitas, sicut accepimus, causa non cognita, iis carnale commercium interdixit, prohibens ipsi P., ne debitum ab uxore requireret*. Verum, si constaret *ecclesiae*, vera esse quae diximus, non ideo tamen contractum matrimonium solveretur, quae res *utique* vix contrahendo matrimonio impedimentum afferret. Ideoque *discretioni tuae per apostolica scripta* Mandamus, quatenus praefato P. auctoritate nostra *firmiter* iniungas, ut memoratam A. sicut uxorem *propriam* maritali affectione pertractet, et carnale debitum ab ea licenter exigat et persolvat, sive, *quod supra dictum est*, ipsam *A.* ante matrimonium contractum cum P., sive postea constiterit hoc egisse; dum tamen, si in fraudem hoc fecerit causa matrimonii separandi, poenitentiam pro praesumptione accipiat, matrimonio in sua firmitate durante.

Chapter VI

Latin source headnote: Between the father of the baptized person and the person lifting or holding the baptized person, spiritual kinship is contracted that is valid for impeding and dissolving a marriage contracted afterward.

Innocent III, to the Bishop and Archdeacon of Lincoln.

Coming to the Apostolic See, C., an Englishman *by nation, explained to us that, when formerly, constituted in adolescence, he had adhered to a certain woman whom a certain other man had known before, by the counsel of his mother it was done that the same woman lifted from the sacred font a certain boy whom he himself had received from another unmarried woman, in order to destroy the suspicion and infamy of each. But afterward, when he burned more vehemently with love for her, without the counsel of his friends he betrothed her secretly. And when he could not beget offspring from her and endured most grave rebukes from his father, turning over in his mind that he had transgressed in betrothing her, having dismissed her, he set out for Jerusalem for the sake of prayer. But when the same man, returning from the lands across the sea, found that she had received offspring from another, he was unwilling to adhere to her; but on account of the adultery which she appeared thus to have committed, having dismissed her altogether, he transferred himself to a distant region and, finally coming to the city of Gubbio, matrimonially joined to himself there a certain woman with suitable land and a fitting dowry, from whom he confessed that he had received offspring. On this account through apostolic writings* We order your discretion that you *investigate the truth concerning these matters more diligently and*, if it is established that the woman H. lifted the son of the aforesaid man from the sacred font before he betrothed her as wife, you solemnize a separation between them, with appeal set aside, *faithfully explaining to us the course of the matter through your letters so that, once the truth is known, we may be able to decree whether he can lawfully remain with the second woman*. [*Given near Civita Castellana, on the eighth day before the Ides of October.* 1198.]

Inter patrem baptizati et levantem seu tenentem baptizatum contrahitur cognatio spiritualis valida ad impediendum, et dirimendum matrimonium postcontractum.

Innocentius III. Episcopo et Archidiacono Linconiensibus.

Veniens ad apostolicam sedem C. Anglicus *natione nobis exposuit, quod, quum olim in adolescentia constitutus mulieri cuidam adhaesisset, quam quidam alius ante cognoverat, de consilio matris suae factum est, ut eadem mulier quendam puerum, quem de alia soluta ipse susceperat, de sacro fonte levaret ad suspicionem et infamiam utriusque delendam. Deinde vero, quum in eius amorem vehementius exarderet, absque consilio amicorum eam clanculo*

desponsavit. Quumque prolem ex ea procreare non posset, et increpationes a patre suo gravissimas sustineret, quod eam desponsando deliquerat revolvens in animo, ipsa dimissa, causa orationis Hierosolymam est profectus. Verum quum idem rediens de partibus transmarinis prolem eam suscepisse de alio invenisset, ei noluit adhaerere; sed propter adulterium, quod commisisse taliter videbatur, ea omnino dimissa, ad longinquam se transferens regionem, et ad Eugubinam tandem veniens civitatem, quandam ibidem cum terra competenti et dote decenti sibi matrimonialiter copulavit, de qua prolem se confessus est suscepisse. Ea propter discretioni vestrae per apostolica scripta Mandamus, quatenus *super his inquiratis diligentius veritatem, et*, si constiterit, H. mulierem praedicti viri filium de sacro fonte levasse, antequam eam desponsasset uxorem, vos inter eos divortium, appellatione postposita, celebretis, *rei processum nobis per literas vestras fideliter exponentes ut an cum secundo legitime commorari valeat veritate cognita decernere valeamus*. [*Dat. ap. civitatem Castellanam VIII. Id. Oct.* 1198.]

Chapter VII

Latin source headnote: If the sons of two coparents, through one of whom coparenthood was reached, contract marriage, they are separated, and those who know the impediment at the time of the contract are bound to denounce it.

The same, to Master S., Canon of Hereford.

Your discretion led you to consult us whether one born before coparenthood can *in the course of time* matrimonially join to himself the daughter of his coparent, male or female, and, if he contracted *with her and remained together with her for several years*, whether they ought *afterward* to be separated, and whether those conscious of such a marriage are bound to accuse it in public. Concerning this we respond *to your discretion in this manner*: persons of this kind cannot contract marriage and, if they have contracted, *by the rigor of law* can be separated from one another; and those who knew of the contract ought to announce it to the Church. [*Given at the Lateran, on the fifteenth day before the Kalends of April.* 1202.]

Si filii duorum compatrum, per quorum alterum deventum est ad compaternitatem, matrimonium contrahant, separantur, et tempore contractus scientes impedimentum illud denunciare tenentur.

Idem Magistro S. Canonico Herfordensi.

Tua nos duxit discretio consulendos, an natus ante compaternitatem filiam compatris sui vel commatris *procedente tempore* sibi possit matrimonialiter copulare, et, si *cum ea* contraxit, *et pluribus annis simul permanserit*, an *postea* debeant separari, et an conscii talis matrimonii teneantur illud in publico accusare. Super quo *discretioni tuae taliter* respondemus, quod huiusmodi personae non matrimonium contrahere, et, si contraxerint, *de iuris rigore* possunt ab invicem separari, et, qui contractum sciverint, debent ecclesiae illud nunciare. [*Dat. Lat. XV. Kal. Apr.* 1202.]

Chapter VIII

Latin source headnote: Spiritual kinship arises between a baptized person and the son of the person baptizing, impeding and dissolving a marriage to be contracted between them. This the chapter says.

Gregory IX. From your letters we received that, when the woman M. sought Alan as husband before the official of Canterbury, and had proved through suitable witnesses that she was affianced by him and carnally known, when at last the depositions of the said witnesses had been published, the same A. proposed by way of exception that he could not have her as wife because the father of the same woman, who had been a priest, baptized him. But when the same official, not admitting an exception of this kind, rendered a definitive sentence against him, and he appealed to the Apostolic See, we

order that, if it is so, you absolve the same A. in this matter from the prosecution of the woman herself, imposing perpetual silence upon the same woman.

> Inter baptizatum et filium baptizantis oritur cognatio spiritualis, impediens et dirimens matrimonium inter eos contrahendum. H. d.
>
> Gregorius IX. Ex literis vestris accepimus, quod, quum M. mulier coram officiali Cantiuariensi Alanum peteret in virum, et se affidatam ab eo ac carnaliter cognitam per testes idoneos probavisset, dictorum tandem testium depositionibus publicatis, idem A. excipiendo proposuit, quod eam habere non poterat in uxorem pro eo, quod ipsum pater mulieris eiusdem, qui sacerdos exstitit, baptizavit. Sed quum idem officialis, exceptione huiusmodi non admissa, diffinitivam tulerit sententiam contra ipsum, et idem ad sedem apostolicam appellaverit, mandamus, quatenus, si est ita, eundem A. super hoc ab impetitione mulieris absolvatis ipsius, eidem mulieri perpetuum silentium imponentes.

Title XII: On Legal Kinship

Sole Chapter

Latin source headnote: Between an adopted person and the daughter of the adopter, marriage cannot subsist while the adoption endures.

Nicholas, in the Responses to the Bulgarians.

If any woman has begun through adoption to be my sister, for as long as the adoption endures, nuptials *certainly* cannot subsist between me and her. [*If therefore, etc.*]

> **DE COGNATIONE LEGALI.**
>
> Inter adoptatum et filiam adoptantis non potest durante adoptione consistere matrimonium.
>
> Nicolaus ad consulta Bulgarorum.
>
> Si qua per adoptionem mihi soror esse coeperit, quam diu durat adoptio, *sane* inter me et ipsam nuptiae consistere non possunt. [*Si ergo etc.*]

Title XIII: On One Who Knew a Blood Relative of His Wife or Betrothed Woman

Chapter I

Latin source headnote: Affinity supervening after marriage has been contracted does not dissolve the marriage, but impedes the exaction of the debt, and the crime of incest makes one incapable as regards contracting marriage.

From the Council at Metz.

If anyone knowingly fornicates with his stepdaughter, he can neither seek the debt from the mother nor ever have the daughter as wife; neither the stepdaughter nor he will ever at any time be able to join themselves to another in marriage. *Nevertheless, his wife, if she so wishes and cannot contain herself, can marry another if, after she learned that her husband had been in adultery with her daughter, she did not have carnal commerce with him.*

> **DE EO, QUI COGNOVIT CONSANGUINEAM UXORIS SUAE VEL SPONSAE.**

Affinitas, superveniens post matrimonium contractum, non solvit matrimonium, sed exactionem debiti impedit, et crimen incestus inhabilitat quoad matrimonium contrahendum.

Ex concilio apud Metiam.

Si quis cum filiastra sua scienter fornicatus fuerit, nec a matre debitum petere, nec filiam unquam habere potest uxorem; nec filiastra, nec ille ullo unquam tempore alii se poterunt matrimonio copulare. *Attamen uxor eius, si ita voluerit et si se continere non potest, si postea quam cognoverit, quod cum filia vir eius fuit in adulterio, carnale commercium cum eo non habuerit, potest alii nubere*.

Chapter II

Latin source headnote: Affinity supervening through illicit intercourse dissolves betrothals of the future, but not marriage; and an incestuous person cannot contract.

Alexander III, to the Bishop of Poitiers.

Coming to us, *P.*, bearer of the present letters, *presented to us the letters of your fraternity, from the tenor of which we perceived that he had taken a certain woman as wife, whom certain persons dissuaded him from knowing carnally for one month from the time he took her. But it happened, as he said, that the father ordered his wife, who was the mother of the bride, to lie in this man's bed, and at the devil's suggestion he knew her. But after the month had passed, both the father and other relatives compelled him to consummate marriage with his bride, which he was unwilling to do until he spoke with you concerning this. But you, having heard his confession, transmitted him with your letters to the Apostolic See,* [*consulting whether he ought to have as wife her whose mother he had known, and what penance was to be enjoined upon him.*] We respond to your inquiry in this manner: if *a sin of this kind were secret, he could not dissolve the marriage which he had contracted publicly. But if it is public that* he knew the mother of his bride and never adhered carnally to the bride, penance a little greater than that for adultery is to be imposed upon him; after it, or part of it, has been performed, by dispensation he will be able to contract marriage with another, *and she to marry another, and the bride's father, if he wishes, can dissemble the deed*. But if he knew the bride before the mother or afterward, he can never take her or another as wife.

Affinitas, superveniens per illicitum coitum, dissolvit sponsalia de futuro, sed non matrimonium; et incestuosus contrahere non potest.

Alexander III. Pictaviensi Episcopo.

Veniens ad nos *P.* praesentium lator *+nobis fraternitatis tuae literas praesentavit, ex quarum tenore perpendimus, quod quandam duxerat in uxorem, quam quidam dissuaserunt ei per mensem, ex quo eam duxerat, carnaliter cognoscere. Contigit autem, sicut dixit, quod pater iussit uxorem suam, quae sponsae mater erat, in huius lecto iacere, quam diabolo suggerente cognovit. Transacto vero mense tam pater quam alii propinqui coegerunt, ut matrimonium cum sponsa sua consummaret, quod facere noluit, donec tecum super hoc loqueretur. Tu vero audita eius confessione ipsum cum literis tuis ad sedem apostolicam transmisisti,* [*consulens, si illam habere debet pro uxore, cuius matrem cognoverat, et quae sibi esset poenitentia iniungenda.*] Inquisitioni tuae taliter respondemus, quod, si *occultum esset huiusmodi peccatum, non posset matrimonium rescindere, quod publice contraxisset. Verum si publicum est, quod* matrem sponsae suae cognovit, et sponsae nunquam carnaliter adhaesit, imponenda est ei poenitentia paulo maior quam pro adulterio, qua peracta, vel parte ipsius, poterit ex dispensatione cum alia matrimonium contrahere, *et illa alii nubere, et pater sponsae, si vult, potest factum dissimulare*. Ceterum si sponsam cognovit antequam matrem vel post, nunquam eam vel aliam potest accipere in uxorem.

Chapter III

Latin source headnote: A marriage is not separated upon the statement of one person asserting that affinity between the spouses preceded it.

The same.

But concerning him who proposed that he had known the wife of his *own* brother before she was joined to him in marriage, we respond *this to your prudence*: unless this was public and notorious or proved by suitable witnesses, do not permit him to attack the aforesaid marriage on that occasion. *But concerning that which you assert, that a certain Saracen received sons from a Christian woman whom he had retained for fourteen years, we have considered that this response should be made to your discretion: both the Saracen and the woman are to be punished with grave chastisement for so great a transgression*.

> Non separatur matrimonium ad dictum unius, asserentis, affinitatem inter coniuges praecessisse.
>
> Idem.
>
> De illo *autem*, qui uxorem fratris *sui*, antequam ei matrimonio iungeretur, se proposuit cognovisse, *hoc tuae prudentiae* respondemus, quod, nisi hoc publicum et notorium fuerit aut idoneis testibus comprobatum, praedictum matrimonium occasione illa ipsum impetere non permittas. *Super eo vero, quod asseris, Sarracenum quendam de muliere Christiana, quam per quatuordecim annos retinuerat filios suscepisse discretioni tuae duximus respondendum, quod tam Sarracenus quam mulier pro tanto excessu gravi sunt animadversione plectendi*.

Chapter IV

Latin source headnote: An incestuous man ought not to contract marriage; but, if he contracts, it holds. And then he is bound to render the debt, but cannot exact it; and he is no less bound to administer necessities to his wife.

Celestine III.

Your letters transmitted to us demonstrated that G., *bearer of the present letters*, after his wife died, knew by carnal union her daughter, namely his own stepdaughter; but afterward, taking another *lawful* woman as wife, he did not fear to commit an illicit thing *no longer secretly* with the *aforesaid* stepdaughter *but* publicly, returning like a dog to its vomit. But because you sought counsel concerning these matters, *by the counsel of our brothers* we respond on the present page that, while cohabiting with and supplying necessities to his *own* lawful wife, he is not to know her for as long as he lives unless he is required by her, and then he is to approach her not without grave sorrow of his *own* heart; and he is also to do penance for the incest and adultery according to the moderation of your judgment for as long as he remains with her; afterward, if he survives her, he will remain perpetually without hope of marriage.

> Incestuosus matrimonium contrahere non debet; sed, si contrahit, tenet. Et tunc tenetur reddere, sed non potest debitum exigere; et non minus tenetur uxori necessaria administrare.
>
> Coelestinus III.
>
> Transmissae nobis tuae literae demonstrarunt, quod G. *lator praesentium*, uxore sua defuncta, filiam eius, privignam videlicet propriam, copula carnali cognovit; postmodum *vero* aliam *legitimam* accipiens in uxorem, *non iam occulte* cum privigna *praedicta, sed* publice, tanquam canis ad vomitum rediens, illicitam rem committere non expavit. Quia vero super his consilium requisisti, *de consilio fratrum nostrorum*

praesenti pagina respondemus, quod *suae* legitimae uxori cohabitans, et necessaria subministrans, non cognoscat eam, quamdiu vixerit, nisi ab ea fuerit requisitus, et tunc ad ipsam non sine gravi cordis *sui* dolore accedat; qui etiam pro incestu et adulterio, donec cum ea permanserit, iuxta moderamen tui arbitrii poenitentiam agens, postmodum, si supervixerit ei, perpetuo sine spe coniugii permanebit.

Chapter V

Latin source headnote: A marriage is not separated upon the confession of spouses who say that affinity preceded it, even if the report of the neighborhood agrees. And this is a highly citable and notable case.

The same.

Concerning that *indeed* which you ask, whether a married man who before contracting marriage knew by carnal commingling a blood relative *or relation* of his wife, when each confesses it and some part of the neighborhood is said to cry this out, is to be separated from his wife by the judgment of the Church, we respond to your fraternity that, *if the truth could not otherwise come to light by ordinary judgment*, he ought not to be separated merely on account of their confession or the report of the neighborhood, since sometimes certain persons wish to collude with one another against a marriage and would easily leap to a confession of incest if they believed that recourse would be had to the judgment of the Church upon their own judgment. But the report of the neighborhood is not to be judged so valid that, unless reasonable and trustworthy proofs are added, a marriage well contracted can be annulled. [*In the third place, etc.* (*Compare chapter* 3, *On Presumptions, II.* 23.) *Given at the Lateran.*]

Non separatur matrimonium ad confessionem coniugum, qui dicunt affinitatem processisse, etiamsi rumor viciniae consentiat. Et est casus multum allegabilis et notabilis.

Idem.

Super eo *vero*, quod postulas, utrum coniugatus, qui ante contractum matrimonium uxoris suae consanguineam *vel propinquam* carnali commixtione cognovit, quum id fateatur uterque, et aliqua pars viciniae hoc acclamare dicatur, sit ab uxore sua iudicio ecclesiae separandus, tuae fraternitati respondemus, quod, *si aliter veritas ordinario iudicio venire non potuerit in lucem*, propter eorum confessionem tantum vel rumorem viciniae separari non debeat, quum et quandoque nonnulli inter se contra matrimonium velint colludere et ad confessionem incestus facile prosilirent, si suo iudicio crederent per iudicium ecclesiae concurrendum. Rumor autem viciniae non adeo est iudicandus validus, quod, nisi rationabiles et fide dignae probationes accedant, possit bene contractum matrimonium irritari. [*Tertio loco etc.* (*cf. c.* 3. *de praesumpt. II.* 23.) *Dat. Laterani.*]

Chapter VI

Latin source headnote: Supervening affinity does not dissolve betrothals of the present.

Innocent III, to the Provost of Magdeburg.

We commend your discretion *in the Lord because in those matters which you reckon doubtful or obscure you consult the Apostolic See, so that henceforth you may proceed in them by its authority*. Indeed, it was proposed on your part *in our hearing* that a certain [*man*] lawfully contracted through words of the present with a certain woman, whom he afterward, without having known her, handed over to a certain blood relative of his, while she resisted as much as she could. But the latter celebrated the solemnities of marriage with her, although she was unwilling; but, as soon as the woman was restored to liberty,

she fled from him and *with insistence* petitioned that she be restored to the former man, *or the former man to her*. We therefore respond to your inquiry in this manner: both is grave penance to be enjoined upon the man for so shameful a crime, and is the woman *herself* to be solicitously admonished on account of public honesty that she neither seek again the first man, whose blood relative knew her, although unwilling, nor return to the second, with whom she cannot commingle on account of the guilt of adultery, but remain in continence until the first has entered the way of all flesh. But if perhaps she cannot be induced to this, the first man is to be compelled to return to her and treat her with marital affection, since he who handed her over to be adulterously used, especially while unwilling, cannot object adultery to her. For although according to evangelical truth neither husband can ever dismiss wife nor wife husband except for the cause of fornication, nevertheless husband or wife cannot always dismiss the other for that same cause, since this can be impeded by a lawful exception or replication. Nor ought the affinity wrongfully contracted between husband and wife after the marriage was lawfully contracted prejudice her who does not exist as a participant in wrong of this kind, since she ought not to be deprived of her right without her own fault; although it is said that a certain predecessor of ours distinguished in a similar case whether the incest or adultery was *namely* manifest or secret, while others assert that a distinction is rather to be made between a proximate and a remote degree.

> Affinitas superveniens non dissolvit sponsalia de praesenti.
>
> Innocentius III. Praeposito Magdeburgensi.
>
> Discretionem tuam *in Domino commendamus, quod in his, quae dubia reputas vel obscura, sedem consulis apostolicam, ut in eis de cetero ipsius auctoritate procedas*. Sane *in audientia nostra* ex parte tua fuit propositum, quod quidam [*vir*] cum muliere quadam legitime per verba de praesenti contraxit, quam postmodum a se incognitam cuidam consanguineo suo tradidit, in quantum potuit renitentem. Ille vero cum ipsa, licet invita, matrimonii solennia celebravit; sed mulier quam cito fuit reddita libertati, aufugit ab eo, et se priori viro *vel priorem sibi* restitui *cum instantia* postulavit. Nos igitur inquisitioni tuae taliter respondemus, quod et viro pro tam turpi facinore gravis est poenitentia iniungenda, et mulier *ipsa* propter publicam honestatem est monenda sollicite, ut nec primum repetat, cuius consanguineus eam, licet invitam, cognovit, nec redeat ad secundum, cui non potest propter reatum adulterii commisceri; sed in continentia maneat, donec prior fuerit viam universae carnis ingressus. Quodsi forsitan ad id induci nequiverit, vir prior cogatur redire ad ipsam, et maritali eam affectione tractare, quum adulterium ei non possit obiicere, qui eam adulterandam tradidit, praesertim invitam. Nam etsi secundum evangelicam veritatem nunquam, nisi propter fornicationis causam, aut vir uxorem, aut uxor possit dimittere virum: non tamen semper propter causam eandem vel uxor virum, vel vir dimittere potest uxorem, quum possit exceptione vel replicatione legitima impediri. Sed nec affinitas, quae post contractum legitime matrimonium inter virum et uxorem inique contrahitur, ei debet officere, quae huiusmodi iniquitatis particeps non exsistit, quum suo iure non debeat sine sua culpa privari; quanquam a quodam praedecessore nostro dicatur in simili casu fuisse distinctum, utrum *videlicet* incestus vel adulterium manifestum fuerit, an occultum, aliis asserentibus, inter gradum proximum et remotum esse potius distinguendum.

Chapter VII

Latin source headnote: Carnal union had with a girl of seven years dissolves a marriage afterward contracted with her blood relative. This the chapter says according to one understanding.

The same, to the Archbishop of Besançon.

To your fraternity *consulting the Apostolic See concerning three articles, to whose counsel recourse is to be had by all the faithful in doubtful matters, we respond through the present writings. In the first,* We approve the sentence of separation which you canonically promulgated against him who afterward presumed to join to himself her whose sister, still seven years old, after betrothals had been contracted, he is known previously to have polluted with extraordinary lust. [*The priests, etc.; compare chapter* 6, *On Clerics Who Have Been Excommunicated, V.* 27. *Given at Ferentino, on the twelfth day before the Kalends of June, in the sixth year.* 1203.]

> Copula carnalis, habita cum puella septem annorum, dirimit matrimonium postea contractum cum consanguinea. H. d. secundum unum intellectum.
>
> Idem Bisuntinensi Archiepiscopo.
>
> Fraternitati tuae *super tribus capitulis sedem consulenti apostolicam, ad cuius consilium est in rebus dubiis a cunctis fidelibus recurrendum, scriptis praesentibus respondemus. In primo* Divortii sententiam approbamus, quam in eum canonice promulgasti, qui illam sibi postea copulare praesumpsit, cuius antea sororem adhuc septennem, contractis sponsalibus, extraordinaria libidine noscitur polluisse. [*Presbyteros etc. cf. c.* 6. *de cler. exc. V.* 27. *Dat. Ferentini XII. Kal. Iun Ao. VI.* 1203.]

Chapter VIII

Latin source headnote: Affinity caused by illicit union breaks preceding betrothals and deprives one of the faculty of contracting marriage.

The same, to the Bishop of Girona.

From the letters of your fraternity we received that G., their bearer, often carnally knew the mother of the girl whom he had betrothed as wife below marriageable years, and afterward treated the adult girl with carnal commingling. *Whence you humbly petitioned that provision be made for the soul of the man himself, and whether, while he lives, it is lawful for the woman to hasten to second nuptials, since this deed is held as public and notorious*. But we caused penance for the sin to be enjoined upon the same man, responding to your consultation in this manner: *if the matter so stands*, after they have been *altogether* separated from each other, let the woman not marry another man if, after she learned of the offense of the man and her mother, she did not blush to commingle with him *carnally*. The man also and the mother of the *same* woman ought never to hasten to other nuptials, but are bound always to observe continence and to bewail the enormous offense which they contracted for so nefarious a lust, especially if a lapse of the flesh is by no means feared concerning persons of this kind. [*Given at Ferentino, on the thirteenth day before the Kalends of July.* 1203.]

> Affinitas, causata ex copula illicita, rumpit sponsalia praecedentia, et privat facultate contrahendi matrimonium.
>
> Idem Episcopo Gerundensi.
>
> Ex literis fraternitatis tuae accepimus, quod G. lator earum, matrem puellae, quam infra nubiles annos desponsaverat in uxorem, carnaliter saepe cognovit, et post carnali commixtione puellam tractavit adultam. *Unde ipsius viri animae provideri humiliter postulasti, et utrum mulieri ad secundas nuptias ipso vivente liceat convolare, quum hoc factum publicum et notorium habeatur*. Nos autem eidem viro poenitentiam iniungi fecimus pro peccato, consultationi tuae taliter respondentes, quod, *si ita res se habet*, eis ab invicem *penitus* separatis, mulier alteri viro non nubat, si postquam novit viri et matris delictum, *se carnaliter* ei non erubuit commisceri. Vir etiam et mater mulieris *ipsius* nunquam debent ad alias nuptias convolare,

sed semper continentiam servare tenentur, et enorme deflere delictum, quod pro tam nefanda libidine contraxerunt, praesertim si circa personas huiusmodi de lapsu carnis minime timeatur. [*Dat. Ferentini XIII. Kal. Iul.* 1203.]

Chapter IX

Latin source headnote: It says the same with regard to the title as the decretal immediately above.

The same, to the Archbishop of Magdeburg.

Coming to the Apostolic See, the layman E., *bearer of the present letters, by humble confession* proposed to us that, when *formerly* in the time of his infancy, *by the counsel of his friends*, he had sworn that he would take a certain girl as wife as soon as he reached lawful age, the girl's father, after an alliance of this kind had been confirmed on both sides by the obligation of sureties, received him in his own house and reared him together with the girl. But *afterward*, from long association, *having obtained the familiarity of the entire household*, he joined himself carnally to the girl's sister, *of whom he had sworn that he would be the husband, seduced by the instigation of the progenitor of human deception*. At last, overcome by the insistence of his friends, he took as wife her whom he had sworn to take, and, after the nuptials had been celebrated, when opportunity presented itself to him, he knew both. But although he was accused concerning this in your presence, he could not be convicted and was unwilling to confess his offense; but now, returning to his heart *and* repenting of the things committed, he seeks that counsel for his salvation be imparted, *lest he appear to wander to the peril of his soul like a horse and mule in which there is no understanding*. Therefore, since the Apostle commands abstention not only from evil but *also* from every appearance of evil, *through apostolic writings* we order your fraternity that, after suitable penance has been enjoined upon the aforesaid E. for a transgression of such enormity, you counsel him, healthfully admonishing and inducing him, that henceforth he abstain from both. [*Given at Anagni, on the seventh day before the Ides of October.* 1203.]

Idem quoad titulum dicit, quod decretalis supr. proxima.

Idem Archiepiscopo Magdeburgensi.

Veniens ad apostolicam sedem E. laicus, *lator praesentium humili* nobis *confessione* proposuit, quod, quum *olim* tempore infantiae suae *de consilio amicorum* quandam puellam se ducturum iuraverit in uxorem, quam cito ad legitimam pervenisset aetatem, pater puellae, confoederatione huiusmodi fideiussorum obligatione hinc inde firmata, eum in propria domo recepit, et nutrivit insimul cum puella. Deinde *vero* ex conversatione diutina, *totius domus familiaritatem adeptus* sorori puellae, *cui se iuraverat fore maritum, instinctu generis seductoris humani* carnaliter se coniunxit. Tandem amicorum suorum devictus instantia, quam iuraverat in uxorem accepit, et nuptiis celebratis, quando se illi opportunitas ingerebat, cognoscebat utramque. Verum licet in praesentia tua super hoc fuerit accusatus, convinci tamen non potuit, nec suum voluit confiteri delictum; nunc autem reversus ad cor *et* poenitens de commissis, salutis suae consilium requirit impendi, *ne tanquam equus et mulus, quibus nullus est intellectus, in animae suae periculum videatur errare*. Quum igitur non tantum a malo, sed *etiam* ab omni specie mali praecipiat Apostolus abstinere, *fraternitati tuae per apostolica scripta* mandamus, quatenus, praedicto E. pro huiusmodi enormitatis excessu iniuncta poenitentia competenti, consulas ei, monens illum salubriter et inducens, ut de cetero abstineat ab utraque. [*Dat. Anagniae VII. Id. Oct.* 1203.]

Chapter X

Latin source headnote: Supervening affinity does not dissolve marriage.

The same, to the Archbishop of Esztergom.

The devotion of your fraternity petitioned *to be instructed through the Apostolic See* whether he who fornicates with the sister of his lawful spouse can afterward remain with his wife, exact the debt, and pay it when required, *or whether on account of this the marriage ought to be separated*. We therefore respond *briefly to your inquiry* that the wife is to be admonished more diligently to abstain from commingling with her husband on account of public honesty and to remain in continence until the husband enters the way of all flesh. But if perhaps, refusing to obey the admonition, she is such that a lapse on her part is feared, her husband will be able and bound, *nevertheless* with fear of God, to pay the conjugal debt to her, since affinity wrongfully contracted after the marriage ought not to harm her who does not exist as a participant in the wrong, *whence she ought not to be deprived of her right without fault*, [*although it is said, etc. You consulted, etc.; compare chapter* 3, *That When the Litigation Has Not Been Contested, II.* 6. *Given at Rome, etc.* 1206.]

> Affinitas superveniens non dissolvit matrimonium.
>
> Idem Archiepiscopo Strigoniensi.
>
> Tuae fraternitatis devotio postulavit *per sedem apostolicam edoceri*, utrum is, qui cum sorore legitimae coniugis fornicatur, cum uxore possit postmodum commorari, et exigere debitum ac solvere requisitus, *vel propter hoc debeat matrimonium separari*. Nos igitur *inquisitioni tuae breviter* respondemus, quod uxor, ut a commixtione viri abstineat propter publicam honestatem, et in continentia maneat, donec vir viam universae carnis ingressus fuerit, diligentius est monenda. Quodsi forte commonitioni parere recusans talis fuerit, ut de lapsu timeatur ipsius, vir eius poterit et debebit, *tamen* cum Dei timore, debitum ei solvere coniugale, quum affinitas, post matrimonium inique contracta, illi nocere non debeat, quae iniquitatis particeps non exsistit, *+unde iure suo non debet sine culpa privari*, [*quanquam dicatur etc. Consuluisti etc. cf. c.* 3. *Ut lite non cont. II.* 6. *Dat. Rom. etc.* 1206.]

Chapter XI

Latin source headnote: It is summarized above in the immediately preceding chapter.

Gregory IX, to the Bishop of Poitiers.

The petition of the woman Jordana contained that the layman I. contracted through words of the future with her while she had not yet completed the tenth year of her age, and, after she was carnally known within the space of the same year, he did not fear to join her mother matrimonially to himself and to proceed to the embraces of condemned commingling. (And below:) Wherefore the aforesaid I. supplicated that, since she cannot resist the goads of the flesh, we deign healthfully to provide for her, lest she be defrauded of her right without her own fault. On this account we order that, if the matter so stands, you attentively admonish and induce each of them to vow perpetual continence; and, if they cannot be induced to it, after suitable penance for the committed incest has first been enjoined upon the aforementioned I., compel him by ecclesiastical censure to cohabit with her and, when exacted, to render the conjugal debt.

> Summatum est supr. capitulo proximo.
>
> Gregorius IX. Episcopo Pictaviensi.
>
> Iordanae mulieris petitio continebat, quod I. laicus cum ipsa, quae nondum decimum aetatis suae annum compleverat, per verba de futuro contraxit, et, ea infra eiusdem anni spatium carnaliter cognita, matrem ipsius sibi matrimonialiter copulare, et ad damnatae commixtionis amplexus procedere non

expavit. (*Et infra:*) Quare praefata I. supplicavit, ut, quum carnis stimulis resistere nequeat, sibi, ne iure suo sine sua propria culpa fraudetur, providere salubriter dignaremur. Ea propter mandamus, quatenus, si res ita se habet, utrumque ipsorum ad vovendam perpetuam continentiam attente moneas et inducas, et, si ad eam induci nequiverint, memoratum I., iniuncta ei primitus pro commisso incestu poenitentia competenti, ut eidem cohabitet, et coniugale debitum reddat exactus, ecclesiastica censura compellas.

Title XIV: On Consanguinity and Affinity

Chapter I

Latin source headnote: A marriage contracted between affines of the first kind and the fourth degree is separated.

Alexander III, to the Abbot of Cassino.

From your letters *directed to us* we received that, when a certain man had secretly given bridal earnest to a certain widow and known her carnally, *had cohabited with her for a year, the mundualdrew the woman's man into a suit, proposing that he had known her, who had been placed in his power, as though a fornicator; then the man and woman affirmed by oath that for a year each had consented to marital union with the other, and henceforth they cohabited together as husband and wife. But when not even to the oath* of the [*said*] *woman did the proctor have faith, he exacted that bridal earnest be given to her publicly*. At last, when the man was prepared to give bridal earnest to her in the sight of the Church, two persons arose, proposing that this man who wished to give her bridal earnest touched the former husband in the fourth degree of consanguinity. But one swore that he had heard it so; the other, *however*, was unwilling to affirm it by oath. *And on account of this, although the man delayed giving bridal earnest to the aforesaid woman, he nevertheless by no means withdrew from cohabitation with her. But in the course of time, at the insistence of the mundualdthe aforesaid* [*man*] *publicly celebrated marriage and afterward remained with his wife for nearly a year*. But *now* the first question revived, and two persons swore before the archpriest of Plumbarola, *as you say*, that the first man was joined to the surviving man in the fifth degree of consanguinity. *Whence, because different persons think different things, through our letters you seek to be instructed as to what is to be done in this case*. Therefore, *by commanding through apostolic writings* we order your discretion to summon each party before your presence and cause the witnesses to swear before you, [*and*] *also inquire from whom and when they learned that to which they testify. But if they learned it after the question had been moved, the said marriage is not to be dissolved; likewise not if they learned it from the accusers of the marriage.* But, after the truth has been more diligently investigated, if through circumspect witnesses *and* persons greater than every exception you find that the first husband touches the surviving man in the fourth degree of consanguinity, do not postpone promulgating a sentence of separation. For, as the canons say, one is equally to abstain from the blood relatives of one's wife as from one's own, *up to the seventh degree*. But we wish it not to escape your prudence that *suitable persons are to be named, and the degrees on each side distinguished* [*and*] *computed*; matrimonial cases are not to be treated by just anyone, but by discreet judges who have the power of judging and are not ignorant of the statutes of the canons *concerning these matters*.

DE CONSANGUINITATE ET AFFINITATE.

Separatur matrimonium, contractum inter affines primi generis et quarti gradus.

Alexander III. Cassiensi Abbati.

Ex literis tuis *ad nos directis* accepimus, quod, quum quidam secreto quandam viduam subarrhasset, et carnaliter cognovisset, *cohabitasset cum ea per annum, mundualdus virum mulieris traxit in causam, proponens, quod illam, in potestate sua positam, quasi fornicariam cognovisset, tunc vir et mulier iuramento firmaverunt, quod ab anno alter in alterius copulam maritalem consenserat, et de cetero sicut vir et mulier insimul cohabitarunt. Quum autem nec iuramento* [*iam dictae*] *mulieris procurator fidem habuerit, exegit eam publice subarrhari*. Tandem quum vir paratus esset eam in conspectu ecclesiae subarrhare, surrexerunt duo proponentes, quod iste, qui eam subarrhare volebat, priorem virum quarto gradu consanguinitatis attingit. Unus autem ita se audivisse iuravit; alius *autem* noluit id iuramento firmare. *Et ob hoc, licet ille praefatam mulierem subarrhare distulerit, minime tamen ab eius cohabitatione discessit. Processu vero temporis ad instantiam mundualdi praefatus* [*vir*] *publice matrimonium celebravit, et postmodum cum uxore fere per annum permansit*. Nunc *autem* quaestio prima revixit, et iuraverunt duo coram archipresbytero Plumbarolae, *velut dicis*, quod primus vir fuit superstiti quinto consanguinitatis gradu coniunctus. *Unde, quia diversi diversa sentiunt, quid agendum sit in hoc casu, nostris literis quaeris edoceri*. Quocirca *discretioni tuae per apostolica scripta praecipiendo* mandamus, quatenus utramque partem ante tuam praesentiam convoces, et facias testes coram te iurare, [*et*] *adhuc inquiras, a quibus et quando didicerint quod testantur. Si vero post motam quaestionem didicerint, non est iam dictum matrimonium dissolvendum; similiter nec si ab accusatoribus matrimonii didicerint*. Inquisita vero diligentius veritate, si per testes circumspectos *et* omni exceptione maiores inveneris, quod primus vir superstitem quarto gradu consanguinitatis attingit, non differas divortii sententiam promulgare. Aeque enim, ut canones dicunt, abstinendum est a consanguineis uxoris, ut propriis, *usque ad septimum gradum*. Ceterum tuam prudentiam volumus non latere, quod *personae idoneae nominandae sunt et gradus distinguendi ab utroque latere* [*et*] *computandi*; non sunt causae matrimonii tractandae per quoslibet, sed per iudices discretos, qui potestatem habeant iudicandi, et statuta canonum *super his* non ignorent.

Chapter II

Latin source headnote: Supervening affinity, which is established at least by report, dissolves betrothals of the future.

Urban III, to the Archbishop of Bordeaux.

Concerning that which you assert, that *a certain* young man, with faith interposed, betrothed a certain girl not yet marriageable, who, having now become marriageable, seeks him, and he excepts, saying that he ought not to take her because, after he affianced the same girl, he carnally knew her relation, we respond to your inquiry in this manner: if it is manifest that the *same* young man knew the relation of the aforesaid girl, or, if it is not manifest, nevertheless the report of the place has it so, since she was a betrothed woman only of the future, the same *young man* [*can and*] ought to be absolved from her prosecution.

Affinitas superveniens, de qua saltem constat per famam, solvit sponsalia de futuro.

Urbanus III. Burdegalensi Archiepiscopo.

Super eo, quod iuvenem *quendam* asseris puellam quandam nondum nubilem fide interposita desponsasse, quae, iam facta nubilis, eum repetit, et ille excipit dicens, se non debere eam ducere pro eo, quod, postquam puellam affidavit eandem, carnaliter propinquam ipsius cognovit, inquisitioni tuae taliter respondemus, quod, si manifestum est, *eundem* iuvenem cognovisse propinquam praedictae puellae, vel, si non est manifestum, fama tamen loci hoc habet, quum esset sponsa tantummodo de futuro, idem *iuvenis* ab eius impetitione [*potest et*] debet absolvi.

Chapter III

Latin source headnote: If someone is dispensed so that he can contract in a certain degree otherwise prohibited, it is required that each of those contracting be distant from the stock by the whole degree, especially if custom has this.

Celestine III.

That which *your* affection—(And below:) You asked *us, however,* whether he who is distant from the stock in the sixth or seventh degree through a descending line can be joined matrimonially to her who on the other side is distant from the same stock in the second or third degree through a descending line, on account of the indulgence *of Pope Adrian of happy memory, then Bishop of Albano, legate of the Apostolic See in Norway*, by which it was permitted to the people of that land to be joined in the sixth degree. This appears *properly* to *you* to be able to be done according to a rule *approved by certain doctors*, by which it is said: in whatever degree someone is distant from the stock, he is distant from anyone descending from the same stock through another line; nevertheless, by the custom of the land, if ever such a case arises, the inhabitants *of the land* separate those joined on account of the nearer degree and impede those wishing to be joined, *as the series of your letters demonstrated*. We therefore respond *thus to your consultation*: that indulgence is to be understood in such a way that each of those to be joined is distant from the stock in the sixth degree, *with kinship computed according to the canons*. But if one is distant from the stock in the sixth or seventh degree and the other in the second or third *degree*, they ought not to be joined. Whence in this part we considered it more prudent to defer to the multitude and the observed custom than, with a certain novelty introduced, to establish something else unto dissension and scandal of the people.

> Si dispensatur cum aliquo, ut possit contrahere in certo gradu alias prohibito, requiritur, quod uterque contrahentium toto gradu distet a stipite, praesertim si hoc habet consuetudo.
>
> Coelestinus III.
>
> Quod dilectio *tua* (*Et infra:*) Quaesivisti, *autem a nobis* utrum is, qui a stipite per descendentem lineam sexto vel septimo gradu distat, possit ei, quae ex altera parte per lineam descendentem ab eodem stipite secundo vel tertio gradu distat, matrimonialiter copulari, propter indulgentiam *felicis memoriae Adriani Papae, tunc Albanensis episcopi, in Norwegiam* apostolicae sedis legati, qua permissum est hominibus terrae illius in sexto gradu coniungi. Quod *tibi* videtur *convenienter* posse fieri secundum regulam, *a quibusdam doctoribus approbatam*, qua dicitur: quoto gradu quis distat a stipite, et a quolibet, per aliam lineam descendentium ab eodem, quum tamen de consuetudine terrae, si quando talis casus emerserit incolae *terrae* propter proximiorem gradum coniunctos separent, et impediant copulari volentes, *sicut literarum tuarum series demonstravit*. Nos itaque *sic consultationi tuae* respondemus, quod indulgentia illa sic est intelligenda, quod uterque coniungendorum distet a stipite sexto gradu, *cognatione secundum canones computata*. Si vero alter sexto vel septimo gradu distat a stipite, alter autem secundo vel tertio *gradu*, coniungi non debent. Unde in hac parte consultius duximus multitudini et observatae consuetudini deferendum, quam aliud in dissensionem et scandalum populi statuendum, quadam adhibita novitate.

Chapter IV

Latin source headnote: Unbelievers joined in a degree prohibited by canonical law are not separated after baptism.

Innocent III, to the Archbishop and Chapter of Tyre.

You wished *to consult us* concerning unbelievers converted to the faith, whether, if before their conversion they were joined according to the institutes of the Old Law *or their own traditions* concerning degrees of consanguinity denoted by the canon, they ought to be separated after baptism. *Concerning this, therefore,* We have considered that this response should be made to your consultation: a marriage thus contracted *before conversion* is not to be separated after the washing of baptism, since the Lord, when asked by the Jews whether it was lawful to dismiss a wife for any cause, responded to them: "What God has joined, let man not separate," intimating by this that marriage existed between them. [*Given at the Lateran, on the third day before the Kalends of January.* 1198.]

> Infideles, coniuncti in gradu prohibito a lege canonica, post baptismum non separantur.
>
> Innocentius III. Archiepiscopo et capitulo Tirensibus.
>
> De infidelibus ad fidem conversis *nos consulere voluistis*, utrum, si ante conversionem suam secundum legis veteris instituta *vel traditiones suas* circa gradus consanguinitatis, a canone denotatos, coniuncti fuerint, separari debeant post baptismum. *Super hoc igitur* Consultationi tuae duximus respondendum, quod matrimonium, sic *ante conversionem* contractum, non est post baptismi lavacrum separandum, quum a Iudaeis Dominus requisitus, si liceret uxorem ex quacunque causa dimittere, ipsis respondit: "Quos Deus coniunxit homo non separet," per hoc innuens, esse matrimonium inter eos. [*Dat. Lat. III. Kal. Ian.* 1198.]

Chapter V

Latin source headnote: The husband's blood relatives lawfully contract with the wife's blood relatives. This is the first point. Marriages cannot be contracted in prohibited degrees even if custom has this. This is the second point.

The same, to the Archbishop of Rosano.

Because concerning these *articles which induce some doubt in you, you consider that our counsel should be sought, and you take care to invoke the aid of the Apostolic See for executing those things which the pastoral office demands, we commend your solicitude in the Lord with worthy praises and respond to your petitions with a grateful spirit. Indeed, you signified to us that in your diocese father and son take mother and daughter, two kinsmen two kinswomen, maternal uncle and nephew two sisters as spouses, and husband and wife together baptize another's child. Moreover, certain persons of your diocese touching one another within the third and seventh degree of consanguinity contract marriage with each other, asserting that this is lawful for them by ancient custom.* [(And below:)] Concerning the fact, therefore, that father and son contract marriages with mother and daughter, two kinsmen with two kinswomen, and maternal uncle and nephew with two sisters, we have considered that this response should be made to you: although all the blood relatives of the man are affines of the wife, and all the blood relatives of the wife are affines of the man, nevertheless, between the blood relatives of the wife and the *blood relatives* of the man, no affinity whatsoever has been contracted from the marriage of the same persons, namely the man and wife, on account of which marriage between them ought to be impeded. (And below:) But you ought publicly to prohibit marriage from being contracted within the prohibited degrees and punish presumptuous persons with ecclesiastical severity, notwithstanding a custom which is rather to be called a corruption. [*But when, etc. Given at the Lateran, on the second day before the Kalends of January.* 1199.]

> Consanguinei mariti cum consanguineis uxoris licite contrahunt. Hoc primo. In gradibus prohibitis non possunt matrimonia contrahi, etiamsi hoc habeat consuetudo. Hoc secundo.

Idem Rosanensi Archiepiscopo.

Quod super his *articulis, qui tibi aliquam dubitationem inducunt, nostrum ducis consilium requirendum, et ad ea exsequenda, quae officium postulant pastorale, apostolicae sedis procuras auxilium invocare, sollicitudinem tuam dignis in Domino laudibus commendamus, et postulationibus tuis grato animo respondemus. Significasti siquidem nobis, quod in dioecesi tua pater et filius matrem et filiam, duo cognati duas cognatas, avunculus et nepos duas sorores ducunt in coniuges, et maritus et uxor simul baptizant puerum alienum. Quidam praeterea tuae dioecesis infra tertium et septimum gradum consanguinitatis se contingentes, adinvicem matrimonium contrahunt, hoc sibi licere de antiqua consuetudine asserentes*. [(*Et infra:*)] Super eo igitur, quod pater et filius cum matre et filia, et duo cognati cum duabus cognatis, avunculus et nepos cum duabus sororibus contrahunt matrimonia, taliter tibi duximus respondendum, quod, licet omnes consanguinei viri sint affines uxoris, et omnes consanguinei uxoris sint viri affines, inter consanguineos tamen uxoris et *consanguineos* viri ex eorundem, scilicet viri et uxoris, coniugio nulla prorsus affinitas est contracta, propter quam inter eos matrimonium debeat impediri. (*Et infra:*) Ne autem infra gradus prohibitos matrimonium contrahatur, debes publice inhibere, et praesumptores ecclesiastica districtione punire, non obstante consuetudine, quae dicenda est potius corruptela. [*Quum autem etc. Dat. Lat. II. Kal. Ian.* 1199.]

Chapter VI

Latin source headnote: A dispensation obtained from the Pope concerning a marriage contracted between blood relatives is not valid if a false cause is expressed there, unless the Pope afterward confirms it. This the chapter says according to the true and common understanding.

The same.

Because concerning—(And below: [*Compare chapter 6, On Bigamists, I.* 21.]) Moreover, concerning the noble man N., for whose dispensation—namely, the indulgence of remaining with her who touches him in the fifth degree of consanguinity—a false cause had been alleged to us in order to obtain it from the Apostolic See, namely offspring, although before the dispensation was obtained the only daughter he had had entered the way of all flesh, as your consultation contained, you will be able to dissemble so that he may remain in the union thus contracted, since, as you assert, you see grave scandal threatening from the separation. [*Finally you, etc. Given at Segni, on the fifth day before the Nones of October, in the sixteenth year of our pontificate.* 1213.]

Non valet dispensatio, obtenta a Papa super matrimonio inter consanguineos contracto, si ibi causa falsa sit expressa, nisi postea eam Papa confirmaret. H. d. secundum verum et communem intellectum.

Idem.

Quia circa (*Et infra:* [*cf. c. 6. de bigam. I.* 21.]) Porro de nobili viro N., pro cuius dispensatione, indulgentia scilicet remanendi cum ea, quae ipsum quinto consanguinitatis gradu contingit, a sede apostolica obtinenda falsa nobis causa fuerat allegata, proles videlicet, quum tamen ante dispensationem obtentam unica filia, quam habeat, viam fuerit universae carnis ingressa, prout tua consultatio continebat, dissimulare poteris, ut remaneat in copula sic contracta, quum ex separatione, sicut asseris, grave videas scandalum imminere. [*Tu denique etc. Dat. Signiae V. Non. Oct. Pont. nostr. Ao. XVI.* 1213.]

Chapter VII

Latin source headnote: Witnesses who depose concerning consanguinity ought to begin the computation from the stock or germ.

The same.

Your fraternity led you to consult us whether the testimony of those persons is sufficient for dissolving a marriage who began to compute the degrees of consanguinity from a maternal uncle and nephew, namely the son of a brother or sister, *when they knew or heard nothing concerning the brothers or their superiors*. We therefore respond to your inquiry in this manner: since marriage obtains much favor, witnesses who, having been produced for obtaining a judicial separation, compute the degrees of consanguinity ought to begin from the stock, that is, from the parents or siblings, and thus distinguish the degrees in order, designating the persons by proper names or equivalent indications, especially since they very frequently furnish testimony from hearsay. Because this is less valid, the faculty is not to be relaxed excessively in an article of this kind, since, by the same [*reason*] by which they would begin the computation from the second, they would begin from more remote persons. [*Consequently, etc.* (*Compare chapter* 26, *On Betrothals, IV.* 1.) *Given at the Lateran, on the Ides of February, in the fourteenth year of our pontificate.* 1212.]

> Testes, qui de consanguinitate deponunt, computationem debent a stipite vel germine incipere.
>
> Idem.
>
> Tua nos duxit fraternitas consulendos, utrum illorum sufficiat testimonium ad matrimonium dirimendum, qui consanguinitatis gradus ab avunculo et nepote, videlicet fratris filio vel sororis, *quum de fratribus vel superioribus nihil noverint vel audiverint*, inceperint computare. Nos igitur inquisitioni tuae taliter respondemus, quod, quum coniugium multum favoris obtineat, testes, qui, ad divortium celebrandum producti, consanguinitatis gradus computant, a stipite debent incipere, id est a parentibus vel germanis, et sic per ordinem distinguere gradus, nominibus propriis vel aequipollentibus indiciis designando personas, praesertim quum saepius testimonium perhibeant de auditu. Quod quia minus est validum, non est in articulo huiusmodi nimium laxanda facultas, quum, qua ratione computationem inciperent a secundo, eadem [*ratione*] ab ulterioribus inchoarent. [*Consequenter etc.* (*cf. c.* 26. *de spons. IV.* 1.) *Dat. Lat. Id. Febr. Pont. nostr. Ao. XIV.* 1212.]

Chapter VIII

Latin source headnote: In the second and third kind of affinity, the prohibition which formerly existed in contracting marriage is removed. Likewise, the prohibition concerning offspring received from second nuptials, who formerly could not contract with the kindred of the former husband, is removed. And the prohibition of marriage does not extend beyond the fourth degree of consanguinity and affinity. This the chapter says; this text is cited daily and is singular in its subject matter.

The same, in the General Council.

It ought not to be judged reprehensible if human statutes are sometimes varied according to the variety of times, especially when urgent necessity or evident utility demands it, since God himself changed in the New Testament certain things which he had established in the Old. Therefore, since the prohibitions concerning marriage by no means to be contracted in the second and third kind of affinity, and concerning offspring received from second nuptials not to be joined to the kindred of the former husband, frequently induce difficulty and sometimes give birth to peril of souls, since when the prohibition ceases the effect ceases, revoking the constitutions issued concerning this with the approval of the sacred council, by the present constitution we decree that those contracting in this manner henceforth be freely joined. Also, henceforth let the prohibition of conjugal union not exceed the fourth degree of consanguinity and affinity, since in more remote degrees a prohibition of this kind can no longer be generally observed without grave detriment. But the number four agrees well

with the prohibition of corporeal marriage, concerning which the Apostle says that the man does not have power over his body, but the woman, nor does the woman have power over her body, but the man, because there are four humors in the body, which are composed of four elements. Therefore, since the prohibition of conjugal union has now been restricted up to the fourth degree, we wish it to be perpetual in such a way, notwithstanding constitutions issued concerning this long ago either by others or by us, that, if anyone presumes to be joined contrary to a prohibition of this kind, he is defended by no length of years, since length of time does not diminish sin but increases it, and crimes are the graver the longer they hold the unhappy soul bound.

> In secundo et tertio affinitatis genere tollitur prohibitio, quae olim erat in matrimonio contrahendo. Similiter tollitur prohibitio de sobole suscepta ex secundis nuptiis, quae olim non poterat contrahere cum cognatione prioris viri. Et prohibitio coniugii ultra quartum consanguinitatis et affinitatis gradum non extenditur. H. d. iste textus, qui quotidie allegatur, et est singularis in materia sua.
>
> Idem in concilio generali.
>
> Non debet reprehensible iudicari, si secundum varietatem temporum statuta quandoque varientur humana, praesertim quum urgens necessitas vel evidens utilitas id exposcit, quoniam ipse Deus ex his, quae in veteri testamento statuerat, nonnulla mutavit in novo. Quum ergo prohibitiones de coniugio in secundo et tertio affinitatis genere minime contrahendo, et de sobole, suscepta ex secundis nuptiis, cognationi viri non copulanda prioris, et difficultatem frequenter inducant, et aliquando periculum pariant animarum, quum cessante prohibitione cesset effectus: constitutiones super hoc editas sacri approbatione concilii revocantes, praesenti constitutione decernimus, ut sic contrahentes de cetero libere copulentur. Prohibitio quoque copulae coniugalis quartum consanguinitatis et affinitatis gradum de cetero non excedat, quoniam in ulterioribus gradibus iam non potest absque gravi dispendio huiusmodi prohibitio generaliter observari. Quaternarius vero numerus bene congruit prohibitioni coniugii corporalis, de quo dicit Apostolus, quod vir non habet potestatem sui corporis, sed mulier, neque mulier habet potestatem sui corporis, sed vir, quia quatuor sunt humores in corpore, qui constant ex quatuor elementis. Quum ergo iam usque ad quartum gradum prohibitio coniugalis copulae sit restricta, eam ita volumus esse perpetuam, non obstantibus constitutionibus super hoc dudum editis vel ab aliis vel a nobis, ut, si quis contra prohibitionem huiusmodi praesumpserit copulari, nulla longinquitate defendatur annorum, quum diuturnitas temporum non minuit peccatum, sed auget, tantoque sunt graviora crimina, quanto diutius infelicem animam detinent alligatam.

Chapter IX

Latin source headnote: One distant from the stock in the fourth or a nearer degree can contract with one distant in the fifth or a more remote degree. This the chapter says together with the gloss.

Gregory IX. A man who is distant from the stock in the fourth degree, and a woman who on the other side is distant in the fifth, can lawfully be joined matrimonially according to the approved rule by which it is said: in whatever degree the more remote person differs from the stock, he or she differs from anyone descending from the same stock through another line.

> Distans a stipite quarto gradu vel citeriori, cum distante quinto vel ulteriori contrahere potest. H. d. cum glossa.
>
> Gregorius IX. Vir, qui a stipite quarto gradu, et mulier, quae ex alio latere distat quinto, secundum regulam approbatam, qua dicitur: quoto gradu remotior differt a stipite, et a quolibet per aliam lineam descendentium ex eodem, licite possunt matrimonialiter copulari.

Title XV: On the Frigid and Those Rendered Impotent by Sorcery, and on Impotence for Intercourse

Chapter I

Latin source headnote: If, when the husband seeks judicial separation and asserts himself to be impotent, the woman confesses the same thing, with canonical solemnity observed, the marriage is dissolved without distinction. But if the Church is deceived, the first marriage is restored. But if, when the woman acts, the man asserts himself to be potent, unless he is convicted by inspection of the body or another indubitable mode, the woman is not heard. But if the man confesses the same thing or is convicted, the marriage is separated, and license to contract is given to the woman. This the chapter says according to Hostiensis.

From the Brocardicum, Book XIX. You received a woman and had her for some time, for one month or for three, or *lastly* for a year, and now for the first time you have said that you are of a frigid nature, so that you could not have intercourse with her or with any other woman; *and* if she who ought to have been your wife affirms the same things which you say, and *if* it can be proved by a true judgment that it is as you say, you can be separated, yet on this condition: if afterward you take another woman, you are to be adjudged guilty of perjury and, after penance has been performed, you will again be bound to restore the former marriage. But as for her, if she first, after a year or half a year, shall *herself* have complained to the bishop or *to* his delegate, saying that you had not known her, *and denies that there was any commingling between you*, while you affirm the contrary, you are to be believed because you are the head of the woman; for, if she wished *to complain*, why was she silent so long? For the *woman* could know quickly and in a short time whether you could have intercourse with her. But if *she* shall have complained immediately in that new condition, after one month or *at the latest after* two [*months*], to the bishop or *to* his delegate, saying: "I wish to be a mother, I wish to beget sons, and therefore I received a husband, but the man whom I received is of a frigid nature and cannot do those things for which I received him," if it can be proved by a right judgment, you can be separated, and she, if she wishes, may marry in the Lord.

> **DE FRIGIDIS ET MALEFICIATIS, ET IMPOTENTIA COEUNDI.**
>
> Si, marito provocante ad divortium, et se impotentem asserente, mulier hoc idem fatetur, servata solennitate canonica matrimonium indistincte dirimitur. Sed si decipiatur ecclesia, primum matrimonium reparatur. Si vero muliere agente vir asserat se potentem, nisi per aspectum corporis vel alio indubitato modo convincatur; mulier non auditur. Sed si vir hoc idem confitetur vel convincitur, matrimonium separatur, et mulieri contrahendi licentia datur. H. d. secundum Hostiensem.
>
> Ex Brocardico libr. XIX. Accepisti mulierem et, per aliquod tempus habuisti, per mensem aut per tres, aut *postremo* per annum, et nunc primum dixisti, te esse frigidae naturae ita, ut non potuisses coire cum illa, nec cum aliqua alia; *et* si illa, quae uxor tua esse debuit, eadem affirmat, quae tu dicis, et *si* probari potest per verum iudicium, ita esse ut dicitis, separari potestis, ea tamen ratione, ut, si tu post aliam acceperis, reus periurii diiudiceris, et iterum post peractam poenitentiam priora connubia reparare debebis. Illa autem, si prior post annum aut dimidium ad episcopum aut *ad* eius missum *se* proclamaverit, dicens, quod non cognovisses eam, *et negat, aliquam commixtionem inter vos esse*, tu autem contrarium affirmas, tibi credendum est eo, quod caput es mulieris, quia, si *se* proclamare voluit, cur tamdiu tacuit? Cito enim et in parvo tempore scire *mulier* potuit, si secum coire potuisses. Si autem *se* statim in ipsa novitate, post mensem aut *postremum post* duos, ad episcopum aut *ad* eius missum proclamaverit, dicens: volo esse mater, volo filios procreare, et ideo maritum accepi, sed vir, quem

accepi, frigidae naturae est, et non potest illa facere, propter quae illum accepi: si probari potest per rectum iudicium, separari potestis, et illa, si vult, nubat in Domino.

Chapter II

Latin source headnote: One impotent for union is impotent to contract marriage, whether the impediment is of age or of nature.

Alexander III, to the Bishop of Amiens.

We hold it pleasing and acceptable that you consult the *Apostolic See concerning those matters which exist as doubtful to you, and your fraternity appears deserving of no small commendation on this account. Indeed, on your part it was intimated to us that a certain woman of your episcopate married a certain man, ignorant that because of the rupture of each groin his genitals had been cut away, and was not known by him; and he, having now become leprous, rendered himself and his property to a house of the infirm. But the woman, having returned to her paternal home, as a young woman desires to marry another man and to be joined by a conjugal covenant. But although the Roman Church has not been accustomed to divide those lawfully joined because of natural frigidity or other spells, nevertheless, if the general custom of the Gallican Church has it that marriages of this kind are dissolved, we will patiently tolerate it if, according to that custom, you grant the same woman the faculty of marrying whom she wishes in the Lord*. For just *as* a boy who cannot render the debt is not fit for marriage, so *also* those who are impotent are reckoned by no means fit to contract marriages. [*Indeed, concerning the canon, etc.; compare chapter* 10, *On Regular Clerics, III.* 31.]

> Impotens ad copulam est impotens ad contrahendum matrimonium, sive sit impedimentum aetatis sive naturae.
>
> Alexander III. Ambianensi Episcopo.
>
> Quod sedem *apostolicam consulis super his, quae tibi dubia exsistunt, gratum gerimus et acceptum, et tua exinde fraternitas non parum commendanda videtur. Ex tua siquidem parte nobis est intimatum, quod quaedam mulier tui episcopatus cuidam viro nupsit, ignorans, quod propter utriusque inguinis rupturam genitalia eius essent abscissa, nec ab eo cognita fuisset, qui utique modo factus leprosus se pariter et sua domui reddidit infirmorum. Mulier vero, ad domum paternam reversa, sicut iuvenis alii viro nubere desiderat et coniugali faedere coniungi. Verum licet Romana ecclesia non consueverit propter naturalem frigiditatem aut propter alia maleficia legitime coniunctos dividere, si tamen consuetudo generalis Gallicanae ecclesiae habet, ut huiusmodi matrimonia dissolvantur, nos patienter tolerabimus, si secundum illam consuetudinem eidem mulieri cui voluerit nubendi in Domino concesseris facultatem*. Sicut *enim* puer, qui non potest reddere debitum, non est aptus coniugio: sic *quoque* qui impotentes sunt minime apti ad contrahenda matrimonia reputantur. [*Sane de canonico etc. cf. c.* 10. *de regul. III.* 31.]

Chapter III

Latin source headnote: A natural impediment to intercourse, irreparable by the art of physicians, impedes marriage.

The same.

From your letters we received that a certain man of sixteen years *or more* took as wife *a* certain girl of thirteen years; when he was *bound to, and* could not, render the debt, the woman contracted so grave an infirmity that she was made altogether useless to the man, and her sexual organ *was* obstructed in such a way that the man could not commingle with her. We therefore respond that, if the woman contracted that defect from nature and cannot be aided by the work of physicians, grant the man the

free faculty of taking another. *But if this proceeded from the fault of the man, although it is not safe for it to be granted to him that he take another, nevertheless you will be able to tolerate it under dissimulation, because it is safer to have one woman as wife than to sin with many.*

> Naturale impedimentum ad coitum, irreparibile arte medicorum, matrimonium impedit.
>
> Idem.
>
> Ex literis tuis accepimus, quod quidam sedecim annorum *vel eo amplius* quandam annorum tredecim duxit *in* uxorem, qui quum debitum reddere *deberet, et* non posset, mulier tam gravem infirmitatem contraxit, ut omnino viro sit facta inutilis, et instrumentum eius *sit* impeditum ita, quod vir ei commisceri non potest. Respondemus igitur, quod, si vitium illud mulier a natura contraxit, nec ope medicorum poterit adiuvari viro aliam accipiendi liberam tribuas facultatem. *Si vero ex culpa viri hoc provenit, licet non sit tutum indulgeri ei, ut aliam accipiat: tamen sub dissimulatione poteris sustinere, quia tutius est unam tamquam uxorem habere, quam cum multis peccare*.

Chapter IV

Latin source headnote: One who knowingly contracts with a woman impotent for union is not separated from her.

Lucius III.

We respond to your consultation, by which you consulted us whether women whose genital passage is closed, and who are unable to commingle with males, can contract marriage and, if they have contracted, whether it ought to be rescinded, in this manner: although it appears incredible that anyone would contract marriage with such women, *and although we do not have an express canon concerning this kind of matter, nevertheless the sacrosanct* Roman Church has been accustomed to judge in similar cases that those whom they cannot have as wives they are to have as sisters. *Nevertheless, such women have sometimes been accustomed to be aided by medical skill so that they can suitably render and receive the debt*.

> Contrahens scienter cum impotenti ad copulam, ab ea non separatur.
>
> Lucius III.
>
> Consultationi tuae, qua nos consuluisti, utrum feminae clausae, impotentes commisceri maribus, matrimonium possint contrahere, et, si contraxerint, an debeat rescindi, taliter respondemus, quod, licet incredibile videatur, quod aliquis cum talibus contrahat matrimonium, *et quamvis de huiusmodi expressum canonem non habeamus, sacrosancta* Romana tamen ecclesia consuevit in consimilibus iudicare, ut quas tanquam uxores habere non possunt habeant ut sorores. *Verumtamen talibus artificio aliquando consuevit succurri, ut valeant apte reddere debitum et accipere*.

Chapter V

Latin source headnote: If impotence for intercourse is established, the marriage is immediately separated; otherwise, the spouses will cohabit for three years. And if with seven relatives as oath-helpers they swear that they gave their effort to carnal union and could not be joined, they are immediately separated. It is commonly summarized thus.

Celestine III.

The praiseworthy—(And below: [*Compare chapter* 2, *While Litigation Is Pending, II.* 16.]) *Solicitously also at the last,* You asked how much time is to be granted to those naturally frigid for an experiment of nuptial union, *in which, if they fail, they are separated*. But we, *although different times are conceded concerning this in the ancient canons as well as the laws, nevertheless,* think this in the present consultation: *if one naturally frigid cannot use her whom he took as spouse*, from the time the marriage was celebrated, if the frigidity cannot be proved beforehand, they are to cohabit for three years *according to the legal Authenticum*. When this has elapsed, if even then they are unwilling to cohabit, and according to the decree of Gregory the woman, *if* by a just judgment she can prove concerning the man that he cannot have intercourse with her, let her receive another; but if he takes another, let them be separated. But if both consent to be together, let the man have her, although not as wife, at least as sister. But if both confess that they never knew each other, with seven relatives as oath-helpers, or, if relatives are lacking, with seven reputable neighbors as oath-helpers, let each, touching the sacrosanct Gospels, say by oath that they were never made one flesh through carnal union; and then it appears that the woman can hasten to second nuptials. But if he takes another woman, then let those who had sworn be held guilty of perjury and, after penance has been performed, be compelled to return to the former marriage. [*Finally, etc.; compare chapter* 1, *On Exceptions, II.* 25.]

> Si de impotentia coeundi constet, statim matrimonium separatur; alias cohabitabunt coniuges per triennium. Et si cum septima manu propinquorum iurant, quod dederunt operam carnali copulae, et non potuerunt coniungi: statim separantur. Ita communiter summatur.
>
> Coelestinus III.
>
> Laudabilem (*Et infra:* [*cf. c.* 2. *Ut lite pend. II.* 16.]) *Sollicite quoque ad ultimum* Requisisti, quantum tempus indulgendum sit naturaliter frigidis ad experientiam copulae nuptialis, *in qua si defecerint, separantur*. Nos vero, *quamvis in antiquis tam canonibus quam legibus super hoc diversa tempora concedantur, id tamen* in praesenti consultatione sentimus, ut, *si naturaliter frigidus non potest illa, quam duxit, uti pro coniuge*, a tempore celebrati coniugii, si frigiditas prius probari non possit, *secundum authenticum legale* cohabitent per triennium. Quo elapso, si nec tunc cohabitare voluerint, et iuxta decretum Gregorii mulier, *si* per iustum iudicium de viro probare potuerit, quod cum ea coire non possit, accipiat alium; si autem ille aliam acceperit, separentur. Quod si ambo consentiant simul esse, vir eam, etsi non ut uxorem, saltem habeat ut sororem. Si autem, quod nunquam se invicem cognoverint, ambo fatentur, cum septima manu propinquorum vel vicinorum bonae famae, si propinqui defuerint, tactis sacrosanctis evangeliis uterque iureiurando dicat, quod nunquam per carnis copulam una caro effecti fuissent, et tunc videtur, quod mulier valeat ad secundas nuptias convolare. Verum si ille aliam duxerit, tunc hi, qui iuraverant, rei periurii teneantur, et peracta poenitentia cogantur ad connubia priora redire. [*Denique etc. cf. c.* 1. *de except.II.* 25.]

Chapter VI

Latin source headnote: Because of a woman's constriction, if it appears that, apart from a divine miracle, she cannot be rendered capable without bodily danger, the marriage is separated; nevertheless, it is restored if it afterward appears that the Church was deceived.

Innocent III, to the Bishop of Auxerre.

We received the letters of your fraternity containing that the woman O. married a certain man in lawful wedlock; she lived with him for many years, but could not be known carnally by him. But although you had been instructed concerning this through your archpriest, nevertheless, wishing to

have fuller certainty *concerning this*, you summoned to your presence certain provident and honorable matrons of her parish, strictly enjoining upon them under peril of their souls that they prudently inspect the woman herself and diligently inquire whether she was suitable for virile embraces; and they at last steadfastly asserted to you upon their faith that the same *woman* could never be a mother or spouse, as one whose natural sexual organ was lacking. Whence you solemnized a separation between her and *that* man, inducing the *same* woman to transfer herself to some religious house, being about to observe perpetual continence, and granted the man license to take a wife *in the name of the Lord*, because he desired to become a father. But it happened afterward that the *same* woman found someone who removed that bodily obstruction and, casting away the continence which she promised, *after she had had* [*intercourse with*] *another man, additionally married* G., bearer of the present letters, *on whose behalf you humbly supplicated that we deal mercifully with them*. Therefore, although you expressed to us only incompletely how the said woman promised that she would observe continence—whether, namely, by a simple word or a solemn vow, whether she passed to religion, as she promised, or remained in her house contrary to her promise, and how she caused that obstruction to be removed, whether, namely, by the art of a physician, intercourse with a man, or any other mode—nevertheless, perceptively considering that the impediment was not perpetual which, apart from a divine miracle, could be removed by human work without bodily danger, we know that the sentence of separation was rendered through an error, although a probable one, since it is manifest from the subsequent fact that she was knowable by him whose like commingles with her, and therefore we say that marriage existed between the *woman herself* and the first man. Wherefore we adjudge that there is no marriage between her and the aforesaid G., and we command them to be separated from each other. And if the aforesaid woman passed to religion, as she asserts that she promised, let the first man, who did not know her, remain with her with whom he afterward contracted by authority of the Church; otherwise, let the *same man*, after dismissing *her whom he afterward brought in*, be bound to return to her with whom he first contracted, unless that woman bound herself by a vow to observe continence, so that by this she is understood to have fornicated with the aforesaid G., or unless she commingled with another man in a fornicatory manner, so that the first man, under pretext of the fornication *which* [*she*] *committed*, wishes to decline her consortium. For if she promised only by a simple word that she would observe continence and afterward married the aforementioned G. in the sight of the Church, for as long as this article was doubtful, it ought not to be presumed that she fornicated with him; but from now on she ought not in any way to remain with him. But through these things you should know that the following question is resolved: whether she who is so constricted that she can carnally commingle with no one unless through an incision or in some other way violence is brought upon her—not only slight violence but perhaps so grave that peril of death is feared from it—ought to be declared suitable for contracting marriage. Likewise, whether she who is so constricted for the man whom she married that she can never be deflowered by him, if she is separated from him by the judgment of the Church and marries another [*man*] for whom she is not constricted and through frequent use of the second man is rendered suitable even for the first, ought to return to him with whom she first entered the conjugal covenant. But concerning such matters judgment is not easily to be given, since the final judgment depends upon the future. *You therefore, according to that which is distinguished above, are to cause what we have decreed to be firmly observed through ecclesiastical censure, with appeal set aside.* [*Given at Ferentino, on the fifth day before the Nones of July, in the ninth year.* 1206.]

Propter arctationem mulieris, si apparet, quod praeter divinum miraculum absque periculo corporali habilis reddi non potest, separatur matrimonium, redintegratur tamen, si postea appareat, ecclesiam fuisse deceptam.

Innocentius III. Altissiodorensi Episcopo.

Fraternitatis tuae literas recepimus, continentes, quod O. mulier cuidam viro matrimonialiter nupsit, cum quo per multos annos morata, non potuit carnaliter ab ipso cognosci. Licet autem per archipresbyterum tuum super hoc fuisses edoctus, tu tamen, volens *super hoc* habere certitudinem pleniorem, quasdam matronas suae parochiae providas et honestas ad tuam praesentiam evocasti, districte illis iniungens sub periculo animarum, ut mulierem ipsam prudenter inspicerent, et perquirerent diligenter, utrum idonea esset ad viriles amplexus; quae tandem in fide sua tibi asseruere constanter, quod eadem *mulier* nunquam poterat esse mater aut coniux, tanquam cui naturale deerat instrumentum. Unde inter ipsam et virum *illum* divortium celebrasti, mulierem *ipsam* inducens, ut ad religionem aliquam se transferret perpetuam continentiam servatura, et viro licentiam tribuisti, ut uxorem duceret *in nomine Domini*, quia pater fieri cupiebat. Contigit autem postea, quod mulier *eadem* invenit qui seras huiusmodi reseravit, et abiiciens continentiam, quam promisit, *et quae alium virum habuerat*, G. latori praesentium supernupsit, *pro quibus humiliter supplicasti, ut cum eis misericorditer ageremus*. Quamvis igitur semiplene nobis expresseris, quomodo dicta mulier se promiserit continentiam servaturam, utrum videlicet simplici verbo, an voto solenni, utrumve ad religionem transierit, ut promisit, an contra promissionem suam in domo remanserit, et qualiter seras illas fecerit reserari, utrum videlicet artificio medici, an concubitu viri, seu alio quolibet modo: nos tamen, perspicaciter attendentes, quod impedimentum illud non erat perpetuum, quod praeter divinum miraculum per opus humanum absque corporali periculo potuit removeri, sententiam divortii per errorem, licet probabilem, novimus esse prolatam, quum pateat ex postfacto, quod ipsa cognoscibilis erat illi, cuius simili commiscetur, et ideo inter ipsam *mulierem* et primum virum dicimus matrimonium exstitisse. Quare inter eam et praefatum G. matrimonium non esse censemus, eosque praecipimus ab invicem separari. Et si praedicta mulier ad religionem transivit, sicut asserit promisisse, primus vir, qui non cognovit eandem, cum ea remaneat, cum qua postmodum ecclesiae auctoritate contraxit; alioquin *idem vir*, ea dimissa, *quam postea superduxit*, debet ad illam redire, cum qua primo contraxit nisi se voto mulier illa constrinxerit ad continentiam observandam, ut intelligatur per hoc cum praefato G. fornicata fuisse, vel nisi se fornicario modo alii viro miscuerit, ut primus vir praetextu fornicationis, *quam* [*ipsa*] *commisit*, eius velit consortium declinare. Nam si tantum simplici verbo se promisit continentiam servaturam, et postea in conspectu ecclesiae nupsit memorato G., quamdiu articulus iste dubitabilis erat, praesumi non debet, quod fornicaretur cum illo, sed amodo non debet cum illo aliquatenus remanere. Per haec autem quaestionem illam noveris esse solutam, qua quaeritur, utrum ea, quae adeo arcta est, ut nulli possit carnaliter commisceri, nisi per incisionem aut alio sibi modo violentia inferatur, non solummodo levis, sed forte tam gravis, ut ex ea mortis periculum timeatur, ad matrimonium contrahendum debeat idonea perhiberi. Similiter illa, quae viro, cui nupserat, adeo arcta est, ut nunquam ab eo valeat deflorari, si ab eo sit per iudicium ecclesiae separata, et nubat alteri [*viro*], cui arcta non sit, et per frequentem usum secundi reddatur etiam apta primo, utrum ad eum redire debeat, cum quo prius foedus inierat coniugale. De talibus autem non est facile iudicandum, quum finale iudicium pendeat ex futuro. *Tu ergo, secundum quod superius est distinctum, facias quod decrevimus per censuram ecclesiasticam appellatione postposita firmiter observari*. [*Dat. Ferentini V. Non. Iul. Ao. IX.* 1206.]

Chapter VII

Latin source headnote: If a wife says that the husband with whom she cohabited for three years does not have the potency for intercourse, when they swear this with seven relatives as oath-helpers,

the marriage is separated. This the chapter says by adhering to the words of the letter.

Honorius III.

Your letters exhibited to us contained that, when the matrimonial case which is pending between the woman M. and A. her husband, *of the diocese of Arras*, had been committed to you by Pope Innocent, our predecessor *of good memory*, the said M. proposed *before you* that, although *already* eight years earlier she had been joined matrimonially to the said A. and had cohabited with him for a long time, *nevertheless, although she was capable of intercourse with a man, she had never been known by him, but* still remained intact because her aforesaid husband did not have the potency for intercourse; wherefore she sought that a separation be solemnized *between them*. But the aforesaid A. *nevertheless* confessed that he had never known her, *although she had exhibited herself ready and prepared for his service, but* nevertheless asserted that he had the potency to know other women. But you, lest *perhaps* they confess this in fraud, caused the said woman to be inspected by matrons of good reputation, trustworthy and experienced in the nuptial work, who furnished testimony that she still remained a virgin. Afterward, through the priest from whose parish the *aforesaid* man came, you caused it to be *diligently* inquired whether the *man* himself had known any woman, and through the inquiry itself it could not be established to you that any woman had been carnally known by him. But while the woman *insistently* sought judicial separation and said that she wished to be a mother and to beget sons, and while the man proposed that he was prepared to stand by the counsel *and will* of the Church, you enjoined upon them that they *humbly receive and* do penance for the things committed, and thus perhaps it would please God, who was the institutor and author of marriage, that they consummate the work of marriage. After several terms *granted to them by you for cohabiting with one another*, returning to your presence, with consonant voice they said that they could not commingle carnally. *On account of this, with their consent you considered that a case of this kind should be left to apostolic judgment*. Therefore, *again through apostolic writings* we order you that, if it is so and it is established to you that the aforesaid man and woman lived together for a continuous three years within the aforesaid years, and they affirm by oath with seven relatives as oath-helpers that they could not commingle carnally, you pronounce a sentence of separation between them.

> Si uxor dicit, virum, cui cohabitavit per triennium, non habere potentiam coeundi, eis hoc iurantibus cum septima manu propinquorum, matrimonium separatur. H. d. inhaerendo verbis literae.
>
> Honorius III.
>
> Literae vestrae nobis exhibitae continebant, quod, quum causa matrimonii, quae inter M. mulierem et A. eius virum *Atrebatensis dioecesis* vertitur, vobis fuisset a *bonae memoriae* Innocentio Papa praedecessore nostro commissa, dicta M. proposuit, *coram vobis*, quod, quum *iam* octo annis elapsis dicto A. fuisset matrimonialiter copulata, et diu cohabitasset eidem, *nunquam tamen, licet esset viripotens, ab eo cognita fuerat, sed* adhuc integra permanebat, eo, quod praedictus vir eius non habebat potentiam coeundi; quare petebat, *inter eos* divortium celebrari. Praedictus vero A. *nihilominus* fatebatur, quod illam nunquam cognoverat, *licet ad eius obsequium se facilem exhibuerit et paratam, sed* tamen se habere potentiam cognoscendi alias asserebat. Vos vero, ne id *forte* confiterentur in fraudem, a matronis bonae opinionis, fide dignis ac expertis in opere nuptiali, dictam fecistis inspici mulierem, quae perhibuerunt testimonium, ipsam adhuc virginem permanere. Postmodum per presbyterum, de cuius parochia vir *praedictus* exstitit, fecistis *diligenter* inquiri, utrum *vir* ipse aliquam cognovisset, nec per inquisitionem ipsam vobis constare potuit, aliquam esse carnaliter cognitam ab eodem. Muliere autem *instanter* requirente divortium, et dicente, quod mater esse volebat, et filios procreare, proponente vero viro,

quod paratus erat stare consilio *et voluntati* ecclesiae, iniunxistis eisdem, ut *humiliter reciperent et* agerent poenitentiam de commissis, et sic forte placeret Deo, qui matrimonii fuit institutor et auctor, ut opus matrimonii consummarent; qui post plures terminos, *ad commanendum sibi a vobis indultos*, ad vestram reversi praesentiam, consona voce dixerunt, quod non poterant carnaliter commisceri. *Propter quod de ipsorum consensu causam huiusmodi apostolico duxistis iudicio relinquendam*. Quocirca *vobis iterato per apostolica scripta* mandamus, quatenus, si ita est, et constiterit vobis, praefatum virum et mulierem infra praedictos annos per continuum triennium insimul habitasse, ipsis cum septima propinquorum manu firmantibus iuramento, se commisceri carnaliter nequivisse, proferatis divortii sententiam inter eos.

Title XVI: On Marriage Contracted against an Interdict of the Church

Chapter I

Latin source headnote: A marriage made or contracted against an interdict of the Church or a judge is not dissolved for this reason alone; nevertheless, penance is imposed upon those contracting thus, and they are separated until the cause of the interdict is heard. This in effect is what this entire title says.

Alexander III, to the Bishop of Padua.

The letters which your fraternity sent to us expressly declare that, when a certain *parishioner of yours*, in the presence and with the consent of his sister, who was already marriageable, had affirmed by a furnished oath that he would give her to a certain man as wife, and she, not many days later, voluntarily receiving the gifts and presents of the man according to the custom of the land, had often embraced him as her own husband, at last, after her brother died, she permitted herself to be betrothed by her husband's own brother, and falsely avers that she had been known by him. And when you publicly prohibited her from joining herself to either of them or to anyone else, she, having spurned your admonitions, did not fear to marry another. Finally, when *you had summoned both before you and* had commanded the woman to return to her mother's house, she appealed *to* our hearing. *But because it lies upon our solicitude to correct the transgressions and enormities of others and to recall them to the measure and form of rectitude, through apostolic writings* we order your fraternity that, if it is so, *as was narrated above*, lest your mandate appear *to be* contemptible, you compel the aforesaid woman to return to her mother's house *with every appeal and excuse ceasing*; and, after worthy penance for so great a transgression has been imposed upon her, when *she* has remained in her mother's house for a month, permit her to return to the third man *and to be lawfully joined to him*.

DE MATRIMONIO CONTRACTO CONTRA INTERDICTUM ECCLESIAE.

Matrimonium, contra interdictum ecclesiae vel iudicis factum seu contractum, propter hoc solum non dirimitur, imponitur tamen poenitentia sic contrahentibus, et separantur, donec cognoscatur de causa interdicti. H. d. in effectu totus iste titulus.

Alexander III. Paduano Episcopo.

Literae, quas tua nobis fraternitas destinavit, expresse declarant, quod, quum quidam *parochianus tuus* sororem suam iam nubilem cuidam se daturum in uxorem, ea praesente et consentiente, praestito iuramento firmasset, et illa, non post multos dies dona et munera viri secundum morem terrae sponte suscipiens, ipsum tanquam proprium virum saepe amplexata fuisset, tandem mortuo fratre a proprio viri sui fratre se desponsari permisit, et, quod ab illo cognita fuisset, mendaciter asseverat. Quumque ei prohibuisses publice, ne cui illorum vel alicui se copularet: ipsa, spretis monitis tuis, alii nubere non

expavit. Demum quum *utrumque ante te convocasses, et* mulieri praecepisses, ut ad domum matris rediret, ipsa *ad* nostram audientiam appellavit. *Verum quoniam sollicitudini nostrae incumbit excessus et enormitates aliorum corrigere, et ad modum et ad formam rectitudinis revocare, fraternitati tuae per apostolica scripta* mandamus, quatenus, si est ita, *ut superius est enarratum*, praefatam mulierem, ne mandatum tuum contemptibile *esse* videatur, ad domum matris *omni appellatione et excusatione cessante* redire compellas, et, imposita sibi de tanto excessu poenitentia condigna, postquam *ea* in domo materna per mensem steterit, ad tertium reverti permittas, *et legitime sibi coniungi*.

Chapter II

Latin source headnote: Betrothals of the future, even when contracted with one woman against an interdict of the Church, do not have the power to dissolve a marriage afterward contracted with another.

The same, to the Bishops of Worcester and Baronia.

From the letters of *our venerable brother* the Archbishop of Canterbury, *legate of the Apostolic See*, it came to us that, when G. of Saint-Léger had betrothed his absent daughter M. to a certain *young man* named R., *afterward, at the procuring of certain blood relatives of the woman herself, the aforementioned R. contracted marriage with her while she was present through words of the present tense, as is said; faith being corporally furnished on each side that henceforth the man would conduct himself toward the woman as toward a lawful wife, and she would reverently obey him without contradiction as her lawful husband; and nothing was lacking except the solemnity to be celebrated in the face of the Church, which on account of the season of Lent could not then be carried into effect*. Afterward, when a suspicion arose that the aforesaid R. desired to pass to other vows, the case was brought to the examination of the *aforementioned* archbishop, who under threat of anathema prohibited him, *as we received from his letters*, from passing to second vows before the aforesaid matter was fully established. But he, having contemned the aforesaid prohibition, solemnly joined to himself in the face of the Church the daughter of V., *named Matilda*, as wife. *But afterward, when the two women and the man had been constituted before the archbishop, the aforesaid R. publicly confessed that he had contracted marriage with Maria, as was said above, and afterward, seduced by the depraved suggestion of certain persons, had taken the other, namely Matilda. But Maria steadfastly asserted that her father had not moved the complaint from her will, adding that between her and the aforesaid R. no obligation had intervened except faith alone concerning contracting marriage; because he had not observed it, she was by no means bound to observe it, and therefore, because he was leaving her whom he had taken second.* But when *she petitioned that the aforesaid R. be restored to her as her own husband, and* the archbishop wished to hear the first marriage, *especially because the women were said to touch one another by consanguinity, and through this the vice of both adultery and incest was feared*, the said M. emitted the voice of appeal *to the Apostolic See and fixed the feast of the Circumcision just passed as the term for the appeal*. Deferring to her appeal, the archbishop more strictly interdicted the same *Maria*, under *peril of her soul and* threat of excommunication, from marrying anyone until the case itself received its due end *before us or before judges delegated by the Apostolic See*. Nevertheless, trusting in the remedy of appeal, she married a certain other man named V. *nevertheless*. *And, cited concerning this before the archbishop, she was unwilling to appear on account of the appeal which she had objected. Therefore, since it did not appear to us that the matter was to be concluded while the parties were absent, committing it to your experience, in which we fully confide, by authority of the present letters* We order that, *after the parties have been summoned before your presence, you investigate the truth more diligently and*, if nothing is established which impedes except the consent of the future which is asserted to have preceded between the aforesaid R. and M.,

with the obstacle of appeal removed you adjudge that the second marriages are to be inviolably observed. For although they ought not to have passed to second vows against the interdict of the Church, nevertheless it is not fitting that on account of this alone the sacrament of marriage be dissolved. Nevertheless, other penance will have to be imposed upon them because they did this against the prohibition of the Church. [*Given on the Nones of February.*]

> Sponsalia de futuro, cum una etiam contra interdictum ecclesiae contracta, non habent dirimere matrimonium, postea contractum cum alia.
>
> Idem Vigoriensi et Baronensi Episcopis.
>
> Ex literis *venerabilis fratris nostri* Cantuariensis archiepiscopi *apostolicae sedis legati* ad nos pervenit, quod, quum G. de sancto Leodegario M. filiam suam absentem cuidam *iuveni*, R. nomine, desponsasset, *postmodum, quibusdam ipsius mulieris consanguineis procurantibus, memoratus R. cum ea praesente per verba praesentis temporis contraxit, sicut dicitur, matrimonium; fide hinc inde corporaliter praestita, quod vir mulierem sicut uxorem legitimam de cetero exhiberet, et ipsa reverenter ei sine contradictione sicut viro legitimo obediret, nihilque defuit, nisi solennitas in facie ecclesiae celebranda, quae propter tempus quadragesimae tunc non potuit effectui mancipari*. Postea orta suspicione, quod praefatus R. ad alia desideraret vota transire, ad examen fuit *iam* dicti archiepiscopi causa perlata, qui sub anathematis interminatione prohibuit, *sicut ex literis ipsius accepimus*, ne, antequam de praescripto negotio plene constaret, vir ad secunda vota transiret. Sed ipse, praescripta prohibitione contempta, filiam V. *Matildam nomine* in facie ecclesiae sibi solenniter copulavit uxorem. *Postmodum vero duabus mulieribus et viro coram archiepiscopo constitutis, praefatus R. publice confessus est, se cum Maria, sicut superius dictum est, matrimonium contraxisse, et aliam, scilicet Matildam, prava quorundam suggestione seductum postmodum accepisse. Maria vero constanter asseruit, quod pater eius non moverat de voluntate eius querelam, adiiciens, quod inter ipsam et praefatum R., excepta sola fide de contrahendo matrimonio, nulla obligatio intercesserat, quam, quia ipse non servaverat, servare minime tenebatur, et ideo, quia eam, quam secundo acceperat, relinquebat*. Quum *autem praefatum R. illa tanquam proprium virum restitui postularet, et* archiepiscopus vellet de matrimonio primo cognoscere, *ob id maxime, quia mulieres dicebantur sese consanguinitate contingere, ac per hoc tam adulterii quam incestus vitium timebatur*, dicta M. *ad sedem apostolicam* appellationis vocem emisit, *et festum circumcisionis proxime praeteritum terminum appellationi praefixit*. Cuius appellationi archiepiscopus deferens, eidem *Mariae* sub *periculo animae et* excommunicationis interminatione districtius interdixit, ne cui nuberet, donec causa ipsa *coram nobis, vel coram delegatis ab apostolica sede iudicibus* finem debitum sortiretur. Ipsa tamen, de remedio appellationis confisa, cuidam alii, V. nomine, *nihilominus* nupsit. *Et super hoc citata coram archiepiscopo noluit propter appellationem, quam obiecerat, apparere. Quum igitur absentibus partibus non videretur nobis negotium finiendum, ipsum experientiae vestrae, de qua plene confidimus, committentes, praesentium auctoritate* Mandamus, quatenus, *partibus ante vestram praesentiam convocatis, inquiratis diligentius veritatem, et*, si nihil constiterit, quod impediat, praeter consensum de futuro, qui inter praefatos R. et M. asseritur praecessisse, secunda matrimonia inviolabiliter observanda sublato appellationis obstaculo iudicetis. Licet enim contra interdictum ecclesiae ad secunda vota transire non debuerit, non est tamen conveniens, ut ob id solum sacramentum coniugii dissolvatur. Alia tamen poenitentia eis debebit imponi, quia contra prohibitionem ecclesiae hoc fecerunt. [*Dat. Non. Febr.*]

Chapter III

Latin source headnote: If those who were said to be blood relatives contracted against the command of a judge, they ought to be separated until the case is heard.

The same, to the Bishop of Padua.

Concerning the woman—(And below: [*Compare chapter* 6, *On Betrothals, IV.* 1.]) But those who are prohibited from being joined on account of consanguinity and afterward receive one another contrary to the interdict of the Church you ought to subject to excommunication until they are separated for so long as it takes to be lawfully ascertained whether their marriage can and ought *by* law to stand.

> Si hi, qui dicebantur consanguinei, contraxerunt contra praeceptum iudicis, debent separari, donec de causa cognoscatur.
>
> Idem Paduano Episcopo.
>
> De muliere (*Et infra:* [*cf. c.* 6. *de spons. IV.* 1.]) Illos autem, qui pro consanguinitate prohibentur coniungi, et post contra interdictum ecclesiae se receperint, excommunicationi debes subiicere, donec tamdiu separentur, quousque legitime cognoscatur, utrum eorum matrimonium possit et debeat *de* iure stare.

Title XVII: Which Children Are Legitimate

Chapter I

Latin source headnote: A natural child, begotten of an unmarried man and an unmarried woman, is legitimated by the subsequent marriage of the parents, even as regards inheritance.

Alexander III.

H., *bearer of the present letters*, complained to us that, when he took as wife a certain woman, *the niece of R.*, the *aforesaid* R., the woman's paternal uncle, endeavors to disinherit her because she was born before the betrothal of her mother, although afterward, *as is said*, the father of the aforesaid woman took her mother as wife. Therefore, *by commanding through apostolic writings* we order your fraternity that, if it is so, *notwithstanding any contradiction or appeal*, you adjudge her *to be* legitimate, prohibiting the aforesaid R. *on our part and yours* from bringing molestation or burden upon the *often-mentioned* woman *and her heirs* concerning the paternal inheritance on this occasion. But if he presumes to act contrary to this, strike him with ecclesiastical severity *with the remedy of appeal removed*.

> **QUI FILII SINT LEGITIMI.**
>
> Naturalis, ex soluto genitus et soluta, legitimatur per subsequens parentum coniugium, etiam quoad hereditatem.
>
> Alexander III.
>
> Conquestus est nobis H. *lator praesentium*, quod, quum quandam mulierem *neptem R.* in uxorem acceperit, *praefatus* R. patruus mulieris ipsam exheredare conatur eo, quod ante desponsationem matris suae nata fuerit, licet postea, *prout dicitur*, pater mulieris praefatae matrem ipsius acceperit in uxorem. Ideoque *fraternitati vestrae per apostolica scripta praecipiendo* mandamus, quatenus, si est ita, *nullius contradictione vel appellatione obstante*, eam legitimam *esse* iudicetis, praedicto R. *ex nostra et vestra parte* inhibentes, ne *saepe* dictae mulieri *et heredibus suis* hac occasione super hereditate paterna molestiam inferat vel gravamen. Si autem contra hoc venire praesumpserit, eum *sublato appellationis remedio* severitate ecclesiastica percellatis.

Chapter II

Latin source headnote: When a marriage contracted in the face of the Church is separated, children begotten or conceived before the sentence are legitimate.

The same.

Since a sentence of separation was canonically rendered between I. Vetus, *your fellow citizen*, and the woman T., their children, *who were born before the sentence itself, and he who was then conceived*, ought not to sustain loss from this, since their parents are known to have publicly contracted *marriage* with each other without contradiction of the Church. Therefore we decree that their children whom *they* had before the separation, and those who had been conceived before the sentence was rendered, are to be held no less legitimate, and that they succeed to the paternal goods by hereditary right and are nourished from the resources of their parents. *Therefore, through apostolic writings we order your whole body that you not prohibit the aforesaid children of the aforementioned I. and the aforesaid woman from succeeding to the paternal goods and being nourished from them, nor permit molestation or burdens to be brought upon them by anyone on the occasion of the separation between their parents.*

> Separato matrimonio in facie ecclesiae contracto, filii, geniti vel concepti ante sententiam, sunt legitimi.
>
> Idem.
>
> Quum inter I. Veterem *concivem vestrum* et T. mulierem divortii sententia canonice sit prolata, filii eorum, *qui ante sententiam ipsam nati fuerunt, et ille, qui tunc conceptus erat*, non debent exinde sustinere iacturam, quum parentes eorum publice et sine contradictione ecclesiae *matrimonium* inter se contraxisse noscantur. Ideoque sancimus, ut filii eorum, quos *ipsi* ante divortium habuerunt, et qui concepti fuerant ante latam sententiam, non minus habeantur legitimi, et quod in bona paterna hereditario iure succedant, et de parentum facultatibus nutriantur. *Quocirca universitati vestrae per apostolica scripta mandamus, quatenus praefatos filios memorati I. et praedictae mulieris succedere in bona paterna, et exinde nutriri non prohibeatis, nec occasione divortii inter parentes eorum eis a quoquam molestiam vel gravamina sustineatis inferri.*

Chapter III

Latin source headnote: One stands by the word of a man and woman who deny that someone is their son, unless the contrary is proved by indications and witnesses.

The same, to the Archbishop of Rouen.

Your letters transmitted to us contained that, when N., *your citizen*, had nourished a certain boy until youth, his wife M., then not betrothed to him, cohabiting with him, afterward, *as is said*, he lawfully betrothed her and received sons from her. When these sought the paternal inheritance, the aforesaid young man contradicted them, conducting himself as son and heir, although he was called a bastard by the neighborhood, which believed him to be their son. But the aforesaid N. and his wife *Matilda* denied that the aforesaid young man was their bastard or lawful son, but said that they had nourished him from a regard for piety. But when the question had been moved before you, and the aforesaid young man was bound with the bond of excommunication because he was unwilling to stand by the law, *you wished to consult us as to what you ought to do concerning this. Concerning this, therefore,* We respond *thus* to your consultation: in such a case one must stand by the word of the man and woman unless it is established to you by certain indications and witnesses that the aforementioned young man is their son.

> Statur verbo viri et mulieris, qui negant aliquem filium, nisi indiciis et testibus probetur contrarium.
>
> Idem Rothomagensi Archiepiscopo.

Transmissae nobis tuae literae continebant, quod, quum N. *civis tuus* usque ad iuventutem quendam puerum nutrivisset, uxore sua M. tunc non desponsata sibi cohabitante, postmodum ipsam, *sicut dicitur*, legitime desponsavit, et filios sustulit ex eadem. Quibus paternam hereditatem petentibus, praedictus iuvenis contradicit, gerens se filium et heredem, quamvis a vicinia, quae ipsum filium eorum esse credebat, spurius diceretur. Praedicti vero N. et uxor eius *Matilda* praefatum iuvenem spurium suum aut legitimum filium esse negabant, sed dicebant, quod eum pietatis intuitu nutrivissent. Quum autem quaestio coram te mota esset, et praedictus iuvenis pro eo, quod iuri stare nolebat, vinculo sit excommunicationis adstrictus, *quid de hoc agere debeas, nos consulere voluisti. Super hoc itaque* Consultationi tuae *taliter* respondemus, quod in tali casu standum est verbo viri et mulieris, nisi certis indiciis et testibus tibi constiterit, esse filium iuvenem memoratum.

Chapter IV

Latin source headnote: The offspring whom a wife conceived from adultery while her husband was living is illegitimate, whether she remains with the adulterer or with the husband.

The same, to the Bishops of Exeter and Winchester and the Abbot of Hereford.

The cause which—(And below: *Compare chapter* 17, *On the Office of a Delegated Judge, I.* 29.) If, *after the parties have been summoned before your presence, it is lawfully* established to you that the *often-mentioned* Agatha was born of the woman Anelina during the time of Alan, her husband, while she was remaining with him as with her husband, or while R., the father of the said Agatha, publicly kept A. herself while she still had a husband, adjudge that she was not the lawful daughter of the same R., because she could not be a wife who, staining the bed of her husband, presumed [*both*] to be joined *and to cohabit* with another while he lived. *Moreover, etc.* (*Compare chapter* 3, *On Fraud and Contumacy, II.* 14.)

Illegitima proles est, quam viro vivente uxor ex adulterio concepit, sive cum adultero sive cum viro moretur.

Idem Exoniensi et Vintoniensi Episcopis, et Abbati Herfordensi.

Causam, quae (*Et infra: cf. c.* 17. *de off. iud. del. I.* 29.) Si, *partibus ante praesentiam vestram convocatis, legitime vobis* constiterit, quod *saepe dicta* Agatha de Anelina muliere, tempore Alani viri sui, ipsa cum eo tanquam cum viro suo morante, vel R. patre dictae Agathae, ipsam A. adhuc habente virum, publice tenente, nata fuit, eam non fuisse legitimam eiusdem R. filiam iudicetis, quia non potuit esse uxor, quae viri sui torum maculans, [*et*] alii, dum ille viveret, copulari *et cohabitare* praesumpsit. *Ceterum etc.* (*cf. c.* 3. *de dol. et cont. II.* 14.)

Chapter V

Latin source headnote: A question of birth, opposed to one seeking an inheritance before a secular judge, is to be referred to an ecclesiastical judge. This is what it says, and the text is very noteworthy and capable of being cited.

The same, to the Bishop of Exeter and the Abbot of Hereford.

R., the bearer of the present letters, *coming to our presence not without great danger to his body, set forth to us in his complaint that, although his grandfather had had two wives, from one of whom his father proceeded, while from the other he begot Hugh, his paternal uncle, the same* [*Hugh*] *violently detains forty acres of land which fell to him and to the father of the same R., and is unwilling to furnish to the same R., who ought to succeed to the paternal*

goods, the portion due. But when the same R. had drawn H. into a lawsuit before a secular judge concerning the inheritance of the grandfather of the same R., the father of the said H., he presumed to object to him that his father had not been born of a lawful marriage, and that therefore he could claim nothing [*for himself*] from the inheritance of his *late* grandfather by right of succession. *But* finally, when the question of birth had *for a long time* been treated before *our venerable brother* the Bishop of Norwich, an appeal was made to our hearing. *But, when he came, the other party disdained to present himself to us either in person or through another.* Therefore, *being unwilling for the case itself to be prolonged any further, committing it to your experience, by apostolic writings we command* your discretion that, *after summoning both parties before your presence and more fully hearing and considering the arguments on each side, you* terminate the case concerning the question of the birth of the father of the same R. within two months *after the receipt of these letters*, with the obstacle of appeal removed. But if within two months the aforesaid H. cannot lawfully prove what he objected *to him concerning the paternal inheritance*, then intimate to the secular lord, under whose judgment the case concerning the inheritance is being conducted, that on account of the question of birth he is not to omit to hear and decide the case concerning the inheritance.

> Quaestio nativitatis, opposita petenti hereditatem coram iudice saeculari, est ad ecclesiasticum iudicem transmittenda. H. d. et est textus multum notabilis et allegabilis.
>
> Idem Exoniensi Episcopo et Abbati Herfordensi.
>
> Lator praesentium R., *non sine multo discrimine sui corporis ad nostram accedens praesentiam, sua nobis conquestione proposuit, quod, quum avus suus uxores duas habuerit, de quarum una eius pater processit, de altera Hug. patruum suum sustulit, idem* [*Hug.*] *XL. acras terrae, quae ipsum et patrem eiusdem R. contigerunt, per violentiam detinet, nec eidem R., qui succedere in bonis paternis debet, debitam partem vult exhibere*. Quum autem idem R. H. coram saeculari iudice super hereditate avi eiusdem R. patris dicti H. traxisset in causam, ille sibi praesumpsit obiicere, quod pater eius non fuit de legitimo matrimonio natus, et ideo de hereditate *quondam* avi sui nihil posset [*sibi*] iure successorio vendicare. Tandem *vero*, quum super quaestione nativitatis coram *venerabili fratre nostro* Norvicensi episcopo *diu* tractatum fuisset, ad nostram exstitit audientiam appellatum. *Sed, eo veniente, altera pars per se vel per alium suam nobis exhibere praesentiam contempsit*. Ideoque, *nolentes causam ipsam diutius protrahi, eam experientiae vestrae committentes, discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus *utramque partem ante vestram praesentiam convocetis, et, rationibus hinc inde plenius auditis et cognitis, ipsam* causam super quaestione nativitatis patris eiusdem R. infra duos menses *post harum susceptionem literarum* sublato appellationis obstaculo terminetis. Si vero infra duos menses praefatus H. non poterit probare legitime quod *ei de paterna hereditate* obiecit, extunc saeculari domino, sub cuius iudicio de hereditate causa vertitur intimetis, ut pro quaestione nativitatis non dimittat, quin causam super hereditate audiat et decidat.

Chapter VI

Latin source headnote: Natural children are legitimated through a subsequent marriage of their parents, but spurious children are not. This is what it says, by adhering to the words of the letter; and it is a famous chapter and is cited daily in both forums.

The same, to the Bishop of Exeter.

So great is the force of marriage that those who were begotten beforehand are held legitimate after the marriage has been contracted. But if a man, while his wife is living, has known another woman and has received offspring from her, although after the death of his wife he marries the same woman,

the son will nevertheless be spurious and is to be repelled from the inheritance, especially if either of them contrived anything toward the death of the prior wife, *since they could not contract a lawful marriage with one another*.

> Naturales legitimantur per subsequens parentum coniugium, spurii vero non. H. d. inhaerendo verbis literae, et est capitulum famosum, et quotidie allegatur in utroque foro.
>
> Idem Exoniensi Episcopo.
>
> Tanta est vis matrimonii, ut qui antea sunt geniti post contractum matrimonium legitimi habeantur. Si autem vir vivente uxore sua aliam cognoverit, et ex ea prolem susceperit, licet post mortem uxoris eandem duxerit, nihilominus spurius erit filius, et ab hereditate repellendus; praesertim si in mortem uxoris prioris alteruter eorum aliquid fuerit machinatus, *quoniam matrimonium legitimum inter se contrahere non potuerunt*.

Chapter VII

Latin source headnote: The Church does not take cognizance of a civil case between laymen; it does take cognizance, however, of whether someone was born of a lawful marriage.

The same, to the Bishops of London and Worcester.

We *some time ago* committed to you for termination the case which is known to be conducted between R. and F. concerning the fact that the mother of the *already-mentioned* R. is said not to have been born of a lawful marriage. But because *in* our letters we caused it to be inserted that, before entry into the principal case, you were to cause the often-mentioned R. to be restored, *with appeal ceasing*, to possession of [*their*] entirety, of which he was possessor when his grandfather took up the journey of setting out for Jerusalem, if he had been despoiled of that possession through violence: we, considering that it pertains to the king, not to the Church, to judge concerning such possessions, lest we seem to derogate from the right *and dignity of our dearest son in Christ Henry*, king [*and prince*] of the English, who, *as we have received, was moved and disturbed because we wrote concerning the possessions, since* he asserts that judgment over them pertains to himself, *will and, by apostolic writings, command* your fraternity that, leaving judgment over the possessions to the king, you take fuller cognizance of the principal case, namely whether the mother of the aforesaid R. was born of a lawful marriage, and terminate a case of this kind *according to the tenor of our other letters, with appeal removed*; although it seems incongruous that the marriage of the mother of the aforesaid R. should be attacked, which, as is said, was not attacked while she was living.

> De causa civili inter laicos non cognoscit ecclesia; cognoscit tamen, an quis sit de legitimo matrimonio natus.
>
> Idem Londonensi et Vigoriensi Episcopis.
>
> Causam, quae inter R. et F. super eo, quod mater *iam* dicti R. dicitur non fuisse de legitimo matrimonio nata, agitari dignoscitur, vobis *iam pridem* commisimus terminandam. Verum quia *in* literis nostris inseri fecimus, ut saepe fato R. possessionem [*eorum*] omnium, quorum possessor exstitit, quando avus suus proficiscendi Hierosolymam iter arripuit, ante principalis causae ingressum faceretis *appellatione cessante* restitui, si eadem possessione fuisset per violentiam spoliatus: nos attendentes, quod ad regem pertinet, non ad ecclesiam de talibus possessionibus iudicare, ne videamur iuri *et dignitati carissimi in Christo filii nostri Henrici* regis, Anglorum [*principis*], detrahere, qui, *sicut accepimus, motus est et turbatus, quod de possessionibus scripsimus, quum* ipsarum iudicium ad se asserit pertinere, *volumus et* fraternitati vestrae *per*

apostolica scripta praecipiendo mandamus, quatenus regi possessionum iudicium relinquentes, de causa principali, videlicet utrum mater praedicti R. de legitimo sit matrimonio nata, plenius cognoscatis, et causam huiusmodi *secundum aliarum literarum nostrarum tenorem appellatione remota* terminetis; licet incongruum videatur, ut matrimonium genetricis praefati R. impetatur, quod ea vivente non fuit, ut dicitur, impetitum.

Chapter VIII

Latin source headnote: If a woman, separated from the first man by a judgment of the Church, contracts with a second while the first is living, the offspring whom she received from the second will be legitimate.

The same, to the Bishop and Archdeacon of Vicenza.

It has been brought to our hearing that, when H., *son of the late Lazarus*, had crossed to the regions of Constantinople and, remaining there for ten years and more, did not return to I., his wife, she lodged a complaint against him before *I., formerly* Bishop of Vicenza, of good memory, and alleged likewise that she could not wait for him any longer. But the bishop, as a provident and discreet man, commanded the parents of the *aforesaid* man to send for him and recall him to his own country. And when, after a long space of time had elapsed, the *aforesaid* man did not return to his own country, the bishop, in the sight of the Church and after hearing the arguments of the woman, promulgated a sentence of separation between them and granted the woman *full* faculty to marry another *man*. Therefore, *because the truth of this matter is not established to us, by apostolic writings we command* your discretion that *you diligently investigate the matter itself, and*, if it is established *to you* that the bishop pronounced a sentence of separation between them, you adjudge legitimate *her* sons whom she begot of the other man, to union with whom she passed by authority of the aforesaid bishop *without question and contradiction by the Church*, not permitting them to be excluded from the inheritance on this occasion. *And if anyone wishes to strive against this, by apostolic authority you are to impose perpetual silence upon him.*

Si mulier, per iudicium ecclesiae separata a primo, vivente illo contrahit cum secundo, legitima erit proles, quam ex illo suscepit.

Idem Episcopo et Archidiacono Vincentino.

Perlatum est ad audientiam nostram, quod, quum H. *filius quondam Lazari*, ad partes Constantinopolitanas transisset, et ibi moram per decennium et amplius faciens, ad I. uxorem suam non rediens, ipsa apud bonae memoriae *I. quondam* Vincentinum episcopum adversus eum querelam deposuit, et quod eum non posset diutius exspectare, nihilominus allegavit. Episcopus vero, sicut vir providus et discretus, parentibus *praedicti* viri mandavit, ut pro eo mitterent, et ipsum ad propria revocarent. Quumque, elapso longi temporis spatio, vir *praedictus* non remearet ad propria, episcopus in conspectu ecclesiae, auditis rationibus mulieris, inter eos sententiam divortii promulgavit, et mulieri, ut alium *virum* duceret, *plenariam* facultatem indulsit. Ideoque *quia huius rei veritas nobis non constat, discretioni vestrae per apostolica scripta praecipiendo* mandamus, quatenus *rem ipsam diligenter investigetis, et*, si *vobis* constiterit, quod episcopus inter eos sententiam divortii tulerit, filios *eius*, quos sustulit de alio, ad cuius copulam auctoritate praedicti episcopi *sine quaestione et contradictione ecclesiae* migravit, legitimos iudicetis, eos hac occasione ab hereditate non patientes excludi. *Et si quis contra hoc niti voluerit, ei auctoritate apostolica silentium penitus imponatis*.

Chapter IX

Latin source headnote: Children born of a clandestine marriage approved by the Church are legitimate. This is what it says, by adhering to the letter.

The same, to the Bishop of Beauvais.

What to us—(And below: [*Compare chapter* 2, *On Clandestine Betrothals, IV.* 3.]) But if any have been begotten of a clandestine marriage afterward approved *and held ratified* by the Church, adjudge them legitimate children and heirs.

> Filii, nati ex matrimonio clandestino per ecclesiam approbato, sunt legitimi. H. d. inhaerendo literae.
>
> Idem Belvacensi Episcopo.
>
> Quod nobis (*Et infra:* [*cf. c.* 2. *de cland. desp. IV.* 3.]) Si qui autem de clandestino matrimonio, postmodum ab ecclesia comprobato *et rato habito*, generati fuerint, eos legitimos iudices filios et heredes.

Chapter X

Latin source headnote: Those born of a marriage contracted contrary to the justice of public propriety are illegitimate and are to be excluded from the inheritance of their parents. And hold this case in mind, because it often happens through ignorance.

Celestine III, to the Archbishop of York.

When it was reported to us—(And below:) We respond *in this manner* to your fraternity: because the justice of public propriety prohibited it, marriage could not be contracted between them, and the marriage contracted ought to have been separated; and through this, since the children are excused neither by permission of the Church nor by paternal ignorance, they do not seem in any respect to be admitted to the succession of the paternal goods.

> Nati ex matrimonio, contracto contra publicae honestatis iustitiam, illegitimi sunt, et ab hereditate parentum excludendi. Et tene menti hunc casum, quia saepe per ignorantiam accidit.
>
> Coelestinus III. Eboracensi Archiepiscopo.
>
> Referente nobis (*Et infra:*) Fraternitati tuae *taliter* respondemus, quod, publicae honestatis iustitia prohibente, matrimonium inter eos contrahi non potuit, et contractum debuit separari, ac per hoc, quum filii nec per ecclesiae permissionem, nec per paternam ignorantiam excusentur, ad successionem bonorum paternorum non videntur aliquatenus admittendi.

Chapter XI

Latin source headnote: To prove offspring illegitimate, it does not suffice to prove an impediment to the marriage, if the marriage was contracted in the face of the Church.

The same.

It has indeed come to us from the representation of the widow L. that, although a marriage had been lawfully celebrated between G., her father, and A., her mother, and they remained peaceably for as long as they lived, after their death certain persons, asserting that she had been received from an unlawful marriage, attempt to remove her from the paternal inheritance as illegitimate. Therefore, by apostolic writings, we command *your discretion* that, if it is so, by *our authority* you declare the said widow legitimate.

Ad docendum prolem illegitimam non sufficit probare impedimentum matrimonii, si fuit in facie ecclesiae contractum.

Idem.

Pervenit sane ad nos ex insinuatione L. viduae, quod, quum inter G. patrem suum, et A. matrem illius matrimonium fuisset legitime celebratum, et, quamdiu vixerunt, quiete permanserunt, post illorum decessum quidam asserentes, eam de non legitimo matrimonio fuisse susceptam, a paterna hereditate tanquam illegitimam amovere conantur. Mandamus itaque *discretioni vestrae per apostolica scripta*, quatenus, si est ita, dictam viduam *auctoritate nostra* legitimam nuncietis.

Chapter XII

Latin source headnote: One stands by the statement of witnesses who prove someone legitimate, although the report of the neighborhood and the treatment by the parents holds the contrary.

Innocent III.

Through your letters you intimated *to us* that R., having received offspring from a *certain* woman whom, according to the opinion of the greater part of the neighborhood, he kept as a concubine, afterward married one woman and, when she had died, another; and she from whom he had received offspring joined another man to herself. But in the course of time the same R., in the presence of many, affirmed by his own oath that he had first pledged as wife the woman whom he had seemed to keep as a concubine before he had begotten a son of her; and afterward, when *he had lived for six years and more, while* he was at the point of death, instituting in his testament as heir the one whom he had received from her, he called him his legitimate son. But when it had been committed to your inquiry *and decision* whether the son so received was a legitimate heir of R. himself and was to be admitted to his patrimony, you—besides the fact that from a certain decretal of Pope Alexander, our predecessor of good memory, you believed that the word of the man and woman was to be stood by concerning this—after receiving witnesses produced by the son of the same R., through whom he lawfully proved that the aforesaid R. had pledged his mother in the chapel of Saint Sergius, adjudged him to be the legitimate heir of R. himself. But we, considering that what is done in truth is of greater weight than what is conceived in pretense, although the *already-mentioned* R., when, having dismissed her whom he had kept as a concubine, he passed to other vows, seems *by* that very deed to have denied the marriage that had been celebrated between them, nevertheless, because the betrothal proved through lawful witnesses shows that they had been joined matrimonially, whether the betrothal itself was of the present, so that through lawful consent expressed by words of the present the bond of marriage was celebrated between them, or was through words of the future followed by carnal union, relying not so much on the decretal of our said predecessor, which speaks in a dissimilar case, as on the proofs introduced, we respond that you proceeded lawfully, confirming your sentence by apostolic authority, *and we fortify it by the protection of the present writing, by apostolic authority enjoining upon you by the present letters that, a warning having been premised, through ecclesiastical censure you cause the sentence itself to be inviolably observed.* [*Given at Rieti, on the third day before the Nones of August,* 1198.]

Statur dicto testium, qui probant aliquem legitimum, licet fama viciniae et tractatus parentum habeat contrarium.

Innocentius III.

Per tuas *nobis* literas intimasti, quod R. ex muliere *quadam*, quam secundum opinionem maioris partis viciniae in concubinam habebat, prole suscepta, quandam post, et aliam, ea defuncta, duxit in uxorem, et ea, de qua prolem susceperat, virum sibi alium copulavit. Processu vero temporis idem R. in praesentia multorum firmavit proprio iuramento, quod eam, quam habere visus fuerat concubinam, prius affidaverat in uxorem, quam ex ea filium genuisset, et postea, quum *per sex annos et ultra vixisset, dum* ageret in extremis, eum, quem ex ea susceperat, in testamento heredem instituens, legitimum filium appellavit. Quum autem tuae inquisitioni *et decisioni* fuisset commissum, an filius sic susceptus legitimus esset heres ipsius R. et ad eius patrimonium admittendus, tu praeter id, quod ex quadam decretali bonae memoriae Alexandri Papae praedecessoris nostri standum esse super hoc verbo viri et mulieris credebas, receptis testibus, a filio eiusdem R. productis, quibus legitime comprobavit, praedictum R. matrem suam in capella sancti Sergii affidasse, eum ipsius R. heredem esse legitimum iudicasti. Nos autem attendentes, quod plus est quod in veritate agitur, quam quod simulate concipitur, licet *iam* dictus R., quum, ea dimissa, quam ut concubinam habuerat, ad alia vota transiverit, videatur *ex* ipso facto matrimonium, quod inter eos celebratum fuerat, denegasse, quia tamen desponsatio, per testes legitimos comprobata, eos matrimonialiter fuisse coniunctos ostendit, sive desponsatio ipsa fuerit de praesenti, ut per consensum legitimum, per verba de praesenti expressum, copula matrimonii inter eos fuerit celebrata, sive per verba de futuro, carnali copula subsecuta, non tam decretali dicti praedecessoris nostri, quae in casu dissimili loquitur, quam inductis probationibus innitentes, te processisse legitime respondemus, sententiam tuam auctoritate apostolica confirmantes, *et praesentis scripti patrocinio communimus auctoritate apostolica tibi praesentium iniungentes ut sententiam ipsam facias monitione praemissa per censuram ecclesiasticam inviolabiliter observari*. [*Dat. Reate III. Non. Aug.* 1198.]

Chapter XIII

Latin source headnote: In the lands of the Church the Pope can freely legitimate illegitimate persons, but in the lands of others he cannot, unless for very arduous causes, or unless in spiritual matters; then, however, he is understood indirectly and by a certain consequence to legitimate them also with respect to temporal matters. Yet this last point is not without scruple. This is what it says according to the understanding that pleases Panormitanus, and it is a difficult and very famous chapter.

The same, to the nobleman G. of Montpellier.

Through our venerable brother the Archbishop of Arles, *coming to the Apostolic See*, your humility supplicated us that we should deign to adorn your sons with the title of legitimation, so that the objection of their birth would not harm them so as to prevent them from succeeding you. That the Apostolic See has full power concerning this, however, appears from the fact that, after consideration of various causes, it has dispensed with certain persons begotten less than legitimately—not only natural children, but also adulterine children—thus legitimating them for spiritual acts so that they can be promoted as bishops. From this it is believed more likely and reckoned more probable that it is able to legitimate them for secular acts, especially if besides the Roman Pontiffs they recognize among men no other superior who has the power of legitimating; because, since greater providence as well as authority and fitness is required in spiritual matters, what is granted in the greater seems to be lawful also in the lesser. This also seems capable of being proved through a similar case, since by the very fact that someone is raised to the summit of episcopal dignity, he is exempted from paternal power. Moreover, even if a mere bishop knowingly ordained another's slave as a priest, although the ordainer would be bound to make satisfaction to the master *according to the canonical*

form, the ordained man would nevertheless escape the yoke of servitude. Indeed, it would seem monstrous that one who was made legitimate for spiritual actions should remain illegitimate with respect to secular acts. Hence, when a dispensation is made in spiritual matters, consequently a dispensation in temporal matters is understood. The Apostolic See, however, can freely effect this in the patrimony of blessed Peter, in which it both exercises the authority of the Supreme Pontiff and executes the power of the supreme prince. *Therefore, since from these things the authority of legitimating seemed to reside with the Roman Church not only in spiritual matters but also in temporal matters, the same archbishop was humbly requesting on your behalf that we grant your sons grace concerning this, on account of your merits and those of your progenitors, who have always persisted in devotion to the Apostolic See.* But he seemed to draw greater boldness for requesting from the fact that *he was not compelled to seek an example far away, but was able to allege in favor of a petition of this kind what he said that we ourselves had done in a similar case*. For since *our dearest son in Christ Philip*, the illustrious king of the French, dismissed *our dearest daughter in Christ* I., the *illustrious* queen *of the French*, and afterward received a boy and a girl from another woman brought in over her, and you similarly, after the lawful wife had been excluded, brought in another woman over her, from whom you received sons, it was believed that the benignity of the Apostolic See should dispense with yours just as with the sons of the same king, *especially since greater necessity commended it, and you are more specially subject to us: for the king of the French received from the queen of the French, formerly of illustrious memory, a lawful heir, who is hoped and believed to be about to succeed him upon the throne of the kingdom; but you do not have from your lawful wife a male heir who may succeed you both in devotion to us and in your own inheritance. Moreover, since the king himself is subject to us in spiritual matters, you are subject to us both in spiritual and in temporal matters, since you possess part of your land from the Church of Maguelone, which it temporally recognizes through the Apostolic See; wherefore the same archbishop asserted that, with the Church of Maguelone mediating, you are temporally subject to us.* But if the truth is diligently inspected, not a similar but a very dissimilar matter is found. For the king himself was separated from the *aforesaid* queen by sentence through the Archbishop of Reims, of *good memory*, legate of the Apostolic See; but you separated your wife from yourself, *as is said*, by your own rashness. He also brought in another woman before the prohibition against contracting with another had reached him, from whom he is known to have received twin offspring; but you attempted to bring in another woman in contempt of the Church, *on account of which the Church itself exercised against you the sword of ecclesiastical vengeance*. Moreover, the king himself objected against the marriage of the *aforesaid queen* an impediment of affinity and introduced witnesses before the aforesaid archbishop; because his sentence was quashed solely on account of the judicial order not having been observed, after the restoration of the [*aforesaid*] queen we considered that other judges should be deputed to him *concerning this*. But you objected to your wife nothing *as is asserted* that would induce a separation, since, even if fidelity of the bed is one of the three goods of marriage, nevertheless its violation would not have violated the conjugal bond. Therefore, as long as the question of the affinity objected is pending, it can not without reason be doubted whether the sons of the same king were legitimate or illegitimate. For if the affinity is proved, it will appear that the aforesaid queen is not the wife of the king, and by consequence the other woman will seem to have been lawfully joined to him and to have borne him legitimate sons. *But concerning yours, neither do you yourself propose that they were born legitimate, nor is this presumed by any reason.* Moreover, since the king *himself* recognizes no superior at all in temporal matters, without injury to another's right he was able to submit himself in this matter to our jurisdiction, *and did submit himself*. In this it *perhaps* would seem to some that he was able to

dispense by himself, not as a father with sons, but as a prince with subjects. But you are known to be subject to others. *Hence, perhaps without injury to them, unless they furnished assent to us, you could not submit yourself to us in this matter, nor are you of such authority that you have the faculty of dispensing concerning these things.* Therefore, induced by these reasons, when requested we granted grace to the king, drawing a cause both from the Old and from the New Testament that, not only in the patrimony of the Church, over which we bear full power in temporal matters, but also in other regions, after consideration of certain causes, we incidentally exercise temporal jurisdiction—not because we wish to prejudice another's right, *or to usurp power not due to us, since we are not ignorant that Christ answered in the Gospel: "Render to Caesar the things that are Caesar's, and to God the things that are God's." For which reason, when asked to divide an inheritance between two, he said, "Who appointed me judge over you?"*—but because, as is contained in Deuteronomy: "If you perceive that a judgment with you is difficult and ambiguous, between blood and blood, cause and cause, leprosy and *non*-leprosy, and you see *words* of judgment varying within your gates: *arise and ascend to the place which the Lord your God shall choose*; you shall come to the priests of the Levitical stock and to the judge who shall be at that time, *and you shall inquire of them*, who shall indicate to you the truth of the judgment; and you shall do whatsoever those who preside over the place which the Lord has chosen shall say, and you shall follow their sentence *and shall not turn aside to the right hand or to the left*. But he who acts proudly, being unwilling to obey the command of the priest who at that time ministers to the Lord your God, shall die by the decree of the judge, *and you shall remove the evil from Israel*." Indeed, since Deuteronomy is interpreted as the second law, by the force of the word it is proved [*in this*] that what is decreed there ought to be observed in the New Testament. For the place which the Lord chose is recognized to be the Apostolic See, *in such a way that the Lord founded it upon himself* [*as*] *the cornerstone*. For when Peter, fleeing the city, had gone out, the Lord, wishing to recall him to the place which he had chosen, when asked by him, "Lord, where are you going?" answered, "I come to Rome to be crucified again"; understanding that this had been said for him, he immediately returned to the place itself. The priests of the Levitical stock are our brothers, who by Levitical right exist as our coadjutors in the execution of the priestly office. But the priest or judge over them is he to whom the Lord says in Peter: "Whatsoever you shall bind upon earth shall be bound also in heaven, *and whatsoever you shall loose upon earth shall be loosed also in heaven*." He is the vicar of the one who is a priest forever according to the order of Melchizedek, appointed by God judge of the living and the dead. Indeed, he distinguishes three judgments: the first between blood and blood, by which the criminal and the civil are understood; the last between leprosy and leprosy, by which the ecclesiastical and the criminal are denoted; the middle between cause and cause, which is referred to both, ecclesiastical as well as civil. In these, when something is difficult or ambiguous, recourse is to be had to the judgment of the Apostolic See; he who proudly disdains to observe its sentence is commanded to die, *and the evil to be removed from Israel*, that is, through a sentence of excommunication to be separated, as if dead, from the communion of the faithful. Paul also, that he might expound the plenitude of power, says in writing to the Corinthians: "Do you not know that you shall judge angels? How much more secular matters?" *Moreover, the office of secular power is sometimes accustomed to execute its function in itself in some matters, but sometimes in others through other persons.* Although, therefore, we considered that a dispensation should be made with the sons of the often-mentioned king *of the French*, concerning whom it is doubted whether they were legitimate from the beginning, nevertheless, because both the Mosaic and the canonical law detest offspring received from adultery—the Lord testifying that mamzers and spurious persons shall not enter the Church

down to the tenth generation, while the canon forbids such persons to be promoted to sacred orders, and secular laws also not only repel them from the paternal succession but even deny them maintenance—we did not consider that assent should be given to your petition, *until, if it can be done, both a lighter fault and a freer jurisdiction are shown, although we embrace your person with the arms of special affection and wish to exhibit special grace to you in those things in which we can do so with God and with honor*.

> In terris ecclesiae Papa potest libere illegitimos legitimare, in terris vero alienis non, nisi ex causis multum arduis, vel nisi in spiritualibus; tunc tamen indirecte et per quandam consequentiam intelligitur legitimare etiam quoad temporalia. Hoc tamen ultimum non est sine scrupulo. H. d. secundum intellectum, qui placet Panorm. et est cap. difficile et multum famosum.
>
> Idem nobili viro G. Montis Pessulani.
>
> Per venerabilem fratrem nostrum, Arelatensem archiepiscopum, *ad sedem apostolicam accedentem*, tua nobis humilitas supplicavit, ut filios tuos legitimationis dignaremur titulo decorare, quatenus eis, quo minus tibi succederent, natalium obiectio non noceret. Quod autem super hoc apostolica sedes plenam habeat potestatem, ex illo videtur, quod, diversis causis inspectis, cum quibusdam minus legitime genitis, non naturalibus tantum, sed adulterinis etiam dispensavit sic ad actus spirituales illos legitimans ut possint in episcopos promoveri. Ex quo verisimilius creditur et probabilius reputatur, ut eos ad actus legitimare valeat saeculares, praesertim si praeter Romanos Pontifices inter homines superiorem alium non cognoscant, qui legitimandi habeat potestatem; quia, quum maior in spiritualibus tam providentia quam auctoritas et idoneitas requiratur, quod in maiori conceditur licitum esse videtur et in minori. Per simile quoque id videtur posse probari, quum eo ipso, quod aliquis ad apicem episcopalis dignitatis attollitur, eximitur a patria potestate. Praeterea etiamsi simplex episcopus scienter servum alterius in presbyterum ordinaret, licet ordinator satisfacere domino *iuxta formam canonicam* teneretur, ordinatus tamen iugum evaderet servitutis. Videretur siquidem monstruosum, ut, qui legitimus ad spirituales fieret actiones, circa saeculares actus illegitimus, remaneret. Unde, quum in spiritualibus dispensetur, consequenter intelligitur in temporalibus dispensatum. Id autem in patrimonio beati Petri libere potest apostolica sedes efficere, in quo et summi Pontificis auctoritatem exercet, et summi principis exsequitur potestatem. *Quum ergo videatur ex his legitimandi auctoritas non tantum in spiritualibus sed in temporalibus etiam penes Romanam ecclesiam residere, ut super hoc filiis tuis gratiam faceremus ob tua et progenitorum tuorum merita, qui semper in devotione sedis apostolicae perstitistis, humiliter ex parte tua idem archiepiscopus requirebat*. Videbatur autem ex eo trahere maiorem audaciam postulandi, quod *non longe petere cogebatur exemplum, sed in favorem petitionis huiusmodi quod nos ipsos in causa simili fecisse dicebat poterat allegare*. Quum *enim carissimus in Christo filius noster Philippus* rex Francorum *illustris carissimam in Christo filiam nostram* I. *Francorum* reginam *illustrem* dimiserit, et ex alia postmodum superducta puerum susceperit et puellam, et tu similiter exclusa legitima superduxeris aliam, ex qua filios suscepisti: sicut cum filiis regis eiusdem, sic cum tuis credebatur de benignitate apostolicae sedis dispensandum, *praesertim quum maior id necessitas suaderet, et tu nobis specialius sis subiectus: siquidem rex Francorum ex inclitae recordationis regina Francorum olim legitimum suscepit heredem, qui ei optatur et creditur in regni solio successurus; tu vero, ex legitima coniuge masculinum non habes heredem, qui tibi et in devotione nostra et propria hereditate succedat. Insuper, quum rex ipse in spiritualibus nobis subiaceat, tu nobis et in spiritualibus et in temporalibus es subiectus, quum partem terrae tuae ab ecclesia Magalonensi possideas, quam ipsa per sedem apostolicam temporaliter recognoscit, quare Magalonensi ecclesia mediante nobis idem archiepiscopus asserebat temporaliter subiacere*. Verum, si veritas diligenter inspicitur, non res similis, sed valde dissimilis invenitur. Nam rex ipse a *praedicta* regina per *bonae memoriae* Remensem archiepiscopum, apostolicae sedis legatum, fuit per sententiam separatus; tu vero uxorem tuam a te, *sicut dicitur*, temeritate propria separasti. Ipse quoque, priusquam ad eum prohibitio de non contrahendo cum altera pervenisset, aliam superduxit, ex qua prolem geminam

noscitur suscepisse; sed tu in contemptum ecclesiae aliam superinducere attentasti, *propter quod ipsa in te gladium exercuit ecclesiasticae ultionis*. Praeterea rex ipse *praedictae reginae* contra matrimonium impedimentum affinitatis obiecit, et coram praefato archiepiscopo testes induxit, cuius sententia quia cassata fuit solummodo propter iudiciarium ordinem non servatum, nos ei post restitutionem [*praefatae*] reginae *super hoc* alios cognitores duximus deputandos. Tu vero uxori tuae nihil, quod divortium induceret, *sicut asseritur*, obiecisti, quum, etsi fides tori sit unum de tribus bonis coniugii, non tamen ipsius violatio coniugale vinculum violasset. De filiis ergo eiusdem regis, utrum legitimi vel illegitimi fuerint, quamdiu pendet quaestio affinitatis obiectae, potest non immerito dubitari. Nam si affinitas fuerit comprobata, praedictam reginam non esse regis coniugem apparebit, et per consequens alia videbitur sibi legitime copulata, et filios ei legitimos peperisse. *De tuis vero, quod sint legitimi nati, nec tu ipse proponis, nec ulla praesumitur ratione*. Insuper quum rex *ipse* superiorem in temporalibus minime recognoscat, sine iuris alterius laesione in eo se iurisdictioni nostrae subiicere potuit *et subiecit*. In quo *forsitan* videretur aliquibus, quod per se ipsum, non tanquam pater cum filiis, sed tanquam princeps cum subditis potuit dispensare. Tu autem nosceris aliis subiacere. *+Unde sine ipsorum forsan iniuria, nisi praestarent assensum nobis, in hoc subdere te non posses, nec eius auctoritatis exsistis, ut dispensandi super his habeas facultatem*. Rationibus igitur his inducti regi gratiam fecimus requisiti, causam tam ex veteri quam ex novo testamento trahentes, quod non solum in ecclesiae patrimonio, super quo plenam in temporalibus gerimus potestatem, verum etiam in aliis regionibus, certis causis inspectis, temporalem iurisdictionem casualiter exercemus, non quod alieno iuri praeiudicare velimus, *vel potestatem nobis indebitam usurpare, quum non ignoremus, Christum in evangelio respondisse: "Reddite quae sunt Caesaris Caesari, et quae sunt Dei Deo. Propter quod postulatus, ut hereditatem divideret inter duos, quis," inquit, "constituit me iudicem super vos?"* sed, quia, sicut in Deuteronomio continetur; "Si difficile et ambiguum apud te iudicium esse perspexeris, inter sanguinem et sanguinem, causam et causam, lepram et *non* lepram, et iudicium inter portas tuas *verba* videris variari:" *surge et adscende ad locum, quem elegerit Dominus Deus tuus*, venies ad sacerdotes Levitici generis, et ad iudicem, qui fuerit illo tempore, *quaeresque ab eis*, qui indicabunt tibi iudicii veritatem, et facies quaecunque dixerint, qui praesunt loco, quem elegerit Dominus, sequerisque eorum sententiam *nec declinabis ad dexteram vel ad sinistram*. Qui autem superbierit, nolens obedire sacerdotis imperio, qui eo tempore ministrat Domino Deo tuo, decreto iudicis morietur, *et auferes malum de Israel*." Sane, quum Deuteronomium lex secunda interpretetur, ex vi vocabuli comprobatur [*in hoc*], ut quod ibi decernitur in novo testamento debeat observari. Locus enim, quem elegit Dominus, apostolica sedes esse cognoscitur *sic, quod eam Dominus in se ipso* [*e*] *lapide angulari fundavit*. Quum enim Petrus urbem fugiens exivisset, volens eum Dominus ad locum, quem elegerat, revocare, interrogatus ab eo: "Domine, quo vadis?" respondit: "venio Romam iterum crucifigi," quod intelligens pro se dictum, ad locum ipsum protinus est reversus. Sunt autem sacerdotes Levitici generis fratres nostri, qui nobis iure Levitico in exsecutione sacerdotalis officii coadiutores exsistunt. Is vero super eos sacerdos sive iudex exsistit, cui Dominus inquit in Petro: "Quodcunque ligaveris super terram, erit ligatum et in coelis, *et quodcunque solveris super terram erit solutum et in coelis*." Eius vicarius, qui est sacerdos in aeternum secundum ordinem Melchisedech, constitutus a Deo iudex vivorum et mortuorum. Tria quippe distinguit iudicia: primum inter sanguinem et sanguinem, per quod criminale intelligitur et civile; ultimum inter lepram et lepram, per quod ecclesiasticum et criminale notatur; medium inter causam et causam, quod ad utrumque refertur, tam ecclesiasticum quam civile, in quibus quum aliquid fuerit difficile, vel ambiguum, ad iudicium est sedis apostolicae recurrendum, cuius sententiam qui superbiens contempserit observare mori praecipitur *et auferri malum de Israel*, id est, per excommunicationis sententiam, velut mortuus, a communione fidelium separari. Paulus etiam, ut plenitudinem potestatis exponeret, ad Corinthios scribens ait: "nescitis, quoniam angelos iudicabitis, quanto magis saecularia?" *Porro saecularis officium potestatis interdum et in quibusdam per se, nonnunquam autem et in nonnullis per alios exsequi consuevit*. Licet igitur cum filiis saepe dicti regis *Francorum*, de quibus, an fuerint legitimi ab initio, dubitatur, duxerimus

dispensandum: quia tamen tam lex Mosaica quam canonica sobolem susceptam ex adulterio detestatur, testante Domino, quod manzeres et spurii usque in decimam generationem in ecclesiam non intrabunt, canone vero vetante tales ad sacros ordines promoveri, saecularibus quoque legibus non solum repellentibus eos a successione paterna, sed negantibus ipsis etiam alimenta: petitioni tuae non duximus annuendum, *donec, si fieri poterit, et culpa levior et iurisdictio liberior ostendatur, licet personam tuam specialis dilectionis brachiis amplectamur et in quibus cum Deo et honestate possumus specialem tibi velimus gratiam exhibere*.

Chapter XIV

Latin source headnote: If a married man, while the first wife is living, contracts with a second woman in the face of the Church while she is ignorant of this, their offspring will be legitimate.

The same, to H. and R., Canons of Benevento.

From the tenor of your letters it became known to us that, when the widow G. sought to have the inheritance of R., her late husband, restored to herself and her ward son *by Landulf of Granno and his nephews, together with the fruits received from it, in your presence, you who by our delegation were taking cognizance of the same case*, the adverse party was endeavoring to exclude her petition on the ground that it asserted that the *same* R., husband of the widow herself, had been begotten of adultery, *proposing that the father of the said Robert, while his lawful wife was living, brought in over her a certain other woman named Marucia, from whom he begot the aforesaid Robert, husband of the widow herself. But on the contrary the widow's party responded that, since the aforesaid Marucia, not knowing that the father of the said Robert had another wife, had contracted with him in the face of the Church, the son whom he received from her ought to be held legitimate, since those who are not born of a knowing adulteress ought not to be reputed illegitimate. And when litigation concerning this had continued for a rather long time in your presence, and the opinions of certain prudent men whose counsel you sought disagreed with one another in this matter, you considered that the Apostolic See should be consulted. Therefore we, having understood these and the other things which you intimated to us through your letters, after diligent discussion with our brothers*, understanding that the father of the aforesaid R. married his mother in the face of the Church while she was *entirely* ignorant that he had matrimonially joined another woman to himself, and that while she was considered his lawful wife he received the said R. from her, incline rather in favor of the offspring, reputing the aforementioned R. legitimate *with respect to this*. *Therefore, by apostolic writings we command your discretion that* [*also*] *you repute him legitimate, being about to proceed in other matters according to the tenor of our letters, with reason going before.* [*Given at Rome at Saint Peter's, on the Ides of October,* 1205.]

Si coniugatus, vivente prima, in facie ecclesiae contrahit cum secunda hoc ignorante, legitima erit eorum proles.

Idem H. et R. Canonicis Beneventanis.

Ex tenore literarum vestrarum nobis innotuit, quod, quum G. vidua hereditatem R., quondam mariti sui *a Landulfo de Granno et nepotibus suis cum fructibus inde perceptis, in praesentia vestra, qui ex delegatione nostra de causa cognoscebatis eadem*, sibi et pupillo filio suo restitui postularet, pars adversa petitionem eius nitebatur excludere, pro eo, quod *eundem* R. maritum ipsius viduae de adulterio genitum asserebat, *proponens, quod dicti Roberti pater, vivente uxore legitima, quandam aliam, Maruciam nomine, superduxit, ex qua praefatum Robertum maritum ipsius viduae generavit. E contra vero pars viduae respondebat, quod, quum praefata Marucia, nesciens, quod dicti Roberti pater aliam haberet uxorem, cum ipso in ecclesiae facie contraxisset, filius, quem suscepit ex ea, legitimus debebat haberi, quum non debeant illegitimi reputari qui de adultera conscia non nascuntur.*

Quumque diutius super hoc in vestra fuisset praesentia litigatum, et nonnullorum prudentum sententia, quorum consilium requisistis, in hoc invicem discordaret, sedem duxistis apostolicam consulendam. Nos igitur, intellectis his et aliis, quae per vestras nobis literas intimastis, habito cum fratribus nostris diligenti tractatu, Intelligentes, quod pater praedicti R. matrem ipsius in facie ecclesiae, ignaram *penitus*, quod ipse aliam sibi matrimonialiter copulasset, duxerit in uxorem, et dum ipsa coniux ipsius legitima putaretur, dictum R. susceperit ex eadem, in favorem prolis potius declinamus, memoratum R. *quoad hoc* legitimum reputantes. *Ideoque discretioni vestrae per apostolica scripta mandamus, quatenus* [*et*] *vos eum legitimum reputetis in ceteris iuxta tenorem literarum nostrarum ratione praevia processuri*. [*Dat. Rom. ap. S. Petr. Id. Oct.* 1205.]

Chapter XV

Latin source headnote: The offspring of infidels who are afterward converted is legitimate, even if the parents are in a degree prohibited by canon law.

The same, to the Bishop of Tiberias.

We rejoice—(And below: [*Compare below* 8, *On the Separation of Spouses, IV.* 19.]) Moreover, offspring born of the unions of infidels who contracted with marital affection in the second, third, or a further degree according to their opinion, after the reception of the faith we wish, at the urging of public utility, to be reputed legitimate. [*But those who, etc. Compare chapter* 8, *On the Separation of Spouses, IV.* 19.]

Proles infidelium, qui postea convertuntur, legitima est, etiamsi parentes sunt in gradu prohibito lege canonica.

Idem Episcopo Tib.

Gaudemus (*Et infra:* [*cf. b.* 8. *de divort. IV.* 19.]) Ceterum prolem, de infidelium coniunctionibus natam, qui secundo, tertio vel ulteriore gradu secundum opinionem illorum matrimoniali contraxerunt affectu, post fidem receptam, utilitate publica suadente, legitimam volumus reputari. [*Qui autem etc. cf. c.* 8. *de divort. IV.* 19.]

Title XVIII: Who Can Accuse a Marriage or Testify against It

Chapter I

Latin source headnote: When the bond of marriage is at issue, while the defendant is contumaciously absent, witnesses concerning an impediment to the marriage can be received, provided that they are lawful; and sentence is rendered according to their statements.

Alexander III, to the Bishop of Paris.

It was reported *to us on your behalf* that, when the father of a certain girl had given her in marriage to a certain citizen of Paris, the husband, after some years during which he remained with his wife, departed from the city through fear of death on account of the homicide which he committed. But now it is said *and seems capable of being lawfully* proved that the father of the *aforesaid* girl *held the young man for baptism and, what is more,* raised him from the sacred font; but although sought by your letters, he has not yet been able to be found, even though five years have passed. Moreover, *because concerning this your fraternity considered that we should be consulted*, we respond to your consultation in this manner: if the *young man and the girl were* [*together*] *for some years without question, those who now accuse the aforesaid marriage do not seem to be free from suspicion. Moreover, if* what is asserted is manifest, or lawful accusers

and witnesses appear *superior to every exception*, after the young man has been sought with every diligence, even if he cannot be found, you will be able to receive witnesses and terminate the judgment by a canonical end. *Yet you are to proceed in such a way that you do not seem in any way to prefer any affection or temporal advantage to justice. Indeed, those with whose knowledge and silence the marriage was contracted are not thereafter to be heard against it.*

QUI MATRIMONIUM ACCUSARE POSSUNT, VEL CONTRA ILLUD TESTARI.

Quum agitur de foedere matrimonii, reo absente contumaciter, possunt super impedimento matrimonii recipi testes, dummodo sint legitimi; et ad dicta eorum fertur sententia.

Alexander III. Parisiensi Episcopo.

Relatum est *nobis ex parte tua*, quod, quum pater cuiusdam puellae eam cuidam civi Parisiensi nuptui tradidisset, maritus post aliquot annos, quibus cum uxore permansit, propter homicidium, quod commisit, de civitate timore mortis exivit. Nunc autem dicitur *et videtur legitime* posse probari, quod pater *praedictae* puellae *ad Christianitatem iuvenem tenuit, et, quod est amplius*, eum de sacro fonte levavit; sed literis tuis quaesitus nondum potuit inveniri, licet quinquennium sit transactum. Ceterum *quia super hoc tua nos duxit fraternitas consulendos*, consultationi tuae taliter respondemus, quod, si *iuvenis et puella aliquot annis sine quaestione fuerunt* [*simul*], *qui praescriptum matrimonium nunc accusant non videntur suspicione carere. Ceterum si* manifestum est quod asseritur, aut legitimi accusatores et testes appareant *omni exceptione maiores*, postquam iuvenis fuerit cum omni diligentia requisitus, etiamsi nequiverit inveniri, testes recipere poteris, et fine canonico iudicium terminare. *Tu tamen ita procedas, quod amorem aliquem aut commodum temporale nequaquam praeponere iustitiae videaris. Sane illi quibus scientibus et tacentibus matrimonium est contractum non sunt contra ipsum ulterius audiendi.*

Chapter II

Latin source headnote: Accusation and testimony in a matrimonial case ought to be made personally and not through letters.

Clement III.

It was asked of us *on behalf of your church* whether persons who utter nothing in their own voice concerning an accusation of marriage ought to be admitted through the writing of a small document alone. To this we respond that in such matters the writing is of no moment for rendering sentence, except as to presumption, unless other lawful supports concur. *Moreover, because this also was added to the consultation, we respond accordingly that those who were present at the betrothals and, when questioned, kept silent are not afterward to be received if they wish to confess anything against the marriage, unless they wish to say something about those things which in truth they learned afterward, concerning which it is established that at the time of the interrogation made they knew nothing. In what manner an oath is to be received from those who accuse a marriage or make some protest, and after how many years certain persons are to be heard in an accusation of marriage, we did not consider should be annexed to the present letters, both because the form of this oath appears diligently expressed in nearly all the canons, and because, on account of the variety of cases and the diversities of persons, a fixed limit concerning a span of years cannot be prescribed for these matters.* [*Given at the Lateran.*]

Accusatio et testimonium in causa matrimoniali personaliter, et non per literas, fieri debent.

Clemens III.

A nobis est *ex parte ecclesiae vestrae* quaesitum, utrum aliqui, super accusatione matrimonii nihil voce propria depromentes, debeant per solam chartulae conscriptionem admitti. Ad hoc respondemus, quod

in talibus, nisi quantum ad praesumptionem, nullius momenti est conscriptio quoad sententiam proferendam, nisi alia legitima adminicula suffragentur. *Praeterea, quia et hoc consultationi fuit additum, proinde respondemus, quod, qui sponsalibus interfuerunt et tacuere quaesiti, non sunt postea recipiendi, si velint contra matrimonium aliqua confiteri, nisi de his aliqua velint dicere quae in veritate postea didicerunt, de quibus quum constet, eos nihil factae interrogationis tempore cognovisse, qualiter ab his qui accusant matrimonium vel aliquid protestantur recipiendum sit sacramentum et post quot annos sint aliqui in accusatione matrimonii audiendo praesentibus literis non duximus annectendum. Quia forma huius sacramenti paene in omnibus patet canonibus diligenter expressa et quia per varietatem casuum et diversitates personarum certa de annorum spatio his non possit meta praefigi.* [*Dat. Laterani.*]

Chapter III

Latin source headnote: In a matrimonial case, blood relatives and parents can testify concerning consanguinity and the contract.

Pope Clement III, to the Bishop of Florence.

It seems to us *that the second woman whom he married contrary to the prohibition of the Church is not his wife, even if he had not betrothed the first. For the authority of both divine and human law proclaims that what has been done contrary to the interdict and order of the Church is not to be held ratified, as being disordered. Therefore, because the woman whom he irregularly brought in over the first is not his wife, since the prohibition resists, he is to be compelled to receive the woman to whom he swore and whom he betrothed, and from whom he begot offspring, so that the sanctity of the oath is not held in contempt, the faith mutually promised is preserved, the offspring is nurtured and educated in the worship of God, and others are not thereby able to take occasion for perjuring themselves and deceiving others. But* that parents, brothers, and blood relatives of both sexes are admitted in testimony concerning their own people for joining or dissolving a marriage is approved by both ancient custom and the laws, *and is likewise approved by both divine and human laws*. For this reason especially parents *are received*, and, if the parents are lacking, the nearer relatives are admitted, because each person endeavors to know his genealogy both from witnesses and documents and also from the recital of his elders. *Therefore, because they know better than others, they are especially admitted. They are likewise received in testimony for the purpose of joining a marriage.* For who ought to be received more fittingly than those who know better, and whose interest it is, in such a way that, if they have not been present and have not furnished consent, according to the laws no marriage is made? But what is read—"a father is not to be received in the case of a son, nor a son in the case of a father"—is true in criminal cases and contracts; but for joining and disjoining marriage, by the prerogative of the marriage itself and because it is a favorable matter, they are fittingly admitted.

In causa matrimoniali super consanguinitate et contractu testificari possunt consanguinei et parentes.

Clemens III. Papa Florentino Episcopo.

Videtur nobis, *quod secunda, quam contra prohibitionem ecclesiae duxit, non sit uxor, etsi primam non haberet desponsatam. Nam quod contra interdictum et ordinem ecclesiae factum est, ratum non haberi tanquam inordinatum, tam divinae quam humanae legis auctoritas proclamat. Quia igitur ea, quam inordinate superduxit, prohibitione renitente uxor non est, cogendus est eam recipere, quam iuravit et desponsavit, atque ex ea prolem genuit, ut iuramenti religio non vilipendatur, et fides promissa adinvicem conservetur, et proles in cultu Dei nutriatur et educetur, et alii exinde occasionem peierandi et alias decipiendi assumere non valeant*. Quod *autem* parentes, fratres et cognati utriusque sexus in testificatione suorum ad matrimonium coniungendum vel dirimendum admittantur, tam antiqua consuetudine quam legibus approbatur, *et tam divinis quam humanis legibus similiter adprobatur*. Ideo enim maxime parentes *recipiuntur*, et, si defuerint parentes, proximiores admittuntur, quoniam

unusquisque suam genealogiam cum testibus et chartis, tum etiam ex recitatione maiorum scire laborat. *Quia igitur aliis melius sciunt, ideo maxime admittuntur. Similiter recipiuntur in testificatione matrimonii gratia coniungendi*. Qui enim melius recipi debent, quam illi, qui melius sciunt, et quorum est interesse, ita, ut, si non interfuerint, et consensum non adhibuerint, secundum leges nullum fiat matrimonium? Quod vero legitur: "pater non recipiatur in causa filii, nec filius in causa patris," in criminalibus causis et contractibus verum est, in matrimonio vero coniungendo et disiungendo ex ipsius coniugii praerogativa, et quia favorabilis res est, congrue admittuntur.

Chapter IV

Latin source headnote: A woman betrothed unwillingly, but afterward known voluntarily, is not heard against the marriage.

The same.

Moreover, you added that someone contracted with a certain girl not yet marriageable, who, finally reaching the bounds of age and being known by him several times, *after four or five years had elapsed from the aforesaid age*, protested against the marriage, asserting that from the beginning she had always dissented *from him*, and she proves what *she says* through witnesses illustrious in reputation and conduct. Therefore, in this case we judge that she ought not to be heard against the marriage, since, reaching the lawful year before she was known, she did not protest when she could have done so. For just as before lawful consent, which is expected in the twelfth year *according to canon law*, she was able to dissent, so, after at a lawful time she consented even once to carnal union, it is not doubted that by ratification she imposed silence upon herself concerning this. [*Again a certain man, etc. Compare chapter* 6, *Who Are Clerics or Vowed Persons, IV.* 6.]

Invita desponsata, postea sponte cognita, contra matrimonium non auditur.

Idem.

Insuper adiecisti, quod aliquis, cum quadam innubili puella contraxit, quae, tandem aetatis metas attingens, et ab illo pluries cognita, *post quatuor aut quinque annos, a praefata aetate decursos*, contra matrimonium proclamavit, asserens, se semper ab initio dissensisse *ab illo*, et quod *dicit* per testes probat fama et conversatione praeclaros. In hoc itaque casu sentimus, quod adversus matrimonium audiri non debet, quae, ante cognitionem sui legitimum annum attingens, quum potuit, minime reclamavit. Sicut enim ante legitimum consensum, qui in duodecimo anno spectatur, *secundum ius canonicum* potuit dissentire: sic, postquam legitimo tempore accedente semel etiam copulae carnali consensit, ex ratihabitione sibi super hoc silentium non ambigitur indixisse. [*Rursus quidam etc. cf. c.* 6. *Qui cler. vel vov. IV.* 6.]

Chapter V

Latin source headnote: One who accuses a marriage for gain is repelled.

Innocent III, to the Archbishop, the Provost, and the Prior of Saint Mary of the Albanians at Genoa.

At the representation of M. of Canula, *a citizen of Genoa*, it was declared to our apostolate that, when *he* had lawfully married N., S., the mother *of the woman* herself, endeavored to accuse the marriage in order to extort money from him. And although wicked works cannot answer her understanding, nevertheless *she* wishes to have money so that she may desist [*henceforth*] from accusation *of the same*

marriage. Therefore, since indulgence is not to be granted to the malice of men, by apostolic writings we command *your discretion* that, if it is so, repelling the *woman herself* from accusation of the *same* marriage, you impose silence upon her concerning this. [*You, brother, etc. Given at the Lateran, on the seventeenth day before the Kalends of July,* 1204.]

> Repellitur accusans matrimonium propter quaestum.
>
> Innocentius III. Archiepiscopo, Praeposito et Priori sanctae Mariae de Albanen. Genuensibus.
>
> Significante M. de Canula *cive Ianuensi* nostro est apostolatui declaratum, quod, quum *ipse* N. duxisset legitime in uxorem, S. mater *mulieris* ipsius nisa est matrimonium accusare, ut ab eo pecuniam extorqueret. Et licet intellectui suo prava non possint opera respondere, nihilominus *tamen* vult habere pecuniam, ut a *matrimonii eiusdem* [*de cetero*] accusatione desistat. Quum igitur non sit malitiis hominum indulgendum, *discretioni vestrae per apostolica scripta* mandamus, quatenus, si est ita, ipsam *mulierem* ab accusatione *ipsius* matrimonii repellentes, eidem super hoc silentium imponatis. [*Tu frater etc. Dat. Lat. XVII. Kal. Iul.* 1204.]

Chapter VI

Latin source headnote: One who kept silent at the time of the proclamation is repelled from accusation of a marriage, unless he was reasonably ignorant of the proclamation, or swears that he learned the matter anew and that he does not object to it maliciously.

The same.

When in your diocese—(And below: [*Compare chapter* 30, *On Tithes, III.* 30.]) But if after a marriage has been contracted some accuser appears, although he did not come forth publicly when the banns were proclaimed in the churches according to custom, it can deservedly be asked whether the voice of his accusation ought to be admitted. Concerning this we considered that a distinction should be made as follows: if, at the time of the aforesaid proclamation, the one who attacks those now joined was outside the diocese, or otherwise the proclamation could not come to his knowledge—as, for example, if, laboring under the heat of excessive infirmity, he suffered exile from a sound mind, or *was* constituted in years so tender that his age was not able to suffice for comprehension of such things, or was impeded by another lawful cause—his accusation ought to be heard. Otherwise, since it is reasonably presumed that, while present in that diocese, he was by no means ignorant of the proclamation publicly made, he is without doubt to be repelled as suspect, unless he has affirmed by his own oath that he afterward learned the things which he objects and that he does not proceed to this from malice; because then, even if he learned from those who kept silent at the time of the proclamation, the approach to accusing ought not to be closed to him, since, even if the fault contracted from such silence excluded them from an attack of this kind, nevertheless this man could not be removed, since he is not culpable. [*But whether, etc. Compare chapter* 44, *On Witnesses, II.* 22. *Given at the Lateran, on the fourth day before the Kalends of November, in the fifteenth year of our pontificate,* 1212.]

> Repellitur ab accusatione matrimonii qui denunciationis tempore tacuit, nisi denunciationem probabiliter ignoravit, vel iuret de novo didicisse, et quod non obiicit illam malitiose.
>
> Idem.
>
> Quum in tua dioecesi (*Et infra:* [*cf. c.* 30. *de dec. III.* 30.]) Si vero post contractum matrimonium aliquis appareat accusator, quum non prodierit in publicum, quando banna secundum consuetudinem in ecclesiis edebantur, utrum vox suae debeat accusationis admitti, merito quaeri potest. Super quo sic

duximus distinguendum, quod, si tempore denunciationis praemissae is, qui iam coniunctos impetit, extra dioecesim exsistebat, vel alias denunciatio non potuit ad eius notitiam pervenire, ut puta, si nimiae infirmitatis fervore laborans sanae mentis patiebatur exsilium, vel in annis *erat* tam teneris constitutus, quod ad comprehensionem talium eius aetas sufficere non valebat, seu alia causa legitima fuerit impeditus, eius accusatio debet audiri. Alioquin, quum rationabiliter praesumatur, quod denunciationem publice factam idem exsistens in ipsa dioecesi minime ignoravit, tanquam suspectus est procul dubio repellendus, nisi proprio firmaverit iuramento, quod postea didicerit ea, quae obiecerit, et ad hoc ex malitia non procedat, quia tunc, etiamsi didicisset ab illis, qui denunciationis tempore siluerunt, claudi non debet eidem aditus accusandi, quoniam, etsi ab impetitione huiusmodi culpa de silentio tali contracta illos excluderet, iste tamen amoveri nequiret, quum culpabilis non exsistat. [*Utrum autem etc. cf. c.* 44. *de test. II.* 22. *Dat. Lat. IV. Kal. Nov. Pont. nostr. Ao. XV.* 1212.]

Title XIX: On the Separation of Spouses

Chapter I

Latin source headnote: Necessary homicide does not deprive one of the hope of marriage, but a plot against the death of a spouse does.

From the council at Worms.

If any woman has taken counsel with other [*persons*] for the death of her husband, and the *man* himself, in defending himself, kills one of them, *and to prove this* [*you are able*], the *man himself can dismiss that wife and*, after the death of the wife, if he wishes, marry another. But let the woman who laid the plot remain subject to penance without hope of marriage.

DE DIVORTIIS.

Homicidium necessarium non privat spe coniugii, sed machinatio in mortem coniugis sic.

Ex concilio apud Wormaciam.

Si qua mulier in mortem mariti sui cum aliis [*hominibus*] consiliata est, et ipse *vir* aliquem illorum se defendendo occiderit, *et hoc probare* [*potes*], potest ipse *vir ipsam uxorem dimittere, et* post mortem uxoris, si voluerit, aliam ducere. Ipsa autem insidiatrix poenitentiae absque spe coniugii stet subiecta.

Chapter II

Latin source headnote: Spouses are not separated on account of the crime of one of them, unless they fornicate spiritually; and even then the marriage endures, even when they have been separated.

Alexander III.

Your fraternity asked of us whether a woman ought to be separated from her husband for robbery or any other crime and marry another; and concerning the man you proposed a question in like manner, whether for any disgraceful act he can be divided from his spouse and lawfully join another to himself in marriage. Therefore we respond in this manner: a woman ought not to be separated from him for theft or another crime of her husband, unless *he endeavors to draw her into his evil deeds and* wishes to corrupt the religion of her faith, *nor is she for any reason to be joined to another*. But if he has drawn his spouse into the evil deed of unbelief, the *woman* will be able *to depart* from the husband *and* to be separated, in such a way, however, that it will not be lawful for her to marry another, because, although they are separated, they will nevertheless always be spouses. In the case of husbands also, let the form of the present sentence be observed.

Coniuges propter alterius crimen non separantur, nisi spiritualiter fornicentur, et tunc durat coniugium, eis etiam separatis.

Alexander III.

Quaesivit a nobis *tua fraternitas, utrum mulier pro latrocinio aut quolibet alio crimine a viro suo debeat separari, et alii nubere, et de viro simili modo quaestionem proposuisti, utrum pro quolibet flagitio possit a coniuge dividi, et aliam sibi legitime matrimonio copulare*. Nos itaque taliter respondemus, quod mulier pro furto vel alio crimine viri sui, nisi *ipse eam ad maleficia sua trahere nitatur, et* fidei suae religionem corrumpere velit, ab eo separari non debet, *nec alii aliqua ratione copulari*. Verum si coniugem suam ad infidelitatis maleficium traxerit, *mulier* a viro *recedere* poterit *et* separari, ita, quod ei nubere alii non licebit, quia, licet separentur, semper tamen coniuges erunt. In viris quoque praesentis sententiae forma servetur.

Chapter III

Latin source headnote: A husband cannot dismiss his wife without a judgment of the Church, even on account of a notorious impediment of kinship. If report relates an impediment to a marriage, even when no one opposes it, the bishop can inquire into it by his office. But if the impediment is notorious, the bishop can separate the marriage by his office.

The same, to the Bishops of Amiens.

Moreover, concerning the Count of Ponthieu, who dismissed *the daughter* of B. *of Saint-Valery*, his wife, without a judgment of the Church *for the reason* that he proposes that she was a blood relative of his deceased wife, let your prudence know *this*: even if the kinship were public and notorious, he could not be separated from her without a judgment of the Church; wherefore you are strictly to compel him to receive her who seeks restoration of him. If he is unwilling to receive her, bind him and the woman brought in over her with the bond of excommunication. *But if any persons appear who lawfully wish and are able to attack the marriage itself, hear the case and decide it by the due end.* Moreover, concerning H., who married *the daughter of Adelm*, his blood relative, [*as*] wife, *if this is public and manifest and no one appears who wishes to attack the marriage, we respond to you* that, when accusers do not appear and the kinship is manifest or public—which is not credible unless they were *first cousins* in the first or second degree—it pertains to your office to dissolve, with gravity applied, those marriages which are known to have been unlawfully contracted. [*To these things, etc. Compare chapter* 15, *On Tithes, III.* 30.]

Vir non potest dimittere uxorem sine iudicio ecclesiae, etiam propter impedimentum parentelae notorium. Si fama refert impedimentum coniugii, etiam nemine opponente, episcopus ex officio suo potest de eo inquirere. Si vero impedimentum est notorium, potest episcopus ex officio suo matrimonium separare.

Idem Ambianensi Episcopis.

Porro de comite Pontini, qui *filiam* B. *de sancto Valerico* uxorem suam absque iudicio ecclesiae dimisit *propterea*, quia eam cognatam fuisse uxoris defunctae proponit, *haec* prudentia tua cognoscat, quod, si etiam parentela esset publica et notoria, absque iudicio ecclesiae ab ea separari non potuit, quare ipsum ad eam recipiendam, quae petit restitutionem ipsius, districte compellas. Quam si recipere noluerit, eum et superinductam vinculo excommunicationis adstringas. *Si qui autem apparuerint, qui matrimonium ipsum legitime velint et possint impetere, causam audias, et eam fine debito decidas*. Praeterea de H. qui *filiam Adelmi*, cognatam suam, duxit [*in*] uxorem, *si hoc publicum est et manifestum, nec apparet aliquis, qui matrimonium velit impetere, id tibi* respondemus, quod, non apparentibus accusatoribus, et parentela manifesta seu publica exsistente, quod credibile non est, nisi essent *consobrini* in primo gradu vel

secundo, tui officii interest, matrimonia illa adhibita gravitate dissolvere, quae illicite contracta noscuntur. [*Ad haec etc. cf. c.* 15. *de dec. III.* 30.]

Chapter IV

Latin source headnote: A wife seeking restoration of her husband is repelled if she has notoriously fornicated and the husband has remained continent.

The same.

You signified *to us* that a certain *knight in your province*, having dismissed his wife without a judgment [*and authority*] of the Church because it had been suggested to him that she had committed incest with a certain blood relative of his, was on this account bound with the bond of excommunication. But the *woman herself* did not remain continent, but received offspring from another man; nevertheless she seeks to be restored to her husband, asserting that she [*had been*] unjustly dismissed by him and that the same *man* had given her material for committing adultery. *Hence, because you consulted us whether the woman herself ought to be restored to* [*her*] *husband, and the husband compelled to receive her*, we respond to your consultation in this manner: if it is notorious that the woman herself committed adultery, the aforesaid husband ought not to be compelled to receive her, unless it were established that he had committed adultery with another woman.

Repellitur uxor, petens restitutionem mariti, si notorie fornicata est, et maritus continuit.

Idem.

Significasti *nobis*, quod quidam *miles in provincia tua*, uxore sua sine iudicio ecclesiae [*et auctoritate*] dimissa pro eo, quod suggestum sibi fuerat, ipsam incestum cum quodam consanguineo suo commisisse, vinculo fuit propter hoc excommunicationis adstrictus. Verum mulier *ipsa* non continuit, sed sobolem de alio viro suscepit; nec minus postulat viro restitui, asserens, se ab ipso iniuste [*fuisse*] dimissam, et eundem *virum* sibi materiam adulterandi dedisse. *Unde, quia nos consuluisti, utrum mulier ipsa debeat viro* [*suo*] *restitui, et vir ad eius receptionem compelli*, Consultationi tuae taliter respondemus, quod, si notorium est, mulierem ipsam adulterium commisisse, ad eam recipiendam praefatus vir cogi non debet, nisi constaret, ipsum cum alia adulterium commisisse.

Chapter V

Latin source headnote: A marriage is separated on account of the adultery of the woman, and, if the man afterward fornicates, it is restored. And it is a good case and very capable of being cited.

The same.

We received from your letters that *the bearer of the present letters*, named V., *formerly of your diocese*, married a certain woman, *namely Lucia, as* wife; they, *at the instigation of a malignant spirit*, were in concord for only a short time. For the same V. proposed that he had married her through violence inflicted upon him, with fear also intervening. *But you, together with your chapter, when you often endeavored to restore peace between them by both threats and admonitions, compelled them, after they had been rashly separated, likewise to be reconciled:* finally the husband judicially accused his wife concerning the crime of fornication, and she, being led by what spirit is unknown, began publicly to confess that, because her husband refused to provide for her in *things due and* necessary, she was compelled to incur the aforesaid crime. And when she had been more diligently admonished by you not to propose so shameful a thing against herself at the suggestion of anyone *or upon iniquitous counsel*, she asserted it

more manifestly. Indeed, when, after summoning your chapter *and other discreet men*, on their counsel you *firmly* enjoined upon each of them that continence was to be observed privately, in such a way that they should live chastely while separated from one another, *and from the report of certain persons you perceived that* the aforementioned V. *intended to marry another woman, although you diligently admonished him not to attempt this in any manner, nevertheless outside the city* he rashly celebrated betrothals and nuptials with another woman in secret. But when you labored to investigate the deed, *so that you might proceed according to it*, the above-mentioned V., explaining and expounding the course of the matter *as it had been done*, is said to have appealed to our hearing. Hence, *by apostolic writings*, we command your fraternity that, if the matter so proceeded, *with appeal removed, through a sentence of excommunication* you compel the aforesaid man to return to his lawful wife, *and, after penance has been enjoined upon him for the adultery committed with the second woman, you cause the first to be treated by him with marital affection.* [*The chaplain, etc. Compare chapter* 1, *On Second Marriages, IV.* 21. *Given at the Lateran.*]

> Matrimonium separatur propter adulterium mulieris, et, si vir postea fornicetur, redintegratur. Et est bonus casus et multum allegabilis.
>
> Idem.
>
> Ex literis tuis accepimus, quod *lator praesentium*, V. *nomine, olim de tua dioecesi* quandam duxit, *videlicet Luciam, in* uxorem, qui, *maligno spiritu instigante*, paucis temporibus fuere concordes. Proponebat enim idem V., quod illam per violentiam sibi illatam, metu etiam mediante duxisset. *Tu vero una cum capitulo tuo, quum tam minis quam admonitionibus inter eos saepe pacem reformare studeres, ei eos temere segregatos pariter reconciliari coegisses*: Tandem vir uxorem suam super crimine fornicationis in iure convenit, quae, nescitur quo ducta spiritu, coepit publice confiteri, quod, quum vir negaret ei in *debitis et* necessariis providere, crimen compulsa est incurrere memoratum. Quumque diligentius a te fuisset admonita, ne ad suggestionem alicuius *vel iniquum consilium* illud tam turpe contra se proponeret, ipsa id manifestius asserebat. Sane, tu, convocato capitulo tuo *et aliis viris discretis*, quum ex eorundem consilio utrique privatim continentiam *firmiter* iniunxeris observandam, ita, quod caste viverent ab invicem segregati, *et ex relatione quorundam perceperis, quod aliam* memoratus V. *intenderet ducere in uxorem, licet ipsum, ne hoc facere aliquatenus attentaret, monueris diligenter, ipse nihilominus extra civitatem* furtim cum alia sponsalia et nuptias temere celebravit. Verum quum factum inquirere laborares, *ut secundum illud procederes*, supra dictus V. rei seriem, *prout factum fuerat*, explicans et exponens, ad audientiam nostram dicitur appellasse. Unde fraternitati tuae *per apostolica scripta* mandamus, quatenus, si res ita processit, praetaxatum virum *appellatione remota* ad legitimam uxorem *per excommunicationis sententiam* redire compellas, *et, iniuncta eidem poenitentia de commisso adulterio cum secunda, priorem maritali affectione ab ipso facias pertractari*. [*Capellanum etc. cf. c.* 1. *de sec. nupt. IV.* 21. *Dat. Laterani*.]

Chapter VI

Latin source headnote: If a wife departs on her own authority from a husband who has lapsed into heresy, she is compelled to return to him when he returns; otherwise, if she had been separated from him by a judgment of the Church.

Urban III, to the Bishop of Florence.

Concerning the woman *indeed* who, when her husband lapsed into heresy, avoided his companionship without a judgment of the Church, *whether, when he returns to Catholic unity, she is to be compelled to restore the marriage*, it seems to us that the woman—especially if she departed with the intention that he who lapsed into heresy, affected alike by weariness and confusion, might convert himself from his error—

is to be restored to him when he has returned, and, even if she is unwilling to return, is to be compelled. But if by a judgment of the Church she withdrew from him *without hope of restoring the marriage*, we say that *she* is in no way to be compelled to receive him. [*But concerning the wife, etc. Compare chapter* 7, *On Burial, III.* 28.]

> Si uxor a viro, lapso in haeresim, propria auctoritate divertit, ad eum reversum redire compellitur; secus, si per iudicium ecclesiae ab eo fuisset separata.
>
> Urbanus III. Florentino Episcopo.
>
> De illa *vero*, quae, viro suo labente in haeresim, ipsius consortium sine iudicio ecclesiae declinavit, *utrum, revertente illo ad catholicam unitatem, ad redintegrandum matrimonium sit cogenda*, videtur nobis, quod mulier, maxime si ea intentione decessit, ut lapsus in haeresim taedio pariter et confusione affectus se ab errore suo converteret, ei, quum reversus fuerit, est reddenda, quae, etiamsi reverti noluerit, compellatur. Si vero iudicio ecclesiae ab eo *sine spe matrimonii redintegrandi* recessit, ad recipiendum eum nullatenus *eam* dicimus compellendam. [*De uxore vero etc. cf. c.* 7. *de sepult. III.* 28.]

Chapter VII

Latin source headnote: The conjugal bond is not dissolved when one of two faithful spouses lapses into heresy. But if one of two infidel spouses is converted to the faith and the other is unwilling to cohabit with that spouse, or not without blasphemy, or without mortal sin, the marriage is dissolved, and the convert will be able to contract.

Innocent III, to the Bishop of Ferrara.

The *more* we know you to be skilled in canon law, *the more we commend your fraternity in the Lord because in doubtful points of questions you have recourse to the Apostolic See, which by the Lord's disposition is the mother and teacher of all the faithful, so that the opinion which you once held in them while you taught others skill in canon law may either be corrected by the Apostolic See or approved*. Indeed, your fraternity *through its letters* intimated *to us* that, when one of the spouses passes into heresy, the one who is left desires to fly to second vows *and to procreate children*; through your letters you considered that we should be consulted whether this can be done *by law*. Therefore, responding to your consultation *on the common counsel of our brothers*, we distinguish—although a certain predecessor of ours seems to have thought otherwise—whether one of two infidels is converted to the Catholic faith, or one of two faithful persons lapses into heresy or falls into the error of paganism. For if one of the infidel spouses is converted to the Catholic faith, while the other is either in no way willing to cohabit with that spouse, or is willing to do so *at least* not without blasphemy of the divine name, or in order to draw that spouse into mortal sin, the one who is left will pass to second vows if that person wishes. And in this case we understand what the Apostle says: "If the infidel departs, let that person depart. For a brother or sister is not subject to servitude in matters of this kind," and also the canon in which it is said *that* "an insult to the Creator dissolves the law of marriage with respect to the one who is left." But if one of two faithful spouses either lapses into heresy or passes into the error of paganism, we do not believe that in this case the one who is left can, while the other is living, fly to second nuptials, although in this case a greater insult to the Creator appears. For although a *true* marriage exists between infidels, it is nevertheless not ratified. But between the faithful it exists both *true* and ratified, because the sacrament of faith, which was once admitted, is never lost; but it makes the sacrament of marriage ratified, so that the sacrament itself endures between the spouses while it

endures. Nor does it stand in the way that perhaps it is objected by certain persons that the faithful person who is left ought not without fault to be deprived of that person's right, since this happens in many cases, as if one of the spouses is castrated. By this response, *however*, the malice of certain persons is forestalled who, out of hatred for their spouses, or whenever they displeased one another, if they could dismiss them in such a case, would feign heresy so that, when their spouses married, they might recoil from the marriage itself. Through this same response is resolved that question by which it is asked whether the one who remained in the faith is compelled to return to the one who returns [*either*] from heresy or from infidelity. [*Given at the Lateran, on the Kalends of May,* 1199.]

> Vinculum coniugale non dissolvitur altero coniugum fidelium in haeresim lapso. Sed si unus infidelium coniugum convertatur ad fidem, et alter noluit sibi cohabitare, vel non sine blasphemia, vel sine peccato mortali, solvitur coniugium, et conversus contrahere poterit.
>
> Innocentius III. Ferrariensi Episcopo.
>
> Quanto te *magis* novimus in canonico iure peritum, *tanto fraternitatem tuam amplius in Domino commendamus, quod in dubiis quaestionum articulis ad sedem apostolicam recurris, quae disponente Domino cunctorum fidelium mater est et magistra, ut opinio, quam in eis quondam habueras, dum alios canonici iuris peritiam edoceres, vel corrigatur per sedem apostolicam vel probetur*. Sane tua *nobis* fraternitas *suis literis* intimavit, quod, altero coniugum ad haeresim transeunte, qui relinquitur ad secunda vota desiderat convolare *et filios procreare*, quod, utrum possit fieri *de iure*, per tuas nos duxisti literas consulendos. Nos igitur consultationi tuae *de communi fratrum nostrorum consilio* respondentes, distinguimus, licet quidam praedecessor noster sensisse aliter videatur, an ex duobus infidelibus alter ad fidem catholicam convertatur, vel ex duobus fidelibus alter labatur in haeresim, vel decidat in gentilitatis errorem. Si enim alter infidelium coniugum ad fidem catholicam convertatur, altero vel nullo modo, vel *saltem* non sine blasphemia divini nominis, vel ut eum pertrahat ad mortale peccatum, ei cohabitare volente: qui relinquitur, ad secunda, si voluerit, vota transibit. Et in hoc casu intelligimus quod ait Apostolus: "Si infidelis discedit, discedat. Frater enim vel soror non est servituti subiectus in huiusmodi," et canonem etiam, in quo dicitur, *quod* "contumelia creatoris solvit ius matrimonii circa eum, qui relinquitur." Si vero alter fidelium coniugum vel labatur in haeresim, vel transeat ad gentilitatis errorem, non credimus, quod in hoc casu is, qui relinquitur, vivente altero possit ad secundas nuptias convolare, licet in hoc casu maior appareat contumelia creatoris. Nam etsi matrimonium verum *quidem* inter infideles exsistat, non tamen est ratum. Inter fideles autem verum *quidem* et ratum exsistit, quia sacramentum fidei, quod semel est admissum, nunquam amittitur; sed ratum efficit coniugii sacramentum, ut ipsum in coniungibus illo durante perduret. Nec obstat, quod a quibusdam forsan obiicitur, quod fidelis relictus non debeat iure suo sine culpa privari, quum in multis casibus hoc contingat, ut si alter coniugum incidatur. Per hanc *autem* responsionem quorundam malitiae obviatur, qui in odium coniugum, vel quando sibi invicem displicerent, si eas possent in tali casu dimittere, simularent haeresim, ut ab ipsa nubentibus coniugibus resilirent. Per hanc ipsam responsionem illa solvitur quaestio, qua quaeritur, utrum ad eum, qui [*vel*] ab haeresi vel infidelitate revertitur, is, qui permansit in fide, redire cogatur. [*Dat. Lat. Kal. Maii* 1199.]

Chapter VIII

Latin source headnote: Pagans joined in a degree prohibited only by canon law are not separated when converted to the faith. This first. If a pagan previously has several wives, after receiving the faith he will adhere to the first. This second. And if, after repudiating a wife, he contracted with a second, even after baptism he will dismiss the second and adhere to the repudiated first wife, even if the repudiated woman had contracted with another; otherwise if she had fornicated. This third.

The same, to the Bishops of Tiberias.

We rejoice in the Lord *and in the power of his might, and we render abundant acts of thanksgiving to the Father of lights, from whom is every best thing given and every perfect gift, because, as you intimated to us by your letters, in these last days he who does not wish the death of a sinner but that he be converted and live has inspired the hearts of many pagans to come to the Christian faith.* You sought to be instructed by an apostolic writing whether pagans who take as wives women joined to them in the second or third or a further degree, being so joined, ought after their conversion to remain together or to be separated from one another. Concerning this we respond to *your fraternity* in this manner: since the sacrament of marriage exists among both the faithful and infidels, as the Apostle shows, saying, "If any brother has an unbelieving wife, and she consents to dwell with him, let him not dismiss her," and in the aforesaid degrees marriage has been lawfully contracted by pagans with respect to themselves, who are not bound by canonical constitutions—"For what is it to us," according to the same Apostle, "to judge concerning those things which are outside?"—especially in favor of the Christian religion and faith, from the reception of which men can easily be recalled by wives who fear that they will be deserted, faithful persons of this kind who were matrimonially joined can freely and lawfully remain joined, since marriages are not dissolved through the sacrament of baptism, but crimes are remitted. But because pagans divide conjugal affection among several women at the same time, it is not without reason doubted whether after conversion they may retain all of them or which one of all. *But because both the patriarchs and other just men before the law and likewise after the law are read to have had many wives at the same time, and no contrary precept appears in the Gospel or the law, nor are pagans subject to canonical institutes discovered afterward, as was premised, it seems that even now according to their rite they lawfully contract with different women, whose lawful unions the water of sacred baptism does not dissolve; and thus, after the example of the patriarchs, pagans converted to the faith of Christ will rejoice in a plurality of marriages.* But this seems discordant and hostile to the Christian faith, since from the beginning one rib was transformed into one woman, and divine scripture testifies that for this reason a man shall leave father and mother and shall adhere to his wife, and the two shall be in one flesh; it did not say "three or more," but "two," nor did it say "he shall adhere to wives," but "to his wife." *Hence Lamech, who is read to have had several wives at the same time, is reproved in the scriptures because he first introduced the reprobate form of bigamy. Although you did not ask concerning these things, nevertheless, wishing to render both you and others more certain concerning them as well, and that truth may prevail over falsehood, without any doubt we declare that* it was never lawful for anyone to have several wives at the same time, unless it was granted to him by divine revelation, which is sometimes reckoned custom and at other times even divine right; through this, just as Jacob is excused from falsehood, the Israelites from theft, and Samson from homicide, so also the patriarchs and other just men who are read to have had several wives at once are excused from adultery. Indeed, this truthful sentence is proved also by the testimony of Truth, who testifies in the Gospel: "Whoever shall dismiss his wife, *except* on account of fornication, and shall marry another, commits adultery." If, therefore, after the wife has been dismissed, another cannot lawfully *also* be married, all the more while she is retained; through this it plainly appears that plurality concerning marriage is to be reproved in both sexes, since they are not judged by unequal standards. *Moreover, etc.* (*Compare chapter* 15, *Which Children Are Legitimate, IV.* 17.) But he who according to his rite repudiated his lawful wife, since Truth in the Gospel has reproved such repudiation, will never lawfully be able, while she lives, to have another, even after being converted to the faith of Christ, unless after his conversion she refuses to cohabit with him, or, even if she consents, nevertheless not

without insult to the Creator, or in order to draw him into mortal sin. In this case, restitution would be denied to the one seeking restoration, although an unjust spoliation were established, because according to the Apostle a brother or sister is not subject to servitude in matters of this kind. But if she, converted also, follows him after he has been converted to the faith, before he marries a lawful wife on account of the aforesaid causes, he will be compelled to receive her. Moreover, although according to the truth of the Gospel he who marries a dismissed woman commits adultery, nevertheless the man who dismissed her will not be able to object to the dismissed woman the fornication arising from the fact that she married another after the repudiation, unless she otherwise fornicated.

> Pagani, iuncti in gradu prohibito lege canonica tantum, conversi ad fidem non separantur. Hoc primo. Si paganus prius plures uxores habeat, post fidem susceptam adhaerebit primae. Hoc secundo. Et, si repudiata uxore cum secunda contraxerit, etiam post baptismum dimittet secundam, et adhaerebit primae repudiatae, etiamsi repudiata cum alio contraxisset; secus si fornicata fuisset. Hoc tertio.
>
> Idem Tiberiadensi Episcopis.
>
> Gaudemus in Domino +*et in potentia virtutis ipsius, et Patri luminum, a quo est omne datum optimum et omne donum perfectum, uberes gratiarum exsolvimus actiones, quod, sicut nobis tuis literis intimasti, diebus istis novissimis ille, qui non vult mortem peccatoris, sed ut convertatur et vivat, ut ad Christianam venirent fidem, multorum paganorum cordibus inspiravit*. Utrum pagani uxores accipientes in secundo vel tertio, vel ulteriori gradu sibi coniunctas, sic coniuncti debeant post conversionem suam insimul remanere, vel ab invicem separari, edoceri per scriptum apostolicum postulasti. Super quo *fraternitati tuae* taliter respondemus, quod, quum sacramentum coniugii apud fideles et infideles exsistat, quemadmodum ostendit Apostolus, dicens: "Si quis frater infidelem habet uxorem, et haec consentit habitare cum eo, non illam dimittat," et in praemissis gradibus a paganis quoad eos matrimonium licite sit contractum, qui constitutionibus canonicis non arctantur, ("quid enim ad nos," secundum Apostolum eundem, "de his, quae foris sunt, iudicare?") in favorem praesertim Christianae religionis et fidei, a cuius perceptione per uxores, se deseri timentes, viri possunt facile revocari, fideles huiusmodi matrimonialiter copulati libere possunt et licite remanere coniuncti, quum per sacramentum baptismi non solvantur coniugia, sed crimina dimittantur. Quia vero pagani circa plures insimul feminas affectum dividunt coniugalem, utrum post conversionem omnes, vel quam ex omnibus retinere valeant, non immerito dubitatur. *Quia vero tam patriarchae quam alii iusti viri ante legem pariter et post legem multas uxores insimul habuisse leguntur, nec contrarium apparet in evangelio vel lege praeceptum, neque pagani subiiciuntur canonicis institutis post inventis, quemadmodum est praemissum: videtur, quod nunc etiam iuxta ritum suum licite contrahant cum diversis, quorum coniunctiones legitimas unda sacri baptismatis non dissolvit, et ita patriarcharum exemplo ad fidem Christi conversi pagani coniugiorum pluralitate gaudebunt*. Verum absonum hoc videtur et inimicum fidei Christianae, quum ab initio una costa in unam feminam sit conversa, et scriptura divina testetur, quod propter hoc relinquet homo patrem et matrem, et adhaerebit uxori suae, et erunt duo in carne una; non dixit: "tres vel plures," sed: "duo," nec dixit: "adhaerebit uxoribus," sed: "uxori." *Unde Lamech, qui plures simul uxores legitur habuisse, reprehenditur in scripturis eo, quod ipse primus reprobandam bigamiae speciem introduxit. Licet autem de his non quaesieris, volentes tamen tam te quam alios super his etiam reddere certiores, et quod veritas praevaleat falsitati, sine dubitatione qualibet protestamur, quod* Nec ulli unquam licuit insimul plures uxores habere, nisi cui fuit divina revelatione concessum, quae mos quandoque, interdum etiam fas censetur, per quam, sicut Iacob a mendacio, Israelitae a furto et Samson ab homicidio, sic et patriarchae et alii viri iusti, qui plures leguntur simul habuisse uxores, ab adulterio excusantur. Sane veridica haec sententia probatur etiam de testimonio veritatis, testantis in evangelio: "Quicunque dimiserit uxorem suam *nisi* ob fornicationem, et aliam duxerit, moechatur." Si ergo, uxore dimissa, duci *et* alia de iure non potest,

fortius et ipsa retenta; per quod evidenter apparet, pluralitatem in utroque sexu, quum non ad imparia iudicentur, circa matrimonium reprobandam. *Ceterum etc.* (*cf. c.* 15. *Qui fil. sint leg. IV.* 17.) Qui autem secundum ritum suum legitimam repudiavit uxorem, quum tale repudium veritas in evangelio reprobaverit, nunquam ea vivente licite poterit aliam, etiam ad fidem Christi conversus, habere, nisi post conversionem ipsius illa renuat cohabitare cum ipso, aut etiamsi consentiat, non tamen absque contumelia creatoris, vel ut eum pertrahat ad mortale peccatum. In quo casu restitutionem petenti, quamvis de iniusta spoliatione constaret, restitutio negaretur, quia secundum Apostolum frater aut soror non est in huiusmodi subiectus servituti. Quodsi conversum ad fidem et illa conversa sequatur, antequam propter causas praedictas legitimam ille ducat uxorem, eam recipere compelletur. Quamvis quoque secundum evangelicam veritatem qui duxerit dimissam moechatur, non tamen dimissor poterit obiicere fornicationem dimissae pro eo, quod nupsit alii post repudium, nisi alias fuerit fornicata.

Chapter IX

Latin source headnote: It is not lawful to take the widow of a brother as wife, and if married in fact she is to be separated, unless the Church dispenses otherwise.

The same, to the Bishop of Livonia and the brothers who are with him.

God, who his Church—(And below: [*Compare chapter* 11, *On Life and Honesty, III.* 1.]) But because *in contracting marriages* the rite among those of the Church of Livonia newly converted to the Catholic faith is different from ours, *since they do not attend to the canonical distinction in consanguinity or affinity, and have been accustomed indiscriminately to join the widows of their brothers to themselves; lest on account of this they be drawn back from their good purpose—since certain of them were unwilling to believe unless you permitted them to retain their brothers' widows, nor were you willing to receive them for baptism unless they dismissed such women* —on account of the *newness and* weakness of that people, we concede that they may enjoy marriages contracted with their brothers' widows, if nevertheless, when the brothers died without offspring, they contracted with such women so that they might raise up the seed of the deceased according to the Mosaic law; prohibiting them from joining such women to themselves henceforth, after they have come to the faith. [*To these things,*] *adhering to the footsteps of blessed Pope Gregory, our predecessor of holy memory, lest the people of Livonia, through fear of more austere requirements, withdraw from the good which it began, by apostolic authority we dispense with them so that they may contract marriage in the fourth and further generation until they are more fully made firm in the faith; conceding this to them not with the intention that, after they have been made firm in the faith with a stable root, they may be joined to such persons; for according to the word of the Apostle, saying, "I gave you milk as drink, not meat," we conceded that these things are to be held for the present only, not for future times, lest, which may it not be, the good which has been planted with a still-weak root be burned up, but rather that it may be strengthened and faithfully preserved unto perfection. But since the sacrament of marriage exists among the faithful and infidels, as the Apostle declares: "If any brother," he says, "has an unbelieving wife, and she consents to dwell with him, let him not dismiss her"; and since by pagans, who are not bound by canonical constitutions—(for what is it to us, according to the same Apostle, to judge concerning those who are outside?)—marriage in the second and third degree is lawfully contracted with respect to themselves: in favor of the Christian religion and faith, from the reception of which men can easily be recalled by wives who fear that they will be deserted, faithful persons who, in this degree while in infidelity, were matrimonially joined to one another can freely and easily remain joined, since marriages are not dissolved through the sacrament of baptism but crimes are remitted. Moreover, etc.* [*Compare chapter* 7, *On Penance, V.* 38. *Given on the thirteenth day before the Kalends of May, in the fourth year,* 1201.]

Non licet relictam fratris in uxorem accipere, et de facto ducta separanda est, nisi aliter ecclesia dispenset.

Idem Livoniensi Episcopo, et eis, qui cum ipso sunt fratribus.

Deus, qui ecclesiam suam (*Et infra:* [*cf. c.* 11. *de vita et hon. III.* 1.]) Quia *vero in matrimoniis contrahendis* dispar est ritus in Livoniensium ecclesia de novo ad fidem catholicam conversorum a nostro, *quum in consanguinitate vel affinitate distinctionem canonicam non attendant, et relictas fratrum indistincte sibi consueverint copulare: ne propter hoc a bono proposito retrahantur, quum nec quidam eorum voluerint credere, nisi relictas fratrum eos pateremini retinere, nec vos eos, nisi tales dimitterent, recipere volueritis ad baptisma*, propter *novitatem et* infirmitatem gentis eiusdem concedimus, ut matrimoniis contractis cum relictis fratrum utantur; si tamen, fratribus decedentibus sine prole, ut semen defuncti iuxta legem Mosaicam suscitarent, cum talibus contraxerunt; ne tales sibi de cetero, postquam ad fidem venerint, copulent, prohibentes. [*Ad haec*] *sanctae memoriae beati Gregorii papae, praedecessoris nostri, vestigiis adhaerentes, ne populus Livoniensis a bono, quod coepit, austeriora metuendo recedat, ut in quarta et ulterius generatione matrimonium contrahant, donec in fide plenius solidentur, cum eis auctoritate apostolica dispensamus; non ea intentione concedentes hoc ipsis, ut, postquam firma radice in fide fuerint solidati, talibus coniungantur; nam secundum apostoli verbum, dicentis: "lac dedi vobis potum, non escam," illis modo, non posteris temporibus tenenda concessimus, ne, quod absit, exuratur bonum, quod adhuc infirma est radice plantatum, sed firmetur potius et usque ad perfectionem fideliter conservetur. Quum autem sacramentum coniugii apud fideles et infideles exsistat, quemadmodum apostolus protestatur: "Si quis, inquiens, frater infidelem habuit uxorem et haec consentit habitare cum eo, non eam dimittat;" et a paganis, qui constitutionibus canonicis non arctantur* (*quid enim ad nos secundum eundem apostolum de iis, qui foris sunt, iudicare*), *in secundo et tertio gradu quoad eos licite contrahatur: in favorem Christianae religionis et fidei a cuius receptione per uxores se deseri timentes, viri possunt facile revocari, fideles, in hoc gradu in infidelitate sibi matrimonialiter copulati, libere possunt et facile remanere coniuncti, quum per sacramentum baptismatis non dissolvantur coniugia sed crimina dimittantur. Ceterum etc.* [*cf. c.* 7. *de poenit. V.* 38. *Dat. XIII. Kal. Mai. Ao. IV.* 1201.]

Title XX: On Donations between Husband and Wife, and on Dowry to Be Restored after Separation

Chapter I

Latin source headnote: When a marriage has been lawfully separated, the dowry is to be restored.

From the council held at Worms.

But when women have been separated from their own husbands for some lawful cause, we command that their entire dowry be returned to them, *which they received on the wedding day; and after the completion of a year let them marry another husband, if they wish; and likewise let a husband marry another wife*.

DE DONATIONIBUS INTER VIRUM ET UXOREM, ET DE DOTE POST DIVORTIUM RESTITUENDA.

Separato licite matrimonio dos restituenda est.

Ex concilio habito apud Wormaciam.

Mulieres *vero*, quum pro aliqua licita causa a propriis viris fuerint separatae, totam dotem praecipimus sibi reddi, *quam in die nuptiali receperunt et post expletum annum accipiant alium virum, si voluerint; similiter et vir uxorem*.

Chapter II

Latin source headnote: When the marriage has been dissolved, the husband is compelled to restore the dowry and to divide the goods which came to them in common.

Urban III, to the Dean, Cantor, and Chapter of Lisieux.

The woman P. signified *to us* that H., whom she held in the place of a husband, after a separation had solemnly been pronounced between them, unlawfully detains her dowry and refuses to return it; he also endeavors to claim for himself, with her wholly excluded, the possessions which came to them in common by the title of any contract while they lived together. Therefore, by apostolic writings, we command *your discretion* that, if it is so and there is nothing else that stands in the way, by ecclesiastical compulsion you compel him to restitution of the dowry and *to* division of those things which they formerly had in common.

> Soluto matrimonio cogitur vir dotem restituere, et bona dividere, quae communiter eis obvenerunt.
>
> Urbanus III. Decano, Cantori et Capitulo Lexonensibus.
>
> Significavit *nobis* P. mulier, quod H. quem loco viri tenebat, divortio inter eos solenniter celebrato, dotem suam illicite detinet et reddere contradicit, possessiones etiam, quae ipsis, dum simul viverent, cuiuscunque contractus titulo communiter obvenerunt, ea prorsus exclusa sibi nititur vindicare. Ideoque *discretioni tuae per apostolica scripta* mandamus, quatenus, si ita est, et non est aliud quod obsistat, ipsum ad restitutionem dotis, et *ad* divisionem eorum, quae olim communiter habuerunt, districtione ecclesiastica compellatis.

Chapter III

Latin source headnote: A delegate to a matrimonial case, if he renders a sentence of separation, ought to pronounce that the dowry is to be restored. And it is a case very capable of being cited.

Clement III.

We wonder *greatly* at your prudence, because, when we had committed to you for *canonical* termination the matrimonial case which was being conducted between H., *a citizen of Pisa,* and the *woman* M., and you, finding consanguinity between them *in the sixth or seventh degree,* had rendered a sentence of separation, you deferred making any determination concerning the dowry which the woman was seeking back from the man. Therefore, because *according to the laws* you, who took principal cognizance of the marriage, were also able to take accessory cognizance of and judicially determine the dowry, which is an incidental cause, by apostolic writings we command *your discretion* that, after a warning has been premised, you compel the aforesaid H. not to delay restoring to the aforesaid M. *her* entire dowry, as shall be canonical.

> Delegatus ad causam matrimonii, si ferat sententiam divortii, pronunciare debet dotem restitui. Et est casus multum allegabilis.
>
> Clemens III.
>
> De prudentia vestra *valde* miramur, quod, quum vobis causam matrimonii, quae vertebatur inter H. *Pisanum civem* et M. *mulierem* commisissemus *canonice* terminandum, et vos, consanguinitatem inter eos *in sexto vel septimo gradu* invenientes, sententiam divortii tulissetis, de dote, quam a viro mulier repetebat, quicquam statuere distulistis. Quia igitur *secundum iura* vos, qui de matrimonio principaliter cognovistis, et de dote, quae est causa incidens, accessorie cognoscere valuistis et sententialiter diffinire, *discretioni*

vestrae per apostolica scripta mandamus, quatenus praedictum H. monitione praemissa cogatis, ut praedictae M. totam dotem *suam*, sicut canonicum fuerit, restituere non moretur.

Chapter IV

Latin source headnote: A woman separated from her husband on account of adultery loses her dowry.

Clement III.

It very often *happens, as you propose, that in your parish women withdraw from their husbands on account of fornication and are known to remain so until the death of the husbands themselves; but when those men are dead and the women seek back their dowry together with their dower from the blood relatives to whom the inheritances of those men come, they deny them a hearing and are unwilling to restore what they demand, for this reason: because they are thought to have made themselves unworthy by the very fact that they considered that they should withdraw from their husbands on account of fornication.* [*Moreover, etc. Compare chapter* 2, *On Delays, II.* 8.] *Therefore, because you desire to be instructed by an apostolic response about what is to be done in each case,*] *we therefore respond in this matter that*, if a woman, on account of *her own* fornication, withdraws from *her* husband by a judgment of the Church or by her own will, and afterward is not reconciled to him, *when he is dead* she will not be able to seek back her dowry or *her* dower. [*In the second case, etc.* (*Compare chapter* 2, *On Delays, II.* 8.) *Given at the Lateran, in the third year,* 1190.]

Mulier, propter adulterium a viro separata, perdit dotem.

Clemens III.

Plerumque *accidit, ut proponis, quod in parochia tua mulieres a viris suis causa fornicationis recedunt, et sic usque ad mortem ipsorum permanere noscuntur; ipsis vero defunctis, quum a consanguineis, ad quos hereditates eorum perveniunt, dotem suam cum dotalitio suo repetunt, eis audientiam denegant, et nolunt restituere quod reposcunt, ob hanc causam, quia eo ipso se indignas fecisse putantur, quod a viris suis causa fornicationis duxerint recedendum.* [*Praeterea etc. cf. c.* 2. *de dilat. II.* 8.] *Quia igitur quid agendum sit in utroque casu apostolico responso desideras edoceri,*] *in hoc itaque respondemus, quod*, Si mulier ob causam *suae* fornicationis iudicio ecclesiae aut propria voluntate a viro *suo* recesserit, nec reconciliata postea sit eidem, *eo defuncto* dotem vel dotalitium *suum* repetere non valebit. [*In secundo etc.* (*cf. c.* 2. *de dilat. II.* 8.) *Dat. Lat. Ao. III.* 1190.]

Chapter V

Latin source headnote: A woman is compelled by the office of the judge to relinquish things given to her by a man on account of nuptials for the preservation of an unlawful marriage, if such a donation presents an impediment to the dissolution of such a marriage. This is what it says according to the understanding which pleases Panormitanus more.

Innocent III, to the Archbishop of Compostela and all the Bishops constituted in the Kingdom of León.

Although it is necessary [*that scandals come, nevertheless woe to that man through whom scandal comes. For how many disturbances and scandals have come upon the entire world in our days we experience today more in fact than we find written in a book. But it is necessary that scandals come, not only, namely, as something unavoidable, but also as something useful, since where the evil man fails, the good man makes progress, and gold is proved in the furnace. But among the other things by which the Christian people is scandalized today, foremost is the persecution of the pagans, which, with sins demanding it, has grown strong beyond measure both in the east and in the west;*

against this, in both places, they thought to find a remedy similar in a certain manner, but because they did not set God before their sight, what was found as a remedy was turned into danger. Indeed, in the east one woman was incestuously joined to two men, but in the west one man presumed to join two women to himself through incest. And in the incest committed in the east, not only the consent but also the authority of the clerics dwelling there intervened. But in the detestable union contracted in the west, although perhaps it was attempted not without the assent of certain ecclesiastical men, ecclesiastical authority nevertheless in no way intervened. But God, wishing to avenge the greater sin more quickly and to deter others from similar things, destroyed Conrad, the late marquis, who ... had previously adhered through incest to the Queen of Jerusalem, by the sword, and Henry, the late Count of Champagne, who succeeded him in a certain manner both in fault and in punishment, by a fall, but each by an unforeseen death. Yet he has not exercised his vengeance against the authors of this iniquity in the west. But the more long-sufferingly he bears them, perhaps the more severely he will avenge. Although the Apostolic See seemed to have dissembled what had been committed concerning this in the east on account of the malice of the time and the pressing persecution, nevertheless it employed the rigor of canonical compulsion to avenge what had been attempted in the west. For when it had come to the hearing of Pope Celestine, our predecessor of good memory, that the King of León had presumed incestuously to join to himself the daughter of our dearest son in Christ, the illustrious King of Portugal, he bound both the King of Portugal himself and those incestuously joined with a sentence of excommunication, and subjected the kingdoms of León and Portugal to a sentence of interdict, whence what had been unlawfully done was wholly revoked. But the said King of León, extending his hand to worse things, like the one of whom scripture says, "Woe to that man who draws sin after himself like a long garment, and the impious man, when he has come into the depth of vices, despises," shamelessly presumed, contrary to the interdict of the Church, to join to himself the daughter of our dearest son in Christ, the illustrious King of Castile—namely, his own niece. When this came to our knowledge, we considered that our beloved son Brother Rainerius, a man equally worthy of reverence for knowledge and religion, acceptable to God and men by reason of his knowledge and honesty, should be sent into Spain, so that according to the prophetic word he might dissolve the bonds of impiety and loose the bundles that oppress. By the grace of God he shook his hands free from every gift, so that what is read might truly be referred to him: "There was no one who enriched Abraham." Therefore, when he arrived in Spain, he diligently admonished the said King of León once and a second time on our behalf that he should recoil from so detestable and unspeakable a union, all the bonds which had been contracted for consummating that union having been dissolved. But when he had made no progress at all with him by his admonitions, he assigned him a fixed day and place; and when he had waited for him even beyond the term, he promulgated against him, who contumaciously absented himself, a sentence of excommunication according to the form of our mandate, and enclosed the Kingdom of León under a general interdict. But he proceeded in nothing against the aforementioned King of Castile or his land, since the same king submitted himself to his mandates and assertively proposed that he would receive his daughter if she were returned to him. Whether he did this from his heart is known more fully by him who is the searcher of hearts and knower of secrets. Recently, however, our venerable brothers the Archbishop of Toledo and the Bishop of Palencia on behalf of the King of Castile himself, and our venerable brother the Bishop of Zamora on behalf of the King of León, coming to the Apostolic See, requested that we ought to dispense with the same King of León and the daughter of the said King of Castile concerning so incestuous a union. On account of this, unless that special grace which we have toward the devotion of the said King of Castile had tempered the movement of our mind, we would have taken care to exercise ecclesiastical severity against them in such a way that thereafter, in our times, no persons would bring to us petitions so often repudiated and condemned; since they themselves also knew that this had been requested more often from the same predecessor of ours, and had been prohibited by him, not granted. But finally the aforementioned archbishop and bishops, understanding that not only could they not obtain indulgence from us concerning this, but could

scarcely obtain a hearing from us, at last requested from us that the interdict pronounced upon the land of the King of León be remitted, asserting that from it a threefold danger threatened the whole kingdom from heretics, Saracens, and even Christians. From heretics: because, since through the interdict itself the mouths of the shepherds were closed in those regions, the faithful could not be instructed by them against the heretics and be informed in any manner to resist them; whence, both from this and because the King of León, asserting himself to be aggrieved by the Church, scarcely resisted them, the heretics grew strong against the faithful and various heresies sprouted in the kingdom itself. From the Saracens: because, since through the exhortations and remissions of the Church the people of the Spains had been accustomed to be induced to the conquest of the pagans, when the office of preachers ceased, the devotion of the people also grew cold; because, since the people saw themselves with their prince subjected to the same penalty with respect to the interdict, perhaps they did not believe themselves immune from the fault to which they had consented even by remaining silent, on account of which they burned less ardently for the defeat of the Saracens, lest they die in sin. From the Catholics: because, since clerics could not minister spiritual things to laymen, the laymen withdrew temporal things from the clerics, withholding offerings, first fruits, and tithes; whence, since the clerics in those regions had been accustomed for the greater part to be sustained from these things, when they were withdrawn, they were compelled not only to beg but to dig and to serve Jews, to the reproach of the Church and of the whole of Christianity. But it seemed difficult to assent to their petition and canonically to relax without fitting satisfaction a sentence rendered from intention, order, and cause. From intention indeed: because, as God bears witness to our conscience, we proceeded to this for no reason except the consideration of justice and honesty, since, on the contrary, a presumption could rather have arisen against us if we had considered that so detestable a deed should be tolerated with patience. From order: because the said Brother R., after lawful admonitions and delays, finally struck the contumacious man with ecclesiastical compulsion. From cause: by example, namely divine and human. Divine: because, when David sinned in numbering the people, the Lord poured out upon the people the vessels of his wrath; whence the same David is read to have said, confessing the sin to the Lord: "I am he who sinned; I am he who acted iniquitously. These, who are sheep, what had they done? Remove, I beseech you, your face, O Lord, from your people." Human: since our already-mentioned predecessor (so that examples may not be sought far away) took care to promulgate the aforesaid sentences against the aforesaid kings of Portugal and León and their kingdoms. Moreover, it would be a matter of evil example, because if perhaps it happened that we promulgated a similar sentence against other kingdoms, a similar grace would be sought from us; if perhaps we denied it, there would seem to be acceptance of persons with us. From this also a suspicion concerning us could arise among certain persons, some perhaps presuming that we were moved to this by a hidden cause. Although, therefore, for the aforesaid causes the said petition did not seem admissible, nevertheless, because where there is a multitude in a case something is to be taken away from severity so that sincere charity may come to the aid of greater evils to be healed, in that matter, at the petition of the aforesaid archbishop and bishops, on the common counsel of our brothers, we considered that grace should be granted concerning the matter from which the impediments expressed above seemed to proceed. Therefore we relaxed the interdict not wholly, but only in one part, and not perpetually, but for a time—namely for as long as it shall please us and we shall see it to be expedient—so that meanwhile we may prove the spirits, whether they are of God, and whether (as the same archbishop and bishops assert) the utility hoped for from it would follow; namely, in such a way that divine offices are celebrated in the kingdom itself, but the bodies of the dead are not delivered to ecclesiastical burial. In this, however, we grant special grace to the clerics, namely that they be buried in an ecclesiastical cemetery with the accustomed solemnity ceasing. Although this could perhaps seem discordant to certain persons, that when the office has been restored ecclesiastical burial should be denied, because according to the canonical sanctions we ought to communicate when dead with the one with whom we communicated when living, nevertheless to those who understand rightly nothing incongruous occurs from this, since, according to the institutes

of the Lateran Council, those who die from tournaments, even if through penance they are reconciled to the Church, are nevertheless deprived of Christian burial. But so that we may seem not to remit the penalty but rather to commute it, we took care to bind the said King of León, the aforementioned daughter of the King of Castile, and all their principal counselors and supporters with a sentence of excommunication, commanding that, to whatever city, town, or village they come, no one presume to celebrate divine offices there while they are present. But we shall command the said King of Castile and our dearest daughter in Christ, the queen his wife, to furnish sworn security that they will stand by our mandates, and either to express in the oath that they will devote effective labor to dissolving so unlawful a union, or we shall cause this to be commanded to them after the oath has been furnished; nor do we believe that concerning this they will show themselves contumacious in any manner, since in the hands of the aforesaid Brother R. (as appears from the letters of the same king) they had firmly promised that they would stand by the mandates of the Church, and had furnished sufficient cause for consummating a union of this kind. But if perchance (which we do not believe) they are unwilling to obey our mandates, we shall command them and their principal counselors and supporters to be excommunicated, and wherever they come we shall prohibit divine offices from being celebrated, so that in this way at least they may return to the mandate of the Church, according to what is read in the Psalmist: "Fill their faces with ignominy, and they shall seek your name, O Lord."] But because certain castles which the *same* King of León is said to have delivered as dowry to the *said* daughter of the King of Castile, in such a way that if he left her on any occasion they would fall into her right, seem to present an impediment to dissolving a union of this kind, since the castles themselves were given not so much for a base cause as *rather* for no cause, seeing that no marriage exists between them and therefore neither a dowry nor a donation on account of nuptials, lest that fall to her advantage which ought rather to be turned to her punishment, we will that the castles themselves be restored and that the *girl herself* be constrained to this through a sentence of excommunication, *decreeing by apostolic authority that, if any offspring has been or shall be received from so incestuous and condemned a union, it is to be held wholly spurious and illegitimate, and according to lawful statutes is to succeed to the paternal goods on no occasion whatsoever. But if not even* [*thus*] *do the aforesaid King of León and daughter of the King of Castile hasten to depart from one another according to the apostolic mandate, we shall take care to exercise against them the gravest compulsion, which as a precaution we did not consider should be explained in the present letters.* [*Therefore to the fraternity, etc. Given at the Lateran, on the eighth day before the Kalends of June,* 1199.]

> Cogitur mulier ex officio iudicis, donata sibi a viro propter nuptias pro conservatione illiciti matrimonii relaxare, si talis donatio praestet impedimentum dissolutioni talis matrimonii. H. d. secundum intellectum, qui plus placet Panormitano.
>
> Innocentius III. Compostellano Archiepiscopo et universis Episcopis in regno Legionensi constitutis.
>
> Etsi necesse sit [*ut scandala veniant, vae tamen est homini illi, per quem scandalum venit. Quot enim turbationes et scandala diebus nostris orbi supervenerint universo, hodie plus experimur in facto, quam scriptum reperiamus in libro. Necesse est autem ut veniant scandala, non solum scilicet inevitabile, sed et utile: quoniam in quo deficit malus proficit bonus, et aurum in fornace probatur. Inter cetera vero, in quibus scandalizatur hodie populus Christianus, praecipuum est persecutio paganorum, quae tam in oriente quam in occidente peccatis exigentibus invaluit ultra modum; contra quam utrobique simile quodammodo putaverunt remedium invenire; sed quia Deum ante suum non proposuere conspectum, quod inventum est in remedium in periculum est conversum. Sane in oriente una duobus fuit incestuose coniuncta, in occidente vero unus sibi duas praesumpsit iungere per incestum. Et incestui quidem in oriente commisso non solum consensus, sed et auctoritas clericorum ibi consistentium intercessit. Sed in detestabili copula in occidente contracta, licet non absque quorundam ecclesiasticorum virorum assensu fuerit forsitan attentata, auctoritas tamen ecclesiastica nullatenus intervenit. Volens autem Deus maius peccatum vindicare celerius, et a similibus alios deterrere, tam Conradum quondam marchionem, qui ... reginae Hierosolymitanae prius adhaeserat per incestum, gladio, quam*

Henricum quondam Campaniae comitem, qui ei et in culpa quodammodo et in poena successit, praecipitio, utrumque vero morte impraevisa peremit. Nondum autem in huius iniquitatis auctores in occidente suam exercuit ultionem. Sed quanto longanimius sustinet, tanto forsitan severius vindicabit. Licet autem apostolica sedes quod super hoc fuerat in oriente commissum propter malitiam temporis et persecutionem urgentem dissimulare sit visa, ad vindicandum tamen quod in occidente fuerat attentatum rigore canonicae districtionis est usa. Nam quum ad bonae memoriae Coelestini Papae praedecessoris nostri audientiam pervenisset, quod rex Legionensis filiam carissimi in Christo filii nostri Portugalliae regis illustris incestuose sibi praesumpserat copulare, tam regem ipsum Portugalliae quam incestuose coniunctos excommunicationis sententia innodavit, et Legionense ac Portugalliae regna sententiae supposuit interdicti, unde quod illegitime factum fuerat est penitus revocatum. Verum dictus rex Legionensis ad deteriora manum extendens, sicut is, de quo dicit scriptura: "Vae homini illi, qui post se trahit peccatum quasi longam vestem, et impius, quum venerit in profundum vitiorum, contemnit," filiam carissimi in Christo filii nostri regis illustris Castellae, neptem videlicet propriam, impudenter sibi contra interdictum ecclesiae copulare praesumpsit. Quod quum ad nostram notitiam pervenisset, dilectum filium fratrem Rainerium, virum scientia et religione pariter reverendum, Deo et hominibus obtentu scientiae et honestatis acceptum, in Hispaniam duximus destinandum, ut iuxta verbum propheticum dissolveret colligationes impietatis; solveret fasciculos deprimentes; qui per Dei gratiam ab omni munere manus excussit ita, ut quod legitur de ipso possit vere referri: "Non fuit qui ditaverit Abraham." Ipse igitur quum in Hispaniam pervenisset, dictum regem Legionensem semel et iterum ex parte nostra commonuit diligenter, ut a tam detestabili et nefanda copula resiliret, universis colligationibus dissolutis, quae fuerant pro ipsa copula consummanda contractae. Sed quum apud eum nihil prorsus monitis profecisset, certum ei diem assignavit et locum, et quum ipsum etiam ultra terminum exspectasset, in eum se contumaciter absentantem iuxta formam mandati nostri excommunicationis sententiam promulgavit, et regnum Legionense interdicto generali conclusit. In memoratum vero regem Castellae vel terram suam in nullo processit, quum idem rex se mandatis eius exponeret, et quod reciperet filiam suam, si sibi redderetur, proponeret assertive. Quod utrum ex animo fecerit, ille plenius novit, qui scrutator est cordium et cognitor secretorum. Nuper autem venerabiles fratres nostri Toletanus archiepiscopus et episcopus Palentinus ex parte ipsius regis Castellae, et ex parte Legionensis venerabilis frater Zamorensis episcopus, ad sedem apostolicam accedentes, postulabant, ut cum eodem rege Legionensi et filia dicti regis Castellae deberemus super tam incestuosa copula dispensare; propter quod, nisi specialis illa gratia, quam ad devotionem dicti regis Castellae habemus, motum nostri animi temperasset, in ipsos ita curassemus severitatem ecclesiasticam exercere, quod nulli de cetero temporibus nostris ad nos repudiatas toties et damnatas petitiones afferrent; quum ipsi etiam noverint, quod id ab eodem praedecessore nostro saepius postulatum fuerit, et ab eo inhibitum, non indultum. Tandem vero intelligentes archiepiscopus et episcopi memorati, quod non solum indulgentiam super hoc a nobis, sed vix etiam possent a nobis audientiam impetrare, interdictum in terram regis Legionensis prolatum tandem a nobis postulavere remitti, asserentes, quod ex eo triplex toti regno periculum ab haereticis, Sarracenis et Christianis etiam imminebat. Ab haereticis: quia, quum per interdictum ipsum clausa essent in partibus illis ora pastorum, non poterant fideles per eos contra haereticos instrui, et ad resistendum eis aliquatenus informari; unde, cum ex hoc, tum quia rex Legionensis ab ecclesia se asserens aggravatum, eis minime resistebat, invalescebant contra fideles haeretici, et in regno ipso haereses variae pullullabant. A Sarracenis: quoniam, quum per exhortationes et remissiones ecclesiae Hispaniarum populus consuevisset ad expugnationem paganorum induci, cessante praedicatorum officio populi etiam devotio tepescebat, quia, quum se cum principe suo quoad interdictum eidem videret poenae subiectum, a culpa, cui vel tacendo consenserat, forte se non credebat immunem, propter quod minus circa debellationem Sarracenorum fervebat, ne decederet in peccato. A catholicis: quia, quum clerici laicis spiritualia ministrare non possent, laici clericis temporalia subtrahebant, oblationes, primitias et decimas detinentes, unde, quum clerici ex his pro maiori parte in partibus illis consueverint sustentari, eis subtractis non solum mendicare, sed fodere, et servire Iudaeis in ecclesia et totius Christianitatis opprobrium cogebantur. Videbatur autem difficile petitioni eorum annuere, et sententiam ex animo, ordine et causa latam canonice sine satisfactione congrua relaxare. Ex animo siquidem: quia, sicut Deus perhibet testimonium conscientiae nostrae, ad hoc non nisi iustitiae et honestatis obtentu processimus, quum ex contrario potius contra nos oriri praesumptio potuisset, si tam detestabile facinus duxissemus in patientia tolerandum. Ex ordine: quia dictus frater R. post commonitiones et dilationes legitimas, tandem districtione

percussit ecclesiastica contumacem. Ex causa: exemplo, divino videlicet et humano. Divino: quia, quum David in populi numeratione peccasset, Dominus in populum vasa sui furoris effudit, unde idem David dixisse legitur, peccatum Domino confitendo: "Ego sum qui peccavi, ego qui inique egi. Isti, qui oves sunt, quid fecerant? Auferatur, obsecro, facies tua, Domine, ex populo tuo." Humano: quum iam dictus praedecessor noster (*ut non longe petantur exempla*) *in praedictos Portugalliae et Legionensem reges et regna ipsorum praedictas sententias curaverit promulgare. Esset insuper res mali exempli, quia, si forsan in alia regna similem nos contingeret promulgare sententiam, similis a nobis gratia peteretur, quam si forsitan negaremus, apud nos esse videretur acceptio personarum. Ex hoc etiam de nobis posset apud aliquos oriri suspicio, praesumentibus forte quibusdam, quod ad id moveremur ex causa latenti. Licet igitur ex causis praemissis non videretur dicta petitio admittenda, quia tamen ubi est multitudo in causa, detrahendum est aliquid severitati, ut maioribus malis sanandis caritas sincera subveniat, in eo ad petitionem praedictorum archiepiscopi et episcoporum gratiam de communi fratrum nostrorum consilio duximus faciendam, ex quo videbantur impedimenta expressa superius provenire. Relaxavimus ergo non in totum, sed in una parte solummodo interdictum, nec perpetuo, sed ad tempus, quamdiu scilicet nobis placuerit et viderimus expedire, ut probemus interim spiritus, si ex Deo sint, et an* (*sicut iidem archiepiscopus et episcopi asseverant*) *sperata inde utilitas sequeretur; sic videlicet, ut in regno ipso divina celebrentur officia, sed decedentium corpora sepulturae ecclesiasticae non tradantur. In quo tamen clericis gratiam facimus specialem, in eo videlicet, ut in coemeterio ecclesiastico cessante solennitate solita tumulentur. Quod licet aliquibus posset absonum forte videri, ut officio restituto sepultura ecclesiastica denegetur, quia, iuxta canonicas sanctiones, cui communicavimus vivo communicare deberemus et mortuo: recte tamen intelligentibus nihil ex hoc incongruitatis occurrit, quum iuxta Lateranensis instituta concilii decedentes ex torneamentis, etsi per poenitentiam reconcilientur ecclesiae, Christiana tamen sepultura priventur. Ut autem non remittere poenam, sed commutare potius videamur, dictum regem Legionensem et memoratam filiam regis Castellae ac omnes principales eorum consiliarios et fautores excommunicationis curavimus sententia innodare, mandantes, ut ad quamcunque civitatem, oppidum vel villam devenerint, nullus ibidem eis praesentibus divina praesumat officia celebrare. Dicto autem rege Castellae et carissimae in Christo filiae nostrae reginae uxori eius dabimus in mandatis, ut, quod stent mandatis nostris, iuratoriam exhibeant cautionem, et vel exprimant in iuramento, quod ad dissolvendam tam illegitimam copulam dent operam efficacem, vel id nos eis faciemus praestito iuramento mandari; nec credimus, quod super hoc se aliquatenus exhibeant contumaces, quum, quod starent mandatis ecclesiae, in manibus praedicti fratris R.* (*sicut ex literis eiusdem regis apparet*) *firmiter promisissent, et impendissent causam sufficientem ad copulam huiusmodi consummandam. Quod si forsan* (*quod non credimus*) *mandatis nostris noluerint obedire, ipsos et principales eorum consiliarios et fautores excommunicari mandabimus, et quocunque devenerint, divina prohibebimus officia celebrari, ut sic saltem ad mandatum ecclesiae revertantur, iuxta quod legitur in Psalmista: "Imple facies eorum ignominia, et quaerent nomen tuum, Domine."*] Quia vero castra quaedam, quae *idem* rex Legionensis *dictae* filiae regis Castellae in dotem tradidisse proponitur ita, ut, si eam aliqua occasione relinqueret, ipsa cederent in ius eius, impedimentum praestare videntur huiusmodi copulae dissolvendae, quum castra ipsa non tam ob turpem, quam ob nullam *potius* causam sint data, utpote, quum inter eos matrimonium non exsistat, et ideo nec dos, nec donatio propter nuptias: ne ad commodum ei cedat quod debet in poenam eius potius retorqueri, castra ipsa restitui volumus, et ad id puellam *ipsam* per excommunicationis sententiam coarctari, *auctoritate apostolica decernentes, ut, si ex tam incestuosa et damnata copula proles est vel fuerit quaecunque suscepta, spuria et illegitima penitus habeatur, quae secundum statuta legitima in bonis paternis nulla prorsus occasione succedat. Quod si nec* [*sic*] *praedictis rex Legionensis et filia regis Castellae a se invicem iuxta mandatum apostolicum discedere maturaverint in eos districtionem curabimus gravissimam exercere quam ad cautelam praesentibus non duximus literis explicandam.* [*Ideoque fraternitati etc. Dat. Lat. VIII. Kal. Iun.* 1199.]

Chapter VI

Latin source headnote: A usufructuary who, without the consent of the owner, gives the thing itself to his wife on account of nuptials does not transfer to her more right than he himself had; the same

concerning one who has a thing as an inheritance or a fief under a condition that takes it away.

The same, to the Archdeacon of Saint Andrews in Scotland.

Recently your discretion asked of us: if some land had been given to someone not as an inheritance or fief, but only *to him* to be possessed for as long as he lived, and he afterward granted a third part to his wife as dowry, whether, when he was dead, the wife ought to have and hold the aforesaid dowry for as long as she lived, since the Church is bound to protect the dowries of widows. You asked in addition *to be instructed by our letters*: if some land had been given to someone and to the heir whom he would beget from a lawful wife as an inheritance or fief, and afterward, after a certain part of it had been granted to his wife as dowry, he died without offspring, whether the *woman herself* could have the same dowry by law, *and whether the Church ought to stand for her in this case, or, when the man was dead, that land ought to return without burden into the goods of the grantor*. But we respond to your consultation in this manner: since as a rule no one can transfer to another more right than it is established that he has, a man to whom land is granted in the aforesaid manner cannot leave to his wife what it was not lawful for him to possess except for as long as he lived. Nor is it lawful for his wife to hold a part of that land as a donation on account of nuptials by the grant of the man, unless *perhaps* the one to whom the ownership of that land pertains wishes to consent to *that* donation. But what we say concerning the first consultation, we respond also concerning the second. For although the Church ought to show herself favorable in the cases of widows, ecclesiastical favor is nevertheless not to be granted to them contrary to justice. But we do not wish you to be ignorant of this: that according to the lawful sanctions the wife is said to give a dowry to the husband, but the husband to make to the wife a donation on account of nuptials.

> Usufructuarius, donans sine consensu domini rem ipsam uxori propter nuptias, non transfert in eam plus iuris quam ipse habebat; idem de eo, qui sub conditione adimente habet rem in hereditatem vel in feudum.
>
> Idem Archidiacono S. Andrea de Scotia.
>
> Nuper a nobis tua discretio requisivit, si aliqua terra data fuerit alicui non in hereditatem vel feudum, sed tantum *sibi*, quoad vixerit, possidenda, et ipse postmodum tertiam partem uxori suae in dotem concesserit, utrum eo defuncto praefatam dotem uxor, dum vixerit, habere debeat et tenere, quum ecclesia dotes protegere teneatur viduarum. Postulasti praeterea *nostris literis edoceri*, si qua terra data fuerit alicui et heredi, quem de uxore legitima procrearet, in hereditatem vel feudum, et ipse, uxori suae quadam parte ipsius in dotem concessa, decesserit postmodum sine prole, an *ipsa* mulier dotem eandem de iure posset habere, *et utrum ecclesia pro ipsa stare debeat in hoc casu, an viro defuncto terra illa sine onere in bona redire debeat concedentis*. Nos autem consultationi tuae taliter respondemus, quod, quum regulariter nullus plus iuris in alium transferre possit, quam eum constet habere, vir, cui terra praedicto modo conceditur, non potest uxori relinquere quod ei non licuit, nisi quoad vixerit, possidere. Nec licet uxori suae partem illius terrae in donationem propter nuptias ex viri concessione tenere, nisi *forte* donationi *illius* ille, ad quem spectat dominium illius terrae, voluerit consentire. Quod autem de prima consultatione dicimus, hoc respondemus etiam de secunda. Nam licet ecclesia in causis viduarum se favorabilem debeat exhibere, contra iustitiam tamen non est eis favor ecclesiasticus concedendus. Illud vero te nolumus ignorare, quod uxor dare dicitur viro dotem, vir autem uxori donationem facere propter nuptias secundum legitimas sanctiones.

Chapter VII

Latin source headnote: A husband proceeding for a dowry is not wholly excluded by the fact that he is tending toward poverty, nor is he absolutely compelled to give security beyond his own means; but the dowry is assigned to him under such security as he can furnish. And if through that security sufficient provision would not be made against consumption of the dowry, the dowry will be deposited with a merchant, so that from an honest profit the husband may sustain the burdens of marriage. This is what it says according to the understanding which Panormitanus holds by adhering to the words of the letter, and it is a noteworthy and everyday case.

The same, to the Archbishop and Archdeacon of Genoa.

Through your letters you intimated *to us* that, when by our authority you took care to sue Master R. concerning a certain sum of money *in Genoese currency* on behalf of the poor man H., *bearer of the present letters*, which the same H. was demanding from him as the dowry of his wife, the said R. opposed against him the exception that *namely* he had repelled his wife from himself and *that*, with the truth concerning this suppressed, he had obtained *our* letters; because, when a question concerning the same dowry had *already* on another occasion been moved before the consuls of your city, they pronounced, *according to the custom of the land*, that, since the same H. seemed to be tending toward poverty, that dowry should not be assigned to him unless he furnished suitable security that it would not perish. Whence you, *after sharing the counsel of prudent men*, commanded him to give security for preserving the dowry and to receive his wife, *and that, until he could do this, the dowry itself should, if he wished, be deposited in the treasury of the Church of Genoa. Since he could not fulfill this, at his instance you took care to write these things back to us*. Therefore, since a small portion of the dowry can sufficiently be entrusted to him to whom the body of the wife was entrusted, by apostolic writings we command *your discretion* that you cause the dowry to be assigned to him under such security as he can furnish, or at least to be committed to some merchant, so that from a part of the honest profit the said man may be able to sustain the burdens of marriage, lest on the occasion of the detained dowry the wife dismissed by the husband, or the husband who dismissed the wife, incur the guilt of adultery. [*Given at Rome at Saint Peter's, on the eighth day before the Ides of March, in the ninth year of our pontificate,* 1206.]

> Vir, agens pro dote, non omnino excluditur ex eo, quod vergat ad inopiam, nec praecise cogitur satisdare ultra facultatem propriam; sed dos sibi assignatur sub cautione, quam praestare potest. Et si per illam cautionem non esset sufficienter provisum consumptioni dotis, deponetur dos apud mercatorem, ut de honesto lucro vir sustineat onera matrimonii. H. d. secundum intellectum, quem tenet Panorm. inhaerendo verbis literae, et est casus notabilis et quotidianus.
>
> Idem Archiepiscopo et Archidiacono Genuensibus.
>
> Per vestras *nobis* literas intimastis, quod, quum magistrum R. super quadam summa pecuniae *Ianuensis monetae* pro H. paupere, *latore praesentium*, auctoritate nostra curaveritis convenire, quam idem H. pro dote uxoris suae requirebat ab eo, dictus R. exceptionem opposuit contra ipsum, quod *videlicet* uxorem suam a se repulerat, et *quod* tacita veritate super hoc *nostras* literas impetraverat; quia, quum super eadem dote *iam* alia vice coram vestrae civitatis consulibus quaestio mota esset, ipsi *iuxta consuetudinem terrae* pronunciaverunt, ut, quoniam idem H. ad inopiam vergere videbatur, dos illa non assignaretur eidem, nisi cautionem idoneam de ipsa non peritura praestaret; unde vos, *communicato prudentum virorum consilio*, ei, ut de salvanda dote caveret et uxorem suam reciperet, praecepistis, *et, donec id posset facere, dos ipsa deponeretur, si vellet, in secretario ecclesiae Ianuensis. Quod quum implere non posset, ad instantiam eius nobis haec rescribere curavistis*. Quum ergo satis possit ei modicum credi dotis, cui creditum est corpus uxoris,

discretioni vestrae per apostolica scripta mandamus, quatenus dotem assignari faciatis eidem sub ea quam potest cautione praestare, vel saltem alicui mercatori committi, ut de parte honesti lucri dictus vir onera possit matrimonii sustentare, ne occasione dotis detentae uxor a viro dimissa, seu vir, qui dimisit uxorem, adulterii reatum incurrat. [*Dat. Rom. ap. S. Petr. VIII. Id. Mart. Pont. nostr. Ao. IX.* 1206.]

Chapter VIII

Latin source headnote: This decretal sufficiently summarizes itself.

Gregory IX.

A donation which is said to have been made between spouses while the marriage endures, from which one becomes richer and the other poorer, has no firmness unless it is confirmed by the death of the donor; yet it wholly vanishes if it is revoked by him tacitly or expressly, or if the one who received what was donated first pays the debt of nature. Indeed, when the marriage has been dissolved, just as the dowry returns to the woman, so also the donation on account of nuptials returns to the man, unless otherwise obtains by custom or by an agreement concerning acquiring the dowry or the donation on account of nuptials, which agreement is equal when the contrary is introduced from each side.

Haec decretalis satis se ipsam summat.

Gregorius IX. Donatio, quae constante matrimonio inter coniuges dicitur esse facta, ex qua alter locupletior, et pauperior alter efficitur, firmitatem non habet, nisi donatoris obitu confirmetur; quae tamen penitus evanescit, si revocetur ab eo tacite vel expresse, vel qui donatum accepit prius debitum naturae persolvat. Sane soluto matrimonio, sicut dos ad mulierem, sic et donatio propter nuptias redit ad virum, nisi de consuetudine secus obtineat, vel ex pacto de lucranda dote vel donatione propter nuptias, quod aequale sit, quum hinc inde contrarium inducatur.

Title XXI: On Second Marriages

Chapter I

Latin source headnote: Second nuptials are not blessed, and the one blessing them is to be punished.

Alexander III.

Moreover, do not in any way postpone sending to the Apostolic See, with the testimony of your letters and *with appeal ceasing*, the chaplain whom it shall be established *to you* to have celebrated a blessing with the second woman, suspended from office and benefice. [*Given at the Lateran.*]

DE SECUNDIS NUPTIIS.

Secundae nuptiae non benedicuntur, et benedicens puniendus est.

Alexander III. Capellanum *nihilominus*, quem benedictionem cum secunda *tibi* constiterit celebrasse, ab officio beneficioque suspensum cum literarum tuarum testimonio *appellatione cessante* ad sedem apostolicam nullatenus destinare postponas. [*Dat. Laterani.*]

Chapter II

Latin source headnote: One who doubts the death of a spouse ought not to contract unless first made certain; and, if that person has contracted, let that person render but not exact the debt. And if afterward that person knows that the first spouse is living, let that person dismiss the second. The Sicilian Abbot.

Lucius III, to all Christians placed in captivity among the Saracens.

Our Lord and Redeemer—(And below:) Indeed, concerning the marriages which certain among you contracted when certainty of the death of the deceased spouse had not yet been obtained, by *apostolic authority* we respond this to you: that no one *among you* henceforth presume to pass to second nuptials until it is established to that person *with firm certainty* that his or her spouse has departed from this life. But if any man or woman has not observed this hitherto and still thinks that he or she ought to doubt the death of the prior spouse, let that person not deny the debt to the one who married that person when it is sought, yet let that person know that it is in no way to be exacted by him or her. But if after this it is established that the prior spouse is alive, having left the adulterous *and unlawful* embraces, let that person return *without doubt* to the prior spouse.

> Dubitans de morte coniugis, nisi prius certificetur, contrahere non debet, et, si contraxit, reddat, sed non exigat debitum. Et si postmodum sciat primam vivere, dimittat secundam. Abbas Siculus.
>
> Lucius III. universis Christianis in captivitate Sarracenorum positis.
>
> Dominus ac redemptor noster (*Et infra:*) Sane, super matrimoniis, quae quidam ex vobis nondum habita obeuntis coniugis certitudine contraxerunt, id vobis *auctoritate apostolica* respondemus, ut nullus *ex vobis* amodo ad secundas nuptias migrare praesumat, donec ei *firma certitudine* constet, quod ab hac vita migraverit coniux eius. Si vero aliquis vel aliqua id hactenus non servavit, et de morte prioris coniugis adhuc sibi existimat dubitandum: ei, quae sibi nupsit, debitum non deneget postulanti, quod a se tamen noverit nullatenus exigendum. Quodsi post hoc de prioris coniugis vita constiterit, relictis adulterinis *illicitisque* complexibus ad priorem *sine dubio* coniugem revertatur.

Chapter III

Latin source headnote: If one of the spouses was blessed on another occasion, the spouses ought not to be blessed anew.

Urban III, to the Bishop of Vigevano.

But a man or woman passing to bigamy ought not to be blessed by a priest, because, since they were blessed on another occasion, their blessing ought not to be repeated.

> Si unus ex coniugibus fuit alias benedictus, non debent coniuges de novo benedici.
>
> Urbanus III. Vigiliensi Episcopo.
>
> Vir autem vel mulier, ad bigamiam transiens, non debet a presbytero benedici, quia, quum alia vice benedicti sint, eorum benedictio iterari non debet.

Chapter IV

Latin source headnote: A woman marrying within the year of mourning does not incur infamy. This is what it says together with the following chapter. The Sicilian Abbot.

The same, to the Bishop of Exeter.

But concerning that question by which it was asked whether *namely* a woman can marry without infamy within the time of mourning defined according to the laws, we respond to *your solicitude* that, since the Apostle says, "A woman, when her husband is dead, is released from the law of her husband," *and* "let her marry in the Lord whom she wishes," through the permission and authority of the Apostle her infamy is abolished.

> Mulier, nubens infra annum lugubrem, infamiam non incurrit. H. d. cum sequenti Abbas Siculus.
>
> Idem Exonensi Episcopo.
>
> Super illa *vero* quaestione, qua quaesitum est, an *scilicet* mulier possit sine infamia nubere infra tempus luctus secundum leges diffinitum, *sollicitudini tuae* respondemus, quod, quum Apostolus dicat: "mulier, viro suo mortuo, soluta est a lege viri sui" *et* "in Domino nubat cui voluerit" per licentiam et auctoritatem Apostoli eius infamia aboletur.

Chapter V

Latin source headnote: It is summarized as the preceding chapter.

Innocent III, to the noblewoman P.

Since according to the Apostle a woman, when her husband is dead, is released from his law and has free faculty to marry whom she wishes, only in the Lord, she ought not to sustain the loss of legal infamy when, although after the death of her husband she marries within the time of mourning, namely the space of one year, she nevertheless uses the power granted to her by the Apostle, especially since in these matters secular laws do not disdain to imitate the sacred canons. *Therefore, since you dispose to pass to second vows, knowing that it is better to marry than to burn, we commend your purpose in the Lord, and by authority of the present letters we more expressly prohibit this from being imputed by anyone as loss or infamy to you or to him who shall marry you, since you have the free faculty granted to you by the Apostle to marry only in the Lord.*

END OF THE FOURTH BOOK.

> Summatur ut praecedens.
>
> Innocentius III. P. nobili mulieri.
>
> Quum secundum Apostolum mulier, mortuo viro suo, ab eius sit lege soluta, et nubendi cui vult, tantum in Domino, liberam habeat facultatem: non debet legalis infamiae sustinere iacturam, quae, licet post viri obitum infra tempus luctus, scilicet unius anni spatium, nubat, concessa sibi tamen ab Apostolo utitur potestate, quum in his praesertim saeculares leges non dedignentur sacros canones imitari. *Quum igitur ad secunda disponas vota transire, sciens, quod nubere melius est quam uri, tuum in Domino propositum commendamus, et ne id tibi vel ei qui te duxerit in iacturam vel infamiam ab aliquo imputetur auctoritate praesentium expressius inhibemus, quum concessam tibi ab apostolo nubendi tantum in Domino liberam habeas facultatem.*
>
> **FINIS LIBRI QUARTI.**

Book V

The Compilation of the Decretals of Lord Pope Gregory IX

Book V

> **DECRETALIUM D. GREGORII PAPAE IX. COMPILATIO**
> **LIBER QUINTUS.**

Title I: On Accusations, Inquisitions, and Denunciations

Chapter I

Latin source headnote: In judicial proceedings inquiry must first be made concerning the person of the accuser.

Pope Felix.

If the accuser shall not have been lawful, let the accused not be wearied, [*because priests ought to be free for sacrificing, etc.*]

> **DE ACCUSATIONIBUS, INQUISITIONIBUS ET DENUNCIATIONIBUS.**
>
> De persona accusatoris prius quaerendum est in iudicio.
>
> Felix Papa.
>
> Si legitimus non fuerit accusator, non fatigetur accusatus, [*quia sacerdotes ad sacrificandum vacare debent etc.*]

Chapter II

Latin source headnote: He who did not first give warning is repelled from denunciation.

The same, to the Bishops established throughout Gaul.

If any bishop shall have been accused by those accusers who are to be received, after *he himself* shall have been charitably admonished by them to amend *that very* cause, and shall have been unwilling to correct it, not formerly, but now, let his causes be canonically referred to the *highest* primates, [*who in a suitable place within that province, etc.*]

> A denunciatione repellitur is, qui non praemonuit.
>
> Idem Episcopis per Galliam constitutis.
>
> Si quis episcopus ab illis accusatoribus, qui recipiendi sunt, accusatus fuerit, postquam *ipse* ab eis caritative conventus fuerit, ut *ipsam* causam emendet, et eam corrigere noluerit: non olim, sed nunc ad *summos* primates causae eius canonice deferantur, [*qui in congruo loco intra ipsam provinciam etc.*]

Chapter III

Latin source headnote: An accusation against a prelate ought to be handled before those whose interest is involved.

Gregory, to the Duke of Campania.

That conduct of prelates (*And below:*) But if there is anyone from the monastery of the aforesaid abbot who can say *anything* that pertains to his fault and guilt, we [*wish this not to be neglected, but rather, indeed, together*] with those whose interest is involved, we wish the cause to be [*altogether*] strictly [*and solicitously*] investigated, so that he may either be condemned or absolved. [*But if no one can be found, etc.*]

> Criminatio praelati debet tractari coram illis, quorum interest.
>
> Gregorius Duci Campaniae.
>
> Illa praepositorum (*Et infra:*) Si vero aliquis est de monasterio praedicti abbatis, qui possit *aliquid* dicere, quod ad culpam reatumque eius pertineat: nos [*hoc non negligi, sed magis una quidem*] cum eis, quorum interest, causam [*omnino*] districte [*et sollicite*] volumus perscrutari, ut vel condemnetur, vel absolvatur. [*Si autem nullus inveniri potuerit etc.*]

Chapter IV

Latin source headnote: One who is accused or denounced concerning some crime cannot meanwhile be promoted.

The same, to the Empress Constantia.

Almighty God: (*And below:*) [*But his other perverse deeds, namely bodily evils, which I have learned—either that he was elected by means of money, or that, while excommunicated, he presumed to celebrate mass—I cannot, for God's sake, pass over without inquiry. But I desire and beseech the Lord that nothing may be found in him concerning those things that have been said, and that his cause may be concluded without peril to my soul. Nevertheless, before these things are ascertained, the most serene lord commanded by a directive sent forth that I receive him when he comes with honor. And*] It is very grievous that a man concerning whom so many and such things are reported should be honored, when they ought first to be investigated and examined. [*And if the causes of bishops, etc.*]

> Qui de aliquo crimine accusatur vel denunciatur, interim promoveri non potest.
>
> Idem Constantiae Augustae.
>
> Omnipotens Deus: (*Et infra:*) [*Alia vero perversa illius, scilicet mala corporalia, quae cognovi, vel quia cum pecuniis est electus, vel quia excommunicatus missam facere praesumpsit, propter Deum irriquisita praeterire non possum. Sed opto et Dominum deprecor, quatenus nihil in eo pro his, quae dicta sunt, valeat inveniri, et sine periculo animae meae causa ipsius terminetur. Prius tamen, quam haec cognoscantur, serenissimus dominus discurrente iussione praecepit, ut eum venientem cum honore suscipiam. Et*] Valde grave est, ut vir, de quo tanta et talia nunciantur, quum ante requiri et discuti debeant, honoretur. [*Et si episcoporum causae etc.*]

Chapter V

Latin source headnote: A bishop cannot repel from accusing him, by an exception of crime, one whom he previously neglected to separate from his familiar company.

Pope Paschal.

Let it be lawful for none of the bishops to repel from accusing him those whom, before he knew that he was to be assailed by them, he neglected to separate from his common familiar company.

> Episcopus per exceptionem criminis illum ab accusatione sua repellere non potest, quem ante a sua familiaritate neglexerit separare.

> Paschalis Papa.
>
> Nulli episcoporum ab accusatione sua repellere liceat, quos, antequam se ab eis impetendum cognosceret, a sua communi familiaritate neglexerit separare.

Chapter VI

Latin source headnote: One acquitted of a certain crime cannot be accused again of the same crime.

From the Council of Mainz.

Concerning those crimes of which the accused has been acquitted, the accusation cannot be repeated.

> Absolutus de certo crimine, de eodem iterum accusari non potest.
>
> Ex concilio Maguntino.
>
> De his criminibus, de quibus absolutus est accusatus, non potest accusatio replicari.

Chapter VII

Latin source headnote: Those dwelling with the enemies of the accused are repelled from accusation.

Pope Stephen.

Let those dwelling with enemies [*also*] be repelled from accusation, [*and all laymen,*] because the affection of friendship is accustomed to incite the vexations of calumny. [*Nor are those persons to be received in your accusation, etc.*]

> Cohabitantes inimicis accusati ab accusatione repelluntur.
>
> Stephanus Papa.
>
> Repellantur [*etiam*] ab accusatione cohabitantes inimicis, [*et omnes laici,*] quia infestationes blasphemiae affectio solet amicitiae incitare. [*Nec illi in vestra suscipiendi sunt accusatione etc.*]

Chapter VIII

Latin source headnote: It prescribes the penance of a calumnious accuser when death or disablement of a limb follows therefrom.

From the Brocardic Book XLIV.

You accused someone, and through your accusation he was killed: unless you did this for the sake of peace, you are to do penance for forty days on bread and water, which is called a carina, together with the seven following years. But if through your delation he was disabled, you ought to do penance through three Lents [*on the lawful ferial days*].

> Ponit poenitentiam accusatoris calumniosi, quum sequitur inde mors vel membri debilitatio.
>
> Ex Brocardico libro XLIV. Accusasti aliquem, et per tuam accusationem occisus est: nisi pro pace hoc feceris, XL. dies in pane et aqua, quod carina vocatur, cum septem sequentibus annis poeniteas. Si autem per tuam delaturam debilitatus est: per tres debes quadragesimas [*per legitimas ferias*] poenitere.

Chapter IX

Latin source headnote: A judge proceeds upon a notorious matter when no one is accusing.

Augustine, on Genesis, concerning the death of Abel.

The evidentness of a perpetrated crime does not require the outcry of an accuser.

> Super notorio procedit iudex nemine accusante.
>
> Augustinus super Genesi de morte Abel.
>
> Evidentia patrati sceleris non indiget clamore accusatoris.

Chapter X

Latin source headnote: Laymen or enemies cannot accuse clerics.

Alexander III, to the Bishop-elect of Gaeta.

When P. Manconella, priest, on the one side, and Bonus, priest, and I. Bonus Cocti, his lay brother, on the other, were constituted in our presence, we did not consider that the same I., because he was a layman, ought to be admitted to the accusation of the *aforesaid* P. And when the aforesaid B. more steadfastly accused the same P. concerning the crime of simony, we repelled him from the accusation, both because he had been brought forward as a witness in that cause, and because the aforesaid I., his brother, had previously accused P. himself before you, especially since P.'s brother had earlier accused the aforesaid B. concerning a similar cause. Therefore, because one after the other was accusing the aforesaid P. with insistent alternation, we admitted neither to his accusation, but considered that purgation concerning the crimes charged ought to be imposed upon both priests. And therefore *by apostolic writings, commanding your discretion,* we command that each of them cause himself to be purged with three priests. *The compurgators, etc.* (*cf. c.* 7, *On Canonical Purgation V.* 34.)

> Laici vel inimici clericos accusare non possunt.
>
> Alexander III. Gaitano Electo.
>
> Quum P. Manconella presbyter ex una parte, et Bonus presbyter et I. Bonus Cocti laicus frater eius ex altera, in nostra essent praesentia constituti, eundem I., quia laicus erat, in *iam* dicti P. accusationem non duximus admittendum. Quumque praefatus B. eundem P. super crimine simoniae constantius accusaret, nos eum, quia in testimonium illius causae adductus fuerat, et quia praedictus I. frater eius ipsum P. coram te prius accusaverat, ab accusatione repulimus, praesertim quum frater P. memoratum B. antea de causa consimili accusasset. Unde quoniam unus post alterum praedictum P. instanti vicissitudine accusabant, neutrum ad eius accusationem admisimus, sed utrique presbytero de obiectis criminibus purgationem duximus indicendam. Ideoque *discretioni tuae per apostolica scripta praecipiendo* mandamus, quatenus uterque illorum cum tribus sacerdotibus faciat se purgare. *Purgatores etc.* (*cf. c.* 7. *de purg. can. V.* 34.)

Chapter XI

Latin source headnote: A monk can accuse an abbot, and he will have the necessary expenses of the suit from the goods of the monastery.

The same, to the Bishop of Worcester.

On your part *a question of this sort was proposed to us: whether monks ought in any way to be admitted to an accusation of their abbots. Concerning this, indeed,* we respond to your prudence thus: monks, unless another *manifest and* reasonable cause impedes, are by no means to be repelled from accusing him on the ground that they are known to be under the obedience and subjection of the abbot, although they

cannot accuse others. And since they have nothing of their own, the necessary expenses ought to be supplied to them from the goods of the monastery until the cause receives its due end. [*Concerning confirmations, etc.* (*cf. c.* 2, *On Confirmation II.* 30.)]

> Monachus accusare potest abbatem, et de bonis monasteriis expensas litis necessarias habebit.
>
> Idem Vigoriensi Episcopo.
>
> Ex parte tua *huiusmodi quaestio nobis fuit proposita, utrum monachi in accusatione abbatum suorum aliquatenus sint admittendi. Super quo utique* Prudentiae tuae taliter respondemus, quod monachi, nisi alia *manifesta et* rationabilis causa impediat, eo, quod de obedientia et subiectione abbatis esse noscuntur, ab eius accusatione sunt nullatenus repellendi: licet alios accusare non possint. Quibus siquidem, quum proprium non habeant, de rebus monasterii expensae debent necessariae, donec causa debitum finem accipiat, ministrari. [*De confirmationibus etc.* (*cf. c.* 2. *de confirm. II.* 30.)]

Chapter XII

Latin source headnote: A drunken priest who celebrates mass without digestion having first taken place ought to be deprived of his church. This is what it says, in a manner suitable for all who are going to read it.

The same.

If it shall be established that the *often-mentioned* D. was not granted the *aforesaid* church perpetually, but was committed to him for a time, and concerning his drunkenness, and that he passed the night in a tavern in such a way that on the next day, no sleep having first taken place, he sang mass: (*And below:*) *But also* if he shall have been reasonably convicted of this in judgment before his bishop *or archbishop*, or, whether accused or called to account, shall have confessed without coercion *before several persons*, you shall, *notwithstanding any appeal*, impose perpetual silence upon him concerning the same church, compelling him to desist from assailing B. But if the *same* church was canonically granted and delivered to the same *D.*, and afterward he was not convicted of any crime for which by law he ought to be despoiled, or if, after an appeal, as he once alleged, he was despoiled of that church, you shall cause it to be restored to him and permit him to remain in peace.

> Presbyter ebriosus, missam celebrans non praemissa digestione, ecclesia privari debet. H. d. ut conveniat omnibus lecturis.
>
> Idem.
>
> Si constiterit, quod *saepe dicto* D. *praescripta* ecclesia non perpetuo concessa, sed ad tempus fuerit commendata, et de vinolentia, et quod in taberna pernoctaverit, ita, quod altera die, nulla praemissa dormitione, missam cantasset: (*Et infra:*) *Sed etiam* Si de hoc rationabiliter convictus fuerit in iudicio ante episcopum *vel archiepiscopum* suum, sive accusatus, vel ad rationem positus sine coactione *coram pluribus* fuerit confessus, ei *nullius appellatione obstante* super eadem ecclesia perpetuum silentium imponatis, ipsum ab impetitione B. desistere compellentes. Ceterum si eidem *D.* fuit ecclesia *ipsa* canonice concessa et tradita, et postea de crimine aliquo non fuit convictus, propter quod de iure debeat spoliari, vel post appellationem, sicut aliquando allegavit, ecclesia illa fuerit spoliatus: ipsam ei faciatis restitui et in pace dimitti.

Chapter XIII

Latin source headnote: An enemy is repelled even from a voluntary exception.

The same.

We remember that *already some time ago* we commanded you, *by way of command*, to take care to impart the gift of blessing to *our beloved daughter* C., abbess *of the monastery of Saint Zacharias*, whose election we confirmed. But because H. on behalf of the other party *approached our presence* and appealed from you *thereupon* to our hearing, proposing that he was accusing her of simony, *you therefore* deferred carrying our mandate into effect. But because it is not fitting for you in this matter to defer to the appeal of the same H., *since it is not lawful for laymen to bear testimony against clerics or monks, and* since the same *H.* was her manifest enemy and bore testimony against her: *we, if we remember well, commanded that the same abbess be blessed, and still, appeal having been removed, by apostolic writings* we command that, when you have been requested thereupon, you do not delay imparting the gift of blessing to the aforesaid abbess, *opposition and appeal ceasing*.

> Inimicus etiam a voluntaria exceptione repellitur.
>
> Idem.
>
> Meminimus *iam pridem* tibi *praecipiendo* mandasse, ut *dilectae filiae nostrae* C. abbatissae *monasterii S. Zachariae*, cuius electionem confirmavimus, munus benedictionis impendere procurares. Sed quia H. pro altera parte *ad nostram praesentiam accessit*, a te *exinde* ad nostram audientiam appellavit, proponens, quod de simonia accusaret eandem, *et ideo* mandatum nostrum distulisti effectui mancipare. Quia vero te non decet in hac parte appellationi eiusdem H. deferre, *quum non liceat laicis contra clericos aut monachos testimonium ferre, et* quum idem *H.* illius manifestus fuerit inimicus, et contra eam testimonium tulerit: *nos, si bene meminimus, eandem abbatissam benedici mandavimus, et adhuc appellatione remota per apostolica scripta* mandamus, quatenus, quum inde fueris requisitus, praefatae abbatissae *contradictione et appellatione cessante* munus benedictionis non differas impartiri.

Chapter XIV

Latin source headnote: One saying before a judge that he will accuse someone can, before inscription, desist without penalty and not accuse; but perpetual silence is imposed upon him when he desists. And according to this summary this text is noteworthy. Abbas.

Innocent III, to the Archbishop of Besançon.

Although in blessed Peter, *prince of the Apostles, the faculty of binding and loosing has been attributed to us by the Lord, which we ought freely to exercise over subjects according to the demand of their merits, nevertheless, following the example of him who saves all and wills no one to perish, we apply ourselves more willingly to loosing than to binding, although there are some faults in which it is a fault to relax vengeance*. Indeed, when *formerly* it had reached the hearing of the Apostolic See from the letters of B., dean of Saint Stephen, and T., I., and M., canons of the church of Besançon, that you had committed various crimes, and you had been denounced by them through the same letters concerning perjury, the crime of simony, and incest, Pope Clement, *of happy memory*, our predecessor, preserving judicial gravity, assigned to you a definite term at which you should present yourself before the apostolic countenance to respond to the charges. But when *you*, according to the tenor of the citation *made to you*, had approached the Apostolic See, *with you and the beloved sons I. and O., archdeacons, being constituted before the Apostolic See, we waited for some time to see whether perhaps any persons would proceed against you and, by making inscription, would propound what they had intimated concerning you in their letters. But when* no one appeared who would thus assail you concerning the aforesaid matters, lest we should seem to omit anything among the

contingencies, we diligently asked I. and O., archdeacons, constituted in our *and our brothers*' presence, whether they wished to propound anything against you concerning the aforesaid matters for themselves or for others, and whether they would lawfully demonstrate what they had written. They answered that they had written these things not with the purpose of accusing; but because *you* seemed incorrigible in certain things, they had considered that certain matters concerning you ought to be intimated to the Apostolic See; but the messenger who had approached to obtain the letters had exceeded the form of his mandate. We therefore, *desiring to consult your reputation*, considered that silence concerning the aforesaid matters ought to be imposed upon the said canons *against you*, so that henceforth it may not be lawful for them to accuse you concerning these things or even to defame you, *following the example of him who, when he had said to the woman, "Woman, has no one condemned you?" and she said, "No one, Lord," said, "Neither shall I condemn you; go, now sin no more."* But because the aforesaid canons wished to desist short of the bond of inscription, we did not consider that, by permission of law, this ought to be imputed to them. But lest we seem to proceed less canonically in your absolution, although we delight more in the fragrance of the good reputation of our fellow bishops than in their infamy, we considered that the inquiry into your reputation ought to be committed to *our venerable brother* the Bishop of Chalon and to *our beloved son* the Abbot of La Ferté. [*Given at Rome, etc., on the fourth day before the Ides of June,* 1198.]

Dicens, se aliquem accusaturum coram iudice, ante inscriptionem potest sine poena desistere, et non accusare; sed ei desistenti silentium imponitur in perpetuum. Et secundum hoc summarium iste textus est notabilis. Abbas.

Innocentius III. Archiepiscopo Bisuntino.

Licet in beato Petro *Apostolorum principe ligandi atque solvendi nobis a Domino sit attributa facultas, quam in subditos iuxta suorum exigentiam meritorum exercere libere debeamus: exemplo tamen illius, qui omnes salvat, et neminem vult perire, libentius ad solvendum intendimus quam ligandum, etsi nonnullae sint culpae, in quibus est culpa relaxare vindictam*. Sane, quum *olim* ex literis B. decani sancti Stephani, et T. I. et M. canonicorum ecclesiae Bisuntinae ad apostolicae sedis audientiam pervenisset, te varia crimina commisisse, ac ab eis fuisses per easdem literas super periurio, crimine simoniae et incestus delatus: *felicis recordationis* Clemens Papa praedecessor noster, servata iudiciaria gravitate, tibi certum terminum assignavit, quo responsurus obiectis apostolico te conspectui praesentares. Quum autem *tu* iuxta tenorem *factae tibi* citationis ad sedem apostolicam accessisses, *te et dilectis filiis I. et O. archidiaconis apud sedem apostolicam constitutis, exspectavimus aliquamdiu, si qui forsan contra te procederent, et quae de te literis intimaverant proponerent inscribendo*. *Ceterum quum* nec ullus appareret, qui te ita impeteret de praedictis, ne aliquid de contingentibus omittere videremur, ab I. et O. archidiaconis in nostra *et fratrum nostrorum* praesentia constitutis quaesivimus diligenter, si quid super praemissis adversus te pro se vel pro aliis proponere vellent, et quod scripserant legitime demonstrarent. Ipsi autem, quod non proposito accusandi haec scripserant, responderunt; sed quia *tu* super quibusdam incorrigibilis videbaris, quaedam de te apostolicae sedi duxerant intimanda; sed nuncius, qui pro literis accesserat impetrandis, mandati formam excessit. Nos igitur, *famae tuae consulere cupientes*, dictis canonicis *contra te* super praedictis silentium duximus imponendum, ne te de cetero eis super his accusare liceat vel etiam infamare, *illius sequentes exemplum, qui quum mulieri dixisset: "nemo te condemnavit, mulier?" et illa: "nemo, Domine," "nec ego," inquit, "te condemnabo; vade iam amplius noli peccare*." Quia vero praedicti canonici citra vinculum inscriptionis desistere voluerunt, eis de iuris permissione id non duximus imputandum. Ne autem in absolutione tua minus canonice procedere videamur, quamvis potius in odore bonae opinionis coepiscoporum nostrorum, quam eorum infamia delectemur: *venerabili fratri nostro* Cabilonensi episcopo

et *dilecto filio* abbati de Firmitate inquisitionem famae tuae duximus committendam. [*Dat. Romae etc. IV. Id. Iun.* 1198.]

Chapter XV

Latin source headnote: A proctor is not admitted to prosecute a criminal accusation, although he could allege a cause of absence or other exceptions not touching the crime proposed; and one who swore to stand by someone's mandate is not admitted to accuse him if, by force of the oath, it was enjoined upon him that he not accuse. This is what it says, and it is customarily alleged for this proposition, and in this it is very widely known.

The same, to the Archbishop of Salzburg.

The *beloved son* A., canon of Prague, coming [*formerly*] to the Apostolic See, proposed before us against *our venerable brother* the Bishop of Prague, among other things, that, although he was the son of a priest, he had been intruded into the church of Prague, and, contrary to the privilege of the same church, *granted to it by imperial liberality and confirmed by the Apostolic See*, had rendered homage to the *beloved son and nobleman*, the Duke of Bohemia, *and had received the regalia from him*, thereby subjecting the church of Prague to servitude. [*He also proposed that he manifestly had a wife, by whom he begot sons; that he fabricated a forged seal; that he was a drunkard, fornicator, and public entertainer, so that on one occasion, together with two jesters, in a contest undertaken against three other entertainers, he was grievously wounded in the nose and almost mutilated in it, as is apparent today, and it is believed that one of the other three jesters against whom he was contending, who died there, was killed by him. To this the same A. added that, after the treasure of the church of Prague, to the amount of a thousand marks, had been badly dissipated by him, he did not fear to confer upon the counsellors of that duke as many as fifty villages and more, to the grave detriment of the church of Prague, and he gave to the duke himself a certain notable castle which had been bestowed upon the same church out of regard for piety by O., formerly Duke of Bohemia.*] Wherefore we remember that we cited the aforesaid bishop peremptorily for the feast of the Lord's Resurrection *then most recently past*. But the same *bishop*, for his excuse, alleged by messengers and letters the hazards of the roads, the imminent consecration of chrism, and the fact that the son of the *nobleman*, the prince of Bohemia, was at that time to be baptized by him. Although, judging excuses of this sort frivolous, as they were, we reputed him contumacious, and we could not receive his proctors in a criminal cause, nevertheless we granted to them *our beloved sons G., cardinal deacon of Saint Angelo, and H., cardinal deacon of Saint Eustace,* as auditors, so that, if they could, they might excuse him in some measure. And when the aforesaid A. repeated the charges before them, *to him* it was answered on the opposite side that, when letters had formerly been obtained concerning this matter for *our venerable brother* the Archbishop of Magdeburg, the same A., *who alone was proceeding against the bishop*, seeing himself fail in the proof of the charges, *having put off his clothes and with bare feet*, humbly prostrated himself at his feet, sought pardon, and confessed that he had proceeded calumniously against him. But since he had sworn concerning this matter to stand by the mandate of the same archbishop, the latter commanded him under the obligation of the oath taken that he should not thereafter dare to propound such things against the same bishop. Therefore, since it was established to us from A.'s own confession that he had taken an oath of this sort and had received such a mandate, we considered that silence ought to be imposed upon him concerning his assault upon the said bishop, nevertheless imposing upon the same bishop, on account of his contumacy, a citation and, on account of the infamy, purgation.

Ad prosequendam accusationem criminalem non admittitur procurator, licet posset allegare causam absentiae, seu alias exceptiones, non tangentes crimen propositum: et qui iuravit stare mandato alicuius, non admittitur ad accusandum illum, si virtute iuramenti sibi fuit iniunctum, ut non accusaret. H. d. et ad hoc solet allegari, et in hoc est valde vulgatum.

Idem Saltzburgensi Archiepiscopo.

Veniens [*olim*] ad sedem apostolicam *dilectus filius* A. Pragensis canonicus contra *venerabilem fratrem nostrum* Pragensem episcopum inter alia proposuit coram nobis, quod, quum esset filius sacerdotis, in ecclesiam fuerat Pragensem intrusus, et contra eiusdem ecclesiae privilegium, *imperiale ei liberalitate concessum et per sedem apostolicam confirmatum*, homagium *dilecto filio nobili viro* duci Bohemiae praestitisset, *et regalia recepisset ab eo*, sic subiiciens Pragensem ecclesiam servituti. [*Proposuit etiam, quod uxorem evidenter haberet, de qua filios generavit; quod sigillum adulterinum confinxit; quod sit ebriosus, fornicator, publicus histrio, ita quod quadam vice cum duobus ioculatoribus contra tres alios histriones certamine inito, enormiter fuit laesus in naso, et eo fere, sicut apparet hodie, mutilatus, et unus reliquorum trium ioculatorum, contra quos decertabat, qui ibidem interiit, ab eo creditur interfectus. Ad hoc subiunxit idem A., quod thesauro ecclesiae Pragensi usque ad mille marcas per eum male distracto, consulariis ipsius ducis usque ad quinquaginta villas et amplius conferre non timuit in grave Pragensis ecclesiae detrimentum, et ipsi duci notabile quoddam castrum dedit, quod eidem ecclesiae pietatis intuitu fuerat ab O. quondam Bohemiae duce collatum.*] Unde praedictum episcopum ad festum Resurrectionis dominicae *proximo praeteritum* peremptorie nos meminimus citavisse. Idem vero *episcopus* ad suam excusationem viarum discrimina, consecrationem chrismatis imminentem, et quod filius *nobilis viri* Bohemiae principis esset per ipsum baptizandus tunc temporis, per nuncios et literas allegavit. Licet autem excusationes huiusmodi, sicut erant, frivolas aestimantes ipsum reputavimus contumacem, nec procuratores eius in causa possemus recipere criminali: eis tamen *dilectos filios nostros G. sancti Angeli et H. sancti Eustachii diaconos cardinales* concessimus auditores, ut, si possent, illum aliquatenus excusarent. Quumque praedictus A. coram eis repetiisset obiecta, *ei* fuit ex adverso responsum, quod, quum olim super hoc ad *venerabilem fratrem nostrum* Magdeburgensem archiepiscopum literae fuerint impetratae, idem A., *qui contra episcopum solus agebat*, in obiectorum se videns probatione deficere, *depositis vestibus et pedibus nudis* ad pedes eius se humiliter prosternens, veniam postulavit, et, quod adversus eum calumniose processerat, est confessus. Ceterum quum super hoc mandato stare eiusdem archiepiscopi iuravisset, ipse praecepit eidem sub debito praestiti iuramenti, ut contra eundem episcopum de cetero proponere talia non auderet. Quum igitur nobis ex ipsius A. confessione constaret, ipsum iuramentum huiusmodi praestitisse, ac tale recepisse mandatum: super impetitione dicti episcopi silentium ei duximus imponendum, propter contumaciam tamen eidem episcopo citationem et purgationem propter infamiam indicentes.

Chapter XVI

Latin source headnote: A denouncer of a crime does not make inscription, because he tends toward correction; but an accuser makes inscription, because he tends toward punishment; one excepting, however, makes inscription for an extraordinary penalty if through the exception someone is cast down from what he has obtained, but otherwise it is otherwise. This first. Secondly, it says that, while a crime is examined by way of exception, a proctor can intervene.

The same, to the Prior of Saint Fridianus and Master B., Canon of Pisa.

Concerning those matters about which you wished to consult us, we respond briefly to your inquiry that a crime can be opposed in three ways: by denouncing, excepting, and accusing. When a crime is opposed by way of denunciation, inscription is not necessary; but when it is *objected* by way of accusation, it is necessary to make inscription, since accusation is instituted for deposition, but

denunciation is to be made for correction. But when a crime has been objected by way of exception, a distinction must be made as to why and when it is opposed. If it is objected so that someone may be repelled from accusation or testimony, it is not necessary to make inscription. But when it is opposed so that someone may be excluded from promotion to an office or benefice, if it is objected before confirmation, no one is compelled to make inscription, because a crime proved in this manner impedes the person to be promoted, but does not cast down one already promoted. But after confirmation, namely when someone is to be ordained or even consecrated, because it both repels from obtaining and casts down from what has been obtained, the exceptor, if he fails in proving, is to be bound to an extraordinary *indeed* penalty according to the judgment of a discreet judge, yet short of the bond *of inscription*, because, when the crime has thus been proved, he loses what had been acquired for him through election and confirmation; but on this account he does not lose what he had previously. For although the matter concerns a crime, nevertheless a question of this kind is not criminal; whence it can rightly be handled through a proctor. *For this, etc.* (*cf. c.* 8, *On Penalties V.* 37.) [*Given at the Lateran on the third day before the Ides of February, in the fifth year of our pontificate,* 1203.]

> Denunciator criminis non se inscribit, quia ad correctionem tendit; accusator autem inscribit, quia tendit ad poenam; excipiens vero inscribit ad poenam extraordinariam, si per exceptionem deiicitur ab obtento, alias secus. Hoc primo. Secundo dicitur, quod, dum discutitur de crimine per modum exceptionis, potest intervenire procurator.
>
> Idem Priori sancti Fridiani et Magistro B. Canonico Pisano.
>
> Super his, de quibus nos consulere voluistis, inquisitioni vestrae breviter respondemus, quod tribus modis valet crimen opponi, denunciando, excipiendo et accusando. Quando crimen in modum denunciationis opponitur, non est inscriptio necessaria; sed, quum in modum accusationis *obiicitur*, oportet inscribi, quoniam ad depositionem instituitur accusatio, sed ad correctionem est denunciatio facienda. Quum autem excipiendo fuerit crimen obiectum, distinguendum est, quare opponatur, et quando. Si autem obiicitur, ut ab accusatione vel testificatione aliquis repellatur, non est inscribi necesse. Sed quum opponitur, ut quis a promotione officii vel beneficii excludatur, si ante confirmationem obiicitur, non cogitur quisquam inscribere, quia crimen, hoc modo probatum, impedit promovendum, sed non deiicit iam promotum. Post confirmationem vero, quum scilicet ordinandus fuerit aliquis aut etiam consecrandus, quia etiam ab obtinendo repellit, et deiicit ab obtento, ad extraordinariam *quidem* poenam secundum arbitrium iudicis discreti, citra vinculum *tamen* inscriptionis, est excipiens adstringendus, si defecerit in probando, pro eo, quod, crimine sic probato, perdit quod per electionem et confirmationem ei fuerat acquisitum; sed ob hoc prius habita non amittit. Licet enim agatur de crimine, non est tamen huiusmodi quaestio criminalis, unde per procuratorem potest rite tractari. *Ad hoc etc.* (*cf. c.* 8. *de poenis V.* 37.) [*Dat. Lat. III. Id. Febr. Pont. nostr. Ao. V.* 1203.]

Chapter XVII

Latin source headnote: General inquisitors, if they have not observed the due order of inquisition, ought prudently and cautiously to correct themselves. This first. Secondly, it sets out the form of oath that inquisitors exact from those under inquiry.

The same, to the Bishop of Vercelli and the Abbot of Tileto.

How and when *a prelate ought to proceed to inquire into and punish the excesses of subjects is gathered clearly from the authorities of the New and Old Testaments, from which the canonical sanctions afterward proceeded on this matter. For it is read in the Gospel that the steward who had been defamed before his lord as though he had*

dissipated his goods heard from him: "What is this that I hear of you? Render an account of your stewardship, for now you will no longer be able to be steward." And in Genesis the Lord says: "I will descend and see whether they have fulfilled in deed the outcry that has come to me." From these authorities it is manifestly proved that not only when a subject, but also when a prelate, transgresses, if his excess reaches the ears of the superior through outcry and reputation—not indeed from the malevolent and slanderous, but from provident and honorable persons, nor only once, but often, which the outcry indicates and the defamation manifests—the truth ought to be investigated more diligently before the elders of the church, so that, if the quality of the matter demands it, canonical severity may strike the fault of the delinquent; nevertheless, the same person is not to be both actor and judge, but, as though reputation were making delation or outcry were denouncing, he is to discharge the duty of his office. Although this must be diligently observed with subjects, it must nevertheless be observed more diligently with prelates, who are set up as though a mark for the arrow. And because they cannot please everyone, since by reason of their office they are bound not only to reprove but also to rebuke, and even sometimes to suspend, and at times indeed to bind, they frequently incur the hatred of many and suffer snares. And therefore the holy Fathers providently established that an accusation of prelates not be readily admitted, lest, when the columns have been shaken, the building fall, unless diligent caution be applied, through which the door is closed not only to false but also to malicious incrimination. Yet they wished so to provide for prelates lest they be accused unjustly, that they nevertheless took care lest they offend insolently, finding a suitable medicine against each disease, namely that a criminal accusation, which tends toward diminution of status, that is, toward degradation, is by no means to be admitted unless a lawful inquiry precedes. But when anyone shall have been defamed concerning his excesses to such an extent that the outcry has now risen so high that it cannot longer be dissembled without scandal nor tolerated without danger, one should proceed without a scruple of doubt to inquire into and punish his excesses, not from the tinder of hatred but from the affection of charity, so that, if the excess has been grave, even if he is not degraded from order, he is nevertheless removed altogether from administration; which, according to evangelical truth, is for the steward who cannot render a worthy account of his stewardship to be removed from the stewardship. If you have observed the due order of inquisition concerning *our venerable brother* the Bishop of Novara, we commend your *intention and* discretion in the Lord. But if on any occasion you omitted it, *lest through a slight shortcut one come to grave loss*, we still wish that *the order itself* be observed at an opportune time, lest injuries arise whence laws arise. And therefore we command that, recurring to the judgment of your conscience, if *perhaps* as men you transgressed against the prescribed order, let it not shame you to correct your error, you who have been appointed to correct the errors of others, because before the strict Judge, in the measure with which you have measured, it will be measured back to you; in such a way, namely, that you find some suitable occasion through which, lest your authority become cheap, you may desist for the present as cautiously and prudently as you can, because one cannot proceed in orderly fashion from things done in disorder. But if you observed the prescribed order, *we will and command that*, all favor and fear having been put aside, having God alone before your eyes, walking by the royal road, without acceptance of persons, you proceed in *this* affair *according to the form that we considered should be expressed to you in other letters, and that you fear no man against God, but rather fear God above every man*. We wish the form of oath that you received from the clergy of Novara concerning the inquiry to be made in this affair to be observed in similar cases, namely that the clerics swear that concerning those things which they know or believe ought to be reformed in their church, both in head and members, excepting occult crimes, they will tell the inquisitors the pure and full truth. (*And below:*) *But the constitutions which we learned that you not so much made as renewed for the correction of excesses and reformation*

of morals, we approve, wishing that you cause them to be laudably observed by the clerics, commanding the prelates on our behalf, etc. (*cf. c.* 17, *On Judgments II.* 1.) [*Given on the fourth day before the Kalends of February,* 1206.]

Generales inquisitores, si non servaverunt debitum inquisitionis ordinem, prudenter et caute se corrigere debent. Hoc primo. Secundo ponit formam iuramenti, quam inquisitores exigunt ab inquisitis.

Idem Versellensi Episcopo et Abbati de Tileto.

Qualiter et quando *debeat praelatus procedere ad inquirendum et puniendum subditorum excessus, ex auctoritatibus novi et veteris testamenti colligitur evidenter, ex quibus super hoc postea processerunt canonicae sanctiones. Legitur enim in evangelio, quod villicus ille, qui diffamatus erat apud dominum suum, quasi dissipasset bona ipsius, audivit ab illo: "quid haec audio de te? redde rationem villicationis tuae: iam enim non poteris villicare." Et in Genesi Dominus ait: "descendam et videbo, utrum clamorem qui venit ad me, opere compleverint." Ex quibus auctoritatibus manifeste probatur, quod non solum, quum subditus, verum etiam, quum praelatus excedit, si per clamorem et famam excessus eius ad aures superioris pervenerit, non quidem a malevolis et maledicis, sed a providis et honestis, nec semel tantum, sed saepe, quod clamor innuit et diffamatio manifestat, debet coram ecclesiae senioribus veritatem diligentius perscrutari, ut si rei poposcerit qualitas, canonica districtio culpam ferat delinquentis, non tamen sit idem actor et iudex, sed, quasi deferente fama vel denunciante clamore, officii sui debitum exsequatur. Licet autem hoc sit diligenter observandum in subditis, diligentius tamen est observandum in praelatis, qui quasi signum sunt positi ad sagittam. Et quia non possunt omnibus complacere, quum ex officio teneantur non solum arguere, sed etiam increpare, quin etiam interdum suspendere, nonnunquam vero ligare: frequenter odium multorum incurrunt et insidias patiuntur. Et ideo sancti Patres provide statuerunt, ut accusatio praelatorum non facile admittatur, ne concussis columnis corruat aedificium, nisi diligens adhibeatur cautela, per quam non solum falsae, sed etiam malignae criminationis ianua praecludatur. Verum ita voluerunt providere praelatis, ne criminarentur iniuste, ut tamen caverent, ne delinquerent insolenter, contra utrumque morbum invenientes congruam medicinam, ut videlicet accusatio criminalis, quae ad diminutionem capitis, id est ad degradationem, intenditur, nisi legitima praecedat inquisitio, nullatenus admittatur. Sed quum super excessibus suis quisquam fuerit infamatus, ut in tantum iam clamor adscenderit, quod diutius sine scandalo dissimulari non possit, nec sine periculo tolerari: absque dubitationis scrupulo ad inquirendum et puniendum eius excessus non ex odii fomite, sed ex caritatis procedatur affectu, quatenus, si gravis fuerit excessus, et si non degradetur ab ordine, ab administratione tamen amoveatur omnino, quod est secundum evangelicam veritatem a villicatione villicum amoveri, qui non potest villicationis suae dignam reddere rationem*. Si circa *venerabilem fratrem nostrum* Novariensem episcopum debitum inquisitionis ordinem observastis, *intentionem et* discretionem vestram in Domino commendamus. Si vero qualibet occasione praetermisistis eundem, *ne levi compendio ad grave dispendium veniatur*, adhuc ipsum *ordinem* tempore opportuno volumus observari, ne inde nascantur iniuriae, unde iura nascuntur. Ideoque mandamus, quatenus ad conscientiae vestrae iudicium recurrentes, si *forte* contra praescriptum ordinem tanquam homines excessistis, non pudeat vos errorem vestrum corrigere, qui positi estis, ut aliorum corrigatis errores, quoniam apud iudicem districtum, in qua mensura mensi fueritis, remetietur vobis, ita videlicet, ut inveniatis occasionem aliquam congruentem, per quam, ne vestra vilescat auctoritas, quanto cautius et prudentius poteritis, supersedeatis ad praesens, quoniam ex his, quae inordinate sunt acta, non potest ordinabiliter agi. Si vero praescriptum ordinem custodistis, *volumus et mandamus, quatenus*, omni gratia et timore postpositis, Deum solum habentes prae oculis, via regia incedentes, sine personarum acceptione in *hoc* negotio procedatis *iuxta formam, quam vobis in aliis literis duximus exprimendam, nec timeatis aliquem hominem contra Deum, sed Deum potius supra omnem hominem metuatis*. Formam vero iuramenti, quam a clericis Novariensibus super inquisitione facienda in hoc negotio recepistis, in similibus volumus observari, ut videlicet iurent clerici, quod super his, quae sciunt vel credunt esse in sua ecclesia reformanda tam in capite quam in membris, exceptis occultis criminibus, meram et plenam dicant inquisitoribus veritatem. (*Et infra:*) *Constitutiones vero, quas ad correctionem excessuum, et reformationem morum vos non tam fecisse, quam*

innovasse cognovimus, adprobamus, volentes, ut eas faciatis a clericis laudabiliter exerceri, praecipientes ex parte nostra praelatis, etc. (*cf. c.* 17. *de iudic. II.* 1.) [*Dat. IV. Kal. Febr.* 1206.]

Chapter XVIII

Latin source headnote: If the person against whom inquiry is made swore only to answer what was asked, after confession he is heard when wishing to prove excuses that do not destroy the confession but explain it; it is otherwise if he swore to tell the full and pure truth.

The same, to the Archbishop of Arles and the Abbot of Valmagne.

When the beloved sons the Abbot of Cîteaux and P. and R., monks of Fontfroide, legates of the Apostolic See, had approached the church of Agde in order to exercise the office of legation in it, because many adverse things concerning *our venerable brother* the Bishop of Agde had been intimated to them through frequent outcry, they wished to descend and see whether he had fulfilled the outcry in deed; *and therefore they bound both the bishop and the canons by the bond of an oath, that they should tell them the truth concerning the state of the church*. [*When the same bishop appealed, they reduced their depositions to writing and sent them to our presence, fixing for the bishop a suitable term at which he should present himself before our countenance to receive the apostolic mandate. But the same bishop, approaching our presence, after he heard his own confessions and the depositions of others, strove to excuse himself in many ways, assigning to us his excuses in writing. We therefore, after diligent counsel had been held with our brothers, considered that the aforesaid bishop ought to be suspended from the administration of the church of Agde because we found him culpable in certain matters, and his confessions made a prima facie case against him, rendering him suspect to us by law, since he had not yet proved his excuses, which nevertheless he steadfastly promised that he would prove.*] But because it was not established to us under what form the bishop with the canons of Agde took the oath before the said legates—whether, namely, he so swore that he would tell the full and pure truth concerning the state of the church, or *so* that he would answer truthfully what was asked—we command [*by way of command*] your discretion *by apostolic writings* that you command the same legates on our behalf, *strictly in virtue of obedience*, that they endeavor faithfully to intimate *to you* under what form he took the oath. And if, according to their response, he swore under the second form, or he himself *before you* sufficiently proves that he swore under that form, either through the depositions of the witnesses whom he produced *while constituted before the Apostolic See, which we send to you enclosed under our seal*, or even of others—since those depositions were not published, nor did *he himself* take care to renounce the production of witnesses—because according to that form he would not be bound by the obligation of the oath except only to answer the matters asked, you shall take care diligently to hear his excuses, *which we send to you enclosed under our seal*. And if he shall have proved them *evidently*, since excuses of this sort do not destroy his confessions but explain them, which are such that they can be turned *both* toward good and toward evil and therefore ought to be judged from the cause, you shall, the obstacle of appeal having been removed, absolve him *completely*, since, even if he was found culpable in certain matters, nevertheless, having been punished by the labor and shame that he incurred because of this cause, a slight fault of this sort can lightly be pardoned him. But if he shall have been unable *sufficiently* to prove those excuses concerning dilapidation, shipwreck, and simony, or if he swore under the first form, since according to that form he ought neither to have concealed truth nor mixed in falsehood, you shall, notwithstanding *those* excuses which he newly proposed *before us*, since in his confessions he made no mention at all of them—although he steadfastly asserted that he had expounded several of them to the aforesaid legates, *which they did not take care to*

write down, since he could not prove this by himself, as one who alone was examined by them—take care to remove him, *the obstacle of any opposition and appeal having been removed*, from the administration of the church of Agde, [*causing provision to be made for that church, with the counsel of the same legates, concerning a suitable person through canonical election, etc. Given on the eighth day before the Kalends of June, in the eighth year,* 1205.]

> Si is, contra quem inquiritur, iuravit respondere tantum ad interrogata, post confessionem auditur volens probare excusationes, quae confessionem non perimunt, sed exponunt; secus si iuraverit, plenam et meram veritatem dicere.
>
> Idem Archiepiscopo Arelatensi et Vallis magnae Abbati. Quum dilecti filii Cisterciensis abbas et P. et R. monachi Fontis frigidi, apostolicae sedis legati, ad ecclesiam Agathensem accessissent, ut in ea legationis officium exercerent, quia de *venerabili fratre nostro* Agathensi episcopo per frequentem clamorem multa sibi fuerant insinuata sinistra, voluerunt descendere ac videre, si clamorem opere complevisset; *ideoque tam episcopum quam canonicos iuramenti vinculo adstrinxerunt, ut super statu ecclesiae sibi dicerent veritatem*. [*Qui depositiones eorum redactas in scriptis, quum idem episcopus appellasset, ad nostram praesentiam destinaverunt, praefigentes eidem episcopo terminum competentem, quo nostro se conspectui praesentaret, mandatum apostolicum recepturus. Idem autem episcopus ad praesentiam nostram accedens, postquam confessiones suas et aliorum depositiones audivit, nisus est se multipliciter excusare, suas nobis excusationes in scriptis assignans. Nos igitur, habito cum fratribus nostris consilio diligenti, praefatum episcopum ab administratione Agathensis ecclesiae duximus suspendendum pro eo, quod in quibusdam eum culpabilem deprehendimus, et confessiones ipsius contra eum prima facie faciebant, reddentes nobis eum de iure suspectum, quum nondum suas excusationes probaverit, quas tamen se probaturum firmiter promittebat.*] Quia vero nobis non constitit, sub qua forma episcopus cum canonicis Agathensibus coram dictis legatis praestiterit iuramentum, utrum videlicet ita iuraverit, ut super statu ecclesiae plenam et meram diceret veritatem, an *ita*, ut ad inquisita veraciter responderet: *discretioni vestrae per apostolica scripta* [*praecipiendo*] mandamus, quatenus eisdem legatis ex parte nostra *in virtute obedientiae districte* mandetis, ut, sub qua forma iuramentum praestiterit *vobis* studeant fideliter intimare. Et si secundum responsionem eorum sub secunda forma iuraverit, aut ipse *coram vobis* sufficienter probaverit, se sub illa forma iurasse, aut per depositiones testium, quos produxit *apud sedem apostolicam constitutus, quas vobis sub bulla nostra mittimus interclusas*, aut etiam aliorum: quum depositiones illae non fuerint publicatae, nec *ipse* productioni testium renunciare curaverit, quoniam secundum eandem non teneretur ex debito iuramenti nisi ad quaesita solummodo respondere, vos excusationes suas, *quas vobis sub bulla nostra mittimus interclusas, diligenter* audire curetis. Et si eas probaverit *evidenter*, quum excusationes huiusmodi confessiones eius non perimant, sed exponant, quae tales sunt, ut *et* ad bonum et malum valeant retorqueri, et ideo iudicari debent ex causa: eum sublato appellationis obstaculo *penitus* absolvatis, quum, etsi repertus sit culpabilis in quibusdam, ex labore tamen et pudore punitus, quos propter hanc causam incurrit, huiusmodi levis culpa leviter ei valeat indulgeri. Quodsi excusationes illas super dilapidatione, naufragio et simonia *sufficienter* probare nequiverit, aut sub prima forma iuraverit, quum secundum eandem nec veritatem tacere, nec admiscere debuerit falsitatem: vos, non obstantibus excusationibus *illis*, quas de novo proposuit *coram nobis*, quum in confessionibus suis nullam omnino de illis fecerit mentionem, quamvis firmiter asseruerit, quod plures ex illis legatis praedictis exposuit, *quas ipsi scribere non curaverunt*, quum hoc per se probare non posset, tanquam qui solus examinabatur ab illis, eum *sublato cuiuscunque contradictionis et appellationis obstaculo* ab administratione Agathensis ecclesiae removere curetis, [*facientes eidem ecclesiae cum consilio legatorum ipsorum de persona idonea per electionem canonicam provideri etc. Dat. VIII. Kal. Iun. Ao. VIII.* 1205.]

Chapter XIX

Latin source headnote: Inquiry is not made into the truth of crimes unless the infamy is first established; and then not enemies or perjurers, but suitable men, are admitted to prosecute the inquisition and to testimony; and, when the crime has not been proved, purgation is imposed upon those defamed.

The same, to the Archbishop of Tarragona, the Abbot of Saint Mary of Poblet, and the Archdeacon of Barcelona.

Since a bishop ought [*according to the Apostle to have good testimony both from those who are within and from those who are without, and according to divine law his garment ought to be woven of scarlet twice dyed and twisted linen, if at any time an adverse rumor against some bishop rises to apostolic ears, from the solicitude of the pastoral office we are bound to descend and see whether he has fulfilled the outcry in deed.*] Indeed, when the *beloved sons* G. *Grossi* and H., canons of Vic, came to the Apostolic See and proposed before us many *grave and* enormous things against *our venerable brother* the Bishop of Vic, because we ought not to pass over them under dissimulation, we considered that the inquiry into them ought to be committed to you, *brother archbishop and son archdeacon, imitating the footsteps of him who, when he had a steward and that steward had been defamed before him because he had dissipated his goods, settled an account with him*. But the said bishop, approaching our presence before your citation reached him, proposed *before us* that those who had suggested *to us* those enormous things *concerning him*, led by the swelling of malice rather than by zeal for justice, had intimated things of this sort to us, since they were his manifest enemies and associated with his foes, and intended to produce their own blood relatives and accomplices to testify against him, who ought not *for any reason* to be admitted to denounce or testify, as being transgressors of an oath taken and entangled in other crimes. *But lest through a slight shortcut one come to grave loss*, we command your discretion *by apostolic writings* that, unless you know that his reputation has been injured concerning the aforesaid matters, you do not proceed suddenly to inquire into them. But if it is necessary to proceed to inquiry, you shall admit neither the aforesaid persons nor others who shall be established to be his enemies either to prosecute the inquiry or to bear testimony against the bishop himself; but through suitable men you shall inquire more diligently into the truth concerning the things that were done, and, if nothing grave shall have been proved against him, you shall impose canonical purgation upon him. [*But if anyone, etc. Given at Ferentino on the Kalends of September, in the ninth year,* 1206.]

> De veritate criminum non inquiritur, nisi prius constet de infamia, et tunc non inimici vel periuri, sed idonei viri ad prosequendam inquisitionem et ad testimonium admittuntur, et, non probato crimine, indicitur infamatis purgatio.
>
> Idem Archiepiscopo Terraconensi et Abbati sanctae Mariae de Populeto et Archidiacono Barchinonensi. Quum oporteat episcopum [*secundum Apostolum habere bonum testimonium et ab iis, qui sunt intus, et ab iis, qui sunt foris, et secundum legem divinam indumentum ipsius de cocco bis tincto et bysso retorta debeat esse contextum, si aliquando rumor sinister contra episcopum aliquem ad apostolicas aures ascendit, ex sollicitudine officii pastoralis tenemur descendere, ac videre, utrum idem clamorem opere consummaverit.*] Sane, venientibus ad apostolicam sedem *dilectis filiis* G. *Grossi* et H. canonicis Vicensibus et multa *gravia et* enormia contra *venerabilem fratrem nostrum* Vicensem episcopum proponentibus coram nobis, quia illa non debebamus sub dissimulatione transire, vobis, *frater archiepiscope et fili archidiacone*, inquisitionem illorum duximus committendam, *illius imitantes vestigia, qui, quum haberet villicum, et ille diffamatus fuisset apud eundem, quia dissipasset bona ipsius, cum eo posuit rationem*. Verum dictus episcopus, antequam ad ipsum vestra citatio

pervenisset, ad praesentiam nostram accedens proposuit *coram nobis*, quod illi, qui enormia *illa* de ipso *nobis* suggesserant, typo malitiae potius quam iustitiae zelo ducti, nobis huiusmodi intimarunt, quum ipsi eius sint inimici manifesti, et cum eius hostibus conversentur, consanguineosque suos ac complices intendant ad testificandum producere contra ipsum, qui ad denunciandum seu testificandum admitti non debent *aliqua ratione*, utpote iuramenti praestiti transgressores, et aliis criminibus irretiti. *Ne vero per leve compendium ad grave dispendium veniatur*, Discretioni vestrae *per apostolica scripta* mandamus, quod, nisi super praedictis famam ipsius laesam esse noveritis, vos ad inquisitionem illorum non subito procedatis. Quodsi ad inquisitionem fuerit procedendum, praedictos vel alios, quos ipsius esse constiterit inimicos, nec ad prosequendam inquisitionem, nec ad perhibendum testimonium contra ipsum episcopum admittatis; sed per viros idoneos super his, quae gesta sunt, inquiratis diligentius veritatem, et, si nihil grave probatum fuerit contra ipsum, vos purgationem canonicam indicatis eidem. [*Quod si aliquis etc. Dat. Ferentini Kal. Sept. Ao. IX.* 1206.]

Chapter XX

Latin source headnote: A public concubinary, an excommunicate, a conspirator, and one who did not first give warning are repelled from denunciation.

The same.

When the beloved son (*And below:*) *You shall inquire more diligently into the truth concerning the aforesaid matters, and* if it shall be established to you that those in whose name excesses of this sort were reported concerning the bishop were at that time public concubinaries, on account of which a sentence of excommunication was promulgated against them, or that the aforesaid bishop had not been first admonished by them concerning the aforesaid excesses, or that they had conspired against him, you shall repel them *entirely from that* denunciation. Otherwise, you shall hear the things proposed on each side, nevertheless prohibiting the same bishop by our authority from presuming unduly to burden the aforesaid clerics concerning those matters on which an appeal has lawfully been made to our hearing, until the aforesaid cause has been concluded according to the form of our mandate.

A denunciatione repellitur publicus concubinarius, excommunicatus et conspirator, et is, qui non praemonuit.

Idem.

Quum dilectus filius (*Et infra:*) *Inquiratis super praemissis diligentius veritatem, et* Si vobis constiterit, praedictos, quorum nomine sunt excessus huiusmodi de episcopo nunciati, publice concubinarios tunc fuisse, propter quod in eos fuit excommunicationis sententia promulgata, vel praefatum episcopum de iam dictis excessibus non fuisse praemonitum ab eisdem, vel ipsos conspirasse in eum, a denunciatione *ipsa penitus* repellatis eosdem. Alioquin audiatis quae fuerunt hinc inde proposita, eidem episcopo auctoritate nostra nihilominus prohibentes, ne super his, super quibus ad audientiam nostram fuerit legitime appellatum, praefatos clericos indebite gravare praesumat, donec causa supra dicta iuxta formam mandati nostri fuerit terminata.

Chapter XXI

Latin source headnote: A crime proved by way of inquisition is not regularly punished by the ordinary penalty; but if it impedes the exercise of order, deposition is made, as in accusation. And if it impedes only retention of a benefice, deprivation of the benefice is made, nor will the judge be able to

moderate this penalty. This is what it says as far as § "The third," according to the true understanding, not well explained by the writers. — (§ 1.) Inquiry ought not to be made concerning the truth of crimes against one who is not defamed, even if an infamous libel has been offered secretly against him; nor concerning the principal matter is credence given to a witness who, having sworn, says that he is an enemy of the person against whom inquiry is made. The same applies if he says this before the oath, unless it is presumed that he said it fraudulently. This is what it says as far as § "You asked." — (§ 2.) One is not punished for a crime concerning which there is no proof except through reputation and the belief of witnesses, and through the statements of a few one ought not to be reputed defamed before the judge. This is what it says to the end.

The same, to the Bishop of Geneva and N. of Valence.

Desiring to execute without scruple of conscience the business of the inquisition which we committed to you to conclude concerning *our venerable brother* the bishop and the canons of Valence, *you asked to be taught by an apostolic oracle whether the statements and names of those whom it happens are questioned are to be published, as is customary to be done concerning witnesses in public causes; or whether it is sufficient that only their statements be published, their names being withheld, since the same bishop and canons manifestly know who were questioned; and whether exceptions or replications ought to be admitted against the same statements, since they are admitted against the persons making the statements. To this we respond briefly that not only the statements but also the names themselves, so that it may appear what was said by whom, are to be published, and lawful exceptions or replications are to be admitted, lest through suppression of names boldness be afforded for defaming falsely, and through exclusion of exceptions, for deposing falsely*. Secondly, you asked what is to be established [*by*] you if such a crime shall have been proved against anyone through inquisition as would depose one criminally accused and convicted. In this, indeed, we considered it necessary to distinguish whether it is such a crime, *namely*, as would impede the exercise of an order received or retention of a benefice even after penance had been performed—for example, if he had committed homicide or obtained an order or benefice through the vice of simony. In that case one will have to proceed as in a judgment of accusation; otherwise the discretion of the judge will be able to moderate the penalty according to the merits of the person and the quality of the excess. § 1. The article of the third doubt contained this: whether, when two or more persons under oath affirm that someone committed some crime while they were looking on, concerning which *nevertheless* he labors under no infamy, you ought to inflict some penalty upon him; and whether at the petition of certain persons secretly delivering to you certain documents containing defamation of the bishop, one should proceed to an inquisition concerning the things contained in the documents themselves; and whether credence ought to be given to the statements of those who, after the oath, having been asked secretly whether they are enemies of those concerning whom inquiry is made, respond that they do not love them, or directly assert themselves to be their enemies, or even publicly confess this before the oath, nevertheless showing no probable causes of enmity. To these matters *likewise* we respond that no one is to be punished for a crime concerning which he labors under no infamy or no clamorous intimation has preceded, because of statements of this sort; indeed, depositions concerning it ought not to be received against him, since inquisition ought to be made only concerning those things about which some outcries have preceded. Nor, at the petition of those who secretly present a libel of defamation, is one to proceed to make an inquisition concerning the crimes contained therein, nor is credence to be given, against those concerning whom inquiry is made, to the statements of persons who, after the oath or before it, tacitly or expressly, assert that they are their enemies, unless perhaps

before the oath they are presumed to do this fraudulently. § 2. You also asked what ought to be established if it should happen that nothing is found through certain knowledge, but only through reputation and the sworn belief of those who were questioned; and whether anyone ought to be reputed defamed concerning a crime as to which two or three or even more persons have said that he was defamed, although nothing adverse concerning him is heard in public. To this our response is that one will not have to proceed to a sentence of deposition solely on account of reputation and the belief of the deponents; but canonical purgation can be imposed upon the person defamed according to the judgment of the one judging, who ought not to repute him defamed because of the statements of a few, when his reputation among good and grave persons has not been injured. [*But you finally, etc. Given at the Lateran on the thirteenth day before the Kalends of January, in the fifteenth year of our pontificate,* 1212.]

Crimen, probatum per modum inquisitionis, regulariter poena ordinaria non punitur; sed, si impedit ordinis exsecutionem, fit depositio, sicut in accusatione. Et si impedit tantum beneficii retentionem, fit privatio a beneficio, nec poterit iudex hanc poenam moderari. H. d. usque ad § Tertiae, secundum verum intellectum, non bene declaratum per scribentes. - (§ 1.) Contra non infamatum super veritate criminum inquiri non debet, etiamsi libellus famosus contra eum oblatus fuerit in secreto; nec super principali creditur testi, qui iuratus dicit se illius, contra quem inquiritur, inimicum. Idem, si hoc dicit ante iuramentum, nisi praesumatur hoc dixisse in fraudem. H. d. usque ad § Quaesivisti. - (§ 2.) Non punitur quis de crimine, de quo non constat, nisi per famam et testium credulitatem, et per dicta paucorum non debet quis apud iudicem infamatus reputari. H. d. usque ad finem.

Idem Episcopo Gebennensi et N. Valentinensi. Inquisitionis negotium, quam de *venerabili fratre nostro* episcopo et canonicis Valentinensibus vobis commisimus terminandam, *sine conscientiae scrupulo exsequi cupientes, apostolico petiistis oraculo edoceri, utrum eorum publicanda sint dicta et nomina, quos interrogari contingit, prout de testibus in publicis causis fieri consuevit; an sola dicta eorundem publicari sufficiat, nominibus tacitis, quum idem episcopus et canonici manifeste sciant, qui fuerint inquisiti; et utrum contra dicta eadem debeant exceptiones seu replicationes admitti, quum contra personas dicentium admittantur. Ad quod breviter respondemus, non solum dicta, sed etiam ipsa nomina, ut quid a quo sit dictum apparent, publicanda, et exceptiones seu replicationes legitimas admittendas, ne per suppressionem nominum infamandi, per exceptionum vero exclusionem deponendi falsum audacia praebeatur*. Secundo quaesivistis, quid [*a*] vobis sit statuendum, si contra quempiam per inquisitionem probatum fuerit tale crimen, quod deponeret accusatum criminaliter et convictum. In quo quidem duximus distinguendum, utrum sit tale *videlicet* crimen, quod ordinis exsecutionem suscepti aut retentionem beneficii etiam post peractam poenitentiam impediret, puta si homicidium commisisset, vel adeptus esset ordinem aut beneficium vitio simoniae. Quo casu erit, sicut in accusationis iudicio, procedendum; alioquin secundum personae merita et qualitatem excessus poenam poterit iudicantis discretio moderari. § 1. Tertiae dubitationis articulus continebat, utrum, quum duo vel plures iurati affirmant, aliquem crimen aliquod eisdem videntibus commisisse, de quo *tamen* aliqua infamia non laborat, aliquam illi poenam infligere debeatis, et utrum ad petitionem quorundam, quasdam cedulas vobis occulte tradentium infamationem episcopi continentes, sit ad inquisitionem eorum, quae in ipsis continentur cedulis, procedendum; et an fides eorum dictis debeat adhiberi, qui, post iuramentum interrogati secreto, utrum sint eorum, de quibus inquiritur, inimici, respondent, quod non diligunt illos, vel directe inimicos se asserunt eorundem, aut etiam ante iuramentum id publice confitentur, nullas tamen inimicitiarum causas probabiles ostendentes. Ad haec *autem pariter* respondemus, nullum esse pro crimine, super quo aliqua non laborat infamia, seu clamosa insinuatio non processerit, propter dicta huiusmodi puniendum, quin immo super hoc depositiones contra eum recipi non debere, quum inquisitio fieri debeat solummodo super illis, de quibus clamores aliqui praecesserunt. Nec ad

petitionem eorum, qui libellum infamationis porrigunt in occulto, procedendum est ad inquisitionem super contentis ibidem criminibus faciendam, aut etiam adversus eos, contra quos fit inquisitio, fides adhibenda est dictis eorum, qui post iuramentum vel ante, tacite vel expresse, inimicos se asserunt eorundem, nisi forsan ante iuramentum in fraudem id facere praesumantur. § 2. Quaesivisti etiam, quid statui debeat, si nihil per certam scientiam, sed tantum per famam, et eorum, qui fuerint inquisiti, credulitatem iuratam contigerit inveniri; et utrum aliquis super eo crimine reputari debeat infamatus, de quo ipsum duo vel tres vel etiam plures dixerint infamatum, licet de ipso nihil sinistri in publico audiatur. Ad quod est nostra responsio, quod propter famam et deponentium credulitatem duntaxat non erit ad depositionis sententiam procedendum; sed infamato canonica poterit indici purgatio secundum arbitrium iudicantis, qui propter dicta paucorum eum infamatum reputare non debet, cuius apud bonos et graves laesa opinio non exsistit. [*Tu denique etc. Dat. Lat. XIII. Kal. Ian. Pont. nostr. Ao. XV.* 1212.]

Chapter XXII

Latin source headnote: If one whose crime is established in judgment seeks restitution because judicial order was not observed, he is not to be heard; rather, the superior ought to deprive him anew as a notorious criminal. This is what it says, and the case is very noteworthy according to this understanding.

The same, to the Bishop and Dean of Senlis.

At the petition of Walter, formerly Abbot of Corbie, correction of that place having some time ago been committed by us to *the beloved sons the scholasticus and Masters* R. *of Courson* and P., canons of Noyon, *of the same place, they, approaching the same monastery twice, corrected certain things there and established some matters that had to be established, while the malice of certain persons impeded the prosecution of the inquiry by delaying it; and, to repress their contumacy, they intended to invoke the secular arm*. But *our* beloved son G., cardinal deacon of Saint Mary in Portico and at that time legate of the Apostolic See, *coming meanwhile to that monastery, in the presence of the above-*mentioned G. and without his protesting, began diligently to inquire into the state of the *aforesaid* monastery. And when, after the inquiry had been completed, he summoned him to Paris to propound against that inquiry whatever he reasonably considered ought to be propounded, the same *W.*, approaching his presence, alleged that he was unable to proceed in the correction of the monastery, which had previously been committed to the aforesaid judges by our authority, and, asserting that he held the cardinal himself suspect for just causes, made an appeal to us; the cardinal, after inspecting *those things* that had been proved against him, removed him, *on the counsel of experts*, from the government of the abbey, giving the brothers of the same place free faculty to elect another, who concordantly elected as abbot *the beloved son John, Abbot of Corbie and then* Prior of Argenteuil, *a provident and honorable man*. [*But when the said W. afterward approached the Apostolic See, asserting that he had been removed from the abbey without reasonable cause by the cardinal himself, who had been circumvented by the false suggestions of certain persons, we, wishing with paternal solicitude to provide for the tranquility of the same monastery, commanded our venerable brothers the Archbishop of Reims and the Bishop of Arras that they devote effective zeal and labor toward a settlement between the same W. and the person substituted for him; otherwise, that they inquire more diligently into the truth both through the aforesaid legate and through others, and faithfully intimate it to us by the feast of Saint Remigius next to come, so that, made more certain through their report, we might proceed in the same affair as we should see that it ought more usefully to be done. Since they were unable to make progress concerning the reformation of peace, as we received from their letters, they proceeded to inquire into the truth concerning all the*

aforesaid matters, receiving witnesses from each party, and transmitted to us under their own seals what they had found both through themselves and through the inquiry of the cardinal. But recently, when the aforesaid W. and I. were constituted in our presence on this account, the same W. sought to have revoked what had been done by the legate after an appeal to us had been interposed, alleging that, since correction of the monastery had been enjoined upon the aforesaid judges and they, after certain things had been corrected and some matters established there, considered that correction of the others ought reasonably to be deferred, the cardinal could not meanwhile by law proceed to the same matter, since a general mandate does not derogate from a special one. To this it was answered on the opposite side that, since the cardinal proceeded to the inquiry in the presence of W. and without his protesting, the same W. seems in this tacitly to have consented that, after the inquiry had been made, the cardinal should correct what he saw ought to be corrected. Against this the same W. proposed in this manner: that, although he did not consider that he ought to protest immediately when the cardinal began to inquire, believing that he did not wish to proceed against him but usefully to ordain something in the church without burden to himself, nevertheless, after, having been summoned by him, he learned that he intended to proceed against him, he declined his examination by appealing to our hearing. The adverse party proposed in addition that, since the aforesaid judges had omitted to proceed in the correction of the monastery and delay drew danger with it, the cardinal himself, to whom its care pertained by reason of the office of legation enjoined upon him, was able to interpose his own efforts for the reformation of that place. For since, according to the authority of the civil law, even in those cases in which solemn judicial order is observed, the prosecution of a criminal cause is not to be extended beyond two years from the joinder of issue; and since we also are known, when consulted as to how long a delegate from us who had rendered a sentence can interpose his jurisdiction so that the sentence be obeyed, to have responded that he can exercise the jurisdiction committed to him for executing the sentence for as much as one complete year; with the said judges delaying to proceed in the correction, since seventeen months had already elapsed from when they are known to have received the apostolic mandate, the cardinal was not undeservedly able to insist upon the aforesaid correction concerning crimes, although the matter was not being pursued criminally. But to this the other party responded that this would have the color of an excuse if the aforesaid judges, having been admonished by the legate, had neglected to proceed to correction. In that case their defect could perhaps have been supplied by the diligence of the legate, just as it is read in the canons concerning a metropolitan that only then can he do those things that pertain to suffragans when the suffragans neglect to fulfill them.] These things, therefore, and the others that each party took care to propose having been heard, [after both inquiries—namely that of the cardinal and that of the aforesaid archbishop and bishop—had been diligently inspected, we understood from the depositions of sworn persons that, although at the time of W.'s promotion the monastery was burdened by a debt of eight thousand pounds, and not much later the same debt had been reduced to two thousand pounds, it had now nevertheless increased to the sum of six thousand pounds; although, as had happened earlier, the debt ought rather to have been diminished than increased from the revenues of the monastery, unless the negligence of the rector had stood in the way. And although the same W. proposed for his excuse that the debt had been increased on account of expenses made in the cause that he had against the monastery of Cluny, in which he recovered a certain priory, it was nevertheless answered to him on the opposite side that the debt ought not meanwhile to have been increased on account of those expenses, since on this account he had obligated certain possessions of the same priory, especially since scarcely a thousand pounds had been expended in the prosecution of the same affair. The said W. also added that the aforesaid debt increased by occasion of a certain house that he had newly constructed in the town of Corbie. To this the adverse party responded that he could have made expenses of this sort from the revenues of the monastery without the burden of debts, especially since on this account no small assistance had been furnished to him by the burgesses. Moreover, since it was established from his own confession that in chapter he had taken an oath not to contract new debt, and afterward he contracted debt, acting

contrary to his own oath, as the witnesses depose, he seemed to be accused of perjury. To this the same W. responded in this way: that, although he first took an oath of this sort, nevertheless afterward a certain statute was made in chapter through which the oath itself was relaxed. But against this the other party replied that, since it was not established that the oath had been revoked through such a statute, and it appeared that the same W. not only took an oath not to contract debt but afterward acted against it, it was manifestly clear that he had incurred the guilt of perjury. Moreover, his insufficiency and dissolute negligence seemed manifestly to be proved. And although some of the witnesses said that, so far as lay in them, he was good, none nevertheless expressly deposed that his provision was useful to the often-mentioned monastery.] Therefore, since *sufficient proof in such an affair* was made to us concerning such matters on account of which the aforesaid G. deservedly had to be removed, even if he ought to be restored because judicial order had not been observed, *nevertheless, on account of the aforesaid causes*, we provided that he remain deprived of the government of the abbey, removing by sentence the aforesaid prior, whom, because the aforesaid G. had been removed *in a certain manner* irregularly on account of legal order not having been observed, we understood for the same cause to have been, by consequence, less lawfully substituted. Because we removed him not on account of a vice of the person or a defect of knowledge, but on account of the solemnity of law that had been omitted, *as was said before*, we afterward restored him as abbot, [*and to the aforesaid W., etc. Given at the Lateran on the seventh day before the Kalends of March, in the thirteenth year of our pontificate,* 1210.]

> Si is, de cuius crimine in iudicio constat, petit restitutionem propter iudiciarium ordinem non servatum, non est audiendus, sed eum, tanquam notorium criminosum, debet superior de novo privare. H. d. et est casus valde notabilis secundum hunc intellectum.
>
> Idem Episcopo et Decano Sylvanectensibus.
>
> Ad petitionem Galterii quondam Corbiensis abbatis *dilectis filiis magistro scholarum et Magistris* R. *de Corzon* et P. canonicis Noviomensibus *eiusdem loci* a nobis dudum correctione commissa, *ipsi bis ad idem monasterium accedentes, quibusdam correctis ibidem nonnulla, quae statuenda fuerant, statuerunt, inquisitionis instantiam quorundam impediente malitia retardando, ad quorum contumaciam reprimendam saeculare intendebant brachium invocare*. Verum dilectus filius *noster* G. sanctae Mariae in porticu diaconus cardinalis, tunc apostolicae sedis legatus, *interim ad idem veniens monasterium, supra* dicto G., praesente, nec reclamante, super statu monasterii *memorati* coepit inquirere diligenter. Et quum inquisitione finita eum Parisius evocasset, propositurum contra inquisitionem eandem si quid rationabiliter duceret proponendum: idem *W.* praesentiam eius adiens allegavit, quod in monasterii correctione procedere non valebat, quae praedictis iudicibus prius fuerat auctoritate nostra commissa, et cardinalem ipsum ex iustis causis se asserens habere suspectum, vocem ad nos appellationis emisit; quem cardinalis, inspectis *his*, quae probata fuerant contra eum, *de consilio peritorum* amovit a regimine abbatiae, dando fratribus eiusdem loci liberam facultatem alium eligendi, qui *dilectum filium Ioannem abbatem Corbeiensem, tunc* priorem de Argentolio, *virum providum et honestum*, elegerunt concorditer in abbatem. [*Quum autem dictus W. postmodum ad sedem apostolicam accessisset, asserens se per cardinalem ipsum quorundam falsis suggestionibus circumventum ab abbatia sine rationabili causa remotum, nos eiusdem coenobii tranquillitati paterna sollicitudine providere volentes, venerabilibus fratribus nostris archiepiscopo Remensi et Atrebatensi episcopo dedimus in mandatis, ut ad compositionem inter eundem W. et substitutum ei darent studium et operam efficacem, alioquin tam per iam dictum legatum quam per alios inquirerent diligentius veritatem, et eam nobis usque ad festum sancti Remigii proximo nunc venturum fideliter intimarent, ut per eorum relationem certiores effecti procederemus in eodem negotio, prout procedendum utilius videremus. Qui quum super reformatione pacis proficere nequivissent, sicut ex literis eorum accepimus, processerunt ad inquirendum super praemissis omnibus veritatem, testibus ab utraque parte receptis, et ea, quae tam per se quam per cardinalis inquisitionem invenerant, nobis sub sigillis propriis transmiserunt. Nuper autem praefatis W. atque I. in nostra propter hoc praesentia constitutis, idem W. quod a legato post appellationem ad nos*

interpositam factum fuerat petiit revocari, allegans, quod, quum correctio monasterii fuerit iudicibus memoratis iniuncta, et ipsi, quibusdam correctis et nonnullis statutis ibidem, aliorum correctionem ex causa duxerint rationabili differendam, cardinalis interim de iure non potuit procedere ad eandem, quum generale mandatum non deroget speciali. Ad quod fuit ex adverso responsum, quod quum W. praesente nec reclamante ad inquisitionem processerit cardinalis, idem W. videtur in hoc tacite consensisse, ut inquisitione facta corrigeret cardinalis quae corrigenda videret. Contra quod idem W. taliter proponebat, quod, licet statim, ut coepit inquirere cardinalis, non duxerit reclamandum, credens eum nolle procedere contra ipsum, sed absque sui gravamine aliquid in ecclesia utiliter ordinare, postquam tamen evocatus ab ipso cognovit, quod adversus eum procedere intendebat, eius declinavit examen ad nostram audientiam appellando. Proposuit insuper pars adversa, quod, quum praedicti iudices omisissent in monasterii correctione procedere, ac periculum traheret ad se mora, cardinalis ipse, ad quem spectabat ex iniuncto sibi legationis officio cura eius, ad reformationem ipsius loci interponere potuit partes suas. Quum enim secundum iuris civilis auctoritatem in illis etiam casibus, in quibus solennis ordo iudiciarius observatur, in criminali causa ultra biennium a contestatione litis non sit eius instantia protrahenda, et nos quoque, consulti, quamdiu delegatus a nobis, qui sententiam tulerat, iurisdictionem suam interponere valeat, ut sententiae pareatur, respondisse noscamur, quod usque ad annum integrum iurisdictionem sibi commissam ad exsequendum sententiam valeat exercere, dictis iudicibus differentibus in correctione procedere, quum iam decem et septem essent menses elapsi, ex quo noscuntur mandatum apostolicum recepisse, ac de criminibus, licet non criminaliter ageretur, correctioni non immerito cardinalis insistere potuit memoratae. Sed ad hoc altera pars respondit, quod hoc colorem excusationis haberet, si praedicti iudices a legato commoniti ad correctionem procedere neglexissent. In quo casu eorum forte defectus per diligentiam potuisset legati suppleri, sicut de metropolitano in canonibus legitur, quod tunc demum potest ea facere, quae ad suffraganeos pertinent, quum illa suffraganei negligunt adimplere.] *His igitur et aliis, quae utraque pars proponere curavit, auditis, *[*inquisitione utraque, cardinalis videlicet et archiepiscopi et episcopi praedictorum, diligenter inspecta, intelleximus ex depositionibus iuratorum, quod, quum tempore promotionis ipsius W. octo millium librarum debito monasterium gravaretur, et non multo tempore post idem debitum usque ad duo millia librarum fuerit diminutum, nunc tamen usque ad sex millium librarum summam excrevit; quum, sicut prius contigerat, de proventibus monasterii debitum potius diminui debuerit quam augeri, nisi rectoris incuria obstitisset. Et quamvis ad excusationem suam proposuerit idem W., quod propter expensas factas in causa, quam contra Cluniacense monasterium habuit, in qua quendam prioratum evicit, idem fuerat debitum augmentatum, fuit tamen ei ex adverso responsum, quod propter expensas illas debitum interim augmentari non debuit, quum propter hoc possessiones quasdam eiusdem obligaverit prioratus, maxime quum in eiusdem prosecutione negotii vix expensae fuerint mille librae. Adiecit etiam dictus W., quod occasione cuiusdam domus, quam in villa Corbeiae de novo construxerat, debitum supradictum excrevit. Ad quod pars adversa respondit, quod ex proventibus monasterii expensas huiusmodi facere potuit absque onere debitorum, praesertim quum propter hoc non modicum auxilium a burgensibus fuerit eidem impensum. Praeterea quum ex confessione ipsius constiterit, quod in capitulo praestiterat iuramentum, ne debitum de novo contraheret, ac postea contraxerit debitum contra iuramentum proprium veniendo, sicut testes deponunt, argui de periurio videbatur. Ad quod idem W. hoc modo respondit, quod, etsi primo huiusmodi praestiterit iuramentum, postea tamen quoddam factum fuit in capitulo constitutum, per quod iuramentum ipsum exstitit relaxatum. Sed contra hoc pars altera replicavit, quia, quum non constiterit, quod per tale statutum revocatum fuerit iuramentum, et appareret eundem W. non solummodo iuramentum de debito non contrahendo praestasse, sed venisse postea contra illud, manifeste liquebat, ipsum reatum periurii incurrisse. Sed et ipsius insufficientia et negligentia dissoluta videbantur manifeste probari. Et quanquam aliqui testium eum, quantum in se, dixerint esse bonum, nulli tamen deposuerunt expresse, quod utilis esset eius provisio monasterio saepedicto.*] Quum igitur nobis de talibus fuerit *sufficiens in tali negotio* facta fides, propter quae praefatus G. erat merito amovendus, etsi restituendus foret propter iudiciarium ordinem non servatum, *ob causas tamen praedictas* ipsum providimus manere privatum regimine abbatiae, supra dictum priorem, quem pro eo, quod, praefato G. propter iuris ordinem non servatum *quodammodo* inordinate remoto, intelleximus ob eandem causam per consequentiam minus legitime substitutum, per sententiam amoventes. Quem quia non propter personae vitium vel scientiae defectum, sed propter iuris solennitatem, *sicut praemissum est*,

praetermissam amovimus, ipsum postmodum restituimus in abbatem, [*et memorato W. etc. Dat. Lat. VII. Kal. Mart. Pont. nostr. Ao. XIII.* 1210.]

Chapter XXIII

Latin source headnote: An exception of crime does not obstruct one proceeding by a possessory action to acquire a benefice, unless he is defamed concerning it; and upon one defamed, when the accuser does not prove or does not appear, purgation is imposed, in which, if he fails, he is punished as one convicted.

The same.

G., nephew of the late H., our subdeacon, approaching our presence, showed us by his complaint that, when the same H. had entered upon the way of all flesh at the Apostolic See, we considered that the prebend which he had held while living in the church of Cremona ought to be conferred upon him, *enjoining upon our venerable brother H., the bishop, and the beloved sons, the chapter of Cremona, that they receive him as a brother and assign to him without any difficulty both a stall in choir and a place in chapter, and the same prebend; to you also, son archdeacon, and to the beloved sons, the provost of Saint Agatha, we commanded that, if the bishop and canons did not fulfill the apostolic mandate, you should take care to execute it, the obstacle of appeal having been removed, restraining opponents by ecclesiastical censure, appeal having been removed. And when you and the same provost, as we received from your letters, had admonished the bishop and canons of Cremona to execute the apostolic mandate, they asserted that our letters had been obtained through suppression of the truth, since, while the aforesaid subdeacon was still alive, they had received the son of a certain noble citizen of Cremona as a canon and had promised him the next vacancy. They also added that before receiving our letters they had sent their messenger to the Apostolic See, and therefore, lest you proceed further, they appealed to our hearing. The young man also, to whom the same prebend had been granted by the bishop and canons, considered that complaint ought to be made to our hearing. Hence you did not proceed further, but intimated to us by your letters the things that had been done. The aforesaid G. therefore sought that, because the canons had acted contrary to the Lateran Council, we not allow the effect of our grant to be impeded, but cause him peacefully to possess the prebend itself. Even if it had been granted to the aforesaid young man, nevertheless our grant, which had preceded it, ought to prevail. But* the [*beloved*] *son Bonus Ioannes, messenger of the aforesaid canons and bishop, proposed that, before the apostolic mandate had issued to them, they had granted the prebend itself to the aforesaid young man, and added that the said G. labored under public infamy concerning homicide and perjury. Hence he was not only not to be admitted to the church of Cremona, but rather was to be cast out even if he had been admitted. The bishop also intimated to us by his letters that, when he had received apostolic letters for the same G., he counselled him that, if he could do so with his conscience safe, he should purge himself at least of perjury and homicide, unless a lawful accuser appeared against him; but he himself was unwilling either to perform or to offer purgation. We therefore, attending that the son of the aforesaid nobleman, as the letters of the bishop and canons of Cremona and of our executors attested, was admitted contrary to the Lateran Council to the next vacancy, so that afterward they received as not vacant a prebend which, before a certain messenger could reach Cremona concerning the death of the subdeacon,* [*to*] *the aforesaid G. we had granted, by apostolic writings* we command your discretion that *you declare void and empty what was done concerning the aforesaid young man, and*, unless the aforesaid G. was publicly defamed concerning the crimes objected against him by way of exception, namely perjury and homicide, you put into execution the grant made to him by us. Thereafter, if a lawful accuser shall appear, you shall hear the things proposed on each side; and, if the aforesaid crimes or any one of them shall have been lawfully proved against him, you shall, *appeal having been put aside*, impose upon him *perpetual* silence

concerning the same prebend. *But if they shall have been unable to prove them, you shall confirm it to him by apostolic authority.* If, however, no lawful accuser shall appear against him, and he is known to be bespattered with infamy concerning the aforesaid crimes, you shall impose canonical purgation upon him; in which, if he *perhaps* fails, you shall impose *perpetual* silence upon him. But if he shall have performed the purgation, restraining the opponents from molesting him, you shall condemn those who endeavored to impede him in *his* lawful expenses.

Agenti possessorio adipiscendae in beneficialibus non obstat exceptio criminis, nisi de eo sit infamatus; et infamato, accusatore non probante vel non apparente, indicitur purgatio, in qua si defecerit, punitur ut convictus.

Idem.

Accedens ad praesentiam nostram G. nepos quondam H. subdiaconi nostri, sua nobis conquestione monstravit, quod, quum idem H. apud sedem apostolicam viam universae carnis ingressus fuisset, praebendam, quam decedens habuerat in ecclesia Cremonensi, ei duximus conferendam, *venerabili fratri nostro H. episcopo et dilectis filiis capitulo Cremonensi iniungentes, ut eum in fratrem reciperent, et tam stallum in choro quam locum in capitulo, et praebendam eandem ipsi sine difficultate aliqua assignarent; tibi etiam, fili archidiacone, et dilectis filiis praeposito S. Agathae dedimus in mandatis, ut, si episcopus et canonici mandatum apostolicum non implerent, vos illud sublato appellationis obstaculo exsequi curaretis, contradictores per censuram ecclesiasticam appellatione remota compescentes. Quumque tu et idem praepositus, sicut ex literis vestris accepimus, monuissetis episcopum et canonicos Cremonenses ad mandatum apostolicum exsequendum, ipsi asseruerunt, nostras literas per veri suppressionem obtentas, quum, vivente adhuc subdiacono praedicto, filium cuiusdam nobilis civis Cremonensis in canonicum recepissent, et promisissent proximam vacaturam. Adiecerunt etiam, quod ante receptionem literarum nostrarum nuncium suum ad sedem apostolicam destinarunt, et ideo, ne procederetis ulterius, ad audientiam nostram appellarunt. Iuvenis etiam, cui per episcopum et canonicos eadem fuerat praebenda concessa, duxit ad audientiam nostram proclamandum. Unde vos non processistis ulterius, sed quae acta fuerant per vestras nobis literas intimastis. Petebat igitur memoratus G., ut ex eo, quod canonici contra Lateranense concilium fecerant, impedire non pateremur nostrae concessionis effectum, sed praebendam ipsam faceremus eum pacifice possidere. Quae si fuisset etiam iuveni memorato concessa, debebat tamen nostra concessio, quae praecesserat praevalere. Verum* [*dilectus*] *filius Bonus Ioannes praedictorum canonicorum et episcopi nuncius proposuit, quod, priusquam ad eos mandatum apostolicum emanasset, praebendum ipsam iuveni concesserant memorato, et subiunxit, quod dictus G. super homicidio et periurio infamia publica laborabat. Unde non solum admittendus non erat ad Cremonensem ecclesiam, sed eiiciendus potius etiam, si fuisset admissus. Episcopus quoque per suas nobis literas intimavit, quod, quum pro eodem G. literas apostolicas recepisset, ei consuluit, ut, si conscientia salva posset, saltem de periurio et homicidio se purgaret, nisi contra eum appareat legitimus accusator; sed ipse purgationem praestare noluit, nec offerre. Nos igitur, attendentes, quod filius nobilis memorati, sicut episcopi et canonicorum Cremonensium, et exsecutorum nostrorum literae attestabentur, fuit contra Lateranense concilium ad proximam vacaturam admissus, ut postmodum acceperunt, non vacantem, quum, priusquam de morte subdiaconi* [*ad*] *Cremonam certus nuncius pervenire potuisset, praedictam praebendam concesserimus memorato G., discretioni vestrae per apostolica scripta* Mandamus, quatenus *quod de praemisso iuvene factum est denuncietis irritum et inane, ac,* nisi praefatus G. super obiectis eidem in modum exceptionis criminibus, videlicet periurio et homicidio, publice fuerit infamatus, concessionem nostram sibi factam exsecutioni mandetis. Deinde, si legitimus accusator apparuerit, audiatis quae fuerint hinc inde proposita, et, si praedicta crimina vel eorum aliquod legitime probatum fuerit contra eum, ipsi super eadem praebenda *perpetuum* silentium *appellatione postposita,* imponatis. *Quod si probare nequiverint, eam sibi auctoritate apostolica confirmetis*. Si vero contra eum legitimus non apparuerit accusator, et ipse super praedictis criminibus dignoscitur respersus infamia, purgationem ei canonicam indicatis; in qua si

forte defecerit, *perpetuum* imponatis ei silentium. Si autem purgationem praestiterit, contradictores ab eius molestia compescentes, eos, qui eum nisi sunt impedire, in expensis *ipsi* legitimis condemnetis.

Chapter XXIV

Latin source headnote: A superior will inquire against a subject, especially a prelate, only concerning those matters on which infamy preceded; and then he will summon him and deliver the articles and names to him, and will publish the statements of the witnesses, and will admit his lawful exceptions, and, when a grave crime has been proved, will remove him from administration. But with regular prelates this order is not to be observed to the letter. And although in this summary a small difference may seem to be drawn between prelates and subjects against whom inquiry is made, nevertheless it is to be drawn, as is apparent in the text.

The same, in the General Council.

How and when a prelate ought to proceed to inquire into and punish the excesses of subjects is clearly gathered from the authorities of the Old and New Testaments, from which the canonical sanctions afterward proceeded, as we formerly distinguished openly and now confirm by the approval of the sacred council. For it is read in the Gospel that the steward who had been defamed before his lord as though he had dissipated his goods heard from him: "What is this that I hear of you? Render an account of your stewardship, for now you will no longer be able to be steward." And in Genesis the Lord says: "I will descend and see whether they have fulfilled in deed the outcry that has come to me." From these authorities it is manifestly proved that not only when a subject, but also when a prelate, transgresses, if it reaches the ears of the superior through outcry and reputation—not indeed from the malevolent and slanderous, but from provident and honorable persons, nor only once, but often, which the outcry indicates and the defamation manifests—the truth ought to be investigated more diligently before the elders of the church, so that, if the quality of the matter demands it, canonical severity may strike the fault of the delinquent, not as though the same person were accuser and judge, but so that, as reputation denounces or outcry makes delation, he may discharge the duty of his office. Although this must be observed with subjects, it must nevertheless be observed more diligently with prelates, who are set up as though a mark for the arrow. And because they cannot please everyone, since by reason of their office they are bound not only to reprove but also to rebuke, and even sometimes to suspend, and at times indeed to bind, they frequently incur the hatred of many and suffer snares. And therefore the holy Fathers providently established that an accusation of prelates not be readily admitted, lest, when the columns have been shaken, the building fall, unless diligent caution be applied, through which the door is closed not only to false but also to malicious incrimination. Yet they wished so to provide for prelates lest they be accused unjustly, that they nevertheless took care lest they offend insolently, finding a suitable medicine against each disease, namely that a criminal accusation, which tends toward diminution of status, that is, toward degradation, is by no means to be admitted unless lawful inscription precedes. But when anyone shall have been defamed concerning his excesses *in such a way* that the outcry has now risen which cannot longer be dissembled without scandal or tolerated without danger, one should proceed without a scruple of doubt to inquire into and punish his excesses, not from the tinder of hatred but from the affection of charity, so that, if the excess has been grave, even if he is not degraded from order, he is nevertheless removed altogether from administration; which, according to the evangelical sentence, is for the steward who cannot render a worthy account of his stewardship to be removed from the

stewardship. Therefore, the person against whom an inquiry is to be made ought to be present, unless he absent himself through contumacy, and those articles concerning which inquiry is to be made are to be expounded to him, so that he may have the faculty of defending himself. And not only the statements but also the names themselves of the witnesses are to be published to him, so that it may appear what was said and by whom; lawful exceptions and replications are also to be admitted, lest through suppression of names boldness be afforded for defaming falsely, and through exclusion of exceptions, for deposing falsely. A prelate ought therefore to arise for the correction of the excesses of subjects the more diligently, the more damnably he would leave their offenses uncorrected. Against them—so that nothing be said of notorious excesses—although one can proceed in three ways, namely through accusation, denunciation, and inquisition, nevertheless diligent caution is to be applied in all, lest perhaps through a slight shortcut one come to grave loss: just as lawful inscription ought to precede accusation, so charitable admonition is to precede denunciation, and clamorous intimation is to precede inquisition, with this moderation always applied, that the form of the sentence too be dictated according to the form of the judgment. We do not, however, believe that this order is to be observed altogether with regular persons, who, when the cause requires it, can more easily and freely be removed from their administrations.

> Superior contra subditum, maxima praelatum, de his tantum inquiret super quibus praecessit infamia, et tunc vocabit eum, et tradet sibi capitula et nomina, et testium dicta publicabit, et ipsius legitimas exceptiones admittet, et, probato gravi crimine, eum ab administratione removebit. In regularibus vero praelatis ad unguem servandus non est hic ordo. Et quanquam in hac summatione modica videatur agi differentia inter praelatos et subditos, contra quos inquiritur, tamen facienda est, ut patet in litera.
>
> Idem in concilio generali. Qualiter et quando debeat praelatus procedere ad inquirendum et puniendum subditorum excessus, ex auctoritatibus veteris et novi testamenti colligitur evidenter, ex quibus postea processerunt canonicae sanctiones, sicut olim aperte distinximus, et nunc sacri approbatione concilii confirmamus. Legitur enim in evangelio, quod villicus ille, qui diffamatus erat apud dominum suum, quasi dissipasset bona ipsius, audivit ab illo: "Quid hoc audio de te? redde rationem villicationis tuae, iam enim non poteris amplius villicare." Et in Genesi Dominus ait: "Descendam et videbo, utrum clamorem, qui venit ad me, opere compleverint." Ex quibus auctoritatibus manifeste probatur, quod non solum quum subditus, verum etiam quum praelatus excedit, si per clamorem et famam ad aures superioris pervenerit, non quidem a malevolis et maledicis, sed a providis et honestis, nec semel tantum, sed saepe, quod clamor innuit et diffamatio manifestat, debet coram ecclesiae senioribus veritatem diligentius perscrutari, ut, si rei poposcerit qualitas, canonica districtio culpam feriat delinquentis, non tanquam idem sit accusator et iudex, sed quasi denunciante fama vel deferente clamore officii sui debitum exsequatur. Licet autem hoc sit observandum in subditis, diligentius tamen est observandum in praelatis, qui quasi signum sunt positi ad sagittam. Et quia non possunt omnibus complacere, quum ex officio suo teneantur non solum arguere, sed etiam increpare, quin etiam interdum suspendere, nonnunquam vero ligare: frequenter odium multorum incurrunt et insidias patiuntur. Et ideo sancti Patres provide statuerunt, ut accusatio praelatorum non facile admittatur, ne concussis columnis corruat aedificium, nisi diligens adhibeatur cautela, per quam non solum falsae, sed etiam malignae criminationi ianua praecludatur. Verum ita voluerunt providere praelatis, ne criminarentur iniuste, ut tamen caverent, ne delinquerent insolenter, contra morbum utrumque invenientes medicinam congruam, videlicet ut criminalis accusatio, quae ad diminutionem capitis, id est degradationem, intenditur, nisi legitima praecedat inscriptio, nullatenus admittatur. Sed quum super excessibus suis quisquam fuerit infamatus, *ita* ut iam clamor ascendat, qui diutius sine scandalo dissimulari non possit vel sine periculo tolerari: absque dubitationis scrupulo ad inquirendum et

> puniendum eius excessus, non ex odii fomite, sed caritatis procedatur affectu, quatenus, si fuerit gravis excessus, etsi non degradetur ab ordine, ab administratione tamen amoveatur omnino, quod est secundum sententiam evangelicam a villicatione villicum amoveri, qui non potest villicationis suae dignam reddere rationem. Debet igitur esse praesens is, contra quem facienda est inquisitio, nisi se per contumaciam absentaverit, et exponenda sunt ei illa capitula, de quibus fuerit inquirendum, ut facultatem habeat defendendi se ipsum. Et non solum dicta, sed etiam nomina ipsa testium sunt ei, ut quid et a quo sit dictum appareat, publicanda, nec non exceptiones et replicationes legitimae admittendae, ne per suppressionem nominum infamandi, per exceptionum vero exclusionem deponendi falsum audacia praebeatur. Ad corrigendos itaque subditorum excessus tanto diligentius debet praelatus assurgere, quanto damnabilius eorum offensas desereret incorrectas. Contra quos, ut de notoriis excessibus taceatur, etsi tribus modis possit procedi, per accusationem videlicet, denunciationem et inquisitionem ipsorum: ut tamen in omnibus diligens adhibeatur cautela, ne forte per leve compendium ad grave dispendium veniatur, sicut accusationem legitima debet praecedere inscriptio, sic et denunciationem caritativa monitio, et inquisitionem clamosa insinuatio praevenire, illo semper adhibito moderamine, ut iuxta formam iudicii sententiae quoque forma dictetur. Hunc tamen ordinem circa regulares personas non credimus usquequaque servandum, quae, quum causa requirit, facilius et liberius a suis possunt administrationibus amoveri.

Chapter XXV

Latin source headnote: Metropolitans ought each year to hold a provincial council for the correction of excesses and reformation of morals, in which they ought to appoint suitable persons through the individual dioceses, who are solicitously to investigate and report matters requiring correction at the following council. And bishops ought each year to hold episcopal synods and publish what was transacted in the provincial council; those neglecting these things are suspended from the exercise of office. This is what it says.

The same, in the same council.

As is known to have been instituted formerly by the holy Fathers, let metropolitans not omit to celebrate provincial councils each year with their suffragans, in which they are to have, with the fear of God, diligent deliberation concerning correcting excesses and reforming morals, especially in the clergy, rereading the canonical rules, *and* especially those established in this General Council, so that they cause them to be observed, inflicting the due penalty upon transgressors. But so that this may be fulfilled more effectively, let them appoint through the individual dioceses suitable persons, namely provident and honorable persons, who throughout the entire year are solicitously to investigate simply and summarily, without any jurisdiction, those things that are worthy of correction or reformation, and faithfully report them to the metropolitan and suffragans and to the others at the following council, so that concerning these and other matters, as shall accord with utility and honor, they may proceed with provident deliberation and cause the things they establish to be observed, intending to publish them in episcopal synods to be celebrated annually through the individual dioceses. But whoever shall neglect to fulfill this salutary statute is to be suspended from the exercise of his office [*until he is released by the judgment of his superior.*]

> Metropolitani ad correctionem excessuum et reformationem morum singulis annis facere debent provinciale concilium, in quo statuere debent personas idoneas per singulas dioeceses, quae sollicite investigent, et in sequenti concilio referant corrigenda. Et episcopi debent facere synodos episcopales

singulis annis, et publicare agitata in provinciali concilio, et haec negligentes ab exsecutione officii suspenduntur. H. d.

Idem in eodem.

Sicut olim a sanctis Patribus noscitur institutum, metropolitani singulis annis cum suis suffraganeis provincialia non omittant concilia celebrare, in quibus de corrigendis excessibus et moribus reformandis, praesertim in clero, diligentem habeant cum Dei timore tractatum, canonicas regulas, *et* maxime, quae statutae sunt in hoc generali concilio, relegentes, ut eas faciant observari, debitam poenam transgressoribus infligendo. Ut autem id valeat efficacius adimpleri, per singulas dioeceses statuant personas idoneas, providas videlicet et honestas, quae per totum annum simpliciter et de plano absque ulla iurisdictione sollicite investigent quae correctione vel reformatione sunt digna, et ea fideliter perferant ad metropolitarum et suffraganeos et alios in concilio subsequenti, ut super his et aliis, prout utilitati et honestati congruerit, provida deliberatione procedant, et quae statuerint faciant observari, publicaturi ea in episcopalibus synodis annuatim per singulas dioeceses celebrandis. Quisquis autem hoc salutare statutum neglexerit adimplere, a sui exsecutione officii suspendatur, [*donec per superioris arbitrium eius relaxetur.*]

Chapter XXVI

Latin source headnote: Sentences of excommunication, suspension, or interdict rendered after denunciation by the denounced abbot, or by another on his behalf, against the denouncing monks or those adhering to them are relaxed. Those despoiled are restored, and oaths concerning concealing the truth are relaxed; the statements of witnesses are delivered to the denounced person, and expenses are supplied from the goods of the monastery to the denouncing monks; and on this account they are not exempted from obedience to the abbot, yet without prejudice to the suit.

Gregory IX, to the Archbishop and the Prior of Saint Mary of Rouen.

Formerly I., V., and P. of the Order of Tiron (*And below:*) Therefore, lest the reformation of the monastery be delayed, we command that, after sentences of excommunication or suspension, if any, which the same abbot rendered or caused to be promulgated through any judges after the affair had been begun against them and those adhering to them, have been relaxed, and after those whom the same abbot unjustly despoiled while the affair was pending have been restored, proceeding in the affair simply and summarily and without the din of judgments—since it is especially not fitting in this case for servants of God to be entangled in such things—you inquire into those things that you see ought to be investigated concerning persons and regular observances, correcting and reforming both in head and in members those things that you know to require the office of correction and reformation, with oaths, if any, that the abbot had extorted concerning concealing the truth having been relaxed; provided that, while the affair itself is pending, the aforesaid monks obey and attend to the same abbot, yet in such a way that through this the prosecution of the affair cannot be impeded. But if witnesses shall have been produced against the same abbot, you shall provide him a copy of their statements. Moreover, you shall cause the expenses made on this account to be supplied to the aforesaid monks, and to three or four from among them, or to others whom you consider ought to be assumed as suitable to prosecute the said affair, from the goods of the same monastery; and the expenses to be made that are necessary for the prosecution of the affair itself, after accounting for any things that they received on this account, are to be supplied from the goods of the monastery, since they have nothing of their own. Opponents, etc.

Sententiae excommunicationum, suspensionum vel interdicti, latae post denunciationem per abbatem denunciatum vel alium pro ipso in monachos denunciantes vel adhaerentes eisdem, relaxantur. Spoliati restituuntur, et iuramenta de tacenda veritate relaxantur, dicta testium denunciato traduntur, et expensae de bonis monasterii monachis denunciantibus ministrantur; et propter hoc ab obedientia abbatis non eximuntur, sine tamen litis praeiudicio.

Gregorius IX. Archiepiscopo et Priori sanctae Mariae Rothomagensis.

Olim I. V. et P. ordinis Tyronensis (*Et infra:*) Ne igitur reformatio monasterii valeat retardari, mandamus, quatenus, relaxatis excommunicationum seu suspensionum sententiis, si quas idem abbas protulerit vel per quoscunque iudices promulgari fecit post inceptum negotium in eos et adhaerentes eisdem, ac eis restitutis, quos idem abbas negotio ipso pendente contra iustitiam spoliavit, in negotio de plano et absque iudiciorum strepitu procedentes, quum talibus maxime in hoc casu non deceat Dei servos involvi, inquiratis quae circa personas et observantias regulares videritis inquirenda, corrigentes et reformantes tam in capite quam in membris quae correctionis et reformationis officio noveritis indigere, iuramentis, si qua de tacenda veritate abbas extorserat, relaxatis, proviso, ut negotio ipso pendente praefati monachi eidem abbati obediant et intendant, ita tamen, quod per hoc prosecutio negotii non valeat impediri. Si vero testes contra eundem abbatem producti fuerint, dictorum ipsorum ei copiam faciatis. Praedictis autem monachis expensas, factas propter hoc, et tribus vel quatuor ex istis, vel aliis, quos idoneos ad dictum negotium prosequendum duxeritis assumendos, faciatis de bonis eiusdem monasterii, et faciendas expensas ad prosecutionem ipsius negotii necessarias, computatis, si qua propter hoc receperunt, de bonis monasterii, quum proprium non habeant, ministrari. Contradictores etc.

Chapter XXVII

Latin source headnote: Against a prelate denounced concerning dilapidation a commission is made to inquire into the truth, and while the affair is pending the power of alienating ought to be interdicted to him.

The same, to the Bishop of Cister. and the Abbots of Alde. and Salen.

The excesses of prelates [*are to be corrected the more severely, the more persons are corrupted by their example if they remain uncorrected.*] Indeed, the beloved sons C. [*C., E., H.*] and four other canons of Freising showed by denunciation [*to Pope H. of good memory, our predecessor,*] that [*our venerable brother*] the Bishop of Freising so gravely dilapidates and consumes the goods of his episcopate—which, as they say, he obtained less than canonically—that, unless a remedy is applied quickly, the same episcopate will through him be brought to the irreparable disgrace of dissolution; and, prodigal not only of property but also of his reputation and salvation, he leads an enormously dissolute life, [*so that there is no place for denying his incontinence, since it is proved by the manifest evidence of cohabitation; moreover, having cast aside the modest gravity of a pontiff, in words and deeds he exhibits himself so frivolous and irreprehensible that his life is a snare and scandal to those for whom he ought to be an example of honor. Therefore, because we neither will nor ought to pass over these things under dissimulation, following the form of the letters that the said predecessor provided should be sent concerning this matter,*] we command your discretion [*by apostolic writings*] that, personally approaching the place, you solicitously inquire into the truth and, faithfully committing it to writing, transmit it to us enclosed under your seals, assigning to the same bishop a term at which he is to present himself [*personally*] before our countenance to receive according to his deserts; meanwhile the power of selling, giving, infeudating, or in any way alienating the goods of the

same church being entirely interdicted to the [*bishop*]. [*But if, etc. Given at the Lateran on the fifth day before the Kalends of May, in the first year,* 1227.]

> Contra praelatum, denunciatum de dilapidatione, fit commissio super veritate inquirenda, et pendente negotio debet sibi interdici potestas alienandi. Idem Episcopo Cister., de Alde. et de Salen. Abbatibus.
>
> Praelatorum excessus [*tanto sunt severius corrigendi, quanto plures eorum corrumpuntur exemplo, si remanerent incorrecti*] Sane dilecti filii C. [*C. E. H.*] et quatuor alii canonici Frisigienses [*bonae memoriae H. papae praedecessori nostro*] denunciando monstrarunt, quod [*venerabilis frater noster*] Frisigiensis episcopus bona sui episcopatus, quem, ut dicunt, fuit minus canonice assecutus, adeo graviter dilapidat et consumit, quod, nisi celeriter adhibeatur remedium, episcopatus idem per eum ad irreparabile dissolutionis opprobrium deducetur, nec solummodo rerum, verum etiam famae suae prodigus et salutis, vitam ducit enormiter dissolutam, [*adeo ut inficiationi eius continentiae non sit locus, quum manifeste cohabitationis indicio comprobetur, alias quod modesta pontificalis gravitatis abiecta se dictis et factis sic levem ac irreprehensibilem exhibet, ut eius vita eis sit in laqueum et in scandalum, quibus esse deberet honestatis exemplum. Quia igitur haec sub dissimulatione transire nec volumus nec debemus, sequentes formam literarum, quas dictus praedecessor noster super hoc providerat destinandas,*] Discretioni vestrae [*per apostolica scripta*] mandamus, quatenus personaliter accedentes ad locum inquiratis sollicite veritatem, et eam fideliter conscribentes sub sigillis vestris nobis transmittatis inclusam, eidem episcopo terminum assignantes, quo nostro se conspectui [*personaliter*] repraesentet pro meritis recepturus, potestate vendendi, dandi, infeudandi seu quomodolibet alienandi bona ipsius ecclesiae interim eidem [*episcopo*] penitus interdicta. [*Quod si etc. Dat. Later. V. Kal. Mai. Ao. I.* 1227.]

Title II: On Calumniators

Chapter I

Latin source headnote: A subdeacon who calumniously accuses a deacon is deprived of the subdiaconate, publicly chastised with lashes, and sent into exile.

Gregory, to Anthemius the Subdeacon.

Since crimes that are brought against innocent persons, and especially against consecrated men, are to be punished more severely, consider how culpable you *all* are who sat in the cause of John the deacon, since no suitable penalty from your decision chastised Hilary, his accuser. [*Nor should you believe this to be suitable for your excuse: that our brother and fellow bishop Paschasius alone is said to have deferred it when you, as though wishing to judge, were present. For if zeal for rectitude had flourished in you, one person could more easily have been reasonably persuaded by many than many could without cause have been delayed by one.*] Therefore, because the evil of such great wickedness ought not to pass without worthy vengeance, we command that the same H. first be deprived of the office of the subdiaconate, which he unworthily exercises, and, having been publicly chastised with lashes, be deported into exile, *so that the punishment of one may be the correction of many, etc.*

> **DE CALUMNIATORIBUS.**
>
> Subdiaconus, calumniose accusans diaconum, subdiaconatu privatur, et publice verberibus castigatur, et in exsilium mittitur.
>
> Gregorius Anthemio Subdiacono.

Quum fortius punienda sint crimina, quae insontibus et maxime sacratis hominibus inferuntur, quam sitis culpabiles *omnes*, qui in causa Ioannis diaconi resedistis, attendite, ut Hilarium, criminatorem ipsius, nulla ex diffinitione vestra poena conveniens castigaret. [*Nec illud ad excusationem vestram, credatis esse idoneum, quod vobis, quasi iudicare volentibus, solus frater et coepiscopus noster Paschasius dicitur distulisse. Nam si zelus in vobis rectitudinis viguisset, facilius uni a multis rationabiliter suaderi, quam multi ab uno poterant sine causa differri.*] Quia ergo tantae nequitiae malum sine digna non debet ultione transire, iubemus eundem H. prius subdiaconatus, quo indignus fungitur, privari officio, et verberibus publice castigatum in exsilium deportari, *ut unius poena multorum possit esse correctio etc*.

Chapter II

Latin source headnote: A denouncer who fails in proving the crimes is suspended from office and benefice until he purges his innocence.

Innocent III, to the Bishops of Zamora, Segovia, and Ávila.

When the beloved son, the scholasticus of Palencia, had approached the Apostolic See and had reported *to us* various excesses concerning his bishop, we committed examination of the excesses charged to *our venerable brother, formerly Bishop of León and now Archbishop of Compostela, and to the beloved sons, the Abbots of Valbuena and Mataplana in the diocese of Palencia*. [*After the truth had been more fully investigated through witnesses concerning twofold simony, dilapidation, absolution of those falling under the canon of a sentence promulgated, the fact that he disdained to defer to appeals interposed to us, and also the fact that he held a dignity vacant in his own hands beyond the time established in the Lateran Council, and that he furtively took away a certain instrument in which episcopal rights are distinguished from the rights of canons, and concerning certain other matters, they faithfully transmitted the inquiry itself to us with the depositions of the witnesses.*] But when we diligently examined the course of the affair *and the statements of the witnesses*, and were unable to understand that anything among the aforesaid matters had been sufficiently proved, we decree, *on the counsel of our brothers*, that the same bishop is to be absolved from the charges, commanding you *by apostolic writings* that you suspend the aforesaid scholasticus from office and benefice until he has canonically purged his innocence, namely that he did not proceed to propound crimes of this sort with the intention of calumniating, so that others, terrified by a similar penalty, may not readily leap to the defamation of their prelates. [*But if not all, etc. Given at the Lateran on the fifth day before the Ides of May, in the tenth year,* 1207.]

Denunciator, in probatione criminum deficiens, ab officio et beneficio suspenditur, donec innocentiam suam purget.

Innocentius III. Zamorensi, Segobiensi et Abulensi Episcopis.

Quum dilectus filius, magister scholarium Palentinus, ad sedem apostolicam accessisset, et *nobis* de suo episcopo excessus varios nunciasset, *venerabili fratri nostro quondam episcopo Legionensi, nunc archiepiscopo Compostellano, et dilectis filiis de Valle bona, et de Mataplana abbatibus dioecesis Palentinae* examinationem commisimus excessuum obiectorum. [*Qui super simonia duplici, dilapidatione, absolutione incidentium in canonem sententiae promulgatae, quodque appellationibus ad nos interpositis deferre contemneret, nec non quod in manibus suis ultra tempus in concilio Lateranensi constitutum vacantem tenuerit dignitatem, et quod furtim quoddam subtraxerit instrumentum, in quo a iure canonicorum iura episcopalia distinguuntur, et quibusdam aliis, inquisita per testes plenius veritate, inquisitionem ipsam cum depositionibus testium nobis fideliter transmiserunt.*] Quum autem processum negotii *et dicta testium* examinaverimus diligenter, nec intelligere potuerimus, probatum esse sufficienter aliquid de praedictis, eundem episcopum *de consilio fratrum nostrorum* absolvendum

decernimus ab obiectis, vobis *per apostolica scripta* mandantes, quatenus memoratum magistrum scholarum, donec canonice suam purgaverit innocentiam, scilicet quod non calumniandi animo ad huiusmodi crimina proponenda processit, ab officio et beneficio suspendatis, ut ceteri, simili poena perterriti, ad infamiam suorum facile non prosiliant praelatorum. [*Quod si non omnes etc. Dat. Later. V. Id. Maii Ao. X.* 1207.]

Title III: On Simony, and That Nothing Is to Be Demanded or Promised for Spiritual Things

Chapter I

Latin source headnote: A bishop, or his ministers or notaries, ought to demand nothing temporal for an order conferred by him.

Gregory, presiding over a general synod.

In ordaining *a bishop, the pontiff imposes his hand; the minister reads the Gospel lesson; and the notary writes the letter of his confirmation*. *But* just as the bishop ought not to sell the hand that he imposes, so neither ought the minister or notary to sell his *own* voice or pen in his ordination. We therefore altogether prohibit the person ordained from giving anything for ordination or use of the pallium, or for charters and small loaves. [*Concerning the aforesaid things, etc.*]

DE SIMONIA, ET NE ALIQUID PRO SPIRITUALIBUS EXIGATUR VEL PROMITTATUR.

Episcopus pro ordine ab eo conferendo, vel ministri vel notarii nihil temporale exigere debent.

Gregorius generali synodo praesidens.

In ordinando *episcopo pontifex manum imponit; evangelicam vero lectionem minister legit: confirmationis autem eius epistolam notarius scribit*. Sicut *autem* non debet episcopus manum, quam imponit, ita nec minister vel notarius in ordinatione eius vocem *suam* vel calamum vendere. Pro ordinatione igitur vel usu pallii, seu chartis atque pastellis, eum, qui ordinatur, omnino aliquid dare prohibemus. [*Ex quibus praedictis rebus etc.*]

Chapter II

Latin source headnote: One who through money cast someone out of his church and afterward intruded himself is to be deposed.

From the Council of Mainz.

One who through money shall have expelled another *priest lawfully* ordained in a church, and shall have claimed it for himself in such a manner, is altogether to be deposed.

Deponendus est qui per pecuniam aliquem eiecit de ecclesia sua, se postea intrudendo.

Ex concilio Maguntinensi. Qui alium *presbyterum* in ecclesia *legitime* ordinatum per pecuniam expulerit, eamque sibi taliter vindicaverit, omnimodo deponatur.

Chapter III

Latin source headnote: Any Catholic is admitted to accuse concerning the crime of simony.

Pope Deodatus.

If the Lord and master of all, who was without sin, gave one person licence to accuse, *how much more is one who is known to be polluted by the stain of Simon to be convicted by the assertion of one person?* Therefore, *in such a matter* no Catholic is to be rejected, but he is to be entreated with great prayers to assert the truth for exposing the rage of simony.

> Quilibet catholicus admittitur ad accusandum de crimine simoniae.
>
> Deodatus Papa.
>
> Si Dominus et magister omnium, qui sine peccato fuit, accusandi licentiam uni dedit, *quanto magis unius assertione convincendus est, qui Simonis labe dignoscitur esse pollutus?* Non igitur *in tali* quilibet catholicus est respuendus, sed, ut veritatem asserat ad propalandam simoniacam rabiem, magnis est precibus exorandus.

Chapter IV

Latin source headnote: A simoniac under accusation is prohibited from the administration of divine things.

The same.

We deemed it necessary to prohibit the accused simoniac *most earnestly through our writings* from celebrating the solemnities of masses until what he was should be more truly established.

> Simoniacus pendente accusatione ab administratione divinorum prohibetur.
>
> Idem.
>
> Accusatum simoniacum necesse habuimus *summopere per scripta nostra* prohibere, ne missarum solennia celebraret, donec quid esset, verius constitisset.

Chapter V

Latin source headnote: It says the same as the preceding chapter, except that the former chapter speaks in accusation and this one in inquisition; as the former speaks of a simoniac in general, this one declares it concerning order.

The same.

Whenever *something is said to have been done contrary to ecclesiastical discipline, lest fault from dissimulation reprove us before God, we do not dare to leave it uninquired into*. It has *therefore* reached us that you were ordained through the simoniacal heresy. *But many other things were also said here concerning you, among which one was especially important*. Therefore we deemed it necessary to prohibit you *through our writings* from celebrating the solemnities of masses until we should learn more truly what the case is.

> Idem dicit, quod praecedens, nisi quod illud cap. loquitur in accusatione, istud in inquisitione, ut illud loquitur de simoniaco in genere, istud declarat de ordine.
>
> Idem.
>
> Quotiens *contra ecclesiasticam quid gestum dicitur disciplinam, ne nos ante Deum culpa ex dissimulatione redarguat, irrequisitum hoc relinquere non audemus*. Pervenit *itaque* ad nos, quod per simoniacam haeresim fueris ordinatus. *Sed et alia de te multa hic dicta sunt, de quibus unum quam maxime fuit*, Propterea necesse habuimus, te *per scripta nostra* prohibere, ne missarum solennia celebrare debuisses, donec quid sit verius discerneremus.

Chapter VI

Latin source headnote: A simoniac is to be deposed.

Pope Lucius.

For just as the simoniacal pestilence surpasses other diseases by its magnitude, so, without delay, as soon as its signs have become manifest through any person, he ought to be eliminated and repelled from the Church of God. *For Peter, the first pastor of the Church, recognizing the inward parts of Simon not by the attestation of any man but by the inspiration of the Holy Spirit, punished him without any hearing with a terrible and sudden death.*

> Simoniacus est deponendus.
>
> Lucius Papa.
>
> Sicut *enim* simoniaca pestis sui magnitudine alios morbos vincit, ita sine dilatione mox, ut eius signa per aliquam personam claruerint, de ecclesia Dei debet eliminari atque repelli. *Petrus enim primus pastor ecclesiae non alicuius hominis attestatione sed sancti spiritus inspiratione Simonis interiora recognoscens sine aliqua audientia terribili eum et repentina morte mulctavit*.

Chapter VII

Latin source headnote: A slave, a prostitute, and criminals can accuse a simoniac.

Deodatus.

So great is the stain of this crime that even slaves are admitted to accusation against masters, and any criminals whatever. Likewise, every sinner can sing mass except a simoniac, whom *even* anyone can accuse so that he may be removed from an order badly received, even a prostitute.

> Simoniacum accusare potest servus, meretrix et criminosi. Deodatus.
>
> Tanta est labes huius criminis, quod etiam servi adversus dominos, et quilibet criminosi admittuntur ad accusationem. Item omnis peccator missam cantare potest, praeter simoniacum, quem *etiam* quilibet, ut ab ordine male accepto removeatur, accusare potest, vel etiam meretrix.

Chapter VIII

Latin source headnote: It is simoniacal to receive a price for entry into religion, for granting priories or chapels, for instituting prelates, for granting burial, for chrism, for holy oil, for the blessings of those marrying, or for other sacraments; nor does a contrary custom avail. This is what it says together with the following chapter.

Alexander III, in the Council of Tours.

Avarice is not sufficiently *usefully reproved by the people if it is not guarded against in every way by those who appear to be constituted in the clergy, and especially those who* [*having despised the world*] *profess the name of religious persons* [*and*] *the rule*. We therefore prohibit that any money be demanded from those who wish to pass into religion. Nor are any priories or chaplaincies of monks or clerics to be sold by annual alienation. Nor is any price to be demanded from the person to whom their government is committed for the commission of them. *The authority of the holy Fathers manifestly declares this to be simoniacal.* Hence whoever shall presume to attempt anything against this decree, both the person who gave and the person who received or consented, is not to doubt that he will have a portion with

Simon. Likewise, let no exaction of any price be attempted for burial or for receiving chrism and oil, nor let anyone defend his guilt under the pretext of any custom, because length of time does not diminish sins but increases them.

> Simoniacum est pretium recipere pro ingressu religionis, pro prioratibus vel capellis concedendis, et pro praelatis instituendis, pro concedenda sepultura, pro chrismate, pro oleo sancto, pro benedictionibus nubentium, vel aliis sacramentis; nec valet consuetudo in contrarium. H. d. cum sequenti. Alexander III. in concilio Turonensi. Non satis *utiliter a populo avaritia redarguitur, si ab his, qui in clero constituti videntur, et praecipue qui* [*contempto saeculo*] *nomen religiosorum profitentur* [*et*] *regulam, modis omnibus non cavetur*. Prohibemus igitur, ne ab iis, qui ad religionem transire volunt, aliqua pecunia requiratur. Nec prioratus vel capellaniae quaelibet monachorum aut clericorum annua distractione vendantur. Nec ab eo, cui regimen ipsarum committitur, pro earum commissione ullum pretium exigatur. *Hoc autem simoniacum esse sanctorum Patrum auctoritas manifeste declarat*. Unde quisquis contra hoc decretum attentare praesumpserit, tam ille, qui dederit, quam ille, qui receperit vel consenserit, partem se cum Simone non dubitet habiturum. Pro sepultura quoque, et chrismatis et olei receptione, nulla cuiusquam pretii exactio attentetur, nec sub obtentu cuiusquam consuetudinis reatum suum quis tueatur, quia diuturnitas temporis non diminuit peccata, sed auget.

Chapter IX

Latin source headnote: It is summarized above in the preceding chapter.

From the Lateran Council.

Since in the body of the Church *all things ought to be handled from charity, and what has been freely received ought freely to be bestowed*, it is exceedingly horrible that venality is reported to have a place in certain churches, so that something is demanded for seating bishops or abbots or any ecclesiastical persons in their seat, or for introducing priests into a church, and also for burials and funeral rites of the dead, and the blessings of those marrying, or other sacraments, *and the person who needs them cannot receive them unless he takes care to fill the hand of the giver*. But many think this to be lawful *for them* because they believe the law of death has gained force through long custom, not *sufficiently attending, because they are blinded by cupidity*, that crimes are the graver the longer they have held an unhappy soul bound. Therefore, lest these things be done hereafter, we more strictly prohibit that anything be demanded either for bringing ecclesiastical persons to their seat, instituting priests, burying the dead, blessing those marrying, or conferring or having conferred other sacraments. But if anyone shall presume to act against this, let him know that he will have a portion with Gehazi, *whose deed he imitates by the exaction of a base gift*. [*We prohibit, etc.; cf. c.* 7, *On Procurations III.* 39.]

> Summatum est supra in cap. praecedenti. Ex concilio Lateranensi. Quum in ecclesiae corpore *omnia debeant ex caritate tractari, et quod gratis receptum est gratis impendi*: horribile; nimis est, quod in quibusdam ecclesiis locum venalitas perhibetur habere ita, ut pro episcopis vel abbatibus seu quibuscunque personis ecclesiasticis ponendis in sedem, sive introducendis presbyteris in ecclesiam, nec non et pro sepulturis et exsequiis mortuorum, et benedictionibus nubentium, seu aliis sacramentis aliquid requiratur *et non possit ille, qui indiget, ista percipere, nisi manum implere curaverit largitoris*. Putant autem plures, ex hoc *sibi* licere, quia legem mortis de longa invaluisse consuetudine arbitrantur, non *satis, quia cupiditate caecati sunt*, attendentes, quod tanto graviora sunt crimina, quanto diutius infelicem animam tenuerunt alligatam. Ne igitur haec de cetero fiant, vel pro personis ecclesiasticis deducendis in sedem, vel sacerdotibus instituendis, aut sepeliendis mortuis, seu benedicendis nubentibus, seu aliis sacramentis conferendis seu collatis aliquid exigatur, districtius prohibemus. Si quis autem contra hoc

venire praesumpserit, portionem cum Giezi se noverit habiturum, *cuius factum exactione turpis muneris imitatur.* [*Prohibemus etc. cf. c.* 7. *de cens. III.* 39.]

Chapter X

Latin source headnote: Nothing besides procuration is to be demanded for the consecration of churches.

The same, to the Bishop of Vigilia.

Since the Roman *Church, over which, although unworthy, we preside, is the mother and mistress of all churches, we are compelled by the duty of the government received to respond, as the Lord shall grant us, to the consultations of individual persons, so that doubtful questions may be entirely untied by the providence of the Apostolic See. But you asked, brother bishop, that it be written back to your fraternity whether you ought to have anything besides procuration for the consecration of churches. And we* respond thus to your consultation: you can and ought to demand nothing besides procuration for the consecration of churches. *But you can demand a moderate procuration from the same church, since the Apostle says: "No one is compelled to serve as a soldier at his own expense."*

Pro ecclesiarum consecratione nihil est praeter procurationem exigendum.

Idem Vigiliensi Episcopo.

Quum sit Romana *ecclesia, cui licet immeriti praesidemus, mater ecclesiarum omnium et magistra, cogimur ex debito suscepti regiminis, prout nobis Dominus dederit, respondere consultationibus singulorum, ut dubiae quaestiones apostolicae sedis providentia penitus enodentur. Quaesivisti autem, frater episcope, tuae fraternitati rescribi, utrum pro ecclesiarum consecratione quicquam praeter procurationem habere debeas. Et nos* Consultationi tuae taliter respondemus, quod nihil pro ecclesiarum consecratione potes vel debes praeter procurationem exigere, *Sed procurationem moderatam, quum Apostolus dicat: "nemo cogitur suis stipendiis militare," ab eadem ecclesia exigere potes.*

Chapter XI

Latin source headnote: One convicted of simony is to be deposed; the same applies to a defamed person who cannot purge himself.

The same, to the Archbishop of Toledo.

Concerning this, moreover, *that the king and his princes are said to have received money from Bernard, formerly Bishop of Osma, so that they would furnish assent to his election, and* that the *same* Bishop of Osma is said to have promised benefices *of a fixed revenue* to the archdeacon, and a priory to a certain cleric before his election, so that each *of them, namely the archdeacon and the cleric*, would consent to him, we respond *this* to your prudence: if it is manifest that the same archdeacon and cleric received what was promised for a cause *so iniquitous and detestable*, or *if* they confessed it in court or were lawfully convicted, they are to be perpetually deposed from the ministry of the altar. But if it is manifest, yet they were neither convicted nor confessed concerning it, but labor only under public infamy, canonical purgation ought to be imposed upon them. If they fail in it, they are to be punished as authors of so great a crime. But you ought *solicitously to admonish* the king and his princes *and diligently* induce them that, if they received anything from the aforesaid bishop so that they would furnish assent to his election, they restore it without diminution to the church of Osma, since they cannot retain it without grave peril to their salvation.

Convictus de simonia deponendus est; idem in infamato, qui se purgare non potest.

Idem Toletano Archiepiscopo.

De hoc autem, *quod rex et principes sui a Bernardo quondam Oxomensi episcopo pecuniam recepisse dicuntur, ut eius electioni praestarent assensum, et* quod *idem* episcopus Oxomensis archidiacono beneficia *certi reditus*, et cuidam clerico ante electionem suam prioratum dicitur promisisse, ut uterque *illorum, archidiaconus videlicet et clericus* consentiret eidem, *hoc* tuae prudentiae respondemus, quod si manifestum est, eundem archidiaconum et clericum ob causam illam *tam iniquam et detestabilem* promissa recepisse, aut *si* exinde confessi fuerunt in iure, vel legitime convicti, ab altaris ministerio sunt perpetuo deponendi. Si vero id manifestum est, nec tamen inde convicti vel confessi fuerint, sed tantum publica laborant infamia, eis canonica purgatio debet indici. In qua si defecerint, tanquam auctores tanti sunt sceleris puniendi. Regem autem et principes eius *sollicite monere* debes *et diligenter* inducere, ut, si qua receperint a praefato episcopo, ut eius electioni praestarent assensum, ecclesiae Oxomensi sine diminutione restituant, quum ea sine gravi suae salutis periculo retinere non possint.

Chapter XII

Latin source headnote: It is simoniacal to promise an ecclesiastical benefice for temporal service.

The same, to the Archbishop of York.

When R., a cleric *of Pontefract*, and the nobleman V. [*W., son of Godric, because of the controversy that was being conducted between them concerning a certain church which the same R. asserted had been given to him by the aforesaid knight,*] were constituted in our presence, because the same V. could not delay longer, *at his departure he constituted our beloved son Master Milo, your messenger,* a sufficient respondent for himself in that cause. And when we understood from the mouth of the aforesaid R. that the aforesaid knight had promised to give him the *aforesaid* church if he could advance a certain affair of the same *knight* in our presence, and that through this the promise itself contained simoniacal depravity, we considered that silence concerning the same church ought to be imposed upon R. himself. *And therefore by apostolic writings, commanding your fraternity, we command that you in no way permit the aforesaid knight to be burdened by the aforementioned R. or others concerning the aforesaid church by occasion of the aforesaid controversy.*

Simoniacum est pro temporali obsequio beneficium ecclesiasticum promittere.

Idem Eboracensi Archiepiscopo.

Quum essent in nostra praesentia constituti R. clericus *de Ponte fracto*, et nobilis vir V. [*W. filius Godrici pro controversia, quae vertebatur inter eos super quadam ecclesia, quam idem R. asserebat a praefato milite sibi datam fuisse,*] quia idem V. moram diutius facere non poterat, *in recessu suo dilectum filium nostrum magistrum Milonem nuncium tuum* pro se in causa illa sufficientem constituit responsalem. Quumque ab ore praefati R. intellexerimus, quod memoratus miles promiserat ei dare ecclesiam *praescriptam*, si quoddam negotium eiusdem *militis* in nostra posset praesentia promovere, ac per hoc promissionem ipsam continere simoniacam pravitatem, eidem R. super eadem ecclesia silentium duximus imponendum. *Ideoque fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus memoratum militem occasione praedictae controversiae a praenominato R. vel aliis super praedicta ecclesia gravari nulla ratione permittas.*

Chapter XIII

Latin source headnote: A notorious simoniac is deposed from his benefice; the same applies to a defamed person who cannot purge himself.

The same, to the Bishop of Cister.

It has been intimated *to our ears* that, *while the episcopate committed to you was vacant*, very many clerics *were* instituted in churches of your episcopate *who* are said to have entry through simony and to be bespattered with infamy therefrom. Hence, *because it is unworthy that they remain in such a crime or such a base suspicion, by apostolic writings, commanding your fraternity*, we command that, if there are any concerning whom it is public and notorious that they entered the aforesaid churches simoniacally, you remove them, *appeal ceasing*, from the churches acquired in such a manner. But upon those whose crime is not public and notorious, if they labor under public infamy, you shall impose purgation with five or six members of their own order as oath-helpers, *within forty days after receipt of these letters*; if they fail in it, you shall perpetually deprive them of benefices of churches of this kind, *taking more attentive care to receive such persons for their purgation concerning whom it is probable that they ought not to perjure themselves under anyone's influence*.

> Notorius simoniacus in beneficio ab illo deponitur; idem in infamato, qui se purgare non potest.
>
> Idem Cistrensi Episcopo.
>
> Insinuatum est *auribus nostris*, quod, *dum episcopatus tibi commissus vacaret*, in ecclesiis tui episcopatus plurimi *sint* clerici *instituti, qui* per simoniam habere dicuntur ingressum, et infamia inde respergi. Unde, *quoniam indignum est, ut in tali crimine vel tam turpi suspicione remaneant, fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus, si qui fuerint, quos in praedictis ecclesiis publicum et notorium est simoniace intrasse, eos *appellatione cessante* amoveas ab ecclesiis taliter acquisitis. Illis autem, quorum crimen non est publicum et notorium, si publica laborant infamia, cum quinta vel sexta manu sui ordinis, *infra XL. dies post harum susceptionem literarum*, purgationem indicas, in qua si defecerint, beneficiis huiusmodi ecclesiarum perpetuo prives eosdem, *provisurus attentius, ut tales personas ad eorum purgationem recipias, de quibus verisimile sit, quod non debeant alicuius obtentu deierare*.

Chapter XIV

Latin source headnote: It is simoniacal to conceal a sinner for a price or favor, to reconcile one who is not penitent, or to remove from reconciliation one who is worthily penitent.

The same.

Let no priest receive a gift or any temporal advantage—indeed, a spiritual detriment—from anyone publicly sinning *or incestuous*, in order to conceal his sin from the bishop or his ministers; nor, out of regard for any person, *or* kinship, or familiarity, sharing in the sins of others, let him refuse to make this known to the bishop. Nor let him bring anyone who is penitent, or less worthily penitent, to reconciliation by grace or favor and bear testimony of reconciliation for him; nor through any malice remove [*any other person*] worthily penitent from reconciliation, because each is simoniacal.

> Simoniacum est pretio vel favore celare peccatorem, vel reconciliare non poenitentam, vel digne poenitentem a reconciliatione removere.
>
> Idem.
>
> Nemo presbyterorum xenium vel emolumentum quodlibet temporale, immo spirituale detrimentum, a quocunque publice peccante *vel incestuoso* accipiat, ut episcopo vel ministris eius peccatum illius celet, nec pro respecta cuiusque personae *aut* consanguinitatis aut familiaritatis, alienis communicans peccatis, hoc episcopo innotescere detrectet. Nec quemquam poenitentem vel minus digne poenitentem, gratia vel favore ad reconciliationem adducat, et testimonium reconciliationis ferat eidem,

vel quocunque livore [*alium quemlibet*] digne poenitentem a reconciliatione removeat, quia simoniacum est utrumque.

Chapter XV

Latin source headnote: A church cannot be bought or bought back. This is what it says according to the letter.

The same, to the Bishop of Worcester and the Prior of Acre.

We received the complaint of the monks of Acre *transmitted to us*, that, when they had obtained a certain manor *which is called Vella*, with its appurtenances, and the church of Genen. from the monks of Cardon under an annual payment of fifteen pounds, and had received a charter concerning it from those monks, *a certain* prior of theirs, without consulting the chapter, resigned the aforesaid manor *and church* and charter to the monks of Cardon after receiving money. Hence, because the aforesaid monks of Acre complain that they have been unjustly burdened, *and it falls to us to correct anything attempted less than reasonably, we commit the cause itself to your experience, and by authority of the presents* we command that, the parties having been summoned *before your presence, you hear more diligently the things proposed on each side and* conclude the aforesaid cause, *the remedy of appeal having been removed*, by concord or judgment, knowing that, just as the aforesaid church could not be bought, so neither could it be bought back. But if the monks of Cardon, lawfully cited, disdain to approach your presence and stand in your judgment, you shall introduce the same monks of Acre into possession of those things concerning which the controversy is conducted, *opposition and appeal ceasing*, and shall not permit them thereafter to be molested without judicial order. *But if each of you cannot be present to execute these things, let the other nevertheless execute them.*

Ecclesia emi vel redimi non potest. H. d. quoad literam.

Idem Vigoriensi Episcopo et Priori de Acra.

Querelam monachorum de Acra *nobis transmissam* recepimus, quod, quum ipsi quoddam manerium, *quod dicitur Vella*, cum pertinentiis suis, et ecclesiam de Genen. a monachis de Cardonio sub annuo censu quindecim librarum fuissent adepti, et inde chartam ab ipsis monachis habuissent, *quidam* prior eorum, capitulo inconsulto, praescriptum manerium *et ecclesiam* et chartam monachis de Cardonio accepta pecunia resignavit. Unde quia praefati monachi de Acra se conqueruntur iniuste gravatos, *et nobis imminet corrigendum, si quid minus rationabiliter attentatur, causam ipsam experientiae vestrae committimus, praesentium vobis auctoritate* mandamus, quatenus, partibus *ante vestram praesentiam* convocatis, *quae hinc inde proposita fuerint diligentius audiatis, et* praescriptam causam *sublato appellationis remedio* concordia vel iudicio terminetis, scituri, quod, sicut emi non potuit, ita nec redimi ecclesia memorata. Si vero monachi de Cardonio legitime citati ad vestram praesentiam accedere et iudicio vestro stare contempserint, vos ipsos monachos de Acra in possessionem eorum, de quibus controversia vertitur, *contradictione et appellatione cessante* inducatis, nec permittatis eos exinde absque ordine iudiciario molestari. *Si vero uterque vestrum his exsequendis interesse non poterit, alter nihilominus exsequatur.*

Chapter XVI

Latin source headnote: Money ought not to be demanded from churches for chrism, even if custom has this.

The same.

Those things that proceed from the *root of avarice and cupidity and burst forth into the appearance of simoniacal depravity are to be completely uprooted, and those things that proceed from thorns and thistles are to be cut away with the sickle of apostolic moderation. But* we have heard that you extort coins for chrism from churches *with rash audacity*, which *under different names* you now call cathedraticum, sometimes a paschal payment, and at times *indeed* an episcopal custom. But because this is known to be simoniacal *and generates peril to souls, by apostolic writings* we command you, *and by commanding we enjoin*, that *from churches, under* the pretext of any custom or prelacy, you by no means demand the aforesaid coins *hereafter*, knowing for certain that, if you presume this *with rash audacity*, you will not undeservedly be able to fear peril to *your* order and dignity. *Nevertheless also, etc.* (*cf. c.* 12, *On Procurations III.* 39.)

> Pro chrismate ab ecclesiis pecunia exigi non debet, etiamsi hoc habeat consuetudo.
>
> Idem.
>
> Ea, quae de avaritiae *et cupiditatis radice procedunt, et in speciem simoniacae pravitatis erumpunt, penitus sunt exstirpanda, et quae de spinis et tribulis procedunt, falce apostolici moderaminis sunt resecanda*. Audivimus *autem*, quod nummos pro chrismate ab ecclesiis *ausu temerario* extorquetis, quos *diversis nominibus* nunc cathedraticum, aliquando paschalem praestationem, interdum *vero* episcopalem consuetudinem appellatis. Quia vero hoc simoniacum esse cognoscitur, *et periculum generat animarum, per apostolica scripta vobis* mandamus *et mandando praecipimus*, quatenus *ab ecclesiis. sub* praetextu alicuius consuetudinis vel praelationis praescriptos denarios *ulterius* nullatenus exigatis, pro certo scituri, quod, si hoc *ausu temerario* praesumpseritis, periculum ordinis et dignitatis *vestrae* poteritis non immerito formidare. *Nihilominus etiam etc.* (*cf. c.* 12. *de. cens. III.* 39.)

Chapter XVII

Latin source headnote: To perform homage for obtaining spiritual things is simoniacal.

The same.

From your diligent report it became known *to us* that H., Archdeacon of Canterbury, *enticed you by many promises, and through the admonition and solicitation of certain great men* induced you to perform homage to him and furnish fidelity, in such a way *indeed* that he would provide you with an ecclesiastical benefice each year. Hence, because an obligation of this sort is *sufficiently* unlawful and exists contrary to the advancement of your salvation and also his, *as your discretion by no means ignores, concerning this* you more insistently *and supplicantly* asked to be absolved by us, adding that henceforth you would receive nothing at all from him from the established benefice. Wherefore we, attending that your petition *in this matter* is honorable and favorable, absolve you from homage and fidelity to the aforesaid archdeacon, especially since things furnished in this manner are known to be contrary to divine and human laws, *by the authority of blessed Peter and also our own*, in such a way that you receive worthy penance therefrom from *some* discreet bishop or priest *and endeavor to be reconciled to God according to his counsel*. But lest you can be bespattered by any mark or infamy on this account, we have considered that letters of our absolution ought to be granted to you, by which you may exist safe and fortified against the bites of those who bark and which you can display as testimony of our indulgence.

> Pro habendis spiritualibus homagium facere simoniacum est.
>
> Idem.

Ex diligenti tua relatione *nobis* innotuit, quod H. Cantuariensis archidiaconus te *multis promissionibus allexit, et quorundam magnorum virorum commonitione ac sollicitudine* induxit, ut ei homagium faceres et fidelitatem praestares, ita *quidem*, quod ipse tibi beneficium ecclesiasticum annis singulis exhiberet. Unde, quoniam huiusmodi obligatio illicita *satis*, et contra tuae salutis, nec non et suae profectum exsistit, *sicut tua discretio nequaquam ignorat: super hoc* absolvi a nobis instantius *et suppliciter* postulasti, adiiciens, quod ab eo deinceps nihil omnino de beneficio acciperes constituto. Quocirca nos, tuam *in hac parte* petitionem honestam et favorabilem attendentes, te a praefati archidiaconi homagio et fidelitate, praesertim quum haec taliter praestita divinis et humanis legibus contraire noscantur, *ex beati Petri et nostra etiam auctoritate* absolvimus ita, quod ab *aliquo* episcopo vel sacerdote discreto poenitentiam inde condignam recipias, *et Deo secundum eius consilium studeas reconciliari*. Verum ne aliqua propter hoc nota vel infamia possis respergi, absolutionis nostrae literas tibi duximus indulgendas, quibus contra latrantium morsus tutus et praemunitus exsistas, et quas in testimonium indulgentiae nostrae valeas demonstrare.

Chapter XVIII

Latin source headnote: An ordination or consecration is not judged simoniacal although something was given to the ordainer without an agreement.

The same, to the Archbishop of Esztergom.

Although we by no means fail to recognize that your questions *arise from the fervor of religion and are brought to us from the affection of inward devotion that you have toward us and the Church*, nevertheless you must not doubt in these things beyond what is fitting, since human laws say that certain persons, *content* with slender religious scruple, disdain to furnish even necessary and lawful sacraments, calling that religious scruple slender which hesitates in such things where one ought not to hesitate in any measure. *Hence the Psalmist says: "They trembled* [*with fear*] *where there was no fear."* Therefore, in this matter—namely that the *beloved* [*son of ours*] P., cardinal priest *of the title of Saint Lawrence in Damaso, but then cardinal deacon of Saint Eustace and* legate of the Apostolic See, approached those parts concerning your election and in order to deliver the pallium to you, and that *our beloved son Albanus*, your brother, foreknowing his necessity, sent him one horse, with you *entirely* ignorant, because in coming by sea he brought no mounts or few with him—you ought in no way to fear, since in receiving or giving gifts three things are especially to be attended: namely, the quality of the person giving and the person receiving, the quantity of the gift, and the time of the donation. Let us *solicitously consider* the quality of the persons, from whom and to whom it was given, namely whether by a poor man to a rich man or conversely, or by a rich man to a wealthy man. Let us *more diligently inspect the valuation of the gift and the time of the donation, whether the thing given is of greater or lesser price, and whether it is conferred when necessity is pressing or at another time. When these things have been examined more studiously, we find nothing worthy of reproach in your aforesaid question, as will appear more manifestly to your solicitude in what follows*. Therefore, if by *right consideration* we weigh the person and quality of the aforesaid cardinal and your brother, it was no great thing for one horse to be sent to the cardinal by the same brother of yours, which so great and abundant a man would perhaps give even to a jester who did not ask. But if we consider the necessity of the time, it is established that this was done with no intention other than that the cardinal be aided in the aforesaid circumstance. *Wherefore no scruple of doubt ought ever to arise in your conscience concerning this, since the thing given was of small price with respect to the person giving and the person receiving, and neither of them had anything in mind that could or ought to inflict any injury upon you, even in the least; although the horse was sent and bestowed, with necessity pressing, before the examination of the election and reception of the pallium, since it was done against your will and with you entirely*

ignorant; nor is the thing reputed of such value that it ought greatly to move the mind of the recipient or turn it from a purpose of honor toward something else. But what is written, "Blessed is he who shakes his hands free from every gift," is said of those gifts that are accustomed to entice or pervert the mind of the recipient, since, even if the person elected himself should offer his ordainer or consecrator an electuary, *medicines*, or some of the *best* wine, or other things of this sort that are of small price and ought not to incline or move the will of the recipient, nevertheless the Roman Church is not accustomed to interpret the recipient or giver as offending in these things, [*unless these things intervened by agreement, etc.*]

> Ordinatio vel consecratio non censetur simoniaca, licet ordinatori aliquid donatum fuerit non ex pacto.
>
> Idem Strigonensi Archiepiscopo.
>
> Etsi quaestiones tuas de fervore religionis *exsurgere, et ex intimae devotionis affectu, quem circa nos et ecclesiam habes,* ad nos perferri nullatenus ignoremus, non tamen tibi est in his ultra, quam oporteat, dubitandum, quum leges humanae dicant, quod quidam tenui religione *contenti* sacramenta etiam necessaria et legitima exhibere contemnunt, tenuem religionem vocantes, quae in talibus haesitat, ubi non est aliquatenus haesitandum. *Unde Psalmista dicit:* "*Trepidaverunt* [*timore*] *ubi non erat timor.*" In hoc itaque, quod, *dilectus* [*filius noster*] P. *tituli S. Laurentii in Damaso* presbyter cardinalis, *tunc vero S. Eustachii diaconus et* apostolicae sedis legatus, pro electione tua, et, ut pallium tibi traderet, ad partes illas accessit, et *dilectus filius noster Albanus* frater tuus, eius praesciens necessitatem, ei equum unum, te *penitus* ignorante, transmisit, quoniam per mare veniens nullas aut paucas secum equitaturas adduxit, te nullo modo timere oportet, quum in accipiendis vel dandis muneribus tria sunt maxime attendenda, personae scilicet dantis et accipientis qualitas, quantitas muneris, et donationis tempus. Qualitas personarum, ut a quo et cui, videlicet, an a paupere diviti, vel e converso, sive a divite locupleti datum fuerit, *sollicite consideremus*. Aestimatio muneris et donationis tempus, si magni vel minoris pretii res data exsistat, et an instante necessitate seu alio tempore conferatur, *diligentius inspiciamus. Quibus siquidem studiosius inquisitis, in praescripta quaestione tua nil reprehensione dignum invenimus, quod sollicitudini tuae in sequentibus manifestius apparebit*. Si ergo praedictorum cardinalis et fratris tui personam et qualitatem *recta consideratione* pensamus, non fuit magnum, ab eodem fratre tuo cardinali equum unum transmitti, quem etiam ioculatori non petenti vir tantus et tam abundans forte donaret. Verum si temporis necessitatem perpendimus, non alia intentione hoc constat factum fuisse, quam ut cardinali subveniretur in articulo praenotato. *Quare super hoc in conscientia tua nullus unquam debet scrupulus dubitationis emergere, quum res data modici pretii quantum ad personam dantis et accipientis exstiterit, nec alteruter eorum aliquid in mente habuerit, quod tibi possit vel debeat quamlibet vel in modico laesionem inferre, etsi ante electionis examinationem et pallii receptionem, quum te nolente et penitus ignorante sit factum, equus necessitate instante transmissus fuerit et collatus, nec etiam res tanti pretii reputetur, quae accipientis animum multum movere debeat, aut ab honestatis proposito ad aliud declinare*. Quod autem scriptum est: "Beatus, qui excutit manus suas ab omni munere," de illis donis dictum est, quae accipientis animum allicere vel pervertere solent, quoniam, si ipsa etiam persona electi offerat ordinatori vel consecratori suo electuarium, *medicinas* aut de *optimo* vino sive de aliis huiusmodi, quae modici pretii fuerint, et quae voluntatem recipientis inclinare vel movere non debeant, non tamen ecclesia Romana interpretari consuevit, accipientem in his delinquere vel donantem, [*nisi ista intervenirent ex pacto etc.*]

Chapter XIX

Latin source headnote: If an abbot and the senior members of a convent received money by agreement for receiving a monk, they are suspended from office and benefice; money so received is restored, and the person so received is transferred to another monastery.

The same.

F., a priest, coming to us, proposed *in a simple report to us* that the abbot and brothers of Saint R. were unwilling to receive him as a monk until he agreed to give them thirty solidi *for the monastic state*. But after the agreement was made, *immediately* on the following day they clothed him in the monastic habit, and the same monks demanded thirty solidi, the abbot ten, and the household twelve for a meal, asserting this to be from the custom of the monastery. Therefore, because *the truth of the matter is not established to us and* a deed of this sort seems pernicious, we command *your fraternity by apostolic writings* that *you diligently inquire into the truth of the matter and*, if you find it to be so, you insistently admonish the abbot and monks to restore to the aforesaid F. the money so unworthily received, *and compel them with all severity*; and, suspending the abbot and the senior persons of the monastery from the exercise of office for the excess of so great a depravity, you shall command the said F. to endeavor to serve the Lord in the monastic habit in another monastery.

> Abbas et maiores de conventu, si pro receptione monachi receperunt pecuniam ex pacto, ab officio et beneficio suspenduntur, et taliter recepta pecunia restituitur, et in aliud monasterium ita receptus transfertur.
>
> Idem.
>
> Veniens ad nos F. presbyter *simplici nobis relatione* proposuit, quod abbas et fratres sancti R. noluerunt eum in monachum recipere, quousque *illis pro monachatu* triginta solidos dare convenit; conventione autem facta *statim* sequenti die eum monasticum habitum induerunt, et iidem monachi triginta solidos, abbas vero decem, et familia duodecim pro pastu, asserentes, hoc esse de consuetudine monasterii, postularunt. Quoniam ergo *rei veritas nobis non constat, et* factum huiusmodi perniciosum videtur, *fraternitati tuae per apostolica scripta* mandamus, quatenus *rei veritatem diligenter inquiras, et*, si ita esse inveneris, abbatem et monachos ad restituendam pecuniam praefato F. tam indigne acceptam, *instanter admoneas, et cum omni districtione* compellas, et, abbatem et maiores personas monasterii pro tantae pravitatis excessu ab officii exsecutione suspendens, praecipias dicto F., ut in alio monasterio in habitu monastico Domino studeat deservire.

Chapter XX

Latin source headnote: If a person to be ordained gave something by agreement to the person presenting him, it is simoniacal; nevertheless, he is not deposed if it is occult.

The same.

From the letters of your fraternity and from the confession of the priest who bears the presents, we received that, when his archdeacon was unwilling otherwise to present him for the order of priesthood [*to be assumed*], he paid six solidi to the same *archdeacon*, and thus, *afterward*, having been presented by him, he received the order itself. Hence, *concerning that on which you sought our counsel*, we considered that this response should be made to you: if this is not public but secret, you are secretly to approach the same priest, admonishing *him*, *yet* without any coercion, and earnestly inducing him to assume the order of some religious institute and perpetually abstain from the office that he [*thus*] illicitly acquired. *But if perhaps you cannot induce him to assume the order of a religious institute, you are to endeavor to establish some ecclesiastical benefice for his support, on the condition that he ought perpetually to abstain from the priesthood.* Otherwise, since his excess is secret, it will not be safe to coerce him

unwillingly from the same office. Nevertheless, you shall not postpone imposing secret penance upon him according to what shall seem good to you.

> Si ordinandus praesentatori suo aliquid dedit ex pacto, simoniacum est; non tamen deponitur, si est occultum.
>
> Idem.
>
> Ex tuae fraternitatis literis, et ex confessione sacerdotis praesentium latoris accepimus, quod, quum ad sacerdotii ordinem [*assumendum*] non aliter voluisset eum eius archidiaconus praesentare, sex solidos solvit eidem *archidiacono*, et sic *postmodum* ordinem ipsum per eum praesentatus accepit. Unde *super eo, de quo nostrum consilium postulasti*, tibi sic duximus respondendum, ut, si hoc non est publicum, sed secretum, eundem sacerdotem secreto convenias, monens, *eum* sine ulla *tamen* coactione, propensius et inducens, ut ordinem alicuius religionis assumat, et perpetuo ab officio abstineat, quod [*ita*] illicite acquisivit. *Si vero ad religionis ordinem assumendum inducere eum forte non poteris, studeas ei ad sustentationem suam aliquod beneficium ecclesiasticum constituere, ad hoc, ut a sacerdotio debeat in perpetuum abstinere*. Alioquin non erit tutum, quum sit secretus eius excessus, ipsum invitum ab eodem officio coercere. Cui tamen secretam poenitentiam, secundum quod tibi visum fuerit, iniungere non postponas.

Chapter XXI

Latin source headnote: It is brief and cannot be summarized more briefly.

The same.

Know that it has reached our *hearing—wherefore, if it is true, we greatly marvel and are rightly moved against you—that in the churches constituted in your jurisdiction you by no means permit vicars to minister unless money has been extorted from them, and that you presume each year to burden the persons of churches as though they were servants and tributaries with undue exactions, extorting from them money and procurations, calling them by various names, sometimes the bishop's aid, at times the same bishop's and your customs. If perhaps they oppose rendering these to you, you suspend the same persons and the vicars of the churches from office, and prohibit divine offices from being celebrated in their churches; and, among other things, you presume to extort from them coins for chrism according to your will, to the peril of your salvation, sometimes calling an exaction of this sort, so that you may seem to exact it more freely, an episcopal custom, sometimes synodals, and sometimes paschal coins.* (*And below:*) *But because it is not fitting for you to treat clerics so cheaply and dishonorably*, we command your discretion *by apostolic writings* that you by no means demand money *from them* for exercising ecclesiastical ministry, assigning vicars, or chrism, *and that you not presume hereafter to burden them with undue exactions or procurations, or to subject their persons or churches to interdict without manifest reason and a reasonable cause; otherwise, if a repeated complaint concerning this should at any time reach us, we will punish you gravely.*

> Breve est, nec potest brevius summari. Idem.
>
> Ad nostram *noveris audientiam pervenisse, unde, si verum est, plurimum admiramur et adversus vos iure movemur, quod in ecclesiis, in vestra iurisdictione constitutis, vicarios, nisi ab eis extorta pecunia, nulla ratione ministrare permittitis, et personas ecclesiarum quasi servos et censuarios singulis annis indebitis exactionibus gravare praesumitis, extorquendo ab eis pecuniam et procurationes, eas diversis nominibus aliquando auxilium episcopi, interdum eiusdem episcopi et vestras consuetudines nuncupantes. Quas si vobis forte reddere contradicunt, vos easdem personas et ecclesiarum vicarios ab officio suspenditis, et in eorum ecclesiis divina prohibetis officia celebrari, et inter cetera denarios chrismatis pro voluntate vestra ab eis in vestrae salutis periculum extorquere praesumitis, huiusmodi exactionem, ut eam liberius videamini exigere, quandoque consuetudinem episcopalem, quandoque synodalia, quandoque paschales denarios appellantes.* (*Et infra:*) *Quia vero non decet vos ita viliter clericos et inhoneste tractare*, Discretioni vestrae

per apostolica scripta mandamus, quatenus *ab eis* pro ministerio ecclesiastico exercendo, sive pro vicariis assignandis, seu pro chrismate nullatenus pecuniam exigatis, *et eos indebitis exactionibus aut procurationibus de cetero gravare, vel personas eorum, aut ecclesias sine manifesta ratione et rationabili causa nullatenus interdicto supponere praesumatis, alioquin si quando ad nos exinde iterata querela pervenerit, vos graviter puniemus*.

Chapter XXII

Latin source headnote: Dispensation can be granted to one simoniacally ordained who is not himself a simoniac.

Lucius III.

Concerning persons *indeed* simoniacally ordained, we cannot give you a certain response *according to your petition* unless we know more fully how they were ordained, since some persons, although they are ordained simoniacally according to a certain appearance of simony—as, for example, when those *ordained* are ignorant of it—can *nevertheless* remain in their orders because they are not simoniacs.

Cum simoniace ordinato, qui simoniacus non est, dispensari potest.

Lucius III. De simoniace *vero* ordinatis *iuxta postulationem tuam* certum tibi non possumus dare responsum, nisi plenius cognoscamus, qualiter fuerint ordinati, quum quidam, licet secundum quandam speciem simoniae, utpote ipsis ignorantibus *ordinatis*, simoniace ordinentur, possunt *tamen*, quia simoniaci non sunt, in suis ordinibus remanere.

Chapter XXIII

Latin source headnote: If one opposing the person elected ceases from opposition for money delivered with the will of the person elected, the person elected and afterward confirmed is a simoniac and is bound to renounce the benefice.

The same.

Cardinal Matthew showed us by a secret intimation that, when you had been elected to the government of your church by the will of the greater part of the brothers, *because*, with a few opposing you, *you were unable to enjoy due peace*, a certain friend of yours, with your knowledge and will, yet *disturbed*, paid a gift of a certain quantity to the person who seemed to be the master of the discord, and thus the opposition *which he had previously maintained* became quiet. But now you doubt that you are entirely immune from the stain of simony for as long as you wish to remain in the administration. Therefore, because *through the aforesaid cardinal you sought the counsel of the Apostolic See* as to what is to be done by you, we respond that you consult your own good greatly if you quickly and spontaneously resign the *aforesaid* administration, remaining mindful of that *evangelical* word: "It profits a man nothing if he gains the whole world but suffers detriment to his own soul."

Si contradicens electo pro pecunia, de voluntate electi tradita, a contradictione cessat, electus postea confirmatus est simoniacus, et beneficio renunciare tenetur.

Idem.

Matthaeus cardinalis secreta nobis insinuatione monstravit, quod, quum fuisses ad ecclesiae tuae regimen de voluntate maioris partis fratrum electus, *quia*, paucis tibi contradicentibus, *non valebas debita pace gaudere*, quidam amicus tuus de conscientia tua et voluntate, turbata *tamen*, ei, qui magister discordiae videbatur, certae quantitatis munus exsolvit, et sic, *quam prius sustinebat*, contradictio conquievit. Nunc autem dubitas, quod non sis a labe simoniae prorsus immunis, donec in

administratione volueris remanere. Quia igitur *per iam dictum cardinalem apostolicae sedis* consilium requisisti, quid tibi sit faciendum: respondemus, quod multum tibi consulis, si administrationem *praedictam* celeriter ac sponte dimittas, illius verbi *evangelici* memor exsistens: "Nihil prodest homini, si universum mundum lucretur, animae vero suae detrimentum patiatur."

Chapter XXIV

Latin source headnote: No price ought to be demanded for absolving an excommunicated person.

The same.

Know that it has reached our ears that, when C. of Seneville had been bound by the bond of excommunication because of money that he owed, he satisfied the creditors, but, with the excommunicators seeking ten pounds for absolution, he was unable to obtain the benefit of absolution. Therefore, because it is unworthy and contrary to ecclesiastical reason that the benefit of absolution be bought back, we command your discretion *by apostolic writings* that, if the aforesaid C. paid the debt *for which he had been named in the sentence*, you cause him to be absolved freely *by apostolic authority*, *notwithstanding any appeal*, if the excommunicators, after being requested, shall not have done it.

Pro absolvendo excommunicatum pretium aliquod exigi non debet.

Idem.

Ad aures nostras pervenisse noveris, quod, quum C. de Senevilla propter pecuniam, quam debebat, vinculo fuisset excommunicationis adstrictus, creditoribus satisfecit, sed, excommunicatoribus decem libras pro absolutione quaerentibus, non valuit absolutionis beneficium obtinere. Quoniam igitur indignum est et ecclesiasticae rationi contrarium, ut absolutionis beneficium redimatur, discretioni vestrae *per apostolica scripta* mandamus, quatenus, si praefatus C. debitum solvit, *pro quo fuerat per sententiam nominatus*, ipsum, *nullius appellatione obstante* gratis faciatis *auctoritate apostolica* absolvi, si excommunicatores id non fecerint requisiti.

Chapter XXV

Latin source headnote: Monks received through simony, if they are simoniacs, are transferred to stricter monasteries; otherwise, after renunciation, they can be placed in the same monasteries or in other monasteries of the same order.

Clement III.

You wished to consult us concerning regular canons or monks who obtained entry through simony with their own knowledge *and contrivance*. Hence, since many express authorities are found concerning this, we respond nothing other than what has been established: that they altogether leave the place which they obtained in such a manner and go to solitary places or other stricter monasteries, in which they are to bewail so execrable an excess without interruption. But if the money was given without their knowledge, you shall compel them to renounce the same place, and afterward you can lead them back into it if they can remain there without scandal, or place them in another that is of the same order to serve God.

Monachi, per simoniam recepti, si sunt simoniaci, ad arctiora monasteria transferuntur: alias post renunciationem in eisdem vel in aliis monasteriis eiusdem ordinis poterunt collocari. Clemens III. De regularibus canonicis seu monachis nos consulere voluisti qui per simoniam ingressum ipsis scientibus

et machinantibus, habuerunt. Unde, quum super hoc auctoritates multae reperiantur expressae, non aliud, quam statutum est, respondemus, ut locum, quem taliter adepti sunt, omnino dimittant, et solitudines seu alia monasteria districtiora adeant, in quibus tam exsecrabilem excessum sine intermissione deplorent. Si autem ignorantibus ipsis pecunia data fuerit, cogas eos ad renunciandum loco eidem, et postmodum in ipsum reducere, si ibi absque scandalo potuerint remanere, vel in alio, qui sit de ordine ipso, ad serviendum Deo poteris collocare.

Chapter XXVI

Latin source headnote: If someone, renouncing a canonry to which he had been admitted simoniacally but in ignorance, is afterward admitted anew to it, he cannot claim anything for himself from the first reception.

The same.

From your intimation it became known to us that your father formerly acquired for you the benefice of a prebend through the intervention of money, and that when *afterward*, arriving at years of discretion, you received the sign of the Lord's cross, *having been led to penance concerning the excess*, you freely resigned the said prebend into the hands of the provost and brothers. But the same *provost and brothers*, taking pity upon you, elected you anew as their canon, in such a way, namely, that through this election you should obtain the last place in choir and in the other *places*. *But because you humbly asked of us whether you could recover your place according to the earlier reception, to you* we respond that, remaining content with the indulgence that your brothers are known mercifully to have shown you, you are to dare to claim nothing in that church by reason of the first reception.

Si quis, canonicatui renuncians, ad quem per simoniam ignoranter assumptus fuerat, postea de novo assumatur ad illum: non potest ex prima receptione sibi aliquid vendicare.

Idem.

Ex insinuatione tua nobis innotuit, quod pater tuus interveniente pecunia olim tibi praebendae beneficium acquisivit, quumque ad annos discretionis *postmodum* perveniens, accepisses dominicae crucis signum, *super excessu poenitentia ductus* dictam praebendam in manu praepositi et fratrum libere resignasti. Sed iidem *praepositus et fratres*, tibi compatientes, de nova te in suum canonicum elegerunt, ita videlicet, quod per electionem istam postremum locum in choro et in aliis *locis* obtineres. *Ceterum, quia a nobis humiliter requisisti, utrum iuxta priorem receptionem tuum locum recuperare valeas: tibi* Respondemus, ut indulgentia, quam fratres tui misericorditer tibi fecisse noscuntur, contentus exsistens, ratione primae receptionis nihil audeas in ipsa ecclesia vendicare.

Chapter XXVII

Latin source headnote: An election is to be quashed as simoniacal if money was promised to the electors on this account, although the person elected is ignorant, unless this was done in fraud of the person elected. This is what it says first. A bishop does not dispense with a person elected and rejected because of the vice of simony. This is what it says secondly. Abbas.

Celestine III.

It was intimated to us on your part *with great diligence* that, when four persons had been appointed by the chapter who ought to elect someone as plebanus, the friends of the person concerning whose election there was hope promised one or all of the electors that they would pay money, yet with the

person who was afterward elected upon the intervention of a promise of this sort being ignorant of it. (*And below:*) Therefore, because you wished to consult us concerning this, we respond briefly to your consultation that, unless it *perhaps* were established that those who made such a promise maliciously did it fraudulently to the detriment of the person who was to be elected, although he himself was not aware of the promise, his election, as presumed through simoniacal depravity, is nevertheless entirely to be rejected. (*And below:* [*cf. c.* 25, *On the Right of Patronage III.* 38.]) Finally, concerning *this* which we found at the end of your consultation, we considered that this response should be made: someone elected as a *plebanus, or priest, or* prelate of any church and rejected, as was said, through simoniacal depravity cannot by law obtain any dispensation from his bishop. [*Given at the Lateran on the eighth day before the Ides of May.*]

> Electio simoniaca est cassanda, si propter hoc electoribus promissa fuit pecunia, quamvis electus ignoret; nisi hoc factum fuerit in fraudem electi. H. d. primo. Cum electo, reprobato per vitium simoniae, non dispensat episcopus. H. d. secundo. Abbas.
>
> Coelestinus III. Nobis fuit ex parte tua *cum magna diligentia* intimatum, quod, quum quatuor essent a capitulo constituti, qui debebant quendam eligere in plebanum, amici eius, de cuius electione spes habebatur, uni vel omnibus eligentium promiserunt, se pecuniam soluturos, eo tamen ignorante, qui, huiusmodi promissione interveniente postmodum est electus. (*Et infra:*) Quia igitur super hoc consulere nos voluisti, consultationi tuae breviter respondemus, quod, nisi *forte* constaret, illos, qui promissum tale fecerunt, per fraudem in dispendium ipsius, qui eligendus erat, id malitiose fecisse, quamvis ipse promissionis conscius non fuerit, eius tamen electio, tanquam simoniaca pravitate praesumpta, est penitus reprobanda. (*Et infra:* [*cf. c.* 25. *de iure patr. III.* 38.]) Ad ultimum *super hoc*, quod in fine consultationis tuae invenimus, hoc duximus respondendum, quod aliquis in *plebanum, seu presbyterum, seu* ecclesiae cuiuslibet praelatum electus, et, ut dictum est, per pravitatem simoniacam reprobatus, ab episcopo suo dispensationem aliquam obtinere de iure non potest. [*Dat. Lat. VIII. Id. Maii.*]

Chapter XXVIII

Latin source headnote: One who gives money to a prelate so that the latter will not molest him in fact in his right recovers it if the prelate does not observe what was promised. This is what it says by adhering to the letter.

The same, to the Bishop of Lincoln and the Prior of Pontefract.

Our *beloved* son R., the provost, explained to us that, when the Archdeacon of York did not cease to afflict him with many burdens *and various injuries*, he promised to give him a certain quantity of money so that he would desist from injuring him; but after receiving the money, the said archdeacon *did not leave him in peace, as he promised, and* did not cease from molesting him concerning his dignities and benefices. And therefore we command your discretion *by apostolic writings* that, if the matter stands thus, you compel the archdeacon, *by our authority, appeal having been removed*, to restore what he received if it shall be established that he acted contrary to his promise, *and that you also more strictly prohibit the archdeacon on our behalf from presuming to molest the provost himself or his people while the suit is pending, and, if perhaps he does so, let it be corrected through your solicitude.*

> Qui dat praelato pecuniam, ne ipsum in iure suo de facto molestet, illam repetit, si praelatus promissa non servet. H. d. inhaerendo literae.
>
> Idem Linconiensi Episcopo et Priori de Ponte fracto.

Dilectus filius *noster* R. praepositus nobis exposuit, quod, quum Eboracensis archidiaconus eum multis gravaminibus *et variis iniuriis* afficere non cessaret, promisit ei certam quantitatem pecuniae se daturum, ut ab ipsius desisteret laesione; verum dictus archidiaconus post receptionem pecuniae *eum, sicut promisit, in pace non dimisit, et* super dignitatibus et beneficiis eius, ab eius molestia non quievit. Ideoque discretioni vestrae *per apostolica scripta* mandamus, quatenus, si res ita se habet, archidiaconum restituere quod accepit, si eum contra promissionem suam venisse constiterit, *auctoritate nostra appellatione remota* compellatis, *et prohibeatis etiam ipsum archidiaconum ex parte nostra districtius, ne pendente lite praepositum ipsum vel suos molestare praesumat, et, si forte fecerit, per vestram sollicitudinem corrigatur*.

Chapter XXIX

Latin source headnote: Nothing ought to be demanded for the blessings of those marrying and the funeral rites of the dead.

Innocent III, to the Abbot of Joug-Dieu and the Prior of Silla.

The parishioners of Villefranche, *beloved sons*, sent their complaint to us that *Damasius*, their chaplain, less lawfully demands and extorts money from them for the funeral rites of the dead and the blessings of those marrying. *And if perhaps his cupidity has not been satisfied, he fraudulently opposes fictitious impediments to them, lest the bodies of the dead be able to be buried or the blessing of those marrying be celebrated. Therefore, because exactions of this sort oppose the institutions of the sacred canons*, we command your discretion *by apostolic writings* that you admonish the said chaplain to desist from so great a presumption and also make suitable satisfaction for the excess, *and more attentively and effectively induce him*, inflicting upon him the canonical penalty, *appeal having been removed*, if he is unwilling to obey *your admonitions*. [*Given, etc., on the second day before the Kalends of June,* 1198.]

Pro benedictionibus nubentium et exsequis mortuorum nihil exigi debet.

Innocentius III. Abbati de Iugo Dei et Priori de Silla.

Suam nobis *dilecti filii* parochiani de Villa franca querimoniam destinarunt, quod *Damasius* capellanus eorum pro exsequiis mortuorum et benedictionibus nubentium minus licite pecuniam ab eis exigit et extorquet. *Quodsi forte cupiditati eius non fuerit satisfactum, ne possint mortuorum corpora sepeliri, vel benedictio nubentium celebrari, fictitia eis impedimenta fraudulenter opponit. Quia igitur exactiones huiusmodi sacrorum canonum obviant institutis*, Discretioni vestrae *per apostolica scripta* mandamus, quatenus dictum capellanum, ut a tanta praesumptione desistat, et etiam pro excessu satisfaciat competenter, moneatis *attentius et efficaciter inducatis*, sibi, si *vestris monitionibus* obedire noluerit, poenam canonicam *appellatione remota* infligentes. [*Dat. etc. II. Kal. Iun.* 1198.]

Chapter XXX

Latin source headnote: If through accusation it is established that a monk was received simoniacally, the person received and the person receiving are deposed. But if through inquisition, the person received is thrust into a stricter monastery; a worthy penalty is imposed upon the person receiving and the senior persons, and meanwhile they are suspended from the exercise of sacred orders.

The same, to the Archbishop of Canterbury.

The beloved son *Master* A., your messenger, proposed on your behalf that, when, visiting the diocese of Canterbury *according to the custom of your predecessors, so that you might correct the things to be corrected*

and establish the things you should see ought to be established according to God, you found simoniacal depravity to have sprouted in monasteries *and regular canonries* and religious places, in such a way that many in them were received for a price who ought rather to have been received freely—indeed, even invited to the observance of religion. You therefore doubt whether, because a multitude is found in the cause, something is to be taken away from severity, *or whether you ought to exercise the rigor of canonical discipline against such persons*. We *therefore* respond thus to your inquiry: if an accusation shall have been canonically instituted before you against those who have been stained by a taint of this sort, after the crime has been proved by judicial order, you shall exercise the vengeance of canonical severity both against those giving and those receiving. But if it shall have been established to you concerning this through inquisition alone, you shall remove from such places those who were received in them through simoniacal depravity and direct them to stricter monasteries to perform penance. But upon abbots and abbesses, priors, prelates of every kind, and their officials, you shall impose suitable penance, and, until they have performed it, suspend them from the exercise of sacred orders, enjoining upon your bishops that they endeavor to observe this form throughout their dioceses. Nevertheless, that which shall have been freely offered without assessment can be gratefully received.

> Si per accusationem constat, monachum simoniace fuisse receptum, receptus et recipiens deponuntur. Si vero per inquisitionem, receptus in arctius monasterium detruditur; recipienti vero et maioribus poena condigna imponitur, et interim ab exsecutione ordinum sacrorum suspenduntur.
>
> Idem Cantuariensi Archiepiscopo.
>
> Dilectus filius *magister* A. nuncius tuus pro parte tua proposuit, quod, quum Cantuariensem dioecesim *secundum praedecessorum tuorum consuetudinem* visitans, *ut quae corrigenda sunt corrigas, et statuas quae secundum Deum videris statuenda*, in monasteriis *et canonicis regularibus*, et religiosis locis pullulasse repereris simoniacam pravitatem, ita, quod in eis multi pretio sunt recepti, qui potius gratis recipi debuissent, immo etiam ad religionis observantiam invitari. Dubitas igitur, an, quia multitudo reperitur in causa, severitati sit aliquid detrahendum, *an in tales exercere debeas rigorem canonicae disciplinae*. Nos *igitur* inquisitioni tuae taliter respondemus, quod, si adversus eos, qui labe fuerint huiusmodi maculati, accusatio coram te fuerit canonice instituta, postquam crimen ordine fuerit iudiciario comprobatum, tam in dantes quam in recipientes canonicae severitatis exerceas ultionem. Quodsi de hoc tibi per solam inquisitionem constiterit, eos, qui per simoniacam pravitatem in locis talibus sunt recepti, ab illis amotos ad agendam poenitentiam ad monasteria dirigas arctiora. Abbatibus autem et abbatissis, prioribus, praelatis quibuslibet et officialibus eorundem iniungas poenitentiam competentem, et, donec illam peregerint, eos a sacrorum ordinum exsecutione suspendas, iniungens episcopis tuis, ut hanc formam per suas dioeceses studeant observare. Illud tamen gratanter recipi poterit, quod fuerit sine taxatione gratis oblatum.

Chapter XXXI

Latin source headnote: An abbot can except against witnesses who deposed against him concerning simony in a judgment of inquisition on the ground that they are enemies and conspirators; but he cannot oppose other exceptions of crimes.

The same, to the Prior of Saint Victor and Masters I. of Bologna and L. of Modena, Canons.

Although Eli the high priest was good in *himself*, nevertheless, because he did not effectively rebuke the excesses of his sons, he received the vengeance of divine punishment both in himself and in them

when, his sons having been killed in battle, he himself fell from his seat and died with his neck broken. Therefore, a prelate ought to arise for the correction of the excesses of subjects the more diligently, the more damnably he would leave their offenses uncorrected. Against them—so that nothing be said of notorious excesses—although one can proceed in three ways, namely through accusation, denunciation, and inquisition, nevertheless diligent caution is to be applied in all, so that, just as lawful inscription ought to precede accusation, so charitable correction ought to precede denunciation, and clamorous intimation ought to precede inquisition. "I will descend," says the Lord, "and see whether they have fulfilled in deed the outcry that has come to me." For the outcry then reaches the prelate when the excesses of subjects are reported to him through public reputation or frequent intimation; and then he ought to descend and see, that is, send and inquire whether truth accompanies the outcry that has come. For according to the canonical sanctions, if anything concerning any cleric whatever shall reach the ears of the prelate that can justly offend him, he ought not readily to believe it, nor ought the unknown matter inflame him to vengeance; rather, the truth is diligently to be investigated before the elders of the church, so that, if the quality of the matter demands it, canonical severity may strike the fault of the delinquent—not as though the same person *himself* were accuser and judge, but so that, as reputation makes delation or outcry denounces, he may discharge the duty of his office, with this moderation always applied, that the form of the sentence too be dictated according to the form of the judgment. Therefore, when those things which were greatly dissonant from regular honor had frequently been intimated to us concerning the Abbot of Pomposa, and when the monks approached our presence, some among them denounced him to us concerning simony, perjury, dilapidation, and insufficiency. When the same abbot excepted against them that fraternal correction according to the evangelical rule had not preceded a denunciation of this sort, and the same monks steadfastly asserted that they had first employed correction of this sort, although the oaths of two monks had been offered to prove this, nevertheless, because they still did not cease to contend concerning it, we, stirred, as we said before, by frequent outcries, wished by virtue of our office to inquire into the aforesaid matters, binding *absolutely all* the monks who had approached either with him or against the *abbot himself* by the bond of an oath, so that they would set forth the full truth that they knew concerning the matters proposed. When their depositions, reduced to writing, had been published, they began to dispute concerning them in many ways. But because we learned both from the assertion of the monks and from the confession of the abbot himself that the same *abbot* had expended *entirely* no small sum of money left by his predecessor and had obligated the monastery for another, greater sum, we considered that he, as suspect concerning dilapidation *according to canonical and lawful sanctions on account of these and other presumptions*, ought to be suspended from the administration of the abbey. And because simony seemed to have been proved in many ways against the abbot himself *through witnesses*, he opposed many exceptions against the witnesses, concerning which there was much dispute *on each side*: some asserting that in the crime of simony, as [*also*] in the crime of lèse-majesté, all persons indiscriminately, both infamous and criminal, were to be admitted not only to accuse but also to testify, since an accusation of simony proceeds after the likeness of a public crime and lèse-majesté, *with many laws and canons alleged concerning this;* others responding to the contrary that, although these two crimes are judged as though equal with respect to accusation, nevertheless they differ in many things, since *both* one penalty is inflicted for the one and another for the other, and a distinction is assuredly to be made between the persons of accusers and witnesses, since crimes are proved not through accusers but through witnesses, *with many reasons*

and arguments nevertheless brought forward concerning this. But lest either the purity of innocence succumb confounded or simoniacal depravity escape unpunished, we, equity having been weighed, considered that *neither all the exceptions opposed against the witnesses were to be admitted, nor were all to be repelled, but* we admitted for proof only those opposed exceptions which, *perhaps* having been proved, would make it appear that the witnesses proceeded not from zeal for justice but from the tinder of malice, *namely conspiracies and capital enmities; but the other objections opposed, such as theft and adultery, we considered ought to be repelled because of the enormity of the simoniacal heresy, in comparison with which all crimes are reputed as virtually nothing, because even if they weakened the credibility of the witnesses in some respect, they nevertheless would not destroy it entirely, especially since it happened that other supporting proofs assisted.* [*Given at the Lateran on the fourth day before the Nones of December,* 1199.]

> Abbas contra testes, qui deposuerunt contra eum de simonia in iudicio inquisitionis, excipere potest, quod sunt inimici et conspiratores; alias vero exceptiones criminum opponere non potest.
>
> Idem Priori sancti Victoris, magistris I. Bononiensi et L. Modicensi Canonicis.
>
> Licet Heli summus sacerdos in se *ipso* bonus exsisteret, quia tamen filiorum excessus efficaciter non corripuit, et in se pariter, et in ipsis animadversionis divinae vindictam excepit, dum, filiis eius in bello peremptis, ipse de sella corruens fractis cervicibus exspiravit. Ad corrigendos igitur subditorum excessus tanto diligentius debet praelatus assurgere, quanto damnabilius eorum offensas desereret incorrectas. Contra quos, ut de notoriis excessibus taceatur, etsi tribus modis procedi possit, per accusationem videlicet, denunciationem et inquisitionem ipsorum: ut tamen in omnibus diligens adhibeatur cautela, sicut accusationem legitima praecedere debet inscriptio, sic et denunciationem caritativa correctio, et inquisitionem clamosa debet insinuatio praevenire. "Descendam," inquit Dominus, "et videbo, utrum clamorem, qui venit ad me, opere compleverint." Tunc enim clamor pervenit ad praelatum, quum per publicam famam aut insinuationem frequentem subditorum sibi referuntur excessus, et tunc debet descendere et videre, id est, mittere et inquirere, utrum clamorem, qui venit, veritas comitetur. Nam iuxta canonicas sanctiones, si quid de quocunque clerico ad aures praelati pervenerit, quod eum iuste possit offendere, non facile credere debet, nec ad vindictam eum res accendere debet incognita, sed coram ecclesiae senioribus diligenter est veritas perscrutanda, ut, si rei poposcerit qualitas, canonica districtio culpam feriat delinquentis; non tanquam sit idem *ipse* accusator et iudex, sed, quasi fama deferente vel denunciante clamore, sui officii debitum exsequatur, eo semper adhibito moderamine, ut iuxta iudicii formam sententiae quoque forma dictetur. Quum igitur de abbate Pomposiano ea nobis frequenter insinuata fuissent, quae ab honestate regulari nimium dissonabant, monachis ad praesentiam nostram accedentibus, quidam ex ipsis nobis ipsum de simonia, periurio, dilapidatione ac insufficientia detulerunt. Contra quos quum idem abbas exciperet, quod denunciationem huiusmodi fraterna correctio secundum regulam evangelicam non praecesserat, et iidem constanter assererent, quod correctionem huiusmodi praemisissent: licet ad probandum hoc duorum monachorum iuramenta fuissent exhibita, quia tamen super hoc ipsi nondum contendere desistebant: nos, ut praediximus, frequentibus clamoribus excitati, ex officio nostro voluimus inquirere de praemissis, omnes *omnino* monachos, qui vel cum ipso, vel contra ipsum *abbatem* accesserant, iuramenti vinculo adstringentes, ut de propositis plenam, quam scirent, exponerent veritatem. Quorum depositiones in scripturis redactae quum publicatae fuissent, super illis coeperunt multipliciter disputare. Quia vero tum ex assertione monachorum, tum ex ipsius abbatis confessione cognovimus, quod idem *abbas* non modicam summam pecuniae, relictam a praedecessore suo, *totam* expenderat, et in alia summa maiori monasterium obligarat, nos eum *iuxta canonicas et legitimas sanctiones propter has et alias praesumptiones* quasi de dilapidatione suspectum, ab administratione abbatiae duximus suspendendum. Et quia *per testes* simonia multis modis contra ipsum abbatem videbatur esse probata, ipse contra testes

multas exceptiones opposuit, super quibus *utrinque* fuit multipliciter disputatum, aliis asserentibus in crimine simoniae, sicut [*et*] in crimine laesae maiestatis, omnes indifferenter, tam infames quam criminosos, non solum ad accusandum, sed etiam ad testificandum admittendos, quum ad instar publici criminis et laesae maiestatis procedat accusatio simoniae, *multis super hoc et legibus et canonibus allegatis*; aliis e contrario respondentibus, quod, licet haec duo crimina quantum ad accusationem quasi paria iudicentur, differunt tamen in multis; quum *et* alia poena pro uno, et alia pro altero inferatur, et inter personas accusatorum et testium sit utique distinguendum, quum non per accusatores, sed per testes crimina comprobentur, *multis nihilominus super hoc et rationibus et argumentis inductis*. Ne vero vel innocentiae puritas confusa succumberet, vel simoniae pravitas effugeret impunita, nos, aequitate pensata, *nec omnes exceptiones contra testes oppositas duximus admittendas, nec repellendas duximus universas, sed* illas duntaxat exceptiones oppositas probandas admisimus, quae *forte* probatae non de zelo iustitiae, sed de malignitatis fomite procedere viderentur, *conspirationes scilicet et inimicitias capitales, ceteras autem obiectiones oppositas ut furti et adulterii propter immanitatem haeresis simoniacae, ad cuius comparationem omnia crimina quasi pro nihilo reputantur, duximus repellendas, quoniam et si fidem testium debilitarent in aliquo, non tamen evacuarent ex toto, praesertim quum alia contigerit adminicula suffragari.* [*Dat. Lat. IV. Non. Dec.* 1199.]

Chapter XXXII

Latin source headnote: This chapter is a gloss upon the preceding chapter. For it tends toward declaring whether and when criminal witnesses are admitted in the crime of simony, and in effect it says the same as the preceding chapter.

The same.

Through your letters you intimated to us that you doubt *greatly* concerning a certain decretal epistle which you assert was published by us concerning witnesses to be admitted against simoniacal depravity. Know therefore *without hesitation* that we by no means published that epistle which begins thus, "Although for abolishing," but we confess that we published another which begins thus, "Although Eli." For its understanding we believe a distinction must be made whether the person against whom proceedings concerning simoniacal depravity are brought is simply denounced or criminally accused, and whether proceedings are brought according to the rigor of law or according to the moderation of equity. Likewise, whether he is a regular who has already renounced the world or a secular who still exists in the world, and whether he is of an inferior grade or of a more excellent dignity. In addition, whether he was previously of clear reputation and good fame or gravely defamed and very suspect, and whether he can readily be punished or cannot be condemned without scandal. Moreover, whether the witnesses are honorable or criminal, and whether they have *already* been corrected for the crime or still persevere in the crime. Again, whether the crimes are the same or lesser, equal or greater, and whether the witnesses are believed to have deposed from zeal for justice or from the tinder of malice. Finally, whether the statements of the witnesses alone are brought forward to uncover simoniacal depravity or other supporting proofs also assist. All these things are to be distinguished for understanding that epistle, *as the diligent investigator can perceive from the course of the epistle itself*. That Abbot of Pomposa, who had long before renounced the world, was gravely defamed concerning simony, perjury, dilapidation, and insufficiency. And when simony seemed to have been proved in many ways [*against the abbot himself*] through monks who had sworn to bear testimony to the truth, he opposed many exceptions against the witnesses—namely conspiracies *and* capital enmities, theft, and adultery—in order to remove them from testimony. But we, lest the purity of innocence succumb confounded or simoniacal depravity escape unpunished, admitted for proof only

those exceptions through which, perhaps having been proved, it would be established that the witnesses proceeded not [*from*] zeal for justice but *from* the tinder of malice, such as conspiracies and capital enmities. But the other exceptions [*opposed*], such as theft and adultery, we considered ought to be repelled because of the enormity of the simoniacal heresy, in comparison with which the other crimes are reputed as virtually nothing, since, even if proved, they would weaken the credibility of the witnesses in some respect but would not entirely destroy it, with other supporting proofs assisting; especially since the witnesses had [*already*] been corrected for the crime. Therefore we considered that such persons ought in such a manner to be admitted against such a person, not according to the rigor of law but according to the moderation of equity, since the proceedings were not criminal, so that he would be deposed from order, but civil, so that he would be removed from administration as undeserving and harmful. And assuredly such prelates can be removed from administrations for lighter causes, *especially by the Supreme Pontiff, who has the power not only of judging but also of disposing*, as the approved custom of certain religious requires. Hence the aforesaid abbot, without awaiting a sentence, yielded for himself as though conscious of guilt.

> Hoc capitulum est glossa praecedentis capituli. Nam tendit ad declaratio nem illius, an et quando testes criminosi admittantur in crimine simoniae, et in effectu idem dicit quod praecedens. Idem.
>
> Per tuas nobis literas intimasti, te *plurimum* dubitare super quadam epistola decretali, quam nos asseris edidisse de testibus admittendis contra simoniacam pravitatem. Noveris igitur *incunctanter*, quod nos illam epistolam, quae sic incipit: "Quamvis ad abolendam," nequaquam edidimus, sed aliam, quae sic incipit: "Licet Heli," nos edidisse fatemur. Ad cuius intelligentiam credimus distinguendum, utrum is, contra quem agitur de simoniaca pravitate, denuncietur simpliciter, aut criminaliter accusetur, et utrum agatur secundum iuris rigorem, aut secundum temperantiam aequitatis. Item utrum ipse sit regularis, qui iam renunciaverit mundo, an saecularis, qui adhuc in mundo exsistit, et an inferioris gradus, an excellentioris sit dignitatis. Ad haec, utrum ante fuisset clarae opinionis et bonae famae, an graviter infamatus et valde suspectus, et utrum de facili possit puniri, an sine scandalo nequeat condemnari. Praeterea utrum testes sint honesti, an criminosi, et an *iam* sint emendati de crimine, an adhuc in crimine perseverent. Rursus si crimina sint eadem vel minora, an paria vel maiora; utrumve testes ex zelo iustitiae, an ex malignitatis fomite deposuisse credantur. Denique utrum ad pravitatem simoniacam detegendam sola dicta testium inducantur, an alia etiam adminicula suffragentur. Haec omnia sunt ad intelligentiam illius epistolae distinguenda, *sicut ex serie ipsius potest perpendere diligens indagator*. Ille quidem Pomposianus abbas, qui iam pridem renunciavit mundo, erat de simonia, periurio, dilapidatione ac insufficientia graviter infamatus. Quumque per monachos, qui iuraverant perhibere testimonium veritati, simonia multis modis [*contra ipsum abbatem*] videretur esse probata, ipse contra testes multas exceptiones opposuit, conspirationes videlicet *et* inimicitias capitales, furtum et adulterium, ut eos a testimonio removeret. Nos vero, ne innocentiae puritas confusa succumberet, vel simoniae pravitas effugeret impunita. illas duntaxat exceptiones probandas admisimus, quibus forte probatis testes non [*de*] zelo iustitiae, sed *de* malignitatis fomite processisse constaret, ut conspirationes et inimicitias capitales. Ceteras autem exceptiones [*oppositas,*] ut furti et adulterii, propter immanitatem haeresis simoniacae, ad cuius comparationem cetera crimina quasi pro nihilo reputantur, duximus repellendas, quoniam, etsi probatae fidem testium debilitarent in aliquo, non tamen evacuarent ex toto, aliis adminiculis suffragantibus; praesertim quum testes de crimine [*iam*] fuerint emendati. Tales igitur contra talem taliter duximus admittendos, non secundum rigorem iuris, sed secundum temperantiam aequitatis, quum ageretur non criminaliter, ut deponeretur ab ordine, sed civiliter, ut ab administratione amoveretur, tanquam immeritus et damnosus. Et utique tales praelati ex levioribus causis possunt ab administrationibus amoveri, *maxime per summum Pontificem, qui potestatem habet non solummodo iudicandi, sed*

etiam disponendi , sicut quorundam religiosorum approbata consuetudo deposcit. Unde praedictus abbas, non exspectata sententia, quasi male conscius sibi cessit.

Chapter XXXIII

Latin source headnote: It is not imputed to a confirmed person elected if, while he prohibited it, money was given for his confirmation.

The same, to the Abbot of Gembloux.

As you intimated *to us* by your letters, when you had been *nurtured from tender age* in the church of Gembloux and, *having become a monk there, in mature age* you were at length promoted to the government of the church of Floreffe; but afterward, the Abbot of Gembloux having been removed from their midst, that church which had previously had you *as* a son called you, *unaware and absent*, as its father *and pastor* through canonical election. And because the cathedral church of Liège lacked a pastor, *after you had delayed for some days in the church of Gembloux*, proceeding to the church of Cologne, which is your metropolis, you meanwhile ministered in the church of Gembloux by its authority. But after a bishop was instituted in the church of Liège, he, having been requested by you, was unwilling to confirm the election made concerning you, *alleging nothing other than that you had been translated from a lesser place to a greater*. But when you learned that these things were being done *to you* for the purpose of extorting money, under threat of anathema you prohibited any money from being offered for a deed of this sort. Yet some of the brothers, without consulting you and with you ignorant, acting contrary to the sentence of excommunication made by you, promised money and even paid it, *as was afterward reported to you*; and thus, having been invited by the bishop, you freely received institution from him, as you sought. *Concerning these matters, therefore, your discretion led you to consult us whether, on account of an unknown and prohibited promise, as was said before, the stain of sin is inflicted upon you; or whether, concerning the promise now known to you, you ought to do penance with the brothers who made it, since you were unwilling to adhere to simoniacal depravity, prepared to undergo labor for the flock of the Lord; or whether, although your conscience does not accuse you, you ought to abstain from the government received if we should decree it*. Although, according to the institutions of the sacred canons, even little children who obtained churches through money by the cupidity of their parents are bound to resign them, nevertheless, because not to furnish consent and expressly to prohibit something are widely different, we considered that this response should be made: because, contrary to your prohibition and will—from which you afterward by no means departed—someone, with you entirely ignorant, promised and paid money, especially since he is joined to you by no consanguinity, we believe that nothing ought to be imputed to you as penalty or fault, unless *perhaps* afterward you consented to the promised money being paid or *even* to the money paid being returned; otherwise it would happen that the deed of someone preparing snares for an enemy would exist to the detriment of the person to whom it was entirely displeasing, and thus someone would report an advantage from his fraud. But it is established that those who gave the money or even received it are culpable to such an extent that, if their excess were manifest to the Church, which does not judge concerning occult things, they would be struck with canonical punishment. [*Given at the Lateran on the second day before the Ides of August,* 1199.]

Non imputatur electo confirmato, si eo prohibente pro ipsius confirmatione pecunia data fuit.

Idem Abbati Iemblacensi. Sicut *nobis* tuis literis intimasti, quum in Iemblacensi ecclesia fueris *a tenera nutritus aetate*, monachus *factus ibidem, in aetate matura* fuisti tandem promotus ad regimen ecclesiae Florensis; verum, abbate Iemblacensi post sublato de medio, ipsa, quae te prius *tanquam* filium habuerat, *inscium et absentem* in patrem *et pastorem* per electionem canonicam te vocavit. Et quia pastore carebat Leodiensis ecclesia cathedralis, *postquam per dies aliquot moram feceras in ecclesia Gemblacensi*, ad Coloniensem ecclesiam, quae tua est metropolis, proficiscens, ipsius auctoritate in Iemblacensi ecclesia interim ministrasti. Ceterum postquam in Leodiensi ecclesia fuit episcopus institutus, is, a te requisitus, electionem de te factam noluit confirmare, *aliud non praetendens, nisi quod de minori loco translatus fueras ad maiorem*. Verum quum haec *tibi* fieri pro extorquenda pecunia comperisses, sub interminatione anathematis vetuisti, ne pro facto huiusmodi aliqua pecunia offerretur. Sed quidam de fratribus, te inconsulto et ignorante contra excommunicationis a te factae sententiam venientes, promiserunt pecuniam, et etiam exsolverunt, *sicut tibi postmodum est relatum*, et sic ab episcopo invitatus, institutionem ab eo accepisti libere, quemadmodum postulabas. *Super his ergo nos duxit tua discretio consulendos, si propter promissionem incognitam et prohibitam, quemadmodum est praemissum, tibi peccati macula infligatur, vel, si de promissione, nunc tibi cognita, tu cum fratribus, qui fecerunt eam, debeas poenitere, quum inhaerere nolueris simoniacae pravitati, paratus pro grege Domini subire laborem, vel, quamvis te conscientia non accuset, a suscepto regimine, si decreverimus, abstinere*. Quamvis autem secundum sacrorum canonum instituta etiam parvuli, qui cupiditate parentum ecclesias per pecuniam sunt adepti, eas dimittere teneantur, quia tamen longe diversum est non praebere consensum, et expresse aliquid prohibere: taliter duximus respondendum, quoniam ex eo, quod contra prohibitionem et voluntatem tuam, a qua postmodum minime recessisti, aliquis te penitus ignorante promisit pecuniam et exsolvit, praesertim quum is nulla sit tibi consanguinitate coniunctus, nihil debet tibi ad poenam vel culpam, sicut credimus, imputari, nisi *forte* postea consenseris pecuniam solvendo promissam, aut *etiam* reddendo solutam; alioquin contingeret, quod alicuius factum, insidias inimico parantis, ei damnosum exsisteret, cui penitus displiceret, et sic aliquis de fraude sua commodum reportaret. Illos autem, qui dederunt pecuniam vel etiam receperunt, in tantum constat esse culpabiles, quod, si excessus eorum esset ecclesiae manifestus, quae non iudicat de occultis, poena essent canonica feriendi. [*Dat. Lat. II. Id. Aug.* 1199.]

Chapter XXXIV

Latin source headnote: If a cleric confers his goods upon a church under an agreement that he be received in it as a canon and retain them for himself as a prebend, simony is committed; it is otherwise if this is done without an agreement.

The same, to the Dean of Beauvais.

Your discretion led you to consult us *whether, if anyone offers certain things from his goods to some church, seeking that during his life it be lawful for him to hold those same goods in that church as a prebend, the goods ought to be received when offered in this manner, and whether the same cleric can be assumed as a canon of the same church without the vice of simony. We therefore* respond thus to your devotion: if any cleric gives or offers his goods with a condition or agreement so that he afterward retains them as a prebend and *so that* he is admitted as a canon, an offering or reception of this kind cannot occur without the vice of simony, since in such matters every compact or agreement ought to cease according to the canonical sanctions. But if purely and without any agreement or condition he offers *some of his goods*, humbly asking that he be admitted as a canon and *that* it be lawful for him to retain his goods as a prebend, and the clerics of the same church consent purely, a reception of this kind *without doubt* can take place without a scruple of simoniacal depravity. Although we considered that this response should be made because it is given to us to judge concerning manifest things alone, nevertheless, if the person who

makes such a donation is led by the intention that through the temporal goods which he offers he may be able to obtain spiritual things, and if the clerics who admit him as a brother would not have admitted him unless they received temporal advantages, without doubt both he and they are judged culpable before the strict Judge, who is the searcher of hearts and knower of secrets. [*Given at Rome at Saint Peter's on the third day before the Nones of December, in the tenth year,* 1207.]

> Si clericus cum pacto confert ecclesiae bona sua, ut in ipsa recipiatur in canonicum, ut illa sibi retineat pro praebenda, simonia committitur; secus, si hoc fiat sine pacto.
>
> Idem Decano Belvacensi.
>
> Tua nos duxit discretio consulendos, *si quis alicui ecclesiae de bonis suis quaedam obtulerit, petens, ut in vita sua sibi liceat eadem bona in ipsa ecclesia pro praebenda tenere, an bona recipi debeant sic oblata, et idem clericus assumi valeat in canonicum eiusdem ecclesiae absque vitio simoniae. Nos igitur* Devotioni tuae taliter respondemus, quod, si quis clericus cum conditione vel pacto largiatur aut offerat bona sua, ut illa postmodum pro praebenda retineat, et *ut* in canonicum admittatur, huiusmodi oblatio vel receptio fieri non poterit sine vitio simoniae, quum in talibus omnis pactio aut conventio cessare debeat iuxta canonicas sanctiones. Si vero pure ac sine pacto vel conditione qualibet offerat *aliqua bona sua*, rogans humiliter, ut in canonicum admittatur, et *ut* bona sua retinere sibi liceat pro praebenda, et clerici eiusdem ecclesiae pure consentiant: huiusmodi receptio *procul dubio* fieri poterit absque scrupulo simoniacae pravitatis. Licet autem taliter duximus respondendum, quia nobis datum est de manifestis tantummodo iudicare: si tamen is, qui talem donationem facit, ea intentione ducatur, ut per temporalia bona, quae offert, spiritualia valeat adipisci, et clerici, qui eum in fratrem admittunt, non essent eum, nisi commoda temporalia perciperent, admissuri: sine dubio tam ille quam isti apud districtum iudicem, qui scrutator est cordium et cognitor secretorum, culpabiles iudicantur. [*Dat. Rom. ap. S. Petr. III. Non. Dec. Ao. X.* 1207.]

Chapter XXXV

Latin source headnote: No one ought to receive an order from one whom he believes to be simoniacal; but he can minister in those orders which he previously received from him.

The same, to the Prior of Canterbury.

Through your letters you intimated *to us* that, when B. had taken the monastic habit in a certain house of the Carthusian order, *the term of his probation having been completed*, he was ordained subdeacon by the diocesan bishop; but afterward he learned from the report of certain persons that, *although the same* bishop *was otherwise an honorable man*, he nevertheless had many times committed the vice of simony. Because of this the same monk, *troubled by vehement grief*, fears to minister in the order received, being unwilling to be promoted by the same bishop to the higher orders. *Wherefore, since it is not lawful for him to leave the hermitage, and the aforesaid bishop does not permit him or anyone else of his diocese to be ordained by another bishop, you asked to be instructed by the Apostolic See what is to be done with the aforesaid monk regarding the order already received and the higher orders to be received.* We therefore respond that the same *monk* may safely minister in the order thus received; but let him not ascend against his conscience to the higher orders, lest perhaps he build unto Gehenna. Although, because he has had an excessively scrupulous conscience, he has fallen into a difficulty of this kind, he will certainly not escape it unless he lays aside his error.

> - Non debet quis ordinem recipere ab eo, quem credit simoniacum; sed ministrare potest in illis, quos prius ab isto recepit. -

Idem Priori Cantuariensi.

Per tuas *nobis* literas intimasti, quod, quum B. in quadam domo Cartusiensis ordinis suscepisset habitum monachalem, *termino suae probationis completo*, a dioecesano episcopo fuit in subdiaconum ordinatus; sed postmodum didicit ex relatione quorundam, quod, *licet idem* episcopus *alias vir esset honestus* , multoties *tamen* commiserat vitium simoniae, propter quod idem monachus, - *vehementi dolore **turbatus*, in suscepto formidat ordine ministrare, nolens ab eodem episcopo ad superiores ordines promoveri. *Unde, **quum eidem eremum exire non liceat, nec praefatus episcopus * *ipsum vel quemquam alium suae dioecesis ab alio episcopo per**mittat ordinari, postulasti per sedem apostolicam edoceri, quid **cum praefato monacho in ordine iam suscepto et suscipiendis **superioribus sit agendum* - . Nos igitur respondemus, ut idem *monachus* in ordine sic suscepto secure ministret; sed contra conscientiam ad superiores ordines non adscendat, ne forte aedificet ad gehennam; licet ex eo, quod conscientiam nimis habuerit scrupulosam, in difficultatem huiusmodi sit collapsus, quam utique non evadet, nisi deponat errorem.

Chapter XXXVI

Latin source headnote: Nothing ought to be demanded for chrism or the investiture of churches, nor does custom or a variation of the name excuse it.

The same, to the Archbishop of Canterbury.

To such an extent, at the demand of sins, has simoniacal depravity corrupted the hearts of certain persons, *that, to the destruction of canonical sanction and [in], as it were, mockery of divine judgment, panting after shameful gains and saying in their heart, "There is no God," they cloak simony beneath an honorable name, as though, when the name is changed, the guilt and punishment are transferred. But neither is God mocked, according to the Apostle, nor will such followers of Simon, even if perhaps they elude temporal punishment at present, escape everlasting punishment in the future, since neither will the respectability of the name cloak the malice of the crime, nor will a word be able to abolish the guilt.* Indeed, it has reached our hearing that, although formerly certain of your suffragans were accustomed, *contrary to the canonical sanctions*, to receive a fixed sum of money for chrism, not fearing the canonical penalty and desiring to elude your correction, they anticipate the time for making payment, receiving in the middle of Lent what they were accustomed to receive after Easter; and, so that they may disguise the reason for receiving it, they vary the name of the pennies, now calling the pennies which they first called chrismal and secondly paschal "the custom of mid-Lent." *Certain others, however, vary neither the time of payment nor the name of the things to be paid in any respect, imitating the old custom in all things.* But since he who receives the price before he confers the precious thing more expressly exhibits the appearance of a sale *than does he who has deferred the time for receiving the recompense by dissembling, and has dissembled by deferring it, although each is dangerous in such matters*, and since grace is to be conferred freely, *lest it happen that both the reality and the name of grace are forfeited*, we command *and strictly enjoin* your fraternity by apostolic writings that, *relying on our authority and your own*, you so correct the aforesaid excesses—restraining your suffragans and their officials, *after prior instruction, by ecclesiastical censure, with the obstacle of appeal removed*, from so unlawful an exaction—that *a complaint about this cannot henceforth be brought to us*, and the fault of others is not imputed to you as punishment for your negligence. *Supported by the same authority*, also take care to abolish from your province that depraved custom by which archdeacons demand that a mark of silver be given to them for the investiture of churches, while lesser deans demand a white cow or the payment of a fixed sum of money. [*Given at the Lateran on the sixth day before the Kalends of July,* 1199.]

- Pro chrismate vel investitura ecclesiarum nihil exigi debet, nec excusat consuetudo vel nominis variatio.

Idem Cantuariensi Archiepiscopo. In tantum peccatis exigentibus corda quorundam simoniaca pravitas depravavit, *ut in exterminium canonicae san* *ctionis et * [*in*] *elusionem quodammodo divini iudicii, lucris turpibus i* *nhiantes, ac dicentes in corde suo: non est Deus, simoniam sub honesto nomine pallient, quasi mutato nomine culpa transferatur **et poena. Verum nec Deus secundum Apostolum irridetur, nec t**ales Simonis sectatores, etsi temporalem in praesenti forsan **eludant, in futuro poenam effugient sempiternam, quum nec **honestas nominis criminis malitiam palliabit, nec vox poterit * *abolere reatum*. Sane pervenit ad audientiam nostram, quod, quum olim quidam suffraganei tui pro chrismate *contra canonicas sanctiones* certam consueverint accipere pecuniae quantitatem, non metuentes poenam canonicam, et correctionem tuam eludere cupientes, tempus faciendae solutionis anticipant, recipientes in media quadragesima quod recipere consuevere post Pascha, et, ut causam recipiendi dissimulent, nomen denariorum variant, denarios, quos prius chrismales, secundo paschales dicebant, consuetudinem mediae quadragesimae nuncupantes. *Quidam vero * - *nec tempus solutionis, nec solvendorum nomen in aliquo varia runt, veterem per omnia consuetudinem imitantes* . Quum vero expressius exprimat venditionis speciem, qui prius recipit pretium, quam rem conferat pretiosam, *quam qui tempus **recipiendae mercedis dissimulando distulerit, et dissimulaverit * *differendo, licet utrumque in talibus periculosum exsistat*, et gratis sit gratia conferenda, *ne ipsam contingat et rem et **nomen gratiae demereri: fraternitati tuae per apostolica scripta* mandamus *et districte praecipimus*, quatenus *auctoritate **nostra fretus et tua*, taliter excessus corrigas supra dictos, suffraganeos tuos et officiales eorum *institutione praemissa * *per censuram ecclesiasticam sublato appellationis obstaculo* a tam illicita exactione compescens, quod - *ad nos de cetero super * *hoc querimonia deferri non possit* , aliorum culpa tibi ob tuam negligentiam non imputetur ad poenam. *Eadem quoque auctoritate suffultus* Pravam etiam illam consuetudinem de tua provincia studeas abolere, per quam pro ecclesiarum investitura archidiaconi marcham argenti, minores vero decani vaccam albam sibi dari postulant, vel certam solvi pecuniae quantitatem. [*Dat. Lat. VI. Kal. Iul.* 1199.]

Chapter XXXVII

Latin source headnote: One ordained subdeacon, who first promised his presenter that he would seek nothing from him, cannot minister in the order received or ascend to higher orders without a dispensation, even if he did not believe that he was sinning.

The same.

Through your letters you intimated to us that, when D., the bearer of the present letters, wished to be ordained subdeacon and did not have a certain title, he entreated a certain priest to present him to the title of his church. When the latter refused to do this, he firmly promised him in return that, if he presented him, he would never seek any portion in his church; and thus he was ordained upon his presentation, nor, *as he asserts*, did he understand that in this he had done anything unlawful. *Wherefore, when he afterward wished to be promoted to the diaconate, and the bishop admonished that no one who had been ordained through the intervention of some promise should come forward, the same man, remembering this promise, refrained from receiving the order of the diaconate, humbly confessing this to you and asking through you to be instructed whether he was guilty by reason of a promise of this kind and whether it was lawful for him to minister in the order of subdeacon received and to ascend to further orders; your fraternity considered that an oracle of the Apostolic See should be sought*. We *therefore* respond thus to your inquiry: unless dispensation is

mercifully granted to him, he ought neither to ascend to higher *orders* nor, *according to the rigor of the canons*, to minister in the order received.

> - Ordinatus in subdiaconum, qui prius praesentatori suo promisit, quod nil ab eo peteret, in suscepto ministrare, vel ad superiores ordines adscendere sine dispensatione non potest, etiamsi peccare non crediderit.
>
> Idem.
>
> Per tuas nobis literas intimasti, quod, quum D. lator praesentium vellet in subdiaconum ordinari, et certum titulum non haberet, quendam presbyterum exoravit, ut ipsum ad ecclesiae suae titulum praesentaret. Quod quum ille facere recusaret, ipse illi firmiter repromisit, quod nunquam, si praesentaret eundem, in ecclesia sua aliquam peteret portionem, et sic ad praesentationem eius exstitit ordinatus, nec, *ut asserit*, se in hoc illicitum egisse aliquid intellexit. *Unde, quum postmodum vellet in diaconum promoveri, episcopo commonente, ne quis, interveniente promissione aliqua, ordinatus * accederet: idem recordatus promissionis istius a susceptione* ordinis diaconatus cessavit, hoc tibi humiliter confitens, et per te **postulans edoceri, utrum ex promissione huiusmodi reus esset, et **an liceret eidem in suscepto diaconatus ordine ministrare, et ad **ordines adscendere ulteriores, fraternitas tua duxit apostolicae * *sedis oraculum requirendum*. Nos *igitur* inquisitioni tuae taliter respondemus, quod, nisi cum eo fuerit misericorditer dispensatum, nec ad *ordines* superiores adscendere, nec in suscepto debet ordine *secundum rigorem canonicum* ministrare.

Chapter XXXVIII

Latin source headnote: It is simony to give money for obtaining a vicariate or another administration of spiritual or ecclesiastical things, and those giving and receiving are to be cast out from that church. This chapter says this in other words, although it is brief.

The same.

To consult. *(And below:)* Whoever shall have wished to obtain a vicariate or another administration of ecclesiastical things through money, buyers as well as sellers, are struck down with Simon *Magus*, and are justly excluded from that church in contempt of which they wished to give and receive money.

> Simonia est dare pecuniam pro vicariatu, vel pro alia administratione 5 rerum spiritualium seu ecclesiasticarum habenda, et dantes et recipientes ab illa ecclesia sunt eiiciendi. H. d. hoc c. per alia verba, licet sit breve.
>
> Idem.
>
> Consulere (*Et infra:*) Quicunque vicedominatum vel aliam ecclesiasticarum rerum administrationem per pecuniam obtinere voluerint, tam ementes quam vendentes cum Simone *mago* percelluntur, et ab illa ecclesia, in cuius contumeliam dare pecuniam et accipere voluerunt, iuste excluduntur.

Chapter XXXIX

Latin source headnote: It is simoniacal to demand anything for the consecrations of bishops, blessings of abbots, and ordinations of clerics, nor does custom excuse it.

The same, in the general council.

As we have learned for certain, in very many places [*and*] by very many persons, as though by those selling doves in the temple, shameful and depraved exactions and extortions are made for the

consecrations of bishops, blessings of abbots, and orders of clerics, and it has been assessed how much is to be paid to this or that person, and how much to another or yet another; and, to the accumulation of greater damnation, certain persons strive to defend cupidity and depravity of this kind through a custom observed for a long time. Therefore, desiring to abolish so great an abuse, we utterly reject a custom of this kind, which is rather to be called a corruption, firmly decreeing that for these things, whether to be conferred or already conferred, no one shall presume to demand or extort anything under any pretext whatsoever; otherwise, both he who receives and he who gives a price of this kind, which is wholly condemned, shall be condemned with Gehazi and Simon.

> Simoniacum est aliquid exigere pro consecratione episcoporum et benedictionibus abbatum et ordinationibus clericorum, nec excusat consuetudo.
>
> Idem in concilio generali.
>
> Sicut pro certo didicimus, in plerisque locis [*et*] a plerisque personis, quasi columbas in templo vendentibus, fiunt exactiones et extorsiones turpes et pravae pro consecrationibus episcoporum, benedictionibus abbatum et ordinibus clericorum, estque taxatum, quantum sit isti vel illi, quantumve alteri vel alii persolvendum, et ad cumulum damnationis maioris quidam cupiditatem et pravitatem huiusmodi nituntur defendere per consuetudinem longo tempore observatam. Tantum igitur abolere volentes abusum, consuetudinem huiusmodi, quae magis dicenda est corruptela, penitus reprobamus, firmiter statuentes, ut pro his sive conferendis sive collatis nemo aliquid quocunque praetextu exigere aut extorquere praesumat; alioquin et qui receperit, et qui dederit huiusmodi pretium omnino damnatum, cum Giezi et Simone condemnetur.

Chapter XL

Latin source headnote: Religious received for a price are expelled from the monastery together with those receiving them, and are confined in stricter monasteries to do penance. But those received before this council were placed in other houses of the same order, unless their multitude prevents it, yet so that they renounce the first reception and are received anew.

The same, in the same council.

Since the simoniacal stain has so infected very many nuns that they scarcely receive any women as sisters without a price, wishing to cloak a vice of this kind under the pretext of poverty, we wholly prohibit this from being done henceforth, decreeing that whoever shall henceforth have committed such depravity, both the one receiving and the one received, whether she is a subject or a prelate, shall be expelled from her monastery without hope of restoration and confined in a place of stricter rule to do perpetual penance. Concerning those, however, who were received in this manner before this synodal statute, we considered that provision should be made thus: removed from the monasteries which they wrongly entered, they are to be placed in other houses of the same order. But if perhaps, because of their excessive multitude, they cannot conveniently be placed elsewhere, lest [*perhaps*] they wander damnably in the world, let them by dispensation be received anew in the same monasteries, their former places being changed and lower ones assigned. We decree that this is also to be observed with respect to monks or other regulars. But, lest they be able to excuse themselves through simplicity or ignorance, we command that the diocesan bishops cause this to be published each year throughout their dioceses.

Religiosi pretio recepti una cum recipientibus de monasterio expelluntur, et in arctioribus monasteriis ad agendam poenitentiam detruduntur. Sed recepti ante istud concilium ponebantur sic recepti in aliis locis eiusdem ordinis, nisi multitudo sit in causa, ita tamen, quod renuncient primae receptioni, et de novo recipiuntur.

Idem in eodem.

Quoniam simoniaca labes adeo plerasque moniales infecit, ut vix aliquas sine pretio recipiant in sorores, paupertatis praetextu volentes huiusmodi vitium palliare: ne id de cetero fiat, penitus prohibemus, statuentes, ut quaecunque de cetero talem commiserint pravitatem, tam recipientes quam recepta, sive sit subdita sive praelata, sine spe restitutionis de suo monasterio expellatur, in locum arctioris regulae ad agendam perpetuam poenitentiam retrudenda. De his autem, quae ante hoc synodale statutum taliter sunt receptae, ita duximus providendum, ut remotae de monasteriis, quae perperam sunt ingressae, in aliis locis eiusdem ordinis collocentur. Quodsi forte propter nimiam multitudinem alibi nequiverint commode collocari, ne damnabiliter [*forte*] in saeculo evagentur, recipiantur in eisdem monasteriis dispensative de novo, mutatis prioribus locis, et inferioribus assignatis. Hoc etiam circa monachos vel alios regulares decernimus observandum. Verum, ne per simplicitatem vel ignorantiam se valeant excusare, praecipimus, ut dioecesani episcopi singulis annis hoc faciant per suas dioeceses publicari.

Chapter XLI

Latin source headnote: Bishops ought to demand nothing in order to permit clerics to be instituted in churches subject to them, monks to make profession, or the dead to be buried; otherwise, what was exacted will be restored twofold.

The same, in the same council.

We have heard concerning certain bishops that, when the rectors of churches die, they subject the churches to interdict and do not permit others to be instituted in them until a fixed sum of money is paid to them. Moreover, when a knight or cleric enters a religious house or chooses burial among religious, even if he has left nothing to the religious house, they introduce difficulties and malicious obstructions until some gift touches their hands. Since, therefore, according to the Apostle, one must abstain not only from evil but *also* from every appearance of evil, we wholly prohibit exactions of this kind. But if anyone shall have been a transgressor, let him restore twofold what was exacted, faithfully to be converted to the use of the houses to whose detriment it was paid.

Episcopi nihil exigere debent, ut permittant in ecclesiis sibi subiectis clericos institui, monachos profiteri, vel mortuos sepeliri; alioquin exacta restituentur duplicata.

Idem in eodem.

Audivimus de quibusdam episcopis, decedentibus ecclesiarum rectoribus, ipsas interdicto subiiciunt, nec patiuntur alios in eisdem institui, donec ipsis certa summa pecuniae persolvatur. Praeterea quum miles aut clericus domum religionis ingreditur, vel apud religiosos eligit sepulturam, etiamsi nihil loco religioso reliquerit, difficultates ingerunt et malitias, donec aliquid muneris manus contingat eorum. Quum igitur non solum a malo, sed *etiam* ab omni specie mali sit secundum Apostolum abstinendum, exactiones huiusmodi penitus inhibemus. Quod si quis transgressor exstiterit, exacta duplicata restituat, in utilitatem locorum, in quorum fuerint soluta dispendium, fideliter convertenda.

Chapter XLII

Latin source headnote: The sacraments are to be conferred freely; nevertheless, the ordinary compels laypersons to observe praiseworthy customs.

The same, in the same council.

It has reached the apostolic hearing by frequent report that certain clerics demand and extort money for the obsequies of the dead, the blessings of those marrying, and similar things, and, if perhaps their cupidity is not satisfied, they fraudulently oppose fictitious impediments. Conversely, certain laypersons, from the leaven of heretical depravity, strive under the pretext of canonical piety to break a praiseworthy custom toward holy church introduced by the pious devotion of the faithful. Therefore, concerning these things, we prohibit depraved exactions from being made and command pious customs to be observed, decreeing that ecclesiastical sacraments are to be conferred freely; but, the truth having been learned, those who maliciously strive to alter a praiseworthy custom are to be restrained by the bishop of the place.

> Sacramenta sunt libere conferenda; cogit tamen ordinarius laicos obser vare laudabiles consuetudines.
>
> Idem in eodem.
>
> Ad apostolicam audientiam frequenti relatione pervenit, quod quidam clerici pro exsequiis mortuorum, et benedictionibus nubentium et similibus pecuniam exigunt et extorquent, et, si forte eorum cupiditati non fuerit satisfactum, impedimenta fictitia fraudulenter opponunt. Econtra vero quidam laici laudabilem consuetudinem erga sanctam ecclesiam, pia devotione fidelium introductam, ex fermento haereticae pravitatis nituntur infringere sub praetextu canonicae pietatis. Qua propter super his pravas exactiones fieri prohibemus, et pias consuetudines praecipimus observari, statuentes, ut libere conferantur ecclesiastica sacramenta; sed per episcopum loci veritate cognita compescantur, qui malitiose nituntur laudabilem consuetudinem immutare.

Chapter XLIII

Latin source headnote: He prohibits Cistercian abbots from being solemnly installed, and sets out the form of obedience which they render to their bishops.

Honorius III, to all the Abbots and Brothers of the Cistercian order.

Lest foulness stain the church of God, *which Jesus Christ washed with his own blood*, lest the wrinkle of duplicity deform it, the filth of cupidity, which is the root of all evils, and the deformity of venality, as a wrinkle contracted under the pretext of custom, are to be utterly eliminated from it, so that the dispensation of the mysteries of God and the mysteries themselves, freely received, may be conferred with gratuitous charity, Gehazi-like depravity having been entirely abolished. How detestable and how dangerous it is to buy or sell these things can clearly be discerned from the fact that the Lord cast those selling and buying sheep and oxen out of the temple and overturned the seats of those selling and buying doves. In the expulsion of the sellers and buyers, indeed, detestation of the crime defiling both is expressed; and in the overturning of the seats it is shown to what punishment those who preside, selling the gifts of God and the ecclesiastical sacraments, are subject. Therefore, lest a crime of this kind, [*which*] makes equal those whom it defiles, be able in any way to infect prelates and subjects, we most strictly prohibit by apostolic authority that any archbishop or bishop, archdeacon or official of theirs, presume to demand or extort from anyone elected as abbot, for a blessing or installation or for receiving their profession, under the pretext of custom, any palfrey or

anything else, by whatever name it may be designated. We also forbid you to furnish in this manner things exacted under a pretext of this kind, since one must abstain not only from evil but from every appearance of evil. Prohibiting also the solemnities of installation from being performed for abbots-elect of your order, we add that archbishops and bishops are to be content with that form of profession which is known to have been instituted from the origin of your order, which is as follows: "I, brother, an abbot of the Cistercian order, promise that I shall perpetually render to you, lord bishop, and to your successors canonically substituted, and to the Holy Apostolic See, with my order preserved, the subjection, reverence, and obedience established by the holy Fathers according to the Rule of Saint Benedict."

> Prohibet abbates Cistercienses solenniter installari, et ponit formam obedientiae, quam praestant suis episcopis.
>
> Honorius III. universis Abbatibus et Fratribus Cisterciensis ordinis.
>
> Ne Dei ecclesiam, *quam lavit proprio sanguine Iesus * *Christus, macula foeditatis coinquinet, ruga duplicitatis deformet, * *cupiditatis spurcitia, omnium malorum radix, et venalitatis deformitas, quasi ruga sub praetextu consuetudinis contracta, eliminandae sunt penitus ab eadem, ut dispensatio mysteriorum Dei, et ipsa mysteria gratis accepta, Giezica pravitate prorsus abolita, caritate gratuita conferantur; quae emere vel vendere **quam detestabile quamve periculosum exsistat, liquido potest per**pendi ex eo, quod Dominus vendentes et ementes oves et boves **eiecit de templo, et cathedras vendentium et ementium columbas **evertit. In eiectione denique vendentium et ementium, facinoris **inquinantis utrosque exprimitur detestatio, et in cathedrarum **eversione monstratur, cui poenae subiaceant hi, qui praesunt, * *vendentes Dei dona et ecclesiastica sacramenta. Ut huiusmodi * *igitur facinus, *[*quod*] *quos coinquinat aequat, praelatos et sub**ditos non possit inficere quoquo modo, auctoritate apostolica **districtius inhibemus, ne quis archiepiscopus vel episcopus, archi* diaconus vel officialis ipsorum a quoquam, in abbatem electo, pro **benedictione, seu installatione vel recipienda professione ab eis, * *sub consuetudinis praetextu cuiusquam palafredum seu aliud quicquam, quocunque nomine censeatur, exigere vel extorquere prae**sumat*. *Vobis etiam sub praetextu huiusmodi exacta taliter inter** dicimus ne praestetis, quum non solum a malo, sed omni specie **mali sit abstinendum*. Installationis *quoque* solennitates in electis abbatibus ordinis vestri fieri prohibentes, adiicimus, ut archiepiscopi et episcopi ea sint forma professionis contenti, quae ab origine vestri ordinis noscitur instituta, quae talis est: "Ego frater abbas Cisterciensis ordinis subiectionem et reverentiam et obedientiam a sanctis Patribus constitutam secundum regulam sancti Benedicti, tibi, domine episcope, tuisque successoribus canonice substituendis, et sanctae sedi apostolicae salvo ordine meo perpetuo me exhibiturum promitto."

Chapter XLIV

Latin source headnote: A prebend and revenues are owed to one received as a canon, notwithstanding the custom that he did not observe the depraved custom of giving some temporal thing to the canons themselves.

Gregory IX, to the Prior of Saint Thomas of Ascoli.

James, a canon of Ascoli, has set forth that, although he was received as a canon and brother in the church of Teramo, the canons of the same church refuse to assign him a share of the revenues and a prebend, alleging a certain custom that they ought to have a dinner from a newly received canon. Wherefore, we command that, if it is so, you compel the said canons, with appeal removed, to provide for him in the revenues and prebend as for one of the others, notwithstanding such a custom.

Recepto in canonicum debetur praebenda et reditus, consuetudine non obstante, quod non servaverit pravam consuetudinem de aliquo temporali dando ipsis canonicis.

Gregorius IX. Priori S. Thomae Esculani.

Iacobus canonicus Esculanus exposuit, quod, quum ipse in ecclesia Aprutinensi sit receptus in canonicum et in fratrem, canonici eiusdem ecclesiae partem proventuum ac praebendam sibi assignare recusant, quandam consuetudinem praetendentes, quod prandium habere debeant a canonico recepto de novo. Quocirca mandamus, quatenus, si est ita, dictos canonicos, ut tali consuetudine non obstante sibi, sicut uni ex aliis, in proventibus et praebenda provideant, appellatione remota compellas.

Chapter XLV

Latin source headnote: If someone ordained another under a promise that provision would not be sought from him, the ordainer is suspended for three years from conferring orders, and the presenter likewise for three years from the exercise of orders; but the ordained person is perpetually suspended from the order, and dispensation with them is granted only through the Apostolic See.

The same.

If anyone shall have ordained or presented to an order another from whom he received a promise or oath that the latter would not trouble him concerning his provision, let them know that the ordainer is suspended from the conferral of orders, the presenter from the exercise of orders for three years, and the ordained person from the order thus received until they shall have merited to obtain dispensation concerning this through the Apostolic See.

Qui ordinavit aliquem sub promissione de non petendo ab ipso provisionem, ordinator per triennium a collatione, praesentator vero ab exsecutione ordinum etiam per triennium suspensi sunt; ordinatus vero ab ordine perpetuo sit suspensus, et solum per sedem apostolicam cum eis dispensatur.

Idem.

Si quis ordinaverit seu ad ordinem praesentaverit aliquem, promissionem vel iuramentum ab illo recipiens, quod super provisione sua non inquietet eundem, ordinator a collatione, praesentator vero ab exsecutione ordinum per triennium, et ordinatus ab ordine sic suscepto, donec dispensationem super hoc per sedem apostolicam obtinere meruerint, noverint se suspensos.

Chapter XLVI

Latin source headnote: It contains two rulings, the second at "and to resignations." And because of the brevity and variety of the readings, it is not otherwise summarized.

The same.

Our mandate having been received that you dispense according to the constitution of the general council with monks who obtained a place in monasteries through simony by something being given *(And below:)* Briefly responding to your consultation, we say that the apostolic mandate extends also to abbots, and to resignations of spiritual and temporal things which are acquired in such a manner by no compact, but with an intention of mind anteceding on both sides; in which case it suffices for those at fault to make satisfaction to their Creator through penance alone, for they are not bound by reason of simony of this kind.

Habet duo dicta: secundum ibi, "et ad resignationes." Et propter brevitatem et varietatem lecturarum aliter non summatur.

Idem.

Mandato nostro recepto, ut cum monachis, qui per simoniam dato aliquo locum in monasteriis sunt adepti, secundum constitutionem generalis concilii dispensares (*Et infra:*) Consultationi tuae breviter respondentes, dicimus, mandatum apostolicum etiam ad abbates extendi, et ad resignationes spiritualium et temporalium, quae nullo pacto, sed affectu animi praecedente utrinque taliter acquiruntur, in quo casu delinquentibus sufficit per solam poenitentiam suo satisfacere Creatori, eos pro simonia huiusmodi non teneri.

Title IV: That Prelates Are Not to Grant Their Deputed Powers or Churches Under an Annual Rent

Chapter I

Latin source headnote: He who gives money in order to exercise episcopal or spiritual jurisdiction is deprived of his office, and the one who thus confers it will no longer be able to confer it and will be canonically punished. This it says together with the following chapters.

Alexander III, in the Lateran Council.

Furthermore, since in certain regions some persons who are called deans are appointed for a price and exercise episcopal jurisdiction for a fixed sum of money, by the present decree we establish that anyone who shall henceforth have presumed to do this is to be deprived of his office, and the bishop is to lose the power of conferring this office.

NE PRAELATI VICES SUAS VEL ECCLESIAS SUB ANNUO CENSU CONCEDANT.

Qui dat pecuniam, ut episcopalem vel spiritualem iurisdictionem exerceat, officio suo privatur, et sic conferens illud amplius conferre non poterit, et canonice punietur. Hoc dicit cum sequentibus.

Alexander III. in concilio Lateranensi. Praeterea, quoniam quidam in quibusdam partibus sub pretio statuuntur, qui decani vocantur, et pro certa pecuniae quantitate episcopalem iurisdictionem exercent, praesenti decreto statuimus, ut, qui de cetero hoc praesumpserit, officio suo privetur, et episcopus conferendi hoc officium potestatem amittat.

Chapter II

Latin source headnote: It is summarized above in the immediately preceding chapter.

The same, in the Council of Tours.

Since in certain regions some deans or archpriests are appointed for an annual price to exercise the functions of bishops or archdeacons and to determine ecclesiastical causes, which beyond doubt redounds to the burden of priests and the subversion of judgments, we [*most strictly*] prohibit this from being done any further. But if anyone shall henceforth have done it, let him be removed from the clergy *by our authority*. The bishop, moreover, who *in his diocese* shall have tolerated this and through his dissimulation permits ecclesiastical jurisdiction to be perverted, is to be struck by canonical severity.

Summatum est supra cap. proximo.

Idem in concilio Turonensi. Quoniam in quibusdam partibus decani quidam vel archipresbyteri ad agendas vices episcoporum seu archidiaconorum, et terminandas causas ecclesiasticas sub annuo pretio statuuntur, quod ad sacerdotum gravamen et subversionem iudiciorum non est dubium redundare: id ulterius fieri [*districtius*] prohibemus. Quodsi quis de cetero fecerit, *nostra auctoritate* removeatur a clero. Episcopus autem, qui *in sua dioecesi* hoc sustinuerit, et ecclesiasticam iurisdictionem sua patitur dissimulatione perverti, districtione canonica percellatur.

Chapter III

Latin source headnote: The governance of a church ought not to be committed under an annual rent.

The same, in the same council.

Since a certain enormous custom has gained force in some places contrary to the institutions of the holy Fathers, namely, that priests are appointed to the governance of churches for an annual price, we prohibit by every means that this be done, because, while the priesthood is made venal for a recompense of this kind, no consideration is had for the reward of eternal recompense.

Regimen ecclesiae sub annuo censu committi non debet.

Idem in eodem.

Quoniam enormis quaedam consuetudo in quibusdam locis contra sanctorum Patrum institutiones invaluit, ut sub annuo pretio sacerdotes ad ecclesiarum regimen statuantur, ne id fiat, modis omnibus prohibemus, quia, dum sacerdotium sub huiusmodi mercede venale disponitur, ad aeternae retributionis praemium consideratio non habetur.

Chapter IV

Latin source headnote: The fruits of churches can be granted under an annual rent.

The same, to the Bishop of Exeter.

We received the complaint of Master G. that, although he had received the church of Chephalai from G., the parson of the same *church*, to be held for seven years at an annual rent, the latter presumed to take it away *from him* before he had held it for the space of one year, although *the same G.* had confirmed by pledged faith [*to him*] that until the appointed term he would inflict no molestation or burden upon him on this account. Therefore, *commanding by apostolic writings*, we command your fraternity that, if *you* find it to be so, *with appeal removed*, you strictly compel him to restore the aforesaid church to the said G. and, until the term established *between them*, permit him peacefully to possess it according to what they agreed between themselves.

Fructus ecclesiarum sub annuo censu concedi possunt.

Idem Exoniensi Episcopo.

Querelam magistri G. recepimus, quod, quum ecclesiam de Chephalai a G. persona eiusdem *ecclesiae* ad annuum censum tenendam per septennium suscepisset, ipse *sibi*, antequam eam per unius anni spatium tenuisset, auferre praesumpsit, quanquam *idem G.* praestita [*sibi*] fide firmaverit, quod usque ad statutum terminum nullam ei exinde molestiam vel gravamen inferret. Ideoque *frater**nitati tuae per apostolica scripta praecipiendo* mandamus, quatenus, si *tibi* constiterit ita esse, *appellatione remota* eum districte compellas, ut praefatam ecclesiam dicto G. restituat, et usque ad terminum *inter eos* constitutum, secundum quod inter se convenerint, ipsum eandem permittat pacifice possidere.

Title V: On Masters, and That Nothing Is to Be Demanded for a License to Teach

Chapter I

Latin source headnote: A cathedral church ought to provide a benefice for a master who is to teach the clerics of the same church and other poor scholars freely; and one selling a license to teach, or forbidding a suitable person to teach, is deprived of his benefice.

From the Lateran Council.

Since the church of God, like a pious mother, is bound to provide for the needy *both in those things which look to the support of the body and in those which conduce to the advancement of souls*, lest the opportunity for reading and advancing be withdrawn from the poor who cannot be aided by the resources of their parents, through every cathedral church some suitable benefice is to be furnished to a master who is to teach the clerics of the same *church* and poor scholars freely, *whereby the necessity of the teacher may be relieved and a way to learning may lie open to the learners. It is also to be restored in other churches or monasteries if, in times past, anything in them was deputed to this purpose.* But for a license to teach no one shall *at all* demand a price, or under the cover of any custom seek anything from those who teach, nor, when a license has been sought, shall he forbid anyone suitable to teach. But anyone who shall have presumed to act contrary to this is to be made alien from an ecclesiastical benefice. For it seems *fitting* that he who, through cupidity of mind, strives to impede ecclesiastical advancement while selling a license to teach should not have the fruit of his labor in the church *of God*.

> **DE MAGISTRIS, ET NE ALIQUID EXIGATUR PRO LICENTIA DOCENDI.**
>
> - Ecclesia cathedralis providere debet magistro de beneficio, qui clericos - eiusdem ecclesiae et alios pauperes gratis doceat, et vendens licentiam - docendi, aut interdicens idoneum ad docendum, beneficio privatur.
>
> Ex concilio Lateranensi. Quoniam ecclesia Dei *et in his, quae spectant ad subsidium **corporis, et in iis, quae ad profectum proveniunt animarum, indi**gentibus*, sicut pia mater, providere tenetur; ne pauperibus, qui parentum opibus iuvari non possunt, legendi et proficiendi oportunitas subtrahatur, per unamquamque cathedralem ecclesiam magistro, qui clericos eiusdem *ecclesiae* et scholares pauperes gratis doceat, competens aliquod beneficium praebeatur, *quo docentis necessitas sublevetur, et discentibus via **pateat ad doctrinam. In aliis quoque restituatur ecclesiis seu monasteriis, si retroactis temporibus aliquid in eis ad hoc fuerit **deputatum*. Pro licentia vero docendi nullus *omnino* pretium exigat, vel sub obtentu alicuius consuetudinis ab eis, qui docent, aliquid quaerat, nec docere quemquam, qui sit idoneus, petita licentia interdicat. Qui autem contra hoc venire praesumpserit, ab ecclesiastico fiat beneficio alienus. Dignum quippe *esse* videtur, ut in ecclesia *Dei* fructum sui laboris non habeat, qui cupiditate animi, dum vendit docendi licentiam, ecclesiasticum profectum nititur impedire.

Chapter II

Latin source headnote: Nothing ought to be demanded or promised for a license to teach, and what was exacted ought to be restored and what was promised remitted; and, when an inferior prelate neglects to establish a master, the superior will supply this.

Alexander III, to the Bishop of Winchester.

You are *henceforth carefully* to prohibit that anything be demanded from *anyone* or even promised in your parish for a license to teach. But if anything shall afterward have been paid or promised, with appeal ceasing, cause what was promised to be remitted and what was paid to be restored, knowing that it is written: "Freely you have received; freely give." Indeed, if anyone, *by occasion of this prohibition*, shall have deferred establishing masters in suitable places, it is lawful for you, *by our grant, with every contradiction and* appeal set aside, to place prudent, honorable, and discreet men there over the instruction of others.

> Pro licentia docendi nihil exigi debet vel promitti, et exactum restitui et promissum remitti debet; et, negligente inferiore praelato ad magistrum constituendum, supplebit hoc superior.
>
> Alexander III. Vintoniensi Episcopo.
>
> Prohibeas *attentius de cetero*, ne in parochia tua pro licentia docendi *aliquos* exigatur aliquid aut etiam promittatur. Si quid vero postea solutum fuerit vel promissum, remitti promissum facias et restitui appellatione cessante solutum, sciens, quod scriptum est: "Gratis accepistis, gratis date." Sane, si quis *occasione huius pro**hibitionis* distulerit magistros in locis congruis instituere, tibi liceat *de concessione nostra, omni contradictione et* appellatione postposita, ibi aliorum instructioni praeficere viros providos, honestos et discretos.

Chapter III

Latin source headnote: Money ought not to be demanded for a license to teach, even if custom allows this.

The same.

The more the Gallican church *shines forth in the knowledge and honorableness of greater personages, and more cautiously strives to avoid those things which appear to confound ecclesiastical honorableness*, the more we judge those worthy of severe censure who assume the name and dignity of master of schools *in your churches* and do not impart to ecclesiastical men a license to teach others without a fixed price. But since this depraved *and enormous* custom has proceeded from the root of cupidity and greatly confounds the comeliness of ecclesiastical honorableness, *you must provide and strive with the greatest care that this custom be* [*entirely*] *rooted out of your churches, since it is especially and particularly ascribed to you if anything worthy of praise or deserving of reproof is found in those churches. [We also, who, though unworthy, exercise the supreme power by the dispensation of the Creator's clemency, being unwilling to leave uncorrected the vice of such cupidity and rapacity, command your fraternity by apostolic writings]* that, this custom having been rooted out of your churches, you take care to prohibit this under threat of anathema, strictly commanding that, whenever suitable and learned men wish to direct studies of letters, they be permitted to direct schools without any molestation or exaction, [*lest knowledge, which ought to be imparted to each person freely, henceforth appear to be exposed for a price*.] But if any shall have been transgressors of a prohibition or precept of this kind, despoil them *by our authority and yours* of their offices and dignities. *Moreover, if* [*this*] *you neglect to correct according to our mandate, we shall regard your negligence as grave and troublesome and shall be compelled to extend our hand to correct these things, so that, if they wish to persist in the purpose of this rapacity, they will not be able to do so.* [*Given at Tusculum on the thirteenth day before the Kalends of November.*]

> Pro licentia docendi pecunia exigi non debet, etiamsi hoc habeat consuetudo.
>
> Idem.

Quanto Gallicana ecclesia *maiorum personarum scientia **et honestate praefulget, et cautius nititur evitare quae con**fundere videantur ecclesiasticam honestatem, tanto vehementiori* Dignos *eos* esse animadversione censemus, qui nomen magistri scholarum et dignitatem assumunt *in ecclesiis * *vestris* , et sine certo pretio ecclesiasticis viris docendi alios licentiam non impendunt. Quum autem haec prava *et enormis* consuetudo a cupiditatis radice processerit, et decorem admodum ecclesiasticae honestatis confundat, *providendum vobis est summopere satagendum, ut **consuetudo ipsa de ecclesiis vestris* [*penitus*] *exstirpetur, **quum vobis praecipue et specialiter adscribatur, si quid in eccles**iis eisdem laude dignum inveniatur vel reprehensione notandum. *[*Nos quoque, qui, licet immeriti, dispensante clementia conditoris suprema fungimur potestate, tantae cupiditatis et rapa**citatis vilium nolentes inemendatum relinqui, fraternitati vestrae **per apostolica scripta*] mandamus, quatenus, consuetudine ipsa de vestris ecclesiis exstirpata, sub anathematis interminatione hoc inhibere curetis, districte praecipientes, ut, cuicunque viri idonei et literati voluerint regere studia literarum, sine molestia et exactione qualibet scholas regere permittantur, [*ne scientia de cetero pretio videatur **exponi, quae singulis gratis debet impendi.*] Si qui vero huiusmodi prohibitionis vel praecepti exstiterint transgressores, eos *auctoritate nostra et vestra* officiis et dignitatibus spolietis. - *Porro, si* - [- *hoc* -] - *iuxta mandatum nostrum corrigere neglexeritis, negligentiam vestram gravem habebimus et molestam et ad ea * *corrigenda manum extendere compellemur, ita quod si **voluerint in huius rapacitatis proposito persistere non vale**bunt. *[*Dat. Tusculi XIII. Kal. Nov.*]

Chapter IV

Latin source headnote: In every cathedral church, or another church sufficient in resources, one master ought to be chosen by the prelate with the chapter, to whom the revenues of one prebend ought to be assigned; but in a metropolitan church a theologian also ought to be chosen. And if it is not sufficient for a grammarian and a theologian, let it provide for the theologian himself from the revenues of its church and cause provision to be made for the grammarian in some church of its city or diocese.

Innocent III, in the general council.

Since, because of poverty, both the pursuit of reading and the opportunity of advancing are withdrawn from some, provision was made by a pious constitution in the Lateran Council that, through every cathedral church, some suitable benefice be furnished to a master who would instruct the clerics of the same church and other poor scholars freely, whereby both the necessity of the teacher would be relieved and a way to learning would lie open to the learners. But since in many churches this is by no means observed, we, strengthening the aforesaid statute, add that a suitable master is to be appointed not only in every cathedral church but also in others whose resources can suffice, to be chosen by the prelate with the chapter, or by the greater and sounder part of the chapter, who is to instruct freely, according to his ability, the clerics of those churches [*and of others*] in the faculty of grammar and other subjects. Indeed, a metropolitan church is nevertheless to have a theologian who is to teach priests and others in sacred scripture, and particularly to inform them in those things which are known to pertain to the care of souls. The revenues of one prebend are to be assigned by the chapter to each of the masters, and as much by the metropolitan to the theologian—not that he is made a canon on this account, but that he may receive those revenues for as long as he shall have persisted in teaching. But if perhaps the metropolitan church is burdened by the two, let it provide for the theologian according to the aforesaid manner, but cause provision to be made for the grammarian in another church of its city or diocese which is able to suffice.

In qualibet cathedrali ecclesia, vel alia, in facultatibus sufficienti, debet a praelato vel capitulo unus magister eligi, cui reditus unius praebendae - debent assignari; in metropolitana vero ecclesia etiam eligi debet theologus. - Et si ad grammaticum et theologum non sufficit, provideat ipsi theologo ex - reditibus suae ecclesiae, et grammatico faciat provideri in aliqua ecclesiarum suae civitatis vel dioecesis.

Innocentius III. in concilio generali. Quia nonnullis propter inopiam et legendi studium et opportunitas proficiendi subtrahitur, in Lateranensi concilio pia fuit constitutione provisum, ut per unamquamque cathedralem ecclesiam magistro, qui eiusdem ecclesiae clericos aliosque scholares pauperes gratis instrueret, aliquod competens beneficium praeberetur, quo et docentis relevaretur necessitas, et via pateret discentibus ad doctrinam. Verum, quoniam in multis ecclesiis id minime observatur, nos, praedictum roborantes statutum, adiicimus, ut non solum in qualibet cathedrali ecclesia, sed etiam in aliis, quarum sufficere poterunt facultates, constituatur magister idoneus, a praelato cum capitulo, seu maiori et saniori parte capituli eligendus, qui clericos ecclesiarum ipsarum [*et aliarum*] gratis in grammatica facultate ac aliis instruat iuxta posse. Sane metropolis ecclesia theologum nihilominus habeat, qui sacerdotes et alios in sacra pagina doceat, et in his praesertim informet, quae ad curam animarum spectare noscuntur. Assignetur autem cuilibet magistrorum a capitulo unius praebendae proventus, et pro theologo a metropolitano tantundem; non quod propter hoc efficiatur canonicus, sed tam diu reditus ipsos percipiat, quamdiu perstiterit in docendo. Quodsi forte de duobus ecclesia metropolis gravetur, theologo iuxta modum praedictum ipsa provideat, grammatico vero in alia ecclesia suae civitatis sive dioecesis, quae sufficere valeat, faciat provideri.

Chapter V

Latin source headnote: Prelates and chapters are bound to send teachable scholars to the study of theology, who in their absence will receive in full for five years the revenues of their prebends and benefices. And if their own revenues do not suffice for the support of study, the prelate with the chapter ought to provide for them; but masters, for as long as they teach, receive in full the fruits of their benefices.

Honorius III.

Upon the watchtower [*of the Lord, although unworthy, having been constituted, while we contemplate with diligent and manifold attention the state of the universal church, we grieve and are deeply saddened that, although the regions are white unto a most abundant harvest and the laborers are very few, very many watchmen who are bound to guard the vineyard of the Lord sleep their sleep, and do not gather the excessively growing tares into bundles to be burned, although the enemy continually sows them over it. And since the suckling and the little child fail in the streets, there is scarcely anyone to break bread for the little ones or give the thirsty the water of saving wisdom to drink, because the knowledge of the Lord is scant upon the earth; for very many, like wanton sons, having received no small portion of the substance of Jesus Christ, procure for themselves from it empty and resounding husks which do not satisfy, and draw water with the bucket of the Samaritans from the well or torrent of the waters of the unbelievers, which do not relieve but provoke the thirst of a dropsical man. Such men indeed, abandoning the enclosed garden with which no stranger communicates, where there is a fountain, and the well of living waters, and digging for themselves cisterns which cannot hold water, as though finding no pastures, disdaining the manna while sighing after the vegetables and melons of Egypt, run to gainful sciences, setting their eyes to look down upon the earth. Therefore, in order that through forceful rebukes, as through a father's blows, erring sons, recalled to their mother's breasts, may be able like young eagles to fly to them more swiftly, and may wish and be able, without stumbling and more willingly, to run in the odor of the fragrant grace of Jesus Christ to draw living waters in joy from the fountains of the Savior, we desire to remove certain obstacles opposing this journey and to annex certain*

necessary things to those which were long ago issued by our predecessors for the propagation of the offspring of true life.] *Since, therefore, from the individual provinces beautiful maidens and virgins ought to be sought by maidservants for King Ahasuerus, who is called blessedness, and brought to the citadel and walls of the city, and to receive through the hand of Hegai the adornment of women, namely the supports of necessary things*, we will and command that the statute [*issued*] in the general council concerning masters of theology to be appointed throughout the individual metropolitan sees be inviolably observed. *Moreover, establishing by the counsel of our brothers and commanding with strict precept*, because some could perhaps excuse themselves concerning this on account of the rarity of masters, we command that certain teachable persons be sent by the prelates and chapters of churches to the study of the profession of theology, who, when they shall have been taught, may shine like the splendor of the firmament in the church of God, from whom an abundance of learned men may afterward be had, who, like stars destined to remain for perpetual eternities, may be able to instruct very many unto justice. If their own ecclesiastical revenues do not suffice for them, let the aforesaid persons supply them with necessities. But those teaching in the theological faculty, while they teach in the schools, and those studying in it, for five years, are, by license of the Apostolic See, to receive in full the revenues of their prebends and benefices, notwithstanding any other custom or statute, since those laboring in the vineyard of the Lord ought not to be defrauded of their denarius. *We will this to be observed unshaken, firmly decreeing that transgressors be struck with due punishment.* [*Indeed, although etc.* (*cf. c.* 10, *That Clerics or Monks, III.* 50.) *Given at Viterbo on the seventh day before the Kalends of December, in the fourth year of our pontificate,* 1219.]

> Praelati et capitula ad studia theologiae scholares dociles transmittere tenentur, qui in absentia reditus praebendarum suarum et beneficiorum per quinquennium integraliter percipient. Et si proprii reditus ad sustentationem studii eis non sufficiunt, debet praelatus cum capitulo eis providere: magistri vero, donec docuerint, integre percipiunt fructus beneficiorum - suorum. -
>
> Honorius III. Super specula [*Domini licet immeriti constituti, dum d**iligenter multo intuitu contemplamur statum ecclesiae generalis, d olemus plurimum et tristamur, quod, quum albae sint regiones * ad messem plurimam et operarii sint perpauci, plerique vigiles, q ui tenentur custodire Domini vineam, dormiunt somnium suum, neque zizania nimium excrescentia in manipulos ad comburendum c olligunt, quamvis ea iugiter superseminet inimicus. Quumque lactens et parvulus deficiat in plateis, vix est qui frangat panem parvulis, aut propinet sitientibus aquam sapientiae salutaris, eo, q uod modica est in terra scientia Domini, quia plurimi velut* * *luxores filii accepta non modica portione substantiae Iesu **Christi comparant sibi de ipsa siliquas vacuas et sonoras, quae non satiant, et aquam hauriunt cum situla Samaritanorum de **puteo vel torrente aquarum infidelium, qui sitim hydropici non relevant, sed irritant. Tales equidem hortum conclusum, cui non **communicat alienus, ubi fons est, et puteum aquarum viventium * *deserentes, ac fodientes sibi cisternas, quae aquam non prae**valent continere, quasi non invenientes pascua fastidito manna, * *dum suspirant ad Aegypti olera et pepones, currunt ad **scientias lucratives, statuentes in terram suos oculos declinare. **Ut igitur per increpationes validas tanquam per patris verbera **filii aberrantes ad matris ubera revocati veluti pulli aquilarum queant expeditius advolare, ac inoffense atque libentius velint et **valeant currere in odorem flagrantis gratiae Iesu Christi ad * *hauriendum aquas vivas in gaudio de fontibus Salvatoris, quos**dam obices amovere cupimus huic itineri obsistentes, et necessaria **quaedam annectere his, quae ab antecessoribus nostris edita sunt **ab olim ad propagationem propaginis vitae verae.*] *Quum itaque de singulis provinciis puellae speciosae, ac virgines pro rege * *Assuero, qui beatitudo dicitur, per ancillas quaeri debeant, et **adduci ad arcem et moenia civitatis, et per manum Aggei mundum * muliebrem accipere, necessariorum videlicet fulcimenta, Volumus et mandamus, ut statutum, [editum] in concilio generali de magistris theologis per singulas metropoles statuendis, inviolabiliter observetur, statuentes *insuper de consilio fra**trum nostrorum, ac districte praecipiendo mandantes*, ut, quia super hoc propter raritatem magistrorum

se possent forsitan aliqui excusare, ab ecclesiarum praelatis et capitulis ad theologicae professionis studium aliqui docibiles destinentur, qui, quum docti fuerint, in Dei ecclesia velut splendor fulgeant firmamenti, ex quibus postmodum copia possit haberi doctorum, qui, velut stellae, in perpetuas aeternitates mansuri ad iustitiam valeant plurimos erudire, quibus, si proprii proventus ecclesiastici non sufficiunt, praedicti necessaria subministrent. Docentes vero in theologica facultate, dum in scholis docuerint, et studentes in ipsa integre per annos quinque, percipiant de licentia sedis apostolicae proventus praebendarum et beneficiorum suorum, non obstante aliqua alia consuetudine vel statuto, quum denario fraudari non debeant in vinea Domini operantes. *Hoc autem inconcusse volumus observari, firmiter * *disponentes, quod feriantur poena debita transgressores.* [*Sane **licet etc.* (*cf. c.* 10. *Ne cler. vel mon.* III. *50.) *Dat. Viterbii * *VII. Kal. Dec. Pont. nostri Ao. IV.* 1219.]

Title VI: On Jews, Saracens, and Their Servants

Chapter I

Latin source headnote: If a slave bought by a Jew for the purpose of commerce has become or desires to become a Christian, he is redeemed for twelve solidi.

From the Council of Mâcon.

With God as author, we decree in the present council that henceforth no Christian slave is to serve a Jew; but, twelve solidi having been given for any good slave, let any Christian have permission to redeem that *slave*, whether to freedom or to servitude. And if he desires to become a Christian and is not permitted, let the same be done, because it is impious to detain in the bonds of servitude to a blasphemer of Christ one whom Christ *the Lord* redeemed.

DE IUDAEIS, SARRACENIS, ET EORUM SERVIS.

Si servus, a Iudaeo emptus, causa mercimonii factus est vel fieri desiderat Christianus, pro XII. solidis redimitur.

Ex concilio Matensi.

Praesenti concilio *Deo auctore* sancimus, ut nullum Christianum mancipium Iudaeo *deinceps* serviat, sed datis XII. solidis pro quolibet bono mancipio, ipsum *mancipium* quicunque Christianorum, seu ad ingenuitatem seu ad servitium, licentiam habeat redimendi. Et si Christianus fieri desiderat, et non permittitur, idem fiat, quia nefas est quem Christus *Dominus* redemit blasphemum Christi in servitutis vinculis detinere.

Chapter II

Latin source headnote: A Jew cannot have a Christian as a slave, but he can have him as an adscriptitious tenant.

Gregory, to the Bishop of Luni.

It has [*reached us by the report of many that Christian slaves are detained in servitude by Jews dwelling in the city of Luni. This matter appeared to us the more severe, the more active was the forbearance on the part of your fraternity. For it was fitting for you, in consideration of your office and with regard for the Christian religion, to leave no occasion whereby simple souls would serve Jewish superstition, not so much through persuasions as, in a certain manner, by right of power. Wherefore we exhort your fraternity, according to the course of most pious laws,*] that no Jew be permitted to retain a Christian slave in his dominion; but, if any are found among

them, let liberty be preserved for them [*by the aid of protection under the sanction of the laws*]. Those, however, who are on their estates, although [*even*] *they* are free by the severity of the laws, nevertheless, because they have long adhered to the cultivation of their lands, owing by the condition of the place, are to remain to cultivate the fields, furnishing the customary payments to the aforesaid men. Let them also perform all the things which the laws command concerning coloni or persons bound by origin, and no [*further*] burden beyond this is to be imposed upon them. But if any of the Jews shall wish to transfer any one of these either to another place or retain him for another service, let him impute it to himself, who by his own rashness has condemned for himself the right over the tenant, and by the severity of the law the right of dominion. [*Therefore, in all these things we will that you apply yourself diligently, etc.*]

> - Iudaeus Christianum in servum habere non potest, in adscriptitium vero potest.
>
> Gregorius Episcopo Lucensi.
>
> Multorum ad nos [*relatione pervenit, a Iudaeis, in** **Lunensi civitate degentibus, in servitium Christiana detineri **mancipia. Quae res nobis tanto visa est asperior, quanto a **fraternitate tua patientia operosior. Oportebat quippe te respectu **loci tui, atque Christianae religionis intuitu, nullam relinquere **occasionem, ut superstitioni Iudaicae simplices animae non tam * *suasionibus, quam potestatis iure quodammodo deservirent. * *Quamobrem hortamur fraternitatem tuam, ut secundum piissima rum legum tramitem,*] Nulli Iudaeo liceat Christianum mancipium in suo dominio retinere: sed, si qui apud eos inveniuntur, libertas eis [*tuitionis auxilio ex legum sanctione*] servetur. Hi vero, qui in possessionibus eorum sunt, licet [*et*] *ipsi* legum districtione sint liberi, tamen, quia colendis terris eorum diutius adhaeserunt, utpote conditione loci debentes, ad colenda rura remaneant, consuetas pensiones praedictis viris praebentes. Cuncta etiam, quae de colonis vel originariis iura praecipiunt, peragant, et nihil eis extra hoc oneris [*amplius*] indicatur. Quodsi quisquam Iudaeorum aliquem de his vel ad alium transferre locum, vel ad aliud obsequium retinere voluerit: ipse sibi imputet, qui ius colonarium *temeritate **sua*, et ius dominii sibi iuris severitate damnavit. [*In his * *ergo omnibus ita te volumus sollerter impendi etc.*]

Chapter III

Latin source headnote: Jews can retain old synagogues; they cannot erect new ones.

The same, to the Bishop of Genoa.

Jews from the city [*coming here to you complained to us that Peter, who by the will of God was led from their superstition to the worship of the Christian faith, having joined to himself certain undisciplined men, on the day following his baptism—that is, on the Lord's Day in the very festivity of Easter—had occupied their synagogue situated at Cagliari without your consent and with grave scandal, and had placed there an image of the Mother of God and of our Lord, the venerable cross, and the white cloak with which he had been clothed when rising from the font. Concerning this matter there also came to us writings attesting these same things from our sons Eupaterius, glorious master of the soldiers, the magnificent and pious governor in the Lord, and other nobles of your city. They also added that this had been foreseen by you and that the aforesaid Peter had been forbidden to dare it. Learning this, we wholly praised you, because, as truly befitted a good priest, you willed that nothing be done from which there would be just reproof. But because*] *by the fact that you in no way involved yourselves* [*in*] *those things which were wickedly done, you demonstrated that what was done displeased you,* [*considering in this matter the intention and, more especially, the judgment of your will, we exhort you with these addresses that, the image and cross having*

been removed from there with the veneration which is fitting, you ought to restore what was violently taken away, because] just as a legal definition does not permit Jews to erect new synagogues, so [*also*] it permits them to have old ones without disturbance. [*Therefore, lest the aforesaid Peter or others, etc.*]

> Iudaei antiquas synagogas retinere possunt, novas exigere non possunt. -
>
> Idem Genuensi Episcopo.
>
> Iudaei de civitate [- *vestra huc venientes questi nobis sunt, quod synagogam eorum, quae Caralis sita est, Petrus, qui ex * - *eorum superstitione ad Christianae fidei cultum Deo volente per**ductus est, adhibitis sibi quibusdam indisciplinatis, sequenti die baptismatis sui, hoc est dominico in ipsa festivitate paschali, cum gravi scandalo sine vestra occupaverit voluntate; atque imaginem **illic genitricis Dei Dominique nostri, et venerandam crucem, et birrum album, quo de fonte resurgens indutus fuerat, posuisset. **De qua re et filiorum nostrorum Eupaterii gloriosi magistri **militum, atque magnifici pii in Domino praesidis, aliorumque **nobilium civitatis vestrae ad nos haec eadem scripta attestantia * *incurrerunt. Qui etiam adiecerunt, a vobis hoc praesensum, et * *praedictum Petrum, ne hoc auderet, fuisse prohibitum. Quod * - *cognoscentes omnino laudavimus, quia, sicut revera bonum decuit **sacerdotem, nil fieri, unde iusta esset reprehensio, voluistis. Sed * *quia*] *per hoc, quod minime vos * [*in*] *his, quae prave acta sunt, miscuistis, displicere vobis quod factum est demonstrastis, *[*considerantes hac de re vestrae voluntatis intentum, ac magis * *iudicium, his hortamur, affatibus, ut sublata exinde cum ea, qua **dignum est, veneratione imagine atque cruce, debeatis quod * - *violenter ablatum est reformare, quia*] Sicut legalis diffinitio Iudaeos novas non patitur erigere synagogas: ita [*quoque*] eos sine inquietudine veteres habere permittit. [*Ne ergo * *supradictus Petrus vel alii etc.*]

Chapter IV

Latin source headnote: On Good Friday Jews are not permitted to keep doors or windows open.

Alexander III.

Since concerning those matters *about which you wrote to us in your letters regarding the Jews we have no certain canon, by notification of the present letters we intimate to your fraternity that, your clergy having been convoked together*, you are generally to forbid, *by both our authority and your own*, that Jews have their doors or windows open on the day of the Parasceve, but are to keep them closed the whole day. *You are also to permit no Christian slaves to live with them, but generally proclaim to all that no Christian dare remain in their service, lest perhaps through association with them they be converted to the unbelief of Judaism.* [*But concerning the lands, etc.* (*cf. c.* 16, *On Tithes, III.* 30.)]

> In die Veneris sancto non licet Iudaeis tenere ostia vel fenestras apertas.
>
> Alexander III. Quia super his, *unde nos in literis tuis de Iudaeis **scripsisti, certum canonem non habemus, fraternitati tuae signi**ficatione praesentium intimamus, quod clero tuo in unum pariter **convocato*, Generaliter *tam nostra quam tua auctoritate* - interdicas, ut Iudaei ostia vel fenestras in die Parasceues aperta non habeant, sed clausa teneant tota die. *Manci* *pia quoque Christiana nulla cum eis habitare permittas, sed * - *generaliter cunctis edicas, ne aliquis Christianorum in eorum * *servitio audeat commorari, ne forte ex ipsorum conversatione ad **Iudaismi perfidiam convertantur.* - [*De terris vero etc.* - (- *cf. c.* 16. *de decim. III.* 30.)]

Chapter V

Latin source headnote: Christians who serve in the house of Jews, Saracens, or pagans ought to be excommunicated. And secular princes who presume to despoil baptized Jews of their goods ought to be excommunicated.

The same, from the Lateran Council.

Neither under the pretext of nursing their children, nor for service, nor for any other cause, are Jews or Saracens to be permitted to have Christian slaves in their houses. Those who shall have presumed to dwell with them are to be excommunicated. *(And below: cf. c.* 21, *On Witnesses, II.* 20.) If, moreover, any, by the inspiration of God, shall have been converted to the Christian faith, they are in no way to be excluded from their possessions, since those converted to the faith ought to be of a better condition than they were held before they received the faith. But if it shall have been done otherwise, we enjoin upon the princes or authorities of those places, under penalty of excommunication, that they cause the portion of their inheritance and of their goods to be exhibited to them in full.

> Excommunicari debent Christiani, qui in domo serviunt Iudaeis, vel - Sarracenis sive paganis. Et principes saeculares excommunicari debent, qui Iudaeos baptizatos suis bonis spoliare praesumunt.
>
> Idem ex concilio Lateranensi. Iudaei sive Sarraceni neque sub alendorum puerorum suorum obtentu, nec pro servitio vel alia qualibet causa Christiana mancipia in domibus suis permittantur habere. Excommunicentur autem qui cum eis praesumpserint habitare. (*Et infra: cf. c.* 21. *de testib. II.* 20.) Si qui praeterea Deo inspirante ad fidem se converterint Christianam, a possessionibus suis nullatenus excludantur, quum melioris conditionis ad fidem conversos esse oporteat, quam, antequam fidem susceperint, habebantur. Si autem secus fuerit factum, principibus seu potestatibus eorundem locorum iniungimus sub poena excommunicationis, ut portionem hereditatis suae et bonorum suorum ex integro eis faciant exhiberi.

Chapter VI

Latin source headnote: Christians carrying prohibited merchandise to the Saracens, or sailing in their ships, are to be excommunicated and deprived of their goods, and are made slaves of those who capture them.

The same, in the same council.

Savage cupidity has so occupied the minds of certain persons that those who glory in the Christian name carry to the Saracens arms, iron, and lashings for galleys, and become equal or even superior to them in malice when they furnish them arms and necessities for attacking Christians. There are also those who, for their cupidity, exercise command and the care of navigation in the galleys and piratical ships of the Saracens. We therefore decree that such persons, cut off from ecclesiastical communion and subjected *for their iniquity* to excommunication, are *also* to be punished by deprivation of their goods through Catholic princes [*of the world*] and consuls of cities, and are to become slaves of those who capture them *if they are captured*. We also command that frequent and solemn excommunication be pronounced against them throughout the churches of maritime cities. *The excommunication also, etc.* (*cf. c.* 3, *On Ravishers, V.* 17.)

> Christiani, deferentes Sarracenis merces prohibitas, vel in ipsorum navibus navigantes, excommunicandi sunt, et rebus eorum privandi, et efficiuntur capientium servi.

Idem in eodem.

Ita quorundam animos occupavit saeva cupiditas, ut, qui gloriantur nomine Christiano Sarracenis arma, ferrum et ligamina deferant galearum, et pares aut etiam superiores in malitia fiant illis, dum ad impugnandos Christianos arma eis et necessaria subministrant. Sunt etiam, qui pro cupiditate sua in galeis et piraticis Sarracenorum navibus regimen et curam gubernationis exerceant. Tales igitur, ab ecclesiastica communione praecisos, et excommunicationi *pro sua iniquitate* subiectos, *et* rerum suarum per principes [*saeculi*] catholicos et consules civitatum privatione mulctari, et capientium fieri servos, *si capti fuerint*, censemus. Praecipimus etiam, ut per ecclesias maritimarum urbium crebra et solennis in eos excommunicatio proferatur. *Excommunicationis quoque etc.* (*cf. c.* 3. *de rapt. V.* 17.)

Chapter VII

Latin source headnote: Jews can restore old synagogues to their former state; they cannot erect them anew.

The same.

He consulted. *(And below:* [*cf. c.* 29, *On Appeals, II.* 28.]) You ought not to permit Jews *also* to construct new synagogues where they did not have *them*. But if old ones have fallen down or threaten ruin, it can be tolerated with equanimity that they rebuild them, but not that they raise them higher or make them larger or more costly than they are known to have been before; for they certainly ought to regard this as a great thing, that they are tolerated in their old synagogues and their observances.

- Iudaei veteres synagogas in priorem statum reformare possunt; de novo exigere non possunt.

Idem.

Consuluit (*Et infra:* [*cf. c.* 29. *de app. II.* 28.]) Iudaeos *etiam* de novo construere synagogas, ubi *eas* non habuerunt, pati non debes. Verum, si antiquae corruerint, vel ruinam minantur, ut eas reaedificent, potest aequanimiter tolerari, non autem, ut eas exaltent, aut ampliores aut pretiosiores faciant, quam antea fuisse noscuntur; qui utique hoc pro magno debent habere, quod in veteribus synagogis et suis observantiis tolerantur.

Chapter VIII

Latin source headnote: Christians ought not to be in the domestic service of Jews.

The same.

Moreover, *by the authority of the present letters we command and enjoin that* you wholly forbid all Christians who are in your jurisdiction and, if necessary, compel them by ecclesiastical severity, not to expose *themselves* continually for any recompense to the service of Jews. Take care also to prohibit this to their midwives and nurses, lest they presume to nurse the infants of Jews in the houses of those same persons, because the customs of the Jews and ours agree in nothing, and they would easily incline the minds of the simple to their superstition and unbelief through continual association and constant familiarity, *at the instigation of the enemy of the human race*. [*Moreover, etc.; cf. c.* 7, *On Usury, V.* 19.]

In familiari servitio Iudaeorum Christiani esse non debent.

Idem.

Ad haec *praesentium auctoritate mandamus atque prae**cipimus, quatenus* omnibus Christianis, qui sunt in iurisdictione vestra, penitus interdicatis, et, si necesse fuerit, districtione ecclesiastica compellatis eosdem, ne *ipsi* Iudaeorum servitio se assidue pro aliqua mercede exponant; quod etiam obstetricibus et nutricibus eorum prohibere curetis, ne infantes Iudaeorum in eorundem domibus nutrire praesumant, quoniam Iudaeorum mores et nostri in nullo concordant, et ipsi de facili ob continuam conversationem et assiduam familiaritatem, *instigante humani generis **inimico*, ad suam superstitionem et perfidiam simplicium animos inclinarent. [*Praeterea etc. cf. c.* 7. *de usur. V.* 19.]

Chapter IX

Latin source headnote: Jews are not to be baptized unwillingly, nor compelled to this, nor punished without judgment, nor despoiled of their goods, nor molested during their festivals; neither are their cemeteries to be violated or their bodies exhumed.

Clement III.

Just as Jews *ought not without permission to presume in their synagogues beyond what is permitted in the law, so they ought to sustain no prejudice in those things which have been granted to them. We therefore, although they prefer to remain in their hardness rather than know the words of the Prophets and the mysteries of their scriptures, and to have knowledge of the Christian faith and salvation, nevertheless, because they seek our defense and aid, following from the gentleness of Christian piety the footsteps of our predecessors of happy memory, the Roman Pontiffs Calixtus, Eugenius,* [*and Alexander,*] *admit their petitions and grant them the shield of our protection.* We *therefore* establish that no *Christian* compel unwilling or refusing Jews to come to baptism [*through violence*]. But if anyone shall have fled to Christians for the sake of the faith, after his will has been disclosed, let him be made a Christian without calumny; for he is not believed to have the faith of Christ who is compelled to come to Christian baptism not voluntarily but unwillingly. Also, no Christian shall presume, without a judgment of the earthly authority, either to kill or wound any one of them, or to take away *from them* their monies, or to change the good customs which until now they have had [*in the region in which they live*]. Especially, during the celebration of their festivals, let no one in any way disturb them with cudgels or stones. Nor is anyone to demand coerced services from them, except *those* which they themselves were accustomed to perform in past time. In addition, opposing the depravity and avarice of evil men, we decree that no one dare mutilate or invade a cemetery of the Jews or dig up buried bodies under the pretext of money. But if anyone, the tenor of this decree having been learned, shall [*rashly*], which God forbid, have presumed to act contrary to it, let him suffer the peril of his honor and office or be struck with a sentence of excommunication, unless he shall have corrected his presumption by worthy satisfaction.

Iudaei inviti non sunt baptizandi, nec ad hoc cogendi, nec sine iudicio puniendi, aut rebus suis spoliandi, vel in suis festivitatibus molestandi, nec ipsorum coemeteria violanda, aut eorum corpora exhumanda.

Clemens III. Sicut Iudaei *non debent sine licentia in synagogis * *ultra, quem in lege permissum est, praesumere ita in his, quae eis concessa sunt, nullum debent praeiudicium sustinere. Nos * *ergo, quum, in sua magis velint duritia permanere, quam Pro**phetarum verba et suarum scripturarum arcana cognoscere, **atque Christianae fidei et salutis notitiam habere, tamen, quia de**fensionem nostram et auxilium postulant, ex Christianae pietatis **mansuetudine et praedecessorum nostrorum felicis memoriae **Calixti, Eugenii* [*et Alexandri*] *Romanorum Pontificum **vestigiis inhaerentes ipsorum petitiones admittimus, eisque pro**tectionis nostrae clypeum indulgemus*. Statuimus *enim*, ut nullus

Christianus invitos vel nolentes Iudaeos ad baptismum [*per violentiam*] venire compellat. Si quis autem ad Christianos causa fidei confugerit, postquam voluntas eius fuerit patefacta, Christianus absque calumnia efficiatur; quippe Christi fidem habere non creditur, qui ad Christianorum baptismum non spontaneus, sed invitus cogitur pervenire. Nullus etiam Christianus eorum quemlibet sine iudicio terrenae potestatis vel occidere, vel vulnerare, vel suas *illis* pecunias auferre praesumat, aut bonas, quas hac tenus [*in ea, in qua habitant, regione*] habuerunt, consuetudines immutare, praesertim in festivitatum suarum celebratione quisquam fustibus vel lapidibus eos nullatenus perturbet. Neque aliquis ab eis coacta servitia exigat, nisi *ea*, quae ipsi tempore praeterito facere consueverunt. Ad hoc malorum hominum pravitati et avaritiae obviantes, decernimus, ut nemo coemeterium Iudaeorum mutilare aut invadere audeat, sive obtentu pecuniae corpora humata effodere. Si quis autem huiusmodi decreti tenore cognito [*temere*,] quod absit, contraire prae sumpserit, honoris et officii sui periculum patiatur, aut excommunicationis sententia plectatur, nisi praesumptionem suam digna satisfactione correxerit.

Chapter X

Latin source headnote: It sets forth two concessions for those who preach to pagans.

The same.

How praiseworthy it is. *(And below:)* Assenting to your petitions, brother bishop, we grant by apostolic authority to you and your companions, when you go out to preach the faith of Christ to pagans, that it is lawful for you, with moderation and thanksgiving, the character of the seasons being observed according to the canonical sanctions, to use those foods which are set before you by the unbelievers themselves. Moreover, we grant that whatever religious or clerics, suitable for announcing evangelical truth to the nations, having sought and obtained the license of their prelates, shall have wished to adhere to you, may by apostolic authority have the free faculty of carrying this out without any contradiction.

- Ponit duas indulgentias illorum, qui paganis praedicant. -

Idem.

Quam sit laudabile (*Et infra:*) Tuis, frater episcope, petitionibus annuentes, tibi tuisque sociis, quum ad praedicandam Christi fidem paganis exibitis, apostolica auctoritate concedimus, ut vobis his cibis cum modestia et gratiarum actione, servata temporum qualitate iuxta canonicas sanctiones, uti liceat, qui vobis ab ipsis infidelibus apponuntur. Insuper indulgemus, ut quicunque religiosi seu clerici, idonei ad annunciandum gentibus evangelicam veritatem, requisita et habita praelatorum suorum licentia, tibi voluerint adhaerere, id absque contradictione qualibet liberam exsequendi habeant auctoritate apostolica facultatem.

Chapter XI

Latin source headnote: It is lawful to go to Alexandria to redeem captives when the travelers swear that they will carry no aid or assistance beyond the matter of redemption. One carrying or sending prohibited merchandise even after a truce is excommunicated, and truces do not come under the designation of peace.

The same.

Your fraternity signified to us in what manner some of your citizens may be able to proceed to Alexandria to recover their fellow citizens who are held captive there. We judge that this can lawfully

be done, provided that they carry nothing there with them in their merchandise or in another manner from which, excepting the matter of redemption, any advantage or assistance can come to the Saracens; and this they will first confirm before you by oath. Those also who, after a truce was made in the lands beyond the sea, went with commerce to Alexandria do not escape the bond of excommunication if they carried prohibited merchandise for the sake of gain, just as neither do those who, not going in their own persons, dispatched merchandise to them through messengers. Finally, as for those who swore that they would not go again into the land of the Saracens with merchandise unless there were peace between the Christians and them, and who came there after a truce was made, that condition concerning the existence of peace or a truce does not absolve them from the bond of excommunication.

> Pro redimendis captivis licet ire Alexandriam iurantibus, quod nihil deferent auxilii seu subsidii extra redemptionis articulum. Portans vel mittens etiam post treugas merces prohibitas, excommunicatus est, et pacis appellatione non veniunt treugae.
>
> Idem.
>
> Significavit nobis tua fraternitas, quomodo aliqui civium tuorum in Alexandriam valeant proficisci pro recuperandis concivibus suis, qui illic in captivitate tenentur. Hoc arbitramur licite posse fieri, dummodo nihil *in* mercibus suis vel alio modo secum illuc deferant, unde possit Sarracenis, excepto redemptionis articulo, aliquod commodum aut subsidium provenire, quod etiam coram te prius iuramento firmabunt. Illi quoque qui post treugam in transmarinis partibus factam cum commercio Alexandriam adiverint, si tulerint merces prohibitas causa lucrandi, excommunicationis vinculum non evadunt, sicut nec illi, qui, in personis propriis non euntes, merces eis per nuncios destinarunt. Ad ultimum illos, qui iuraverunt, se amplius in terram Sarracenorum cum mercibus non ituros, nisi pax esset inter Christianos et ipsos, et post treugam factam venerunt illuc, conditio illa de pace aut treuga habenda ab excommunicationis vinculo non absolvit.

Chapter XII

Latin source headnote: Those who have any commerce with Saracens during time of war, or furnish them assistance, are excommunicated.

The same.

What was formerly commanded. *(And below:)* Indeed, although this was strictly prohibited in the Lateran Council, nevertheless, *by the counsel of our brothers*, we subject to excommunication all those who henceforth shall have commerce with the Saracens or, by themselves or through others, by ships or by any other device whatsoever, shall have considered that any assistance in things or counsel is to be furnished to them for as long as war between us and them shall have endured. We therefore command *and strictly enjoin* your discretion that neither through yourselves, nor through your ships, nor in any other manner or by any device whatsoever are you to transmit to them merchandise, counsels, or other assistance, lest, if *perhaps* any, hardened in their malice, shall have presumed to act otherwise, they not only fall by the law itself into that excommunication, but *they also* incur the wrath of the living God.

> Excommunicati sunt, qui cum Sarracenis tempore guerrae aliquod habent commercium, vel eis praestant subsidium.
>
> Idem.

> Quod olim praeceptum fuit (*Et infra:*) Sane, licet hoc fuerit in concilio Lateranensi districte inhibitum, nos tamen *de consilio fratrum nostrorum* omnes illos excommunicationi supponimus, qui iam amplius cum Sarracenis mercimonium habuerint, vel per se vel per alios navibus, seu quocunque alio ingenio, eis aliqua rerum subsidia seu consilia, quamdiu inter nos et illos guerra duraverit, duxerint impendenda. Vestrae igitur discretioni mandamus *atque districte praecipimus*, quatenus nec per vos, nec per vestras naves, nec alio quocunque modo aut ingenio, eis mercimonia, consilia vel alia subsidia transmittatis, ne, si *forte* aliqui in sua malitia indurati secus agere praesumpserint, non solum ipso iure incidant in excommunicationem illam, verum etiam *illi* iram Dei viventis incurrant.

Chapter XIII

Latin source headnote: Jews ought not to have Christian nurses or servants; commerce with Christians is forbidden to those acting contrary to this.

Innocent III, to the Archbishop of Sens and the Bishop of Paris.

Although Christian piety receives Jews, whom their own fault subjected to perpetual servitude *when they crucified the Lord whom their prophets foretold would come in the flesh for the redemption of Israel*, and sustains their cohabitation—*whom even the Saracens, because of their unbelief, although they persecute the Catholic faith and do not believe in the one crucified by them, are unable to sustain, but rather expelled from their territories, vehemently crying out against us because they are sustained by us who truly confess our Redeemer condemned by them to the gibbet of the cross*—nevertheless they ought not to be ungrateful to us so as to render insult to Christians for grace and contempt in return for familiarity; for, though mercifully admitted, as it were, into our familiarity, they render us that recompense which, according to a common proverb, a mouse in a purse, a snake in the bosom, and fire in the lap are accustomed to furnish to their hosts. We have learned, moreover, that Jews make Christian women nurses of their sons and—what it is not only shameful to say but even impious to think—when it happens on the day of the Lord's Resurrection that those women receive the body and blood of Jesus Christ, for three days before they nurse them the Jews cause their milk to be poured into the privy. They commit, in addition, other detestable and unheard-of things against the Catholic faith, on account of which it is to be feared by the faithful that they incur divine indignation when they permit them unworthily to perpetrate things which bring confusion upon our faith. *We therefore asked our dearest son in Christ, Philip, illustrious King of the French, and also commanded the noble man M., Duke of Burgundy, and the Countess of Troyes, that they so restrain the excesses of the Jews that they do not presume to raise the neck, subjected to the yoke of perpetual servitude, against reverence for the Christian faith.* We therefore strictly prohibit that henceforth they have Christian nurses or servants, lest the sons of the free woman serve the sons of the bondwoman; but, as servants rejected by the Lord, in whose death they wickedly conspired, let them at least through the effect of their deed recognize themselves as servants of those whom the death of Christ made free, while it made them servants. *Since they have now begun to gnaw in the manner of a mouse and to sting like a snake, it is to be feared that the fire harbored in the lap may consume what it has corroded. Wherefore, by apostolic writings we command your fraternity that you take care so diligently to admonish and effectively induce the aforesaid king and others to this on our behalf that the unbelieving Jews henceforth in no way grow insolent, but under servile fear always display the shame of their fault and revere the honor of the Christian faith.* But if the *Jews* shall not dismiss their Christian nurses and servants, *supported by our authority*, strictly forbid all Christians under penalty of excommunication to dare to exercise any commerce with them. [*Given on the Ides of July,* 1205.]

Iudaei nutrices vel servientes Christianos habere non debent; contra facientibus interdicitur Christianorum commercium.

Innocentius III. Archiepiscopo Senonensi et Episcopo Parisiensi. Etsi Iudaeos, quos propria culpa submisit perpetuae servituti, *quum Dominum crucifixerint, quem sui prophetae praedixerunt ad redemptionem Israel in carne venturum*, pietas Christiana receptet, et sustineat cohabitationem illorum, *quos etiam propter eorum perfidiam Sarraceni, qui fidem catholicam persequuntur, nec credunt in crucifixum ab illis, sustinere non possunt, sed potius a suis finibus expulerunt, in nos vehementius exclamantes, eo, quod sustineantur a nobis, qui ab ipso crucis patibulo condemnatum Redemptorem nostrum veraciter confitemur*, ingrati tamen nobis esse non debent, ut reddant Christianis pro gratia contumeliam et de familiaritate contemptum, qui, tanquam misericorditer in nostram familiaritatem admissi, nobis illam retributionem impendunt, quam, iuxta vulgare proverbium, mus in pera, serpens in gremio, et ignis in sinu suis consueverunt hospitibus exhibere. Accepimus autem, quod Iudaei faciunt Christianas filiorum suorum nutrices, et, quod non tantum dicere, sed etiam nefandum est cogitare, quum in die Resurrectionis dominicae illas recipere corpus et sanguinem Iesu Christi contingit, per triduum, antequam eos lactent, lac effundere faciunt in latrinam. Alia insuper contra fidem catholicam detestabilia et inaudita committunt, propter quae fidelibus est verendum, ne divinam indignationem incurrant, quum eos perpetrare patiuntur indigne quae fidei nostrae confusionem inducunt. *Rogavimus igitur carissimum in Christo filium nostrum Philippum regem Francorum illustrem, mandavimus etiam nobili viro M. duci Burgundiae, et comitissae Trecensi, ut taliter reprimant Iudaeorum excessus, ne cervicem, perpetuae servitutis iugo submissam, praesumant erigere contra reverentiam fidei Christianae*. Inhibemus ergo districte, ne de cetero nutrices vel servientes habeant Christianos, ne filii liberae filiis famulentur ancillae, sed tanquam servi a Domino reprobati, in cuius mortem nequiter coniurarunt, se saltem per effectum operis recognoscant servos illorum, quos Christi mors liberos, et illos servos effecit. *Qui quum iam coeperint rodere more muris, et pungere sicut serpens, verendum est, ne ignis, receptatus in sinu, corrosa consumat. Quocirca fraternitati vestrae per apostolica scripta mandamus, quatenus praedictum regem et alios ad hoc ex parte nostra ita diligenter monere ac efficaciter inducere procuretis, quod Iudaei perfidi de cetero nullatenus insolescant, sed sub timore servili praetendant semper verecundiam culpae suae, ac revereantur honorem fidei Christianae*. Si vero *Iudaei* nutrices et servientes non dimiserint Christianos, *vos, auctoritate nostra suffulti*, sub excommunicationis poena inhibeatis districte omnibus Christianis, ne cum eis commercium aliquod audeant exercere. [*Dat. Id. Iul.* 1205.]

Chapter XIV

Latin source headnote: A Jew who strikes a cleric is punished temporally; and, if he cannot in fact be punished, commerce with Christians is forbidden to him until he has made satisfaction to the person who suffered the injury.

The same.

You asked *to be instructed by the Apostolic See* how you ought to proceed against a Jew who laid violent hands upon a certain cleric. To this *we* briefly respond *to your fraternity* that, if the said Jew is subject to your jurisdiction, you are to punish him by a monetary or other temporal penalty, according to what is fitting, causing suitable satisfaction to be rendered to the injured person; otherwise, admonish and induce his lord to cause competent satisfaction to be made by him to the person suffering injury and to the church. But if his lord neglects *to* fulfill this, by ecclesiastical censure forbid all Christians to presume to exercise commerce with the Jew himself before he makes satisfaction. What follows, etc. *Thirdly, you asked, etc.* [*cf. c.* 21, *On Regulars, III.* 31. *Given at the Lateran on the seventh day before the Ides of June, in the fifteenth year of our pontificate,* 1212.]

Iudaeus, qui percusserit clericum, temporaliter punitur, et, si de facto puniri non potest, interdicitur sibi Christianorum commercium, donec satisfecerit iniuriam passo.

Idem.

Postulasti *per sedem apostolicam edoceri*, qualiter contra Iudaeum procedere debeas, qui manus iniecit in quendam clericum violentas. Ad quod *fraternitati tuae* breviter respondemus, quod, si dictus Iudaeus tuae iurisdictionis exsistit, ipsum poena pecuniaria punias, vel alia, secundum quod convenit, temporali, faciens laeso satisfactionem congruam exhiberi; alioquin eius dominum moneas et inducas, ut passo iniuriam et ecclesiae ab eo satisfieri faciat competenter. Quod si dominus eius *id* neglexerit adimplere, tu Christianis omnibus per censuram ecclesiasticam interdicas, ne cum ipso Iudaeo, antequam satisfaciat, praesumant commercia exercere. Consequenter etc. *Tertio quaesivisti etc.* [*cf. c.* 21. *de regul. III.* 31. *Dat. Lat. VII. Id. Iun. Pont. nostr. Ao. XV.* 1212.]

Chapter XV

Latin source headnote: Jews and Saracens of both sexes ought in the lands of Christians to use dress by which they are distinguished from Christians, and on the day of the Lord's Passion they ought not to go forth in public or break out in insult to the Creator.

The same, in the general council.

In certain provinces diversity of dress distinguishes Jews or Saracens from Christians; but in some such confusion has grown up that they are distinguished by no difference. Whence it happens at times that, through error, Christians mingle with the women of Jews or Saracens, and Jews or Saracens with the women of Christians. Therefore, lest the excess of so damned a mingling be able to have a refuge of further excuse through the veil of an error of this kind, we establish that such persons of both sexes are to be publicly distinguished from other peoples by the character of their dress in every province of Christians and at every time, [*since this very thing is also read to have been enjoined upon them through Moses.*] But on the days of lamentation and of the Lord's Passion they are by no means to go forth in public, because, as we have learned, certain of them are not ashamed to go about more ornately on such days and do not fear to mock Christians who, exhibiting the memory of the most sacred Passion, display signs of lamentation. We most strictly forbid this: that they presume in any way to break out in insult to the Creator. And since we ought not to dissemble the reproach of him who blotted out our reproaches, we command that presumers of this kind be restrained by secular princes with the application of condign censure, lest they presume in any way to blaspheme the one crucified for us.

Iudaei et Sarraceni utriusque sexus debent in terris Christianorum uti habitu, per quem a Christianis discernantur, et in die Passionis Domini non debent in publicum progredi, nec in contumeliam Creatoris prosilire.

Idem in concilio generali. In nonnullis provinciis a Christianis Iudaeos seu Sarracenos habitus distinguit diversitas; sed in quibusdam sic quaedam inolevit confusio, ut nulla differentia discernantur. Unde contingit interdum, quod per errorem Christiani Iudaeorum seu Sarracenorum, et Iudaei seu Sarraceni Christianorum mulieribus commiscentur. Ne igitur tam damnatae commixtionis excessus per velamen erroris huiusmodi ulterioris excusationis possint habere diffugium: statuimus, ut tales utriusque sexus in omni Christianorum provincia et omni tempore qualitate habitus publice ab aliis populis distinguantur, [*quum etiam per Moysen hoc ipsum legatur eis iniunctum.*] In diebus autem lamentationis et dominicae Passionis in publicum minime prodeant, eo, quod nonnulli ex ipsis talibus diebus, sicut

accepimus, et ornatius non erubescunt incedere, ac Christianis, qui sacratissimae passionis memoriam exhibentes lamentationis signa praetendunt, illudere non formidant. Illud autem districtissime inhibemus, ne in contumeliam Creatoris prosilire *aliquatenus* praesumant. Et quoniam illius dissimulare non debemus opprobrium, qui probra nostra delevit: praecipimus praesumptores huiusmodi per principes saeculares condignae animadversionis adiectione compesci, ne crucifixum pro nobis aliquatenus blasphemare praesumant.

Chapter XVI

Latin source headnote: One placing a Jew or pagan over public offices is corrected through a provincial council; and commerce with Christians is denied to the person placed over the office until he has relinquished the office and, according to the bishop's provision, restores to the use of poor Christians the things acquired from it.

The same, in the same council.

Since it is exceedingly absurd that a blasphemer of Christ exercise the force of power over Christians, we renew in this general council what the Council of Toledo providently established concerning this, on account of the audacity of transgressors, prohibiting Jews from being preferred to public offices, because under such a pretext they are exceedingly hostile to Christians. But if anyone shall have committed such an office to them, after prior admonition let him be restrained with fitting severity through the provincial council, which we command to be celebrated each year. To an official of this kind, however, association with Christians in commerce and other matters is to be denied until, according to the provision of the diocesan bishop, whatever he acquired from Christians by occasion of the office thus received is converted to the use of poor Christians, and he relinquishes with shame the office which he irreverently assumed. We extend this same provision to pagans.

Praeponens Iudaeum vel paganum publicis officiis, per concilium provinciale corripitur, et praeposito denegatur Christianorum commercium, donec deposuerit officium, et in usus Christianorum pauperum restituet inde quaesita secundum episcopi providentiam.

Idem in eodem.

Quum sit nimis absurdum, ut blasphemus Christi in Christianos vim potestatis exerceat, quod super hoc Toletanum concilium provide statuit, nos propter transgressorum audaciam in hoc generali concilio innovamus, prohibentes, ne Iudaei publicis officiis praeferantur, quoniam sub tali praetextu Christianis plurimum sunt infesti. Si quis autem eis officium tale commiserit, per provinciale concilium, quod singulis annis praecipimus celebrari, monitione praemissa districtione, qua convenit, compescatur. Officiali vero huiusmodi tamdiu Christianorum communio in commerciis et aliis denegetur, donec in usus pauperum Christianorum secundum providentiam dioecesani episcopi convertatur quicquid fuerit a Christianis adeptus occasione officii sic suscepti, et officium cum pudore dimittat, quod irreverenter assumpsit. Hoc idem extendimus ad paganos.

Chapter XVII

Latin source headnote: The general council repeats the Lateran Council above, in the same title, at *Ita,* and adds the penalty of satisfaction to be rendered at the time of absolution.

The same, in the same council.

For the liberation of the Holy Land. *(And below:)* Moreover, we excommunicate and anathematize those false and impious Christians who carry arms, iron, and lashings for galleys to the Saracens against Christ himself and the Christian people; also those who sell them galleys or ships, and those who exercise the care of navigation in the piratical ships of the Saracens or furnish them any counsel or aid in engines or any other things to the detriment of the Holy Land. We decree that they are to be punished by deprivation of their goods and to be slaves of those who capture them, commanding that a sentence of this kind be publicly renewed throughout all maritime cities on Sundays and feast days. And the bosom of the church is not to be opened to such persons unless they shall have transmitted in aid of the Holy Land all that they received from so damned a commerce and as much again from their own goods, so that by an equal judgment they may be punished in that wherein they offended. But if perhaps they shall not be able to pay, let the guilt of such persons be otherwise so chastised that through their punishment others are forbidden the audacity of presuming similar things.

> Concilium generale repetit concilium Lateranense supra eod. Ita, et addit poenam satisfactionis, tempore absolutionis impendendam.
>
> Idem in eodem.
>
> Ad liberandam terram sanctam (*Et infra:*) Excommunicamus praeterea et anathematizamus illos falsos et impios Christianos, qui contra ipsum Christum et populum Christianum Sarracenis arma, ferrum et ligamina deferunt galearum; eos etiam, qui galeas eis vendunt vel naves, quique in piraticis Sarracenorum navibus curam gubernationis exercent, vel *in* machinis aut quibuslibet aliis aliquod eis impendunt consilium vel auxilium in dispendium terrae sanctae; ipsosque rerum suarum privatione mulctari, et capientium servos fore censemus, praecipientes, ut per omnes urbes maritimas diebus dominicis et festivis huiusmodi sententia publice innovetur. Et talibus gremium non aperiatur ecclesiae, nisi totum, quod ex commercio tam damnato perceperint, et tantundem de suo in subsidium terrae sanctae transmiserint, ut aequo iudicio in quo deliquerint puniantur. Quodsi forte solvendo non fuerint, sic alias reatus talium castigetur, quod in poena ipsorum aliis interdicatur audacia similia praesumendi.

Chapter XVIII

Latin source headnote: Jews or pagans are not to be placed over public offices; and, if royal rights are sold to them, a Christian not suspected of wrongdoing is to be placed over their collection.

Gregory IX, to the Bishops of Astorga and Lugo.

From the special affection of charity which we bear toward the illustrious King of Portugal. *(And below:)* We command that you carefully induce the king himself not to place Jews over Christians in public offices, as is contained in the general council; and, if perhaps he shall have sold his revenues to Jews or pagans, let him then appoint a Christian not suspected of inflicting burdens upon clerics and churches, through whom the Jews or Saracens may collect the royal rights without injury to Christians.

> Iudaei vel pagani publicis officiis praeficiendi non sunt, et, si eis regalia iura vendantur, ad ea colligenda praeficiendus est Christianus non suspectus.
>
> Gregorius IX. Astoricensi et Lucensi Episcopis.
>
> Ex speciali, quem erga illustrem regem Portugalliae gerimus, caritatis affectu (*Et infra:*) Mandamus, quatenus regem ipsum sollicite inducatis, ne in officiis publicis Iudaeos Christianis praeficiat, sicut in generali concilio continetur, et, si forte reditus suos Iudaeis vendiderit vel paganis, Christianum tunc

deputet de gravaminibus inferendis clericis et ecclesiis non suspectum, per quem Iudaei sive Sarraceni sine Christianorum iniuria iura regalia consequantur.

Chapter XIX

Latin source headnote: It summarizes itself.

The same.

No Jew is permitted to buy a baptized person or one wishing to be baptized, or to retain him in his service. But if he shall have bought for the purpose of commerce one not yet converted to the faith, and the latter afterward becomes or desires to become a Christian, twelve solidi having been given for him, let him immediately be withdrawn from that Jew's service. But if within three months he shall not have exposed him for sale, or shall have bought him to serve himself, neither may he himself sell him nor may another dare to buy him; rather, no price having been given, let him be led to the rewards of liberty.

Se ipsum summat.

Idem.

Nulli Iudaeo baptizatum vel baptizari volentem emere liceat vel in suo servitio retinere. Quodsi quem, nondum ad fidem conversum, causa mercimonii emerit, et postmodum factus sit vel fieri desideret Christianus, datis pro eo XII. solidis ab illius servitio protinus subtrahatur. Si autem infra tres menses ipsum venalem non exposuerit, vel ad sibi serviendum emerit eundem, nec ipse vendere, nec alius audeat comparare, sed nullo dato pretio perducatur ad praemia libertatis.

Title VII: On Heretics

Chapter I

Latin source headnote: He is an unbeliever who does not have certainty of faith, and an unbeliever is not to be believed to the prejudice of another.

Pope Stephen, to all Bishops.

One doubtful in faith is an unbeliever, nor are those who are ignorant of the faith of truth to be believed at all, [*and who do not lead a life of upright conduct, etc.*]

DE HAERETICIS.

Infidelis est, qui non habet certitudinem fidei, et infideli non est credendum in praeiudicium alterius.

Stephanus Papa omnibus Episcopis.

Dubius in fide infidelis est, nec eis omnino credendum est, qui fidem veritatis ignorant, [*nec rectae conversationis vitam ducunt etc.*]

Chapter II

Latin source headnote: He is convicted of erring in faith who, when he can, does not recall others who err from their error.

Pope Leo.

He who, when he can, does not recall others from error demonstrates that he himself errs. [*Given on the twelfth day before the Kalends of August, Calepius and Ardabur being consuls, men of clarissimus rank,* 447.]

> Errare in fide convincitur, qui alios errantes, quum potest, ab errore non revocat.
>
> Leo Papa.
>
> Qui alios, quum potest, ab errore non revocat, se ipsum errare demonstrat. [*Dat. XII. Kal. Aug. Calepio et Ardabure VV. CC. Coss.* 447.]

Chapter III

Latin source headnote: A persevering heretic is eternally damned; neither baptism, almsgiving, martyrdom, nor any other good whatsoever profits him so far as attaining eternal life is concerned.

Augustine, On the Catholic Faith.

Hold most firmly and doubt in no way that every heretic or schismatic, *although he gives many alms or even sheds blood for Christ*, will share with the devil and his angels in the burning of eternal fire unless, before the end of *this* life, he shall have been incorporated into and reintegrated with the Catholic Church. *(And a little afterward:)* For *indeed*, to every man who does not hold the unity of the Catholic Church, neither baptism, nor almsgiving, however abundant, nor death undertaken for the name of Christ will be able to profit unto salvation.

> Haereticus perseverans aeternaliter damnatur; cui nec prodest baptismus, nec eleemosyna, vel martyrium, vel aliud quodcunque bonum, quoad hoc, ut consequatur vitam aeternam.
>
> Augustinus de fide catholica.
>
> Firmissime tene et nullatenus dubites, omnem haereticum vel schismaticum, *quamvis multas eleemosynas faciat, vel etiam pro Christo sanguinem fundat*, cum diabolo et angelis eius aeterni ignis incendio participandum, nisi ante finem *huius* vitae catholicae fuerit incorporatus et redintegratus ecclesiae. (*Et post pauca:*) Omni *enim* homini, qui ecclesiae catholicae non tenet unitatem, neque baptismus, neque eleemosyna quantumlibet copiosa, neque mors pro nomine Christi suscepta proficere poterit ad salutem.

Chapter IV

Latin source headnote: When an author is condemned, his writings, books, and works are condemned.

Gregory, to Anastasius of Antioch.

Of your fraternity. *(And below:)* [*Moreover, when your fraternity spoke concerning the preservation of the holy councils, it professed that it preserves the holy First Synod of Ephesus. But because, from the annotation of a heretical codex which was transmitted to me from the imperial city, I learned—through the fact that certain Catholic chapters had been censured together with heretical ones—that certain persons consider as the First Synod of Ephesus that which is related to have been composed formerly by heretics in the same city, it is altogether necessary that your charity seek the same synod at the holy churches of Alexandria and Antioch and discover how it is truly held; or, if it pleases you, we shall send from here what we have preserved from antiquity in the archives.*] *For that synod which was produced under the appearance of the First Synod of Ephesus asserts that certain chapters presented in it were approved, which are the teachings of Coelestius and Pelagius. And* since Coelestius and Pelagius were

condemned in the Synod of Ephesus, how will those chapters whose authors are condemned be able to be received?

> Damnato auctore damnantur eius scripturae et libri et opera.
>
> Gregorius Anastasio Antiocheno.
>
> Fraternitatis tuae (*Et infra:*) [*Praeterea, dum de sanctorum conciliorum custodia tua fraternitas loqueretur, sanctam Ephesinam synodum primam se custodire professa est. Sed quia ex annotatione haeretici codicis, qui ad me ex regia urbe transmissus est, agnovi per hoc, quod quaedam capitula catholica cum haereticis fuerant reprehensa, quia quidam illam Ephesinam primam synodum in eadem urbe existimant, quae quondam ab haereticis traditur esse composita, omnino necesse est, ut caritas vestra eandem synodum apud S. Alexandrinam atque Antiochenam ecclesiam requirat, et qualiter in veritate habeatur inveniat; vel, si placet, hinc dirigimus, quae ab antiquitate servata in scriniis habemus.*] *Illa enim synodus, quae sub imagine primae Ephesinae facta est, quaedam in se oblata capitula asserit approbata, quae sunt Coelestii atque Pelagii praedicamenta. Et* Quum Coelestinus atque Pelagius in Ephesina synodo sint damnati, quomodo poterunt illa capitula recipi, quorum damnantur auctores.

Chapter V

Latin source headnote: A bishop who institutes as heir a heretical relative, a stranger, or a pagan is proclaimed excommunicated even after death. This it says according to the common and truer understanding; and, so that it pertains to the title, it can be understood that from this he is presumed to be a heretic.

From the African Council.

If any bishop shall institute as heirs persons outside his kinship, or shall prefer heretics, even relatives, or pagans, let anathema be pronounced against him at least after death, and let his name in no way be recited among the priests of God. [*Nor can he be excused if he died intestate, etc.*]

> Episcopus, instituens heredem haereticum consanguinem, vel extraneum, vel paganum, etiam post mortem excommunicatus nunciatur. H. d. secundum communem et veriorem intellectum, et, ut faciat ad tit., potest intelligi, quod ex hoc praesumatur haereticus.
>
> Ex concilio Africano.
>
> Si quis episcopus heredes instituerit extraneos a consanguinitate sua, vel haereticos, etiam consanguineos, aut paganos pertulerit, saltem post mortem ei anathema dicatur, atque eius nomen inter Dei sacerdotes nullo modo recitetur. [*Nec excusari possit, si intestatus decesserit etc.*]

Chapter VI

Latin source headnote: It speaks concerning the same matter as the preceding chapter, and what was said there concerning a bishop is extended to priests and other clerics.

From the same council.

To those who are not Catholic *Christians*, even if they are relatives, bishops or priests are to confer nothing *through donations of their property*. Finally, what has been said concerning bishops and priests ought to be understood concerning the remaining clerics *also*.

> Loquitur de eadem materia cum praecedenti, et extenditur, quod ibi dictum fuit de episcopo, ad presbyteros et alios clericos.
>
> Ex eodem.

In eos, qui catholici *Christiani* non sunt, etiamsi consanguinei fuerint, *per donationes rerum suarum* episcopi vel presbyteri nihil conferant. Denique hoc, quod de episcopis et presbyteris dictum est, debet de reliquis *quoque* clericis exaudiri.

Chapter VII

Latin source headnote: Christ was true God and true man; one holding the opposite is a heretic and excommunicated.

Alexander III, to the Archbishop of Reims.

Since Christ is perfect God and perfect man, *it is astonishing with what rashness anyone dares to say that Christ is not something insofar as he is man. But lest so great an abuse be able to arise in the church of God or an error be introduced,* we command [*your fraternity*] *by apostolic writings* that, *the masters of Paris and Reims and of the other surrounding cities having been convoked, by our authority* you forbid under anathema that anyone henceforth dare to say that Christ is not something insofar as he is man, because, just as Christ is true God, so he is true man, subsisting of a rational soul and human flesh. [*Given at Vesta on the twelfth day before the Kalends of May,* 1177.]

Christus fuit verus Deus et verus homo, sentiens oppositum haereticus est et excommunicatus.

Alexander III. Remensi Archiepiscopo.

Quum Christus perfectus Deus et perfectus sit homo, *mirum est, qua temeritate quisquam audet dicere, quod Christus non sit aliquid secundum quod homo. Ne autem tanta possit in ecclesia Dei suboriri abusio vel error induci,* [*fraternitati vestrae*] *per apostolica scripta* Mandamus, quatenus *convocatis magistris Parisiensium et Remensium et aliarum circumpositarum civitatum, auctoritate nostra* sub anathemate interdicas, ne quis de cetero audeat dicere, Christum non esse aliquid secundum quod homo, quia, sicut Christus verus est Deus, ita verus est homo, ex anima rationali et humana carne subsistens. [*Dat. Vestae XII. Kal. Maii.* 1177.]

Chapter VIII

Latin source headnote: Heretics, their receivers, and their supporters are excommunicated; and those dying in this sin ought not to be buried in the church cemetery, nor ought prayer to be made for them.

From the Lateran Council.

As blessed Leo says, *although ecclesiastical discipline, content with priestly judgment, avoids bloody punishments, nevertheless it is aided by the constitutions of Catholic princes, so that men often seek a saving remedy when they have feared that corporal punishment will come upon them. For this reason,* because in *Gascony, Albi, and* the regions of Toulouse *and other places,* the damnable perversity of the heretics whom some call Cathars, *others Publicans,* others Patarenes, and others by other names, has so gained strength *that they now exercise their wickedness not in secret, as elsewhere, but publicly manifest their error and draw the simple and infirm to their assent,* we decree that [*and*] they and their defenders and receivers are subject to anathema; and under anathema we prohibit anyone from presuming to keep or support them in his house or land, or to exercise commerce with them. But if anyone dies in this sin, neither under the cover of our privileges granted to whomsoever, nor under any other occasion, is [*any*] offering to be made for him, nor is he to receive burial among Christians. [*Concerning the Brabanters, etc.*]

Haeretici, receptatores et fautores eorum excommunicati sunt, et decedentes in hoc peccato, in coemeterio ecclesiae sepeliri non debent, nec pro eis orari. Ex concilio Lateranensi. Sicut ait beatus Leo,

licet ecclesiastica disciplina, sacerdotali contenta iudicio, cruentas effugiat ultiones: catholicorum tamen principum constitutionibus adiuvatur, ut saepe quaerant homines salutare remedium, dum corporale metuerint super se supplicium evenire. Ea propter, Quia in *Vasconia, Albigesio et* partibus Tolosanis, *et aliis locis ita* haereticorum, quos alii Catharos, *alii Publicanos*, alii Patarenos, et alii aliis nominibus vocant, invaluit damnanda perversitas, *ut iam non in occulto, sicut alibi, nequitiam suam exerceant, sed errorem suum publice manifestent, et ad consensum suum simplices attrahant et infirmos,* [*et*] eos, et defensores et receptatores eorum anathemati decernimus subiacere, et sub anathemate prohibemus, ne quis eos in domo vel in terra sua tenere vel fovere, aut negotiationem cum eis exercere praesumat. Si autem in hoc peccato decesserit, neque sub privilegiorum nostrorum quibuscunque indultorum obtentu, neque sub alia quacunque occasione [*aut*] oblatio pro eo fiat, aut inter Christianos accipiat sepulturam. [*De Brabantionibus etc.*]

Chapter IX

Latin source headnote: A heretic who believes or teaches wrongly concerning the sacraments of the Church is excommunicated; and, upon conviction, unless he corrects himself and abjures the error, if he is a cleric he is to be degraded and handed over to the secular court, by which a layperson also will be punished. The same penalty also applies to those suspected of heresy if they have not cleared themselves, and a hearing is entirely denied to those who relapse. Secular princes who are unwilling to swear to defend the Church against heretics are excommunicated, and their lands are placed under interdict; but their cities which resist are deprived of commerce with other cities and of episcopal dignity; and exempt persons are subject to the ordinaries in those things which are established against heretics.

Lucius III.

For abolishing *the depravity of diverse heresies which in modern times has begun to spring forth in very many parts of the world, ecclesiastical vigor ought to be aroused, so that, with the power of imperial fortitude supporting it, both the insolence of heretics may be crushed in the very attempts of its falsehood and the simplicity of Catholic truth, shining in holy Church, may demonstrate it everywhere as cleansed from every abomination of false dogmas. Therefore we, supported alike by the presence and vigor of our dearest son Frederick, illustrious Emperor of the Romans and ever Augustus, by the common counsel of our brothers, and also of other patriarchs, archbishops, and many princes who assembled from diverse parts of the empire, rise against those heretics, upon whom the profession of diverse falsehoods has imposed diverse names, by the general sanction of the present decree, and by apostolic authority condemn every heresy, by whatever name it may be designated, through the series of this constitution. First, therefore, we decree that the Cathars and Patarenes, and those who falsely claim for themselves the name Humiliati or Poor Men of Lyons, the Passagines, Josephines, and Arnoldists, are perpetually subject to anathema. And since certain persons, denying the power of piety under its appearance, as the Apostle says, claim for themselves the authority of preaching—although the same Apostle says, "How shall they preach unless they are sent?"—all who, either prohibited or not sent, without authority received from the Apostolic See or from the bishop of the place, shall have presumed to preach publicly or privately, and* all who do not fear to believe or teach otherwise concerning the sacrament of the body and blood of our Lord Jesus Christ, or concerning baptism, confession of sins, marriage, or the remaining ecclesiastical sacraments, than the sacrosanct Roman Church preaches and observes, and generally whomsoever the same Roman Church or the individual bishops throughout their dioceses, with the counsel of the clerics—or the clerics themselves while the see is vacant, with the counsel, if necessary, of neighboring bishops—shall have judged to be heretics, we bind with the *same* bond of perpetual anathema. *We decree that their receivers and defenders,*

and all alike who shall have afforded any patronage or favor to the aforesaid heretics in order to foster in them the depravity of heresy, whether they are called Consoled, Believers, Perfects, or by any superstitious names whatsoever, are subject to the like sentence. But because, at the demand of sins, it sometimes happens that the severity of ecclesiastical discipline is contemned by those who do not understand its power, we nevertheless decree by the present ordinance that whoever shall manifestly have been detected in heresy, if he is a cleric or is disguised by the shadow of any religious state, is to be stripped of the prerogative of the entire ecclesiastical order and, thus despoiled *alike* of every ecclesiastical office and benefice, is to be left to the judgment of the secular authority to be punished by due censure, unless, immediately after detection of the error, he shall have spontaneously hastened back to the unity of the Catholic faith and consented publicly to abjure his error at the judgment of the bishop of the region and to render suitable satisfaction. But a layperson *whom the notorious or private guilt of any of the aforesaid plagues shall have tainted,* unless, as has been said, after abjuring the heresy and rendering satisfaction, he shall immediately have fled to the orthodox faith, is to be left to the judgment of the secular judge to receive due punishment according to the character of the crime. *(And below:)* But those who shall have been found notable by suspicion of the *Church* alone, unless at the judgment of the bishop, according to consideration of the suspicion and the character of the person, they shall have demonstrated their own innocence by suitable purgation, will be subject to the like sentence. We also decree that those who, after abjuration of the error, or after, as we have said, purging themselves by the examination of their own bishop, shall have been detected as having fallen back into the abjured heresy, are to be left to secular judgment without any hearing at all, *the goods of condemned clerics being applied, according to the lawful sanctions, to the churches which they served. Indeed, we decree that the aforesaid sentence of excommunication, to which we command all heretics to be subject, is to be renewed by all patriarchs, archbishops, and bishops on the principal feast days and whenever they shall have solemnities or any occasion, for the glory of God and the censure of heretical depravity; establishing by apostolic authority that, if anyone of the order of bishops shall have been found negligent or indolent in these matters, he is to be held suspended from episcopal dignity and administration for the space of three years. In addition, by episcopal counsel and the suggestion of the imperial summit and its princes, we have added that every archbishop or bishop, by himself, by his archdeacon, or by other honorable and suitable persons, is to go around, twice or once in the year, his own parish in which it shall be reported that heretics dwell; and there he is to compel three or more men of good testimony—or even, if it shall appear expedient, the entire neighborhood—to swear that, if anyone there knows heretics or persons celebrating secret conventicles, or persons differing from the common association of the faithful in life and morals, he will take care to indicate them to the bishop or archdeacon. The bishop or archdeacon is then to summon the accused to his presence; unless they shall have purged themselves from the charge brought against them at their judgment according to the custom of the country, or if, after purgation has been rendered, they shall have fallen back into their former unbelief, they are to be punished by the judgment of the bishops. But if any of them, rejecting an oath because of a damnable superstition, should perhaps be unwilling to swear, by that very fact they are to be judged heretics and struck with the penalties which have been named above.* We further establish that counts, barons, rectors, and consuls of cities and other places, according to the admonition of *archbishops and* bishops, are to promise by an oath physically rendered that, *in all the aforesaid matters,* when they have been requested *concerning them,* they will faithfully and effectively aid the Church against heretics and their accomplices *and will strive* in good faith, according to their office and power, *to commit to execution both the ecclesiastical and imperial statutes concerning those things which we have stated.* But if they are unwilling to observe this, let them be despoiled of the honor which they hold and in no way be assumed to

others, while they are nevertheless to be bound by excommunication and their lands placed under interdict of the Church. But a city which shall have considered that these *decretal* enactments are to be resisted, or which, contrary to the admonition of the bishop, shall have neglected to punish those resisting, is to be deprived of commerce with other cities and is to know that it is to be deprived of episcopal dignity. *We also decree that all supporters of heretics, as persons condemned to perpetual infamy, are to be repelled from advocacy, testimony, and other public offices.* But if there are any who, exempt from the law of diocesan jurisdiction, are subject to the authority of the Apostolic See alone, nevertheless in those things which have been established *above* against heretics, let them undergo the judgment of *archbishops or* bishops and obey them in this matter as delegates of the Apostolic See, notwithstanding the privileges of their liberty. [*Moreover, etc.* (*cf. c.* 23, *On the Right of Patronage, III.* 38.)]

> Haereticus, male sentiens vel male docens de sacramentis ecclesiae, excommunicatus est, et convictus, nisi se correxerit et errorem abiuraverit, si clericus est, degradetur, et curiae saeculari tradatur, per quam etiam laicus punietur. Eadem etiam est poena suspectis de haeresi, si se non correxerunt, et relapsis omnino audientia denegatur. Saeculares principes, qui iurare nolunt de ecclesia contra haereticos defendenda, excommunicantur, et terrae eorum supponantur interdicto; civitates vero ipsorum resistentes aliarum commercio et episcopali dignitate privantur; exempti vero subsunt ordinariis super his, quae contra haereticos instituuntur.
>
> Lucius III. Ab abolendam *diversarum haeresium pravitatem, quae in plerisque mundi partibus modernis coepit temporibus pullulare, vigor debet ecclesiasticus excitari cui nimirum imperialis fortitudinis suffragante potentia, et haereticorum protervitas in ipsis falsitatis suae conatibus elidatur, et catholicae simplicitas veritatis in ecclesia sancta resplendens, eam ubique demonstret ab omni exsecratione falsorum dogmatum expiatam. Ideoque nos carissimi filii nostri Friderici, illustris Romanorum imperatoris semper Augusti praesentia pariter et vigore suffulti, de communi fratrum nostrorum consilio, nec non aliorum patriarcharum, archiepiscoporum multorumque principum, qui de diversis partibus imperii convenerunt, contra ipsos haereticos, quibus diversa capitula diversarum indidit professio falsitatum, praesentis decreti generali sanctione consurgimus, et omnem haeresim, quocunque nomine censeatur, per huius constitutionis seriem auctoritate apostolica condemnamus. Imprimis ergo Catharos et Patarinos et eos, qui se Humiliatos vel Pauperes de Lugduno falso nomine mentiuntur, Passaginos, Iosephinos, Arnaldistas perpetuo decernimus anathemati subiacere. Et quoniam nonnulli, sub specie pietatis virtutum eius, iuxta quod ait Apostolus, denegantes, auctoritatem sibi vendicant praedicandi: quum idem Apostolus dicat: "quomodo praedicabunt, nisi mittantur?" omnes, qui vel prohibiti, vel non missi, praeter auctoritatem, ab apostolica sede vel ab episcopo loci susceptam, publice vel privatim praedicare praesumpserint, et* Universos, qui de sacramento corporis et sanguinis Domini nostri Iesu Christi, vel de baptismate, seu de peccatorum confessione, matrimonio vel reliquis ecclesiasticis sacramentis aliter sentire aut docere non metuunt, quam sacrosancta Romana ecclesia praedicat et observat, et generaliter, quoscunque eadem Romana ecclesia vel singuli episcopi per dioeceses suas cum consilio clericorum, vel clerici ipsi sede vacante cum consilio, si oportuerit, vicinorum episcoporum haereticos iudicaverint, *pari* vinculo perpetui anathematis innodamus. *Receptores et defensores eorum, cunctosque pariter, qui praedictis haereticis ad fovendam in eis haeresis pravitatem patrocinium praestiterint aliquod vel favorem, sive consolati, sive credentes, sive perfecti, seu quibuscunque superstitiosis nominibus nuncupentur, simili decernimus sententiae subiacere. Quia vero peccatis exigentibus quandoque contingit, ut severitas ecclesiasticae disciplinae ab his, qui virtutem eius non intelligunt, contemnatur,* Praesenti nihilominus ordinatione sancimus, ut, quicunque manifeste fuerint in haeresi deprehensi, si clericus est vel cuiuslibet religionis obumbratione fucatus, totius ecclesiastici ordinis praerogativa nudetur, et sic omni *pariter* officio et beneficio spoliatus ecclesiastico, saecularis relinquatur arbitrio potestatis, animadversione debita puniendus, nisi continuo post deprehensionem erroris ad fidei catholicae unitatem sponte recurrere, et errorem suum ad arbitrium episcopi regionis publice consenserit abiurare, et satisfactionem congruam

exhibere. Laicus autem, *quem aliqua praedictarum pestium notoria vel privata culpa resperserit*, nisi, prout dictum est, abiurata haeresi et satisfactione exhibita confestim ad fidem confugerit orthodoxam, saecularis iudicis arbitrio relinquatur, debitam recepturus pro qualitate facinoris ultionem. (*Et infra:*) Qui vero inventi fuerint sola *ecclesiae* suspicione notabiles, nisi ad arbitrium episcopi iuxta considerationem suspicionis qualitatemque personae propriam innocentiam congrua purgatione monstraverint, simili sententiae subiacebunt. Illos quoque, qui post abiurationem erroris, vel, postquam se, ut diximus, proprii antistitis examinatione purgaverint, deprehensi fuerint in abiuratam haeresim recidisse, saeculari iudicio sine ulla penitus audientia decernimus relinquendos, *bonis damnatorum clericorum ecclesiis, quibus deserviebant, secundum sanctiones legitimas applicandis. Sane praedictam excommunicationis sententiam, cui omnes haereticos praecipimus subiacere, ab omnibus patriarchis, archiepiscopis et episcopis in praecipuis festivitatibus, et quoties solennitates habuerint vel quamlibet occasionem, ad gloriam Dei et reprehensionem haereticae pravitatis decernimus innovari, auctoritate apostolica statuentes, ut, si quis de ordine episcoporum in his negligens fuerit vel desidiosus inventus, per triennale spatium ab episcopali habeatur dignitate et administratione suspensus. Ad haec de episcopali consilio et suggestione culminis imperialis et principum eius adiecimus, ut quilibet archiepiscopus vel episcopus per se, vel archidiaconum suum, aut per alias honestas idoneasque personas, bis vel semel in anno propriam parochiam, in qua fama fuerit haereticos habitare, circumeat, et ibi tres vel plures boni testimonii viros, vel etiam, si expedire videbitur, totam viciniam iurare compellat, quod, si quis ibidem haereticos scierit vel aliquos occulta conventicula celebrantes, seu a communi conversatione fidelium vita et moribus dissidentes, eos episcopo vel archidiacono studeat indicare. Episcopus autem vel archidiaconus ad praesentiam suam convocet accusatos, qui, nisi se ad eorum arbitrium iuxta patriae consuetudinem ab obiecto reatu purgaverint, vel, si post purgationem exhibitam in pristinam relapsi fuerint perfidiam, episcoporum iudicio puniantur. Si qui vero ex eis, iurationem superstitione damnabili respuentes, iurare forte noluerint, ex hoc ipso haeretici iudicentur, et poenis, quae praenominatae sunt, percellantur*. Statuimus insuper, ut comites, barones, rectores et consules civitatum et aliorum locorum, iuxta commonitionem *archiepiscoporum et* episcoporum, praestito corporaliter iuramento promittant, quod *in omnibus praedictis* fideliter et efficaciter, quum ab eis *exinde* fuerint requisiti, ecclesiam contra haereticos et eorum complices adiuvabunt *et studebunt* bona fide iuxta officium et posse suum *ecclesiastica simul et imperiali statuta circa ea, quae diximus, exsecutioni mandare*. Si vero id observare noluerint, honore, quem obtinent, spolientur et ad alios nullatenus assumantur, eis nihilominus excommunicatione ligandis, et terris ipsorum interdicto ecclesiae supponendis. Civitas autem, quae his *decretalibus* institutis duxerit resistendum, vel contra commonitionem episcopi punire neglexerit resistentes, aliarum careat commercio civitatum, et episcopali se noverit dignitate privandam. *Omnes etiam fautores haereticorum tanquam perpetua infamia condemnatos, ab advocatione et testimonio et aliis publicis officiis decernimus repellendos*. Si qui vero fuerint, qui a lege dioecesanae iurisdictionis exempti, soli subiaceant sedis apostolicae potestati, nihilominus in his, quae *superius* sunt contra haereticos instituta, *archiepiscoporum vel* episcoporum subeant iudicium, et eis in hac parte, tanquam a sede apostolica delegatis, non obstantibus libertatis suae privilegiis, obsequantur. [*Praeterea etc.* (*cf. c.* 23. *de iure patr. III. *38.)]

Chapter X

Latin source headnote: The goods of heretics are confiscated and, in the lands of the Church, are applied to the treasury of the Church, and in the lands of the empire to the treasury of the secular judge; and this applies even if they have Catholic sons.

Innocent III.

The corruption of the world declining into old age *is savored not only by the corrupted elements, but is also attested by the most worthy of creatures, created in the image and likeness of the Creator and preferred by the*

privilege of dignity to the birds of heaven and beasts of the whole earth; and not only does it now decline as the world itself, as it were, fails, but it both infects and is infected with the rough rust of old age. For at the end most wretched man sins; he who could not persevere in paradise at the creation of himself and the world degenerates near the dissolution of himself and the globe; and, forgetful near the end of the ages of the price of his redemption, while he inserts himself into the diverse and vain knots of questions, he entangles himself in the snares of his own fraud and falls into the pit which he prepared. For behold, while the enemy man sows wicked seed over the Lord's harvest, the crops spring forth as tares, or rather are polluted; the wheat withers and vanishes into chaff; the moth in the flower and the foxes in the fruit strive to demolish the vineyard of the Lord. Indeed, under the New Testament a new offspring of Achan steals from the spoils of Jericho the golden tongue and the mantle, [and] the detestable offspring of Abiram, Dathan, and Korah wish with new censers to burn leavened incense upon new altars, while night declares knowledge to night, while the blind offers leadership to the blind, while heresies spring forth, and the heretic establishes as heir of his own heresy and damnation one whom he renders excluded from the divine inheritance. These are the tavern keepers who mix water with wine and offer the venom of the dragon in the golden cup of Babylon, having, according to the Apostle, an appearance of piety but utterly denying its power. Although diverse enactments have issued in the times of our predecessors against little foxes of this kind, indeed having diverse appearances but tails tied to one another because they agree in the same vanity, nevertheless the death-bearing plague could not yet be deadened to such a degree that, like a cancer, it did not creep further in secret and now pour forth openly the venom of its wickedness, while, cloaked by an appearance of religion, it both deceives many simple persons and seduces certain astute ones; he who was not a disciple of truth having become a master of error. Therefore, lest we, who, although around the eleventh hour, have been deputed by the evangelical householder among the laborers—indeed, more truly, over the laborers—of the vineyard of the Lord of Hosts, and to whom the sheep of Christ are committed by pastoral office, appear neither to capture the foxes demolishing the vineyard of the Lord nor to ward off the wolves from the sheep, and on this account may deservedly be called mute dogs unable to bark, and perish with the wicked husbandmen and be compared to the hireling, we considered that something more severe should be established against the defenders, receivers, supporters, and believers of heretics, so that those who cannot by themselves be recalled to the way of rectitude may nevertheless be confounded in their defenders, receivers, supporters, and even believers, and, when they see themselves avoided by all, may desire to be reconciled to the unity of all. Therefore, by the common counsel of our brothers and with the assent of the archbishops and bishops present at the Apostolic See, we most strictly prohibit anyone from presuming in any manner to receive or defend heretics, or in any way to favor or believe them, firmly establishing by the present decree that, if anyone shall have presumed to do any of these things, unless, admonished a first or second time, he takes care to cease from his presumption concerning this, he is made infamous by the law itself and is to be admitted neither to public offices or councils of cities, nor to electing others to such offices, nor to testimony. Let him also be incapable of making a will and not come to the succession of an inheritance. Moreover, no one is to be compelled to answer him concerning any business whatsoever. But if perhaps he is a judge, let his sentence obtain no force, nor are any causes to be brought to his hearing. If he is an advocate, let his patronage in no way be admitted. If a notary, let the instruments prepared by him be of no effect at all, but be condemned with their condemned author. We command the same to be observed in similar matters. But if he is a cleric, let him be deposed from every office and benefice, so that, where the guilt is greater, the vengeance exercised may be graver. But if anyone shall have contemned to avoid such persons after they have been denounced by the Church, let him know that he has incurred a sentence of anathema. But in lands subject to our temporal jurisdiction we establish that the goods of heretics are to be made public property, and in other lands we command the same to be done by secular authorities and princes, whom, if perhaps they shall have been negligent, we will and command to be compelled to execute this by ecclesiastical censure,

with appeal removed. Nor are their goods thereafter to revert to them unless, when they return to their heart and renounce association with heretics, someone shall have wished to show mercy to them, so that at least temporal punishment may correct one whom spiritual discipline does not correct. For since, according to lawful sanctions, when those guilty of injured majesty are punished capitally their goods are confiscated, with life alone preserved to their sons from mercy, how much more ought those who, erring in the faith of the Lord, offend Jesus Christ the Son of God to be cut off by ecclesiastical severity from our head, which is Christ, and despoiled of temporal goods, since it is far more grave to injure eternal than temporal majesty? Nor ought even the disinheritance of the orthodox sons in any way to impede the censure of severity of this kind under the pretext, as it were, of a certain compassion, since in many cases, even according to divine judgment, sons are punished temporally for their fathers, and according to the canonical sanctions vengeance is sometimes borne not only against the authors of crimes but also against the progeny of the condemned. [*We therefore decree, etc. Given at the Lateran on the eighth day before the Kalends of April, in the second year of our pontificate,* 1199.]

> Bona haereticorum confiscantur, et in terris ecclesiae applicantur fisco ecclesiae, in terris imperii iudicis saecularis fisco, et procedit, etiamsi catholicos habent filios.
>
> Innocentius III. Vergentis in senium saeculi corruptelam *non solum sapiunt elementa corrupta, sed etiam dignissima creaturarum ad imaginem et similitudinem condita Creatoris, praelata privilegio dignitatis volucribus coeli et bestiis universae terrae testatur, nec tantum eo quasi deficiente iam deficit, sed et inficit et inficitur scabra rubigine vetustatis. Peccat enim ad extremum homo miserrimus, et, qui non potuit in sui et mundi creatione in paradiso persistere, circa sui et orbis dissolutionem degenerat, et pretii suae redemptionis circa fines saeculorum oblitus, dum variis ac vanis quaestionum se nexibus ingerit, se ipsum laqueis suae fraudis innectit, et incidit in foveam, quam paravit. Ecce etenim, inimico homine messi dominicae superseminante semen iniquum, segetes in zizania pullulant, vel potius polluuntur, triticum arescit, et evanescit in paleas, in flore tinea et vulpes in fructu demoliri vineam Domini moliuntur. Nova siquidem sub novo testamento Achor progenies de spoliis Iericho lingulam auream palliolumque furatur, *[*et*] *Abyron, Dathan et Chore soboles detestanda novis thuribulis fermentatum thymiama novis volunt altaribus adolere, dum nox nocti scientiam indicat, dum caecus praebet caeco ducatum, dum haereses pullulant, et quem divinae reddit hereditatis expertem, suae constituit haereticus haeresis et damnationis heredem. Hi sunt caupones, qui aquam vino commiscent, et virus draconis in aureo calice Babylonis propinant, habentes, secundum Apostolum, speciem pietatis, virtutem autem eius penitus abnegantes. Licet autem contra vulpes huiusmodi parvulas, species quidem habentes diversas, sed caudas ad invicem colligatas, quia de vanitate conveniunt in id ipsum, diversa praedecessorum nostrorum temporibus emanaverint instituta: nondum tamen usque adeo pestis potuit mortificari mortifera, quin, sicut cancer, amplius serperet in occulto, et iam in aperto suae virus iniquitatis effundat, dum palliata specie religionis et multos decipit simplices, et quosdam seducit astutos, factus magister erroris, qui non fuerat discipulus veritatis. Ne autem nos, qui, licet circa horam undecimam inter operarios, immo verius super operarios vineae Domini Sabaoth sumus a patrefamilias evangelico deputati, et quibus ex officio pastorali sunt oves Christi commissae, nec capere vulpes demolientes vineam Domini, nec arcere lupos ab ovibus videamur, et ob hoc merito vocari possimus canes muti non valentes latrare, ac perdamur cum malis agricolis et mercenario comparemur: contra defensores, receptatores, fautores et credentes haereticorum aliquid severius duximus statuendum, ut, qui per se ad viam rectitudinis revocari non possunt, in suis tamen defensoribus, receptatoribus et fautoribus, ac etiam credentibus confundantur, et, quum se viderint ab omnibus evitari, reconciliari desiderent omnium unitati. De communi ergo fratrum nostrorum consilio, assensu quoque archiepiscoporum et episcoporum apud sedem apostolicam exsistentium, districtius inhibemus, ne quis haereticos receptare quomodolibet vel defensare, aut ipsis favere vel credere quoquo modo praesumat, praesenti decreto firmiter statuentes, ut, si quis aliquid horum facere praesumpserit, nisi primo secundove*

commonitus a sua super hoc curaverit praesumptione cessare, ipso iure sit factus infamis, nec ad publica officia vel consilia civitatum, nec ad eligendos aliquos ad huiusmodi, nec ad testimonium admittatur. Sit etiam intestabilis, nec ad hereditatis successionem accedat. Nullus praeterea ipsi cogatur super quocunque negotio respondere. Quodsi forte iudex exstiterit, eius sententia nullam obtineat firmitatem, nec causae aliquae ad eius audientiam perferantur. Si fuerit advocatus, eius patrocinium nullatenus admittatur. Si tabellio, instrumenta confecta per ipsum nullius sint penitus momenti, sed cum auctore damnato damnentur. In similibus etiam idem praecipimus observari. Si vero clericus fuerit, ab omni officio et beneficio deponatur, ut, in quo maior est culpa, gravior exerceatur vindicta. Si quis autem tales, postquam ab ecclesia fuerint denotati, contempserit evitare, anathematis se noverit sententiam incurrisse. In terris vero, temporali nostrae iurisdictioni subiectis, bona haereticorum statuimus publicari, et in aliis idem praecipimus fieri per potestates et principes saeculares, quos ad id exsequendum, si forte negligentes exstiterint, per censuram ecclesiasticam appellatione remota compelli volumus et mandamus. Nec ad eos bona eorum ulterius revertantur, nisi eis, ad cor revertentibus et abnegantibus haereticorum consortium, misereri aliquis voluerit, ut temporalis saltem poena corripiat quem spiritualis non corrigit disciplina. Quum enim secundum legitimas sanctiones, reis laesae maiestatis punitis capite, bona confiscentur eorum, filiis suis vita solummodo ex misericordia conservata: quanto magis, qui aberrantes in fide Domini Dei filium Iesum Christum offendunt, a capite nostro, quod est Christus, ecclesiastica debeat districtione praecidi, et bonis temporalibus spoliari, quum longe sit gravius aeternam quam temporalem laedere maiestatem? Nec huiusmodi severitatis censuram orthodoxorum *etiam* exheredatio filiorum quasi cuiusdam miserationis praetextu debet ullatenus impedire, quum in multis casibus etiam secundum divinum iudicium filii pro patribus temporaliter puniantur, et iuxta canonicas sanctiones quandoque feratur ultio non solum in auctores scelerum, sed etiam in progeniem damnatorum. [*Decernimus ergo etc. Dat. Lat. VIII. Kal. Apr. Pont. nostr. Ao. II.* 1199.]

Chapter XI

Latin source headnote: Advocates or notaries who favor heretics or their defenders, or give patronage to those litigating under them and write instruments for them, are infamous and suspended from that office.

The same.

If the earth were to rise against us [*and the stars of heaven were to reveal your iniquities and manifest your crimes to the whole world, so that not only men but even the elements themselves conspired for your destruction and ruin and blotted you from the face of the earth, sparing neither sex nor age, so that you were an everlasting reproach to all nations, no sufficient or worthy vengeance could be taken upon you. For you neither fear God nor dread man, nor distinguish between profane and holy, but set light as darkness and darkness as light, and call evil good and good evil. You contemn the acquisition of a good reputation, which fattens the bones, and a good name, which is preferred to many riches, and care nothing for infamy, since you are of a worn forehead and have assumed the shameless forehead of a harlot. For you have rotted in sins like beasts in their dung, so that the smoke and dung of your corruption has now infected nearly all the surrounding regions and, as we believe, provoked the Lord himself to nausea. Indeed, in sins you surpass all, having become more unbelieving than Jews and more cruel than pagans. For the Jews once fastened the Lord to the gibbet of the cross; but you, continually crucifying the same one in his members, lacerate him with reproaches and insults. And although they believe, albeit under the blindness of sin, that God the Father founded all visible and invisible things, very many of you believe that visible things were founded and created by Lucifer. Pagans raged in destroying and slaughtering the bodies of Christians, but you intend to kill the whole man, secretly stealing the souls of the faithful from Christ and destroying both men alike. But neither these nor those knew the Lord's Christ, on account of which they appear to have some excuse in their sins; but you, like the*

sons of Ephraim drawing the bow, were signed with the character of Christ and still wish to be reckoned publicly by Christian profession, yet, departing backward in heart and receding from the faith, you have been turned into a crooked bow, entangled in the snares of heretics and deformed by their depraved dogmas. Whence the prophetic word has truly been fulfilled in you: "The lamias have bared their breasts; they have suckled their young." For you have been made drunk not with the wine of compunction but with the gall of the dragon offered to you by heretics in the golden cup of Babylon. For now the waters have overflowed, and sins, submerged in the abyss of vices, have covered your heads. Now the deep has swallowed you, and the mouth of the infernal pit presses upon you. Indeed, you have fallen into the lake of desperation, since you contemn to rise from the deep. Whence we deservedly fear lest the wrath of God come upon the sons of distrust, and he now sharpen his sword like lightning and cause the judgment of his hand to act concerning you, and on the day of fury not be mindful of his mercy. But we, having compassion upon your miseries, wish to meet your impending ruin and, if we can, to close the open way of your destruction, knocking upon God with prayers and imitating the footsteps of Abraham, who, when the Lord wished to overthrow Sodom and Gomorrah, obtained by multiplied intercessions that he would not destroy all for the sake of ten just men. Indeed, we wish to discover whether some faithful persons remain among you who have not taken care to bend their knees before Baal and who, prostrated in sackcloth and ashes after the example of the Ninevites, may soften the wrath and fury of the Lord, so that many may be spared for the sake of a few and all may not perish together. Therefore, if anyone is of God, let him join himself to us, for we wish to bear the sword of Phinehas, to imitate the censure of Moses, and with Mattathias to punish those sacrificing to demons, so that, with the Lord's aid, the unbelieving and unworthy may be eliminated from the temple and the leaven of heretical depravity be savingly purged from the mass of the Lord's dough. Therefore, by apostolic writings we command and strictly enjoin you that, since certain of your fellow citizens, sons of Belial, in hatred of Christ and contempt of the Apostolic See and of us, after the prohibition made by us, attempted to elect as consuls certain believers of the Patarenes, and did not fear to appoint as chamberlain even the heresiarch himself, namely I. Tiniosus, a son of perdition, who, at the demand of his iniquities, already long ago was bound by the bond of excommunication at our command and still persists in his contumacy, you rise manfully against the electors themselves and those elected, and likewise their accomplices, resisting them magnanimously and powerfully, sharply assailing them, and laboring to frustrate and blunt their first attempts so that they cannot be rooted with a firm root. But so that the trunk may wither and dry up completely when the roots have been torn out, under threat of anathema we most strictly prohibit anyone from presuming to swear to them as consuls or rectors or in any other manner. But those who are bound to them by any oath, or who presumed to swear to them after an election of this kind, since there ought to be no participation of Christ with Belial or of light with darkness, and a faithful man is in no way bound to keep faith with an apostate who rashly violated the faith of the Creator, since this is laid down in the canons, we have considered that they are to be absolved from such an oath.] *Although many things have been issued and established by us and our predecessors against heretics, and you have no excuse in your sins as though you had forgotten ancient mandates*, because what is specifically enjoined is customarily feared more than what is generally commanded, we firmly prohibit you advocates and scriniaries from furnishing *the aforesaid* heretics, *while they remain in their contumacy and error—Patarenes or* believers, their supporters or defenders, *at any time* with aid, counsel, or favor in anything; nor are you to furnish your patronage to them in causes or acts, or to any litigating under their examination, and in no way are you to attempt to *prepare* public instruments or make *any* writings for them. But if *perhaps* you shall have presumed to act *contrary* to this, we decree that, suspended from your office, you are subject to perpetual infamy. *Moreover, lest the judges and scriniaries who consented to be associated with the aforesaid electors in a rash presumption of this kind glory in their wickedness, since he who abuses the power permitted to him deserves to lose his privilege, we judge them to be*

suspended from their office, decreeing as invalid and void whatever shall have been done or established by them and by the aforesaid electors. [*But the sentences, etc. Given, etc.,* 1205.]

Advocati vel notarii, haereticis vel eorum defensoribus faventes, aut sub eis litigantibus, patrocinantes, et pro eis instrumenta scribentes, infames sunt, et ab illo officio suspensi. Idem.

Si adversus nos terra consurgeret [*et iniquitates vestras coeli sidera revelarent, et manifestarent vestra scelera toti mundo, ut non solum homines, sed ipsa etiam elementa coniurarent in vestrum excidium et ruinam, et a terrae facie vos delerent, non parcentes sexui vel aetati, ut essetis cunctis gentibus in opprobrium sempiternum, ultio de vobis sumi non posset sufficiens sive digna. Vos enim nec Deum timetis, nec hominem formidatis, nec discernitis inter prophanum et sanctum, sed ponitis lucem tenebras, et tenebras lucem, et dicitis malum bonum, et bonum malum; vos famam bonam, quae impinguat ossa, et nomen bonum, quod multis divitiis antefertur, procurare contemnitis, et de infamia non curatis, quum sitis attritae frontis et impudibundam frontem assumpseritis meretricis. Computruistis namque in peccatis, sicut iumenta in stercore suo, ut fumus ac fimus putrefactionis vestrae iam fere circumiacentes regiones infecerit, ac ipsum Dominum, ut credimus, ad nauseam provocaverit. In peccatis quidem excellitis universos, facti perfidiores Iudaeis et crudeliores paganis. Iudaeis siquidem semel Dominum crucis patibulo affixerunt, sed vos, in membris suis iugiter crucifigentes eundem, opprobriis ipsum et contumeliis laceratis, et, quum illi credant, licet sub caecitate peccati, Deum Patrem omnia visibilia et invisibilia condidisse, plerique vestrum a Lucifero visibilia credunt esse condita et creata. Pagani furebant in perimendis Christianorum corporibus et mactandis, sed vos necare intenditis totum hominem, animas fidelium latenter Christo subripientes et utrumque hominem pariter perimentes. Verum, nec isti, nec illi Christum Domini cognoverunt, propter quod habere videntur excusationem aliquam in peccatis, sed vos, tanquam filii Effrem intendentes arcum, Christi fuistis charactere insigniti, et adhuc in publico Christiana vultis professione censeri, corde tamen abeuntes retrorsum ac recedentes a fide, conversi estis in arcum perversum, haereticorum laqueis irretiti, ac eorum pravis dogmatibus deformati. Unde, vere in vobis verbum propheticum est impletum: "Lamiae nudaverunt mammas, lactaverunt catulos suos." Potati enim estis non vino compunctionis, sed felle draconis, vobis ab haereticis propinato in aureo calice Babylonis. Iam enim inundaverunt aquae, operueruntque capita vestra peccata demersa in barathrum vitiorum. Iam absorbuit vos profundum, et urget super vos os suum puteus infernalis. In lacum desperationis siquidem incidistis, quum contemnatis resurgere a profundo. Unde, merito formidamus, ne in filios diffidentiae veniat ira Dei, et iam exacuat sicut fulgur gladium suum, et agat de vobis iudicium manus sua, nec in die furoris exsistat misericordiae suae memor. Nos autem, vestris miseriis compatientes, imminenti ruinae vestrae occurrere volumus et viam patulam exterminii vestri praecludere, si valemus, pulsantes Deum precibus, et Abrahae vestigia imitantes, qui a Domino, volente subvertere Sodomam et Gomorrham, multiplicatis intercessionibus impetravit, quod pro decem iustis non perderet universos. Experiri siquidem volumus, utrum inter vos aliqui fideles remanserint, qui ante Baal sua genua non curaverint, et, Ninivitarum exemplo sacco et cinere prosternati, iram Domini mitigent et furorem, ut parcatur multis pro paucis, nec simul pereant universi. Si quis igitur Dei est, adiungat se nobis, nam gestare volumus gladium Phinees, et animadversionem Mosaicam imitari, ac cum Mathathia punire daemonibus immolantes, ut auxiliante Domino eliminentur de templo perfidi et indigni, et fermentum haereticae pravitatis de massa conspersionis dominicae salubriter expurgetur. Ideoque per apostolica vobis scripta mandamus et districte praecipimus, quatenus, quum quidam vestri concives filii Belial in odium Christi et contemptum apostolicae sedis et nostrum, post inhibitionem a nobis factam, quosdam credentes Patarenarum in consules eligere attentaverint, ipsum etiam haeresiarcham, videlicet I. Tiniosi perditionis filium, qui exigentibus iniquitatibus suis de mandato nostro iam dudum vinculo exsistit excommunicationis adstrictus, et adhuc in contumacia sua perdurat, camerarium instituere non timentes, in electos ipsos et electores pariter ac eorum complices viriliter insurgatis, resistentes eis magnanimiter et potenter, ac eosdem acriter expugnantes, et, ne valeant radicari firma radice, primos ipsorum conatus frustrare ac contundere laboretis. Ut autem evulsis radicibus stipes arescat penitus et siccetur, sub interminatione anathematis districtius inhibemus, ne aliquis eis iurare tanquam consulibus vel rectoribus vel alio modo praesumat. Illos vero, qui eis aliquo iuramento tenentur adstricti, vel qui eis iurare post electionem huiusmodi praesumpserunt, quum nulla esse debeat participatio Christi ad Belial, vel lucis ad tenebras, et fidelis apostatae, qui fidem violavit temere creatoris, tenere fidem nullo modo*

teneatur, quum hoc cautum in canonibus habeatur, eos a tali iuramento duximus absolvendos.] *Licet autem a nobis et praedecessoribus nostris contra haereticos multa sint edita et statuta, nec habeatis aliquam excusationem in peccatis, quasi antiquorum fueritis obliti mandatorum, et* Quia plus timeri solet quod specialiter iniungitur, quam quod generaliter imperatur: vobis advocatis et scriniariis firmiter inhibemus, ne *praefatis* haereticis, *dum fuerint in sua contumacia et errore, Paterinis vel* credentibus, fautoribus vel defensoribus eorundem, *ullo tempore* in aliquo praestetis auxilium, consilium vel favorem, nec eis in causis vel in factis, vel aliquibus litigantibus sub eorum examine vestrum patrocinium praebeatis, et pro ipsis publica instrumenta *condere* vel *aliqua* scripta facere nullatenus attentetis. Quodsi *forte* contra *facere* praesumpseritis, ab officio vestro suspensos perpetuae vos decernimus infamiae subiacere. *Ceterum ne iudices et scriniarii qui consenserunt praefatis electis in huiusmodi praesumtione temeraria sociari de sua nequitia glorientur, quum privilegium mereatur amittere, qui permissa sibi abutitur potestate, eos ab officio suo iudicamus esse suspensos, decernentes irritum et inane quicquid per ipsos et electos praedictos factum fuerit vel statutum.* [*Sententias autem etc. Datum etc.* 1205.]

Chapter XII

Latin source headnote: Laypersons are not to preach, hold secret conventicles, or censure priests.

The same, to all the faithful of Christ established both in the city of Metz and in its diocese.

Since from the office of the apostolate enjoined *upon us we have been made, according to the Apostle, debtors to the wise and the unwise, it is fitting for us to be solicitous for the salvation of all, so that we may both draw the wicked back from vices and foster the good in virtues. But there is need for greater discretion when vices secretly enter under the appearance of virtues and the angel of Satan feigns and transforms himself into an angel of light. Indeed, our venerable brother, the Bishop of Metz, signified to us through his letters that, both in the diocese and in the city of Metz, a multitude of laymen and women, drawn in a certain manner by no slight desire for the scriptures, caused the Gospels, the epistles of Paul, the Psalter, the Moralia, Job, and several other books to be translated for themselves into the Gallic tongue, applying themselves to a translation of this kind so willingly—would that also prudently—that in secret discussions laymen and women presume to belch forth such things among themselves and to preach to one another. They also spurn the company of those who do not involve themselves in like things and consider as strangers to themselves those who do not apply their ears and minds to such things. When certain of the parish priests wished to correct them concerning these things, they* [*resisted them*] *to their face, attempting to introduce arguments from the scriptures that they ought not in any way to be prohibited from these things. Certain of them also disdain the simplicity of their priests and, when the word of salvation is proposed to them by those priests, murmur secretly that they have it better in their booklets and can express it more prudently themselves.* Although the desire to understand the divine scriptures, and the pursuit of exhorting according to them, is not to be censured but rather commended, nevertheless certain laypersons appear deservedly to be reproved in that they celebrate *such* secret conventicles *of their own,* usurp for themselves the office of preaching Christ, mock the simplicity of priests, and spurn the company of those who do not adhere to such things.

For God, the true light which illuminates every man coming into this world, so hates the works of darkness that, when he was about to send his Apostles into the whole world to preach the gospel to every creature, he commanded them, saying openly: "What I say to you in darkness, say in the light; and what you hear in the ear, preach upon the housetops," *manifestly announcing through this that evangelical preaching is not to be proposed in secret conventicles, as heretics do, but publicly in churches according to Catholic custom. For, according to the testimony of Truth, everyone who does evil hates the light and does not come to the light, lest his works be reproved. But he who does the truth comes to the light, so that his works may be*

manifested, because they were done in God. On account of this, when the high priest had questioned Jesus concerning his disciples and his doctrine, he responded: "I have spoken openly to the world; I have always taught in the synagogue and in the temple, in which all the Jews come together; and in secret I have spoken nothing." Moreover, if anyone objects that, according to the Lord's precept, what is holy is not to be given to dogs, nor are pearls to be cast before swine, since Christ himself said, not to all but to the Apostles alone, "To you it is given to know the mystery of the kingdom of God, but to the rest in parables," let him understand that the dogs and swine are not those who gratefully receive what is holy and willingly accept pearls, but those who tear apart what is holy and contemn pearls —such as those who do not venerate evangelical words and ecclesiastical sacraments as Catholics, but rather abominate them as heretics, always barking against them and blaspheming, whom Paul the Apostle teaches are to be avoided after a first and second admonition. But the secret mysteries of the faith are not to be expounded indiscriminately to all, since they cannot be understood indiscriminately by all, but only to those who can grasp them with a faithful understanding. On account of this the Apostle says to the more simple: "As to little ones in Christ, I gave you milk to drink, not meat"; for solid food belongs to the mature, as he himself said to others: "We speak wisdom among the perfect, but among you I judged myself to know nothing except Jesus Christ, and him crucified." For the profundity of divine scripture is so great that not only simple and unlettered persons but even the prudent and learned are not fully sufficient to investigate its understanding. On account of this scripture says, "Because many have failed while searching the scrutiny." Whence it was rightly established long ago in the divine law that the beast which touched the mountain was to be stoned, namely lest any simple and unlearned person presume to reach the sublimity of sacred scripture or even to preach to others. For it is written: "You shall not seek things higher than yourself." On account of this the Apostle says: "Not to be more wise than it is fitting to be wise, but to be wise unto sobriety." For just as there are many members of the body but all *members* do not have the same function, so there are many orders in the Church, but not all have the same office, because, according to the Apostle, "the Lord gave *some* as apostles, others as prophets, and others as teachers, etc." Therefore, since the order of teachers is, as it were, principal in the Church, no one ought indiscriminately to usurp for himself the office of preaching. For according to the Apostle, "How shall they preach unless they are sent?" and Truth itself commanded the Apostles: "Ask the Lord of the harvest that he send laborers into his harvest." But if perhaps someone astutely responds that such persons are invisibly sent by God, even if they are not visibly sent by man, since an invisible mission is much more worthy than a visible one and a divine mission far better than a human one—*whence John the Baptist is not read to have been sent by man but by God, as the Evangelist testifies: "There was a man sent by God whose name was John"*—it can *and certainly ought* reasonably to be answered that, since that interior mission is hidden, it does not suffice for anyone merely to assert that he himself is sent by God, since every heretic makes this assertion; rather, he must establish that invisible mission through the working of a miracle or through a special testimony of scripture. Whence, when the Lord wished to send Moses into Egypt to the children of Israel so that they would believe that he was sent by him, he gave him a sign: that he would turn his rod into a serpent and again reform the *serpent into* a rod. John the Baptist also brought forth from scripture a special testimony of his mission, saying *to the priests and Levites who had been sent to ask who he was and why he had assumed the office of baptizing*: "I am the voice of one crying in the wilderness: make straight the way of the Lord, as Isaiah the Prophet said." *Therefore, one who says that he is sent by God, when he has not been sent by man, is not to be believed unless he brings forth concerning himself a special testimony from the scriptures or works an evident miracle. For concerning those who are read to have been sent by God, the Evangelist also testifies that they went forth and preached everywhere, the Lord cooperating and confirming the word by the signs which followed.*

Although knowledge is very necessary to priests for teaching, because, according to the prophetic word, "the lips of the priest guard knowledge, and they seek the law from his mouth," nevertheless even simple priests are not to be disparaged by learned men, since the priestly office ought to be honored in them; on account of which the Lord commanded in the law: "You shall not disparage the gods," understanding by this the priests, who on account of the excellence of their order and the dignity of their office are designated by the name of gods. *According to which he says elsewhere concerning a servant wishing to remain with his master that the master is to offer him to the gods. For since, according to the word of the Apostle, a servant stands or falls to his own master, certainly a priest ought to be chastised in the spirit of meekness by the bishop to whose correction he is subject, but not to be reproved in the spirit of pride by the people over whose correction he is placed, since, according to the Lord's precept, father and mother ought not to be cursed but rather honored. This ought to be understood much more strongly concerning a spiritual father than a carnal one.* Nor should anyone defend the audacity of his presumption by that example in which an ass is read to have reproved the Prophet, or because the Lord says: "Which of you shall reprove me of sin? And if I have spoken badly, bear witness concerning the evil"; since it is one thing secretly to correct a brother sinning against oneself, which *certainly* everyone is bound to do according to the evangelical rule—in which case, indeed, it can be understood that Balaam was corrected by the ass—and it is another thing openly to reprove one's father *even when he is at fault, and especially to call him a fool for being simple,* which is certainly permitted to no one according to evangelical Truth: "For he who even says to his brother, 'Fool,' shall be guilty of the fire of Gehenna." Again, it is one thing for a prelate, confident of his own innocence, voluntarily to submit himself to the accusation of his subjects, in which case the aforesaid word of the Lord ought to be understood; and it is another for a subject to rise rashly against a prelate, not so much with the intention of reproving as of disparaging him, when the necessity *of obeying* rather lies upon him. But if perhaps necessity should demand that a priest, as useless and unworthy, ought to be removed from the care of the flock, action is to be taken in an orderly manner before the bishop, to whose office both the institution and destitution of priests are known to pertain. *But that is to be spurned by all as proceeding from the arrogance of the Pharisees: that, as though they alone were just, they spurn the rest, since until now, from the beginning of the nascent Church, there have been many holy men who are read neither to have been such nor to have adhered to such persons, while persons of this kind are read to have newly arisen. Unless they are content to be taught rather than to teach, they will perhaps pertain to those to whom the Lord says: "Do not become many masters." Therefore, children, because we love you with paternal affection, lest under the pretext of truth you fall into the pit of error and under the appearance of virtues into the snare of vices, we earnestly ask, admonish, and exhort your whole body in the Lord, enjoining upon you for the remission of your sins that you recall your tongue and mind from those things which we have marked above as reprehensible, observing the Catholic faith and ecclesiastical rule, lest it happen that you are circumvented by fallacious words or even circumvent others. For unless you humbly and devoutly receive our correction and paternal admonition, after the oil we shall pour in the wine, applying ecclesiastical severity, so that those unwilling to obey voluntarily may learn to acquiesce even unwillingly.* [*Given at the Lateran,* 1199.]

> Laici non praedicent, nec occulta conventicula faciant, nec sacerdotes reprehendant.
>
> Idem universis Christi fidelibus, tam in urbe Metensi quam in eius dioecesi constitutis.
>
> Quum ex iniuncto *nobis apostolatus officio facti simus, secundum Apostolum, sapientibus et insipientibus debitores, pro universorum salute nos oportet esse sollicitos, ut et malos retrahamus a vitiis, et bonos in virtutibus foveamus. Tunc autem opus est discretione maiori, quum vitia sub specie virtutum occulte subintrant, et angelus Satanae se in angelum lucis simulat et transformat. Sane, significavit nobis venerabilis frater noster episcopus Metensis per literas suas, quod*

tam in dioecesi quam urbe Metensi laicorum et mulierum multitudo, non modico tracta quodammodo desiderio scripturarum, evangelia, epistolas Pauli, Psalterium, Moralia, Iob et plures alios libros sibi fecit in gallico sermone transferri, translationi huiusmodi adeo libenter, utinam autem et prudenter, intendens, ut secretis quaestionibus talia inter se laici et mulieres eructare praesumant et sibi invicem praedicare; qui etiam eorum aspernantur consortium, qui se similibus non immiscent, et a se reputant alienos qui aures et animos talibus non apponunt. Quos quum aliqui parochialium sacerdotum super his corripere voluissent, ipsi [*eis*] *in faciem restiterunt, conantes rationes inducere de scripturis, quod non ab his deberent aliquatenus prohiberi. Quidam etiam ex eis simplicitatem sacerdotum suorum fastidiunt, et, quum ipsis per eos verbum salutis proponitur, se melius habere in libellis suis, et prudentius se posse id eloqui, submurmurant in occulto*. Licet autem desiderium intelligendi divinas scripturas, et secundum eas studium adhortandi, reprehendendum non sit, sed potius commendandum: in eo tamen apparent quidam laici merito arguendi, quod *tales* occulta conventicula *sua* celebrant, officium praedicationis Christi sibi usurpant, sacerdotum simplicitatem eludunt, et eorum consortium aspernantur, qui talibus non inhaerent. Deus enim lux vera, quae omnem hominem venientem in hunc mundum illuminat, in tantum odit opera tenebrarum, ut Apostolos suos in mundum universum praedicaturos evangelium omni creaturae missurus, eis praeceperit, aperte dicens: "Quod dico vobis in tenebris, dicite in lumine, et, quod in aure auditis, praedicate super tecta," *per hoc manifeste denuncians, quod evangelica praedicatio non in occultis conventiculis, sicut haeretici faciunt, sed in ecclesiis iuxta morem catholicum est publice proponenda. Nam iuxta testimonium veritatis omnis, qui male agit, odit lucem, et ad lucem non venit, ne eius opera arguantur. Qui autem facit veritatem, venit ad lucem, ut manifestentur opera eius, quia in Deo sunt facta. Propter quod, quum pontifex interrogasset Iesum de discipulis suis, et de doctrina eius, respondit: "Ego palam locutus sum mundo, ego semper docui in synagoga et in templo, in quo omnes Iudaei conveniunt, et in occulto locutus sum nihil." Porro, si quis obiiciat, quod iuxta praeceptum dominicum non est sanctum dandum canibus, neque margaritae mittendae sunt ante porcos, quum et ipse Christus non omnibus quidem, sed solis Apostolis dixerit: "Vobis datum est nosse mysterium regni Dei, ceteris autem in parabolis:" intelligat, canes et porcos non eos esse, qui sanctum gratanter accipiunt et margaritas libenter acceptant, sed illos, qui sanctum dilacerant et margaritas contemnunt, quales sunt, qui evangelica verba et ecclesiastica sacramenta non ut catholici venerantur, sed abominantur potius ut haeretici, oblatrantes semper et blasphemantes, quos Paulus Apostolus post primam et secundam commonitionem docet esse vitandos. Arcana vero fidei sacramenta non sunt passim omnibus exponenda, quum non passim ab omnibus possint intelligi, sed eis tantum, qui ea fideli possunt concipere intellectu; propter quod simplicioribus inquit Apostolus: "Quasi parvulis in Christo lac potum dedi vobis, non escam;" maiorum est enim solidus cibus, sicut aliis ipse dicebat: "Sapientiam loquimur inter perfectos, inter vos autem nihil iudicavi me scire, nisi Iesum Christum, et hunc crucifixum." Tanta est enim divinae scripturae profunditas, ut non solum simplices et illiterati, sed etiam prudentes et docti non plene sufficiant ad ipsius intelligentiam indagandam. Propter quod dicit scriptura: "Quia multi defecerunt scrutantes scrutinio." Unde recte fuit olim in lege divina statutum, ut bestia, quae montem tetigerit, lapidetur, ne videlicet simplex aliquis et indoctus praesumat ad sublimitatem scripturae sacrae pertingere, vel etiam aliis praedicare. Scriptum est enim: "Altiora te ne quaesieris." Propter quod dicit Apostolus: "Non plus sapere quam oportet sapere, sed sapere** **ad sobrietatem." *Sicut enim multa sunt membra corporis, omnia vero membra non eundem actum habent, ita multi sunt ordines in ecclesia, sed non omnes idem habent officium, quia secundum Apostolum "alios quidem Dominus dedit apostolos, alios prophetas, alios autem doctores, etc." Quum igitur doctorum ordo sit quasi praecipuus in ecclesia, non debet sibi quisquam indifferenter praedicationis officium usurpare. Nam secundum Apostolum: "quomodo praedicabunt, nisi mittantur?" et veritas ipsa praecepit Apostolis: "Rogate Dominum messis, ut mittat operarios in messem suam." Quodsi forte quis argute respondeat, quia tales invisibiliter mittuntur a Deo, etsi non visibiliter mittantur ab homine, quum invisibilis missio multo sit dignior quam visibilis, et divina longe melior quam humana, unde Ioannes Baptista non legitur missus ab homine, sed a Deo, sicut Evangelista, testatur: "Quia fuit homo missus a Deo, cui nomen erat Ioannes," potest et debet utique rationabiliter responderi, quod, quum interior illa missio sit occulta, non sufficit cuiquam nude tantum asserere, quod ipse sit missus a Deo, quum hoc quilibet haereticus asseveret: sed oportet, quod adstruat illam invisibilem missionem per operationem miraculi, vel per scripturae testimonium speciale. Unde, quum Dominus vellet mittere Moysen in Aegyptum ad filios*

Israel, ut crederent ei, quod mitteretur ab ipso, dedit ei signum, ut converteret virgam in colubrum, et colubrum in virgam iterum reformaret. Ioannes quoque Baptista speciale suae missionis testimonium protulit de scriptura, dicens sacerdotibus et Levitis, qui missi fuerant ad interrogandum, quis esset, et quare baptizandi officium assumpsisset: "Ego vox clamantis in deserto, dirigite viam Domino, sicut ait Esaias Propheta." Non est ergo credendum ei, qui dicit se missum a Deo, quum non sit missus ab homine, nisi de se speciale proferat testimonium de scripturis, vel evidens miraculum operetur. Nam et de his, qui missi leguntur a Deo, Evangelista testatur, quod ipsi profecti praedicabant ubique, Domino cooperante et sermonem confirmante sequentibus signis. Licet autem scientia sit valde necessaria sacerdotibus ad doctrinam, quia iuxta verbum propheticum "labia sacerdotis custodiunt scientiam, et legem exquirunt ex ore eius:" non est tamen simplicibus sacerdotibus etiam a scholasticis detrahendum, quum in eis sacerdotale officium debeat honorari, propter quod Dominus in lege praecepit: "Diis non detrahes," sacerdotes intelligens, qui propter excellentiam ordinis et officii dignitatem deorum nomine nuncupantur. Iuxta quod alibi dicit de servo, volente apud dominum remanere, ut dominus offerat eum diis. Quum enim iuxta verbum Apostoli servus suo domino stet aut cadat, profecto sacerdos ab episcopo, cuius correctioni est subiectus, debet in mansuetudinis spiritu castigari, non autem a populo, cuius est correctioni praepositus, in spiritu superbiae reprehendi, quum iuxta praeceptum dominicum pater et mater non debeant maledici, sed potius honorari. Quod de spirituali patre multo fortius debet intelligi quam carnali. Nec quisquam suae praesumptionis audaciam illo defendat exemplo, quod asina legitur reprehendisse Prophetam, vel quod Dominus ait: "Quis ex vobis arguet me de peccato? Et, si male locutus sum, testimonium perhibe de malo;" quum aliud sit fratrem in se peccantem occulte corripere, quod utique quisque tenetur efficere secundum regulam evangelicam (in quo casu sane potest intelligi, quod Balaam fuit correptus ab asina), et aliud est patrem suum etiam delinquentem reprehendere manifeste, ac praecipue fatuum pro simplici appellare, quod utique nulli licet secundum evangelicam veritatem: "nam qui etiam dicit fratri, fatue, reus erit gehennae ignis". Rursus aliud est, quod praelatus sponte, de sua confisus innocentia, subditorum se accusationi supponit, in quo casu praemissum Domini verbum debet intelligi; et aliud est, quod subditus non tam animo reprehendendi, quam detrahendi exsurgit temerarius in praelatum, quum ei potius incumbat necessitas *obsequendi. Quodsi forte necessitas postularet, ut sacerdos tanquam inutilis et indignus a cura gregis debeat removeri: agendum est ordinate apud episcopum, ad cuius officium tam institutio quam destitutio sacerdotum noscitur pertinere. *Illud autem, tanquam de supercilio Pharisaeorum procedens, debet ab omnibus aspernari, quod tanquam ipsi soli sint iusti, ceteros aspernantur quum et hactenus ab initio nascentis ecclesiae multi fuerint viri sancti, qui nec tales fuisse leguntur nec talibus adhaesisse, quum de novo tales surrexisse legantur: qui nisi contenti sint doceri potius quam docere, ad illos forsitan pertinebunt quibus Dominus ait: "Nolite fieri plures magistri." Nos ergo, filii, quia paterno vos affectu diligimus, ne sub praetextu veritatis in foveam decidatis erroris et sub specie virtutum in laqueum vitiorum universitatem vestram rogamus attentius, monemus et exhortamur in Domino in remissionem vobis peccatorum iniungentes, quatenus ab iis quae superius reprehensibilia denotavimus, linguam et animum revocetis, fidem catholicam et regulam ecclesiasticam observantes, ne vos verbis fallacibus circumveniri vel etiam circumvenire contingat: quia nisi correctionem nostram et admonitionem paternam receperitis humiliter et devote, nos post oleum infundemus et vinum, severitatem ecclesiasticam apponentes; ut qui noluerint obedire spontanei, discant acquiescere vel inviti. *[*Datum Laterani* 1199.]

Chapter XIII

Latin source headnote: All heretics, by whatever names they are named, are excommunicated. This it says as far as § *But those condemned*. — § 1. Those condemned for heresy are punished by the secular judge, and the goods of lay heretics are confiscated, while the goods of clerics are applied to the churches in which they were beneficed. This it says as far as § *But those who*. The Sicilian Abbot. — § 2. If one suspected of heresy does not purge himself, he is excommunicated at the judgment of the superior, and, remaining in excommunication for a year, is condemned as a heretic. This it says as far

as § *But let them be admonished*. The Sicilian Abbot. — § 3. Secular authorities, perpetual or temporary, are bound to swear that to the extent of their powers they will exterminate all heretics condemned by the Church; and a temporal lord who does not purge his land of heretics is excommunicated. And if he persists in excommunication for a year, this is announced to the Pope, who will absolve his faithful from their oath and expose his land to the faithful, preserving the right of the principal lord unless he too is at fault. This it says as far as § *But Catholics*. The Sicilian Abbot. — § 4. Those signed with the cross for the extermination of heretics enjoy the privilege granted to those signed with the cross for the aid of the Holy Land. This it says as far as § *Believers*. The Abbot. — § 5. There the penalty for believers in, receivers of, and defenders of heretics is set down, first for laypersons and secondly for clerics, as far as § *Because*. The Abbot. — § 6. No one ought to assume for himself the office of preaching unless a license concerning this is granted to him by law, the Apostolic See, or the diocesan bishop; otherwise he is excommunicated, and, unless he comes to his senses, another penalty is imposed. This it says as far as § *We add*. The Abbot. — § 7. Archbishops and bishops who regard the provinces and dioceses of their inferiors as suspected of heresy are to visit them, at least once a year, by themselves or through other suitable persons. They also ought, if this appears expedient, to exact an oath from those of the neighborhood to reveal heretics and those celebrating secret conventicles; once revealed, relapsed persons are to be punished canonically, and those resisting the oath are to be condemned as heretics. This it says as far as § *We will*. The Abbot. — § 8. A bishop negligent in pursuing heresy is to be removed from episcopal dignity and another suitable person substituted. This it says as far as the end. The Sicilian Abbot.

The same, in the general council.

We therefore excommunicate and anathematize every heresy raising itself against this holy, orthodox, and Catholic faith which we have expounded above, condemning all heretics, by whatever names they may be designated, indeed having diverse faces but tails tied to one another, because they agree in the same vanity.

§ 1. But those condemned are to be left to the secular authorities present or to their bailiffs, to be punished by due censure, clerics first having been degraded from their orders, so that the goods of those thus condemned, if they are laypersons, are confiscated; but if they are clerics, they are to be applied to the churches from which they received their stipends.

§ 2. But those who shall have been found notable by suspicion alone, unless, according to consideration of the suspicion and the character of the person, they shall have demonstrated their own innocence by suitable purgation, are to be struck with the sword of anathema and avoided by all until condign satisfaction, so that, if they shall have persisted in excommunication for a year, from then on they are to be condemned as heretics.

§ 3. But secular authorities, whatever offices they exercise, are to be admonished and induced—and, if necessary, compelled by ecclesiastical censure—so that, just as they desire to be reputed and held faithful, they publicly furnish an oath for the defense of the faith that from lands subject to their jurisdiction they will in good faith strive, to the extent of their powers, to exterminate all heretics denounced by the Church, so that henceforth, whenever anyone shall have been assumed into an authority, whether perpetual or temporary, he is bound to confirm this chapter by oath. But if a temporal lord, requested and admonished by the Church, shall have neglected to purge his land from [*this*] heretical foulness, let him be bound by the bond of excommunication by the metropolitan and

the other bishops of the province; and, if he shall have contemned to make satisfaction, let this be signified within a year to the Supreme Pontiff, so that from then on he may declare the lord's vassals absolved from their fidelity to him and expose the land to occupation by Catholics, who, the heretics having been exterminated, may possess it without any contradiction and preserve it in purity of faith, saving the right of the principal lord, provided that he himself furnishes no obstacle concerning this and opposes no impediment, the same law nevertheless being observed concerning those who do not have principal lords.

§ 4. But Catholics who, having assumed the sign of the cross, shall have girded themselves for the extermination of heretics are to enjoy that indulgence and be fortified by that holy privilege which are granted to those proceeding to the aid of the Holy Land.

§ 5. Moreover, we decree that believers in, receivers of, defenders of, and supporters of heretics are subject to excommunication, firmly establishing that, after anyone of this kind shall have been marked by excommunication, if he shall have contemned to make satisfaction within a year, from then on he is made infamous by the law itself and is to be admitted neither to public offices or councils, nor to electing others to such offices, nor to testimony. Let him also be incapable of making a will, so that he neither has the free faculty of making a testament nor comes to the succession of an inheritance. Moreover, no one is to be compelled to answer him concerning any business whatsoever, but he is to be compelled to answer others. But if perhaps he is a judge, let his sentence obtain no force, nor are any causes to be brought to his hearing. If he is an advocate, let his patronage in no way be admitted. If a notary, let the instruments prepared by him be of no effect, but be condemned with their condemned author. And we command the same to be observed in similar matters. But if he is a cleric, let him be deposed from every office and benefice, so that, where the guilt is greater, the vengeance exercised may be graver. But if any shall have contemned to avoid such persons after they have been denounced by the Church, let them be struck by a sentence of excommunication until suitable satisfaction. Indeed, clerics are not to exhibit ecclesiastical sacraments to pestilent persons of this kind, nor presume to deliver them to Christian burial, nor receive their alms or offerings; otherwise, let them be deprived of their office, to which they are never to be restored without a special indult of the Apostolic See. Similarly, any regulars whatsoever, upon whom this also is to be inflicted: that their privileges are not to be observed in that diocese in which they presumed to perpetrate such excesses.

§ 6. But because certain persons, denying the power of piety under its appearance, as the Apostle says, claim for themselves the authority of preaching, although the same Apostle says, "How shall they preach unless they are sent?", all who, either prohibited or not sent, without authority received from the Apostolic See or the Catholic bishop of the place, shall have presumed publicly or privately to usurp the office of preaching, are to be bound by the bond of excommunication and, unless they come to their senses as quickly as possible, struck with another suitable penalty.

§ 7. We add moreover that every archbishop or bishop, by himself, by his archdeacon, or by other honorable and suitable persons, is to go around, twice or at least once in the year, his own parish in which it shall be reported that heretics dwell; and there he is to compel three or more men of good testimony—or even, if it shall appear expedient, the entire neighborhood—to swear that, if anyone there knows any heretics, or persons celebrating secret conventicles, or persons differing from the common association of the faithful in life and morals, he will take care to indicate them to the

bishop. But the bishop himself is to summon the accused to his presence; unless they shall have purged themselves from the charge brought against them, or if, after purgation has been rendered, they shall have fallen back into their former unbelief, they are to be punished canonically. But if any of them, rejecting the religious obligation of an oath with damnable obstinacy, should perhaps be unwilling to swear, by that very fact let them be reputed heretics.

§ 8. We therefore will and command, and strictly enjoin in virtue of obedience, that bishops diligently keep watch throughout their dioceses for the effective execution of these things if they wish to escape canonical punishment. For if any bishop shall have been negligent or remiss in purging from his diocese the leaven of heretical depravity, when this shall appear from certain indications, let him be deposed from the episcopal office and another suitable person, who wills and is able to confound heretical depravity, be substituted in his place.

> Excommunicati sunt omnes haeretici, quibuscunque nominibus nominentur. H. d. usque ad § Damnati. - § 1. Damnati de haeresi per saecularem iudicem puniuntur, et bona laicorum haereticorum confiscantur, et clericorum bona applicantur ecclesiis, ubi beneficiati erant. H. d. usque ad § Qui autem. Abbas Siculus. - § 2. Si suspectus de haeresi se non purgat, ad arbitrium superioris excommunicatur, et exsistens per annum in excommunicatione, ut haereticus, damnatur. H. d. usque ad § Moneantur. Abbas Siculus. - § 3. Potestates saeculares perpetuae vel temporales iurare tenentur universos haereticos ab ecclesia damnatos pro viribus exterminare, et temporalis dominus, non purgans terram suam haereticis, excommunicatur. Et si perstiterit in excommunicatione per annum, nunciatur Papae, qui fideles eius a iuramento absolvet, et eius terram fidelibus exponet, salvo iure principalis domini; nisi et ipse sit in culpa. H. d. usque ad § Catholici. Abbas Siculus. - § 4. Cruce signati ad exterminationem haereticorum, gaudent privilegio concesso cruce signatis in subsidium terrae sanctae. H. d. usque ad § Credentes. Abbas. - § 5. Ibi ponitur poena credentium, receptatorum et defendentium haereticos, primo laicorum, secundo clericorum, usque ad § Quia. Abbas. - § 6. Nullus debet sibi officium praedicandi assumere, nisi super hoc sibi a iure vel a sede apostolica vel a dioecesano episcopo licentia concedatur; alias excommunicatur, et, nisi resipuerit, alia poena imponitur. H. d. usque ad § Adiicimus. Abbas. - § 7. Archiepiscopi et episcopi, inferiorum suarum provincias et dioeceses suspectas habentes de haeresi, saltem semel in anno per se vel per alios idoneos visitent; qui etiam debent, si hoc expedire videbitur, exigere iuramentum ab illis de vicinia ad revelandos haereticos et occulta conventicula celebrantes, quos revelatos relapsos canonice punient, et renitentes iurare, ut haeretici condemnentur. H. d. usque ad § Volumus. Abbas. - § 8. Episcopus negligens in haeresi persequenda, a dignitate episcopali est removendus, et alius idoneus est surrogandus. H. d. usque ad finem Abbas Siculus.
>
> Idem in concilio generali. Excommunicamus itaque et anathematizamus omnem haeresim, extollentem se adversus hanc sanctam, orthodoxam et catholicam fidem, quam superius exposuimus, condemnantes haereticos universos, quibuscunque nominibus censeantur, facies quidem diversas habentes, sed caudas ad invicem colligatas, quia de vanitate conveniunt in id ipsum. § 1. Damnati vero praesentibus saecularibus potestatibus aut eorum ballivis relinquantur animadversione debita puniendi, clericis prius a suis ordinibus degradatis, ita, quod bona huiusmodi damnatorum, si laici fuerint, confiscentur: si vero clerici, applicentur ecclesiis, a quibus stipendia receperunt. § 2. Qui autem inventi fuerint sola suspicione notabiles, nisi iuxta considerationem suspicionis qualitatemque personae propriam innocentiam congrua purgatione monstraverint, anathematis gladio feriantur, et usque ad satisfactionem condignam ab omnibus evitentur, ita, quod, si per annum in excommunicatione perstiterint, ex tunc velut haeretici condemnentur. § 3. Moneantur autem et inducantur, et, si necesse fuerit, per censuram ecclesiasticam compellantur saeculares potestates, quibuscunque fungantur officiis, ut, sicut reputari cupiunt et haberi fideles, ita pro defensione fidei praestent publice iuramentum, quod

de terris suae iurisdictioni subiectis universos haereticos, ab ecclesia denotatos, bona fide pro viribus exterminare studebunt, ita, quod amodo, quandocunque quis fuerit in potestatem sive perpetuam sive temporalem assumptus, hoc teneatur capitulum iuramento firmare. Si vero dominus temporalis, requisitus et monitus ab ecclesia, suam terram purgare neglexerit ab [*hac*] haeretica foeditate, per metropolitanum et ceteros comprovinciales episcopos excommunicationis vinculo innodetur, et, si satisfacere contempserit, infra annum significetur hoc summo Pontifici, ut ex tunc ipse vasallos ab eius fidelitate denunciet absolutos, et terram exponat catholicis occupandam, qui eam, exterminatis haereticis, absque ulla contradictione possideant, et in fidei puritate conservent, salvo iure domini principalis, dummodo super hoc ipse nullum praestet obstaculum, nec aliquod impedimentum opponat, eadem nihilominus lege servata circa eos, qui non habent dominos principales. § 4. Catholici vero, qui, crucis assumpto charactere, ad haereticorum exterminium se accinxerint, illa gaudeant indulgentia, illoque sancto privilegio sint muniti, quae accedentibus in terrae sanctae subsidium conceduntur. § 5. Credentes praeterea, receptatores, defensores et fautores haereticorum excommunicationi decernimus subiacere, firmiter statuentes, ut, postquam quis talium fuerit excommunicatione notatus, si satisfacere contempserit infra annum, ex tunc ipso iure sit factus infamis, nec ad publica officia seu consilia, nec ad eligendos aliquos ad huiusmodi, nec ad testimonium admittatur. Sit etiam intestabilis, ut nec testandi liberam habeat facultatem nec ad hereditatis successionem accedat. Nullus praeterea ipsi super quocunque negotio, sed ipse aliis respondere cogatur. Quodsi forte iudex exstiterit, eius sententia nullam obtineat firmitatem, nec causae aliquae ad eius audientiam perferantur. Si fuerit advocatus, eius patrocinium nullatenus admittatur; si tabellio, instrumenta confecta per ipsum nullius sint momenti, sed cum auctore damnato damnentur. Et in similibus idem praecipimus observari. Si vero clericus fuerit, ab omni officio et beneficio deponatur, ut, in quo maior est culpa, gravior exerceatur vindicta. Si qui autem tales, postquam ab ecclesia fuerint denotati, evitare contempserint, excommunicationis sententia usque ad satisfactionem idoneam percellantur. Sane, clerici non exhibeant huiusmodi pestilentibus ecclesiastica sacramenta, nec eos Christianae praesumant tradere sepulturae, nec eleemosynas aut oblationes eorum percipiant, alioquin suo priventur officio, ad quod nunquam restituantur absque indulto sedis apostolicae speciali. Similiter quilibet regulares, quibus etiam hoc infligatur, ut eorum privilegia in illa dioecesi non serventur, in qua tales excessus praesumpserint perpetrare. § 6. Quia vero nonnulli sub specie pietatis virtutem eius, iuxta quod Apostolus ait, abnegantes, auctoritatem sibi vendicant praedicandi, quum idem Apostolus dicat: "Quomodo praedicabunt, nisi mittantur?" omnes, qui prohibiti, vel non missi, praeter auctoritatem ab apostolica sede vel catholico episcopo loci susceptam, publice vel privatim praedicationis officium usurpare praesumpserint, excommunicationis vinculo innodentur, et nisi quam citius resipuerint, alia competenti poena plectentur. § 7. Adiicimus insuper, ut quilibet archiepiscopus vel episcopus per se aut per archidiaconum suum, aut alias honestas idoneasque personas, bis aut saltem semel in anno propriam parochiam, in qua fama fuerit haereticos habitare, circumeat, et ibi tres vel plures boni testimonii viros, vel etiam, si expedire videbitur, totam viciniam iurare compellat, quod, si quos ibidem haereticos sciverit, vel aliquos occulta conventicula celebrantes, seu a communi conversatione fidelium vita et moribus, dissidentes, eos episcopo studeat indicare. Ipse autem episcopus ad praesentiam suam convocet accusatos, qui, nisi se ab obiecto reatu purgaverint, vel, si post purgationem exhibitam in pristinam fuerint relapsi perfidiam, canonice puniantur. Si qui vero ex eis, iuramenti religionem obstinatione damnabili respuentes, iurare forte noluerint, ex hoc ipso tanquam haeretici reputentur. § 8. Volumus igitur et mandamus, et in virtute obedientiae districte praecipimus, ut ad haec efficaciter exsequenda episcopi per dioeceses suas diligenter invigilent, si canonicam velint effugere ultionem. Si quis enim episcopus super expurgando de sua dioecesi haereticae pravitatis fermento negligens fuerit vel remissus, quum id certis indiciis apparuerit, ab episcopali officio deponatur, et in locum ipsius alter substituatur idoneus, qui velit et possit haereticam confundere pravitatem.

Chapter XIV

Latin source headnote: Laypersons, of whatever profession they may be, ought not to preach.

Gregory IX, to the Archbishop of Milan.

Just as in one body. *(And below:)* Therefore, since certain laypersons presume to preach and it is greatly to be feared lest vices secretly enter under the appearance of virtues, we, considering that the order of teachers is, as it were, principal in the church of God, command that, since the Lord gave some as apostles, others as prophets, and still others as teachers, you forbid all laypersons, of whatever order they may be designated, to usurp the office of preaching.

> Laici, cuiuscunque professionis sint, praedicare non debent.
>
> Gregorius IX. Archiepiscopo Mediolanensi. Sicut in uno corpore (*Et infra:*) Quum igitur nonnulli laici praedicare praesumant, et verendum nimis exsistat; ne vitia sub specie virtutum occulte subintrent, nos, attendentes, quod doctorum ordo est in ecclesia Dei quasi praecipuus, mandamus, quatenus, quum alios Dominus apostolos dederit, alios prophetas, alios vero doctores, interdicas laicis universis, cuiuscunque ordinis censeantur, usurpare officium praedicandi.

Chapter XV

Latin source headnote: This chapter, as far as § *But if any*, is contained in chapter *We excommunicate*, above in the same title, at the beginning; whence summarize and explain it as was stated there. — § 1. If those detected in heresy are unwilling to return to the faith, they are to be confined in perpetual prison to perform penance; and those believing the errors of heretics are heretics. This it says.

The same.

We excommunicate and anathematize all heretics—the Cathars, Patarenes, Poor Men of Lyons, Passagines, Josephines, Arnoldists, Speronists, and others, by whatever names they may be designated—indeed having diverse faces but tails tied to one another, because they agree in the same vanity. But those condemned by the Church are to be left to secular judgment to be punished by due censure, clerics first having been degraded from their orders.

§ 1. But if any of the aforesaid, after they shall have been detected, are unwilling to return to perform condign penance, let them be confined in perpetual prison; and we likewise judge those believing their errors to be heretics.

> Hoc cap. usque ad § Si qui autem. habetur in c. Excommunicamus. supr. eod. tit. in princ., unde summa et declara, prout ibi fuit dictum. - § 1. Si in haeresi deprehensi nolunt redire ad fidem, detrudendi sunt in perpetuo carcere ad poenitentiam peragendam, et credentes erroribus haereticorum haeretici sunt. H. d.
>
> Idem.
>
> Excommunicamus et anathematizamus universos haereticos, Catharos, Patarenos, Pauperes de Lugduno, Passaginos, Iosepinos, Arnaldistas, Speronistas, et alios, quibuscunque nominibus censeantur, facies quidem habentes diversas, sed caudas adinvicem colligatas, quia de vanitate conveniunt in id ipsum. Damnati vero per ecclesiam saeculari iudicio relinquantur, animadversione debita puniendi, clericis prius a suis ordinibus degradatis. § 1. Si qui autem de praedictis, postquam fuerint deprehensi, redire noluerint ad agendam condignam poenitentiam, in perpetuo carcere detrudantur, credentes autem eorum erroribus haereticos similiter iudicamus.

Chapter XVI

Latin source headnote: Those who were bound to heretics are freed from every obligation.

The same.

Let all who were bound by any compact, fortified by any firmness whatsoever, to persons manifestly fallen into heresy know themselves absolved from the debt of fidelity, homage, and every service.

> Liberantur ab omni obligatione qui haereticis tenebantur adstricti. Idem.
>
> Absolutos se noverint a debito fidelitatis hominii et totius obsequii, quicunque lapsis manifeste in haeresim aliquo pacto, quacunque firmitate vallato, tenebantur adstricti.

Title VIII: On Schismatics and Those Ordained by Them

Chapter I

Latin source headnote: Ordinations, collations of benefices, and alienations of ecclesiastical things made by schismatics are invalid; and those who swear to maintain a schism are suspended from dignity and order.

From the Lateran Council.

Renewing what was done by our predecessor *Pope Innocent of happy memory*, we decree that ordinations made by the heresiarchs Octavian and Guido, *and also by John of Struma, who followed them*, and by those ordained by them, are invalid. We add *also* that those [*if any*] who received ecclesiastical dignities or benefices through the said schismatics are to lack the things obtained. Alienations also, *or invasions*, which were made concerning ecclesiastical things through the same schismatics, or *which* were made through laypersons, are to lack all force and revert to the churches without any burden. But if anyone shall have presumed to act contrary to this, let him know that he is subject to excommunication. We decree that those who voluntarily furnished an oath to maintain the schism remain suspended from sacred orders and dignities.

> **DE SCHISMATICIS ET ORDINATIS AB EIS.**
>
> Irritae sunt ordinationes, beneficiorum collationes, et ecclesiasticarum rerum alienationes per schismaticos factae, et a dignitate et ordine suspenduntur qui schisma tenere iurant.
>
> Ex concilio Lateranensi. Quod a praedecessore nostro *felicis memoriae Papa Innocentio factum est innovantes*, ordinationes ab Octaviano et Guidone haeresiarchis, *nec non et Ioanne Strumensi, qui eos secutus est*, factas, et ab ordinatis ab eis, irritas esse censemus, adiicientes *etiam*, ut, [*si*] qui dignitates ecclesiasticas seu beneficia per dictos schismaticos acceperunt, careant impetratis. Alienationes quoque *sive invasiones*, quae per eosdem schismaticos, seu *quae* per laicos factae sunt de rebus ecclesiasticis, omni careant firmitate, et ad ecclesias sine omni onere revertantur. Si quis autem contraire praesumpserit, excommunicationi se noverit subiacere. Illos vero, qui sponte iuramentum de tenendo schismate praestiterint, a sacris ordinibus et dignitatibus decernimus manere suspensos.

Chapter II

Latin source headnote: One ordained by a schismatic is to be repelled from office unless he proves that dispensation was granted to him by one having the power.

Innocent III, to the Archbishop of Besançon.

To your fraternity. (*And below:* [*cf. c.* 7, *On One Who Had Knowledge, IV.* 13.]) You will also be able without hesitation to repel from office the prior whom you assert was ordained by a schismatic, unless he shall lawfully have proved that merciful dispensation was granted to him by that person who had the power of dispensing concerning this. [*Given at Ferentino on the twelfth day before the Kalends of June,* 1203.]

> Ordinatus a schismatico ab officio est repellendus, nisi probet secum dispensatum per habentem potestatem.
>
> Innocentius III. Bisuntino Archiepiscopo.
>
> Fraternitati tuae (*Et infra:* [*cf. c.* 7. *de eo, qui cogn. IV.* 13.]) Priorem *quoque*, quem a schismatico asseris ordinatum, ab officio poteris repellere incunctanter, nisi legitime probaverit secum fuisse misericorditer dispensatum et ab ea persona, quae super hoc potestatem habuerit dispensandi. [*Dat. Ferentini XII. Kal. Iun.* 1203.]

Title IX: On Apostates and Those Repeating Baptism

Chapter I

Latin source headnote: A cleric who, having cast aside his habit and tonsure, involves himself in enormities loses the privilege of the canon *If anyone, at the devil's persuasion*; whence those who apprehend him do not fall under the canon, namely, the excommunication.

Alexander III.

Moreover, we do not command that clerics who, having abandoned the clerical order and their habit, live in apostasy as laypersons, if they are apprehended while involved in crimes, are to be freed by ecclesiastical censure. *For the statutes of the holy Fathers declare that such persons are to be numbered among apostates.* [*Concerning priests, etc.; cf. c.* 2, *That Clerics or Monks, III.* 50.]

> **DE APOSTATIS ET REITERANTIBUS BAPTISMA.**
>
> Clericus, qui dimisso habitu et tonsura immiscet se enormitatibus, perdit privilegium canonis: Si quis suadente, unde eum deprehendentes non incidunt in canonem. scil. excommunicationem.
>
> Alexander III. Praeterea clerici, qui, relicto ordine clericali et habitu suo, in apostasia tanquam laici conversantur, si in criminibus comprehensi teneantur, per censuram ecclesiasticam non praecipimus liberari. *Tales enim inter apostatas numerandos sanctorum Patrum statuta declarant. *[*Sacerdotibus etc. cf. c.* 2. *Ne cler. vel mon. III.* 50.]

Chapter II

Latin source headnote: If the crime of an acolyte who furnished ministry to one rebaptizing is hidden, he can be promoted; if public, he cannot, unless, when he enters religion, dispensation is granted to him.

The same, to the Abbot of Saint Geneviève.

From the tenor of your letters we have perceived that a certain man, exhausted by a long illness, believing the insane counsel of women who practiced sorcery, in order that he might be healed did injury to the sacrament of baptism through repetition. *But a certain youth of good character, as it appears—an acolyte and the natural brother of him in whom baptism is asserted to have been repeated—stood by at this*

sacrilege, furnished ministry in responding to the priest who baptized, and became a cooperator in the impious deed. Therefore, because your prudence led you to consult us as to how the acolyte ought to be punished *or purged,* whom *also* his younger age and the intention of his brother's *bodily* salvation appear to excuse *somewhat,* by the present letters we respond to your discretion that, *although he does not appear to deserve to be struck with a severe penalty,* nevertheless, if what is proposed is public, he will not be able to be promoted to higher orders unless he shall have wished to pass to religion, so that by favor of the religious state dispensation may be granted to him. But if it is hidden, he can be promoted and expiate his excess with worthy fruits of penance.

> Si crimen acolythi, qui rebaptizanti praebuit ministerium, est occultum, promoveri potest; si publicum, non, nisi cum eo religionem intrante dispensetur.
>
> Idem Abbati S. Genovefae.
>
> Ex literarum tuarum tenore perpendimus, quod quidam, aegritudine longa confectus, insano sortilegarum mulierum credens consilio, ut sanaretur, per iterationem fecit iniuriam baptismatis sacramento. *Adstitit autem huic sacrilegio adolescens quidam bonae, ut videtur, indolis, acolythus, frater carnalis illius, in quo baptismus asseritur iteratus, et ministerium in respondendo exhibuit presbytero baptizanti, et cooperator exstitit rei nefandae*. Quia ergo tua nos duxit prudentia consulendos, qualiter puniri debeat *vel purgari* acolythus, quem *etiam* minor aetas et intentio fraternae salutis *corporeae* excusare videtur *aliquantulum,* discretioni tuae praesentibus literis respondemus, quod, *quamvis multum non videatur poena plectendus,* ad superiores *tamen* ordines promoveri, si publicum est quod proponitur, non valebit, nisi ad religionem transire voluerit, ut favore religionis ipsius circa eum valeat dispensari. Si vero occultum est, promoveri poterit, et excessum suum dignis poenitentiae fructibus expiare.

Chapter III

Latin source headnote: One defamed concerning apostasy is compelled to purge himself.

Innocent III.

To your fraternity. *(And below:* [(*cf. c.* 3, *On Pilgrim Clerics, I.* 22.) *Others also, whom public report asserts to be monks or canons regular, proceeding in secular dress, falsely represent themselves as secular men though they are monks. Concerning them, since it cannot be proved that they professed the religious life, you sought an apostolic response whether they ought to be sent back to the regions on this side of the sea and, by letters of the bishops and abbots of those monasteries in which they are said to have assumed the regular habit, demonstrate that they are not monks or canons regular, or rather ought to be tolerated in secular dress. But we, etc.* (*cf. c.* 3, *On Pilgrim Clerics, I.* 22.)] Concerning the second article *however,* we have considered that response should be made to your inquiry that clerics who are defamed of the crime of apostasy—namely, those who cast aside the clerical habit—are not to be tolerated in secular dress, but are to be constrained by ecclesiastical severity until, when proof is lacking, they take care to furnish canonical purgation to abolish the infamy. [*You asked, etc. Given at Rome at Saint Peter's on the second day before the Kalends of February, in the ninth year,* 1207.]

> Infamatus de apostasia compellitur se purgare.
>
> Innocentius III. Tuae fraternitati (*Et infra:* [(*cf. c.* 3. *de cler. per. I.* 22.) *Alii quoque, quos fama publica monachos asserit vel canonicos regulares, in saeculari habitu incedentes se saeculares monachos mentiuntur, de quibus, quum probari non possit, quod vitam religiosam sint professi, responsum apostolicum expetisti, utrum ad partes remitti debeant cismarinas, et episcoporum illorum et abbatum

monasteriorum illorum, in quibus dicuntur regularem habitum assumpsisse, literis doceant, se non esse monachos vel canonicos regulares, vel debeant potius in saeculari habitu tolerari. Nos autem etc. *(*cf. c.* 3. *de cler. peregr. I.* 22.)] Super secundo *vero* articulo inquisitioni tuae duximus respondendum, quod clerici, qui sunt de apostasiae crimine infamati, qui videlicet abiecerunt habitum clericalem, non sunt in saeculari habitu tolerandi, sed per districtionem ecclesiasticam coercendi, donec deficiente probatione, ad infamiam abolendam purgationem canonicam curaverint exhibere. [*Quaesivisti etc. Dat. Rom. ap. S. Petr. II. Kal. Febr. Ao. IX. *1207.]

Chapter IV

Latin source headnote: Baptized persons are compelled to abandon the rites of another sect or faith.

The same, in the general council.

Certain persons, as we have learned, who voluntarily approached the water of sacred baptism do not wholly put off the old man so that they may be more perfectly clothed with the new, since, retaining remnants of their former rite, they confound the comeliness of the Christian religion by such a mingling. But since cursed is the man who enters the land by two ways, and one ought not to be clothed in a garment woven of linen and wool, we establish that an observance of the old rite of this kind is to be restrained in every way by the prelates of churches, so that those whom the choice of free will offered to the Christian religion may be preserved in its observance by the necessity of saving compulsion, since it is a lesser evil not to know the way of the Lord than, after knowing it, to turn back.

Baptizati alterius sectae vel fidei ritus dimittere compelluntur.

Idem in concilio generali. Quidam, sicut accepimus, qui ad sacri undam baptismatis voluntarii accesserunt, veterem hominem omnino non exuunt, ut novo perfectius induantur, quum, prioris ritus reliquias retinentes, Christianae religionis decorem tali commixtione confundant. Quum autem maledictus sit homo, qui terram duabus viis ingreditur, et indui veste non debeat lino lanaque contexta: statuimus, ut per praelatos ecclesiarum talis observantia veteris ritus omnimode compescatur, ut, quos Christianae religioni liberae voluntatis arbitrium obtulit, salutiferae coactionis necessitas in eius observatione conservet; quum minus malum exsistat viam Domini non agnoscere, quam post agnitam retroire.

Chapter V

Latin source headnote: Apostates can be imprisoned and afflicted so that they reassume the habit.

Honorius III, to the Archbishop of Tours.

Your fraternity sought to be instructed by us what is to be done concerning apostates when those who can in no way be induced by threats or blandishments to reassume the cast-off *monastic* habit are detained in custody. To this we respond briefly to you that, if you wish, you will be able to imprison such persons under severe custody, so that a miserable life alone is preserved for them, until they come to their senses from the wickedness of their presumption. [*Given at Rome on the second day before the Nones of May,* 1218.]

Apostatae incarcerari et affligi possunt, ut habitum reassumant.

Honorius III. Archiepiscopo Turonensi. A nobis expetiit tua fraternitas edoceri, quid de apostatis sit agendum, quum in custodia detinentur, qui minis vel blanditiis nullatenus possunt induci, ut abiectum

monachalem habitum reassumant. Ad quod tibi breviter respondemus, quod tales, si volueris, poteris sub gravi custodia carcerare, ita, quod solummodo vita sibi misera reservetur, donec a suae praesumptionis nequitia resipiscant. [*Dat. Romae II. Non. Mai.* 1218.]

Chapter VI

Latin source headnote: A monk ordained while in apostasy cannot minister in the order received without a dispensation of the Pope.

The same, to the Archbishop of Lyon.

We respond briefly to your consultation that a monk receiving any sacred order while in apostasy, however much he shall have been reconciled to his abbot and received penance, nevertheless cannot minister in the order thus received without a dispensation of the Roman Pontiff. *To the inquiry, etc.* (*cf. c.* 7, *On the Use and Authority of the Pallium, I.* 8.) [*Given at Rieti on the fourth* (*third*) *day before the Ides of August,* 1225.]

Monachus, in apostasia ordinatus, non potest sine dispensatione Papae in suscepto ordine ministrare.

Idem Archiepiscopo Lugdunensi. Consultationi tuae breviter respondemus, quod monachus, aliquem sacrum ordinem in apostasia recipiens, quantumlibet suo fuerit reconciliatus abbati, et receperit poenitentiam, absque *tamen* dispensatione Romani Pontificis ministrare non poterit in ordine, sic suscepto. *Inquisitioni etc.* (*cf. c.* 7. *de usu et auct. pall. I.* 8.) [*Dat. Reate IV. *(*III.*) *Id. Aug.* 1225.]

Title X: On Those Who Killed Their Children

Chapter I

Latin source headnote: A woman who deliberately kills her son must do penance perpetually in a monastery; if, however, concern is felt about her incontinence, permission to marry is granted to her, or at least is not denied.

Alexander III, to the Bishop of Tournai.

M., the woman *bearing the present letters*, coming to us, showed us with a tearful confession that, when she had begotten a son by a certain man, and he had often reproached her with a swollen countenance that the son was not his, she, led by the heat of anger *and fury of mind*, killed that same son. *When this was discovered, the Count of Flanders compelled her to abjure the whole land for as long as seven years, unless she should remain by our permission. And when she had presented herself before us and had stated to us by her assertion that she had taken the cross, intending to set out for Jerusalem, we, recalling her from the journey to Jerusalem because in those parts her presence could not be useful but harmful, decided that she should be sent back to your fraternity, and by the authority of the present letters* We command that you laboriously induce that *woman* to pass into some monastery *of your episcopate*, in which she may lament her sins in perpetual penance. But if, because the weakness of the flesh resists, she is unwilling to be induced to this, you are to grant her permission to marry in the Lord, because it appears safer to us that she marry in the Lord *and* admit one man alone than dishonorably admit many.

DE HIS, QUI FILIOS OCCIDERUNT.

Mulier, occidens sponte filium, debet perpetuo in monasterio poenitere; si tamen timetur de incontinentia, datur vel saltem non denegatur sibi licentia nubendi. Alexander III. Tornacensi Episcopo.

Veniens ad nos M. mulier *latrix praesentium* lacrimabili nobis confessione monstravit, quod, quum de quodam filium genuisset, et ille sibi saepe turgido vultu improperasset, quod filius eius non esset, ipsa, iracundiae calore *et furore animi* ducta, eundum filium interfecit. *Quo comperto comes Flandrensis eam totam terram usque ad septennium abiurare coegit, nisi de nostra licentia remaneret. Quumque se nostro adspectui praesentasset, et, quod crucem suscepisset Hierosolymam profectura, nobis assertione sua proposuisset: nos eam, quia in partibus illis praesentia sua non posset esse utilis, sed damnosa, ab Hierosolymitano itinere revocantes, ipsam fraternitati tuae duximus remittendam, praesentium tibi auctoritate* Mandamus, quatenus eam *mulierem* laboriosius inducere, ut ad aliquod monasterium *tui episcopatus* transeat, in quo peccata sua perpetua poenitentia deploret. Si autem repugnante carnis fragilitate ad hoc induci noluerit, ei licentiam in Domino nubendi tribuas, quia tutius nobis videtur, ut in Domino nubat *et* uni soli, quam inhoneste multos admittat.

Chapter II

Latin source headnote: A woman who kills her child must not on this account be separated from her husband; but another penance is to be imposed upon her.

Lucius III, to the Bishop of Paris.

We have understood *from your letters* that, *when* M., the woman *bearing the present letters*, *had* a little daughter, being inflamed by diabolical fury, *at length, at the suggestion of him who rejoices in the destruction of the faithful, she slaughtered her with a lethal wound*, on account of which the lord of the land compelled her husband and her to abjure the land. But because you have informed us that she has other children, *wherefore dispensation should be made concerning her exile, we, having complete confidence in your discretion, have decided that she should be committed to your prudence, and by apostolic writings* command that you make such provision in this matter that she may pay the penalty for her crime, that through your providence counsel may be taken *in the Lord* for her salvation and that of *her* children, and that, notwithstanding the *alleged* oath which the said lord is alleged to have extorted from her husband, you restore her, as you shall see to be expedient, to the same husband [*of hers*] *and to her possessions*, so that she may govern her children freely and peacefully.

Mulier, occidens filium, propter hoc a viro separari non debet; sed alia poenitentia sibi imponitur.

Lucius III. Parisiensi Episcopo.

Intelleximus *ex literis tuis*, quod, *quum* M. mulier *latrix praesentium* filiam parvam *haberet*, furore accensa diabolico *tandem ipsam, suggerente eo, qui de fidelium perditione laetatur, letali vulnere* iugulavit, propter quod dominus terrae maritum eius et ipsam compulit abiurare. Quia vero illam alios habere filios intimasti, *unde circa ipsius exsilium debeat dispensari: nos, de discretione tua plenam fiduciam obtinentes, eam tuae duximus prudentiae remittendam, per apostolica scripta* mandamus, quatenus ita super hoc provideas, quod sui sceleris poenam luat, et saluti eius ac filiorum *ipsius* per tuam providentiam *in Domino* consulatur, et, non obstante *proposito* iuramento, quod a viro dictus dominus proponitur extorsisse, eam, sicut expedire videris, eidem viro [*suo*] *et rebus suis* restituas ita, quod filios suos libere possit et pacifice gubernare.

Chapter III

Latin source headnote: It is summarized by itself, laying down the penance of parents beside whom children are found crushed.

The same.

Concerning infants who are found dead with their father and mother, and it is not apparent whether the infant was crushed by the father or by the mother, or suffocated, or died by his own death, the parents ought not to be secure on that account, nor indeed without punishment; nevertheless, consideration ought to be given to age, where not will but the event was the cause of death. But if it is not hidden from them that they themselves are the killers, they ought to know that they have gravely transgressed, *as is proved by the Council of Ancyra*. Certain persons, moreover, judge that a penance of three years ought to be imposed, one of which they are to complete on bread and water.

> Se summat, ponens poenitentiam parentum, circa quos pueri reperiuntur oppressi. Idem.
>
> De infantibus autem, qui mortui reperiuntur cum patre et matre, et non apparet, utrum a patre, vel a matre oppressus sit ipse, vel suffocatus, vel propria morte defunctus, non debent inde securi esse parentes, nec etiam sine poena; sed tamen consideratio debet esse aetatis, ubi non voluntas, sed eventus mortis causa fuerit. Si autem eos non latet, ipsos interfectores esse, scire debent, se graviter deliquisse, *quod Ancyritano concilio probatur*. Quidam autem poenitentiam trium annorum iudicant esse debere, quorum unum peragant in pane et aqua.

Title XI: On Exposed Infants and the Sick

Sole Chapter

Latin source headnote: An infant exposed by his father, or by another with the father consenting or ratifying it, is by that very fact freed from paternal power. The same applies to a slave and a freedman, who for the aforesaid cause are freed from their master's power. And the same rule of law applies to the aforesaid sick persons of whatever age who are thus exposed, or if sustenance is denied to them; nevertheless, those who furnish the aforesaid persons with sustenance acquire no right in them.

Gregory IX.

If an infant has been exposed by his father, or by another while the father knew of it or ratified it, the duty of affection having been cast aside, he is by that very fact freed from paternal power. For also in this case a freedman is rescued into freeborn status, and a slave into freedom; and the same is to be said concerning the aforesaid sick persons of whatever age, if they have been exposed, or if it should happen that sustenance is impiously denied to any one of them. Certainly, those who take them in cannot on this account claim any right in their persons.

> **DE INFANTIBUS ET LANGUIDIS EXPOSITIS.**
>
> Infans, expositus a patre vel alio, eo consentiente vel ratum habente, hoc ipso a patris potestate liberatur. Idem in servo et liberto, qui ob praedictam causam liberantur a dominica potestate. Et idem iuris est in praedictis languidis cuiuscunque aetatis sic expositis, vel si eis alimenta denegantur; hi tamen, quae praedictis alimenta praestiterint, nullum ius in eis acquirunt.
>
> Gregorius IX. Si a patre, sive ab alio, sciente ipso aut ratum habente, relegato pietatis officio infans expositus exstitit: hoc ipso a potestate fuit patria liberatus. Nam et hoc casu in ingenuitatem libertus, et servus in libertatem eripitur, quod et de praedictis cuiuscunque aetatis languidis, si expositi fuerint, vel si alicui eorum alimenta impie denegari contigerit, est dicendum. Sane, qui hos suscipiunt, non possunt propter hoc in eorum personis ius aliquod vendicare.

Title XII: On Voluntary or Accidental Homicide

Chapter I

Latin source headnote: An incorrigible killer must be deposed and delivered to the secular court, so that he may die.

In Exodus.

If anyone shall deliberately kill his neighbor and by ambush, you shall tear him away from my altar, so that he may die.

> **DE HOMICIDIO VOLUNTARIO VEL CASUALI.**
>
> Homicida incorrigibilis debet deponi, et tradi curiae saeculari, ut moriatur.
>
> In Exodo.
>
> Si quis per industriam occiderit proximum suum et per insidias, ab altari meo evelles eum, ut moriatur.

Chapter II

Latin source headnote: It lays down a penance for one who kills a robber when he could have freed himself otherwise; but if he could not free himself otherwise, he is not bound to do penance, except by way of precaution.

From the Roman Penitential.

You killed a thief or robber when he could have been apprehended without killing, *and nevertheless you killed him*. Because he was created in the image of God, *and was baptized in his name and redeemed by his blood*, for forty days you shall not enter *the* church, and, clothed in a woolen garment, you shall abstain for the aforesaid days from foods and drinks that are forbidden, and from the marriage-bed, *the* sword, and *from* riding. On the third and fifth weekdays and *on* the Sabbath, use some kind of pulses or vegetables, *and* fruit, and little fish with moderate beer, *and do so* temperately. But if without contemplation of hatred, in freeing yourself and your possessions, you killed members of the devil of this kind, I speak according to indulgence: on account of the image of God, if you wish to fast to some extent, it is good for you, and give alms abundantly. If a priest has done the same things, he is not to be deposed; nevertheless, for as long as he lives, he is to do penance.

> Ponit poenitentiam occidentis latronem, quum se poterat aliter liberare; si vero aliter liberare se non poterat, non tenetur agere poenitentiam, nisi ad cautelam.
>
> Ex poenitentiali Romano.
>
> Interfecisti furem aut latronem, ubi comprehendi poterat absque occisione, *et tamen interfecisti*; quia ad imaginem Dei creatus est, *et in nomine eius baptizatus et sanguine eius redemptus est*, per XL. dies non intres *in* ecclesiam, et, lanea veste indutus, ab escis et potibus, qui interdicti sunt, et a toro, *a* gladio et *ab* equitatu, illos supra dictos dies *te* abstineas. In tertia autem et quinta feria et *in* sabbato aliquo genere leguminum, vel oleribus, *et* pomis, et parvis pisciculis cum mediocri cerevisia utere *et* temperate. Si autem sine odii meditatione te tuaque liberando huiusmodi diaboli membra interfecisti: secundum indulgentiam dico, propter imaginem Dei, si aliquid ieiunare volueris, bonum est tibi, et eleemosynam fac largiter. Si presbyter eadem fecerit, non deponatur; tamen, quamdiu vivit, poenitentiam agat.

Chapter III

Latin source headnote: A thief by day is not killed without fault, but a thief by night is.

Augustine, on Exodus.

"If [*however*] a thief shall be found breaking in, and shall have been struck and died, homicide is not to be imputed to the one who struck him. But if the sun should rise upon him, he shall be guilty [*and shall die by death*]." Therefore it is understood [*then*] that homicide does not pertain to him if a nocturnal thief is killed; but if he was a thief by day, that it does pertain to homicide. For this is what he says: "if the sun should rise upon him, etc.," because he could discern that the man had come to steal, not to kill, and therefore he ought not to be killed. This is also found in the ancient secular laws, than which this law is *nevertheless* more ancient: namely, that a nocturnal thief may be killed with impunity in any manner, but a thief by day only if he has defended himself [*with*] a weapon. For then he is more than a thief.

> Non occiditur fur diurnus sine culpa, sed nocturnus sic.
>
> Augustinus super Exodo.
>
> "Si [*autem*] perfodiens inventus fuerit fur, et percussus mortuus fuerit, non est illi homicidium imputandum. Si autem oriatur sol super eum: reus erit, [*et morte morietur*.]" Intelligitur ergo, [*tum*] non pertinere ad eum homicidium, si fur nocturnus occidatur; si autem diurnus fuerit, ad homicidium pertinere. Hoc est enim, quod ait: "si oriatur sol super eum, etc," quia poterat discernere, quod ad furandum, non ad occidendum venisset, et ideo non debet occidi. Hoc etiam in antiquis legibus saecularibus, quibus ista *tamen* est antiquior, invenitur, impune scilicet occidi nocturnum furem quoquo modo, diurnum autem, si se [*cum*] telo defenderit. Iam enim plus est quam fur.

Chapter IV

Latin source headnote: What is unlawful does not fall under a general promise or permission, even one made under oath.

Jerome.

With an oath Herod promised to give the dancing girl whatever she should ask from him. If he should say that he had acted on account of his oath, would he have done it or not if she had asked for the destruction of his father or mother? What, therefore, he would have repudiated in his own kin he ought to have scorned [*also*] in the case of a prophet.

> Sub generali pollicitatione seu permissione, etiam iurata, non venit illicitum.
>
> Hieronymus.
>
> Cum iuramento pollicitus est Herodes saltatrici dare quodcunque postulasset ab eo; si ob iusiurandum fecisse se dicat, si patris matrisve interitum postulasset, facturus esset, an non? Quod ergo in suis repudiaturus fuit, contemnere debuit [*et*] in propheta.

Chapter V

Latin source headnote: One who makes or gives sorceries or poisons causing sterility is a killer.

From the Council of Worms.

If anyone, for the sake of satisfying lust or in contemplation of hatred, shall make something for a man or woman, or give something to drink, so that the person cannot beget or conceive, or so that offspring cannot be born, let him be held as a killer.

> Homicida est, qui facit vel dat sortilegia, vel venena sterilitatis.
>
> Ex concilio Guarmaciensi. Si aliquis causa explendae libidinis vel odii meditatione homini aut mulieri aliquid fecerit, vel ad potandum dederit, ut non possit generare, aut concipere, vel nasci soboles, ut homicida teneatur.

Chapter VI

Latin source headnote: In imposing penance, a judge must attend to the circumstances by which the offense is increased or diminished. It says this as far as § *But Those*. — § 1. One who accompanies a killer with the intention of killing, although he does not lay hands upon the victim, is held to almost the same punishment as the killer if death nevertheless followed from his action. It says this as far as § *Those Also*. Abbas Siculus. — § 2. One who accompanies a killer only with the intention of preventing him from being hindered is held to a somewhat lesser punishment. It says this as far as § *But Those Who*. — § 3. One who incites another to homicide is punished more mildly than the killer; it is otherwise, however, if he incited him to a specific homicide. For, when that homicide follows, he is held as a killer. It says this as far as § *These Too*. — § 4. Those who guard the baggage of the killers, knowing that they are assassins, are not immune from the punishment for homicide. It says this as far as § *Those, Moreover*. Abbas. — § 5. One who seizes the goods of the person killed is not on this account held for homicide; and it is not sufficient for the one who seized them that he distribute them to the poor when he can restore them to those whose property they are established to have been. It says this as far as § *To Those, Furthermore*. Abbas. — § 6. Those who participate with the killers in excommunication are punished differently according to the manner of participation. It says this as far as § *The Clerics*. Abbas. — § 7. In this §, as far as the end, the penance of clerics who furnished assistance, counsel, or favor to the aforesaid death is laid down. It says this. Abbas Siculus.

Alexander III, to the Bishop of Exeter.

Just as it is fitting *and consonant with every principle of reason that grave and difficult questions be referred to the examination of the Apostolic See, so also it falls upon us by the ministry of the solicitude we have undertaken to resolve those same questions, as the Lord shall grant us, and to respond to each person seeking counsel from us, so that through the providence of the Roman Church, which by the Lord's ordering holds primacy everywhere on earth, questions may be resolved and ambiguity in these matters removed from the hearts of each. Although, moreover, we do not doubt that concerning the questions which your discretion directed to us to be resolved you are provident and circumspect, we are nevertheless constrained by the ministry of servitude to respond to you concerning them according to our discretion and providence.* Indeed, since you are a man *learned and wise and* discreet *and very much practiced in these matters*, you know more fully that, in the offenses of individuals, not only the quantity and quality of the offense, but also the age, knowledge, *and* sex and condition of the offender must be attended to, and that penance must be imposed upon each person not only according to the aforesaid matters but also according to the place and time in which the offense is committed, since, *as you yourself are not ignorant*, the same offense is to be punished more in one person than in another.

§ 1. But those who confess that, with the intention of killing, striking, or capturing that holy and venerable man, formerly Archbishop of Canterbury, they came without laying hands upon him, if his

death had followed from that capture, would have to be punished by an equal or nearly equal penance.

§ 2. *And* those also who came not in order to strike but to render assistance to the assailants if perhaps they should be hindered by the violence of others ought to be chastised with a somewhat lesser punishment, because, since it is written, "He who could have freed a man from death and did not free him killed him," it is established that [*they*] are not immune from the guilt of homicide who came to render assistance to the killers against others; nor is he free from the scruple of a secret association who, [*although he can,*] ceases to oppose a manifest crime.

§ 3. But those who assert that they inflamed the king's mind to hatred, from which *perhaps* the homicide followed, are to be punished [*sufficiently*] harshly and severely, but not so severely, unless perhaps by their suggestions they provoked the king himself to that homicide.

§ 4. These too are not free from fault, nor ought they to be immune from punishment, who, although they were ignorant of that *wicked* plot, nevertheless furnished service to those whom they knew to be assassins, *or* in guarding their baggage.

§ 5. Those, moreover, who are said to have seized the spoils of that holy man and his companions after his death, if they committed nothing else in so great a crime, we judge to be immune from the punishment for his death; but they are bound to restore in full the things they seized to those to whom they belonged, if they have the means from which they can return them. And a moderate penance is *nevertheless* to be imposed upon them for this, because, although they admit that they distributed to the poor certain of the things that they seized, they nevertheless ought not to have distributed to the poor the property of others when they could have restored it to those to whom it belonged.

§ 6. Furthermore, upon those who know themselves to be guilty solely by participation with excommunicated persons, a penance is to be imposed *according to this*: after consideration of the length of time for which they persisted in that wickedness, and after inquiry *also* whether they knowingly or unknowingly communicated with them through fear or affection.

§ 7. But we judge that the clerics who are established to have been present under arms at so great a crime, and *also those clerics* who gave *the* counsel that [*that same*] holy man should be captured, are to be deposed perpetually not only from the ministry of the altar, but *also in such a manner* that at no time whatsoever are [*they*] to read lessons in churches or sing responsories separately in the choir; rather, in psalms before God they are to strive to obtain pardon for what was committed. Furthermore, *those clerics themselves* are to be confined in the strict cloister of monks or canons regular, if this can be done, and *indeed* in such a manner that for as long as seven or five years they ought to be barred from entry into churches. [*Concerning that matter, however, etc.*]

> In poenitentia imponenda iudex debet attendere circumstantias, ex quibus augetur vel minuitur delictum. Hoc dicit usque ad § Illi autem. - § 1. Socians homicidam animo occidendi, licet non apponat manum, si tamen ex sua causa mors secuta est, tenetur fere pari poena cum homicida. Hoc dicit usque ad § Illi etiam. Abbas Sic. - § 2. Qui sociat homicidam tantum animo prohibendi ne impediatur, tenetur paulo minori poena. H. d. usque ad § Qui vero. - § 3. Incitans alium ad homicidium, mitius punitur quam homicida, secus autem, si incitavit ad certum homicidium. Nam, eo secuto, tenetur ut homicida. H. d. usque ad § Hi quoque. - § 4. Custodientes sarcinas occidentium, scientes, eos esse sicarios, non

sunt immunes a poena homicidii. H. d. usque ad § Eos insuper. Abbas - § 5. Occupans bona occisi, non per hoc tenetur de homicidio, et non sufficit occupanti, quod eroget illa pauperibus, quum poterit restituere eis, quorum constat fuisse. H. d. usque ad § Illis praeterea. Abbas - § 6. Participantes interfectoribus in excommunicatione, diversimode puniuntur iuxta modum participationis. H. d. usque ad § Clericos. Abbas. - § 7. In isto § usque ad fin. ponitur poenitentia clericorum, praestantium praedictae morti auxilium, consilium vel favorem. Hoc dicit. Abbas Siculus.

Alexander III. Exoniensi Episcopo.

Sicut dignum *est et omni rationi consentaneum, graves et difficiles quaestiones ad examen apostolicae sedis deferri, ita etiam nobis ex ministerio susceptae sollicitudinis imminet, easdem quaestiones, prout nobis Dominus dederit, solvere, et singulis a nobis consilium postulantibus respondere, ut providentia Romanae ecclesiae, quae ubique terrarum obtinet Domino disponente principatum, quaestiones solvantur, et removeatur in his ambiguitas de cordibus singulorum. Licet autem super quaestionibus, quas nobis tua discretio solvendas direxit, te non dubitemus providum et circumspectum exsistere: cogimur tamen ex servitutis ministerio iuxta discretionem et providentiam nostram tibi exinde respondere*. Sane, quum vir *literatus et sapiens et* discretus *et in his plurimum exercitatus* exsistas, plenius nosti, quod in excessibus singulorum non solum quantitas et qualitas delicti, sed aetas, scientia, *et* sexus atque conditio delinquentis sunt attendenda, et non solum secundum praedicta, sed secundum locum et tempus, quo delictum committitur, unicuique poenitentia debet indici, quum, *sicut tu ipse non ignoras*, idem excessus magis sit in uno quam in alio puniendus. § 1. Illi autem, qui animo occidendi, feriendi aut capiendi illum sanctum et reverendum virum quondam Cantuariensem archiepiscopum citra manuum iniectionem se fatentur venisse, si de illa captione mors eius secuta fuisset, pari poenitentia, vel fere pari exsisterent puniendi. § 2. *Et* Illi etiam, qui non, ut ferirent, sed, ut percussoribus opem ferrent, si forte per aliorum violentiam impedirentur, paulo minori debent poena mulctari, quia, quum scriptum sit: "qui potuit hominem liberare a morte, et non liberavit, eum occidit," constat [*ipsos*] ab homicidii reatu immunes non esse, qui occisoribus opem contra alios praestare venerunt, nec caret scrupulo societatis occultae, qui, [*quum possit,*] manifesto facinori desinit obviare. § 3. Qui vero se asserunt animum regis inflammasse ad odium, unde *forte* homicidium fuit secutum, [*satis*] dure et aspere, sed non ita severe sunt puniendi, nisi forte regem ipsum ad illud homicidium suis suggestionibus provocassent. § 4. Hi quoque non sunt a culpa liberi, nec a poena debent esse immunes, qui, licet fuerint illius *iniquae* machinationis ignari, tamen eis, quos sicarios esse sciebant, *vel* in sarcinis custodiendis ministerium praebuerunt. § 5. Eos insuper, qui dicuntur illius sancti viri et suorum post mortem eius spolia occupasse, si nihil aliud in tanto facinore commiserunt, a poena mortis eius arbitramur esse immunes; sed, quae occuparunt, eis, quorum fuerunt, tenentur in integrum restituere, si habent in facultatibus, unde possint ea reddere. Et ipsis ex hoc *tamen* moderata est poenitentia iniungenda, quia, licet quaedam ex his, quae occupaverunt, fateantur se pauperibus erogasse, non tamen aliena, quum ipsa potuissent eis, quorum fuerint, restituere, debuerunt pauperibus erogare. § 6. Illis praeterea, qui sola excommunicatorum participatione se reos esse cognoscunt, considerata temporis mora, quo in eadem nequitia perdurarunt, et inquisito *etiam*, si eis timore vel affectione communicaverint scienter vel ignoranter, *secundum hoc* est poenitentia indicenda. § 7. Clericos autem, quos constat armatos interfuisse tanto facinori, et illos *etiam clericos*, qui consilium *illud* dederunt, ut [*idem*] sanctus vir caperetur, perpetuo non solum ab altaris ministerio deponendos esse censemus, sed *ita* etiam, quod in ecclesiis nullo unquam tempore [*ipsi*] lectiones legant, vel responsoria in choro separatim cantent; sed in psalmis apud Deum de commisso satagant veniam impetrare. Insuper *autem clerici ipsi* in districto claustro monachorum vel canonicorum regularium, si fieri potest, sunt recludendi, ita *quidem*, quod usque ad septennium vel quinquennium debeant ab ecclesiarum introitu coerceri. [*Super eo vero etc.*]

Chapter VII

Latin source headnote: Accidental homicide is imputed to one who was engaged in a lawful act if he did not exercise the diligence that he ought to have exercised.

The same.

But a priest [*another priest*] who struck a certain boy on the head *and wounded him* for the purpose of discipline, when the boy died after a few days, *as you assert*, you ought both to remove perpetually from every ministry of the altar and to depose from the priestly office, if the boy died from that very blow, or contracted another illness from it by which he is known to have died.

> Homicidium casuale imputatur ei, qui dabat operam rei licitae, si non adhibuit diligentiam, quam debuit.
>
> Idem.
>
> Presbyterum *autem* [*alium,*] qui quendam puerum intuitu disciplinae percussit in capite *et vulneravit*, quum post paucos dies, *sicut asseris*, exspirasset, tam ab omni altaris ministerio debes perpetuo removere, quam ab officio sacerdotali deponere, si ex ipsa percussione interiit, vel aliam infirmitatem incurrerit, de qua noscitur exspirasse.

Chapter VIII

Latin source headnote: Accidental homicide is imputed to one who was engaged in an unlawful act, or even in a lawful act, according to another interpretation, if he did not exercise all the diligence that he ought to have exercised.

The same, to the Archbishop of Cosenza.

It was contained in your letters that, when the deacon bearing the present letters and certain other clerics were returning from the church's vineyards after the work was finished, for the sake of lightening their labor they imitated a certain game of travelers, *throwing* their staffs *a long distance*. *For* they endeavored to throw straight ahead and to strike one another's staff. The condition of this game, *as they assert*, is customarily that the one who struck another's staff, as if the victor, would use the other man, *whose staff was struck*, as a horse; but the aforesaid clerics, not using the license to ride, were content with the throwing alone, *so that, while they ran more briskly to their staffs, they would not feel the labor of the journey*. But a certain layman, *as the aforesaid deacon asserts*, after he had struck that deacon's staff, incautiously leapt upon him to ride him, and thus received from the sickle with which that deacon was girded a mortal wound, from which he died after eight days. We therefore command that you not permit that deacon, without the permission of the Roman Pontiff, to ascend to a higher grade or ever to minister in the office of the diaconate, but that you allow him by dispensation to minister in the office of the subdiaconate.

> Homicidium casuale imputatur ei, qui dabat operam rei illicitae vel etiam licitae, secundum alium intellectum, si non adhibuit omnem diligentiam, quam debuit.
>
> Idem Cusentinensi Archiepiscopo.
>
> Continebatur in literis tuis, quod, quum diaconus, praesentium lator, et quidam alii clerici a vineis ecclesiae opere consummato redirent, leviandi laboris gratia quendam ludum imitati *sunt* viatorum, *proiicientes* baculos suos *in longum*; studebant *enim* iacere in directum, et alter alterius fustem ferire. Cuius ludi, *sicut asserunt*, solet esse conditio, ut, qui alterius baculum percuteret, quasi victor, pro equo

alio, *cuius baculus percussus est*, uteretur; sed praefati clerici, equitandi licentia non utentes, sola erant iactione contenti, *ut, dum alacrius ad baculos suos concurrerent, laborem itineris non sentirent*. Quidam autem laicus, *sicut praedictus diaconus asserit*, dum baculum eiusdem diaconi percussisset, incautus in eum equitaturus insiliit, et sic a falce illius diaconi, qua erat accinctus, mortale vulnus accepit, de quo post dies octo exspiravit. Ideoque mandamus, quatenus eundem diaconum sine licentia Romani Pontificis ad superiorem gradum non adscendere, vel in diaconatus officio nullo unquam tempore ministrare permittas, sed eum dispensative ministrare in subdiaconatus officio patiaris.

Chapter IX

Latin source headnote: Accidental homicide is not imputed to one who was not at fault.

The same, to the Bishop of Exeter.

P., the cleric bearing the present letters, proposed to us *by word of mouth* that, when one day he happened to be playing with a certain cleric, it occurred that the latter threw him to the ground, and his knife, which he had at his side, entered the other man, who died wounded by the accidental event. We therefore command that, *when the truth of the matter has been ascertained*, if the matter so occurred and no other just cause impedes, you freely permit the aforesaid P. to be promoted to sacred orders.

Homicidium casuale non imputatur ei, qui non fuit in culpa.

Idem Exoniensi Episcopo.

Lator praesentium P. clericus nobis *viva voce* proposuit, quod, quum quadam die casu cum quodam clerico luderet, contigit, quod ille proiecit istum ad terram, cuius cultellus, quem ad latus suum habebat, in alterum incidit, et fortuito casu occubuit vulneratus. Ideoque mandamus, quatenus, *rei veritate comperta*, si ita res se habuit, et alia iusta causa non impedit, praedictum P. libere permittas ad sacros ordines promoveri.

Chapter X

Latin source headnote: One from whose unlawful conduct homicide follows is rendered irregular.

The same, to the Abbot of Saint Benedict of Vebia.

We received your letters, through which we learned that, while the bearer of the present letters remained with another brother in the custody of a certain house, certain robbers entering upon them at night presumed shamefully to afflict their persons and strip them of their own garments. Rising up against them after recovering their strength, these brothers bound them and wished to detain them until notice could be brought to the chapter. But when this man, intending to carry the matter to your hearing, had left them bound in the custody of his brother, and the thieves were striving to free themselves, the brother killed them lest he himself be killed by them. But because it was more expedient to leave even the cloak after the tunic and to sustain the loss of possessions than to become so violently inflamed against others for the preservation of cheap and transitory things, let this man humbly abstain from the ministry of the altar, and let each strive to expiate his sin, *by such means as* he *can*, according to your judgment. For it is established that the men were killed through the action of both brothers, contrary to *regular* gentleness *and* ecclesiastical *discipline*.

Is, ex cuius opera illicita sequitur homicidium, irregularis efficitur.

Idem abbati S. Benedicti de Vebia.

Suscepimus literas tuas, per quas cognovimus, quod, quum lator praesentium in custodia cuiusdam domus cum altero fratre maneret, ingredientes de nocte quidam latrones ad eos, turpiter ipsos in personis affligere, et denudare vestimentis propriis praesumpserunt. In quos isti resumptis viribus insurgentes, ligaverunt illos, et detinere usque ad notitiam capituli voluerunt. Quum autem iste, rem ad tuam audientiam perlaturus, ligatos eos in fratris sui custodia dimisisset, et fures se solvere niterentur, frater illos, ne ipse ab eis interimeretur, occidit. Verum quoniam expediebat potius post tunicam *etiam* relinquere pallium, et rerum sustinere iacturam, quam pro conservandis vilibus rebus et transitoriis tam acriter in alios exardescere: abstineat iste humiliter ab altaris ministerio, et uterque peccatum suum, *quibus modis* ad arbitrium tuum *potuerit*, studeat expiare. Constat enim, eos contra *regularem* mansuetudinem *et* ecclesiasticam *disciplinam* ex utriusque ope interemptos.

Chapter XI

Latin source headnote: One who gives cause for a homicide is irregular.

The same, to the Bishop of Lucca.

For the rest, you should know that the deacon *whom you assert to be learned and endowed with uprightness*, who appears to have given cause for a homicide, *as we perceive from the tenor of your letters*, does not appear fit to be promoted to the priesthood.

Dans causam homicidio irregularis est.

Idem Lucensi Episcopo.

De cetero noveris, quod diaconus, *quem literatum et honestate praeditum asseris*, qui homicidio causam dedisse videtur, *sicut ex tenore literarum tuarum perpendimus*, non videtur ad sacerdotium promovendus.

Chapter XII

Latin source headnote: Accidental homicide is imputed to one who was engaged in a lawful act if he did not exercise the diligence that he ought to have exercised.

Clement III.

It came to the hearing of our apostolate [*from your part*] that, when a certain priest, wishing to correct a member of his household, attempted to beat him with *the* belt with which he was accustomed to be girded, it occurred that the knife, slipping from the sheath that adhered to the belt, wounded him slightly in the back. But afterward, when the wounded man had lived for some time and had *already* recovered from the wound, he was struck, as is said, by another, more serious illness, and *with a sound mind and due devotion* entered upon the way of all flesh. But because it is held doubtful whether he died by reason of the wound, *and that priest having been suspended from every office and benefice, you consulted the Apostolic See as to what was to be done by you concerning this matter. Now, therefore,* we have decided to respond to your discretion that, since in doubtful matters we ought to choose the safer path, it is fitting for you to enjoin upon the aforesaid priest that *henceforth* he not minister in sacred orders. Nevertheless, after a suitable penance has been imposed [*upon him*], you will be able to grant him permission to be content to *minister* in minor orders. But if *it shall lawfully be established to you that* the man died of another illness, *with your permission* he will be able to minister in divine offices as he was accustomed. [*Given at the Lateran.*]

Homicidium casuale imputatur ei, qui dedit operam rei licitae, si non adhibuit diligentiam, quam debuit.

Clemens III. Ad audientiam apostolatus nostri [*ex parte vestra*] pervenit, quod, quum quidam presbyter, volens corrigere quendam de familia sua, *eo* cingulo, quo cingi solebat, ipsum verberare tentaret, contigit, quod cultellus de vagina, quae cingulo adhaerebat, elapsus, eum in dorso aliquantulum vulneravit; postmodum vero, quum ille vulneratus aliquamdiu vixisset, et *iam* convaluisset a vulnere, alia graviori, ut dicitur, infirmitate percussus, *cum sana mente ac devotione debita* viam est universae carnis ingressus. Quia vero, utrum occasione vulneris decessisset, dubium habetur: *eodem presbytero ab omni officio beneficioque suspenso, quid super hoc vobis esset agendum, apostolicam sedem consuluistis. Nunc itaque* vestrae discretioni duximus respondendum, quod, quum in dubiis semitam debeamus eligere tutiorem, vos convenit iniungere presbytero memorato, ut *de cetero* in sacris ordinibus non ministret; iniuncta tamen [*ei*] poenitentia congruenti, sibi poteritis concedere, ut *in* minoribus ordinibus *ministrare* sit contentus. Si vero *vobis legitime constiterit, quod* ille ex alia infirmitate obierit, *de vestra licentia* poterit, sicut erat solitus, divina officia ministrare. [*Dat. Laterani.*]

Chapter XIII

Latin source headnote: Accidental homicide is not imputed to one who was engaged in a lawful act and was not at fault.

Innocent III, to the Bishop of Langres.

The beloved son A., a chaplain, *appearing in our presence, proposed to us in his confession* that, when he was burdened by a certain bodily illness *to such an extent that the desire both for food and for sleep appeared to have been taken from him,* in order that he might arouse his appetite for eating to some degree, he mounted a horse that he was keeping. Since it did not obey the reins well, but frolicked with *its* leaps contrary to the rider's will, he, in order to restrain its impetuosity, both pulled forcefully on the bridle and spurred the horse. And when the bridle broke, the horse, left *as if* to its own will, ran rapidly, and a certain woman, approaching *him* from the side *and carrying a little child,* met him. The horse rushed upon her, its rider being thrown far away, and crushed the aforesaid child; *and the chaplain himself scarcely escaped the danger of death from the sudden accident, but, at last recovering, did not thereafter presume to celebrate divine offices*. Therefore, *because the aforesaid matters have not been established to us, by apostolic writings* we command your fraternity to *inquire more diligently into the truth concerning them, and,* if it is so, since the same chaplain perpetrated no homicide either by will or by act, nor was he engaged in an unlawful matter, you are not to prevent him from being able to celebrate divine offices. [*Given at the Lateran on the eighth day before the Ides of November,* 1200.]

Homicidium casuale non imputatur ei, qui dedit operam rei licitae, nec fuit in culpa.

Innocentius III. Episcopo Lingonensi. Dilectus filius A. capellanus, *in nostra praesentia constitutus, sua nobis confessione* proposuit, quod, quum quadam corporis molestia gravaretur *ita, quod et cibi et somni desiderium raptum videretur ab eo,* ut comedendi appetitum aliquantulum excitaret, equum, quem nutriebat, adscendit. Qui quum bene non pareret habenis, sed praeter sessoris arbitrium *suis* saltibus lasciviret, ipse, ut eius refrenaret impetum, *et* freno vim intulit, equumque calcaribus stimulavit. Quumque fracto freno equus, *quasi* proprio arbitrio relictus, curreret festinanter, *ei* quaedam mulier, veniens ex obliquo *et* infantulum baiulans, obviavit, in quam equus irruens, procul abiecto sessore, puerum praedictum oppressit, *et capellanus ipse ex repentino casu vix mortis periculum evitavit, sed ad ultimum convalescens postmodum divina celebrare non praesumpsit*. Ideoque, *quia nobis non constitit de praemissis, fraternitati tuae per apostolica scripta* mandamus, quatenus *super his inquiras diligentius veritatem, et* si est ita, quum idem capellanus nec

voluntate nec actu homicidium perpetravit, nec dedit operam illicitae rei, non impedias, quo minus divina possit officia celebrare. [*Dat. Lat. VI. Id. Nov. *1200.]

Chapter XIV

Latin source headnote: It is summarized as in the preceding chapter.

The same, to the Bishop of Metz.

We learned from the letters of your fraternity that, when H., the priest *bearing the present letters*, wished to unload hay from a cart, he threw to the ground a pole resting upon it, *when he saw no one around the cart*, and, while he was engaged in unloading the hay, a certain man, *approaching near him*, found a certain boy half alive beside the cart, in whom nothing of an injury could be found except a little bruising on the forehead. We, moreover, asked the same priest whether, before he threw the pole, he had carefully looked around to see whether anyone was near the cart. He asserted that he had looked around diligently, but denied that he had seen anyone. Therefore, sending him back to you, *by apostolic writings* we command your fraternity that, if the matter so occurred, unless a grave scandal has arisen against that *priest*, or he labors under so great an ill repute that in the absence of an accuser it is necessary to impose canonical purgation upon him, you freely permit him to exercise the priestly office. [*Given at the Lateran on the eighth day before the Kalends of December, in the third year,* 1200.]

Summatur ut supr. cap. prox. Idem Metensi Episcopo.

Ex literis tuae fraternitatis accepimus, quod, quum *lator praesentium* H. presbyter foenum vellet de curru deponere, perticam superius allegatam, *quum neminem circa currum videret*, proiecit in terram, et, quum foeno insisteret deponendo, quidam, *prope ipsum accedens*, puerum quendam iuxta currum reperit semivivum, in quo praeter modicum livoris in fronte nihil inveniri potuit laesionis. Nos autem ab eodem quaesivimus sacerdote, si, priusquam iaceret perticam, circumspexisset sollicite, an esset aliquis circa currum; qui, quod diligenter circumspexit, asseruit, sed, quod vidisset aliquem, denegavit. Ad te igitur remittentes eundem, *fraternitati tuae per apostolica scripta* mandamus, quatenus, si res ita se habet, nisi contra eundem *presbyterum* grave scandalum sit exortum, vel tanta laboret infamia, quod deficiente accusatore oporteat eidem canonicam purgationem indici, ipsum libere permittas exsequi officium sacerdotis. [*Dat. Lat. VIII. Kal. Dec. Ao. III. *1200.]

Chapter XV

Latin source headnote: It is likewise summarized as in the chapter *Beloved Son* above in this same title.

The same, to the Archbishop of Besançon.

We learned from the letters of your fraternity that a certain monk, *a boy of your diocese*, while assisting in taking down a bell from a bell tower, because a certain piece of timber *by accident* fell when he moved it, crushed and killed a certain boy in the church beneath the bell tower. *Wherefore you humbly asked us what should be done by you concerning this, petitioning that a merciful dispensation be granted to him.* Therefore, *by apostolic writings* we command your fraternity that, if the monk himself was doing a necessary and useful thing, and in a place through which he did not believe that anyone would pass, or be present there, or even customarily come there, when he is known to have moved the timber, he

can suitably, especially in a monastery, be promoted to higher orders. [*Given at Rome at Saint Peter's on the Nones of April, in the ninth year,* 1206.]

> Summatur etiam, ut supr. eod. cap. Dilectus.
>
> Idem Bisuntino Archiepiscopo.
>
> Ex literis tuae fraternitatis accepimus, quod quidam monachus *puer tuae dioecesis* ad deponendam de campanili campanam subserviens, quia quoddam lignum *casu* corruit, ipso movente in ecclesia sub campanili quendam puerum oppressit et occidit. *Unde a nobis humiliter postulabas, quid tibi esset super hoc faciendum, petens, ut cum ipso misericorditer dispensetur*. Quocirca *fraternitati tuae per apostolica scripta* mandamus, quatenus, si monachus ipse rem necessariam agebat et utilem, et in loco, per quem aliquem transire non crederet, vel ibidem exsistere, vel etiam illuc de consuetudine venire, quando lignum movisse dignoscitur, satis poterit, praesertim in monasterio, ad altiores ordines promoveri. [*Dat. Rom. ap. S. Petr. Non. Apr. IX.* 1206.]

Chapter XVI

Latin source headnote: It is summarized as in the chapter *Beloved Son* above in this same title.

The same, to the Bishop of Padua.

You informed us *through your letters* that, when the cleric F. was riding *with the archpriest of Saint Fidantius*, the horse on which he sat threw both itself and him into the water. Thereupon the cleric struck it heavily with his spurs. But the horse, *to use the words of your letters*, since it was hard in the mouth, broke into a run contrary to its rider's will, *and, poorly obeying the reins*, unexpectedly trampled to death a certain woman whom it met. And when we had caused inquiry to be made of the same cleric whether he had previously known the horse's vice, he asserted that he had not known it. Therefore, *by apostolic writings* we command your fraternity that *you inquire more diligently into the truth concerning these matters and*, if it is so, by way of *greater* precaution you impose a suitable penance upon that *cleric*, upon completion of which you are not to prevent him both from ministering in the orders he has received and from being able to be promoted to higher ones.

> Summatur, ut supr. eod. cap. Dilectus.
>
> Idem episcopo Paduano.
>
> Significasti nobis *per literas tuas*, quod, quum F. clericus *cum archipresbytero sancti Fidantii* equitaret, equus, cui insidebat, tam se quam ipsum proiecit in aquam. Unde clericus ipsum graviter calcaribus stimulavit; equus vero, *ut literarum tuarum verbis utamur*, quum exsistaret bucca durus, praeter voluntatem sessoris ruptus in cursum, *et male parens habenis*, quandam mulierem, quam obviam habuit, ex improviso pedibus interfecit. Quumque nos ab eodem clerico fecissemus inquiri, utrum equi vitium prius scivisset: illud asseruit se ignorasse. Ideoque *fraternitati tuae per apostolica scripta* mandamus, quatenus *inquiras super his diligentius veritatem, et*, si ita est, ad *maiorem* cautelam iniungas eidem *clerico* poenitentiam competentem, qua peracta non impedias, quo minus *et* in susceptis ministret ordinibus, et ad maiores valeat promoveri.

Chapter XVII

Latin source headnote: A person is not deemed a killer when, despite his prohibition and without his giving cause, a homicide is committed by his blood relatives.

The same.

Peter, a deacon and monk of Saint John of Puna, showed us by his statement that, when he was formerly *established* in the secular habit and held *a certain* benefice in the church of Rigelo, the abbot of that church deprived him of the same benefice. His relatives and friends *repeatedly entreated the abbot to restore the aforesaid benefice to him; and when the abbot was unwilling to acquiesce in their entreaties*, being very angry and agitated, they assembled one night in the deacon's house, and after supper they said that they wished to take vengeance upon the abbot. Although they were expressly forbidden by that deacon to kill the abbot or do anything to him whereby he might incur danger to his order and loss to his soul, nevertheless they rushed upon him, and, after inflicting blows, departed, leaving him half alive; he died after several days. *But from that time until today the aforesaid deacon, having become sorrowful on account of what had occurred, ceased from administration, and, before two years had elapsed, put on the monastic habit. Wherefore he petitioned us humbly to be instructed whether he could minister in the office of deacon and, if this were permitted to him, whether he could be promoted to a higher order. Although, if the truth supports the foregoing, the aforesaid deacon does not appear culpable for the abbot's death, nevertheless, because it belongs to good minds to acknowledge fault where there is no fault, we ascribe it not to him as a sin, but reckon it as merit, that by his own will he suspended himself from the administration of his office or put on the regular habit.* Therefore, *by apostolic writings* we command your fraternity that, if you know the foregoing to be supported by the truth, by apostolic authority you grant the often-mentioned deacon free faculty not only to minister in the office of the diaconate but also to ascend to the order of priesthood, if no other canonical impediment stands in the way, especially if he has not been stained by ill repute concerning this; since there ought not to be imputed to him what, contrary to his express prohibition and without his giving cause or occasion, was sacrilegiously attempted by his blood relatives, [*divine scripture testifying that the soul that shall sin shall itself die, etc. Given at Rieti on the fourth day before the Nones of August, in the first year of our pontificate,* 1198.]

Non censetur homicida is, quo prohibente et causam non dante a consanguineis homicidium committitur.

Idem.

Petrus, diaconus et monachus sancti Ioannis de Puna, sua nobis insinuatione monstravit, quod, quum ipsum quondam in saeculari habitu *constitutum*, in ecclesia de Rigelo beneficium *quoddam* obtinentem, abbas illius ecclesiae eodem beneficio spoliasset, cognati et amici eius *abbati saepius supplicarunt, ut beneficium restitueret sibi memoratum; quo nolente ipsorum precibus acquiescere*, irati plurimum et commoti, nocte quadam in domo diaconi convenerunt, et coena facta dicebant, quod vindictam volebant sumere de abbate. Inhibiti autem expresse ab eodem diacono, ne abbatem occiderent, aut aliquid sibi facerent, unde ordinis sui discrimen incurreret et animae detrimentum, nihilominus irruerunt in eum, et plagis impositis abierunt, semivivo relicto, qui post dies aliquot exspiravit. *Ab illo autem tempore usque hodie praedictus diaconus, de eo, quod contigerat, tristis effectus, ab administratione cessavit, et, nondum expleto biennio, habitum induit monachalem. Unde a nobis suppliciter petiit edoceri, utrum posset in officio diaconi ministrare, et, si hoc ei liceret, an posset ad maiorem ordinem promoveri. Licet autem, si praemissis veritas suffragatur, praefatus diaconus super abbatis interitu non videatur esse culpabilis; quia tamen bonarum mentium est, ibi culpam agnoscere, ubi culpa non est, quod ab administratione officii se propria voluntate suspendit, vel habitum induit regularem, sibi non ad peccatum adscribimus, sed ad meritum reputamus*. Quocirca *fraternitati vestrae per apostolica scripta* mandamus, quatenus, si praemissa noveris veritate subnixa, saepe dicto diacono non solum in diaconatus officio ministrare, sed etiam ad ordinem presbyteratus adscendere, si aliud canonicum non obstiterit, liberam concedas auctoritate apostolica facultatem, praesertim si super hoc non fuerit respersus infamia; quum ei non debeat imputari, quod contra prohibitionem eius expressam, eo causam vel occasionem non

dante, ausu sacrilego fuit ab ipsius consanguineis attentatum, [*divina scriptura testante, quod anima, quae peccaverit, ipsa morietur etc. Dat. Reate II. Non Aug. Pont. nostr. Ao. I.* 1198.]

Chapter XVIII

Latin source headnote: One who struck another lethally is deemed irregular, although the man was killed by others; the same applies if it is not apparent whether he struck lethally, if the man also died after being struck by others and it is not apparent from whose wound he died. It is the same if he struck nonlethally but had the intention of killing, and the man died from the wounds of others. It says this notably. Abbas.

The same, to the Abbot of the Holy Trinity of Meldemberg.

You informed us *through your letters* that, when a certain evildoer, having entered the church *of Bleiseium, with the fear of God set aside*, carried the eucharist together with altar ornaments and ecclesiastical books outside [*that*] church, the beloved son L., the priest *bearing the present letters*, a canon regular of [*your*] church, *whom you had instituted chaplain in the aforesaid church of Bleiseium*, took up a mattock and struck the aforesaid son of wickedness. But both you and he are wholly ignorant whether a blow of this kind was unto death. When the parishioners of the church saw the man carrying away the ornaments of the church, they took up swords and clubs and immediately killed him in that same place. *But the aforesaid Laurence, taking forethought for his salvation, after a year had passed revealed to you the sequence of the matter under the title of confession, on whose behalf you humbly petitioned us that we deign to act mercifully with him. Although it is contained in the canon that, if four or five men or more shall have fought against one man, and he, having been wounded by them, shall have died, whoever among them inflicted even a wound is judged a killer according to the statutes of the canons; nevertheless, in another canon it is said concerning a priest who struck a deacon riding on horseback, and the latter, falling from the horse with a broken neck, died: that if he was not struck unto death, penance is to be imposed upon the priest who acted incautiously, in such a manner that, having been suspended for some time from the solemnities of masses, he may afterward return to the priestly office; but if the deacon truly died from any blow of the priest, the latter is by no reason to be permitted to minister here in the manner of a priest, even if he had no intention of killing.*

We believe that in the aforesaid case a distinction must be made whether it can be established that the aforesaid priest did not inflict a lethal blow from which, *that is*, if the wounds of the others had not followed, the man struck would by no means have died, and whether the striker had no intention of killing, and the others did not proceed against the man through his exertion, counsel, or command. And indeed, if the matter so occurred—which perhaps could be shown from this, if a certain blow inflicted by him should appear to have been so slight and so light, in a part of the body in which one is not customarily killed by being lightly struck, that in the judgment of skilled physicians such a blow would be asserted not to have been lethal—since concerning the remaining matters the *priest* himself is to be believed, who is accused or denounced by no one, but of his own accord, *being solicitous for his salvation*, seeks saving counsel, after a penance imposed by way of precaution he will be able to minister in the priestly office, especially with the favor of religious life being added, since he is a canon regular and can celebrate the priestly office without any scandal. But if it cannot be discerned from whose blow the man struck died, in this doubt the priest must be treated as a killer, although perhaps he is not a killer, and he ought to abstain from the priestly office, since in this case it is safer to cease than rashly to celebrate, for the reason that in the one course no

danger, but in the other great danger, is feared. *Whether, moreover, a similar judgment is to be made concerning those of whom one, but it is entirely unknown which, perpetrated a homicide, if perhaps they should be presented to receive sacred orders—whether all are equally to be repelled, since it cannot be discerned who ought to be judged culpable—the diligent investigator should consider, although this case is very different from that one.*

But if, as is reported, this priest, having first been struck by that sacrilegious man, immediately struck him back on the head with a mattock, although all laws and every legal system permit force to be repelled by force, nevertheless, because this ought to be done with the moderation of blameless defense, not for taking vengeance but for repelling injury, the same priest does not appear to be wholly excused from the penalty for homicide: both by reason of the instrument with which he struck, which, since it is heavy, is not accustomed to inflict a light wound, and by reason of the part in which that man was struck, in which one is customarily mortally injured by a slight blow; *especially since it is asserted according to the common proverb that he who strikes first strikes by touching, while he who strikes second strikes in pain. Wherefore, after everything has been weighed, it is believed expedient for him humbly to abstain from exercising the priestly office.* [*Given at Viterbo on the Kalends of July, in the twelfth year of our pontificate,* 1209.]

> Irregularis censetur, qui alium letaliter percussit, licet ab aliis fuerit extinctus; idem, si non apparet, an letaliter, si etiam percussus ab aliis obiit, et non apparet, ex cuius vulnere decesserit. Idem est, si percusserit non letaliter, si animum occidendi habuit, et ex aliorum vulneribus percussus exspiravit. H. d. notabiliter. Abbas.
>
> Idem Abbati S. Trinitatis de Meldemberg.
>
> Significasti nobis *per literas tuas*, quod, quum quidam maleficus, ingressus ecclesiam *de Bleiseio, Dei timore posthabito* eucharistiam cum altarium ornamentis et libris ecclesiasticis extra [*ipsam*] ecclesiam asportasset, *dilectus filius* L. presbyter *lator praesentium* ecclesiae [*tuae*] canonicus regularis, *quem in praefata ecclesia de Bleiseio institueras capellanum*, praefatum iniquitatis filium fossorio arrepto percussit. Sed, si ad mortem fuit ictus huiusmodi, tu et ipse penitus ignoratis; quem parochiani ecclesiae videntes ornamenta ecclesiae asportantem, arreptis gladiis et fustibus in eodem loco protinus occiderunt. *Praefatus vero Laurentius de sua salute praecogitans, evoluto anno sub titulo confessionis tibi rei ordinem revelavit, pro quo nobis humiliter supplicasti, ut cum eo misericorditer agere dignaremur. Licet autem contineatur in canone, quod, si quatuor homines aut quinque vel plures contra unum hominem rixati fuerint, et ab eis mortuus fuerit vulneratus, quicunque illorum et plagam imposuerit, homicida secundum statuta canonum iudicetur; quia tamen in alio canone dicitur de presbytero, qui diaconum equitantem percussit, et ipse, cadens ex equo, cervice fracta interiit: quodsi non ad mortem percussus est, incaute agenti presbytero est poenitentia indicenda, ita, quod aliquanto tempore a missarum suspensus solenniis, denuo ad sacerdotale officium revertatur, quodsi veraciter qualicunque percussione presbyteri mortuus est diaconus, nulla hic ratione more sacerdotis permittendus est ministrare, etiamsi voluntatem non habuit occidendi*. Nos in praemisso casu credimus distinguendum, utrum constare possit, quod praefatus sacerdos non inflixit percussionem letalem, de qua *videlicet*, si aliorum non fuissent vulnera subsecuta, percussus minime interiisset, et si percussor voluntatem non habuerit occidendi, neque ipsius studio, consilio vel mandato processerint alii contra illum. Et quidem, si hoc ita se habet, quod forsan ex eo posset ostendi, si certa apparuisset percussio ab eodem inflicta tam modica et tam levis, in ea parte corporis, in qua quis de levi percuti non solet ad mortem, ut peritorum iudicio medicorum talis percussio assereretur non fuisse letalis, quum de ceteris credendum sit ipsi *sacerdoti*, qui non accusatur vel denunciatur ab aliquo, sed per se ipsum, *de sua salute sollicitus*, consilium appetit salutare, post poenitentiam ad cautelam iniunctam in sacerdotali poterit officio ministrare, maxime religionis accedente favore, quum sit canonicus regularis, et sine omni scandalo possit sacerdotale officium

celebrare. Quodsi discerni non possit, ex cuius ictu percussus interiit: in hoc dubio tanquam homicida debet haberi sacerdos, etsi forte homicida non sit, a sacerdotali officio abstinere debet, quum in hoc casu cessare sit tutius quam temere celebrare, pro eo, quod in altero nullum, in reliquo vero magnum periculum timeatur. *Utrum autem de illis sit simile sentiendum, quorum unus, sed quis omnino nescitur, homicidium perpetravit, si forsan ad recipiendos sacros ordines praesententur, utrum omnes sint pariter repellendi, quum discerni non possit, qui debeant culpabiles iudicari, diligens investigator advertat, quamvis hic casus sit ab illo valde diversus*. Si vero, quemadmodum perhibetur, sacerdos iste prius ab illo percussus sacrilego, mox eum cum ligone in capite repercussit, quamvis vim vi repellere omnes leges et omnia iura permittant; quia tamen id debet fieri cum moderamine inculpatae tutelae, non ad sumendam vindictam, sed ad iniuriam propulsandam: non videtur idem sacerdos a poena homicidii penitus excusari, tum ratione instrumenti, cum quo ipse percussit, quod, quum grave sit, non solet levem plagam inferre, tum ratione partis, in qua fuit ille percussus, in qua de modico ictu quis letaliter solet laedi, *maxime quum secundum vulgare proverbium asseratur, quod, qui ferit primo, ferit tangendo, qui ferit secundo, ferit dolendo. Unde, pensatis omnibus, ei creditur expedire, ut cum humilitate abstineat a sacerdotali officio exsequendo.* [*Dat. Viterbii Kal. Iul. Pont. nostr. Ao. XII.* 1209.]

Chapter XIX

Latin source headnote: A religious who practices surgery, if death follows from it, is irregular, even if he is skilled and diligent and did this from a motive of piety; but after satisfaction a merciful dispensation can be granted to him. It says this as far as § *Lastly*. — § 1. One who gave to a secular judge identifying objects belonging to a thief by whom he had been wounded is not irregular, although the thief is afterward killed. Abbas Siculus.

The same.

Your fraternity led us to be consulted. (*And below:* [*cf. c.* 7, *On Consanguinity and Affinity, IV.* 14.]) *Third,* you asked *that it be explained through the Apostolic See* what ought to be judged concerning a certain monk who, believing that he was curing a certain woman of a swelling of the throat, as a surgeon opened that swelling with a knife. When *that* swelling had subsided somewhat, the *monk* himself instructed the woman that she should in no way expose herself to the wind, lest perhaps the wind, entering the opening of the throat, should cause her death. But the woman, having scorned his command, while gathering crops incautiously exposed herself to the wind, and thus much blood flowed out through the opening of the throat, and the woman in this way ended her last day; *she nevertheless confessed that, because she exposed herself to the wind,* [*she herself*] *had given herself the cause of death*. The question, namely, is whether, since the aforesaid monk is a priest, it is lawful for him to exercise the priestly office. We therefore respond *thus* to your fraternity: although the monk himself transgressed greatly by usurping another's office, which was by no means fitting for him, nevertheless, if he acted from a motive of piety and not of greed, was skilled in the practice of surgery, and took care to exercise all the diligence that he ought, he is not to be so condemned because of what happened through the woman's fault contrary to his advice that, after fitting satisfaction, he cannot be dealt with mercifully so that he may be able to celebrate divine offices; otherwise, according to rigor, the exercise of the priestly order is to be forbidden to him.

§ 1. Lastly, it was proposed from your part [*before us*] that a certain scholar, fearing that robbers might be in his lodging, arose from his bed, *having taken up a small sword in order to seek a light*, and, *when he came unwittingly to the door*, found a thief there who, *beginning to wrestle with the scholar*, not only threw

the scholar himself to the ground but *also* wounded him almost unto death. *But the scholar, having been provoked by him and immediately repelling force with force, wrested the sword from the robber and struck him back while observing the moderation of law; the robber, terrified, hastened his flight as quickly as he could.* Therefore, when morning *dawned,* the scholars sought that robber, and, finding him wounded, delivered him to the podestà of Vicenza, before whom he steadfastly denied that he had committed the foregoing acts at all. Thereupon the aforesaid podestà sent *his* messengers to that scholar so that he might disclose whether he knew anything concerning the aforesaid thief, or might deliver identifying objects. The scholar delivered to the aforesaid messengers the knife that he had taken from the robber himself, and the shoes left by the latter in his house, which the robber had taken off *for himself* so that the noise of his feet would not be heard, involving himself no further in that matter. The podestà, therefore, after receiving such identifying objects, delivered the robber himself to his officers to be punished; they amputated his genitals and put out his eyes. The robber, moreover, *went to a certain monastery, and there for three days*, moved by anger and pain, took neither drink nor food, and thus was taken from their midst. Wherefore you seek to be instructed by our pronouncement whether the aforesaid scholar may be promoted to sacred orders. We therefore respond thus to your inquiry: if the aforesaid scholar is supported by worthy merits, he is in no way to be barred from receiving sacred orders on account of the foregoing event. [*Given at the Lateran on the Ides of February, in the fourteenth year of our pontificate,* 1212.]

> Religiosus, chirurgiam exercens, si ex ea mors sequitur, irregularis est; etiamsi sit peritus et diligens, et hoc fecerit causa pietatis; sed cum eo post satisfactionem misericorditer dispensari potest. H. d. usque ad § Ad ultimum. - § 1. Qui iudici saeculari dedit intersignia furis, a quo fuit vulneratus, irregularis non est, licet ille postmodum occidatur. Abbas Siculus.
>
> Idem.
>
> Tua nos duxit fraternitas consulendos (*Et infra:* [*cf. c.* 7. *de cons. et aff. IV.* 14.]) *Tertio* Quaesivisti *per sedem apostolicam explicari*, quod sit de quodam monacho sentiendum, qui, credens, se quandam mulierem a gutturis tumore curare, ut chirurgicus cum ferro tumorem illum aperuit, et, quum tumor *ille* aliquantulum resedisset, *monachus* ipse mulieri praecepit, ne se vento exponeret ullo modo, ne forte ventus, subintrans gutturis apertionem, sibi causam mortis inferret; sed mulier, eius mandato contempto, dum messes colligeret, vento se exposuit incaute, et sic per apertionem gutturis sanguis multus effluxit, et mulier diem ultimum sic finivit, *quae tamen confessa est, quod, quia vento exposuit semetipsam,* [*ipsa*] *sibi dederat causam mortis*; utrum videlicet, quum praedictus monachus sit sacerdos, liceat ei sacerdotale officium exercere. Nos igitur fraternitati tuae *taliter* respondemus, quod, licet ipse monachus multum deliquerit alienum officium usurpando, quod sibi minime congruebat, si tamen causa pietatis, et non cupiditatis id egerit, et peritus erat in exercitio chirurgiae, omnemque studuit, quam debuit, diligentiam adhibere, non est ex eo, quod per culpam mulieris contra consilium eius accidit, adeo reprobandus, quod non post satisfactionem condignam cum eo misericorditer agi possit, ut divina valeat celebrare; alioquin interdicenda est ei sacerdotalis ordinis exsecutio de rigore. § 1. Ad ultimum fuit ex parte tua propositum [*coram nobis,*] quod quidam scholaris, metuens, ne latrones in hospitio suo essent, *parvo assumpto gladio, ut ignem quaereret*, de strato consurgens, *quum venisset ad ostium, ignarus* reperit ibi furem, qui, *cum scholari incipiens colluctari*, non solum ipsum scholarem prostravit ad terram, sed *etiam* paene ad mortem vulneravit eundem. *Scholaris vero, provocatus ab illo, vim vi in continenti repellens, extorto latroni gladio, eundem servato iuris moderamine repercussit, qui perterritus fugam, quam cito potuit, maturavit*. Mane itaque *lucescente*, scholares latronem quaesiverunt eundem, quem, vulneratum inventum, potestati Vincentiae tradiderunt, coram quo constanter negavit, quod praemissa minime

perpetravit. Unde praefatus potestas ad eundem scholarem *suos* nuncios destinavit, ut exponeret, si qua sciret de fure praedicto, vel traderet intersignia; qui cultrum, quem ipsi latroni abstulerat, et sotulares ab eodem in ipsius domo dimissos, quos abstraxerat *sibi*, ne pedum strepitus audiretur, nunciis tradidit memoratis, super eodem facto se nihil amplius intromittens. Potestas igitur, receptis talibus intersigniis, latronem ipsum apparitoribus suis tradidit puniendum, qui sibi amputaverunt virilia, et oculos eruerunt; latro vero *se ad quoddam coenobium transtulit, et ibi per triduum* ira et dolore commotus nec potum sumpsit, nec cibum, et sic de medio est sublatus. Unde per nostrum oraculum postulas edoceri, utrum praefatus scholaris ad sacros valeat ordines promoveri. Nos igitur inquisitioni tuae taliter respondemus, quod, si praefatus scholaris dignis meritis adiuvatur, propter praescriptum eventum a susceptione sacrorum ordinum nullatenus est arcendus. [*Dat. Lat. Id. Febr. Pont. nostr. Ao. XIV.* 1212.]

Chapter XX

Latin source headnote: One who gives cause for an abortion is a killer if what had been conceived was a living rational creature; otherwise it is otherwise.

The same, to the Prior and Brothers of the Carthusians.

As we learned from the tenor of your letters, when a certain priest of your order, who had formerly been a black monk, seized by the belt, as if in play, a certain pregnant woman with whom he had contracted a dishonorable association, and who asserted that she had conceived by him, the *woman afterward* asserted that through this she had been so injured that on this account she miscarried. On account of this the same priest, having made use of the counsel of upright men, decided that he should separate himself from the ministry of the altar. *Wherefore you humbly petitioned us that we deign to act mercifully with him.* We, however, respond to your devotion by this present communication that, if what was conceived had not yet been given life, he will be able to minister; otherwise, he ought to abstain from the office of the altar. [*Given at the Lateran on the fourth day before the Nones of October, in the fourteenth year of our pontificate,* 1211.]

Qui dat causam abortioni, homicida est, si conceptum erat vivificatum animal rationale; alias secus.

Idem Priori et Fratribus Carthusiensibus.

Sicut ex literarum vestrarum tenore accepimus quum quidam presbyter vestri ordinis, qui prius fuerat niger monachus, quandam mulierem praegnantem, cum qua contraxerat consuetudinem inhonestam, et quae asserebat, se concepisse ex eo, per zonam arripuerit, quasi ludens, ipsa *mulier postmodum* per hoc sic se asseruit esse laesam, quod occasione huiusmodi abortivit; propter quod idem presbyter, proborum virorum usus consilio, se ipsum duxit ab altaris ministerio sequestrandum. *Quare nobis humiliter supplicastis, ut cum eo agere misericorditer dignaremur*. Nos vero devotioni vestrae insinuatione praesentium respondemus, quod, si nondum erat vivificatus conceptus, ministrare poterit; alioquin debet ab altaris officio abstinere. [*Dat. Lat. IV. Non. Oct. Pont. nostr. Ao. XIV.* 1211.]

Chapter XXI

Latin source headnote: It is not imputed to a cleric seeking justice civilly against a layman if the judge exacts vengeance of blood upon the layman.

The same, to Bishop S.

You petitioned. (*And below:* [*cf. c.* 14, *On a Competent Forum, II.* 2.]) You asked further whether it is lawful for you to implore the royal power against certain persons who, in contempt of a sentence of

excommunication, withhold the tithes due to churches, since they can scarcely be constrained to pay them without the shedding of blood. To this we respond *briefly* that, if, when you simply lodge a complaint of this kind, the king—to whom the sword has been committed for the praise of the good, but the punishment of the evil—exercises upon those same rebels the power delivered to him, it will be imputed to their hardness or malice. [*Concerning cemeteries, etc.; cf. c.* 7, *On the Consecration of a Church, III.* 40. *Given at the Lateran on the third day before the Kalends of May, in the sixteenth year of our pontificate,* 1213.]

> Non imputatur clerico, civiliter iustitiam petenti de laico, si iudex in laicum exercet vindictam sanguinis.
>
> Idem S. Episcopo.
>
> Postulasti: (*Et infra:* [*cf. c.* 14. *de for. comp. II.* 2.]) Quaesivisti praeterea, utrum contra quosdam, contempta excommunicationis sententia debitas ecclesiis decimas subtrahentes, tibi regiam implorare liceat potestatem, quum ad solutionem ipsarum vix absque sanguinis effusione valeant coarctari. Ad quod *breviter* respondemus, quod, si, te huiusmodi querimoniam simpliciter deponente, rex, cui ad bonorum laudem, vindictam vero malorum, gladius est commissus, in eosdem rebelles traditam sibi exercuerit potestatem, eorum erit duritiae aut malitiae imputandum. [*Coemeteria etc. cf. c.* 7. *de cons. eccl. III.* 40. *Dat. Lat. III. Kal. Mai. Pont. nostr. Ao. XVI.* 1213.]

Chapter XXII

Latin source headnote: Accidental homicide is not imputed to one who did not kill and was not at fault, even if by way of precaution he sought pardon.

Honorius III, to the Bishop of York.

The *humble* confession presented to us by the cleric I. disclosed that, when he was of boyish age, playing with certain companions of his own age and pursuing one of them, he threw a stone after him, not indeed with the intention *of injuring him*, but of striking fear into him. Although the boy was neither struck nor touched by the thrown stone, nevertheless, falling upon another stone and injuring his head, he died *after the space of forty days*, partly through the inexperience of the physician and partly through the neglect of his father, who exposed him *in summertime to work and sweat in the fields*. But because the said cleric, so that the grief of the dead boy's father might be mitigated, *being an ignorant boy induced by friends*, sought pardon from him concerning this, you repel him *on this occasion* from receiving sacred orders, although the same father of the deceased, laboring at the point of death, confessed to you and *your archdeacon, and also* to the priest to whom he disclosed his conscience, and confirmed by an oath, that the cleric had committed nothing in the death of his son, as had become *fully* established to him. Wherefore the same cleric petitioned us *as suppliantly as humbly* that, since he did not have an injured conscience concerning that death, we deign to act mercifully with him. Therefore, *by apostolic writings* we command your fraternity that, *after diligent inquiry has been made into the truth concerning these matters*, if it shall be established that it is so, you do not on this account repel him from receiving sacred orders.

> Homicidium casuale non imputatur ei, qui non occidit, nec fuit in culpa, etiamsi ad cautelam veniam postulaverit.
>
> Honorius III. Episcopo Eboracensi. Exhibita nobis *humilis* I. clerici confessio patefecit, quod, quum in puerili esset constitutus aetate, cum quibusdam coaetaneis suis ludens, et insequens unum ex illis,

lapidem post eum non animo *quidem* laedendi, sed timorem incutiendi proiecit; qui, licet ex proiecto lapide percussus non fuerit, neque tactus, ad alium tamen lapidem corruens, et caput offendens, tum propter imperitiam medicantis, tum propter patris incuriam, qui *aestivo tempore campestribus* laboribus et sudoribus ipsum exposuit, *post XL. dierum spatium* exspiravit. Quia vero dictus clericus, ut mitigaretur dolor patris defuncti, *tanquam puer inscius ab amicis inductus*, veniam super hoc postulavit ab ipso, tu eum *hac occasione* a sacrorum ordinum susceptione repellis, quanquam idem defuncti pater, in extremis laborans, tibi et *archidiacono tuo, nec non* presbytero, cui suam aperuit conscientiam, confessus fuerit, et praestito firmaverit iuramento, nihil ipsum in morte filii sui, prout sibi *plene* constiterat, commisisse. Quare idem clericus *tam suppliciter quam humiliter* postulavit a nobis, ut, quum de illius obitu laesam non habeat conscientiam, dignaremur agere misericorditer cum eodem. Quocirca *fraternitati tuae per apostolica scripta* mandamus, quatenus, *inquisita super his sollicite veritate*, si constiterit ita esse, ipsum propter hoc a receptione sacrorum ordinum non repellas.

Chapter XXIII

Latin source headnote: Accidental homicide is not imputed to one who was engaged in a lawful act and was not at fault.

The same, to the Bishop and Chapter of Vannes.

The priest John showed us by his humble communication that, when *on a certain day* he rang the bells so that, when the signal had been given, the faithful people might assemble for divine offices, a falling bell struck a certain boy *standing* before it. Although, having been wounded in the head, he received the care of physicians for a month, *after a month nevertheless* he died, since the wound was mortal. *Wherefore he humbly petitioned us that, acting mercifully with him, we permit him freely to exercise the priestly office.* We, therefore, considering that nothing could be imputed to the said priest, who was engaged in a lawful act, if he did not foresee every accidental event, command your discretion that, if *it shall be established to you that the matter* is so, you permit the said priest, *if no other canonical impediment stands in the way*, to exercise the priestly office *with the obstacle of any appeal removed*.

Homicidium casuale non imputatur ei, qui dedit operam rei licitae, nec fuit in culpa.

Idem Episcopo et Capitulo Venetensibus.

Ioannes sacerdos humili nobis insinuatione monstravit, quod, quum *die quadam* pulsaret campanas, ut signo dato conveniret populus fidelium ad divina, cadens tintinnabulum percussit quendam *manentem* puerum coram eo, qui, *licet vulneratus in capite per mensem curam receperit medicorum, post mensem tamen*, quum vulnus esset mortale, decessit. *Unde nobis humiliter supplicavit, ut misericorditer agentes cum ipso, permitteremus sibi exsequi libere officium sacerdotis*. Nos igitur attendentes, quod dicto sacerdoti, qui dabat operam rei licitae, nihil potuit imputari, si casus omnes fortuitos non praevidit, discretioni vestrae mandamus, quatenus, si *vobis* constiterit, *rem* ita esse, dictum sacerdotem, *si aliud canonicum non obsistit*, sacerdotale officium *sublato cuiuslibet appellationis obstaculo* exsequi permittatis.

Chapter XXIV

Latin source headnote: A cleric who fights even against enemies of the Catholic faith, if he struck anyone and his conscience reproaches him concerning a killing, ought to abstain from the ministry of the altar.

The same, to Pelagius the Priest.

Your petition presented to us contained that, when the enemies of the Lord's cross and blasphemers of the Christian name gravely attacked a certain fortress in which you dwelt, and its inhabitants, clerics as well as laymen, went out against them and fought one another, very many were killed on both sides. Wherefore, because you struck some men, you fear that you incurred irregularity, and *you humbly petitioned us that we deign to write to you what you ought to do. Therefore, we* command your discretion that, if concerning the killing of anyone in that conflict your conscience reproaches you, you reverently abstain from the ministry of the altar, since it is more prudent in a doubt of this kind to abstain than rashly to celebrate.

> Clericus pugnando etiam contra inimicos fidei catholicae, si quemquam percussit, et de interfectione ipsum remordet conscientia, a ministerio altaris abstinere debet.
>
> Idem Pelagio Presbytero.
>
> Petitio tua nobis exhibita continebat, quod, quum inimici dominicae crucis ac blasphemi nominis Christiani castrum quoddam, in quo morabaris, graviter invasissent, exeuntibus inde habitatoribus tam clericis quam laicis contra eos, ac invicem confligentibus, hinc inde occisi quam plurimi exstiterunt. Unde, quum pro eo, quod aliquos percuissisti, irregularitatem metuas incurrisse, *nobis humiliter supplicasti, ut, quid agere debeas, tibi scribere dignaremur. Quocirca discretioni tuae* mandamus, quatenus, si de interfectione cuiusquam in illo conflictu tua conscientia te remordet, a ministerio altaris abstineas reverenter, quum sit consultius in huiusmodi dubio abstinere, quam temere celebrare.

Chapter XXV

Latin source headnote: It says the same as the chapter *John* above in this same title, and places a difference only in the facts.

Gregory IX.

A certain man, as you assert, having been summoned by a priest to assist in the construction of a church, fell together with a ceiling panel that the same priest was attempting to loosen, and on this occasion was taken from human affairs. (*And below:*) Considering, therefore, that the priest himself was engaged in a lawful act, and also took care to exercise the diligence that he ought, those standing around to whom danger threatened having been warned so timely and in so loud a voice that they could both understand and flee, we respond thus to your inquiry: on account of this cause, or because he perhaps did not foresee all accidental events that cannot be foreseen, he ought not to be impeded with respect to office or benefice.

> Idem dicit, quod cap. Ioannes supr. eod., et tantum ponit diversitatem in facto.
>
> Gregorius IX. Quidam, ut asseris, ad aedificationem ecclesiae, in adiutorium a presbytero evocatus, ruens cum laqueari, quod idem presbyter solvere nitebatur, hac occasione rebus est humanis exemptus. (*Et infra:*) Attendentes igitur, quod sacerdos ipse dabat operam licitae rei, studuit etiam, quam debuit, diligentiam adhibere, circumstantibus quibus periculum imminebat, ita tempestive et alta voce praemonitis, quod et intelligere et fugere potuerunt, inquisitioni tuae taliter respondemus, quod ob hanc causam, vel quia omnes casus fortuitos, qui praevideri non possunt, forsitan non praevidit, non debet quoad officium vel beneficium impediri.

Title XIII: On Tournaments

Chapter I

Latin source headnote: Tournaments ought not to be held, and penance is granted to one wounded in them; but if he dies, ecclesiastical burial is denied to him if he entered with the intention of fighting; it is otherwise if he entered for another cause, as, for example, to exact debts owed to him. It says this together with the following chapter.

From the Lateran Council.

Adhering to the footsteps of our predecessors of happy memory, *Pope* Innocent and Pope Eugenius, we prohibit the holding of those detestable markets or fairs, which are commonly called tournaments, in which knights are accustomed to assemble by agreement and rashly engage one another for the display of their strength and boldness, whence the deaths of men and dangers to souls often result. But if any of them shall have died there, although penance is not to be denied to him when he asks for it, nevertheless he is to lack ecclesiastical burial.

> **DE TORNEAMENTIS.**
>
> Torneamenta fieri non debent, et vulnerato in eis conceditur poenitentia; sed, si moritur, denegatur ei sepultura ecclesiastica, si accessit animo pugnandi; secus, si accessit alia causa, ut puta ut debita sibi exigeret. Hoc dicit cum cap. sequ.
>
> Ex concilio Lateranensi. Felicis memoriae *Papae* Innocentii et Eugenii praedecessorum nostrorum vestigiis inhaerentes, detestabiles illas nundinas vel ferias, quas vulgo torneamenta vocant, in quibus milites ex condicto convenire solent, et ad ostentationem virium suarum et audaciae temere congredi, unde mortes hominum et animarum pericula saepe proveniunt, fieri prohibemus. Quodsi quis eorum ibi mortuus fuerit, quamvis ei poscenti poenitentia non negetur, ecclesiastica tamen careat sepultura.

Chapter II

Latin source headnote: It says the same as in the preceding chapter.

Alexander III, to the Bishop of Anagni.

You should know that it has come to our hearing that, when a certain man had gone to a place appointed for tournaments for the sake of seeking *his* debts *from certain knights whom he thought would come there, it happened that he was crushed and died when the horse on which he was sitting fell violently and heedlessly upon him; but beforehand he received the Lord's body and was anointed with the anointing of holy oil. Wherefore, because he received death at a tournament, he is barred from the burial of the faithful.* But *we*, considering that ecclesiastical burial ought to be forbidden only to those *as we believe* who, entering tournaments solely with the intention of doing so, die there, command your fraternity that, if it shall be established to you that *the aforesaid I.* came to the aforesaid tournament not with the intention of taking part in the sport but of receiving what was owed to him, although he died there by an accidental event, you cause his body by ecclesiastical dispensation to be delivered for burial, especially if he received the Lord's body and was anointed with the anointing of holy oil.

> Idem dicit, quod in superiori cap.
>
> Alexander III. Anatensi Episcopo.

Ad audientiam nostram noveris pervenisse, quod, quum quidam ad locum, deputatum torneamentis, causa requirendi *sua* debita *a quibusdam militibus, quos eo venturos putabat*, accessisset, *accidit, ut violenter et inconsiderate ab equo, in quo sedebat, super eum cadente compressus et mortuus est, sed prius dominicum corpus suscepit, et sacri olei unctione perunctus est. Unde pro eo, quod in torneamento mortem accepit, a sepultura fidelium prohibetur*. Nos *vero* attendentes, quod his tantum, *sicut credimus*, ecclesiastica sepultura debeat interdici, qui, ad torneamenta animo id faciendi tantum accedentes, decedunt ibidem, fraternitati tuae mandamus, quatenus, si tibi constiterit, quod *praefatus I.* ad praedictum torneamentum non animo ludendi, sed percipiendi credita, pervenisset, licet ibi fortuito casu obierit, corpus eius dispensatione ecclesiasticae tradi facias sepulturae, maxime si dominicum corpus susceperit, et sacri olei fuerit unctione perunctus.

Title XIV: On Clerics Fighting in a Duel

Chapter I

Latin source headnote: A cleric who enters a duel, whether he offered it or accepted it, is to be deposed; nevertheless, the bishop will be able to dispense with him if death or mutilation of a member did not follow from it.

Alexander III.

Furthermore, if a cleric voluntarily offered a duel to someone, or, *if* it was offered, accepted *and undertook* it, whether he was victor or vanquished, by the rigor of law he is deservedly to be deposed. But however grave and enormous his offense in this may be, he can escape the sentence of deposition if his bishop shall decide that a merciful dispensation should be granted to him, provided that homicide or the diminution of members did not follow from that duel.

DE CLERICIS PUGNANTIBUS IN DUELLO.

Clericus, iniens duellum, sive obtulerit sive susceperit, deponendus est; poterit tamen episcopus cum eo dispensare, si mors vel mutilatio membri non sit inde secuta.

Alexander III. Porro, si clericus alicui sponte duellum obtulerit, vel, *si* oblatum susceperit *et subierit*, sive victor sive victus fuerit, de rigore iuris est merito deponendus. Sed, quantumque eius in hoc gravis sit et enormis excessus, evadere potest depositionis sententiam, si cum ipso suus episcopus duxerit misericorditer dispensandum; dummodo ex ipso duello homicidium vel membrorum diminutio non fuerit subsecuta.

Chapter II

Latin source headnote: A cleric is irregular not only if he himself kills directly, but also if a champion furnished by him kills the adversary; nor does custom excuse him. Nevertheless, a dispensation can be granted to him concerning the holding of a benefice.

Celestine III.

Henry, the priest *bearing the present letters*, humbly informed us that, when he had proceeded against a certain layman concerning theft in a secular court, *he*, because his witnesses failed, introduced a champion according to the evil custom of the land, who wounded the accused with blows *of the sword* to such an extent that he was compelled to die *the following night*. Therefore, because you wished to consult us concerning this, we remove your uncertainty by this response: such champions are true

killers, and the aforesaid priest, although not he himself but another fought for him in the duel, ought not to minister in sacred orders, as the institutions of the sacred canons *also* teach. There is no doubt, moreover, that homicide is perpetrated by deed as well as by command, or by counsel or defense; nevertheless, a merciful dispensation can be granted to him concerning the holding of a benefice.

> Irregularis est clericus, non solum si ipse interficit per se, sed etiam si pugil, ab eo datus, adversarium occidat; nec excusat consuetudo. Poterit tamen cum eo circa beneficium habendum dispensari. Coelestinus III. Henricus presbyter *lator praesentium* nobis humiliter intimavit, quod, quum laicum quendam super furto in saeculari placito convenisset, *ipse*, quia testes sui defecerunt, pugilem secundum pravam terrae consuetudinem introduxit, qui reum usque adeo ictibus *gladii* vulneravit, quod coactus est *nocte proxima* exspirare. Quia igitur super hoc nos consulere voluisti, ambiguitatem tuam responsione huiusmodi removemus, quod tales pugiles homicidae veri exsistunt, nec praedictus sacerdos, licet non ipse, sed alius pro eo in duello pugnaverit, debet in sacris ordinibus ministrare, sicut *etiam* tradunt sacrorum canonum instituta. Homicidium autem tam facto quam praecepto, sive consilio aut defensione non est dubium perpetrari; poterit tamen cum eo circa habendum beneficium misericorditer dispensari.

Title XV: On Archers

Sole Chapter

Latin source headnote: An archer and crossbowman acting against Christians is to be excommunicated. It says this.

Innocent III.

Under anathema we prohibit henceforth the exercise against Christian and Catholic persons of that death-dealing art, hateful to [*God*], of crossbowmen and archers.

> **DE SAGITTARIIS.**
>
> Excommunicandus est sagittarius et ballistarius contra Christianos. Hoc dicit.
>
> Innocentius III. Artem *autem* illam mortiferam et [*Deo*] odibilem ballistariorum et sagittariorum adversus Christianos et catholicos exerceri de cetero sub anathemate prohibemus.

Title XVI: On Adulteries and Defilement

Chapter I

Latin source headnote: One who defiles a virgin is bound to endow her and take her as wife; and, if he does not wish to contract with her, he will be chastised corporally in addition to furnishing the dowry. It says this together with the following chapter.

In Exodus.

If anyone shall seduce a virgin not yet betrothed and shall lie with her, he shall endow her and shall have [*her*] as wife. But if the virgin's father shall be unwilling to give her, he shall pay money according to the measure of the dowry that virgins are accustomed to receive.

> **DE ADULTERIIS ET STUPRO.**

> Stuprans virginem tenetur eam dotare et ducere in uxorem, et, si non vult cum ea contrahere, ultra dotem corporaliter castigabitur. H. d. cum cap. sequenti. In Exodo.
>
> Si seduxerit quis virginem nondum desponsatam, dormieritque cum ea, dotabit eam, et habebit [*eam*] uxorem. Si vero pater virginis dare noluerit, reddet pecuniam iuxta modum dotis, quam virgines accipere consueverunt.

Chapter II

Latin source headnote: It is summarized in the immediately preceding chapter.

Gregory, to the Bishop of Siponto.

It has come to us that Felix, *your nephew*, defiled a certain virgin, *a thing wicked even to say*. If this is true, although he would have to be chastised by a [*grave*] penalty according to the law, *we nevertheless*, softening the law's severity to some extent, ordain in this manner: either let him have as wife the woman whom he defiled, or *certainly*, if he thinks that this should be refused, let him be chastised *more strictly* in body and excommunicated, and let him be thrust into a monastery in which he is to do penance, from which there is to be no permission *for him* to depart without [*our*] command. [*Therefore, let your fraternity take care that these things are fulfilled, etc.*]

> Summatum est supra capitulo proximo.
>
> Gregorius Sipontino Episcopo.
>
> Pervenit ad nos, quod Felix *nepos tuus* quandam virginem, *quod nefas est dici*, stupro decepit. Quod si verum est, quamvis [*grave*] esset de lege poena plectendus, nos *tamen*, aliquatenus legis duritiem mollientes, hoc modo disponimus, ut aut quam stupravit uxorem habeat, aut *certe*, si renuendum putaverit, *districtius ac* corporaliter castigatus excommunicatusque, in monasterio, in quo agat poenitentiam, retrudatur, de quo *ei* nulla sit egrediendi sine [*nostra*] praeceptione licentia. [*Ita igitur fraternitas tua ut haec compleantur studeat etc.*]

Chapter III

Latin source headnote: A husband retaining an adulterous wife before she has completed penance is a participant in the offense; it is otherwise if she has done penance. Nevertheless, he ought not to receive her repeatedly.

From the Council of Arles.

If a man, knowing that his wife has transgressed, lives with her when she has not done penance but remains in *her* fornication, the *man* will be guilty and a participant in her sin. But if the woman after being dismissed shall have done penance and shall wish to return to her husband, he ought to receive the sinner, *who has done penance*, but not repeatedly.

> Maritus, retinens adulteram coniugem non peracta poenitentia, particeps est delicti; secus, si egit poenitentiam; non tamen debet eam saepe recipere.
>
> Ex concilio Arelatensi. Si vir sciens, uxorem suam deliquisse, quae non egerit poenitentiam, sed permanet in fornicatione *sua*, vixerit cum illa: *vir* reus erit et eius peccati particeps. Quodsi mulier dimissa egerit poenitentiam, et voluerit ad virum suum reverti, debet, sed non saepe, recipere peccatricem, *quae poenitentiam egit*.

Chapter IV

Latin source headnote: A husband can accuse his wife of adultery on account of suspicion, and in accusing her he is preferred to others.

From the Council of Paris.

It has *indeed* been permitted to husbands to accuse their wives even upon suspicion, and they themselves more than others can both accuse concerning adultery and defend.

> Maritus propter suspicionem potest accusare uxorem de adulterio, et in accusando praefertur ceteris.
>
> Ex concilio Parisiensi. Maritis *sane* etiam ex suspicione uxores accusare permissum est, et ipsi plus ceteris de adulterio et accusare possunt et defendere.

Chapter V

Latin source headnote: On the confession of a woman alone, asserting that she committed adultery with a priest, the priest ought not to be punished; but if he is in ill repute, purgation can be imposed upon him. If he furnishes it, he is absolved, but if he fails, he is suspended from office.

Alexander III.

You informed us that a certain priest, *at the instigation of the devil*, slept *frequently, as you assert*, within a church with another man's wife. She publicly disclosed to you *indeed* that she and he had confessed an offense of this kind to a certain priest, and that same priest said this very thing in your presence while concealing the name of the adulterer. You sought counsel *from the Apostolic See* concerning what ought to be done in this matter when, although the adulterer denies it, the woman persists in her confession. We therefore command that, imposing a fitting penance upon the aforesaid adulteress, you take care to reconcile the *aforesaid* church by the sprinkling of holy water. But upon the aforesaid priest, lest, contrary to the Apostle, the hearts of the weak be struck by his ill repute, and lest our ministry be disparaged, and lest priests, becoming more secure, fall more freely into sin, you are to impose, according to your judgment, purgation with five neighboring priests whom you shall know to be unwilling to perjure themselves. If he shall be able to purge himself, you are to permit him to minister in his office; otherwise, you are not to postpone suspending him from his office.

> Ad solam mulieris confessionem, asserentis, se commisisse adulterium cum sacerdote, non debet sacerdos puniri, sed sibi infamato potest indici purgatio; quam si praestiterit, absolvitur, deficiens vero suspenditur ab officio.
>
> Alexander III. Significasti nobis, quendam presbyterum cum alterius coniuge *instinctu diabolico* infra ecclesiam *frequenter, sicut asseris*, dormivisse, quae *utique* se et illum cuidam sacerdoti huiusmodi delictum confessos fuisse, publice tibi detexit, et hoc ipsum idem sacerdos, nomen adulteri celans, in praesentia tua dixit. Super quo quid fieri debeat, quum, negante adultero, mulier in confessione persistat, *ab apostolica sede* consilium requisisti. Ideoque mandamus, quatenus condignam poenitentiam praefatae imponens adulterae, ecclesiam *praelibatam* per aspersionem aquae benedictae reconciliare procures. Praedicto autem sacerdoti, ne contra Apostolum infirmorum corda mala fama ipsius percutiantur, et ne vituperetur ministerium nostrum, neque securiores presbyteri exsistentes in peccatum licentius prolabantur, cum vicinis quinque presbyteris, quos se nolle peierare cognoveris, iuxta arbitrium tuum purgationem indicas. Quem, si purgare se poterit, in officio suo ministrare permittas; alioquin ab officio suo ipsum suspendere non postponas.

Chapter VI

Latin source headnote: A spouse cannot proceed against a spouse for adultery if the former is also proved to have committed adultery.

Innocent III, to the Archbishop of Tours.

We have understood, *both through the letters of our venerable brother the Bishop of Poitiers and through those matters which were proposed on behalf of the parties before our beloved son Andrew, our subdeacon and chaplain, who was appointed auditor in this matter*, that, when the layman S. had driven H., his wife, from marital consortium *without a reasonable cause, the same bishop*, their diocesan, hearing that the same *woman* was fornicating with a certain adulterer, bound her and him by the bond of excommunication. At length, after abjuring the adulterer and receiving absolution before the aforesaid bishop, she petitioned that the aforesaid man be restored to her. But he, objecting against her to *this* adultery, *of which he said that she had begotten offspring*, and alleging that she had not been expelled by him but had departed of her own accord, proposed that restoration of himself *to her* was by no means to be made. The aforesaid woman, wholly denying this, replied against him that he had fornicated *and had begotten offspring from the fornication, on account of which he could not use such an exception against her. But when the faculty of proving these matters had been granted to each party, the aforesaid woman proved the same man's adultery through certain witnesses, whom the man himself said ought to be rejected as less suitable, and at length an appeal was made by him to our presence.* Therefore, *by apostolic writings* we command your fraternity that, unless it shall be established to you either through the manifestness of the matter or through a lawful confession of the woman that she had committed adultery voluntarily, if proof of the adultery that the man is said to have committed fails, you compel him to receive her. But if the woman's fornication is established in the aforesaid manner, unless the witnesses through whom the man's adultery was proved shall have been rejected, since the right of marriage remains injured in each party and equal offenses are removed by mutual compensation, you are nevertheless to compel him to receive her and treat her with marital affection; otherwise, you are not to postpone imposing silence upon the *aforesaid* woman. [*Given at the Lateran on the sixth day before the Kalends of May, in the eleventh year,* 1208.]

> Coniux coniugem de adulterio impetere non potest, si et ipse adulterium commisisse convincatur.
>
> Innocentius III. Turonensi Archiepiscopo.
>
> Intelleximus *tam per literas venerabilis fratris nostri Pictaviensis episcopi, quam per ea, quae coram dilecto filio Andrea subdiacono et capellano nostro, super hoc auditore concesso, proposita pro partibus exstiterunt*, quod, quum S. laicus H. uxorem suam a maritali consortio *sine causa rationabili* depulisset, *idem episcopus* dioecesanus eorum, audiens, *mulierem* eandem cum quodam adultero fornicari, eam et illum vinculo excommunicationis adstrinxit, quae, tandem adulterum abiurans, absolutione recepta coram episcopo memorato praedictum virum sibi restitui postulavit. At ille, *huiusmodi* obiiciens ei adulterium, *de quo prolem genuisse dicebat eandem*, et quod ab ipso non expulsa, sed spontanea recessisset, restitutionem sui proposuit *ei esse* minime faciendam; quod mulier *memorata prorsus* inficians, replicavit in ipsum, quod fuerat fornicatus, *et de fornicatione sobolem procrearat, propter quod tali exceptione uti non poterat contra ipsam. Quum autem, utrique parti probandi haec facultate concessa, praefata mulier per quosdam testes eiusdem viri adulterium probavisset, quas vir ipse dicebat tanquam minus idoneos reprobandos, tandem ab eo fuit ad nostram praesentiam appellatum.* Quocirca *fraternitati tuae per apostolica scripta* mandamus, quatenus, nisi tibi constiterit, vel per evidentiam rei, vel per confessionem legitimam mulieris, quod adulterata sponte fuisset adulterii etiam, quod vir dicitur commisisse, probatione cessante, ipsum recipere compellas eandem. Quodsi praedicto modo de mulieris fornicatione constiterit, nisi testes, per quos viri

adulterium est probatum, fuerint reprobati, quum matrimonii ius in utroque laesum consistat, et paria delicta mutua compensatione tollantur: nihilominus eum cogas, ut eam recipiat, et maritali affectione pertractet; alioquin mulieri *praedictae* silentium imponere non postponas. [*Dat. Lat. VI. Kal. Maii Ao. XI.* 1208.]

Chapter VII

Latin source headnote: A marriage ought not to be separated with respect to the marriage-bed on account of adultery when both spouses have committed adultery.

The same, to the Bishop of Amiens.

Your fraternity asked *us* whether, when someone denies the conjugal debt to his wife who has been detected in adultery, if he himself afterward manifestly perpetrates adultery with another woman, *the wife having done penance for what was committed and humbly sought pardon, the husband* ought to be compelled to treat her with marital affection. Concerning this we respond *thus* to you: since equal crimes are removed by mutual compensation, a husband of this kind cannot decline the consortium of his wife on the pretext of her fornication. [*Given at Anagni on the Ides of June, in the eleventh year,* 1208.]

Non debet separari matrimonium quoad torum propter adulterium, quando ambo coniuges fuerunt adulterati. Idem Episcopo Ambianensi. Tua fraternitas requisivit *a nobis*, utrum, aliquo denegante uxori suae in adulterio deprehensae debitum coniugale, si postmodum ipse cum alia perpetret adulterium manifeste, *an uxore agente poenitentiam de commisso et veniam humiliter postulante, vir* cogi debeat, ut eandem maritali affectione pertractet. Super quo tibi *taliter* respondemus, quod, quum paria crimina compensatione mutua deleantur, vir huiusmodi fornicationis obtentu suae uxoris nequit consortium declinare. [*Dat. Anagniae Id. Iun. Ao. XI.* 1208.]

Title XVII: On Robbers, Incendiaries, and Violators of Churches

Chapter I

Latin source headnote: By reason of robbery, someone is allotted the forum of one who is not his judge, and he can be punished by that judge with his own judge supporting him.

From the Council of Meaux.

Concerning those who *have a benefice or inheritance within a parish, are parishioners of another bishop, and* travel from place to place and there commit robberies and depredations, it was determined that they be excommunicated by the prelate of that place, and not depart from that parish before they worthily make amends for what they perpetrated. Their excommunication is to be made known *to their superior and* their own bishop, lest he receive them before they return to the place where they committed the robbery and make full amends for everything.

DE RAPTORIBUS, INCENDIARIIS ET VIOLATORIBUS ECCLESIARUM.

Ratione rapinae sortitur quis forum non sui iudicis, et ab eo poterit puniri proprio iudice suffragante.

Ex concilio Meldensi. De illis autem, qui *intra parochiam beneficium aut hereditatem habent et alterius episcopi parochiani sunt, et* de loco ad locum iter faciunt, et ibi rapinas et depraedationes peragunt, placuit, ut ab illius loci praelato excommunicentur, nec ante ex parochia illa exeant, quam digne quae perpetrarunt

emendent; quorum excommunicatio *seniori eorum et* proprio episcopo significanda est, ne eos recipiat, antequam illuc redeant, ubi rapinam fecerint, et omnia plene emendent.

Chapter II

Latin source headnote: A manifest robber or violator of a church, if he restores or gives security for restoration, is admitted during life and at death to penance and burial. But if he was unwilling to give security when he could, and at death cannot do so, clerics ought not to be present at his burial; and clerics who are present or impose penance contrary to this disposition are deposed from office and benefice.

Eugenius III.

Concerning that, moreover, *which by common deliberation with our brothers we decreed in council regarding robbers and violators of churches, and priests who should attempt to impose penance upon them or to receive their offerings contrary to our statute, we decree in that same constitution, following the footsteps of the holy Fathers, and likewise confirm by the authority of God and of the blessed Apostles Peter and Paul*, We decree that, if anyone among those *robbers* who, *at the devil's suggestion, have violently risen up to robbery in the City*, or anyone who has been manifestly apprehended in the violation of churches, does not first restore what was taken, if he can, or furnish firm and full security for making amends, the benefit of penance is to be denied to him entirely. But if, *which may it not happen*, he shall have persisted in his contumacy until death and, placed at the point of death, shall humbly have sought the remedy of penance, if he shall furnish amends or security for making amends *and shall give suitable sureties who ought to restore what was taken*, penance and ecclesiastical burial are to be granted to him. But one who, while in health, did not repent or make amends, through an obstinate mind, and at death was unable to furnish security *and sureties, as we have said*, the solemnity of penance *indeed* appears, as we believe, to profit him little; nevertheless, if he is contrite for his sin, viaticum is not to be denied to him, yet in such a manner that no cleric is present at his burial or presumes to receive his alms. But if any priests or clerics should attempt, contrary to this, to give penance during life or at death, to be present at *their* burial, or to receive their alms, or should be found participants in robbery of this kind, let them suffer irrecoverable loss of their order and lack ecclesiastical benefice.

Manifestus raptor vel ecclesiae violator, si restituit vel de restituendo cavet, in vita et in morte ad poenitentiam et ad sepulturam admittitur. Si vero noluit cavere, quum posset, et in morte non potest, clerici eius sepulturae interesse non debent, et clerici, interessentes vel iniungentes poenitentiam contra hanc dispositionem, deponuntur ab officio et beneficio.

Eugenius III. Super eo vero, *quod de raptoribus et ecclesiarum violatoribus, atque presbyteris, qui poenitentiam eis iniungere vel eorum oblationes contra statutum nostrum suscipere attentaverint, a nobis communi deliberatione statutum in concilio cum fratribus nostris statuimus in constitutione ipsa, sanctorum Patrum vestigia subsequentes, auctoritate Dei et beatorum Apostolorum Petri et Pauli pariter confirmamus*, Statuimus ut quicunque ex his *raptoribus*, qui *in Urbe suggerente diabolo* violenter surrexerint in rapinam, sive in ecclesiarum violatione manifeste fuerit deprehensus, nisi prius ablata restituat, si poterit, vel emendandi firmam et plenam securitatem fecerit, poenitentiae beneficium ei penitus denegetur. Si vero usque ad obitum, *quod absit*, in contumacia sua duraverit, et in extremis positus remedium poenitentiae humiliter postulaverit, si emendationem vel emendandi securitatem praestiterit, *ac fideiussores, qui ablata restituere debeant, idoneos dederit*: ei poenitentia et sepultura ecclesiastica concedantur. Qui autem in sanitate obstinata mente non poenituerit vel emendaverit, et in morte securitatem *ac fideiussores, sicut diximus*, praestare nequiverit,

solennitas poenitentiae *quidem* parum prodesse videtur, sicut credimus; sed de peccato contrito viaticum non negetur, ita tamen, ut nullus clericorum sepulturae illius intersit, nec eius eleemosynam praesumat accipere. Quodsi qui presbyterorum vel clericorum contra hoc in vita vel in morte poenitentias dare, aut sepulturae *illorum* interesse, vel eorum eleemosynas accipere attentaverint, seu huiusmodi rapinae participes inventi fuerint: ordinis sui damnum irrecuperabiliter patiantur, et ecclesiastico beneficio careant.

Chapter III

Latin source headnote: Those who capture or despoil faithful persons traveling by ship for a just cause ought to be excommunicated. It says this first. Those who despoil persons suffering shipwreck are excommunicated unless they restore what was taken. This is the second point.

From the Lateran Council.

Let those *also* be subjected to excommunication who presume either to capture Romans or other Christians carried by ship for trade or other honorable causes, or to despoil them of their possessions. Those also who, with condemned cupidity, despoil of their possessions Christians suffering shipwreck, to whom according to the rule of faith they are bound to render assistance, are to know that they are subject to excommunication unless they return what was taken.

Excommunicari debent qui capiunt vel spoliant fideles, ex iusta causa navigantes. H. d. primo. Excommunicati sunt spoliantes naufragium patientes, nisi ablata restituant. Hoc secundo.

Ex concilio Lateranensi. Excommunicationi *quoque* subdantur, qui Romanos aut alios Christianos, pro negotiatione vel aliis honestis causis navigio vectos, aut capere aut rebus suis spoliare praesumunt. Illi etiam, qui Christianos naufragium patientes, quibus secundum regulam fidei auxilio esse tenentur, damnata cupiditate spoliant rebus suis, nisi ablata reddiderint, excommunicationi se noverint subiacere.

Chapter IV

Latin source headnote: By delegation of the prince, prelates can judge concerning robbery and other crimes; nevertheless, they cannot inflict a penalty of blood.

Alexander III, to the Archbishop of Palermo.

It is *said to happen* sometimes in your archbishopric *that* Saracens seize Christian women and boys and presume to abuse them, and at times do not fear even to kill some, [*a thing terrible to hear*]. Since, moreover, *our dearest son in Christ, the illustrious* William, King of Sicily, has committed offenses of this kind to you and other bishops to be punished, *your prudence led you to consult us as to what is to be done with Saracens who have been caught in so nefarious a crime. Concerning this, certainly,* We respond thus to your consultation: you will be able to chastise such persons existing within your jurisdiction with a monetary penalty, and even to afflict them with scourges, yet with [*such*] moderation employed that the scourges by no means appear to pass into vengeance of blood. But if the offense *of the Saracens concerning this matter* shall have been so grave that they ought to suffer death or the cutting off of members, you are to reserve *the exercise of that vengeance* to the royal power.

Ex principis delegatione possunt praelati de raptu et aliis criminibus iudicare; poenam tamen sanguinis infligere non possunt.

Alexander III. Panormitano Archiepiscopo.

In archiepiscopatu tuo *dicitur contingere* quandoque, *quod* Sarraceni mulieres Christianas et pueros rapiunt, et eis abuti praesumunt, et quosdam etiam, [*quod auditu est terribile,*] interdum occidere non verentur. Quum autem excessus huiusmodi *carissimus in Christo filius noster, illustris* rex Siciliae *Willelmus* tibi et aliis episcopis commiserit puniendos, *quid de Sarracenis agendum sit, qui fuerint in tam nefario scelere intercepti, tua nos duxit prudentia consulendos. Super quo utique* Consultationi tuae taliter respondemus, quod tales, in iurisdictione tua exsistentes, pecuniaria poteris poena mulctare, et etiam flagellis afficere ea [*tamen*] moderatione adhibita, quod flagella in vindictam sanguinis transire minime videantur. Si vero ita fuerit *super hoc* gravis *Sarracenorum* excessus, quod mortem vel detruncationem membrorum debeant sustinere, vindictam *ipsam exercendam* reserves regiae potestati.

Chapter V

Latin source headnote: An incendiary of a church, repenting and absolved at death, is buried in a cemetery, and his heirs are compelled to make satisfaction according to the means of the deceased. It says this.

The same, to the Bishop of Clermont.

It was contained in your letters, *which I., the bearer of the present letters, presented,* that H., who had been entangled in many crimes and had committed the burning of churches at the devil's instigation, at length, when placed in his *last* illness, *confessed himself a sinner, and,* after accepting penance for what had been committed, was absolved from the sentence of anathema by the hand of his chaplain; but at death he could not have ecclesiastical burial. Therefore, if the matter so occurred, *by apostolic writings and by way of precept* we command your fraternity that, with appeal ceasing, you cause the body of the same *father of the aforesaid I.* to be buried in the cemetery, and admonish and compel his heirs worthily to make satisfaction, according to his means, to those upon whom he had inflicted losses contrary to justice through burning or in another manner, so that he may thus be freed from sin.

Incendiarius ecclesiae, in morte poenitens et absolutus, in coemeterio sepelitur, et heredes compelluntur ad satisfaciendum iuxta facultatem defuncti. Hoc dicit.

Idem Claremontensi Episcopo.

In literis tuis, *quas I. lator praesentium exhibuit,* continebatur, quod, quum H. multis fuisset criminibus irretitus, qui ecclesiarum incendium diabolo instigante commiserat, tandem in *ultima* aegritudine constitutus, *se confessus est peccatorem, et,* accepta poenitentia de commissis, per manum capellani sui fuit a sententia anathematis absolutus, sed moriens ecclesiasticam sepulturam habere nequivit. Quapropter, si ita res se habet, *fraternitati tuae per apostolica scripta praecipiendo* mandamus, ut corpus eiusdem *patris I. supra dicti* appellatione cessante facias in coemeterio sepeliri, et heredes eius moneas et compellas, ut his, quibus ille per incendium vel alio modo damna contra iustitiam irrogaverat, iuxta facultates suas condigne satisfaciant, ut sic a peccato valeat liberari.

Chapter VI

Latin source headnote: There is not said to be abduction where a willing woman is carried away for marriage; nevertheless, the abductor can contract marriage with the woman abducted, and after consummation of the marriage one cannot enter religious life without the consent of the other. It says this together with the following chapter.

Lucius III, to the Bishop of Burgos.

When we had committed to *your experience for termination* the case that is pending between the knight E., *the bearer of the present letters*, and his wife, *the knight E., seeking her return and asserting that the woman had lawfully married him, steadfastly declared that he would prove this through canonical proofs. The woman, however, proposed that, having been given to another man at the suggestion of her lords and parents, she turned away from the love of that knight, who had previously carried her away from her parents, yet with her willing, as is said, and afterward, before he knew her carnally, betrothed her; thereafter she was enclosed in a monastery of nuns, where she is also detained. Wherefore, because concerning these matters your prudence decided that the Apostolic See should be consulted, by this present communication to you* We respond that, since abduction is said to be committed where nothing concerning marriage is treated beforehand, this man ought not to be called an abductor, since he had the woman's assent and betrothed her before he knew her carnally, although her parents *perhaps* protested, from whom he is said to have carried her away. Furthermore, since after marriage has been perfected by carnal union, the Apostle bearing witness, the wife does not have power over her own body, but the husband does, and conversely, if it shall have become clear, either from the man's *canonical* proofs or from the woman's confession, that the marriage preceded, she could not afterward enter a monastery or otherwise profess continence without the man's assent. Therefore, because after the consummated marriage the abducted woman was placed by force in the monastery, she will not be able to decline the consortium of the husband, especially if it cannot be proved that the husband assented that the woman should profess continence.

> Raptus non dicitur, ubi volens pro matrimonio abducitur; raptor tamen cum rapta matrimonium contrahere potest, et post consummationem matrimonii alter sine consensu alterius religionem ingredi non potest. H. d. cum cap. sequenti. Lucius III. Burgensi Episcopo.
>
> Quum causam, quae inter E. militem *latorem praesentium* et uxorem eius vertitur, *tuae commisissemus experientiae terminandam, E. miles repetens, mulierem legitime sibi nupsisse, per probationes canonicas constanter se asseruit probaturum. Femina vero proposuit, quod dominorum et parentum suorum suggestione alteri viro tradita, ab illius militis amore divertit, qui a parentibus eam prius rapuerat, illa tamen volente, ut dicitur, et postmodum, priusquam eam cognosceret, desponsavit, deinde inclusa est in monasterium monialium, ubi etiam detinetur. Unde, quoniam super his prudentia tua duxit sedem apostolicam consulendam, significatione praesentium tibi* Respondemus, quod, quum ibi raptus dicatur admitti, ubi nil ante de nuptiis agitur, iste raptor dici non debet, quum habuerit mulieris assensum, et prius eam desponsaverit, quam cognoverit; licet parentes *forsitan* reclamarent, a quibus eam dicitur, rapuisse. Praeterea quum post matrimonium, carnis commixtione perfectum, teste Apostolo uxor sui corporis potestatem non habeat, sed maritus, et e converso: si praecessisse matrimonium vel ex probationibus viri *canonicis*, vel ex mulieris confessione claruerit postmodum sine assensu viri non potuit ipsa monasterium ingredi, aut aliter continentiam profiteri. Non ergo pro eo, quod post matrimonium consummatum rapta per vim in monasterio fuerit, viri poterit consortium declinare; maxime si probari nequeat, virum, ut mulier profiteretur, continentiam assensisse.

Chapter VII

Latin source headnote: A woman who has been abducted can contract marriage with her abductor when free faculty in contracting is given to her.

Innocent III, to the Bishop of Saron.

Coming to the Apostolic See. (*And below:* [*cf. c.* 24, *On Prebends, III.* 5.]) A girl who has been abducted will contract lawfully with her abductor if her prior dissent afterward passes into consent, and what

displeased her before at length begins to please her, provided that the persons are legally qualified to contract.

> Rapta potest matrimonium contrahere cum raptore, ubi dabitur libera facultas in contrahendo.
>
> Innocentius III. Episcopo Saronensi. Accedens ad apostolicam sedem (*Et infra:* [*cf. c.* 24. *de praeb. III.* 5.]) Rapta puella legitime contrahet cum raptore, si prior dissensio transeat postmodum in consensum, et quod ante displicuit tandem incipiat complacere, dummodo ad contrahendum legitimae sint personae.

Title XVIII: On Thefts

Chapter I

In Exodus.

He who steals a man and shall sell *him,* having been convicted *of the offense,* shall die by death.

> **DE FURTIS.**
>
> In Exodo.
>
> Qui furatur hominem, et vendiderit *eum,* convictus *noxae* morte moriatur.

Chapter II

Latin source headnote: The ecclesiastical sacraments are to be denied to thieves and robbers dying in sin; it is otherwise if they repented at death.

From the Council of Tribur.

If thieves and robbers are killed while stealing or plundering, it was determined that prayer is not to be made for them. But if, having been captured or wounded, they shall have confessed to a priest or deacon, we do not deny them communion.

> Furibus et latronibus in peccato obeuntibus sacramenta ecclesiastica deneganda sunt; secus, si in morte eos poenituit.
>
> Ex concilio Triburiensi. Fures et latrones si in furando vel depraedando occiduntur, visum est, pro eis non esse orandum. Sed si comprehensi aut vulnerati presbytero vel diacono confessi fuerint, communionem eis non negamus.

Chapter III

Latin source headnote: One who commits theft from a necessity that is not very urgent sins, but not gravely; wherefore a light penance is to be imposed upon him. It says this according to the common understanding.

From the Penitential of Theodore.

If anyone shall have stolen foodstuffs, clothing, or livestock on account of the necessity of hunger or nakedness, let him do penance for three weeks; and, if he shall have returned it, let him not be compelled to fast.

> Committens furtum ex necessitate non multum urgente, peccat, sed non graviter; unde imponenda est ei levis poenitentia. H. d. secundum communem intellectum.

> Ex poenitentiali Theodori. Si quis propter necessitatem famis aut nuditatis furatus fuerit cibaria,vestem vel pecus, poeniteat hebdomadas tres, et, si reddiderit, non cogatur ieiunare.

Chapter IV

Latin source headnote: One who does not disclose a thief on account of the gain that he obtains from him is guilty of sin.

Jerome, on Proverbs.

"He who shares with a thief kills his own soul." Not only the thief is held guilty, but also the one who, aware of the theft, does not disclose it when the possessor makes inquiry.

> Non indicans furem propter lucrum, quod ab eo consequitur, reus peccati est.
>
> Hieronymus super Parabolas.
>
> "Qui cum fure partitur, occidit animam suam." Non fur solum, sed ille reus tenetur, qui, furti conscius, quaerente possessore non indicat.

Chapter V

Latin source headnote: A secret thief can, after restitution and penance, be promoted to sacred orders.

Alexander III, to the Bishop of Cremona.

From your letters, *if we remember rightly, it became known to our ears, and the diligent report of the beloved son I., our subdeacon, disclosed*, that B., *the bearer of the present letters*, seizing a certain chalice incautiously left in a church, presumed to retain it for a long time. *Afterward, nevertheless, being led by repentance, he humbly and reverently disclosed his offense to a priest in confession, and, according to the counsel of the same priest, made satisfaction concerning it to the church, as was fitting. Wherefore, because on account of this very matter the discretion of your fraternity hesitates to ordain him, by apostolic writings and by way of precept* We command your prudence that, if *the aforesaid B.* voluntarily confessed *the offense of presumption of this kind*, made satisfaction concerning it to the church whose chalice it had been, and has not been stained concerning this with a manifest mark or ill repute, after the penance or a suitable part of the penance has been completed, provided that you know him to be otherwise suitable, you do not hesitate to promote him to sacred orders.

> Fur occultus potest post restitutionem et poenitentiam ad sacros ordines promoveri. Alexander III. Cremonensi Episcopo.
>
> Ex literis tuis, *si bene meminimus, auribus nostris* innotuit, *et dilecti filii I. subdiaconi nostri diligens relatio patefecit*, quod B. *lator praesentium* calicem quendam in ecclesia minus caute dimissum rapiens, longo tempore detinere praesumpsit. *Postea tamen poenitentia ductus presbytero in confessione excessum suum humiliter et reverenter aperuit, et ecclesiae iuxta eiusdem presbyteri consilium, prout dignum fuit, exinde satisfecit. Unde quoniam propter hoc ipsum tuae fraternitatis discretio dubitat ordinare, prudentiae tuae per apostolica scripta praecipiendo* Mandamus, quatenus, si *praedictus B.* sponte confessus fuerit *huiusmodi praesumptionis excessum*, et exinde ecclesiae, cuius calix fuerat, satisfecerit, nec est super hoc nota vel infamia manifesta respersus, post peractam poenitentiam aut congruam partem poenitentiae, dummodo, alias idoneum ipsum esse cognoscas, ad sacros ordines non dubites promovere.

Title XIX: On Usuries

Chapter I

Latin source headnote: Usury is to make profit from the fruits of a thing given in pledge; this fails in the case excepted here.

Alexander III, in the Council of Tours.

Many clerics, *and, what we say with sorrow, even those who by verbal profession and habit have left the present world, while they abhor ordinary usuries as if more manifestly condemned, lend money to persons in need, receive their possessions in pledge, and take the fruits arising from them beyond the principal. Therefore,* The authority of the general council has decreed that no one *henceforth* established in the clergy presume to practice either this or another kind of usury. And if anyone [*up to this time*] has received another's possession in pledge under this appearance or condition in return for money given, if, after expenses have been deducted, he has already received his principal from the fruits, let him restore the possession absolutely to the debtor. But if he has something less, after that has been received, let the possession return freely to its owner. But if after a constitution of this kind anyone established in the clergy shall have persisted in the detestable profits of usuries, let him suffer peril to ecclesiastical office, unless perhaps it was a benefice of a church that appeared fit to be redeemed for it in this manner from the hand of a layman.

> **DE USURIS.**
>
> Usura est lucrifacere fructus rei pignoratae; fallit in casu hic excepto.
>
> Alexander III. in concilio Turonensi. Plures clericorum, *et, quod moerentes dicimus, eorum quoque, qui praesens saeculum professione vocis et habitu reliquerunt dum communes usuras, quasi manifestius damnatas, exhorrent, commodata pecunia indigentibus, possessiones eorum in pignus accipiunt, et provenientes fructus percipiunt ultra sortem. Idcirco* Generalis concilii decrevit auctoritas, ut nullus *amodo* constitutus in clero vel hoc vel aliud genus usurae exercere praesumat. Et si quis [*hactenus*] alicuius possessionem data pecunia sub hac specie vel conditione in pignus acceperit, si sortem suam deductis expensis de fructibus iam perceperit, absolute possessionem restituat debitori. Si autem aliquid minus habet, eo recepto, possessio libere ad dominum revertatur. Quodsi post huiusmodi constitutum in clero quisquam exstiterit, qui detestandis usurarum lucris insistat, ecclesiastici officii periculum patiatur, nisi forte ecclesiae beneficium fuerit, quod redimendum ei hoc modo de manu laici videatur.

Chapter II

Latin source headnote: In effect, it says the same as the preceding chapter, but adds tacitly that the same applies to laymen. For in the preceding chapter mention was made only of clerics.

The same, to the Archbishop of Canterbury and his Suffragans.

Because it is dangerous not only for ecclesiastical men but also for any others to devote themselves to the profits of usuries, by the authority of the present letters we have decided to enjoin upon *you* that, through ecclesiastical coercion and without the exaction of usuries, you compel those who, after expenses have been deducted, have *already* received *their* principal from the possessions or trees that they are known to hold in pledge, to restore those pledges.

> Idem in effectu dicit cum praecedenti cap., sed addit tacite idem esse in laicis. Nam in praecedenti capite tantum fuit facta mentio de clericis.

Idem Cantuariensi Archiepiscopo et eius Suffraganeis.

Quoniam non solum viris ecclesiasticis, sed etiam quibuslibet aliis periculosum est usurarum lucris intendere, auctoritate *tibi* praesentium duximus iniungendum, ut eos, qui de possessionibus vel arboribus, quas tenere in pignore noscuntur, sortem *suam* deductis expensis *inde iam* receperunt, ad eadem pignora restituenda sine usurarum exactione ecclesiastica districtione compellas.

Chapter III

Latin source headnote: Manifest usurers cannot be admitted to the communion of the altar, ecclesiastical burial, or the offering of an oblation; and clerics acting contrary to this are to be punished as is stated here.

The same, in the Lateran Council.

Because in almost every place the crime of usuries has become so strong that many, setting aside other businesses, practice usuries as if lawfully, and pay no attention to how they are condemned by the page of each testament, we therefore decree that manifest usurers are neither to be admitted to the communion of the altar nor, if they die in this sin, to receive Christian burial, and that no one is to receive their offerings. But whoever shall have received them or delivered them for Christian burial is both to be compelled to return *what* he received and to remain suspended from the exercise of his office until he makes satisfaction according to the judgment of his bishop.

Manifesti usurarii ad communionem altaris et ecclesiasticam sepulturam et oblationem offerendam admitti non possunt, et clerici, contra hoc facientes, puniantur, ut hic dicitur.

Idem in concilio Lateranensi. Quia in omnibus fere locis ita crimen usurarum invaluit, ut multi, aliis negotiis praetermissis, quasi licite usuras exerceant, et qualiter utriusque testamenti pagina condemnentur, nequaquam attendant: ideo constituimus, quod usurarii manifesti nec ad communionem admittantur altaris, nec Christianam, si in hoc peccato decesserint, accipiant sepulturam, sed nec oblationes eorum quisquam accipiat. Qui autem acceperit, vel Christianae tradiderit sepulturae, et *ea*, quae acceperit, reddere compellatur, et, donec ad arbitrium episcopi sui satisfaciat, ab officii sui maneat exsecutione suspensus.

Chapter IV

Latin source headnote: It can be understood in two ways: first concerning the lender, and second concerning the recipient of usuries; and according to the first understanding it says this: it is not lawful to receive usuries even for a pious work when through the receipt cause is given for usury to be committed. It says this. Or thus, and more clearly: it is not lawful to induce anyone to practice usuries, even for a pious work. And this reading is gathered from the decision.

The same, to the Archbishop of Palermo.

Concerning that, moreover, *which your affection asked of us—whether a dispensation can be made for receiving money at usury so that the poor who are held in captivity by the Saracens can be freed through that same money—by these present letters to you* We respond that, since the page of each testament detests the crime of usuries, we do not see that any dispensation can be made concerning this, because, since sacred scripture forbids a person *even* to lie for the life of another, much more must one be forbidden to become involved in the crime of usuries even for redeeming the life of a captive.

Potest intelligi dupliciter, primo in mutuante, secundo recipiente usuras, et secundum primum intellectum hoc dicit: Etiam pro opere pio non licet usuras recipere, quando per receptionem datur causa usurae committendae. H. d. Vel sic et clarius: Non licet inducere quem ad exercendum usuras etiam pro pio opere. Et ista lectura colligitur ex decisa.

Idem Panormitano Archiepiscopo.

Super eo vero, *quod a nobis tua dilectio postulavit, utrum possit in recipienda pecunia ad usuram dispensatio fieri, ut pauperes, qui in Sarracenorum captivitate tenentur, per eandem possint pecuniam liberari, praesentibus tibi literis* Respondemus, quod, quum usurarum crimen utriusque testamenti pagina detestetur, super hoc dispensationem aliquam posse fieri non videmus, quia, quum scriptura sacra prohibeat, *vel* pro alterius vita mentiri, multo magis prohibendus est quis, ne etiam pro redimenda vita captivi usurarum crimine involvatur.

Chapter V

Latin source headnote: Usurers who are solvent are compelled by the penalties of the Lateran Council to restore usuries, even those that they received before the council; and when means do not exist, possessions bought from money lent at interest ought to be sold, and satisfaction ought to be made to those entitled to receive it.

The same, to the Archbishop of Salerno.

When you, *as you assert*, commanded that manifest usurers, *namely those who died in that sin*, according to our decree that was recently promulgated in council, be deprived of the communion of the altar and ecclesiastical burial until they return what they had received so wickedly, certain of them *say that their own resources are insufficient to pay the usuries received. Others, however, promise that* [*they*] *will return the portions of the usuries that they have at hand; but they confess that they cannot return other usuries that they had extorted, since possessions were purchased from them and delivered to their children or parents. Others, however,* shamelessly, in order to excuse excuses in sins, affirm that only those usuries are to be restored which were received after our prohibition, *and that no persons ought to be compelled to pay usuries that they had received before our prohibition.* Concerning these matters we thus respond to your fraternity: whether before or after our prohibition they extorted usuries, they are to be compelled by the penalty that we established in council to restore them to those from whom they extorted them, or to their heirs, or, if these do not survive, to distribute them to the poor, provided that they have in their resources that from which they can restore them, since, according to the word of blessed Augustine, sin is not remitted unless what was taken is restored. But those who do not have in their resources that from which they can restore the usuries ought not to be chastised by any penalty, since the mark of poverty manifestly excuses them. The possessions, however, that were purchased from usuries ought to be sold, and their prices restored to those from whom the usuries were extorted, so that thus they may be freed not only from *that* penalty but also from the sin that they had incurred through the extortion of usuries.

Usurarii, qui sunt solvendo, coguntur per poenas Lateranensis concilii usuras restituere, etiam quas ante concilium receperunt; et facultatibus non exstantibus debent possessiones, emptae ex pecunia foenebri, vendi, et debentibus recipere satisfieri. Idem Salernitano Archiepiscopo.

Quum tu, *sicut asseris*, manifestos usurarios, *scilicet qui in illo peccato decesserint*, iuxta decretum nostrum, quod nuper in concilio promulgatum est, communione altaris et ecclesiastica praeceperis sepultura privandos, donec reddant quod tam prave receperant: quidam eorum *dicunt, ad solvendas perceptas usuras*

proprias non sufficere facultates. Alii vero promittunt, [*se*] *partes usurarum, quas habent prae manibus, reddituros; sed usuras alias, quas extorserant, quum de his possessiones comparatae sunt, et eorum filiis vel parentibus traditae, se non posse reddere confitentur. Alii vero* ad excusandas excusationes in peccatis impudenter affirmant, illas duntaxat usuras restituendas, quae sunt post interdictum nostrum receptae, *nec aliquos ad solvendas usuras, quas ante interdictum nostrum receperant, debere compelli*. Super his fraternitati tuae taliter respondemus, quod, sive ante sive post interdictum nostrum usuras extorserint, cogendi sunt per poenam, quam statuimus in concilio, eas his, a quibus extorserunt, vel eorum heredibus restituere, vel, his non superstitibus, pauperibus erogare; dummodo in facultatibus habeant, unde ipsis possint eas restituere, quum iuxta verbum B. Augustini non remittatur peccatum, nisi restituatur ablatum. Illi autem, qui non habent in facultatibus, unde usuras valeant restituere, non debent ulla poena mulctari, quum eos nota paupertatis evidenter excuset. Possessiones vero, quae de usuris comparatae sunt, debent vendi, et ipsarum pretia his, a quibus usurae sunt extortae, restitui, ut sic non solum a poena *illa*, sed etiam a peccato possint, quod per usurarum extorsionem incurrerant, liberari.

Chapter VI

Latin source headnote: One who sells a thing for more than it is worth because he defers payment sins, unless it is doubtful whether at the time of payment the value of the thing will have changed, and the seller would not have been going to sell at the time when he sold. It says this according to the common understanding.

The same, to the Archbishop of Genoa.

You say that in your city it often happens that certain persons buy pepper, cinnamon, or other merchandise, which at that time is not worth more than five pounds, and promise *through a public instrument* that they will pay six pounds at the established term to those from whom they receive that merchandise. Although a contract of this kind cannot from such a form be deemed to bear the name of usuries, nevertheless the sellers incur sin unless it is doubtful whether that merchandise will be worth more or less at the time of payment. And therefore your citizens would consult well for their salvation if they ceased from such a contract, since the thoughts of men cannot be hidden from almighty God.

Vendens rem plus, quam valeat, quia solutionem differt, peccat, nisi dubium sit, an tempore solutionis erit valor rei variatus, et venditor non erat venditurus tempore, quo vendidit. H. d. secundum communem intellectum.

Idem Genuensi Archiepiscopo.

In civitate tua dicis saepe contingere, quod, quum quidam piper, seu cinamomum, seu alias merces comparant, quae tunc ultra quinque libras non valent, et promittunt *per publicum instrumentum*, se illis, a quibus illas merces accipiunt, sex libras statuto termino soluturos. Licet autem contractus huiusmodi ex tali forma non possit censeri nomine usurarum, nihilominus tamen venditores peccatum incurrunt, nisi dubium sit, merces illas plus minusve solutionis tempore valituras. Et ideo cives tui saluti suae bene consulerent, si a tali contractu cessarent, quum cogitationes hominum omnipotenti Deo nequeant occultari.

Chapter VII

Latin source headnote: A usurer who, after admonition, does not desist, if he is a cleric, is suspended from office and benefice; if a layman, he is excommunicated.

The same.

Furthermore, you are to forbid your parishioners to receive usuries *in every way, because the page of each testament detests the crime of usuries*. If they should scorn to obey *your admonitions*, if they are clerics, you are to suspend them from office and benefice; if [*however*] they *are* laymen, you are to bind them with the bond of excommunication until worthy satisfaction.

> Usurarius monitus, non desistens, si clericus est, ab officio et beneficio suspenditur; si laicus, excommunicatur.
>
> Idem.
>
> Praeterea parochianis tuis usuras recipere *omnibus modis* interdicas, *quia usurarum crimen utriusque testamenti pagina detestatur*. Qui si *monitis vestris* parere contempserint, si clerici sint, eos ab officio beneficioque suspendas; si [*vero*] laici *fuerint*, usque ad dignam satisfactionem ipsos vinculo excommunicationis adstringas.

Chapter VIII

Latin source headnote: The fruits of a thing given in pledge ought to be computed toward the principal, and it excepts one case.

The same, to the Abbot and Brothers of Saint Laurence.

The cleric C., *the bearer of the present letters, complained to us that, although from a certain piece of land that his father obligated to you, after expenses were deducted, you received your principal, you nevertheless still detain that land, not without derogation from your salvation, uprightness, and reputation. Wherefore, by apostolic writings and by way of precept* we command your discretion that, if you detain that land by title of pledge and have received *your* principal from its fruits, you return the aforesaid land to the aforesaid cleric *with delay and appeal ceasing, and leave him in peace and quiet*, unless *perhaps* that land is of the fief of *your* monastery.

> Fructus rei pignoratae computari debent in sortem, et excipit unum casum.
>
> Idem Abbati et Fratribus S. Laurentii. Conquestus est nobis C. clericus *praesentium lator, quod, licet de quadam terra, quam pater suus vobis obligavit, sortem vestram deductis expensis receperitis, terram tamen ipsam non sine derogatione vestrae salutis, honestatis et famae nihilominus detinetis. Inde est, quod* Discretioni vestrae *per apostolica scripta praecipiendo* mandamus, quatenus, si terram ipsam titulo pignoris detinetis, et de fructibus eius sortem *vestram* recepistis, praedictam terram clerico memorato *dilatione et appellatione cessante* reddatis, *et in pace et quiete dimittatis*, nisi *forte* terra ipsa de feudo sit monasterii vestri.

Chapter IX

Latin source headnote: An heir, whether the usurer's son or an outsider, is compelled to restore usuries extorted by the deceased.

The same, to the Bishop of Piacenza.

Your fraternity led us to be consulted as to what is to be observed concerning the sons of usurers who succeed them when they have died in the crime of usuries, or concerning outsiders to whom you assert that the goods of the usurers have devolved. We therefore respond to your question by the present letters that sons are to be compelled to restore the usuries by the same coercion by which

their parents, if they were living, would be compelled. We believe that this same thing is also to be exercised against outside heirs.

> Heres, usurarii filius vel extraneus, usuras, extortas per defunctum, restituere compellitur.
>
> Idem Episcopo Placentino.
>
> Tua nos duxit fraternitas consulendos, quid sit de usurariorum filiis observandum, qui eis, in crimine usurarum defunctis, succedunt, aut de extraneis, ad quos bona usurariorum asseris devoluta. Tuae igitur quaestioni literis praesentibus respondemus, quod filii ad restituendas usuras ea sunt districtione cogendi, qua parentes sui, si viverent, cogerentur. Id ipsum etiam contra heredes extraneos credimus exercendum.

Chapter X

Latin source headnote: One who lends with the intention that he receive something beyond the principal is bound in the forum of the soul to restore it if he obtained anything from this. The same applies to one who does not give permission for an oath unless he receives something from it. And the same applies to one who sells a thing for more than it is worth because he defers payment.

Urban III.

Your devotion consulted us, *in which we commend the solicitude of the priestly office*, whether in the judgment of souls he ought to be judged as a usurer who, not otherwise intending to make the loan, lends money with the intention that, although every agreement is absent, he nevertheless receive more than the principal; and whether he is involved in the guilt of the same crime who, as is commonly said, does not otherwise grant permission for an oath until, although without exaction, he receives some emolument from it; and whether a merchant ought to be condemned by a similar penalty who sells his merchandise for a far greater price if a longer delay is extended for making payment than if the price is paid to him immediately. But because what is to be held in these cases is manifestly known from the Gospel of Luke, in which it is said, "Make a loan, hoping for nothing from it," persons of this kind, on account of the intention of gain that they have, since every usury and surplus is prohibited in the law, are to be judged to act wickedly and, in the judgment of souls, effectively induced to restore the things that were received in such a manner.

> Mutuans ea mente, ut ultra sortem aliquid recipiat, tenetur in foro animae ad illud restituendum, si ex hoc aliquid consecutus est. Idem in non dante parabolam iuramenti, nisi aliquid inde recipiat. Et idem in vendente rem plus, quam valeat, quia differt solutionem.
>
> Urbanus III. Consuluit nos tua devotio, *in quo sacerdotalis officii sollicitudinem commendamus*, an ille in iudicio animarum quasi usurarius debeat iudicari, qui non alias mutuo traditurus, eo proposito mutuam pecuniam credit, ut, licet omni conventione cessante, plus tamen sorte recipiat; et utrum eodem reatu criminis involvatur, qui, ut vulgo dicitur, non aliter parabolam iuramenti concedit, donec, quamvis sine exactione, emolumentum aliquod inde percipiat; et an negotiator poena consimili debeat condemnari, qui merces suas longe maiori pretio distrahit, si ad solutionem faciendam prolixioris temporis dilatio prorogetur, quam si ei in continenti pretium persolvatur. Verum quia, quid in his casibus tenendum sit, ex evangelio Lucae manifeste cognoscitur, in quo dicitur: "Date mutuum, nihil inde sperantes:" huiusmodi homines pro intentione lucri, quam habent, quum omnis usura et superabundantia prohibeatur in lege, iudicandi sunt male agere, et ad ea, quae taliter sunt accepta, restituenda, in animarum iudicio efficaciter inducendi.

Chapter XI

Latin source headnote: A manifest usurer who appeals in order to evade restitution is not to be heard.

Innocent III, to the Prelates Established in the Kingdom of France.

How pernicious *the vice of usuries is, we do not believe your discretion to be ignorant, since, besides the canonical constitutions that have issued forth in hatred of them, through the Prophet it is given to be understood that those who give their money at usury are to be repelled from the tabernacle of the Lord; and usuries are prohibited in both the new and the old testament, since Truth itself commands, "Make a loan, hoping for nothing from it," and through the Prophet it is said, "You shall not receive usury or any surplus." Wherefore, by apostolic writings* We command you all that you not permit manifest usurers, *especially those* who are established to have publicly renounced usuries, to protect themselves by the evasion of any appeal when someone proceeds against them concerning usuries. [*Given at the Lateran on the fifth day before the Kalends of November,* 1198.]

> Manifestus usurarius, appellans ad subterfugiendum restitutionem, audiendus non est.
>
> Innocentius III. Praelatis in regno Franciae constitutis.
>
> Quam perniciosum *sit vitium usurarum, discretionem vestram non credimus ignorare, quum praeter constitutiones canonicas, quae in earum odium emanarunt, per Prophetam detur intelligi, eos, qui suam dant pecuniam ad usuram, a tabernaculo Domini repellendos, et tam in novo quam in veteri testamento prohibitae sint usurae, quum ipsa veritas praecipiat: "Mutuum date, nihil inde sperantes," et per Prophetam dicatur: "Usuram et omnem superabundantiam non accipias." Inde est, quod universitati vestrae per apostolica scripta* Mandamus, quatenus manifestos usurarios, *eos* maxime, quos usuris publice renunciasse constiterit, quum aliquis eos convenerit de usuris, nullius permittatis appellationis subterfugio se tueri. [*Dat. Lat. V. Kal. Nov.* 1198.]

Chapter XII

Latin source headnote: Through the withdrawal of communion with Christians and through secular princes, Jews are to be compelled to restore usuries.

The same, to the Archbishop of Narbonne.

After the pitiable. (*And below:*) [*But if any of those setting out for that place are bound by oath to furnish usuries, you, brother archbishops and bishops, throughout your dioceses, with the obstacle of appeal removed, are to compel their creditors by the same coercion, so that, completely absolving them from the oath, they desist from further exaction of usuries. But if any of the creditors shall compel them to pay usuries, with the obstacle of appeal removed you are to compel him to restore them by similar coercion.*] We command [*however*] that Jews be compelled to remit usuries to Christians by *you, sons,* the secular princes and powers. And until they shall have remitted them, by a sentence of excommunication we command that all communion with them be altogether denied by all Christ's faithful, both in trade and in other matters. [*Therefore, let no one altogether withdraw himself from this work, etc. Given at Rieti on the eighteenth day before the Kalends of September,* 1198.]

> Per subtractionem communionis Christianorum et per principes saeculares cogendi sunt Iudaei ad usuras restituendas.
>
> Idem Narbonensi Archiepiscopo.

Post miserabilem (*Et infra:*) [*Si qui vero proficiscentium illuc ad praestandas usuras iuramento tenetur adstricti, vos, fratres archiepiscopi et episcopi, per vestras dioeceses creditores eorum sublato appellationis obstaculo eadem districtione cogatis, ut eos a sacramento penitus absolventes, ab usurarum ulterius exactione desistant. Quod si quisquam creditorum eos ad solutionem coegerit usurarum, eum ad restitutionem earum sublato appellationis obstaculo districtione simili compellatis.*] Iudaeos [*vero*] ad remittendas Christianis usuras per *vos, filii* principes et potestates compelli praecipimus saeculares. Et, donec eis remiserint, ab universis Christi fidelibus tam in mercimoniis quam in aliis per excommunicationis sententiam eis iubemus communionem omnimodam denegari. [*Ab hoc igitur opere nullus omnino se subtrahat etc. Dat. Reate XVIII. Kal. Sept. *1198.]

Chapter XIII

Latin source headnote: Notwithstanding an oath furnished by a debtor not to seek the return of usuries, a judge can by virtue of his office compel the usurer to restore the usuries.

The same, to the Bishop of Modena.

We received your questions some time ago, because certain usurers *of your diocese* cause those to whom they give money at usury to furnish an oath that they will not seek the return of the usuries and will raise no question concerning those that they have paid. We therefore respond *thus to your inquiry*: after prior admonition, through ecclesiastical censure and with appeal removed, you are to compel the usurers themselves, before the payment of the usuries, to desist from exacting them, or to restore them after they have been paid, lest it happen that they obtain an advantage from *their* deceit and fraud, *who cause the oath to be furnished for this purpose, that they may not be troubled concerning the usuries*.

Non obstante iuramento de non repetendis usuris, per debitorem praestito, potest iudex ex officio suo usurarium ad restituendas usuras compellere.

Idem Mutinensi Episcopo.

Tuas dudum recepimus quaestiones, quod quidam usurarii *tuae dioecesis* eos, quibus dant pecuniam ad usuram, praestare faciunt iuramentum, quod usuras non repetant, et super his, quas solverint, nullam moveant quaestionem. Nos igitur *inquisitioni tuae taliter* respondemus, ut usurarios ipsos monitione praemissa per censuram ecclesiasticam appellatione remota compellas, ante usurarum solutionem ab earum exactione desistere, vel restituere ipsas, postquam fuerint persolutae, ne de dolo et fraude *suo* contingat eos commodum reportare, *qui ad hoc praestari faciunt iuramentum, quod super usuris non valeant molestari*.

Chapter XIV

Latin source headnote: A usurer seeking the return of usuries is not heard unless he first restores those he extorted.

The same.

Because [*therefore*] he who acts against the law invokes the law's assistance in vain, we decree that, if any usurer shall obtain letters from us concerning the restoration of usuries or the computation of fruits toward the principal, unless he himself first restores the usuries that he is known to have received from others, he is in no way to be heard by authority of those letters. [*Given at Rome on the fifth day before the Kalends of January,* 1205.]

Non auditur usurarius repetens usuras, nisi prius restituat extortas.

Idem.

Quia [*igitur*] frustra legis auxilium invocat qui committit in legem: statuimus, ut, si quis usurarius a nobis literas impetraverit super restituendis usuris, vel fructibus computandis in sortem, nisi prius ipse restituerit usuras, quas ab aliis noscitur recepisse, auctoritate literarum ipsarum nullatenus audiatur. [*Dat. Romae V. Kal. Ian.* 1205.]

Chapter XV

Latin source headnote: One convicted of usurious depravity through public report and other arguments can be declared a usurer and restrained as a manifest usurer according to the disposition of the Lateran Council.

The same, to the Bishop of Auxerre.

Although there are very many usurers in your diocese concerning whom it is not in the least doubted that they are manifest usurers, no accuser appears against them on account of fear of *princes and* powerful persons who protect them, nor have those same persons been condemned by sentence. *You therefore decided to seek from the oracle of the Apostolic See how you can proceed against them. But we* respond thus to your fraternity: although no accuser appears against them, nevertheless, if by other arguments it shall have been established that they are manifest usurers, you will be able freely to exercise against them the penalty issued against usurers in the Lateran Council. [*Given at the Lateran on the seventeenth day before the Kalends of June, in the tenth year,* 1207.]

Convictus de usuraria pravitate per formam et alia argumenta, potest manifestari usurarius, et tanquam manifestus usurarius compesci secundum dispositionem Lateranensis concilii. Idem Altissiodorensi Episcopo.

Quum in dioecesi tua sint quam plurimi usurarii, de quibus minime dubitatur, quin sint usurarii manifesti, contra quos propter timorem *principum et* potentum, qui tuentur eosdem, nullus accusator apparet, nec iidem sunt per sententiam condemnati, *qualiter procedere valeas contra ipsos, oraculum duxisti sedis apostolicae requirendum. Nos autem* Fraternitati tuae taliter respondemus, quod, licet contra eos non appareat accusator, si tamen aliis argumentis illos constiterit esse usurarios manifestos, in eos poenam in Lateranensi concilio contra usurarios editam libere poteris exercere. [*Dat. Lat. XVII. Kal. Iun. Ao. X.* 1207.]

Chapter XVI

Latin source headnote: A husband receiving a pledge for a promised dowry is not bound to compute the fruits toward the principal. It says this; it is a singular case and is not proved elsewhere.

The same.

Salutarily. (*And below:*) Indeed, we do not believe that a son-in-law is to be compelled to compute toward the principal the fruits of the possessions that were obligated to him in pledge by his father-in-law for a dowry treated as paid, since frequently the fruits of the dowry are not sufficient to support the burdens of marriage.

Maritus, recipiens pignus pro dote promissa, non tenetur fructus in sortem computare. H. d. est casus singularis, et alibi non probatur.

Idem.

Salubriter (*Et infra:*) Sane generum ad fructus possessionem, quae sibi a socero sunt pro numerata dote pignori obligatae, computandos in sortem non credimus compellendum, quum frequenter dotis fructus non sufficiant ad onera matrimonii supportanda.

Chapter XVII

Latin source headnote: One seeking the return of usuries is not heard unless he restores those extorted by himself or another from whomsoever he derives his cause.

The same, to the Bishop of Bologna.

The layman Michael sent his complaint to us that M. and certain other citizens of Bologna extorted many things from him and from his father, whose heir he became, in the name of usuries. (*And below:*) You are to take very attentive care that you do not proceed in that business by our authority unless the said complainant has restored, or still restores, any usuries that he himself or his father at any time extorted.

Repetens usuras non auditur, nisi restituat extortas per se, vel per alium, a quocunque causam habeat.

Idem Episcopo Bononiensi. Michael laicus suam nobis querimoniam destinavit, quod M. et quidam alii Bononienses cives multa extorserunt ab eo, et a patre suo, cuius heres exstitit, nomine usurarum. (*Et infra:*) Attentius provisurus, ne auctoritate nostra in negotio procedas eodem, nisi dictus conquerens restituerit vel adhuc restituat, si quas aliquando ipse vel pater eius extorsit usuras.

Chapter XVIII

Latin source headnote: Jews also are to be compelled to restore usuries extorted from Christians and to pay tithes or offerings from their possessions.

The same, in the General Council.

The more the Christian religion is restrained from the exaction of usuries, the more gravely the perfidy of the Jews grows strong in these matters, so that within a short time they exhaust the resources of Christians. Wishing, therefore, to provide in this respect for Christians, lest they be inhumanly burdened by Jews, we establish by synodal decree that, if henceforth under any pretext Jews shall have extorted grave or immoderate usuries from Christians, participation with Christians is to be withdrawn from them until they have made suitable satisfaction for the immoderate burden. Wherefore Christians, if there is need, are to be compelled through ecclesiastical censure and with appeal set aside to abstain from trade with them. We moreover enjoin upon princes that they are not on this account to be hostile to Christians, but rather are to take care to restrain the Jews from so great a burden. By this same penalty we decree that Jews are to be compelled to make satisfaction to churches for tithes and offerings due, which the churches were accustomed to receive from Christians from houses and other possessions before they came to the Jews by any title, so that the churches may thus be preserved without loss.

Etiam Iudaei compellendi sunt ad restituendas usuras extortas a Christianis, et ad solvendas decimas vel oblationes de eorum possessionibus.

Idem in concilio generali. Quanto amplius Christiana religio ab exactione compescitur usurarum, tanto gravius super his Iudaeorum perfidia inolescit, ita, quod brevi tempore Christianorum exhauriunt

facultates. Volentes igitur in hac parte prospicere Christianis, ne a Iudaeis immaniter aggraventur, synodali decreto statuimus, ut, si de cetero quocunque praetextu Iudaei a Christianis graves immoderatasve usuras extorserint, Christianorum eis participium subtrahatur, donec de immoderato gravamine satisfecerint competenter. Unde Christiani, si opus fuerit, per censuram ecclesiasticam appellatione postposita compellantur ab eorum commerciis abstinere. Principibus autem iniungimus, ut propter hoc non sint Christianis infesti, sed potius a tanto gravamine studeant cohibere Iudaeos. Hac eadem poena Iudaeos decernimus compellendos ad satisfaciendum ecclesiis, pro decimis et oblationibus debitis, quas a Christianis de domibus et possessionibus aliis percipere consueverant, antequam ad Iudaeos quocunque titulo devenissent, ut sic ecclesiae conserventur indemnes.

Chapter XIX

Latin source headnote: He is a usurer who receives from a debtor something beyond the principal, even if he assumes the risk upon himself. It says this first. A purchaser of a thing below the just price is not a usurer if at that time it is probably doubted whether at the time of payment the thing will be worth more or less. It says this second. By reason of doubt, one is excused who, because he defers payment of the price, sells a thing for more than it is worth, if he was not otherwise going to sell it. It says this third.

Gregory IX, to Brother R.

One who lends a fixed quantity of money to a person sailing or going to a fair, intending, because he assumes the risk upon himself, to receive something beyond the principal, is to be deemed a usurer. Likewise, one who gives ten solidi so that at another time the same number of measures of grain, wine, or oil are returned to him—which, although they are then worth more, it is probably doubted whether at the time of payment they will be worth more or less—ought not on this account to be considered a usurer. By reason of this doubt, he too is excused who sells cloth, grain, wine, oil, or other merchandise so that at a fixed term he may receive for it more than it is worth at that time, provided, nevertheless, that at the time of the contract he had not been going to sell it.

Usurarius est, qui a debitore recipit aliquid ultra sortem, etiamsi suscipiat in se periculum. H. d. primo. Non est usurarius emptor rei minus iusto pretio, si tunc verisimiliter dubitetur, an tempore solutionis plus vel minus sit res valitura. H. d. secundo. Propter dubium excusatur is, qui ex eo, quod differt solutionem pretii, vendit rem plus, quam valeat, si non erat eam alias venditurus. Hoc dicit tertio.

Gregorius IX. Fratri R.

Naviganti vel eunti ad nundinas certam mutuans pecuniae quantitatem, pro eo, quod suscipit in se periculum, recepturus aliquid ultra sortem, usurarius est censendus. Ille quoque, qui dat X. solidos, ut alio tempore totidem sibi grani, vini vel olei mensurae reddantur, quae licet tunc plus valeant, utrum plus vel minus solutionis tempore fuerint valiturae, verisimiliter dubitatur, non debet ex hoc usurarius reputari. Ratione huius dubii etiam excusatur, qui pannos, granum, vinum, oleum vel alias merces vendit, ut amplius, quam tunc valeant, in certo termino recipiat pro eisdem; si tamen ea tempore contractus non fuerat venditurus.

Title XX: On the Crime of Forgery

Chapter I

Latin source headnote: A false witness injures three: God, the judge, and the party; and not only one who tells a lie is false, but also one who conceals the truth.

Augustine.

A false witness is liable to three persons: first to God, whose presence he contemns; then to the judge, whom he deceives by lying; lastly to the innocent person, whom he injures by false testimony. Each is guilty, both he who conceals the truth and he who tells a lie, because the former does not wish to benefit and the latter desires to harm.

> **DE CRIMINE FALSI.**
>
> Testis falsidicus tres laedit, Deum, iudicem et partem, et falsus est non solum, qui mendacium dicit, sed etiam, qui veritatem occultat.
>
> Augustinus.
>
> Falsidicus testis tribus personis est obnoxius, primum Deo, cuius praesentiam contemnit; deinde iudici, quem mentiendo fallit; postremo innocenti, quam falso testimonio laedit. Uterque reus est, et qui veritatem occultat, et qui mendacium dicit, quia et ille prodesse non vult, et iste nocere desiderat.

Chapter II

Latin source headnote: A sentence rendered through false letters ought not to be committed to execution.

Lucius III, to the Bishop of Worcester.

Concerning the fact that you were unwilling to commit to execution a sentence rendered by authority of false letters, we commend your prudence *very greatly*, commanding that, whenever any writings sent under our name appear to you liable to be refuted as false, you place no faith in them and do not observe what shall have been commanded through them, but cause the one who presented them to be carefully detained.

> Sententia, lata per falsas literas, non debet exsecutioni mandari. Lucius III. Vigoriensi Episcopo.
>
> Super eo vero, quod sententiam auctoritate literarum falsarum latam noluisti exsecutioni mandare, tuam *plurimum* prudentiam commendamus, mandantes, ut quoties aliqua scripta sub nomine nostro destinata redarguenda videris falsitatis, nullam eis adhibeas fidem, et quod per ipsas mandatum fuerit non observes, sed eum, qui praesentaverit, retineri facias diligenter.

Chapter III

Latin source headnote: A cleric who forges a prince's seal is deposed. Likewise, a mark is impressed upon him, and he is sent into exile.

Urban III.

It came to our hearing, through your report, that, when you had committed to imprisonment certain *perverse* clerics who had forged the seal of *our dearest son in Christ, Philip, the illustrious* King of the French, *you decided to seek counsel from the Apostolic See as to what ought to be done by you concerning them.*

Wherefore we, on the counsel of our brothers, respond thus to your fraternity: you are not to cause a member to be removed from them or a corporal penalty to be inflicted upon them through which they might incur danger of death; but, after they have *first* been degraded from their *own* orders, you are to cause some mark to be impressed upon them as a sign of the crime, by which they may be known among others, and, compelling them to abjure that province, permit them to depart.

> Clericus, falsans sigillum principis, deponitur. Item ei character imprimitur, et in exsilium mittitur.
>
> Urbanus III. Ad audientiam nostram te significante pervenit, quod, quum quosdam *perversos* clericos, qui falsaverant sigillum *carissimi in Christo filii nostri Philippi* regis *illustris* Francorum, carcerali custodiat mancipaveris, *quid faciendum sit tibi de ipsis, a sede apostolica duxisti consilium inquirendum. Unde nos* Fraternitati tuae *de fratrum nostrorum consilio* taliter respondemus, ut eis nec membrum auferri, nec poenam infligi facias corporalem, per quam periculum mortis possint incurrere; sed eis *prius* a suis *propriis* ordinibus degradatis, in signum maleficii characterem aliquem imprimi facias, quo inter alios cognoscantur, et provinciam ipsam eos abiurare compellens, abire permittas.

Chapter IV

Latin source headnote: One present at the Curia is not to receive apostolic letters except from the hands of the Pope or of officials deputed by him; nevertheless, persons of distinction will be able to receive them through messengers, but from the hands of the aforesaid persons. One acting contrary to this, if a layman, is subject to excommunication; if a cleric, he is deposed from office and benefice. It says this as far as § *Adding*. — § 1. By the penalty of excommunication it provides against those who do not surrender or destroy false letters within twenty days; and absolution is reserved to the Pope, and one made contrary to this is not valid. It says this. Abbas.

Innocent III.

Harsh commands [*and sometimes unjust appointments are asserted and wondered at by many to issue from the Apostolic See, and they place blame upon it in this, in which its sincerity, wholly ignorant of blame, is excused by innocence. For we, more frequently occupied with greater affairs and bearing by virtue of our office the care of all, through which we are debtors to all, since we cannot satisfy immediately all those pressing upon us, certain persons, because they cannot be heard—straying from the path of justice or extending the license of their petition beyond what uprightness permits—burst forth into the impulse of their own will; and, recurring with the studied malice of their mind to their devices of falsehood and arts of perdition, they endeavor through the cunning of a false appearance to blacken and deform the brightness of apostolic purity. How many and how great evils arise from the device of this falsehood, since through it both innocent persons are sometimes condemned and guilty persons are absolved from the crimes charged, and also the authority of the Apostolic See is injured, the evident malice of the matter itself declares. Although falsehood of this kind can for some time be hidden with the works of darkness, nevertheless, because through it an injury is especially inflicted upon the blessed Apostles, he from whom, in their person, the Roman Church received authority over all churches—whence also our bull, through which the business of the whole Christian body is conducted, is marked beforehand with the image of their heads—does not permit the destruction caused by so great a crime to be concealed any longer to their so great prejudice.*] *For it recently happened in the City that certain persons, practicing the cunning of falsehood more perniciously, were detected in their iniquities, so that we found among them both bulls under our name and under that of Pope Celestine, our predecessor of good memory, which they had falsely fashioned, and very many letters marked with bulls,* [*and, having captured them, we still detain them in prison.*] *But we, always wishing with paternal solicitude to provide for the honor of the Roman Church and the utility of all, on the common counsel of our brothers,* Decree, and under penalty of

excommunication and suspension from order and benefice more strictly prohibit, that henceforth no one at the Apostolic See receive *our* letters except from us or from the hands of those who by our mandate are deputed to that office. But if a person shall have been of such authority that it is fitting for him to receive our letters through a messenger, let him send a suitable messenger *himself* to our chancery or to us ourselves, through whom he is to receive apostolic letters according to the prescribed form. But if anyone shall have been a transgressor of our mandate in this respect, if he is a layman, let him be subject to excommunication; if a cleric, let him be condemned to suspension from *his* office and benefice. [*But because, as we learned from the forgers themselves, the falsehood of their wickedness has been spread in many ways, through letters transmitted by them both to your regions and to other regions, by apostolic writings we command your fraternity and strictly enjoin upon you that you summon a provincial council, in which you are solemnly and generally to establish that it be publicly declared throughout the individual parishes that, if anyone shall have obtained letters from the Apostolic See whose tenor could be suspect and wishes to use them, in order that he may escape the established penalty, first a comparison of the false bull with a true one is to be made; and, if he shall find it to be marked by falsehood, he is not to delay presenting those same letters to the diocesan bishop, abbot, or archdeacon of the place, who, after the truth has been ascertained, is to subject the person who brought back such letters, if a layman, to excommunication; but if a cleric, is to suspend him from office and benefice.*]

§ 1. *To these things* Adding, we decree that you promulgate a general sentence of excommunication, which you are to cause to be renewed frequently throughout the individual parishes: that, if anyone knows himself to possess false letters, within twenty days he is either to destroy those letters or surrender them, if he wishes to escape the penalty of excommunication; and we do not wish that penalty to be relaxed by anyone without our special mandate, except perhaps at the point of death. Nor, even if absolution shall have been presumed contrary to this, is it to have any validity, *lest perhaps, after our time, falsehood meanwhile concealed may be able to generate prejudice for anyone*. [*But concerning the rest, etc. Given at Rome at Saint Peter's on the fourteenth day before the Kalends of June, in the first year of our pontificate,* 1198.]

> Exsistens in curia literas apostolicas non recipiat, nisi de manibus Papae, vel officialium ab ipso deputatorum; personae tamen solennes per nuncios recipere poterunt, de manibus tamen praedictorum. Contra faciens, si laicus est, excommunicationi subiacet; si clericus, ab officio et beneficio deponitur. Hoc dicit usque ad § Adiicientes. - § 1. Per excommunicationis poenam providet contra non resignantes, nec destruentes literas falsas infra XX. dies; et absolutio Papae reservatur, et contra factum non tenet. H. d. Abbas.
>
> Innocentius III. Dura saepe mandata [*et institutiones interdum iniquas a sede apostolica emanare multi arguunt et mirantur, et in hoc ei culpam imponunt, in quo sinceritas eius culpae prorsus ignara per innocentiam excusatur. Nos etenim circa maiora negotia frequentius occupati, et curam universorum ex officio nostro gerentes, per quod sumus omnibus debitores, quum omnibus apud nos instantibus in continenti satisfacere non possimus, quidam eo, quod a iustitiae semita aberrantes aut ultra, quam permittit honestas, suae petitionis licentiam extendentes, exaudiri non possunt, in motum propriae voluntatis irrumpunt, et ad sua ingenia falsitatis et artes perditionis cum animi exquisita malitia recurrentes, per falsae astutiam speciei candorem puritatis apostolicae denigrare ac depravare nituntur. Ex cuius falsitatis ingenio quot et quanta mala proveniant, quum per eam et innocentes quandoque damnentur, et rei ab obiectis criminibus absolvantur, nec non et apostolicae sedis laedatur auctoritas, ipsa rei evidens malitia protestatur. Licet autem huiusmodi falsitas aliquamdiu possit cum operibus tenebrarum abscondi, tamen, quia per eam beatis Apostolis speciatim infertur iniuria, ille, a quo in persona eorum Romana ecclesia auctoritatem super ecclesiis universis accepit, unde et bulla nostra, per quam totius negotia Christianitatis aguntur, capitum ipsorum charactere*

praesignatur, perniciem tanti sceleris non patitur in tantum praeiudicium eorum diutius occultari.] *Accidit enim nuper in Urbe, quod quidam, falsitatis astutiam perniciosius exercentes, in suis fuere iniquitatibus deprehensi, ita, quod bullas tam sub nomine nostro, quam bonae memoriae Coelestini Papae praedecessoris nostri, quas falso confinxerant, et quam plures literas bullis signatas invenerimus apud eos,* [*ipsosque captos adhuc in carcere detinemus.*] *Nos autem, semper honori Romanae ecclesiae et utilitati omnium paterna volentes sollicitudine providere, de communi fratrum nostrorum consilio* Statuimus, et sub excommunicationis poena et suspensionis ordinis et beneficii districtius inhibemus, ne quis apud sedem apostolicam *de cetero* literas nostras nisi a nobis, vel de manibus illorum recipiat, qui de mandato nostro ad illud sunt officium deputati. Si vero persona tantae auctoritatis exstiterit, ut ipsam deceat per nuncium literas nostras recipere, nuncium *ipsum* ad cancellariam nostram vel ad nos ipsos mittat idoneum, per quem literas apostolicas iuxta formam praescriptam recipiat. Si quis autem in hac parte mandati nostri transgressor exstiterit, si laicus fuerit, excommunicationi subiaceat; si clericus, officii et beneficii *sui* suspensione damnetur. [*Verum quia, sicut a falsariis ipsis accepimus tam ad partes vestras, quam ad ceteras regiones per literas transmissas ab eis suae iniquitatis falsitas multipliciter est diffusa, fraternitati vestrae per apostolica scripta mandamus et districte praecipimus, quatenus provinciale concilium evocetis, in quo solenniter et generaliter statuatis, ut per singulas parochias publice proponatur, quod, si quis a sede apostolica literas impetraverit, quarum tenor possit esse suspectus, et eis uti voluerit, ut statutam poenam evadat, primo fiat collatio de falsa bulla cum vera, et si eam invenerit falsitate notandam, episcopo dioecesano, abbati vel archidiacono loci easdem literas non differat praesentare, qui veritate comperta illum, qui tales literas reportavit, si laicus fuerit, excommunicationi subiiciat; si clericus, eum ab officio beneficioque suspendat.*] § 1. *Ad haec* Adiicientes statuimus, ut generalem excommunicationis sententiam promulgetis, quam per singulas parochias faciatis frequentius innovari, quod, si quis falsas literas se habere cognoscit, infra viginti dies literas illas aut destruat, aut resignet, si poenam excommunicationis voluerit evadere; quam, nisi forsan in mortis articulo, sine speciali mandato nostro a quoquam nolumus relaxari. Nec, etiamsi praesumpta fuerit contra hoc absolutio, quicquam habeat firmitatis, *ne forte post tempora nostra falsitas interim occultata cuiquam valeat praeiudicium generare*. [*Ceterum etc. Dat. Romae ap. S. Petr. XIV. Kal. Iun. Pont. nostr. Ao. I. *1198.]

Chapter V

Latin source headnote: It lays down nine methods of falsifying papal letters.

The same, to the Archbishop and Canons of Milan.

Although we consider ourselves insufficient in life and knowledge for the governance *of the Apostolic See, which by the Lord's gift is the mother and teacher of all churches, nevertheless, insofar as the Lord shall have granted us in his mercy, we have proposed to abstain from those things through which derogation could deservedly be made against us; although, because of the defect of human weakness, we cannot always and in all things imitate the form of perfection in such a way that something does not at some time creep into our works that can be imputed to less circumspect providence—something that nevertheless happens not deliberately or with certain knowledge, but sometimes from ignorance or excessive occupation.* [*You indeed informed us through your letters that, when certain letters had been presented to you through which we appeared strictly to command you to receive I. of Cimilian., a cleric of your church, as canon and brother, and not to call anyone else as canon until he had fully obtained the benefit of a prebend, after the tenor of those letters had been diligently inspected, you scarcely believed that they had proceeded with our knowledge, or, if they had proceeded, that they had been obtained through excessive importunity.*]

But when, as provident and discreet men, you sent those same letters back to our presence so that from their inspection we might know more fully whether they had proceeded with our knowledge, we found more in them than

your discretion had suspected. For although we began to doubt somewhat concerning the style of composition and the form of the writing, nevertheless we found the bull to be genuine, which at first led us into vehement wonder, since we knew that the letters themselves had by no means issued with our knowledge. Therefore, examining the bull more diligently on each side, we found it somewhat swollen in the upper part, which adheres to the cord. And when we caused the cord to be drawn a little, without any violence, from the swollen side, the bull remaining on the other cord, the cord on that side was torn away from it without any difficulty; at its end an indication of cutting was still apparent. Through this we plainly detected that the bull itself had been extracted from other letters and inserted into these through the vice of falsehood, as you will recognize more fully from the letters themselves, which for greater certainty we have decided to send back to you.

[*Since, therefore, so great an offense ought not to be left in any way unpunished, by apostolic writings we command your discretion and strictly enjoin upon you that, unless within twenty days after receipt of these letters, having been admonished by you, the said I. shall come to our presence to make satisfaction with the testimony of your letters, from that time you suspend him from every ecclesiastical benefice and clerical office, with the obstacle of any contradiction and appeal removed, or, if he lacks a benefice, bind him with a sentence of anathema; since he is not easily to be believed immune from this fault, because neither through his brothers nor his blood relatives could he induce us, although frequently entreated, to send you our letters concerning this. From this he could have recognized sufficiently the fraud of the author, even if he himself was not the principal forger, especially since he is said to have been present at the time when, on the common counsel of our brothers, we publicly established against forgers, among other things firmly prohibiting under penalty of excommunication that anyone receive apostolic letters except from our hand or from that of our bullator, with the sole exception of those to whom, on account of the eminence of their dignity, we granted that they could accomplish the same thing through faithful and known messengers.*]

But in order that you yourselves may henceforth be able to detect the varieties *of falsehood of this kind* concerning our letters, *which we have detected thus far*, we have decided to express them *to you* in the present letters.

The first kind of falsehood is this: that a false bull is attached to false letters.

The second: that the cord is drawn *entirely* out of a genuine bull and, after another cord is inserted, is attached to false letters.

The third: that the cord, cut from the side on which the parchment is folded, is inserted with the genuine bull into false letters, and is restored beneath the same *fold with a cord of similar hemp*.

The fourth: *when from the upper part of the bull one part of the cord is cut beneath the lead and, after being attached to false letters through the same cord, is carried back beneath the lead*.

The fifth: *when, after sealed letters have been delivered, something in them is altered by a fine erasure*.

The sixth: *when the writing of letters to which a genuine bull had been attached is wholly effaced or erased with water or wine, and the same parchment, whitened anew with lime and other things according to the customary craft, is rewritten*.

The seventh: *when, to a parchment to which a genuine bull had been attached and which has been wholly effaced or scraped, another exceedingly thin written parchment of the same size is joined with very strong glue*.

We also do not *consider immune from the crime of falsehood those who, contrary to our constitution, knowingly receive our letters not from our hand or that of our bullator*.

Likewise, those who, *approaching the bull, carefully cast in false letters so that they may be sealed with a genuine bull along with the others*.

But these two kinds of falsehood cannot *easily be detected unless the falsehood is recognized either in the manner of composition, the form of the writing, or the quality of the parchment. In the other cases, however, a diligent investigator will be able* to observe the falsehood *more diligently either in the joining of the cords, the comparison of the bull, or its movement or bluntness, especially if the bull is not level, but is more* swollen *in one place and more depressed in another*. [*But if, etc. Given at Spoleto on the fourth day before the Nones of September,* 1198.]

> Ponit novem modos falsandi literas papales.
>
> Idem Archiepiscopo et Canonicis Mediolanensibus.
>
> Licet ad regimen *apostolicae sedis, quae dante Domino universarum ecclesiarum mater est et magistra, insufficientes nos vita et scientia reputemus, quantum tamen nobis Dominus in sua miseratione concesserit, ab his proposuimus abstinere, per quae nobis possit merito derogari; quanquam ex infirmitatis humanae defectu non sic formam perfectionis semper et in omnibus imitari possimus, quin, aliquid aliquando in nostris subrepat operibus, quod minus circumspectae providentiae valeat imputari; quod tamen non ex industria vel scientia certa, sed interdum ex ignorantia vel nimia occupatione contingit.* [*Significastis siquidem nobis per literas vestras, quod, quum quaedam vobis fuissent literae praesentatae, per quas vobis districte praecipere videbamur, ut I. de Cimilian. clericum ecclesiae vestrae in canonicum reciperetis et fratrem, nec aliquem alium in canonicum vocaretis, donec ipse praebendae beneficium plenarie fuisset adeptus, earum tenore diligenter inspecto vix eas credidistis de nostra conscientia processisse, vel, si etiam processerunt, per nimiam fuisse importunitatem obtentas.*] *Ceterum quum easdem literas, sicut viri providi et discreti ad nostram remisissetis praesentiam, ut ex earum inspectione plenius nosceremus, utrum ex nostra conscientia processissent, plus in eis invenimus, quam vestra fuisset discretio suspicata. Nam licet in stilo dictaminis et forma scripturae aliquantulum coeperimus dubitare, bullam tamen veram invenimus, quod primum nos in vehementem admirationem induxit, quum literas ipsas sciremus de nostra conscientia nullatenus emanasse. Bullam igitur hinc inde diligentius intuentes, in superiori parte, quae filo adhaeret, eam aliquantulum tumentem reperimus. Et quum filum ex parte tumenti sine violentia qualibet aliquantulum attrahi fecissemus, bulla in filo altero remanente, filum ex parte illa fuit ab ipsa sine qualibet difficultate avulsum, in cuius summitate adhuc etiam incisionis indicium apparebat. Per quod liquido deprehendimus, bullam ipsam ex aliis literis extractam fuisse, ac illis per vitium falsitatis insertam, sicut ex literis ipsis plenius agnoscetis, quas ad maiorem certitudinem vobis duximus remittendas.* [*Quum igitur tantus excessus relinqui non debeat aliquatenus impunitus, discretioni vestrae per apostolica scripta mandamus et districte praecipimus, quatenus dictum I., nisi infra XX. dies post harum susceptionem a vobis commonitus ad praesentiam nostram cum testimonio literarum vestrarum satisfacturus accesserit, extunc ab omni ecclesiastico beneficio et clericali officio, sublato cuiuslibet contradictionis et appellationis obstaculo, suspendatis, vel, si beneficio caret, anathematis eum sententia innodetis, quum ab hac culpa non de facili sit credendus immunis, quum nec per fratres, nec per consanguineos nostras nos, licet saepius rogatos, potuisset inducere, ut super hoc nostras vobis literas mitteremus. Ex quo fraudem auctoris, etsi principalis falsarius ipse non fuerit, sufficienter agnoscere potuisset, praesertim quum eo tempore praesens fuisse dicatur, quo contra falsarios de communi fratrum consilio publice constituimus inter cetera, sub poena excommunicationis firmiter inhibentes, ne quis literas apostolicas nisi de manu nostra vel bullatoris nostri reciperet, illis duntaxat exceptis, quibus propter dignitatis excellentiam indulsimus, ut per nuncios fideles et notos id ipsum possent efficere.*] Ut autem varietates* huiusmodi* falsitatis circa nostras literas, *quas hactenus deprehendimus, vos ipsi de cetero* deprehendere valeatis, eas* *vobis praesentibus literis duximus exprimendas. Prima species falsitatis haec est, ut falsa bulla falsis literis apponatur. Secunda, ut filum de vera bulla extrahatur ex toto, et per aliud filum immissum falsis literis inseratur. Tertia, ut filum ab ea parte, in qua charta plicatur, incisum, cum vera bulla falsis literis immittatur, sub eadem plicatura cum filo similis canapis restauratum. Quarta, quum a superiori parte bullae altera pars fili sub plumbo rescinditur, et per idem filum literis falsis inserta reducitur infra*

plumbum. Quinta, quum literis bullatis et redditis, in eis aliquid per rasuram tenuem immutatur. Sexta, quum scriptura literarum, quibus fuerat apposita vera bulla, cum aqua vel vino universaliter abolita seu deleta, eadem charta cum calce et aliis iuxta consuetum artificium dealbata de novo rescribitur. Septima, quum chartae, cui fuerat apposita vera bulla, totaliter abolitae vel abrasae, alia subtilissima charta eiusdem quantitatis scripta cum tenacissimo glutino coniungitur. Eos etiam a crimine falsitatis non reputamus immunes, qui contra constitutionem nostram scienter literas nostras non de nostra vel bullatoris nostri manu recipiunt. Illos quoque, qui, accedentes ad bullam, falsas literas caute proiiciunt, ut de vera bulla cum aliis sigillentur. Sed hae duae species falsitatis non possunt facile comprehendi, nisi vel in modo dictaminis, vel in forma scripturae, vel qualitate chartae falsitas cognoscatur. In ceteris autem diligens indagator falsitatem poterit diligentius* intueri, vel in adiunctione filorum, vel in collatione* *bullae, vel motione vel obtusione, praesertim si bulla non sit aequalis, sed alicubi magis sit tumida, et alibi magis* *depressa. [*Si vero etc. Dat. Spoleti II. Non. Sept.* 1198.]

Chapter VI

Latin source headnote: Papal letters are false in which a bishop is called a son, or an inferior a brother, or one person is addressed in the plural.

The same, to the Bishop of Antivari.

To how grave a penalty [*those are subject who do not fear to falsify apostolic letters, and who, concealing genuine letters obtained from us, do not fear to use false letters, we believe is not hidden from your fraternity.*] *You should know that it came to our hearing from the letters of our dearest son in Christ, Vulcan, illustrious King of Dioclea, and also from the tenor of your letters that you sent to our beloved son John, our chaplain, at Dyrrachium, that, when Dominicus, formerly Bishop of Suacium, who before the same chaplain and our beloved son S., our subdeacon, then exercising the office of legation in those parts, had been accused of homicide and in the council at Antivari had resigned the pontifical dignity, had formerly come to our presence, returning from us he presented certain letters to you,* [*which we saw to be contained word for word in the letters already sent on your behalf to our aforesaid chaplain,*] *through which he asserted that the pontifical office had been restored to him by us. But you, placing faith in those letters, removed from that same church our venerable brother whom you are said canonically to have consecrated as bishop-elect of Suacium, and restored the aforesaid Dominicus in that church on the occasion of the false letters. But the aforesaid king, as he informed us by his letters, not believing that those letters had issued with our knowledge, commanded both Dominicus himself and the aforesaid bishop to be presented before us, humbly petitioning to be instructed by an apostolic rescript as to whatever we should decide was to be established concerning that business.*

But we, examining more diligently the letters that were presented to you under our name, manifestly detected falsehood in them both in their contents and in their composition. And in this we were *not a little* amazed that you had believed such letters to have issued from us, since *especially* you ought to know that the Apostolic See observes this custom in its letters: that we call *all* patriarchs, archbishops, and bishops "brothers" in our letters, but all others, *whether they are* kings *or* princes or other *men* of whatever order, "sons." And when our letters are directed to one person alone, we never speak to him in the plural so as to place "you" or "your" in the plural, and things similar to these, in the letters themselves. But in the false letters presented to you, in the salutation you were called "beloved son in Christ," although in *all* the letters that we ever sent to you, you could have seen yourself called by us "venerable brother." On account of this, *we wish you to be so circumspect in similar matters that through false letters you cannot again be circumvented or deceived; rather,* you are to take care to examine apostolic letters *more diligently*, both in the bull, cord, and parchment and in the style, so that

in no way do you admit genuine letters as false or false letters as genuine. [*For you are to know, etc. Given at the Lateran on the Nones of December, in the third year of our pontificate,* 1200.]

> Falsae sunt literae papales, in quibus episcopus vocatur filius, vel inferior frater, vel uni scribitur in plurali. Idem Attinacensi Episcopo.
>
> Quam gravi poenae subiaceant, [*qui literas apostolicas falsare non timent, et veras a nobis impetratas literas occultantes, falsis uti literis non verentur, fraternitatem tuam credimus non latere.*] *Ad audientiam siquidem nostram ex literis carissimi in Christo filii nostri Wulcani Diocliae regis illustris, nec non et tenore literarum tuarum, quas dilecto filio Ioanni capellano nostro, apud Durachium direxisti, noveris pervenisse, quod quum Dominicus, quondam Suacensis episcopus, qui coram eodem capellano et dilecto filio S. subdiacono nostro, tunc in partibus illis gerentibus legationis officium, fuerat de homicidio accusatus, et in concilio apud Antivarum pontificalem resignaverat dignitatem, ad nostram olim praesentiam accessisset, a nobis rediens quasdam tibi literas praesentavit, *[*quas de verbo ad verbum in literis iam dicto capellano nostro ex parte tua directis perspeximus contineri,*] *quibus asserebat sibi a nobis pontificale officium restitutum. Tu vero, literis illis fidem adhibens, venerabilem fratrem nostrum, quem in Suacensem episcopum electum diceris canonice consecrasse, ab eadem ecclesia removisti, praefato Dominico occasione literarum falsarum in ipsa ecclesia restituto. Praefatus autem rex, sicut suis nobis literis intimavit, non credens, literas illas ex nostra conscientia emanasse, tam ipsum Dominicum quam praefatum episcopum nostro praecepit conspectui praesentari, humiliter petens rescripto apostolico edoceri, quicquid de ipso duceremus negotio statuendum*. Nos vero literas, quae tibi sub nostro nomine praesentatae fuerunt, diligentius intuentes, in eis tam in continentia quam in dictamine *manifeste* deprehendimus falsitatem. Ac in hoc fuimus *non modicum* admirati, quia tu tales literas a nobis credideras emanasse, quum *praesertim* scire debeas, apostolicam sedem consuetudinem in suis literis hanc tenere, ut *universos* patriarchas, archiepiscopos et episcopos "fratres," ceteros autem, *sive* reges *sint sive* principes vel alios *homines* cuiuscunque ordinis, "filios" in nostris literis appellemus. Et quum uni tantum personae nostrae literae diriguntur, nunquam ei loquimur in plurali, ut "vos" sive "vester" et his similia in ipsis literis apponamus. In falsis autem literis, tibi praesentatis, in salutatione, "dilectus in Christo filius" vocabaris, quum in *omnibus* literis, quas aliquando tibi transmisimus, te videre potueris a nobis "fratrem venerabilem" appellatum. Propter quod *sic te esse volumus in consimilibus circumspectum, ut per falsas literas denuo nequeas circumveniri vel falli, sed* sic literas apostolicas studeas *diligentius* intueri tam in bulla, filo et charta, quam in stilo, quod veras pro falsis, vel falsas pro veris literis modo aliquo non admittas. [*Scire namque etc. Dat. Lat. Non. Dec. Pont. nostr. Ao. III.* 1200.]

Chapter VII

Latin source headnote: Those who by themselves or through others falsify letters of the Pope are excommunicated together with their supporters, and clerics are deprived of offices and benefices and are to be degraded and delivered to the secular court, by which a layman is lawfully punished. But one who uses false letters, if a cleric, is deprived of office and benefice; if a layman, he is excommunicated. It says this.

The same.

For confounding the malice of forgers, *we recall that on another occasion we sent apostolic letters in which we remember that we distinguished more fully the methods of falsehood, lest anyone be able to excuse himself through ignorance. But because it sometimes happens that those presenting false letters, after they have been refuted concerning them, say in their excuse that they obtained letters of this kind through others,* On the common counsel of our brothers we have decided to decree that those who wish to use our letters first

examine them diligently, because, if they say that they used false letters in ignorance, their late repentance will not be able to avoid the penalties noted below. For we decree that all forgers of our letters who by themselves or *through* others practice the vice of falsehood are bound by the bond of anathema together with their supporters and defenders, establishing that clerics who shall have been detected as forgers are perpetually deprived of all ecclesiastical offices and benefices, in such a manner that those who practiced the vice of falsehood by themselves, after they have been degraded by an ecclesiastical judge, are to be delivered to the secular power to be punished according to lawful constitutions, by which also laymen who shall have been convicted of falsehood are to be lawfully punished. But those who use false letters under our name, if they are clerics, are to be despoiled of ecclesiastical offices and benefices; if laymen, they are to remain subject to excommunication until they make suitable satisfaction, yet in such a manner that in the former and in the latter malice is punished more gravely than negligence; and we decree that this is also to be observed concerning those who obtain false letters.

> Qui per se, vel per alios literas Papae falsant, excommunicati sunt cum suis fautoribus, et clerici officiis et beneficiis privati sunt, et degradandi et tradendi curiae saeculari, per quam laicus legitime punitur. Qui vero falsis literis utitur, si clericus est, officio et beneficio privatur; si laicus, excommunicatus est. H. d.
>
> Idem.
>
> Ad falsariorum confundendam malitiam *iam alia vice recolimus apostolicas literas destinasse, in quibus falsitatis modos, ne quis se possit per ignorantiam excusare, meminimus plenius distinxisse. Quia vero nonnunquam evenit, ut falsas literas exhibentes, postquam super his fuerint redarguti, ad excusationem suam dicant, se huiusmodi literas per alios impetrasse,* De communi fratrum nostrorum consilio duximus statuendum, ut, qui literis nostris uti voluerint, eas primo diligenter examinent, quoniam, si falsis literis se usos dixerint ignoranter eorum sera poenitentia evitare nequibit poenas inferius annotatas. Nos enim omnes falsarios literarum nostrarum, qui per se vel *per* alios vitium falsitatis exercent, cum fautoribus et defensoribus suis anathematis vinculo decernimus innodatos, statuentes, ut clerici, qui falsarii fuerint deprehensi, omnibus officiis et beneficiis ecclesiasticis perpetuo sint privati, ita, quod, qui per se falsitatis vitium exercuerint, postquam per ecclesiasticum iudicem fuerint degradati, saeculari potestati tradantur secundum constitutiones legitimas puniendi, per quam et laici, qui fuerint de falsitate convicti, legitime puniantur. Qui vero sub nomine nostro literis falsis utuntur, si clerici fuerint, officiis et beneficiis ecclesiasticis spolientur; si laici, tamdiu maneant excommunicationi subiecti, donec satisfaciant competenter, ita tamen, ut in istis et in illis malitia gravius quam negligentia puniatur, quod et de his, qui falsas literas impetrant, statuimus observandum.

Chapter VIII

Latin source headnote: A person is not presumed to falsify letters concerning simple justice, nor is he punished if, upon discovering this, he desisted from using them.

The same.

Coming [*to our presence, P., the priest bearing the present letters, showed us by his statement that, when formerly he had been sent by the archpriest and clerics of Casale Nuovo concerning certain cases in which they confessed that they were unduly burdened by you, and had come to our presence, he could not obtain his letters because at that time we were burdened by illness; and after he had remained at the Apostolic See for a few days, it happened that he too became ill. But while he was confined to a bed of sickness, a certain cleric of Casale Nuovo named Azo, who at that*

time was staying in the City, came to him and, under the hope of affection and favor, promised him that he would obtain from us the letters that he sought. He believed the man's word and furnished the expenses that the aforesaid cleric proposed that he would spend for the letters themselves. At length he brought to him certain letters of commission addressed to our venerable brother the Archbishop of Trani and the beloved son the Abbot of Coronata. The aforesaid priest, believing them to be genuine and to have issued with our knowledge, brought them to the delegated judges. And when in the presence of those judges you impugned the letters as false, and the priest himself and the other clerics of Casale Nuovo proposed that they were genuine, you sent those letters under the seal of the aforesaid judges to our presence; we manifestly detected that they were false. On account of this we commanded you by our writings that you send to our presence for punishment the one who obtained the aforesaid letters, suspended from office and benefice. But because his conscience rendered the aforesaid priest innocent, after you suspended him from office and benefice he hastened to our presence to excuse his innocence. But when he remained with us for a longer time and sought mercy from us, alleging complete ignorance of the aforesaid falsehood, we nevertheless decided that he should be sent back to you with our letters so that he might find the mercy for which he prays. Wherefore,] *by apostolic writings* we command your fraternity that, if the apostolic letters in which falsehood was detected contain a form of simple justice, since it ought not to be presumed that anyone committed the fraud of falsehood for such letters, which can easily be obtained *by anyone*, [*after canonical purgation has been received from the priest himself that he was not aware of the falsehood,*] and he did not use [*those*] letters after he knew them to be false, you, restoring to him [*in consideration of divine piety*] his office and benefice, are not to trouble him further concerning this, [*because just as it is just, etc.*]

> Non praesumitur quis falsare literas de simplici iustitia, nec punitur, si, hoc comperto, destiterit illis uti. Idem.
>
> Accedens [*ad praesentiam nostram P. presbyter lator praesentium sua nobis insinuatione monstravit, quod, quum olim missus ab archipresbytero et clericis de Casali novo pro quibusdam causis, super quibus a te se fatebantur indebite praegravari, ad nostram praesentiam accessisset, nec posset pro eo, quod tunc temporis nos eramus infirmitate gravati, suas literas obtinere, moram apud sedem apostolicam faciendo post paucos dies contigit ipsum etiam infirmari. Dum autem esset in lecto aegritudinis constitutus, accessit ad eum quidam clericus de Casali novo, Azo nomine, qui tunc temporis morabatur in Urbe, et sub spe dilectionis et gratiae promisit ei se quas a nobis postulabat literas obtenturum; qui credidit verbo eius, et expensas tribuit, quas pro literis ipsis se expensurum praefatus clericus proponebat. Tandem ad eum quasdam commissionis literas ad venerabilem fratrem nostrum Tranensem archiepiscopum et dilectum filium abbatem de Coronata portavit, quas praedictus presbyter credens veras esse et de nostra conscientia emanasse, ad iudices detulit delegatos. Quumque in praesentia ipsorum iudicum tu literas argueres falsitatis, et sacerdos ipse et alii clerici de Casali novo eas veras esse proponerent, tu easdem literas sub sigillo praedictorum iudicum ad nostram praesentiam direxisti, quas utique falsas esse deprehendimus manifeste, pro quo tibi per scripta nostra mandavimus, ut illum, qui praefatas literas impetravit, officio beneficioque suspensum ad nostram praesentiam dirigeres puniendum. Verum quum sacerdotem praedictum sua redderet conscientia innocentem, postquam tu eum officio et beneficio suspendisti, ad nostram festinanter accessit praesentiam ad suam innocentiam excusandam. Sed quum apud nos moram faceret longiorem, et a nobis misericordiam postularet, praefatae falsitatis omnimodam ignorantiam proponendo, ipsum tamen cum literis nostris ad te duximus remittendum, ut misericordiam inveniat, quam precatur. Inde est, quod*] Fraternitati tuae *per apostolica scripta* mandamus, quatenus, si literae apostolicae, in quibus falsitas fuerit deprehensa, de simplici iustitia formam habeant, quum praesumi non debeat, quod pro talibus literis, quae possunt facile *a quibuslibet* obtineri, fraudem quis commiserit falsitatis, [*ab ipso presbytero canonica purgatione recepta, quod conscius non fuerit falsitatis,*] nec literis [*illis*] usus est, postquam eas falsas esse cognovit, tu, ei [*divinae pietatis intuitu*] officium beneficiumque restituens, ipsum super hoc ulterius non molestes, [*quia sicut iustum est etc.*]

Chapter IX

Latin source headnote: On account of the erasure of a few letters in an unsuspected place, a rescript is not proved false.

The same.

From the contents [*of the letters of the beloved sons, the Abbot of Holy Cross of Waltham and Master Simon of Svelle, it became known to us that, when formerly the question pending between the beloved sons M. Phil. of Ludeleve on the one side and the clerics Robert and Vincent on the other concerning the church of Streton had been committed to them and to the late Abbot of Stratford by Pope C. of good memory, our predecessor, and that same abbot and the aforesaid Vincent had alike been taken from this light, the two aforementioned judges, proceeding according to the tenor of the apostolic rescript, heard more diligently the attestations and allegations of each party. At length, when each party had renounced further proof before them and a definitive sentence was to be promulgated according to the allegations against Master P., the opposing party impugned the apostolic letters as false and steadfastly asserted that it would prove them false at the peril of the case, imposing the law upon itself that it would fall from the case unless it proved the falsehood more evidently; and, lest the judges proceed further in the case, it appealed to the Apostolic See. But when the often-mentioned Phil. produced the man through whom he had obtained the letters and firmly promised that he would prove them genuine, the aforesaid R., having been required by the same judges to express some mark of falsehood on account of which he alleged that the letters were false, wished to specify nothing else except that he called them false and asserted that they had by no means issued from our chancery. But the aforesaid judges, after receiving from R. himself sworn security that he would prosecute the accusation of falsehood as was expressed above, fixed for each party, as the term for prosecuting before us the appeal interposed, the day following the recently past Sunday on which "Rejoice, Jerusalem" is sung. But the aforesaid Robert, coming to our presence at the appointed term, after suppressing the truth concerning the falsehood of the letters and the course of the business (as is said), obtained letters from us addressed to the aforesaid judges and, proposing absolutely nothing concerning the accusation of falsehood, furtively withdrew from the Apostolic See.*]

But *we*, examining more diligently the letters themselves that had been impugned as false, found in them no sign of falsehood or of suspicion except the erasures of a few letters, which ought by no means to have turned the mind of a wise man to doubt. Wherefore [*by apostolic writings we command your discretion that you inquire more diligently into the truth concerning these matters, and,*] if it shall be established to you [*that the already-mentioned letters were obtained from us with the truth suppressed, and*] that the aforesaid R. bound himself at the peril of the case to prove that those letters were false, since [*a personal question is litigated between him and his adversary and*] anyone has free faculty to renounce his right, you are to impose silence upon that R. concerning the said church. [*Otherwise, after the parties have been summoned, etc. Given at the Lateran on the thirteenth day before the Kalends of November,* 1198.]

> Propter paucarum literarum rasuram in loco non suspecto rescriptum non probatur falsum.
>
> Idem.
>
> Ex continentia [*literarum dilectorum filiorum abbatis sanctae crucis de Waltham et magistri Simonis de Svelle nobis innotuit, quod, quum olim quaestio, quae vertebatur inter dilectos filios M. Phil. de Ludeleve ex una parte, Robertum et Vincentium clericos ex altera super ecclesia de Streton, ipsis et quondam abbati de Straford. a bonae memoriae C. Papa praedecessore nostro commissa fuisset, eodem abbate pariter et praedicto Vincentio de hac luce subtractis, praenominati duo iudices iuxta tenorem rescripti apostolici procedentes, attestationes et allegationes utriusque partis diligentius audierunt; et tandem, quum renunciatum eis ab utraque parte fuisset, et secundum allegata diffinitiva esset sententia promulganda contra magistrum P., adversa pars literas apostolicas arguit falsitatis, et eas esse falsas sub periculo*

causae se firmiter asseruit probaturam, sibi legem imponens, ut a causa caderet, nisi probaret evidentius falsitatem, et, ne ulterius iudices in causa procederent, sedem apostolicam appellavit. Saepedicto autem Phil. exhibente illum, per quem literas impetravit, et firmiter promittente, quod eas veras esse probaret, memoratus R. ab eisdem iudicibus requisitus, ut aliquam notam exprimeret falsitatis, propter quam falsas esse literas proponebat, nihil aliud specificare voluit, nisi quod eas falsas dixit, et asseruit a cancellaria nostra nullatenus emanasse. Supradicti vero iudices, ab ipso R. iuratoria cautione recepta, quod accusationem falsitatis prosequeretur, sicut superius est expressum, sequentem diem post dominicam, qua cantatur "Laetare Hierusalem," proximo praeteritam, ad prosequendum coram nobis appellationem interpositam utrique parti terminum praefixerunt. Ceterum praefatus Robertus in termino praetaxato ad praesentiam nostram accedens, super falsitate literarum ac processu negotii veritate suppressa (*ut dicitur*) *a nobis ad praedictos iudices literas impetravit, et nihil prorsus de falsitatis accusatione proponens, a sede apostolica furtive recessit.*] Verum *nos* literas ipsas, quae redargutae fuerant falsitatis, diligentius intuentes, nullum in eis falsitatis signum vel suspicionis invenimus, nisi paucarum literarum rasuras, quae nequaquam sapientis animum in dubitationem vertere debuerunt. Unde [*discretioni vestrae per apostolica scripta mandamus, quatenus inquiratis super his diligentius veritatem, et,*] si vobis constiterit, [*iam dictas literas a nobis fuisse veritate tacita impetratas, et*] praedictum R. obligasse se sub periculo causae, quod literas illas falsas esse probaret, quum [*inter ipsum et adversarium suum quaestio personalis agatur, et*] quilibet ad renunciandum iuri suo liberam habeat facultatem, ipsi R. super dicta ecclesia silentium imponatis. [*Alioquin partibus convocatis etc. Dat. Lat. XIII. Kal. Nov. *1198.]

Title XXI: On Sorceries

Chapter I

Latin source headnote: Sortileges for discovering future things or making divinations are prohibited, and a penalty is imposed upon those acting contrary to this.

From the Penitential of Theodore.

Thefts are not to be sought by lot in tablets, books, or other things, *nor is anyone to cast lots in a psalter, the Gospel, or other things*, nor is anyone to presume to observe any divinations in any things. But one who shall have acted contrary to this is to do penance for forty days.

DE SORTILEGIIS.

Sortilegia pro futuris inveniendis vel divinationibus faciendis prohibentur, et contra facientibus poena imponitur.

Ex poenitentiali Theodori. In tabulis vel codicibus aut aliis sorte furta non sunt requirenda, *aut nullus in psalterio vel in evangelio vel in aliis rebus sortiri*, nec divinationes aliquas in aliquibus rebus quis observare praesumat. Qui autem contra fecerit, quadraginta dies poeniteat.

Chapter II

Latin source headnote: A priest who seeks thefts through inspection of an astrolabe is suspended from the ministry of the altar for a time. It is commonly summarized thus; but in truth this summary is not unqualifiedly true, because he can be punished more severely.

Alexander III, to the Patriarch of Grado.

We learned from the tenor of your letters that the priest V., *the bearer of the present letters, making use of youthful levity*, went with a certain infamous man to a private place, *intending to invoke an unclean spirit*. *Wherefore you suspended him from ecclesiastical office and benefice, because on this account he labored under ill*

repute and the crime was public and notorious. But he proposed to us by word of mouth that he had *gone* not with the intention of summoning a demon, but so that by inspection of an astrolabe the theft from a certain church could be recovered. But although he alleges that he did this from good zeal and *from* simplicity, it was nevertheless exceedingly grave, and from it he contracted no small stain of sin. *But because it is safer to incline toward the right than* [*toward*] *the left, and toward mercy than toward severity, we have decided that he should be sent back to your fraternity.* We command that *within eight days after receipt of these letters you restore to him the church with everything taken away, and* impose upon him for expiation of that offense such a penance that for one year and longer, if it shall seem good to you, *yet in such a manner that it does not exceed two years*, you command him to abstain from the ministry of the altar, and that thereafter he be free to exercise the priestly office.

> Presbyter, qui per inspectionem astrolabii furta requirit, ad tempus suspenditur ab altaris ministerio. Ita communiter summatur; sed in veritate haec summatio non est indistincte vera, quia acrius potest puniri. Alexander III. Grandensi Patriarchae.
>
> Ex tuarum tenore literarum accepimus, quod V. presbyter, *lator praesentium, iuvenili levitate usus*, cum quodam infami ad privatum locum *immundum spiritum invocaturus* accessit. *Unde tu eum, quia propter hoc infamia laborabat, et facinus publicum et notorium erat, ab officio et beneficio ecclesiastico suspendisti. Ipse autem coram nobis viva voce proposuit, quod* non ea intentione, ut vocaret daemonium, *ierat*, sed ut inspectione astrolabii furtum cuiusdam ecclesiae posset recuperari. Verum, licet hoc ex bono zelo et *ex* simplicitate se fecisse proponat: id tamen gravissimum fuit, et non modicam inde maculam peccati contraxit. *Sed quoniam tutius est in dexteram quam* [*in*] *sinistram, et in misericordiam quam in severitatem declinare, ipsum fraternitati tuae duximus remittendum*. Mandamus, quatenus *sibi infra octo dies post harum susceptionem literarum ecclesiam cum universis ablatis restituas, et* talem ei pro expiatione illius delicti poenitentiam imponas, quod per annum et amplius, si tibi visum fuerit, *ita tamen, quod biennium non excedat*, eum ab altaris ministerio praecipias abstinere, et extunc liberum sit ei exercere officium sacerdotis.

Chapter III

Latin source headnote: Not only ought an election not to be made by lots, but neither ought electors by compromise to be selected by lots.

Honorius III, to the Chapter of Lucca.

Your church having *recently* been deprived of a bishop, *as we have learned*, you, assembling as one in order to treat concerning the election of a future pontiff, *having begun to hold diverse discussions concerning the manner of election, at length* elected by lot one of yourselves, who by your authority elected three through whom, in place of all, a pastor should be provided for the church of Lucca. Two of these elected the third, namely Master R., which was expressly lawful for them according to the power delivered by you all. Therefore, when your proctors appeared before us concerning these matters, we, after examining such a process, although it does not lack a blemish—indeed, it is worthy of much reprehension that a lot intervened in such matters—*nevertheless, on account of the prerogative of morals and learning of Master R., your canon, upon whom the votes of your church concurred for his appointment as bishop, and the affection that we have for that same church*, admit the election celebrated concerning him to the favor of confirmation, condemning the use of lots in elections by a perpetual prohibition.

> Non solum electio per sortes fieri non debet, sed etiam electiones compromissariorum per sortes assumi non debent.

Honorius III. Capitulo Lucanensi. Ecclesia vestra *nuper* episcopo destituta, *sicut comperimus*, vos, convenientes in unum, ut de futuri tractaretis electione pontificis, *circa modum electionis diversas incipientes habere tractatus*, unum *tandem* elegistis ex vobis per sortem, qui tres auctoritate vestra elegit, per quos vice omnium Lucanensi provideretur ecclesiae de pastore; quorum duo tertium, magistrum R. scilicet, elegerunt, quod expresse licebat eisdem secundum traditam a vobis omnibus potestatem. Procuratoribus igitur vestris super his in nostra praesentia constitutis, nos, tali examinato processu, licet nota non careat, quin immo multa reprehensione sit dignum, quod sors in talibus intervenit, *propter praerogativam tamen morum et literaturam magistri R. canonici vestri, in quem vota ecclesiae vestrae praeficiendum episcopum concurrerunt, et affectionem, quam ad eandem habemus ecclesiam*, electionem celebratam de ipso ad gratiam confirmationis admittimus, sortis usum in electionibus perpetua prohibitione damnantes.

Title XXII: On Detecting Collusion

Chapter I

Latin source headnote: When an accuser desists from an accusation, a judge can by virtue of his office inquire into the crime charged.

Gregory, to All the Bishops of Corinth.

Reading over the writings of your fraternity, we learned that those who had said certain things against Bishop Hadrian had now come into friendship with the same *bishop, and at present great joy has been produced for us by their unity. But because we do not permit the things that were said to remain unexamined, we direct a deacon of our see to investigate them.* But because the character of the reported crime vehemently impels us so that we ought by no means to dissemble the things that we heard, especially since you indicated that the accusers and the accused made peace with one another, it is necessary for *us* to investigate this more subtly, lest perhaps their concord was purchased not from charity but from a reward.

DE COLLUSIONE DETEGENDA.

Accusatore desistente ab accusatione, potest iudex ex officio suo inquirere super crimine illato.

Gregorius universis Episcopis de Corintho.

Scripta fraternitatis vestrae relegentes agnovimus, quod hi, qui contra Hadrianum episcopum aliqua dixerant, modo cum eodem *episcopo* in amicitiam convenissent, *et magna nobis ad praesens facta est de eorum unitate laetitia. Sed, quoniam ea, quae dicta sunt, indiscussa manere non patimur, sedis nostrae diaconum ad ea investiganda dirigimus*. Quia vero nunciati facinoris qualitas nos vehementer impellit, ut ea, quae audivimus, dissimulare nullatenus debeamus, praesertim quum accusatores et accusatum inter se fecisse gratiam indicaveritis, hoc *nobis* necesse est subtilius perscrutari, ne forte non ex caritate, sed ex praemio eorum sit concordia comparata.

Chapter II

Latin source headnote: When the accuser and the accused desist, the judge prosecutes.

The same.

Gregory in no way passed over crimes once heard without examination, even if the accused had returned to favor with the accuser.

Desistente accusatore et accusato iudex prosequitur.

Idem.

Crimina semel audita Gregorius indiscussa nullo modo praeteribat, etiamsi accusatus cum accusatore in gratiam rediisset.

Chapter III

Latin source headnote: One who colludes in a benefice case ought to be deprived of the benefice.

Alexander III, to the Bishop of Norwich.

We have heard that, *in your episcopate and in other episcopates of England*, the malice of clerics has increased to such an extent that sometimes, after collusion has been made among themselves concerning benefices that they possess, they cause themselves to be troubled by others, and afterward, so that the question may be yielded and those same clerics may possess the benefices in quiet, they pay others an annual pension from *those* benefices as if in the name of a settlement, so that after their deaths they may be able to claim a right in those benefices concerning which collusion was made *among those same clerics*. Wherefore, [*because*] *you wished to consult us as to what* is to be done by *you* concerning this, *by apostolic writings and by way of precept* we command your fraternity that, if it shall have been lawfully established to you that any clerics of your jurisdiction have committed fraud through collusion of this kind, you do not delay, *with appeal removed*, perpetually to despoil them of the benefices concerning which collusion was made, because it would be sufficiently unworthy *and absurd* if the fraud and deceit that they endeavor to commit to the prejudice of your right and that of others did not rebound to their disadvantage and loss.

Colludens in causa beneficiali privari debet beneficio.

Alexander III. Norvicensi Episcopo.

Audivimus, *in episcopatu tuo et in aliis episcopatibus Angliae* usque adeo clericorum malitiam excrevisse, ut interdum, inter se collusione facta super beneficiis, quae possident, se sustineant ab aliis molestari, et postea, ut quaestioni cedatur, et iidem clerici beneficia quiete possideant, quasi nomine transactionis solvunt aliis de *ipsis* beneficiis annuam pensionem, ut post mortem eorum in beneficiis illis, super quibus est *inter eosdem clericos* collusio facta, ius sibi valeant vindicare. Unde, [*quia*] *quid sit* tibi *exinde faciendum, nos consulere voluisti, fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus, si quos clericos tuae iurisdictionis per collusionem huiusmodi fraudem legitime tibi constiterit commisisse, eos beneficiis, super quibus collusum fuerit, non differas *appellatione remota* perpetuo spoliare, quia satis esset indignum *et absonum*, si fraus et dolus, quae in praeiudicium tui iuris et aliorum nituntur committere, in eorum non redundarent incommodum et iacturam.

Chapter IV

Latin source headnote: An absolution from charges of crimes, made through collusion, does not impede the faculty of accusing again and inquiring concerning those crimes.

Gregory IX, to the Archbishop of Bari and Brother Joseph, a Florentine Monk.

The outcry that rises against the Archbishop of Acerenza grows to such a degree that we can no longer dissemble it without scandal or tolerate it without danger. (*And below:*) Although the Apostolic See, aroused by frequent outcries, decided that an inquiry into certain of his offenses should be committed, nevertheless, on account of his evasions, as is said, the same man colluding with the

investigators and examiners, and also the witnesses and the aforesaid investigators and examiners having been corrupted, not only have the aforesaid offenses thus far remained uncorrected, but he did not fear to commit worse things than the former. (*And below:*) We command your discretion that, if collusion and corruption of this kind shall be established, you inquire anew concerning the aforesaid and other matters, but otherwise concerning new matters only, which you shall see ought to be investigated.

> Absolutio de criminibus illatis, per collusionem facta, non impedit facultatem iterum accusandi et inquirendi de illis criminibus.
>
> Gregorius IX. Barensi Archiepiscopo et Fratri Ioseph Monacho Florentino.
>
> In tantam clamor, qui adscendit contra Acherontinum archiepiscopum, invalescit, quod dissimulare ipsum ulterius sine scandalo non valemus, nec sine periculo tolerare. (*Et infra:*) Licet autem sedes apostolica frequentibus clamoribus excitata inquisitionem quorundam excessuum suorum duxerit committendam, propter tergiversationes tamen ipsius, ut dicitur, eodem cum inquisitoribus et examinatoribus colludente, nec non corruptis testibus et inquisitoribus ac examinatoribus supra dictis, non solum praedicti excessus remanserunt hactenus incorrecti, verum etiam peiora prioribus committere non expavit. (*Et infra:*) Discretioni vestrae mandamus, quatenus, si de huiusmodi collusione ac corruptione constiterit, ex integro super praemissis et aliis, alioquin super novis duntaxat inquiratis, quae videritis inquirenda.

Title XXIII: On the Offenses of Children

Chapter I

Latin source headnote: Minors below puberty can commit offenses apart from the vice of the flesh; nevertheless, they are punished more mildly than adults.

Gregory.

Certain persons are unwilling to attribute sin to older children before the age of fourteen, when they begin to reach puberty. We would deservedly believe this if there were no sins except those that are committed with the genital members. But who would dare to affirm that thefts, lies, and perjuries are not sins? Yet childhood is full of these, although in children they appear not to be punishable in the same manner as in adults.

> **DE DELICTIS PUERORUM.**
>
> Impuberes praeter vitium carnis delinquere possunt; puniuntur tamen mitius quam adulti. Gregorius.
>
> Pueris grandiusculis peccatum nolunt attribuere quidam, nisi ab annis XIV., quum pubescere coeperint. Quod merito crederemus, si nulla essent peccata, nisi quae membris genitalibus admittuntur. Quis vero audeat affirmare, furta, mendacia et periuria non esse peccata? At his plena est puerilis aetas; quamvis in eis non ita, ut in maioribus, punienda videantur.

Chapter II

Latin source headnote: A boy ought not to be punished as severely as an adult, nor is a father held for the offense of his son below puberty.

Alexander III, to the Bishop of Hermon.

From the report of H., *the bearer of the present letters*, we understood that, when his son, *who was* ten years old, was shooting arrows with other boys, a certain nephew of the same H., struck by an arrow, died. The same son is said to have done this by an accidental event while he was playing among the others, *although this is held uncertain*. On account of this *our beloved son*, the Abbot of Saint Remigius, was urgently demanding one hundred solidi from the aforesaid H. according to the custom of that land. (*And below:*) Wherefore, because in boys that is customarily left unpunished which human laws say is to be corrected more severely in others of more advanced age, *by apostolic writings and by way of precept* we command your fraternity that *you inquire more diligently into the matter itself, and*, if *it shall be established to you* that the son of the aforesaid H. committed that offense before the fourteenth year of his age, you admonish the aforesaid abbot and, *with appeal removed, by our authority* compel him not to exact the aforesaid one hundred solidi from that H. on account of that custom, nor to seek them from him as a temporal penalty. *But if the aforesaid abbot shall decide, after your admonition, to proceed against him concerning this, relying upon our authority you are to absolve Haide and his son from his proceeding, with the remedy of appeal removed.*

> Puer non debet ita severe puniri, sicut maior, nec pater ex delicto filii impuberis tenetur.
>
> Alexander III. Hermonensi Episcopo.
>
> Referente nobis H. *latore praesentium* intelleximus, quod, quum filius eius, *qui* decennis *erat*, cum aliis pueris sagittaret, quidam nepos eiusdem H. sagitta percussus interiit, quod idem filius eius, quum inter alios luderet, fortuito casu dicitur peregisse, *licet id habeatur incertum*. Propter quod *dilectus filius noster* abbas sancti Remigii a praefato H. secundum consuetudinem illius terrae centum solidos instantius requirebat. (*Et infra:*) Unde, quoniam in pueris relinqui solet inultum quod in aliis provectioris aetatis humanae leges dicunt severius corrigendum, *fraternitati tuae per apostolica scripta praecipiendo* mandamus, quatenus *rem ipsam diligentius inquiras, et*, si *tibi* constiterit, filium praedicti H. infra XIV. aetatis suae annum eundem excessum commisisse, memoratum abbatem moneas et *auctoritate nostra appellatione remota* compellas, ut ab eodem H. praedictos centum solidos propter illam consuetudinem non exigat, nec ab ipso pro temporali poena requirat. *Quodsi praenominatus abbas eum super hoc post commonitionem tuam duxerit impetendum, tu Haide et filium suum ab eius impetitvione sublato appellationis remedio auctoritate nostra fretus absolvas*.

Title XXIV: On a Cleric Who Hunts

Chapter I

Latin source headnote: Hunting is prohibited to a cleric, and a penalty is imposed upon one acting contrary to this. It says this together with the following chapter.

From the Council of Orléans.

It is not lawful for a bishop, priest, or deacon to possess dogs, hawks, or *things* of this kind for hunting. But if anyone among such persons shall have been detained more frequently in this pleasure, if he is a bishop, let him be *suspended* from communion for three months; if a priest, for two; if a deacon, let him be suspended from every office.

> **DE CLERICO VENATORE.**
>
> Clerico prohibetur venatio, et contra facienti poena imponitur. Hoc dicit cum sequenti. Ex concilio Aurelianensi. Episcopum, presbyterum aut diaconum canes aut accipitres aut huiusmodi *res* ad

venandum habere non licet. Quodsi quis talium personarum in hac voluptate saepius detentus fuerit, si episcopus est, tribus mensibus a communione *suspendatur*: si presbyter, duobus; si diaconus, ab omni officio suspendatur.

Chapter II

Latin source headnote: It is summarized in the immediately preceding chapter.

From the same council.

We forbid all servants of God hunts and woodland wanderings with dogs, and hawks or falcons.

Summatum est supra capitulo proximo.

Ex eodem.

Omnibus servis Dei venationes et silvaticas vagationes cum canibus, et accipitres aut falcones interdicimus.

Title XXV: On a Cleric Who Strikes

Chapter I

Latin source headnote: A cleric who repeatedly strikes another and does not desist after admonition is to be deposed.

From the Council of Agde.

If anyone in any sacred grade shall have been a striker, let him be corrected from the crime; and if he shall not have amended himself, let him be deposed.

DE CLERICO PERCUSSORE.

Clericus, saepe alium percutiens, et monitus non desistens, deponendus est.

Ex concilio Agathensi. Si quis in aliquos gradu sacro percussor exstiterit, corripiatur a crimine, et, si non emendaverit, deponatur.

Chapter II

Latin source headnote: A bishop who causes someone to be cruelly beaten is suspended from the administration of masses for two months.

Gregory, to the Bishop of Taranto.

Furthermore, because, contrary to the order of the priesthood, you appointed that a woman *of the matriculae* be cruelly beaten with clubs on account of her offense—although, since she died after eight months, we by no means judge that she died from it—nevertheless, because you were unwilling to have regard for your order, *therefore* we establish that you are to abstain from the administration of masses for two months, [*during which, suspended from your office, it is fitting for you to lament what you did, etc.*]

Duobus mensibus a missarum administratione suspenditur episcopus, qui crudeliter aliquem fustigari facit.

Gregorius Tarentino Episcopo.

> Praeterea, quoniam mulierem *de matriculis* propter delictum suum contra ordinem sacerdotii caedi crudeliter fustibus deputasti, quam licet exinde, quum post octo menses decesserit, minime arbitramur fuisse defunctam, tamen, quia ad ordinem tuum noluisti habere respectum, *propterea* duobus te mensibus ab administratione missarum statuimus abstinere, [*in quibus ab officio tuo suspensum flere te convenit quod fecisti etc.*]

Chapter III

Latin source headnote: A cleric is not punished as a killer if he was himself in a conflict on the side of those repelling violence, although some persons died there and he himself threw stones, by which he himself struck no one.

Alexander III, to the Bishop of Lucca.

The bearer of the present letters asserts that he was in a certain conflict, yet on the side of those who were repelling violence; in it he himself threw stones, but struck no one. Because some are said to have been killed there by others, we command him to abstain from the celebration of masses for two years. We therefore command that, if *the matter shall so have occurred and* other matters do not impede, when the period of time of this kind has elapsed, you admit him to the exercise of his office.

> Non punitur clericus ut homicida, si fuit ipse in conflictu pro parte violentiam repellentium, licet ibi aliqui mortui sint, et ipse lapides proiecit, ex quo nullum ipse percussit.
>
> Alexander III. Lucensi Episcopo.
>
> Praesentium lator in quodam conflictu asserit se fuisse, pro parte tamen illorum, qui violentiam repellebant; in quo lapides ipse proiecit, sed aliquem non percussit. Quem nos, quia per alios illic aliqui dicuntur occisi, a celebratione missarum per biennium praecipimus abstinere. Mandamus itaque, ut, si *res ita se habuerit, et* alia non impedierint, decurso huiusmodi temporis spatio, ad sui eum officii exsecutionem admittas.

Chapter IV

Latin source headnote: A cleric who was in a conflict in which certain persons were killed without his deed or counsel can be promoted by the common law. It says this according to the second understanding, which pleases Panormitanus more.

Celestine III.

After the contents of *your* letters *had been inspected, by which you informed us that*, When P., an acolyte *bearing the present letters*, had taken up arms with certain *men* to resist robbers, in that conflict three were wounded unto death by others, yet in such a manner that those homicides were perpetrated neither by his deed nor by his counsel. We respond thus to your consultation: since you say that the aforesaid acolyte has passed to the fruit of a better life *and has lived laudably in monastic religious life for almost eight years up to this time, provided his merits do not otherwise oppose*, he can be promoted to the order of subdiacon and *deservedly* exercise the ministry of the altar.

> Clericus, qui fuit in conflictu, ubi aliqui fuerunt occisi sine eius facto vel consilio, de iure communi promoveri potest. H. d. secundum intellectum, qui plus placet Panorm.
>
> Coelestinus III. Continentia literarum *vestrarum inspecta, qua significastis nobis, quod*, Quum P. acolythus *praesentium lator* cum quibusdam *hominibus* ad resistendum praedonibus arma sumpsisset, in conflictu illo tres fuerunt ab aliis vulnerati ad mortem, ita tamen, quod illa homicidia neque facto eius neque

consilio perpetrata fuerunt. Consultationi tuae taliter respondemus, quod, quum praedictum acolythum ad frugem melioris vitae transivisse dicatis, *et in monachali religione fere per annos octo laudabiliter huc usque vixisse, meritis eius alias non repugnantibus*, poterit ipse ad subdiaconatus ordinem promoveri, et *merito* altaris ministerium exercere.

Title XXVI: On Those Who Utter Curses

Chapter I

Latin source headnote: One who curses the Pope is to be punished so that others may henceforth be deterred and he himself restrained.

Clement III.

It became known to us. (*And below:*) *Lastly, we command and enjoin upon your fraternity that*, Because you reported to us through *your* letters that the cleric I. *of the Holy Trinity*, in the presence of many bystanders, uttered certain words to the disparagement of our office and benefice, you restrain him from his rashness *through suspension from office and benefice, with the obstacle of appeal removed*, so that his punishment may strike terror into others, lest henceforth they burst forth into such words against the Roman Church.

DE MALEDICIS.

Maledicens Papae puniendus est, ut alii deinceps deterreantur, et ipse arceatur.

Clemens III. Innotuit nobis (*Et infra:*) *Ad ultimum fraternitati tuae mandamus atque praecipimus, quatenus*, Quia nobis per literas *tuas* retulisti, quod I. clericus *sanctae Trinitatis*, multis coram adstantibus, verba quaedam in depressionem officii et beneficii nostri protulit, ipsum a temeritate sua *per suspensionem officii et beneficii sublato appellationis, obstaculo* compescas, ut poena illius aliis terrorem incutiat, ne de cetero contra Romanam ecclesiam in talia verba prorumpant.

Chapter II

Latin source headnote: Here is laid down the penalty of one blaspheming God or any saint, and especially the most glorious Virgin.

Gregory IX.

We decree that, if anyone shall have presumed publicly to loose his tongue in blasphemy against God, or any of his saints, and especially the blessed Virgin, he is to be subjected by his bishop to the penalty noted below: namely, for seven Sundays the blasphemer is to stand openly before the doors of the church while the solemnities of masses are conducted; on the last of those Sundays he is to have neither cloak nor shoes and is to be bound with a strap around his neck; and on the seven preceding Fridays he is to fast on bread and water, in no way entering the church. On each of the aforesaid days he is also to feed three poor persons, if he can, otherwise two or one. And if his means do not suffice even for this, it is to be commuted into another penance. If he shall refuse to receive and complete the aforesaid penance, entrance to the church is also to be forbidden to him, and at death he is to lack ecclesiastical burial. Furthermore, through the temporal power, with coercion by the diocesan bishop employed against him if necessary, the blasphemer, if rich, is to be chastised by a penalty of forty solidi of current money, otherwise thirty or twenty, and, if he does not suffice for this, five solidi, having no mercy in this; and this is also to be placed among the other statutes of communities.

Hic ponitur poena blasphemantis Deum, vel aliquem sanctum, et maxime Virginem gloriosissimam.

Gregorius IX. Statuimus, ut, si quis contra Deum, vel aliquem sanctorum suorum, et maxime beatam Virginem, linguam in blasphemiam publice relaxare praesumpserit, per episcopum suum poenae subdatur inferius annotatae, videlicet, ut septem diebus dominicis prae foribus ecclesiae in manifesto, dum aguntur missarum solennia, blasphemus exsistens, ultimo illorum die dominico pallium et calceamenta non habeat, ligatus corrigia circa collum, septemque praecedentibus sextis feriis in pane ieiunet et aqua, ecclesiam nullatenus ingressurus. Quolibet quoque praedictorum dierum tres, si poterit, alioquin duos reficiat pauperes sive unum. Et, si nec ad hoc eius suppetant facultates, id in poenam aliam commutetur; cui etiam, si renuerit recipere ac peragere poenitentiam supra dictam, ecclesiae interdicatur ingressus, et in obitu ecclesiastica careat sepultura. Per temporalem praeterea potestatem, coactione, si necesse fuerit, episcopi dioecesani adhita contra eum, blasphemus, si dives fuerit, quadraginta solidorum, alioquin triginta sive viginti, et, si ad id non sufficiat, quinque solidorum usualis monetae poena mulctetur, nullam in hoc misericordiam habiturus; quod etiam inter alia communitatum statuta ponatur.

Title XXVII: On an Excommunicated, Deposed, or Interdicted Cleric Who Ministers

Chapter I

Latin source headnote: A deposed cleric who celebrates is excommunicated.

From the Canon of the Apostles.

If any bishop, priest, or deacon, justly deposed for certain crimes, shall have dared to handle again the ministry formerly committed to him, let him be cut off *entirely* from the Church.

DE CLERICO EXCOMMUNICATO, DEPOSITO VEL INTERDICTO MINISTRANTE.

Clericus, depositus celebrans, excommunicatur.

Ex canone Apostolorum.

Si quis episcopus, presbyter vel diaconus, depositus iuste pro certis criminibus, ausus fuerit attractare ministerium sibi dudum commissum: hic ab ecclesia *penitus* abscindatur.

Chapter II

Latin source headnote: A degraded or suspended cleric who celebrates and does not desist after admonition is excommunicated; and if he does not desist even thus, at the Church's request he is condemned to exile through the secular power.

From the Council of Antioch.

If any priest or other cleric *shall have been degraded by his bishop* or suspended from office for certain crimes, and through contempt and pride he presumes to perform anything from the ministry forbidden to him, and afterward, having been corrected by his bishop, persists in the presumption begun, let *him* be excommunicated in every way *and expelled from the church*. And whoever shall communicate with him is likewise to know himself excommunicated. The same is to be observed concerning excommunicated clerics, laymen, or women. But if anyone shall have contemned all these things and the bishop shall have been unable to amend him, at the Church's request let him be condemned to exile by the king's judgment.

> Degradatus vel suspensus celebrans, et monitus non desistens, excommunicatur; et, si nec sic desistat, per saecularem potestatem ad requisitionem ecclesiae exsilio damnatur.
>
> Ex concilio Antiocheno.
>
> Si quis presbyter aut alius clericus *ab episcopo suo* fuerit degradatus, aut ab officio pro certis criminibus suspensus, et ipse per contemptum et superbiam aliquid de ministerio sibi interdicto agere praesumpserit, et postea ab episcopo suo correptus in incepta praesumptione perduraverit: *hic* modis omnibus excommunicetur *et ab ecclesia expellatur*. Et quicunque cum eo communicaverit, similiter se sciat esse excommunicatum. Similiter de clericis, laicis vel feminis excommunicatis observandum est. Quodsi aliquis ista omnia contempserit, et episcopus minime emendare potuerit, regis iudicio ad requisitionem ecclesiae exsilio damnetur.

Chapter III

Latin source headnote: An interdicted and excommunicated cleric who celebrates and does not desist after admonition is deposed.

Alexander III, to the Bishop of London.

But if any clerics shall have been interdicted or excommunicated by their own bishops, or even at the command of the Roman Pontiff by other bishops, [*and*] shall have celebrated divine offices before absolution, unless after admonition they return without delay, let them incur the sentence of perpetual deposition for the venture of so great a rashness.

> Interdictus et excommunicatus celebrans, monitus non desistens, deponitur.
>
> Alexander III. Londonensi Episcopo.
>
> Clerici autem, si qui a suis, aut etiam de mandato Romani Pontificis ab alienis episcopis interdicti vel excommunicati [*fuerint, et*] ante absolutionem divina officia celebraverint, nisi moniti sine dilatione redierint, perpetuae depositionis sententiam pro ausu tantae temeritatis incurrant.

Chapter IV

Latin source headnote: Excommunicated or interdicted clerics who celebrate ought to be deposed, unless the penalty is mitigated on account of their multitude.

The same, to the Archbishop of Toledo.

The bearers of the present letters, *coming with your letters to our presence, informed* us *more fully of their offense, namely*, that both they and many others, after they were interdicted or excommunicated, presumed to celebrate divine offices. *But because they said that a great multitude sinned with them in this, and it could not become known to us which of them transgressed more or less, we decided that the business itself should be committed to the judgment of your discretion. By apostolic writings and by way of precept* we command your fraternity that, *after more diligent inquiry into the truth of the matter*, if it shall be established that only forty or fewer transgressed in these matters, you depose all of them perpetually from the priestly office. But if you shall know that a great multitude sinned in this, you are to condemn by perpetual deposition those who shall have been established to be more the cause of the offense, suspend for a time from office the others who did not transgress so greatly, and impose penance upon all according to the discretion given to you by God.

> Excommunicati vel interdicti celebrantes deponi debent, nisi propter multitudinem mitigetur poena.

Idem Toletano Archiepiscopo.

Latores praesentium, *cum tuis literis ad nostram accedentes praesentiam, suum* nobis *excessum plenius* intimarunt, *scilicet*, quod tam ipsi quam multi alii, postquam interdicti vel excommunicati fuerunt, divina praesumpserunt officia celebrare. *Quoniam vero cum eis magnam multitudinem in hoc peccasse dicebant, nec nobis, quis eorum magis vel minus deliquerit, innotescere potuit, negotium ipsum tuae discretionis arbitrio duximus remittendum*. Fraternitati tuae *per apostolica scripta praecipiendo* mandamus, quatenus, *rei veritate diligentius inquisita*, si XL. solummodo vel pauciores in his deliquisse constiterit, omnes in perpetuum ab officio sacerdotali deponas. Si vero multitudinem magnam in hoc peccasse cognoveris, eos, quos magis causam delicti esse constiterit, perpetua depositione condemnes, et alios, qui non tantum deliquerunt, ab officio ad tempus suspendas, et omnibus poenitentiam secundum discretionem tibi a Deo datam iniungas.

Chapter V

Latin source headnote: If one who has knowledge of an excommunication through report alone celebrates, by rigor he ought to be deposed, although a merciful dispensation can be granted to him. It says this, and it is a notable case.

Innocent III, to the Chapter of Würzburg.

The Lord granted to blessed Peter [*in whose dignity of the apostolate we, although insufficient, have succeeded, the privilege of a singular prerogative for the Roman Church: that it exist as the head and mother of all the faithful, so that a member which has not persisted in its unity is foreign to that body concerning which the Apostle says, "we are all one body in Christ"; nor does one who has not had it as mother and teacher belong to that fold concerning which it is read in the Gospel, "there shall be one fold and one shepherd." We also, who by God's ordering have been called to its governance, although in life we are unequal and in merits unlike our first predecessors, who laid down their lives for the Church, nevertheless by the same privilege exercise equal power with him, since we read that it was said by the Lord: "Whatever you shall bind upon earth shall be bound also in heaven, and whatever you shall loose upon earth shall be loosed also in heaven." Although, moreover, the Apostolic See, considering human imperfection and the gravity of the burden enjoined upon it, has summoned many to a share of the solicitude committed to it, it nevertheless retained for itself the fullness of power, reserving many things to its power alone which, apart from its special authority, by law neither ought nor can be dispensed by any persons with impunity, such as the resignations and translations of bishops and certain other matters which, since they are known, there is no need for us to explain in letters.*]

Our venerable brother [*Conrad*], formerly Bishop of Hildesheim, *chancellor of the imperial court, not considering that there are many things which, apart from the special authority of the Apostolic See, by law neither could nor ought to be attempted by any persons with impunity, such as the resignations and translations of bishops and other matters known to you*, having not only failed to obtain permission but not even sought it, left the church of Hildesheim and occupied the church of Würzburg, [*and thus in the letters that he sent us he presumed to call himself Bishop of Würzburg*]. Wherefore *we, wishing to punish his presumption with due correction, gave commands to our venerable brother* the Archbishop of Magdeburg *and certain others established in Germany* that, since the fact itself could not fail to be notorious in those parts, unless the said bishop ceased from the administration of the church of Würzburg within twenty days *after receipt of the letters that we directed to him concerning this*, they were publicly to announce him as excommunicated *and cause his excommunication to be renewed with bells rung and candles lit on feast days and Sundays*. The same Archbishop of Magdeburg took care to fulfill this.

[*Although in manifest matters the judicial order did not need to be required, and he appeared to have confessed concerning himself, since in letters directed to us he presumed to call himself Bishop of Würzburg, nevertheless, in order to overcome every malice, we again commanded him, without first giving a salutation, that, with every pretext ceasing, if he wished to find favor with us, he was to fulfill the apostolic mandate. When he nevertheless persisted in his contumacy and, after another had been elected and confirmed in the church of Hildesheim by our mandate, presumed to call himself Bishop of Hildesheim, lest the Apostolic See appear to dissemble, we announced him excommunicated amid the solemnities of masses and commanded that he be avoided by all. But at length, recognizing his own rashness, first before the aforesaid archbishop and many princes of Germany, and second before our venerable brother C., Archbishop of Mainz and Bishop of Sabina, and many princes, he affirmed by oath that he would obey apostolic commands. Thereafter, neither avoiding the dangers of the roads nor intolerant of the inconveniences of the season, he came to the Apostolic See and, voluntarily confessing his offense in great contrition of heart and great humility of body, sought the benefit of absolution. But we, following the example of him who does not wish the death of the sinner but rather that he be converted and live, because he swore by every compact and tenor that he would in good faith receive and observe all our commands, whatever we should tell him by way of imposing things upon him concerning those matters for which he had been excommunicated by us, through our messenger, or through letters, afterward caused the benefit of absolution to be furnished to him.*]

But the bishop himself, afterward appearing in our presence, although he acknowledged and confessed his offense and sought not judgment but mercy, [*introduced certain things in his own excuse, yet in such a manner that he neither departed from the form of humility nor relied upon the reasons introduced to such an extent that he did not always condemn what he had done, and, while excusing himself, voluntarily accused himself. He appeared, moreover, to have transgressed more particularly in three things.

First, namely, in that, apart from our special authority, he presumed to pass from the church of Hildesheim to the church of Würzburg, something he could not do by law, and after another had been elected and confirmed in the church of Hildesheim by our mandate, he named himself Bishop of Hildesheim.

Second, namely, in that, after the said Archbishop of Magdeburg had promulgated against him by our mandate a sentence of excommunication, he presumed to celebrate divine offices in a solemn court; and after he knew himself excommunicated by us, he repeatedly caused celebration to be held for himself and frequently thrust himself into communion.

Third, that, although he pretended to cease from the administration of the church of Würzburg, he nevertheless never withdrew fully from it, since, when questioned by us, he confessed that he still detained the temporalities.

But the same bishop wished to excuse himself concerning the first point in this manner: that he had passed to the church of Würzburg by special apostolic authority, since Celestine, Pope of good memory, our predecessor, had decided to grant him permission to pass to another church. But, considering more diligently the words of that indulgence and their force, he had from it no cause for passing before the postulatio had been examined by the one by whom it was to be made, lest perhaps anything be done through pressure, anything be transacted through simoniacal depravity, or anything contrary to canonical sanctions be capable of being attempted. This is sufficiently clear from the tenor of the indulgence, in which it is added near the end: "provided that it does not oppose canonical statutes." Furthermore, although it appeared to have been granted to him that, when invited, he

might assume a greater dignity, it was nevertheless not granted to him that he should transfer himself to a church of equal dignity, since it is a greater indulgence for a bishop that he pass to an equal church; much more, we have never found this dispensed. But it is established that the churches of Hildesheim and Würzburg, insofar as dignity pertains, are equal, since each is a suffragan of the church of Mainz; for although Würzburg is richer in temporalities, Hildesheim is nevertheless reported to be nobler in spiritualities.*]

Nevertheless, among other things in his excuse, he proposed that, since the said Archbishop of Magdeburg was not his ordinary judge, he had not believed that, without prior admonition, he could proceed against him by delegated authority or promulgate any sentence against him. Wherefore, since neither before the fact had he received letters of admonition nor after the *fact* any letters from him, he did not believe that he sinned if he celebrated divine offices however solemnly, especially since the sentence pronounced against him was known to him only through report. *But he asserts that, after he knew himself excommunicated by us, he caused divine offices to be celebrated for him and frequently thrust himself into the communion of the faithful not in contempt of the Apostolic See or even of so great a sacrament, but in hope of pardon, namely lest he become more hardened or his mind behave more stubbornly if he were never present at divine offices; although on solemn days he never thrust himself into the celebration of divine offices, but with a few persons, secretly in a corner of some church on non-festal days, he sometimes caused divine offices to be celebrated for him.*

Although in this he does not appear to have been entirely culpable, nevertheless, because in doubts the safer way is to be chosen, even if he doubted the sentence rendered against him, he ought rather to have abstained than to handle ecclesiastical sacraments. But that, in hope of pardon, after he knew himself excommunicated by us, he caused divine offices to be celebrated for him and thrust himself into the communion of the faithful, we believe to work against him rather than for him, since he ought not to have transgressed in reliance upon penance; and for an excommunicated person not to avoid others is much more dangerous than not to be avoided. Indeed, since not avoiding lies within his own power, an excommunicated person cannot fail to sin; but since not being avoided depends upon others, he can be not avoided without sin of his own.

[*He asserted that he had held the fortifications and towns of the church of Würzburg for its utility, lest, if perhaps they came into foreign hands, there would afterward be no one to free them. But since spiritual things are worthier than temporal things, obedience better than victims, and listening better than offering the fat of rams, the same bishop ought not, for the temporal advantage of the church of Würzburg, to have incurred the mark of disobedience and resisted apostolic commands. Considering, therefore, that the Lord does not wish the death of the sinner, lest we appear unmindful of the benignity of the Apostolic See, we decided that mercy should be shown to the same bishop in certain things. But because the same merciful Lord—if the one is held without the other—and because there are also certain faults in which, according to canonical sanctions, it is culpable to relax punishment, we therefore tempered mercy through discipline and discipline through mercy, so that we might punish the offenses committed by the same bishop in such a way that we would not compel him to despair of pardon. Therefore, when he had been placed publicly in the consistory in our presence and that of our brothers, following the canonical sanctions in which it is provided that those who transfer themselves to a greater people ought both to be driven from the other's chair and to lack their own, so that they preside neither over those whom they despise through pride nor over those whom they covet through avarice, we caused him by sentence to be despoiled both of the episcopate of Würzburg and that of Hildesheim.*]

Showing mercy to him, we decided not to inflict upon him the penalty that the canon inflicts upon those who, after excommunication, presumed to celebrate divine offices, or *who* thrust themselves into the celebration of divine offices. [*We therefore commanded, etc. Given at the Lateran on the fifth day before the Ides of April, in the second year,* 1200.]

> Si habens notitiam excommunicationis per solam famam celebrat, debet de rigore deponi, licet cum eo possit misericorditer dispensari. H. d. et est casus notabilis.
>
> Innocentius III. Herbipolensi Capitulo.
>
> Illud Dominus in beato Petro, [*cui licet insufficientes in apostolatus successimus dignitate, singularis praerogativae privilegium ecclesiae Romanae concessit, ut universorum fidelium caput et mater exsistat ita ut alienum sit a corpore illo de quo ait apostolus: "omnes unum corpus sumus in Christo" membrum quod in eius non perstitit unitate, nec ad illud ovile pertineat, de quo in evangelio legitur: "fiet unum ovile et unus pastor," qui matrem eam non habuerit et magistram, nos quoque, qui ad eius regimen Deo disponente sumus vocati, etsi vita sumus impares et meritis inaequales primis praedecessoribus nostris, qui pro ecclesia suas animas posuerunt, ex eodem tamen privilegio pari cum eodem fungimur potestate, quum legimus dictum a domino: "quodcumque ligaveris super terram, erit ligatum in coelo et quodcumque solveris super terram erit solutum et in coelo" licet autem apostolica sedes imperfectionem humanam et iniunctam sibi oneris gravitatem attendens, multos in sortem creditae sibi sollicutidinis evocaverit, sibi tamen retinuit plenitudinem potestatis, multa suae solius potestati reservans quae praeter specialem auctoritatem ipsius, nec de iure debent nec possunt impune ab aliquibus dispensari, utpote cessiones et translationes episcoporum et alia quaedam, quae quum. nota sint, nobis non opus est literis explicare.*] Venerabilis frater noster [*Conradus*] quondam Hildesemensis episcopus, *imperialis aulae cancellarius, non attendens, quod multa sunt, quae praeter specialem auctoritatem apostolicae sedis de iure non possent nec deberent impune ab aliquibus attentari, utpote cessiones et translationes episcoporum, et alia, quae nota sunt vobis*, licentia non solum non obtenta, sed nec etiam postulata, ecclesia Hildesemensi relicta Herbipolensem ecclesiam occupavit, [*et sic in literis quas nobis destinavit + Herbipolensem se praesumpsit appellare*], Unde *nos, praesumptionem ipsius debita volentes animadversione punire, venerabili fratri nostro* Magdeburgensi episcopo *et aliis quibusdam in Teutonia constitutis* dedimus in mandatis, ut, quum factum ipsum non posset in partibus illis non esse notorium, nisi dictus episcopus infra XX. dies *post susceptionem literarum, quas super hoc ipsi direximus*, ab Herbipolensis ecclesiae administratione cessaret, eum excommunicatum publice nunciaret, *et excommunicationem eius facerent pulsatis campanis et candelis accensis festivis diebus et dominicis innovari*, quod idem Magdeburgensis studuit adimplere. [*Licet autem in manifestis non esset ordo iudiciarius requirendus et ipse confessus de + videretur, quum literis ad nos directis se praesumpserit Herbipolensem episcopum apellare, ad vincendam omnem malitiam, eidem denuo non praemissa salutatione, mandavimus ut omni occasione cessante, si apud nos vellet gratiam invenire, mandatum apostolicum adimpleret: quum ipse nihilominus in sua contumacia perduraret et posteaquam alius in Hildesheimensi ecclesia de mandato nostro electus et confirmatus fuerat, se praesumeret Hildesheimensem episcopum appellare, ne apostolica sedes dissimulare videretur, ipsum excommunicatum inter missarum solemnia nuntiavimus et mandavimus ab omnibus evitari: ceterum, ipse tandem temeritatem propriam recognoscens, primo coram iam dicto archiepiscopo et multis principibus Alamanniae, secundo coram venerabili fratre nostro C. Moguntino archiepiscopo, episcopo Sabinensi, et multis principibus iuramento firmavit, quod mandatis apostolicis obediret, et exinde nec viarum vitans discrimina, nec incommoda, temporis impatiens, ad Apostolicam sedem accessit et sponte suum confessus excessum, in multa contritione cordis et magna humilitate corporis, absolutionis beneficium postulavit. Nos autem, eius sequentes exemplum, qui non vult mortem peccatoris, sed ut magis convertatur et vivat, quod ipse pacto quolibet et tenore iuravit, quod universa mandata nostra bona fide reciperet et servaret quaecumque diceremus ipsi, super his, pro quibus fuerat excommunicatus per nos aut per nuntium nostrum seu per litteras iniungendo: postmodum autem fecimus ei absolutionis beneficium exhiberi.*] Ipse vero episcopus, in nostra postmodum praesentia constitutus, etsi suum recognosceret et confiteretur excessum, et non iudicium, sed misericordiam postularet +. [*aliqua in sui excusationem induxit; sic tamen, ut nec formam humilitatis excederet, neque usque adeo rationibus inniteretur*

inductis, quin semper damnaret quod fecerat, et se ipsum excusans spontanee accusaret; videbatur autem tribus specialius deliquisse. Primo videlicet in eo quod praeter specialem auctoritatem nostram ab ecclesia Hildesheimensi ad Herbipolensem de octo, quod iure non potuit, transire praesumpsit, ac postquam alius in Hildesheimensi ecclesia electus et confirmatus demandato nostro fuerat, se ipsum Hildesheimensem episcopum nominavit. Secundo in eo videlicet, quod postquam dictus archiepiscopus Magdeburgensis in eum de mandato nostro sententiam excommunicationis promulgavit, divina praesumpsit officia in sollemni curia celebrare, et postquam se novit excommunicatum a nobis, sibi fecit saepius celebrari et communioni frequenter se ingessit. Tertio, quod si ab Herbipolensis ecclesiae se simulavit administratione cessare, nunquam tamen plene recessit ab ea utpote quum interrogatus a nobis confessus fuerit se adhuc temporalia detinere: verum idem episcopus super primo capitulo se voluit taliter excusare, quod ad Herbipolensem ecclesiam ex speciali apostolica auctoritate transivisset, quum bonae memoriae Celestinus papa praedecessor noster, ei duxerit indulgendum licentiam ad aliam ecclesiam transeundi, sed verba ipsius indulgentiae ac vim eorum diligentius attendentes ex ea causam non habuit transeundi, priusquam per eum postulatio examinata fuisset cuius fuerat facienda, ne quid forte per impressionem fieret, ne quid ageretur per symoniacam pravitatem, ne quid attentare contra canonicas sanctiones posset, quod ex tenore indulgentiae satis patet, in qua subiungitur circa finem: dummodo canonicis non obviet statutis: praeterea etsi videretur ei indultum ut invitatus maiorem sumeret dignitatem, concessum tamen ipsi non fuit, ut ad paris dignitatis ecclesiam se transferret, quum indulgentiae maioris exsistat episcopo ut ad parem ecclesiam transeat + magis + nunquam invenimus dispensatum, constat autem Hildesheimensem et Herbipolensem ecclesias quantum ad dignitatem pertinet, esse pares, quum utraque suffraganea sit ecclesiae Moguntinae; nam licet Herbipolensis sit in temporalibus abundantior, Hildesheimensis tamen in spiritualibus nobilior perhibetur.] Hoc tamen inter alia in sua excusatione proposuit, quod, quum dictus Magdeburgensis non esset ordinarius iudex eius, non crediderat, quod monitione non praemissa auctoritate delegata posset procedere contra ipsum, aut sententiam in eum aliquam promulgare. Unde, quum nec ante factum monitorias, nec post *factum* literas ab eo aliquas accepisset, peccare non credidit, si divina officia quantumcunque solenniter celebravit, praesertim quum ei non nisi per famam de sententia contra eum prolata constaret. *Quod autem, postquam se novit excommunicatum a nobis, divina sibi fecerit officia celebrari, et fidelium communioni se ingesserat frequenter, id non in contemptum sedis apostolicae vel tanti etiam sacramenti, sed spe veniae asserit se fecisse, ne videlicet indureseeret amplius, vel durius eius animus proterviret, si nunquam divinis officiis interesset; licet in diebus solennibus se nunquam celebrationi divinorum ingesserit, sed cum paucis in angulo alicuius ecclesiae occulte non festivis diebus divina sibi fecerit interdum officia celebrari*. Licet autem in hoc non videatur omnino culpabilis exstitisse, quia tamen in dubiis via est tutior eligenda, etsi de lata in eum sententia dubitaret, debuerat tamen potius se abstinere, quam sacramenta ecclesiastica pertractare. Illud autem, quod sub spe veniae divina sibi fecit, postquam se a nobis excommunicatum noverat, celebrari, et communioni fidelium se ingessit, potius contra eum facere credimus, quam pro eo, quum sub fiducia poenitentiae non debuerit deliquisse, et excommunicato non vitare multo magis, quam non vitari periculosum exsistat; non vitare siquidem, quum in eo sit, excommunicatus sine delicto non potest, sed, quum ex aliis pendeat, sine suo delicto poterit non vitari. [*Munitiones autem et oppida Herbipolensis ecclesiae in utilitatem ipsius se asseruit tenuisse ne si ad alienas manus forsitan devenissent, non esset quia ea postmodum liberaret; sed quum spiritualia sunt temporalibus digniora et obedientia melior quam victimae et auscultare melius quam adipem arietum offerre, non debuerat idem episcopus pro temporali commodo Herbipolensis ecclesiae, inobedientiae notam incurrere et apostolicis iussionibus contraire. Attendentes igitur, quod non vult dominus mortem peccatoris, ne videremur apostolicae sedis benignitatis immemores cum eodem episcopo misericordiam in quibusdam duximus faciendam; sed quoniam idem dominus misericors + si una sine altera teneatur, quum et quaedam sint culpae, in quibus secundum canonicas sanctiones culpa est relaxare vindictam, temperavimus ergo et per disciplinam misericordiam et per misericordiam disciplinam, ut sic commissos ab eodem episcopo puniremus excessus, ne ipsum cogeremus de venia desperare; ipsum igitur sub nostra et fratrum nostrorum praesentia in publico consistorio constitutum, sequentes canonicas sanctiones, quibus est cautum, ut qui ad maiorem plebem se transtulerint, et a cathedra pelli debeant aliena et carere propria, ut nec illis praesideant quos per superbiam spernunt, nec illis quos per avaritiam concupiunt, tam*

Herbipolensi quam Hildesheimensi episcopatu per sententiam curavimus spoliare,] Cum eo misericordiam facientes, poenam, quam canon infligit his, qui post excommunicationem divina praesumpserint officia celebrare, vel *qui* se celebrationi ingesserint divinorum, ei non duximus infligendam. [*Mandavimus ergo etc. Dat. Later. V. Id. Apr. Ao. II. *1200.]

Chapter VI

Latin source headnote: An excommunicated cleric who celebrates is deposed from his benefice.

The same, to the Archbishop of Besançon.

To your fraternity. (*And below:* [*cf. c.* 7, *On One Who Has Known His Wife, IV.* 13.]) But priests and other clerics *of your diocese* who, having been canonically bound by you with the bonds of anathema for their offenses, presumed or presume to celebrate divine offices, you will reasonably be able to despoil of all ecclesiastical benefices. [*The prior, etc. Given at Ferentino on the twelfth day before the Kalends of June, in the sixth year,* 1203.]

Excommunicatus celebrans a beneficio deponitur.

Idem Bisuntino Archiepiscopo.

Fraternitati tuae (*Et infra:* [*cf. c. *7. *de eo, qui cogn. IV.* 13.]) Presbyteros autem et alios clericos *dioecesis tuae*, qui pro suis excessibus a te nexibus anathematis canonice innodati praesumpserunt vel praesumunt officia celebrare divina, rationabiliter poteris omnibus beneficiis ecclesiasticis spoliare. [*Priorem etc. Dat. Ferentini XII. Kal. Iun. Ao. VI. *1203.]

Chapter VII

Latin source headnote: A collation of a benefice made to an excommunicated person is not valid, and one knowingly conferring upon such persons is suspended from the collation of benefices. — (*You Asked, etc.*:) One who celebrates in an interdicted place, if a secular cleric, is deprived of benefices; if a monk, he is thrust into a stricter monastery. It says this.

The same, to the Dean and Prior of Cologne.

You asked to be instructed through the Apostolic See. (*And below:*) *Consequently, you also asked whether clerics who, while they were bound by the bond of excommunication, obtained ecclesiastical benefices can lawfully retain them after they have obtained the benefit of absolution, petitioning nevertheless* [*that it be explained through the Apostolic See*] *by what penalty abbots and abbesses and other prelates of churches who knowingly conferred ecclesiastical benefices upon clerics subject to excommunication ought to be corrected. To these matters* We respond to your consultation that, since communication ought not to be held with excommunicated persons, ecclesiastical benefices cannot be conferred upon clerics bound by the bond of excommunication, nor can they lawfully retain them unless perhaps a merciful dispensation shall have been granted to them, since they did not obtain them canonically. But those who knowingly conferred those benefices upon such persons ought to be suspended from the collation of benefices until they deserve to obtain pardon concerning this, so that they may be punished in that in which they presumed to transgress. You asked further how clerics *and* monks or nuns of conventual churches ought to be punished who, after a sentence of interdict had been rendered, presumed thus far, and even now do not fear, to celebrate divine offices in places subjected to interdict, although on account of this they are bound by the bond of excommunication. To this we respond briefly that clerics who presumed such things are to be despoiled of ecclesiastical benefices, but monks or nuns are to be thrust into stricter

monasteries to complete penance. [*Furthermore, etc. Given at the Lateran on the Ides of May, in the tenth year,* 1207.]

> Collatio beneficii excommunicato facta non tenet, et scienter talibus conferens a beneficiorum collatione suspenditur. - (Quaesivistis etc.:) Celebrans in loco interdicto, si est clericus saecularis, beneficiis privatur; si monachus, in arctius monasterium detruditur. H. d.
>
> Idem Decano et Priori Coloniensibus.
>
> Postulastis per sedem apostolicam edoceri (*Et infra:*) *Consequenter etiam quaesivistis, utrum clerici, qui, dum essent excommunicationis vinculo innodati, ecclesiastica beneficia sunt adepti, eadem, postquam absolutionis beneficium obtinuerunt, licite valeant retinere, postulantes nihilominus* [*per sedem apostolicam explicari,*] *qua poena corrigi debeant abbates et abbatissae, et alii ecclesiarum praelati, qui scienter clericis excommunicationi subiectis ecclesiastica beneficia contulerunt. Ad quae* Consultationi vestrae respondemus, quod, quum excommunicatis communicari non debeat, clericis excommunicationis vinculo innodatis ecclesiastica beneficia conferri non possunt, nec illi valent ea retinere licite, nisi forsitan cum eis fuerit misericorditer dispensatum, quum ea non fuerint canonice consecuti. Illi vero, qui scienter illa beneficia talibus contulerunt, tamdiu debent a beneficiorum collatione suspendi, donec super hoc veniam consequi mereantur, ut puniantur in hoc, in quo delinquere praesumpserunt. Quaesivistis praeterea, qualiter puniri debeant clerici *ac* monachi vel moniales ecclesiarum conventualium, qui post latam interdicti sententiam in locis suppositis interdicto praesumpserunt hactenus, et adhuc etiam non verentur divina officia celebrare, quamvis propter hoc sint excommunicationis vinculo innodati. Ad hoc breviter respondemus, quod clerici, qui talia praesumpserunt, sunt ecclesiasticis beneficiis spoliandi; monachi vero vel moniales in arctioribus monasteriis ad peragendam poenitentiam detrudendi. [*Insuper etc. Dat. Lat. Id. Maii Ao. X.* 1207.]

Chapter VIII

Latin source headnote: A collation of a benefice made to one who was previously excommunicated is valid if he was absolved at the time of the collation.

The same, to the Dean and Subdeacon of Poitiers and Master P., a Canon of Périgueux.

The beloved son Master P. [*Boiol*], a cleric of *our venerable brother* the Bishop of Tusculum, *formerly* proposed before us that, when *the beloved son* G., cardinal deacon of Saint Mary in Portico, was exercising in those parts the office of legation of the Apostolic See, certain persons among the *canons* of Limoges humbly entreated him to set in order their church, which was defrauded of the due service of clerics, presenting special entreaties on behalf of themselves and that same master, *our scribe*. But he, entering the city of Limoges, admonished the canons *with entreaties interposed* to receive them as associates and brothers, especially since five or four prebends had been vacant since the last ordering of that church. When they did not take care to respond after delays for deliberation had been sought and granted, the aforesaid cardinal invested those same clerics with a prebend of Limoges. (*And below:*) *But if he should prove that the man was excommunicated at that time, they were not to postpone revoking what had been done concerning him. They, executing the apostolic command, after receiving witnesses from each party and understanding the confessions and allegations, sent that case, sufficiently instructed, to our examination.* But when the said master and the penitentiary of Limoges appeared in our presence and we caused the acts of the trial to be inspected diligently, through the penitentiary's witnesses we understood *proof to have been made* that the Bishop of Limoges, several years before the same master was invested, had bound with the bond of excommunication both the clerics and townspeople of the

castle of Limoges and the same P. by name, whom they said was their counselor and supporter. But through the witnesses of Master P. it was proved that, although the said bishop had pronounced a sentence of excommunication against the townspeople and their supporters, clerical as well as lay, of Limoges, he nevertheless absolved them three years before the said master was invested, *certain priests having been retained in excommunication until a fixed time because they had presumed to celebrate contrary to a sentence of interdict*, and that afterward the same bishop communicated with the said master in church and at table. But because, *according to the tenor of our mandate*, the said penitentiary did not prove, as he had offered, that the often-mentioned Master *P.* was excommunicated by the aforesaid bishop at the time of his investiture, while, on the contrary, proof was made of absolution and communication by the said bishop, we decided, *on the counsel of our brothers*, that what was done by the said legate concerning the aforesaid Master *P.* should be approved by definitive sentence. [*Therefore, etc. Given at the Lateran on the sixth day before the Kalends of February, in the thirteenth year,* 1210.]

> Valet collatio beneficii ei facta, qui prius fuit excommunicatus, sed absolutus tempore collationis.
>
> Idem Decano et Subdiacono Pictaviensibus et Magistro P. Canonica Petragoricensi. Proposuit *olim* coram nobis *dilectus filius* magister P. [*Boiol*] clericus *venerabilis fratris nostri* episcopi Tusculanensis, quod *dilecto filio* G. sanctae Mariae in porticu diacono cardinali in partibus illis apostolicae sedis legationis fungente officio, quidam de Lemovicensibus *canonicis* ei humiliter supplicarunt, ut eorum ecclesiam, quae debito fraudabatur clericorum servitio, ordinaret, pro se ac magistro eodem *scriptore nostro* preces specialiter porrigentes. Ipse vero, Lemovicensem civitatem ingressus, canonicos *interpositis precibus* monuit, ut illos reciperent in socios et in fratres, maxime quum praebendae V. vel IV. ab ultima ipsius ecclesiae ordinatione vacassent, quibus post petitas et concessas deliberationis inducias non curantibus respondere, de praebenda Lemovicensi cardinalis praedictus eosdem clericos investivit. (*Et infra:*) *Si vero probaret, ipsum excommunicatum tunc temporis exstitisse, non postponerent quod de ipso factum fuerat revocare, qui, mandatum apostolicum exsequentes, utriusque partis receptis testibus, et confessionibus et allegationibus intellectis, eandem causam sufficienter instructam ad nostrum remiserunt examen*. Quum autem dictus magister et Lemovicensis poenitentiarius in nostra fuissent praesentia constituti, et acta iudicii inspici fecerimus diligenter, per poenitentiarii testes intelleximus *factam fidem*, quod Lemovicensis episcopus pluribus annis, antequam idem magister investitus fuerit, *et* clericos et burgenses castri Lemovicensis et eundem P. nominatim, quem eorum dicebant consiliarium et fautorem, vinculo excommunicationis adstrinxit. Per testes vero magistri P. probabatur, quod, etsi dictus episcopus in burgenses et eorum fautores tam clericos quam laicos Lemovicenses excommunicationis sententiam protulisset, eos tamen per tres annos absolvit, antequam dictus magister fuerit investitus, *quibusdam presbyteris usque ad certum tempus in excommunicatione retentis, qui contra sententiam interdicti praesumpserant celebrare*, et quod idem episcopus dicto magistro communicavit postea in ecclesia et in mensa. Quia vero *iuxta mandati nostri tenorem* saepe dictum magistrum *P.* investiturae suae tempore a praefato episcopo exstitisse excommunicatum, dictus poenitentiarius, sicut obtulerat, non probavit, quum ex adverso de absolutione et communione dicti episcopi fuerit facta fides: quod per dictum legatum de memorato magistro *P.* factum est, *de fratrum nostrorum consilio* per diffinitivam sententiam duximus approbandum. [*Quocirca etc. Dat. Lat. VI. Kal. Febr. Ao. XIII. *1210.]

Chapter IX

Latin source headnote: A suspended or excommunicated person who celebrates in ignorance needs no dispensation with respect to irregularity; otherwise it is otherwise.

Gregory IX, to I. and I., Canons of Prague.

Of the Apostolic See. (*And below:*) But because in ignorance you celebrated divine offices during the suspension, probable ignorance renders you excused. But if perhaps the ignorance was gross and supine or erroneous, on account of which you need the favor of dispensation, we grant it to you from apostolic benignity. [*Given on the tenth day before the Kalends of May,* 1227.]

> Suspensus vel excommunicatus ignoranter celebrando nulla indiget dispensatione respectu irregularitatis; alias secus.
>
> Gregorius IX. I. et I. Canonicis Pragensibus.
>
> Apostolicae sedis (*Et infra:*) Verum, quia tempore suspensionis ignari celebrastis divina, vos reddit ignorantia probabilis excusatos. Ceterum, si forte ignorantia crassa et supina aut erronea fuerit, propter quod dispensationis gratia egeatis, eam vobis de benignitate apostolica indulgemus. [*Dat. X. Kal. Mai.* 1227.]

Chapter X

Latin source headnote: One who celebrates while under minor excommunication is not irregular, but sins, and can elect and exercise those things that belong to jurisdiction, although he cannot be elected; and if he confers sacraments, although he sins, nevertheless the conferral is valid and has its effect.

The same.

If one celebrates while bound by minor excommunication, although he sins gravely, he nevertheless incurs no mark of irregularity, nor is he prohibited from electing or from exercising those things that belong to him by reason of jurisdiction. Nevertheless, if such a person shall knowingly have been elected, his election is to be annulled for the reason that he is elected to receive those things from whose reception he was deprived by the holy Fathers. He sins, moreover, by conferring ecclesiastical sacraments; but those conferred by him do not lack the effect of their power, since he does not appear removed from the conferral but from participation in the sacraments, which consists in reception alone, provided that he has not, in contempt of ecclesiastical discipline, namely contrary to the prohibition of his superior, pertinaciously thrust himself into communion with excommunicated persons, in which case he is to be struck with anathema.

> Excommunicatus minori celebrans non est irregularis, sed peccat, et potest eligere, et ea, quae sunt iurisdictionis, exercere, licet non eligi; et, si confert sacramenta, licet peccet, tamen collatio tenet et suum habet effectum.
>
> Idem.
>
> Si celebrat minori excommunicatione ligatus, licet graviter peccet, nullius tamen notam irregularitatis incurrit, nec eligere prohibetur, vel ea, quae ratione iurisdictionis sibi competunt, exercere. Si tamen scienter talis electus fuerit, eius electio est irritanda pro eo, quod ad susceptionem eorum eligitur, a quorum perceptione a sanctis Patribus est privatus. Peccat autem conferendo ecclesiastica sacramenta; sed ab eo collata virtutis non carent effectu, quum non videatur a collatione, sed participatione sacramentorum, quae in sola consistit perceptione, remotus; dummodo non in contemptum ecclesiasticae disciplinae, videlicet contra prohibitionem superioris, communioni excommunicatorum pertinaciter se ingesserit, in quo casu est anathemate feriendus.

Title XXVIII: On a Cleric Who Ministers Without Being Ordained

Chapter I

Latin source headnote: A cleric ministering in matters belonging to an order that he does not have is to be deposed and is not afterward to be ordained.

Pope Hormisdas.

If anyone who has not been ordained shall baptize or exercise any divine office, on account of his rashness let him be cast out of the church and never be ordained.

> **DE CLERICO NON ORDINATO MINISTRANTE.**
>
> Clericus, ministrans in pertinentibus ad ordinem, quem non habet, deponendus est, et amplius non ordinandus.
>
> Hormisda Papa.
>
> Si quis baptizaverit aut aliquod divinum officium exercuerit non ordinatus, propter temeritatem abiiciatur de ecclesia, et nunquam ordinetur.

Chapter II

Latin source headnote: A deacon who celebrates mass is not promoted to the priesthood and is suspended from the diaconate for a time; but concerning his benefice a dispensation can be granted for a time.

Urban III, to the Bishop of León.

It became known to us from the letters of your fraternity that the deacon I., *the bearer of the present letters, wishing to be ordained priest before the proper time, asserted that he had obtained the sacerdotal grade through your ordination, and,* although you had not imposed your hand upon him, presumed to usurp the celebration of masses. *Afterward, however, at the Lord's inspiration, he returned to himself and, recognizing his own offense, humbly petitioned that counsel be given to him in so great a danger. Therefore, because concerning this your fraternity led us to be consulted, by the present letters* We respond to your consultation that he cannot be promoted to the priestly office; and according to your provision, let him remain suspended from the diaconate for two or three years. But let him be treated mercifully concerning his benefice, lest, deprived of sustenance, he return to the business of the world. But so that you can show him this mercy more securely, do not cease to exhibit diligent care concerning him for completing the *imposed* penance. Without doubt, however, he will provide more healthfully for himself if he shall decide to transfer himself to the regular life.

> Diaconus, missam celebrans, ad sacerdotium non promovetur, et a diaconatu suspenditur ad tempus; sed in beneficio poterit ad tempus dispensari. Urbanus III. Legionensi Episcopo.
>
> Ex literis tuae fraternitatis innotuit nobis, quod I. diaconus *praesentium lator, volens ante tempus in presbyterum ordinari, asseruit, se propter ordinationem tuam gradum sacerdotalem adeptum, et*, quum non imposuisses ei manum, missarum celebrationem usurpare praesumpsit, *postmodum vero Domino inspirante rediit ad se ipsum, et proprium recognoscens excessum, in tanto sibi periculo consuli humiliter postulavit. Quia igitur super hoc tua nos duxit fraternitas consulendos, literis praesentibus* Consultationi tuae respondemus, quod ad sacerdotis officium non poterit promoveri; a diaconatu quoque biennio vel triennio pro tua maneat provisione suspensus. De beneficio autem misericorditer agatur cum eo, ne sustentatione privatus ad

saeculi negotia revertatur. Ut autem securius ei possis hanc misericordiam facere, de agenda *imposita* poenitentia diligentem circa eum curam non desinas exhibere. Salubrius autem sibi absque dubio providebit, si ad regularem vitam se duxerit transferendum.

Title XXIX: On a Cleric Promoted by a Leap

Sole Chapter

Latin source headnote: One who in ignorance is made a priest by a leap from subdeacon, after penance is ordained deacon, and afterward a dispensation can be granted to him in the priesthood.

Innocent III, to the Bishop of Bologna.

Your letters *presented to us* contained that, as you had learned from the report of certain *good men*, the priest P., *the bearer of the present letters*, having omitted the order of the diaconate, caused himself to be promoted to the order of the priesthood; *and when you had inquired more diligently from him concerning the truth of this*, he also secretly and *humbly* confessed to you that he did not know for certain whether the matter so occurred, but, since good men among whom he had lived asserted this, he believed their assertion, because *he himself*, at the time when he received the lower orders, was below the years of discretion. *You therefore, sending him to the Apostolic See, humbly petitioned us that we deign to act mercifully with him. We, therefore, grieving with his misery, by apostolic writings* Command your fraternity that you impose upon him a fitting penance for negligence of this kind. When it has been completed, because that which is not known to have been done is not understood to be repeated, you are to take care to ordain him deacon, and thus by mercy permit him to minister in the order of priest. [*Given at Rome at Saint Peter's on the twelfth day before the Kalends of February,* 1205.]

DE CLERICO PER SALTUM PROMOTO.

Qui ignoranter per saltum de subdiacono fit presbyter, post poenitentiam in diaconum ordinatur, et postea potest secum in sacerdotio dispensari. Innocentius III. Bononiensi Episcopo.

Tuae *nobis praesentatae* literae continebant, quod, sicut ex relatione quorundam *bonorum virorum* receperas, P. presbyter *lator praesentium*, diaconatus ordine praetermisso, se fecit ad sacerdotii ordinem promoveri, *quumque super hoc ab ipso quaesisses diligentius veritatem*, ipse tibi quoque secreto *humiliter* confessus est, se pro certo nescire, si res taliter se haberet, sed, ex quo boni viri hoc asserebant, inter quos fuerat conversatus, credebat assertioni eorum, eo, quod *ipse* tempore, quo ordines inferiores susceperat, infra annos discretionis fuerat constitutus. *Tu igitur, ipsum ad apostolicam sedem transmittens, a nobis humiliter supplicasti, ut cum eo misericorditer agere dignaremur. Nos igitur, eius miseriae condolentes, fraternitati tuae per apostolica scripta* Mandamus, quatenus condignam poenitentiam pro huiusmodi negligentia iniungas eidem; qua peracta, quia non intelligitur iteratum quod factum esse nescitur, ipsum in diaconum ordinare procures, et sic de misericordia eundem ministrare permittas in ordine sacerdotis. [*Dat. Rom. ap. S. Petr. XII. Kal. Febr. *1205.]

Title XXX: On One Who Secretly Received an Order

Chapter I

Latin source headnote: One who secretly receives an order, if an excommunication had been rendered against persons doing this, cannot minister in the order thus received or ascend to a higher

one without a dispensation of the Pope; but if an excommunication had not been rendered, the bishop and abbot will be able to dispense. It says this together with the following two chapters.

Alexander III, to the Bishop of Langres.

P., *the bearer of the present letters*, coming to us, explained to us that, *having been circumvented by the cunning of the ancient enemy*, he secretly received the order of the diaconate. Wherefore we respond to your fraternity that, if *perhaps* he was not prohibited by you, or by any of your archdeacons or prelates, under threat of anathema, you yourself, after fitting satisfaction has been imposed, may at your judgment dispense for his promotion to the priestly office, unless other matters impede. But if a threat of anathema was made concerning this, you are to admonish him, *as we too have done*, to receive the regular habit in some monastery or house of canons. *According to the admonition*, after he has lived laudably in that habit for some time, you will be able to provide for him mercifully; otherwise, by no reason do we grant that he be promoted to the priestly order.

> **DE EO, QUI FURTIVE ORDINEM SUSCEPIT.**
>
> Qui furtive recipit ordinem, si contra hoc facientes lata erat excommunicatio, sine dispensatione Papae in sic suscepto ministrare vel ad superiorem adscendere non potest; sed, si excommunicatio lata non erat, episcopus et abbas poterunt dispensare. H. d. cum duobus sequentibus.
>
> Alexander III. Lingoniensi Episcopo.
>
> Veniens ad nos P. *lator praesentium* nobis exposuit, se *antiqui hostis versutia circumventum* furtive diaconatus ordinem suscepisse. Unde fraternitati tuae respondemus, quod, si *forte* non fuit a te, vel ab aliquo archidiaconorum vel praelatorum tuorum sub anathematis interminatione prohibitus, tu ipse in promotione ipsius ad sacerdotale officium condigna satisfactione imposita, nisi alia impediant, pro arbitrio tuo dispenses. Si vero interminatio anathematis super hoc facta est, moneas eum, *sicut et nos fecimus*, ut in aliquo monasterio seu canonia habitum suscipiat regularem; cui *iuxta admonitionem*, ex quo in habitu illo aliquanto tempore fuerit laudabiliter conversatus, poteris misericorditer providere; alioquin nulla ratione concedimus, eum ad sacerdotalem ordinem promoveri.

Chapter II

Latin source headnote: It is summarized in the immediately preceding chapter.

Celestine III.

When H., the bearer of the present letters, as he showed us by his inquiry, came to your presence for the purpose of ordination, you conferred upon him the four minor orders according to the custom of the country. Not content with these, with a rash venture he also received the subdiaconate [*on that same day, hiding among others without your knowledge, and the diaconate*]. But because the same cleric transgressed greatly in this deed, we command that you permit him to celebrate only in minor orders. But if he shall enter a religious house and his life and morals shall require it, his *abbot*, if he wishes, will be able [*also*] to dispense *with him* in the other orders.

> Summatum est supra capitulo proximo.
>
> Coelestinus III. Quum H. lator praesentium, sicut nobis sua quaestione monstravit, ad tuam ordinationis causa praesentiam accessisset, iuxta consuetudinem patriae sibi quatuor minores ordines contulisti; quibus non contentus, subdiaconatum etiam [*eodem die, inter alios latens te inscio, et diaconatum*] temerario ausu recepit. Quia vero idem clericus in hoc facto multum excessit, mandamus, quatenus

eum in minoribus duntaxat ordinibus celebrare permittas. Si vero domum religionis intraverit, et vita et mores eius exegerint: abbas *suus*, si voluerit, [*etiam*] in aliis *cum eo* poterit ordinibus dispensare.

Chapter III

Latin source headnote: It is summarized in the first chapter above.

The same.

It became known to us *from the tenor of your letters* that the cleric G., *the bearer of the present letters*, and two others from your diocese went to G., formerly Bishop of Sigüenza, to receive orders from him. And although it had been prohibited by that bishop under sentence of excommunication that anyone thrust himself forward to receive two orders, the aforesaid clerics nevertheless secretly received the orders of subdiaconate and diaconate. *Therefore, because concerning what is to be done by you for them your fraternity led us to be consulted,* We respond thus to your consultation: those *thus* ordained ought not by rigor of law to minister in the orders received. Nevertheless, if they wished to transfer themselves to any religious life, and, after completing a penance imposed upon them at your judgment, shall have lived laudably there, in the course of time you will be able by our permission to dispense with them so that afterward they may rejoice in exercising the orders received. *Furthermore, on behalf of the aforesaid G., because he labored in his own person, we more attentively entreat and admonish your fraternity that you cause him to be received as a brother into the house of canons regular of Saint P. of Semina or another religious place, where he may lament his offense, so that, if you shall see his merits supporting him while he lives regularly there, you may grant him the faculty of ministering, as we have said.*

Summatum est supra capitulo primo.

Idem.

Innotuit nobis *ex tenore tuarum literarum*, quod G. clericus *lator praesentium* et alii duo de dioecesi tua ad G. quondam Seguntinum episcopum, ut ordines ab eo reciperent, accesserunt; quumque ab eodem episcopo sub excommunicationis sententia fuisset inhibitum, ne quis se ad duos ordines suscipiendos ingereret, praedicti clerici nihilominus subdiaconatus et diaconatus ordinem clandestine susceperunt. *Quia igitur, quid tibi faciendum sit, pro his tua nos duxit fraternitas consulendos*, Consultationi tuae taliter respondemus, quod *taliter* ordinati in susceptis ordinibus de iuris rigore ministrare non debent. Verum tamen, si ad religionem aliquam voluerunt se transferre, et, peracta poenitentia pro arbitrio tuo eis iniuncta, ibidem laudabiliter fuerint conversati, processu temporis cum eis poteris de nostra licentia dispensare, ut postmodum susceptorum ordinum exsecutione laetentur. *Praeterea pro praedicto G., quum in persona propria laboravit, fraternitatem tuam rogamus attentius et monemus, ut eum facias in canonicam regularem St. P. de Semina vel alium religiosum locum, ubi deploret excessum, tanquam fratrem assumi, ut si ei ibidem viventi regulariter sua merita videris suffragari ministrandi prout diximus ei tribuas facultatem*.

Title XXXI: On the Offenses of Prelates and Subjects

Chapter I

Latin source headnote: It admonishes prelates to abstain from burdens upon subjects, enumerates some of them, and imposes a doubled penalty upon those acting contrary to this.

Alexander III.

It has come to our hearing, *wherefore, if it is true, we wonder greatly and are moved against you by law, that each year you impose a tallage upon the priests established in your jurisdiction as if upon servants and hirelings; unless they pay money according to your will, you interdict them from divine office, and you treat them cheaply and dishonorably to such a degree that you have rendered them contemptible to laymen.* But since you ought to cherish priests as sons and brothers with benign and fraternal charity, we command that you in no way presume to exercise tallages of *this kind* and undue exactions against them, nor henceforth burden them unreasonably or treat them dishonorably, or attempt without the judgment of *their* chapter to suspend them or subject their churches to interdict; nor are you to permit them to hold two *mother* churches, of which you shall see that one suffices [*for them*]; nor are you to presume to excommunicate anyone without judicial order. You are to know for certain that, if reports of this kind concerning you should again come to our ears, *with the Lord as author* we shall punish you for so great offenses in such a manner that, from fear of your punishment, others will abstain from like things.

DE EXCESSIBUS PRAELATORUM ET SUBDITORUM.

Monet praelatos abstinere a gravaminibus subditorum, et aliqua enumerat, et geminatam poenam imponit contra facientibus.

Alexander III. Pervenit ad audientiam nostram, *unde, si verum est, miramur plurimum, et adversus vos de iure novemur, quod in presbyteros, qui sunt in vestra iurisdictione constituti, singulis annis, quasi in servos et mercenarios, talliam facitis, quibus, nisi ad voluntatem vestram pecuniam solverint, divinum officium interdicitis, et eos viliter et inhoneste tractatis in tantum, quod ipsos laicis despicabiles reddidistis*. Quum autem presbyteros quasi filios et fratres benigna ac fraterna debeatis caritate fovere, mandamus, quatenus in eos *huiusmodi* tallias et exactiones indebitas exercere nullatenus praesumatis, nec de cetero irrationabiliter gravetis vel inhoneste tractetis eosdem, aut sine iudicio capituli *sui* suspendere, vel eorum ecclesias interdicto subiicere attentetis, neque duas *matrices* ecclesias, quarum unam [*sibi*] sufficere videbitis, permittatis illos tenere, nec aliquem excommunicare sine ordine iudiciario praesumatis, scituri pro certo, quod, si huiusmodi rumores de vobis iterum ad aures nostras pervenerint, pro tantis excessibus vos *auctore Domino* taliter puniemus, quod timore poenae vestrae ceteri a similibus abstinebunt.

Chapter II

Latin source headnote: A bishop cannot without cause free a church subject to another from that person's subjection and service.

The same, to the Archbishop of Canterbury.

In addition, because the *aforesaid* bishop, *as we have learned*, has established several churches, *and especially the church of Nortun.*, as free and immune from the custom and service of the archdeacons, through which he diminished *and reduced* their revenues, nevertheless, by this present communication we command you that, *if the matter so occurred*, you correct and amend the bishop's action concerning this *with appeal removed*, and so provide that the customs that the priests in the churches of their archdeaconries owe to the aforesaid archdeacons be fully preserved, and that they exhibit to them the due reverence and honor.

Non potest episcopus sine causa ecclesiam alteri subiectam ab illius subiectione et obsequio liberare.

Idem Cantuariensi Archiepiscopo.

Ad haec, quoniam *praedictus* episcopus, *sicut accepimus*, plures ecclesias, *et praecipue ecclesiam de Nortun.*, a consuetudine et obsequio archidiaconorum liberas constituit et immunes, per quod reditus diminuit

eorundem *et attenuavit: nihilominus tibi praesentium significatione* mandamus, quatenus, *si res ita se habet*, factum episcopi super hoc *appellatione remota* corrigas et emendes, et ita provideas, quod praefatis archidiaconis consuetudines, quas presbyteri in ecclesiis suorum archidiaconatuum debent, plenarie conserventur, et illis debitam reverentiam exhibeant et honorem.

Chapter III

Latin source headnote: One who has subjection or the collation of a benefice cannot retain it for his own use or confer it upon himself.

The same, to the Bishop of Exeter.

It has come to our ears that certain archdeacons do not fear by their own authority to intrude themselves into churches in their archdeaconries that are vacant, *and thus are not ashamed to detain those churches. Therefore, considering the offense of so great a presumption to be absurd and contrary to every principle of reason, and being unwilling to leave it uncorrected, by apostolic writings and by way of precept* We command your fraternity that you compel through ecclesiastical censure those, *if there are any archdeacons in your episcopate*, who occupy churches in this manner or detain them after occupation, to relinquish them *with every pretext and appeal ceasing*; and, ordaining the same churches with suitable *and upright* persons, take care to punish the aforesaid archdeacons with due correction for so great a presumption.

Habens subiectionem seu collationem beneficii, illud pro suo usu retinere non potest, seu sibi conferre.

Idem Exoniensi Episcopo.

Ad aures nostras pervenit, quod quidam archidiaconi, tui se in ecclesias, quae in suis archidiaconatibus vacant auctoritate propria intrudere non verentur, *et sic ipsas ecclesias detinere non erubescunt. Attendentes itaque absonum et omni rationi contrarium tantae praesumptionis excessum, nec volentes incorrectum relinquere, fraternitati tuae per apostolica scripta praecipiendo* Mandamus, quatenus eos, *si qui archidiaconi sunt in episcopatu tuo*, qui tali modo ecclesias occupant vel occupatas detinent, ad eas dimittendas *omni occasione et appellatione cessante* censura ecclesiastica compellas, et easdem ecclesias de personis idoneis *et honestis* ordinans, praefatos archidiaconos pro tanta praesumptione debita cures animadversione punire.

Chapter IV

Latin source headnote: Persons incontinent against nature, if clerics, are deposed and thrust into a monastery; if laymen, they are excommunicated.

The same, in the Lateran Council.

Clerics *established in sacred orders who maintain women in their houses under the mark of incontinence are either to cast them off and live continently, or to be made strangers to ecclesiastical office and benefice*. But whoever shall have been detected laboring under *that* incontinence which is against nature, on account of which the wrath of God comes upon the sons of unbelief and consumed five cities with fire, if they are clerics, let them be cast down from the clergy or thrust into monasteries to do penance; if laymen, let them be subjected to excommunication and made wholly strangers to the assembly of the faithful.

Contra naturam incontinentes, si sunt clerici, deponuntur, et in monasterio detruduntur; si laici, excommunicantur.

Idem in concilio Lateranensi. Clerici *in sacris ordinibus constituti, qui mulierculas in domibus suis sub incontinentiae nota tenuerint, aut abiiciant eas et continenter vivant, aut ab officio et beneficio ecclesiastico fiant alieni*. Quicunque *autem* illa incontinentia, quae contra naturam est, propter quam ira Dei venit in filios

diffidentiae et quinque civitates igne consumpsit, deprehensi fuerint laborare, si clerici fuerint, deiiciantur a clero, vel ad agendam poenitentiam in monasteriis detrudantur; si laici, excommunicationi subdantur, et a coetu fidelium fiant penitus alieni.

Chapter V

Latin source headnote: A subject is not bound to obey a superior who demands or commands something contrary to the tenor of his privilege.

The same.

Indeed, if bishops demand anything from abbots beyond due obedience, contrary to the freedom of the order granted by our predecessors and by us, let the *same* abbots be free by apostolic authority to deny what is sought, *lest on this occasion this order, which thus far existed free, be bound by the snare of perpetual servitude*.

Subditus non tenetur parere superiori, aliquid exigenti vel praecipienti contra tenorem sui privilegii. Idem.

Sane, si episcopi aliquid ab abbatibus praeter debitam obedientiam contra libertatem ordinis a praedecessoribus nostris et a nobis indultam exigunt, liberum sit *eisdem* abbatibus auctoritate apostolica quod petitur denegare, *ne occasione ista ordo iste qui hactenus liber exstitit, perpetuae servitutis laqueo vinciatur*.

Chapter VI

Latin source headnote: A vicar of a church who usurps for himself the parsonship of that church contrary to an oath furnished ought not to be admitted to the exercise of his office.

The same, to the Bishop of Norwich.

We have also decided to establish concerning vicars who are obligated to the parsons by faith and oath that, if, *the religion of faith and oath having been contemned*, by falsely assuming the parsonship for themselves they rise up against the parsons, and concerning this shall have been confessed or convicted in court, henceforth they are in no way to be admitted in that episcopate to the exercise of their office.

Vicarius ecclesiae, usurpans sibi ipsius ecclesiae personatum contra praestitum iuramentum, ad officii sui exsecutionem admitti non debet.

Idem Norvicensi Episcopo.

Illud etiam de vicariis, qui personis fide et sacramento obligati sunt, duximus statuendum, quod, si *fidei et sacramenti religione contempta* personatum sibi falso assumentes, contra personas se erexerint, et super hoc in iure confessi fuerint vel convicti, de cetero in eodem episcopatu ad officii sui exsecutionem nullatenus admittantur.

Chapter VII

Latin source headnote: An excommunication rendered against a subject because he does not obey contrary to a privilege granted to him by the superior is not valid.

Clement III.

When, *in order to restrain the malice of certain persons, it was established with much deliberation in the Lateran Council that archbishops, bishops, archdeacons, archpriests, and also deans not exceed a fixed number of mounts and*

persons in visitations of churches, because, as we have heard, certain persons among the aforesaid do not observe this at all in your churches, we have decided attentively to provide healthfully for your advantage concerning this. Therefore, by apostolic authority we grant to your discretion that, if prelates of churches should perhaps presume, when visiting churches, to exceed the number of mounts and persons established in the Lateran Council and demand procuration for them, you are to be free by apostolic authority to deny it; and, if on account of this they shall have promulgated any sentence against your churches or *your* clerics, *by apostolic authority* we decree it to be invalid. [*Let no one therefore, etc. Given at Rome at Saint Peter's.*]

> Excommunicatio, lata contra subditum, quia non paret contra privilegium sibi a superiori concessum, non tenet.
>
> Clemens III. Quum ad quorundam *malitiam coercendam in concilio fuerit Lateranensi multa deliberatione statutum, ut archiepiscopi, episcopi, archidiaconi, archipresbyteri etiam et decani certum evectionis numerum et personarum in ecclesiarum visitationibus non excedant: quia, sicut audivimus, quidam ex praedictis personis id in ecclesiis vestris nequaquam observant, super hoc commoditati vestrae attentius duximus salubriter providendum.* Ideoque discretioni vestrae apostolica auctoritate concedimus, ut, si ecclesiarum praelati numerum evectionis et personarum in Lateranensi concilio constitutum, quum ecclesias visitant, excedere forte praesumpserint, et pro illis procurationem exegerint, liberum sit vobis auctoritate apostolica denegare, et, si propter hoc in ecclesias vestras vel clericos *vestros* aliquam sententiam promulgaverint, ipsam *auctoritate apostolica* decernimus non tenere. [*Nulli ergo etc. Dat. Rom. ap. S. Petrum.*]

Chapter VIII

Latin source headnote: An inferior prelate below a bishop cannot unite his own church or one subject to him to another without the bishop's consent, even with the metropolitan's authority intervening. It says this, and it is a highly citable case.

Celestine III, to Bishop Faustinus.

Just as it is known to pertain to the Supreme Pontiff to unite episcopates and subject them to another's power, so the union of churches of his diocese and their subjection belongs to the bishop. Therefore, since, *as became known to us,* the prior of Granda subjected or united his monastery, which is in your diocese and ought to be ordered with your consent, to the monastery of Accato without seeking your assent at all, *by apostolic writings we command and grant to your fraternity that* what he did *concerning this* without consulting you, you may by our authority invalidate as shall be just, notwithstanding the assent or confirmation that the metropolitan is alleged to have interposed, since in the diocese of his suffragan, without the latter's assent, he ought not to attempt anything *of this kind* contrary to canonical constitutions. We also decree that it is to be annulled, *as has been said, establishing, etc.*

> Praelatus inferior citra episcopum non potest suam ecclesiam vel sibi subiectam alteri unire sine episcopi consensu, etiam metropolitani auctoritate interveniente. H. d. et est casus multum allegabilis.
>
> Coelestinus III. Faustino Episcopo.
>
> Sicut unire episcopatus atque potestati subiicere alienae, ad summum Pontificem pertinere dignoscitur: ita episcopi est ecclesiarum suae dioecesis unio et subiectio earundem. Quum itaque, *sicut nobis innotuit,* prior Grandensis monasterium suum, quod est in tua dioecesi, et de tuo debet ordinari consensu, monasterio de Accato, tuo assensu minime requisito, subiecerit sive unierit, *fraternitati tuae per apostolica*

scripta mandamus atque indulgemus, ut, quod fecit *super hoc* te inconsulto, tibi liceat auctoritate nostra, sicut iustum fuerit, infirmare, non obstante assensu vel confirmatione, quam metropolitanus interposuisse proponitur, quum in dioecesi sui suffraganei absque ipsius assensu non debeat aliquid *huiusmodi* contra constitutiones canonicas attentare, nos quoque id decernimus, *prout dictum est*, irritandum, *statuentes etc*.

Chapter IX

Latin source headnote: A cleric who publicly glories in his crime ought to be suspended.

Innocent III, to the Archpriest of Saint Andrew of Pall.

No one of sound mind is ignorant how grave a crime it is for clerics, when they have done evil, to glory *and exult in the worst things*. Indeed, we have learned, *which we report not without grief*, that, when R. Deserien. gave P., his daughter, as wife to a certain man named I., the deacon P., *of the church of Saint Peter and son of the priest A.*, was not ashamed publicly to confess that he had carnally known the aforesaid woman. From this it happened that the *aforesaid* husband sent her back to her own people, to whom she had been joined matrimonially. Therefore, *by apostolic writings* we command you that, if the aforesaid matters shall have been established to you, *with every contradiction and* appeal ceasing, you do not postpone suspending the aforesaid cleric from office and benefice, compelling the husband to receive his wife and exhibit to her the marital duty, as is just. [*Given on the fourth day before the Ides of May, in the first year of our pontificate,* 1198.]

Suspendi debet clericus, qui de suo crimine publice gloriatur.

Innocentius III. Archipresbytero sancti Andreae de Pall.

Quam sit grave crimen in clericis, quum malefecerint, gloriari *et in rebus pessimis exsultare*, nullus sanae mentis ignorat. Accepimus sane, *quod non sine dolore referimus*, quod, quum R. Deserien. P. filiam suam cuidam I. nomine tradiderit in uxorem, P diaconus *ecclesiae S. Petri, filius A. sacerdotis*, non erubuit publice confiteri, se mulierem praedictam carnaliter cognovisse; unde factum est, quod *praedictus* vir ad propria eam remitteret, cui fuerat matrimonialiter copulata. Ideoque *tibi per apostolica scripta* mandamus, quatenus, si tibi constiterit de praemissis, *omni contradictione et* appellatione cessante praefatum clericum ab officio et beneficio suspendere non postponas, compellens virum, ut uxorem suam recipiat, eique, sicut iustum est, officium exhibeat maritale. [*Dat. IV. Id. Maii Pont. nostr. Ao. I.* 1198.]

Chapter X

Latin source headnote: A cleric who directly or indirectly furnishes authority or counsel for homicide is rendered irregular.

The same, to the Bishop of Hippo and the Abbot of Tileto, Visitors of Lombardy.

We have learned from your letters that, when you had gone to the church of Albenga together with *our venerable brother* the Archbishop of Pisa, then Bishop of Vercelli, to discharge the office of visitation, the Bishop of Albenga, among the other things that had been alleged against him, confessed *this to you* with his own mouth: that, when a certain man in a certain town belonging to his jurisdiction was accused of theft, and that man denied it altogether, offering to purge himself by the judgment of glowing iron and to be punished by hanging if he failed in it, the said bishop asked the judge what seemed good to him concerning this. And when the judge had answered that it should be done as the thief himself had said, the glowing iron was brought into the presence of the bishop himself. When that thief had taken it, he was burned; whence the judge, terrified, consulted the

aforesaid bishop as to what seemed good to him concerning this. He answered that, if *that* thief escaped thus, it would be an evil; although *by letters that the same bishop has now directed to us* he affirms that he used these words: "You hear how great the outcry of the people is; they all say [*that*] it is an evil if he thus escapes unpunished." And so the bishop and the judge entered the town itself with a multitude, in whose presence the aforesaid thief was hanged *by the authority of the bishop himself*; on account of which you sent him to the Apostolic See with your letters. But the same man, *when established in our presence*, never alleged *anything at all* concerning these matters before us, nor did we see your letters, although he asserts that he presented them to us. Indeed, *immediately* when the said archbishop, who fully disclosed to us the course of this affair, came to the Apostolic See, the same bishop withdrew from our presence and, though sought, could not be found. But *we deliberated diligently with our brothers concerning these matters, and*, because the same bishop is known to have offended gravely not only in the judgment of the glowing iron but also in the hanging of the thief, since he furnished to these not only authority but also his bodily presence, we judge him unworthy of the ministry of the altar. Therefore, since the pontifical office cannot be fulfilled without the ministry of the altar, *by apostolic writings we* command *your discretion* that you admonish him to resign the episcopate; otherwise, removing him *by apostolic authority* from the church of Albenga, *the obstacle of appeal being removed*, cause provision to be made for it by a canonical election of a suitable person, [*restraining gainsayers, etc. Given at the Lateran, on the Ides of December, in the eleventh year of our pontificate,* 1208.]

> Clericus, auctoritatem vel consilium directe vel indirecte homicidio praestans, irregularis efficitur.
>
> Idem Episcopo Hiponensi et Abbati de Tileto, Visitatoribus Lombardiae.
>
> Ex literis vestris accepimus, quod, quum ad Albiganensem ecclesiam una cum *venerabili fratre nostro* Pisano archiepiscopo, tunc episcopo Vercellensi, accessissetis visitationis officium impleturi, Albiganensis episcopus inter cetera, quae proposita fuerant contra ipsum, *hoc vobis* ore proprio est confessus, quod, quum quidam in villa quadam, ad eius iurisdictionem spectante, infamaretur de furto, et idem illud inficiaretur omnino, offerens, quod candentis ferri iudicio se purgaret, et ut suspendio puniretur, si deficeret in eodem, dictus episcopus requisivit a iudice, quid super hoc videretur eidem. Et quum iudex respondisset, ut fieret, sicut fur ipse dixerat, ferrum candens in ipsius praesentia episcopi est allatum. Quo quum accepisset fur ille, combustus est; unde iudex pavefactus, quid sibi super hoc videretur, consuluit episcopum memoratum. Qui respondit, quod, si fur *idem* sic evaderet, malum esset; quanquam *per literas, quas idem episcopus nobis modo direxit*, affirmet, se verbis talibus usum fuisse: "Auditis, quantus est clamor populi, omnes dicunt, [*quod*] malum est, si sic evaserit impunitus." Et sic episcopus et iudex villam ipsam cum multitudine sunt ingressi, in quorum praesentia praedictus fur est *auctoritate ipsius episcopi* suspensus; propter quod ipsum cum literis vestris ad sedem apostolicam destinastis. Sed idem *in praesentia nostra constitutus* nihil *unquam* super his proposuit coram nobis, nec literas vestras vidimus, licet idem se nobis illas asserat praesentasse. Quin immo *statim*, quum dictus archiepiscopus ad sedem apostolicam accessit, qui nobis huiusmodi rei seriem plenarie indicavit, idem episcopus a nostra discessit praesentia, et perquisitus non potuit inveniri. Nos autem *super his cum fratribus nostris deliberavimus diligenter, et*, quia idem episcopus non solum in iudicio candentis ferri, verum etiam in furis suspendio graviter noscitur deliquisse, quum his non tantum auctoritatem praestiterit, verum etiam praesentiam exhibuerit corporalem, ipsum indignum altaris ministerio reputamus. Quum igitur pontificale officium sine altaris ministerio non valeat adimpleri, *discretioni vestrae per apostolica scripta* mandamus, quatenus, ut episcopatui cedat, moneatis eundem; alioquin ipsum *auctoritate apostolica* ab

Albiganensi ecclesia *sublato appellationis obstaculo* amoventes, faciatis eidem per electionem canonicam de persona idonea provideri, [*contradictores etc. Dat. Lat. Id. Dec. Pont. nostr. Ao. XI.* 1208.]

Chapter XI

Latin source headnote: A conferral of a benefice secretly made to an unworthy person ought to be quashed, and one who makes a second conferral before the first conferral is quashed ought for that occasion to be deprived of the power of conferring.

The same, to the Archbishop and the Abbots of the Greater Monastery and of Saint Julian at Tours.

When a dispute arose between the beloved sons B. and P., canons of Poitiers, concerning the subcantorship of the church of Poitiers, *each of them firmly* asserting that he had canonically obtained the subcantorship itself through the cantor of Poitiers, to whom its donation belonged, [*the aforesaid Bocard, coming on account of this to the Apostolic See, affirmed before our beloved son Guala, Cardinal Deacon of Saint Mary in Porticu, whom we assigned as auditor to him and the proctor of the aforesaid Peter, that the subcantorship itself had been canonically conferred upon him. He added that, even if the cantor had otherwise conferred it canonically upon the aforesaid Peter, the donation itself nevertheless ought not to have taken effect because of the unworthiness of the person, since that Peter was a public gambler and manifest usurer. But although, after many altercations, the aforesaid Bocard introduced certain witnesses to prove not only this but also his principal claim, nevertheless, because both he and the opposing party intended to produce several witnesses concerning the principal matter and the incidental matters, we committed the case itself to our beloved sons, the dean and cantor of Saint Radegund at Poitiers and the dean of Thouars, to be concluded by a canonical termination, transmitting to them the aforesaid attestations enclosed under our seal. When the parties were afterward established before them and the said Bocard sought the admission of his witnesses, it was answered on the other side that he was not to be heard at all, since through our delegated judges, the beloved sons the archpriest, the master of the schools, and Master P. Parvus, canon of Bourges, he had been bound by a sentence of excommunication because he refused at their command to admit the cleric Hugh as a canon of Faye. And when afterward that Bocard presented letters of the same judges concerning his absolution, the opposing party began to accuse them of falsity, because their final clause differed from the remainder of the writing both in the color of the ink and in the form of the letters, alleging that the same B., as one accused of the crime of falsity, was to be repelled altogether from his claim. Then, after manifold and diverse contentions, the judges themselves, with the will of the parties, received witnesses concerning both the principal and the incidental matters. But when the same B. afterward appealed to our hearing, the judges themselves remitted the parties to our presence with the attestations and the acts of the trial authenticated by their own seals. The parties, therefore, recently established on this account at the Apostolic See, litigated for some time before our beloved son Cynthius, Cardinal Priest of the title of Saint Lawrence in Lucina, whom we assigned to them as auditor.*] We, therefore, having *diligently* inspected the attestations of both parties, found it *evidently* proved that the same P. was a public gambler and manifest usurer, since he had *publicly* lent eleven denarii for twelve at gaming. Whence, although *the same Peter*, to cloak the excess of so great a presumption, alleged that he had done this according to the custom of the clerics of Gaul, by which almost all clerics so frequently lend and gamble, we nevertheless, who by the debt of our office propose to root out pests of this sort and altogether condemn pleasure-giving games, by occasion of which one arrives at material for dissolution under a certain appearance of courtliness, regard the aforesaid excuse as frivolous, since it is cloaked by a depraved custom, which ought *rather* to be called corruption. For the offense is more punishable in those by whom authority to offend is usurped for

framing excuses in sins. Therefore, because what is known to have been done concerning the *aforesaid* subcantorship for the same P. was done contrary to legitimate sanctions, according to which the gates of dignity ought not to lie open to base and unworthy persons, we have determined that it must be invalidated on account of his unworthiness and baseness. Furthermore, it was manifestly proved by witnesses against the aforesaid B. that the final clause had not been inserted in the letters of the same judges with the knowledge *of the aforesaid judges of Bourges*, as is expressed clearly in their depositions; *Robert the deacon also, introduced as a witness to prove this, deposed the same thing and added that, when he was to seal those letters,* [*he*] *inspected them diligently and did not then find the same clause appended*. Whence the other party alleged that, because the aforesaid B. had knowingly used letters thus falsified, he ought *deservedly* to be repelled altogether as a forger. But we, considering that, even if it were established *most evidently* that the said clause had been appended to those letters without the knowledge of the aforesaid judges, nevertheless, because proof was not made to us that the said B. appended that clause, or procured that it be placed by another, or even that he knowingly used letters thus falsified, determined that the same man was to be absolved from an accusation of falsity of this kind; especially since, after this was objected against him, he altogether ceased to use them. [*In addition, through the witnesses produced by Bocard concerning the principal matter it was shown sufficiently enough that on the fifth weekday—or, to speak more expressly, on the Thursday after the feast of Saint Michael, two years previously—the aforesaid subcantorship had been granted to him. But by his own confession it appeared that the same feast in that year had been celebrated on a Thursday, and thus it was proved by consequence that the said donation was made to B. on the eighth day after the feast itself. Moreover, through six witnesses—namely the cantor, Oliver, W. Gerru, R. Agnellus, I. Marinus, and P. of Marcai—whom the aforesaid P. introduced to prove that the donation made to him had preceded, it was manifestly proved that the often-mentioned subcantorship had been conferred upon him at an earlier time, since Oliver, W., and I. say manifestly that the donation was made to Peter on the second or third day after the said feast, the cantor that it was on the third or fourth day, and P. that it was in the week after the same feast. But by the witnesses whom Bocard introduced to disprove the said witnesses, Oliver and William were discredited as manifest fornicators. The cantor also is convicted by many witnesses of being perjured, because, although he said under oath that he had never given the aforesaid subcantorship to Bocard, it was proved on the other side by many witnesses that the cantor invested the same man in their presence. Moreover, R. Agnellus is known to have deposed nothing concerning the principal matter, although the party of Peter, saying that he had spoken ambiguously, attempted to show that the same witness had said concerning the principal matter that same thing which Riverius and William had said. But the two remaining witnesses, namely I. Marinus and P. of Marcai, remained, and they could not reasonably be discredited. For although the party of Bocard said that faith was not to be placed in the testimony of that P., because he had been a proctor in Peter's case—which it endeavored to establish from the fact that the witnesses of the same Bocard had said that the same I. had carried Peter's letters, sought witnesses, and done certain things of this kind—nevertheless, because it was not established to us that he had been the proctor of the same P., we judged that faith was to be placed in his testimony. We also regarded as frivolous what the same party of Bocard alleged, namely that, because Peter of Marcai said that the donation was made to the often-mentioned Peter in the week after the aforesaid feast, it is implied that that donation to Peter had by no means preceded the donation of B., which had been made on the eighth day after the same feast. For since a week, or seven-day period, is by no means extended beyond the seventh day, it is apparent that the donation made within the week, or even the seven-day period, was certainly made at an earlier time than that which was made afterward on the eighth day.*] Therefore, since by the depositions *at least* of two witnesses, *who were in no way discredited*, it has been *evidently* established to us that the grant made to P. preceded, although it deserved to be

disapproved because of the unworthiness of the same *P.*, we decree the grant afterward made to B. invalid and void. But because the cantor, *to whom the donation of the subcantorship itself is alleged to belong —to say nothing of his perjury*, conducted himself so inconstantly in this affair that, *as was premised*, he attempted to make a second donation before the first had been disapproved, and it is fitting that a person be punished in that in which he is seen to have offended, we have determined that the inconstancy of his variation is to be punished in this: that he is to have no faculty of granting the subcantorship itself on this occasion. By the authority of the present letters, commanding and granting you to assign the same, supported by our authority, *the obstacle of appeal being removed*, to a suitable person, [*restraining gainsayers, etc.*]

Collatio beneficii facta indigno occulta cassari debet, et conferens secundo ante cassationem primae collationis privari debet ea vice potestate conferendi. Idem Archiepiscopo et maioris monasterii et sancti Iuliani Abbatibus Turonensibus.

Inter dilectos filios B. et P. canonicos Pictavenses super succentoria Pictavensis ecclesiae quaestione suborta, *eorum* utroque *firmiter* asserente, succentoriam ipsam se per Pictavensem cantorem, ad quem eius donatio pertinebat, canonice assecutum, [*praedictus Bocardus propter hoc ad sedem apostolicam veniens, coram dilecto filio nostro Guala sanctae Mariae in Porticu diacono cardinali, quem sibi et procuratori praedicti Petri dedimus auditorem, affirmans sibi succentoriam ipsam canonice fuisse collatam, adiecit, quod, etsi cantor eam memorato Petro alias canonice contulisset, donatio tamen ipsa propter indignitatem personae consequi non debebat effectum, quum idem Petrus esset publicus aleator et usurarius manifestus. Licet autem post altercationes multas non solum ad hoc, sed etiam ad principale probandum praefatus Bocardus induxerit quosdam testes, quia tamen tam ipse quam pars adversa super principali et incidentibus plures testes producere intendebat, dilectis filiis decano et cantori sanctae Radegundis Pictavensis et Toarcensi decano causam ipsam commisimus fine canonico terminandam, attestationes praedictas eis sub bulla nostra transmittentes inclusas. Coram quibus postea partibus constitutis, quum iam dictus Bocardus testes suos recipi postularet, fuit ex adverso responsum, quod non erat aliquatenus audiendus, utpote qui per dilectos filios archipresbyterum, magistrum scholarum, et magistrum P. Parvum canonicum Bituricenses, iudices delegatos a nobis, sententia erat excommunicationis adstrictus pro eo, quod ad mandatum eorum Hugonem clericum in canonicum Fayensem admittere recusabat. Quumque postmodum idem Bocardus super absolutione sua literas eorundem iudicum praesentasset, adversa pars eos coepit arguere falsitatis eo, quod clausula finalis earum tam in incausti colore quam in literarum forma a scriptura reliqua discordabat, allegans eundem B. tanquam reum criminis falsitatis ab intentione sua penitus repellendum. Porro post contentiones multiplices et diversas iudices ipsi de voluntate partium testes tam super principali quam incidentibus receperunt. Sed eodem B. postmodum ad nostram audientiam appellante, iudices ipsi partes cum attestationibus et actis iudicii sigillis propriis consignatis ad nostram praesentiam remiserunt. Partes itaque propter hoc nuper apud sedem apostolicam constitutae coram dilecto filio nostro Cynthio tituli sancti Laurentii in Lucina presbytero cardinali, quem ipsis deputavimus auditorem, aliquamdiu litigarunt.*] Nos igitur, attestationibus utriusque partis *diligenter* inspectis, invenimus *evidenter* esse probatum, eundem P. publicum aleatorem esse ac usurarium manifestum; utpote qui undecim denarios pro duodecim *publice* mutuaverat in ludo. Unde, licet ad palliandum tantae praesumptionis excessum proposuerit *idem Petrus*, quod hoc fecerat iuxta consuetudinem Gallicorum clericorum, qua fere universi clerici mutuant sic frequenter et ludunt: nos tamen, qui ex officii nostri debito pestes huiusmodi exstirpare proponimus, atque ludos voluptuosos, occasione quorum sub quadam curialitatis imagine ad dissolutionis materiam devenitur, penitus improbamus, excusationem praedictam, quae per pravam consuetudinem, quae corruptela dicenda est *potius*, palliatur, frivolam reputantes, quum in illis magis plectibilis sit offensa, per quos ad excusandas excusationes in culpis delinquendi auctoritas usurpatur, quod circa eundem P. de succentoria *praedicta* factum esse dignoscitur, propter indignitatem et vilitatem ipsius duximus irritandum, quum personis vilibus et indignis portae dignitatis patere non debeant iuxta legitimas

sanctiones. Praeterea contra praefatum B. fuit manifeste per testes probatum, quod de conscientia iudicum *praedictorum Biturícensium* ultima clausula inserta non fuerat in literis eorundem, sicut in ipsorum depositionibus exprimitur evidenter; *Robertus quoque diaconus, ad hoc probandum testis inductus, illud idem deposuit, et adiecit, quod, quum deberet easdem literas sigillare,* [*illas*] *diligenter inspexit, nec eandem clausulam appositam tunc invenit*. Unde pars altera proponebat, quod, quum praedictus B. scienter usus fuerit literis sic falsatis, debebat *merito* tanquam falsarius omnino repelli. Verum nos, attendentes, quod, etsi constaret *evidentissime*, quod dicta clausula literis illis fuisset apposita praeter conscientiam iudicum praedictorum, quia tamen fides nobis facta non fuit, quod dictus B. illam clausulam apposuerit, vel procuraverit, ut ab alio poneretur, vel etiam, quod scienter usus fuerit literis sic falsatis, ab huiusmodi falsitatis obiectu eundem duximus absolvendum; maxime quum, postquam sibi hoc obiectum fuit, praetermiserit *penitus* uti eis. [*Ad haec per testes Bocardi super principali negotio productos fuit satis sufficienter ostensum, quod quinta feria et, ut loquamur expressius, die Iovis post festivitatem sancti Michaelis, biennio iam elapso, succentoria sibi concessa fuerat supradicta; sed per confessionem eiusdem apparuit, quod idem festum eodem anno die Iovis fuerat celebratum, sicque fuit per consequentiam comprobatum, quod octavo die post festum ipsum eidem B. dicta donatio facta fuit. Ceterum per sex testes, cantorem scilicet, Oliverium, W. Gerru, R. Agnellum, I. Marinum, P. de Marcai, quos supradictus P. ad probandum, quod donatio sibi facta praecesserat, introduxit, exstitit manifeste probatum, quod anteriori tempore sibi fuerat succentoria saepedicta collata, quum Oliverius, W. et I. manifeste dicant, quod secunda vel tertia, et cantor quod tertia vel quarta die post dictum festum, et P. quod in hebdomada post idem festum eidem Petro donatio facta fuit. Verum per testes, quos Bocardus ad reprobationem testium iam dictorum induxit Oliverius et Willelmus fuerunt tanquam manifesti fornicarii reprobati. Cantor quoque per multos testes convincitur esse periurus, quia, quum iuratus dixerit, quod Bocardo succentoriam nunquam dederat supradictam, per multos testes probatum est ex adverso, quod ipsis praesentibus cantor investivit eundem. Insuper R. Agnellus nihil deposuisse dignoscitur super negotio principali, licet pars Petri, dicens ipsum amphibologice fuisse locutum, ostendere nisa fuerit, quod idem testis super principali dixerit illud idem, quod Riverius et Willelmus. Duo vero residui, scilicet I. Marinus et P. de Marcai, remanserunt, qui nequiverunt rationabiliter reprobari, quia, licet dixerit pars Bocardi, quod ipsius P. testimonio fides habenda non erat, quoniam in causa Petri fuerat procurator, quod ex eo nitebatur adstruere, quia testes eiusdem Bocardi dixerant, quod idem I. literas Petri portaverat, quaesierat testes, et quaedam huiusmodi fecerat, quia tamen nobis non constitit, quod eiusdem P. fuerit procurator, eius testimonio fidem censuimus adhibendam. Sed et illud frivolum reputavimus, quod proposuit eadem pars Bocardi, videlicet, quia, quum Petrus de Marcai dixerit, quod in hebdomada post praedictum festum saepedicto Petro donatio facta fuit, innuitur, quod donationem ipsius B., quae octavo die post idem festum facta fuerat, eadem, Petri donatio minime praecessisset. Nam quum hebdomada vel septimana nequaquam ultra diem septimum extendatur, apparet, quia donatio, quae facta fuerat in hebdomada vel etiam septimana, citeriori utique tempore fuit facta quam illa, quae facta fuit postmodum in octavo.*] Quum igitur per depositiones *saltem* duorum testium, *qui nullatenus reprobati fuerunt*, nobis constiterit *evidenter*, quod concessio P. facta praecesserit, quanquam propter indignitatem eiusdem *P.* meruerit reprobari, concessionem postmodum B. factam irritam decernimus et inanem. Quia vero cantor *ad quem ipsius succentoriae donatio spectare proponitur, ut de ipsius periurio taceamus*, adeo inconstanter se habuit in hoc facto, ut, *sicut praemissum est*, prima donatione non reprobata secundam facere attentaverit, et dignum sit, ut in eo quis puniatur, in quo visus est deliquisse, in hoc eius duximus varietatis inconstantiam puniendam, ut concedendi succentoriam ipsam hac vice nullam habeat facultatem, praesentium vobis auctoritate mandantes concedimus, quatenus eandem, auctoritate nostra suffulti, *sublato appellationis obstaculo* personae idoneae assignetis, [*contradictores etc.*]

Chapter XII

Latin source headnote: To take cognizance of a matrimonial cause, and likewise to impose public penances and grant indulgences, pertains to the episcopal dignity; whence an inferior prelate ought

not to intermeddle in these matters unless it belongs to him by special right.

The same, in the General Council.

From the complaints of bishops coming to us from diverse parts of the world, we have learned of the grave and great excesses of certain abbots, who, not content with their own bounds, extend their hands to those things that belong to the episcopal dignity, by taking cognizance of matrimonial causes, imposing public penances, also granting letters of indulgences, and presuming similar things, whence it sometimes happens that episcopal authority becomes cheap in the eyes of many. Wishing, therefore, in these matters to provide both for the dignity of bishops and the salvation of abbots, by the present decree we firmly prohibit any abbot from presuming to extend himself to such things, if he wishes to avoid his own peril, unless perhaps any one of them is able to defend himself concerning matters of this kind by a special grant or another legitimate cause.

> Cognoscere de causa matrimoniali, item poenitentias publicas et indulgentias concedere spectat ad dignitatem episcopalem; unde inferior praelatus de his se intromittere non debet, nisi ei competat de iure speciali. Idem in concilio generali. Accedentibus ad nos de diversis mundi partibus episcoporum querelis, intelleximus graves et grandes quorundam abbatum excessus, qui, suis finibus non contenti, manus ad ea, quae sunt episcopalis dignitatis, extendunt, de causis matrimonialibus cognoscendo, iniungendo publicas poenitentias, concedendo etiam indulgentiarum literas, et similia praesumendo, unde contingit interdum, quod vilescit episcopalis auctoritas apud multos. Volentes igitur in his et episcoporum dignitati et abbatum providere saluti, praesenti decreto firmiter prohibemus, ne quis abbatum ad talia se praesumat extendere, si proprium voluerit periculum evitare; nisi forsan quisquam eorum speciali concessione vel alia legitima causa super huiusmodi valeat se tueri.

Chapter XIII

Latin source headnote: A priest cannot be compelled to reveal a sinner or a sin confessed in penance.

Honorius III, to P., Cardinal Priest of the title of Saint Pudentiana, Our Vicar.

The beloved son John, priest *of Saint Thomas in Parione*, complained in an exposition *before us* that the rectors of the confraternity of the City, striving to constrain him to reveal the thieves and *that* which had been revealed to him as a priest concerning a certain theft, or to make satisfaction from it to the person who suffered the loss, pronounced a sentence of interdict against him unless he accomplished one of the aforesaid things *within eight days*. Therefore, because it would be pernicious for the aforesaid priest to reveal things entrusted to him in such a manner, and *again unjust* for him to be compelled to pay for that which he did not seize, *by apostolic writings* we command your discretion that, summoning the aforesaid rectors before you, you enjoin upon them that they cease entirely from burdening the aforesaid priest *concerning this*.

> Ad revelandum peccatorem, sive peccatum in poenitentia confessum, sacerdos compelli non potest.
>
> Honorius III. P. tit. sanctae Pudentianae Presbytero cardinali, Vicario nostro.
>
> Dilectus filius Ioannes, *sancti Thomae de Parione* presbyter, exposuit *coram nobis* conquerendo, quod rectores fraternitatis Urbis ipsum ad revelandum fures, et *id*, quod super quodam furto sibi tanquam sacerdoti fuerat revelatum, vel ad satisfaciendum exinde damnum passo arctare nitentes, in eum, nisi alterum praemissorum *intra octo dies* efficeret, tulerunt sententiam interdicti. Quia igitur perniciosum esset, praedictum presbyterum sibi taliter credita revelare, ac *iterum iniquum*, cogi ad id, quod non rapuit,

exsolvendum, discretioni tuae *per apostolica scripta* mandamus, quatenus praefatos rectores coram te conveniens, iniungas eisdem, ut a memorati presbyteri *super hoc* gravamine penitus conquiescant.

Chapter XIV

Latin source headnote: Private persons regularly cannot constitute a college and possess the signs of a college unless it is otherwise granted to them.

The same, to Provost R. and Archdeacon I. of Soissons.

Our beloved daughter in Christ, the Abbess of Iotrensis, took care to intimate to us that, although the priests and clerics of the church of Iotrensis in the diocese of Meaux have not been accustomed to have their own seal, nor are they one body such that it might be called a chapter, they nevertheless contend, *against the will of the abbess herself*, who is their head and patroness, that they are to have a seal *to her prejudice and burden; for which reason she petitioned us that this be prohibited to them. But because the aforesaid matters were not established to us*, we command your discretion that, *after the truth concerning these things has been more diligently investigated*, if it shall have been established to you that it is so, you expressly prohibit the said priests and clerics by our authority from presuming either to fabricate a seal anew or to use it if perhaps it has newly been fabricated, *restraining them, if they presume to come against our prohibition, from a presumption of this kind through ecclesiastical censures, appeal being set aside*.

Privati homines regulariter nequeunt constituere collegium et habere signa collegii, nisi eis aliter concedatur.

Idem Praeposito R. et I. Archidiacono Suessionensibus.

Dilecta in Christo filia abbatissa Iotrensis nobis insinuare curavit, quod, quum presbyteri et clerici Iotrensis ecclesiae Meldensis dioecesis non consueverint proprium habere sigillum, nec sint unum corpus ita, quod capitulum appellaretur, nihilominus *tamen* contra voluntatem ipsius *abbatissae*, quae ipsorum caput est et patrona, sigillum habere contendunt *in ipsius praeiudicium et gravamen; quare id eis a nobis petiit inhiberi. Quia vero nobis non constitit de praemissis*, Discretioni vestrae mandamus, quatenus, *inquisita super his diligentius veritate*, si vobis constiterit ita esse dictis presbyteris et clericis auctoritate nostra inhibeatis expresse, ne praesumant vel de novo fabricare sigillum, vel uti eo, si forte noviter fuerit fabricatum, *ipsos si contra prohibitionem nostram venire praesumpserint, a praesumptione huiusmodi per censuras ecclesiasticas appellatione postposita compescentes*.

Chapter XV

Latin source headnote: One who, contrary to his oath, denies that a prelate is his lord, or complains against him before a secular judge, or attacks him, ought to be deposed.

The same, to the Archdeacon of Saint Aubert, the Abbot of Annona, and the Provost of Cambrai.

We received a grave complaint, not devoid of grief, *and surrounded with the stings of insults to the whole clergy: that, when our venerable brother the Bishop of Amiens had conferred a certain vacant benefice, which is called the altar of Villesco, upon a certain suitable person—as he believed it to belong to him—while the Archdeacon of Amiens was absent, the same archdeacon, accompanied by a band consisting of his brother Manasser and certain others, approached the aforesaid bishop and, alleging that he had been wronged by him concerning this, insisted before him that the person instituted by the bishop should be removed altogether from the benefice itself without cognizance of the cause.* (*And below:*) We command your discretion that, if it shall have been established

to you that the *often-mentioned* archdeacon, once and a second time, contrary to the fidelity of the homage rendered and the reverence owed, denied that his bishop was his lord, or lodged an action against him concerning spiritual matters in the secular forum, or furnished either cause or counsel both to the attackers of the bishop and his associates and to his brother or his accomplices, you cut him off perpetually from the church of Amiens as a rotten member, *lest by his corruption he contaminate others, and remove him altogether,* causing his benefices to be assigned to suitable persons by those to whom *their* donation belongs; *otherwise, because public report labors against him and manifest presumptions appear, impose upon him canonical purgation concerning the aforesaid matters with ten persons of the same dignity, order, and province as oath-helpers. But if perhaps he shall fail in such a purgation within a time to be fixed by you, deprive him of office and benefice, every impediment of contradiction and appeal being removed, nevertheless causing the benefices which the same archdeacon holds to be assigned to suitable persons, as was expressed above*.

> Qui contra iuramentum negat praelatum dominum suum, vel coram iudice saeculari de ipso conqueritur vel ipsum invadit, deponi debet.
>
> Idem S. Auberti Archidiacono, Abbati de Annona Praeposito Cameracensi. Gravem et dolore non vacuam, *ac toti clero contumeliarum aculeis circumfertam recepimus questionem, quod, quum venerabilis frater noster Ambianensis episcopus quoddam beneficium vacans, quod altare dicitur de Villesco, cuidam idoneo, prout ad se spectare credebat, absente tamen Ambianensi archidiacono contulisset, idem archidiaconus, stipatus caterva Manasseri fratris sui et quorundam aliorum, accedens ad episcopum memoratum, et proponens, quod ei iniuriatus fuerat super hoc, institit apud eum, ut sine causae cognitione a beneficio ipso prorsus amoveretur ab episcopo institutus. *(*Et infra:*) Discretioni vestrae mandamus, quatenus, si vobis constiterit, archidiaconum *saepe dictum* semel et secundo contra fidem homagii praestiti ac debitam reverentiam episcopum suum esse dominum negasse, vel in foro saeculari deposuisse contra eum super rebus spiritualibus quaestionem, aut tam invasoribus episcopi et sociorum eius, quam fratri eius vel complicibus suis causam vel consilium praebuisse, ipsum, tanquam membrum putridum, *ne sua contaminet alios corruptela*, ab Ambianensi ecclesia perpetuo abscindatis *et removeatis omnino*, beneficia sua facientes personis idoneis per illos, ad quos donatio *eorum* pertinet, assignari; *alioquin, quia contra eum publica fama laborat, et manifestae praesumptiones apparent, purgationem ei super praemissis canonicam cum manu decima eiusdem dignitatis et ordinis eiusdem provinciae indicatis. Quod si forte in tali purgatione defecerit infra tempus praefigendum a vobis ipsum cuiuslibet contradictionis et appellationis impedimento sublato officio beneficioque privetis, facientes nihilominus sicut superius est expressum beneficia, quae idem archidiaconus detinet personis idoneis assignari*.

Chapter XVI

Latin source headnote: It sets forth fifteen burdens inflicted upon religious, from which it commands prelates to abstain.

Gregory IX, to all Prelates of Churches.

Exceedingly unjust (*And below:*) Since religious men, wholesomely denying themselves, have chosen to serve poor Christ in poverty according to His pleasure, as having nothing and possessing all things, there are not lacking many, both prelates of churches and others, who, seduced by blind cupidity and regarding whatever the piety of the faithful bestows upon the aforesaid persons as taken away from their own greed, disturb their peace in manifold ways. For, against the rule approved by the Apostolic See and the institutions of their order, they wish, against their will, to hear their confessions, to impose penances upon them, and to furnish them the Eucharist; nor do they wish the

body of Christ to be reserved in their oratories. They compel their dead brothers to be buried at their churches and their funeral rites to be celebrated there; and if any one of the dying brothers chooses burial elsewhere than in their churches, they compel the funeral first to be carried to their churches, so that the offering may fall to their uses. Nor, allowing them to possess a bell or a blessed cemetery, do they permit them to celebrate divine things except at certain times. They also wish to fix according to their own will in their houses a certain number of brothers, priests, clerics, and laymen, as well as of candles, lamps, and ornaments, and they demand from them the residue of the candles when new ones are set out. Nor do they permit their new priests to celebrate their first Masses anywhere other than in their churches, nevertheless compelling them to receive and reserve for those prelates' use the offerings in the daily Masses that they celebrate in their own places and at their own altars. They also contend to extort from them under the name of an offering whatever is given to them by the pious devotion of the faithful within the precinct of their houses while they celebrate the solemnities of Mass; and they wrongly claim for their own right what is bestowed upon them unconditionally, both in ornaments of the altar and in ecclesiastical books. Therefore, we command that each and all of you desist from the aforesaid burdens, more strictly restraining your subjects from things of this kind. [*The twelfth day before the Kalends of September,* 1231.]

> Ponit XV. gravamina, illata religiosis, a quibus praecipit praelatos abstinere.
>
> Gregorius IX. universis ecclesiarum Praelatis.
>
> Nimis iniqua (*Et infra:*) Quum religiosi viri, abnegantes salubriter semet ipsos, elegerint in paupertate Christo pauperi ad placitum famulari, tanquam nihil habentes, et omnia possidentes: non desunt plerique tam ecclesiarum praelati quam alii, qui, caeca cupiditate seducti, propriae aviditati subtrahi reputantes quicquid praedictis fidelium pietas elargitur, quietem ipsorum multipliciter inquietant. Volunt namque contra regulam a sede apostolica approbatam et sui ordinis instituta ipsis invitis eorum confessiones audire, ac eis iniungere poenitentias, et eucharistiam exhibere; nec volunt, ut corpus Christi in eorum oratoriis reservetur. Et fratres ipsorum defunctos apud ecclesias suas compellunt sepeliri, et eorum exsequias celebrari, et, si quis decedentium fratrum alibi quam in suis ecclesiis eligat sepulturam, funus primo ad ecclesias suas deferri cogunt, ut oblatio suis usibus cedat. Nec sustinentes, eos habere campanam, vel coemeterium benedictum, certis tantum temporibus permittunt ipsos celebrare divina. Volunt quoque in domibus eorum certum numerum fratrum, sacerdotum clericorum et laicorum, nec non cereorum, lampadarum et ornamentorum pro voluntate sua taxare, ac residuum cereorum, quando noviter apponuntur exigunt ab eisdem. Nec permittunt, quod novi sacerdotes eorum alibi quam in ecclesiis suis celebrent primas missas, eos nihilominus compellentes, ut in quotidianis missis, quas in suis locis et altaribus celebrant, oblationes ad opus eorum recipiant et reservent; quicquid etiam eis, dum celebrant missarum solennia, intra domorum suarum ambitum pia fidelium devotione donatur, ab ipsis extorquere oblationis nomine contendentes, quod eisdem tam in ornamentis altaris quam in libris ecclesiasticis absolute confertur, vendicant perperam iuri suo. Quocirca mandamus, quatenus universi et singuli a praenotatis gravaminibus desistatis, subditos vestros ab huiusmodi arctius compescendo. [*XII. Kal. Sept.* 1231.]

Chapter XVII

Latin source headnote: It sets forth twelve burdens upon the Preachers and Minors, from which it commands prelates to abstain.

The same, to all Prelates of Churches.

Exceedingly depraved (*And below:*) Since certain religious men—namely, the Friars Preachers and Minors, whose order and rule the Apostolic See is known to have approved—serve poor Christ in the most straitened poverty, many prelates and others compel them to attend their synods and to be subject to their constitutions. Not content with these things, they threaten that they will hold chapters and scrutinies in the places of the brothers for the purpose of correcting them, demanding fidelity confirmed by an oath from their ministers and custodians. Likewise commanding them for a slight cause to come with them processionally both outside and within cities, they fulminate a sentence of excommunication against their benefactors; and, threatening the same thing against the brothers, they endeavor to remove them from the places in which they serve the Lord unless they obey them in all the things said above. In addition, prohibiting the brothers from daring to go, when devoutly invited by the people, to more honorable cities and towns where they may dwell religiously and honorably, they presume to promulgate a sentence of excommunication both against the brothers who go and against those who receive them. They also contend to extort from them tithes from the fruits of gardens, as well as revenues from the dwellings of the brothers as from houses of Jews, asserting that, if the brothers did not dwell there, certain proceeds would be paid by other inhabitants. And in order that they may subject them entirely to their dominion, they wish to set ministers and custodians over them at the choice of their own will. Therefore, we command that each and all of you desist from the aforesaid burdens, more strictly restraining your subjects from things of this kind.

> Ponit XII. gravamina Praedicatorum et Minorum, a quibus praecipit praelatos abstinere.
>
> Idem universis ecclesiarum Praelatis.
>
> Nimis prava (*Et infra:*) Quum quidam viri religiosi, utputa fratres Praedicatores et Minores, quorum ordinem et regulam sedes apostolica noscitur approbasse, in arctissima paupertate Christo pauperi famulentur: plerique praelati et alii eos ad synodos suas cogunt accedere, ac suis constitutionibus subiacere. Nec his contenti, capitula et scrutinia in locis fratrum pro his corrigendis facturos se comminantur, fidelitatem iuramento firmatam ab eorum ministris et custodibus exigentes. Eis quoque, ut tam extra civitates quam intra cum eis processionaliter veniant, ex levi causa mandantes, excommunicationis sententiam fulminant in benefactores ipsorum, et id ipsum fratribus comminantes, eos de locis, in quibus Domino famulantur, satagunt amovere, nisi eis obediant in omnibus supra dictis. Ad hoc, ne fratres ad honorabiliores civitates et villas, ubi religiose ac honeste valeant commorari, a populis devote vocati accedere audeant inhibentes, tam in accedentes fratres quam in receptatores eorum praesumunt excommunicationis sententiam promulgare. Ab eis etiam de hortorum fructibus decimas, nec non de habitaculis fratrum, sicut de Iudaeorum domibus, contendunt reditus extorquere, asserendo, quod, nisi fratres morarentur ibidem, ab aliis habitatoribus proventus aliqui solverentur; et, ut ipsos suae subdant totaliter ditioni, eisdem ministros et custodes volunt praeficere pro suae arbitrio voluntatis. Quocirca mandamus, quatenus universi et singuli a praenotatis gravaminibus desistatis, subditos vestros ab huiusmodi arctius compescendo.

Chapter XVIII

Latin source headnote: One who does not observe an interdict is suspended from office and benefice and from all jurisdiction. It says this according to the true understanding.

The same, to the Archbishop of Braga.

So great is the key of Peter (*And below:*) It cannot fail to come to mind, to the confusion of P., formerly Bishop of Coimbra, how greatly he offended against us and the Roman Church, despised the keys of Peter, and injured ecclesiastical power, since he not only rashly violated the sentence of interdict which he had observed from the beginning, but even induced others—indeed, compelled them—not to observe it. And those whom he could by no means induce by admonitions or bend by threats and terrors to violate the sentence of interdict, after atrocious injuries, loss of goods, and despoiling of kinsmen, he stripped of dignities, prebends, and benefices and compelled miserably to go into exile, conferring those things upon his supporters in this matter not without rash presumption. All these things the same bishop publicly acknowledged in our presence and that of our brothers. Although the aforesaid bishop resigned voluntarily into our hands, nevertheless, unwilling that those who did not fear to violate a sentence of interdict of this kind by their own rashness, and to receive the dignities, prebends, and benefices of others who had been despoiled of them without fault and without reasonable cause, should escape the severity of canonical vengeance, lest the perversity of the deed pass into an example for presumptuous persons, by the authority of almighty God we decree invalid and void every institution, destitution, and conferral of prebends, benefices, and dignities presumed by the same bishop, and the sentences of excommunication or interdict pronounced by him against anyone on this occasion after the violation of that interdict. But because where the offense is greater, there it is to be avenged more severely, we command that, after removing altogether from the benefices themselves, prebends, and dignities, and also from any other benefices and churches that they hold, all whom the aforesaid bishop intruded into the aforesaid benefices, prebends, and dignities, you suspend by apostolic authority from office and benefice both those same presumptuous persons and all others who damnably violated the aforesaid interdict. You shall also compel those who are established to have extended rash hands against the persons and property of the aforesaid canons, prelates, and clerics to come to our presence to receive a sentence according to their deserts, invoking for this, if necessary, the assistance of the secular arm.

> Non servans interdictum, suspensus est ab officio et beneficio, et omni iurisdictione. H. d. secundum verum intellectum.
>
> Idem Archiepiscopo Bracarensi. Tanta est clavis Petri (*Et infra:*) Ad confusionem P. episcopi quondam Colubriensis non potest in memoriam non venire, quantum in nos et ecclesiam Romanam deliquerit, despexerit Petri claves, et ecclesiasticam laeserit potestatem, quum non solum interdicti sententiam, quam servaverat ab initio, temere violavit, verum etiam induxit alios, immo compulit, non servare, et quos inducere monitis et flectere minis ac terroribus ad violandam interdicti sententiam nulla potuit ratione, post atroces iniurias, amissionem bonorum, spoliationem parentum, dignitatibus, praebendis et beneficiis spolians, coegit miserabiliter exsulare, ea suis in hac parte fautoribus non absque praesumptione temeraria conferendo, quae omnia idem episcopus in nostra et fratrum nostrorum praesentia publice recognovit. Licet autem memoratus episcopus in manibus nostris spontanea cesserit voluntate: nolentes tamen, ut hi, qui huiusmodi sententiam interdicti non sunt veriti temeritate propria violare, ac recipere dignitates, praebendas ac beneficia aliorum, qui absque culpa et sine causa rationabili eis fuerant spoliati, severitatem effugiant canonicae ultionis, ne facti perversitas transeat praesumptoribus in exemplum, auctoritate Dei omnipotentis omnem institutionem, destitutionem, collationem praebendarum, beneficiorum ac dignitatum praesumptas per eundem episcopum, et excommunicationis seu interdicti sententias, in quoscunque hac occasione prolatas ab eo post interdicti violationem eiusdem, decernimus irritas et inanes. Quia vero, ubi magis exceditur, ibi est severius vindicandum, mandamus, quatenus omnibus, quos praedictus episcopus in supra dicta beneficia,

praebendas et dignitates intrusit, non solum a beneficiis ipsis, praebendis et dignitatibus, verum etiam ab aliis beneficiis, si qua obtinent, et ecclesiis prorsus amotis, tam praesumptores eosdem, quam omnes alios, qui praefatum interdictum damnabiliter violarunt, suspendas auctoritate apostolica ab officio et beneficio. Illos quoque, quos in personas et res praedictorum canonicorum, praelatorum et clericorum manus temerarias constiterit extendisse, ad nostram venire compellas praesentiam, pro meritis sententiam recepturos, invocato ad hoc, si opus fuerit, auxilio brachii saecularis.

Title XXXII: On Notification of a New Work

Chapter I

Latin source headnote: Even a church built after notification of a new work is to be destroyed at the builder's expense. It says this together with the following chapter.

Lucius III, to the Bishop of Padua.

We have understood from your letters that, when the cause which is pending between *our beloved sons*, the prior of Saint Cyprian *of Venice* and the clerics of Rodigio, concerning a chapel which was constructed by those clerics to the prejudice of the baptismal church of Costa, *as the account of the same prior demonstrated to us*, had been delegated to your fraternity *by the Apostolic See to be terminated by a canonical conclusion*, the parties having been summoned to your presence, it became sufficiently known to you through witnesses that the aforesaid church of Rodigo had begun to build that chapel after an appeal had been made to us and notification of the new work had been given; and on this account the aforesaid prior sought in judgment that whatever had been done in the often-mentioned chapel after the appeal had been made to us and after notification of the new work had been given should be demolished altogether. Concerning this it seemed doubtful to your discretion whether one could proceed to these things by canonical judgment, [*and*], *since nothing concerning notification of a new work has been defined in the canons, you determined that the Apostolic See was to be consulted*. But because, just as *human* laws do not disdain to imitate the sacred canons, so also the statutes of the sacred canons are aided by the constitutions of *former* princes, *by the present letters* we command your fraternity that, diligently considering that whatever is built after notification of a new work, whether by right or by wrong, ought according to legal constitutions to be demolished, and because no church is to be constructed to the prejudice of another, you do not delay in terminating the matter itself according to the statutes of the laws and canons, *appeal being removed, having associated prudent men with you. For since we believe you skilled in both laws, we deemed it safer for the cause to be terminated through your solicitude—you who will be able more fully to know the truth from the statements of the parties and the bounds and limits of the places—than for anything to be defined by us while we are ignorant of the character of the matter*.

DE NOVI OPERIS NUNCIATIONE.

Etiam ecclesia aedificata post nunciationem novi operis destruenda est expensis construentis. H. de cum sequenti. Lucius III. Paduano Episcopo.

Intelleximus ex literis tuis, quod, quum causa, quae vertitur inter *dilectos filios nostros*, priorem S. Cypriani *de Venetia* et clericos de Rodigio super capella, quae in praeiudicium baptismalis ecclesiae de Costa ab eisdem clericis est constructa, *sicut nobis eiusdem prioris relatio demonstravit*, fraternitati tuae *a sede apostolica* delegata fuisset *fine canonico terminanda, partibus ad tuam praesentiam convocatis, per testes sufficienter tibi innotuit, quod praefata ecclesia de Rodigo eandem capellam post appellationem ad nos factam, et denunciationem novi operis aedificare coeperat, et ob hoc praefatus prior in iudicio postulabat, quicquid in saepe dicta capella post*

appellationem ad nos factam, et post denunciationem novi operis factum fuerat, penitus demoliri. Super quo discretioni tuae dubium videbatur, utrum ad haec canonico procedi posset iudicio, [*et*], *quum nihil de nunciatione novi operis sit in canonibus definitum, duxisti sedem apostolicam consulendam*. Quia vero, sicut *humanae* leges non dedignantur sacros canones imitari, ita et sacrorum statuta canonum *priorum* principum constitutionibus adiuvantur, fraternitati tuae *praesentibus literis* mandamus, quatenus diligenter considerans, quod post denunciationem novi operis, sive iure sive iniuria aliquid construatur, *de* legalibus debet constitutionibus demoliri. Et quia nulla ecclesia in praeiudicium est alterius construenda, *adscitis tibi viris prudentibus* negotium ipsum, secundum legum et canonum statuta *appellatione remota* non differas terminare. *Nam quum te credamus in utroque iure peritum: securius duximus, causam per tuam sollicitudinem terminari qui per dicta partium et terminos et fines locorum plenius poteris cognoscere veritatem, quam aliquid a nobis ignorantibus qualitatem negotii definiri*.

Chapter II

Latin source headnote: It is summarized in the first chapter above.

Innocent III, to the Archbishop of Canterbury.

Since by the office of the apostolate committed [*to us, although undeserving, we hold the place of Him who, according to the prophetic word, delivered the poor man from the powerful and the needy man who had no helper, it is fitting that we strive with diligent effort lest lesser persons be oppressed by greater ones, but that prelates so exercise the jurisdiction received over their subjects that they are proved to benefit rather than to preside. Therefore, attending to these things according to the debt of our office,*] by a *strict* command [*we long ago*] *ordered you that, in the affair of the chapel of Lamhee, according to the form contained in the apostolic letters, you cease altogether from oppression of the monks of Canterbury.* [*Concerning this, our beloved sons B., Abbot of Boxleia, and W., Abbot of Ponte Roberti, your envoys, coming to our presence, endeavored in many ways to excuse your fraternity. In the first place, they alleged that, when Theobald of good memory, Archbishop of Canterbury, and the glorious Thomas, his successor, considering that no one serving as a soldier for God entangles himself in secular affairs, and being unwilling that the monks of Canterbury, abandoning the divine offices, should transfer themselves to secular affairs, had had the will and purpose to build a church in honor of Stephen the Protomartyr and to ordain secular clerics in it, revenues being assigned to them from their proceeds and churches, through whom they could expedite their affairs both at the Apostolic See and before secular courts, the hasty death of the first and the long exile of the second impeded their laudable purpose, as was more fully contained and expressed in the letters of our venerable brother I., formerly Archbishop of Lyons, which were recited in our presence and that of our brothers. Baldwin of good memory, Archbishop of Canterbury, succeeding them as much in purpose as in office and in will as in dignity, began to build a church near the suburb of the city of Canterbury, at a distance of about three or four stadia, in honor of the aforesaid protomartyr and blessed Thomas, an indulgence for this having first been obtained from Pope Urban, our predecessor of happy memory. By his authority it was granted to him that he could both build a church in honor of those martyrs and ordain suitable persons for whom he would provide canonically in ecclesiastical benefices, yet so that the churches should by no means be defrauded of the services owed and the necessary stipends. And although that Urban had repeatedly directed letters against the said B., your predecessor, concerning demolition of the work, they said that, because he made no mention in them of the indulgence already granted, no derogation whatever had been made to it by repeated rescripts; they alleged, moreover, that those rescripts had been obtained both by false suggestion and with the truth suppressed, and had not come to the knowledge of the archbishop himself. Whence, if he had not obeyed them, he could not rightly be reprehended. They likewise produced in their own favor a rescript of Pope Gregory, our predecessor of holy memory, who, although he had granted by general letters that*

rescripts obtained within three months before the death of the aforesaid Urban, his predecessor, should possess the same firmness, notwithstanding the death of the mandator, that they ought to have possessed if he were then living, nevertheless was unwilling that matters touching the archbishop himself and his clerics be included under the aforesaid generality. By this rescript, they said, he had plainly derogated from his predecessor's letters, which he had directed against the archbishop at the instance of the monks. They said that those letters, and also those of Clement of good memory, his successor, who had been his imitator in this matter, had been wholly derogated from by an amicable settlement then made, by the will of the parties, between the archbishop and the aforesaid monks through our most dear son in Christ R., the illustrious King of the English, our venerable brother Walter, Archbishop of Rouen, and certain bishops and abbots. For when, in the time of the aforesaid B., Archbishop of Canterbury, the aforesaid king, archbishop, bishops, and abbots had come to Canterbury, the parties submitted to them by compromise both the construction of that church and the institution of the prior and certain other questions. They, after diligent deliberation had first been taken, judged together that the archbishop himself had reasonably built the aforesaid church. Nevertheless, for the good of peace, at the instance of the aforesaid king and also of the others, he granted that he would transfer the college of canons to another place which he should choose as suitable. Therefore, your said envoys alleged that by this settlement the monks had renounced the preceding rescripts obtained from the Apostolic See, since thereafter the said archbishop, leaving the former place where he could not build without scandal to the monks, transferred his purpose to the place of Lamhee, fifty miles distant from the city of Canterbury, where he began to build a church, as he had before, in honor of the aforesaid martyrs, so that because of the exceedingly great distance between the places no material for complaint would remain to the monks. Afterward, succeeding him, you wished to perfect what had been done less fully by him; and they endeavored to show that this was lawful for you by the rescript of the letters of Pope Celestine, our predecessor of good memory, who in the seventh and final year of his pontificate, in order to allay every discord between the churches of Canterbury and Lamhee and lest the canons of Lamhee possess the faculty of rising against the cathedral church, granted you free faculty to arrange the church of Lamhee itself internally and externally, notwithstanding letters obtained for our venerable brother the Bishop of Chichester and our beloved sons the Abbots of Waltham and Reading. Therefore, they said that through these letters his preceding writings, which seemed contrary to them, were wholly revoked. Thus your said envoys strove to prove their position through the laudable purpose of the aforesaid pontiffs Theobald and the glorious martyr Thomas, through the indulgences and rescripts of the Roman Pontiffs Urban, Gregory, and Celestine, and through the aforesaid settlement made by the will of the parties. But on the part of the monks the foregoing arguments were answered in order as follows: that we could not and ought not judge concerning the hidden wills of men, which the Lord who searches the reins and hearts reserved to Himself alone, nor were they able to answer such matters, the allegation of which in judgment was nothing other than to divine the secrets of hearts. Indeed, they said that by the indulgence of Pope Urban, our predecessor, which we mentioned above, no derogation whatever had been made to their right, because the canonical assignment of benefices through it was reserved to the Archbishop of Canterbury, who according to canonical constitution could not proceed without the deliberation and assent of the monks; far from consenting to his deed in this matter, they had even expressly contradicted it, as subsequent events showed, and they still persevered in the same purpose. With them thus contradicting, the judgment of the superior was to have been awaited. They endeavored to show the same thing also by this argument: that according to legitimate sanctions, if at any time a principal benefit is granted to someone—for example, the free making of a testament—nothing else seems to be granted than that he may make a testament in a legitimate and also customary manner. Likewise, one who obtained from a prince that he might build in a public place will not be able to build to another's inconvenience unless this very thing also was sought and granted by the prince. They further asserted that derogation had been made from the aforesaid indulgence by the subsequent executory letters of Urban

himself, by which he willed that the work itself be held accursed and profane. They alleged that, whether the indulgence had been shown before Urban himself, it was altogether abrogated, since notwithstanding it the demolition of the church itself had been commanded; or whether it had been omitted, this ought to be imputed to its holder, since it is provided even by civil law that lawsuits ought not to be restored under pretext of instruments discovered afterward. They wished to prove the same thing by the letters of Pope Clement, our predecessor of pious memory. When the envoys of the parties were established in his presence, because the said B., your predecessor, had wished contumaciously and pertinaciously to complete the accursed and profane work, he, after the example of Pope Urban, his predecessor, strictly commanded the aforesaid archbishop, on the counsel of his brothers, to take care to demolish without any delay whatever he had done in the named church, revoking altogether as invalid whatever had been wrongly attempted concerning the institution of canons and other matters. There, whether the aforesaid indulgence had been omitted or even alleged, for the reason stated above it could not impede their claim. They said that their party could be burdened in no respect by the settlement itself, which we mentioned above, since it had been violently extorted through fear of the king. For when Pope Clement, our aforesaid predecessor, in order to allay the discord arisen between the archbishop and the monks of Canterbury, had specially sent into England John of Anagni of good memory, then Cardinal Priest of the title of Saint Mark and legate of the Apostolic See, but afterward Bishop of Palestrina, after he crossed there, it was brought about by the procurement of the said B., Archbishop of Canterbury, that he was held at the port of Dover against his will for many days, which redounded to the grave injury of the Roman Church. Nor was he permitted to proceed to Canterbury before the monks suffered force and were compelled to sustain all things in the peace which they made with the archbishop through the said King of the English, who at the same time had come to Canterbury with his bishops. Therefore, when he heard this while situated nearby, and afterward knew it while present at Canterbury, he took care to commit it to writing so that the truth of the matter might become known to all and so that what had been done might not generate prejudice to the justice of the monks. And if the archbishop himself or any of his successors should at any time produce a writing concerning the form of the peace, it would be known to all that it had been composed without the consent or knowledge of the brothers of the said church and had not been exhibited to him when he requested it, although he had been sent to the cause by the Supreme Pontiff. Whence he ought either to have confirmed the transaction if it accorded with justice, or, if it had been done otherwise, to have invalidated it. Thus, therefore, knowing that manifest violence had intervened in that deed, by the apostolic authority with which he functioned he established that neither the settlement thus made nor the compromise violently extorted nor any writing thus composed should be valid, and that it should bring no prejudice to those monks in the future, since all things had been completed in his presence and against his contradiction, as is contained in his public letters, which we caused to be recited before us. After these things, when Pope Celestine of good memory, our predecessor, by apostolic authority revoked as invalid all things that had been done by force or fear against the monks by the aforesaid Archbishop B., he expressly decreed to lack force those things in particular which were alleged to have been done against the command of the Apostolic See while the legate of the Roman Church was present and contradicting, as they were contained and expressed in the authentic instrument of the same legate, namely I. of Anagni, formerly Cardinal Priest, who had been sent into England on account of the cause itself, and whatever the same archbishop had obtained contrary to the right of the monks or the tenor of the privileges of the Apostolic See. He further established that no man should draw into precedent those things which he had wrongly done, and that those things which he had obtained from the Apostolic See with the truth suppressed should at no time generate prejudice in any matter to the right or privileges of the monks, just as was established to us and our brothers from the contents of those letters. The monks also asserted that from the very greater distance of the place a greater prejudice had been generated against them, because, since secular clerics were said by your envoys to have been summoned to supply their default, the affairs of the church of

Canterbury could scarcely be managed through nearby clerics while the monks were absent, whereas, with those clerics situated far away and the absence of the monks seized as an opportunity, the affairs would be transacted without the monks' knowledge and while they were altogether unconsulted, whence the church of Canterbury would incur loss and damage. Thus nothing accrued to them through this, since the same cause for contradiction remained. They further asserted that the final rescript of the said Pope Celestine, our predecessor, lacked force, as having been surreptitiously obtained through suppression of the truth, since in it no mention was made of the commands that had proceeded from Pope Urban and Clement, nor even of that confirmation which he himself had granted concerning the quashing of the aforesaid settlement, and especially since he is said to have granted that rescript at a time when sickness oppressed him exceedingly. To found their position, those monks produced the rescripts of the aforesaid Roman Pontiffs Urban, Clement, and Celestine, and also our own after those, by which it was commanded most urgently that whatever had been attempted concerning the aforesaid chapel should be held invalid and void.] *But when the things we have premised had been prudently alleged by the envoys in our presence and that of our brothers, we, who have received a time for judging justice, wishing to adhere to the footsteps of Him with whom there is no acceptance of persons, whose place, although unworthy, we hold on earth, and so to walk prudently on the royal road that we turn neither to the right nor to the left,* and, believing that our predecessors Urban, Clement, and Celestine also were to be imitated more fully, especially in those things which they established after prior deliberation, *on the common counsel of our brothers, by apostolic writings* command your fraternity *and strictly enjoin upon you in virtue of obedience* that, *every contradiction, excuse, and appeal ceasing, within thirty days after receipt of the present letters,* at your expense you cause to be demolished altogether whatever was built in the church of Lamech after notification of the new work—(notwithstanding even if you shall have been absent [*from your church*], since it is also provided by a legitimate sanction that, if one to whom a new work had been notified builds before remission and then begins to bring an action that he has a right to possess what was thus built, the action ought to be denied him)—altogether reducing to invalidity whatever is known to have been ordained by you or *your* predecessor concerning the institution of canons there and other things pertaining to that church, their revenues being recalled to their former state. We command that those canons, because they were instituted there, be declared by you, on our authority, absolved from the obligation of the oath rendered. For since the principal matter does not now stand, whatever followed from it or on account of it we decree under the aforesaid strictness is to be invalidated, *as has been sanctioned by canonical and civil tradition.* [*Furthermore, the clerics who celebrated divine offices in that chapel after the apostolic prohibitions, as we commanded through our other writings, you shall hold as suspended until they have made competent satisfaction concerning this. Nor shall you delay in restoring to the said monks all things that were attempted to their burden—namely by the seizure of presents, churches, and other things—which they possessed before the appeal; and henceforth, on occasion of this affair, you shall not presume to innovate anything concerning the state of the monastery against our prohibition. But if* (*which we do not believe*) *you shall either contemn or delay to fulfill our command as was premised, you shall know yourself from that time suspended from pontifical office, and for contempt of the apostolic command we will that you come to our presence to answer. By the counsel of our brothers, strictly enjoining in virtue of obedience, we also command our venerable brothers, the suffragans of the church of Canterbury, that, unless you bring our command into effect within the aforesaid time, they render you no obedience or reverence, because it is just that one who scorns to obey his own prelate should not be obeyed by his subjects. But if perhaps not even thus shall we be able to recall you to the good of obedience—for which evil is never committed, but good ought often to be left undone—you shall know that a greater punishment threatens you, since wounds that do not feel the medicine of poultices must be cut away with iron. Indeed, concerning the aforesaid matters, in which*

with a safe conscience we could not proceed in another manner, we ask your fraternity not to be saddened in any way, because (*God being witness*) *they proceeded not from any indignation, but because, although insufficient, we have been established in the seat of justice, whence we are bound to preserve the rights of each person unimpaired. We could not, without grave offense to the Creator, show favor to your fraternity, which we embrace very sincerely, since we hold you among our brothers and fellow bishops as an honorable member and an immovable column in the house of the Lord. Nor can you impute anything to us in this matter, since, according to canonical tradition, when counsel cannot be given to anyone except by sinning, then a man ought to judge that he has nothing he may do. It is also found in the secular laws that those things which in deed injure our piety, reputation, and modesty, and generally those things which are opposed to good morals, are to be believed things which we cannot do.*] Concerning this also we cannot sufficiently marvel: although *the said church had now long been, as it were, a stone of offense and a rock of scandal, on account of which we and our predecessors were so gravely moved against you and your predecessors, and* the religious men, *equally prudent*, the monks of Canterbury, who abandoned all things for Christ, did not hesitate frequently to expose their persons and property to so many labors *and pains, so many fears* and perils—which *without doubt neither the former nor the latter, as was said*, would have done unless they knew that the aforesaid matters looked to the grave detriment of the church of Canterbury—*to omit other things*, at least for the avoidance of so grave a scandal to your neighbors you did not cease from things of this kind that had even been prohibited to you, although you ought to have learned from the testimony of sacred scripture that, while those works which cannot be omitted without mortal sin are not to be abandoned to avoid scandal, nor ought those things which cannot be committed without mortal sin to be committed to avoid scandal, nevertheless one must cease, for the removal of scandal, from those things which can equally be committed and omitted without mortal sin, and one must also persevere in them for the avoidance of scandal. Whence the Apostle *says*: "If a brother is scandalized, I will not eat flesh forever"; and the Lord in the Gospel says against those who furnish the material of scandal: "Woe to that man through whom scandal comes; it is better for him that an ass's millstone be hung about his neck and that he be sunk into the deep." And although the scandal of the greater is to be avoided, the scandal of the little ones is also to be avoided, according to the testimony of Truth: "Whoever shall scandalize," He says, "one of these *least* little ones who believe in me, etc." Therefore, let an end henceforth be imposed by you upon *the things that have been premised* in such a way that the rebellion of past contradiction may *not undeservedly* be expiated through the virtue of subsequent obedience. [*Given at the Lateran, on the Kalends of December, in the first year of our pontificate,* 1198.]

> Summatum est supra capitulo primo.
>
> Innocentius III. Cantuariensi Archiepiscopo.
>
> Quum ex iniuncto [*nobis apostolatus officio locum eius licet immeriti teneamus, qui iuxta verbum propheticum liberavit pauperem a potente et inopem, cui non erat adiutor, diligenti studio satagere nos oportet, ne minores a maioribus opprimantur, sed ut praelati sic exerceant acceptam iurisdictionem in subditos, ut prodesse probentur potius quam praeesse. Haec ergo secundum officii nostri debitum attendentes,*] *districta* [*dudum*] *tibi iussione mandavimus, ut in negotio capellae de Lamhee iuxta formam in literis apostolicis comprehensam ab oppressione monachorum Cantuariensium omnino cessares.* [*Super quo venientes ad praesentiam nostram dilecti filii B. de Boxleia et W. de Ponte Roberti abbates, nuncii tui, fraternitatem tuam nitebantur multipliciter excusare. In primis siquidem proponentes, quod, quum bonae memoriae Theobaldus Cantuariensis archiepiscopus et gloriosus Thomas successor ipsius, attendentes, quod nemo militans Deo implicat se negotiis saecularibus, et nolentes monachos Cantuarienses relictis divinis officiis ad negotia saecularia se transferre, ad honorem protomartyris Stephani aedificandi ecclesiam voluntatem*

*et propositum habuissent, et in ea saeculares clericos ordinandi, de suis proventibus et ecclesiis eis redditibus assignandis, per quos tam apud apostolicam sedem quam apud curias saeculares sua possent negotia expedire, laudabile primi propositum obitus festinatus, secundi longum exsilium impedivit, sicut in literis venerabilis fratris nostri I. quondam Lugdunensis archiepiscopi plenius continebatur expressum, quae in nostra et fratrum nostrorum fuerunt praesentia recitatae. His bonae memoriae Balduinus Cantuariensis archiepiscopus ita proposito ut officio, voluntate ut dignitate succedens, prope suburbium civitatis Cantuariensis quasi per stadia tria vel quatuor ad honorem praefati protomartyris et beati Thomae construere coepit ecclesiam, felicis recordationis Urbani Papae praedecessoris nostri super hoc indulgentia primitus impetrata. Cuius sibi fuit auctoritate concessum, ut in honorem ipsorum martyrum et aedificare posset ecclesiam, et de personis idoneis ordinare, quibus in ecclesiasticis beneficiis canonice provideret; sic tamen, quod ecclesiae debitis obsequiis et necessariis stipendiis minime fraudarentur. Et licet idem Urbanus adversus dictum B. praedecessorem tuum super demolitione operis suas saepius literas destinasset, quia in eis non faciebat de concessa iam indulgentia mentionem, ei dicebant per rescripta frequentia nullatenus derogatum, quae praeterea proponebant et per falsi suggestionem et veritate tacita impetrata, et ad ipsius archiepiscopi notitiam minime devenisse. Unde, si eis non paruerat, de iure non poterat reprehendi. Rescriptum quoque sanctae memoriae Gregorii Papae praedecessoris nostri pro se pariter producebant, qui, quum per literas indulserit generales, *ut rescripta, quae a tribus mensibus ante obitum praedicti Urbani praedecessoris sui fuerant impetrata, eandem firmitatem haberent, non obstante obitu mandatoris, quam obtinere, si tunc viveret, debuissent, negotia, quae ipsum archiepiscopum et eius clericos contingebant, sub praemissa noluit generalitate concludi, per quod nimirum rescriptum praedecessoris sui dicebant literis derogatum, quas adversus archiepiscopum direxerat ad instantiam monachorum. Quibus siquidem literis, et etiam bonae memoriae Clementis successoris sui, qui eius in hac parte fuerat imitator, per factam tunc temporis amicabilem compositionem de partium voluntate inter archiepiscopum et monachos memoratos per carissimum in Christo filium nostrum R. Anglorum regem illustrem, et venerabilem fratrem nostrum Walterum Rothomagensem archiepiscopum, et quosdam episcopos et abbates, dicebant penitus derogatum. Quum enim tempore praefati B. Cantuariensis archiepiscopi praemissi rex, archiepiscopus et episcopi et abbates Cantuariam accessissent, in eos fuit tam de constructione ipsius ecclesiae quam institutione prioris et quibusdam aliis quaestionibus a partibus compromissum. Ipsi autem diligenti deliberatione praemissa pariter iudicarunt, quod ipse archiepiscopus rationabiliter aedificaverit ecclesiam memoratam. Ipse tamen pro bono pacis concessit ad praedicti regis instantiam et etiam aliorum, quod canonicorum collegium ad locum transferret alium, quem eligeret competentem. Per hanc ergo compositionem dicti nuncii tui renunciasse dicebant monachos rescriptis praecedentibus a sede apostolica impetratis, quum exinde dictus archiepiscopus loco priore dimisso, ubi aedificare non potuerat sine scandalo monachorum, ad locum de Lamhee per quinquaginta miliaria distantem a civitate Cantuariae, suum propositum transtulisset, ubi et ecclesiam, sicut prius fecerat, aedificare coepit ad honorem martyrum praedictorum, ut sic propter nimiam locorum distantiam nulla remaneret monachis materia conquerendi. Cui postea tu succedens, quod ab ipso minus factum fuerat perficere voluisti, et quod ipsum tibi liceret ex rescripto literarum bonae memoriae Coelestini Papae praedecessoris nostri ostendere nitebantur, qui anno pontificatus sui septimo et extremo ad omnem inter ecclesias Cantuariensem et de Lamhee discordiam sopiendam, et ne canonici de Lamhee facultatem haberent contra cathedralem ecclesiam insurgendi, disponendi de ipsa ecclesia de Lamhee interius et exterius, non obstantibus literis ad venerabilem fratrem nostrum Cicestrensem episcopum et dilectos filios de Waltham et de Radinges abbates obtentis, concessit tibi liberam facultatem. Per has ergo literas praecedentia scripta sua, quae his videbantur adversa, dicebant penitus revocata. Intentionem ergo suam probare dicti tui nuncii satagebant per laudabile propositum Theobaldi et gloriosi Thomae martyris pontificum praemissorum, et per Urbani, Gregorii et Coelestini Romanorum Pontificum indulgentias et rescripta, et praemissam compositionem factam de partium voluntate. Verum praemissis rationibus ex parte monachorum fuit ex ordine taliter obviatum, quod de occultis hominum voluntatibus, quas sibi tantum Dominus reservavit, qui renes et corda scrutatur, a nobis iudicari non poterat nec debebat, nec ipsi valebant ad talia respondere, quae proponere in iudicio nihil aliud erat, quam de secretis cordium divinare. Sane per indulgentiam Urbani Papae praedecessoris nostri, de qua praemisimus, iuri suo in nullo dicebant penitus derogatum, quia canonica beneficiorum assignatio per eam Cantuariensi archiepiscopo servabatur, qui iuxta constitutionem canonicam sine tractatu et assensu monachorum procedere non valebat, qui nedum*

quod ipsius facto in hac parte consenserint, verum etiam contradixerint expresse, sicut sequentia docuerunt, et adhuc in eodem proposito perseverant. Eis ergo contradicentibus, superioris fuerat iudicium exspectandum. Idem etiam ea ratione ostendere nitebantur, quia iuxta sanctiones legitimas, si quando alicui conceditur beneficium principale, puta libera factio testamenti, nihil videtur aliud indulgeri, quam ut modo testetur legitimo, et etiam consueto. Ille quoque, qui, ut in loco publico aedificare posset, a principe similiter impetravit, aedificare cum alterius incommodo non valebit, nisi et hoc ipsum a principe postulatum fuerit et concessum. Per sequentes etiam ipsius Urbani literas exsecutorias, quibus opus ipsum maledictum haberi voluit et profanum, asserebant praescriptae indulgentiae derogatum, quae sive coram eodem Urbano fuerit ostensa, proponebant eam penitus abrogatam, quum ea non obstante demolitio ipsius ecclesiae fuerit demandata, sive fuerit praetermissa, sibi debuit imputari, quum iure civili etiam caveatur, quod sub praetextu instrumentorum postea repertorum lites non debeant restaurari. Id ipsum per literas piae recordationis Clementis Papae praedecessoris nostri probare volebant, in cuius praesentia nunciis partium constitutis, quum dictus B. praedecessor tuus opus maledictum et profanum voluisset contumaciter et pertinaciter consummare, ad exemplum Urbani Papae praedecessoris sui praefato archiepiscopo de consilio fratrum districte praecepit, ut quicquid fecerat in ecclesia nominata curaret sine dilatione qualibet demoliri, quod de instituendis canonicis et aliis fuerat perperam attentatum, in irritum penitus revocato, ubi, sive omissa fuerit praemissa indulgentia, vel etiam allegata, eorum non poterat ratione praemissa propositum impedire. Per ipsam vero compositionem, de qua praemisimus, tanquam regio metu violenter extortam, partem suam in nullo gravari posse dicebant. Quum enim dictus Clemens Papa praedecessor noster pro sedanda discordia inter archiepiscopum et monachos Cantuarienses exorta bonae memoriae Iohannem Anagninum tunc temporis tit. sancti Marci presbyterum cardinalem, apostolicae sedis legatum, postea vero episcopum Praenestinum, in Angliam specialiter destinasset, postquam illuc transfretavit, factum fuit dicto B. Cantuariensi archiepiscopo procurante, quod apud portum Dovoriae contra voluntatem suam per dies plurimos teneretur, quod in gravem ecclesiae Romanae iniuriam redundavit, nec ante permissus fuit Cantuariam proficisci, quam per dictum regem Anglorum, qui eodem tempore cum episcopis suis Cantuariam venerat, in pace, quam fecerunt cum archiepiscopo, monachi vim passi fuerunt, et compulsi sunt omnia sustinere. Quod ideo quum prope positus audisset, et postea praesens apud Cantuariam cognovisset, scripto mandare curavit, ut rei veritas omnibus innotesceret, et quod factum fuerat non generaret praeiudicium iustitiae monachorum, et, si archiepiscopus ipse vel aliquis de successoribus eius scripturam super forma pacis quandoque proferret, sciretur ab omnibus, eam fratribus iam dictae ecclesiae nec consentientibus nec scientibus fuisse confectam, nec sibi exhibitam postulanti, qui ad causam fuerat a summo Pontifice destinatus. Unde vel rem gestam confirmare debuerat, si iustitiae concordaret, vel, si aliter facta fuerat, infirmare. Sic ergo cognoscens intercessisse illi facto violentiam manifestam, auctoritate, qua fungebatur, apostolica statuit, quod nec concordia sic facta valeret, neque compromissio violenter extorta, neque scriptum aliquod sic conceptum, et quod ipsis monachis in posterum praeiudicium non afferret, quum omnia eo praesente ac contradicente fuerint adimpleta, sicut in suis literis patentibus continetur, quas coram nobis fecimus recitari. Post haec, quum bonae memoriae Coelestinus Papa praedecessor noster omnia, quae per memoratum B. archiepiscopum circa monachos vi vel metu acta fuerant, auctoritate apostolica in irritum revocaret, nominatim ea, quae legato Romanae ecclesiae praesente et contradicente contra mandatum sedis apostolicae facta proponebantur, sicut in authentico eiusdem legati, I. videlicet Anagnini quondam presbyteri cardinalis ob causam ipsam in Angliam destinati, continebantur expressa, viribus carere decrevit, et quaecunque contra ius monachorum vel tenorem privilegiorum apostolicae sedis idem archiepiscopus impetrarat. Insuper statuens, ut nullus hominum quae male gesserat ad consequentiam traheret, nec ea, quae a sede apostolica obtinuerat tacita veritate, iuri monachorum vel privilegiis ullo unquam tempore in aliquo praeiudicium generarent; quemadmodum nobis et fratribus nostris ex ipsorum constitit continentia literarum. Ex ipsa quoque maiore loci distantia sibi asserebant monachi maius praeiudicium generatum, quia, quum in eorum defectum, sicut a tuis nunciis dicebatur, saeculares clerici fuerint evocati, vix possent per eos vicinos Cantuariensis ecclesiae negotia monachis absentibus procurari, quae ipsis procul positis et captata eorum absentia sine monachorum conscientia tractarentur et eis penitus inconsultis, unde Cantuariensis ecclesia dispendium incurreret et iacturam. Sic ergo per hoc nihil eis accessit, eadem contradictionis causa manente. Ultimum quoque rescriptum dicti Coelestini Papae praedecessoris nostri carere viribus asserebant, utpote per suppressionem veritatis surreptum, quoniam in eo nulla fiebat mentio mandatorum, quae

ab Urbano Papa et Clemente processerant, nec etiam confirmationis illius, quam ipsemet super cassatione compositionis praedictae concessit; et praesertim, quum rescriptum illud indulsisse dicatur eo tempore, quo eum infirmitas admodum praegravabat. Ad fundandam sane intentionem suam praedictorum Urbani, Clementis et Coelestini Romanorum Pontificum rescripta, nec non et nostrum post illa, iidem monachi producebant, quibus urgentissime mandabatur, ut, quicquid de praefata capella fuerat attentatum, haberetur irritum et inane.] Quum autem quae praemisimus in nostra fratrumque nostrorum praesentia prudenter essent a nunciis allegata: nos, qui tempus accepimus iustitiam iudicandi, volentes illius vestigiis inhaerere, apud quem non est acceptio personarum, cuius locum licet indigni tenemus in terris, et ita via regia prudenter incedere, ut non declinemus ad dextram vel sinistram, praedecessores quoque nostros Urbanum, Clementem et etiam Coelestinum credentes amplius imitandos in illis maxime, quae deliberatione praevia statuerunt, de communi fratrum nostrorum consilio* Fraternitati tuae *per apostolica scripta* mandamus *et in virtute obedientiae districte praecipimus*, quatenus, *omni contradictione et excusatione et appellatione cessantibus, infra XXX. dies post receptionem praesentium* quicquid aedificatum est in ecclesia de Lamech post novi operis nunciationem, expensis tuis facias penitus demoliri, (eo non obstante, si etiam absens [*ab ecclesia tua*] exstiteris, quum cautum sit *etiam* legitima sanctione, ut, si is, cui opus novum fuerat nunciatum, ante remissionem aedificaverit, deinde agere coeperit, ius sibi esse ita aedificatum habere, sibi debeat actio denegari,) reducens prorsus in irritum quicquid de instituendis ibi canonicis et aliis ad ipsam ecclesiam pertinentibus a te vel *a* praedecessore tuo cognoscitur ordinatum, eorum reditibus ad statum pristinum revocatis, quos ab obligatione praestiti iuramenti, pro eo, quod ibidem instituti fuerunt, auctoritate nostra per te denunciari praecipimus absolutos. Quum enim amodo non teneat principale, quicquid ex eo vel ob id secutum est, sub praemissa districtione decernimus, irritandum, *sicut sancitum est traditione canonica et civili.* [*Clericos praeterea, qui in capella ipsa post inhibitiones apostolicas divina officia celebrarunt, sicut nos per alia scripta nostra mandavimus, tamdiu habeas pro suspensis, quousque super hoc satisfacerint competenter, et universa, quae in praedictorum monachorum sunt attentata gravamen, exeniorum videlicet et ecclesiarum et aliorum invasione, quae ante appellationem habuerant, non differas dictis monachis resignare; ac de cetero circa statum monasterii contra prohibitionem nostram huius occasione negotii non praesumas aliquid innovere. Si vero* (*quod non credimus*) *praeceptum nostrum, sicut praemissum est, vel contempseris vel distuleris adimplere, a pontificali officio ex tunc noveris te suspensum, et pro contemptu mandati apostolici ad nostram venire te volumus praesentiam responsurum. Venerabilibus quoque fratribus nostris Cantuariensis ecclesiae suffraganeis de consilio fratrum nostrorum in virtute obedientiae districte praecipiendo mandamus, quatenus, nisi tu infra praemissum tempus mandatum nostrum duxeris ad effectum, ipsi nullam tibi impendant obedientiam vel reverentiam, quia iustum est, quod ei non obediatur a subditis, qui suo contemnit obedire praelato. Quod si forte nec sic te poterimus ad bonum obedientiae revocare, propter quod malum nunquam committitur, bonum autem debet saepius intermitti, maiorem tibi animadversionem noveris imminere, quum ferro sint abscindenda vulnera, quae fomentorum non sentiunt medicinam. Sane super praemissis, in quibus salva conscientia non poteramus alio modo procedere, fraternitatem tuam rogamus nullatenus contristari, quia* (*teste Deo*) *non ex indignatione aliqua processerunt, sed quia, quum simus, licet insufficientes, in sede iustitiae constituti, unde iura sua servare tenemur singulis illibata, fraternitati tuae, quam sincerius amplexamur, quum te inter fratres et coepiscopos nostros honorabile membrum et in domo Domini columnam immobilem habeamus, non potuimus sine gravi offensa creatoris deferre. Nec nobis in hac parte potes aliquid imputare, quum secundum traditionem canonicam, quando non nisi peccando alicui consuli potest, tunc aestimare debet homo, quid faciat non habere. In ipsis etiam legibus saecularibus invenitur, ut quae facta laedunt pietatem, aestimationem, verecundiam nostram, et generaliter quae bonis moribus adversantur, nec facere nos posse sit credendum.*] Super eo quoque non sufficimus admirari, quod, quum *dicta ecclesia iam dudum quasi lapis offensionis fuerit et petra scandali, pro qua nos et praedecessores nostri adversus te tuosque praedecessores ita graviter sumus moti, et* viri religiosi *pariter et prudentes*, monachi Cantuarienses, qui omnia dimiserunt pro Christo, tot laboribus *et doloribus, tot timoribus* et periculis personas et res non dubitaverunt frequenter exponere, quod *procul dubio tam illi quam isti, ut dictum est*, non fecissent, nisi cognoscerent praemissa respicere in grave Cantuariensis ecclesiae detrimentum, *ut de aliis omittamus*, tu saltem pro vitando tam gravi scandalo proximorum ab huiusmodi

etiam tibi prohibitis non cessasti, quum sacrae scripturae testimonio debueras didicisse, quod, licet opera illa, quae sine mortali peccato omitti non possunt, non sunt pro vitando scandalo dimittenda, nec ea debeant pro scandalo vitando committi, quae sine mortali peccato committi non possunt: ab his tamen, quae sine mortali peccato committi possunt pariter et dimitti, sit pro scandalo tollendo cessandum, et eis etiam pro vitando scandalo insistendum. Unde Apostolus *dicit*: "Si scandalizatur frater, non comedam carnes in aeternum," et Dominus in evangelio contra eos, qui scandali praestant materiam: "Vae," inquit, "homini illi, per quem scandalum venit; melius est ei, ut suspendatur mola asinaria ad collum eius, et demergatur in profundum." Et licet maiorum scandalum sit vitandum, vitandum est etiam scandalum pusillorum, iuxta testimonium veritatis, "qui scandalizaverit," inquit, "unum de pusillis istis *minimis*, qui in me credunt, etc." Finis ergo his, *quae praemissa sunt, de cetero* taliter a te imponatur, quod praeteritae contradictionis rebellio per virtutem sequentis obedientiae valeat *non immerito* expiari. [*Dat. Lat. Kal. Dec. Pont. nostr. Ao. I. *1198.]

Chapter III

Latin source headnote: It is in the option of one notifying a new work whether he ought within three months to show his own prejudice, and meanwhile work is to cease, or whether, after security for demolishing the work has been received, he permits building to proceed at once. It says this together with the following chapter.

Honorius III.

From the report of the canons of Saint Opportuna *of Paris*, it became known to us that, concerning the fact that N. *Rufus*, a citizen of Paris, was building in a certain open place belonging to their church, *situated within their cloister*, to their prejudice and burden although they prohibited it, they lodged a complaint before the official of the Archdeacon of Paris. They offered immediately to prove the prejudice and that the open place belonged to their church, and further petitioned that the building be prohibited notwithstanding that the said N. offered security for demolishing the work. And because the same official decreed by an interlocutory ruling that their proofs were to be admitted and that meanwhile rest was to be taken from the work, the same N. appealed to the church of Sens. But when the official of Sens, *a kinsman of the aforesaid Nicholas*, after revoking that interlocutory ruling *solely at the choice of his own will*, decreed that, without their proofs having been admitted, the work was to proceed under security for demolishing it, the aforesaid canons appealed to our hearing, *whence they petitioned that we command their proofs to be received and the building to be prohibited*. Therefore, *by apostolic writings* we command your discretion that, if it is so, after revoking as invalid whatever you shall find to have been *rashly* attempted after an appeal of this kind, *you establish concerning this what shall be just, appeal being set aside, causing* etc.

In optione est nunciantis novum opus, an intra tres menses de praeiudicio suo debeat ostendere, et interim cessetur ab opere; an vero recepta cautione de opere demoliendo statim aedificari permittat. H. d. cum sequ.

Honorius III. Significantibus canonicis sanctae Opportunae *Parisiensis* innotuit nobis, quod, quum super eo, quod N. *Rufus* civis Parisiensis in quadam platea ecclesiae suae, *infra claustrum ipsorum sita*, eis prohibentibus in suum aedificabat praeiudicium et gravamen, deposuerunt coram officiali Parisiensis archidiaconi quaestionem, eis offerentibus in continenti probare praeiudicium et plateam ad suam ecclesiam pertinere, ac petentibus *insuper*, ut non obstante, quod dictus N. cautionem de demoliendo opere offerebat, aedificium prohiberi. Et quia idem officialis interloquendo decrevit, probationes eorum admittendas esse, ac ab opere interim quiescendum, idem N. ad Senonensem ecclesiam provocavit. Sed

quum Senonensis officialis, *Nicolai praedicti cognatus*, eadem interlocutoria *pro suae duntaxat voluntatis arbitrio* revocata, decreverit, ad opus sub cautione de demoliendo ipso, non admissis eorum probationibus, procedendum, praedicti canonici nostram audientiam appellarunt, *unde petebant, ut ipsorum probationes recipi, ac prohiberi aedificium mandaremus*. Ideoque *discretioni vestrae per apostolica scripta* mandamus, quatenus, si est ita, revocato in irritum quicquid post appellationem huiusmodi *temere* inveneritis attentatum, *super hoc quod iustum fuerit appellatione postposita statuatis, facientes* etc.

Chapter IV

Latin source headnote: It is summarized in the preceding chapter.

Gregory IX.

The person to whom you allege that you notified a new work is bound, notwithstanding the security which is offered by him for destroying the work if it is found not to have been built by right, to wait for you for the space of three months while you wish to prove the prejudice to your right.

Summatum est supra capitulo proximo.

Gregorius IX. Is, cui opus novum te nunciasse proponis, non obstante cautione, quae offertur ab ipso de opere destruendo, si non iure aedificatum exsistat, tenetur te per trium mensium spatium exspectare, iuris tui praeiudicium probare volentem.

Title XXXIII: On Privileges and the Offenses of Privileged Persons

Chapter I

Latin source headnote: Episcopal dignity ought not to be bestowed except upon distinguished and populous places.

Pope Leo.

Episcopal governance ought to preside only over larger peoples and more populous cities, lest *that which the divinely inspired decrees of the holy Fathers prohibited—the sacerdotal eminence being bestowed upon villages and estates or obscure and solitary municipalities—and* an honor to which more excellent places ought to be committed become cheap through its very multiplicity. [*But what now, etc. Given on the fourth day before the Ides of August,* 446.]

DE PRIVILEGIIS ET EXCESSIBUS PRIVILEGIATORUM.

Episcopalis dignitas non debet tribui, nisi locis insignibus et populosis.

Leo Papa.

Episcopalia gubernacula non nisi maioribus populis et frequentioribus civitatibus praesidere oportet, ne, *quod, sanctorum Patrum divinitus inspirata decreta vetuerunt, viculis et possessionibus vel obscuris et solitariis municipiis tribuatur sacerdotale fastigium, et* honor, cui debent excellentiora committi, ipsa sui numerositate vilescat. [*Quod nunc etc. Dat. IV. Id. Aug.* 446.]

Chapter II

Latin source headnote: Notwithstanding the privilege of forum, a lay malefactor against a church can be punished by the church.

Pope Gregory, to the Subdeacon.

Just as we do not wish to disturb the privileges of laymen in their judgments, so, when they prejudice us, we wish to resist them with moderated authority. Therefore, to coerce violent laymen is not to act contrary to law, but to furnish assistance to law. [*Therefore, because God gave, etc.*]

> Non obstante privilegio fori potest laicus ecclesiae malefactor per ecclesiam puniri. Gregorius P. Subdiacono.
>
> Sicut in iudiciis laicorum privilegia turbare nolumus, ita eis praeiudicantibus nobis moderata volumus auctoritate resistere. Violentos itaque laicos coercere non contra legem est agere, sed legi facere subsidium. [*Quia igitur Deus dedit etc.*]

Chapter III

Latin source headnote: Even exempt religious ought not to receive churches and tithes from laymen without the consent of the diocesan bishops. It says this as far as § Excommunicated Persons. — § 1. Excommunicated and interdicted persons ought by no means to be admitted to divine things, even by exempt religious. It says this as far as § But in Churches. Abbas Siculus. — § 2. Even exempt religious do not institute or remove persons, without consulting the bishops, in churches that do not belong to them by full right; but they exact an account in temporal matters from those instituted. It says this as far as § But If. — § 3. Hospitallers and Templars celebrate once a year in a church situated in an interdicted place; nevertheless, bodies of the dead are not buried there. It says this as far as § Concerning Confraternity Members. Abbas. — § 4. Confraternity members of exempt persons, or their oblates, who have not transferred themselves entirely, can be judged by the ordinaries of the places. It says this to the end. Abbas Siculus.

Alexander III, in the Lateran Council.

Since we ought both to plant sacred religion and to foster it when planted in every way, nowhere do we accomplish this better than if, by the authority committed to us *by God*, we take care to nourish those things which are right and to correct those which impede the progress of virtue. But from the *vehement* complaint of our brothers and fellow bishops we have learned that the brothers of the Temple and Hospital, and *also* other religious, exceeding the privileges granted to them by the Apostolic See, presume many things against episcopal authority which both cause scandal *to the people of God* and produce grave peril to souls. *For they alleged that they receive churches from the hands of laymen; admit excommunicated and interdicted persons to ecclesiastical sacraments and burial in their churches without the bishops' knowledge; institute and remove priests; and, when their brothers go to seek alms, although it was granted to them that at their arrival churches should be opened once a year and divine offices celebrated in them, several of them, coming repeatedly from one or diverse houses to an interdicted place, abuse the indulgence of their privileges in celebrating offices and burying the dead, and then presume to bury the dead at interdicted churches. Also, by occasion of the confraternities which they establish in many places, they enervate the strength of episcopal authority, while under pretext of certain privileges they intend to fortify against the bishops' sentence all who wish to betake themselves to their confraternity. In these matters, however, since the excess arises not so much from the knowledge or counsel of the superiors as from the indiscretion* [*of certain*] *inferiors, we have decreed that the things in which they exceed are to be removed and the things which create doubt are to be declared.* Therefore, we prohibit both them and also any other religious from receiving churches and tithes from the hand of laymen without the consent of the bishops, relinquishing *even* whatever they received at any time contrary to this tenor. § 1. We likewise establish that excommunicated persons and those interdicted by name are

to be avoided by them and by all others according to the sentence of the bishops. § 2. But in their churches which do not belong to them by full right, they shall present to the bishops the priests who are to be instituted, so that they may answer to the bishops *indeed* concerning the care of the people, but render to the religious themselves a competent account concerning temporal things. Nor shall they dare to remove those instituted without consulting the bishops. § 3. But if Templars or Hospitallers come to an interdicted church, they are not to be admitted to ecclesiastical office except once in the year, nor then are bodies of the dead to be buried there. § 4. *Concerning* confraternity members, however, we establish this: that, if they have not wholly given themselves to the aforesaid brothers but have determined to remain in every respect in their own properties, on this account they shall in no way be exempted from the sentence of their bishops; rather, the bishops shall exercise their power over them as over their other parishioners when they are to be corrected for their offenses. What has been said concerning the aforesaid brothers, we command also to be observed by other religious who by their presumption seize the rights of bishops and presume to come against their canonical sentences and the tenor of our privileges. For if they come against this statute, both the churches in which they presumed those things shall lie under interdict, and what they did shall be held invalid *and void*.

> Religiosi etiam exempti ecclesias et decimas non debent a laicis recipere, sine consensu dioecesanorum. Hoc dicit usque ad § Excommunicatos. - § 1. Excommunicati et interdicti omnino non debent admitti ad divina, etiam per religiosos exemptos. H. d. usque ad § In ecclesiis. Abbas Siculus. - § 2. Religiosi etiam exempti in ecclesiis, non pertinentibus ad eos, pleno iure non instituunt nec destituunt inconsultis episcopis; sed rationem exigunt in temporalibus ab institutis. H. d. usque ad § Quodsi. - § 3. Hospitalarii et Templarii semel in anno celebrant in ecclesia, posita in loco interdicto; ibi tamen non sepeliuntur corpora mortuorum. H. d. usque ad § De confratribus. Abbas. - § 4. Confratres exemptorum, seu ipsorum oblati, qui in totum non se transtulerunt, iudicari possunt ab ordinariis locorum. H. d. usque ad fin. Abbas Siculus.
>
> Alexander III. in concilio Lateranensi. Quum et plantare sacram religionem, et plantatam fovere modis omnibus debeamus, nusquam hoc melius exsequimur, quam si nutrire ea, quae recta sunt, et corrigere, quae profectum virtutis impediunt, commissa nobis *a Deo* auctoritate curemus. Fratrum autem et coepiscoporum nostrorum *vehementi* conquestione comperimus, quod fratres Templi et Hospitalis, et alii *quoque* religiosi, indulta sibi ab apostolica sede privilegia excedentes, contra episcopalem auctoritatem multa praesumunt, quae et scandalum faciunt *populo Dei* et grave pariunt periculum animarum. *Proposuerunt enim, quod ecclesias recipiant de manibus laicorum, excommunicatos et interdictos ad ecclesiastica sacramenta et sepulturam admittant in ecclesiis suis praeter eorum conscientiam, et instituant et amoveant sacerdotes, et fratribus eorum ad eleemosynas quaerendas euntibus, quum indultum sit eis, ut in eorum adventu semel in anno aperiantur ecclesiae atque in eis divina celebrentur officia, plures ex eis, de una sive diversis domibus ad interdictum locum saepius accedentes, indulgentia privilegiorum in celebrandis officiis et sepeliendis mortuis abutuntur, et tunc mortuos apud interdictas ecclesias sepelire praesumunt. Occasione quoque fraternitatum, quas in pluribus locis faciunt, robur episcopalis auctoritatis enervant, dum contra eorum sententiam sub privilegiorum aliquorum obtentu munire cunctos intendunt, qui ad eorum fraternitatem voluerint se conferre. In his autem, quia non tam de maiorum conscientia vel consilio, quam de minorum indiscretione* [*quorundam*] *exceditur, et removenda ea, in quibus excedunt, et quae dubitationem faciunt decrevimus declaranda*. Ecclesias igitur et decimas de manu laicorum sine consensu episcoporum tam illos quam etiam quoscunque alios religiosos recipere prohibemus, dimissis *etiam*, quascunque contra tenorem istum aliquo tempore receperunt. § 1. Excommunicatos quoque et nominatim interdictos tam ab illis quam ab aliis omnibus iuxta episcoporum sententiam statuimus evitandos. § 2. In ecclesiis vero suis, quae ad eos pleno iure non pertinent, instituendos presbyteros

episcopis repraesentent; ut eis *quidem* de plebis cura respondeant, ipsis vero pro rebus temporalibus rationem exhibeant competentem. Institutos etiam inconsultis episcopis non audeant removere. § 3. Quodsi Templarii vel Hospitalarii ad ecclesiam venerint interdictam, non nisi semel in anno ad ecclesiasticum officium admittantur, nec tunc ibi sepeliantur corpora defunctorum. § 4. De confratribus *autem* hoc constituimus, ut, si non se praedictis fratribus omnino reddiderint, sed in proprietatibus suis omnimodo duxerint remanendum, propter hoc ab episcoporum suorum sententia nullatenus eximantur, sed potestatem suam in eos, sicut in alios parochianos suos exerceant, quum pro suis fuerint excessibus corrigendi. Quod autem de praedictis fratribus dictum est, ab aliis quoque religiosis, qui praesumptione sua episcoporum percipiunt iura, et contra canonicas eorum sententias et tenorem privilegiorum nostrorum venire praesumunt, praecipimus observari. Si enim contra institutum hoc venerint, et ecclesiae, in quibus ista praesumpserint, subiaceant interdicto, et quod egerint irritum habeatur *et vacuum*.

Chapter IV

Latin source headnote: One who derogates from the privileges of others is to be deprived of his own privileges.

The same, to the Archbishops and Bishops to whom these letters shall come.

Our beloved sons, the brothers of the Hospital of Jerusalem, have shown by a complaint transmitted to us that you are unwilling to do justice for them concerning their malefactors, contemning the reception of their privileges, *and that you in no way permit them to seek alms in your parishes or to bury their brothers. Therefore, because those brothers are fortified with many liberties and privileges by the Roman Pontiffs, which we are unwilling to allow to be infringed in our times, by apostolic writings we command your fraternity, by way of precept, that you cause absolutely no molestation to the said brothers in those things which are known to have been granted to them by the Roman Church, nor presume in any way to contradict or deny those things to them. For if henceforth we shall be able to discover such things concerning you in truth*, know for certain that we shall curtail the privileges granted to you, since you do not fear to oppose *our authentic writings and those* of the Roman Church.

Suis privilegiis privandus est qui alienis derogat.

Idem Archiepiscopis et Episcopis, ad quos literae istae pervenerint.

Dilecti filii *nostri* fratres Hospitalis Hierosolymitani transmissa nobis conquestione monstrarunt, quod vos eis de malefactoribus suis iustitiam facere non vultis, privilegia ipsorum recipere contemnentes, *nec ipsos eleemosynas quaerere in vestris parochiis, aut fratres eorum sepelire aliquatenus permittatis. Quoniam igitur iidem fratres multis sunt libertatibus et privilegiis a Romanis Pontificibus praemuniti, quae ut nostris temporibus infringantur nolumus sustinere, fraternitati vestrae per apostolica scripta praecipiendo mandamus, quatenus iam dictis fratribus in his, quae sibi ab ecclesia Romana noscuntur indulta fuisse, nullam prorsus molestiam faciatis, nec ea sibi contradicere vel denegare aliquatenus attentetis. Si enim de vobis in veritate de cetero talia poterimus comperire*, Pro certo sciatis, quod nos concessa vobis privilegia decurtabimus, quum *nostris et* ecclesiae Romanae scriptis authenticis obviare minime timeatis.

Chapter V

Latin source headnote: Even privileged persons cannot admit excommunicated persons to burial; and, if they have admitted them, they ought to cast them out from there; and, if they have not done so, the bishop shall supply their omission.

The same, to the Archbishop of Canterbury.

For this purpose, *although undeserving, by the Lord's disposition we have been established in the see of the prince of the blessed Apostles: that we ought to plant the things which look to the adornment of the virtues, and take care to pluck up and root out the things which are opposed to reason and impede the advancement of salvation. Indeed, we have learned that the Hospitallers presume, against the prohibitions of the bishops, to consign to ecclesiastical burial persons excommunicated by name, not considering how grave it is to communicate in death with those whom the Church, while they lived, separated from her bosom for their offenses. Whence, because we neither wish nor ought in any way to tolerate presumption and rashness of this kind, brother, by apostolic writings we* command you to order the Hospitallers that, if they have buried in the cemeteries of churches any who died in excommunication, they cast them altogether outside those *cemeteries*. But if they are unwilling to do so, you shall carry out this *very thing, by our authority, the obstacle of appeal being removed,* concerning those whom it shall be established *to you* died in excommunication. [*Furthermore, concerning these persons, etc. Given at Ferentino, on the tenth day before the Kalends of April,* 1175.]

> Etiam privilegiati non possunt admittere excommunicatos ad sepulturam, et, si admiserint, debent inde eos eiicere, et, si non fecerint, episcopus supplebit.
>
> Idem Cantuariensi Archiepiscopo.
>
> Ad haec *in beatorum Apostolorum principis sede Domino disponente quanquam immeriti sumus constituti, ut plantare debeamus quae ad virtutum spectant decorem, et evellere et eradicare curemus quae obvia sunt rationi et profectum impediunt salutis. Intelleximus sane, quod Hospitalarii nominatim excommunicatos contra prohibitiones episcoporum ecclesiasticae praesumunt tradere sepulturae, non cogitantes, quam grave sit illis morte communicare, quos, dum viverent, ecclesia a suo sinu pro eorum excessibus segregavit. Unde, quoniam huiusmodi praesumptionem et temeritatem nolumus nec debemus aliquatenus tolerare, frater, tibi per apostolica scripta* Mandamus, quatenus Hospitalariis praecipias, ut, si quos in excommunicatione defunctos in coemeteriis ecclesiarum sepelierint, eos extra coemeteria *ipsa penitus* eiiciant. Quodsi facere noluerint, tu hoc *ipsum* de his, quos in excommunicatione defunctos esse *tibi* constiterit, *auctoritate nostra remoto appellationis obstaculo* exsequaris. [*Praeterea de his etc. - Dat. Ferentini X. Kal. April. *1175.]

Chapter VI

Latin source headnote: Prescription runs against the privilege of a church over a period of thirty years, but today over forty, as below in this same title, *Accedentibus*.

The same, to the Abbot and Monks of Saint Andrew of the Cistercian Order.

If for thirty years you have paid tithes to the canons of Plautio from the land that you possess in their parish, from now on [*and*] in full [*without any*] *molestation or occasion, appeal being set aside,* you shall pay them those tithes, *and you shall restore in full those which you are known to have withheld*. For although by benefit of the privileges of the Roman Church it was granted to the brothers of the Cistercian Order that they ought to pay no tithes *or first fruits* from their labors, nevertheless you wished for so long a time to detract from the privilege granted [*by*] *us* to you; and, because everyone is free to renounce his own right, you cannot defend yourselves in this matter in that way. [*Indeed, unless we loved you and your order so greatly, etc.*]

> Contra privilegium ecclesiae praescribitur spatio XXX. annorum, hodie vero XL. ut infra eod. Accedentibus.
>
> Idem Abbati et Monachis S. Andreae Cisterciensis ordinis.

Si de terra, quam habetis in parochia canonicorum de Plautio, per XXX. annos eis decimas persolvistis, eas sibi de cetero [*et*] integre [*aliqua*] *sine molestatione occasione et appellatione postposita* persolvatis, *et quas noscimini subtraxisse integre restituatis*. Licet enim privilegiorum Romanae ecclesiae beneficio fratribus Cisterciensis ordinis indultum fuerit, quod de laboribus suis nullas decimas *vel primitias* persolvere debeant: de privilegio tamen [*a*] *nobis* indulto tanto tempore vobis detrahere voluistis, quum liberum sit unicuique suo iuri renunciare, eoque modo non potestis vos in hac parte tueri. [*Sane nisi nos vos et ordinem vestrum adeo diligeremus, etc*.]

Chapter VII

Latin source headnote: Judgment is not to be made concerning privileges unless their tenor has been inspected, and according to their contents they are to be observed by all subjects.

The same, to the Bishop of Amiens.

Moreover, although the Templars and Hospitallers have been endowed with many prerogatives of liberty, we do not doubt that they possess a different liberty in those places in which they had been inhabitants before the places came to them. You can perceive all this more fully from an inspection of *their* privileges, and you shall observe according to what you find. For we wish them to observe the tenor of their privileges in such a way that they are in no way seen to transgress their bounds.

De privilegiis non est iudicandum, nisi eorum tenore inspecto, et secundum continentiam eorum ab omnibus subditis sunt servanda.

Idem Ambianensi Episcopo.

Porro, quamvis Templarii et Hospitalarii multa sint libertatis praerogativa donati, non dubitamus, quin aliam libertatem habeant in locis, in quibus, antequam pervenissent ad eos, fuerant habitatores, quod totum ex inspectione privilegiorum *suorum* plenius advertere potes, et secundum quod inveneris, ita observes. Sic enim eos volumus privilegiorum suorum servare tenorem, quod eorum metas transgredi minime videantur.

Chapter VIII

Latin source headnote: Exemption from the jurisdiction of bishops is not proved by payment of a census made to the Roman Church.

The same, to I., Legate of the Apostolic See.

We have received the letters which you directed concerning the churches paying a census *in the episcopate of our venerable brother the Bishop of Novara, and from their tenor we have perceived how vigilant you are in preserving our rights*. Nevertheless, we wish it not to escape your diligence that, just as not all those who exist specially under the right of blessed Peter pay a census annually to the Apostolic See, so not all those paying *our* census are held immune from subjection to bishops. Therefore, the privileges of the *same* churches are to be inspected, and their tenor is to be attended to more diligently, so that, if it shall have been discovered that a church which pays a census exists specially under the right of blessed Peter and that an annual census is rendered as a token of the liberty received, it will not undeservedly be able to enjoy a special prerogative. But if the census is paid as a token of the protection received, nothing is seen on this account to have been withdrawn from the right of the diocesan bishop. *Therefore, since it is established that the priest of Saint Peter promised obedience to the aforesaid bishop at his ordination, as he confessed and asserted at law, we are unwilling that you protect him or*

any others, because, just as we wish our rights to be preserved by our brothers and fellow bishops, so it is fitting for us to guard their rights unimpaired.

> Per solutionem census, quae fit Romanae ecclesiae, non probatur exemptio a iurisdictione episcoporum.
>
> Idem I. apostolicae sedis Legato.
>
> Recepimus literas, quas de ecclesiis censualibus *episcopatus venerabilis fratris nostri Novariensis episcopi* direxisti, *et ex earum tenore perpendimus, qualiter ad iura nostra servanda vigil exsistas*. Ceterum diligentiam tuam volumus non latere, quod, sicut non omnes, qui specialiter beati Petri iuris exsistunt, annuatim apostolicae sedi censum exsolvunt, ita non omnes *nostri* censuales ab episcoporum subiectione habentur immunes. Inspicienda sunt ergo *ipsarum* ecclesiarum privilegia, et ipsorum tenor est diligentius attendendus, ut, si fuerit deprehensum, quod ecclesia, quae censum solvit, specialiter B. Petri iuris exsistat, et ad indicium perceptae libertatis census annuus conferatur, non immerito poterit speciali praerogativa gaudere. Si vero ad indicium perceptae protectionis census persolvitur, non ex hoc iuri dioecesani episcopi aliquid videtur esse subtractum. *Quum igitur constet, presbyterum S. Petri praefato episcopo obedientiam promisisse in ordinatione sua, sicut in iure confessus asseruit, nolumus, quod eum vel aliquos tuearis, quia sicut iustitias nostras volumus a fratribus et coepiscopis nostris reservari, ita eorum iura nos convenit illibata custodire*.

Chapter IX

Latin source headnote: A privilege granted to one person cannot be extended to another on account of identity of reason. It says this, and it is customarily cited every day.

The same.

Indeed (*And below:*) It is rash and unworthy for anyone to presume by his own authority for himself that which the Roman Church, after regard was had to a certain reason, willed to grant to someone by singular benefits.

> Privilegium, uni concessum, non potest ad alium extendi propter identitatem rationis. H. d. et solet quotidie allegari. Idem.
>
> Sane (*Et infra:*) Temerarium est et indignum, aliquem sibi sua auctoritate praesumere, quod Romana ecclesia alicui, certa ratione inspecta, singularibus voluit beneficiis indulgere.

Chapter X

Latin source headnote: Public bells cannot be kept in private oratories, even by religious. It says this; and hold this text in mind, for it is cited every day and is in use.

Celestine III, to the Bishop of Ávila.

You desire to be certified by *our* open letters whether Templars, Hospitallers, and others having oratories in their houses are permitted to place bells in them and ring them publicly. We respond to the consultation *which you make, and we say*, that they are not permitted to do this; rather, they are to be restrained by you through ecclesiastical censure, appeal being removed, so that they are content with their own right in such a way that they do not impede the justice of others.

> In oratoriis privatis campanae publicae teneri non possunt etiam per religiosos. H. d. et tene menti hunc textum, qui quotidie allegatur et est in usu.
>
> Coelestinus III. Abulensi Episcopo.

> Patentibus literis *nostris* certificari desideras, utrum Templariis, Hospitalariis et aliis, oratoria in domibus suis habentibus, liceat campanas in eis ponere publiceque pulsare. Respondemus autem consultationi tuae *quam facis, et dicimus*, quod non licet eis hoc agere; quin potius per te per censuram ecclesiasticam appellatione remota coercendi sunt, ut ita sint suo iure contenti, quod iustitiam non impediant aliorum.

Chapter XI

Latin source headnote: Throughout the whole province those Hospitallers who send persons falsely marked with the cross to collect alms are deprived of the office of exhortation; and, if those sent are laymen, they are excommunicated, but, if they are clerics, they are suspended from office and benefice. Those who celebrate in a polluted church before its reconciliation are punished by the same suspension; persons suspended by bishops cannot be absolved by exempt persons; and confraternity members of privileged persons who do not transfer themselves entirely to them are not privileged.

Innocent III, to the Archbishop of Lyons.

The tenor of your letters has taught us that the brothers of the Hospital of Saint John send lay and illiterate men to collect alms *which the people have been accustomed to send from devotion to the aforesaid place for the sustenance of the poor. But because they are not sufficient by themselves to go about all the places, they associate with themselves clerics, priests, and even rude laymen—not religious, but practiced in wickedness—placing the sign of the cross upon their breasts. And since they serve gluttony and drunkenness, showing themselves very dishonorable in other things, they gravely scandalize the clergy and people, since those laymen perform the offices of priories and are set over both clerics and priests, and they not only exist disobedient to the bishops but also rashly presume to claim for themselves certain immunities as though granted to them by the Apostolic See. For* when one of them, *recently* striking the vicar priest in a certain baptismal church conferred upon them by your predecessor, had polluted the church itself by the shedding of blood, you prohibited divine offices from being celebrated there until reconciliation; but nevertheless they celebrated divine offices in it. *Moreover, they receive priests coming to them from anywhere, concerning whose manner of life and ordination there is absolutely no certainty, to celebrate divine office for them, the assent of the bishops not having been sought at all.* Other priests, suspended from office by their bishops *according to the requirement of their deserts*, those same men, although they are laymen, restore to the performance of divine offices. Furthermore, they endeavor so to emancipate certain persons who dwell with their wives in their own houses, because they confer something of their own upon them annually, that they are by no means bound to answer anyone according to the law of the land concerning the things objected against them. But because one who abuses the power permitted to him deserves to lose his privilege, *by apostolic writings* we command your fraternity that, if you find any clerics, *or priests*, or laymen falsely marked with the cross by the said brothers for collecting alms, then throughout your whole province, *supported by our authority*, you prohibit those by whom they are established to have been sent from the office *of this kind* of exhortation. Those sent *also*, if they were laymen, you shall strike with the sword of excommunication; if they were clerics *or priests*, you shall suspend them from office and benefice, with no benefit of privilege or remedy of appeal whatever prevailing. Enveloping with the same penalty of suspension those whom you shall know to have celebrated divine things in the aforesaid church, subject to you by diocesan law, after your interdict, you shall not permit divine offices to be celebrated in it until it has been reconciled, *as the sacred statutes command*. Priests also suspended by their bishops and rashly restored by the aforesaid brothers to their offices you shall, *supported by our*

authority, return to the same sentence of suspension. But those whom they assert not to be bound for the aforesaid cause to answer others according to the law of the land we are unwilling to have excused; rather, you shall compel them to answer, the obstacle of appeal being removed. [*Given at the Lateran, on the fifth day before the Ides of December,* 1198.]

> In tota provincia exhortationis officio privantur Hospitalarii, qui mittunt pro eleemosynis cruce falso signatos, et, si missi sunt laici, excommunicantur; si sunt clerici, ab officio et beneficio suspenduntur. Et eadem suspensione puniuntur qui ante reconciliationem in polluta ecclesia celebrant; et suspensi per episcopos exemptos absolvi non possunt; et fratres privilegiatorum, qui ad eos se omnino non transferunt, privilegiati non sunt.
>
> Innocentius III. Archiepiscopo Lugdunensi. Tuarum nos tenor edocuit literarum, quod fratres Hospitalis sancti Ioannis laicos et illiteratos mittunt pro eleemosynis colligendis, *quas populus ex devotione pro sustentatione pauperum praefato loco mittere consuevit. Quia vero non sufficiunt per se loca omnia circumire, sibi clericos, sacerdotes, laicos etiam rudes, non religiosos, sed in nequitiis exercitatos assumunt, eorum pectoribus crucis characterem imponentes. Quumque gulae et ebrietati deserviant, se valde inhonestos in aliis ostendentes, clerum et populum graviter scandalizant, quum ipsi laici prioratuum fungantur officiis, et tam clericis quam sacerdotibus praeponantur, et non solum episcopis inobedientes exsistunt, verum etiam quasdam immunitates, tanquam ab apostolica sede sibi indultas, praesumunt sibi temere vindicare*. Quum *enim* in quadam ecclesia baptismali, eis a praedecessore tuo collata, quidam eorum, *nuper* percutiens vicarium sacerdotem, ipsam ecclesiam sanguinis effusione foedasset, usque ad reconciliationem divina ibidem interdixisti officia celebrari; sed nihilominus ipsi in ea divina officia celebrarunt. *Sacerdotes insuper, undecunque venientes ad eos, de quorum etiam conversatione et ordinatione nulla certitudo prorsus habetur, ad divinum officium sibi celebrandum recipiunt, episcoporum assensu minime requisito*. Alios vero presbyteros ab officio suspensos per episcopos suos *pro suorum exigentia meritorum*, iidem, quum sint laici, ad divina officia restituunt exsequenda. Quosdam praeterea, qui cum uxoribus suis in domibus propriis commorantur, eo, quod eis de suis aliquid conferunt annuatim, ita emancipare contendunt, ut aliquibus secundum legem terrae de sibi obiectis respondere minime teneantur. Verum, quia privilegium meretur amittere qui permissa sibi abutitur potestate, fraternitati tuae *per apostolica scripta* mandamus, quatenus, si quos clericos, *seu sacerdotes* aut laicos a dictis fratribus pro colligendis eleemosynis cruce falso signatos inveneris, his, a quibus ipsos missos esse constiterit, per totam provinciam tuam *nostra fretus auctoritate* exhortationis *huiusmodi* officium interdicas, missos *etiam*, si laici fuerint, excommunicationis mucrone percellas, si clerici *vel presbyteri fuerint*, ab officio beneficioque suspendas, nullo prorsus privilegii beneficio vel appellationis remedio praevalente. Eos vero, quos in praedicta ecclesia, lege tibi dioecesana subiecta, post interdictum tuum divina celebrare cognoveris, eadem poena suspensionis involvens, in ea, donec reconciliata fuerit, *quemadmodum sacros praecipiunt instituta*, officia non permittas celebrari divina; presbyteros etiam, suspensos ab episcopis suis, et per praedictos fratres ad officia sua temere restitutos, in eandem sententiam suspensionis *nostra fretus auctoritate* reducas. Illos vero, quos ad respondendum aliis secundum legem terrae pro praemissa causa asserunt non teneri, nolumus excusari, quin eos ad respondendum sublato appellationis impedimento compellas. [*Dat. Lat. V. Id. Dec. *1198.]

Chapter XII

Latin source headnote: The contents of a lost instrument can be proved through witnesses who read it through, if they depose concerning its tenor and that it was without defect. It says this, and the case is nowhere else so clear.

The same, to the Abbot and Convent of Saint Peter of Gubbio.

When formerly we were established at Perugia and you, son abbot, humbly presented to us the privilege of Pope Lucius *of good memory, our predecessor,* and petitioned that it be renewed, it was not brought to effect on account of the contradiction of *our venerable brother Mark,* Bishop of Gubbio, *who arrived at that time,* asserting that this redounded to his prejudice. [*And when each of you complained of the other in our audience, we committed the cause to be heard by our venerable brother the Bishop of Assisi under this form: that he should take care to recall you and the said bishop to concord; otherwise, he should hear the things alleged on both sides and, reducing everything to writing, faithfully disclose to us the course of the matter. When he had inspected the privileges granted to you by the Apostolic See and understood that your monastery pertained specially to the Roman Church, he did not judge, as we have learned, that he should proceed further in the cause. Subsequently, at the petition of the aforesaid Bishop of Gubbio, our letters concerning the mutual questions were directed to our venerable brother the Bishop of Cagli and our beloved son Ar., Abbot of Saint Mary of Vallis Pontis. But because, while the judgment was pending, John the monk carried off the privileges, other charters, and the treasure of your monastery, it was necessary for you, abbot, again to labor to come to our presence, where you obtained letters providing that through a sentence of excommunication those who knew anything concerning the loss of the privilege should be compelled to speak the truth. But because not even thus could you recover the lost privileges, you returned to us anew.*] Therefore, when you, *with your witnesses,* and the proctors of the aforesaid *Bishop of Gubbio* were established in our presence, we commanded *our beloved son* B., Cardinal Priest of the Basilica of the Twelve Apostles, to receive *diligently* concerning the loss and tenor of the privileges the witnesses whom you should deem fit to produce. He, *as the diligent executor of our command, with the aforesaid proctors present,* faithfully reduced to writing the depositions of ten sworn witnesses. When their depositions had been published, the *said* proctors sought an adjournment for producing witnesses *of the bishop,* through whom they might discredit those introduced by the opposing party; which adjournment, *a peremptory term having been fixed,* we determined should be granted to them under this tenor: that they should prove before the Apostolic See whatever they wished, where the other party had assumed the burden of proof. (*And below:*) We, however, knowing clearly, both through the depositions of the witnesses and *through* the assertions of certain of our brothers, that the tenor of the said privilege had been such—namely, that your monastery pertained to the Roman Church with no intermediary; that no bishop was permitted to pronounce excommunication against that monastery and its churches, so that the brothers serving the Lord there, free from the power of all, might enjoy the favor of the liberty of the Roman Church; and that no mention of the diocesan bishop was contained in them—and *nevertheless* also attending to this: that, *as we learned clearly from the statements of certain witnesses, and as many of our brothers who were present at that time recalled,* when you, son abbot, in the time of Celestine *of good memory,* our predecessor, had come to his presence, he, after inspecting the privileges of your church, admitted you to the kiss as one not bound, although you were said to have been excommunicated by the Bishop of Gubbio, which he is presumed not to have done unless he had known that your monastery pertained specially to the Roman Church, *on the common counsel of our brothers we decree that it is to be pronounced* that the privilege of Pope Lucius *of good memory* [*our predecessor*], which appeared without defect of bull, charter, or letter when it was shown to us, had that tenor which it is known through the depositions of witnesses and assertions of our brothers to have possessed. [*Therefore, we decree, etc. Given at the Lateran, on the second day before the Kalends of June,* 1199.]

> Contenta in instrumento perdito probari possunt per testes, qui illud perlegerunt, si deponunt de tenore, et quod erat sine vitio. H. d. et non est alibi casus ita clarus.

Idem Abbati et Conventui S. Petri Eugubini. Quum olim essemus apud Perusiam constituti, et tu, fili abbas, privilegium *bonae memoriae* Lucii Papae *praedecessoris nostri* nobis humiliter praesentans, postulaveris innovari: propter contradictionem *venerabilis fratris nostri Marci* Eugubini episcopi, *qui tunc temporis supervenit*, asserentis hoc in suum praeiudicium redundare, non fuit effectui mancipatum. [*Quumque alter vestrum de altero in nostro auditorio quereretur, venerabili fratri nostro Assisinati episcopo causam sub ea forma commisimus audiendam, ut vos et iam dictum episcopum curaret ad concordiam revocare; alioquin audiret utrinque proposita, et omnia in scriptis redigens, nobis processum negotii fideliter reseraret. Qui quum indulta vobis a sede apostolica privilegia inspexisset, intellecto, quod monasterium vestrum ad Romanam ecclesiam specialiter pertineret, in causa non duxit ulterius, sicut accepimus, procedendum. Consequenter vero ad venerabilem fratrem nostrum Callensem episcopum et dilectum filium Ar. abbatem sanctae Mariae Vallis pontis ad postulationem praefati episcopi Eugubini literae nostrae fuerunt super mutuis quaestionibus destinatae. Sed quia pendente iudicio Iohannes monachus privilegia, chartas alias et thesaurum monasterii vestri rapuit, te, abbas, ad nostram oportuit praesentiam iterum laborare, ubi literas impetrasti, quod per excommunicationis sententiam, qui de amissione privilegii scirent aliquid, cogerentur dicere veritatem. Sed quoniam neque sic amissa potuisti privilegia reperire, ad nos denuo es reversus.*] Te igitur *cum testibus tuis* et praefati episcopi *Eugubini* procuratoribus in nostra praesentia constitutis, *dilecto filio nostro* B. basilicae XII. Apostolorum presbytero cardinali dedimus in mandatis, ut super amissione ac tenore privilegiorum testes reciperet *diligenter*, quos duceres producendos, qui *mandati nostri diligens exsecutor praesentibus praefatis procuratoribus* fideliter redegit in scriptis depositiones X. testium iuratorum, quorum depositionibus publicatis *iam* dicti procuratores ad producendos testes *episcopi*, per quos inductos a parte adversa repellerent, inducias postularunt; quas *praefixo termino peremptorio* sub eo tenore illis duximus concedendas, ut apud sedem apostolicam probarent quae vellent, ubi onus probationis pars altera subiisset. (*Et infra:*) Nos vero, tam per depositiones testium quam *per* assertiones quorundam fratrum nostrorum liquido cognoscentes, talem dicti privilegii fuisse tenorem, quod videlicet coenobium vestrum nullo mediante ad Romanam ecclesiam pertineret, et quod non liceret alicui episcopo eidem monasterio et eius ecclesiis excommunicationem indicere, ut fratres, illic Domino servientes, ab omnium potestate liberi, Romanae ecclesiae libertatis gratia potirentur, et quod nulla in eis mentio dioecesani episcopi habebatur, illud etiam *nihilominus* attendentes, quod, *sicut ex dictis quorundam testium intelleximus evidenter, et plerique de nostris fratribus, tempore illo praesentibus, recolebant*, quum tu, fili abbas, tempore *bonae memoriae* Coelestini praedecessoris nostri ad ipsius praesentiam accessisses, ipse, inspectis ecclesiae tuae privilegiis, te, licet excommunicatus ab Eugubino episcopo dicereris, tanquam non ligatum admisit ad osculum, quod praesumitur non fecisse, nisi monasterium vestrum cognovisset ad Romanam ecclesiam specialiter pertinere, *de communi fratrum nostrorum consilio pronunciandum* decernimus, privilegium illud *bonae memoriae* Lucii Papae [*praedecessoris nostri*] quod sine reprehensione bullae, chartae vel literae apparebat, quando fuit nobis ostensum, illius fuisse tenoris, cuius per depositiones testium et assertiones fratrum nostrorum noscitur exstitisse. [*Decernimus ergo etc. Dat. Lat. II. Kal. Iun.* 1199.]

Chapter XIII

Latin source headnote: Renewal of privileges does not bestow a new right, but preserves the ancient one. It says this as regards the title.

The same, to the Bishop-elect of Châlons and the Abbot of Trois-Fontaines.

It was intimated *to our ears* on behalf of the abbess and sisters of the church of Iotrensis that *our venerable brother* the Bishop of Meaux, on occasion of a certain commission obtained by letters to delegated judges, in which no mention was made of their privileges—which declare that they and their churches, and the clergy and people of Iotrensis, look to the Apostolic See with no intermediary,

privileges of which he was not ignorant—began to molest them gravely by demanding from them and from the clergy and people of Iotrensis, *who according to the privileges of the Apostolic See enjoy a similar liberty*, obedience and complete subjection *to be rendered to himself*. [*Whence, when they were cited by the same judges, not by joining issue but rather by excepting against them, they said that we were their special lord in judgment and that they owed no obedience to the Bishop of Meaux, because, when our venerable brother O., Bishop of Ostia, then legate of the Apostolic See, had diligently inspected their privileges and learned that their monastery pertained to the right and property of the Apostolic See, in our stead he bestowed the gift of benediction upon the abbess herself, who at that time had newly been elected, and caused her specially to promise obedience to us and the Roman Church, requiring and receiving an oath from her for this.*] But when the judges *and their assessors* burdened them greatly [*in that they denied them a delay for exhibiting the privileges of liberty, although their proctors offered them an oath that they did not then have the privileges, nor had it been procured by fraud that they had not carried them to their presence, and they were unwilling to give them brief adjournments,*] they fled to the benefit of appeal, [*excepting against the same judges: both because they asserted that they were suspect, and especially the Bishop of Paris himself, who had a similar cause against the beloved son the Abbot of Saint Geneviève, and therefore they believed that he was unwilling to give any sentence other than one which he would wish another to give for himself; and because, when he had first wished to pronounce an interlocutory ruling without his fellow judge, and the proctors of the abbess said that they wished his fellow judge to be present, he had answered them that the latter would profit them in nothing, because, when he came, he would do nothing except what the bishop himself wished; and because they afterward denied them reasonable adjournments; and because on occasion of those letters they ought not to proceed in the cause, for the reason that by those letters the Bishop of Meaux demanded that the obedience owed—which the abbess is bound to render to the Roman Pontiff alone—be rendered to him by her and by the clergy and people of Iotrensis, although it was established by the privileges of the Roman Church that they were bound to him in nothing, and no mention of their privileges was made in those letters.*] But the *same* judges, not deferring to the appeal nor having compassion upon the frailty of their sex, pronounced sentences of excommunication against the abbess and of interdict against the clergy and people of Iotrensis. Indeed, when the envoys of the church of Iotrensis had recounted these and many *other* things in our presence, *by which they said that the women and their people had been burdened contrary to the liberty granted to them*, they showed us an apostolic privilege through which it was established that the church of Iotrensis pertained specially to the Roman Church. But we, detaining the same envoys longer on account of the aforesaid appeal, because in the end no suitable respondent appeared to defend the opposing party, *although afterward a certain simple envoy presented to us concerning this the letters of the aforesaid Bishop of Paris and Abbot of Lagny*, determined that the privilege of the Apostolic See granted to the church of Iotrensis was to be renewed, yet in such a way that through its renewal no more right should accrue to that church than it obtained through the privileges of our predecessors, since through this we wish not to grant it a new right but to preserve the ancient one. [*Because, however, etc. Given at the Lateran, on the fourth day before the Ides of January, in the fifth year,* 1203.]

> Innovatio privilegiorum novum ius non tribuit, sed antiquum conservat. H. d. quoad titulum.
>
> Idem Cathalanensi Electo et Abbati trium Fontium.
>
> Ex parte abbatissae ac sororum Iotrensis ecclesiae *nostris* exstitit *auribus* intimatum, quod *venerabilis frater noster* Meldensis episcopus commissionis occasione cuiusdam, per literas ad iudices delegatos obtentae, in qua nulla mentio habebatur de ipsarum privilegiis, quae illas et earum ecclesias, clerum et populum Iotrensem ad apostolicam sedem nullo mediante spectare declarant, quorum ipse non erat ignarus, eas incepit graviter molestare, obedientiam ab ipsis ac a clero et populo Iotrensi, *qui secundum*

privilegia sedis apostolicae gaudent consimili libertate, subiectionem omnimodam *impendendam sibi* requirendo. [*Unde, quum ab eisdem iudicibus citarentur, ipsae non contestando litem, sed excipiendo potius contra eos, nos sibi specialem in iudicio dominum esse dixerunt, et se nullam obedientiam episcopo Meldensi debere, quia, quum venerabilis frater noster O. Hostiensis episcopus, tunc apostolicae sedis legatus, earum privilegiis diligenter inspectis, cognoverit monasterium earum ad ius et proprietatem sedis apostolicae pertinere, ipsi abbatissae, quae tunc temporis noviter erat electa, vice nostra munus benedictionis impendit, et obedientiam nobis et ecclesiae Romanae fecit ab ea specialiter repromitti, requirens ab ea propter hoc et accipiens sacramentum.*] Verum, quum iudices *et assessores eorum* ipsas valde gravarent [*in eo, quod negarent dilationem eiusdem ad exhibenda privilegia libertatis, quum procuratores earum illis iuramentum offerrent, se tunc privilegia non habere, nec procuratum dolo fuisse, quominus eadem ad eorum praesentiam detulissent, et ipsi eis breves inducias dare nollent,*] ad appellationis beneficium convolarunt, [*contra iudices excipientes eosdem, tum quia eos asserebant esse suspectos, et praesertim ipsum Parisiensem episcopum, qui contra dilectum filium abbatem S. Genovefae consimilem causam habebat, et ideo ipsum credebant aliam sententiam nolle dare, quam vellet ab alio pro se dari, tum quia, quum absque coniudice suo voluisset prius interlocutoriam promulgare, procuratoribus abbatissae dicentibus, se velle coniudicem eius esse praesentem, responderat illis, eum in nullo profecturum eisdem, quia, quum ille veniret, nihil faceret, nisi quod vellet et ipse; tum quia illis postmodum rationabiles inducias denegabant; tum quia occasione literarum illarum non debeant in causa procedere pro eo, quod Meldensis episcopus per literas illas obedientiam debitam, quam abbatissa soli Pontifici Romano tenetur impendere, ab ipsa, clero et populo Iotrensibus sibi requirebat impendi, quum per privilegia ecclesiae Romanae constaret, illi eos in aliquo non teneri, et de privilegiis suis nulla in eisdem literis mentio haberetur.*] Sed iudices *ipsi*, appellationi non deferentes, nec fragilitati sexus compatientes earum, in abbatissam excommunicationis, et in clerum et in populum Iotrensem interdicti sententias protulerunt. Sane, quum nuncii Iotrensis ecclesiae praedicta et alia *multa* in nostra praesentia retulissent, *quibus eas et suos contra libertatem, eis concessam, gravatos aiebant*, privilegium nobis apostolicum ostenderunt, per quod ecclesiam Iotrensem constabat ad Romanam ecclesiam specialiter pertinere. Nos autem, eosdem nuncios propter appellationem praedictam diutius detinentes, quia tandem nullus apparuit idoneus responsalis, qui partem defensaret adversam, *licet postmodum quidam simplex nuncius super hoc nobis praedictorum Parisiensis episcopi et Latiniacensis abbatis literas praesentasset:* privilegium apostolicae sedis ecclesiae Iotrensi concessum duximus innovandum, ita tamen, ut per innovationem ipsius eidem ecclesiae non plus iuris accrescat, quam per privilegia praedecessorum nostrorum obtinuit, quum per hoc non novum ei concedere, sed antiquum ius conservare velimus. [*Quia vero etc. Dat. Lat. IV. Id. Ian. Ao. V.* 1203.]

Chapter XIV

Latin source headnote: A church using a double privilege of exemption, although it fails under one, can nevertheless aid itself by the other and prevail; nor is an exempt person bound to promise obedience to the diocesan bishop. Nevertheless, by force of exemption he cannot construct a church in a non-exempt place without the license of the diocesan bishop; and, if an exempt person in fact constructs a church in a non-exempt place, it yields to the right of the bishop.

The same, to the Bishop of Coimbra.

When formerly *you came to the Apostolic See, and*, because of the questions which you had against the *beloved sons*, the prior and canons of the monastery of Santa Cruz, concerning which appeal had been made to our hearing, you made a longer stay, because no suitable respondent appeared for the other party, we determined that a certain term should be fixed for them, at which they should come or send representatives to receive a definitive sentence concerning all the privileges and liberties which they said they possessed from the Roman Pontiffs or from M., formerly Bishop of Coimbra, and concerning the other questions brought against them by the church of Coimbra. *But so that the truth*

might appear more easily, we commanded under the same strictness that the authentic and original instruments with their bulls be exhibited to us by the same term. Meanwhile, either party was permitted before our beloved sons, the Abbots of Alcobacia and Serra, and F. *Menende*, monk of Alcobacia, to whom the cause had previously been delegated *under a certain form, and witnesses produced on both sides*, to allege and prove anything else which it should judge ought to be alleged and proved. [*We took care, however, to assign the aforesaid term to them as peremptory, so that, if they should perhaps contemn to come or send representatives at it, we would nevertheless take care to proceed in the same matter so far as we could by law. We also commanded the same judges that, if they proceeded by the will of the parties, after receiving other witnesses, if they should judge that any were to be produced concerning the privileges, liberties, and other articles, and bringing the matter as far as definitive sentence, they should send all the acts under their seals to the Apostolic See. And when afterward you had come to the Apostolic See, two canons of Santa Cruz arrived who neither possessed letters of ratification nor had been appointed proctors for this cause. Whence we, regarding the party of Santa Cruz as contumacious, as it was, since it had sent to us not suitable respondents for the cause but envoys of whatever sort, commanded that the attestations received by the delegated judges be opened, so that at last, if the merits of the cause were clear to us, we might pronounce sentence. But you, wishing to render favorable to you the mind of our most dear son in Christ, the illustrious ... King of Portugal, who had been moved against you on this account, agreed with the aforesaid canons under this form: namely, that the same cause, both concerning the principal and the incidental matter, the obstacle of appeal being removed, should be committed for termination to our venerable brother the ... Bishop of Zamora and our beloved sons the ... Dean of Zamora and the Dean of Orense; yet so that the party of Santa Cruz might, within forty days after receipt of our letters, produce instruments and witnesses concerning those articles in which, during its absence, you had produced your witnesses. Otherwise, it would not be permitted to challenge the attestations already received or to object that there had been proceedings in this cause although issue had not been joined. We therefore commanded the said bishop and deans by way of precept that, if the party of Santa Cruz wished to ratify what had been done by the said canons, after receiving its witnesses and instruments concerning the aforesaid heads —if, nevertheless, it should judge that these were to be exhibited within forty days after receipt of our letters—and after your attestations had been published according to the aforesaid form, they should proceed in the cause and terminate it with a due conclusion, appeal being set aside. But if perhaps it were unwilling to ratify what had been done by the aforesaid canons, since its contumacy would be understood not to have been purged but increased, they should proceed against them as contumacious persons and, after diligently inspecting the attestations received, decide the cause itself, appeal being removed, and order the sentence which they should render to be executed. But because this cause was to be tried outside the kingdom of Portugal, they should first take care to assign the parties a suitable term by peremptory edict, lest because of the remoteness of the places and the distance of the persons you should be compelled to labor longer. And if they could not cite the party of Santa Cruz through others, they should take care, after prior admonition, to compel through ecclesiastical censure, appeal being removed, its canons dwelling in the kingdom of León to present to it the letters of citation, notwithstanding any letters prejudicial to truth and justice which might appear to have been obtained from the Apostolic See. But if not all could take part in executing these things, the bishop should nevertheless execute them with one of the others. When the parties had been summoned to a certain term and had assembled at it, the aforesaid Bishop and Dean of Zamora, because the Dean of Orense could not be present, took care to ask the Prior of Santa Cruz whether he ratified what had been done by his canons. It was answered on his behalf that there was no place for the question, since he was prepared immediately to prove that our rescript had been obtained through falsehoods in the petitions. For when the Dean of Coimbra had brought back against the monastery of Santa Cruz eleven letters of commission to the aforesaid Abbot of Seira and the beloved son P. Froildiz, monk of Alcobacia, although the party of the church of Santa Cruz had at first obtained the requested*

adjournments, nevertheless, because on the second occasion it could not obtain individual adjournments for the individual commissions, it appealed on this account to our hearing, although appeal was prohibited by our letters. Finally, that party and the Dean of Coimbra took care to submit the matter by compromise to the aforesaid King of Portugal, the Priors ... de Costa and ... de Rimaran., and the aforesaid judges, two sureties on either side being obligated in the name of a penalty; and thus the prior renounced the appeal with the assent of his own men, while the dean renounced our letters. Furthermore, twelve canons on either side swore to render testimony to the truth concerning the whole matter. Therefore, after the witnesses had been received and their depositions reduced to writing, the king was unwilling to take part, but committed his functions to the aforesaid Priors ... de Costa and de Rimaranes, and proposed to the parties that they pursue their right through the Roman Church or through others, since a cause of this kind did not pertain to him. But you alleged before the aforesaid Bishop and Dean of Zamora that neither the renunciation of the Dean of Coimbra, who had been appointed proctor not to renounce but rather to act, nor even the compromise had been valid: both because the judges ought not to have been arbitrators; because ecclesiastical matters had been submitted by compromise to a layman; and also because the same man substituted others for himself, although concerning this there had been no treatment at all in the compromise. But the party of Santa Cruz alleged on the other side that the compromise had been valid, because it said that we had pronounced that an action could be brought concerning its penalty, adding that you had ratified the dean's renunciation and had obtained the aforesaid letters by suppressing this, although you could by no means have obtained them if you had more fully disclosed the truth concerning this to us. And although the same party introduced four witnesses who said simply and absolutely that you had ratified what had been done by the dean, nevertheless six witnesses whom you had introduced took care to depose that you expressed a ratification of this kind not simply but conditionally—namely, if the matter were concluded according to the attestations prepared. Moreover, John Caesar, canon of Santa Cruz, had been introduced as a witness, and Michael Petri and others whom you had introduced deposed under oath that we had caused the whole truth of this matter to be investigated through the first delegated judges and all things to be reported to us, and that, after everything had been diligently inspected, we had thus pronounced that your claim was not impeded by the objections. The same John and Michael Petri also, when asked whether you had ratified the dean's renunciation, said that they knew absolutely nothing concerning this; but on the part of Santa Cruz it was objected against them that they had been contrary to themselves, since they had first said that they reported the whole truth of the matter to us and secondly that they had made no mention of the ratification, which was as it were the principal part of this matter. But you said that the witness whom the party of Santa Cruz had introduced was deservedly to be believed against it. The judges, therefore, attending that appeal had been prohibited in our letters, that the condition under which you had said you ratified what had been done by the dean had not occurred, and that, after the truth of the whole matter had been inspected, we had pronounced that your cause ought not to be impeded by the things which the canons of Santa Cruz had objected; and also considering that the party of Santa Cruz had more fully discredited the aforesaid John, whom it itself had produced and who instructed the judges themselves concerning the things done before us, ruled interlocutorily on prudent counsel that proceedings in the matter which had been delegated to them could not by law be impeded on occasion of the alleged falsity. Then, when they wished to proceed in the principal matter, the Prior of Santa Cruz alleged manifold causes of recusation; because the judges, regarding them as frivolous, were unwilling to admit them, the prior, neglecting every defense of his cause, contumaciously absented himself. But we also afterward regarded the aforesaid recusations as invalid for this reason: that the contumacy of the party of Santa Cruz was not diminished but increased.]

But the judges, believing that the cause had been sufficiently conducted, *after diligently inspecting the attestations and arguments of both parties*, condemned the monastery of Santa Cruz to pay you the expenses which you swore that you had incurred over four years on occasion of this matter, *and which*

reach the sum of fifty marks of gold, on the counsel of prudent men. By their sentence they invalidated the liberty which the said M., Bishop of Coimbra, had conferred upon the monastery of Santa Cruz *to the enormous detriment of the church of Coimbra,* the assent of the canons having been extorted through *the bishop's herald and* the king's porter. Furthermore, because the same M., your predecessor, had been a canon regular and had given to the aforesaid monastery two thousand marabatini which he had acquired after he had already been promoted as bishop, the judges condemned the [*monastery*] itself to restore them. Moreover, all the tithes *as well as* the churches which the monastery, without the assent of the Bishop of Coimbra, had *received from the hand of the king or of others, whether laymen or clerics, and which it had founded by its own authority in Latren. or other places contained in the attestations*—[*namely, the chapel of Saint John constructed in the suburb of Coimbra; the churches of Toaveiro de Laurizal, de Mira, de Sorenes, Saint Facundus, the hermitage of Saint Martin de Agoacla, the churches de Mortedi, de Travancha, Saint Marina in Sena, Saint Roman with both rights, Saint Sebastian, and all the churches founded in the castle of Seirene and its boundaries; and also the inheritances contained in the attestations by right of property, namely, the inheritances of Lavaes with its church of Buarchos, de Cassaira, de Eimedi, de Saint Verissimus, and de Cabima*]—because the party of Santa Cruz had opposed the proofs made against it neither by prescription nor by another defense, they judged were to be recalled to the right of the church of Coimbra with the fruits of the intervening time, [*commanding that the two bodies of dead persons who had died excommunicated be exhumed from the cemetery of the monastery and removed altogether from the monastery. They also decreed that the parts of the parishes of Saint James and Saint Justa which had been divided by royal command without the authority of the Church and added to the chapel of Saint John were to be reduced to the state of their first integrity, and that the chapel of Saint John, so far as pertains to parochial right, was to be subjected to the jurisdiction of the church of Coimbra. They judged that the portion from the goods of the deceased was, according to the custom of the land, to be restored to those churches from which the living had received the ecclesiastical sacraments. They further judged that the vineyard which formerly Dominic Rozocida had held as a prestimony from the church of Coimbra and had conferred upon the monastery of Santa Cruz was to be recalled to the right of the church of Coimbra, and that the church of Coimbra itself was to be restored to the right of possession—to which, as had been proved by witnesses, the canons of Santa Cruz had been accustomed to go every Sunday. They similarly decreed that for the houses of the New Gate, in which the church of Coimbra formerly had parochial right, the monastery of Santa Cruz should compensate it with as much right in another suitable place as the church of Coimbra had lost in the aforesaid houses. But they took care to adjudge to the monastery itself the church de Quiaios, which the aforesaid M., Bishop of Coimbra, had granted to the monastery of Santa Cruz with the assent of his canons. They decreed that the portion of the town de Pavea—although it had been purchased in the name of the church of Coimbra from the money of M., formerly its prior, and afterward left to the same church by testament—was to be restored to the monastery, with the right of ownership of the church of Coimbra preserved, because you nevertheless occupied the monastery while it possessed that portion. But the remaining portion of the town itself, which Pelagius F. had formerly conferred upon the monastery of Santa Cruz, they adjudged to the monastery itself by full right. Furthermore, they judged that three farmsteads in Saint Ioanninus were to be restored to the monastery, with the question of ownership of the church of Coimbra preserved, absolving the monastery from the claim for twelve measures of wheat which you had sought.*]

> Ecclesia, utens duplici privilegio exemptionis, licet succumbat ex uno potest nihilominus ex alio se iuvare et obtinere; nec tenetur exemptus promittere obedientiam dioecesano; vigore tamen exemptionis non potest sine licentia dioecesani ecclesiam construere in loco non exempto; et, si exemptus de facto in loco non exempto construit ecclesiam, cedit iuri episcopi. Idem Colubriensi Episcopo.

Quum olim *ad apostolicam sedem accessisses, et* propter quaestiones, quas adversus *dilectos filios* priorem et canonicos monasterii sanctae Crucis habebas, pro quibus ad audientiam nostram fuerat appellatum, moram feceris longiorem: quia pro parte altera nullus comparuit responsalis, eisdem certum terminum duximus praefigendum, in quo venirent vel mitterent super privilegiis omnibus et libertatibus, quae a Romanis Pontificibus vel ab M. quondam Colubriensi episcopo se habere dicebant, et super aliis quaestionibus, adversus eos a Colubriensi ecclesia intentatis, diffinitivam sententiam recepturi. *Ut autem veritas facilius appareret, authentica et originalia cum bullis suis nobis usque ad eundem terminum sub eadem districtione praecepimus exhiberi*; Interim autem utrique parti liceret coram dilectis filiis tuis de Alcobacia et de Serra abbatibus, et F. *Menende* monacho Alcobaciae, quibus *sub certa forma* causa prius fuerat delegata, *et testes utrinque producti*, proponere ac probare, si quid aliud proponendum duceret ac probandum. + [*Praedictum autem terminum eis peremptorium curavimus assignare, ad quem si venire vel mittere forte contemnerent, nos nihilominus, quantum possemus de iure in eodem negotio procedere curaremus. Eisdem quoque iudicibus dedimus in mandatis, ut, si de partium voluntate procederent, receptis aliis testibus, si quos super privilegiis, libertatibus et aliis articulis, ducerent producendos, usque ad definitivam sententiam producentes, gesta omnia sub sigillis suis ad sedem apostolicam destinarent. Quumque postmodum ad sedem apostolicam accessisses, supervenerunt duo canonici S. Crucis, qui nec litteras habebant de rato, nec procuratores ad hanc causam fuerant destinati. Unde, nos, partem S. Crucis contumacem reputantes, ut erat, utpote quae non idoneos responsales ad causam, sed ad nos qualesquales nuntios destinarant, attestationes receptas a iudicibus delegatis iussimus aperiri, ut tandem, si nobis de meritis causae liqueret, sententiam proferremus. Verum, tu, animum carissimi in Christo filii nostri … Portugallensis regis illustris, qui contra te fuerat ex hoc motus, placatum reddere tibi volens, convenisti cum praedictis canonicis in hac forma, ut videlicet venerabili fratri nostro … Zamorensi episcopo, et dilectis filiis … Zamorensi et Auriensi decanis, tam super principali quam incidenti sublato appellationis obstaculo, causa committeretur eadem terminanda, sic tamen, ut pars Sanctae Crucis infra quadraginta dies post susceptionem literarum nostrarum, super articulis illis, in quibus tu in eius absentia produxeras testes tuos, instrumenta producere posset et testes. Aliter autem, non liceret eisdem attestationes calumniari receptas vel excipere, quasi fuisset in hac causa, lite non contestata processum. Nos ergo, dictis episcopo et decanis praecipiendo dedimus in mandatis, ut si pars Sanctae Crucis ratum vellet habere quod a dictis canonicis erat actum, receptis testibus et instrumentis ipsius super capitulis supradictis, si tamen infra quadraginta dies post susceptionem literarum nostrarum ea ducerent exhibenda, et tuis attestationibus publicatis secundum formam praedictam, in causam procederent, et eam, appellatione postposita, fine debito terminarent. Quod si forsan ratum nollent habere quod a praedictis canonicis erat actum quum eorum contumacia non intelligeretur purgata, sed aucta, in eos tanquam in contumaces procederent et receptis attestationibus diligenter inspectis, causam ipsam, appellatione remota, deciderent, et sententiam quam ferrent exsecutioni mandarent. Quia vero causa haec extra regnum erat Portugallense tractanda, partibus primo competentem terminum sub edicto curarent peremptorio assignare, ne propter remotionem locorum et distantiam personarum laborare diutius cogereris. Quod si partem S. Crucis per alios citare non possent, canonicos eius in regno Legionensi manentes, ad citationis ei literas praesentandas, monitione praemissa per censuram ecclesiasticam, appellatione remota, compellere procurarent; nullis literis veritati et iustitiae praeiudicantibus, si quae apparerent a sede apostolica impetratae. Quod si non omnes iis exsequendis interesse valerent, episcopus nihilominus exsequeretur ea cum altero aliorum. Partibus ad certum terminum convocatis, et convenientibus ad eundem, praedicti episcopus et decanus Zamorenses, quoniam Auriensis decanus non poterat interesse, a priore S. Crucis quaerere curaverunt, an ratum haberet quod fuerat a canonicis suis actum; quibus fuit ex ipsius parte responsum, quod locus interrogationi non erat, quum paratus esset in continenti probare, rescriptum nostrum per precum mendacia impetratum. Nam, quum Colimbrensis decanus ad praedictos de Seira abbatem et dilectum filium P. Froildiz, monachum Alcobatiae, contra monasterium Sanctae Crucis undecim commissionum literis reportasset, licet pars ecclesiae Sanctae Crucis primo inducias obtinuerit postulatas, quia secundo tamen non potuit pro singulis commissionibus singulas inducias obtinere, quamvis appellatio esset literis nostris inhibita, propter hoc tamen ad nostram audientiam appellavit. Tandem vero, pars ipsa et Colimbriensis decanus in praedictum regem Portugallensem … de Costa, et … de Rimaran. priores, et praedictos iudices compromittere curaverunt, duobus cautis pene nomine obligatis utrinque; sicque prior appellationi*

renuntiavit cum assensu suorum literis nostris renuntiante decano. Utrinque praeterea duodecim canonici iuraverunt super toto negotio perhibere testimonium veritati. Receptis igitur testibus et depositionibus eorum redactis in scriptum, rex noluit interesse, sed commisit praedictis ... de Costa et de Rimaranes prioribus vices suas et proposuit partibus ut per Romanam ecclesiam vel per alios prosequerentur ius suum, quoniam ad eum causa huiusmodi non spectabat. Tu vero, coram praedictis episcopo et decano Zamorensibus proponebas, nec renuntiationem Colimbriensis decani, qui non ad renuntiandum sed agendum potius datus fuerat procurator, nec compromissum etiam tenuisse, tum quia iudices esse arbitri non debebant, tum quoniam de rebus ecclesiasticis fuerat in laicum compromissum, tum etiam quia idem sibi alios subrogavit, quum de hoc in compromissione tractatum penitus non fuisset. Verum, pars S. Crucis proposuit ex adverso, quod tenuerat compromissum, quia nos pronuntiasse posse agi de ipsius poena dicebat, adiiciens ratam te renuntiationem habuisse decani, et quod, hoc suppresso, praedictas literas impetratas, quas non potuisses aliquatenus obtinere, si super hoc nobis exposuisses plenius veritatem. Et licet pars eadem quatuor testes induxerit, qui simpliciter et absolute dixerunt, ratum te habuisse quod factum fuerat a decano, sex tamen testes, quos tu induxeras, deponere curaverunt huiusmodi rati habitionem te non simpliciter sed conditionaliter expressisse si videlicet secundum attestationes confectas negotium finiretur. Ceterum, Ioannes Caesar, canonicus Sanctae Crucis, fuerat testis inductus, et Michael Petri et alii, quos tu induxeras, deposuere, iurati, quod nos omnem huius negotii veritatem feceramus per primos iudices delegatos inquiri, et ad nos universa referri, sicque pronuntiaveramus, omnibus diligenter inspectis, non impediri tuum propositum per obiecta. Idem quoque Ioannes, et Michael Petri, utrum renuntiationem decani ratum habueris requisiti, dixerunt, se de hoc penitus nihil scire; sed contra hos fuit ex parte Sanctae Crucis obiectum, eos sibi contrarios exstitisse, quum prius dixissent se nobis totam veritatem negotii retulisse ac secundo quod de rati habitione, quae erat quasi praecipua pars huius negotii, non fecerant mentionem. Tu vero dicebas, quod testi, quem pars Sanctae Crucis induxerat, credendum erat merito contra eam. Iudices igitur, attendentes in literis nostris appellationem fuisse prohibitam, nec exstitisse conditionem, sub qua ratum habere te dixeras, quod factum fuerat a decano, et quod nos inspecta totius negotii veritate, pronunciaveramus, causam tuam non debere per ea, quae canonici Sanctae Crucis obiecerant, impediri, considerantes etiam, quod pars Sanctae Crucis praedictum Ioannem, quem ipsa produxerat, et qui iudices ipsos super iis, quae coram nobis acta fuerant, instruebat, plenius reprobasset, interlocuti sunt de prudenti consilio, processum negotii, quod eis fuerat delegatum, impediri de iure non posse occasione oppositae falsitatis. Deinde, quum vellent in principali procedere, prior Sanctae Crucis multiplices recusationum causas opposuit, quas quia iudices frivolas reputantes admittere noluerunt, prior, omni causae suae defensione neglecta, se contumaciter absentavit; sed et nos recusationes praedictas ea postmodum ratione invalidas reputavimus, quod contumacia partis Sanctae Crucis non fuit diminuta sed aucta.] Iudices autem sufficienter actum esse de causa credentes, *attestationibus et rationibus utriusque partis diligenter inspectis*, monasterium sanctae Crucis in expensis, quas per quadriennium occasione huiusmodi negotii iuraveras te fecisse, *et quae quinquaginta marcarum auri summam attingunt, tibi de prudentum consilio* damnarunt, infirmantes sua sententia libertatem, quam dictus M. Colubriensis episcopus *in enorme detrimentum Colubriensis ecclesiae* contulerat monasterio S. Crucis, canonicorum assensu per *praeconem episcopi et* portarium regis extorto. Praeterea, quia idem M. praedecessor tuus fuerat canonicus regularis, et duo millia Marabatinorum, quae acquisierat in episcopum iam promotus, monasterio dederat memorato, [*monasterium*] ipsum ad restitutionem eorum iudices condemnarunt. Insuper *tam decimas quam* ecclesiae omnes, quas *de manu regis vel aliorum, laicorum sive clericorum*, monasterium praeter episcopi Colubriensis assensum *receperat, et quas in Latren. vel aliis locis, in attestationibus comprehensis*, propria auctoritate fundarat, [*scilicet capellam Sancti Ioannis in suburbio Colimbriensi constructam, ecclesiam de Toaveiro de Laurizal, de Mira, de Sorenes, Sancti Facundi, Heremidam Sancti Martini de Agoacla, ecclesiam de Mortedi, de Travancha, Sanctae Marinae in Sena, Sancti Romani cum utroque iure, ecclesiam Sancti Sebastiani, et omnes ecclesias in castro Seirene et terminis eius fundatas, hereditates quoque in attestationibus comprehensas proprietatis iure, videlicet hereditates de Lavaes cum ecclesia sua de Buarchos, de Cassaira, de Eimedi, de Sancto Verissimo, de Cabima,*] quia pars sanctae Crucis nec praescriptione, nec defensione alia probationibus contra se factis obstiterat, iudicarunt in ius Colubriensis ecclesiae cum fructibus medii temporis revocari, [*duo corpora mortuorum, qui excommunicati decesserant, de coemeterio*

monasterii extumulari mandantes, et a monasterio penitus amoveri. Decreverunt etiam partes parochiarum Sancti Iacobi, et S. Iustae, quae de mandato regio praeter auctoritatem ecclesiae divisae fuerant et capellae Sancti Ioannis adiectae, ad statum integritatis primae reduci, et capellam Sancti Ioannis quantum ad ius parochiale pertinet Colimbriensis ecclesiae iurisdictioni supponi, partem de bonis decedentium, secundum terrae consuetudinem, ecclesiis illis restituendam esse censentes, a quibus viventes ecclesiastica perceperunt sacramenta. Iudicarunt insuper vineam, quam quondam Dominicus Rozocida in praestimonio ab ecclesia Colimbriensi tenuerat, et contulerat monasterio Sanctae Crucis, ad ius Colimbriensis ecclesiae revocari, ipsamque Colimbriensem ecclesiam ad ius possessionis restitui, ad quam, sicut fuerat testibus comprobatum, singulis diebus Dominicis ire consueverant canonici Sanctae Crucis, similiter decernentes, ut pro domibus Portae Novae, in quibus olim parochiale ius ecclesia Colimbriensis habebat, monasterium Sanctae Crucis tantumdem iuris loco alio competenti, quantum in praedictis domibus ecclesia Colimbriensis amiserat, recompenset. Verum, ecclesiam de Quiaios, quam praedictus M. Colimbriensis episcopus, de canonicorum suorum assensu concesserat monasterio Sanctae Crucis, monasterio ipsi adiudicare curarunt. Partem de Pavea villa, licet nomine Colimbriensis ecclesiae de pecunia M. quondam prioris ipsius, empta fuerit, et postmodum eidem testamento relicta, quia tu tamen, quum ipsam possideret, monasterium occupasti, salvo iure proprietatis Colimbriensis ecclesiae, monasterio restitui decernentes, reliquam vero partem villae ipsius, quam Pelagius F. olim contulerat monasterio S. Crucis, adiudicantes ipsi monasterio pleno iure; praeterea, tres casales in Sancto Ioannino, salva quaestione proprietatis ecclesiae Colimbriensis, monasterio restitui censuerant ipsum a petitione duodecim modiorum frumenti, quos petiveras, absolventes.]

Finally, *when you and the other party had come on account of this to the Apostolic See*, the proctor of the monastery *of Santa Cruz* alleged that the sentence was neither valid nor binding. Even if the aforesaid sentence were otherwise binding, nevertheless, because the monastery had been undefended, *as the judges themselves protested through their letters*, and the privileges of liberty had not been exhibited before them, lest the offense of a person redound to the damage of the church, it ought to be admitted to the exhibition of its privileges; which it petitioned should be granted to it from the accustomed kindness of the Apostolic See. We, therefore, attending that the same privileges not only supported the liberty of the monastery but also expressed our right and defended the justice of the Roman Church, lest the injury of the monastery redound against us, determined that its party was to be admitted by grace to exhibit the privileges. *But so that we might understand more fully the truth concerning the judges' proceedings, we commanded that all the acts, just as they had been done, be exhibited to us by both sides before us.* [*The proctor of the monastery therefore alleged that the aforesaid M., Bishop of Coimbra, had granted to the monastery of Santa Cruz, with its parishes, parishioners, and confraternity members, full liberty from every episcopal right and exaction; that he had reduced his grant to writing; and that he had strengthened it by the subscriptions of the canons of Coimbra, since they had furnished assent to this. Even if a grant of this kind had perhaps been invalid of itself, nevertheless through the confirmation of Pope A. of happy memory, our predecessor—who had confirmed it by his privilege from certain knowledge to such an extent that he not only expressed its tenor but used its words—it had obtained the strength of perpetual firmness, since Celestine afterward imitated him concerning this and confirmed that grant just as he had confirmed it. But on your behalf it was answered to this that the aforesaid grant was not binding: both because the said bishop could not with effect burden his church so enormously; and because the assent of the canons had been surreptitiously obtained through the frauds of him who, in order to draw them more easily to his assent, asserted that the monastery had always existed free, and had been extorted through the power both of him and of the king, since the king's porter threatened the canons with proscription of their property and the bishop's herald with exile. Moreover, the tenor of that grant could not be fully established, nor was credence to be given to the writing which the party of the monastery presented, since, according to what certain witnesses had deposed, the page of that grant which Michael made had been erased in several lines,*

and each of the canons who had subscribed had subscribed with his own hand; but in the writing which had been exhibited to us, no erasure whatever appeared and all the subscriptions had been written by the same hand. Nor did it harm your argument that the aforesaid Alexander, our predecessor, had confirmed a grant of this kind so as to use its words, because, although he was aware of the words, he was nevertheless ignorant of the facts, since he did not know that the assent of the canons had been extorted and that the page of the same grant had been altered. Moreover, the other party replied that, even if neither the grant of this kind nor its confirmation had been binding, the true and ancient liberty of the monastery could nevertheless be established through the privileges, since Pope Innocent of good memory, our predecessor, had received it into the guardianship and protection of blessed Peter and, when he declares it tributary, adds: "But as a token of this liberty received from the Roman Church, it shall pay two bezants each year to us and our successors." Lucius, Eugenius, and Adrian of happy memory expressed this in their privileges, although the authentic instruments of Lucius and Eugenius were not presented to us. But against this you, brother bishop, alleged that our said predecessors had granted no liberty whatever to the aforesaid monastery, but had only received it under protection, no mention of liberty having been made except where it is said: "But as a token of this liberty received from the Apostolic See"; and that this could not harm your church if it were subtly weighed. For since the pronoun "this" demonstrates nothing there to the eye, but is known rather to make a demonstration to the understanding, lest the understanding be altogether foreign if it is not formed from the things above, the pronoun itself seems to make, as it were, a relative demonstration and to call the protection and confirmation of which mention is made in the preceding part "liberty," although a certain liberty is conferred together with confirmation: namely, that, according to the sentence of the aforesaid Alexander, no one may be sued concerning those things which have been confirmed to it by the Apostolic See except by the authority of the Apostolic See; and thus what is read in the privilege can be understood concerning liberty of this kind. That this ought to be the meaning is apparent from the privileges themselves, since Innocent both expresses that the reverence of the diocesan bishop is preserved and Lucius and Eugenius, after the protection had been granted and the confirmation of certain churches expressed, preserve his right for the diocesan bishop. Moreover, the other party alleged on the opposite side that, if the aforesaid Innocent had wished to call "protection" by the foreign word "liberty," he could have put "protection" where he put "liberty." Nor does what is alleged concerning the demonstrative pronoun harm its position, since in ancient times the Apostolic See received into special protection and its own guardianship only those churches which it regarded as special and its own. Whence, because both through the first chapter, where the monastery is received into the guardianship and protection of blessed Peter, and through certain other things that follow, liberty is known to have been granted to the monastery itself, the demonstrative pronoun points to the understanding of that liberty, better understood than expressed. For far be it that the Apostolic See should be believed to have wished to circumvent the monastery by receiving a census from it under the name of liberty while granting it either no liberty or a half-full liberty, as was alleged on the other side. Nor does it obstruct, but rather supports, its position that the often-mentioned Innocent willed the reverence of the diocesan bishop to be preserved, since from the fact that he expressly reserved reverence to him, it is understood that he denied the other things. But he wished reverence to be exhibited to him in this: that, as the Roman Pontiffs who succeeded him, wishing to interpret what had been obscurely stated, expressed in their privileges, the canons of Santa Cruz should receive chrism, holy oil, consecrations of altars, and certain other things expressed in the same privileges from the diocesan bishop, if he were catholic, possessed the grace and communion of the Apostolic See, and wished to furnish them gratis and without any depravity. Nor does it similarly harm their position if Lucius and Eugenius, after enumerating certain churches, said that the right of the diocesan bishop was preserved, since they did not understand this concerning the head but concerning the members, just as Adrian also reserved canonical justice to the diocesan bishops. This could not be understood concerning the head, since it is established that none of the churches has several diocesan bishops. But Alexander and his successors,

so that they might altogether remove the scruple of doubt concerning this, made mention only of the authority of the Apostolic See. Moreover, if neither so many nor such great things sufficed, prescription alone protected the church of Santa Cruz. We therefore, having heard and understood these and the other things alleged on both sides,] accordingly distinguishing between the liberty granted to the church itself by the aforesaid bishop and the liberty which the Apostolic See granted to it long before the time of that bishop, *as is apparent from the aforesaid privileges*, because it was *evidently* established to us that the assent of the canons had been extorted in the bishop's grant, that the page of the grant had erasures in several lines, and that the individual subscriptions had been written by the individual hands of those subscribing, but that the writing which had been exhibited to us neither displayed an erasure nor was varied by diverse hands in the subscriptions, but rather had been written from first to last by the same hand, we decree invalid and void the liberty granted by the bishop himself through extortion, confirming on this point the sentence of the delegated judges. But because we clearly recognized from the privileges that our aforesaid predecessors had granted a privilege of liberty to the church of Santa Cruz, and that it had been in possession of that liberty for so long that, even if other grounds ceased, it would have prescribed, we confirm by apostolic authority the liberty granted to it by our predecessors, imposing silence upon you concerning this. But on this point we derogate in nothing from the sentence of the delegated judges, since they did not take cognizance of this liberty.

[*After these things, however, the proctor of the church of Santa Cruz alleged before us that, when the ... Duke of Portugal of illustrious memory had granted to that church all the churches which either had already been founded or were to be founded in the future in the castle of Leiren and its territory, and all ecclesiastical rights, a public instrument having been drawn up concerning this which he said was called a "testament" by the customary word of the land, and both the Archbishop of Braga, metropolitan of the province, and the Bishop of Coimbra had subscribed a grant of this kind, the delegated judges, without inspecting the privileges of Santa Cruz, although the cause had not been specially delegated to them concerning the same churches, pronounced an unjust sentence against the church of Santa Cruz. And although the Bishop of Coimbra, as diocesan, subscribed the aforesaid grant because at that time the Saracens held the city of Lisbon, to whose diocese the churches are known to pertain, nevertheless, when that city had afterward been restored to the Christians through the industry of the duke himself, the Bishop of Lisbon, as true diocesan, confirmed by his own privilege the donation of the ... duke. Pope Adrian, diligently attending to this, determined that all the churches situated both in the castle of Leiren and in its territory, with all things pertaining to them, just as the charter of the duke himself and the confirmation of the aforesaid bishop contained, were to be confirmed to the church of Santa Cruz by his privilege. But on your behalf it was alleged on the other side that the duke's grant was not binding, since a layman did not possess the power to confer ecclesiastical rights, and especially spiritual ones. Nor is it valid that the Archbishop of Braga and Bishop of Coimbra are said to have subscribed in the duke's charter, since neither was the charter itself drawn up by a public hand nor do their seals hang from it, for which reason it altogether forfeits credit. Nor does it harm your position that the aforesaid Pope Adrian confirmed to the church of Santa Cruz the aforesaid churches with their appurtenances according to what is contained in the charter of the duke himself and the confirmation of the Bishop of Lisbon, since he believed that the duke himself granted the right of patronage and the temporal things, and the bishop, as diocesan, the spiritual right. But it is established from the confession of the other party and from the tenor of the privileges of the aforesaid Alexander and Celestine, our predecessors, that the aforesaid churches pertain to the diocese of Coimbra, since, after they and certain others are enumerated in their privileges, it is added that they all lie in the episcopate of Coimbra. Whence, since the other party used those privileges in its own favor and also procured them, it neither ought nor was able to disapprove them in this matter. Therefore, Adrian's privilege had not conferred a new right upon the*

monastery but had confirmed one possessed; whence the grant of the duke himself, which had previously been invalid, had not received validity from his confirmation. But against these things, the other party replied that the church of Santa Cruz had possessed those churches and the church of Saint John situated in the suburb of the city of Coimbra for so long that it was able to defend itself by legitimate prescription, since even from the time when Adrian had confirmed those churches to it and when they could possess them in good faith, until the time when the suit was joined, forty years and several months had elapsed. Therefore, after everything had been diligently inspected, it was established to us also from the form of the sentence of the aforesaid judges that the monastery of Santa Cruz had obtained possession of the aforesaid churches in the time of the often-mentioned duke, since the judges commanded that all the churches which the monastery had received from the hand of the king be recalled to the right of the church of Coimbra, and receipt is known to pertain to possession. It was also established from the form of your petition, since you petitioned that they be restored to you, that the monastery still possessed those same churches. It was similarly established that it possessed them in the intervening time and that, from the time of the aforesaid Adrian, who had confirmed them to it, a space of forty years had elapsed at the time the suit was moved. And although the other party asserted in judgment before us that G. of good memory, Cardinal Deacon of Saint Angelus and then legate of the Apostolic See, had imposed silence upon you concerning all these matters, and thus it might seem that the suit had been joined before him, nevertheless from the depositions of the witnesses the truth was fully disclosed to us: namely, that neither had the suit been joined nor a sentence promulgated, since, after inspecting the privileges of the Roman Pontiffs, he was unwilling to hear you concerning these things. Therefore, since it is established that long before forty years, and afterward during the intervening time, the monastery of Santa Cruz possessed the aforesaid churches, and now also possesses them, and no interruption is proved on the other side, on the counsel of our brothers we adjudge both the aforesaid churches of Leiren and the church of Saint John of Coimbra to the monastery of Santa Cruz, imposing silence upon you concerning them. In this also we do not derogate from the delegated judges, since Adrian's privilege, by whose authority the canons of Santa Cruz could believe themselves possessors in good faith, was not exhibited before them, nor were the other instruments. But concerning the fact that they condemned the same church to pay you, in the name of expenses, fifty marks of gold and two thousand gold coins which the often-mentioned M., Bishop of Coimbra, had conferred upon the church of Santa Cruz, by the will of the parties we took care so to moderate their sentence that the monastery is bound to pay you twenty of the fifty marks of gold and one thousand of the two thousand gold coins.]

And since we confirm the liberty granted to the monastery by our predecessors, we decree that the monastery is not bound to the right of profession, which is contrary to liberty, not derogating from the delegated judges, to whom the privileges of liberty had not been presented. *Moreover, concerning the fact that the same judges decreed that for the houses of the New Gate, in which the church of Coimbra had possessed parochial right, the monastery should compensate it in another suitable place with as much as it had lost in the aforesaid houses, we wholly correct the sentence which they rendered, judging that the monastery is not bound to this.* But in other matters we confirm by *apostolic authority* the sentence rendered by the aforesaid judges *both* for the church of Coimbra *and for the monastery of Santa Cruz*. [*Therefore, let no one, etc. Given at Ferentino, on the sixth day before the Kalends of July,* 1203.]

> Tandem *vero, quum tu et pars altera propter hoc ad sedem apostolicam venissetis*, procurator monasterii *sanctae Crucis* proposuit, sententiam non valere nec tenere. Quodsi alias etiam sententia memorata teneret, quia tamen monasterium fuit indefensum, *sicut ipsi iudices per suas literas protestarunt*, nec exhibita fuerant coram eis privilegia libertatis, ne delictum personae in damnum ecclesiae redundaret, debebat ad exhibitionem privilegiorum suorum admitti, quod sibi concedi de solita benignitate sedis apostolicae postulavit. Nos igitur attendentes, quod eadem privilegia non solummodo pro libertate monasterii

faciebant, sed etiam exprimebant ius nostrum et ecclesiae Romanae iustitiam tuebantur, ne in nos monasterii laesio redundaret, ad privilegia exhibenda partem eius de gratia duximus admittendam. + *Ut autem plenius de processu iudicum possemus intelligere veritatem: gesta omnia, sicut acta fuerant coram nobis, utrimque nobis iussimus exhiberi. *[*Proposuit igitur monasterii procurator, quod praedictus M. Colimbriensis episcopus, monasterio Sanctae Crucis cum parochiis, parochianis et confratribus suis, ab omni episcopali iure et exactione plenam concesserat libertatem et concessionem suam in scriptis redegerat, et Colimbriensium canonicorum, quoniam in hoc assensum praestiterant, subscriptionibus roborarat. Quod si huiusmodi concessio per se forsan fuisset invalida per confirmationem tamen felicis recordationis A. papae, praedecessoris nostri, qui eam per privilegium suum usque adeo ex certa scientia confirmarat, ut non solum tenorem eius expresserit, sed usus fuerit verbis eius, robur sortita fuerat perpetuae firmitatis, quum Coelestinus eum super hoc postmodum fuerit imitatus, et concessionem illam, sicut ille confirmaverat, confirmavit. Verum, ad hoc fuit ex tua parte responsum, quod praedicta concessio non tenebat, tum quia dictus episcopus non potuerat ecclesiam suam tam enormiter cum effectu gravare, tum quia canonicorum assensus per fraudes eius, qui, ut eos ad consensum suum facilius traheret, asserebat monasterium semper liberum exstitisse, subreptus fuerat, et per potentiam tam eius quam regis extortus quum portarius regis proscriptionem rerum, et episcopi praeco exsilium canonicis minaretur. Insuper, non plene poterat de concessionis illius tenore constare, nec erat illi scripto credendum, quod pars monasterii praesentabat, quum, iuxta quod deposuerant quidam testes, pagina concessionis illius, quam Michael fecerat, in aliquot lineis fuisset abrasa, et singuli canonicorum, qui subscripserant manu propria subscripsissent; in scripto autem quod fuerat nobis exhibitum, nulla rasura penitus appareret, et universae subscriptiones eadem essent manu conscriptae. Nec nocebat quod praedictus Alexander, praedecessor noster, concessionem huiusmodi confirmarat, ut usus fuerat verbis eius, quoniam, etsi verborum conscius fuerit, erat tamen factorum ignarus, utpote qui non noverat extortum fuisse canonicorum assensum, et concessionem eiusdem paginam variatam. Ceterum, pars altera replicavit, quod si nec concessio huiusmodi nec confirmatio tenuisset, poterat tamen per privilegia de vera et vetere monasterii libertate constare, quum bonae memoriae Innocentius papa praedecessor noster illud in B. Petri tutelam protectionemque susceperit, et, quum illud exprimit censuale subiungat: ad iudicium autem perceptae huius a Romana ecclesia libertatis, duos bizantios annis singulis nobis nostrisque successoribus persolvat. Hoc autem felicis recordationis Lucius, Eugenius et Adrianus suis privilegiis expresserunt, licet Lucii et Eugenii nobis non fuerint authentica praesentata. Contra hoc autem, tu frater episcope, proponebas, quod dicti praedecessores nostri nullam penitus praedicto monasterio concesserant libertatem, sed illud tantum sub protectione receperant, de libertate non habita mentione, nisi ubi dicitur: ad indicium autem perceptae huius a sede apostolica libertatis; quod ecclesiae tuae nocere non poterat, si subtiliter pensaretur. Quum enim hoc pronomen "huius" ibi ad oculum nihil demonstret, sed ad intellectum potius demonstrationem facere dignoscatur, ne peregrinus sit penitus intellectus, si a superioribus non formetur, videtur pronomen ipsum demonstrationem quasi facere relativam, ac protectionem et confirmationem, de quibus in parte superiori fit mentio, nominet libertatem, quamvis libertas quaedam cum confirmatione pariter conferatur, ut videlicet, iuxta praedicti Alexandri sententiam, praeter auctoritatem apostolicae sedis super illis non possit aliquis conveniri, quae ipsi fuerint per sedem apostolicam confirmata, sicque quod in privilegio legitur, intelligi possit de huiusmodi libertate. Quod autem is debebat esse sensus, ex privilegiis ipsis patet, quum et Innocentius dioecesani episcopi reverentiam exprimat esse salvam, et Lucius et Eugenius post protectionem indultam et confirmationem quarundam ecclesiarum expressam, ius suum episcopo dioecesano conservent. Porro, pars altera proposuit ex adverso, quod si praedictus Innocentius "protectionem" nominare voluisset peregrino vocabulo "libertatem," ubi "libertatis" posuit, "protectionis" ponere potuisset. Nec nocet quod de pronomine demonstrativo proponitur, quum antiquitus illas duntaxat ecclesias in specialem protectionem, propriamque tutelam apostolica sedes reciperet, quas speciales et proprias reputabat. Unde, quum tam per primum capitulum, ubi monasterium in B. Petri tutela protectioneque suscipitur, quam per quaedam alia quae sequuntur, libertas monasterio ipsi noscatur indulta, libertatem ipsam, intellectam melius, quam expressam, ad intellectum pronomen demonstrativum ostendit. Absit enim, ut apostolica sedes voluisse monasterium circumvenire credatur, ut censum ab eo sub nomine libertatis reciperet, et libertatem ei vel nullam, vel semiplenam, ut est ex adverso propositum, indulgeret. Nec obest, sed prodest potius, quod saepedictus Innocentius dioecesani episcopi reverentiam voluit esse salvam, quum ex eo quod expresse ipsi reverentiam*

reservavit, intelligatur, cetera denegasse. In hoc autem reverentiam ei voluit exhiberi, ut sicut successores illius Romani pontifices, quod obscure dictum fuerat, interpretari volentes, in suis privilegiis expresserunt, chrisma, oleum sanctum, consecrationes altarium, et quaedam alia in privilegiis eisdem expressa, canonici S. Crucis ab episcopo dioecesano suscipiant, si catholicus fuerit, et gratiam atque communionem apostolicae sedis habuerit, et ea gratis, et absque ulla pravitate voluerit exhibere. Nec nocet similiter, si Lucius et Eugenius, connumeratis quibusdam ecclesiis, ius dioecesani episcopi dixerint esse salvum, quum hoc non intellexerint de capite, sed de membris, sicut et Adrianus dioecesanis episcopis canonicam iustitiam reservavit, quod intelligi de capite non valeret, quum constet nullam ecclesiarum plures episcopos dioecesanos habere. Alexander autem, et successores ipsius, ut penitus super hoc dubitationis scrupulum amoverent, non fecerunt, nisi de auctoritate sedis apostolicae, mentionem. Ceterum, si nec tot, et tanta sufficerent, sola praescriptio Sanctae Crucis ecclesiam tuebatur. Nos igitur, iis et aliis auditis et intellectis quae fuerunt hinc inde proposita,] Distinguentes itaque inter libertatem, per praedictum episcopum ecclesiae ipsi concessam, et libertatem, quam ei longe ante tempus ipsius episcopi apostolica sedes indulsit, *sicut patet ex privilegiis ante dictis*, quia nobis constitit *evidenter*, extortum fuisse in episcopi concessione canonicorum assensum, et concessionis paginam in aliquot lineis habuisse rasuras, et subscriptiones singulas fuisse singulis subscribentium manibus adnotatas, scriptum autem, quod nobis exhibitum fuerat, nec rasuram praetendere, nec esse variis subscriptionum manibus variatum, sed a primo ad ultimum eadem *potius* manu conscriptum, libertatem, ab ipso episcopo concessam per extorsionem, irritam decernimus et inanem, super hoc sententiam delegatorum iudicum confirmantes. Quia vero evidenter agnovimus ex privilegiis, ante dictos praedecessores nostros ecclesiae sanctae Crucis libertatis privilegium indulsisse, et quod in ea possessione tamdiu fuerat libertatis, quod aliis etiam cessantibus praescripsisset: libertatem ei a praedecessoribus nostris indultam auctoritate apostolica confirmamus, tibi super hoc silentium imponentes. Super hoc autem in nullo sententiae delegatorum iudicum derogamus, quum ipsi de hac non cognoverint libertate. + [*Post haec vero, procurator ecclesiae Sanctae Crucis proposuit coram nobis, quod quum inclytae recordationis ... dux Portugallensis, universas ecclesias, quae vel fundatae iam erant, vel fundandae in posterum in castro Leiren, ac eius territorio, et universa iura ecclesiastica eidem ecclesiae concessisset, confecto super hoc publico instrumento, quod ipse dicebat usitato terrae vocabulo testamentum, et tam Bracarensis archiepiscopus, metropolitanus provinciae, quam Colimbriensis episcopus, concessioni huiusmodi subscripsisset, delegati iudices, non inspectis privilegiis S. Crucis, licet super eisdem ecclesiis eis causa non fuerit specialiter delegata, contra ecclesiam S. Crucis iniquam sententiam protulerunt. Et licet Colimbriensis episcopus, ut dioecesanus subscripserit concessioni praedictae, quia Ulixbonensem civitatem, ad cuius dioecesim pertinere noscuntur, detinebant tunc temporis Saraceni, ea tamen per industriam ducis ipsius reddita quondam Christianis, Ulixbonensis episcopus, velut verus dioecesanus, donationem ... ducis privilegio proprio confirmavit; quod praedictus Adrianus papa diligenter attendens, omnes ecclesias tam in castro Leiren, quam territorio eius sitas, cum omnibus pertinentiis ad easdem, sicut charta ducis ipsius et praedicti episcopi confirmatio continebant, ecclesiae S. Crucis suo duxit privilegio confirmandas. Verum, pro parte tua fuit propositum ex adverso, quod concessio ducis non tenuit, quum laicus ecclesiastica iura et praesertim spiritualia, conferendi non habuerit potestatem. Nec valet quod Bracharensis archiepiscopus et episcopus Colimbriensis in ducis charta subscripsisse dicuntur, quum nec charta ipsa publica sit manu confecta nec illorum sigilla dependant ex eadem, quare fidem penitus demeretur. Nec nocet etiam, quod praedictus Adrianus papa praedictas ecclesias cum pertinentiis suis, iuxta quod in charta ducis ipsius et confirmatione Ulixbonensis episcopi continetur, confirmavit ecclesiae S. Crucis, quum crediderit, ducem ipsum ius patronatus et temporalia, et episcopum, tanquam dioecesanum, spirituale concessisse. Constat autem ex confessione partis alterius et ex tenore privilegiorum praedictorum Alexandri et Coelestini, praedecessorum nostrorum, praedictas ecclesias ad Colimbriensem dioecesim pertinere, quum eis et quibusdam aliis numeratis in eorum privilegiis subiungatur, quae omnes in episcopatu Colimbriensi consistunt. Unde quum pars altera pro se iis privilegiis uteretur, et illa etiam impetravit, ea nec debebat in hoc, nec poterat reprobare. Propterea, privilegium Adriani novum ius non contulerat monasterio, sed habitum confirmarat; unde, concessio ducis ipsius, quae prius erat invalida, non susceperat ex ipsius confirmatione valorem. Adversus haec autem, pars altera replicavit, quod tandiu ecclesias ipsas et ecclesiam S. Ioannis positam in civitatis Colimbriensis suburbio possederat*

ecclesia S. Crucis, quod praescriptione legitima poterat se tueri, quum etiam ex illo tempore, quo Adrianus easdem ei ecclesias confirmarat, et quo ipsi bona fide illas potuerant possidere, usque ad tempus litis conceptae, fuissent quadraginta anni et aliquot menses elapsi. Constitit ergo nobis omnibus diligenter inspectis, ex forma quoque sententiae iudicum praedictorum, quod monasterium S. Crucis, saepedicti ducis tempore, praedictarum ecclesiarum fuerat possessionem adeptum, quum ipse omnes ecclesias, quas monasterium de manu regis receperat, ad ius Colimbriensis ecclesiae praeceperit revocari, et receptio ad possessionem pertinere noscatur. Constitit etiam ex forma petitionis tuae, qui eas tibi restitui postulabas, ipsam adhuc easdem ecclesias possidere. Similiter quoque constitit, ipsam eas medio tempore possedisse, ac quod etiam a tempore praedicti Adriani, qui eas confirmarat eidem, spatium quadraginta annorum fuerat, tempore motae litis, elapsum, et licet asseruerit pars altera in iudicio coram nobis, bonae memoriae G. Sancti Angeli diaconum cardinalem, tunc apostolicae sedis legatum, tibi super his omnibus imposuisse silentium, sicque videretur quod lis contestata fuerit coram eo, tamen, tum ex depositionibus testium nobis plene fuit veritas patefacta, videlicet quod nec lis contestata fuisset, nec sententia promulgata, quum, inspectis privilegiis pontificum Romanorum, super his noluerit te audire. Quum ergo longe ante quadraginta annos, et postmodum medio tempore, monasterium S. Crucis praedictas constet ecclesias possedisse, ac nunc etiam possidere, nec ex adverso interruptio sit probata, tam praedictas ecclesias de Leiren, quam ecclesiam S. Ioannis Colimbriensis, de fratrum nostrorum consilio, adiudicamus monasterio S. Crucis, super eis tibi silentium imponentes. In hoc quoque non derogamus iudicibus delegatis, quum coram eis exhibitum non fuerit privilegium Adriani, cuius auctoritate canonici S. Crucis se credere potuerunt bonae fidei possessores, nec alia etiam instrumenta. Super eo vero, quod in quinquaginta marcis auri expensarum nomine, ac duobus millibus aureorum, quos saepe dictus M. Colimbriensis episcopus contulerat ecclesiae S. Crucis, tibi eandem ecclesiam condemnarunt, de voluntate partium eorum sententiam taliter curavimus moderari, ut de quinquaginta marcis auri, viginti, et de duorum millibus aureorum, mille monasterium tibi solvere teneatur.] Quumque libertatem, a praedecessoribus nostris indultam monasterio, confirmemus, ad ius professionis, quod est contrarium libertati, monasterium decernimus non teneri, non derogantes iudicibus delegatis, quibus libertatis privilegia non fuerant praesentata. *Ceterum super eo, quod iidem iudices decreverunt, ut pro domibus portae novae, in quibus parochiale ius ecclesia Colubriensis habuerat, monasterium tantundem recompensaret eidem in loco alio competenti, quantum amiserat in domibus memoratis, omnino corrigimus sententiam, quam tulerunt, ad id censentes monasterium non teneri*. In ceteris autem latam a praedictis iudicibus sententiam *tam* pro Colimbriensi ecclesia *quam monasterio S. Crucis auctoritate apostolica* confirmamus. [*Nulli ergo etc. Dat. Ferentini VI. Kal. Iul. *1203.]

Chapter XV

Latin source headnote: Prescription does not run against the privileges of a church in a period shorter than forty years. It says this according to the true understanding.

The same, to the Bishop and Master G. of Limoges.

When the *beloved sons Master Zacharias*, proctor of the abbot and convent of Nouaillé on the one side, and *Brother Peter*, proctor of the Templars of Tocen., on the other, came to our presence, *we appointed our beloved son I., our subdeacon and chaplain, as auditor, before whom* the proctor *of the abbot and* monks proposed that, since they had peacefully possessed the tithes of the lands of Sarcole for a long time before those lands came under the *power and* lordship of the Templars, and *also*, after the Templars acquired the aforesaid lands, had peacefully possessed the tithes from them for forty years and more, the Templars now do not fear to withhold those *tithes* from them, *inflicting serious injuries upon them in other matters as well,* [*and that, although they had obtained our letters concerning these things and at one time the matter had been submitted by compromise to arbitrators, through the obstructing malice of the Templars they had been unable thus far to obtain their right. On the other side, however, the proctor of the Templars proposed that, since they were fortified by privileges of the Roman Pontiffs that they should not be bound to pay tithes from lands*

which they cultivate with their own hands or at their own expense, the aforesaid abbot and monks did not cease unduly to molest them concerning this, while proving exceedingly injurious to them in other matters. And when we had determined that the cause which is disputed between them and the aforesaid monks concerning those tithes was to be committed to our venerable brothers the Archbishop of Bourges and the Bishop of Clermont, while the question was being handled before them, certain monks, having associated with themselves a multitude of armed men and violently entered the Templars' lands, carried away from their crops according to the judgment of their own will, burning the remainder with fire.] *Therefore, after these and the other things which were proposed before the aforesaid chaplain had been more fully understood, because full proof concerning them could not be made to us,* we command your discretion *by apostolic writings* that, *after the truth has been more fully investigated,* if the abbot and monks sufficiently show that they continuously received the tithes from the aforesaid lands from the Templars for forty years without litigation, you compel the Templars, *appeal being set aside*, to render those *tithes*. For since during so long a time they paid tithes contrary to the privileges granted to them, they are presumed tacitly to have renounced those privileges. But if they *perhaps* fail in their proof, absolve the Templars from their claim, imposing upon them, *appeal being set aside*, perpetual silence concerning this; *concerning the other matters, however, hear what they may determine to propose on either side, and establish what shall be just, appeal being set aside, causing what you decree to be firmly observed through ecclesiastical censure.* [*Given at Ferentino, on the Kalends of July, in the ninth year,* 1206.]

> Contra privilegia ecclesiae minori spatio quadraginta annorum non praescribitur. H. d. secundum verum intellectum.
>
> Idem Episcopo et Magistro G. Lemovicensibus.
>
> Accedentibus ad praesentiam nostram *dilectis filiis magistro Zacharia* abbatis et conventus Naugiacensis ex una parte, et *fratre Petro* Templariorum de Tocen. ex altera procuratoribus, *dilectum filium I. subdiaconum et capellanum nostrum dedimus auditorem, coram quo* procurator *abbatis et* monachorum proposuit, quod, quum decimas terrarum de Sarcole diu quiete possederint, antequam ad Templariorum *potestatem et* dominium pervenissent, et *etiam* postquam Templarii terras acquisiere praedictas, decimas earundem per XL. annos et amplius pacifice possedissent, nunc eis ipsas *decimas* subtrahere non verentur, *in aliis eisdem graves iniurias irrogantes,* [*et licet super his nostras literas impetrarint, et interdum in arbitros fuerit compromissum, Templariorum impediente malitia nequiverunt hactenus suam iustitiam obtinere. Ex adverso vero Templariorum proposuit procurator, quod, quum privilegiis Romanorum Pontificum sint muniti, ne de terris, quas propriis manibus vel sumptibus excolunt, decimas solvere teneantur, praedicti abbas et monachi ipsos super hoc indebite molestare non cessant, in aliis eis iniuriosi plurimum exsistentes. Quumque causam, quae inter ipsos et praefatos monachos super decimis ipsis vertitur, venerabilibus fratribus nostris Bituricensi archiepiscopo et episcopo Claromontensi duxerimus committendam, dum coram illis quaestio tractaretur, quidam monachi adhibita sibi multitudine armatorum, terras ipsorum violenter intrantes, de segetibus eorum pro suae voluntatis arbitrio asportarunt, igne residuum comburentes.*] *His igitur et aliis, quae coram praedicto capellano fuere proposita, plenius intellectis quia de ipsis nobis non potuit fieri plena fides* Discretioni vestrae *per apostolica scripta* mandamus, quatenus, *inquisita plenius veritate,* si abbas et monachi sufficienter ostenderint, quod a Templariis decimas de terris praedictis per XL. annos continue perceperint sine lite, vos ad praestationem *decimarum* ipsarum Templarios *appellatione postposita* compellatis. Quum enim tanto tempore contra indulta privilegia decimas solverint, eis renunciasse tacite praesumuntur. Quodsi *forte* in probatione defecerint, ab ipsorum impetitione Templarios absolvatis, ipsis super hoc *appellatione postposita* silentium perpetuum imponentes; *super aliis autem audiatis quae hinc inde duxerint proponenda, et quod iustum fuerit appellatione postposita statuatis, facientes quod decreveritis per censuram ecclesiasticam firmiter observari. *[*Dat. Ferentini Kal. Iul. Ao. IX.* 1206.]

Chapter XVI

Latin source headnote: One exempt by reason of a certain thing or a certain place is not judged exempt with respect to a further thing or place. It says this, and it is a notable and highly citable text.

The same, to the Bishop of Langres.

Since the chapel of the *noble man*, the Duke of Burgundy, is said to enjoy a privilege of this kind, that no archbishop or bishop may dare to promulgate sentences of suspension, excommunication, or *even* interdict against the persons of the canons of that chapel, *the dean of the Christianity and* certain *other* canons of the aforesaid chapel, who hold parish churches from you, on occasion of the aforesaid privilege say that they are so exempt even in those matters whose jurisdiction pertains to you that, however gravely they may sometimes offend, they refuse to be subject to your correction and sentence. *Whence you humbly petitioned to be instructed by us as to how you should proceed against rebels of this kind.* Therefore, *by the authority of the present letters*, we command your fraternity that, insofar as they are exempt by reason of that chapel, you reverently defer to the apostolic privileges; but insofar as, by reason of the parish churches or otherwise, they are known to fall within your jurisdiction, freely pursue against them the duty of your office. [*Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of March, in the ninth year,* 1206.]

> Exemptus ratione certae rei vel certi loci non censetur exemptus respectu ulterius rei vel loci. H. d. et est textus notabilis et multum allegabilis.
>
> Idem Episcopo Lingonensi. Quum capella *nobilis viri* ducis Burgundiae gaudere dicatur huiusmodi privilegio, quod nullus archiepiscopus vel episcopus in personas canonicorum eiusdem capellae suspensionis vel excommunicationis aut *etiam* interdicti sententias audeat promulgare, *decanus Christianitatis et* quidam *alii* capellae supra dictae canonici, qui parochiales ecclesias a te tenent, occasione privilegii praelibati in his etiam, quarum iurisdictio ad te pertinet, ita se dicunt exemptos, ut quantumcunque graviter interdum excedant, tuae correctioni recusant et sententiae subiacere. *Unde a nobis doceri humiliter postulasti, qualiter tibi sit erga rebelles huiusmodi procedendum*. Quocirca *fraternitati tuae praesentium auctoritate* mandamus, quatenus, in quantum exempti sunt eiusdem ratione capellae, apostolicis privilegiis deferas reverenter; sed, in quantum ratione parochialium ecclesiarum vel alias iurisdictionem tuam respicere dignoscuntur, officii tui debitum in eosdem libere prosequaris. [*Dat. Rom. ap. S. Petr. XIV. Kal. Mart. Ao. IX. *1206.]

Chapter XVII

Latin source headnote: By an exemption granted to a monastery, chapels subject to it are not considered exempt.

The same, to the Abbot and Brothers of the monastery of Evesham.

From the mouth of the one sitting upon the throne proceeds a two-edged sword, because from the mouth of the Roman Pontiff, *who presides over the Apostolic See*, a most upright sentence ought to go forth, which spares no one contrary to justice but renders to each what is his own. Therefore, when a controversy was being disputed between you and *our venerable brother* the Bishop of Worcester concerning the subjection and liberty of your monastery, *and we had committed it to delegated judges for termination, they referred the same cause, sufficiently instructed, to our presence, fixing for the parties a certain term at which they should present themselves before us with instruments and attestations to receive sentence. Therefore, when the parties had been established in our presence through suitable proctors, we furnished them a free and benign*

audience. And indeed the proctor of your monastery proposed that the monastery itself had existed free and exempt from its very foundation; to prove this he introduced privileges of our predecessors, one of Constantine and another of Alexander, and also indulgences of Clement and Celestine, the continual use of which from long past times he endeavored to show through the depositions of witnesses. [*For in the first privilege of Constantine it was expressly contained that Egwin of holy memory, Bishop of Worcester, coming to the Apostolic See, reverently related to our aforesaid predecessor a certain vision in which blessed Mary manifested herself to him; and at that time the English kings Kenred and Offa, with whom the said bishop visited the thresholds of the Apostles, from their own goods bestowed by royal liberality many benefactions at the place shown in the vision, in the presence of our same predecessor, which he confirmed by apostolic authority, so that in the same place a congregation of monks might be established according to the rule of blessed Benedict—which at that time flourished less in those parts—for the honor of the divine name. Whence the aforesaid Pontiff commanded Brithwald, Primate of Britain, by apostolic writings, that, after a council had been assembled, he should establish the fold divinely shown, fortified by apostolic authority and endowed by royal liberality for himself and his successors, especially enjoining upon him, with the aforesaid Bishop Egwin assisting, the care of the souls of that church, so that by the power delivered to him he should defend it from every assault of invaders and incursion of tyrants; but if anything of the sinister part should be discovered to arise there, it should be reported rather to the ears of that primate than that the holy place should be unjustly corrupted through the secret sentence of anyone. Therefore, since the aforesaid kings endowed that place with liberty, our same predecessor also endowed it by the authority of the Apostolic See, so that no man of whatever order should attempt to corrupt and diminish what he had established. In the second privilege of the same Pope Constantine we perceived it to be contained that by apostolic writings he commanded the aforesaid primate to protect and foster the churches of God established throughout Britain, among which he subjected especially to his dominion that church which had most recently been established by the venerable man Bishop Egwin by apostolic and royal authority, so that he should take care to render it free in perpetuity from every assault of adversaries; establishing that the same place should be free under the monarchy of its own abbot from every tyrannical exaction, and that no man of whatever order should presume to bring any burden upon it. The abbot, moreover, according to canonical authority, shall be elected by the brothers either from the monastery itself or from the parish of the Wiccians, and, being freely and canonically blessed in the same church without any exaction, in reverence for the venerable Egwin—who, after resigning the episcopal see, was made abbot in the same monastery—shall use a ring only in the celebration of masses and shall always obtain the first place after the prelate of the Wiccians. From these chapters of the privileges, therefore, the proctor of your monastery endeavored to show that the monastery itself was entirely exempt from every episcopal jurisdiction from its first foundation: first, because it is said to have been constructed by apostolic and royal authority alone, whence it is understood to pertain only to the Apostolic See in spiritual matters and to the royal crown in temporal matters, since the Supreme Pontiff is not accustomed to command that any monastery be constructed by his authority unless it is to be constructed upon ground donated to him; then, because the place itself, which the kings are said to have donated by royal liberality, he also donated, so that, just as they endowed it with liberty as regards temporal matters, so also he should be understood to have endowed it with liberty as regards spiritual matters, since temporal matters pertained to them and spiritual matters to him; also because he especially enjoined the care of the souls of that church upon the Primate of Britain, to whose dominion it is also said to have been especially subjected, so that, if anything sinister should arise there, it might be corrected through his industry and caution, whence he seems to have committed the correction of that place to him alone, and thus to pertain in no way to another; then, because he decreed that the aforesaid place should remain under the monarchy of its own abbot, whence, since monarchy is interpreted as sole principality, it appears that the abbot of that place alone obtains the principal power in that*

place. That the words of those privileges ought to be understood in this manner the subsequent privileges seem to declare more manifestly; for in the privilege of Innocent of happy memory it is contained that no bishop may presume to celebrate a synod or chapter, ordinations, or public masses in that abbey or its chapels unless invited by the abbot and brothers of that place, and that, when an abbot has been elected in the same monastery, he shall be blessed without any exaction in that church by whatever bishop he prefers, provided that he is catholic and possesses the favor of the Apostolic See. The same Innocent also, adhering to the footsteps of Constantine, decreed that the pastoral care of the whole house and church and of the other places pertaining to that church should remain only with the abbot of that place, and that their ordering should remain in his power alone, just as has hitherto been observed. In the privilege of Pope Alexander it is perceived to be contained that the brothers of that place shall receive chrism, holy oil, consecrations of altars, and ordinations of clerics who are to be promoted to sacred orders from whatever bishop they prefer who possesses the communion and favor of the Apostolic See, with the provision that the Bishops of Worcester shall not unjustly exact anything from them but shall remain content only with those things which it is established their predecessors reasonably rendered to their predecessors. At the end, however, it is added, "that the authority of the Apostolic See be preserved," and it is not said "that the canonical justice of the diocesan bishop be preserved," since, according to the approved custom of the Roman Church, canonical justice is preserved for the diocesan bishop in monasteries which are not exempt. Moreover, in the indulgences of Clement and Celestine of good memory it is plainly intimated that the same monastery pertains to the jurisdiction of blessed Peter with no intermediary, since, after placing this beforehand in the preamble, they infer consequently in this manner: "Induced, therefore, by this reason, we have determined that the use of gloves and ring, dalmatic, tunic, sandals, and mitre is to be granted to you." Therefore, by the fact that the pastoral care of the whole house and church is decreed to remain with the abbot alone, that which had been established by Constantine—namely, that the same place should exist free under the monarchy of its own abbot—is elucidated by Innocent; whence, since the pastoral care of the whole house and church ought to remain with the abbot alone, it is certainly apparent that the bishop ought not to exercise pastoral care there, since the abbot of that place also ought to be blessed within his own church without any exaction. Whence neither profession nor obedience ought to be required from him. But because the abbot cannot exercise by himself certain things pertaining to pastoral solicitude, so that nothing which pertains to the fullness of liberty may be lacking to him, it is granted to him by Alexander that he may freely receive the ecclesiastical sacraments from whatever bishop he prefers who possesses the communion and favor of the Apostolic See. Moreover, by the fact that the same place is asserted to pertain to the jurisdiction of blessed Peter alone, as is intimated in the indulgences of Clement and Celestine, that which Pope Constantine is said to have done in endowing that place with liberty appears to have been more manifestly declared, when he committed the guardianship of the same to the Primate of Britain as his vicar or legate.] Furthermore, in the privilege of Constantine a certain thing is perceived to be contained through which the same monastery appears to pertain to the jurisdiction of the bishop: namely, that the abbot of that *monastery* should always obtain the first place after the prelate of Worcester. Whence, since he cannot obtain that place in a general or provincial council, because it would be incongruous for an abbot to sit first after him above the other bishops, it therefore remains that he is understood to possess that place in the episcopal synod; for which reason he is bound to attend the episcopal synod and through this to receive and observe its statutes. In the privilege of Pope Alexander another thing is contained through which the diocesan bishop appears to have retained his jurisdiction in that monastery, even if not in all matters, nevertheless in certain matters: since it is said in it that the Bishops of Worcester should not unjustly exact anything from the brothers of that place but should remain content only with those things which it is established their predecessors reasonably rendered to their predecessors. Whence it is established

that the abbots are bound to exhibit certain things from their own goods to the bishops. We, therefore, after these and the other things had been diligently heard *and perspicaciously understood*, since prescription was proved by neither party *through witnesses*, *on the common counsel of our brothers* definitively determine that the monastery of Evesham is free at its head, as wholly exempt from episcopal jurisdiction and subject only to the *Roman Pontiff and* Roman Church, with its guardianship nevertheless reserved to the Archbishop of Canterbury. In its members, however, *namely those* which are not proved exempt, we decree that it is subject to the diocesan bishop; for which reason the abbot ought to attend his synod and obtain the first place after the Bishop of Worcester. For those members also, *as we have said*, which are not exempt, the same abbot is bound to exhibit reverence, service, and honor to the Bishop of Worcester, with which being competently exhibited to him, the Bishop of Worcester ought to remain content. [*Because, however, etc. Given on the fifteenth day before the Kalends of February,* 1206.]

> Per exemptionem, concessam monasterio, capellae sibi subiectae non censentur exemptae.
>
> Idem Abbati et Fratribus Evasensis coenobii. Ex ore sedentis in throno procedit gladius bis acutus, quoniam ex ore Romani Pontificis, *qui praesidet apostolicae sedi*, rectissima debet exire sententia, quae contra iustitiam nulli parcat, sed reddat unicuique quod suum est. Quum igitur inter vos et *venerabilem fratrem nostrum* Vigoriensem episcopum super monasterii vestri subiectione ac libertate controversia verteretur, *et nos eandem terminandam commisissemus iudicibus delegatis: causam eandem sufficienter instructam ad nostram praesentiam remiserunt, certum partibus terminum praefigentes, quo cum instrumentis et attestationibus nostro se conspectui praesentarent sententiam recepturae. Partibus igitur in nostra praesentia per procuratores idoneos constitutis, audientiam praebuimus liberam et benignam. Et quidem* monasterii vestri proposuit procurator, quod idem monasterium ab ipsa sui fundatione liberum exstitit et exemptum; ad hoc probandum privilegia praedecessorum nostrorum inducens, unum Constantini et alterum Alexandri, nec non indulgentias Clementis et Coelestini, quorum usum continuum a longis retro temporibus per depositiones testium ostendere nitebatur. [*In primo siquidem privilegio Constantini continebatur expressum, quod sanctae recordationis Egwinus, Wigorniensis episcopus, ad apostolicam sedem accedens, visionem quandam, qua se beata Maria manifestavit eidem, praefato praedecessori nostro reverenter exposuit, et tunc temporis Anglorum reges Kenredus et Offa, cum quibus iam dictus episcopus Apostolorum limina visitavit, in loco visionis ostensae de bonis suis plurima beneficia in praesentia eiusdem praedecessoris nostri regia liberalitate donarunt, quae ipse auctoritate apostolica confirmavit, quatenus in eodem loco monachorum congregatio secundum beati Benedicti regulam, quae minus in illis partibus tunc vigebat, ad divini nominis constitueretur honorem; unde praefatus Pontifex Brithwaldo Britanniarum primati per apostolica scripta mandavit, ut coadunato concilio constitueret ovile, divinitus ostensum, apostolica auctoritate munitum, et regia liberalitate donatum sibi et successoribus suis, memorato Egwino episcopo assistente, curam animarum eiusdem ecclesiae praecipue iniungendo, ut ab omni pervasorum impulsu et tyrannorum incursu potestate sibi tradita defensaret; si quid vero sinistrae partis inibi comperiretur oriri, eiusdem primatis auribus potius deferretur, quam per alicuius occultam sententiam locus sanctus depravaretur iniuste. Ipsum ergo locum quoniam antedicti reges libertate donarunt, et idem praedecessor noster apostolicae sedis auctoritate donavit, ut nullus cuiuscunque ordinis homo quod ipse constituerat depravare et diminuere attentaret. In secundo vero privilegio eiusdem Constantini Papae perspeximus contineri, quod ipse praefato primati per apostolica scripta mandavit, ut ecclesias Dei per Britanniam constitutas protegeret et foveret, inter quas eam, quae nuperrime nunc a venerabili viro Egwino episcopo apostolica et regia auctoritate fuerat constituta, ditioni eius praecipue submittebat, ut eam ab omni adversariorum impugnatione liberam in perpetuum reddere procuraret, constituens, ut idem locus sub monarchia proprii abbatis ab omni tyrannica exactione sit liber, et nullus cuiuscunque ordinis homo aliquid ibi gravamen inferre praesumat. Abbas autem secundum auctoritatem canonicam vel de ipso monasterio, vel de parochia Wictiorum a fratribus eligatur, qui libere ac canonice sine aliqua exactione in eadem ecclesia benedictus, ob reverentiam venerabilis*

Egwini, qui, episcopali sede dimissa in eodem monasterio factus est abbas, annulo in celebratione solummodo missarum utatur, primumque locum semper obtineat post praesulem Wictiorum. Ex horum ergo privilegiorum capitulis monasterii vestri procurator nitebatur ostendere, quod ipsum monasterium a prima sui fundatione ab omni episcopali iurisdictione fuit prorsus exemptum; tum, quia dicitur apostolica tantum et regia auctoritate constructum, unde non nisi ad apostolicam sedem in spiritualibus et regiam coronam in temporalibus intelligitur pertinere, quum summus Pontifex non consueverit aliquod monasterium ut sua construatur auctoritate mandare, nisi quod in fundo sibi donato fuerit construendum; tum, quia locum ipsum, quem reges donasse dicuntur regia liberalitate, et ipse donavit, ut, sicut illi donaverunt eum libertate, quantum ad temporalia, sic et iste, quantum ad spiritualia intelligatur libertate donasse, quum ad illos utique temporalia et ad istum spiritualia pertinerent; tum etiam, quia curam animarum eiusdem ecclesiae praecipue iniunxit Britanniarum primati, quam et ditioni eius praecipue dicitur submisisse, ut, si quid ibi oriretur sinistri, per ipsius corrigeretur industriam et cautelam, unde videtur correctionem ipsius loci ei solummodo commisisse, sicque ad alium minime pertinere: tum, quia praefatum locum sub monarchia proprii abbatis manere decrevit, unde, quum monarchia interpretetur unicus principatus, videtur, quod abbas ipsius loci solus in eodem loco principalem obtinet potestatem. Quod autem verba privilegiorum ipsorum intelligi debeant tali modo, sequentia privilegia manifestius declarare videntur; nam in privilegio felicis memoriae Innocentii continetur, ne aliquis episcopus in ipsa abbatia vel capellis ipsius synodum vel capitulum, ordinationes vel missas publicas, nisi invitatus ab abbate et fratribus ipsius loci, celebrare praesumat, et, quum abbas in eodem monasterio fuerit electus, absque omni exactione a quocunque maluerit episcopo in ipsa benedicatur ecclesia, dummodo catholicus fuerit et gratiam habeat apostolicae sedis. Idem etiam Innocentius, Constantini vestigiis inhaerendo decrevit, ut solummodo penes abbatem ipsius loci totius domus et ecclesiae aliorumque locorum ad eandem ecclesiam pertinentium pastoralis cura consistat, et eorundem ordinatio in ipsius tantum potestate permaneat, sicut est hactenus observatum. In privilegio vero Alexandri Papae perspicitur contineri, ut chrisma, oleum sanctum, consecrationes altarium, ordinationes clericorum, qui ad sacros fuerint ordines promovendi, a quocunque maluerint episcopo, communionem et gratiam apostolicae sedis habente, fratres ipsius loci suscipiant, statuto, ut Wigornienses episcopi aliquid ab eis iniuste non exigant, sed iis tantum contenti permaneant, quae antecessores eorum antecessoribus suis constat rationabiliter impendisse. In fine vero subiungitur, "ut salva sit apostolicae sedis auctoritas," nec dicitur, "quod dioecesani episcopi canonica sit salva iustitia," quum in monasteriis non exemptis secundum approbatam ecclesiae Romanae consuetudinem dioecesano episcopo canonica iustitia conservetur. In indulgentiis autem bonae memoriae Clementis et Coelestini patenter innuitur, quod idem coenobium ad iurisdictionem beati Petri nullo pertineat mediante, quum, hoc in prooemio praemittentes, sic inferant consequenter: "Hac itaque ratione inducti, usum chirothecarum et annuli, dalmaticae, tunicae, sandaliorum et mitrae tibi duximus concedendum." Per id ergo, quod pastoralis cura totius domus et ecclesiae penes abbatem solummodo decernitur permanere, illud dilucidatur ab Innocentio, quod fuerat a Constantino statutum, ut videlicet idem locus sub monarchia proprii abbatis liber exsistat; unde, quum pastoralis cura totius domus et ecclesiae penes abbatem solummodo debeat permanere, patet profecto, quod episcopus pastoralem ibi curam exercere non debet, quum et abbas illius loci absque omni exactione infra suam ecclesiam debeat benedici. Unde nec professio, nec obedientia debet ab illo requiri. Quia vero quaedam ad pastoralem sollicitudinem pertinentia per se ipsum abbas exercere non potest, ut nihil ei desit, quod pertineat ad plenitudinem libertatis, conceditur illi ab Alexandro, ut ecclesiastica sacramenta libere percipiat a quocunque maluerit episcopo, communionem et gratiam apostolicae sedis habente. Per id autem, quod idem locus asseritur ad iurisdictionem beati Petri solummodo pertinere, sicut innuitur in indulgentiis Clementis et Coelestini, videtur illud manifestius declaratum, quod Constantinus Papa locum ipsum dicitur libertate donasse, tutelam eiusdem Britanniarum primati tanquam suo vicario vel legato committens.] Porro in privilegio Constantini quiddam contineri perspicitur, per quod idem coenobium videtur ad iurisdictionem episcopi pertinere, videlicet, quod abbas eiusdem *monasterii* primum locum post Vigoriensem praesulem semper obtineat. Unde, quum locum ipsum obtinere non possit in generali concilio neque in provinciali, quoniam absonum esset, ut abbas primus post illum super alios episcopos resideret: relinquitur ergo, quod locum illum in episcopali synodo intelligatur habere, quare tenetur ad synodum episcopalem accedere, ac per hoc ipsius statuta recipere ac servare. In privilegio vero Alexandri papae quiddam aliud continetur, per quod dioecesanus episcopus

in eodem coenobio iurisdictionem suam, etsi non in omnibus, in quibusdam tamen retinuisse videtur: quum in illo dicatur, quod Vigorienses episcopi ab eiusdem loci fratribus aliquid iniuste non exigant, sed his tantum contenti permaneant, quae praedecessores eorum antecessoribus suis constat rationabiliter impendisse. Unde constat, quod abbates episcopis aliqua de suis exhibere tenentur. Nos igitur, his et aliis diligenter auditis *et perspicaciter intellectis*, quum a neutra parte *per testes* sit probata praescriptio, *de communi fratrum nostrorum consilio* sententialiter diffinimus, quod Evasense coenobium librum est in capite, tanquam ab episcopali iurisdictione prorsus exemptum, et soli *Romano Pontifici et* Romanae ecclesiae subiectum, tutela tamen ipsius Cantuariensi archiepiscopo reservata. In membris autem, *videlicet illis*, quae non probantur exempta, dioecesano episcopo ipsum subiacere decernimus, propter quod abbas ad synodum eius debet accedere, primumque locum post Vigoriensem episcopum obtinere. Pro ipsis quoque membris, *ut diximus*, non exemptis, idem abbas tenetur Vigoriensi episcopo exhibere reverentiam, obsequium et honorem, quibus Vigoriensis episcopus sibi competenter exhibitis debet manere contentus. [*Quia vero etc. Dat. XV. Kal. Febr.* 1206.]

Chapter XVIII

Latin source headnote: One received under the protection of the Pope is not on that account considered exempt. It says this.

The same, to the Bishop of Vic.

It was asked *of us* on your behalf whether clerics and laymen who show letters of protection in which their persons are declared by express name to remain under apostolic protection with all their goods are exempt from the jurisdiction of the diocesan bishop. We, however, respond to you *in this manner* concerning this: that through letters of this kind, *which we sometimes grant personally to certain persons*, they are in no way withdrawn from the power of their bishops. [*Given at Rome, at Saint Peter's, on the Ides of December,* 1204.]

Receptus sub protectione Papae per hoc non censetur exemptus. Hoc dicit.

Idem Ausonensi Episcopo.

Ex parte tua fuit quaesitum *a nobis*, utrum clerici et laici, qui literas protectionis ostendunt, in quibus personae suae expresso nomine cum omnibus rebus suis sub apostolica protectione consistere declaruntur, a iurisdictione episcopi dioecesani sint exempti. Nos autem tibi super hoc *taliter* respondemus, quod per literas huiusmodi, *quas quandoque aliquibus personaliter indulgemus*, ab episcoporum suorum potestate minime subtrahuntur. [*Dat. Rom. ap. S. Petr. Id. Dec.* 1204.]

Chapter XIX

Latin source headnote: Religious to whom it has been granted by the Pope that they may convert churches subject to them to their own uses ought to receive possession of those churches not by their own authority but from the diocesan bishop of the place, unless something else is expressed in the privilege.

The same, to the Bishop of Ely.

The pastoral office (*And below:* [*cf. c.* 28, *On the Office of a Delegated Judge, I.* 29.]) You asked *further* whether religious men to whom it has been granted by the Apostolic See that they may convert their churches to their own uses are permitted, when the persons of those churches die, to enter possession of those *churches* by their own authority, or whether they should rather be inducted into it

by the diocesan bishop. To this we *certainly* respond that, unless perhaps this is expressly contained in the indulgence of the Supreme Pontiff, they are not permitted to enter possession of them without consulting their bishop, because we do not believe that episcopal right is derogated from by an indulgence of this kind. [*Solicitously, etc.* (*cf. c.* 9, *On Those Things Which Are Done, III.* 13.) *Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January,* 1204.]

> Religiosi, quibus a Papa concessum est, ut ecclesias eis subiectas possint in proprios usus convertere, non auctoritate propria, sed a dioecesano loci possessionem illarum ecclesiarum recipere debent, nisi in privilegio aliud exprimatur.
>
> Idem Elidensi Episcopo.
>
> Pastoralis officii (*Et infra:* [*cf. c.* 28. *de off. iud. del. I.* 29.]) Interrogasti *praeterea* utrum viris religiosis, quibus a sede apostolica est indultum, ut ecclesias suas in proprios usus possint convertere, decedentibus personis earum, liceat auctoritate propria possessionem earundem *ecclesiarum* intrare, vel per dioecesanum episcopum in ipsa sint potius inducendi. Ad quod *utique* respondemus, quod, nisi forte in indulgentia summi Pontificis id contineatur expressum, suo episcopo inconsulto in possessionem ipsarum eis non est licitum introire, quia per indulgentiam huiusmodi episcopali iuri non credimus derogari. [*Sollicite etc.* (*cf. c.* 9. *de his, quae fiunt III.* 13.) *Dat. Rom. ap. S. Petr. XIV. Kal. Ian.* 1204.]

Chapter XX

Latin source headnote: If the person because of whose offense an interdict was imposed does not observe it, others are nevertheless bound to observe it; it is otherwise if the person in whose favor it was issued does not observe it.

The same, to the Bishop and Chapter of Tripoli.

You petitioned to be instructed by the Apostolic See whether, when your city is placed under a general interdict because of the Hospitallers or Templars, and those same persons do not observe it, you are bound to observe it. To this we determine that the response is *thus*: that their offense furnishes you no license to offend. But if the aforesaid Hospitallers or Templars exceed the bounds of their privileges by rashly violating an interdict which had been promulgated for them, lest *they* appear to laugh at the weeping of others, during as long as they violate the interdict, by our license you may celebrate as a punishment for their presumption. [*Given at Segni, on the fourteenth day before the Kalends of October, in the fifteenth year of our pontificate,* 1212.]

> Si is propter cuius delictum positum est interdictum, illud non servat, alii nihilominus servare tenentur; secus, si ille non servat, in cuius favorem latum fuit.
>
> Idem Episcopo et Capitulo Tripolitanis.
>
> Petiistis per sedem apostolicam edoceri, utrum, quum propter Hospitalarios vel Templarios civitas vestra generali supponitur interdicto, eisdem non servantibus, vos illud teneamini observare. Ad quod *sic* ducimus respondendum, quod illorum excessus vobis non praebet licentiam excedendi. Sed si praefati Hospitalarii vel Templarii privilegiorum suorum fines excesserint, violando temere interdictum, quod pro eis fuerat promulgatum: ne *ipsi* videantur de aliorum fletu ridere, vos in poenam praesumptionis eorum, quamdiu ipsi violaverint interdictum, de nostra licentia celebretis. [*Dat. Signiae XIV. Kal. Oct. Pont. nostr. Ao. XV.* 1212.]

Chapter XXI

Latin source headnote: A privilege granted to a monastery that its monks cannot be excommunicated is understood concerning monks existing in the monastery or in churches subject to it by both rights. It says this, and it is an everyday case.

The same.

Since, *as you intimated to us through your letters*, it is established by the confession of the opposing party that the Bishop of Nepi receives episcopal right in the church of Saint Blaise de Flagen., *and through this the same church does not pertain to the monastery by full right*, we believe that, notwithstanding that chapter of the privilege which was granted to the *same* monastery—that no bishop may presume to place under interdict churches subject to it by both rights, or to summon to synod or excommunicate a monk or cleric of the same monastery—the aforesaid bishop can place the said church under interdict and excommunicate your monk or cleric appointed to its governance, when either is to be done by law; because that chapter appears to be understood concerning monks or clerics remaining in the monastery itself or sent to churches subject to it by both rights.

> Privilegium concessum monasterio, ut eius monachi excommunicari non possint, intelligitur de monachis, exsistentibus in monasterio, vel in ecclesiis sibi subiectis utroque iure. Hoc dicit, et est casus quotidianus.
>
> Idem.
>
> Quoniam, *sicut nobis per tuas literas intimasti*, per confessionem constat partis adversae, quod Nepesinus episcopus ius episcopale percipit in ecclesia sancti Blasii de Flagen., *ac per hoc eadem ecclesia non pertinet ad monasterium pleno iure:* credimus, quod, non obstante illo capitulo privilegii, quod *ipsi* monasterio est indultum, ut nullus episcopus ecclesias utroque iure illi subiectas interdicto supponere, vel monachum seu clericum eiusdem monasterii synodare vel excommunicare praesumat, praefatus episcopus possit interdicere dictam ecclesiam, et excommunicare monachum seu clericum vestrum ad eius regimen deputatum, quum alterutrum de iure fuerit faciendum; quoniam illud capitulum esse intelligendum videtur de monachis aut clericis in ipso monasterio permanentibus, vel ad ecclesias destinatis, utroque iure sibi subiectas.

Chapter XXII

Latin source headnote: A bishop who remits episcopal tithes to a certain church indefinitely is seen to have remitted not only past but also future tithes. And it is a notable case.

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

Because concerning (*And below:* [*cf. c.* 6, *On Bigamists, I.* 21.]) *Subsequently also* you asked whether the monks of All Saints can extend the privilege granted by your predecessor *E. of good memory* concerning the retention of episcopal tithes to possessions acquired and afterward to be acquired. Concerning this we give *your fraternity* the following response: that, if the remission of those tithes was made according to the canonical sanctions, since your predecessor, in remitting episcopal tithes to the monastery indefinitely, excepted nothing and could have excepted nothing, and the fullest interpretation is to be applied in benefices, nor ought one and the same substance to be assessed under a diverse right, he is seen to have understood it not only concerning the tithes of possessions of that time but of the future. [*Indeed, etc. Moreover, etc.* (*cf. c.* 6, *On Consanguinity and Affinity, IV.* 14.) *Given at Segni, on the fifth day before the Nones of October, in the sixteenth year of our pontificate,* 1213.]

Episcopus, remittens alicui ecclesiae decimas episcopales indefinite remisisse videtur non solum praeteritas, sed et futuras. Et est casus notabilis.

Idem Londonensi Archiepiscopo, apostolicae sedis Legato.

Quia circa (*Et infra:* [*cf. c.* 6. *de big. I.* 21.]) *Subsequenter etiam* Quaesivisti, utrum monachi omnium Sanctorum privilegium *bonae memoriae E.* praedecessoris tui super episcopalibus decimis retinendis indultum, extendere valeant ad possessiones acquisitas, et postmodum acquirendas. Super quo tale damus *tuae fraternitati* responsum, quod, si decimarum illarum remissio facta exstitit secundum canonicas sanctiones, praedecessor tuus indefinite decimas episcopales monasterio remittendo, quum nihil exceperit et potuerit excepisse, ac in beneficiis plenissima sit interpretatio adhibenda, nec debeat una eademque substantia diverso iure censeri, intellexisse videtur non solum de decimis possessionum illius temporis, sed futuri. [*Sane etc. Porro etc. *(*cf. c.* 6. *de cons. et. aff. IV.* 14.) *Dat. Signiae V. Non. Oct. Pont. nostr. Ao. XVI. *1213.]

Chapter XXIII

Latin source headnote: The council sets forth the order of the four patriarchal sees, up to the word "preserved," where it sets forth their three privileges. First, that they give the pallium. Second, at the word "Lord's," that they cause the cross to be carried before them, except in the cases excepted here. Third, at the words "In all," that appeal is made to them. And concerning this it makes a reservation at the word "preserved."

The same, in the general council.

Renewing the ancient privileges of the patriarchal sees, with the holy universal synod approving, we decree that after the Roman Church—which by the Lord's disposition obtains the primacy of ordinary power over all others, as the mother and teacher of all the faithful of Christ—the church of Constantinople shall obtain the first place, Alexandria the second, Antioch the third, and Jerusalem the fourth, with its own dignity preserved for each, in such a way that, after their prelates have received from the Roman Pontiff the pallium, which is the insignia of the fullness of pontifical office, and have furnished to him an oath of fidelity and obedience, they too may licitly bestow the pallium upon their suffragans, receiving from them a canonical profession for themselves and a promise of obedience for the Roman Church. They shall, however, cause the standard of the Lord's cross to be carried everywhere before them, except in the city of Rome and wherever the Supreme Pontiff is present, or his legate using the insignia of apostolic dignity. Moreover, in all provinces subject to their jurisdiction, appeal shall be made to them when necessary, with appeals interposed to the Apostolic See preserved, to which deference must humbly be shown by all.

Ponit concilium ordinem quatuor patriarchalium sedium, usque ibi: Servata, ubi ponit tria privilegia ipsarum. Primum, quia dant pallium. Secundum ibi: Dominicae, quia ante se crucem deferri faciunt, praeterquam in casibus, hic exceptis. Tertium ibi: In omnibus, quia ad ipsos appellatur. Et in hoc protestatur ibi: Salvis.

Idem in concilio generali. Antiqua patriarchalium sedium privilegia renovantes, sancta universali synodo approbante sancimus, ut post Romanam ecclesiam, quae disponente Domino super omnes alias ordinariae potestatis obtinet principatum, utpote mater universorum Christi fidelium et magistra, Constantinopolitana primum, Alexandrina secundum, Antiochena tertium, Hierosolymitana quartum locum obtineant, servata cuilibet propria dignitate ita, quod, postquam antistites earum a Romano Pontifice receperint pallium, quod est plenitudinis officii pontificalis insigne, praestito sibi fidelitatis et

obedientiae iuramento, licenter et ipsi suis suffraganeis pallium largiantur, recipientes pro se professionem canonicam, et pro Romana ecclesia sponsionem obedientiae ab eisdem. Dominicae vero crucis vexillum ante se faciant ubique deferri, nisi in urbe Romana, et ubicunque summus Pontifex praesens exstiterit, aut eius legatus, utens insigniis apostolicae dignitatis. In omnibus autem provinciis, eorundem iurisdictioni subiectis, ad eos, quum necesse fuerit, provocetur, salvis appellationibus ad sedem apostolicam interpositis, quibus est ab omnibus humiliter deferendum.

Chapter XXIV

Latin source headnote: A privilege granted to religious that they may bury their confraternity members during an interdict is understood concerning those confraternity members who, although they remain in the world, have nevertheless offered themselves to the order after changing their secular habit, or concerning those who have given their goods to them while retaining the usufruct. This is the first point. A privilege granted to religious by which, when they come to an interdicted place, churches are opened to them once a year so that divine offices may be celebrated in them is understood to mean that only one single church is opened in the place. This is the second point.

The same, in the same council.

So that the privileges which the Roman Church has granted to certain religious [*persons*] may remain unshaken, we have determined that certain things in them are to be declared, lest, being understood less soundly, they be drawn toward abuse, on account of which they could deservedly be revoked, because one who abuses the power permitted to him deserves to lose his privilege. Indeed, the Apostolic See has granted to certain regulars that ecclesiastical burial shall not be denied to those who have assumed their confraternity, if perhaps the churches to which they pertain have been interdicted from divine offices and it should happen that they die, unless they have been excommunicated or interdicted by name; and that they may carry to their own churches for burial their confraternity members whom the prelates of churches have not permitted to be buried at their churches, unless they have been excommunicated or interdicted by name. We understand this, however, concerning those confraternity members who, while still remaining in the world, have either been offered to their order after changing their secular habit, or who have given their goods to them among the living, retaining for themselves the usufruct for as long as they live in this world; yet let these be buried at non-interdicted churches of those regulars or of others in which they have chosen burial, lest, if it were understood concerning any persons whatever assuming their confraternity, ecclesiastical discipline should alike be dissolved and cheapened for two or three denarii contributed to them annually; nevertheless let them obtain also the certain remission granted to them by the Apostolic See. We also will that the other thing which has been granted to regulars of this kind—namely, that if any of their brothers who have been sent by them to receive confraternities or collections should come to any city, castle, or village, and if perhaps that place has been interdicted from divine offices, in their joyful arrival the churches shall be opened once a year so that, with excommunicated persons excluded, divine offices may be celebrated there—be understood thus: that in the same city, castle, or village only one church is opened to the brothers of that order once in the year, as has been said; because, although it is stated in the plural that churches shall be opened at their joyful arrival, it is nevertheless to be referred by a sound understanding not separately to the churches of the same place but conjointly to the aforesaid places, lest, if they visited the individual churches of the same place in this manner, the sentence of interdict should happen to be excessively

cheapened. But those who presume to usurp anything for themselves contrary to the aforesaid declarations shall be subject to grave vengeance.

> Privilegium religiosis concessum, ut possint sepelire confratres suos tempore interdicti, intelligitur de illis confratribus, qui, licet maneant in saeculo, obtulerunt se tamen ordini, mutato habitu saeculari, vel de illis, qui bona sua eis dederunt usufructu retento. Hoc primo. Privilegium religiosis concessum, quo eis, venientibus ad locum interdictum, semel in anno aperiantur ecclesiae, ut celebrentur in eis divina, intelligitur, quod una tantum sola ecclesia aperiatur in loco. Hoc secundo.
>
> Idem in eodem.
>
> Ut privilegia, quae quibusdam religiosis [*personis*] Romana concessit ecclesia, permaneant inconcussa, quaedam in eisdem duximus declaranda, ne minus sane intellecta pertrahantur ad abusum, propter quem possint merito revocari, quia privilegium meretur amittere qui permissa sibi abutitur potestate. Sane quibusdam regularibus apostolica sedes indulsit, ut his, qui fraternitatem eorum assumpserint, si forsitan ecclesiae, ad quas pertinent, a divinis officiis fuerint interdictae, ipsosque mori contigerit, sepultura ecclesiastica non negetur, nisi excommunicati vel nominatim fuerint interdicti; suos quoque confratres, quos ecclesiarum praelati apud ecclesias suas non permiserint sepeliri, nisi excommunicati vel interdicti fuerint nominatim, ipsi ad ecclesias suas deferant tumulandos. Hoc autem de illis confratribus intelligimus, vel qui adhuc manentes in saeculo eorum ordini sunt oblati, mutato habitu saeculari, vel eis, qui bona sua dederant inter vivos, retento sibi, quamdiu in hoc saeculo vixerint, usufructu; qui tamen sepeliantur apud ipsorum regularium vel aliorum non interdictas ecclesias, in quibus elegerint sepulturam, ne, si de quibuslibet ipsorum fraternitatem assumentibus fuerit intellectum, pro duobus aut tribus denariis annuatim sibi collatis dissolvatur pariter et vilescat ecclesiastica disciplina; certam tamen et ipsi remissionem obtineant, ab apostolica sibi sede concessam. Illud etiam, quod huiusmodi regularibus est indultum, ut, si qui fratrum suorum, qui ab eis missi fuerint ad recipiendas fraternitates sive collectas, in quamlibet civitatem, castellum vel vicum advenerint, si forte locus ille a divinis officiis sit interdictus, in eorum iucundo adventu semel in anno aperiantur ecclesiae, ut exclusis excommunicatis divina ibidem officia celebrentur, sic intelligi volumus, quod in eadem civitate, aut castro aut villa una tantum ecclesia eiusdem ordinis fratribus semel, ut dictum est, aperiatur in anno; quia, licet pluraliter dictum sit, quod in eorum iucundo adventu ecclesiae aperiantur, non tamen ad ecclesias eiusdem loci divisim, sed praedictorum locorum coniunctim sano referendum est intellectu, ne, si hoc modo singulas eiusdem loci visitarent ecclesias, nimium vilipendi contingeret sententiam interdicti. Qui vero contra declarationes praedictas quicquam sibi usurpare praesumpserint, gravi subiaceant ultioni.

Chapter XXV

Latin source headnote: During a general interdict bishops who were not prohibited and who were not culpable for the interdict can celebrate secretly; and today this is not a privilege of bishops but the common law, as in the final chapter *On the Sentence of Excommunication* in the Sixth Book, and there it is fully set forth whether, when, and in what manner celebration can occur during an interdict.

The same, in the same council.

Extending to bishops, in favor of the pontifical office, that which has been granted to certain religious, we concede that, when a land has been placed under a common interdict, with excommunicated and interdicted persons excluded, they may sometimes celebrate divine offices behind closed doors, *and* in a suppressed voice and without bells being rung, unless this very thing has been expressly interdicted to them also. But we grant this to those who have furnished no cause

for the interdict and have introduced nothing of deceit or fraud, drawing such a benefit toward an unjust detriment.

> Tempore generalis interdicti episcopi non prohibiti, qui non fuerunt culpabiles interdicti, clam celebrare possunt, et hodie istud non est privilegium episcoporum, sed ius commune, ut in c. fin. de sent. excomm. in VI. et ibi plene habetur, an et quando et qualiter possit celebrari tempore interdicti. Idem in eodem.
>
> Quod nonnullis est religiosis indultum, in favorem pontificalis officii ad episcopos extendentes concedimus, ut, quum commune terrae interdictum fuerit, excommunicatis et interdictis exclusis possint quandoque ianuis clausis *et* supressa voce et non pulsatis campanis divina celebrare officia, nisi et hoc ipsum eis expresse fuerit interdictum. Verum hoc illis concedimus, qui causam aliquam non praestiterint interdicto, nec quicquam doli vel fraudis ingesserint, tale compendium ad iniquum dispendium pertrahentes.

Chapter XXVI

Latin source headnote: Privileges are not to be violated even indirectly. It says this generally.

Honorius III, to the Archbishops and Bishops in whose dioceses monasteries and priories subject to the monastery of Cluny are situated.

The more greatly (*And below:*) Indeed, the beloved sons, the Abbot and Convent of Cluny, have offered us a grave complaint that certain of you and your officials, since they cannot pronounce sentences of excommunication and interdict against them and the monks of their order because they are fortified in this matter by privileges of the Apostolic See, pronounce the aforesaid sentences against those who grind in their mills or bake in their ovens, or communicate with them in any way by selling or buying or otherwise; and thus, observing not the force and power but the words alone of the apostolic privileges, they in a certain manner excommunicate the monks of the said order when they do not permit others to communicate with them. From this there also results the incongruity that the monks themselves, as regards this, are judged by the judgment of the Jews, and those who communicate with them in the aforesaid matters incur a greater excommunication than they would have incurred even by communicating with excommunicated persons. Therefore, being unwilling to pass over any longer under dissimulation these things already brought to us by frequent cries, we command all and each of you that henceforth you do not issue sentences of this kind in fraud of our privileges, because, if a cry concerning this should again ascend to us, we shall not be able to pass it by with conniving eyes without chastising the promulgators of such sentences with due severity.

> Privilegia non sunt violanda etiam indirecte. H. d. generaliter.
>
> Honorius III. Archiepiscopis et Episcopis, in quorum dioecesibus monasteria et prioratus Cluniacensi monasterio subiecta consistunt.
>
> Quanto amplius (*Et infra:*) Sane dilecti filii abbas et conventus Cluniacensis gravem nobis querimoniam obtulerunt, quod quidam vestrum et vestrorum officiales, quum in eos et sui ordinis monachos non possint excommunicationis et interdicti proferre sententias, eo, quod super hoc apostolicae sedis privilegiis sunt muniti, in eos, qui molunt in molendinis vel coquunt in furnis eorum, quicquid vendendo seu emendo aut alias eis communicant, sententias proferunt memoratas, et sic apostolicorum privilegiorum non vim et potestatem, sed sola verba servantes, dicti ordinis monachos quodammodo excommunicant, dum eis alios communicare non sinunt. Ex quo illud etiam evenit inconveniens, ut ipsi monachi, quantum ad hoc, iudicentur iudicio Iudaeorum, et qui eis communicant in praedictis maiorem

excommunicationem incurrant, quam etiam excommunicatis communicando fuerint incursuri. Nolentes igitur haec crebris ad nos clamoribus iam perlata ulterius sub dissimulatione transire, vobis universis et singulis mandamus, quatenus huiusmodi sententias in fraudem privilegiorum nostrorum de cetero non feratis, quia, si super hoc ad nos denuo clamor adscenderit, non poterimus conniventibus oculis pertransire, quin promulgatores talium sententiarum severitate debita castigemus.

Chapter XXVII

Latin source headnote: Those who conduct themselves as laymen in habit, tonsure, and other respects do not defend themselves as clerics when caught in offenses. It is commonly summarized thus.

The same, to V., formerly the illustrious Queen of the English.

It was proposed on your behalf *before us* that certain literate men, whom neither habit nor tonsure declares to be clerics, dwelling in a land subject to your jurisdiction, when they are caught in certain offenses, in order to elude your jurisdiction and evade the due vengeance for their offenses, assume or even reassume an abandoned tonsure or clerical habit, although before they were regarded as laymen by all, *and thus their offenses remain unpunished*. Therefore, lest malice be fostered by a tonsure or habit thus reassumed, if you exercise your jurisdiction against offenders of this kind who were caught in an offense without tonsure and habit, we have determined that it is to be tolerated with equanimity, since indulgence ought not to be shown to the malice of men, but it should rather be opposed.

Qui in habitu et tonsura et ceteris ut laici conversantur, deprehensi in maleficiis se pro clericis non defendunt. Ita communiter summatur.

Idem V. quondam Anglorum Reginae illustri. Ex parte tua fuit propositum *coram nobis*, quod nonnulli literati, quos nec habitus nec tonsura clericos profitetur, in terra tuae iurisdictioni subiecta degentes, quum deprehenduntur in aliquibus forisfactis, ut iurisdictionem tuam eludant et debitam pro delictis ultionem evadant, assumunt seu etiam resumunt tonsuram abiectam seu habitum clericalem, licet ante pro laicis ab omnibus haberentur, *et sic eorum delicta remament impunita*. Ne igitur tonsura vel habitu sic resumpto malitia foveatur, si tuam iurisdictionem exerceas in huiusmodi delinquentes, qui sine tonsura et habitu in delicto fuerint deprehensi, aequanimiter duximus tolerandum, quum malitiis hominum indulgeri non debeat, sed potius obviari.

Chapter XXVIII

Latin source headnote: Civil law ought not to be taught at Paris and in neighboring places.

The same.

Upon the watchtower (*And below:* [*cf. c.* 5, *On Masters, V.* 5.]) Indeed, although holy Church does not reject the service of secular laws, which imitate *sufficient* traces of equity and justice, nevertheless, because in France and certain provinces laymen do not use the laws of the Roman emperors, and ecclesiastical causes of such a kind that cannot be resolved by canonical statutes rarely occur, so that the sacred page may be attended to more fully, *and the disciples of Elisha may sit more freely beside the fullest streams like doves, when they have not found ladders in the doors upon which they may spread their feet apart*, we firmly interdict and more strictly prohibit anyone from presuming to teach or hear civil law at Paris or in neighboring cities or other places. And one who acts contrary to this shall not only be excluded in

the meantime from the advocacy of causes, but shall also be bound by the bishop of the place with the bond of excommunication, *appeal being set aside*. [*But you, brothers and sons, shall observe the aforesaid things more diligently and cause them to be observed more studiously by others, so that you may deservedly be proved true friends of the bridegroom, etc. Given at Viterbo, on the seventh day before the Kalends of December, in the fourth year of our pontificate,* 1219.]

> Parisiis et in locis vicinis ius civile legi non debet.
>
> Idem.
>
> Super specula (*Et infra:* [*cf. c.* 5. *de mag. V.* 5.]) Sane, licet sancta ecclesia legum saecularium non respuat famulatum, quae *satis* aequitatis et iustitiae vestigia imitantur: quia tamen in Francia et nonnullis provinciis laici Romanorum imperatorum legibus non utuntur, et occurrunt raro ecclesiasticae causae tales, quae non possint statutis canonicis expediri, ut plenius sacrae paginae insistatur, *et discipuli Helisei liberius iuxta fluenta plenissima resideant ut columbae, dum in ianuis scalas non invenerint, ad quas divaricare valeant pedes suos*, Firmiter interdicimus et districtius inhibemus, ne Parisius, vel in civitatibus seu aliis locis vicinis quisquam docere vel audire ius civile praesumat. Et qui contra fecerit, non solum a causarum patrociniis interim excludatur, verum etiam per episcopum loci *appellatione postposita* excommunicationis vinculo innodetur. [*Vos autem, fratres et filii, sic diligentius praescripta servetis et faciatis studiosius ab aliis observari, quod veri amici sponsi possitis merito comprobari, etc. Dat. Viterbii VII. Kal. Dec. Pont. nostr. Ao. IV. *1219.]

Chapter XXIX

Latin source headnote: Renewal of a privilege does not introduce a new right but preserves the old one.

The same, to the Bishop of Bayeux.

Because it *was not our intention that, through the renewal which we made of a certain writing of the monastery of Saint Stephen of Caen, which we found contained in the register of Pope Alexander of good memory, our predecessor, the right of the church of Bayeux should be derogated from*, since renewal neither confers a new right nor even takes away an old one, we will that you be in that state in which you are known to have existed at the time the renewal was obtained. Moreover, through this we intend to generate no prejudice to any right otherwise belonging to the same monastery.

> Innovatio privilegii ius novum non inducit, sed vetus conservat.
>
> Idem Episcopo Baiocensi. Quia intentionis nostrae *non exstitit, ut per innovationem, quam fecimus cuiusdam scripti monasterii S. Stephani Cadomensis, quod in registro bonae memoriae Alexandri Papae praedecessoris nostri reperimus contineri, derogaretur iuri ecclesiae Baiocensis:* Quum innovatio nec ius novum conferat, nec etiam tollat vetus, te in eo statu esse volumus, in quo tempore impetratae innovationis dignosceris exstitisse. Ceterum nullum per hoc intendimus iuri, alias eidem monasterio competenti, praeiudicium generari.

Chapter XXX

Latin source headnote: Privileged persons who may celebrate everywhere with a portable altar can do this without the license of prelates.

The same.

In those things which are known to pertain to divine worship, not a malign but rather a benign interpretation ought to be made. Whence we are compelled to wonder that, although we determined

that it was to be granted to the Friars Preachers and Minors that, wherever they should be, they might celebrate with a portable altar without prejudice to parochial right, certain persons, *as was recently proposed before us*, interpreting our indulgence too strictly, endeavor to assert that through it the aforesaid brothers cannot do this without the assent of *bishops, abbots, and other* prelates; on account of which they do not permit them to celebrate according to the apostolic indulgence. But since, *if the matter stood thus*, the aforesaid indulgence would confer nothing upon them, because without it, with *bishops and other* prelates assenting, this would be permitted to them, we command your fraternity that, after rejecting an interpretation of this kind, provided nevertheless that they wholly abstain *themselves* from the other things which arise by parochial right, you do not defer to publish by our authority the license to celebrate thus given to them, so that the said brothers may appear to have obtained some favor in this matter from our indulgence. [*Given at Rieti, on the fifth day before the Kalends of September, in the twentieth year,* 1225.]

> Privilegiati, ut ubique possint cum altari viatico celebrare, hoc possunt sine licentia praelatorum.
>
> Idem.
>
> In his, quae ad cultum divinum facere dignoscuntur, non maligna, sed benigna esset potius interpretatio facienda. Unde mirari compellimur, quod, quum fratribus Praedicatoribus et Minoribus duximus indulgendum, ut, ubicunque fuerint, sine parochialis iuris praeiudicio cum altari valeant viatico celebrare, quidam, *sicut nuper fuit propositum coram nobis*, nimis stricte interpretando indulgentiam nostram, nituntur asserere, quod per eam praedicti fratres praeter *episcoporum, abbatum et aliorum* praelatorum assensum facere hoc non possint, propter quod eos celebrare iuxta indulgentiam apostolicam non permittunt. Quum autem, *si res taliter se haberet*, nihil eis conferret memorata indulgentia, sine qua id *episcopis et aliis* praelatis annuentibus liceret eisdem: fraternitati tuae mandamus, quatenus interpretatione huiusmodi reprobata, dum tamen ab aliis, quae iure parochiali proveniunt *se* prorsus abstineant, datam eis sic licentiam celebrandi auctoritate nostra non differas publicare, ita, quod dicti fratres aliquam ex indulgentia nostra videantur in hoc gratiam consecuti. [*Dat. Reate V. Kal. Sept. Ao. XX. *1225.]

Chapter XXXI

Latin source headnote: A privilege concerning the nonpayment of tithes of noval lands does not comprehend tithes possessed at the time the privilege was obtained and by others, unless mention is made in the privilege of another's possession.

Gregory IX, to the Dean of the greater church and the Archdeacon of the Christianity of Lincoln.

Formerly, when litigation concerning tithes had arisen between the prior and convent of Butele on the one side and the prioress and nuns of Campesse on the other (*And below:*), on the counsel of our brothers we decree that prejudice ought not to be generated for the right of the aforesaid prior and convent concerning tithes of noval lands of which they were in possession at the time when apostolic indulgences concerning the nonpayment of tithes of noval lands were obtained by the other party, through those indulgences, which make no mention of this.

> Privilegium de decimis novalium non solvendis non comprehendit decimas tempore privilegii impetrati possessas ac aliis, nisi de possessione alterius in privilegio fiat mentio.
>
> Gregorius IX. maioris ecclesiae et Christianitatis Decano et Archidiacono Linconiensibus.

> Dudum inter priorem et conventum de Butele ex parte una, et priorissam et moniales de Campesse ex alia super decimis lite mota (*Et infra:*) De consilio fratrum nostrorum decernimus, iuri praedictorum prioris et conventus super decimis novalium, in quarum erant possessione tempore illo, quo indulgentiae apostolicae impetratae fuerunt, a parte altera de decimis novalium non solvendis, non debere per eas, non facientes de hoc aliquam mentionem, praeiudicium generari.

Chapter XXXII

Latin source headnote: Confraternity members of privileged persons, unless they have transferred themselves to them entirely, are bound to episcopal rights.

The same.

Certain persons, as you assert, received into the confraternity of privileged persons are unwilling to answer you concerning episcopal rights. But for as long as brothers of this kind make their stay in their own houses, you will be able to compel them to pay the said rights to you in full.

> Confratres privilegiatorum, nisi se ad eos in totum transtulerint, ad episcopalia iura tenentur.
>
> Idem.
>
> Quidam, sicut asseris, in privilegiatorum fraternitate recepti, nolunt tibi de iuribus episcopalibus respondere. Verum, quamdiu huiusmodi fratres moram in domibus suis fecerint, eos compellere poteris ad dicta iura tibi integre persolvenda.

Chapter XXXIII

Latin source headnote: As regards the privilege of retaining the tithe, land once noval is always noval.

The same, to the Chapter of Arles.

We respond briefly to your consultation that land concerning which no memory exists that it was ever cultivated, newly reduced to cultivation by religious, ought perpetually to be assessed by law, as regards immunity from paying tithes of noval lands, because otherwise it might sometimes happen that the indulgence concerning noval lands would bring them more detriment than benefit.

> Quoad privilegium retentionis decimae semel novale semper est novale.
>
> Idem Arelatensi Capitulo.
>
> Consultationi vestrae breviter respondemus, quod terra, de qua non exstat memoria, quod aliquando culta fuisset, redacta per religiosos noviter ad culturam, perpetuo debet quoad immunitatem de non solvendis decimis novalium iure censeri, quum alias nonnunquam contingeret indulgentiam de novalibus plus eis dispendii quam utilitatis afferre.

Title XXXIV: On Canonical Purgation

Chapter I

Latin source headnote: A defamed person worthy of belief purges himself by oath; otherwise it is the contrary, and one who sins enormously is deemed unsuitable.

From the Council of Tribur.

A noble or freeborn man, if accused in a synod and he denies the crime, if he shall have been known to be trustworthy, shall purge himself with twelve freeborn men. But if previously he was caught in theft, perjury, or false testimony, he shall not be admitted to an oath; rather, purgation shall be imposed upon him as upon one who is not freeborn.

> **DE PURGATIONE CANONICA.**
>
> Infamatus fide dignus per iuramentum se purgat; alias secus, et censetur non idoneus enormiter peccans.
>
> Ex concilio Triburiensi. Nobilis homo vel ingenuus, si in synodo accusatus crimen negaverit, si fidelem eum esse sciverit, cum duodecim ingenuis se expurget. Si autem antea deprehensus fuerit in furto, aut periurio aut falso testimonio: non admittatur ad iusiurandum; sed ei, sicut qui ingenuus non est, purgatio indicatur.

Chapter II

Latin source headnote: A defamed person who, after being admonished three times, does not correct himself is suspended from office until purgation.

From the Council of Agde.

If any priest, negligent of his manner of life, has permitted evil things to be suspected of him through depraved examples, and the people, bound by the bishop through an oath or ban of the Christianity, have disclosed his infamy, and certain accusers of his crime have been lacking, he shall first be admonished separately by the bishop, then before two or three witnesses; and, if he has not amended himself, [*in the assembly of priests*] the bishop shall admonish him by public rebuke. But if not even thus has he corrected himself, he shall be suspended from office until fitting satisfaction, lest the faithful people suffer scandal in him.

> Infamatus, tertio monitus se non corrigens, usque ad purgationem ab officio suspenditur.
>
> Ex concilio Agathensi. Si quis presbyter, negligens vitae suae, pravis exemplis mala de se suspicari permiserit, et populus, ab episcopo iuramento seu banno Christianitatis adstrictus, infamiam eius patefecerit, certique accusatores criminis eius defuerint, admoneatur primo seorsum ab episcopo, deinde sub duobus vel tribus testibus, et, si non emendaverit, [*in conventu presbyterorum*] episcopus eum publica increpatione admoneat. Si vero nec sic se correxerit, ab officio suspendatur usque ad condignam satisfactionem, ne populus fidelium in eo scandalum patiatur.

Chapter III

Latin source headnote: Regulars also purge themselves of an offense according to the canonical rule.

From the Council of Meaux.

If nuns are accused of serving lusts and cannot be manifestly detected, they shall be compelled canonically to purge their evil reputation in accordance with the rule of their standing.

> Etiam regulares purgant se de delicto secundum regulam canonicam.
>
> Ex concilio Meldensi. Moniales, si libidinibus inservire accusentur, et manifeste detegi non valuerint, erga regulam suae opinionis malam famam canonice purgare cogantur.

Chapter IV

Latin source headnote: If the offense is probable, purgation is not imposed; otherwise it is. It says this as regards the title.

From the same council.

If anyone of ecclesiastical rank has manifestly disclosed himself as an assenter to or intermediary for abductors of the betrothed women of others, he shall be repelled from his own rank; and, if he has been assailed by probable suspicions arising from this, he shall canonically purge himself.

> Si delictum est probabile, non indicitur purgatio; alias secus. H. d. quoad titulum.
>
> Ex eodem.
>
> Si quis de gradu ecclesiastico raptoribus alienarum sponsarum se consensorem vel interventorem manifeste prodiderit, a proprio gradu repellatur, et, si verisimilibus exinde suspicionibus fuerit propulsatus, canonice se expurget.

Chapter V

Latin source headnote: A defamed person against whom a crime cannot be proved ought to purge himself by an oath concerning the truth, but the compurgators concerning belief.

Pope Innocent, to the Patriarch of Aquileia and the Bishop of Mantua.

We do not believe it escapes you how many times *our brother A.*, Bishop of Trent, has been accused of simony *in our presence and yours*; but the accusers, bringing a writing, were unable to produce witnesses according to canonical form—namely, that he had given the church of Saint Peter to the priest P. for four measures of grain, *which he had received from that church. But because neither the accusers nor the witnesses were able to proceed in that cause according to the form of the canons and the statutes of the holy Fathers*, on the common counsel of our brothers we judge that he ought to purge himself of the aforesaid simony with three members of his own order and four abbots and religious priests as oath-helpers, *in your presence*. The tenor of the purgation shall, moreover, be of this kind: the *same* bishop shall first swear upon the holy Gospels of God that, for the church of Saint Peter to be given to the priest P., neither he himself, by himself or through an intermediary person, nor anyone for him with his knowledge received a price; then [*however*] the compurgators shall swear upon the holy Gospels of God that they believe he swore truly. [*We therefore, etc.* (*cf. c.* 17, *C. II, qu.* 5.)]

> Infamatus, contra quem crimen probari non potest, debet se purgare iuramento de veritate, compurgatores vero de credulitate.
>
> Innocentius Papa Aquilegiensi Patriarchae et Mantuano Episcopo.
>
> Quoties *frater noster A.* Tridentinus episcopus *in nostra et vestra praesentia* de simonia impetitus sit, vos latere non credimus, sed accusatores, scriptum afferentes, testes secundum formam canonicam producere nequiverunt, scilicet quod ecclesiam sancti Petri presbytero P. dederit pro quatuor modiis frumenti, *quos ab eadem ecclesia acceperit. Verum quoniam nec accusatores nec testes secundum formam canonum et sanctorum Patrum statuta in causa ipsa procedere potuerunt*, Communi fratrum nostrorum consilio iudicamus, ut tertia manu sui ordinis et quarta abbatum et religiosorum sacerdotum de supra dicta simonia, *in vestra praesentia* debeat se purgare. Porro purgationis tenor erit huiusmodi: *Idem* episcopus iurabit primum super sancta Dei evangelia, quod pro ecclesia sancti Petri presbytero P. danda nec ipse per se, nec per submissam personam, nec aliquis pro eo se sciente pretium recepit; deinde [*vero*]

compurgatores super sancta Dei evangelia iurabunt, quod ipsi credunt, eum verum iurasse. [*Nos itaque etc.* (*cf. c.* 17. *C. II. qu.* 5.)]

Chapter VI

Latin source headnote: A bishop compels his defamed parishioner to purge himself before him, unless he has legitimately appealed from him.

Alexander III, to the Bishop of Genoa.

We *preside among others with supreme dignity, although undeserving, so that we ought to declare things which are doubtful and diligently respond to the consultations of individuals insofar as the Lord has ministered to us, so that questions may be terminated under the examination of the Roman Church, which by the Lord's disposition obtains the primacy among the other churches. Whence*, because your fraternity wished to consult us as to whether a bishop can compel his parishioner, *when public report accuses him*, to purgation, we respond to your consultation in this manner: that, if he labors under public infamy concerning any crime, when an accuser and witnesses are lacking, he is to be compelled to purgation by the bishop himself, unless perhaps he has determined to appeal concerning this to a superior judge. Indeed, if he has appealed, he shall obey the judgment of him to whose examination he has willed to transfer the cause through appeal.

Episcopus parochianum suum infamatum compellit ad se purgandum, nisi ab eo legitime appellaverit.

Alexander III. Genuensi Episcopo.

Nos inter alios *praeeminemus suprema, licet immeriti, dignitate, ut quae dubia sunt debeamus declarare, et singulorum consultationibus, quantum nobis Dominus ministraverit, sollicite respondere, ut quaestiones sub examine Romanae ecclesiae terminentur, quae inter alias ecclesias disponente Domino obtinet principatum. Unde,* Quia nos tua fraternitas consulere voluit, utrum episcopus parochianum suum, *publica fama eum accusante*, ad purgationem cogere possit, consultationi tuae taliter respondemus, quod, si de aliquo crimine publica laborat infamia, accusatore et testibus deficientibus ad purgationem est per ipsum episcopum compellendus, nisi forte super ipso ad superiorem iudicem duxerit appellandum. Sane, si appellaverit, eius parebit iudicio, ad cuius examen causam voluerit per appellationem transferre.

Chapter VII

Latin source headnote: Compurgators ought to be honorable and to have knowledge of the person whom they purge, and they ought not to be impeded by the judge or another; and one who fails in purgation is punished as convicted.

The same, to the Bishop-elect of Gaeta.

When P. Manconella, priest (*And below:* [*cf. c.* 10, *On Accusations, V.* 1.]) We will, *however*, that his purgators be of such honor and reputation that it is probable that they would be unwilling to swear falsely through love, hatred, or consideration of money. But so that they may appear suitable, it is necessary that they know the life and manner of living of the person whom they ought to purge. You shall take care to deprive one who fails in purgation of every ecclesiastical office and benefice, *taking care by every means* that, if any should wish to assist a person purging himself in his purgation, you show them no malevolence or indignation, nor impede them *in any manner*, or permit them, so far as lies in you, to be impeded by others.

Compurgatores debent esse honesti, et notum habere eum, quem purgant, nec debent a iudice vel alio impediri; et deficiens in purgatione punitur ut convictus.

Idem Gaietanensi Electo.

Quum P. Manconella presbyter (*Et infra:* [*cf. c. *10. *de accus. V.* 1.]) Purgatores *vero* illius honestatis et opinionis esse volumus, quod verisimile sit, eos nolle amore vel odio seu obtentu pecuniae deierare. Ut autem idonei appareant, necesse est, ut eius, quem purgare debent, vitam et conversationem agnoscant. Deficientem vero in purgatione omni officio et beneficio ecclesiastico privare procures, *tibi omnibus modis* praecavens, quod, si qui purgando in sua voluerint purgatione assistere, nullam eis malevolentiam vel indignationem ostendas, nec eos *aliquo modo* impedias, vel ab aliis, quantum in te est, impediri permittas.

Chapter VIII

Latin source headnote: An absolution made according to vulgar purgation does not hold, and notwithstanding it purgation can be imposed anew and an accusation is admitted.

Lucius III.

From the contents of your letters we have understood that, when you had suspended the priest H., *the bearer of the present letters*, from the priestly office because he was defamed concerning homicide, *after the counsel of the brothers in your episcopate had been consulted*, he produced letters of your predecessor *of good memory*, from which it appeared that he had purged his innocence by the judgment of cold water and that the bishop had absolved him by his letters; *a scholar also, who at the instigation of the devil had perpetrated the homicide, affirmed, after touching the holy Gospels, that he himself was immune from the crime*. But because foreign judgments are prohibited, we, judging that the purgation which he furnished was not sufficient, command your fraternity *by apostolic writings* that, if suitable accusers have not appeared *who can convict him of the homicide*, you enjoin upon him that he show his innocence through canonical purgation with seven or five members of his own order as oath-helpers, as you shall know to be expedient; and when he has furnished it, you shall relax the suspension without *delay and* difficulty and, announcing him to be a man of good testimony, absolve him from the infamy of homicide, no contradiction or appeal notwithstanding, *supported by our authority*. *The one who is defamed, however, shall affirm by a furnished oath that he is immune from the crime of homicide, and the purgators ought to swear that they believe he swore truly.*

Absolutio, facta secundum purgationem vulgarem, non tenet, et ea non obstante potest indici de novo purgatio, et admittitur accusatio.

Lucius III. Ex tuarum intelleximus continentia literarum, quod, quum H. presbyterum *latorem praesentium*, quia infamabatur de homicidio, *communicato fratrum consilio in episcopatu tuo*, a sacerdotali officio suspendisses, *bonae memoriae* praedecessoris tui literas tulit in medium, quibus apparuit, eum iudicio aquae frigidae suam innocentiam purgavisse, et episcopum suis eum literis absolvisse, *scholaris etiam, qui homicidium instigante diabolo perpetraverat, immunem se ipsum a crimine, tactis sacrosanctis evangeliis, affirmavit*. Quia vero peregrina iudicia sunt inhibita, purgationem, quam praestitit, sufficere non putantes, *fraternitati tuae per apostolica scripta* mandamus, quatenus, si accusatores idonei non apparuerint, *qui eum de homicidio convincere possint*, ut cum septima aut quinta manu sui ordinis, sicut expedire cognoveris, per purgationem canonicam innocentiam suam ostendat, sibi iniungas; quam quum praestiterit, suspensionem sine *mora et* difficultate relaxes, et eum testimonii boni virum annuncians, ab infamia homicidii nullius contradictione vel appellatione obstante *auctoritate nostra fretus*

absolvas. *Is autem, qui infamatur, sese immunem a crimine homicidii praestito iuramento firmabit, et purgatores, quod eum credant verum iurasse, iurare debebunt*.

Chapter IX

Latin source headnote: It suffices that a compurgator be tolerated by the Church, be of good reputation, and not be condemned as suspected of a crime.

The same, to the Bishop of Winchester.

Established in our presence, P. the deacon *of Bochan showed us by his assertion* (*And below:*) Furthermore, this induces no small wonder in us: that you were unwilling to receive the offered purgation unless you first commended the names of the individual persons who wished to purge the *said* P. and first diligently inquired concerning their nations and the other circumstances, as though you were going to make ordinations—would that you discussed ordinands in this way! Indeed, in purgations to be made, since it is sufficient for those who furnish an oath for the person to be purged to swear according to their own conscience and opinion that the person to be purged is immune from the crime or that he furnished a good oath, if the purgators are tolerated by the Church, are of good reputation while ministering in their orders, and have not been condemned in judgment for a crime, they are without doubt to be admitted without any investigation.

Sufficit, quod compurgator sit toleratus ab ecclesia bonae famae, nec de crimine suspectus condemnatus.

Idem Vintoniensi Episcopo.

Constitutus in praesentia nostra P. diaconus *de Bochan sua nobis assertione monstravit* (*Et infra:*) Praeterea illud nobis non modicam admirationem inducit, quod purgationem oblatam recipere noluisti, nisi prius commendasses nomina singulorum, qui *iam* dictum P. purgare volebant, et de nationibus et ceteris circumstantiis prius inquireres diligenter, tanquam esses ordinationes facturus: utinam sic discuteres ordinandos! Sane in purgationibus faciendis, quum satis sit illis, qui pro purgando exhibent iuramentum, secundum propriam conscientiam et opinionem iurare, quod purgandus a crimine sit immunis, vel quod bonum exhibuit iuramentum, si purgatores ab ecclesia tolerentur, et sint bonae famae in suis ordinibus ministrantes, nec in iudicio pro crimine condemnati: procul dubio sunt absque ullius indagine admittendi.

Chapter X

Latin source headnote: On account of the magnitude of the crime, a defamed person can be suspended not only from office but also from benefice until he has purged himself. This is the first point. And on this account the number of compurgators is increased. This is the second point. For a cause, someone is sometimes suspended for a time after purgation has been furnished. This is the third point. And one who fails in purgation is punished as convicted. This is the fourth point.

Innocent III, to the Archbishop of Sens.

Among our solicitudes this ought to be the chief: that we catch the little foxes *which endeavor to demolish the vineyard of the Lord, having certain diverse appearances but tails joined to one another, because in vanity they agree in the same thing. For these are the taverners who mix water with wine, who serve the poison of the dragon in the golden cup of Babylon, who, according to the prophetic word, bend the bow, a bitter thing, so that they may shoot the innocent in secret; their error creeps

like a cancer in such a way that, unless the cluster is injured in the flower, it will germinate fruit not only bitter but even pestiferous. The Apostle, an eminent preacher, describes these in his epistle with prophetic speech and teaches that they are to be avoided in every way; against them priests ought to sound with silver trumpets so that, with the people crying out and the ark of the covenant preceding, the walls of Jericho—which had already been condemned by perpetual anathema—may fall, in such a way that, if anyone should presume to steal from it even a golden rule, he shall be overwhelmed with stones with Achor, the son of Charmi. *[*You, therefore, as a provident and discreet man, fulfill the office of a true pastor and exercise pastoral solicitude purely and fully over the flock committed to you, while you both are zealous for the law of Christ and, attacking the error of heretics, unsheathe the sword of canonical vengeance against their supporters. For vigilantly you keep watch over your flock, lest, after abandoning the fold of the true shepherd, which is one, the sheep rashly depart after the tracks of flocks which are not of it, or lest the wolf seize and scatter those whom truth has united in the same fold under one shepherd of the catholic faith. Appointed among the chief cultivators of the vineyard of the Lord of Sabaoth, you do not suffer the little foxes which we have described to demolish its appearance, but endeavor rather to catch or drive them away. Indeed, as we have learned from the letters of your fraternity, when at the prayers of our venerable brother the Bishop of Auxerre you had gone to the town which is called La Charité, with him and our venerable brothers the Bishops of Nevers and Meaux present, you caused the people of that town to be assembled together, where, after a diligent inquiry had been held concerning heretics and their doctrines, among others whom you found publicly defamed concerning heretical depravity, you learned that the Dean of Nevers was burdened by common opinion and that through him and in him no small scandal had been manifested in the minds of Catholics. Whence, on account of the vehement infamy and grave scandal, you suspended him from office and benefice, assigning him a certain day at Auxerre on which he should present himself before you to defend himself from the crime charged. And when he had come to your presence at the appointed term, with the said Bishops of Auxerre and Nevers and many persons learned in both laws present, since no certain accuser appeared against him, by virtue of your office you caused witnesses both for him and against him to be received and diligently examined and the attestations also to be published. And when afterward he did not present himself before you on the day granted to him, although you had granted him free opportunity to speak against the witnesses and their statements and to propose his arguments, after certain proofs and allegations had been proposed and he had finally renounced them, he sought a sentence. But you, withdrawing together with our venerable brothers the Bishop of Troyes and the said Bishops of Auxerre and Nevers, after the attestations had been diligently inspected and the counsel of many wise men employed, because the crime against him had not been clearly proved, did not determine that he was to be condemned for heresy. But because from the statements of the witnesses there was much presumption against him, inasmuch as it had been manifestly proved that he had not only had familiarity with heretics but had even knowingly sought it, and since he also labored under public infamy and so great a scandal had been stirred up against him that it could not be erased by canonical purgation, you were unwilling either to absolve him or to receive the purgation which he had offered at the beginning and was then also offering, but determined that he was to be sent to the Apostolic See with your letters, understanding that from the fullness of power granted to us we can dispense short of canonical punishment and increase the rigor of severity beyond it. Moreover, when he had afterward been established in our presence, we granted him a common audience in our consistory, where he endeavored to excuse himself in many ways, alleging especially that, since he offered purgation when no legitimate accuser appeared, witnesses against him ought not to have been admitted in any way.*] Therefore, although an ecclesiastical constitution teaches that such persons are to be suspended only from office until canonical purgation, nevertheless, because you suspended him also from benefice on account of the enormity of the crime, we are unwilling to disapprove it; nor do we disapprove even

this: that, although no legitimate accuser appeared against him, nevertheless by virtue of your office, with public report making the accusation, you wished to inquire more fully into the truth. Attending, however, to the widespread infamy, grave scandal, and vehement suspicion arising from the statements of the witnesses, which appeared to make against the *same* dean, since purgation would have to be imposed upon him on account of any one of them, and preserving justice while softening rigor, *on the counsel of our brothers, the archbishops* [*and*] *bishops existing at the Apostolic See*, we have determined that a purgation of the fourteenth hand of his order is to be imposed upon him. Therefore, remitting him to you *with apostolic letters* so that he may be purged where he is known to be defamed, we command your fraternity *by apostolic writings* that, having summoned with you the *said* Bishop of Nevers and *our venerable brother* the Bishop of Paris, you receive the purgation imposed upon him *by us*, yet in such a way that those who proceed to prove his purgation are Catholics in faith and approved in life, who have known his manner of life and life not so much in modern time as in the past; but, when the purgation has been received, do not postpone restoring his benefice to him, *lest he be compelled to beg, to the reproach of the clergy*. As a punishment, however, for that familiarity which he is known knowingly to have had with heretics, we will that he remain suspended from office until the scandal is quieted, yet in such a way that he publicly abjure familiarity with heretics. You shall moreover strictly command him that in the aforesaid and other surrounding towns he profess and preach the catholic faith, and confound and detest heretical depravity, henceforth adorning his life with good works in such a way that the infamy may be converted into good reputation and every scandal and suspicion may be erased from the minds of Catholics. But if perhaps he should fail in the purgation, you shall strike him with the sword of ecclesiastical discipline and shall not omit to thrust him, deposed from office and benefice, into a strict monastery to perform penance. [*Given at the Lateran, on the Nones of May,* 1199.]

> Propter magnitudinem criminis infamatus suspendi potest, nedum ab officio, sed etiam a beneficio, donec se purgaverit. Hoc primo. Et augetur propter hoc numerus compurgatorum. Hoc secundo. Ex causa interdum post purgationem praestitam suspenditur quis ad tempus. Hoc tertio. Et deficiens in purgatione punitur convictus. Hoc quarto.
>
> Innocentius III. Senonensi Archiepiscopo.
>
> Inter sollicitudines nostras illa debet esse praecipua, ut capiamus vulpeculas, *quae moliuntur vineam Domini demoliri, species quidam habentes diversas, sed caudas ad invicem colligatas, quia de vanitate conveniunt in id ipsum. Hi sunt namque caupones, qui aquam vino commiscent, qui virus draconis in aureo calice Babylonis propinant, qui iuxta verbum propheticum arcum rem amaram intendunt, ut sagittent innoxios in occultis, quorum error serpit ut cancer ita, quod, nisi botrus in flore laedatur, fructum non solum amarum, sed etiam pestiferum germinabit. Hos Apostolus egregius praedicator in epistola sua prophetico sermone describit, et docet omnibus modis evitandos, contra quos sacerdotes tubis argenteis clangere debent, ut conclamante populo, arca foederis praecedente, muri corruant Hiericho, quae iam fuerat perpetuo anathemate condemnata, ita, quod, si quis ex ea vel regulam auream furari praesumpserit, cum Achor filio Charmi lapidibus obruatur. *[*Tu ergo sicut vir providus et discretus veri pastoris adimples officium, et super grege tibi commisso pure ac plene sollicitudinem pastoralem exerces, dum et legem Christi zelaris, et haereticorum impugnans errorem, in fautores ipsorum exseris gladium canonicae ultionis. Vigilans enim vigilas super grege tuo, ne relicto veri pastoris ovili, quod est unum, oves aberrent, post vestigia gregum, qui non sunt ex eo, temere abeuntes; vel ne lupus eas rapiat, et dispergat, quas veritas in eodem ovili sub uno pastore fidei catholicae counivit. Inter praecipuos quidem vineae domini Sabaoth agricolas deputatus vulpeculas, quas descripsimus, non pateris eius speciem demoliri: sed eas vel capere potius satagis vel fugare. Sane, sicut ex literis tuae fraternitatis*

accepimus, quum ad preces venerabilis fratris nostri Altissiodorensis episcopi ad villam, quae Charitas dicitur, accessisses, praesentibus eodem et venerabilibus fratribus nostris Nivernensi et Meldensi episcopis in unum fecisti eiusdem villae populum congregari, ubi de haereticis et eorum dogmatibus inquisitione diligenti habita, inter alios, quos super haeretica pravitate reperisti publice infamatos, decanum Nivernensem communi didicisti opinione gravari, et in eo et per eum non modicum fuisse scandalum catholicorum animis declaratum. Unde propter vehementem infamiam et grave scandalum ipsum ab officio et beneficio suspendisti, apud Altissiodorum ei diem certum assignans, quo tuo se conspectui praesentaret ab obiecto crimine defensurum. Quumque statuto termino ad tuam praesentiam accessisset, praesentibus dictis Altissiodorensi et Nivernensi episcopis, ac pluribus in utroque iure peritis, quum certus accusator contra eum minime compareret, tu ex officio tuo testes tam pro ipso quam contra ipsum recipi ac diligenter examinari fecisti, et attestationes etiam publicari. Quumque postmodum non ad concessum ei diem tuo se conspectui praesentasset, quum facultatem ei liberam indulsisses in testes ac eorum dicta dicendi ac proponendi suas in medium rationes, quibusdam propositis probationibus et allegationibus tandem renuncians, sententiam postulavit. Tu vero cum venerabilibus fratribus nostris Trecensi ac dictis Altissiodorensi et Nivernensi episcopis secedens in unum, inspectis attestationibus diligenter, et adhibito plurium consilio sapientum, quia crimen contra eum liquido probatum non erat, ipsum non duxisti de haeresi condemnandum. Verum quoniam ex dictis testium multa erat praesumptio contra eum, utpote quum esset manifeste probatum, eum familiaritatem haereticorum non solum habuisse, sed etiam captasse scienter, quum publica etiam laboraret infamia, et tantum suscitatum esset scandalum contra ipsum, quod non posset canonica purgatione deleri, nec ipsum absolvere, nec purgationem, quam obtulerat ab initio et tunc etiam offerebat, recipere voluisti, sed ipsum cum literis tuis ad sedem duxisti apostolicam destinandum, intelligens, quod ex concessa nobis plenitudine potestatis citra poenam canonicam dispensare possimus, et ultra eam rigorem severitatis augere. Ceterum ei postmodum in nostra praesentia constituto communem audientiam in consistorio nostro concessimus, ubi se multipliciter nisus est excusare, illud praesertim allegans, quod, quum non apparente accusatore legitimo purgationem offerret, testes contra eum non fuerant aliquatenus admittendi.] Licet ergo ecclesiastica constitutio tales ab officio tantum usque ad purgationem canonicam doceat suspendendos, quia tamen eum etiam a beneficio propter immanitatem criminis suspendisti, nolumus improbare; nec illud etiam improbamus, quod, licet contra eum nullus accusator legitimus appareret, ex officio tuo tamen, fama publica deferente, voluisti plenius inquirere veritatem. Attendentes autem vulgatam infamiam, grave scandalum, et vehementem suspicionem ex testium dictis obortam, quae contra *eundem* decanum facere videbantur, quum propter eorum quodlibet ei esset purgatio indicenda, et servantes iustitiam et mollientes, rigorem, *de consilio fratrum nostrorum, archiepiscoporum *[*et*] *episcoporum apud sedem apostolicam exsistentium*, purgationem ei quartae decimae manus sui ordinis duximus indicendam. Ipsum igitur ad te *cum literis apostolicis* remittentes, ut ibi purgetur, ubi noscitur infamatus, *fraternitati tuae per apostolica scripta* mandamus, quatenus, accitis tecum *dicto* Nivernensi et *venerabili fratre nostro* Parisiensi episcopis, indictam ei *a nobis* purgationem accipias, ita tamen, ut, qui ad eius purgationem processerint comprobandam, sint fide catholici et vita probati, qui conversationem et vitam ipsius non tam moderno tempore noverint quam transacto; purgatione vero recepta beneficium ei restituere non postponas, *ne cogatur in cleri opprobrium mendicare*. In poenam autem familiaritatis illius, quam cum haereticis scienter habuisse dignoscitur, eum ab officio volumus manere suspensum, donec scandalum sopiatur, ita tamen, ut publice familiaritatem haereticorum abiuret. Praecipias insuper ei districte, ut in praedicta et aliis villis circumpositis profiteatur et praedicet fidem catholicam, ac confundat et detestetur haereticam pravitatem, sic deinceps vitam suam bonis adornans operibus, ut infamia convertatur in bonam famam, et omne scandalum et suspicio de catholicorum mentibus deleatur. Quodsi forsan in purgatione defecerit, eum ecclesiasticae disciplinae mucrone percellas, et ab officio et beneficio depositum ad agendam poenitentiam in arctum monasterium detrudere non omittas. [*Dat. Lat. Non. Maii. *1199.]

Chapter XI

Latin source headnote: It is brief and cannot be summarized otherwise.

The same, to the Abbot of Saint-Denis and the Priest of Saint Martin.

When the beloved (*And below:*) We will and command you, however, to attend to this: that such persons as are neighboring and honorable be admitted to *this kind of* purgation. [*But if not all, etc. Given at the Lateran, on the ninth day before the Kalends of April,* 1202.]

> Breve est, nec potest aliter summari. Idem Abbati sancti Dionysii et Presbytero S. Martini. Quum dilectus (*Et infra:*) Illud autem vos attendere volumus et mandamus, ut tales ad purgationem *huiusmodi* admittantur personae, quae vicinae sint et honestae. [*Quod si non omnes etc. Dat. Lat. IX. Kal. Apr. *1202.]

Chapter XII

Latin source headnote: If infamy does not take its origin from probable conjectures, purgation is not to be imposed of necessity; nevertheless, it can be imposed at the insistence of the person to be purged.

The same.

When in his youth (*And below:* [*cf. c.* 15, *On Presumptions, II.* 23.]) But because a father chastises the son whom he loves, for greater caution we enjoined upon the Bishop of Pécs through our letters that, by ceasing from his familiarity, he should conduct himself *before God and men* in such a way that sinister suspicion concerning him could not be held. But the enemy man, surreptitiously obtaining a rescript of *those* letters, wickedly published it before the *aforesaid* king and magnates of the kingdom so that the *same bishop* should thereby be defamed more greatly, *since he appeared to be unbelievable and suspect to us*. Whence we, attending to so great a wickedness of his rivals, although we were pressed many times against him, nevertheless could never be moved against him, knowing that a multitude easily follows the statement of one person. But when the same bishop had been postulated to the metropolitan see of Esztergom, certain persons who opposed that postulation, so that they might more easily impede his promotion, endeavored to rekindle the coals of that accusation. Whence a certain proctor of his, *established in our presence*, on the counsel of *certain* of his friends who *indeed* had a good zeal concerning this, but not according to knowledge, began *before us in the presence of our brothers* insistently to petition that we cause canonical purgation to be imposed upon the same bishop so that he might demonstrate his innocence. We, however, regarding a petition of this kind as insufficiently provident, *indeed, as exceedingly improvident*, often wished to recall the proctor himself from it, *both because the often-mentioned bishop did not appear among good and serious men to be defamed concerning that crime, since his fellow bishops, questioned concerning this by apostolic command, took care to furnish us laudable testimony concerning him, and because such defamation appeared to have proceeded from enemies and rivals, as was expressed above. Whence, since his previous life appeared commendable and a deed of this kind appeared incredible, we did not believe that any purgation was henceforth to be imposed upon him.* Moreover, because the proctor insisted, we were compelled, not by necessity of law but by the importunity of the petitioner, to command that purgation be imposed upon him by you with two [*bishops and three*] abbots, although we had protested to the *same proctor* that such a petition was then being made insufficiently providently for another *also* reason: namely, because the suffragans of the church of Esztergom would scarcely at that time purge that man, since they contradicted him in the matter of the postulation, and the suffragans of the church of Kalocsa would then by no means purge him, because a controversy concerning the metropolitan see of Esztergom was being disputed between him and the

Archbishop of Kalocsa. Whence, since there are no other pontiffs in Hungary, it deservedly appeared that he could not purge himself in that article through the bishops of his kingdom. [*Therefore, etc. Given at Ferentino, on the Nones of July, in the ninth year,* 1206.]

> Si infamia ortum non habet ex probabilibus coniecturis, non est de necessitate indicenda purgatio; potest tamen indici ad instantiam purgandi. Idem.
>
> Quum in iuventute sua (Et infra: [*cf. c. *15. *de praesumpt. II.* 23.]) Quia vero pater filium, quem diligit, corripit, nos Quinqueecclesiensi episcopo per literas nostras ad maiorem cautelam iniunximus, ut ab illius familiaritate cessando *apud Deum et homines* taliter se haberet, quod sinistra de ipso suspicio non possit haberi. Sed inimicus homo, rescriptum literarum *illarum* surripiens, apud *praedictum* regem et regni magnates ipsum nequiter publicavit, ut sic *idem episcopus* deberet amplius infamari, *quum videretur esse nobis incredibilis et suspectus*. Unde nos, tantam aemulorum nequitiam attendentes, licet pulsati fuerimus multoties contra eum, nunquam tamen adversus ipsum potuimus commoveri, scientes, quod dictum unius facile sequitur multitudo. Ubi vero idem episcopus ad Strigoniensem metropolim exstitit postulatus, quidam, qui super ipsa postulatione adversabantur eidem, ut promotionem ipsius facilius impedirent, illius criminationis carbones reaccendere sunt moliti. Unde quidam procurator ipsius, *in nostra praesentia constitutus*, de consilio *quorundam* amicorum suorum, qui super hoc bonum *quidem* zelum habebant, sed non secundum scientiam, coepit *a nobis in praesentia fratrum nostrorum* cum instantia postulare, quatenus eidem episcopo purgationem canonicam faceremus indici, ut suam innocentiam demonstraret. Nos autem, postulationem huiusmodi minus providam, *immo nimis improvidam* reputantes, procuratorem ipsum ab ea saepe voluimus revocare, *tum quia saepe fatus episcopus non videbatur apud bonos et graves de illo crimine infamatus, quum coepiscopi sui, super hoc ex mandato apostolico requisiti, laudabile testimonium de ipso nobis curaverint perhibere, tum quia talis infamatio videbatur ab inimicis et aemulis processisse, sicut superius est expressum. Unde quum ante acta vita eius commendabilis appareret, et huiusmodi facinus incredibile videretur: non credebamus, ei purgationem aliquam amodo indicendam*. Ceterum, quia procurator instabat, compulsi fuimus, non iuris necessitate, sed importunitate petentis, ut per vos ei purgationem canonicam cum duobus [*episcopis et tribus*] abbatibus mandaremus indici, quamvis *eidem procuratori* fuerimus protestati, quod ex alia *quoque* causa talis petitio minus provide tunc fiebat, quia *videlicet* Strigoniensis ecclesiae suffraganei vix eo tempore purgarent eundem, qui in facto postulationis contradicebant eidem, et suffraganei Colocensis ecclesiae ipsum minime tunc purgarent, quia inter eum et Colocensem archiepiscopum de Strigoniensi metropoli contentio vertebatur. Unde, quum non sint alii pontifices in Hungaria, merito videbatur, quod per episcopos regni sui non posset in illo articulo se purgare. [*Propterea etc. Dat. Ferentini Non. Iul. Ao. IX.* 1206.]

Chapter XIII

Latin source headnote: A compurgator swears concerning belief.

The same, to the Archbishop of Tyre.

Concerning witnesses (*And below:* [*cf. c.* 29, *On Witnesses, II.* 20.]) But those who are introduced to purge the infamy of someone are bound to affirm by oath this alone: that they believe that the person who is purged speaks the truth *by oath*. [*Given at the Lateran, on the fourth day before the Nones of January,* 1199.]

> Compurgator iurat de credulitate.
>
> Idem Tyronensi Archiepiscopo.

De testibus (*Et infra:* [*cf. c.* 29. *de test. II.* 20.]) Illi vero, qui ad purgandam alicuius infamiam inducuntur, id solum tenentur iuramento firmare, quod veritatem credunt eum *iuramento* dicere, qui purgatur. [*Dat. Lat. IV. Non. Ian.* 1199.]

Chapter XIV

Latin source headnote: A person defamed concerning a defect of birth ought not to be promoted unless he first purges himself.

The same, to the Bishop of Florence.

Coming to our presence, the *beloved son* T., deacon, *your parishioner*, showed us by a humble intimation that, when it was said by his rivals that he was the son of a priest, you neither wished to promote him *to the order of the presbyterate* nor permitted him to be promoted by another, *although neither this nor anything else had been proved against him*. Therefore, we command your fraternity *by apostolic writings* that, if the *deacon himself* was publicly besprinkled with a mark *of this kind* and it cannot be legitimately established to you concerning it, after purgation has been received from him, *provided that no other canonical impediment obstructs*, you do not defer on this account to promote him to the office of priest, because, although it is not a mark of offense, it is nevertheless a mark of defect impeding promotion to sacred orders. [*Given at Rome, at Saint Peter's, on the eighth day before the Ides of February, in the ninth year,* 1207.]

Infamatus super defectu natalium non debet promoveri, nisi prius se purget.

Idem Florentino Episcopo.

Accedens ad praesentiam nostram *dilectus filius* T. diaconus, *parochianus tuus*, humili nobis insinuatione monstravit, quod, quum a suis aemulis diceretur, quod esset filius sacerdotis, tu eum nec promovere *ad presbyteratus ordinem voluisti*, nec permisisti ab alio promoveri, *quamquam vel id vel aliud probatum non fuerit contra ipsum*. Quocirca *fraternitati tuae per apostolica scripta* mandamus, quatenus, si *diaconus ipse* publice fuerit *huiusmodi* nota respersus, et de ipsa tibi legitime constare non poterit, purgatione ab ipso recepta, *dummodo aliud canonicum non obsistat*, ipsum non differas propter hoc ad sacerdotis officium promovere, quia, etsi non sit nota delicti, est tamen nota defectus impedientis ad sacros ordines promovendum. [*Dat. Rom. ap. S. Petr. VIII. Febr. Ao. IX.* 1207.]

Chapter XV

Latin source headnote: Purgation is not to be imposed concerning a notorious crime; and, while a case concerning crimes is pending before a delegate of the Pope, a purgation received concerning them by the ordinary is not valid.

The same, to the Abbot of Eugen. and the Scholastic of Modena.

When, for the beloved sons H. the priest and G., proctor of the cleric O., *who had been constituted in our presence, we granted our beloved son* T., *our subdeacon and* chaplain, as auditor, the same proctor proposed *before him* that, when the said priest had been publicly defamed concerning the crime of incest, the Bishop of Constance *of good memory*, the ordinary judge, imposed purgation upon him; and, when he had been unable to purge himself, he was by sentence deprived by him *in a full synod* of his churches, which he nevertheless held *for some time*, occupied by violence. And when *afterwards* the same priest publicly kept in his house *after bringing her there* the wife of one of his blood relatives, at the petition *of H.*, the parish priest of Heniso, and of certain other clerics of the diocese of Constance, we say that

we sent *our* letters to judges *in this form*: *namely*, that, if the said priest could not purge himself before them concerning the crime of adultery and incest, they should chastise him with the due penalty. They, *proceeding in the business according to the tenor of our mandate*, when it was established to them that the same priest, because he had failed in the purgation, had been condemned *in synod* by the aforesaid bishop, deprived him by sentence, as contumacious, of the aforesaid churches, especially since the crime of incest and adultery, as notorious, *was manifestly evident* to them; and they granted to the *beloved son*, the Abbot of Saint Gall, to whom the donation of those churches pertained, free power to confer those churches upon other persons, and he afterwards assigned them to the above-mentioned cleric O. [*But the same priest, coming to the Apostolic See and falsely asserting that he had been despoiled with the order of law disregarded, carried back our letters to the abbot of the house of Saint Peter and his fellow judges, who were altogether suspect to the other party. After a copy of those letters had been denied to the same O., and after they had refused to admit his proof concerning the falsity of the letters, they, with the order of law disregarded and after an appeal had lawfully been interposed to us, delivered a sentence of restitution for the same priest, which O. proposed that he would prove at the proper place and time through lawful witnesses.*] The said priest, however, among other things, responded *on the opposing side* that [*although he had been defamed concerning the foregoing crimes by hostile enemies, and purgation had on that account been imposed upon him by the chapter of Constance, nevertheless no one wished to receive it, although he had been prepared to furnish it within the term fixed for him; adding that*] the proceeding of the aforesaid judges deserved to be retracted because, when joinder of issue had not occurred, *and after an appeal had been interposed to us*, they had presumed to proceed against him. [*Moreover, the said priest proposed by way of complaint that, when he had been despoiled of the aforesaid churches by violence by the aforesaid O. and his accomplices, and, after letters of restitution had been obtained first to the above-mentioned abbot of the house of Saint Peter and his fellow judges, and secondly to the bishop-elect of Constance, he had deserved to obtain the benefit of restitution through both, the same O. did not fear to despoil him repeatedly. Hence, when on this account he and his accomplices, bound by a sentence of excommunication, persisted in their contumacy, we gave orders to the aforesaid bishop-elect and his fellow judges that, supported by our authority, they should more strictly prohibit divine offices from being said in places in which the same excommunicated persons were present, and, with appeal ceasing, should suspend them from divine things until they competently satisfied the often-mentioned priest for the damages and injuries inflicted, or presented themselves before us to answer for so great a contempt. But they, fleeing to the refuge of an appeal, although under interdict, celebrate divine rites contrary to the prohibition of those judges, and they did not take care to send a representative to our presence.*] He added that, *to abolish every infamy*, he had taken care to furnish the purgation imposed by the bishop-elect of Constance; *yet the often-mentioned rivals do not cease to defame him. Hence he humbly supplicated us that, absolved from their claims, we should cause him to enjoy peaceful possession of the aforesaid churches,* [*lawfully punishing those who, excommunicated and under interdict, presumed to celebrate divine offices. To these things the proctor added that the said purgation was received by the bishop-elect while the other party was absent and wholly ignorant, which he also asserted that he would prove.*]

Therefore, these and the other things *that were proposed before the aforesaid chaplain* having been more fully understood, although those letters said to have been obtained to the aforesaid judges, or a transcript of them, had not been shown before us, nevertheless, because from the tenor of their report, which the said proctor exhibited, it was clearly established to us—as if the letters themselves had been shown—that those judges had proceeded with the order of law disregarded, by apostolic authority we retract both their proceeding and the grant of the churches made by the aforesaid abbot at their mandate, especially since the sequence of the report itself contains contradictory and

opposing things. For it is said that the crime of the same priest had been public and notorious to such a degree that no place at all remained for denial, seeing that the people of the entire neighborhood were witnesses to it; and yet it is stated there beforehand that they fixed for the same priest a peremptory term in which, if he could, he might canonically purge himself concerning the infamy of the aforesaid crimes; for, assuredly, if the crime was notorious, purgation was *certainly* not to be imposed upon him, but a sentence of condemnation was to be promulgated against him. [*We have also thought that the sentence of restitution delivered for the same priest by different judges ought to be approved, commanding you by the authority of the present letters that you introduce the same priest into corporal possession of the aforesaid churches, with the obstacle of any contradiction and appeal removed, and defend him after he has been introduced; constraining objectors, if there are any, by ecclesiastical censure with appeal postponed, and causing competent satisfaction to be made to the same priest both concerning the fruits received in the meantime from the aforesaid churches and concerning the damages and injuries inflicted. Full restitution having been made, if a lawful opponent appears who can and wishes lawfully to prove that the same priest, because he failed in a purgation lawfully imposed upon him, was condemned by the aforesaid bishop and despoiled of the often-mentioned churches, you shall impose perpetual silence upon him concerning those churches, causing them to be canonically provided with suitable persons by those to whom it pertains.*] But if no lawful accuser appears, and you find him defamed among good and grave men concerning the aforesaid crimes, or either one of them, you shall impose canonical purgation upon him, notwithstanding that he is said to have purged himself before the aforesaid bishop-elect; for, while the judicial proceeding was pending before delegated judges, the ordinary ought not to have imposed purgation upon the defamed man. [*In which purgation, etc. Given at Rome, at Saint Peter's, on the fourth day before the Ides of January, in the tenth year,* 1208.]

> Super notorio crimine non est indicenda purgatio, et, pendente causa super criminibus coram Papae delegato, purgatio ab ordinario super eis recepta non tenet.
>
> Idem Abbati Eugen. et Scholastico Mutinensi. Quum dilectis filiis H. presbytero et G. procuratori O. clerici *constitutis in praesentia nostra dilectum filium* T. *subdiaconum et* capellanum nostrum concesserimus auditorem, idem procurator proposuit *coram eo*, quod, quum dictus presbyter super incestus crimine fuisset publice infamatus, *bonae memoriae* Constantiensis episcopus, ordinarius iudex, ei purgationem indixit; qui, quum se purgare nequivisset, ab ipso fuit *in plena synodo* suis ecclesiis sententialiter destitutus, quas ipse nihilominus detinuit *aliquamdiu* per violentiam occupatas. Quumque *postmodum* idem presbyter cuiusdam consanguinei sui uxorem *adductam in domo* publice detineret, ad petitionem *H.*, plebani de Heniso, et quorundam aliorum clericorum Constantiensis dioecesis iudicibus *nostras* dicimus *sub hac forma* literas destinasse, ut *videlicet*, si dictus presbyter super crimine adulterii et incestus coram ipsis se purgare non posset, ipsum poena debita castigarent. Qui, *iuxta mandati nostri tenorem in negotio procedentes*, quum constitisset eisdem, quod idem presbyter pro eo, quod in purgatione defecerat, ab episcopo memorato fuerat *in synodo* condemnatus, ipsum, utpote contumacem, praedictis ecclesiis per sententiam privaverunt, maxime quum de incestus et adulterii crimine, tanquam de notorio, *manifeste* liqueret eisdem, *dilecto filio* abbati sancti Galli, ad quem illarum ecclesiarum donatio pertinebat, potestatem liberam concedentes, ecclesias illas personis aliis conferendi, qui eas postea supra dicto O. clerico assignavit. [*Verum idem presbyter ad sedem apostolicam veniens, et falso se asserens praetermisso iuris ordine spoliatum, ad abbatem de domo S. Petri et suos coniudices alteri parti omnino suspectos nostras literas reportavit. Qui eidem O. literarum ipsarum copia denegata et probationem ipsius super literarum falsitate admittere recusantes, iuris ordine praetermisso post appellationem ad nos legitime interpositam restitutionis sententiam pro eodem presbytero protulerunt, quod se loco et tempore probaturum per legitimos testes proponebat.*] Dictus vero presbyter inter cetera *ex adverso* respondit, quod, [*licet super praemissis criminibus ab inimicis fuisset aemulis infamatus et a Constantiensi capitulo propter hoc eidem indicta purgatio, ipsam tamen nullus recipere voluit, licet eam paratus fuerit*

infra praefixum sibi terminum exhibere, adiiciens, quod] processus iudicum praedictorum debebat merito retractari, quum lite non contestata *et post appellationem ad nos interpositam* procedere praesumpserint contra eum. [*Praeterea dictus presbyter proposuit conquerendo, quod, quum a praedicto O. et complicibus suis praedictis ecclesiis fuisset per violentiam spoliatus, et ad supradictum abbatem de domo sancti Petri ac coniudices suos primo, et secundo ad electum Constantiensem restitutionis literis impetratis, per utrosque restitutionis meruerit beneficium obtinere, idem O. eum non est veritus saepius spoliare. Unde quum propter hoc ipse cum complicibus suis excommunicationis sententia innodatus in sua contumacia perduraret, praedicto electo et coniudicibus suis dedimus in praeceptis, ut auctoritate nostra suffulti districtius inhiberent, ne in locis, in quibus iidem excommunicati praesentes exsisterent, divina officia dicerentur et eosdem tamdiu appellatione cessante suspenderent a divinis, donec saepedicto presbytero de damnis et iniuriis irrogatis satisfacerent competenter, vel responsuri de tanto contemptu nostro se conspectui praesentarent. Sed ipsi ad appellationis diffugium convolantes, contra prohibitionem ipsorum iudicum divina celebrant interdicti, nec ad nostram praesentiam responsalem transmittere curaverunt.*] Adiiciens quod *ad abolendam omnem infamiam* purgationem indictam ab electo Constantiensi curaverit exhibere, *saepe dicti tamen aemuli eum non desinunt infamare. Unde nobis humiliter supplicavit, ut ab illorum petitionibus absolutum, faceremus ipsum praedictarum ecclesiarum pacifica possessione gaudere,* [*illos legitime punientes, qui excommunicati et interdicti divina praesumpserunt officia celebrare. Ad haec procurator adiecit, quod dicta purgatio fuit ab electo recepta absente parte altera et penitus ignorante, quod etiam se asseruit probaturum.*] His igitur et aliis, *quae fuerunt coram capellano praedicto proposita*, plenius intellectis licet literae illae, quae ad praedictos iudices impetratae dicuntur, vel ipsarum transscriptum ostensum non fuerit coram nobis, quia tamen ex tenore relationis ipsorum, quam dictus procurator exhibuit, ac si literae ipsae ostensae fuissent, nobis constitit evidenter, iudices ipsos praetermisso iuris ordine processisse: tam processum eorum, quam concessionem ecclesiarum a praedicto abbate de mandato ipsorum factam, auctoritate apostolica retractamus, praesertim quum relationis ipsius series repugnantia contineat et adversa. Dicitur enim, quod crimen eiusdem presbyteri usque adeo publicum fuerat et notorium, quod nullus inficiationi locus penitus exsistebat, utpote cuius universae viciniae populus testis erat, et tamen ibidem praemittitur, quod eidem presbytero terminum peremptorium praefixerunt, in quo, si posset, super infamia praedictorum criminum canonice se purgaret; quum nimirum, si crimen notorium exsistebat, non erat *utique* illi indicenda purgatio, sed in eum condemnationis sententia promulganda. [*Restitutionis quoque sententiam pro eodem presbytero a diversis iudicibus latam duximus approbandam, praesentium vobis auctoritate mandantes, quatenus eundem presbyterum in corporalem possessionem praedictarum ecclesiarum sublato cuiuslibet contradictionis et appellationis obstaculo inducatis et defendatis inductum; contradictores, si qui fuerint, per censuram ecclesiasticam appellatione postposita compescentes, et facientes eidem presbytero tam de fructibus medio tempore perceptis ex ecclesiis memoratis, quam de damnis et iniuriis irrogatis satisfieri competenter. Facta vero restitutione plenaria, si legitimus apparuerit contradictor, qui possit et velit legitime comprobare, quod idem presbyter, pro eo, quod in legitime indicta sibi purgatione defecit, condemnatus fuit a praedicto episcopo et saepedictis ecclesiis spoliatus, vos eidem super ecclesiis ipsis perpetuum silentium imponatis, facientes eisdem, per eos ad quos pertinet, de personis idoneis canonice provideri.*] Si vero nullus apparuerit legitimus accusator, et ipsum inveneritis apud bonos et graves super praedictis criminibus vel ipsorum altero infamatum, purgationem ei canonicam indicatis, non obstante, quod coram praedicto electo dicitur se purgasse; quum, iudicio pendente coram iudicibus delegatis, non debuerit ordinarius purgationem indicere infamato. [*In qua purgatione etc. Dat. Rom. ap. S. Petr. IV. Id. Ian. Ao. X. *1208.]

Chapter XVI

Latin source headnote: It is not sufficient for a prelate defamed concerning crimes, when he purges himself, to swear that he is free from those crimes; rather, he ought to swear that he did not commit those crimes after his promotion.

The same.

We received the letters by which you took care to intimate to us that, after the apostolic mandate concerning the imposition of purgation upon our *venerable brother*, the Archbishop of Besançon, had been received, you cited him as was proper; and he appeared before you on the appointed day, offering an oath of purgation in this form, namely, that he was free from those crimes concerning which he was bound to purge himself. [*And when you said that this was not the canonical form, and there had been some dispute concerning this, he at last raised the voice of appeal to us, to which you deferred on the advice of prudent men.*] But he, coming to our presence, humbly supplicated that at least concerning the purgation of incontinence we deign to temper rigor, because he ought not to assert that from his birth he had never suffered a lapse of the flesh. Furthermore, since it is not believed that an oath of this kind was required of him, we perhaps presume rather that for another reason he wished to swear according to the prescribed form, namely, that he was free from those crimes concerning which he had been defamed, as though, since they had been remitted through penance, he was now free from them. But to swear this would be an act of no small temerity, since blessed Job says: "Even if I shall have been innocent, my soul itself is ignorant of this," [*and Solomon: "Who can say: My heart is clean and I am pure from sin?" Hence the Psalmist said: "Who understands offenses? Cleanse me from my hidden ones, O Lord," while the Apostle bears witness: "I am conscious of nothing in myself, yet I am not thereby justified."*] Therefore we reject the prescribed form of purgation, according to which the same archbishop offered to purge himself, as undiscerning, rash, and inept, enjoining upon him that, if he wishes and is able to purge himself according to the following form, he shall do so according to the sound understanding that we have thought ought to be expressed to him: namely, that he swear that he did not at all commit, after he was promoted to archiepiscopal dignity, those graver crimes—that is, simony, the sale of justice, and incontinence—concerning which he stands defamed; and let the compurgators swear in this manner, that they believe that he has sworn the truth. When this has been done, you shall dismiss him in peace. Otherwise, etc. [*Given at the Lateran, on the fourth day before the Nones of January, in the sixteenth year of our pontificate,* 1214.]

> Non sufficit praelato, de criminibus infamato, iurare, quum se purgat, quod sit immunis ab illis criminibus; sed iurare debet, quod post suam promotionem illa crimina non commisit.
>
> Idem.
>
> Accepimus literas, quibus nobis intimare curastis, quod apostolico mandato super indicenda purgatione *venerabili fratri nostro* archiepiscopo Bisuntino recepto, ipsum citastis ut decuit; qui ad diem praefixum comparuit coram vobis, iuramentum purgationis offerens sub hac forma, videlicet, quod immunis erat ab illis criminibus, super quibus se purgare debebat. [*Quumque vos diceretis, hanc non esse formam canonicam, et super hoc fuisset aliquamdiu disputatum, ipse tandem ad nos vocem appellationis emisit, cui de prudentum virorum consilio detulistis.*] Ipse vero ad praesentium nostram accedens humiliter supplicavit, ut saltem super purgatione incontinentiae dignaremur temperare rigorem, quia non deberet asserere, quod a nativitate sua nunquam passus fuerit lapsum carnis. Porro, quum ab eo non credatur exactum fuisse huiusmodi iuramentum, potius forte praesumimus, quod alia de causa volebat sub praescripta forma iurare, videlicet, quod immunis erat ab illis criminibus, de quibus fuerat infamatus, tanquam, dimissis per poenitentiam, iam esset immunis ab illis. Sed hoc iurare non parvae temeritatis exsisteret, quum beatus Iob dicat: "Etiamsi simplex fuero, hoc ipsum ignorat anima mea," [*et Salomon: "Quis potest dicere, mundum est cor meum et purus sum a peccato?" Unde Psalmista dicebat: "Delicta quis intelligit, ab occultis munda me, Domine," Apostolo attestante: "Nihil mihi conscius sum, non tamen in hoc iustificatus sum."*] Ideoque praescriptam

purgationis formam, secundum quam idem archiepiscopus obtulit se purgare, reprobamus, utpote indiscretam, temerariam et ineptam, iniungentes eidem, ut, si voluerit et potuerit secundum hanc formam se purgare, secundum sanum intellectum, quem ei duximus exprimendum, videlicet quod illa crimina graviora, id est simoniam, venditionem iustitiae atque incontinentiam, de quibus infamatus exsistit, iuret se minime commisisse, postquam ad archiepiscopalem promotus est dignitatem; et compurgatores sic iurent, quod credunt, eum verum iurasse. Quo facto, vos illum dimittatis in pace. Alioquin etc. [*Dat. Lat. IV. Non. Ian. Pont. nostr. Ao. XVI.* 1214.]

Title XXXV: On Vulgar Purgation

Chapter I

Latin source headnote: Duels and other vulgar purgations are prohibited, because through them one who ought to be absolved is often condemned, and God appears to be tempted. This is what the whole title says.

Celestine III.

The care of the government undertaken *induces us that we ought to respond to the consultations of our brothers and, so far as human frailty permits, to cut away from them the scruple of doubt. Hence it is that*, since your fraternity has thought that the Apostolic See should be consulted as to whether duels ought to be sustained concerning possession of churches, we have thought it right to respond to your solicitude that in that case, or in any others, you ought in no way to tolerate this. [*Given at Rome, at Saint Peter's.*]

DE PURGATIONE VULGARI.

Duella et aliae purgationes vulgares prohibitae sunt, quia per eos multoties condemnatur absolvendus, et Deus tentari videtur. H. d. totus titulus.

Coelestinus III. Cura suscepti regiminis *nos inducit, ut fratrum nostrorum debeamus consultationibus respondere, et ab eis, quantum humana permittit fragilitas, dubitationis scrupulum amputare. Inde est, quod,* Quum tua fraternitas duxerit sedem apostolicam consulendam, utrum super ecclesiarum possessionibus duella debeant sustineri, tuae duximus sollicitudini respondendum, quod in eo casu, vel in aliis etiam hoc non debes aliquatenus tolerare. [*Dat. Rom. ap. S. Petr.*]

Chapter II

Latin source headnote: It is summarized above, in the preceding chapter.

Innocent III, to the Prior of Saint Sergius of Spoleto.

You should know that it has come to our hearing through the representations of the layman V. and his brothers that, when a certain man accused them concerning the crime of theft, they were compelled, *contrary to the custom of the land*, to enter a duel with him; in it they fell, their other sins impeding them, on account of which, *after an appeal had been interposed to us*, they were despoiled of their own goods by the consuls of Spoleto. But now the theft has been found among others, and, by the Lord's agency, it has been revealed that they were innocent. Hence we gave orders to the consuls themselves that they restore all things taken away [*from them*]. *Therefore we command your discretion by apostolic writings that, if they neglect to fulfill our mandate, you, having summoned the parties and heard what is proposed on both sides, are to decree, with appeal removed, what shall be just, causing what you decree to be firmly*

observed through ecclesiastical censure, etc. [*Given at the Lateran, on the eleventh day before the Kalends of April,* 1203.]

> Summatum est supr. cap. proximo.
>
> Innocentius III. Priori S. Sergii Spoletani. Significantibus V. laico et fratribus eius ad nostram noveris audientiam pervenisse, quod, quum quidam eos super furti crimine accusaret, cum eo *praeter terrae consuetudinem* coacti sunt inire duellum, in quo, aliis peccatis suis praepedientibus, ceciderunt, propter quod *post appellationem ad nos interpositam* per consules Spoletanos bonis fuerunt propriis spoliati. Nunc vero furtum apud alios est inventum, et, quod ipsi fuerint innocentes, est faciente Domino revelatum. Unde consulibus ipsis dedimus in mandatis, ut ablata [*eis*] restituant universa. *Ideoque discretioni tuae per apostolica scripta mandamus, quatenus si ipsi mandatum nostrum neglexerint adimplere, tu partibus convocatis et auditis hinc inde propositis quod iustum fuerit appellatione remota decerneres, faciens quod decreveris per censuram ecclesiasticam firmiter observari etc.* [*Dat. Lat. XI. Kal. Apr.* 1203.]

Chapter III

Latin source headnote: It is summarized above, Chapter I.

Honorius III.

Beloved sons newly baptized in Livonia sent a grave complaint to us that the brothers of the Templars *professing the order in Livonia*, and certain *other advocates and judges* who exercise temporal power over them, whenever they are defamed concerning some crime, compel them to undergo the judgment of glowing iron; and if any burning follows from it, they inflict a civil penalty upon them, *by which matter they strike scandal and terror into converts and those to be converted*. Therefore, since a judgment of this kind is altogether forbidden *according to lawful and canonical sanctions*, as one in which God appears to be tempted, we command that, *after admonition has been given*, you compel by ecclesiastical censure, with appeal removed, the said brothers and others to desist altogether from a grievance of this kind against the converts.

> Summatum est supra cap. I. Honorius III. Dilecti filii noviter in Livonia baptizati gravem ad nos querimoniam destinarunt, quod fratres Templariorum *ordinem in Livonia profitentes*, et alii *quidam advocati et iudices*, qui temporalem in eis potestatem exercent, si quando de aliquo alio crimine infamantur, eos ferri candentis iudicium subire compellunt, quibus, si qua exinde sequatur adustio, civilem poenam infligunt, *qua re conversis et convertendis scandalum incutiunt et terrorem*. Quum igitur huiusmodi iudicium *secundum legitimas et canonicas sanctiones* sit penitus interdictum, utpote, in quo Deus tentari videtur: mandamus, quatenus dictos fratres et alios, ut ab huiusmodi conversorum gravamine omnino desistant, *monitione praemissa* per censuram ecclesiasticam appellatione remota compellas.

Title XXXVI: On Injuries and Damage Inflicted

Chapter I

Latin source headnote: Because of its brevity, it is not summarized.

In Exodus.

If men shall have quarreled, and one strikes his neighbor with a stone or fist, and he shall not have died but shall have lain in bed, *if he shall have arisen and walked outside upon his staff, the one who struck him shall be innocent*, yet *in such manner that* he restore his lost labor and expenses for physicians.

> **DE INIURIIS ET DAMNO DATO.**
>
> Propter eius brevitatem non summatur.
>
> In Exodo.
>
> Si rixati fuerint homines, et percusserit alter proximum suum lapide vel pugno, et ille mortuus non fuerit, sed iacuerit in lecto, *si surrexerit et ambulaverit foris super baculum suum: innocens erit*, qui percusserit, *ita tamen, ut* operas eius et impensas in medicos restituat.

Chapter II

Latin source headnote: It is brief, and therefore is not summarized.

In the same place.

If anyone opens a cistern and digs it, and does not cover it, and an ox or ass falls into it, the owner of the cistern shall render the price of the beasts; but that which is dead shall be his.

> Breve est, et ideo non summatur.
>
> Ibidem.
>
> Si qui aperuerit cisternam, et foderit, et non operuerit eam, cecideritque bos vel asinus in eam: dominus cisternae reddet pretium iumentorum; quod autem mortuum est, ipsius erit.

Chapter III

Latin source headnote: It is brief, and therefore is not summarized.

In the same place.

If another's ox *wounds the ox of another, and it dies, they shall sell the living ox and divide the price; but they shall divide between themselves the carcass of the dead one. But if he knew that the ox* had been apt to gore since yesterday and the day before, and its owner did not keep it, he shall render ox for ox and shall receive the whole carcass.

> Breve est, et ideo non summatur.
>
> Ibidem.
>
> Si bos alienus *bovem alterius vulneraverit, et ille mortuus fuerit, vendent bovem vivum, et dividentpretium; cadaver autem mortui inter se dispertient. Si autem sciebat, quod bos* cornupeta fuerit ab heri et nudiustertius, et non custodivit eum dominus suus: reddet bovem pro bove, et cadaver integrum accipiet.

Chapter IV

In the same place.

If anyone damages a field or vineyard and lets loose his beast so that it feeds upon another's property, he shall restore as the valuation for the damage *whatever best thing he has in his own field or vineyard*.

> Ibidem.
>
> Si laeserit quispiam agrum vel vineam, et dimiserit iumentum suum, ut depascat aliena: *quicquid optimum habuerit in agro suo vel vinea*, pro damno aestimationem restituet.

Chapter V

Latin source headnote: It is brief and is not summarized.

In the same place.

If fire going out *finds thorns and* seizes stacks of grain or standing crops in the fields, the one who kindled the fire shall render the damage.

> Breve est, et non summatur.
>
> Ibidem.
>
> Si egressus ignis *invenerit spinas, et* comprehenderit acervos frugum sive stantes segetes in agris, reddet damnum qui ignem succenderit.

Chapter VI

Latin source headnote: It is brief and almost the same as the preceding chapter.

From the Roman Penitential.

If anyone voluntarily burns someone's house or threshing floor, he shall restore everything removed and burned and shall do penance for three years.

> Breve est, et quasi idem cum praecedenti. Ex poenitentiali Romano.
>
> Si quis domum vel aream cuiusquam incenderit voluntarie, sublata et incensa omnia restituat, et tres annos poeniteat.

Chapter VII

Latin source headnote: A secular power that has placed a cleric under ban ought to be condemned by an ecclesiastical judge according to the valuation of the injury, expenses, and damages. And today add the penalty in Clementines 1, On Penalties.

Honorius III, to the Bishop of Bologna.

Formerly, when we wrote to our *venerable brother*, the Bishop of Modena, that, *coming personally to Florence*, he should *effectively admonish and induce* the government, councilors, and people of the city of Florence to make satisfaction for the damages and injuries inflicted upon our *venerable brother*, the Bishop of Fiesole, and the churches of Fiesole, *and, if it should be necessary*, should constrain them by ecclesiastical censure, the same *Bishop of Modena, more diligently executing our mandate as to the admonition and having granted a period of delay*, received witnesses before joinder of issue. Therefore we, having entirely revoked his proceeding *because he had proceeded to the reception of witnesses before joinder of issue*, have thought that the commune of Florence, because it had placed *the same* Bishop of Fiesole under ban contrary to God and ecclesiastical liberty, should by sentence be condemned, on account of the injury of the ban and the expenses and damages ensuing on such an occasion, after valuation had first been made by oath, to pay one thousand pounds of current money to the aforesaid *Bishop of Fiesole*.

> Saecularis potestas, quae clericum bannivit, condemnari debet per iudicem ecclesiasticum secundum aestimationem iniuriae in expensis et damnis. Et hodie adde poenam in Clem. 1. de poenis.
>
> Honorius III. Episcopo Bononiensi. Olim scribentibus nobis *venerabili fratri nostro*, episcopo Mutinensi, ut, *accedens personaliter Florentiam*, potestatem, consiliarios et populum civitatis Florentinae *moneret efficaciter et induceret* ad satisfaciendum de damnis et iniuriis, irrogatis *venerabili fratri nostro* episcopo et ecclesiis Fesulanis, *et, si necesse foret*, censura ecclesiastica coarctaret, idem *Mutinensis, mandatum nostrum quoad monitionem diligentius exsecutus, datis induciis* testes, lite non contestata, recepit. Quare nos, eius

processu, *quoniam ad receptionem testium lite non contestata processerat*, penitus revocato, commune Florentinum, quia banniverat *eundem* episcopum Fesulanum contra Deum et ecclesiasticam libertatem, propter iniuriam banni, et expensas, et damna tali occasione secuta, taxatione iuramento praemissa, in mille libris usualis monetae praedicto episcopo *Fesulano* sententialiter duximus condemnandum.

Chapter VIII

Latin source headnote: One who swears to a statute concerning damages not to be reclaimed will, notwithstanding this, be able to reclaim expenses. This is what it says; or thus: A statute concerning damages not to be reclaimed does not extend to expenses.

Gregory IX.

You proposed in our presence and that of our brothers that formerly the citizens of Brescia, being very greatly burdened by restorations of damages inflicted upon one another, which they had incurred on account of many civil discords, generally approved and even confirmed by oath a statute issued [*by our venerable brother the Patriarch of Antioch, then Bishop-elect of Brescia*], [*namely*] that restorations of this kind were not thereafter to be sought or received from the commune. [*But recently, not without our labor and solicitude, you procured that, concerning the discord that gravely troubles those citizens, the consuls and council swore precisely and absolutely that they would obey all your mandates; yet, unless it should happen that provision is made by the commune of Brescia for those suffering damages at least in the expenses that they made on an occasion of this kind, you cannot perfectly quiet that discord without its undergoing a relapse. Concerning this you sought that an apostolic* (*remedy*) *be applied.*] Therefore, since restoration of damages is one thing and satisfaction of expenses another, and hence it ought not to be understood that the matter of expenses was comprehended in the oath furnished concerning the article of damages, we command [*your fraternity by apostolic writings*] that, notwithstanding the aforesaid oath, by our authority you provide that, for the good of concord, the said commune contribute something toward satisfaction of the expenses according to the judgment of your discretion, to be moderated by you as shall be expedient. [*Given at the Lateran, on the fifteenth day before the Kalends of April, in the fourth year of our pontificate,* 1230.]

Qui iurat statutum super non repetendis damnis, hoc non obstante, expensas repetere poterit. H. d. vel sic: Statutum super damnis non repetendis ad expensas non extenditur.

Gregorius IX. In nostra et fratrum nostrorum praesentia proposuistis, quod olim cives Brixienses pro restaurationibus damnorum illatorum ad invicem, quae propter multas civiles discordias incurrerant, plurimum aggravati, statutum [*per venerabilem fratrem nostrum patriarcham Antiochenum, tunc Brixiensem electum*] editum, [*videlicet*] de non petendo vel recipiendo in posterum restaurationes huiusmodi a communi, generaliter approbarunt et firmarunt etiam iuramento. [*Nuper vero non sine nostro labore et sollicitudine procurasti, quod super discordia, quae graviter cives ipsos exagitat, consules et consilium praecise ac absolute iurarunt, se mandatis tuis omnibus parituros, quem tamen, nisi per commune Brixiense damna passis saltem in expensis, quas huiusmodi occasione fecerunt, provideri contingat, perfecte sopire non potes quin sustineat recidivum. Super quo apostolicum* (*postulasti*) *remedium adhiberi.*] Quum igitur aliud sit damnorum restauratio quam satisfactio expensarum, et ideo in iuramento exhibito super damnorum articulo intelligi non debeat, quod factum expensarum fuerit comprehensum: [*fraternitati tuae per apostolica scripta*] mandamus, quatenus, iuramento non obstante praedicto, auctoritate nostra provideas, quod dictum commune pro bono concordiae ad expensarum satisfactionem aliquid contribuat iuxta tuae discretionis arbitrium, a te, sicut expedierit, moderandum. [*Dat. Lat. XV. Kal. Apr. Pont. nostr. Ao. IV.* 1230.]

Chapter IX

Latin source headnote: It contains several statements and summarizes itself.

The same.

If through your fault damage was caused or an injury inflicted, or perhaps you gave aid to others inflicting them, or these things occurred through your lack of skill or negligence, by law you ought to make satisfaction for them; nor does ignorance excuse you if you ought to have known that injury or loss could probably result from your act. But if you allege that your animals did harm, you are nevertheless bound to satisfaction unless, by giving them to those who suffered the damage, you wish to free yourself; this, however, does not avail for liberation if they were wild animals, or ones accustomed to do harm, and you did not take the diligence that you ought to have taken. Indeed, although one who gives the occasion of damage is seen to have caused the damage, nevertheless it must be said otherwise of one who omitted nothing among the contingencies so that it would not happen.

> Habet plura dicta, et se summat.
>
> Idem.
>
> Si culpa tua datum est damnum vel iniuria irrogata, seu aliis irrogantibus opem forte tulisti, aut haec imperitia tua sive negligentia evenerunt: iure super his satisfacere te oportet, nec ignorantia te excusat, si scire debuisti, ex facto tuo iniuriam verisimiliter posse contingere vel iacturam. Quodsi animalia tua nocuisse proponas, nihilominus ad satisfactionem teneris nisi ea dando passis damnum velis liberare te ipsum; quod tamen ad liberationem non proficit, si fera animalia, vel quae consueverunt nocere, fuissent, et quam debueras non curasti diligentiam adhibere. Sane, licet qui occasionem damni dat damnum videatur dedisse: secus est tamen in illo dicendum, qui, ut non accideret, de contingentibus nil omisit.

Title XXXVII: On Penalties

Chapter I

Latin source headnote: A criminal is to be punished as often as he repeats the offense.

From the Council of Toledo.

Things that are repeated by frequent transgression are to be condemned by frequent sentence.

> **DE POENIS.**
>
> Toties puniendus est criminosus, quoties delictum iterat.
>
> Ex concilio Toletano.
>
> Ea, quae frequenti praevaricatione iterantur, frequenti sententia condemnentur.

Chapter II

Latin source headnote: One who kills a priest is to be punished, and part of the penalty is distributed to the church over which he presided, and the other part for his soul.

From the Council of Tribur.

The composition for a slain priest is to be paid to the bishop to whose diocese he belongs, in such manner *namely* that the bishop shall assign half *of his wergild* to the uses of the church over which he presided, *and* shall justly distribute the other *half* in alms for him, because no one seems to *us* a nearer heir of his than *the one* who joined him to the Lord.

> Interficiens presbyterum puniendus est, et poenae pars ecclesiae, cui praefuit, alia pars pro eius anima distribuitur.
>
> Ex concilio Triburiensi. Presbyteri interfecti compositio episcopo, ad cuius parochiam pertinet, solvatur, ita *videlicet*, ut medietatem *werigeldi episcopus eius* utilitatibus ecclesiae, cui praefuit, tribuat, *et* alteram *medietatem* in eius eleemosynam iuste dispertiat, quia nullus *nobis* eius heres proximior videtur, quam *ille*, qui ipsum Domino sociavit.

Chapter III

Latin source headnote: Prelates ought not to exact money for tolerating criminals, nor, even for the sake of correction, to impose a monetary penalty from cupidity.

Alexander III, to the Archbishop of Canterbury.

Although, according to the Apostle, *we ought to reprove, entreat, and rebuke, nevertheless we ought so to correct the excesses of individuals that we are proved to seek not the things that are ours but those that are Jesus Christ's, and that we are seen to preserve moderation and maturity in making correction*. We have *however* received that the archdeacons of the bishopric of Coventry, for correcting excesses and punishing crimes, exact a monetary penalty from clerics and laymen, *and in the ordeal of fire and water presume to demand thirty denarii from a man and a woman*; and for an annual exaction of money they sometimes suspend persons [*and*] place churches under interdict; they do not fear *also* to exact twelve denarii from vicars so that they may permit them to sing in churches; and they do other things that oppose the institutes of the canons and appear to proceed from the root of cupidity and avarice. *Therefore, because it is incumbent upon our solicitude to provide with pastoral diligence that nothing be done by the ecclesiastical persons of your province that is subject to reproach or blackens ecclesiastical honor, by apostolic writings we command your fraternity, by way of precept,* that you more strictly prohibit this to the archdeacons of the aforesaid bishopric *on our part and yours;* but if they presume with *rash boldness to act contrary to your prohibition*, you shall compel them by ecclesiastical censure, *with every occasion and* appeal ceasing, *and cause that sentence to be inviolably observed until worthy satisfaction*.

> Non debent praelati pro criminosis sustinendis pecuniam exigere, nec etiam correctionis causa ex cupiditate poenam pecuniariam imponere.
>
> Alexander III. Cantuariensi Archiepiscopo.
>
> Licet iuxta Apostolum *arguere, obsecrare et increpare debeamus, sic tamen debemus excessus corrigere singulorum, ut probemur, non quae nostra sunt, sed quae Iesu Christi quaerere, et in correctione facienda videamur modestiam et maturitatem servare*. Accepimus *autem*, quod archidiaconi Conventrensis episcopatus pro corrigendis excessibus et criminibus puniendis a clericis et laicis poenam pecuniariam exigunt, *et in examinatione ignis et aquae triginta denarios a viro et muliere quaerere praesumunt*, et pro annua exactione pecuniae personas quandoque suspendunt, [*et*] ecclesias interdicunt, a vicariis *quoque duodecim* denarios, ut eos in ecclesiis cantare permittant, exigere non formidant, et alia agunt, quae canonum obviant institutis, et de radice cupiditatis et avaritiae prodire videntur. *Quia igitur sollicitudini nostrae incumbit pastorali diligentia providere, ne ab ecclesiasticis personis tuae provinciae aliquid agatur, quod reprehensioni subiaceat, vel ecclesiasticam honestatem*

denigret: fraternitati tuae per apostolica scripta praecipiendo mandamus, quatenus archidiaconis praedicti episcopatus *ex parte nostra et tua* hoc districtius interdicas; si autem contra *prohibitionem tuam ausu temerario* venire praesumpserint, eos *omni occasione et* appellatione cessante ecclesiastica censura compellas, *et sententiam ipsam usque ad dignam satisfactionem facias inviolabiter observari*.

Chapter IV

Latin source headnote: The defeated party is condemned in expenses to the victorious party who is present, even in pecuniary cases; and it excepts one case.

The same, in the Council of Tours.

By condemning in expenses, and by another manifold remedy, the imperial enactment restrains the calumny and audacity of those litigating rashly. Therefore, since it is recognized as consonant with the sacred institutes, we command that henceforth in pecuniary cases the defeated party be condemned in expenses to the victorious party, unless *perhaps, as has been provided*, sentence is rendered for one absent.

Victus condemnatur victori praesenti in expensis, etiam in causis pecuniariis, et unum casum excipit.

Idem in concilio Turonensi. Calumniam et audaciam temere litigantium condemnando in expensis, et alio multiplici remedio sanctio imperialis compescit. Quoniam igitur sacris institutis consonare dignoscitur, praecipimus, ut de cetero in causis pecuniariis victus victori in expensis condemnetur, nisi *forte, sicut cautum est*, sententia pro absente feratur.

Chapter V

Latin source headnote: A cleric who furnishes cause or assistance for war is to be deposed.

Innocent III, to the Archbishop of Nidaros.

In matters of doubt (*And below:* [*cf. c.* 30, *On the Sentence of Excommunication, V.* 39.]) But because priests who steer ships into battle, those who personally engage in the conflict *of battle*, and those who incite others to fight, all *indeed* sin enormously, we believe that according to canonical rigor they are to be deposed. [*These moreover, etc.* (*cf. c.* 8, *On Renunciation, I.* 9.) *Given at the city of Castella, on the sixth day before the Ides of October,* 1198.]

Clericus, causam seu operam praebens bello, deponendus est.

Innocentius III. Midrosiensi Archiepiscopo.

Quod in dubiis (*Et infra:* [*cf. c.* 30. *de sent. exc. V.* 39.]) Quia vero tam sacerdotes, qui gubernant naves ad pugnam, quam qui personaliter exercent *pugnae* conflictum, et hi, qui alios incitant ad pugnandum, omnes *quidem* enormiter peccant, de rigore canonico eos credimus deponendos. [*Hi praeterea etc.* (*cf. c.* 8. *de renunc. I.* 9.) *Dat. ap. civ. Castellanam VI. Id. Oct.* 1198.]

Chapter VI

Latin source headnote: A cleric is to be deposed for a great crime committed by him and thrust into a monastery to do penance.

The same, to the Bishop of London.

The prudence of your discretion (*And below:*) To that *moreover* which you asked of us in the third place —how clerics detected in robbery or other great crimes ought to be punished—we respond that,

degraded from their orders, they ought to be thrust into strict monasteries to perform penance. [*But, etc. Given at the Lateran, on the sixth day before the Ides of November, in the fifth year of our pontificate,* 1202.]

> Clericus pro magno scelere ab eo commisso deponi debet, et in monasterio detrudi ad agendam poenitentiam.
>
> Idem Londonensi Episcopo.
>
> Tuae discretionis prudentiam (*Et infra:*) Ad illud *praeterea*, quod a nobis tertio requisisti, qualiter clerici in latrociniis vel aliis magnis sceleribus deprehensi puniri debeant, respondemus, quod a suis ordinibus degradati detrudi debeant in arctis monasteriis ad poenitentiam peragendam. [*Ceterum etc. Dat. Lat. VI. Id. Nov. Pont. nostr. Ao. V. *1202.]

Chapter VII

Latin source headnote: If each of the contracting parties acts contrary to the contract, each can exact the penalty mutually promised by the agreement.

The same, to the Abbot and Brothers of Grottaferrata.

Having been constituted in our presence (*And below:* [*cf. c.* 6, *On Religious Houses, III.* 36.]) Although in the instrument *of the aforesaid bishop's grant* there was expressed a certain penalty that the party not observing the contract would pay to the one observing it, nevertheless, since each party is convicted by its own confession of having acted contrary to it—for your party withheld the pension from the Bishop of Lavita, while the bishop exacted a procuration from the same church, as the aforesaid steward proposed—we render each party absolved from it.

> Si uterque contrahentium venit contra contractum: uterque potest exigere poenam, adinvicem promissam ex conventione.
>
> Idem Abbati et Fratribus Cryptae ferratae.
>
> Constitutus in praesentia nostra (*Et infra:* [*cf. c.* 6. *de rel. dom. III.* 36.]) Licet autem in instrumento *concessionis praedicti* episcopi Lavitani expressa fuerit certa poena, quam pars contractum non servans solveret observanti, quum tamen utraque pars venisse contra illum ex confessione propria convincatur, quum et pars vestra subtraxerit episcopo pensionem, et episcopus procurationem exegerit ab eadem ecclesia, sicut oeconomus proposuit memoratus: utramque partem ab ea reddimus absolutam.

Chapter VIII

Latin source headnote: If a witness is imprisoned because of vacillation, he does not incur infamy.

The same, to the Prior of Saint Fridianus and Master B., Canon of Pisa.

Concerning those things about which you wished to consult us (*And below:* [*cf. c.* 16, *On Accusations, V.* 1.]) [*We wish you to know concerning this that, in our presence, the case had been begun concerning the business for which you sent us your letters.*] But the cleric who, because he had varied and vacillated before you, was captured and detained at our mandate does not incur infamy. *But, etc.* (*cf. c.* 8, *On Compelling Witnesses, II.* 21.) [*Given at the Lateran, on the third day before the Ides of February, in the fifth year of our pontificate,* 1203.]

> Si testis propter vacillationem incarceratur, infamiam non incurrit.
>
> Idem Priori S. Fridiani et Magistro B. Canonico Pisano.

Super his, de quibus nos consulere voluistis (*Et infra:* [*cf. c.* 16. *de acc. V.* 1.]) [*Ad hoc nosse vos volumus, quod super negotio, pro quo vestras nobis literas destinastis, in praesentia fuerat causa coepta.*] Clericus autem, qui pro eo, quod variaverat et vacillaverat coram vobis, de mandato nostro captus est et detentus, infamiam non incurrit. *Ceterum etc.* (*cf. c.* 8. *de test. cog. II.* 21.) [*Dat. Lat. III. Id. Febr. Pont. nostr. Ao. V. *1203.]

Chapter IX

Latin source headnote: One bound to pay a certain quantity on a certain day under a penalty is not bound to the entire penalty if he pays part within the term.

The same, to the Bishop of Spoleto.

G. and A., rectors of the clerics *of the parish* of Saint Fortunatus, transmitted their complaint to us that, when they had been condemned to you by a certain arbitration for forty pounds, and a penalty of thirty pounds had been imposed upon *them* if they did not pay those pounds to you within the appointed term, after thirty-three pounds had at last been paid in *that* term, on account of the seven remaining *pounds*, by means of certain letters of ours obtained with the truth suppressed, you obtained that they be condemned to you for the aforesaid thirty pounds by the delegated judge, *our beloved son Paul, our subdeacon*. Therefore, because it does not become you to forget episcopal moderation to such an extent that, panting after dishonorable gains, you desire to be enriched with another's loss, we command [*and strictly enjoin*] *your fraternity by apostolic writings* that, content with payment of the *aforesaid* seven pounds, you do not henceforth trouble the aforesaid rectors concerning the penalty of thirty pounds, *as was judicially determined by our beloved son G., cardinal deacon of Saint Nicholas in the Tullian Prison*. [*Given at Rome, at Saint Peter's, on the third day before the Ides of January, in the ninth year,* 1207.]

Obligatus ad certam quantitatem, certa die sub poena solvendam, si partem infra terminum solvit, ad poenam integram non tenetur.

Idem Spoletano Episcopo.

Suam ad nos *G. et A.* rectores clericorum *plebatus* sancti Fortunati querimoniam transmiserunt, quod, quum tibi essent in XL. libris per quoddam arbitrium condemnati, essetque *ipsis* poena XXX. librarum apposita, nisi eas tibi solverent in termino constituto, tandem XXXIII. libris in *ipso* termino persolutis, occasione septem residuarum *librarum* per quasdam nostras literas, veritate tacita impetratas, obtinuisti eos in praefatis XXX. libris tibi per *dilectum filium Paulum, subdiaconum nostrum*, delegatum iudicem condemnari. Quia igitur te non decet in tantum pontificalis modestiae oblivisci, ut inhonestis quaestibus anhelando desideres cum aliena iactura ditari, *fraternitati tuae per apostolica scripta* mandamus [*et districte praecipimus,*] quatenus *praedictarum* septem librarum solutione contentus, super poena XXX. librarum memoratos rectores de cetero non molestes, *sicut per dilectum filium nostrum G. S. Nicolai in carcere Tulliano diaconum cardinalem fuit sententialiter diffinitum*. [*Dat. Rom. ap. S. Petr. III. Id. Ian. Ao. IX.* 1207.]

Chapter X

Latin source headnote: Those who kill a prelate are deprived of the benefices and fiefs that they have from the church over which that prelate presided; they shall not be restored to them or to their heirs, nor ought any others newly to be granted to them. And today similar penalties have been increased for one killing, capturing, or placing a bishop under ban; concerning these, see the Clementine Si quis suadente, under the same title.

The same.

It reached the ears of our apostolate that, when certain of your parishioners had wickedly slain with diabolical boldness I., *the late* Bishop of Vicenza of good memory, your predecessor, the fiefs and benefices that they held from the Church of Vicenza had been taken from them by sentence after much deliberation. Therefore, since they are to be punished with an even greater [*indeed*] penalty, we, *adhering to the footsteps of Pope Celestine of good memory, our predecessor*, by apostolic authority prohibit both you and your successors from restoring the aforesaid benefices [*further*] to them or their heirs, or from newly conferring any others upon them. [*But if anyone, etc. Given at the Lateran, on the twelfth day before the Kalends of April,* 1198.]

> Occidentes praelatum privantur beneficiis et feudis, quae habent ab ecclesia, cui praeerat praelatus ille, nec eis vel heredibus restituentur, nec alia de novo concedi debent. Et hodie in occidente, capiente vel banniente episcopum auctae sunt similes poenae, de quibus in Clem. Si quis suadente eod. tit.
>
> Idem.
>
> Ad aures nostri apostolatus pervenit, quod, quum quidam parochiani tui ausu diabolico bonae memoriae I. *quondam* Vincentinum episcopum praedecessorem tuum nequiter peremissent, feuda et beneficia, quae illi a Vincentina ecclesia obtinebant, ipsis per sententiam fuerant cum multa deliberatione sublata. Quia igitur maiori [*etiam*] sunt animadversione plectendi, nos, *bonae memoriae Coelestini Papae praedecessoris nostri vestigiis inhaerentes*, tam tibi quam successoribus tuis auctoritate apostolica prohibemus ne ipsis aut heredibus eorum beneficia praedicta restituantur [*ulterius*], seu de novo eis alia quaelibet conferantur. [*Si quis autem etc. Dat. Lat. XII. Kal. Apr.* 1198.]

Chapter XI

Latin source headnote: One who breaks out against a judge is punished at the judgment of the superior.

The same.

The beloved son *James*, Bishop-elect of Saint P. at Montes, *coming to the Apostolic See, a grave complaint against the beloved sons, the Abbot of Molesme and I., Archdeacon* [*of Châlons*], *set forth, asserting that they* [*against him*] *had proceeded wrongly in his case, which had been committed to them. And when the beloved son T., a cleric, had come to our presence with their letters containing the proceeding of the case, and the same James endeavored to impugn that proceeding in many ways, asserting that their report was false in certain matters, we, because the aforesaid cleric had no mandate except to contradict or to impetrate, for greater caution thought that the proceeding itself ought neither to be confirmed nor quashed,* [*commanding you by apostolic writings that, having summoned the parties and heard what is proposed on both sides, if you find that the aforesaid judges proceeded reasonably, you confirm their proceeding and cause it to be firmly observed through ecclesiastical censure, with the obstacle of appeal removed. Otherwise, having annulled it as shall be just, you are to proceed in the same case according to the form of the former letters, causing what you decree to obtain due firmness. But if you find any of the monks bound by the bond of excommunication on this account, you shall absolve them according to the form of the Church, enjoining upon them what shall by law be enjoined.*] *But because it often happens that, against the false assertion of an unjust judge, an innocent litigant cannot prove a true denial, since by the nature of things there is no direct proof of a negative fact, lest falsity prejudice truth or iniquity prevail over equity, it seems necessary and equitable that, when someone proposes a lawful exception, prepared to prove it either to decline the judgment or to repel the claim of the other, if perhaps by word or deed he withdraws from it, or does not prove it within a competent term to be fixed by the judge, the restrained judge should not proceed before applying the suitable precaution of instruments or witnesses concerning this, through which, if necessary, the truth can be established, so that, if a*

dispute arises against his report or proceeding, the assertion of the judge himself may be strengthened by proofs of this kind; so that, with this moderation applied, deference is so given to honest and discreet judges that the justice of the innocent is not injured through imprudent and unjust ones. And, lest judicial authority vanish, when the litigant's dishonesty has been established, one rashly breaking out against the assertion of the judge can be punished with a worthy penalty according to the judgment of the superior. [*But the witnesses, etc. Given at the Lateran, on the Nones of January, in the thirteenth year,* 1211.]

> Prorumpens contra iudicem, arbitrio superioris punitur.
>
> Idem.
>
> Dilectus filius *Iacobus*, electus sancti P. ad Montes, *ad apostolicam sedem accedens, gravem querelam contra dilectos filios Molismensem abbatem et I. archidiaconum* [*Cathalaunensem*] *exposuit, asserens, eos* [*adversus ipsum*] *in causa sua, quae fuit illis commissa, perperam processisse. Quumque dilectus filius T. clericus cum literis eorundem, continentibus causae processum, ad nostram praesentiam accessisset, et idem Iacobus niteretur processum ipsum multipliciter improbare, relationem eorum in quibusdam asserens esse falsam, nos, quia praefatus clericus non habebat nisi ad contradicendum vel impetrandum mandatum, ad maiorem cautelam processum ipsum nec confirmandum duximus nec cassandum,* [*per apostolica vobis scripta mandantes, quatenus partibus convocatis et auditis hinc inde propositis, si praefatos iudices inveneritis rationabiliter processisse, ipsorum confirmetis processum, et faciatis illum per censuram ecclesiasticam sublato appellationis obstaculo firmiter observari. Alioquin eo, sicut iustum fuerit, irritato, iuxta formam priorum literarum in causa procedatis eadem, facientes quod decreveritis firmitatem debitam obtinere. Si quos autem ex monachis propter hoc inveneritis excommunicationis vinculo innodatos, secundum formam ecclesiae absolvatis, iniungentes eisdem quod de iure fuerit iniungendum.*] *Quia vero saepe contingit, quia contra falsam assertionem iniqui iudicis innocens litigator veram non potest negationem probare, quum negantis factum per rerum naturam nulla sit directa probatio: ne falsitas veritati praeiudicet aut iniquitas praevaleat aequitati, necessarium videtur et aequam, ut, quum quis legitimam exceptionem proponit, illam probare paratus vel ad declinandum iudicium vel ad intentionem alterius elidendam, si forsan verbo vel facto ab illa recesserit, vel eam non probaverit infra terminum competentem a iudice praefigendum, modestus iudex non ante procedat, quam super hoc instrumentorum vel testium cautelam adhibeat opportunam, per quam, si necesse fuerit, possit de veritate constare, ut, si contra relationem seu processum ipsius fuerit suborta contentio, huiusmodi probationibus ipsius iudicis possit assertio roborari, quatenus, hoc adhibito moderamine, sic honestis et discretis deferatur iudicibus, quod per improvidos et iniquos innocentium iustitia non laedatur. Et,* Ne iudicialis evanescat auctoritas, quum de litigatoris improbitate constiterit, adversus assertionem iudicis temere prorumpentis, iuxta superioris arbitrium digna poterit animadversione puniri. [*Testes autem etc. Dat. Lat. Non. Ian. Ao. XIII. *1211.]

Chapter XII

Latin source headnote: Patrons, advocates, or vice-lords who claim for themselves more in churches than the laws permit are restrained by ecclesiastical censure; and if, by themselves or through others, they kill the prelate or a cleric of the church, they lose what they have from the church, and their descendants to the fourth generation are not admitted to the clergy or placed over religious houses.

The same, in the general council.

In certain provinces the patrons, advocates, or vice-lords of churches have raised themselves to such insolence that not only, when vacant churches ought to be provided with suitable pastors, do they introduce difficulties and malicious obstructions, but they also presume to dispose according to their own will of possessions and other ecclesiastical goods; and, what is horrible to say, they do not fear to break out into the slaughter of prelates. Therefore, because that which was devised as an aid for defense ought not to be turned back to the harm of oppression, we expressly prohibit patrons,

advocates, or vice-lords from henceforth usurping more concerning the foregoing things than is found permitted in law; and if they presume to act contrary to this, let them be most strictly restrained by canonical severity. Nevertheless, with the approval of the sacred council, we decree that, if patrons, advocates, feudatories, vice-lords, or other beneficiaries of any church presume with nefarious boldness, by themselves or through others, to kill or mutilate the rector or another cleric of that church, the patrons shall entirely lose the right of patronage, the advocates the advocacy, the feudatories the fief, the vice-lords the vice-lordship, and the beneficiaries the benefice. And lest the memory of vengeance be prolonged less than that of the excess, not only shall none of the foregoing things pass to the heirs, but the descendants of such persons to the fourth generation shall in no way be admitted into the college of clerics, nor shall they attain the honor of any prelacy in houses of regulars, unless they have been mercifully dispensed with.

> Patroni, advocati vel vicedomini, vendicantes sibi in ecclesiis plus quam iura permittant, per censuram ecclesiasticam compescuntur, et, si occidunt praelatum vel clericum ecclesiae per se vel per alios, perdunt quod habent ab ecclesia, et eorum posteri usque ad quartam generationem non admittuntur ad clerum, nec in religionibus praeficiuntur.
>
> Idem in concilio generali. In quibusdam provinciis ecclesiarum patroni et advocati seu vicedomini se in tantam insolentiam erexerunt, quod non solum, quum vacantibus debet ecclesiis de pastoribus idoneis provideri, difficultates ingerunt et malitias, verum etiam de possessionibus aliisque bonis ecclesiasticis pro sua voluntate ordinare praesumunt, et, quod horrendum est dicere, in necem praelatorum prorumpere non formidant. Quum igitur quod ad defensionis subsidium est inventum ad depressionis dispendium non debeat retorqueri, prohibemus expresse, ne patroni vel advocati seu vicedomini super praemissis de cetero plus usurpent, quam reperiatur in iure permissum, et, si contra praesumpserint, per severitatem canonicam districtissime compescantur. Sacri nihilominus concilii approbatione statuimus, quatenus, si patroni, vel advocati, aut feudatarii, seu vicedomini aut alii beneficiati alicuius ecclesiae rectorem vel clericum alium ipsius ecclesiae per se vel per alios occidere vel mutilare ausu nefando praesumpserint, patroni ius patronatus, advocati advocatiam, feudatarii feudum, vicedomini vicedominatum, et beneficiati beneficium prorsus amittant. Et ne minus vindictae quam excessus memoria prorogetur, non solum de praemissis nihil perveniat ad heredes, sed etiam usque ad quartam generationem posteritates talium in clericorum collegium nullatenus admittantur, neque in domibus regularibus alicuius praelationis assequantur honorem, nisi cum eis fuerit misericorditer dispensatum.

Chapter XIII

Latin source headnote: While a lord remains excommunicated, his subjects do not owe fidelity; and if he has persisted in it for a long time and, having been admonished, has not obeyed the Church, they are absolved from their obligation to him.

Honorius III, to the Provost, Archdeacon, and H., Canon of Soissons.

We received the grave complaint of the *beloved sons* of the chapter of Lund that, when the *nobleman*, the Count of Register, had been bound by the bond of excommunication by judges delegated by the Apostolic See for the many injuries that he had inflicted upon them, he, *now* persisting in excommunication for two years and more, stubbornly refused to obey the law, contemning the keys of the Church *to the loss of his own salvation and the scandal of many*. Therefore, although obstinacy of this kind is not free from the suspicion of heretical depravity, nevertheless, wishing to spare the nobility of the aforesaid count *if perhaps, returning to his heart, he recovers from his error*, we command your

discretion that, if the aforesaid count, *after having been diligently admonished by you, within fifteen days* after your admonition has not fully obeyed the law, you, *causing the sentence of excommunication delivered against him, as it was reasonably pronounced, to be inviolably observed until worthy satisfaction, and placing all his land and the places in which the same count shall have stayed under ecclesiastical interdict*, shall absolve the churches in which he is known to have some right from their obligation to him, *with the obstacle of any contradiction and appeal removed*, and shall announce that his faithful men, for as long as he persists in excommunication, are wholly absolved from their oath of fidelity to him. *But if perhaps even thus vexation does not give him understanding, he will not without reason be able to fear lest his obstinacy drive him into the infamy of heresy, which, when he wishes, perhaps he will not easily be able to avoid.*

> Domino excommunicato manente, subditi fidelitatem non debent, et, si longo tempore in ea perstiterit et monitus non paruerit ecclesiae, ab eius debito absolvuntur.
>
> Honorius III. Praeposito, Archidiacono et H. Canonico Suessionensibus.
>
> Gravem *dilectorum filiorum* capituli Lund. recepimus quaestionem, quod, quum *nobilis vir* comes Registrensis pro multis iniuriis, quas irrogarat eisdem, per iudices a sede apostolica delegatos excommunicationis vinculo fuerit innodatus, idem, *iam* per duos annos et amplius in excommunicatione persistens, iuri parere pertinaciter renuit, claves ecclesiae *in suae salutis dispendium et plurimorum scandalum* contemnendo. Licet igitur huiusmodi pertinacia non careat scrupulo haereticae pravitatis: volentes tamen nobilitati parcere comitis supra dicti, *si forsan ad cor revertens a suo resipiscat errore*, discretioni vestrae mandamus, quatenus, si comes praedictus *a vobis diligenter commonitus, infra quindecim dies* post commonitionem vestram non paruerit plene iuri, vos *excommunicationis sententiam latam in eum, sicut rationabiliter est prolata, facientes usque ad condignam satisfactionem inviolabiliter observari, et totam terram ipsius ac loca, in quibus idem comes fuerit commoratus, supponentes ecclesiastico interdicto*, ecclesias, in quibus aliquod ius habere dignoscitur, ab eius debito *sublato cuiuslibet contradictionis et appellationis obstaculo* absolventes, fideles ipsius, quamdiu in excommunicatione perstiterit, ab eius fidelitatis iuramento denuncietis penitus absolutos. *Quodsi forsan nec sic tribuat ei vexatio intellectum poterit non immerito formidare, ne sua pertinacia eum in haeresis impingat infamiam, quam quum noluerit forte de facili non poterit evitare*.

Title XXXVIII: On Penances and Remissions

Chapter I

Latin source headnote: Public penance ought to be imposed for a manifest sin.

Pope Alexander.

Manifest sins are not to be purged by a hidden correction.

> **DE POENITENTIIS ET REMISSIONIBUS.**
>
> Pro manifesto peccato poenitentia publica imponi debet.
>
> Alexander Papa.
>
> Manifesta peccata non sunt occulta correctione purganda.

Chapter II

Latin source headnote: It sets down the penance of one who kills a priest.

From the Council of Mainz.

Upon one who kills a priest let a penance of twelve years be imposed according to the canons; *or, if he denies it, if he is free, let him swear with seventy-two, but if he is a serf, let him purge himself upon twelve glowing plowshares*. One convicted *of the offense* shall lack the military belt until the final time of his life and shall remain without hope of marriage.

> Ponit poenitentiam occidentis presbyterum.
>
> Ex concilio Maguntinensi. Qui presbyterum occiderit, XII. annorum poenitentia ei secundum canones imponatur, *aut, si negaverit, si liber est, cum LXXII. iuret, si autem servus, super duodecim vomeres ferventes se expurget*. Convictus *noxa* usque ad ultimum tempus vitae suae militiae cingulo careat, et absque spe coniugii maneat.

Chapter III

Latin source headnote: After the circumstances have been considered, a discretionary penance is to be adjudged to one who exceeded the measure in defending himself.

Alexander III, to the Archbishop of Milan and his Suffragans.

The nobleman P. signified to us that, when F., called emperor, once returned from the City, he denied him the castle of Vernica. (*And below:*) Hence it happened that, after four castles had been destroyed, more than two thousand houses were destroyed, and many men killed, and other evils are *said* to have been committed there, which it would be long to recount individually. Therefore, because the aforesaid P. desires to be reconciled to God on this account *and to undertake a worthy penance, we command your fraternity by apostolic writings* that *you give him counsel concerning this and* mercifully impose a penance upon him according to what shall seem good, attending to the fact that he did this for his liberty and *for* devotion to the Church. Wherefore in these things you ought to have such discretion that both others and he are in no way held back from the service of the Church by the austerity of the penance, nor ought they *deservedly* to fear any danger to salvation.

> Consideratis circumstantiis arbitraria poenitentia iudicenda est ei, qui modum excessit se defendendo.
>
> Alexander III. Mediolanensi Archiepiscopo et Suffraganeis.
>
> Significavit nobis vir nobilis P., quod F. dicto imperatori, quum olim rediret ab Urbe, castrum Vernicae negavit. (*Et infra:*) Unde contigit, quod, IV. castris destructis, plus quam duo millia domorum destructa fuerunt et multi homines interfecti, et alia mala ibi commissa *dicuntur*, quae longum esset per singula enarrare. Quoniam igitur praefatus P. Deo exinde reconciliari desiderat, *et poenitentiam dignam suscipere, fraternitati vestrae per apostolica scripta* mandamus, quatenus *eidem super hoc consilium detis, et* ipsi poenitentiam, secundum quod visum fuerit, misericorditer imponatis, attendentes, quod pro libertate sua et *pro* ecclesiae devotione hoc fecit. Quare in his debetis talem discretionem habere, ut alii et ipse idem pro austeritate poenitentiae a servitio ecclesiae nullatenus retardentur, nec aliquod salutis periculum *merito* debeant formidare.

Chapter IV

Latin source headnote: Indulgences granted by prelates to those not subject to them do not benefit them unless their own judges grant this.

The same, to the Archbishop of Canterbury.

But concerning your consultation whether remissions that are made at dedications of churches or to those contributing to the building of bridges benefit others than those who are subject to the persons granting the remissions, we wish your fraternity to hold [*firmly*] that, since no one can be bound or absolved by one who is not his judge, we judge that the aforesaid remissions benefit only those to whom their own judges specially granted that they should benefit them. And in this understand resolved the question in which it is asked whether one who communicates with an excommunicated person ought to implore the grace of absolution from his own bishop or from the bishop of the excommunicated person.

> Indulgentiae, quae conceduntur per praelatos non subditis, non prosunt, nisi proprii iudices hoc concedant.
>
> Idem Archiepiscopo Cantuariensi. Quod autem consuluisti, utrum remissiones, quae fiunt in dedicationibus ecclesiarum aut conferentibus ad aedificationem pontium, aliis prosint, quam his, qui remittentibus subsunt, hoc volumus tuam fraternitatem [*firmiter*] tenere, quod, quum a non suo iudice ligari nullus valeat vel absolvi, remissiones praedictas prodesse illis tantummodo arbitramur, quibus, ut prosint, proprii iudices specialiter indulserunt. Et in hoc eam intelligas quaestionem solutam, in qua quaeritur, utrum is, qui excommunicato communicat, a suo episcopo vel excommunicati absolutionis gratiam debeat implorare.

Chapter V

Latin source headnote: One who does not lay aside the intention of sinning is not truly penitent; nevertheless, his confession is received.

The same, to the Bishop of Beauvais.

As to the fact that certain persons, *as you assert*, come to confession concerning crimes and, although they wish to confess, nevertheless assert that they cannot abstain, we respond to your consultation in this way: you ought to receive their confession and furnish them counsel concerning their crimes, because, although penance of this kind is not true, nevertheless their confession is to be admitted, and penance *is* to be imposed by frequent and salutary admonitions.

> Non est vere poenitens qui peccandi animum non deponit; tamen recipitur eius confessio.
>
> Idem Belvacensi Episcopo.
>
> Quod quidam, *sicut asseris*, ad confessionem de criminibus veniunt, et, quamvis confiteri velint, se tamen asserunt abstinere non posse, consultationi tuae taliter respondemus, quod eorum confessionem recipere debes, et eis de criminibus consilium exhibere, quia, licet non sit vera huiusmodi poenitentia, admittenda est tamen eorum confessio, et crebris et salubribus monitis poenitentia *est* indicenda.

Chapter VI

Latin source headnote: One who by way of penance ought to fast on bread and water on a certain day can, when bread is lacking, use other foods.

The same, to the Archbishop of Tribur.

Although the page of both the Old and New Testaments (*And below:* [*cf. c.* 3, *On Feasts, II.* 9.]) But if those who are bound by penance imposed upon them to pass certain days on bread and water do not have bread upon which to feed, let them be refreshed with legumes or fish or other foods if necessity

demands it, discretion nevertheless being applied, so that they use these things not for delights but for *necessary sustenance alone*.

> Qui ex poenitentia debet certa die in pane et aqua ieiunare, potest deficiente pane aliis cibariis utI. Idem Triburiensi Archiepiscopo.
>
> Licet tam veteris quam novi testamenti pagina (*Et infra:* [*cf. c.* 3. *de fer. II.* 9.]) Si autem illi, qui aliquos dies in pane et aqua ex iniuncta sibi poenitentia tenentur peragere, panem, quo vescantur, non habent: leguminibus aut piscibus aut aliis cibariis reficiantur, si necessitas id exposcat, discretione tamen adhibita, quod his non ad delicias, sed ad *necessariam solummodo* sustentationem utantur.

Chapter VII

Latin source headnote: Public penance is not imposed upon a Greek priest who procures, or deliberately neglects to prevent, the smothering of his children; but he ought to abstain from the office of the altar and otherwise do penance in secret. But if the offense is public, he ought to do penance publicly.

Clement III.

It has been asked *of us* whether public penance is to be imposed upon Greek priests, to whom it is permitted to make use of lawful marriage, if they request that it be imposed upon them for children who have been smothered. Therefore, we respond to your consultation in this manner: if, through their procuring or deliberate negligence, children are found smothered in beds, they ought perpetually to abstain from the office of the altar, and a penance graver than for laymen, but nevertheless not public unless the matter becomes public, ought to be imposed upon them; *they, however, shall not only cease from the execution of sacred orders, but, if they are below those orders, they shall in no way be assumed to them*. But *also*, if through their carelessness the children are found dead in cradles, and that matter was hidden, let penance be imposed upon them according to the judgment of the penitentiary, and, for the terror of others, let them abstain from the celebration of Masses for a time. [*Given at the Lateran.*]

> Sacerdoti Graeco procuranti, vel studiose negligenti oppressionem filiorum, non imponitur poenitentia publica, sed debet abstinere ab altaris officio, et aliter in secreto agere poenitentiam; sed, si delictum est publicum, debet publice agere poenitentiam.
>
> Clemens III. Quaesitum est *a nobis*, utrum sacerdotibus Graecis, quibus legitimo matrimonio licet uti, poenitentia publica sit imponenda, si eam sibi postulent pro filiis oppressis iniungi. Huic igitur consultationi tuae taliter respondemus, quod, si ipsis procurantibus vel studiose negligentibus filii in lectis reperiuntur oppressi, ab officio altaris debent perpetuo abstinere, et eis gravior quam laicis, non tamen publica, nisi in publicum id veniat, poenitentia debet imponi; *qui tamen non solum a sacrorum ordinum exsecutione cessabunt, verum etiam, si sunt infra ipsos, ad eos minime assumantur*. Verum *etiam*, si ex incuria ipsorum mortui inveniantur in cunis, et illud fuerit occultum, eis poenitentia pro arbitrio poenitentiarii imponatur, et in terrorem aliorum ad tempus abstineant a celebratione missarum. [*Dat. Laterani.*]

Chapter VIII

Latin source headnote: A priest ought to determine penance according to the magnitude of the excess, the penitent's contrition, and other circumstances. This is what it says with respect to the title.

Innocent III, to the Bishop of Livonia and to the Brothers who are with him.

God, who his Church (*And below:* [*cf. c.* 11, *On the Life and Honesty of Clerics, III.* 1.]) But, since penance is to be moderated by the judgment of a discreet priest not so much according to the magnitude of the excess as according to the penitent's contrition, having weighed the quality of the person and considered all the circumstances concerning fornication, adultery, homicide, perjury, and other crimes, and especially the newness of the Church of Livonia, you shall impose a fitting penance upon offenders as you shall see to be expedient for their salvation. But, adhering to the footsteps of the Apostle, who says, *as we said before*, "I gave you milk to drink, not meat," you shall instruct them gradually in the faith, carefully teaching them the form of confession, the Lord's Prayer, and the Creed. In the meantime, nevertheless, you shall grant the sacrament of the body and blood of the Lord to those reborn in the font of baptism on the customary feast days and at the point of death. [*Given on the thirteenth day before the Kalends of May, in the fourth year,* 1201.]

> Sacerdos poenitentiam arbitrari debet secundum quantitatem excessus, poenitentis contritionem, et alias circumstantias. H. d. quoad titulum.
>
> Innocentius III. Livoniensi Episcopo, et eis, qui cum ipso sunt, Fratribus.
>
> Deus, qui ecclesiam suam (*Et infra:* [*cf. c.* 11. *de vita et hon. cler. III.* 1.]) Ceterum, quum poenitentia non tam secundum quantitatem excessus, quam poenitentis contritionem per discreti sacerdotis arbitrium sit moderanda, pensata qualitate personae super fornicatione, adulterio, homicidio, periurio et aliis criminibus, consideratis circumstantiis omnibus et praesertim novitate Livoniensis ecclesiae, competentem poenitentiam delinquentibus imponatis, prout saluti eorum videritis expedire. Apostoli autem vestigiis inhaerentes, dicentis, *ut praediximus:* "lac vobis potum dedi, non escam," paulatim eos instruatis in fide, confessionis formam, orationem dominicam et symbolum illos sollicite edocentes. Interim tamen corporis et sanguinis Domini sacramentum renatis fonte baptismatis consuetis festivitatibus et in mortis articulo tribuatis. [*Dat. XIII. Kal. Mai. A. IV.* 1201.]

Chapter IX

Latin source headnote: The confession of a woman who substituted another's child for herself, or conceived her own by adultery, and does not wish to disclose it to her husband, is heard.

The same, to the Cardinal Priest of Saint Lawrence in Lucina, Legate of the Apostolic See.

Of the office (*And below:* [*cf. c.* 38, *On Election, I.* 6.]) You signified *moreover* that a certain woman confessed to you in penance that, fearing lest her husband's possession devolve upon others, *induced by the counsel of a certain sorceress*, she drank the juice of certain herbs *daily*, and thus her belly swelled; and, thereby showing herself to be pregnant, *at last* she substituted another's child for herself. Fearing her husband, she does not wish to disclose the crime to him, and he believes without any doubt that the offspring is his own. Therefore, because through *our letters* you ask to be instructed whether penance is to be imposed upon her while this fraud continues, we respond *to your inquiry in this manner*: just as penance is not to be denied to a woman who, while her husband was ignorant, conceived offspring from adultery, although she fears to confess it to her husband, so penance ought not to be denied to this woman either, especially if by "others" you understand strangers to whom she fears her husband's possession would devolve; but fitting satisfaction ought to be imposed upon her by a discreet priest. *Finally, etc.* (*cf. c.* 42, *On the Sentence of Excommunication, V.* 39.)

Auditur mulieris confessio, quae sibi partum alienum supposuit, vel proprium ex adulterio suscepit, nec illud marito vult detegere.

Idem sancti Laurentii in Lucina Presbytero cardinali apostolicae sedis Legato.

Officii (*Et infra:* [*cf. c.* 38. *de elect. I.* 6.]) Significasti *praeterea*, quandam mulierem in poenitentia tibi fuisse confessam, quod timens, ne viri possessio devolveretur ad alios, *inducta cuiusdam consilio veneficae mulieris*, quarundam herbarum *quotidie* succum potavit, et sic venter eius intumuit, et inde gravidam se ostendens, *tandem* sibi partum supposuit alienum; timensque maritum, non vult facinus ipsi detegere, qui prolem credit sine dubitatione qualibet esse suam. Quoniam igitur *per nostras* postulas *literas* edoceri, utrum ei hac fraude durante sit poenitentia iniungenda: *inquisitioni tuae taliter* respondemus, quod, sicut mulieri, quae ignorante marito de adulterio prolem suscepit, quamvis id viro suo timeat confiteri, non est poenitentia deneganda, ita nec illi debet poenitentia denegari, maxime si per alios intelligas alienos, ad quos timeat possessionem viri devolvi; sed competens satisfactio per discretum sacerdotem ei debet iniungi. *Postremo etc.* (*cf. c.* 42. *de sent. excomm. V.* 39.)

Chapter X

Latin source headnote: An abbess cannot bless nuns, hear confessions, or preach publicly.

The same, to the Bishops of Valencia and Burgos, and to the Abbot of N. of the Cistercian Order.

Certain new things have recently been brought to our ears, *at which we marvel not a little*: namely, that abbesses *established in the dioceses of Burgos and Palencia* bless their own nuns, also hear their confessions concerning crimes, and, reading the Gospel, presume to preach publicly. Therefore, since this is equally discordant and absurd [*and is in no way to be tolerated by us*], we command *your discretion by apostolic writings* that, lest this be done henceforth, you take care firmly to prohibit it by *apostolic authority*, because, although the most blessed Virgin Mary was worthier and more excellent than all the Apostles, nevertheless the Lord committed the keys of the kingdom of heaven not to her but to them. [*Given at the Lateran, on the third day before the Ides of December, in the thirteenth year,* 1210.]

Abbatissa moniales benedicere, confessiones audire et publice praedicare non potest.

Idem Valentino et Burgensi Episcopis, et Abbati de N. Cisterciensis ordinis.

Nova quaedam nuper, *de quibus miramur non modicum*, nostris sunt auribus intimata, quod abbatissae *videlicet, in Burgensi et in Palentinensi dioecesibus constitutae*, moniales proprias benedicunt, ipsarum quoque confessiones in criminibus audiunt, et legentes evangelium praesumunt publice praedicare. Quum igitur id absonum sit pariter et absurdum, [*nec a nobis aliquatenus sustinendum,*] *discretioni vestrae per apostolica scripta* mandamus, quatenus, ne id de cetero fiat, *auctoritate* curetis *apostolica* firmiter inhibere, quia, licet beatissima virgo Maria dignior et excellentior fuerit Apostolis universis, non tamen illi, sed istis Dominus claves regni coelorum commisit. [*Dat. Lat. III. Id. Dec. Ao. XIII. *1210.]

Chapter XI

Latin source headnote: During a general interdict, penance and viaticum are granted to the dying. This is the first point. Clerics who observed the interdict can be buried silently in a cemetery. This is the second. In conventual churches, clerics in twos or threes can say the hours in a subdued voice. This is the third. During an interdict, penance can be granted to those signed with the cross and to pilgrims. This is the fourth.

The same.

As regards you (*And below:*) *But because we have understood that some doubt whether, when viaticum is to be given to clerics or laymen at the end of life, anointing also is to be bestowed, and whether burial together with the other sacraments is to be granted to the dying; whether also in conventual churches divine offices can be celebrated in a subdued voice, with doors closed and those under interdict excluded; and likewise whether penance is to be imposed upon those receiving the sign of the cross and those visiting the shrines of the saints, we wish to cut away an uncertainty of this kind from the hearts of those who doubt. For* in that word by which we do not deny penance to the dying, we wish viaticum also, which is furnished to those who are truly penitent, to be understood, so that it *also* is not denied to the dying. But although through a general interdict both anointing and ecclesiastical burial are denied to all, nevertheless we grant by grace that clerics who die, provided that they observed the interdict, may be buried with silence in the cemetery of the church, without the ringing of bells and with all solemnities ceasing. And in conventual churches, two and two, or three together, may read the canonical hours but not sing them, with doors closed, those under interdict and those excommunicated excluded, and in a voice so subdued that it cannot be heard outside; since it has also been granted to regulars according to a privilege of the Apostolic See that, when a general interdict of a land occurs, it is lawful for them, with doors closed, excommunicated persons and those under interdict excluded, without bells being rung, to celebrate divine rites in a suppressed voice. But we do not deny to those receiving the sign of the cross that penance be imposed upon them, when they request it, out of reverence for the Crucified; and this can mercifully be granted to other pilgrims also.

> Tempore generalis interdicti conceditur poenitentia et viaticum morientibus. Hoc primo. Clerici, qui servarunt interdictum, possunt eum silentio in coemeterio sepeliri. Hoc secundo. In conventualibus ecclesiis clerici bini vel trini possunt horas submissa voce dicere. Hoc tertio. Cruce signatis et peregrinis tempore interdicti poenitentia concedi potest. Hoc quarto.
>
> Idem.
>
> Quod in te (*Et infra:*) *Verum quoniam a quibusdam intelleximus dubitari, utrum, quum clericis vel laicis dandum sit viaticum in extremis, an etiam in unctio impendenda, et an cum aliis sacramentis indulgenda sit decedentibus sepultura; utrum etiam in conventualibus ecclesiis demissa voce, ianuis clausis, interdictis exclusis, divina possint officia celebrari; similiter an suscipientibus signum crucis et sanctorum limina visitantibus sit poenitentia iniungenda: ambiguitatem huiusmodi de dubitantium cordibus volumus amputare*. In illo *enim* verbo, per quod poenitentiam morientibus non negamus, viaticum etiam, quod vere poenitentibus exhibetur, intelligi volumus, ut nec ipsum *etiam* decedentibus denegetur. Licet autem per generale interdictum denegetur omnibus tam unctio quam ecclesiastica sepultura, concedimus tamen ex gratia, ut clerici decedentes, qui tamen servaverint interdictum, in coemeterio ecclesiae sine campanarum pulsatione, cessantibus solennitatibus omnibus, cum silentio tumulentur. Et in conventualibus ecclesiis bini et bini, vel simul tres, horas canonicas valeant legere, non cantare, ianuis clausis, interdictis et excommunicatis exclusis, et voce ita demissa, quod exterius audiri non possint; quum et regularibus secundum privilegium sedis apostolicae sit indultum, ut, quum generale interdictum terrae fuerit, liceat eis, ianuis clausis, excommunicatis et interdictis exclusis, non pulsatis campanis, suppressa voce celebrare divina. Recipientibus autem signum crucis non negamus, quo minus eis ob reverentiam crucifixi poenitentia, quum postulaverint, iniungatur, quod et aliis peregrinis potest misericorditer indulgeri.

Chapter XII

Latin source headnote: It is famous and very frequently alleged, and says this: Every person capable of fraud is bound at least once a year to confess to his own priest, or to another with his permission, and to receive the sacrament of the Eucharist at least at Easter. And a priest who reveals a confession is to be deposed and thrust into a monastery to do perpetual penance.

The same, in the general council.

Every faithful person of either sex, after reaching the years of discretion, shall faithfully confess all his sins by himself at least once a year to his own priest, and shall endeavor to fulfill according to his own strength the penance imposed upon him, reverently receiving the sacrament of the Eucharist at least at Easter, unless perhaps, on the counsel of his own priest, for some reasonable cause he judges that he should abstain from a reception of this kind for a time; otherwise, while living, let him be kept from entrance into the church, and, when dying, let him lack Christian burial. Hence, let this salutary statute be published frequently in churches, lest anyone assume a veil of excuse through the blindness of ignorance. But if anyone wishes for just cause to confess his sins to another priest, let him first seek and obtain permission from his own priest, since otherwise that priest cannot absolve or bind him. But let the priest be discerning and cautious, so that, in the manner of a skilled physician, he pours wine and oil over the wounds of the injured man, diligently inquiring into the circumstances both of the sinner and of the sin, through which he may prudently understand what counsel he ought to furnish him and what kind of remedy to apply, using different trials to save the sick man. But let him take care altogether that by word, sign, or any other manner he does not in any way betray the sinner. Yet, if he needs more prudent counsel, let him seek it cautiously without any expression of the person, because we decree that one who presumes to reveal a sin disclosed to him in the penitential judgment is not only to be deposed from the priestly office but also to be thrust into a strict monastery to do perpetual penance.

> Famosum est et multum allegabile, et hoc dicit. Quilibet doli capax tenetur saltem semel in anno confiteri proprio sacerdoti, vel de eius licentia alteri, et eucharistiae sacramentum ad minus in Pascha recipere. Et sacerdos, revelans confessionem, deponendus est, et in monasterio ad agendum perpetuam poenitentiam detrudendus.
>
> Idem in concilio generali. Omnis utriusque sexus fidelis, postquam ad annos discretionis pervenerit, omnia sua solus peccata saltem semel in anno fideliter confiteatur proprio sacerdoti, et iniunctam sibi poenitentiam propriis viribus studeat adimplere, suscipiens reverenter ad minus in Pascha eucharistiae sacramentum, nisi forte de proprii sacerdotis consilio ob aliquam rationabilem causam ad tempus ab huiusmodi perceptione duxerit abstinendum; alioquin et vivens ab ingressu ecclesiae arceatur, et moriens Christiana careat sepultura. Unde hoc salutare statutum frequenter in ecclesiis publicetur, ne quisquam ignorantiae caecitate velamen excusationis assumat. Si quis autem alieno sacerdoti voluerit iusta de causa sua confiteri peccata, licentiam prius postulet et obtineat a proprio sacerdote, quum aliter ipse illum non possit absolvere vel ligare. Sacerdos autem sit discretus et cautus, ut more periti medici superinfundat vinum et oleum vulneribus sauciati, diligenter inquirens et peccatoris circumstantias et peccati, quibus prudenter intelligat, quale debeat ei praebere consilium, et cuiusmodi remedium adhibere, diversis experimentis utendo ad salvandum aegrotum. Caveat autem omnino, ne verbo aut signo aut alio quovis modo aliquatenus prodat peccatorem. Sed, si prudentiori consilio indiguerit, illud absque ulla expressione personae caute requirat, quoniam, qui peccatum in poenitentiali iudicio sibi

detectum praesumpserit revelare, non solum a sacerdotali officio deponendum decernimus, verum etiam ad agendam perpetuam poenitentiam in arctum monasterium detrudendum.

Chapter XIII

Latin source headnote: Physicians called to the sick ought before all things to induce the sick person to confession, and not to persuade him of anything for bodily health that tends toward danger to souls.

The same, in the same council.

Since bodily infirmity sometimes proceeds from sin, the Lord saying to the sick man whom he had healed, “Go, and sin no more, lest something worse happen to you,” by the present decree we enact, and strictly command physicians of bodies, that, when it happens that they are called to the sick, before all things they admonish and induce them to call physicians of souls, so that, after provision has been made for the sick person's spiritual salvation, they may proceed more salutarily to the remedy of bodily medicine, since, when the cause ceases, the effect ceases. Indeed, among other things, what gave cause for this edict was that certain persons, lying upon a bed of sickness, when they are advised by physicians to make provision concerning the salvation of their souls, fall into a condition of despair, whence they more easily incur danger of death. But if any physician, after this constitution of ours has been published by the prelates of the places, is found a transgressor of it, let him be kept from entrance into the church until he has competently made satisfaction for a transgression of this kind. Furthermore, since the soul is much more precious than the body, under threat of anathema we prohibit any physician from advising a sick person, for bodily health, to do anything that is turned to the peril of the soul.

Medici, vocati ad infirmos, debent ante omnia inducere infirmum ad confessionem, nec quicquam persuadere pro salute corporis, tendens in animarum periculum.

Idem in eodem.

Quum infirmitas corporalis nonnunquam ex peccato proveniat, dicente Domino languido, quem sanaverat: "Vade, et amplius noli peccare, ne deterius aliquid tibi contingat," praesenti decreto statuimus, et districte praecipimus medicis corporum, ut, quum eos ad infirmos vocari contigerit, ipsos ante omnia moneant et inducant, ut medicos advocent animarum, ut, postquam fuerit infirmo de spirituali salute provisum, ad corporalis medicinae remedium salubrius procedatur, quum causa cessante cesset effectus. Hoc quidem inter alia huic causam dedit edicto, quod quidam, in aegritudinis lecto iacentes, quum eis a medicis suadetur, ut de animarum salute disponant, in desperationis articulum incidunt, unde facilius mortis periculum incurrunt. Si quis autem medicorum huius nostrae constitutionis, postquam per praelatos locorum fuerit publicata, transgressor exstiterit, tamdiu ab ingressu ecclesiae arceatur, donec pro transgressione huiusmodi satisfecerit competenter. Ceterum, quum anima sit multo pretiosior corpore, sub interminatione anathematis prohibemus, ne quis medicorum pro corporali salute aliquid aegroto suadeat, quod in periculum animae convertatur.

Chapter XIV

Latin source headnote: Collectors of alms ought not to be admitted without letters of the Apostolic See or of the diocesan bishops; and even then they are not to propose anything beyond what is contained in those letters. This is the first point. And they ought to be modest and abstain from unsuitable lodging places and expenses. This is the second. At the dedication of a basilica, remission

ought not to exceed one year, and at the anniversary of the dedication, and in letters of indulgence granted by someone other than the Pope, it ought not to exceed forty days. This is what it says to the end.

The same, in the same council.

Since from this (*And below:* [*cf. c.* 2, *On Relics and the Veneration of Saints, III.* 45.]) We also prohibit collectors of alms—some of whom, falsely representing themselves as others, propose certain abuses in their preaching—from being admitted unless they exhibit genuine letters of the Apostolic See or of the diocesan bishop; and even then let them not be permitted to propose anything to the people beyond what shall be contained in those letters. We have thought that the form that the Apostolic See commonly grants to such persons should be expressed, so that diocesan bishops may moderate their letters according to it. It is as follows: "Since, as the Apostle says, we shall all stand before the judgment seat of Christ to receive according to what we have done in the body, whether it was good or evil, we ought to anticipate the day of the final harvest with works of mercy, and, with a view to eternal things, to sow on earth what, when the Lord renders it, we ought to gather in heaven with multiplied fruit, holding a firm hope and a right confidence, because one who sows sparingly shall also reap sparingly, and one who sows in blessings shall also reap eternal life from blessings. Therefore, since the resources of the hospital itself do not suffice for the support of the brothers and needy persons resorting to such a hospital, we admonish and exhort all of you in the Lord, and enjoin upon you for the remission of sins, that from the goods bestowed upon you by God you furnish them pious alms and welcome aids of charity, so that through your assistance provision may be made for their poverty, and through these good things and [*through*] others that you shall do by the Lord's inspiration, you may be able to attain eternal joys." But let those who are sent to seek alms be modest and discerning, and let them not lodge in taverns or other unsuitable places, nor make useless or costly expenditures, taking every care lest they wear the habit of a false religious profession. In addition, because through indiscreet and excessive indulgences, which certain prelates of churches do not fear to grant, both the keys of the Church are contemned and penitential satisfaction is enervated, we decree that, when a basilica is dedicated, the indulgence shall not be extended beyond one year, whether it is dedicated by one bishop alone or by several; and thereafter, at the time of the anniversary of the dedication, the remission granted from imposed penances shall not exceed forty days. (*And below:*) We command that this number of days also regulate letters of indulgence that are sometimes granted for any cases, since the Roman Pontiff, who possesses the fullness of power, has been accustomed to observe this moderation in such matters.

> Eleemosynarum quaestores sine apostolicis vel dioecesanorum literis admitti non debent, nec tunc proponant ultra id, quod in ipsis literis continetur. Hoc primo. Et debent esse modesti, et a locis et expensis incongruis abstinere. Hoc secundo. In dedicatione basilicae ultra annum, et in anniversario dedicationis, et in literis indulgentiarum, concessis ab alio quam a Papa, ultra XL. dies remissio excedere non debet. H. d. usque ad fin.
>
> Idem in eodem.
>
> Quum ex eo (*Et infra:* [*cf. c.* 2. *de reliq. et ven. sanct. III.* 45.]) Eleemosynarum quoque quaestores, quorum quidam se alios mentiendo abusiones nonnullas in sua praedicatione proponunt, admitti, nisi apostolicas vel dioecesani episcopi literas veras exhibeant, prohibemus, et tunc praeter id, quod in ipsis continebitur literis, nihil populo proponere permittantur. Formam vero, quam communiter talibus apostolica sedes indulget, duximus exprimendam, ut secundum eam dioecesani episcopi suas literas

moderentur. Ea siquidem talis est: "Quoniam, ut ait Apostolus, omnes stabimus ante tribunal Christi, recepturi prout in corpore gessimus, sive bonum fuerit sive malum, oportet nos diem messionis extremae misericordiae operibus praevenire, ac aeternorum intuitu seminare in terris, quod reddente Domino cum multiplicato fructu colligere debeamus in coelis, firmam spem fiduciamque rectam tenentes, quoniam qui parce seminat parce et metet, et qui seminat in benedictionibus, de benedictionibus et metet vitam aeternam. Quum igitur ad sustentationem fratrum et egenorum ad tale confluentium hospitale propriae non suppetant facultates, universitatem vestram monemus et exhortamur in Domino, atque in remissionem vobis iniungimus peccatorum, quatenus de bonis vobis a Deo collatis pias eleemosynas et grata eis caritatis subsidia erogetis, ut per subventionem vestram ipsorum inopiae consulatur, et vos per haec bona et [*per*] alia, quae Domino inspirante feceritis, ad aeterna possitis gaudia pervenire." Qui autem ad quaerendas eleemosynas destinantur, modesti sint et discreti, nec in tabernis aut in aliis locis incongruis hospitentur, nec inutiles faciant aut sumptuosas expensas, caventes omnino, ne falsae religionis habitum gestent. Ad haec, quia per indiscretas et superfluas indulgentias, quas quidam ecclesiarum praelati facere non verentur, et claves ecclesiae contemnuntur, et poenitentialis satisfactio enervatur, decernimus, ut, quum dedicatur basilica, non extendatur indulgentia ultra annum, sive ab uno solo sive a pluribus episcopis, dedicetur, ac deinde in anniversario dedicationis tempore XL. dies de iniunctis poenitentiis indulta remissio non excedat. (*Et infra:*) Hunc quoque dierum numerum indulgentiarum literis praecipimus moderari, quae pro quibuslibet casibus aliquoties conceduntur, quum Romanus Pontifex, qui plenitudinem obtinet potestatis, hoc in talibus moderamen consueverit observare.

Chapter XV

Latin source headnote: An archbishop can grant indulgences within his province according to the form of the general council. This is what it says. And it speaks concerning the preceding chapter at the end.

Honorius III.

You sought to be made certain by our response whether you can grant general letters of remission throughout your province. We therefore respond briefly to your fraternity that you can freely grant letters of this kind throughout your province, yet in such manner that you do not exceed the statute of the general council.

Archiepiscopus infra provinciam suam potest concedere indulgentias secundum formam concilii generalis. H. d. Et loquitur de cap. praeced. in fine.

Honorius III. Nostra postulasti certificari responso, utrum per tuam provinciam possis concedere remissionis literas generales. Nos igitur fraternitati tuae breviter respondemus, quod per provinciam tuam libere potes huiusmodi concedere literas, ita tamen, quod statutum generalis concilii non excedas.

Chapter XVI

Latin source headnote: A bishop and the others concerning whom the letter speaks can choose a provident confessor for themselves without the permission of their superiors.

Gregory IX.

Lest danger to souls threaten because of a delay of penance, we permit bishops and other superiors, as well as lesser exempt prelates, to choose for themselves a provident and discreet confessor even without the permission of their superior.

Episcopus et alii, de quibus in litera, possunt sine licentia superiorum sibi eligere providum confessorem.

Gregorius IX. Ne pro dilatione poenitentiae periculum immineat animarum, permittimus episcopis et aliis superioribus, nec non minoribus praelatis exemptis, ut etiam praeter sui superioris licentiam providum et discretum sibi possint eligere confessorem.

Title XXXIX: On the Sentence of Excommunication

Chapter I

Latin source headnote: A prepubescent person who struck a cleric can be absolved by the bishop; and one who strikes a cleric in jest or for the sake of discipline, even if he is of full age, is not excommunicated. But one who does so from hatred is, and is absolved by the Pope.

Alexander III, to the Archbishop of Sens.

But concerning that matter about which you sought counsel *from us—whether scholars, if they strike one another at full or lesser age, or clerics or religious men in a cloister, according to that canon by which it was enacted that those who lay violent hands upon clerics are to be sent to the Apostolic See to be absolved, ought to come to the same see for their absolution; to your inquiry in this manner* we respond: if clerics below the years of puberty strike one another, or one strikes another, they are not to be sent to the Apostolic See, because their age excuses them. Nor *even* if clerics are of full age and it happens that they strike one another not from *hatred*, *envy*, or *indignation*, but from playful levity; nor is a master to be sent if he strikes a clerical scholar with a view to discipline or correction, because in their cases a violent laying on of hands cannot be imputed. But if the same scholars or secular clerics strike one another from hatred, they ought to come to the Apostolic See for their absolution.

DE SENTENTIA EXCOMMUNICATIONIS.

Impubes, qui clericum percussit, ab episcopo absolvi potest, et qui ioco vel causa disciplinae percutit clericum, etiamsi sit maior, excommunicatus non est; qui vero ex odio, sic, et per Papam absolvitur.

Alexander III. Senonensi Archiepiscopo.

Super eo vero, quod *a nobis* consilium postulasti, *utrum scholares, si se invicem percusserint in plena vel minori aetate, clerici aut religiosi viri in claustro, secundum canonem illum, quo statutum est, ut illi, qui in clericos violentas manus iniiciunt, mittantur ad apostolicam sedem absolvendi, debeant pro sua absolutione ad eandem sedem venire, inquisitioni tuae taliter* respondemus, quod, si clerici infra puberes annos se adinvicem, aut unus alterum percusserint, non sunt ad apostolicam sedem mittendi, quia eos aetas excusat. Nec *etiam* clerici, si sunt plenae aetatis, et non *de* odio, vel *de* invidia, vel *de* indignatione, sed levitate iocosa se adinvicem percutere contingat, neque magister, si scholarem clericum intuitu disciplinae vel correctionis percusserit, quia non potest in ipsis iniectio manuum violenta notari. Ceterum si ex odio iidem scholares vel saeculares clerici sese percusserint, pro sua absolutione debent ad apostolicam sedem venire.

Chapter II

Latin source headnote: The abbot absolves monks who strike one another. The same applies to regular canons; and, if the abbot's discretion is deficient, recourse is had to the bishop.

The same, to the same.

But monks and regular canons, in whatever manner they strike one another in the cloister, are not to be sent to the Apostolic See, but are to be subjected to discipline according to the providence *and discretion* of their abbot; and if the abbot's discretion does not suffice for their correction, the providence of the diocesan bishop is to be applied.

> Monachos, se adinvicem percutientes, absolvit abbas. Idem in canonicis regularibus; et, abbatis discretione deficiente, recurritur ad episcopum.
>
> Idem eidem.
>
> Monachi vero et canonici regulares, quocunque modo se in claustro percusserint, non sunt ad apostolicam sedem mittendi, sed secundum providentiam *et discretionem* sui abbatis disciplinae subdantur, et, si discretio abbatis non sufficit ad eorum correctionem, est providentia dioecesani episcopi adhibenda.

Chapter III

Latin source headnote: A doorkeeper who has struck a cleric, but not gravely, can be absolved by the bishop. This is the first point. An official who deliberately lays a hand upon a cleric is absolved by the Pope. This is the second. One who, repelling force with force, strikes a cleric is not excommunicated. This is the third. One who strikes a cleric found shamefully with a close female relative is not excommunicated; it is otherwise with a remote relative, and a close relative is defined as in the letter.

The same, to the same.

But if *someone* serving as doorkeeper of some authority, acting maliciously under the pretext of his office, injures a cleric, he can be absolved by his bishop, unless perhaps he gravely wounded the same cleric. But an official cannot merit the benefit of absolution for laying hands upon a cleric without the mandate of the Roman Pontiff, because no layman is given such great authority over a cleric, unless perhaps, when keeping back a rushing crowd, he injures a cleric not deliberately but by accidental mischance. But if anyone repels or injures with force a cleric who brings force upon him, he ought not on this account to be sent to the Apostolic See, provided that he immediately repels force with force, since all laws and all rights permit force to be repelled with force. Nor is one to be compelled to come to the Apostolic See who has laid violent hands upon a cleric found shamefully with his wife, mother, [*or*] sister, or his own daughter. But if he catches [*him*] in fornication or adultery that he commits with one who is not related to him by so close a line of consanguinity, or [*otherwise*] lays violent hands upon him, he will not be immune from that sentence of excommunication.

> Ostiarius, qui clericum percussit non graviter, ab episcopo absolvi potest. Hoc primo. Officialis, deliberate iniiciens manum in clericum, per Papam absolvitur. Hoc secundo. Qui repellendo vim vi clericum percutit, excommunicatus non est. Hoc tertio. Qui percutit clericum, turpiter inventum cum propinqua, excommunicatus non est; secus cum remota, et dicitur propinqua, ut in litera.
>
> Idem eidem.
>
> Si vero *aliquis* alicuius potestatis ostiarius, sub praetextu sui officii malignatus, clericum laeserit, ab episcopo suo potest absolvi, nisi forte eundem clericum graviter vulneraverit. Officialis vero pro iniectione manuum in clericum non potest sine mandato Romani Pontificis absolutionis beneficium promereri, quia nulli laico super clericum tanta datur auctoritas, nisi forte turbam arcendo irruentem, non ex deliberatione, sed fortuito casu clericum laedat. Si vero clericum, vim sibi inferentem, vi quis

repellat vel laedat, non debet propter hoc ad sedem apostolicam transmitti, si in continenti vim vi repellat, quum vim vi repellere omnes leges omniaque iura permittant. Nec ille compellendus est ad sedem apostolicam venire, qui in clericum, cum uxore, matre [*vel*] sorore vel filia propria turpiter inventum, manus iniecerit violentas. Ceterum, si [*eum*] in stupro vel adulterio, quod committit cum ea, quae ipsum ita proxima consanguinitatis linea non contingit, ceperit, aut [*alias*] in eum violentas manus iniecerit, non erit a sententia illius excommunicationis immunis.

Chapter IV

Latin source headnote: One who strikes a cleric while probably ignorant that he is a cleric is not excommunicated; nevertheless, he ought to prove his ignorance by oath, and, if he refuses to furnish this, he ought to be held as excommunicated.

The same.

But if anyone lays violent hands upon a cleric who wears his hair long, *being ignorant that he was a cleric*, he ought not on this account to be presented before the apostolic presence, nor even to be marked by excommunication, provided that he was ignorant that the man was a cleric; or, if this is doubtful, provided only that he personally furnishes an oath that he had been ignorant that the man was a cleric. But if he is unwilling to furnish the oath, because it is established that he laid violent hands upon a cleric, it is fitting to abstain from him as from an excommunicated person until he is absolved at the mandate of the Supreme Pontiff.

Qui percutit clericum, ignorans probabiliter eum clericum, excommunicatus non est; ignorantiam tamen probare debet per iuramentum, et, si hoc praestare recusat, pro excommunicato haberi debet.

Idem.

Si vero aliquis in clericum nutrientem comam, *ignorans, quod clericus fuerit*, manus iniecerit violentas, propter hoc non debet apostolico praesentari conspectui, nec etiam excommunicatione notari, dummodo ipsum esse clericum ignoraverit, vel, si hoc dubium fuerit, propria manu duntaxat praestiterit iuramentum, quod eum esse clericum ignorasset. Ab illo autem, si praestare noluerit iuramentum, quia violentas manus constat eum in clericum iniecisse, sicut ab excommunicato, donec de mandato summi Pontificis absolvatur, convenit abstineri.

Chapter V

Latin source headnote: One who strikes a cleric or religious is excommunicated and is absolved by no one other than the Pope, except at the point of death.

The same.

It is *not doubtful or uncertain to you, as we believe*, that those who lay violent hands upon clerics or canons, or converts of any religious order, incur a sentence of excommunication by the constitution of the council, and cannot obtain the benefit of absolution except at the point of death without the Roman Pontiff.

Percutiens clericum vel religiosum excommunicatus est, nec ab alio quam a Papa absolvitur, praeterquam in mortis articulo.

Idem.

Non dubium est *vobis, sicut credimus, vel incertum*, quod hi, qui violentas manus in clericos vel canonicos, aut cuiuslibet religionis conversos iniiciunt, ex constitutione concilii sententiam excommunicationis

incurrunt, nec nisi in articulo mortis sine Romano Pontifice absolutionis possunt beneficium impetrare.

Chapter VI

Latin source headnote: Women who have fallen under the canon Si quis suadente are absolved by the bishop. The same applies to persons who are not their own masters, or are delicate, concerning whom it is doubtful that they could conveniently approach the curia. And this is what it says down to § Illi. — § 1. One who commands a cleric to be struck is excommunicated, just like the one striking him. This is what it says.

The same.

Women or *also* other persons who are not their own masters can be absolved by the diocesan bishop if they have laid violent hands upon a cleric. But concerning those who possess great power and are so delicate that they cannot endure the labor of coming to the Apostolic See, *if they have laid violent hands upon clerics*, we respond that the status of the person and the truth of the affair are first to be intimated to the Roman Pontiff, and according to his counsel such persons are to be corrected for the crime committed. § 1. But those who, not by themselves, but by their authority or mandate, cause others violently to lay hands upon clerics are to be sent to the Apostolic See *with every excuse ceasing*, since he truly commits the deed by whose authority or mandate the offense is proved to be committed.

> Mulieres, quae inciderunt in canonem: Si quis suadente, absolvuntur ab episcopo. Idem in personis, quae non sunt sui iuris, vel sunt delicatae, de quibus dubitatur, quod non possent commode accedere ad curiam. Et h. d. usque ad § Illi. - § 1. Mandans clericum percuti, excommunicatus est, sicut percutiens. H. d.
>
> Idem.
>
> Mulieres vel *etiam* aliae personae, quae sui iuris non sunt, ab episcopo dioecesano absolvi possunt, si manus in clericum iniecerint violentas. De his vero, qui magnae sunt potentiae, et ita delicati, quod laborem veniendi ad sedem apostolicam nequeunt sustinere, *si manus violentas iniecerint in clericos*, respondemus, quod status personae prius et veritas negotii est intimanda Romano Pontifici et secundum consilium eius tales erunt de commisso scelere corrigendi. § 1. Illi vero, qui non per se ipsos, sed eorum auctoritate vel mandato alii violenter iniiciunt manus in clericos, ad sedem apostolicam sunt *omni excusatione cessante* mittendi, quum is committat vere, cuius auctoritate vel mandato delictum committi probatur.

Chapter VII

Latin source headnote: One excommunicated for laying hands upon a cleric, although the matter is hidden, is absolved by the Pope alone.

The same.

Moreover, if any lay violent hands upon their brothers and, led by penance, not convicted but privately, *as you assert*, seek pardon from you, you ought more *earnestly* to admonish and induce them to make suitable satisfaction to those whom they injured and to present themselves before the apostolic presence, since they cannot be absolved by you or *by any* other without a special mandate of the Roman Pontiff.

> Excommunicatus per iniectionem manuum in clericum, licet occultus, absolvitur per solum Papam.

Idem.

Porro, si aliqui violentas manus in fratres suos iniiciunt, et ducti poenitentia, non convicti, sed privatim, *sicut asseris*, a te veniam postulant, eos monere debes *propensius* et inducere, ut his, quos laeserunt, congrue satisfaciant, et apostolico se conspectui repraesentent, quum a te vel *ab* alio *quolibet* sine speciali mandato Romani Pontificis absolvi non possint.

Chapter VIII

Latin source headnote: Even privileged persons are bound to avoid an excommunicated person, and are excommunicated for laying hands upon a cleric.

The same.

No *Templar monks, however,* can protect themselves by a privilege of the Apostolic See so that they need not avoid excommunicated persons and be avoided as excommunicated for a violent laying of hands upon clerics.

Etiam privilegiati tenentur vitare excommunicatum, et per iniectionem manuum in clericum excommunicati sunt.

Idem.

Nulli *autem monachi Templarii* se possunt privilegio apostolicae sedis tueri, quo minus excommunicatos vitare debeant, et pro violenta manuum iniectione in clericos sicut excommunicati vitari.

Chapter IX

Latin source headnote: One who strikes a monk or religious convert ought to be publicly announced as excommunicated and avoided until he has been absolved by the Pope.

The same, to the Bishops and other Prelates established throughout Gaul.

But if any of your parishioners lay violent hands upon monks or converts of the aforesaid order, you shall, with the remedy of appeal removed and according to the tenor of the general decree, publicly announce them as excommunicated, and you shall cause them to be more strictly avoided as excommunicated until they make suitable satisfaction to those injured and present themselves before the apostolic presence with your letters.

Percutiens monachum vel conversum religiosum debet denunciari excommunicatus, et vitari, donec fuerit per Papam absolutus.

Idem Episcopis et aliis Praelatis per Galliam constitutis.

Parochianos *autem* vestros, si qui in monachos vel conversos praefati ordinis violentas manus iniecerint, sublato appellationis remedio secundum tenorem generalis decreti excommunicatos publice nuncietis, ipsosque faciatis sicut excommunicatos arctius evitari, donec laesis congrue satisfaciant, et cum literis vestris apostolico se conspectui repraesentent.

Chapter X

Latin source headnote: The form of the precept that ought to be given under the binding force of an oath to one who is absolved after being excommunicated for a violent laying of hands upon a cleric is set down.

The same, to the Archbishop of Genoa.

From the tenor of your letters it became known to us that the canon B. *of Saint Mary of the Vineyards* laid violent hands upon a certain subdeacon. (*And below:*) Therefore we command *your fraternity* that, after receiving an oath from the *canon* that he ought to obey your mandate, you absolve him in our stead from the sentence by which he is bound, and under the binding force of the oath command him that henceforth he not lay violent hands upon a cleric, monk, *Hospitaller*, or convert of any religious order, unless in defending himself, or unless he does so by mandate of their prelates, or unless he has a ministry of prelacy or teaching over him, or is known to be his associate in the same church.

> Ponitur forma praecepti, quod sub virtute iuramenti fieri debet illi, qui pro violenta manuum iniectione in clericum excommunicatus absolvitur.
>
> Idem Genuensi Archiepiscopo.
>
> Ex tenore literarum tuarum nobis innotuit, quod B. canonicus *S. Mariae de Vineis* in quendam subdiaconum manus iniecit violentas. (*Et infra:*) Mandamus itaque *fraternitati tuae*, quatenus, recepto ab eo *canonico* iuramento, quod tuo debeat mandato parere, ipsum vice nostra a sententia, qua tenetur, absolvas, sibique in virtute iuramenti praecipias, ne de cetero in clericum, monachum, *Hospitalarium* vel alicuius religionis conversum manus iniiciat violentas, nisi se defendendo, aut de mandato suorum fecerit praelatorum, vel nisi super eum praelationis ministerium aut magisterium habeat, aut cum ipso in eadem ecclesia socius esse noscatur.

Chapter XI

Latin source headnote: A bishop absolves one excommunicated for striking a cleric if he cannot approach the Pope without danger; nevertheless, he ought to command him to approach the Pope when the impediment ceases.

The same, to the Bishop of Le Mans.

Henceforth you should know that, if anyone is bound by the bond of excommunication for a violent laying of hands upon a cleric, and if, having mortal enemies or other just excuses by which he is reasonably excused from the journey, he cannot present himself before the apostolic presence without danger, it is lawful for the diocesan bishop, after receiving an oath according to the custom of the Church, to impart to him the grace of absolution. But it is to be enjoined upon him under obligation of the oath that, as soon as he has an opportunity, he approach the Roman Pontiff to receive the apostolic mandate.

> Excommunicatum pro percussione clerici absolvit episcopus, si sine periculo Papam adire nequit; debet tamen sibi mandare, quod adeat Papam impedimento cessante.
>
> Idem Cenomanensi Episcopo.
>
> De cetero noveris, quod, si quis pro violenta manuum iniectione in clericum est vinculo excommunicationis adstrictus, si habens capitales inimicitias, vel alias iustas excusationes, quibus ab itinere rationabiliter excusetur, ita, quod sine periculo apostolico se nequeat conspectui praesentare, licet dioecesano episcopo, recepto iuramento secundum morem ecclesiae sibi absolutionis gratiam impertiri. Sed est illi sub iuramenti debito iniungendum, ut, quam citius opportunitatem habuerit, Romanum Pontificem adeat, mandatum apostolicum suscepturus.

Chapter XII

Latin source headnote: When the Pope delegates the absolution of an excommunicated person, he commands that security for obeying the mandates of the Church be received.

Urban III, to the Archbishop of Sens.

To these things *however*, when [*sometimes*] a controversy is conducted before delegated judges between [*some*] of your parishioners, *or between them and others, frequently, as you assert, it is enjoined upon you by those judges by apostolic authority that you strike with ecclesiastical constraint one of the parties, perhaps contemning obedience to the judgment, or for another reasonable cause. But those who are commanded to lie under excommunication obtain letters from the Apostolic See to other judges, by whom it is nevertheless commanded to you by apostolic authority that you hold as absolved those who had been excommunicated at the mandate of the former judges. Concerning this your discretion doubts what you should do amid diversity of this kind. To which we briefly respond that, if the letters obtained to the second judges were not obtained with the truth suppressed, you ought to hold them absolved at their mandate, especially since* the Roman Church is by no means accustomed to delegate to others absolution from the sentence of delegated judges unless it is expressly contained in the letters of commission that sufficient security is to be furnished by those who ought to be absolved, that they ought to obey the judgment of the Church.

> Quum Papa absolutionem excommunicati delegat, mandat recipi cautionem de parendo mandatis ecclesiae.
>
> Urbanus III. Senonensi Archiepiscopo.
>
> Ad haec *autem*, quum [*nonnunquam*] inter [*aliquos*] parochianos tuos, *vel inter eos et alios controversia coram delegatis iudicibus agitetur, saepius a iudicibus ipsis, ut asseris, auctoritate apostolica tibi iniungitur, ut alteram partium, forte parere iudicio contemnentem, vel ob aliam causam rationabilem ecclesiastica districtione percellas. Illi vero, qui subiacere excommunicationi mandantur, ad alios iudices literas ab apostolica sede impetrant, a quibus nihilominus auctoritate apostolica tibi mandatur, ut eos, qui de priorum iudicum mandato excommunicati fuerant, habeas absolutos. Super quo tua discretio dubitat, quid tibi in diversitate huiusmodi sit agendum. Ad quod breviter respondemus, quod, si literae, ad secundos iudices impetratae, tacita veritate obtentae non fuerint, eos ad mandatum eorum absolutos habere debes; praecipue quum* Romana ecclesia absolutionem sententiae delegatorum iudicum nequaquam consuevit aliis delegare, nisi in literis commissionis contineatur expresse de sufficienti cautione praestanda ab his, qui absolvi debent, quod iudicio ecclesiae debeant obedire.

Chapter XIII

Latin source headnote: One excommunicated under the canon "If anyone, at the devil's persuasion," whether rich or poor, is to be absolved by the Pope or his legate; it is otherwise for a woman, or a sick or mutilated person, who can be absolved by the bishop.

Clement III.

It is known (*And below:*) *Your fraternity, diligently attending to this, certainly sought to be informed concerning those who with some rashness lay violent hands upon clerics, and who do not possess the means to be able to labor to the Apostolic See—namely, how salutary provision can be made for them. Concerning this* we have thought that your consultation should be answered in this manner: women *whom the frailty of sex impedes*, the old and infirm, or those impeded by loss *of other* members, although they do not come to the Apostolic See, can *receive the remedy of salvation from the bishops and by their office* be restored to the communion of the faithful, satisfaction having been made according to their means to those upon whom it is

established that injuries were inflicted by them. But all others, whether poor or rich, must be presented to the Apostolic See or its legate in order to obtain the benefit of absolution. But if, during an infirmity *of this kind*, the benefit of absolution is granted through fear of death, after an oath has been furnished it shall be enjoined upon them that, after they have been restored to health, they approach the Roman Church or its legate to receive the apostolic mandate concerning such matters.

> Excommunicatus per canonem: "Si quis suadente," sit dives vel pauper, per Papam absolvendus est vel eius legatum; fallit in muliere, sive infirmo vel mutilato, qui per episcopum absolvi possunt.
>
> Clemens III. Ea noscitur (*Et infra:*) *Quod utique fraternitas tua diligenter attendens, certificari humiliter postulavit de his, qui violentas manus in clericos aliqua temeritate iniiciunt, nec eis suppetunt facultates, ut ad sedem apostolicam valeant laborare, quomodo his scilicet possit salubriter provideri. Super quo* Consultationi tuae taliter duximus respondendum, quod mulieres, *quas sexus fragilitas impedit*, senes et valetudinarii, seu *aliorum* membrorum destitutionibus impediti, licet ad apostolicam sedem non veniant, ab episcopis valeant *salutis remedium accipere, et ex eorum officio* fidelium communioni restitui, satisfacto iuxta facultates his, quibus per eos constiterit iniurias irrogatas; alios autem, sive pauperes sive divites, sedi apostolicae vel legato eius, ut beneficium absolutionis obtineant, necesse est praesentari. Si vero *huiusmodi* infirmitatis tempore timore mortis beneficium fuerit absolutionis indultum, iuramento praestito iniungatur eisdem, ut, postquam sanitati fuerint restituti, ad Romanam ecclesiam vel eius legatum accedant, mandatum apostolicum super talibus recepturi.

Chapter XIV

Latin source headnote: Before denunciation, one excommunicated for a violent laying of hands upon clerics is to be avoided, unless the fact is unknown. This is the first point. One who kills a cleric who, having contemned the clerical habit, involved himself in enormities, is not excommunicated. This is the second.

The same.

Since not by man (*And below:*) *It was therefore asked of us on your behalf whether you are bound to abstain from communion with one who, for a rash laying of hands, fell under the sentence before he is publicly announced as excommunicated; and whether the killers of clerics or of those priests who, having cast aside the ministry of the order received, do not fear to pollute themselves with homicides in public wars or even apart from wars—since in feasting, drunkenness, pillaging, and other enormities they rage equally with laymen, or worse—fall under the canon of a sentence already imposed. Therefore, concerning the second* consultation we respond in this manner: you ought to abstain from communion with one who, for a sacrilegious laying of hands upon a cleric, fell under the edict of excommunication, even if he has not been denounced, *still* unless perhaps this was known to you alone. In that case you will avoid him only privately for as long as he is tolerated by the Church, so that, at least suffused with the blush of shame, he may be compelled *in this manner* to make satisfaction for the hidden excess. But concerning the article of the second question, we respond that the *lay* killers of clerics or priests who, *as has been said*, having contemned the clerical habit, shamelessly involve themselves in tyranny and enormity, are by no means restrained by the canon of a sentence already imposed, in hatred of clerical excess and *for* the terror and correction of similar persons; nevertheless, let a fitting penance somewhat harsher than if they had committed such things against *altogether* lay persons be enjoined upon them. *Moreover, because no one is to be despaired of while he is established in a mortal body, since that which is deferred is sometimes afterwards completed with more mature counsel. Finally, concerning what you consulted us—whether by common law it is lawful for you*

and your suffragans to absolve those who are struck by a sentence of excommunication for a rash laying of hands—we answer this more manifestly: that, with the exception of certain persons contained in the decretals of Alexander III being observed, this is lawful for no one unless he enjoys a special privilege of the Apostolic See. Nevertheless, wishing to provide by paternal dispensation for those who dwell in such remote parts of your province, by the present letters we grant to your fraternity that, if bodily impotence, poverty, or some unavoidable and manifest necessity impedes those who are thus excommunicated by the law itself, provided that they make satisfaction to those whom they offended and do some penance for their own correction and the terror of others, you, supported by apostolic authority, may absolve them from the sentence of excommunication, provided that enormous bodily injury or death did not ensue from such a striking. Assuredly, in all these matters, if anyone diligently examines the statutes of the holy fathers, he will find that we have answered nothing new, but have, as though by a certain hand of solicitude, renewed what is ancient.

> Ante denunciationem vitandus est excommunicatus pro violenta manuum iniectione in clericos, nisi sit occultus. Hoc primo. Interficiens clericum, qui, contempto clericali habitu, se enormitatibus immiscuit, excommunicatus non est. Hoc secundo.
>
> Idem.
>
> Quum non ab homine (*Et infra:*) *A nobis itaque fuit ex parte tua quaesitum, an tenearis abstinere a communione illius, qui pro temeraria manuum iniectione in sententiam incidit, antequam excommunicatus publice nuncietur, et an incidant in canonem latae sententiae interfectores clericorum aut presbyterorum illorum, qui, abiecto suscepti ordinis ministerio, in publicis bellis vel etiam praeter bella se homicidiis polluere non verentur, quum in comessationibus, et in ebrietatibus, atque rapinis et aliis enormitatibus aeque sunt, ut laici, vel deterius debacchantes. In secunda igitur* Consultatione taliter respondemus, quod a communione illius, qui pro sacrilega manuum iniectione in clericum in edictum excommunicationis incidit, licet denunciatus non sit, *adhuc* debes abstinere, nisi forte id tibi soli pateret. In quo casu ipsum privatim tantummodo evitabis, quamdiu ab ecclesia toleratur, ut saltem verecundiae rubore suffusus pro latenti excessu *taliter* satisfacere compellatur. In articulo vero secundae quaestionis respondemus, quod occisores clericorum aut presbyterorum, qui, *ut dictum est*, contempto clericali habitu tyrannidi et enormitati se inverecunde immiscent, in odium clericalis excessus, et *in* terrorem atque correctionem similium, canone latae sententiae *laici* minime coercentur; iniungatur tamen eis poenitentia competens aliquantulum asperior, quam si *omnino* in laicos talia commisissent. *Praeterea, quia nemo desperandus est, dum fuerit in mortali corpore constitutus, quum id quod differtur, aliquando consilio postmodum maturiore perficiatur. Ad ultimum quoque quod consuluisti nos, si de iure communi tibi liceat, ac suffraganeis tuis, illos, qui pro temeraria manuum iniectione excommunicationis sententia percelluntur, absolvere, huic manifestius respondemus, quod observata exceptione quorundam quae in decretalibus Alexandri III. continetur hoc nemini liceat, nisi apostolicae sedis gaudeat privilegio speciali. Verumtamen volentes illis, qui in tam remotis partibus tuae provinciae commorantur, dispensatione providere paterna: fraternitati tuae praesentibus literis indulgemus, ut illos, qui taliter excommunicati sunt ipso iure, si corporum impotentia, aut paupertas eos impediat, aut aliqua inevitabilis, et manifesta necessitas, dummodo satisfaciant iis, quos offenderunt et aliquam agant poenitentiam, ad correctionem sui, ceterorumque terrorem a sententia excommunicationis auctoritate apostolica fretus absolvas, si tamen ex percussione huiusmodi laesio corporalis enormis aut mors non fuerit subsecuta. Nimirum in his omnibus, si quis sanctorum patrum statuta diligenter perscrutetur, nihil novum nos respondisse reperiet, sed quod antiquum est quasi quadam manu sollicitudinis innovasse.*

Chapter XV

Latin source headnote: One is not to communicate with an excommunicated person before absolution, although he has sworn to obey the mandates of the Church or has made a settlement with the person offended. This is the first point. One defamed concerning excommunication is not to

be communicated with unless he purges himself or is absolved as a precaution. This is the second point.

The same.

Since you desire *to be more fully instructed by a rescript of the Apostolic See concerning what your fraternity ought to observe in these matters that contain doubt, we, who, although unworthy, are compelled by the office of administration undertaken to respond to the consultations of individuals,* [*wish by the present rescript to resolve the knots of your questions, and we commend your prudence in this: that, although you have skill in canon law and enjoy the counsel of prudent men, nevertheless, for greater evidence and to set a form before others, you seek the counsel of your mother, the sacrosanct Roman Church, in which you show that you have the spirit of counsel and fortitude, as a discreet and prudent man.*] The tenor of the first question was of this kind: whether others are to communicate with an excommunicated person who swore to obey the mandate of the Church and to whom, before absolution, the bishop restored communion, and whether the bishop ought to do this. To this question *indeed* we respond in this manner: since the oath of security that those who are excommunicated now furnish was introduced according to the Church's custom as a precaution rather than *from* the rigor of the canons, and is not reckoned of such force that, unless the benefit of absolution follows, one who is excommunicated ought to be restored to the communion of others—especially since he has not obtained absolution from that oath, and it is established that he was excommunicated, and it is true that he has not been absolved—neither the bishop nor others ought to communicate with him unless, after the oath has been furnished, he has been absolved according to the form of the Church; because *according to the canons of the Apostles and the statutes of Pope Fabian*, one who knowingly communicates with an excommunicated person *is to be deprived of communion; indeed, according to the statutes of Isidore*, he contracts the penalty of excommunication with him. Following *the statutes of the canons, and especially those of Alexander III of pious memory, our predecessor*, we have thought that this conclusion should be imposed upon the second question: if there is public report that someone struck a cleric, neither the bishop nor anyone else ought to communicate with him unless, at the judgment of the bishop, he has purged himself concerning this, or, for *greater* caution, obtains the benefit of absolution. In the third place your discretion asked whether, if a cleric struck *by someone deposited a complaint before his bishop and was prepared to produce witnesses, and* through the mediation of the bishop made a settlement with the one who struck him, and the latter was reconciled to him, he ought thereby to be admitted to the communion of others. Concerning this we respond briefly to you that, although the one who laid violent hands appears to have made satisfaction in this manner to the one whom he injured, nevertheless he is recognized not thereby to have made satisfaction to the Church, which he offended; and unless the form of the Church introduced for the absolution of such persons, *as was said above*, is observed, one is not to communicate with him. *Moreover, we resolve all the perplexities of the final question: that one who keeps a cleric captive, even if he has not laid violent hands upon him, is placed in the same category of crime, is to be avoided, and is not to be restored to fraternal communion unless he has been absolved according to the form of the Church, as was said above.*

> Ante absolutionem communicandum non est excommunicato, licet iuraverit parere mandatis ecclesiae, vel composuerit cum offenso. Hoc dicit primo. Infamato de excommunicatione communicandum non est, nisi se purget, vel ad cautelam absolvatur. H. d. secundo.
>
> Idem.

Quum desideres, *quid tua fraternitas observare debeat super his, quae dubietatem continent, apostolicae sedis rescripto plenius edoceri: nos, qui, licet immeriti, ex suscepto administrationis officio consultationibus respondere cogimur singulorum,* [*interrogationum tuarum nodos praesenti rescripto solvere volumus, et tuam in hoc prudentiam commendamus, qui quum iuris canonici peritiam habeas, et prudentum consilio perfruaris, ad maiorem tamen evidentiam et formam ceteris praefigendam sacrosanctae Romanae ecclesiae matris tuae consulta requiris, in quo spiritum consilii et fortitudinis, sicut vir discretus et prudens, te habere ostendis.*] Fuit autem primae quaestionis tenor huiusmodi, utrum alicui excommunicato, qui mandato ecclesiae stare iuravit, et ante absolutionem episcopus ei communionem reddidit, sit communicandum ab aliis, et an episcopus id facere debeat. Cui *siquidem* quaestioni taliter respondemus, quod, quum cautio iuratoria, quam hodie qui excommunicati sunt praestant, potius ad cautelam ex consuetudine ecclesiae, quam *ex* rigore canonum sit inducta, neque momenti tam validi reputetur, quod, nisi absolutionis beneficium subsequatur, ille, qui excommunicatur, debeat communioni aliorum restitui, praesertim quum ex eo iuramento absolutionem consecutus non sit, et constet, eum excommunicatum fuisse, et verum sit, absolutum non esse, nec episcopus nec alii debent communicare eidem, nisi fuerit secundum formam ecclesiae post iuramentum praestitum absolutus, quia *secundum Apostolorum canones et Fabiani statuta Pontificis*, qui cum excommunicato scienter communicaverit, *est communione privandus, immo iuxta Isidori statuta* excommunicationis poenam contrahit cum eodem. Secundae quaestioni, *statuta canonum et praecipue piae memoriae Alexandri III. praedecessoris nostri sequentes*, hunc finem duximus imponendum, quod, si publica fama est, aliquem verberasse clericum, nec episcopus, nec alius communicare sibi debet, nisi ad arbitrium episcopi de hoc se purgaverit, vel ad *maiorem* cautelam absolutionis beneficium consequatur. Tertio loco tua discretio requisivit, si clericus, verberatus *ab aliquo, querimoniam apud suum episcopum deposuerit, et testes producere paratus fuit, et* episcopo mediante cum suo verberatore composuerit, et ille reconciliatus sibi fuerit, an per hoc is debeat ad aliorum communionem admitti. Super quo tibi breviter respondemus, quod, licet ille, qui violentas manus iniecit, ei, quem laesit, satisfecisse taliter videatur, ecclesiae tamen, quam offendit, ex hoc non satisfecisse dignoscitur, et, nisi forma ecclesiae, quae pro absolutione talium, *ut supra dictum est*, introducta est, observetur, non est communicandum eidem. *Ultimae praeterea quaestionis omnes perplexiones resolvimus, quod in pari stilo criminis conquadratur, qui clericum captivum detinet, licet violentas manus in ipsum non iniecerit est vitandus, nec est communioni fraternae reducendus, nisi iuxta formam ecclesiae fuerit ut supradictum est, absolutus*.

Chapter XVI

Latin source headnote: A priest who casts a regular out of a church when she disturbs divine offices is not excommunicated.

The same.

Coming to the Apostolic See, I., the bearer of the present letters, showed us by his assertion *set forth* that, while he was celebrating the morning offices, a certain nun, entering the *same* church and playing with another cleric, created an impediment whereby he could not render divine worship to God; hence the aforesaid priest, moved so that he could attend more freely to the celebration of divine things, laid hands upon her in order to put her outside the church and, when she would not leave, by dragging her compelled her to remain outside the church. But on this account you avoided him as excommunicated and caused him to be avoided by others. Therefore, we command you *by apostolic writings* that, if the matter is so, you do not henceforth avoid him, since we by no means see him as excommunicated on this account.

Sacerdos, eiiciens regularem de ecclesia, officia divina turbantem, excommunicatus non est.

Idem.

Veniens ad sedem apostolicam. I. lator praesentium sua nobis assertione *proposita* monstravit, quod, quum matutina officia celebraret, quaedam monialis, ecclesiam *ipsam* ingrediens, cum alio clerico ludendo impedimentum praestabat, quo minus Deo divinum posset obsequium exhibere; unde memoratus sacerdos commotus, ut liberius posset circa divinorum celebrationem vacare, manibus in eam appositis, ut extra ecclesiam poneret, quum nollet exire, in trahendo ipsam coegit eandem extra ecclesiam residere. Sed tu illum propter hoc tanquam excommunicatum evitasti, et facis ab aliis evitari. Ideoque *per apostolica tibi scripta* mandamus, quatenus, si res ita se habet, eum de cetero non evites, quum ex hoc ipsum excommunicatum nullatenus videamus.

Chapter XVII

Latin source headnote: Those excommunicated for a light laying of hands upon a cleric can be absolved by the bishop. This is what it says according to the common reading, and the text is singular.

The same.

It came to us (*And below:* [*cf. c.* 5, *On Compelling Witnesses, II.* 21.]) *But those who, impeded by sickness, cannot labor to the Apostolic See for the benefit of absolution, you can absolve after receiving from them the customary oath, in such manner that, when restored to their former health, they present themselves before the apostolic presence. But concerning this we believe that you can freely dispense sufficiently with the female sex, children, and the old.* [*Moreover, after the clerics of the city have been summoned, you can cleanse churches that have been polluted by an effusion of blood or semen with a procession and the sprinkling of holy water, as is written in the ordinal.*] We have thought that absolution of those *also* who inflicted upon clerics an injury not enormous but moderate and light should be committed to the judgment of your fraternity.

Excommunicati pro levi manuum iniectione in clericum possunt per episcopum absolvi. H. d. secundum communem lecturam, et est textus singularis.

Idem.

Pervenit ad nos (*Et infra:* [*cf. c.* 5. *de test. cog. II.* 21.]) *Illos autem, qui valetudine praepediti pro absolutionis beneficio ad sedem apostolicam nequeunt laborare, recepto ab eis, sicut moris est, iuramento, potes absolvere ita, quod sanitati pristinae restituti apostolico se conspectui repraesentent. Sexui vero femineo, et pueris ac senibus super hoc satis te credimus posse libere dispensare.* [*Ecclesias insuper, quae sanguinis vel seminis sunt effusione pollutae, civitatis clericis convocatis cum processione et aquae benedictae aspersione, prout in ordinario habetur scriptum, poteris emundare.*] De his *etiam* absolvendis, qui clericis non enormem, sed modicam et levem iniuriam irrogarunt, tuae fraternitatis arbitrio duximus committendum.

Chapter XVIII

Latin source headnote: A cleric who knowingly and voluntarily participates with one excommunicated in divine offices is excommunicated by the greater excommunication and is to be absolved only by the Pope. This is what it says according to Panormitanus.

The same.

He signified to us (*And below:*) But we do not doubt that those clerics [*who*] knowingly and voluntarily participated with persons excommunicated by us, and received them in the offices, are

enveloped with them by the same sentence of excommunication; and we also wish them to be sent back to us, with the information of your letters, to obtain the benefit of absolution.

> Clericus, qui scienter et sponte participat excommunicato in divinis officiis, excommunicatus est excommunicatione maiori, et tantum absolvendus per Papam. H. d. secundum Panorm.
>
> Idem.
>
> Significavit nobis (*Et infra:*) Verum clericos [*illos*], qui scienter et sponte participaverunt excommunicatis a nobis, et ipsos in officiis receperunt, eadem excommunicationis sententia cum ipsis non dubitamus involvi; quos etiam pro beneficio absolutionis habendo ad nos volumus cum literarum tuarum insinuatione remitti.

Chapter XIX

Latin source headnote: One excommunicated for laying hands upon a cleric, or an incendiary after publication, is absolved by the Pope alone.

The same.

Your fraternity was led to consult us *whether only those are to be sent to the Apostolic See who, falling under the canon of a sentence already imposed, turned violent hands against clerics, and whether they cannot be freed from the same sentence except by the Roman Pontiff. Hence* we respond to your fraternity in this manner: not only *those* who lay rash hands upon clerics, but also incendiaries, once they have been publicly denounced by a sentence of the Church, are to be sent to the Apostolic See for the benefit of absolution, *and are to be absolved only by the Roman Pontiff. But those who presume to receive ecclesiastical benefices from the hands of laymen are not accustomed to labor to the Apostolic See for such an excess.* [*Concerning the priest, etc.; cf. c.* 4, *On Sick Clerics, III.* 6.]

> Excommunicatus pro iniectione manuum in clericum, vel incendiarius post publicationem a solo Papa absolvitur.
>
> Idem.
>
> Tua nos duxit fraternitas consulendos, *an ii soli sint ad sedem apostolicam destinandi, qui in latae sententiae canonem incidentes, manus in clericos inverterunt violentas, et utrum non possint ab eadem sententia, nisi per Romanum Pontificem liberari. Unde* Fraternitati tuae taliter respondemus, quod non solum *ii*, qui in clericos temerarias manus iniiciunt, sed etiam incendiarii, ex quo sunt per ecclesiae sententiam publicati, pro absolutionis beneficio ad apostolicam sedem sunt mittendi, *et non nisi per Romanum Pontificem absolvendi. Illi vero, qui ecclesiastica beneficia de manibus praesumunt laicorum accipere, non consueverunt pro tali excessu ad sedem apostolicam laborare*. [*De sacerdote etc. cf. c.* 4. *de cler. aegr. III.* 6.]

Chapter XX

Latin source headnote: Legates *de latere* can absolve those excommunicated for laying hands upon clerics.

The same.

Recourse *is to be had to the eminence of the Apostolic See whenever an article of doubt emerges, so that a person may receive and observe with a more ready conscience what shall have been answered to him by the Apostolic See concerning a doubtful matter, insofar as the sentence of its truth is known to be strengthened by the more certain prerogative of that dignity, which in blessed Peter, prince of the Apostles, received the breadth of prelacy before all*

others. But, as it was intimated to our ears on your behalf, it is doubtful to you whether those who incurred excommunication for laying hands upon clerics or other religious persons obtain the benefit of absolution when they are absolved by cardinal legates who are sent from the side of the Roman Pontiff for a time, although those legates do not show an express mandate *for themselves* concerning this. Concerning this we wish it to be observed by you *and your suffragans* that you hold, without any scruple of hesitation, as absolved those whom it is established obtained the benefit of absolution *from such men*. [*Given at the Lateran.*]

> Legati de latere absolvere possunt excommunicatos pro iniectione manuum in clericos.
>
> Idem.
>
> Ad eminentiam sedis apostolicae *est recurrendum, quoties articulus dubitationis emergit, ut tanto quis promptiori conscientia recipiat et observet quod super re dubia sibi fuerit a sede apostolica responsum, quanto praerogativa dignitatis illius certiori noscitur ipsius sententia veritatis roborata, quae in B. Petro Apostolorum principe prae aliis omnibus amplitudinem praelationis accepit*. Sicut *autem* ex parte tua nostris est auribus intimatum, tibi exstat dubium, utrum absolutionis beneficium assequantur qui pro iniectione manuum in clericos vel alias religiosas personas excommunicationem incurrerunt, et a legatis cardinalibus, qui a latere Romani Pontificis destinantur pro tempore, absolvuntur, quum iidem legati mandatum *sibi* super hoc non ostendant expressum. Super quo id a te *ac tuis suffraganeis* volumus observari, ut eos habeas absque omni haesitationis scrupulo absolutos, quos constiterit a talibus beneficium *fuisse* absolutionis adeptos. [*Dat. Laterani.*]

Chapter XXI

Latin source headnote: A general excommunication binds only the subjects of the one pronouncing it.

The same.

It was asked of us on your behalf whether, if someone pronounces thus, "Whoever commits theft, let him be excommunicated," this general clause is referred to the subjects of the one imposing the excommunication, or is extended generally to all who are not within his jurisdiction. To this we say *certainly* that only his subjects are bound by this sentence, unless perhaps the greater and broader authority of the delegating person has conferred more *upon him*.

> Generalis excommunicatio non ligat, nisi subditos proferentis.
>
> Idem.
>
> A nobis fuit ex parte tua quaesitum, utrum, si quis ita pronunciaverit: "quisquis furtum fecerit, excommunicatus sit:" haec generalis clausula ad ipsius excommunicatoris subditos referatur, an generaliter extendatur ad omnes, qui non sunt de iurisdictione illius. Ad quod *utique* dicimus, quod hac sententia non nisi subditi obligantur, nisi forte plus *ei* contulerit maior et largior auctoritas delegantis.

Chapter XXII

Latin source headnote: Those who despoil churches by breaking into them are excommunicated and, after denunciation, are absolved only by the Pope.

The same.

The *beloved sons*, the canons of Reggio, complained to us that I. de Malafrena and his followers violently broke into *the church of Viliaco and certain other* churches of the bishopric of Reggio, and did not at all hesitate to despoil them, *and in no way hesitated to plunder certain men of the Church of Reggio*. Therefore, since *these things* are grave and ought not to be passed over with closed eyes, we command that, if the matter is so, you publicly announce the aforesaid sacrilegious persons as excommunicated, *with candles publicly lighted and appeal ceasing*, and cause them to be more strictly avoided as excommunicated until they make suitable satisfaction to those who suffered injury, repair the damages caused by them, and present themselves before the apostolic presence with your letters containing the truth of the matter.

> Qui cum effractione spoliant ecclesias, excommunicati sunt, et per Papam tantum post denunciationem absolvuntur.
>
> Idem.
>
> Conquesti sunt nobis *dilecti filii* Reginenses canonici, quod I. de Malafrena et eius sequaces *ecclesiam de Viliaco et alias* quasdam ecclesias Reginensis episcopatus violenter confregerunt, easque spoliare minime dubitarunt, *et quosdam homines Reginae ecclesiae depraedari nullatenus dubitaverunt*. Quoniam igitur *haec* gravia sunt, nec clausis debent oculis praeteriri; mandamus, quatenus, si est ita, memoratos sacrilegos, *publice accensis candelis, appellatione cessante* excommunicatos nuncietis, et faciatis sicut excommunicatos arctius evitari, donec passis iniuriam congrue satisfaciant, et damna pro eis data resarciant, et cum literis vestris rei veritatem continentibus apostolico se conspectui repraesentent.

Chapter XXIII

Latin source headnote: One who strikes or even kills a cleric who, having laid aside the clerical habit, involves himself in savage enormities, is not bound to go to the Apostolic See for absolution. Thus it can be summarized generally.

The same.

We have understood from your letters that a certain priest *of your diocese*, because he presumed falsely to call himself the king's son and, after taking up arms, caused sedition [*in the province*] and war, was ordered by the *beloved son*, Count B., to be beaten *through the villages*; and afterwards, having been handed over to the gallows at his mandate, he expired. *Therefore, since you intimated that both the count himself and the other participants in this deed wished to make satisfaction concerning this, by the present page* we have thought that your fraternity should be answered that, if the aforesaid priest committed excess in such manner and, *bearing arms*, was killed not while repelling but while inflicting injury, it does not seem to us that his killers ought on this account to be compelled to approach the Apostolic See to obtain absolution; but you, who know well the merits of the persons, shall enjoin fitting penance upon them. [*But, etc.; cf. Compilation II, c.* 4, *On Vows, III.* 21.]

> Percutiens vel etiam interficiens clericum, se, dimisso clericali habitu, saevis enormitatibus immiscentem, non tenetur ire pro absolutione ad sedem apostolicam. Ita generaliter summari potest.
>
> Idem.
>
> Perpendimus ex literis tuis, quod quidam sacerdos *tuae dioecesis* pro eo, quod se filium regis falso nominare praesumpsit, et, armis acceptis, [*in provincia*] seditionem fecit et guerram, a *dilecto filio* B. comite *per vicos* iussus est fustigari; qui postea eius mandato traditus patibulo exspiravit. *Quia igitur tam ipsum comitem quam alios huius facti participes velle super hoc satisfacere intimasti, praesenti pagina* Fraternitati

tuae duximus respondendum, quod, si memoratus sacerdos tali modo excessit, et *arma ferens* non propulsando, sed inferendo iniuriam fuit occisus, non videtur nobis, quod interfectores eius propter hoc ad obtinendam absolutionem apostolicam sedem adire cogantur; tu vero, qui merita personarum bene nosti, poenitentiam eis competentem iniungas. [*Ceterum etc. cf. Comp. II. c.* 4. *de vot. III.* 21.]

Chapter XXIV

Latin source headnote: An ecclesiastical judge who causes a cleric to be struck by a layman, even for the sake of discipline, is excommunicated; and both he and the one striking are bound to go to the Pope for absolution.

The same.

We received the consultation of all of you, by which you asked us whether *that* layman falls under the edict of excommunication who, at the order of an abbot in whose service he abides, presumes to lay rash hands upon a cleric, *or* monk, or convert, especially where there is no cause for which he ought to be beaten. But it seems to us that, unless the abbot does this for the cause of regular discipline in his own person, or, if necessity presses, orders it to be done through a cleric or monk, both the one who commands such persons to be beaten and those who beat them, even if a cause existed, by no means escape the sentence of excommunication until they come to the Apostolic See.

Iudex ecclesiasticus, faciens percuti clericum per laicum, etiam causa disciplinae, excommunicatus est, et ipse, et verberans pro absolutione tenentur ire ad Papam.

Idem.

Universitatis vestrae consultationem accepimus, qua nos requisistis, utrum *ille* laicus incidat in excommunicationis edictum, qui ad iussionem abbatis, in cuius servitio commoratur, in clericum, *aut* monachum, aut conversum temerarias manus praesumit iniicere, maxime ubi causa non subest, propter quam debeat verberari. Nobis autem videtur, quod, nisi causa regularis disciplinae hoc faciat abbas in propria persona, vel, si necessitas urget, per clericum vel monachum fieri iubeat, tam qui tales verberari praecipit, quam illi, qui verberant, etiamsi causa subesset, excommunicationis sententiam, donec ad apostolicam sedem veniant, nequaquam evadunt.

Chapter XXV

Latin source headnote: A cleric walking about as a layman who does not come to his senses after a third admonition loses clerical privilege.

The same.

In our hearing a consultation of this kind was proposed on your behalf: whether clerics who, having abandoned the clerical habit, are in no way ashamed to bear military arms ought, if bodily injury is inflicted upon them or they redeem themselves from captivity, to enjoy that immunity of clerics by which one who rashly lays hands upon a cleric is marked as excommunicated by the law itself. To these things we respond briefly to you that, since one who commits against the Church implores the aid of the Church in vain, and the law of secular princes furnishes a sufficiently effective argument for this response—in which it is manifestly provided that a matron whose chastity has been assailed cannot bring an action for injuries if she was found in the clothing of a prostitute—clerics of this kind, if they *have been* admonished a third time by their prelates *and* have refused to lay down military arms, ought not to have any assistance from the privilege of clerics.

Clericus, ut laicus incedens, tertio monitus non resipiscens, perdit privilegium clericale.

Idem.

In audientia nostra talis fuit ex parte tua proposita consultatio, utrum clerici, qui arma militaria relicto habitu clericali gestare nullatenus erubescunt, si eis fuerit iniuria corporalis illata, vel se a captione redemerint, illa clericorum debeant immunitate gaudere, qua pro temeraria manuum iniectione, facta in clericum, excommunicatus quis ipso iure notatur. Ad haec tibi breviter respondemus, quod, quum frustra ecclesiae imploret auxilium, qui committit in ipsam, et lex saecularium principum huic responso satis efficax afferat argumentum, qua manifeste cautum habetur, matronam, cuius pudicitia attentata fuerit, non posse iniuriarum agere, si in veste meretricali fuerit deprehensa, huiusmodi clerici, si *fuerint* a praelatis suis tertio commoniti, *et* militaria noluerint arma deponere, de privilegio clericorum subsidium aliquod habere non debent.

Chapter XXVI

Latin source headnote: One excommunicated for laying hands upon a cleric, if impeded from going to the curia, can be absolved by an inferior; but, when the impediment ceases, he is bound to visit the curia to receive the apostolic mandate.

The same.

Because you seek the responses of the Apostolic See *even concerning those things about which you do not doubt and have very fully recognized what ought to be observed concerning those very things, we commend your fraternity in the Lord all the more insofar as, in those things that are expressed in the institutions of the sacred canons, you desire and intend to proceed by our authority. Indeed, your fraternity asked us whether* [*one*] *who confesses that he has fallen under the canon of a sentence already imposed, and cannot be induced to come to the Apostolic See to be absolved, can or ought to merit the benefit of absolution from the bishop or even from a simple priest; and whether priests who are bigamists or husbands of widows may celebrate the solemnities of Masses after their wives have entered the way of all flesh. But although what ought to be observed concerning these things is defined in the sacred canons, nevertheless* we have thought that *at present* your fraternity should be answered that one who asserts that he has fallen under the canon of a sentence already imposed can obtain the benefit of absolution only through the Apostolic See or its legate, unless perhaps he is *established* at the point *of death*, or is so burdened by poverty, infirmity, or old age that he cannot undertake the labor of coming to the Roman Church, or is held back from this by another canonical impediment. But from these persons it is customary to exact in the form of an oath that, when their strength has been recovered and opportunity granted, they ought to visit the Roman Church in person. [*Concerning the priests, etc.; cf. c.* 3, *On Bigamists Not to Be Ordained, I.* 21.]

Excommunicatus propter iniectionem manuum in clericum, impeditus ire ad curiam, potest ab inferiore absolvi; sed impedimento cessante tenetur curiam visitare, suscepturus mandatum apostolicum.

Idem.

Quod de his *etiam, in quibus non dubitas, et quid de his ipsis observari debeat plurimum agnovisti, sedis apostolicae responsa requiris, tanto fraternitatem tuam magis in Domino commendamus, quanto in his, quae sacrorum canonum institutionibus sunt expressa, auctoritate nostra procedere desideras et disponis. Sane, requisivit a nobis fraternitas tua, utrum* [*is,*] *qui se confitetur in latae sententiae canonem incidisse, nec ad hoc potest induci, ut ad sedem apostolicam veniat absolvendus, ab episcopo vel etiam a simplici presbytero absolutionis beneficium possit vel debeat promereri, et utrum presbyteris bigamis vel viduarum maritis, eorum uxoribus viam universae carnis ingressis, missarum liceat solennia celebrare. Verum, licet, quid de his observare debeat, sacris canonibus sit definitum, hoc tamen*

Fraternitati tuae *ad praesens* duximus respondendum, quod is, qui asserit, se in canonem latae sententiae incidisse, non aliter, quam per sedem apostolicam vel eius legatum absolutionis potest beneficium obtinere, nisi forte in mortis *sit* articulo *constitutus*, vel paupertate, aut infirmitate vel senectute tanta gravetur, quod ad ecclesiam Romanam laborem subire non valeat veniendi, vel ab hoc alio impedimento canonico retrahatur. Ceterum ab his in forma sacramenti exigi consuevit, ut resumptis viribus et opportunitate concessa Romanam ecclesiam in propria persona debeant visitare. [*De presbyteris etc. cf. c.* 3. *de bigam. non ord. I.* 21.]

Chapter XXVII

Latin source headnote: One bound by several excommunications, although arising from the same act, who obtains absolution with one cause or one excommunication expressed, is not held as absolved with regard to another.

Innocent III, to the Archbishop, Dean, and Precentor of Lyon.

When, for the case that was being conducted between the *beloved sons* G. and F., archdeacons of the Church of Chalon, we granted to them as auditor the *beloved son G., cardinal deacon of Saint Adrian*, the proctor of G. *the archdeacon alleged among other things* that, when F. the archdeacon had rashly laid violent hands upon the succentor *of the Church of Chalon, who was exercising the office of the diaconate*, in the common dormitory, and had dragged him through the cloister while beating him, you, brother archbishop, caused him publicly to be announced as excommunicated for the violent laying of hands and the violation of the immunity of the church. (*And below:*) *We therefore, committing the case itself to your examination*, command your discretion *by apostolic writings* that, if it is established to you that the said F. the archdeacon was excommunicated for a twofold cause and expressed only one in the letters that he obtained *from the Apostolic See* concerning his absolution, after admonition has been given you compel him as an excommunicated person to make satisfaction to his church for the other cause *through ecclesiastical censure, with appeal removed*. [*But the aforesaid, etc. The expenses, etc.* (*cf. c.* 6, *On Proctors, I.* 38.)]

Ligatus pluribus excommunicationibus, licet ex eodem facto, obtinens absolutionem expressa una causa seu una excommunicatione, non habetur pro absoluto quoad aliam.

Innocentius III. Archiepiscopo, Decano et Praecentori Lugdunensibus.

Quum pro causa, quae inter *dilectos filios* G. et F. Cabilonensis ecclesiae archidiaconos vertebatur, eis *dilectum filium G. sancti Hadriani diaconum cardinalem* concesserimus auditorem, procurator G. *archidiaconi inter alia* allegavit, quod, quum F. archidiaconus in succentorem *Cabilonensis ecclesiae, diaconatus fungentem officio*, in communi dormitorio manus iniecisset temere violentas, et eum traxisset verberando per claustrum, tu, frater archiepiscope, eum ob violentam manuum iniectionem et violationem immunitatis ecclesiae fecisti excommunicatum publice nunciari. (*Et infra:*) *Nos igitur, causam ipsam vestro examini committentes*, Discretioni vestrae *per apostolica scripta* mandamus, quatenus, si vobis constiterit, dictum F. archidiaconum ob duplicem causam excommunicatum fuisse, et expressisse tantum alteram in literis, quas super absolutione sua *a sede apostolica* impetravit, ipsum tanquam excommunicatum satisfacere ecclesiae suae pro altera, monitione praemissa *per censuram ecclesiasticam appellatione remota* cogatis. [*Praedictas vero etc. Expensas etc.* (*cf. c.* 6. *de proc. I.* 38.)]

Chapter XXVIII

Latin source headnote: With an excommunicated person who dies in excommunication, however contrite he may have died, there is to be no communion before absolution, nor is prayer to be made for him, although he is absolved with respect to God. But if the preceding contrition is established to the Church, he will be absolved even after death by the one by whom he would have been absolved while alive; and his heirs are compelled by the Church to make satisfaction for him.

The same, to the Abbot of Saint Andrew.

It has often been asked of us whether, if an excommunicated person in whom there were manifest indications of penance, and through whom it did not stand that he was not reconciled to ecclesiastical unity, died without receiving the benefit of absolution, he is to be held as absolved by the Church, and whether alms are to be received for such a person and prayer made by the faithful. *But so that we may express more openly through the supposition of an example what we intend: a certain priest and regular canon, as you intimated to us through your letters, labored under public infamy because he approached a certain married woman; the woman's husband and his blood relatives rashly laid violent hands upon him, on account of which they were denounced by the bishop as lying under the sentence of excommunication. But afterwards they approached the same bishop and, after furnishing in his hands a bodily oath that they would obey the judgment of the Church, received in mandate from him that on this account they should present themselves before the apostolic presence. And when one of them prepared himself for the journey of coming, he was slain by certain of his rivals and buried outside the cemetery of the church. And although the friends and blood relatives of the slain man were gravely moved against the killers, nevertheless they would remit to them every rancor and offense provided that the body of the slain man were handed over for ecclesiastical burial. Therefore, perhaps it would seem to some in this case that, since not an article of necessity but contempt of religion excludes the sacrament, and the divine judgment of the Church* [*can and*] *ought to imitate divine judgment, since manifest signs of penance preceded in the aforesaid slain man and he is believed on this account to have been absolved before God, he is also to be held as absolved by the Church. But on the contrary, since one is bound with respect to God before the Church triumphant by guilt alone, but with respect to man before the Church militant by sentence alone, when the bond of guilt is remitted, he is absolved before God, but he is not absolved before men unless and until the bond of the sentence is relaxed; otherwise the absolution of the Church would appear in no way necessary if, by contrition of heart alone apart from the priestly office, the rigor of ecclesiastical discipline were relaxed.*

We therefore respond briefly to your consultation *by the common counsel of our brothers* that the judgment of God always rests upon truth, which neither deceives nor is deceived; but the judgment of the Church sometimes follows opinion, which often happens both to deceive and to be deceived. On this account it sometimes happens that one who is bound before God is loosed before the Church, and one who is free before God is bound by an ecclesiastical sentence. Therefore, the bond by which a sinner is bound before God is dissolved in the remission of guilt; but that by which he is bound before the Church is relaxed when the sentence is remitted. The evangelical account manifests this in the raising of Lazarus, whom the Lord first raised and afterwards commanded the Apostles to loose after he was raised. Hence, however much a person has taken care to humble himself after furnishing an oath that he would obey the mandate of the Church, and however many signs of penance have preceded, if nevertheless, prevented by death, he was unable to obtain the benefit of absolution, although he is believed to have been absolved before God, nevertheless he is not yet to be held as absolved before the Church. Yet he can and ought to be aided by the benefit of the Church,

[*namely*] that, if the penance of the living man was established by evident signs, the benefit of absolution should also be bestowed upon him after death. Nor is it an obstacle that the power of binding and loosing men upon earth is read as having been attributed to the Church, as though it could not loose and bind those buried under the earth, and that it is written, "Let there be no communion with the dead man with whom there was no communion while he was alive," since, although there was no communion with him, nevertheless there ought to have been communion with one whom not contempt of religion but an article of necessity impeded; and in certain cases designated by the canons the Church is read to have bound and loosed the dead. But so that in one and the same affair we may both preserve rigor and display gentleness, we decree that absolution of that dead man who, while living, would have been absolved by the Apostolic See is to be sought from the Apostolic See; but, for the foregoing cause, we grant that other persons may be absolved by those by whom they would have been absolved while they lived. But let the form of absolution be observed, so that it be done with a penitential psalm and both the Lord's Prayer and another customary prayer. His heirs also, if after admonition they are unwilling, are to be compelled by ecclesiastical constraint to make satisfaction for him. [*Given at the Lateran, on the second day before the Nones of May,* 1199.]

> Excommunicato, decedenti in excommunicatione, quantumcunque contritus decesserit, non est communicandum ante absolutionem, nec pro eo orandum, licet sit quoad Deum absolutus. Sed si constat ecclesiae de contritione praecedenti, absolvetur etiam post mortem ab eo, a quo vivus fuerat absolvendus; et heredes eius compelluntur per ecclesiam ad satisfaciendum pro eo.
>
> Idem Abbati S. Andreae.
>
> A nobis est saepe quaesitum, utrum, si aliquis excommunicatus, in quo indicia fuerint poenitentiae manifesta, nec per eum steterit, quo minus reconciliaretur ecclesiasticae unitati, non suscepto beneficio absolutionis decesserit, pro absoluto ab ecclesia sit habendus, et utrum pro tali recipienda sit eleemosyna, et a fidelibus sit orandum. *Ut autem quod intendimus per suppositionem exempli apertius exprimamus, quidam presbyter et canonicus regularis, sicut per tuas nobis literas intimasti, quum publica laboraret infamia, quod ad quandam coniugatam accederet, maritus mulieris et consanguinei eius in eum manus iniecerunt temere violentas; propter quod per episcopum denunciati sunt excommunicationis sententiae subiacere. Verum ipsi, postmodum ad eundem episcopum accedentes, praestito in manibus eius, quod parerent iudicio ecclesiae, corporaliter iuramento, in mandatis receperunt ab ipso, quod, propter hoc apostolico se conspectui praesentarent. Quumque unus illorum se ad iter accingeret veniendi, a quibusdam suis aemulis est peremptus, et extra coemeterium ecclesiae tumulatus. Et licet contra interfectores amici et consanguinei interfecti graviter sint commoti, eis tamen omnem rancorem remitterent et offensam, dummodo interfecti cadaver traderetur ecclesiasticae sepulturae. Videretur igitur forsan in hoc casu quibusdam, quod, quum sacramentum non necessitatis articulus, sed contemptus religionis excludat, et iudicium ecclesiae divinum *[*possit et*] *debeat iudicium imitari, quum in interfecto praedicto manifesta poenitentiae signa praecesserint, et propter hoc absolutus apud Deum esse credatur, absolutus etiam ab ecclesia sit habendus; sed e contrario, quum ex sola culpa ligetur quis quoad Deum apud triumphantem ecclesiam, ex sola vero sententia ligetur quoad hominem apud ecclesiam militantem, quando vinculum culpae remittitur, absolvitur apud Deum, sed apud homines non absolvitur, nisi quando vinculum sententiae relaxatur; alioquin ecclesiae absolutio nullatenus necessaria videretur, si in sola cordis contritione praeter sacerdotale officium rigor relaxaretur ecclesiasticae disciplinae*. Nos igitur consultationi tuae *de communi fratrum nostrorum consilio* breviter respondemus, quod iudicium Dei veritati, quae non fallit, nec fallitur, semper innititur; iudicium autem ecclesiae nonnunquam opinionem sequitur, quam et fallere saepe contingit et falli. Propter quod contingit interdum, ut qui ligatus est apud Deum apud ecclesiam sit solutus, et qui liber est apud Deum ecclesiastica sit sententia innodatus. Vinculum ergo, quo peccator

ligatus est apud Deum, in culpae remissione dissolvitur; illud autem, quo ligatus est apud ecclesiam, quum sententia remittitur, relaxatur, quod in suscitatione Lazari sermo evangelicus manifestat, quem prius Dominus suscitavit, et Apostolis praecepit postmodum solvere suscitatum. Unde, quantumcunque se quis, iuramento praestito, quod ecclesiae mandato pareret, humiliare curaverit, quantacunque poenitentiae signa praecesserint; si tamen morte praeventus absolutionis non potuerit beneficium obtinere, quamvis absolutus apud Deum fuisse credatur: nondum tamen habendus est apud ecclesiam absolutus. Potest tamen et debet ei ecclesiae beneficio subveniri, [*scilicet*] ut, si de ipsius viventis poenitentia per evidentia signa constiterit, defuncto etiam absolutionis beneficium impendatur. Nec obstat, quod ecclesiae legitur attributa potestas ligandi atque solvendi homines super terram, tanquam non possit solvere et ligare sub terra sepultos, et quod legitur, "Non communicetur mortuo, cui non est communicatum et vivo," quum, etsi communicatum non fuerit, communicandum tamen illi fuisset, quem non contemptus religionis, sed necessitatis articulus impedivit, et in certis casibus a canonibus denotatis ligasse legatur ecclesia mortuos et solvisse. Ut autem in uno pariter et eodem negotio et servemus rigorem, et mansuetudinem ostendamus: statuimus, ut illius mortui absolutio a sede apostolica requiratur, qui, quum viveret, ab ea fuerat absolvendus; aliorum autem absolutionem ex praemissa causa ceteris indulgemus, a quibus, dum viverent, fuerant absolvendi. Absolutionis autem forma servetur, ut fiat cum poenitentiali psalmo, et tam oratione dominica quam alia consueta. Heredes quoque ipsius ad satisfaciendum pro ipso, si monitione praemissa noluerint, per districtionem ecclesiasticam compellantur. [*Dat. Lat. II. Non. Maii* 1199.]

Chapter XXIX

Latin source headnote: One who keeps a cleric in custody or chains without injury is excommunicated. This is the first point. One who knowingly communicates with an excommunicated person in the crime is excommunicated and, unless difficulty impedes, ought to be absolved by the one who excommunicated him, with an oath. But one who communicates outside the crime can be reconciled by a simple priest without an oath. This is what it says to the end.

The same, to the Bishop of Wrocław.

Recently your discretion asked us what is to be done concerning those laymen who *violently*, yet without injury, keep clerics in public or private custody, or even thrust them into chains, *whether they fall under the canon of a sentence already imposed so that by the act itself they are bound by the bond of excommunication, like those who rashly lay violent hands upon clerics*; and whether those who knowingly communicate with persons excommunicated by name can be absolved from excommunication through confession by a simple priest, or absolution ought to be sought by them from the bishop or archbishop; *and whether, after penance has been done, you may dispense with those who, although they are not bigamists by law, are nevertheless called bigamists in fact because, while established in sacred orders, they have joined second women to themselves in cohabitation in the manner of marriage*. We therefore respond to your inquiry *in this manner* and in order: concerning the first article of the consultation, we do not believe that laymen escape the penalty of excommunication, although bodily injury did not ensue from their act, short of which violence is very often wickedly perpetrated against clerics. But concerning the second question, we believe that a distinction is to be made: whether one who communicates with a person excommunicated by name knowingly communicates in the crime with the criminal, furnishing him counsel, aid, or favor; or otherwise in prayer or a kiss, or praying with him, or even eating with him. In the first article, since such a person [*both*] communicates in the crime and participates with the criminal, and thereby by reason of the condemned crime is seen to offend against the one who

condemned it, absolution will then rightly be sought from him or his superior, since *according to canonical sanctions* an equal penalty constrains the one acting and the one consenting. But in the second case he will be able to obtain the benefit of absolution from his bishop or his own priest. For although even then one communicating with an excommunicated person is bound not by a sentence of a judge but of the law, nevertheless, because the maker of the canon did not specially reserve his absolution to himself, he is seen by that very fact to have granted to others the faculty of relaxing it. But the one who communicates with an excommunicated person according to the first manner ought to be absolved with an oath; while the one who, according to the second manner, *participates with him* can be reconciled without sworn security. But if, for some just cause, it is difficult for the person to be absolved to approach the one who excommunicated him, we grant by indulgence that, after security has been furnished according to the form of the Church that he will obey the mandate of the one who excommunicated him, he may be absolved by his bishop or his own priest. [*The third, etc.; cf. c.* 4, *On Bigamists Not to Be Ordained, I.* 21. *Given at the Lateran, on the seventeenth day before the Kalends of June,* 1199.]

> Detinens clericum in custodia vel vinculis sine laesione, excommunicatus est. H. d. primo. Communicans excommunicato scienter in crimine excommunicatus est, et, nisi difficultas impediat, absolvi debet ab excommunicatore cum iuramento. Communicans vero extra crimen reconciliari potest per simplicem sacerdotem sine iuramento. H. d. usque ad finem.
>
> Idem Wratislaviensi Episcopo.
>
> Nuper a nobis tua discretio requisivit, quid de illis laicis sit faciendum, qui clericos *violenter*, sine laesione tamen, in custodia detinent publica vel privata, vel etiam detrudunt in vincula, *utrum in canonem latae sententiae incidant, ut ipso facto sint excommunicationis vinculo innodati, sicut illi, qui manus iniiciunt in clericos temere violentas*; et utrum, qui nominatim excommunicatis scienter communicant, absolvi ab excommunicatione possint per confessionem a simplici sacerdote, vel episcopi seu archiepiscopi sit ab eis absolutio expetenda, *et, si post actam poenitentiam cum illis valeas dispensare, qui, etsi bigami de iure non sunt, de facto saltem bigami nuncupantur eo, quod in sacris ordinibus constituti more nuptiali secundas in contubernium sibi mulierculas adiunxerunt*. Nos igitur inquisitioni tuae *taliter* ex ordine respondemus, quod in primo consultationis articulo non credimus laicos poenam excommunicationis evadere, quamvis per eorum factum corporalis laesio non fuerit subsecuta, citra quam violentia saepius circa clericos nequiter perpetratur. In secunda vero quaestione credimus distinguendum, an is, qui nominatim excommunicato communicat, scienter in crimine communicet criminoso, ei consilium impendendo, auxilium vel favorem, aut alias in oratione vel osculo, aut orando secum, aut etiam comedendo. In primo quidem articulo, quum talis [*et*] communicet crimini, et participet criminoso, ac per hoc ratione damnati criminis videatur in eum delinquere, qui damnavit, ab eo vel eius superiore merito delicti tunc erit absolutio requirenda, quum *iuxta canonicas sanctiones* facientem et consentientem par poena constringat. In secundo vero casu a suo episcopo vel a proprio sacerdote poterit absolutionis beneficium obtinere. Quamvis enim et tunc non iudicis, sed iuris sententia excommunicato communicans sit ligatus, quia tamen conditor canonis eius absolutionem sibi specialiter non retinuit, eo ipso concessisse videtur facultatem aliis relaxandi. Is autem, qui iuxta primum modum excommunicato communicat, cum iuramento debet absolvi; qui vero iuxta secundum modum *illi participat*, reconciliari poterit sine iuratoria cautione. Verum, si difficile sit ex aliqua iusta causa, quod ad ipsum excommunicatorem absolvendus accedat: concedimus indulgendo, ut, praestita iuxta formam ecclesiae cautione, quod excommunicatoris mandato parebit, a suo absolvatur episcopo vel proprio sacerdote. [*Tertius etc. cf. c.* 4. *de big. non. ord. I.* 21. *Dat. Lat. XVII. Kal. Iun.* 1199.]

Chapter XXX

Latin source headnote: The oath of an excommunicated person to obey the mandates of the Church does not have the force of absolution. This is the first point. No one is bound to communicate with an excommunicated person except the excepted persons; otherwise one communicating with an excommunicated person incurs the lesser excommunication and is to be excommunicated with the greater, unless the latter was excommunicated together with his participants, in which case the one communicating would then be excommunicated with the greater excommunication.

The same, to the Archbishop of Esztergom.

Because you seek *to be made certain in doubtful matters by our rescript, so that according to it you may moderate the judgment of your discretion, we commend your fraternity with worthy praises in the Lord. Indeed, your fraternity consulted us* [*whether an altar upon which an excommunicated person presumed to celebrate divine rites ought to be reconsecrated, and*] *whether there is to be communication with an excommunicated person who furnished sworn security that he would obey the mandate of the Church but has not yet obtained the benefit of absolution; and whether any persons can, and which persons are even bound to, communicate with an excommunicated person. It also asked what penalty was to be imposed upon those who communicate with excommunicated persons unwillingly or involuntarily, and what is to be done concerning priests who steer ships into battle and fight, and those who incite others but do not fight. But to these things* we respond to your fraternity in this manner: one is not to communicate with an excommunicated person, although he has confirmed by oath that he will obey the mandate of the Church, until he has been absolved by the Church; otherwise absolution would not be necessary after the oath. *But whether, if not contempt of religion but an article of necessity excluded the benefit of absolution, it is lawful to communicate with such a person, at least at death, because you did not at all inquire through your letters, we have not thought that it should be answered at present*. But no one knowingly is *at all* bound to communicate with a person excommunicated by name, except certain persons who are specially excused through that chapter of Pope Gregory, "Since many." But those who presumptuously participate with persons excommunicated by name, apart from the persons noted by the said canon, are to be bound by the bond of excommunication unless, after perhaps being admonished, they desist from participating with them. But it is otherwise if they knowingly communicate with one who has been bound by sentence with the bond of excommunication together with his participants; for then they too incur the sentence of excommunication. [*But because, etc.* (*cf. c.* 5, *On Penalties, V.* 37.) *Given at the city of Castella, on the sixth day before the Ides of October,* 1198.]

> Iuramentum excommunicati de stando mandatis ecclesiae non habet vim absolutionis. H. d. primo. Excommunicato nullus communicare tenetur praeter personas exceptas; alias communicans excommunicato incurrit minorem, et est excommunicandus maiori, nisi ille esset excommunicatus cum participibus suis, qui tunc esset excommunicatus maiori. Idem Strigonensi Archiepiscopo.
>
> Quod in dubiis *nostro postulas certificari rescripto, ut iuxta illud tuae discretionis arbitrium modereris, fraternitatem tuam dignis in Domino laudibus commendamus. Sane consuluit nos tua fraternitas,* [*utrum altare, in quo excommunicatus divina celebrare praesumpsit, reconsecrari debeat, et*] *an sit communicandum excommunicato, qui, quod staret mandato ecclesiae, iuratoriam praestitit cautionem, sed nondum absolutionis beneficium est adeptus, et si excommunicato communicare aliqui, et qui etiam teneantur. Quaesivit etiam, quae poena iis fuerit iniungenda, qui excommunicatis nolentes communicant vel inviti, et quid de presbyteris sit agendum, qui gubernant naves ad pugnam, et pugnent, et iis, qui alios incitant, sed non pugnant. Ad haec autem fraternitati tuae taliter* Respondemus, quod excommunicato, licet, quod stet mandato ecclesiae, iuramento firmaverit, communicari non debet,

donec per ecclesiam fuerit absolutus; alioquin post iuramentum non esset absolutio necessaria. *Utrum autem, si absolutionis beneficium non contemptus religionis, sed articulus necessitatis excluserit, tali vel saltem in morte communicare sit licitum, quia minime per tuas literas requisisti, ad praesens non duximus respondendum*. Nullus autem scienter *omnino* nominatim excommunicato communicare tenetur, nisi quaedam personae, quae per illud Gregorii Papae capitulum: "Quoniam multos," specialiter excusantur. Illi autem, qui nominatim excommunicatis praesumptuose participant, praeter personas a dicto canone annotatas, nisi ab eorum participatione commoniti forte destiterint, excommunicationis vinculo sunt innodandi; secus autem, si scienter ei communicant, qui cum participibus suis est vinculo excommunicationis sententialiter innodatus. Tunc enim et ipsi sententiam excommunicationis incurrunt. [*Quia vero etc.* (*cf. c.* 5. *de poen. V.* 37.) *Dat. cap. civ. Castellanam VI. Id. Oct.* 1198.]

Chapter XXXI

Latin source headnote: Those who were previously bound to an excommunicated person by familiar service are bound to communicate with him; others are not bound by necessity, although sometimes they can do so when urgent necessity exists.

The same, to the Doctors of Decrees at Bologna.

Among other things that *our venerable brother*, the Archbishop of Esztergom, *formerly caused to be proposed to our apostolate, humbly consulting, he also inquired, if we remember rightly, whether anyone can communicate with an excommunicated person and who are even bound to do so; to whom* we recall that we responded *concerning that article* that no one *at all* is bound knowingly to communicate with a person excommunicated by name, except certain persons who are specially excused through that chapter of Pope Gregory, "Since many." But from this *our* response, *as we have received, a great* occasion for disputation arose for certain persons, some conceding that the persons named in the aforesaid chapter are bound to communicate with an excommunicated person, especially those who were previously bound by obligation to communion with them, while others assert that they can lawfully communicate with *excommunicated persons* if they wish, but are nevertheless not bound to this by necessity. Therefore, so that interpretation may proceed from the source from which the law issued, we have thought that ambiguity of this kind should be resolved in this manner: since certain persons noted *previously* in the aforesaid chapter were, before the pronouncement of the sentence, bound to adhere in familiar service to those against whom the sentence of excommunication was *subsequently* delivered, and are not afterwards bound to the contrary, since *that same* obligation still endures, by the operation of the benefit of the canon they are not released from their former obligation but are bound to familiar service, and consequently are *also* bound to communion, without which they cannot furnish that service. But we do not believe this should be referred to all the persons of the chapter, so that they are subject to an obligation of this kind, since travelers, pilgrims, and merchants ought to abstain from communion with such persons unless an article of necessity threatens, as is manifestly gathered at the end; but only to those who are bound to such persons, constrained by a closer obligation. Nevertheless, they ought not to communicate with them in those things for which they are marked by excommunication, as in crimes, but ought altogether to abstain from them. *Hence we prudently responded in the foregoing consultation that not all persons, but certain ones who are specially excused through that chapter of Pope Gregory, are bound to communion of this kind in the aforesaid manner. But whether those persons also, because of the authority for punishing the crime more severely, should sometimes be prohibited by*

a sentence of excommunication from communion with such persons—because this was not asked, it was not answered.

> Excommunicato communicare tenentur qui prius erant ei obligati ad obsequium familiare; alii vero non tenentur de necessitate, licet interdum possint de necessitate urgente.
>
> Idem Doctoribus decretorum Bononiensibus.
>
> Inter alia, quae *venerabilis frater noster* Strigoniensis archiepiscopus *dudum apostolatui nostro* proponi fecit *humiliter consulendo, illud etiam, si bene meminimus, inquisivit, utrum excommunicato communicare quis, et qui etiam teneantur; cui* Nos *super illo* recolimus *articulo* respondisse, quod nullus *omnino* nominatim excommunicato scienter communicare tenetur, nisi quaedam personae, quae per illud Gregorii Papae capitulum: "Quoniam multos," specialiter excusantur. Verum ex hac *nostra* responsione *magna quibusdam, sicut accepimus*, orta est occasio disputandi, aliis concedentibus, quod excommunicato communicare tenentur personae in praedicto capitulo nominatae, praesertim quae prius ad communionem eorum ex debito tenebantur, aliis asserentibus, eos *excommunicatis* communicare licite posse, si velint, non tamen ad hoc ex necessitate teneri. Ut igitur, unde ius prodiit, interpretatio quoque procedat, ambiguitatem huiusmodi taliter duximus absolvendam, quod, quum quaedam personae, in praemisso capitulo *prius* denotatae, illis, in quos lata fuerit excommunicationis sententia *subsequenter*, ante prolationem ipsius obsequio tenerentur familiariter adhaerere, neque postmodum ad contrarium teneantur, quum adhuc *ipsum* debitum duret, beneficio canonis id agente, a priore non sunt obnoxietate solutae, sed ad familiare tenentur obsequium, et ita per consequens ad communionem *quoque* tenentur, sine qua illud nequeunt exhibere. Illud autem non ad omnes personas capituli credimus referendum, ut videlicet obnoxietati huiusmodi sint subiectae, quum viatores, peregrini et mercatores a communione talium personarum, nisi articulus necessitatis immineat, debeant abstinere, ut in fine colligitur manifeste, sed ad illas duntaxat, quae talibus arctiori tenentur obnoxietate constrictae, quibus tamen in his, pro quibus sunt excommunicatione notatae, ut in criminibus, communicare non debent, sed ab eis penitus abstinere. *Unde prudenter in praemissa consultatione respondemus, non omnes personas, sed quasdam, quae per illud Gregorii Papae capitulum specialiter excusantur, ad communionem huiusmodi praemisso modo teneri, utrum autem et illae personae propter auctoritatem facinoris severius puniendi a communione talium per excommunicationis sententiam debeant aliquando prohiberi quia quaesitum non exstitit, responsum non fuit*.

Chapter XXXII

Latin source headnote: If one excommunicated for laying hands knowingly receives orders, if he is a secular cleric, he is to be deposed; if a regular, he is suspended from execution of the order. With one who, in ignorance of the law or fact, receives orders while thus excommunicated, if he is a secular cleric, the Pope alone dispenses; if a regular, the abbot dispenses, provided that the ignorance is probable and the act is not grave.

The same.

Since the absolution of those who incur the stain of excommunication for a violent laying of hands upon clerics is reserved only to the Apostolic See, *except in* certain cases excepted by our predecessor, some persons, neglecting the ecclesiastical sentence, do not fear to receive ecclesiastical orders while placed under excommunication. But the apostolic oracle is rather often implored as to what ought to be done concerning them. Concerning these we believe that a distinction is to be made, *as is found in the things set forth below*: such persons either know that they are ensnared by the bond of excommunication; or do not remember the act for which they fell under the canon of a sentence already imposed; or, knowing the act but ignorant of the law, do not know that they are bound by it.

If the first are secular clerics, we decree that they are to be perpetually deposed from the orders received. In the remaining cases, both archbishops and bishops should know that they do not have the faculty of dispensing without a special mandate of the Apostolic See; the absolution of such persons is also forbidden to them, since greater things are understood to be prohibited to those to whom lesser things are forbidden. Nevertheless, persons of this kind can be brought to the ears of the Roman Pontiff, so that a response may issue from him according to rigor or equity, as his discretion shall see ought to be done.

But if persons of this kind are cloistered, although it was enacted by Pope Alexander, *our predecessor of good memory*, that monks and regular canons, in whatever manner they strike one another in the cloister, are not to be sent to the Apostolic See, but are to be subjected to discipline according to the *discretion and* providence of their abbot, and, if the abbot's discretion does not suffice for their correction, the providence of the diocesan bishop is to be applied; and elsewhere it is said that an abbot cannot and ought not, without the permission of the Roman Pontiff, to absolve those fleeing from the world who have received the religious habit in a monastery and afterwards confess, among other things, that they committed such an offense by which they incurred a sentence of excommunication by the act itself, although he can punish the presumption of the offenders with due penalty—we, nevertheless, favoring religious life and wishing to display greater grace toward them so that material for wandering may be removed, grant to their prelates that they can also impart the benefit of absolution to such persons, unless their excess was *so* difficult and enormous, as if it proceeded to mutilation of a member or effusion of blood, or a violent hand *was* laid upon a bishop or abbot, since such and similar excesses cannot be passed over without scandal. But if any cloistered person lays violent hands upon a religious person of another cloister, let him be absolved by his own abbot and by the abbot of the one who suffered the injury. But if he strikes a secular cleric, he can merit the grace of absolution only through the Apostolic See, so that scandal may be avoided. But if *also* it happens that these are promoted to orders, then, according to the foregoing distinction, those who knowingly caused themselves to be ordained in contempt of ecclesiastical discipline we decree to remain suspended from execution of the order and office received. But concerning the others, who do not have memory of the act or knowledge of the law, after the utility of the monasteries has been weighed and regular penance imposed and completed, their abbots will be able to dispense, unless the act was grave and notable, or the one who did it was adult and discreet, so that *strongly and forcibly* a presumption is made against forgetfulness or ignorance. But we command the abbots to observe this form diligently, lest one who abuses the power permitted to him deserve to lose the privilege.

> Si excommunicatus pro manuum iniectione scienter recipit ordines, si est clericus saecularis, deponendus est; si regularis, exsecutione ordinis est suspensus. Qui, ignorans ius vel factum, sic excommunicatus recipit ordines, si est clericus saecularis, dispensat cum eo solus Papa; si regularis, dispensat abbas, si ignorantia est probabilis, et factum non est grave.
>
> Idem.
>
> Quum illorum absolutio, qui pro violenta manuum iniectione in clericos labem excommunicationis incurrunt, *praeterquam in* quibusdam casibus, a praedecessore nostro exceptis, sedi duntaxat apostolicae reservetur: nonnulli, ecclesiasticam sententiam negligentes, in excommunicatione positi ecclesiasticos ordines accipere non formidant. Quid autem de his fieri debeat, apostolicum saepius oraculum imploratur. Circa quos credimus, *sicut reperitur in subditis*, distinguendum, quod tales vel sciunt, excommunicationis se vinculo irretitos, vel non recolunt factum, pro quo in latae sententiae canonem

inciderunt, vel factum quidem scientes, iuris ignari nesciunt exinde se teneri. Primos, si fuerint saeculares clerici, a susceptis ordinibus censemus in perpetuum deponendos; in reliquis casibus tam archiepiscopi quam episcopi absque mandato sedis apostolicae speciali dispensandi facultatem se noverint non habere, quibus etiam est absolutio talium interdicta, quum maiora intelligantur illis prohibita, quibus vetita sunt minora. Poterunt tamen huiusmodi Romani Pontificis auribus intimari, ut ab eo secundum rigorem vel aequitatem responsum prodeat, prout discretio sua viderit faciendum. Qui si claustrales huiusmodi fuerint, licet a *bonae memoriae praedecessore nostro* Alexandro Papa fuerit constitutum, quod monachi et canonici regulares, quocunque modo se in claustro percusserint, non sunt ad apostolicam sedem mittendi, sed secundum *discretionem et* providentiam sui abbatis disciplinae subdantur, et, si abbatis discretio ad eorum correctionem non sufficit, providentia est dioecesani episcopi adhibenda; et alibi dicatur, quod de saeculo fugientes, qui religionis habitum in monasterio receperunt, et inter cetera postmodum confitentur, se tale commisisse delictum, per quod ipso actu excommunicationis sententiam incurrerunt, sine licentia Romani Pontificis abbas non potest nec debet eos absolvere, quamvis praesumptionem delinquentium debita possit animadversione punire: nos tamen in religionis favorem, et ut evagandi materia subtrahatur, maiorem eis gratiam exhibere volentes, eorum praelatis, quod etiam talibus absolutionis beneficium impertiri valeant, indulgemus, nisi excessus ipsorum exstiterit *adeo* difficilis et enormis, utpote si ad mutilationem membri vel effusionem sanguinis est processum, aut in episcopum aut abbatem violenta *sit* manus iniecta, quum excessus tales et similes nequeant sine scandalo praeteriri. Si vero claustralis aliquis in religiosam personam alterius claustri manus iniecerit violentas, per abbatem proprium, et eius, qui passus est iniuriam, absolvatur. Quodsi clericum percusserit saecularem, non nisi per apostolicam sedem, ut scandalum evitetur, absolutionis gratiam poterit promereri. Si autem *et* hos ad ordines promoveri contingat, iuxta praemissam distinctionem, qui scienter in contemptum ecclesiasticae disciplinae se fecerint ordinari, ab exsecutione suscepti ordinis et officii decernimus manere suspensos. Circa reliquos vero, facti memoriam vel iuris peritiam non habentes, monasteriorum utilitate pensata, post iniunctam regularem poenitentiam et peractam abbates ipsorum poterunt dispensare, nisi grave fuerit et notabile factum, aut is, qui fecit, adultus fuerit et discretus, ut violenter *et valide* contra oblivionem vel ignorantiam praesumatur. Praecipimus autem abbatibus, ut formam istam diligenter observent, ne privilegium mereatur amittere, qui sibi permissa abutitur potestate.

Chapter XXXIII

Latin source headnote: A nun who strikes another nun, a convert, or a secular cleric falls under excommunication and can be absolved by the bishop of the place.

The same, to the Bishop of Pistoia.

Concerning nuns, your fraternity asked us by whom the benefit of absolution is to be bestowed upon them if they rashly lay violent hands upon one another, their male or female converts, or even clerics *serving in their monasteries*. Therefore, concerning this we respond to your consultation that, *by our authority*, they are to be absolved by the bishop in whose diocese *their* monasteries are situated. [*Given at the Lateran, on the third day before the Kalends of March,* 1202.]

Monialis, percutiens monialem seu conversum, vel clericum saecularem, incidit in excommunicationem, et ab episcopo loci absolvi potest.

Idem Pistoriensi Episcopo.

De monialibus tua a nobis fraternitas requisivit, per quem eis sit beneficium absolutionis impendendum, si vel in se invicem vel conversos vel conversas suas, aut clericos etiam, *in suis monasteriis*

servientes, manus iniecerint temere violentas. Super hoc igitur tuae consultationi taliter respondemus, ut *auctoritate nostra* per episcopum, in cuius dioecesi *earum* monasteria fuerint, absolvantur. [*Dat. Lat. III. Kal. Mart. *1202.]

Chapter XXXIV

Latin source headnote: Even a contract that cannot be carried out without communion is not dissolved or impeded by an excommunication supervening upon one who is bound to furnish something to a person not excommunicated.

The same, to all the Crusaders.

If truly *you repent of the offense and fully propose to make satisfaction for the sin, we believe—indeed, we know—that God is already placated toward you. Therefore, if the Venetians are induced to make satisfaction and merit obtaining the benefit of absolution, you will safely be able to sail with them and fight the battle of the Lord.* But if perhaps the Venetians wish neither to make satisfaction nor to be absolved, *seeing that they are said not to grieve but altogether to rejoice concerning the offense*, we permit you to cross by ship with them as far as the land of the Saracens or the *Jerusalem* province, according to what was agreed between you and them or shall honorably be agreed, communicating with them as little as you can, yet with grief and bitterness of heart and under hope of pardon. For, since they have already received from you the greater amount of the freight and cannot be induced or even constrained to restore it, if it were done otherwise, you would seem to carry away loss from penance, but they a reward from contumacy, since they remain bound to you to discharge this debt, and that which is owed can be exacted and received from excommunicated persons. But it is provided in law that, if anyone passes through the land of heretics or of any excommunicated persons, he can buy and receive necessary things from them. Moreover, if the father of a household is bound by a sentence of excommunication, the household is excused from participation with him. Therefore, although the Doge of the Venetians, the lord of the ships, persists in excommunication as the father of a household, nevertheless you, as his household while you are in his ships, will not be reached by his excommunication, and you will be excusable before God if, while existing in the ships of excommunicated persons, with grief of heart under hope of penance, you communicate with [*the excommunicated persons*] themselves in those matters in which you cannot avoid their communion. [*But, etc.*]

Contractus etiam, qui sine communione explicari non potest, non dissolvitur, seu impeditur per excommunicationem, supervenientem in eum, qui tenetur aliquid praestare non excommunicato.

Idem universis Crucesignatis.

Si vere *vos poenitet de commisso, et plene proponitis satisfacere de peccato, Deum vobis credimus, immo novimus, iam placatum. Si ergo Veneti ad satisfactionem induci et absolutionis beneficium meruerint obtinere, secure cum eis navigare poteritis, et praelium Domini praeliari*. Quodsi Veneti forte nec satisfacere voluerint, nec absolvi, *utpote qui non dolere, sed gaudere dicuntur prorsus de commisso*: vobis permittimus, ut cum ipsis usque in terram Sarracenorum vel *Hierosolymitanam* provinciam, iuxta quod inter vos convenit et ipsos, vel honeste convenerit, navigio transeatis, quanto minus poteritis, cum dolore tamen et amaritudine cordis, et sub spe veniae communicantes eisdem. Quum enim iam a vobis maiorem nauli receperint quantitatem, nec ad eam possint restituendam induci aut etiam coarctari: si aliter fieret, videremini vos damnum ex poenitentia, ipsi vero praemium ex contumacia reportare, quum ad hoc debitum exsolvendum ipsi vobis maneant obligati, et ab excommunicatis exigi possit et recipi quod debetur. Est autem cautum in iure, quod, si quisquam per terram haereticorum aut quorumlibet excommunicatorum transierit, necessaria

emere ac recipere poterit ab eisdem. Praeterea, si paterfamilias domus excommunicationis sententia fuerit innodatus, a participatione illius familia excusatur. Licet ergo dux Venetorum dominus navium tanquam paterfamilias domus in excommunicatione persistat, vos tamen, tanquam ipsius familiam, dum in navibus eius fueritis, ipsius excommunicatio non continget, et excusabiles eritis apud Deum, si in excommunicatorum navibus exsistentes cum dolore cordis sub spe poenitentiae [*excommunicatis*] communicaveritis ipsis, in quibus eorum communionem non potueritis evitare. [*Verum etc.*]

Chapter XXXV

Latin source headnote: A prelate can and ought to imprison an incorrigible cleric subject to him, and laymen, without fear of excommunication, can with the permission of prelates seize clerics and lead them to judgment.

The same, to the Bishop of London.

That you may *take thought for your reputation and salvation, and may so restrain the audacity of the wicked that you protect the innocence of the good from them, you humbly consult us concerning those things that touch the pastoral office, so that, made secure by our response, you may more commendably discharge the duty of the solicitude enjoined upon you.* Indeed, you consulted us whether clerics who offend gravely, and who cannot safely be assigned to monasteries to do penance—because, since they do not repent of the things committed, if an opportunity of fleeing were seized they would flee the prison of the cloister and would involve themselves more criminally in their former crimes—can be consigned by you or their other prelates to close custody; *and whether laymen, if they detect clerics in great crimes, incur the canon of the sentence pronounced, since they can neither apprehend them nor drag them before judges unless they lay violent hands upon them. To the first, therefore,* We respond that, since prelates ought to correct the offenses of their subjects, and it concerns the public welfare that crimes not remain unpunished and that through the audacity of impunity those who had been wicked not become more wicked, they not only can but also ought to detain under close custody *superior* clerics, after they have been canonically condemned of a crime, who, since they are incorrigible and cannot be guarded in monasteries, would easily lapse into like or worse things. Laymen, however, can without incurring a sentence of excommunication seize clerics and drag them to judgment, if need be, even violently, provided nevertheless that they do this by mandate of the prelates to whose jurisdiction those clerics are subject and to whom it belongs to correct criminals, since not they themselves but those by whose authority they do it are seen to do this; provided nevertheless that their violence extends no further than the defense or *rather* the resistance of the clerics requires. [*Given at Anagni, the fourth day before the Ides of December,* 1203.]

Praelatus potest et debet clericum, subiectum incorrigibilem, incarcerare, et laici citra metum excommunicationis de praelatorum licentia capere possunt clericos, et ad iudicium ducere.

Idem Londonensi Episcopo.

Ut famae tuae *consulas et saluti, et sic malorum audaciam comprimas, ut ab eis bonorum innocentiam tuearis, super his nos humiliter consulis, quae officium pastorale contingunt, ut de nostra responsione securus iniunctae tibi sollicitudinis debitum laudabilius exsequaris*. Sane consuluisti nos, utrum clerici graviter excedentes, qui tute non possunt monasteriis ad agendam poenitentiam deputari, quoniam, quum non poeniteant de commissis, opportunitate fugiendi captata carcerem fugerent claustri, et prioribus se sceleribus scelestius immiscerent, a te vel aliis praelatis suis arctae possint custodiae mancipari, *et utrum laici, si clericos in magnis sceleribus deprehendant, in canonem incidant latae sententiae, quum nec comprehendere, nec ad*

iudices trahere ipsos possint, nisi manus in eos iniecerint violentas. Ad primum igitur Respondemus, quod, quum praelati excessus corrigere debeant subditorum, et publicae utilitatis intersit, ne crimina remaneant impunita, et per impunitatis audaciam fiant qui nequam fuerant nequiores, non solum possunt, sed debent etiam *superiores* clericos, postquam fuerint de crimine canonice condemnati, sub arcta custodia detinere, qui, quum sint incorrigibiles, nec in monasteriis valeant custodiri, ad similia vel peiora facile laberentur. Laici vero citra excommunicationis sententiam capere clericos, et ad iudicium trahere possunt, si oporteat, etiam violenter, dum tamen id de mandato faciant praelatorum, quorum illi sunt iurisdictioni subiecti, et quorum est corrigere criminosos, quum hoc non ipsi, sed illi, et quorum auctoritate id faciunt, facere videantur; dum tamen non amplius eorum violentia se extendat, quam defensio vel rebellio *potius* exigit clericorum. [*Dat. Anagniae IV. Id. Dec.* 1203.]

Chapter XXXVI

Latin source headnote: He is excommunicated who lays violent hands upon a cleric, even one willing, even if he does this in satisfaction for a preceding injury. This is what it says, and it is a notable case.

The same, to the Archbishop of Braga.

It sometimes happens *in your parts, and it is held by the custom of the region, as your fraternity intimated to us,* that clerics, if they offend someone and wish to make satisfaction to the person offended, according to the custom of the country, which laymen *already* observe among themselves, voluntarily submit their bodies to thirty *or forty* or to more or fewer blows of rods, *which they frequently receive not under compulsion but willingly, not only from the hands of other clerics but also of laymen. Whence you humbly consulted us whether beaters of this kind incur the canon of the sentence pronounced.* We, however, respond to your fraternity concerning this *in this manner*: that a laying-on of hands of this kind, although not violent, nevertheless appears injurious, since that canon was promulgated not so much in favor of the ordained cleric as in favor of the clerical order. And therefore we both will and command that you prohibit this from being attempted henceforth *throughout the province of Braga*. But if, after a prohibition of this kind, any cleric voluntarily subjects himself [*to such a penalty, or a layman inflicts such a penalty upon him,*] *both* are to be excommunicated, provision being made that the cleric make competent satisfaction to the person who suffered the injury without injury to the clerical order, so that peace may reasonably be restored between them. [*Given at Rome at Saint Peter's, the seventh day before the Kalends of March, in the ninth year of our pontificate,* 1206.]

Excommunicatus est qui in clericum, etiam volentem, manus iniecerit violentas, etiamsi hoc faciat in satisfactionem praecedentis iniuriae. H. d. et est casus notabilis.

Idem Bracharensi Archiepiscopo.

Contingit interdum *in partibus tuis, et de consuetudine regionis habetur, sicut tua nobis fraternitas intimavit*, quod clerici, si quem offendant, et satisfacere velint offenso, secundum morem patriae, quem inter se laici *iam* observant, corpora sua sponte supponunt XXX. *vel XL.* seu pluribus aut paucioribus percussionibus fustium, *quas frequenter non coacti suscipiunt, sed volentes, non solum de aliorum clericorum manibus, sed etiam laicorum. Unde nos humiliter consulebas, utrum huiusmodi percussores in canonem incidant sententiae promulgatae*. Nos autem fraternitati tuae super hoc *taliter* respondemus, quod huiusmodi manus iniectio, etsi non violenta, tamen iniuriosa videtur, quum ille canon non tam in favorem clerici ordinati, quam in favorem ordinis clericalis fuerit promulgatus. Ideo et volumus et mandamus, ut id de cetero prohibeas attentari *per provinciam Bracharensem*. Si quis autem clericus post prohibitionem huiusmodi sponte se subiecerit

[*tali poenae, vel laicus in eum talem poenam iniecerit,*] excommunicetur *uterque*, proviso, ut clericus iniuriam passo sine iniuria clericali satisfaciat competenter, quatenus inter eos pax valeat rationabiliter reformari. [*Dat. Rom. ap. S. Petr. VII. Kal. Mart. Pont. nostr. Ao. IX.* 1206.]

Chapter XXXVII

Latin source headnote: A slave excommunicated for laying hands upon a cleric is bound to go to the Apostolic See for absolution. But if from this the master, who was not at fault, would suffer grave loss, or the slave does this in fraud of him, he can be absolved by the bishop, if the injury was not enormous.

The same, to the Archbishop of Lyon.

It has been reported to us that, when some slaves *of your province*, on account of a violent laying-on of hands upon a cleric, incur the canon of the sentence pronounced, their masters alleging that they are unwilling to be without their slaves, they take no care to come to the Apostolic See to be absolved, evading ecclesiastical discipline by an occasion of this kind. Therefore, *by apostolic writings we command your fraternity* that you compel them to come to the Apostolic See to be absolved, since more deference must be shown to God than to man; unless they have done this in fraud, so that they might withdraw themselves from the service of their masters, or the masters themselves through this incur grave loss without fault of their own. For then in either case you will be able to absolve them by indulgence of our provision, since they are very far removed from the Apostolic See; but in recompense for the labor that they would endure on the journey, another satisfaction is to be enjoined upon them, provided the offense is not so grave and enormous that, for avoiding scandal and removing an example of this kind, slaves of this kind ought to come to the servant of the servants of God to be absolved. [*Given at Rome at Saint Peter's, on the Ides of January, in the eighth year,* 1206.]

Servus excommunicatus pro iniectione manuum in clericum, tenetur pro absolutione ire ad sedem apostolicam. Sed, si ex hoc dominus, qui non fuit in culpa, grave damnum patiatur, vel servus hoc faciat in eius fraudem, absolvi potest ab episcopo, si laesio non fuit enormis.

Idem Lugdunensi Archiepiscopo.

Relatum est nobis, quod, quum aliqui servi *tuae provinciae* propter iniectionem manuum in clericum violentam in canonem incidunt sententiae promulgatae, allegantibus dominis eorundem, quod carere mancipiis suis nolunt, venire ad sedem apostolicam absolvendi non curant, per occasionem huiusmodi eludentes ecclesiasticam disciplinam. Quocirca *fraternitati tuae per apostolica scripta* mandamus, quatenus eos venire compellas ad sedem apostolicam absolvendos, quum plus sit Deo quam homini deferendum; nisi fecerint hoc in fraudem, ut subtrahant se obsequio dominorum, aut ipsi domini propter hoc sine culpa sua grave damnum incurrant. Tunc enim in utrolibet casu poteris eos ex indulgentia nostrae provisionis absolvere, quum nimis sint ab apostolica sede remoti, sed in recompensationem laboris, quem in itinere sustinerent, alia eis satisfactio iniungatur, dummodo non sit tam gravis et enormis excessus, ut propter vitandum scandalum et tollendum exemplum huiusmodi servi ad servum servorum Dei venire debeant absolvendi. [*Dat. Rom. ap. S. Petr. Id. Ian. Ao. VIII. *1206.]

Chapter XXXVIII

Latin source headnote: One excommunicated on account of participation with an excommunicated person, although he afterward attacks him, is not on this ground alone to be held absolved.

The same, to the Archbishop of Esztergom.

It has been established by the sacred canons (*And below:* [*cf. c.* 12, *On Burials, III.* 28.]) But *although* he who had voluntarily communicated with those excommunicated persons who, with all their supporters and participants, are bound by a sentence of excommunication, *afterward* returning to his heart, has at the mandate of the church attacked the excommunicated persons whom he had previously favored, nevertheless, until he has received the grace of absolution, he is not to be held absolved; nor, if he dies in a war of this kind, are absolutions or offerings to be received for him, or prayers offered to the Lord, unless his repentance while living has been established through evident signs, and the benefit of absolution is imparted even to the deceased according to the tenor of a certain constitution of ours.

> Excommunicatus propter participationem cum excommunicato, licet eum postea impugnet, ex hoc solo pro absoluto non est habendus.
>
> Idem Strigonensi Archiepiscopo.
>
> Sacris est canonibus institutum (*Et infra:* [*cf. c. *12. *de sepult. III.* 28.]) Licet *autem* is, qui voluntarius excommunicatis illis communicaverat, qui cum omnibus fautoribus et participibus suis excommunicationis sententia sunt adstricti, ad cor *postmodum* rediens, de mandato ecclesiae excommunicatos, quos prius foverat, expugnaverit: non tamen prius, quam absolutionis gratiam perceperit, habendus est absolutus, nec, si occumbat in huiusmodi bello, sunt absolutiones vel oblationes recipiendae pro eo, vel orationes Domino porrigendae, nisi quum de ipsius viventis poenitentia per evidentia signa constiterit, et iuxta cuiusdam constitutionis nostrae tenorem defuncto etiam absolutionis beneficium impendatur.

Chapter XXXIX

Latin source headnote: A person once excommunicated must always be avoided as excommunicated, unless he lawfully proves that he has been absolved.

The same, to the Bishop of Assisi.

As *you intimated to us by your letters, when you subject certain clerics or laymen of your diocese to excommunication, their faults requiring it, they afterward return to you, no satisfaction having been made, without testimonial letters, and say that they have received the benefit of absolution. You humbly asked to be instructed by us whether they ought to be believed in this matter, since, as you say, on account of a cause of this kind your sentences are held in contempt by your subjects. Therefore, unwilling to indulge the malice of men,* We respond to your fraternity in this manner: unless those excommunicated by you bring back to you concerning their absolution our letters or those of him to whom we have committed our office in this matter, or it is otherwise lawfully established for you that they have been absolved, you, *placing no faith in their absolution,* are to hold them as excommunicated just as before and cause them to be avoided. [*Given at the Lateran, the second day before the Ides of August,* 1199.]

> Semel excommunicatus debet vitari semper ut excommunicatus, nisi legitime probet, se fuisse absolutum.
>
> Idem Assuntinensi Episcopo.
>
> Sicut nobis *tuis literis intimasti, quum aliquos tuae dioecesis clericos vel laicos, culpis suis exigentibus, excommunicationi supponis, ipsi, postmodum ad te, nulla satisfactione praemissa, sine testimonialibus literis redeuntes, dicunt, se absolutionis beneficium accepisse; quibus si credi debeat in hac parte, per nos instrui suppliciter postulasti,*

quum propter causam huiusmodi, sicut dicis, tuae sententiae a subditis contemnantur. Nolentes itaque malitiis hominum indulgere, Fraternitati tuae taliter respondemus, quod, nisi excommunicati a te super absolutione sua literas nostras, vel illius, cui vices nostras in hac parte commisimus, reportaverint, aut alio modo legitime de illorum absolutione tibi constiterit, tu, *eorum absolutioni fide non habita*, ipsos pro excommunicatis ut prius habeas et facias evitari. [*Dat. Lat. II. Id. Aug. *1199.]

Chapter XL

Latin source headnote: If one excommunicated by a bishop appeals to the metropolitan, he can be absolved by him; nevertheless the metropolitan, wishing to defer to his suffragan, can remit him to him, when he was excommunicated on account of a manifest offense. And before absolution he who wishes to prove that he was unjustly excommunicated is not heard; it is otherwise if he wishes to prove that the sentence is null.

The same, to the Archbishop of Sens.

By your letters *you intimated to us that, when our venerable brother the Bishop of Auxerre had promulgated a sentence of excommunication against the beloved son the Archpriest of Auxerre, the archpriest presented himself before you and offered sufficient security that he would stand by the mandate of the church, humbly seeking that you bestow upon him the benefit of absolution. But you, wishing to defer to the bishop mentioned, admonished him repeatedly that he absolve the archpriest. But because he did not obey the admonitions, you took care to absolve the excommunicated man, whom the bishop does not hold absolved, inasmuch as he alleges that his absolution did not pertain to you. Whence you ask what is to be done henceforth in similar cases. For* it appears to some that, since a question is not carried to the metropolitan through an appeal, and an excommunicated person does not have a voice for appealing, inasmuch as he is separated from the church, whether he has appealed or not, the metropolitan ought not to bestow upon him the benefit of absolution. But from the words of a certain epistle, which scholars *say is decretal, and* allege to have issued from Pope Alexander *of good memory, our predecessor*, it is held that, if a sentence of excommunication was promulgated against someone before an appeal, the metropolitan, having received from him before joinder of issue an oath according to the custom of the church, ought to absolve him, unless he wishes to defer to the diocesan bishop and remit him to him to be absolved. There it is also consequently inferred that excommunicated persons are neither to be heard before they have been absolved nor to be remitted to those from whom they had appealed. But in the Council of Sardica it is found that he who has been cast off by the bishop is to address the neighboring bishops, and his case is to be heard and more diligently examined; but the bishop who justly or unjustly cast him off is patiently to accept that the matter be discussed, so that either his sentence may be approved by several or may even be amended. Nevertheless, before all things have been diligently *and faithfully* examined, no one before cognizance of the case is to presume to associate in communion him who had been deprived of communion. We therefore believe a distinction must be made whether someone alleges that he was marked by excommunication after a lawful appeal had been interposed, or that an intolerable error was manifestly expressed in the form of the excommunication; in these cases he ought to be admitted to proof of them even if he does not seek absolution, but until they have been established he ought to be avoided in other matters, although the Apostolic See has been accustomed to absolve even such persons as a precaution. But in other cases, unless he implores the grace of absolution, he ought not to be heard, lest he appear to despise the ecclesiastical sentence and through this be bound more greatly by his contempt. But if he has humbly sought the benefit of absolution, the

metropolitan ought to absolve him, unless he has decided that deference is to be shown to his suffragan; but if the suffragan is unwilling to bestow upon him the benefit of absolution according to the form of the church, the metropolitan is nevertheless to absolve him, having received security that he ought to obey his mandate, and thereafter is to hear the case and, with justice mediating, decree what is canonical. But if perhaps the bishop had excommunicated his subject on account of a manifest offense, the metropolitan ought not to absolve him unless the suffragan, having been requested, maliciously denied him the benefit of absolution. [*Given at the Lateran, the thirteenth day before the Kalends of March, in the fifth year of our pontificate,* 1203.]

> Si excommunicatus ab episcopo metropolitanum appellat, ab eo absolvi potest; metropolitanus tamen, volens suo suffraganeo deferre, potest illum sibi remittere, quando propter manifestum excessum fuit excommunicatus. Et ante absolutionem non auditur volens probare, se iniuste excommunicatum; secus, si probare vult, sententiam esse nullam.
>
> Idem Senonensi Archiepiscopo.
>
> Per tuas literas *nobis intimasti, quod, quum venerabilis frater noster Autissiodorensis episcopus in dilectum filium Autissiodorensem archipresbyterum excommunicationis sententiam promulgasset, archipresbyter tuo se conspectui praesentavit, et, quod staret mandato ecclesiae, sufficientem obtulit cautionem, petens humiliter, ut absolutionis ei beneficium exhiberes; tu vero, volens episcopo memorato deferre, ipsum saepius monuisti, ut absolveret archipresbyterum. Sed quia monitis non parebat, excommunicatum absolvere curavisti, quem episcopus pro absoluto non habet, utpote qui proponit, quod ad te illius absolutio non spectabat. Unde quaeris, quid in similibus de cetero sit agendum*. Videtur *enim* aliquibus, quod, quum ad metropolitanum per appellationem quaestio non defertur, excommunicatus autem vocem non habeat appellandi, utpote ab ecclesia separatus, sive appellaverit sive non, metropolitanus ei non debet absolutionis beneficium exhibere. Verum ex verbis cuiusdam epistolae, quam *dicunt* scholastici *decretalem, et* a *bonae memoriae* Alexandro Papa *praedecessore nostro* emanasse proponunt, habetur, quod, si ante appellationem in aliquem excommunicationis sententia fuerit promulgata, metropolitanus, ante litis ingressum ab eo iuramento recepto secundum ecclesiae consuetudinem, debet ipsum absolvere, nisi voluerit episcopo dioecesano deferre, ipsumque ad eum remittere absolvendum. Ubi etiam consequenter infertur, quod nec excommunicati sunt audiendi, priusquam fuerint absoluti, nec sunt ad illos, a quibus appellaverant, remittendi. In Sardicensi autem concilio reperitur, ut is, qui ab episcopo est abiectus finitimos episcopos interpellet, et causa eius audiatur et diligentius pertractetur; episcopus autem, qui iuste vel iniuste abiecit eundem, patienter accipiat, ut discutiatur negotium, quatenus vel probetur eius a pluribus sententia, vel etiam emendetur, prius tamen, quam omnia diligenter *ac fideliter* examinata fuerint, nullus ante causae cognitionem communioni eum sociare praesumat, qui fuerat communione privatus. Nos igitur credimus distinguendum, utrum quis proponat, se post appellationem legitimam interpositam excommunicatione fuisse notatum, vel in forma excommunicationis intolerabilem errorem fuisse patenter expressum; in quibus casibus ad probationem eorum, etiamsi absolutionem non petat, debet admitti; sed donec de ipsis constiterit, in aliis evitari debet, quanquam apostolica sedes etiam tales consueverit absolvere ad cautelam. Verum in aliis, nisi gratiam absolutionis imploret, non debet audiri, ne sententiam ecclesiasticam contemnere videatur, et per hoc amplius ex suo contemptu ligetur. Quodsi absolutionis beneficium humiliter postulaverit, metropolitanus eum debet absolvere, nisi suo duxerit suffraganeo deferendum; cui tamen si suffraganeus absolutionis beneficium iuxta formam ecclesiae noluerit exhibere, ipse nihilominus illum absolvat; cautione recepta, quod suo debeat parere mandato, ac deinde causam audiat, et quod canonicum fuerit iustitia mediante decernat. Quodsi forsan episcopus subditum suum propter manifestum excommunicasset excessum, metropolitanus non debet ipsum absolvere, nisi

suffraganeus requisitus malitiose sibi absolutionis beneficium denegaret. [*Dat. Lat. XIII. Kal. Mart. Pont. nostr. Ao. V.* 1203.]

Chapter XLI

Latin source headnote: If the Pope greets an excommunicated person in his letters, he does not absolve him on this account.

The same.

If it should perhaps sometimes happen that our letters are directed with a formula of greeting to those who by apostolic authority are subject to excommunication, the sentence of excommunication is not to be believed relaxed on this account, since it happens that letters of this kind are obtained through ignorance or negligence, excessive occupation, or even *through* surreption, *as is said recently to have happened among the people of Piacenza. Since they are bound by the bond of excommunication on account of the iniquity that they committed against God and his church, they boast that they are as though absolved through letters of this kind, which we are said to have sent to them on behalf of the Templars, although we are not mindful of such letters; for even if they were exhibited to them when already excommunicated, perhaps they had nevertheless been obtained earlier. Therefore, by apostolic writings we command your fraternity that you avoid them more strictly as excommunicated until they recover from their error, observing a like judgment in similar cases if ever a like thing should happen.* [*Given at Rome at Saint Peter's, the ninth day before the Kalends of March,* 1203.]

Si Papa suis literis excommunicatum salutat, non propter hoc eum absolvit.

Idem.

Si aliquando forte contigerit, quod eis, qui auctoritate apostolica sunt excommunicationi subiecti, nostrae literae cum salutationis alloquio destinentur, non propter hoc excommunicationis credatur sententia relaxata, quum per ignorantiam vel negligentiam, aut occupationem nimiam, vel etiam *per* subreptionem contingat huiusmodi literas impetrari, *sicut nuper in Placentinis dicitur contigisse. Qui quum sint propter iniquitatem, quam in Deum et eius ecclesiam commiserunt, excommunicationis vinculo innodati, se quasi absolutos per huiusmodi literas, quas eis pro Templariis misisse dicimur, gloriantur, quamvis non simus memores talium literarum quum etsi eis iam excommunicatis exhibitae fuerint, forsan tamen prius fuerant impetratae. Quocirca fraternitati vestrae per apostolica scripta mandamus, quatenus eos, sicut excommunicatos arctius evitetis, donec a suo resipiscant errore, in similibus si quando forte contigerit simile iudicium observantes*. [*Dat. Rom. ap. S. Petr. IX. Kal. Mart.* 1203.]

Chapter XLII

Latin source headnote: One excommunicated by several prelates for several causes is not to be restored to communion although he wishes to make satisfaction concerning one cause; and, if absolution is obtained while the other causes are suppressed, the absolution is not valid.

The same, to C., Cardinal Priest of Saint Lawrence in Lucina, Legate of the Apostolic See.

Of the office (*And below:* [*cf. c.* 38, *On Election, I.* 6.]) Lastly you asked whether he who for several offenses has been bound by the bond of excommunication by several prelates having jurisdiction over him, and wishes to make satisfaction to one of the prelates concerning only one offense, is to be absolved by him concerning that for which he wishes to make satisfaction to him, and, although he has not made satisfaction concerning another, can be announced to the other as absolved. *But because concerning this there are different opinions of different scholars, we, wishing at present to prejudice no one,*

Respond to you concerning this article only that an absolution surreptitiously obtained does not profit one who suppresses the truth, and one who understands the truth ought not to grant an absolution of this kind.

> Excommunicatus a pluribus praelatis ab plures causas non est communioni restituendus, licet de una causa velit satisfacere, et, si impetratur absolutio tacitis aliis causis, non valet absolutio.
>
> Idem C. sancti Laurentii in Lucina Presbytero cardinali apostolicae sedis Legato.
>
> Officii (*Et infra:* [*cf. c.* 38. *de elect. I.* 6.]) Postremo quaesivisti, utrum is, qui propter plures excessus a pluribus praelatis, ius in ipsum habentibus, excommunicationis est vinculo innodatus, et uni praelatorum de uno tantum satisfacere vult excessu, ab eo sit absolvendus, de quo satisfacere vult eidem, et, quum de alio non satisfecerit, alii absolutus valeat nunciari. *Quia vero super hoc inter scholasticos diversae sunt sententiae diversorum: nos ad praesens, nulli praeiudicare volentes, id solummodo tibi* Super hoc articulo respondemus, quod supprimenti veritatem absolutio subrepta non prodest, et veritatem intelligens absolutionem huiusmodi exhibere non debet.

Chapter XLIII

Latin source headnote: The word of God can lawfully be preached to excommunicated and interdicted persons. This is the first point. And during a general interdict baptism and anointing with chrism on the forehead, and penance for the dying, can be granted. This is the second point.

The same, to the Bishop of Ferrara.

You seek to be instructed by our response whether, when the citizens of Ferrara are bound by sentences of excommunication and interdict, it is lawful for you once a week or a month to convoke men and women at some church, to whom you might preach the word of God and induce them to correction. Concerning this *we respond to your fraternity in this manner*: you will be able to do this without scruple of conscience when you see it to be expedient, provided that no divine office is celebrated for them contrary to the form of the interdict. Moreover, you asked whether, since the city of Ferrara is subjected to interdict *and excommunication*, and therefore all ecclesiastical sacraments except the baptism of infants and the penances of the dying are interdicted there, it is lawful for you to sign baptized children upon their foreheads. Concerning this *we respond to you in this manner*: just as children can be baptized, so also those baptized can by you be anointed upon their foreheads with sacred chrism for confirmation.

> Excommunicatis et interdictis praedicari potest licite verbum Dei. Hoc primo. Et tempore generalis interdicti concedi potest baptismus et chrismatio in fronte, et poenitentia morientium. H. d. secundo.
>
> Idem Ferrariensi Episcopo.
>
> Responso nostro postulas edoceri, an, quum Ferrarienses cives excommunicationis et interdicti sententiis sint ligati, liceat tibi viros et mulieres semel in hebdomada vel in mense apud aliquam ecclesiam convocare, quibus praedices verbum Dei, et eosdem ad correctionem inducas. Super quo *fraternitati tuae taliter* respondemus, quod sine scrupulo conscientiae hoc facere poteris, quum videris expedire, dummodo contra formam interdicti nullum eis divinum officium celebretur. Praeterea quaesivisti, quum Ferrariensis civitas sit interdicto *et excommunicationi* supposita, et ideo sint ibidem, praeter baptisma parvulorum et poenitentias morientium, universa sacramenta ecclesiastica interdicta, an liceat tibi baptizatos pueros in frontibus consignare. Super quo *tibi taliter* respondemus, quod, sicut baptizari possunt pueri, sic et baptizati ad confirmationem in frontibus a te possunt sacro chrismate deliniri.

Chapter XLIV

Latin source headnote: If a spouse knows for certain an impediment to the marriage, he ought not to render the debt, but rather to suffer excommunication; but if he believes this from a probable and discerning cause, he can render the debt but not exact it; but if from a slight and rash cause, having put aside his conscience, he can render and exact it.

The same.

Responding *briefly* to your inquiry, we believe a distinction must be made whether one of the spouses knows for certain an impediment to the marriage on account of which he cannot exercise carnal commerce without mortal sin, although he cannot prove it before the church, or does not know *an impediment of this kind* for certain but believes it. In the first case, *therefore*, he ought rather humbly to sustain a sentence of excommunication than to commit mortal sin through carnal commerce. But in the second case *indeed* we distinguish whether he has a conscience of this kind from slight and rash belief or from probable and discerning belief. And indeed, at the counsel of his pastor, after the conscience of slight and rash belief has been cast out, he can lawfully not only render but exact the conjugal debt. But when conscience strikes the mind from probable and discerning belief, although not evident and manifest, he can indeed render the debt, but he ought not to demand it, lest in either respect he commit an offense either against the law of marriage or against the judgment of conscience. *You, therefore, are to proceed according to the response written above concerning that article about which you wished to consult us.*

> Si coniux scit pro certo impedimentum matrimonii, non debet reddere debitum, sed potius excommunicationem pati; si autem hoc credat ex causa probabili et discreta, potest reddere debitum, non autem exigere; sed si ex levi et temeraria causa, deposita conscientia potest reddere et exigere.
>
> Idem.
>
> Inquisitioni tuae *breviter* respondentes credimus distinguendum, utrum alter coniugum pro certo sciat impedimentum coniugii, propter quod sine mortali peccato non valeat carnale commercium exercere, quamvis illud apud ecclesiam probare non possit, an *impedimentum huiusmodi* non sciat pro certo, sed credat. In primo *itaque* casu debet potius excommunicationis sententiam humiliter sustinere, quam per carnale commercium peccatum operari mortale. In secundo *vero casu* distinguimus, utrum habeat conscientiam huiusmodi ex credulitate levi et temeraria, an probabili et discreta; et quidem ad sui pastoris consilium, conscientia levis et temerariae credulitatis explosa, licite potest non solum reddere, sed exigere debitum coniugale. Verum quum conscientia pulsat animum ex credulitate probabili et discreta, quamvis non evidenti et manifesta, debitum quidem reddere potest, sed postulare non debet, ne in alterutro vel contra legem coniugii, vel contra iudicium conscientiae committat offensam. *Tu ergo iuxta responsionem praescriptam super illo procedas articulo, de quo nos consulere voluisti*.

Chapter XLV

Latin source headnote: Through abandonment of habit and tonsure a cleric does not lose clerical privilege before a threefold admonition.

The same.

It sometimes happens [*that, while clerics distinguished by the character turn aside to base profits and involve themselves in secular business, they render the clerical name abominable to the hearts of the weak.*] Indeed, as we have learned, the *noble man* the Count of Flanders [*and the noble woman Matilda, relict of the late Philip,*

Count of Flanders,] intimating it, there are certain persons in your diocese who show nothing of the cleric either in the manner of their tonsure, in the form of their garments, or in the quality of their business, but display themselves as clerics to evade punishment. For when they are dragged before public tribunals concerning offenses that they commit with secular extravagance, having cut their hair so that they can circumvent vengeance, they represent themselves as clerics, alleging with their lips the privilege of the clerical forum, who by their deeds a little before had denied the clerical state, [*and while through a sudden tonsure they evade the punishments that, while untonsured, they merited by perverse deeds, the audacity of offending is nourished in them through confidence of impunity; and while they offend with impunity, they are made a scandal to some and an example to others.*] But because he who abuses the power permitted to him deserves to lose a privilege, and he who commits against the law vainly invokes the aid of the law, we will and command that such persons, if after being admonished by you a third time they have scorned to amend themselves, be made bereft of that immunity which is known to have been instituted for the protection of clerics and the restraint of lay violence. [*You, finally, etc. Given at the Lateran, the fifth day before the Ides of January, in the fifteenth year of our pontificate,* 1213.]

> Per dimissionem habitus et tonsurae non perdit clericus ante trinam monitionem privilegium clericale.
>
> Idem.
>
> Contingit interdum, [*quod, dum clerici charactere insigniti ad turpia lucra divertunt, et saecularibus se negotiis immiscent, clericale nomen abominabile reddunt cordibus infirmorum.*] Sane, sicut accepimus, insinuante *nobili viro* comite Flandrensi [*ac nobili muliere Mathilda relicta quondam Philippi Flandrensis comitis,*] in dioecesi tua quidam exsistunt, qui nec in modo tonsurae, nec in vestimentorum forma, nec in qualitate negotiorum de clerico quicquam ostendunt, ad poenae subterfugium se clericos exhibentes. Quum enim super excessibus, quos saeculari luxu committunt, ad publica iudicia pertrahuntur, circumcisis crinibus, ut possint circumvenire vindictam, se pro clericis repraesentant, clericalis fori privilegium labiis allegantes, qui factis paulo ante negaverant clericatum [*dumque repentina tonsura poenas eludunt, quas intonsi perversis actibus meruerunt, per impunitatis fiduciam nutritur in eis audacia delinquendi, et, dum impune delinquunt, quibusdam efficiuntur in scandalum et aliis in exemplum.*] Verum, quia privilegium meretur amittere qui permissa sibi abutitur potestate, ac frustra legis auxilium invocat qui committit in legem: volumus et mandamus, ut tales, si tertio a te commoniti se ipsos contempserint emendare, illius efficiantur immunitatis extorres, quae pro clericorum tutela et laicorum violentia coercenda dignoscitur instituta. [*Tu denique etc. Dat. Lat. V. Id. Ian. Pont. nostr. Ao. XV. *1213.]

Chapter XLVI

Latin source headnote: He who did not give prior admonition and communicated with him is repelled from denouncing an excommunicated person.

The same.

In the presence of the beloved son (*And below:*) Nor can the canons object to their dean that he is excommunicated, since he had neither been admonished nor assailed concerning this, nor had they on this account caused him to be avoided; rather, the bishop at table, and the canons even in divine offices, had communicated with him.

> Ab excommunicati denunciatione repellitur qui non praemonuit, et ei communicavit.
>
> Idem.

In praesentia dilecti filii (*Et infra:*) Nec canonici suo decano excommunicationem possunt obiicere, quum super hoc nec commonitus, nec impetitus fuerit, neque ipsi propter hoc eum duxerint evitandum, sed episcopus in mensa, et canonici communicaverint ei etiam in divinis.

Chapter XLVII

Latin source headnote: He is excommunicated who deceitfully permits a cleric to be struck, since he could prohibit it and did not prohibit it.

The same.

Of how great a presumption and rashness it is to lay violent hands upon rulers of the church, *the Lord testifies in the Gospel, who declares that he is afflicted in his ministers, and elsewhere attested that he is crucified again in the prince of the Apostles. This the quality of the penalty also manifestly declares, since the sentence of excommunication strikes offenders in the act itself if they presume to perpetrate violence not only against our brothers and fellow bishops but even against clerics of lesser order.* Moreover, lest the presumption of some suppose that only the authors of violence of this kind *are* to be punished, catholic authority condemns those doing and those consenting to be punished by an equal penalty, interpreting *even* those who, when they can, fail to oppose a manifest crime as favoring the offenders. [*Considering this carefully hitherto, Pope C. of good memory, our predecessor, had announced the authors and supporters of the capture and detention of our venerable brother the Archbishop of Salerno to be bound by the bond of excommunication, etc.*]

Excommunicatus est dolose permittens clericum percuti, ex quo poterat prohibere, et non prohibuit.

Idem.

Quantae praesumptionis et temeritatis exsistat in rectores ecclesiae manus iniicere violentas, *in evangelio Dominus protestatur, qui se in ministeriis suis affligi asserit, et in Apostolorum principe alibi perhibuit se iterum crucifigi. Hoc etiam poenae qualitas manifeste declarat, quum excommunicationis sententia in ipso actu feriat delinquentes, si non solum in fratres et coepiscopos nostros, sed etiam in minoris ordinis clericos violentiam praesumpserint operari*. Ne autem solos violentiae huiusmodi auctores aliquorum praesumptio existimet *esse* puniendos, facientes et consentientes pari poena plectendos catholica condemnat auctoritas, eos *etiam* delinquentibus favere interpretans, qui, quum possint, manifesto facinori desinunt obviare. [*Quod bonae memoriae C. Papa praedecessor noster hactenus diligenter attendens, auctores et fautores captionis et detentionis venerabilis fratris nostri Salernitani archiepiscopi excommunicationis nunciasset vinculo innodatos etc.*]

Chapter XLVIII

Latin source headnote: A prelate ought not to excommunicate a subject unless a competent admonition has preceded, and from a manifest and reasonable cause; and the penalty expressed here is imposed upon one acting to the contrary. Likewise, the subject who falsely complains that he was unjustly excommunicated is punished; and it adds what the law is if a prelate, saying that he erred, wishes to absolve the excommunicated person, and the adversary appeals lest he be absolved.

The same, in the general council.

With the sacred council approving, we prohibit anyone from presuming to promulgate a sentence of excommunication against another unless a competent admonition has preceded, with suitable persons present through whom, if need be, the admonition can be proved. But if anyone should presume to the contrary, even if the sentence of excommunication was just, let him know that

entrance to the church is interdicted to him for one month, and that he is nevertheless to be punished with another penalty if it shall seem expedient. He is also to take diligent care not to proceed to the excommunication of anyone without a manifest and reasonable cause. But if perhaps he has proceeded to it in such a manner and, when humbly requested, has taken no care to revoke a proceeding of this kind without difficulty, the person aggrieved is to lodge before the superior a complaint concerning the unjust excommunication. If the superior can do so without danger in delay, he is to remit him with his mandate to that excommunicator, to be absolved within a competent term; otherwise, by himself or another, as he shall see to be expedient, having received sufficient security, he is to impart to him the office of absolution. And when it has been established against the excommunicator that the excommunication was unjust, the excommunicator is to be condemned to pay damages to the excommunicated person; nevertheless, otherwise also, if the quality of the fault shall demand it, he is to be punished at the superior's discretion, since it is no slight fault to inflict so great a penalty upon an innocent person, unless perhaps he erred from a probable cause, especially if he is of praiseworthy reputation. But if the complainant has proved nothing reasonable against the sentence of excommunication, he likewise is to be condemned, for the vexation caused by the complaint of unjust excommunication, through a penalty to pay damages, or otherwise according to the superior's discretion, unless perhaps a probable error excuses him also; and he is to be compelled, after security has been received, to make satisfaction concerning that for which he was bound by a just excommunication, or he is to be reduced to the former sentence, to be inviolably observed until worthy satisfaction. But if the judge, recognizing his own error, is prepared to revoke such a sentence, and he for whose sake it had been rendered appeals lest the judge revoke it without satisfaction, he is not to defer to the appeal in this matter unless the error is such that there ought deservedly to be doubt concerning it; and then, having received sufficient security that before him to whom the appeal has been made, or before one delegated by him, he will obey the law, he is to absolve the excommunicated person. And thus he will by no means be subject to the penalty written above, taking every care that he not, with perverse will and to another's prejudice, falsely assert an error, if he wishes to escape the vengeance of canonical severity.

> Praelatus excommunicare non debet subditum, nisi competente monitione praemissa, et ex causa manifesta et rationabili; et contra facienti imponitur poena hic expressa. Item punitur subditus, qui falso conqueritur, se excommunicatum iniuste, et subiicit, quid iuris, si praelatus, dicens se errasse, vult excommunicatum absolvere, et adversarius appellat, ne absolvatur.
>
> Idem in concilio generali. Sacro approbante concilio prohibemus, ne quis in aliquem excommunicationis sententiam, nisi competenti admonitione praemissa, et personis praesentibus idoneis, per quas, si necesse fuerit, possit probari monitio, promulgare praesumat. Quod si contra praesumpserint etiamsi iusta fuerit excommunicationis sententia, ingressum ecclesiae per mensem unum sibi noverit interdictum, alia nihilominus poena mulctandus, si visum fuerit expedire. Caveat etiam diligenter, ne ad excommunicationem cuiusquam absque manifesta et rationabili causa procedat. Ad quam si taliter forte processerit, et requisitus humiliter processum huiusmodi non curaverit absque gravamine revocare, gravatus apud superiorem deponat de iniusta excommunicatione querelam, qui, si absque periculo morae potest, ad excommunicatorem illum cum suo mandato remittat, infra competentem terminum absolvendum; alioquin ipse per se, vel per alium, prout viderit expedire, sufficienti cautione recepta munus ei absolutionis impendat. Quumque adversus excommunicatorem de iniusta excommunicatione constiterit, excommunicator condemnetur ad interesse excommunicato; alias nihilominus, si culpae qualitas postulaverit, superioris arbitrio puniendus, quum non levis sit culpa tantam infligere poenam

insonti, nisi forsitan erraverit ex causa probabili, maxime si laudabilis opinionis exsistat. Verum, si contra excommunicationis sententiam nihil rationabile fuerit a conquerente probatum, idem et super iniusta excommunicationis molestia per poenam ad interesse, vel alias secundum superioris arbitrium condemnetur nisi forsan et ipsum probabilis error excuset; et super eo, pro quo fuerit iusta excommunicatione ligatus, per cautionem receptam satisfacere compellatur, vel in pristinam reducatur sententiam usque ad satisfactionem condignam inviolabiliter observandam. Si vero iudex, suum recognoscens errorem, paratus sit talem revocare sententiam, et is, pro quo lata fuerat, ne absque satisfactione revocet illam, appellet: appellationi non deferat in hac parte, nisi talis sit error, de quo merito debeat dubitari; et tunc, sufficienti cautione recepta, quod coram eo, ad quem appellatum exstiterit, vel delegato ab ipso iuri parebit, excommunicatum absolvat. Sicque poenae praescriptae minime subiacebit, cavens omnino, ne voluntate perversa in alterius praeiudicium mentiatur errorem, si districtionis canonicae vult effugere ultionem.

Chapter XLIX

Latin source headnote: He excommunicates heretics and all violators of ecclesiastical liberty.

Honorius III, to the Bishop of Bologna.

Let your fraternity know *that we* [*recently*], *in the basilica of the prince of the Apostles, in the presence of our dearest son in Christ Frederick, illustrious Emperor of the Romans, ever august* [*and King of Sicily*], *during the celebration of Masses, after we placed the diadem of the empire upon his head, by the counsel of our brothers and with candles lighted,* Excommunicate *on behalf of almighty God, and also by the authority of the* [*blessed*] *Apostles Peter and Paul and our own*, all heretics of either sex, by whatever name they are designated, and their supporters, receivers, and defenders, and also those who henceforth cause issued statutes and customs, *or rather abuses*, introduced against the liberty of the church, to be observed, *and* do not cause them to be removed from their statute books within two months after the publication of a sentence of this kind. Likewise we excommunicate the makers and writers of those statutes, and also the magistrates, consuls, rectors, and councillors of places where statutes and customs of this kind shall henceforth have been issued or observed, as well as those who have presumed to judge according to them or to write the judgments in public form. [*Given at the Lateran, the second day before the Nones of January, in the fifth year of our pontificate,* 1221.]

Excommunicat haereticos et quoscunque violatores ecclesiasticae libertatis.

Honorius III. Episcopo Bononiensi. Noverit fraternitas tua, *quod nos* [*nuper*] *in basilica principis Apostolorum, praesente carissimo in Christo filio nostro Frederico illustri Romanorum imperatore semper Augusto *[*et rege Siciliae*], *in celebratione missarum, postquam capiti eius imposuimus imperii diadema, de consilio fratrum nostrorum accensis candelis* Excommunicamus *ex parte Dei omnipotentis, auctoritate quoque* [*beatorum*] *Apostolorum Petri et Pauli et nostra*, omnes haereticos utriusque sexus, quocunque nomine censeantur, et fautores et receptatores et defensores eorum, nec non et qui de cetero servari fecerint statuta edita et consuetudines *vel potius abusiones*, introductas contra ecclesiae libertatem, *et* nisi ea, de capitularibus suis infra duos menses post huiusmodi publicationem sententiae fecerint amoveri. Item excommunicamus statutarios et scriptores statutorum ipsorum, nec non potestates, consules, rectores et consiliarios locorum, ubi de cetero huiusmodi statuta et consuetudines editae fuerint vel servatae, nec non et illos, qui secundum ea praesumpserint iudicare, vel in publicam formam scribere iudicata. [*Dat. Lat. II. Non. Ian. Pont. Nostr. Ao. V.* 1221.]

Chapter L

Latin source headnote: Brothers of the Hospital of Jerusalem excommunicated for laying hands upon a cleric or fellow brother can be absolved by their prior, unless the offense was difficult and enormous.

The same, to the Master and Brothers of the Hospital of Jerusalem.

It is provided by a canonical constitution that monks and canons regular, in whatever manner they have struck one another *in the cloister*, are not to be sent to the Apostolic See, but are to be subjected to discipline according to the discretion and providence of their abbot. But if the discretion of the abbot does not suffice for their correction, the providence of the diocesan bishop is to be applied, unless the offense was difficult and enormous, on account of which recourse ought deservedly to be had to the Roman Church. We therefore, *inclining to your supplications*, have deemed that a statute of this kind is to be extended to you, establishing by the authority aforesaid that in such a case, unless greater providence is to be required, the benefit of absolution is to be bestowed upon your brothers through your prior, who, as we have heard, ought to be a priest.

> Fratres hospitalis Hierosolymitani, excommunicati pro iniectione manuum in clericum seu confratrem, absolvi possunt per eorum priorem, nisi excessus fuerit difficilis et enormis.
>
> Idem Magistro et Fratribus hospitalis Hierosolymitani. Canonica constitutione cavetur, quod monachi et canonici regulares, quocunque modo se *in claustro* percusserint, non sunt ad apostolicam sedem mittendi, sed secundum discretionem et providentiam sui abbatis disciplinae subdantur. Quodsi abbatis discretio ad eorum correctionem non sufficiat providentia est dioecesani episcopi adhibenda, nisi excessus difficilis fuerit et enormis, propter quem merito ad ecclesiam Romanam sit recursus habendus. Nos ergo, *vestris supplicationibus inclinati*, ad vos statutum huiusmodi duximus extendendum, auctoritate praedicta statuentes, ut in tali casu, nisi maioris sit providentia requirenda, per priorem vestrum, qui, sicut audivimus, presbyter esse debet, fratribus vestris absolutionis beneficium impendatur.

Chapter LI

Latin source headnote: One excommunicated or suspended ought not to be absolved unless an oath has first been furnished; if, however, the oath cannot be obtained without scandal, absolution will be able to be made through a promise by hand.

The same, to the Cardinal Priest of the title of Saint Praxedes, Legate of the Apostolic See.

Concerning the fact that Greek monks and hermits, bound by a sentence of suspension and excommunication on account of disobedience, are unwilling to return to the mandate of the church except through a promise by hand, we have deemed that this is to be answered to you: that if they can in no way be induced to furnish an oath according to the form of the church, on this occasion you will be able to receive them with a promise by hand, since sometimes, the qualities of places and times having been considered, something must be taken away from severity.

> Excommunicatus vel suspensus absolvi non debet, nisi prius iuramento praestito; si tamen sine scandalo iuramentum haberi non potest, poterit fieri absolutio per manualem promissionem.
>
> Idem tituli sanctae Praxedis Presbytero cardinali apostolicae sedis Legato.
>
> Super eo, quod monachi Graeci et Eremitae, propter inobedientiam sententia suspensionis et excommunicationis ligati, nolunt ad mandatum ecclesiae nisi per manualem promissionem redire, hoc

tibi duximus respondendum, quod, si nullatenus possunt induci ad praestandum iuxta formam ecclesiae iuramentum, ipsos hac vice cum promissione poteris recipere manuali, quum interdum, consideratis locorum et temporum qualitatibus severitati sit aliquid detrahendum.

Chapter LII

Latin source headnote: When the force of a sentence is doubted, someone can be absolved as a precaution after furnishing an oath.

The same, to the Deans of Bourges and Chartres and the Subdeacon of Arles.

Our venerable brother the Bishop of Le Mans and *the beloved son H., canon of Tours*, proctor of *our venerable brother* the Archbishop of Tours, having been constituted in our presence concerning a certain sentence of suspension promulgated against the aforesaid bishop by that archbishop, we, *having heard and understood those things that were proposed by them concerning this before us, because the parties disagreed upon the fact in such a manner that it could not be fully established, by grace* relaxed the sentence itself as a precaution, the bishop himself in the presence of the said proctor having furnished a corporal oath that he would obey the mandates that the same archbishop should make to him on account of this, if it should be established that the *bishop* himself had been culpable in that for which the aforesaid sentence was rendered.

Quum de viribus sententiae dubitatur, potest quis absolvi ad cautelam iuramento praestito.

Idem Bituricensi et Carnotensi Decanis et Subdiacono Arelatensi. Venerabili fratre nostro Cenomanensi episcopo et *dilecto filio H. canonico Turonensi*, procuratore *venerabilis fratris nostri* Turonensis archiepiscopi, in nostra praesentia constitutis pro quadam suspensionis sententia, in praefatum episcopum ab eodem archiepiscopo promulgata, nos, *auditis et intellectis quae super hoc fuerunt ab eis proposita coram nobis, quia partes dissentiebant in facto ita, quod de illo plene constare non potuit*, sententiam ipsam *de gratia* relaxavimus ad cautelam, ipso episcopo in praesentia dicti procuratoris praestante corporaliter iuramentum, quod parebit mandatis, quae idem archiepiscopus sibi propter hoc fecerit, si constiterit, ipsum *episcopum* in eo, pro quo fuit lata praedicta sententia, culpabilem exstitisse.

Chapter LIII

Latin source headnote: Officials of places in which there are statutes against ecclesiastical liberty are excommunicated unless they cause them to be erased; and the makers of the statutes are deprived of fiefs of the church.

The same, to the Bishop of Siena.

We have received the grave complaint of our venerable brother the Archbishop of Pisa, that *A., B., and* certain *other* citizens of Pisa, deputed by the magistrate and the people to issue the statutes of the city, *as though they savor perversely, have presumed to issue such things* in derogation of the Apostolic See and subversion of ecclesiastical liberty: that if any cleric or layman obtains apostolic letters to an ecclesiastical judge against any layman of the district of Pisa, he is to be condemned in one thousand solidi unless he has renounced *such* letters; nor are the revenues of his possessions to be rendered to him, nor his fields cultivated, but rather they are to be subjected to the ban of the magistrate, *which will receive no one for the government of the city unless he has sworn that he will observe this; and this and every other magistrate who shall be in office for the time being will cause his successors to swear to the things stated above.* They established, moreover, that the clerics at their own expense are to cause the castle of Ripafracta

to be guarded. But if they refuse, the magistrate is to be bound to proceed against them *according to what the council of the city shall prescribe, all of which the person who now presides over the aforesaid city confirmed by oath that he would firmly observe.* Therefore, *since the whole city of Pisa, which otherwise has cast aside the fear of God for so long that it is presumed now infected with error or close to infection, and since there is no doubt that both the makers of the statutes and that magistrate have on this account incurred a sentence of excommunication in addition to the mark of infamy*, we command your fraternity to take care to promulgate a sentence of excommunication against the councillors and officials of that city unless they cause the statutes themselves to be erased from their statute books, and suitable security to be given, as the matter requires, that they ought not to attempt similar things henceforth. Furthermore, since those makers of the statutes are said to hold many things from ecclesiastical goods in fief, take care nevertheless to announce them deprived of fiefs of this kind.

> Excommunicantur officiales locorum, in quibus sunt statuta contra ecclesiasticam libertatem, nisi ea deleri fecerint; et statutarii feudis ecclesiae sunt privati. Idem Episcopo Senensi. Gravem venerabilis fratris nostri Pisani archiepiscopi recepimus quaestionem, quod *A. B. et* quidam *alii* cives Pisani, deputati a potestate ac populo ad statuta civitatis edenda, *tanquam perverse sapiant, talia* in derogationem apostolicae sedis et subversionem ecclesiasticae libertatis edere praesumpserunt, quod, si quis clericus vel laicus contra quemcunque laicum Pisani districtus ad iudicem ecclesiasticum literas apostolicas impetraverit, in mille solidis, nisi *huiusmodi* renunciaverit literis, condemnetur, nec reditus possessionum suarum reddantur eidem, vel agri excolantur illius, sed banno potius subiaceant potestatis, *quae nullum ad regimen civitatis suscipiet, nisi hoc se iuraverit servaturum; et haec et quaelibet alia potestas, quae pro tempore fuerit, successores suos iurare faciet supra dicta*. Statuerunt illi praeterea, ut clerici suis sumptibus castrum Ripae fractae faciant custodiri. Quod si renuerint, contra eos potestas procedere teneatur, *iuxta quod dictaverit consilium civitatis, quae omnia is, qui nunc praeest civitati praedictae, observaturum se firmiter iureiurando firmavit*. Ideoque, *quum tota civitas Pisana, quae alias tamdiu Dei timorem abiecit, quod infecta iam errore vel infectioni proxima praesumatur, et tam statutarios quam potestatem eandem non sit dubium propter hoc excommunicationis sententiam praeter notam infamiae incurrisse*: fraternitati tuae mandamus, quatenus in consiliarios et officiales civitatis ipsius, nisi statuta ipsa de capitularibus suis deleri fecerint, et idonee, sicut exigit res, caveri, quod similia de cetero non debeant attentare, excommunicationis sententiam promulgare procures. Ceterum, quum iidem statutarii multa de bonis ecclesiasticis tenere dicantur in feudum, ipsos fore nihilominus privatos feudis huiusmodi nunciare procures.

Chapter LIV

Latin source headnote: One speaking with an excommunicated person concerning matters tending to the salvation of the soul is not excommunicated, even if he interposes other words. - § 1. Preachers, especially those who cannot otherwise be sustained, can receive alms from excommunicated persons and persons detaining the goods of others. This is what it says. - § 2. It states certain cases in which one who strikes a cleric is not excommunicated.

Gregory IX.

Since wrongful acts are distinguished by will and purpose, he does not incur the sentence of excommunication who participates in conversation with an excommunicated person in those matters that pertain to absolution or otherwise to the salvation of the soul, although he even incidentally interposes other words so that he may profit more with him. § 1. Preachers also, who among excommunicated persons or other detainers of others' property in preachings and confessions act, as it were, the cause or care of those to whom the property itself is known to pertain, can lawfully

receive alms from them, especially if they cannot otherwise have sustenance in that place. § 2. But if, by reason of an office that they hold in a church, or even if other senior clerics out of zeal of devotion, have perhaps lightly struck, for the sake of correction, boys or adolescents constituted in minor orders who disturb divine office, and those who under color of prelacy or a master's authority have struck subjects and scholars, they do not incur the sentence of excommunication. This is also to be said of those who have deemed that some persons of their household or relatives of inferior degrees are to be corrected in a similar manner so that they may be restrained from their insolences and be instructed in knowledge and good morals.

> Alloquens excommunicatum in tendentibus ad salutem animae, etiamsi alia verba interponat, excommunicatus non est. - § 1. Praedicatores, praesertim qui alias sustentari non possunt, ab excommunicatis et detinentibus bona aliena eleemosynam recipere possunt. Hoc dic. - § 2. Ponit quosdam casus, in quibus percutiens clericum excommunicatus non est.
>
> Gregorius IX. Quum voluntate ac proposito maleficia distinguantur, excommunicationis sententiam non incurrit qui excommunicato in his, quae ad absolutionem vel alias ad salutem animae pertinent, in locutione participat, licet etiam alia verba incidenter, ut apud eum magis proficiat, interponat. § 1. Praedicatores quoque, qui penes excommunicatos vel alios alienarum rerum detentores in praedicationibus et confessionibus quasi gerunt causam vel curam eorum, ad quos res ipsae spectare noscuntur, eleemosynas licite possunt ab illis recipere, praesertim si alias non valeant in illo loco sustentationem habere. § 2. Si qui vero ratione officii, quod in ecclesia obtinent, aut etiam alii clerici seniores zelo devotionis pueros vel adolescentes, in minoribus ordinibus constitutos, turbantes divinum officium, et hi, qui obtentu praelationis vel magisterii subditos et scholares correctionis causa leviter forte percusserint, excommunicationis sententiam non incurrunt. Quod et de his dicendum est, qui aliquos de familia sua vel propinquos inferiorum graduum simili modo, ut cohibeantur a suis insolentiis, et scientia bonisque moribus informentur, duxerint corrigendos.

Chapter LV

Latin source headnote: One communicating with an excommunicated person in a damnable crime falls under major excommunication.

The same, to the Bishop of Astorga.

If the public concubines of clerics are marked by the severity of ecclesiastical censure, there is no doubt that those same concubinary clerics who, after the sentence has been rendered, communicate in the same crime with the criminals are enveloped by a sentence of major excommunication. [*Aqua, etc.* (*cf. c.* 9, *On the Consecration of a Church, III.* 40.) *Given at the Lateran, the twelfth day before the Kalends of June, in the seventh year of our pontificate,* 1233.]

> Communicans excommunicato in crimine damnabili incidit in excommunicationem maiorem.
>
> Idem Astoricensi Episcopo.
>
> Si concubinae publicae clericorum ecclesiasticae censurae districtione notentur, eosdem concubinarios non est dubium sententia maioris excommunicationis involvi, qui post latam sententiam communicant in eodem crimine criminosis. [*Aqua etc.* (*cf. c. *9. *de cons. eccl. III.* 40.) *Dat. Lat. XII. Kal. Iun. Pont. nostr. Ao. VII.* 1233.]

Chapter LVI

Latin source headnote: One under minor excommunication can absolve someone from excommunication.

The same.

Power having been conferred upon two persons that, if they fall into minor excommunication, they may absolve each other from it, the power does not expire when each is bound by a bond of excommunication of this kind.

> Excommunicatus minori potest ab excommunicatione aliquem absolvere.
>
> Idem.
>
> Duobus collata potestas, ut a minori excommunicatione, si in ipsam inciderint, invicem se absolvant, utroque ligato vinculo excommunicationis huiusmodi, non exspirat.

Chapter LVII

Latin source headnote: Ministers of churches are permitted to celebrate once a week during an interdict, when those conditions stated in the text concur.

The same.

We permit ministers of churches once a week during an interdict, without bells being rung, in a subdued voice, with the doors closed, and with excommunicated and interdicted persons excluded, to celebrate the solemnities of Masses for the purpose of consecrating the body of the Lord, which is not denied to those dying in penance.

> Permittitur ministris ecclesiarum semel in hebdomada celebrare tempore interdicti, concurrentibus his, quae exprimuntur in textu.
>
> Idem.
>
> Permittimus ecclesiarum ministris semel in hebdomada tempore interdicti, non pulsatis campanis, voce submissa, ianuis clausis, excommunicatis et interdictis exclusis, missarum solennia celebrare causa conficiendi corpus Domini, quod decedentibus in poenitentia non negatur.

Chapter LVIII

Latin source headnote: One making satisfaction to a cleric whom he beat cannot on this account be absolved by the bishop, except in the certain cases expressed here.

The same.

Although one who incurs the canon of a sentence already pronounced on account of a violent laying-on of hands makes satisfaction according to his own means to those upon whom he inflicted injuries, nevertheless he cannot in any other way obtain the benefit of absolution than through the Apostolic See or its legate, unless he is hindered from being able to approach the Roman Pontiff by the imminence of the moment of death, sickness, enmity, or poverty, by boyish or old age, by the frailty of sex or another incapacity of the body, or by any canonical impediment whatever, or unless by a benefit of law he is excused from labor of this kind. Moreover, it has been customary to enjoin certain of the aforesaid persons—namely those who labor under a temporal impediment, except boys—under

the obligation of an oath that they are bound to furnish according to the form of the church, that, when the impediment ceases, they are to approach the Apostolic See, humbly to receive its mandate.

> Satisfaciens clerico, quem verberavit, non potest propter hoc ab episcopo absolvi, nisi in certis casibus hic expressis.
>
> Idem.
>
> Quamvis incidens in canonem latae sententiae propter violentam manuum iniectionem iuxta proprias facultates eis satisfaciat, quibus iniurias irrogavit: non tamen taliter, quam per sedem apostolicam vel eius legatum absolutionis potest beneficium obtinere, nisi imminente mortis articulo, infirmitate, inimicitia aut inopia, puerili vel senili aetate, fragilitate sexus seu alia corporis impotentia, sive quolibet impedimento canonico retrahatur, quo minus Romanum Pontificem possit adire, vel nisi iuris beneficio a labore huiusmodi excusetur. Ceterum quibusdam praedictorum, videlicet qui temporali impedimento laborant, exceptis pueris, sub debito iuramenti, quod secundum ecclesiae formam praestare tenentur, consuevit iniungi, ut impedimento cessante ad apostolicam sedem accedant, mandatum ipsius humiliter suscepturi.

Chapter LIX

Latin source headnote: An excommunication rendered without qualification is understood as major. This is what it says, and it is a notable text and is alleged daily.

The same.

If it happens that anyone is excommunicated by his judge under this form of words, "I excommunicate that man," or a similar one, it is to be said that he is bound not only by minor excommunication, which excludes from reception of the sacraments, but also by major excommunication, which separates from the communion of the faithful.

> Excommunicatio simpliciter lata intelligitur de maiori. H. d. et est textus notabilis, et quotidie allegatur.
>
> Idem.
>
> Si quem sub hac forma verborum: "Illum excommunico," vel simili, a iudice suo excommunicari contingat, dicendum est, eum non tantum minori, quae a perceptione sacramentorum, sed etiam maiori excommunicatione, quae a communione fidelium separat, esse ligatum.

Chapter LX

Latin source headnote: A benefit granted by reason of minority of age, after it has begun to have effect, is not extinguished although the minor has reached majority of age.

The same.

To boys who have incurred the canon of the sentence promulgated, whether they seek to be absolved before or after puberty, the diocesan bishop can impart the benefit of absolution, since on account of the defect of the age at which the offense was committed rigor is to be tempered with gentleness.

> Beneficium, indultum ratione minoris aetatis, postquam coepit habere locum, non exstinguitur, licet minor pervenerit ad maiorem aetatem.
>
> Idem.
>
> Pueris, qui in canonem inciderunt sententiae promulgatae, sive ante sive post pubertatem postulent, se absolvi, potest dioecesanus episcopus absolutionis beneficium impertiri, quum propter defectum

aetatis, in qua fuit commissus excessus, rigor sit mansuetudine temperandus.

Title XL: On the Meaning of Words

Chapter I

Latin source headnote: "Newly broken land" is land newly brought under cultivation.

Jerome, on Hosea.

"Renew the newly broken land." Newly broken land is a field now cut for the first time.

DE VERBORUM SIGNIFICATIONE.

Novale est terra noviter ad culturam redacta.

Hieronymus super Osee.

"Innovate novale." Novale est ager nunc primum praecisus.

Chapter II

Latin source headnote: Under the appellation of father, in a broad signification, all descendants are included.

The same, on Daniel.

"For King Nebuchadnezzar, your father," that is, great-grandfather, according to the usage of Scripture, which calls grandfathers and those thereafter fathers.

Appellatione patris veniunt in lata significatione omnes descendentes.

Idem super Danielem.

"Nam et rex Nabuchodonosor, pater tuus," id est, proavus more scripturae, quae avos et deinceps patres appellat.

Chapter III

Latin source headnote: He who immediately died is not said to have been born.

The same, in Proverbs.

"For I also was an only-begotten son before my mother." Why does he call himself only-begotten *before his mother*, when Scripture testifies that a uterine brother had preceded him, unless because that brother, having immediately been born without a name, departed from life as though he had never existed?

Non dicitur natus qui statim decessit.

Idem in Parabolis.

"Nam et ego unigenitus fui coram matre mea." Quare unigenitum se *coram matre* nominat, quem fratrem uterinum praecessisse scriptura testatur, nisi quia ille mox, natus sine nomine, quasi nunquam esset, de vita decessit?

Chapter IV

Latin source headnote: The expression "before" does not always imply.

The same, on Matthew.

From what is said, "before they came together," it does not follow that they afterward came together; rather, Scripture shows that it had not happened.

> Dictio "antequam" non semper implicat.
>
> Idem super Matthaeum.
>
> Quod dicitur: "antequam convenirent," non sequitur, ut postea convenirent; sed scriptura quod factum non sit ostendit.

Chapter V

Latin source headnote: He who is born first is called the firstborn, even if no one follows him.

The same, in the same work.

"Joseph did not know Mary until she bore her firstborn son." From this passage certain persons most perversely suspect that Mary had other sons also, *saying that one is not called firstborn unless he also has brothers*, since *this* is the usage of the divine Scriptures: that they call firstborn not *him* whom brothers follow, but him who was born first.

> Primogenitus dicitur qui primo nascitur, etiamsi nullus sequatur eum.
>
> Idem in eodem.
>
> "Ioseph non cognovit Mariam, donec peperit filium suum primogenitum." Ex hoc loco quidam perversissime suspicantur, et alios filios Mariam habuisse, *dicentes, primogenitum non dici, nisi qui habeat et fratres*, quum *hic* mos divinarum scripturarum sit, ut primogenitum non *eum* vocent, quem fratres sequuntur, sed eum, qui primo natus fuit.

Chapter VI

Latin source headnote: Words are to be understood not according to how they sound, but according to the mind of the speaker.

Hilary.

The understanding of sayings is to be taken from the causes for speaking, because the thing is not subject to the expression, but the expression to the thing.

> Verba sunt intelligenda non secundum quod sonant, sed secundum mentem proferentis.
>
> Hilarius.
>
> Intelligentia dictorum ex causis est assumenda dicendi, quia non sermoni res, sed rei est sermo subiectus.

Chapter VII

Latin source headnote: A fact is not vitiated when it is narrated in a different manner, where the same thing is concluded in substance.

Augustine, on Matthew.

Diversity of narration presents no obstacle where the same things are said, especially since each of the evangelists believes himself to speak in that order in which God willed.

> Non vitietur factum, vario modo narratum, ubi idem in substantia concluditur.
>
> Augustinus super Matthaeum.
>
> Nihil obstat narrandi diversitas, ubi eadem dicuntur, maxime quum quisque evangelistarum eo ordine credat se dicere, quo Deus voluit.

Chapter VIII

Latin source headnote: We ought to consider the sense, not the words.

Gregory.

Therefore, if perhaps it should happen that you receive my lengthy epistle for translation, I ask that not word be translated from word, but sense from sense, because very often, while the propriety of words is attended to, the sense of the truth is lost.

> Sensum, non verba considerare debemus.
>
> Gregorius.
>
> Propterea, si prolixam epistolam meam ad interpretandum accipere te fortasse contigerit, rogo, non verbum ex verbo, sed sensum ex sensu transferri, quia plerumque, dum proprietas verborum attenditur, sensus veritatis amittitur.

Chapter IX

Latin source headnote: It states who properly is a provost.

Isidore.

Although all who preside are rightly called persons placed over others, usage nevertheless has obtained that those who bear a certain care of priority over others are called provosts.

> Dicit, quis proprie sit praepositus.
>
> Isidorus.
>
> Quamvis omnes, qui praesunt, praepositi rite vocentur, usus tamen obtinuit, eos vocari praepositos, qui quandam prioratus curam super alios gerunt.

Chapter X

Latin source headnote: It does not admit a fitting summation.

The same, in the Book of Etymologies.

The forum is the place for conducting lawsuits, so called from speaking, or from King Phoroneus, who first gave law to the Greeks. *This place is also called "before the rostra," from the fact that, when the ships of the Carthaginians had been captured in the Punic War, the beaks were taken away and affixed in the Roman Forum so that they might be the emblem of this victory.* The forum, moreover, consists of a cause, a law, and a judgment. A cause is so called from the event from which it comes. For it is the matter and origin of a business, not yet laid open by the examination of discussion; while it is proposed, it is a cause; while it is discussed, it is a judgment [*is*]; while it is concluded, it is justice. Judgment, moreover, is called as it were a declaration of law, and justice as it were the standing of law. Judgment, moreover, was formerly called inquiry, whence we call both the originators of judgments *and* those placed over them quaestors or inquirers. A business [*however*] signifies many things: sometimes the doing of

some thing, the contrary of which is leisure; sometimes the action of a cause, which is the quarrel of a lawsuit. And it is called "business" *as though "not leisure,"* that is, without leisure. A business, moreover, is spoken of in causes, but trading in commerce, where something is given that greater things may be gained. A quarrel is so called as though "a chattering about law," because those who plead a cause contend at law. A lawsuit, moreover, first took its name from a dispute over a boundary, concerning which Virgil says: "A boundary had been placed so that it might settle the dispute concerning the fields." A cause consists either of argument or of proof. An argument never gives proof by witnesses, never by documents, but finds the truth by investigation alone, whence *also* "argument" is so called as though "acutely found." Proof, however, consists of witnesses and the faith of documents. In every business also these persons are sought: judge, accuser, defendant, and three witnesses. A judge is so called as though one declaring the law to the people, or because he decides according to law. To decide according to law, however, is to judge justly. Therefore, he is not a judge if justice is not in him. The accuser is so called as though a causator, because he calls to a cause the one whom he accuses. The defendant is named from the thing that is sought, because, although he is not conscious of a crime, he is nevertheless called defendant as long as he is summoned into judgment concerning some thing. In antiquity witnesses were called "survivors" because they were brought forth concerning the standing of the cause; now, with part of the name removed, they are called witnesses. Witnesses, however, are considered by condition, nature, and life. By condition: whether free, not a slave. For a slave often suppresses the testimony of the truth through fear of his master. By nature: whether a man, not a woman. For a woman always produces variable and mutable testimony. By life: whether innocent and upright in conduct. For if good life is lacking, he will lack credibility. For justice cannot have commerce with a criminal man. *There are* [*however*] *two kinds of witnesses: either by stating what they saw, or by bringing forth what they heard. In two ways, moreover, witnesses offend: when they either utter false things or cover true things with silence.*

> Non recipit congruam summationem.
>
> Idem in libro Etymologiarum.
>
> Forus est exercendarum litium locus, a fando dictus, sive a Foroneo rege, qui primus Graecis legem dedit. *Qui locus et prorostra vocatur ab eo, quod ex bello Punico captis navibus Carthaginensium rostra ablata sunt, et in foro Romano praefixa, ut essent huius insigne victoriae*. Constat autem forus causa, lege et iudicio. Causa a casu, quo venit, dicitur. Est enim materia et origo negotii, necdum discussionis examine patefacta, quae, dum proponitur, causa est; dum discutitur, iudicium [*est*]; dum finitur, iustitia. Vocatur autem iudicium quasi iurisdictio, et iustitia quasi iuris status. Iudicium autem prius inquisitio vocabatur, unde et auctores iudiciorum *et* praepositos quaestores vel quaesitores vocamus. Negotium [*autem*] multa significat, modo actum alicuius rei, cuius contrarium est otium, modo actionem causae, quod est iurgium litis, et dictum est negotium *quasi nec otium*, id est sine otio. Negotium autem in causis, negotiatio in commerciis dicitur, ubi aliquid datur, ut maiora lucrentur. Iurgium dicitur quasi iuris garrium, eo, quod hi, qui causam dicunt, iure disceptant. Lis autem a contentione limitis prius nomen sumpsit, de qua Virgilius. "Limes erat positus, litem ut discerneret agris." Causa aut argumento, aut probatione constat. Argumentum nunquam testibus, nunquam tabulis dat probationem, sed sola investigatione invenit veritatem, unde *et* dictum est argumentum, quasi argute inventum. Probatio autem testibus et fide tabularum constat. In omni quoque negotio hae personae quaeruntur: iudex, accusator, reus et tres testes. Iudex dictus quasi ius dicens populo, sive quod iure disceptet. Iure autem disceptare est iuste iudicare. Non est ergo iudex, si non est in eo iustitia. Accusator vocatus est quasi causator, quia ad causam vocat eum, quem appellat. Reus a re, quae petitur, nuncupatur, quia, quamvis

> conscius sceleris non sit, reus tamen dicitur, quamdiu in iudicium pro re aliqua petitur. Testes antiquitus superstites dicebantur eo, quod super causae statu proferebantur; nunc parte ablata nominis testes vocantur. Testes autem considerantur conditione, natura et vita. Conditione, si liber, non servus. Nam saepe servus metu dominantis testimonium supprimit veritatis. Natura, si vir, non femina. Nam varium et mutabile testimonium semper femina producit. Vita, si innocens et integer actu. Nam, si vita bona defuerit, fide carebit. Non enim potest iustitia cum scelerato homine habere commercium. *Duo sunt* [*autem*] *genera testium, aut dicendo id, quod viderunt, aut proferendo id, quod audierunt. Duobus autem modis testes delinquunt, quum aut falsa promunt, aut vera silentio tegunt*.

Chapter XI

Latin source headnote: It states what a pact is and whence it is so called.

The same.

A pact is said to be a writing agreed between parties out of peace, approved by laws and customs; [*and*] "pact" is so called as though made out of peace.

> Dicit, quid sit pactum, et unde dicatur.
>
> Idem.
>
> Pactum dicitur inter partes ex pace conveniens scriptura, legibus ac moribus comprobata: [*et*] dictum pactum, quasi ex pace factum.

Chapter XII

Latin source headnote: Here Isidore gives the etymology of right as it is found in a thing, not as it is a general name.

The same, in the same work.

Right is so called from possessing by right. For that which is possessed justly is possessed by this right; that justly which well; but that which is possessed badly belongs to another. He possesses badly who either uses his own things badly or presumes upon things belonging to another.

> Hic Isidorus ponit etymologiam iuris, prout habetur in re, non prout est generale nomen.
>
> Idem in eodem.
>
> Ius dictum est a iure possidendo. Hoc enim iure possidetur, quod iuste, hoc iuste, quod bene; quod autem male possidetur, alienum est. Male autem possidet, qui vel suis male utitur, vel aliena praesumit.

Chapter XIII

Latin source headnote: Whatever a member of the faithful offers to a church is contained under the name of an oblation, and ought not to be possessed by secular persons.

Paschal II, to the Canons of Saint Martin.

The case of the people of Carpi (*And below:*) Moreover, first fruits, tithes, and oblations are reckoned especially among the goods of churches alone. But we call oblations whatever things from their own lawful property are offered to the church by the faithful. Therefore, whoever obtains them through a secular *hand or* power, without doubt strives against God and *against* the sanctions of the holy Fathers; indeed, both he who receives and he who delivers is judged a robber and a sacrilegious person.

Quicquid fidelis offert ecclesiae, oblationis nomine continetur, et a saecularibus possideri non debet.

Paschalis II. Canonicis sancti Martini. Causa Carpensis plebis (*Et infra:*) Ceterum primitiae, decimae et oblationes in solis ecclesiarum bonis praecipue numerantur. Oblationes vero dicimus, quaecunque de propriis et licitis rebus ecclesiae a fidelibus offeruntur. Quicunque igitur eas per *manum vel* potestatem saecularem obtinet, procul dubio contra Deum et *contra* sanctorum Patrum nititur sanctiones; quin immo et qui accipit, et qui tradit, raptor et sacrilegus iudicatur.

Chapter XIV

Latin source headnote: A priest alone can confer the sacrament of extreme unction upon a sick person. This is what it says. - § 1. In a leap year the custom of the place ought to be observed concerning the day on which the feast of Saint Matthias is celebrated, provided nevertheless that the vigil is continuous with the feast. This is what it says.

Alexander III.

Your fraternity asked *of us whether a priest ought to anoint a sick person when only one cleric is present, and on what day the feast of blessed Matthias ought to be observed in a leap year, especially since certain persons wish to interpose a day between the vigil and the feast,* [*and whether a woman, etc.; cf. c.* 2, *On Baptism, IV.* 19.] We therefore have deemed that this is to be answered to you: that a priest, when one cleric is present and even alone, can anoint a sick person. § 1. But let the vigil precede the feast of blessed Matthias according to ecclesiastical custom to the extent that it admits no other day between itself and the solemnity, either on account of the leap day or in any other manner; on that vigil, unless it falls on the Lord's *day*, a fast is to be observed. But whether the feast itself takes place on the preceding or on the following day, which two are reckoned as though one, there is no error, but the custom of the church is to be observed. [*But that a woman on account of theft, etc.; cf. c.* 2, *On Baptism, IV.* 19.]

Solus sacerdos potest sacramentum extremae unctionis infirmo conferre. H. d. - § 1. In anno bissextili servari debet loci consuetudo circa diem S. Matthiae festandum, dum tamen vigilia continuetur festo. Hoc dicit.

Alexander III. Quaesivit *a nobis* fraternitas tua, *utrum sacerdos uno clerico tantum praesente infirmum debeat inungere, et qua die festum beati Matthiae in anno bissextili debeat observari, praesertim quum quidam inter vigiliam et festum velint diem interponere,* [*et utrum mulier etc. cf. c.* 2. *de div. IV. *19.] Nos itaque tibi taliter duximus respondendum, quod sacerdos uno praesente clerico et etiam solus potest infirmum ungere. § 1. Festum vero beati Matthiae iuxta consuetudinem ecclesiasticam vigilia eatenus praecedat, ut nec pro bissexto, nec pro quolibet alio modo inter se et solennitatem aliam diem admittat, in qua utique vigilia, nisi venerit in dominica *die*, ieiunium celebretur. Ipsum autem festum sive fiat in praecedenti die sive in sequenti, qui duo quasi pro uno reputantur, nullus error, sed consuetudo ecclesiae teneatur. [*Quod autem mulier pro furto etc. cf. c.* 2. *de div. IV.* 19.]

Chapter XV

Latin source headnote: By the words "I establish and command," a definitive sentence can be rendered.

Celestine III.

In those matters that contain ambiguity, *recourse is owed to the Apostolic See, to which in truth, as mother and head of all churches, greater and more difficult questions, just as was established by the ancient Fathers and*

rightly approved by the usages of those employing them, ought everywhere to be referred. For it became known *indeed* to our apostolate that, when *concerning the controversy that* existed *between Master M. and the lay brothers of the Hospital of Saint Simplician concerning that hospital*, in the presence of *our venerable brother O.*, Archbishop of Milan, a question was being litigated, after cognizance of the case the archbishop himself did not use these words in pronouncing the sentence, *so as to say according to civil law*: "I condemn this party," or "I absolve this party," but pronounced thus: "I establish and command," *that henceforth, and the remaining things that are expressly contained in the instrument. Therefore, because, as we learned from the report of our beloved sons Cynthius, Cardinal Priest of Saint Lawrence in Lucina, and John, Cardinal Priest of Saint Prisca, whom we assigned as auditors for this, there was doubt concerning this pronouncement of the sentence:* Considering, therefore, that this word "I establish" *according to the law* signifies a completed thing and is received with effect, not verbally, likewise *that* according to Gregory that which is commanded is ordered, and that which is ordered must be done and sometimes, if it is not done, carries a penalty; considering nevertheless that, *according to the same Gregory*, no one ought to consider the words, but the will *and intention*, since the intention ought not to serve the words, but the words the intention, we interpret *in the present article by the counsel of our brothers*, the proctors of each party being present, and define that the words of the aforesaid archbishop, pronounced in such form, possess the firmness of a sentence to remain perpetually valid. *We therefore confirm by the present page of the Apostolic See the sentence itself, although it has hitherto been impeded by the obstacle of an appeal, and fortify it by the protection of this writing, establishing and commanding by apostolic authority that the aforesaid brothers of that hospital obey its abbot and his grantors in perpetuity as their prelates and lords, just as the archbishop himself commanded.*

> Per verbum: "statuo et praecipio," diffinitiva sententia ferri potest.
>
> Coelestinus III. In his, quae ambiguitatem continent, *ad sedem apostolicam ex debito recursus habetur, ad quam re vera, tanquam matrem et caput omnium ecclesiarum, maiores et difficiliores quaestiones, sicut ab antiquis Patribus constitutum est et moribus utentium recte approbatum, usquequaque conferri debent*. Innotuit *siquidem* apostolatui nostro, quod, quum *de controversia, quae* inter magistrum M. et conversos hospitalis sancti Simpliciani super eodem hospitali *haberetur*, in praesentia *venerabilis fratris nostri O.* Mediolanensis archiepiscopi quaestio verteretur, ipse archiepiscopus post cognitionem causae in prolatione sententiae his verbis non fuit usus, *ut secundum ius civile diceret*: "talem partem condemno, vel talem absolvo," sed pronunciavit ita: "statuo et praecipio," *ne de cetero, et reliqua, quae expressim continentur in instrumento. Quoniam igitur, sicut ex relatione dilecti filii nostri Cynthii S. Laurentii in Lucina, et Ioannis S. Priscae presbyterorum cardinalium didicimus, quos ad hoc concessimus auditores, super hac fuit prolatione sententiae dubitatum*: Attendentes igitur, quod hoc verbum "statuo" *secundum legem* rem perfectam significat, et cum effectu, non verbotenus accipitur, item *quod* secundum Gregorium quod praecipitur imperatur, et quod imperatur necesse est fieri, et aliquando, si non fiat, poenam habet, considerantes nihilominus, quod *iuxta eundem Gregorium* non debet aliquis considerare verba, sed voluntatem *et intentionem*, quum non intentio verbis, sed verba intentioni debeant deservire, interpretamur *in praesenti articulo de fratrum nostrorum consilio*, procuratoribus utriusque partis praesentibus, et diffinimus, quod praefati archiepiscopi verba, tali forma prolata, perpetuo valiturae sententiae obtineant firmitatem. *Nos itaque sententiam ipsam licet appellationis obstaculo hucusque fuerit impedita, praesenti pagina sedis apostolicae confirmamus, et huius scripti patrocinio communimus statuentes et auctoritate apostolica praecipientes ut ipsius hospitalis praefati fratres abbati eiusque concessoribus obediant in perpetuum tanquam praelatis suis et dominis sicut archiepiscopus ipse praecepit*.

Chapter XVI

Latin source headnote: A benefit of a prince ought to be interpreted most broadly.

Innocent III, to the Patriarch of Grado.

We recall that we formerly wrote to you that if the *beloved son the archpriest and* the canons of Padua, *to whom we directed our writings concerning this,* did not confer upon *the beloved son* Master G., canon of Padua, without any delay, the prebend which is conferred from the common property only upon residents, and manual benefices from the common revenues, just as upon one of the others, you were to take care to compel them to this, appeal ceasing. But because, *as was reported to our apostolate*, certain persons attempt to interpret our mandate otherwise than is fitting, since benefits of princes are to be interpreted most broadly, *wishing to remove doubt from our mandate, not to reserve the scruple of a question, so that you may execute what we command more diligently and freely*, we have deemed that our understanding *in this matter* is to be disclosed to you: namely, that we enjoined the prebend which is conferred from the common property only upon residents in food and clothing to be conferred fully upon Master G. himself, just as upon one of the other residents. *Therefore, by apostolic writings we command your fraternity that, attending to no malicious interpretation in the business itself, you endeavor diligently to execute, after the obstacle of any contradiction and appeal has been removed, what we command you concerning the aforesaid master.*

> Beneficium principis latissime interpretari debet.
>
> Innocentius III. Patriarchae Grandensi. Olim tibi scripsisse recolimus, ut, si *dilectus filius archipresbyter et* canonici Paduani, *quibus super hoc scripta nostra direximus, dilecto filio* magistro G. canonico Paduano, praebendam, quae tantum residentibus de communi confertur, sicut uni ex aliis de communibus proventibus et manualia beneficia *omni dilatione postposita* non conferrent, tu eos ad id appellatione cessante compellere procurares. Quia vero, *sicut nostro apostolatui reseratum est*, quidam mandatum nostrum interpretari aliter, quam deceat, moliuntur, quum beneficia principum sint interpretanda largissime: *volentes a mandato nostro dubietatem auferre, non quaestionis scrupulum reservare, ut quae mandamus diligentius et liberius exsequaris*, nostrum *tibi in eo* aperiendum duximus intellectum, videlicet, quod praebendam, quae tantum residentibus in victu et vestitu de communi confertur, ipsi magistro G. plene, sicut uni ex aliis residentibus, iniunximus conferendam. *Quocirca fraternitati tuae per apostolica scripta mandamus, quatenus in negotio ipso malitiosam interpretationem aliquam non attendens, sic, quod de praefato magistro tibi praecipimus, sublato cuiuslibet contradictionis et appellationis obstaculo exsequi studeas diligenter*.

Chapter XVII

Latin source headnote: An interdict is called general when it is rendered not only against a province, but against a town or castle.

The same, to the Bishop of Coimbra and the other Bishops constituted in the Kingdom of Portugal.

Since in your parts, *sins requiring it*, it often happens that various places are placed under interdict, we have learned that among you it is called into doubt when an interdict ought to be called general or particular. For those who merited being adorned with a privilege by the Roman Church—namely, that when a general interdict of the land has been imposed, it is lawful for them, with the doors closed, bells not rung, excommunicated and interdicted persons excluded, and in a subdued voice, to celebrate divine offices—assert that they are not constrained by a particular interdict, saying *that*

interdict alone to be general when a kingdom, or at least a whole province, is subjected to interdict. *On account of this, justice is more often destroyed and the sentences of prelates are held in contempt, since they celebrate divine offices in other provinces under interdict and, while the organs of others are suspended, they themselves, with bells rung and doors open, indiscriminately receive any persons whatever to divine offices.* But since nothing is expressly said in the privileges about a kingdom or province, we will that under the name of land not only a kingdom or province be understood, but also a town and castle, so that in these too that which is said concerning a general interdict has place: namely, that when a town or castle is subjected to a general interdict, the form of the privilege written above ought to be observed. [*Given at the Lateran, the seventh day before the Ides of February,* 1199.]

> Generale dicitur interdictum, quod fertur nedum in provinciam, sed in villam vel castrum.
>
> Idem Colubriensi et aliis Episcopis in regno Portugaliae constitutis.
>
> Quum in partibus vestris *peccatis exigentibus* saepe contingat diversa loca interdicto supponi, quando generale vel particulare dici debeat interdictum, apud vos accepimus in dubium revocari, quum illi, qui ab ecclesia Romana decorari privilegio meruerunt, videlicet, ut, quum generale interdictum terrae fuerit, liceat eis, ianuis clausis, non pulsatis campanis, exclusis excommunicatis et interdictis, suppressa voce divina officia celebrare, interdicto particulari se asserant non arctari, dicentes *illud* interdictum generale duntaxat, quum regnum, vel saltem provincia tota subiicitur interdicto. *Propter quod et iustitia saepius deperit, et praelatorum sententiae contemnuntur, quum in aliis provinciis interdictis divina celebrent, et, suspensis organis aliorum, ipsi pulsatis campanis et apertis ianuis quoslibet passim recipiant ad divina.* Quum autem in privilegiis de regno vel provincia nil expresse dicatur, nomine terrae non solum regnum vel provinciam intelligi volumus, verum etiam villam et castrum, ut et in his locum habeat quod de generali dicitur interdicto, videlicet ut, quum villa vel castrum generali subiicitur interdicto, praescripta privilegii forma debeat observari. [*Dat. Lat. VII. Id. Febr.* 1199.]

Chapter XVIII

Latin source headnote: A privilege against a custom opposing the common law is to be interpreted broadly. This is what it says according to the understanding of the ancient abbot, and it is a notable case according to this understanding.

The same, to the Bishop of Auxerre.

Since by the kindness of the Apostolic See it was granted to you that the ordering of the property of clerics dying intestate should remain *freely* in your *power and* disposition, *wishing to remove every occasion of scandal that has sometimes arisen between you and your people concerning two matters*, you wished to consult us, *first,* whether the appellation of the word "clerics" extends as much to canons as to non-canons; *second, whether those who commit their last will to the will and disposition of another, ordering or determining nothing at all by themselves about what ought to be conferred upon what place or person, are said to die intestate. Therefore, to the first* Consultation of yours we respond in this manner: that the appellation of clerics comprehends not only others but also canons. *Concerning the second, etc.* (*cf. c.* 13, *On Testaments, III.* 26.) [*Given at the Lateran,* 1202.]

> Privilegium contra consuetudinem, iuri communi obviantem, large est interpretandum. H. d. secundum intellectum abbatis antiqui, et est casus not. secundum hunc intellectum.
>
> Idem Altissiodorensi Episcopo.

Quum tibi de benignitate sedis apostolicae sit indultum, quod ordinatio rerum clericorum ab intestato decedentium *libere* in tua *potestate ac* dispositione permaneat, *volens omnem materiam scandali removere, quod aliquando inter te et tuos est subortum super duobus*, nos consulere voluisti, *primo*, an appellatio vocabuli clericorum tam ad canonicos quam ad non canonicos extendatur; *Secundo, an illis, qui in voluntate et dispositione alterius suam committunt ultimam voluntatem, nil per se penitus ordinantes nec determinantes, quid cui loco vel personae conferri debeat, dicentur decedere intestati. Primae igitur* Consultationi tuae taliter respondemus, quod appellatio clericorum non solum alios, sed etiam canonicos comprehendit. *In secunda etc. *(*cf. c. *13. *de testam. III.* 26.) [*Dat. Lat.* 1202.]

Chapter XIX

Latin source headnote: One swearing to obey the prelate and the church is bound to obey not the diocesan clergy, but the chapter of the cathedral church.

The same, to the Provost and Chapter of Piacenza.

Since the clerics of Piacenza furnish an oath under this form of words: "I, such a one, from this hour henceforth shall be faithful and obedient to the *holy* church of Piacenza and to my lord, the Bishop of Piacenza," you wished to consult us *by your letters* whether the clergy of the whole diocese or only the chapter of the cathedral church ought to be understood. We therefore respond *to your discretion by the present page* in this manner: that by the word "church of Piacenza" in the form of the oath written above, the clergy of the whole diocese ought not to be understood; and if the chapter of the cathedral church is understood, nevertheless he who furnishes an oath of this kind is principally obligated to the bishop as to the head. [*Given at Ferentino, the sixth day before the Nones of July,* 1203.]

Iurans obedire praelato et ecclesiae, non clero dioecesano, sed capitulo ecclesiae cathedralis obedire tenetur.

Idem Praeposito et Capitulo Placentino.

Quum clerici Placentini iuramentum praestant sub hac forma verborum: "Ego talis ab hac hora in antea fidelis ero et obediens *sanctae* Placentinae ecclesiae, et domino meo, episcopo Placentino," *per vestras nos literas* consulere voluistis, utrum intelligi debeat clerus totius dioecesis, an capitulum tantum ecclesiae cathedralis. Nos igitur *discretioni vestrae praesenti pagina* taliter respondemus, quod per ecclesiae Placentinae vocabulum in forma iuramenti praescripti non debeat intelligi totius dioecesis clerus; et, si capitulum intelligatur ecclesiae cathedralis, is tamen, qui praestat huiusmodi iuramentum, episcopo, tanquam capiti, principaliter obligatur. [*Dat. Ferentini VI. Non. Iul.* 1203.]

Chapter XX

Latin source headnote: Under the appellation of ecclesiastical censure are comprehended excommunication, suspension, and interdict.

The same, to the Prior of Saint Fridianus at Lucca.

To one asking what ought to be understood by ecclesiastical censure when we place a clause of this kind in our letters, we respond that by it not only a sentence of interdict, but also of suspension and excommunication can be understood, unless the discerning judge, having investigated the circumstances of things and persons, renders that which he shall see to be more expedient.

Appellatione ecclesiasticae censurae comprehenditur excommunicatio, suspensio et interdictum.

Idem Priori S. Fridiani Lucani. Quaerenti, quid per censuram ecclesiasticam debeat intelligi, quum huiusmodi clausulam in nostris literis apponimus, respondemus, quod per eam non solum interdicti, sed suspensionis et excommunicationis sententia valeat intelligi, nisi iudex discretus, rerum et personarum circumstantiis indagatis, ferat quam magis viderit expedire.

Chapter XXI

Latin source headnote: In privileges concerning tithes of newly broken lands not to be paid, that is called newly broken land of whose cultivation there is no memory, and which previously brought forth little or no fruit.

The same, to the Bishop of Zaragoza.

Your fraternity asked *of us* what ought to be understood by the word "newly broken land." Although some have said that newly broken land is land cut, which lies fallow for a year, while others assert that land brought under cultivation from a forest after the trees have been uprooted is said to become newly broken land, each of which interpretations is gathered from the civil laws, We therefore respond to your inquiry *in this manner*: that we believe the intention of our predecessors, when they granted to pious places an indulgence concerning newly broken lands, to have been that they understood by newly broken land a field newly brought under cultivation, concerning which there exists no memory that it had ever been cultivated. But neither do we believe that an indulgence was granted to them concerning every such newly broken land, but only concerning that one whose tithe a religious convent can retain without grave detriment to the parochial church, since there is often such uncultivated land from which the parochial church receives great revenues by reason of tithes. [*Given at Viterbo, the eleventh day before the Kalends of September, in the tenth year,* 1207.]

In privilegiis de decimis novalium non solvendis illud appellatur novale, de cuius cultura non est memoria, et quod prius modicum vel nullum fructum afferebat.

Idem Caesaraugustano Episcopo.

Quid per "novale" vocabulum intelligi debeat, *a nobis* tua fraternitas requisivit. Licet autem quidam dixerint, quod novale sit terra praecisa, quae anno cessat, aliis asserentibus, quod ex silva, quae arboribus exstirpatis ad cultam redigitur, fieri novale dicatur, quarum utraque interpretatio ex civilibus legibus colligitur: Nos igitur inquisitioni tuae *taliter* respondemus, quod eam credimus praedecessorum nostrorum intentionem fuisse, quum piis locis indulgentiam de novalibus concesserunt, ut novale intellexerint agrum, de novo ad cultum redactum, de quo non exstat memoria, quod aliquando cultus fuisset. Sed nec de quolibet tali novali credimus eis indulgentiam fore concessam, nisi de illo duntaxat, cuius decimam religiosus potest conventus absque gravi detrimento parochialis ecclesiae detinere, quum talis sit saepe locus incultus, de quo parochialis ecclesia magnos percipit decimarum ratione proventus. [*Dat. Viterbii XI. Kal. Sept. Ao. X.* 1207.]

Chapter XXII

Latin source headnote: If a church subject to a bishop is united to another, or is committed to it to be governed, with the right of the mother church preserved, by "mother church" the cathedral, and not the Roman Church, is understood.

The same, to Abbot F. and B., Monks of Alcobaça.

We learned, from our venerable brother the Bishop of Coimbra complaining, that, when the brothers of the Holy Cross recently received under their protection the monastery of Argar, which had been accustomed from ancient times to exhibit episcopal rights to his predecessors, now, after one of their canons had been made prior there without his consent, on the occasion of a certain privilege obtained from Pope C. *of good memory, our predecessor*, with the truth suppressed, it denies that it should exhibit *due* obedience to that bishop, taking from this the occasion that by "mother church" it understands not the cathedral but the Roman Church. *But because it is not our intention that the rights of our brothers in our times* [*unduly*] *be diminished, we have deemed that the case itself should be committed to you.* Therefore, *by apostolic writings* we command that, if nothing else occurs to you on account of which the said prior ought not to answer to the diocesan bishop, you compel him by ecclesiastical censure to furnish that obedience to him just as his predecessors furnished it to the predecessors of the bishop, notwithstanding the privilege obtained by surreption to the prejudice of the Church of Coimbra. For we will that by "mother church" the cathedral church be understood, not the Roman Church. [*But if not all, etc. Given at Rome, the third day before the Kalends of June,* 1198.]

> Si ecclesia, subiecta episcopo, unitur alteri, vel gubernanda committitur, salvo iure matricis ecclesiae: per matricem ecclesiam intelligitur cathedralis, et non Romana.
>
> Idem Abbati F. et B. Monachis Alcobaciae.
>
> Venerabili fratri nostro Colubriensi episcopo didicimus conquerente, quod, quum fratres sanctae Crucis monasterium de Argariis sub protectione sua nuper receperint, quod suis praedecessoribus episcopalia iura consueverat ab antiquis temporibus exhibere, nunc quodam de canonicis suis sine suo consensu ibi facto priore, occasione cuiusdam privilegii, a *bonae memoriae* C. Papa *praedecessore nostro* veritate tacita impetrati, eidem episcopo *debitam* obedientiam denegat exhibere, inde sumpta occasione, quod per matricem ecclesiam non cathedralem intelligit, sed Romanam. *Quia vero non est nostrae intentionis, ut iura fratrum nostrorum temporibus nostris* [*indebite*] *minuantur, causam ipsam vobis duximus committendam*. Ideoque *per apostolica scripta* mandamus, quatenus, si aliud vobis non occurrerit, propter quod dictus prior non debeat dioecesano episcopo respondere, vos eum ad eam praestandam eidem, sicut praedecessores sui praedecessoribus episcopi praestiterunt, per censuram ecclesiasticam compellatis, non obstante privilegio in praeiudicium Colubriensis ecclesiae per subreptionem obtento. Nos enim per matricem ecclesiam cathedralem intelligi volumus, non Romanam. [*Quod si non omnes etc. Dat. Romae III. Kal. Iun.* 1198.]

Chapter XXIII

Latin source headnote: One excommunicated or interdicted for contumacy or a doubtful offense is absolved after security has been furnished that he will stand by the law. But if he was excommunicated or interdicted for a manifest offense, then he ought first to make satisfaction before he is absolved. And that is called manifest which is established through confession, lawful proof, or the evidence of the thing. This is what it says, together with the following chapter.

The same, to the Abbot of Saint Geneviève, and the Dean and Chancellor of Paris.

On behalf of the beloved daughter in Christ, *the noble woman* the Countess of Blois, those *sent to our presence sought that a hearing be exhibited to her, so that we might hear the injuries that the Church of Chartres inflicts upon her and her people; to them, and to the beloved son S. de Bero, canon of Chartres, who stood for that church, we gave as auditor the beloved son R., cardinal priest of the title of Saint Anastasia. In his presence* the envoys of the countess Alleged that, when the provost *of the countess of La Ferté in the town of Nolis* had

seized a certain robber *who had committed theft*, and justice had thereupon been done, the robber was demanded *from the bailiffs of the countess* by the chapter of Chartres after justice had been done, because they said that he had been captured in their land; *the bailiffs asserting to the contrary that he had been captured in land in which the same countess has the right to capture robbers and other malefactors, because her husband, before he assumed the sign of the cross, was in possession of that right, so that in the place in which the chapter itself said that the robber had been captured, he possessed jurisdiction of this kind; which they were prepared to prove*. But when the countess offered security concerning this that she would obey the law, the canons of Chartres nevertheless caused her land to be placed under interdict, which they were unwilling to relax unless amends were first paid. *Thereafter our venerable brother the Bishop of Chartres, having been requested concerning this and diligently admonished by letters of his metropolitan that he absolve the land of the countess in such manner as by law he could and ought, refused to do this, having been prohibited by the aforesaid chapter.* For they said that *this* was contained in the privileges of the Church of Chartres: that it was lawful for no one to grant the benefit of absolution without fitting satisfaction to persons excommunicated or expressly interdicted on behalf of the canons of Chartres. *But the envoys of the countess, seeing that after security had been given they could not be absolved as they ought, appealed to the hearing of the metropolitan concerning this as well as other cases litigated between the countess and the chapter, placing both the countess herself and her land and bailiffs under his protection.* [*Meanwhile the Dean of Châteaudun addressed the provost of the countess at Châteaudun so that he would take care to return or restore on security the property of a certain man that he had seized. When he was prepared to restore it on security, the dean, after first inspecting certain letters that he had received on behalf of the chapter of Chartres, was unwilling that the provost himself restore that property on security, but that he return it absolutely. The provost, unwilling to do this lest the right of the countess perish in this matter, prohibited the dean from proceeding further and sent forth a voice of appeal to the hearing of the metropolitan, placing the land of the countess and her bailiffs under his protection and fixing a day for the appeal. But on the next day the dean, just as he had addressed the provost, addressed the castellan of Châteaudun, who, after giving him a similar response, appealed, promising with the provost himself concerning this to stand by the mandate of the church. But the dean, asserting that he had received a mandate from the chapter, placed that castle under interdict in the evening. Therefore, when the parties had been cited by the metropolitan and constituted in his presence, the proctor of the aforesaid countess, complaining on her behalf, alleged that the chapter of Chartres so aggrieved her, although she had not been cited or requested in anything, that it repeatedly placed her land under interdict for any cause whatever without requesting her in any way. He also complained that, when she herself or her bailiffs were cited in the cases of the chapter to answer before the ordinary judge, they were now compelled to answer in the chapter; and that, when the castle of La Ferté had been unjustly placed under interdict, they were unwilling to receive from her the sufficient security to obey the law that she offered, although she was also prepared to prove that she had exercised her own right. They complained further that Châteaudun had been interdicted after the appeal, and she offered suitable proof that in seizing the aforesaid property the countess had exercised her own right, namely that right in whose possession her husband was at the time when he assumed the cross. Furthermore, when certain witnesses had been received concerning this at Paris by the metropolitan, and the proctor of the countess insistently sought that he absolve the land after sufficient security had been received, the proctor of the chapter said to the contrary that it was lawful neither for the metropolitan nor another to absolve the land, alleging the tenor of the aforesaid privilege and wishing to produce witnesses concerning this, just as the countess had produced them. Therefore, another day having been assigned to the parties at Noliacum so that they might produce witnesses and exhibit the privilege,*] *The metropolitan, when the parties were present on the appointed day, having diligently inspected the privilege, received witnesses on each side. After they had been examined by an official of the*

metropolitan and another day assigned to the parties, the proctor of the countess insistently sought that the depositions received be published, offering abundantly sufficient security to obey the law, so that the sentence of interdict might be relaxed. But the proctor of the chapter alleged to the contrary that by reason of the aforesaid privilege the land could neither be nor ought to be absolved by him unless amends had first been made to the chapter, interpreting that expression contained in the privilege, namely "fitting satisfaction," as amends. Therefore, after litigation at length concerning a clause of this kind, the aforesaid metropolitan pronounced interlocutorily that he wished to reserve an exposition of this kind to apostolic examination, and concerning this assigned a day to the parties. [*Nevertheless, by reason of the aforesaid appeal, he wished to take cognizance by himself or by his official whether those castles had been interdicted unjustly or lawfully. Therefore, when the proctor of the aforesaid countess pressed that, after security had been received and the depositions published, the sentence of interdict be relaxed, the aforesaid Simon, with the proctor of the chapter, sought delays so that they might produce other witnesses to prove that what they had done was just. When these had been granted to him, the proctor of the countess, pressing on the day assigned to the parties concerning this, as he had done more often, sought that the depositions be published and the sentence of interdict relaxed, after security had been received. But the proctor of the chapter, having been asked whether he wished to show through proof before the officials of the aforesaid metropolitan that what the chapter had done concerning this was just, constantly asserted both that he wished to prove nothing and that he would not hear the depositions of the adverse party; but he appealed lest they absolve the land, fixing as the term of his appeal the octave of blessed Martin most recently past. The officials, indeed, attending that an appeal of this kind was not to be deferred to, after receiving security up to one hundred marks to obey the law, absolved the aforesaid land. Therefore the aforesaid Simon, since he did not have the letters of procuration, after assigning as sureties the beloved sons the Abbot of Saint John de Valeta and Thomas, Archdeacon of Dreux, to be condemned in the penalty of one hundred marks if the chapter were unwilling to hold ratified what he himself should do, alleged to the contrary, asserting that, when the aforesaid castles had been interdicted on behalf of the chapter of Chartres, it had been alleged before the metropolitan on behalf of that chapter that by reason of that clause, which is expressed above, he could not and ought not to absolve the land interdicted on their behalf; on account of which he reserved the interpretation of that clause to apostolic examination, but, wishing to take cognizance whether the interdict had been rendered justly or unjustly, assigned a day to the parties. But when the same metropolitan was on the point of coming to the Apostolic See, Master I., his official, whom he had deputed as auditor over the business brought before him, was challenged as suspect by the proctor of the chapter on account of manifest causes which he did not believe to be unknown to the metropolitan himself; but the metropolitan did not remove him altogether from the case, but rather joined to him the Archdeacon of Autun, no mention then having been made of joining another, the parties being present and the archdeacon present and furnishing consent through silence. But afterward the same metropolitan, in place of the archdeacon, as was said by the other party, joined Geoffrey, canon of Sens, if the archdeacon could not be present. Whence the proctor of the chapter, seeing the aforesaid master, who had been challenged, and the said Geoffrey, whom he did not know to have been joined in place of the archdeacon, sitting to take cognizance of the case, asserted that in the absence of the archdeacon he was not bound to answer or make allegations, and contradicted those wishing to proceed without him, interposing a voice of appeal to the Apostolic See. And since it was not lawfully established that Geoffrey had been substituted in place of the archdeacon—through whom the suspicion of Master I. also would not have been suppressed—nor was it canonically manifest that the archdeacon could not be present, those men, namely Master I. and the said Geoffrey, in contempt of the appeal, relaxed the sentence of interdict after receiving security, contrary to the tenor of the privilege of the Church of Chartres and to the prejudice of the interpretation for which the assigned day was pending. Whence the same Simon said that whatever had been done by them concerning this ought to be revoked as void. But the proctors of the aforesaid countess sought that it be opened*

to them through apostolic interpretation what fitting satisfaction is or how it is to be understood, since on the occasion of this word the canons of Chartres place the land of that countess under interdict when and how they will, and are unwilling that the sentence be relaxed until amends proceed. Moreover, although the countess herself is present in the town that they wish to place under interdict, she is nevertheless neither summoned by them nor lawfully cited; rather, when it pleases them, they summon the provost or one of the bailiffs, saying to him: "Either you will do thus, or we will place the land under a sentence of interdict." And when it is alleged to them on behalf of the countess that what they seek pertains to the jurisdiction of the countess, and they offer to stand by the mandate of the church, they nevertheless interdict the land. And if at any time someone on behalf of the countess is cited by the ordinary judge concerning this on account of the complaint of the chapter, they do not permit him to answer except in the chapter of Chartres. Whence the proctors themselves sought that justice be exhibited to the countess concerning these grievances and others. We therefore, having diligently heard these and other things that were alleged before the cardinal himself, because it was not established for us whether the appeal was lawful, command your discretion by apostolic writings that, after the parties have been convoked and witnesses received on each side, since the production of witnesses has not yet been renounced on either side, you take care sufficiently to examine the case itself and, with the obstacle of appeal removed, terminate it with a canonical end. But if the chapter is unwilling to hold the act of Simon ratified, by our authority, with the obstacle of appeal removed, you are to condemn the aforesaid sureties to the penalty named and cause what you shall establish to be firmly observed through ecclesiastical censure, reducing to a void whatever was wrongly attempted against the countess herself on behalf of the chapter after her envoys undertook the journey to come to the Apostolic See.] But for understanding the clause of the privilege mentioned, we believe a distinction is to be made whether a sentence of interdict or excommunication was rendered against someone for contumacy alone, namely because, when cited, he was unwilling to stand by the law, or also for an offense, namely because, when commanded, he was unwilling to amend the wrongful act. In the first case we believe that fitting satisfaction is made for a sentence *of this kind* to be relaxed if sufficient security to stand by the law is first given; but in the second *case*, if the offense is manifest, we do not believe that fitting satisfaction is made for the sentence to be relaxed unless sufficient amends are first furnished. But if the offense is doubtful, we believe that competent security for obeying the mandate of the church suffices for relaxing the same sentence. [*But if, etc. Given at Rome on the Kalends of April, in the eighth year,* 1205.]

> Excommunicatus vel interdictus pro contumacia vel offensa dubia absolvitur cautione praestita de stando iuri. Si vero fuit excommunicatus vel interdictus pro manifesta offensa, tunc prius debet satisfacere, antequam absolvatur. Et dicitur manifesta, de qua constat per confessionem vel probationem legitimam vel rei evidentiam. H. d. cum cap. sequ.
>
> Idem Abbati sanctae Genovefae, Decano et Cancellario Parisiensibus.
>
> Ex parte in Christo dilectae filiae *nobilis mulieris* comitissae Blesensis, *ad nostram praesentiam destinati, sibi postularunt audientiam exhiberi, ut audiremus iniurias, quas ei et suis infert ecclesia Carnotensis, quibus et dilecto filio S. de Bero canonico Carnotensi, qui pro ipsa stabat ecclesia, dilectum filium R. tit. S. Anastasiae presbyterum cardinalem dedimus auditorem. In cuius praesentia* Proposuerunt nuncii comitissae, quod, quum ipsius *comitissae* praepositus *de Firmitate de villa Nolis* quendam latronem ceperit, *qui furtum commiserat*, et iustitia fuerit inde facta, latro fuit *a comitissae ballivis* per capitulum Carnotense post factam iustitiam requisitus, quia eum in terra sua captum fuisse dicebant, *asserentibus ballivis e contra, ipsum fuisse captum in terra, in qua ius capiendi latrones et alios malefactores habet eadem comitissa, quoniam vir eiusdem, antequam signaculum crucis assumeret, erat in possessione iuris illius, ut in loco illo, in quo captus ab ipso capitulo dicebatur, huiusmodi iurisdictionem haberet; quod erant probare parati*. Verum quum super hoc de parendo iuri comitissa cautionem offerret, canonici Carnotenses nihilominus terram eius fecerunt interdicto supponi, quod

relaxare noluerunt, nisi prius solveretur emenda. *Consequenter venerabilis frater noster Carnotensis episcopus super hoc requisitus, et per literas metropolitani sui monitus diligenter, ut terram comitissae taliter absolveret, sicut de iure poterat et debebat, idem, a capitulo iam dicto prohibitus, hoc facere recusavit*. Dicebant enim, *hoc* in Carnotensis ecclesiae privilegiis contineri, quod nemini liceat excommunicatis vel nominatim interdictis pro canonicis Carnotensibus absque congrua satisfactione absolutionis beneficium indulgere. *Videntes autem nuncii comitissae, quod data cautione absolvi non poterant, ut deberent, tam, super hoc quam aliis causis, inter comitissam et capitulum agitatis, metropolitani audientiam, appellaverunt, tam ipsam comitissam quam terram et ballivos ipsius sub eius protectione ponentes.* [*Interim decanus de Castroduni comitissae praepositum Castroduni convenit ut res hominis cuiusdam, quas ceperat, reddere vel recredere procuraret. Qui quum eas paratus esset recredere, decanus, prius literis quibusdam inspectis, quas ex parte capituli Carnotensis receperat, noluit, ut praepositus ipse res illas recrederet sed redderet absolute; quod praepositus nolens efficere, ne ius in hoc comitissae periret decano inhibuit ne ultra procederet, et ad metropolitani audientiam vocem appellationis emisit, terram comitissae et ballivos ipsius sub protectione ponens eiusdem, et diem appellationi praefigens. Decanus vero, in crastinum castellanum Castriduni, sicut praepositus fecerat, requisivit, qui responso ei dato consimili, appellavit, promittens cum ipso praeposito super hoc ecclesiae stare mandato. Decanus autem, asserens mandatum a capitulo recepisse, castrum illud in vespere supposuit interdicto. Partibus itaque a metropolitano citatis et in eius praesentia constitutis procurator comitissae iam dictae pro ipsa proposuit conquerendo, quod capitulum Carnotense eam non citatam, vel requisitam in aliquo, taliter aggravabat, quod terram eius pro qualibet causa, ea nullatenus requisita, interdicto saepius supponebat. Conquestus est etiam, quod quum ipsa, vel eius ballivi pro causis citantur capituli coram ordinario iudice responsuri, iam coguntur in capitulo respondere et quum castrum Firmitatis iniuste fuerit suppositum interdicto, ab ea nolebant de iuri parendo sufficientem quam offerebat recipere cautionem quum etiam esset probare parata, quod iure suo usa fuisset. Conquerebantur insuper, quod Castrumduni post appellationem fuerat interdictum et probationem idoneam offerebat, quod in capiendis rebus iam dictis iure suo usa fuerat comitissa, illo iure videlicet in cuius possessione vir erat ipsius tempore crucis assumptae. Ceterum, quum a metropolitano recepti fuerint super hoc Parisius quidam testes et comitissae procurator ipsius postularet instanter, ut terram absolveret, sufficienti cautione recepta, procurator capituli dicebat econtra, quod metropolitano vel alii terram absolvere non licebat, iam dicti privilegii tenorem allegans, volens super hoc testes producere, sicut produxerat comitissa. Die igitur alio apud Noliacum partibus assignato, ut producerent testes et privilegium exhiberent*] *Metropolitanus, quum partes essent in die praefixa praesentes, privilegio diligenter inspecto testes hinc inde recepit, quibus ab officiali metropolitani examinatis ipsius, et die partibus iterum assignato, procurator comitissae cum instantia postulabat publicari attestationes receptas, ex abundanti de iuri parendo sufficientem offerens cautionem, ut relaxaretur sententia interdicti. Sed procurator capituli e contrario allegabat, quod iam dicti privilegii ratione ab ipso terra non poterat nec debebat absolvi, nisi prius capitulo facta fuisset emenda, interpretando verbum illud, quod in privilegio continetur, videlicet, "satisfactione congrua," pro emenda. Litigato igitur diutius super huiusmodi clausula, interlocutus est metropolitanus iam dictus, se velle huiusmodi expositionem apostolico examini reservare, et super hoc diem partibus assignavit.* [*Voluit tamen cognoscere per se, vel officialem suum, appellationis ratione praedictae, utrum iniuste, an iure castra illa interdicta fuissent. Instante itaque procuratore comitissae praefatae, ut, cautione recepta et attestationibus publicatis, relaxaretur sententia interdicti, praedictus Simon cum procuratore capituli, ut alios testes producerent ad probandum iustum esse quod fecerant, inducias postulavit, quibus concessis eidem, comitissae procurator ipsius, in die partibus super hoc assignato instante, sicut saepius fecerat, attestationes petiit publicari et interdicti relaxari sententiam, cautione recepta. Requisitus autem procurator capituli utrum vellet per probationem ostendere, quod super hoc capitulum fecerat, esse iustum, coram officialibus metropolitani iam dicti, constanter asseruit, nec aliquid se velle probare, nec etiam auditurum attestationes partis adversae, sed ne terram absolverent appellabat, octavas beati Martini proximo praeteritas suae terminum appellationi praefigens. Officiales, si quidem attendentes non esse appellationi huiusmodi deferendum, cautione recepta usque ad centum marcas de iuri parendo, terram absolvere iam dictam. Praefatus igitur Simon, quum procuratoris literas non haberet, dilectis filiis, abbate sancti Ioannis de Valeta et Thoma, archidiacano Drocensi, fideiussoribus assignatis, in centum marcarum poena damnandis, si, quod ipse faceret, capitulum ratum habere non vellet, econtra proposuit, asserens, quod quum*

castra praedicta pro Carnotensi capitulo interdicta fuissent, coram metropolitano pro ipso capitulo fuerat allegatum, quod illius clausulae ratione, quae superius est expressa, terram interdictam pro ipsis absolvere non poterat, nec debebat, propter quod clausulae interpretationem eiusdem districtioni apostolicae reservaret, sed, volens cognoscere utrum iuste an iniuste latum fuerit interdictum, diem partibus assignavit. Verum, quum idem in procinctu esset ad sedem apostolicam veniendi, per procuratorem capituli, magister I. officialis ipsius, quem super negotiis delatis ad ipsum deputaverat auditorem, tanquam suspectus est recusatus, propter manifestas causas, quas ipsi metropolitano non esse credebat ignotas, sed metropolitanus ipsum non removit prorsus a causa, imo ei archidiaconum Eduensem adiunxit, tunc de alio adiungendo non habita mentione, praesentibus partibus, archidiaconoque praesente ac per taciturnitatem praebente consensum. Postmodum vero, idem metropolitanus loco archidiaconi, sicut a parte altera dicebatur, Gaufridum, canonicum Senonensem adiunxit, si archidiaconus interesse non posset. Unde procurator capituli videns praefatum magistrum, qui fuerat recusatus, et dictum Gaufridum quem loco archidiaconi nesciebat adiunctum, ut de causa cognoscerent, residentes, asseruit, se absente archidiacono respondere vel proponere non teneri, et procedere sine ipso volentibus contra dixit, vocem appellationis ad sedem apostolicam interponens. Quumque legitime non constaret, illum Gaufridum loco archidiaconi substitutum, per quem etiam magistri I. suppressa suspicio non fuisset, nec archidiaconum interesse non posse canonice manifestum exsisteret, ipsi, videlicet magister I. et dictus Gaufridus, appellatione contempta, relaxarunt sententiam interdicti, cautione recepta, contra tenorem privilegii ecclesiae Carnotensis, in praeiudicium interpretationis, cuius dies assignata pendebat. Unde, idem Simon quidquid per eos super hoc factum erat, debere dicebat in irritum revocari. Procuratores autem comitissae iam dictae petebant sibi quid sit satisfactio congrua, vel qualiter intelligenda sit per interpretationem apostolicam aperiri, quum huius occasione vocabuli canonici Carnotenses quando et quomodo volunt, comitissae terram eiusdem interdicto supponunt, nec velint sententiam relaxari, donec procedat emenda. Insuper etiam, licet ipsa comitissa sit praesens in villa, quam ipsi volunt supponere interdicto, non erit tamen vocata per eos nec citata legitime, immo, quum placet eis, vocant praepositum, vel aliquem de ballivis, illi dicentes: Aut tu facies ita, vel nos terram interdicti sententiae supponemus; et quum ex parte comitissae proponatur ab eis, hoc, quod ipsi postulant, ad iurisdictionem comitissae spectare, et se offerunt ecclesiae stare mandato, ipsi terram nihilominus interdicunt, ac, si quando super hoc aliquis ex parte comitissae pro querela capituli a iudice ordinario est citatus, non permittunt, quod ipse respondeat, nisi in capitulo Carnotensi, unde procuratores ipsi super gravaminibus istis et aliis eidem comitissae postulabant iustitiam exhiberi. Nos igitur, his et aliis quae coram ipso cardinale fuere proposita, diligenter auditis, quia nobis non constitit utrum legitima fuerit appellatio, discretioni vestrae per apostolica scripta mandamus, quatenus, partibus convocatis et testibus utrinque receptis, quum nondum sit productioni testium renuntiatum hinc inde causam ipsam sufficienter examinare curetis, eamque, sublato appellationis obstaculo, fine canonico terminare. Si vero capitulum factum ipsius Simonis ratum habere noluerit, vos fideiussores praedictos ad poenam nominatam, auctoritate nostra sublato appellationis obstaculo, condemnetis et faciatis quod statueritis per censuram ecclesiasticam firmiter observari, reducentes in irritum quidquid contra ipsam comitissam, postquam ipsius nuntii iter arripuerunt ad sedem apostolicam veniendi, ex parte capituli perperam fuerit attentatum.] Ad intelligendam autem clausulam privilegii memorati credimus distinguendum, utrum in aliquem interdicti vel excommunicationis sententia sit prolata pro contumacia tantum, quia scilicet citatus stare noluit iuri; vel etiam pro offensa, quia videlicet iussus noluit maleficium emendare. In primo casu credimus congrue satisfieri, ut *huiusmodi* sententia relaxetur, si prius sufficiens standi iuri cautio tribuatur; in secundo vero *casu*, si offensa est manifesta, non credimus satisfieri congrue, ut relaxetur sententia, nisi prius sufficiens praestetur emenda. Si vero dubia est offensa, sufficere credimus ad relaxandam eandem, si parendi mandato ecclesiae competens satisfactio praebeatur. [*Quod si etc. Dat. Romae Kal. April. Ao. VIII. *1205.]

Chapter XXIV

Latin source headnote: It is summarized in the preceding chapter above; or say: that is called manifest which is established through confession, lawful proof, or the evidence of the thing.

The same, to the Countess of Blois.

Since formerly on behalf of the canons of Chartres a certain chapter was alleged against you, which they said was contained in the privileges of their church—namely, that it is lawful for no one to grant the benefit of absolution, without fitting satisfaction, to persons excommunicated or expressly interdicted on behalf of the canons of Chartres—[*because it was brought into question what fitting satisfaction would be, we recall that, for understanding that clause, we made a distinction whether a sentence of interdict or excommunication had been promulgated against someone for contumacy alone, namely because when cited he was unwilling to stand by the law, or also for an offense, namely because when commanded he was unwilling to amend the wrongful act; believing in the first case that fitting satisfaction was made for a sentence of this kind to be relaxed if sufficient security to stand by the law were furnished; but in the second, if the offense were manifest, saying that fitting satisfaction was by no means made for the sentence to be relaxed unless sufficient amends were first exhibited; and if perhaps it were doubtful, deeming it sufficient for relaxing the same sentence if fitting security for obeying the mandate were furnished.*] But because, while we loosen a handle, we are not yet said to have bound, on account of the fact that, when those same canons allege, as you assert, that offense to be manifest, it appears manifest not to the judge nor to another but to themselves alone, *a greater scruple of a question arose from that expression, namely "manifest"; inclining to your humble prayers*, we write back that we understand that offense to be manifest which has become known either through confession or lawful proof, or [*even*] by the evidence of the thing, which can be concealed by no evasion. [*Given at the Lateran, the eighth day before the Kalends of June, in the tenth year,* 1207.]

> Summatum est supr. cap. proximo; vel dic: manifestum dicitur, quod per confessionem vel probationem legitimam vel evidentiam rei constat.
>
> Idem Comitissae Blesensi. Quum olim pro canonicis Carnotensibus quoddam capitulum contra te fuerit allegatum, quod dicebant in ecclesiae suae privilegiis contineri, ut videlicet nemini liceat excommunicatis vel nominatim interdictis pro canonicis Carnotensibus absque congrua satisfactione absolutionis beneficium indulgere, [*quoniam fuit in quaestionem deductum, quae foret congrua satisfactio, ad intelligendum clausulam illam meminimus distinxisse, utrum in aliquem esset interdicti vel excommunicationis sententia promulgata pro contumacia tantum, quia videlicet citatus noluit stare iuri, vel etiam pro offensa, quia videlicet iussus noluit maleficium emendare, in primo casu credentes congrue satisfieri, ut huiusmodi relaxaretur sententia, si sufficiens standi iuri cautio praeberetur, in secundo vero, si manifesta foret offensa, dicentes, nequaquam satisfieri congrue, ut relaxaretur sententia, nisi prius sufficiens exhiberetur emenda, et si forsitan esset dubia, sufficere reputantes ad relaxandum eandem, si parendi mandato congruens satisdatio praeberetur.*] Quia vero, dum ansam solvimus, nondum dicimur ligavisse, propter hoc, quod, eisdem canonicis, velut asseris, proponentibus, illam offensam esse manifestam, non quae iudici, nec quae alii, sed quae sibi tantummodo manifesta videtur: *maior ex illa dictione, videlicet: "manifesta," scrupulus quaestionis emersit, tuis humilibus precibus inclinati* offensam illam nos rescribimus intelligere manifestam, quae vel per confessionem, vel probationem legitime nota fuerit, aut [*etiam*] evidentia rei, quae nulla possit tergiversatione celari. [*Dat. Lat. VIII. Kal. Iun. Ao. X.* 1207.]

Chapter XXV

Latin source headnote: The words of privileges ought to be understood so that they assert something and no ambiguity remains; and therefore the words "according to" and "in accordance with" appear to have been added causally, not conditionally. This is what it says, according to Panormitanus.

The same, to the Bishop and Cantor of Arras.

When the abbot of Saint Silvanus at Auchy had *formerly* entered the way of all flesh, and the monks of that place had elected as abbot a certain person from the bosom of that church, but had been unable in any way to obtain confirmation of *that* election from the Bishop of Thérouanne *of good memory*, they sought it from the Apostolic See *through their proctor*. But the proctor of the monastery of Saint Bertin proposed to the contrary that, since according to approved custom and privileges of the Roman Pontiffs the abbots of Auchy ought always to be taken from the monastery of Saint Bertin, an election of this kind was deservedly to be disapproved, as attempted against long-standing custom and against a privilege of the Apostolic See, and the monks of Auchy ought by law to be compelled to elect for themselves as abbot a suitable person from the monastery of Saint Bertin. (*And below:*) We therefore, having diligently inspected the depositions of witnesses *produced before judges delegated by us*, found it to be *sufficiently* proved that for forty years and less the monks of Auchy had elected for themselves an abbot from the monastery of Saint Bertin, *in such manner that within the span of the time written above seven persons were taken from the aforesaid community as abbots of Auchy.* (*And below:*) And when on a certain occasion they had elected Guarin, a monk of Auchy, his election could have no force until, after profession had been made at the monastery of Saint Bertin, after some time, namely when it pleased the abbot and convent of that place, he was taken as abbot of Auchy. From the privileges of the Roman Pontiffs *granted to the monastery of Saint Bertin* it could also be argued *evidently* that the abbot of Auchy was to be elected from the college of Saint Bertin. For in a privilege of Pope Paschal *of happy memory, our predecessor*, a chapter of this kind appears inserted: "We grant that the substitution of the abbot among the monks of Saint Silvanus at Auchy shall always remain in your disposition in accordance with the custom of past time," *to whose words Pope Innocent of good memory, our predecessor, adhered completely.* In a privilege of *Pope Calixtus II*, a chapter of this kind is also found: "Moreover, in accordance with the decree of Pope Paschal, *our lord predecessor of holy memory*, by apostolic authority we decree that the substitution of the abbot among those of Auchy be made from nowhere other than your monastery." But to this the opposing party responded that, even if it were proved *evidently through the depositions of witnesses* that within the aforesaid span of time the abbot of Auchy had always been taken from the monastery of Saint Bertin, nevertheless *no prejudice was thereby prepared for the monks of Auchy, since this was done from no necessity, but from free will.* (*And below:*) *But* it could not be said that *from this* some custom had been introduced as though by a contradictory judgment, since in the election of the aforesaid Guarin the proceeding is known to have taken place in such a manner outside judgment for the sake of peace. (*And below:*) Moreover, since Pope Paschal deemed that the substitution of the abbot of Saint Silvanus should be granted to the monastery of Saint Bertin in accordance with the custom of past time, and proof is not made concerning the custom of past time *or usage*, no prejudice concerning this could be generated for the monastery of Auchy by his privilege and similar ones. To this it was answered to the contrary that this determination, "according to the custom of past time," can be understood both causally and conditionally, and can be referred as much to a personal as to an impersonal verb. For if it determines the impersonal verb, it is understood conditionally, and *such* is the sense: "We grant that the substitution of the abbot of Saint Silvanus at the monastery of Auchy shall always consist in your disposition, according to the custom of past time," that is, if the custom of past time was such. But if it determines the personal verb, it ought to be understood causally, so that the sense is: "We grant according to the custom of past time," that is, because the custom of past time so obtained, that the substitution *namely of the abbot of Saint Silvanus*

at Auchy shall always consist in your disposition. But this sense appears more correct, because, since a privilege is a private law, and a law ought not to be obscure or captious but certain and manifest, and it would not be private unless it granted something specially, those words assuredly are to be so understood that the matter at issue can be valid rather than perish; especially since the aforesaid Pope C., who succeeded that Paschal as his nearest neighbor, using more equitable words, removed that determination completely so that ambiguity might be removed, and changed what was said in the grant of Paschal—namely, that the substitution of the abbot of Saint Silvanus among those of Auchy should always exist in the disposition of the abbot and brothers of Saint Bertin—decreeing that the substitution of that abbot was to be made from nowhere other than the monastery of Saint Bertin, *so that the election could on one side indeed be reduced to the common law. The subsequent custom, which is said to be the best interpreter of laws, also declares that these same words are to be interpreted in this manner.* Therefore, having diligently heard *these and other things pertaining to the same case*, and *having understood them perspicaciously, by the counsel of our brothers*, we adjudged a dignity of this kind to the monastery of Saint Bertin: that whenever an election of an abbot is imminent in the monastery of Auchy, the monks of Auchy are to elect for themselves as abbot a suitable person from the community of Saint Bertin; namely in such manner that the monastery itself ought to enjoy this prerogative of honor for so long as regular observance flourishes there, so that suitable persons who can be taken as abbot are found in it. [*Therefore, the election, etc. Given at the Lateran, the second day before the Kalends of May, in the twelfth year of our pontificate,* 1209.]

> Verba privilegiorum debent intelligi, ut aliquid asserant, et non remaneat ambiguitas, et ideo verba: "secundum" et "iuxta," videntur apposita causative, non conditionabiliter. H. d. Panorm.
>
> Idem Episcopo et Cantori Atrebatensibus.
>
> Abbate sancti Silvani Alciatensis *olim* viam universae carnis ingresso, quum eiusdem loci monachi elegissent quendam de ipsius ecclesiae gremio in abbatem, et *eiusdem* confirmationem electionis a *bonae memoriae* Morinensi episcopo nequivissent aliquatenus obtinere, *per procuratorem suum* eam a sede apostolica petierunt. Ceterum procurator monasterii sancti Bertini proposuit ex adverso, quod, quum secundum approbatam consuetudinem et privilegia Romanorum Pontificum abbates Alciatenses debeant de monasterio sancti Bertini semper assumi, huiusmodi electio erat non immerito reprobanda, utpote contra consuetudinem diuturnam et contra privilegium sedis apostolicae attentata, et Alciatenses monachi debeant de iure compelli, ut de monasterio sancti Bertini personam idoneam sibi eligerent in abbatem. (*Et infra:*) Nos igitur, depositionibus testium, *coram delegatis a nobis iudicibus productorum*, diligenter inspectis, invenimus, *sufficienter* esse probatum, quod a XL. annis et infra monachi Alciatenses abbatem sibi de S. Bertini monasterio elegerunt, *ita, quod infra praescripti temporis spatium de praefato coenobio septem fuerunt in Alciacenses abbates assumpti.* (*Et infra:*) Et quum quadam vice Guarinum Alciatensem monachum elegissent, eius electio robur habere non potuit, donec apud monasterium S. Bertini professione facta, post aliquantum temporis, quando scilicet eiusdem loci abbati et conventui placuit, in Alciatensem exstitit abbatem assumptus. Ex privilegiis quoque Romanorum Pontificum *monasterio sancti Bertini concessis* argui poterat *evidenter*, Alciatensem abbatem fore de sancti Bertini collegio eligendum. Nam privilegio *felicis recordationis* Paschalis Papae *praedecessoris nostri* huiusmodi capitulum apparet insertum: "Subrogationem abbatis penes monasterium sancti Silvani apud Alciatenses monachos iuxta praeteriti temporis morem in vestra semper concedimus dispositione persistere," *cuius verbis bonae memoriae Innocentius Papa praedecessor noster prorsus inhaesit*. In privilegio etiam Calixti *secundi Papae* huiusmodi capitulum invenitur: "Porro iuxta *domini praedecessoris nostri sanctae memoriae* Paschalis Papae decretum abbatis subrogationem penes Alciaten. non aliunde quam de vestro

monasterio fieri apostolica auctoritate decernimus." Ad hoc autem pars adversa respondit, quod, si etiam *evidenter per depositiones testium* probaretur, quod infra praedicti temporis spatium de monasterio sancti Bertini semper fuerit abbas Alciatensis assumptus, ex hoc *tamen nullum Alciacensi monachis praeiudicium parabatur, quum hoc non ex necessitate aliqua factum fuerit, sed ex libera voluntate. *(*Et infra:*) *Sed* dici non poterat, quod *ex eo* consuetudo aliqua quasi contradicto iudicio fuerit introducta, quum in memorati Guarini electione pro bono pacis extra iudicium processum taliter dignoscatur. (*Et infra:*) Praeterea, quum Paschalis Papa subrogationem abbatis sancti Silvani monasterio S. Bertini iuxta morem praeteriti temporis duxerit concedendam, nec de more praeteriti temporis *seu consuetudine* fiat fides: per eius privilegium et similia nullum super hoc Alciatensi monasterio poterat praeiudicium generari. Contra quod fuit ex adverso responsum, quod haec determinatio, "secundum praeteriti temporis morem," et causalis, et conditionalis potest intelligi, et tam ad personale quam ad impersonale verbum referri. Si enim impersonale verbum determinet, conditionalis intelligitur, et *talis* est sensus: "Concedimus subrogationem abbatis sancti Silvani apud Alciatense monasterium in vestra semper dispositione consistere, secundum praeteriti temporis morem;" id est: si mos praeteriti temporis talis fuerit. Si vero verbum determinet personale, causaliter debet intelligi, ut sit sensus: "Concedimus secundum praeteriti temporis morem," id est: quia mos praeteriti temporis sic obtinuit, surrogationem, *videlicet abbatis S. Silvini apud Aliacum in vestra semper dispositione consistere*. Hic autem sensus rectior esse videtur, quia, quum privilegium sit lex privata, et lex non debeat esse obscura vel captiosa, sed certa et manifesta, nec esset privata, nisi aliquid specialiter indulgeret, profecto sic intelligenda sunt illa verba, ut res, de qua agitur, valere possit potius quam perire, maxime quum supra dictus C. Papa, qui eidem Paschali e vicino successit, verbis aequioribus usus, determinationem illam prorsus amoverit, ut ambiguitas tolleretur, et, quod dicebatur in concessione Paschalis, ut videlicet surrogatio abbatis sancti Silvani apud Alciaten. in dispositione abbatis et fratrum sancti Bertini semper exsisteret, ipse mutaverit, decernens, surrogationem ipsius abbatis non aliunde quam de monasterio sancti Bertini faciendam, *ut electio ad ius commune posset ex una quidem parte reduci. Eadem quoque verba sic esse interpretanda, subsequens consuetudo declarat, quae perhibetur esse legum optima interpres*. His igitur *et aliis, ad eandem causam spectantibus,* diligenter auditis *et perspicaciter intellectis, de consilio fratrum nostrorum* monasterio sancti Bertini adiudicavimus huiusmodi dignitatem, ut, quoties in Alciatensi monasterio abbatis electio imminet facienda, Alciatenses monachi de coenobio S. Bertini personam idoneam sibi eligant in abbatem, ita videlicet, ut tamdiu monasterium ipsum hac honoris debeat praerogativa gaudere, donec ibidem viguerit observantia regularis, ut idoneae personae inveniantur in illo, qui possint in abbatem assumi. [*Quocirca electionem etc. Dat. Lat. II. Kal. Maii Pont. nostr. Ao. XII.* 1209.]

Chapter XXVI

Latin source headnote: It states who are called manifest heretics. Second, what tolls, escort fees, and salt dues are interdicted. Third, it is stated how the precept made to a layman—that he answer those complaining of him in the ecclesiastical forum—is understood. This is what it says.

The same, to the Count of Toulouse.

Since doubt arose among certain persons concerning some articles of the mandates *made to you by Milo of good memory, our notary, then legate of the Apostolic See*, your devotion sought from us who are to be called manifest heretics. Concerning this we have deemed that it should be answered to you that *in this case* those are understood to be manifest heretics who publicly preach against the catholic faith, or profess or defend their error, or who have been convicted or confessed before their prelates, or have been condemned by sentence by them concerning heretical depravity; their own goods are confiscated and they are punished according to lawful sanctions. Moreover, since the legate

mentioned interdicted to you tolls, escort fees, [*and*] salt dues, we have deemed that it should be declared by apostolic authority that those tolls, salt dues, [*and*] escort fees are interdicted that do not appear to have been granted by the largess of emperors or kings or of the Lateran Council, or to have been introduced by ancient custom from a time of which no memory exists. (*And below:*) But since you received in mandate from the legate that you exhibit justice to those complaining of you according to his judgment or that of another legate, an ordinary judge, or [*even*] a delegated judge, we determine that this is to be understood in such a manner that in every case which by reason of persons or things pertains to the ecclesiastical forum, and concerning all the chapters that were established for preserving peace by the *already* mentioned legate, or are to be established by apostolic authority, likewise to widows, wards, orphans, and miserable persons, you are bound to answer in an ecclesiastical judgment. [*We will moreover, etc.; cf. Comp. IV, c.* 1, *On Census, IV.* 18. *Given at the Lateran, the tenth day before the Kalends of February,* (?) 1210.]

> Dicit, qui dicuntur haeretici manifesti. Secundo, quae sint pedagia, guidagia et salinaria interdicta. Tertio dicitur, quomodo intelligitur praeceptum, factum laico, quod de se conquerentibus in ecclesiastico foro respondeat. H. d.
>
> Idem Comiti Tholosano.
>
> Super quibusdam mandatorum articulis, *tibi a bonae memoriae Milone, notario nostro, tunc temporis apostolicae sedis legato, factorum, apud quosdam dubitatione suborta,* tua devotio postulavit a nobis, qui sint dicendi haeretici manifesti. Super quo tibi duximus respondendum, illos *in hoc casu* intelligendos esse manifestos haereticos, qui contra fidem catholicam publice praedicant, aut profitentur, seu defendunt eorum errorem, vel qui coram praelatis suis convicti sunt vel confessi, vel ab eis sententialiter condemnati super haeretica pravitate; quorum bona propria confiscantur, et ipsi iuxta sanctiones legitimas puniuntur. Praeterea, quum pedagia, guidagia [*et*] salinaria tibi legatus interdixerit memoratus: auctoritate apostolica duximus declarandum, illa esse pedagia, salinaria [*et*] guidagia interdicta, quae non apparent imperatorum, vel regum, vel Lateranensis concilii largitione concessa, vel ex antiqua consuetudine a tempore, cuius non exstat memoria, introducta. (*Et infra:*) Quum autem a legato receperis in mandatis, ut de te conquerentibus secundum suum, vel alterius legati, vel iudicis ordinarii, vel [*etiam*] delegati arbitrium iustitiam exhiberes: hoc taliter intelligendum esse censemus, ut in omni causa, quae ratione personarum vel rerum ad ecclesiasticum forum pertinet, ac super universis capitulis, quae pro pace servanda sunt per *iam* dictum legatum statuta, vel auctoritate apostolica statuenda, item viduis, pupillis, orphanis et personis miserabilibus tenearis in iudicio ecclesiastico respondere. [*Volumus insuper etc. cf. Comp. IV. c.* 1. *de cens. IV.* 18. *Dat. Laterani. X. Kal. Febr.* (?) 1210.]

Chapter XXVII

Latin source headnote: A cleric is delivered to the secular court because he is degraded with the secular power present, to which it is announced that it is to receive him into its forum. This is what it says, as far as § "But concerning that man." - § 1. This section does not pertain to the title, but according to some it states an act of grace.

The same, to the Bishop of Paris.

We know that it is expedient that we explain more openly that expression which is contained [*both*] in the ancient canons and in our decree *also* issued against forgers—namely, that a cleric degraded by an ecclesiastical judge is to be delivered to the secular court to be punished. For since certain of our predecessors, when consulted concerning this, gave different answers, and the opinion of certain

persons is approved by more persons, that a cleric who has been degraded on account of this or another grave disgrace, not only damnable but harmful, is consequently attached to the secular forum as one stripped of clerical privilege when he has been cast out from the ecclesiastical forum, his degradation is to be celebrated with the secular power present, and it is *to be* pronounced to it, when the degradation has been celebrated, that it receive the degraded person into its forum; and thus he is understood to be delivered to the secular court. Nevertheless, the church ought efficaciously to intercede for him that the sentence concerning him be moderated short of danger of death. § 1. But concerning that criminal forger whom you caused to be captured at our mandate, we have deemed that you should be counseled to confine him in perpetual prison to do penance, to be sustained on the bread of sorrow and water of distress, so that he may bewail the things committed and not further commit things to be bewailed. [*Given at the Lateran, the fourteenth day before the Kalends of March, in the eleventh year of our pontificate,* 1209.]

> Clericus traditur curiae saeculari, quia degradatur saeculari potestate praesente, cui denunciatur, ut in suum forum illum recipiat. H. d. Usque ad § Pro illo. - § 1. Iste § non facit ad titulum, sed ponit gratiam secundum quosdam.
>
> Idem Episcopo Parisiensi. Novimus expedire, ut verbum illud, quod [*et*] in antiquis canonibus, et in nostro *quoque* decreto contra falsarios edito continetur, videlicet ut clericus, per ecclesiasticum iudicem degradatus, saeculari tradatur curiae puniendus, apertius exponamus. Quum enim quidam antecessorum nostrorum, super hoc consulti, diversa responderint, et quorundam sit opinio a pluribus approbata, ut clericus, qui propter hoc vel aliud flagitium grave, non solum damnabile, sed damnosum, fuerit degradatus, tanquam exutus privilegio clericali saeculari foro per consequentiam applicetur, quum ab ecclesiastico foro fuerit proiectus; eius est degradatio celebranda saeculari potestate praesente, ac pronunciandum *est* eidem, quum fuerit celebrata, ut in suum forum recipiat degradatum, et sic intelligitur tradi curiae saeculari; pro quo tamen debet ecclesia efficaciter intercedere, ut citra mortis periculum circa eum sententia moderetur. § 1. Pro illo vero falsario scelerato, quem ad mandatum nostrum capi fecisti, hoc tibi duximus consulendum, ut in perpetuum carcerem ad agendam poenitentiam ipsum includas, pane doloris et aqua angustiae sustentandum, ut commissa defleat, et flenda ulterius non committat. [*Dat. Lat. XIV. Kal. Mart. Pont. nostr. Ao. XI. *1209.]

Chapter XXVIII

Latin source headnote: If the Pope grants to a defendant, who on account of the absence of the plaintiff cannot recover possession, that the lapse of a year not prejudice him, this indulgence is understood according to the common law.

Honorius III, to the Archbishop of Tours.

The beloved son James Barba, *proctor of the Church of Saint Mark of Venice, having formerly humbly supplicated us that, since he was prepared to exhibit to you the fullness of justice concerning the Church of Saint Mark of Tyre and other things about which a question was moved between you and the Venetians and the vicar of the Venetians, we cause the possession of that church—which by Pope I. of happy memory, our predecessor, was assigned to you for the sake of custody—to be restored to him*, Because, while you were then absent for a necessary cause, the possession delivered to you for the sake of custody could not be restored to the adverse party, *we* granted to him that the lapse of time should not obstruct him from being able to recover that possession. But since so much time is said to have elapsed before the grant of that indulgence that it could suffice for you to produce the effect of true possession according to the statutes of the

general council, *and, if perhaps that time had not elapsed before the aforesaid indulgence, it appears that the same indulgence closes to you the way to true possession, since it is simply contained in it that henceforth the lapse of time is not to obstruct that proctor from being able to recover the possession mentioned, we, whose intention it was to assist the right of the said proctor and that church without injury to you and your church,* By the authority of the present letters declare that it was not our intention through that indulgence to extinguish the right that belongs to you from past possession or, after your return, shall belong to you from future possession. For the adverse party will be able to impute it to itself if it has been negligent in prosecuting its justice, since, when the impediment of your absence ceased, it had the faculty of convening you.

> Si Papa indulget reo, qui propter absentiam actoris possessionem recuperare non potest, quod ei lapsus anni non noceat: intelligitur haec indulgentia secundum ius commune.
>
> Honorius III. Archiepiscopo Turonensi. Dilecto filio Iacobo Barba, *procuratore ecclesiae sancti Marci de Venetiis, olim nobis humiliter supplicante, ut, quum paratus esset tibi iustitiae plenitudinem exhibere super ecclesia sancti Marci de Tyro et rebus aliis, de quibus inter te et Venetos, ac vicarium Venetorum quaestio mota fuit, possessionem ipsius ecclesiae, quae per felicis memoriae I. Papam praedecessorem nostrum tibi fuit causa custodiae assignata, sibi restitui faceremus,* Quia, te pro causa necessaria tunc absente, possessio, tibi tradita causa custodiae, restitui parti adversae non potuit: *nos* eidem indulsimus, ut sibi lapsus temporis non obsisteret, quo minus possessionem ipsam recuperare valeret. Quoniam vero tantum temporis ante concessionem ipsius indulgentiae dicitur effluxisse, quod tibi sufficere posset ad verae possessionis effectum secundum statuta concilii generalis, *et, si forte tempus ipsum ante praedictam indulgentiam non effluxerit, videtur, quod eadem ad veram possessionem viam tibi praecludat, quum simpliciter contineatur in ipsa, quod de cetero ipsi procuratori lapsus temporis non obsistat, quo minus possessionem recuperare valeat memoratam: nos, quorum fuit intentio, iuri dicti procuratoris et ipsius ecclesiae sine tua et ecclesiae tuae iniuria subvenire,* Auctoritate praesentium declaramus, quod nostrae intentionis non fuit per ipsam indulgentiam ius perimere, quod tibi competit ex possessione praeterita, vel post reditum tuum competierit ex futura. Sibi enim imputare poterit pars adversa, si negligens fuerit in sua iustitia prosequenda, quum, absentiae tuae impedimento cessante, conveniendi te habuit facultatem.

Chapter XXIX

Latin source headnote: Under the name of an oblation is understood whatever is offered to a church in any manner, at Mass or outside it, and in a church or outside it.

The same, to the Prior and Clerics of Saints John and Paul at Todi.

When a question was formerly litigated between you on one side and the abbot of Saint P. of Monte in the Diocese of Spoleto on the other concerning the third part of the oblations *and possessions* of the chapel of Saint Hilary, *and of its cells and certain other things, before Angelo of good memory, cardinal deacon of Saint Andrew, then subdeacon and chaplain of Pope I. of happy memory, our predecessor, granted by the same predecessor as auditor to the parties,* and it had been proved by you that for forty years and more your church had received the third part of the oblations of that chapel from the clerics instituted by the abbot of Monte, and that he had sometimes committed that same third to you, son prior, to be collected, Pope I. of good memory, our predecessor, adjudging that third to your church, established that it was lawful for you, prior, to collect through those clerics, as had been customary, the part mentioned, *as we saw to be contained in the letters of the same predecessor*. But because afterward the priest of the aforesaid chapel—asserting that under the name of oblations were by no means contained

those things that on the feast of All Saints are sent to that chapel or carried to it or to the house of that priest with a view to the dead; nor those things that are placed in the treasury, which he takes from the altar and causes to be carried through the church *fraudulently by someone*; and those things before the cross and at the Mass of the Trinity; and those things given for the betrothed; and lamps with oil that are offered to the aforesaid chapel by certain persons; or things that are given to the messenger who is sent through the parish of the aforesaid chapel to receive such things—*and* denying that the third part of all these should be exhibited to you, endeavored, from other things to be paid under the name of the third part, to retain proportionately what touched your church for making the necessary expenses of the chapel itself, the said predecessor, *that every occasion of scandal might be removed, willed and commanded that the third portion be paid integrally, without any subtraction, both* from all the things stated above *and from oblations and other things*. But the chaplains of the aforesaid chapel, *wishing still to raise the tinder of another defense, and* saying that first fruits and tithes, or those things offered to priests for Masses for the dead, and things for seventh days, thirtieth days, and anniversaries, breads and other things offered within the week, and testamentary dispositions of the dead, are by no means contained under the name of oblations, are unwilling to pay you the third part of all these things. We therefore will and command that, through your cleric instituted by you in the same church, from all the things stated above and *from* other oblations, by whatever title they have come to the *same* church, the third portion be paid to you integrally without any diminution.

> Oblationis nomine intelligitur quicquid offertur ecclesiae quocunque modo, in missa vel extra, et in ecclesia vel extra.
>
> Idem Priori et Clericis sanctorum Ioannis et Pauli Tudertinis.
>
> Quum inter vos dudum ex parte una, et abbatem sancti P. de Monte Spoletanae dioecesis ex altera super tertia parte oblationum *et possessionum* capellae sancti Hilarii, *et cellarum ipsius et quibusdam aliis coram bonae memoriae Angelo, sancti Andreae diacono cardinali, tunc subdiacono et capellano felicis recordationis I. Papae praedecessoris nostri, ab eodem praedecessore partibus auditore concesso*, quaestio verteretur, et a vobis probatum fuerit, per XL. annos et amplius tertiam partem oblationum eiusdem capellae vestram ecclesiam recepisse a clericis institutis, per abbatem de Monte, tuisque, fili prior, eandem tertiam te commisisse aliquando colligendam: bonae memoriae I. Papa praedecessor noster ipsam tertiam ecclesiae vestrae adiudicans, statuit, ut tibi, prior, liceret per eosdem clericos, sicut fuerat consuetum, partem colligere memoratam, *prout in eiusdem praedecessoris literis perspeximus contineri*. Verum, quia postmodum sacerdos praedictae capellae, asserens, oblationum nomine minime contineri ea, quae ipsi capellae in festivitate omnium sanctorum mittuntur, vel portantur ad illam, seu ad domum sacerdotis eiusdem intuitu defunctorum, nec non, quae in cimilini ponuntur, quod de altari suscipit, et facit per ecclesiam *in fraudem ab aliquo* deportari, et quae ante crucem, et in missa Trinitatis, et ea, quae pro desponsatis dantur et lampades cum oleo, quae praedictae capellae ab aliquibus offeruntur, vel quae dantur nuncio, qui ad recipienda talia per praefatae capellae parochiam destinatur, *et* de his omnibus vobis tertiam partem denegans exhibere, de aliis, nomine tertiae partis persolvendis, pro rata vestram ecclesiam contingentis, retinere nitebatur ad expensas, capellae ipsius necessarias faciendas: dictus praedecessor, *ut omnis materia scandali tolleretur, tam* de omnibus supra dictis, *quam oblationibus aliisque* absque subtractione aliqua integre persolvi voluit et mandavit tertiam portionem. At capellani praedictae capellae, *volentes adhuc alterius defensionis fomitem suscitare, ac* dicentes, primitias et decimas, vel ea, quae offeruntur pro missis mortuorum sacerdotibus, et quae pro septimis, et tricesimis, et anniversariis, panes et alia, quae infra hebdomadam offeruntur, et mortuorum iudicia oblationum nomine minime contineri, de his omnibus tertiam partem solvere vobis nolunt. Volumus igitur et mandamus, ut per

vestrum clericum, a vobis in eadem ecclesia institutum, de omnibus supra dictis et *de* aliis oblationibus, quocunque titulo ad ecclesiam *ipsam* pervenerint, sine diminutione aliqua integre tertia vobis portio persolvatur.

Chapter XXX

Latin source headnote: A lawsuit is said to have been moved when issue has been joined.

The same, to Bishop F. and B. Bertrandi.

It was proposed on your behalf *before us* that the *beloved sons*, the provost and canons of Arezzo, endeavoring by *a sinister interpretation* to lead back into the scruple of a renewed question the sentence that Pope I. *of happy memory*, our predecessor, promulgated concerning *the Church of Saint Gregory, certain lands and part of the mills of Cuprene and of Castrosaxo and* the mill *situated above the bridge* of Calianen., and other *various* articles *comprehended in that sentence, between you and their canonry*, assert that the chapter of that sentence in which it is said that the canonry itself is not to impede your monastery from being able to rebuild the aforesaid mill of Calianen. in that condition in which it is known to have been at the time of the lawsuit moved, is to be referred to the time when a little stone was cast in denunciation of a new work; while you assert to the contrary that it is to be understood of the time when issue was joined concerning this between you and the aforesaid canonry. *Therefore, you humbly supplicated that we deign to decide an altercation of this kind by an interpretation of the chapter stated above*. We therefore, having *diligently* considered the same sentence, interpret what is said in the aforesaid chapter concerning the time of the lawsuit moved to be referred to the time when joinder of issue was made.

Lis dicitur mota, quum fuerit contestata.

Idem Episcopo F. et B. Bertrandi. Ex parte vestra fuit propositum *coram nobis*, quod *dilecti filii* praepositus et canonici Aretinenses sententiam, quam *felicis memoriae* I. Papa praedecessor noster super *ecclesia sancti Gregorii, quibusdam terris et parte molendinorum Cuprene ac Castri saxi et* molendino, *posito supra pontem* de Calianen., ac aliis *diversis* articulis *in eadem sententia comprehensis, inter vos et eorum canonicam* promulgavit, *per interpretationem sinistram* in recidivae quaestionis scrupulum reducere molientes, asserunt, capitulum illud eiusdem sententiae, quo dicitur, ne canonica ipsa impediat, quo minus monasterium vestrum molendinum praefatum de Calianen. reaedificare valeat in eo statu, in quo fuisse dignoscitur tempore motae litis, esse referendum ad tempus, quo lapillus in denunciatione novi operis iactus fuit; vobis e contrario asserentibus, illud esse intelligendum de tempore, quo lis super hoc inter vos et praefatam canonicam exstitit contestata. *Quare humiliter supplicastis, ut altercationem huiusmodi per interpretationem capituli supra dicti decidere dignaremur*. Nos igitur, considerata eadem sententia *diligenter*, quod in praefato capitulo dicitur de tempore motae litis, interpretamur esse referendum ad tempus, quo litis contestatio facta fuit.

Chapter XXXI

Latin source headnote: A constitution of a legate concerning the third part of mortuaries to be paid to the bishop ought to be understood of those mortuaries in which it is owed by common law.

The same, to the Prelates of the Community of the French at Constantinople.

It was proposed on your behalf *before us* that your patriarch, *our venerable brother*, on the occasion of a certain constitution that *our venerable brother* the Bishop of Albano, then legate *of the Apostolic See* in

the parts of Romania, issued concerning the legacies of the deceased, and which the beloved son I., cardinal priest of the title of Saint Praxedes, renewed while he discharged the office of legation there, unduly exacts from you a third *part* of certain things that are bequeathed by dying persons to you and your churches. Therefore, since they, as we learned from their interpretation, did not understand that any portion ought to be paid to the cathedral church from those things that are bequeathed in ecclesiastical ornaments, or for the fabric of a church in need of repair, or for the lights of the church, nor *also* from those things that are bequeathed for an anniversary, seventh, thirtieth, and twentieth day to be performed, or from those that are bequeathed by anyone to persons specially, unless perhaps this is done by reason of the church, we, holding their interpretation ratified, command that the aforesaid constitution be observed according to it, firmly prohibiting anyone from fraudulently procuring anything in the aforesaid matters to the prejudice of the cathedral church.

> Constitutio legati, de solvenda tertia mortuariorum episcopo, intelligi debet de his mortuariis, in quibus de iure communi debetur.
>
> Idem Praelatis universitatis Francigenarum Constantinopolitanae.
>
> Ex parte vestra fuit propositum *coram nobis*, quod *venerabilis frater noster* patriarcha vester, occasione constitutionis cuiusdam, quam *venerabilis frater noster* Albinensis episcopus, tunc *apostolicae sedis* legatus in partibus Romaniae, super legatis edidit defunctorum, et dilectus filius I. tit. sanctae Praxedis presbyter cardinalis, dum ibidem legationis fungeretur officio, innovavit, de quibusdam, quae vobis et ecclesiis vestris legantur a decedentibus, tertiam *indebite* a vobis exigit portionem. Quum igitur ipsi, sicut ex eorum interpretatione accepimus, non intellexerint, quod de his, quae in ornamentis ecclesiasticis, vel ad fabricam ecclesiae, reparatione indigentis, aut ad ecclesiae luminaria, nec non *et* de his quae pro anniversario, septimo, tricesimo ac vicesimo faciendis, vel de his, quae personis specialiter, nisi forsan id fiat ecclesiae ratione, a quocunque legantur, aliqua deberet solvi portio ecclesiae cathedrali: nos, interpretationem eorum ratam habentes, secundum ipsam constitutionem praefatam praecipimus observari, firmiter inhibentes, ne in praedictis aliquid fraudulenter in praeiudicium cathedralis ecclesiae procuretur.

Chapter XXXII

Latin source headnote: In a privilege concerning receipt of the fruits of benefices, the appellation of benefices comprehends even greater benefices when the privilege is granted to a bishop for an honorable and favorable cause. This is what it says, with the supplement of Panormitanus.

The same, to the Bishop of Toulon.

Your fraternity intimated to us that, since for the relief of the burden of debts *by which you are oppressed* we deemed that it should be granted to you that it be lawful for you to retain for two years the fruits of benefices that happen in the meantime to become vacant in your diocese, certain persons, endeavoring by a sinister interpretation to restrict the privilege of apostolic grace, assert that prebends and greater benefices are by no means contained under the name of benefices; *concerning this you sought an apostolic interpretation.* We therefore, *rejecting the opinion of interpreters of this kind,* declare by the authority of the present letters that in this case prebends and other benefices are contained under the general name of benefices.

> In privilegio de percipiendis fructibus beneficiorum appellatio beneficiorum etiam maiora beneficia comprehendit, quando privilegium est concessum episcopo pro honesta et favorabili causa. H. d. cum suppletione Panormitani. Idem Episcopo Tolonensi. Tua nobis fraternitas intimavit, quod, quum tibi pro

relevatione oneris debitorum, *quo premeris*, duxerimus indulgendum, ut fructus beneficiorum, quae interim in dioecesi tua vacare contigerit, tibi liceat biennio retinere, quidam, apostolicae gratiae privilegium sinistra interpretatione restringere molientes, asserunt, praebendas et maiora beneficia nequaquam beneficiorum nomine contineri, *super quo interpretationem apostolicam postulasti*. Nos igitur, *interpretum huiusmodi sententiam reprobantes*, auctoritate praesentium declaramus, quod in hoc casu praebendae ac alia beneficia generali beneficiorum nomine continentur.

Chapter XXXIII

Latin source headnote: The word "moderation" contains diminution, not augmentation.

Gregory IX, to the Dean and Sacristan of Engo.

The letters transmitted to us contained that, when the bishop and chapter of Saintes signified that the number of forty canons instituted in their church could not be observed because the resources of the church did not suffice, we gave you in mandate that, moderating the number of canons and prebends in accordance with the resources of the church, you establish that it be firmly observed. But you found that the resources of the aforesaid church had increased so greatly from the time when the number was established that a greater number could be maintained in it without mutilation of the prebends; therefore you asked whether by the word "moderation" added to our letters you ought to augment or diminish that number. Therefore we command that, if the old prebends have not been diminished, since moderation has no place, you leave their number and the number of canons in the same condition in which it is known to have existed hitherto, converting the increase of their revenues to the benefit of that church until we deem that it should be disposed otherwise.

Verbum moderationis diminutionem continet, non augmentum.

Gregorius IX. Decano et Sacristae Engo.

Transmissae nobis literae continebant, quod, significantibus episcopo et capitulo Xantonensi, quod quadragenarius canonicorum numerus, institutus in eorum ecclesia, non poterat observari, pro eo, quia non sufficiebant ecclesiae facultates, vobis dedimus in mandatis, ut canonicorum et praebendarum numerum iuxta facultates ecclesiae moderantes, statueretis eundem firmiter observari. Vos vero invenistis, praedictae ecclesiae facultates a tempore statuti numeri adeo excrevisse, quod absque mutilatione praebendarum maior haberi posset numerus in eadem: quare quaesistis, an per "moderationis" verbum, literis nostris appositum, eundem numerum augmentare vel minuere deberetis. Quocirca mandamus, quatenus, si veteres non sunt minutae praebendae, quum moderatio locum non habeat, ipsarum et canonicorum numerum dimittatis in eodem statu, in quo hactenus dignoscitur exstitisse, in utilitatem eiusdem ecclesiae convertentes augmentum suorum redituum, donec duxerimus aliter disponendum.

Title XLI: On Rules of Law

Chapter I

Latin source headnote: It cannot be summarized more briefly.

John Chrysostom.

Every thing, through whatever causes it comes into being, is dissolved through the same causes.

DE REGULIS IURIS.

> Non potest brevius summari. Ioannes Chrysostomus.
>
> Omnis res, per quascunque causas nascitur, per easdem dissolvitur.

Chapter II

Latin source headnote: Doubtful things ought to be interpreted in the better part.

Bede, in the Homilies.

"Be merciful, etc." In this passage I judge that nothing else is commanded to us except that we interpret in the better part those deeds concerning which it is doubtful with what intention they are done. For what is written, "From their fruits you shall know them," was said of manifest things that cannot be done with a good intention, such as fornication, blasphemies, thefts, drunkennesses, and similar things, concerning which we are permitted to judge.

> Dubia in meliorem partem interpretari debent.
>
> Beda in Homiliis.
>
> "Estote misericordes, etc." Hoc loco nihil aliud nobis praecipi existimo, nisi ut ea facta, quae dubium est quo animo fiant, in meliorem interpretemur. Quod enim scriptum est: "Ex fructibus eorum cognoscetis eos," de manifestis dictum est, quae non possunt bono animo fieri, ut stuprum, blasphemiae, furta, ebrietates et similia, de quibus nobis permittitur iudicare.

Chapter III

Latin source headnote: Truth is not to be omitted in order to avoid scandal.

The same.

"He who shall cause scandal, etc." It is more useful that scandal be permitted to arise than that truth be abandoned.

> Propter scandalum evitandum veritas non est omitenda.
>
> Idem.
>
> "Qui scandalizaverit etc." Utilius scandalum nasci permittitur, quam veritas relinquatur.

Chapter IV

Latin source headnote: On account of necessity an unlawful thing is made lawful.

The same, on Mark.

Necessity makes lawful what is not lawful by law. For the sabbath also was commanded to be observed; nevertheless the Maccabees fought on the sabbath without fault of their own. So too today, if a sick person breaks a fast, he is not held guilty of his vow.

> Propter necessitatem illicitum efficitur licitum.
>
> Idem super Marcum.
>
> Quod non est licitum lege, necessitas facit licitum. Nam et sabbatum custodiri praeceptum est; Maccabaei tamen sine culpa sua in sabbato pugnabant; sic et hodie, si quis ieiunium fregerit aegrotus, reus voti non habetur.

Chapter V

Latin source headnote: A thing done unlawfully induces an obligation.

Gregory VII.

What has been introduced secretly, or through force, or otherwise unlawfully, ought to subsist with no stability.

> Illicite factum obligationem inducit.
>
> Gregorius VII. Quod latenter, aut per vim, vel alias illicite introductum est, nulla debet stabilitate subsistere.

Chapter VI

Latin source headnote: Tortures are not to be inflicted without judgments preceding.

The same, to the Bishop of Varia.

When in contemplation (*And below:*) At the very beginning of the case, one is not to begin with tortures.

> Tormenta, iudiciis non praecedentibus, inferenda non sunt.
>
> Idem Variensi Episcopo.
>
> Quum in contemplatione: (*Et infra:*) In ipso causae initio non est a quaestionibus inchoandum.

Chapter VII

Latin source headnote: He who offends an ecclesiastical thing or person is sacrilegious.

Pope Stephen.

Those things which are frequently *usurped must more frequently be repeated and prohibited. For* Whatever is done unjustly against things consecrated to God and against bishops is reckoned as sacrilege, because they are sacred and ought not to be violated by anyone.

> Sacrilegus est offendens rem vel personam ecclesiasticam.
>
> Stephanus Papa.
>
> Quae multotiens *usurpantur necesse est saepius replicentur et prohibeantur. Nam* Quicquid in sacratis Deo rebus et episcopis iniuste agitur, pro sacrilegio reputatur, quia sacra sunt, et a quoquam violari non debent.

Chapter VIII

Latin source headnote: He who does otherwise than he ought is not said to do.

Augustine.

He who performs a precept from fear performs it otherwise than he ought, and therefore now does not perform it.

> Qui facit aliter quam debet, facere non dicitur.
>
> Augustinus.
>
> Qui ex timore facit praeceptum, aliter quam debeat facit, et ideo iam non facit.

Chapter IX

Latin source headnote: One committing one sin is guilty of all as regards eternal life.

The same, in the Book on Penance.

Let the sinner bewail that, offending in one, he has been made guilty of all [*through ingratitude*].

> Committens unum peccatum, reus est omnium quoad vitam aeternam.
>
> Idem in libro de poenitentia.
>
> Defleat peccator, quia, offendens in uno factus est omnium [*per ingratitudinem*] reus.

Chapter X

Latin source headnote: Ignorance does not excuse a prelate concerning the sins of his subjects. This is what it says as regards the mystical and moral understanding.

Gregory, in the Register.

Although the consideration of the case [*moves me, nevertheless charity also impels me to write, because both once and twice I wrote to my most holy brother, Lord John, but I did not receive his letters. For another secular person spoke to me under his name; and if those were his letters, I was not watchful, who believed concerning him far otherwise than I found. For I had written concerning the case of the most reverend man John the priest, and concerning the questions of the monks of Isauria, one of whom, also constituted in the priesthood, was beaten with rods in your church; and your most holy fraternity wrote back to me, as I recognize from the name of the epistle, that he did not know concerning what case I was writing. At this reply I was greatly astonished, silently revolving with myself whether he speaks the truth.*] *What can be worse than that such things are done against the servants of God, and he himself, who is at hand, does not know?* For *indeed* there can be no excuse for the shepherd if the wolf eats the sheep and the shepherd does not know. [*But if your holiness knew, etc.*]

> Ignorantia non excusat praelatum in peccatis subditorum. H. d. quoad mysticum et moralem intellectum.
>
> Gregorius in Registro.
>
> Quamvis causae [*consideratio me movet, ad scribendum tamen et caritas impellit, quia et semel et bis sanctissimo fratri meo domino Ioanni scripsi, sed non eius epistolas recepi. Alter enim saecularis mihi sub eius nomine loquebatur, quae, si epistolae eius fuerunt, ego vigilans non fui, qui longe de eo aliter credidi quam inveni. De causa enim reverendissimi viri Ioannis presbyteri scripseram, atque de quaestionibus monachorum Isauriae, quorum unus, et in sacerdotio positus, in ecclesia vestra fustibus caesus est, et rescripsit mihi, sicut ex nomine epistolae agnosco, sanctissima fraternitas tua, quia nescierit, de qua causa scriberem. Ad quod rescriptum vehementer obstupui, mecum tacitus revolvens, si verum dicit.*] *Quid esse deterius potest, quam ut agantur talia contra servos Dei, et ipse nesciat, qui praesto est?* Non *enim* potest esse pastoris excusatio, si lupus oves comedit, et pastor nescit. [*Si autem scivit sanctitas vestra etc.*]

Chapter XI

Latin source headnote: Homage is not furnished for spiritual things.

Lucius III.

It is unworthy and foreign to the custom of the Roman Church that anyone be compelled to do homage for spiritual things.

Pro spiritualibus homagium non praestatur.

Lucius III. Indignum est et a Romanae ecclesiae consuetudine alienum, ut pro spiritualibus facere quis homagium compellatur.