THE LIBER SEXTUS OF BONIFACE VIII

Pope Boniface VIII · 1298

English and Latin

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Prooemium

The Sixth Book

Of the Decretals of Lord Pope Boniface VIII

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

Presiding over the governance of the sacrosanct Roman Church, which the unsearchable depth of divine providence, by an immutable disposition, has set above all churches and has willed to hold the chief teaching authority of the whole world, we are troubled by continual cares and pressed by constant meditation, so that, according to the office of stewardship entrusted to us, we may devote ourselves with the unremitting zeal of solicitude, insofar as it shall have been granted to us from on high, to the advantages of our subjects, in whose prosperity we indeed prosper. For we embrace willing labors for their repose, and sometimes pass sleepless nights, so that we may remove scandals from them and, insofar as is possible for us, repress—now by the clarification of ancient laws, and now by the promulgation of new ones—the disputes that human nature, ever hastening to bring forth new forms, daily strives to devise.

Indeed, after the volume of decretals compiled as providently as usefully by our predecessor Pope Gregory IX of happy memory, certain decretals were said to have been issued successively by him and by other Roman Pontiffs concerning various matters; concerning some of these, whether they were decretals and who their authors were was anxiously doubted in judicial proceedings and in the schools. We, having been called by the disposition of heaven to the summit of the supreme pontificate and having been urgently petitioned concerning this by many, desired, with divine grace assisting, for the public benefit, entirely to remove this sort of ambiguity and uncertainty, which was bringing loss to many, and to make clear which of these decretals ought to be retained and which ought thereafter to be rejected. Therefore, through our venerable brothers William, Archbishop of Embrun, and Berengar, Bishop of Béziers, and our beloved son Master Richard of Siena, vice-chancellor of the Holy Roman Church and doctor of both laws, we caused decretals of this sort to be reviewed more diligently. Finally, many of them having been cut away entirely because they appeared either to be temporary, contrary to themselves or to other laws, or altogether superfluous, and the remainder having been placed under their proper titles—some of them abridged, some changed in whole or in part, and many corrections, subtractions, and additions having been made in them as we saw expedient—we ordered them to be brought together into one book with certain of our constitutions. In these constitutions many salutary things are established for the correction of morals and the repose of subjects, which, with God's favor, will bear abundant fruits in the house of the Lord, and many doubts frequently arising in judicial proceedings and outside them are decided.

We have judged that this book, which is to be joined to the other five books of the aforesaid volume of decretals, should be called the Sixth, so that the same volume, comprehending with this addition the sixfold number of books—which is a perfect number—may impart a perfect form in matters to be done and discipline in morals. Nor was it without reason that in this matter we omitted to observe the practice of our predecessors, who, when they newly promulgated certain constitutions, ordered

them to be placed in the series of the ancient ones. For we did this lest innumerable books have to be destroyed and others newly made, not without the greatest losses, labors, and expenses.

Therefore, by apostolic writings we command your whole body that, receiving with ready affection this book, arranged with great maturity and transmitted to you under our seal, you henceforth use it in judicial proceedings and in the schools, and that you no longer receive or hold as decretals any decretals or constitutions promulgated by any of our predecessors, the Roman Pontiffs, after the publication of the aforesaid volume, except those that are inserted or specifically reserved in this book.

> Liber sextus
>
> DECRETALIUM
>
> DOMINI BONIFACII PAPAE VIII.
>
> Episcopus servus servorum Dei, dilectis filiis doctoribus et scholaribus universis Bononiae commorantibus salutem et apostolicam benedictionem.
>
> Sacrosanctae Romanae ecclesiae, quam imperscrutabilis divinae providentiae altitudo universis dispositione incommutabili praetulit ecclesiis et totius orbis praecipuum obtinere voluit magistratum, regimini praesidentes, curis sollicitamur continuis, et assidua meditatione urgemur, ut iuxta creditae nobis dispensationis officium subditorum commodis, in quorum prosperitate utique prosperamur, iugi, quantum nobis ex alto concessum fuerit, sollicitudinis studio intendamus. Amplectimur quippe voluntarios pro ipsorum quiete labores, et noctes quandoque transimus insomnes, ut scandala removeamus ab ipsis, et, quas humana natura, novas semper deproperans edere formas, lites quotidie invenire conatur, nunc antiquorum declaratione, nunc vero novorum editione iurium, prout nobis est possibile, reprimamus. Sane, quum post volumen decretalium, a felicis recordationis Gregorio Papa IX. praedecessore nostro tam provide quam utiliter compilatum, nonnullae ab eo et ab aliis Romanis Pontificibus successive super diversis dicerentur articulis editae decretales, de quarum aliquibus, an decretales exsisterent, earumque auctoribus* dubitabatur sollicite in iudiciis et in scholis: nos, ad apicem summi pontificatus superna dispositione vocati, super hoc cum instantia requisiti a multis, ambiguitatem et incertitudinem huiusmodi, dispendium pluribus afferentem, omnino tollere, ac elucidare, quae de decretalibus ipsis teneri, quaeve deberent in posterum refutari, gratia suffragante divina pro utilitate publica desiderabiliter affectantes, per venerabiles fratres nostros Guilielmum archiepiscopum Ebrudunensem, et Berengarium episcopum Biterensem, ac dilectum filium magistrum Richardum de Senis, sanctae Romanae ecclesiae vicecancellarium, iuris utriusque doctorem, decretales huiusmodi diligentius fecimus recenseri, et tandem, pluribus ex ipsis, quum vel temporales, aut sibi ipsis vel aliis iuribus contrariae, seu omnino superfluae viderentur, penitus resecatis, reliquas, quibusdam ex eis abbreviatis, et aliquibus in toto vel in parte mutatis, multisque correctionibus, detractionibus et additionibus, prout expedire vidimus, factis in ipsis, in unum librum cum nonnullis nostris constitutionibus, in quibus ad correctionem morum subditorumque quietem multa statuuntur salubria, fructus uberes Deo propitio in domo Domini allatura, et plurima in iudiciis et extra frequentata dubia deciduntur, redigi mandavimus, et sub debitis titulis collocari. Quem librum, quinque libris aliis dicti voluminis decretalium adnectendum, sextum censuimus nuncupari, ut idem volumen senarium, qui numerus est perfectus, librorum illo adiuncto numerum comprehendens, perfectam in rebus agendis formam tribuat et in moribus disciplinam. Nec sine causa morem praedecessorum nostrorum, qui, quum constitutiones aliquas promulgabant noviter, eas mandabant sub antiquarum serie situari, omisimus in hac parte servare. Haec* enim fecimus, ne infinitos libros destrui, et alios non sine maximis dispendiis, laboribus et expensis de novo fieri oporteret. Universitati vestrae igitur per

apostolica scripta mandamus, quatenus librum huiusmodi cum multa maturitate digestum, quem sub bulla nostra vobis transmittimus, prompto suscipientes affectu, eo utamini de cetero in iudiciis et in scholis, nullas alias praeter illas, quae inseruntur aut specialiter reservantur in eo, decretales aut constitutiones, a quibuscunque nostris praedecessoribus Romanis Pontificibus post editionem dicti voluminis promulgatas, recepturi ulterius aut pro decretalibus habituri.

Book I

Title I: On the Supreme Trinity and the Catholic Faith

Chapter I

The Holy Spirit proceeds eternally from the Father and the Son as from one principle and by one spiration. John Andrew.

Gregory X, at the general Council of Lyons.

With a faithful and devout profession we confess that the Holy Spirit proceeds eternally from the Father and the Son, not as from two principles, but as from one principle; not by two spirations, but by one spiration. This the sacrosanct Roman Church, mother and teacher of all the faithful, has hitherto professed, preached, and taught; this it firmly holds, preaches, professes, and teaches. This is the immutable and true judgment of orthodox Fathers and doctors, Latin and Greek alike.

But because certain persons, through ignorance of the aforesaid irrefragable truth, have fallen into various errors:

we, desiring to bar the way to errors of this sort, with this sacred council approving, condemn and reprove all who shall presume to deny that the Holy Spirit proceeds eternally from the Father and the Son, or even to assert with rash audacity that the Holy Spirit proceeds from the Father and the Son as from two principles, and not as from one.

> **DE SUMMA TRINITATE ET FIDE CATHOLICA.**
>
> Spiritus sanctus aeternaliter a Patre et Filio tanquam ab uno principio et unica spiratione procedit. Ioann. Andr.
>
> Gregorius X. in generali concilio Lugdunensi. Fideli ac devota professione fatemur, quod Spiritus sanctus aeternaliter ex Patre et Filio, non tanquam ex duobus principiis, sed tanquam ex uno principio, non duabus spirationibus, sed unica spiratione procedit. Hoc professa est hactenus, praedicavit et docuit, hoc firmiter tenet et praedicat, profitetur et docet sacrosancta Romana ecclesia, mater omnium fidelium et magistra; hoc habet orthodoxorum Patrum atque doctorum Latinorum pariter et Graecorum incommutabilis et vera sententia.
>
> Sed quia nonnulli propter irrefragabilis praemissae veritatis ignorantiam in errores varios sunt prolapsi: nos, huiusmodi erroribus viam praecludere cupientes, hoc sacro approbante concilio damnamus et reprobamus omnes, qui negare praesumpserint, aeternaliter Spiritum sanctum ex Patre et Filio procedere, sive etiam temerario ausu asserere, quod Spiritus sanctus ex Patre et Filio tanquam ex duobus principiis, et non tanquam ex uno procedat.

Title II: On Constitutions

Chapter I

A later constitution of the prince abrogates an earlier contrary one, although it does not express this; it does not abrogate particular customs and reasonable statutes unless it expresses this. John Andrew.

Boniface VIII.

Although the Roman Pontiff, who is deemed to have all laws in the archive of his breast, is known, by enacting a later constitution, to revoke an earlier one even though he makes no mention of it, nevertheless, because he can probably be ignorant of the customs and statutes of particular places and individual persons, since they are matters of fact and consist in fact, he is not understood by a constitution newly issued by him to derogate from them in any respect—provided that they are reasonable—unless this is expressly provided in it.

> **DE CONSTITUTIONIBUS.**
>
> Nova constitutio principalis tollit primani contrariam, quamvis id non exprimat; speciales consuetudines et statuta rationabilia non tollit, nisi id exprimat. Ioann. Andr.
>
> Bonifacius VIII. Licet Romanus Pontifex, qui iura omnia in scrinio pectoris sui censetur habere, constitutionem condendo posteriorem, priorem, quamvis de ipsa mentionem non faciat, revocare noscatur: quia tamen locorum specialium* et personarum singularium consuetudines et statuta, quum sint facti et in facto consistant, potest probabiliter ignorare: ipsis, dum tamen sint rationabilia, per constitutionem a se noviter editam, nisi expresse caveatur in ipsa, non intelligitur in aliquo derogare.

Chapter II

Two things are stated: first, that the statutes of ordinaries do not bind those who are probably ignorant of them; second, that the statute of a bishop does not bind his subject outside his diocese. John Andrew.

The same.

So that dangers to souls may be averted, we do not will that those who are ignorant be bound by sentences promulgated through the statutes of any ordinaries whatsoever, provided that their ignorance was not gross or supine.

The subjects of a bishop who commit theft outside his diocese are known not to be bound by a statute of that bishop by which a sentence of excommunication is promulgated against all who shall commit theft, since one who declares the law outside his territory may be disobeyed with impunity.

> Duo sunt dicta: primum, quod statuta ordinariorum non ligant probabiliter ignorantes; secundum, quod statutum episcopi extra suam dioecesim subditum non ligat. Ioann. Andr.
>
> Idem. Ut animarum periculis obvietur, sententiis per statuta quorumcunque ordinariorum prolatis ligari nolumus ignorantes : dum tamen eorum ignorantia crassa non fuerit aut supina.
>
> Statuto episcopi, quo in omnes, qui furtum commiserint, excommunicationis sententia promulgatur, subditi eius, furtum extra ipsius dioecesim committentes, minime ligari noscuntur, quum extra territorium ius dicenti non pareatur impune.

Title III: On Rescripts

Chapter I

A rescript obtained by an excommunicated person is invalid by law itself, as is anything that has followed from it, unless it concerns the matter of the excommunication or of an appeal.

Gregory IX.

A rescript, or a proceeding conducted by means of it, shall have no validity by law itself if it was obtained by an excommunicated person concerning a matter other than the article of his

excommunication or appeal.

> **DE RESCRIPTIS.**
>
> Rescriptum, impetratum ab excommunicato, est ipso iure nullum, et quicquid inde secutum est, nisi in causa excommunicationis vel appellationis.
>
> Gregorius IX. Ipso iure rescriptum, vel processus per ipsum habitus, non valeat, si ab excommunicato super alio quam excommunicationis vel appellationis articulo fuerit impetratum.

Chapter II

By the clause "certain others," only four persons can be convened, whose names are to be expressed in the first citation, lest there be room for variation. John Andrew.

Innocent IV, at the general Council of Lyons.

Since indefiniteness is disapproved in many articles of law, we have providently judged that it should be established that by that general clause, "certain others," which is frequently inserted in our letters, no more than three or four persons are to be drawn into judicial proceedings. The petitioner is to express their names in the first citation, lest perhaps room for fraud be left if he can vary them freely.

> Per clausulam: Quidam alii, possunt soli quatuor conveniri, quorum nomina in primo citatorio exprimantur, ne variationi sit locus. Ioann. Andr.
>
> Innocentius IV. in concilio Lugdunensi. Quum in multis iuris articulis infinitas reprobetur, provide duximus statuendum, ut per illam generalem clausulam: „ Quidam alii," quae frequenter in literis nostris inseritur, ultra tres vel quatuor in iudicium non trahantur, quorum nomina in primo citatorio exprimat impetrator, ne locus fraudi forsitan relinquatur, si circa ea possit libere variare.

Chapter III

If a plaintiff obtains letters against a defendant concerning several personal actions, directed to different judges, the letters and the proceedings under them are invalid, and the plaintiff shall be condemned to pay the defendant's costs. The same applies to a defendant who, during the same proceeding, sues or countersues the plaintiff. John Andrew.

The same, at the same council.

Wishing to restrict, by the expedient of equity and with such care as we can exercise, the expenses of lawsuits, we enlarge the statute issued concerning this by our predecessor Pope Gregory IX of happy memory and decree that, if anyone wishes to bring several personal actions against another, he is to take care to obtain letters concerning all actions of this sort not to different judges, but to the same judges. Anyone who does the contrary shall lack every benefit of the letters, and proceedings conducted through them shall have no validity; if he has cited or harassed the defendant through them, he is to be condemned to pay the defendant's lawful costs. A defendant also, if during the same proceeding he considers the plaintiff obligated to him, must pursue his right before the same judges by the benefit of counterclaim—or of an action, if he prefers to obtain letters against him—unless he can challenge them as suspect; if he acts contrary to this, he is to be punished by a similar penalty.

> Si actor contra reum super pluribus personalibus literas impetrat ad diversos, non valent literae, nec processus earum, et reo condemnabitur in expensis. Et idem in reo, conveniente vel reconveniente actorem, eodem durante iudicio. Ioann. Andr.

> Idem in eodem. Dispendia litium aequitatis compendio volentes qua possumus industria coarctare, statutum felicis recordationis Gregorii Papae IX. praedecessoris nostri super hoc editum ampliantes, decernimus, ut, si quis contra alium plures personales movere voluerit quaestiones, non ad diversos iudices, sed ad eosdem super omnibus huiusmodi quaestionibus literas studeat impetrare. Qui vero contrarium fecerit, omni* commodo careat literarum, nec processus habitus valeat per easdem, reo*, si eum per ipsas citaverit vel fatigaverit, in expensis legitimis comdemnandus. Reus quoque, si eodem durante iudicio actorem sibi obnoxium duxerit*, reconventionis beneficio vel conventionis, si contra eum literas impetrare maluerit, de iure suo debet apud eosdem iudices experiri, nisi eos ut suspectos poterit recusare, simili poena, si contra hoc* fecerit, puniendus.

Chapter IV

A person received by letters granting a faculty, if reception pertained to those receiving him, is understood to have been received by their authority and not by the Pope's, unless something else was expressed in the letters. But if reception did not pertain to them, he is then said to have been received by apostolic authority. John Andrew.

Boniface VIII.

When by our letters we grant certain persons the faculty of receiving someone as a canon of a church, notwithstanding the privileges, customs, or statutes of that church, confirmed by oath, apostolic confirmation, or any other guarantee: if the reception of canons in that church otherwise does not pertain to those to whom letters of this sort are directed, but they receive the power of reception from the force of those letters, the person received is known to have been received by apostolic authority. But if the reception of canons otherwise pertains to those same persons, he is deemed to have been received not by apostolic authority but by that of the recipients, unless our letters provide expressly that they receive him by our authority.

> Receptus per literas facultatis, si ad recipientes spectabat receptio, ipsorum, et non Papae auctoritate intelligitur esse receptus, nisi in literis aliud esset expressum. Si autem receptio non spectabat ad eos, tunc apostolica auctoritate dicitur receptus. Ioann. Andr.
>
> Bonifacius VIII. Quum aliquibus recipiendi aliquem in canonicum alicuius ecclesiae, non obstantibus eiusdem ecclesiae privilegiis, consuetudinibus vel statutis, iuramento, confirmatione apostolica vel quacunque firmitate alia roboratis, per nostras literas concedimus facultatem: si canonicorum receptio alias in ipsa ecclesia non spectat ad eos, quibus huiusmodi literae diriguntur, sed ex earum viribus recipiunt potestatem: is, qui recipitur, auctoritate apostolica dignoscitur esse receptus. Si vero canonicorum receptio alias pertineat ad eosdem, non apostolica, sed recipientium censetur auctoritate receptus, nisi, quod eum auctoritate nostra reciperent, in nostris literis caveretur expresse.

Chapter V

A papal rescript that grants to a person promoted the retention of his former benefices until the Pope's good pleasure expires when the Pope dies; it is otherwise if it says, "until the good pleasure of the Apostolic See." Nor is such a rescript understood to concern benefices not previously held canonically. This is what it says. John Andrew.

The same.

If it is graciously granted to you by the Roman Pontiff that you may retain until his will's good pleasure the benefices that you held at the time of your promotion, a grace of this sort expires by that very fact upon the death of him through whom his good pleasure is altogether extinguished. It is otherwise, however, if the aforesaid grace is granted until the good pleasure of the Apostolic See. For

then, because the See itself does not die, it will endure perpetually unless revoked by a successor. But under the pretext of such a concession—which, because it is ambitious, ought to be restricted—you can licitly retain only those benefices that you hold canonically.

> Rescriptum papale, quod concedit promoto retentionem primorum beneficiorum usque ad beneplacitum Papae, extinguitur mortuo Papa; secus, si ibi dicatur: „usque ad beneplacitum apostolicae sedis.“ Nec intelligitur tale rescriptum de beneficiis, prius non canonice detentis. H. d. Ioann. Andr.
>
> Idem. Si gratiose tibi a Romano Pontifice concedatur, ut beneficia, quae tempore tuae promotionis obtinebas*, posses usque ad suae voluntatis beneplacitum retinere: huiusmodi gratia per eius obitum, per quem ipsius beneplacitum omnino exstinguitur, eo ipso exspirat. Secus autem, si usque ad apostolicae sedis beneplacitum gratia concedatur praedicta. Tunc enim, quia sedes ipsa non moritur, durabit perpetuo, nisi a successore fuerit revocata. Praetextu vero talis concessionis, quae debet, quum sit ambitiosa, restringi, ea solum beneficia, quae canonice obtines, potes licite retinere.

Chapter VI

Vacancy by death and vacancy by resignation are different; therefore, in letters obtained for benefices, when one is expressed, the other is not included.

The same.

You cannot fulfill a mandate received from the Apostolic See that, after receiving from someone the resignation of the benefice he holds, you confer and assign it to another, if, before resigning, he is taken from human affairs, since it became vacant not by resignation but by death—unless a different intention of the mandator should appear expressly. If two persons obtain letters concerning the same benefice, the first alleging that it became vacant through the death of the one who held it and the second that it became vacant through his resignation, the second must be preferred to the first in obtaining it when the benefice became vacant by resignation, not by death.

> Vacatio per mortem et vacatio per renunciationem sunt diversa, et ideo in literis, ad beneficia impetratis, uno expresso, non venit reliquum.
>
> Idem. Susceptum ab apostolica sede mandatum, ut, ab aliquo beneficii, quod obtinet, resignatione recepta, ipsum alteri conferas et assignes, adimplere non potes, si ille, antequam resignet, rebus eximatur humanis, quum non per resignationem vacaverit, sed per mortem; nisi de intentione mandantis aliud appareret expresse. Si duo super eodem beneficio literas impetrent, primo eorum, per illius obitum, qui tenebat, secundo vero, per cessionem eiusdem ipsum proponente vacare: secundus, quum beneficium ipsum cessione, non morte vacaverit, debet primo in ipsius assecutione praeferri.

Chapter VII

Although a person who was ignorant that a benefice had been conferred upon him made no mention of it when petitioning for another, the letters are valid; nevertheless, he shall choose one of them if they cannot by law be held simultaneously. John Andrew.

The same.

The grace that you state you obtained from the Apostolic See concerning a benefice ought not to be regarded as defective, although you made no mention of another benefice previously conferred upon you in your absence and without your knowledge by your bishop, since you did not know of it at the

time of the petition. Nevertheless, if the benefices are such that they cannot by law be held simultaneously, you cannot have both; but you are to choose which of them you prefer to retain.

> Licet ignorans, beneficium sibi collatum, in impetratione alterius illius mentionem non fecerit, valent literae; alterum tamen eliget, si de iure simul teneri non possint. Ioann. Andr.
>
> Idem. Gratia, quam super beneficio a sede apostolica te impetrasse proponis, vitiosa reputari non debet, quamvis de alio beneficio, ab episcopo tuo antea tibi absenti et ignoranti collato, nullam, quum tempore impetrationis nescires, feceris mentionem. Utrumque tamen, si talia sint beneficia, quae simul nequeant de iure teneri, habere non potes; sed eligas quod ex eis malueris retinere.

Chapter VIII

If someone is restored to a revoked grace, he is understood to have been restored without prejudice to another; hence he ought not to be preferred to another who petitioned before the restoration. John Andrew.

The same.

Although a person whose grace—by which it was commanded that provision be made for him in a certain church from the next benefice to become vacant—had been revoked by us is restored by us anew to that grace, nevertheless he ought not to be preferred, unless we expressly say this, to one to whom a similar grace was granted in the same church after the aforesaid revocation and before the restoration, since a restoration of this kind, where nothing else is expressed, is understood to be made without prejudice to another's right.

> Si restituatur quis ad gratiam revocatam, sine alterius praeiudicio intelligitur restitutus; unde alteri, ante restitutionem impetranti, praeferri non debet. Ioann. Andr.
>
> Idem. Quamvis is, cuius gratia, per quam mandabatur in certa ecclesia provideri sibi de beneficio proxime vacaturo, per nos fuerat revocata, restituatur a nobis denuo ad eandem: non tamen ei, cui post revocationem, et ante restitutionem praedictas similis in eadem ecclesia gratia facta fuit, nisi de hoc expresse dixerimus, anteferri debebit, quum talis restitutio, ubi aliud non exprimitur, intelligatur fieri sine iuris praeiudicio alieni.

Chapter IX

In letters obtained for benefices, the date is considered. Hence, by those letters a person cannot obtain a benefice with cure of souls if, although he is now of age, he was underage at that time. John Andrew.

The same.

If, at the time when we commanded that provision be made for you from a benefice with or without cure of souls, you did not have an age suitable for obtaining a benefice with cure of souls, provision cannot in any way be made for you by the authority of letters of this sort from a benefice having cure of souls, although you have now attained lawful age, since at the time of their date you were not yet suitable. But because you then had an age sufficient for a benefice without cure, you can licitly obtain one through them.

> In literis ad beneficia impetratis inspicitur tempus datae. Unde per illas beneficium curatum obtinere non poterit, qui, licet nunc sit maior, illo tempore minor erat. Ioann. Andr.
>
> Idem. Si eo tempore, quo tibi de beneficio cum cura vel sine cura mandavimus provideri, ad obtinendum curatum beneficium idoneam non habebas aetatem: tibi, licet nunc legitimae effectus sis aetatis,

auctoritate literarum huiusmodi, quum tempore datae ipsarum adhuc non esses idoneus, de beneficio curam animarum habente nequaquam poterit provideri. Beneficium autem sine cura, quum ad ipsum sufficientem tunc aetatem haberes, per eas licite poteris obtinere.

Chapter X

A general grace does not prejudice a special one, and it must make mention of a preceding privilege, custom, or statute. This is what it says. Zenzel.

The same.

If, for the payment of your debts, we grant to you by special grace for a five-year period the fruits of the first year of benefices that will become vacant in your diocese, notwithstanding any customs, privileges, or statutes through which our concession could be impeded, it is in no way our intention that, if fruits of this sort are perhaps owed to the fabric of your church, to another use, or to any individual person by a special custom, privilege, or statute, any prejudice should be generated for them by the concession itself, unless this is expressly provided in it.

Gratia generalis non praeiudicat speciali, et debet facere mentionem de praecedenti privilegio, consuetudine vel statuto. H. d. Zenzel.

Idem. Si propter tua debita persolvenda fructus beneficiorum primi anni, quae in tua vacabunt dioecesi, tibi, non obstantibus quibuslibet consuetudinibus, privilegiis vel statutis, per quae nostra impediri posset* concessio, usque ad quinquennium de speciali gratia concedimus*: intentionis nostrae nequaquam exsistit, si fructus huiusmodi, ecclesiae tuae fabricae vel alteri usui, seu cuicunque singulari personae de speciali consuetudine, privilegio vel statuto forsitan debeantur, quod eis per concessionem ipsam, nisi hoc expresse caveatur in ea, praeiudicium aliquod generetur.

Chapter XI

Cases should be committed by the Apostolic See or its legate to persons holding a dignity or a canonry of a cathedral church. Nor should they be conducted except in cities or notable places. This is what it says as far as § "But when." — §1. When the plaintiff and defendant are of the same diocese, the case should not be committed outside it except in six cases; even in these, however, the person shall not be drawn beyond one day's journey, and, unless in the last two cases the petitioner establishes their truth by oath, he shall be repelled by the judge and condemned in costs. This is what it says as far as § "But when." Dominicus. — §2. A plaintiff against a defendant of a different diocese ought to obtain a delegate either in the defendant's diocese or in another diocese that is not the plaintiff's own and is not more than one day's journey distant. Dominicus. — §3. Without the express consent of the parties, a delegate can neither cite the parties nor hear the case outside the place of his commission, nor can he subdelegate to places or persons other than those expressed here. John Andrew. — §4. A delegate should receive nothing from the parties except food and drink freely offered that can be consumed within a few days, or moderate expenses, if they are not poor, when for necessity or utility, and not maliciously, he travels outside his residence. Dominicus. — §5. Unless he needs one, a delegate is not to assume an assessor; otherwise he is to provide for him from his own property. If he needs one, he shall assume a person not suspect to the parties, with a moderate salary payable by the parties. — §6. A delegate ought to assess the salary of notaries, and ought not to share with them or with assessors in the salary. Dominicus. — §7. A delegate receiving anything contrary to the prohibition of this chapter is bound to restore it, notwithstanding the remission of the giver. John Andrew. — §8. A delegate ought not to summon witnesses unless the state of the case requires it, and the party producing them ought to provide their expenses in coming, remaining,

and returning. Dominicus. — §9. Acts done contrary to this decretal are invalid by law itself. This is what it says, and it is not divided.

The same.

Since certain provisions contained in the statute that we recently issued concerning judges to be deputed by the Apostolic See—provisions thought to have been introduced for the common benefit—are known, as experience has taught, to tend toward harm, we have judged, at the persuasion of utility, that the statute should be reformed for the better by the present enactment, which we command to be inviolably observed. We therefore decree that henceforth cases are to be committed by the authority of letters of the Apostolic See or of its legates to no persons except those invested with a dignity, holding a personatus, or canons of cathedral churches; nor are they to be heard anywhere except in cities or notable places where a supply of learned persons can conveniently be had.

§1. But when the plaintiff and defendant are of the same city or diocese, a case is not to be committed outside that city and diocese, nor is either of them to be convened outside them, unless an action is to be directed by a bishop against someone of his diocese, by someone against the bishop, against his chapter, or against the corporate body of a city, town, or castle; or unless a plaintiff, not daring to enter that city or diocese, or reasonably fearing the power of his adversary, cannot safely convene him within them. In these cases a case can indeed be committed outside the said city and diocese against the aforesaid persons; nevertheless, none of them may be convened more than one day's journey from the boundary of his diocese. But in the last two cases the judge is in no way to proceed in the case unless the petitioner first establishes before him, at least by his own oath, the aforesaid fear—which he is bound to express in the letters of commission. Rather, dismissing the parties from his jurisdiction, the judge is to condemn that petitioner to pay the other party's lawful costs.

§2. But when the plaintiff and defendant are of different cities and dioceses, if the plaintiff refuses to have a judge in the defendant's city or diocese, he may freely obtain one not in his own but in another city or diocese, and draw the defendant there, provided that the place to which he has drawn him is not more than one day's journey distant, as was premised in the other case.

§3. In none of the aforesaid cases is the judge to cite the parties or hear the case committed to him outside the city or diocese in which he was deputed, unless their express consent to this has been given. Nor is he in any way to commit his functions elsewhere than within those places, or to persons other than those designated above.

§4. Furthermore, so that the judicial proceeding before him may proceed gratuitously and with complete purity, he is not to presume in any manner to receive from the parties any gift or anything else, except perhaps food or drink offered out of pure liberality that can be consumed within a few days; or, when it happens that on account of the case committed to him he must travel outside his residence, moderate expenses. He is to provide attentively that he in no way exceed due measure in those expenses, that he exact no more from one party than from the other, since he conducts the common business of both, and that, where the utility or necessity of the case committed to him does not require it, he not assume an occasion for traveling outside his residence for the sake of obtaining expenses. Moreover, where the litigants are notably poor, he is to exact absolutely nothing from them even for expenses.

§5. He is by no means to join an assessor to himself, as some sometimes fraudulently do, unless he needs one—which is left to his conscience; otherwise he is bound to provide for him from his own property. But if he needs one, he is to assume a person suspect to neither party and cause the parties jointly to provide him with a suitable salary, providently moderated by the judge.

§6. The judge is prudently to restrain the notary or notaries writing in the case committed to him, who very often exceed the bounds of reason in demanding a salary, as pertains to his office; nor is he in any way to share gain with them or with the aforesaid assessor.

§7. If he receives anything contrary to the present constitution, he is bound to make full restitution of it, and no remission by those to whom restitution is to be made shall benefit him in any way.

§8. Nor, for the giving of testimony—under pretext of which some sometimes fraudulently procure others to be summoned by judges, so that they may weary them with labors and expenses or extort something from them—is he to summon anyone at all unless the condition and state of the case require it. Even then, however, he is not to do so unless he causes suitable expenses for coming, remaining, and returning to be supplied by the producing party to the person summoned to give testimony.

§9. Whatever is attempted contrary to the foregoing provisions or any one of them shall be invalid and void by law itself.

> Causae ab apostolica sede vel eius legato committi debent dignitatem obtinentibus vel canonicatum ecclesiae Cathedralis. Nec tractari debent, nisi in civitatibus vel locis insignibus. H. d. usque ad §. Quum vero. — §. 1. Actore et reo eiusdem dioecesis exsistentibus, causa committi non debet extra illam, nisi in sex casibus, in quibus tamen non trahetur ultra unam diaetam, et, nisi in duobus ultimis casibus impetrans per iuramentum fidem fecerit de illis, repelletur a iudice, et in expensis condemnabitur. Hoc dicit usque ad §. Quum autem. Dominicus. — §. 2. Actor contra reum diversae dioecesis debet impetrare delegatum vel in dioecesi rei, vel in alia non propria, nec ultra unam diaetam distante. Dominicus. — §. 3. Delegatus extra locum commissionis nec partes citare, nec causam cognoscere potest sine expresso partium consensu, nec subdelegare locis vel personis aliis, quam hic expressis. Ioann. Andr. —• §. 4. Delegatus nihil debet a partibus recipere, nisi esculentum et poculentum libere oblatum, quod paucis possit consumi diebus, vel moderatas expensas, si non sunt pauperes, quando pro necessitate vel utilitate, non malitiose, extra domicilium pergeret. Dominicus. — §.5. Delegatus, nisi indigeat, non assumat assessorem; alias de suo illi provideat. Si eget, non suspectum partibus assumet, cum moderato salario a partibus solvendo. — §. 6. Delegatus taxare debet salarium notariorum, nec participare debet cum ipsis vel assessoribus in salario. Dom. — §. 7. Delegatus, recipiens aliquid contra prohibitionem huius capituli, tenetur restituere, non obstante dantis remissione. Ioann. Andr. — §. 8. Delegatus non debet vocare testes, nisi statu causae requirente, et producens illis administrare debet expensas in veniendo, stando et redeundo. Dominicus. — §. 9. Gesta contra hanc decretalem sunt ipso iure nulla. H. d. et non dividitur.
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> Idem. Statutum, quod circa iudices a sede apostolica deputandos nuper edidimus , quum quaedam contenta in eo, quae pro communi utilitate credebantur inducta, sicut experientia docuit, tendere dignoscantur ad noxam, sanctione praesenti, quam irrefragabiliter observari mandamus, suadente utilitate in melius duximus reformandum. Sancimus igitur, ut nullis, nisi dignitate praeditis, aut personatum obtinentibus seu ecclesiarum cathedralium canonicis, causae auctoritate literarum sedis apostolicae vel legatorum eiusdem de cetero committantur, nec audiantur alibi, quam in civitatibus vel locis insignibus, ubi possit commode copia peritorum haberi.

§. i. Quum vero eiusdem civitatis seu dioecesis fuerint actor et reus, extra ipsas causa non committatur, nec conveniatur aliquis eorundem, nisi ab episcopo contra aliquem de sua dioecesi, vel ab aliquo contra eum, aut contra eius capitulum, seu contra universitatem civitatis, villae aut castri fuerit actio dirigenda, vel nisi actor, eandem civitatem seu dioecesim intrare non audens, aut sui adversarii potentiam merito perhorrescens, eum infra ipsas nequeat convenire secure. In his quippe casibus extra dictas civitatem et dioecesim possit contra praedictos causa committi; nullus tamen eorum ultra unam diaetam a fine suae dioecesis valeat conveniri. Sed et in duobus ultimis casibus, nisi impetrans de praedicto* timore, quem in literis commissionibus exprimere teneatur, primo fidem iudici faciat saltem per proprium iuramentum, iudex ipse nullatenus in causa procedat, sed partes a sua iurisdictione dimittens, impetrantem eundem in expensis legitimis alteri parti condemnet.

§. 2. Quum autem actor et reus civitatum et dioecesum fuerint diversarum, si actor in civitate vel dioecesi rei iudicem habere recuset, ipsum non in sua, sed in alia civitate vel dioecesi libere impetrare valeat, reumque trahere ad eandem; dummodo locus, ad quem eum traxerit, ultra unam diaetam, sicut in casu alio praemittitur, minime sit remotus.

§.3. In nullo quoque casuum praedictorum iudex extra civitatem seu dioecesim, in quibus deputatus fuerit, citet partes, nec de causa sibi commissa cognoscat, nisi ad id expressus accesserit earundem assensus; neque alibi, quam infra illas, et personis duntaxat designatis superius committat quomodolibet vices suas.

§. 4. Insuper, ut gratis et cum omni puritate iudicium coram ipso procedat, nullum munus vel quicquid* aliud, nisi forsan esculentum vel poculentum mera liberalitate oblatum, quod paucis consumi possit diebus, vel nisi, quum ipsum propter causam sibi commissam contigerit extra suum domicilium proficisci, moderatas expensas recipere ab eisdem partibus qualitercunque praesumat, provisurus attente, quod in ipsis expensis modum nequaquam excedat, nec plus ab una parte quam ab alia exigat, quum commune gerat negotium utriusque; quodque, ubi causae sibi commissae utilitas vel necessitas non exegerit, occasionem propter habendas expensas proficiscendi extra domicilium non assumat; sed et, ubi notabiliter fuerint pauperes litigantes, etiam pro expensis nil prorsus exigat ab eisdem.

§. 5. Assessorem autem, ut quandoque faciunt aliqui fraudulenter, nisi eo indigeat, quod conscientiae relinquatur eiusdem, sibi nequaquam adiungat; alioquin de suo proprio providere teneatur eidem. Si autem indigeat: ipsum neutri parti suspectum assumens, ei de competenti salario, provide moderando ab eo, faciat a partibus communiter provideri.

§. 6. Notarium vero vel notarios, in causa sibi commissa scribentes, qui ut plurimum in exigendo salario metas rationis excedunt, ut ad ipsius spectat officium, prudenter refrenet, nec cum ipsis aut cum assessore praefato lucrum participet ullo modo.

§. 7. Si quid autem contra constitutionem praesentem receperit, ad ipsius restitutionem integram teneatur, nulla eorum, quibus restitutio facienda fuerit, remissione ullatenus profutura eidem.

§. 8. Pro ferendo quoque testimonio, praetextu cuius aliqui alios fraudulenter interdum a iudicibus vocari procurant, ut eos laboribus et expensis fatigent, aut extorqueant aliquid ab eisdem, nullum ullatenus convocet, nisi quando conditio et status causae requirent. Sed nec tunc, nisi a producente, competentes vocato pro testimonio veniendo, stando, et redeundo faciat ministrari expensas.

§. 9. Quicquid autem contra praemissa vel eorum aliquod contigerit attentari, sit ipso iure irritum et inane.

Chapter XII

The mere fact that the second petitioner first presented his letters and was received as a canon in the same church does not exclude the first petitioner from a prebend vacant at the time of his reception, or becoming vacant afterward, or vacant before his reception or presentation; and this is so if it had been affected for the first petitioner by the proceeding of his executor or by the interposition of a decree, unless by fraud or negligence he was excluded from it. This is what it says. Dominicus.

The same.

You obtained from us a grace in the church of Bourges, with a certain executor granted to cause you to be received as a canon and to provide you with a prebend if any was then vacant in that church, or otherwise from the next to become vacant. Another person subsequently obtaining a similar grace in that church, although he presented his letters and was received as a canon before you, ought not to be preferred to you in a prebend vacant at the time of your reception or becoming vacant afterward, since it had not been conferred upon another before your reception.

The same is true if a prebend became vacant before your reception as a canon through the proceeding of your executor, who had notified the person to whom collation of the prebend pertained that he wished to confer it by authority of this kind, or had forbidden him to confer it, or had reserved it to his own collation—especially when it was affected by the interposition of a decree. For then a prebend of this sort ought to be assigned to you and not to the other person. Indeed, even if the prebend became vacant before your reception and even before your presentation, the same is to be judged if, in the grace of this sort granted to you, we had decreed invalid and void whatever might happen to be attempted against it.

Therefore, in the aforesaid cases you ought to obtain the vacant prebend in preference to the last petitioner, provided that fraud or notable negligence cannot be imputed to you.

> Sola praeventa praesentatio et receptio in canonicum secundi impetrantis in eandem ecclesia, non excludit primum impetrantem a praebenda vacante tempore suae receptionis, vel post a vacante ante suam receptionem vel praesentationem; et hoc, si per processum exsecutoris vel interpositionem decreti pro primo impetrante affecta exstiterat, nisi dolo vel negligentia excluderetur ab eadem. H. d. Dominicus.
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> Idem. Tibi, qui gratiam in Biturensi ecclesia impetrasti a nobis, certo exsecutore concesso, qui te in canonicum recipi faceret, et de praebenda tibi, si qua in eadem ecclesia tunc vacabat, alioquin de vacatura proxime provideret, alius, similem gratiam post tuam impetrationem obtinens in eadem, licet prius quam tu suas literas praesentaverit, et in canonicum sit receptus, in praebenda tempore tuae receptionis, vel etiam post vacante, ex quo alteri ante tuam receptionem collata non exstitit, anteferri non debet. Idem quoque, si ante receptionem tuam in canonicum vacavisset praebenda per processum tui exsecutoris, qui ei, ad quem praebendae collatio pertinebat, notificaverat, quod eam volebat per huiusmodi potestatem conferre, aut interdixerat, ne conferret eandem, seu illam suae reservaverat collationi, praesertim cum interpositione decreti affecta; tunc enim tibi et non alteri debet praebenda huiusmodi assignari. Quinimmo si ante receptionem et praesentationem etiam tuam praebenda vacavit*, idem erit censendum, si in huiusmodi gratia tibi facta decretum a nobis fuerat irritum et inane quod contra ipsam contingeret attentari. In praedictis itaque casibus debes tu praebendam vacantem potius quam impetrator ultimus obtinere; dum tamen dolus tibi non possit vel notabilis negligentia imputari.

Chapter XIII

If it is first mandated conditionally that provision be made for one person, and a second person, petitioning unconditionally, obtains the canonry from the Pope or his executor before the condition occurs, the second is preferred to the first in obtaining the prebend. John Andrew.

The same.

If our writing was directed to someone on your behalf, that he provide you by apostolic authority with a canonry and prebend of the church of Bourges if the assent of the bishop and chapter of the aforesaid church should be given to this, and another person, petitioning later, obtained a canonry of Bourges by collation of the Apostolic See or by the provision of an executor deputed for this before the assent of the aforesaid bishop and chapter was given to the provision to be made for you, that person is deservedly preferred to you in a vacant prebend, although you were afterwards, upon the intervention of their aforesaid assent, received as a canon of that church by authority of the said earlier mandate.

> Si primo sub conditione provideri mandatur, et secundus, pure impetrans, priusquam veniat conditio, a Papa vel exsecutore suo canonicatum obtineat: in assecutione praebendae primo praefertur. Ioann. Andr.
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> Idem. Si pro te alicui directa fuerint scripta nostra, ut tibi de canonicatu et praebenda ecclesiae Biturensis, si ad id accederet episcopi et capituli ecclesiae praelibatae assensus, auctoritate apostolica provideret: alter, postmodum impetrans, qui ex collatione apostolicae sedis vel exsecutoris super hoc deputati provisione, priusquam episcopi et capituli praedictorum assensus* ad provisionem tibi accederet faciendam, canonicatum obtinuit Biturensem*, licet tu, interveniente postea praedictorum assensu, dicti prioris mandati auctoritate in canonicum ipsius ecclesiae sis receptus, in praebenda vacante tibi merito antefertur.

Chapter XIV

This is a solemn decretal and was subtly glossed by John Andrew. According to him it can be summarized thus: if priority between two petitioners is not apparent. This decretal distinguishes two branches and makes a further distinction within the second. Its parts are clear according to John Andrew, although the first gloss summarizes it more broadly.

The same.

When two persons obtain from us on the same day letters concerning similar provision to be made for them in the same church, with certain executors deputed to them, if it is not apparent which of them petitioned first, the one upon whom we conferred the canonry is to be preferred in the prebend to the other, who did not obtain a canonry from us, although the latter presented his letters before the other to those to whom the reception of canons and collation of prebends pertain and was received by them as a canon.

But if we conferred the canonry upon neither or upon both of them, then, because they are equal in grace, the person who presented first shall be stronger in right to the prebend. But if perhaps both concur simultaneously in presenting, those to whom, as premised, the reception of canons and collation of prebends pertain—or the greater part of them—are bound to choose whichever one of them they wish. Once he has been chosen, the other shall altogether lack what he petitioned for,

unless it appears expressly from the tenor of his letters that we willed provision to be made for both of them.

> Haec est solennis decretalis, et per Ioannem Andreae subtiliter glossata, et potest sic secundum eum summari: Si inter duos impetrantes non apparet prioritas. Haec decretalis duo membra distinguit, et in secundo sub distinguit. Et partes patent secundum Ioannem Andreae, licet glossa prima latius summet.
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> Idem. Duobus super provisione simili, sibi facienda in eadem ecclesia, literas a nobis obtinentibus una die, certis eis exsecutoribus deputatis, si non appareat, quis primo impetraverit ex eisdem, is eorum, cui canonicatum contulimus, est in praebenda praeferendus alteri, qui a nobis canonicatum non exstitit assecutus, licet prius quam alius eis, ad quos spectat canonicorum receptio et collatio praebendarum, suas praesentaverit literas, et ab eis in canonicum sit receptus. Si vero neutri eorum vel utrique canonicatum contulimus, tunc, ex quo in gratia sunt aequales, is, qui primo praesentaverit, erit potior in praebenda. Quodsi forsan ambo simul in praesentando concurrant, hi, ad quos, ut praemittitur, spectat canonicorum receptio et collatio praebendarum, vel eorum maior pars, ex eis alterum, quem voluerint, eligere teneantur. Quo electo, alius omnino careat impetratis, nisi ex tenore literarum ipsius expresse appareat, quod utrique ipsorum voluerimus providere.

Chapter XV

All indulgences granted by Boniface or his predecessors to clerics for the perpetual receipt, while absent, of the fruits of their benefices are revoked. And the Pope declares that he will not grant them in the future. John Andrew.

The same.

Because, through the ambitious importunity of petitioners, both we and certain of our predecessors, the Roman Pontiffs, have granted to many persons perpetual indulgences for receiving the fruits of their benefices—with daily distributions alone excepted—whether they were in the schools, resided in another of their churches, remained in the Roman Curia, were in some other definite place, or even were anywhere whatsoever; and because from this arise an insolent disposition to wander, material is prepared for dissipation, divine worship, which we desire to be increased, is diminished, and the office for which an ecclesiastical benefice is generally given is omitted: we, wishing to amend things past and, insofar as we can, to take precautions against things future, revoke altogether all indulgences of this kind and similar indulgences given to persons, not to churches or dignities, and will that their concession be banished from our times. What we do not permit ourselves to do, we indicate to our successors.

> Omnes indulgentiae concessae a Bonifacio, vel suis praedecessoribus, clericis, de percipiendis perpetuo fructibus suorum beneficiorum in absentia, sunt revocatae. Et profitetur Papa, se illas in posterum non daturum. Ioann. Andr.
>
> Idem. Quia per ambitiosam importunitatem petentium tam nos quam nonnulli praedecessores nostri Romani Pontifices indulgentias perpetuas multis concessimus de percipiendis fructibus beneficiorum suorum, distributionibus quotidianis duntaxat exceptis, sive in scholis essent, sive in ecclesiarum suarum altera residerent, aut in Romana curia moram traherent, seu alio certo loco, vel etiam ubicunque, ex quo insolentiae oriuntur vagandi, et dissolutionis praeparatur materia, minuitur cultus divinus, quem desideramus augeri, et officium plerumque, propter quod beneficium ecclesiasticum datur, omittitur: nos volentes emendare praeterita, et quantum possumus adversus futura cavere, omnes huiusmodi et similes indulgentias, personis, non ecclesiis vel dignitatibus datas, penitus

revocamus, et earum concessionem nostris volumus exsulare temporibus. Quodque nobis licere non patimur, nostris succesoribus indicamus.

Title IV: On Custom

Chapter I

Under pretext of a custom, even one confirmed by oath or observed for however long a time, no one can, without dispensation of the Apostolic See, obtain or retain if already obtained more than one personatus, dignity, or other perpetual office together with a canonry and prebend in a church; and what is presumed to the contrary is altogether invalid. John Andrew.

Boniface VIII.

You assert that a custom has been observed in your church for so long a time that no memory exists to the contrary, namely, that the canons of that church can licitly obtain in it, without dispensation of the Apostolic See, two personatus, two dignities, provostships or administrations, or two offices—or one of them together with another—and a prebend at the same time. Deservedly regarding this as a corruption, since it is hostile to the sacred canons and has proceeded from the root of ambition, we reprove it by apostolic authority and decree that you are not bound to its observance even if it was confirmed by oath, since an oath does not constitute a bond of iniquity.

We establish that, since a person is scarcely able worthily to fulfill one office, henceforth no one may, without dispensation of the said See, obtain or retain if already obtained in the same church more than one personatus, dignity, provostship, administration, or perpetual office, by whatever name these may be called, together with a prebend at the same time. If anything contrary is presumed by anyone, it shall be altogether invalid.

DE CONSUETUDINE.

Praetextu consuetudinis etiam iuratae, vel quantocunque tempore observatae, non potest quis nisi unicum personatum, dignitatem, vel aliud perpetuum officium, simul cum canonica et praebenda in aliqua ecclesia absque dispensatione sedis apostolicae obtinere, vel iam obtenta tenere: et contra praesumptum irritum est omnino. Ioann. Andr.

Bonifacius VIII. Consuetudinem, quam in vestra ecclesia servatam asseritis tanto tempore, quod in contrarium memoria non exsistit, videlicet, quod ipsius ecclesiae canonici duos personatus, aut duas dignitates, vel praeposituras seu administrationes, aut duo officia vel eorum alterum cum reliquo insimul et praebendam possint in ea licite absque dispensatione sedis apostolicae obtinere, corruptelam, quum sacris sit inimica canonibus et de ambitionis radice processerit, merito reputantes, eam auctoritate apostolica reprobamus, vosque ad ipsius observantiam, etiamsi iuramento firmata exstiterit, (quum iuramentum iniquitatis vinculum non exsistat), decernimus non teneri, statuentes, ut, (quum unum officium vix digne valeat aliquis adimplere), nulli liceat de cetero, nisi unicum personatum, vel dignitatem, aut praeposituram, sive administrationem vel officium perpetuum*, quocunque nomine censeantur, cum praebenda insimul absque dispensatione dictae sedis in eadem ecclesia obtinere, vel iam obtenta tenere. Quodsi a quoquam secus praesumptum fuerit, irritum sit omnino .

Chapter II

A custom that an appeal may be taken from a bishop's official to the bishop is invalid. John Andrew.

The same.

We do not think it consonant with reason that an appeal can be taken from a bishop's official to the same bishop, however long this custom has in fact been observed, lest an appeal appear to have been interposed from the same person to himself, since the tribunal of both is the same.

> Non valet consuetudo, quod ab officiali episcopi ad episcopum appelletur. Ioann. Andr.
>
> Idem. Non putamus illam consuetudinem, quantocunque tempore de facto servatam, consonam rationi, quod ab officiali episcopi ad eundem episcopum valeat appellari: ne ab eodem ad se ipsum, quum sit idem auditorium utriusque, appellatio interposita videatur.

Chapter III

A prescriptive custom is valid by which a bishop is not bound to seek the counsel of his chapter in investigating, punishing, and correcting the offenses of his subjects. John Andrew.

The same.

Provided that it has otherwise been canonically prescribed, the custom alleged by a bishop—that in investigating, punishing, and correcting the offenses of his subjects he is by no means bound to seek the counsel of his chapter—is not to be reproved.

> Valet consuetudo praescripta, quod episcopus in inquirendo, puniendo, et corrigendo subditorum excessus sui capituli consilium requirere non teneatur. Ioann. Andr.
>
> Idem. Non est, dum tamen alias sit praescripta canonice, consuetudo, quam allegat episcopus, reprobanda, quod in inquirendis, puniendis et corrigendis subditorum excessibus consilium sui capituli requirere minime teneatur.

Chapter IV

A laudable custom of a church is not abrogated by an apostolic rescript mandating that provision be made for someone from the first prebend to become vacant. Hence, if there is a custom there that the more senior canons may successively choose vacant prebends, notwithstanding that mandate a more senior canon may choose a vacant prebend; after those wishing to choose have been awaited for twenty days, the executor shall provide that person with one not chosen. But if the Pope were to confer a prebend vacant in the Curia, the more senior canon could not then choose it. John Andrew.

The same.

When in your church, in which a custom is observed that the more senior canons may successively, if they wish, choose for themselves or through others the better prebends when they become vacant, we command that provision be made for someone from the next prebend to become vacant there that is owed by law to no one else, the more senior canons may, notwithstanding a mandate of this kind, choose according to that custom when a prebend becomes vacant; and the prebend that was not chosen, if it is owed to no one, is to be conferred upon the person for whom we wrote. But in prebends becoming vacant at the Apostolic See, when disposition concerning them is made by the Roman Pontiff, there is no place for the aforesaid custom.

Moreover, lest provisions to be made by apostolic authority be delayed beyond what is due under pretext of the same custom, we establish that executors deputed for these provisions are to await

those wishing to choose for only twenty days; when these have elapsed, they are freely to proceed in the prebends not chosen to execute the mandates given to them, notwithstanding the aforesaid custom.

> Per rescriptum apostolicum, quo de praebenda primo vacatura mandabatur alicui provideri, laudabilis illius ecclesiae consuetudo non tollitur. Hinc est, quod, si ibi est consuetudo, quod antiquiores canonici vacantes praebendas possint optare gradatim, illo non obstante mandato, poterit antiquior vacantem optare praebendam, et, exspectatis per XX. dies optare volentibus, exsecutor de non optata providebit eidem. Si autem praebendam vacantem in curia Papa conferret, tunc illam antiquior optare non poterit. Ioann. Andr.
>
> Idem. Quum tua in ecclesia, in qua consuetudo habetur, quod antiquiores canonici gradatim meliores, si voluerint, possint, quum vacant, per se vel per alios optare praebendas, provideri mandamus alicui de praebenda, nulli alii de iure debita, proximo inibi vacatura: huiusmodi non obstante mandato poterunt ipsi antiquiores iuxta consuetudinem eandem optare, quum praebenda vacabit, et illa, quae optata non fuerit, si nulli sit debita, erit illi, pro quo scripsimus, conferenda. In praebendis vero apud sedem apostolicam vacantibus, quum de ipsis per Romanum Pontificem ordinatur, locus praedictae consuetudini non exsistit. Ne autem praetextu eiusdem consuetudinis provisiones, auctoritate apostolica faciendae, ultra debitum differantur: statuimus, ut exsecutores, super ipsis provisionibus deputati, optare volentes per viginti dies duntaxat exspectent, quibus elapsis libere in non optatis ad exsequenda sibi mandata procedant, praefata consuetudine non obstante.

Title V: On the Postulation of Prelates

Chapter I

If anyone elects "by postulating," or elects one "to be postulated" or "toward postulation," or postulates "by electing," postulates one "to be elected," or postulates "toward election," such an election or postulation is invalid by law itself. The same is true if he says, "I elect and postulate, insofar as it can better have validity in law," unless it is reasonably doubted whether the person ought to be elected or postulated. In that case, at the time of consent, he is to choose one of the two courses, namely election or postulation; once it has been chosen, he cannot return to the other. This is what it says. John Andrew.

Boniface VIII.

By a perpetual edict we prohibit anyone henceforth from proceeding to make elections or postulations under any of these forms devised by pernicious curiosity: "I elect by postulating," "I postulate by electing," "I elect one to be postulated," or "I postulate one to be elected," since neither a true election nor a true postulation results from them, but rather they oppose one another; or under these words, "I elect toward postulation," or "I postulate toward election," since they are known to signify an imperfect act. If the contrary is done, we decree it invalid by that very fact.

We also prohibit anyone from being postulated or elected under this form, "I elect and postulate, insofar as it can better have validity in law," since it contains uncertainty, and establish that what is done contrary to this is altogether without force, except when it is reasonably doubted whether someone ought to be elected or rather postulated. In that case, the person so postulated or elected is necessarily bound, at the time of consent, to choose the course of election or of postulation, lest he wander in uncertainty; permission to return to the other after he has chosen one is altogether forbidden to him.

DE POSTULATIONE PRAELATORUM.

Si quis eligat postulando, vel postulandum, vel in postulandum, vel postulet eligendo, vel eligendum, vel in eligendum: talis electio vel postulatio est irrita ipso iure. Si autem dicat: „ Eligo et postulo, prout melius de iure valere potest," idem; nisi probabiliter dubitaretur, an esset eligendus vel postulandus. Et tunc consensus tempore eligat alteram viam, electionis scilicet vel postulationis; qua electa ad alteram redire non poterit. H. d. Ioann. Andr.

Bonifacius VIII. Perpetuo prohibemus edicto, ne sub aliqua ex his formis, quas perniciosa curiositas adinvenit: „ Eligo postulando," et: „Postulo eligendo," aut: „Eligo postulandum, seu: ,,Postulo eligendum, ^ quum nec vera electio, nec vera postulatio resultet ex ipsis, quin sibi potius invicem adversentur, aut sub illis verbis*: „Eligo in postulandum," vel: „Postulo in eligendum," quum rem imperfectam significare noscantur, ad faciendas electiones vel postulationes de cetero procedatur, si secus actum fuerit, eo ipso irritum decernentes. Sub ea etiam forma: „Eligo et postulo, prout potest melius de iure valere," quum incertitudinem contineat, quemquam postulari vel eligi prohibemus, statuentes, quod contra factum fuerit viribus omnino carere, nisi quando probabiliter dubitatur, utrum quis sit eligendus, vel potius postulandus. Quo casu is, qui sic postulatus fuerit aut* electus, consensus tempore viam electionis vel postulationis, ne in incerto vagetur, eligere necessario teneatur, redeundi ad aliam, postquam unam elegerit, sibi licentia penitus interdicta.

Title VI: On Election and the Power of the Elected

Chapter I

If anything is objected against a provision, election, or postulation made to a personatus, dignity, or canonry, whether against the person or against the form, and an appeal from this has been made to the Pope, the appellant, the defending party, and those whose interest is involved are to set out upon the journey to the Pope within one month from the day of the objection. John Andrew. — § 1. If the other party, after being awaited for twenty days following the arrival of the first, has not come, the business is to be proceeded with. John Andrew. — § 2. One who does not prove what he objects against the form is condemned to the other party in expenses; one who does not prove what he objects against the person is suspended from benefices for three years, and is perpetually deprived of them if in the meantime he intrudes himself into them. These penalties do not apply if it legitimately appears that he was not acting calumniously. John Andrew.

Innocent IV at the General Council of Lyons. We decree that, if anyone attacks an election, postulation, or provision that has been made, objecting something against its form or against the person, and it happens that an appeal is made to us on this account, both the one who objects and the one who defends, and generally all those whose interest is involved and whom the cause concerns, are to set out for the Apostolic See within one month from the day of the objection, either in person or through procurators instructed for the cause.

§ 1. But if the other party does not come, after being awaited for twenty days following the arrival of the first, the business of the election is to be proceeded with as shall be according to law, notwithstanding anyone's absence. We will and command that these provisions be observed in dignities, personatuses, and canonries.

§ 2. We add that one who has not fully proved what he objects against the form is to be condemned to the expenses that the other party shows that it incurred on this account. But one who has failed in proving what he objects against the person is to know himself suspended from ecclesiastical

benefices for three years. If, within that time, he intrudes himself into them by his own temerity, he is by the law itself to be perpetually deprived of them, having no hope or confidence of mercy concerning this, unless it is established by the most manifest proofs that a probable and sufficient cause excused him from the vice of calumny.

> **DE ELECTIONE ET ELECTI POTESTATE.**
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> Si aliquid opponatur contra provisionem, electionem vel postulationem, factam ad personatum, dignitatem vel canonicam, in personam vel formam, et ab hoc fuerit appellatum ad Papam, appellans et defendens, et quorum interest, a die obiectionis infra mensem arripiant iter eundi ad Papam. Ioann. Andr. — §. 1. Si pars altera, exspectata per XX. dies post adventum alterius, non venerit, in negotio procedatur. Ioann. Andr. — §. 2. Non probans, quod in formam opponit, condemnatur parti alteri in expensis; non probans, quod obiicit in personam, est a beneficiis triennio suspensus, et perpetuo privatus, si se interim ad illa miscuerit. Hae poenae locum non habent, si legitime pateat, eum calumniose non fuisse. Ioann. Andr.
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> Innocentius IV. in concilio generaliLugdunensi. Statuimus, ut, si quis electionem, postulationem vel provisionem factam impugnat, in formam obiiciens aliquid vel personam, et propter hoc ad nos appellari contigerit, tam is, qui opponit, quam qui defendit, et generaliter omnes, quorum interest, et quos causa contingit, per se vel per procuratores ad causam instructos ad sedem apostolicam a die obiectionis iter arripiant infra mensem.
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> §. i. Sed si pars alia non venerit, per viginti dies post adventum alterius exspectata, in electionis negotio, non obstante cuiusquam absentia, sicut de iure fuerit, procedatur. Haec autem in dignitatibus, personatibus et canoniiss observari volumus et mandamus.
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> §. 2. Adicientes, ut, qui plene non probaverit quod in formam opponit, ad expensas, quas propter hoc pars altera se fecisse docuerit, condemnetur. Qui vero in probatione defecerit eius, quod obiicit in personam, a beneficiis ecclesiasticis triennio noverit se suspensum. Ad quae, si infra illud tempus propria temeritate se ingesserit, eis ipso iure perpetuo sit privatus, nullam super hoc de misericordia spem aut fiduciam habiturus, nisi manifestissimis constiterit documentis, quod ipsum a calumniae vitio causa probabilis et sufficiens excusaret.

Chapter II

Conditional, alternative, and uncertain votes in elections are rejected and are held as not added, and they fall back upon those consenting unconditionally. John Andrew.

The same. In elections and postulations, and in scrutinies from which the right of electing arises, we utterly reject conditional, alternative, or uncertain votes, decreeing that, votes of this kind being held as not added, the election is to be celebrated from unconditional consents, the vote of those who did not consent unconditionally reverting on that occasion to the others.

> Vota conditionalia et alternativa et incerta in electionibus reprobantur, et habentur pro non adiectis, et recidunt in pure consentientes. Ioann. Andr.
>
> Idem. In electionibus et postulationibus, ac scrutiniis, ex quibus ius oritur eligendi, vota conditionalia, alternativa vel incerta penitus reprobamus, statuentes, ut, huiusmodi votis pro non adiectis habitis, ex puris consensibus celebretur electio, voce illorum, qui non pure consenserint, ea vice in alios residente.

Chapter III

The reason for the constitution is set forth, and the preservation of the old law. John Andrew. — § 1. It is set forth how the election of the Roman Pontiff ought to be made when he dies in the city in which he resided with his curia. — § 2. What the law is when the Roman Pontiff dies outside the city in which the curia was. — § 3. He appoints executors of this law, with penalties. John Andrew. — § 4. He adjures the cardinals to put aside every private affection in the election of the Roman Pontiff, and annuls all pacts, obligations, and oaths that had been given or made concerning the election of anyone. — § 5. He admonishes all the faithful, immediately upon hearing of the death of the Supreme Pontiff, to celebrate his obsequies and to pray daily for a vigilant, concordant, and useful provision for the Roman Church; prelates, moreover, are to exhort their subjects to this in their preaching and indicate to them the frequency of prayers and the observance of fasts. John Andrew.

Gregory X at the General Council of Lyons. Where the greater danger is apprehended, there without doubt fuller provision must be made. How heavily a prolonged vacancy of the Roman Church is burdened with losses, however, and how full it is of many and great dangers, consideration of time past teaches, and the crises of that time, prudently considered, make manifest. Hence evident reason calls us to ensure that, while our attention is carefully occupied even with reforming lesser matters, we by no means leave those that are more dangerous without an appropriate remedy of reform. Therefore, judging that all the provisions salutarily established by our predecessors—and especially by Pope Alexander III of happy memory—for avoiding discord in the election of the Roman Pontiff are to remain wholly unshaken in their force—for we intend to detract nothing from them, but by the present constitution to supply what experience has proved to be lacking—

§ 1. With the approval of this sacred council, we decree that, if it happens that the same Pontiff closes his last day in the city in which he resided with his curia, the cardinals who are present in that city are to be bound to await those absent for ten days only. When these have elapsed, whether the absent cardinals have come or not, all are then to assemble in the palace in which the same Pontiff resided, each being content with only one servant, cleric or layman, as they shall judge fit to choose. We nevertheless permit those whom manifest necessity suggests should be indulged to have two, the choice of these being reserved to those same cardinals. In the same palace all are to inhabit in common one conclave, with no intervening wall or other covering, which, with free access to a private chamber reserved, is to be so closed on every side that no one can enter or leave it. No access to the same cardinals is to lie open to anyone, nor any opportunity of speaking secretly with them; nor are they themselves to admit any persons coming to them except those who, by the will of all the cardinals present there, should be summoned solely for matters pertaining to the business of the impending election. Nor is it lawful for anyone to send a messenger or writing to those cardinals or to any one of them; one who acts to the contrary, however, by sending a writing or messenger, or by speaking secretly with any one of them, incurs by that very fact the sentence of excommunication. In the aforesaid conclave, nevertheless, a suitable window is to be left through which the things conveniently necessary for the cardinals' sustenance may be supplied to them, but through it no entrance to them may be open to anyone.

But if—which God forbid—within three days after the aforesaid cardinals have entered the aforesaid conclave as stated above, that church has not been provided with a pastor, for the space of the five immediately following days they are to be content each day with only one dish, both at luncheon and at supper. When those days have passed without a provision having been made, only bread, wine, and

water are thereafter to be supplied to them until that provision follows. Moreover, while the business of such provision is pending, the said cardinals are to receive nothing from the Pope's camera, nor from the other things accruing from whatever source to that church during the vacancy; but throughout the vacancy all those things are to remain in the custody of the person to whose fidelity and diligence the same camera has been committed, to be reserved by him for the disposition of the future Pontiff. Those who receive anything, however, are thereafter to be bound to abstain from receiving any revenues belonging to them until they make full satisfaction for the things thus received.

The same cardinals are to devote themselves so attentively to accelerating the provision that they are by no means to involve themselves in any other business, unless perhaps a necessity so urgent should arise that they would have to make provision for defending the territory of that church or some part of it, or unless a danger so great and so evident should threaten that, by the concordant judgment of all and each of the cardinals present, it would seem necessary to meet it swiftly. Indeed, if any one of the aforesaid cardinals has not entered the aforesaid conclave as expressed above, or, having entered, has departed without a manifest cause of illness, the others are freely to proceed to elect the Supreme Pontiff, without his being sought and without his thereafter being admitted into the business of the same election. If, however, illness supervening, it happens that any one of them departs from that conclave, even while that illness continues the election may be proceeded with without his vote being sought. But if, after health has been restored to him or before, he wishes to return to the others, or if other absent cardinals, whom we have said are to be awaited for ten days, arrive while the matter is still intact—that is, before that church has been provided with a pastor—they are to be admitted into that business in the state in which they find it, and are to observe with the others the foregoing provisions concerning enclosure, servants, food and drink, and all the remaining matters.

§ 2. Furthermore, if at any time it happens that the Roman Pontiff departs from this light outside the aforesaid city in which he was residing with his curia, the cardinals are to be bound to assemble in the city in whose territory or district the same Pontiff died, unless perhaps it is under interdict or persists in open rebellion against the Roman Church. In that case they are to assemble in another, nearer city that likewise is neither subject to interdict nor, as stated, openly rebellious. In this city also, both as regards awaiting the absent cardinals and as regards common habitation, enclosure, and all other matters, the same provisions are to be observed in the episcopal house, or in any other house to be assigned to the cardinals, that were expressed above for the case in which the said Pontiff dies in the city in which he resided with his curia.

§ 3. Furthermore, because it is of little use to establish laws unless there is someone to protect them, we decree in addition that the lords and other rulers and officials of that city in which the election of the Roman Pontiff is to be celebrated, by our authority and by the power delivered to them with the approval of the same council, cause each and all of the foregoing provisions to be observed fully and inviolably, without any fraud or deceit, and that they do not presume to constrain the cardinals beyond what has been set forth. Immediately upon hearing of the death of the Supreme Pontiff, they are corporally to swear an oath concerning the observance of these provisions in this manner before the clergy and the entire people of that city, specially summoned for this purpose. But if they do not diligently observe the foregoing provisions, or commit fraud in or concerning them, of whatever pre-

eminence, condition, or status they may be, every privilege ceasing, they incur by that very fact the sentence of excommunication and are to be perpetually infamous; nor are the gates of dignity ever to stand open to them, nor are they to be admitted to any public office. We further decree that they are by that very fact deprived of the fiefs and other goods that they hold from the same Roman Church or from any other churches, so that those goods revert fully and freely to the churches themselves, to be disposed of without any contradiction at the judgment of the administrators of those churches. The aforesaid city, moreover, is not only to be subjected to interdict but also deprived of pontifical dignity.

§ 4. Moreover, because when either a disordered affection takes judgment captive or the necessity of some obligation drives it toward some definite person, election ceases while freedom of electing is taken away, we beseech the same cardinals through the bowels of the mercy of our God, and adjure them through the sprinkling of his precious blood, that, considering more attentively what hangs over them when the creation of the vicar of Jesus Christ, the successor of Peter, the ruler of the universal Church, and the director of the Lord's flock is at issue, they put aside every disorder of private affection, and, with the constraint of every pact, agreement, and obligation, as well as every compact and understanding, ceasing, do not turn the gaze of their consideration back upon themselves or their own; do not seek the things that are their own; do not attend to private advantages; but, with nothing constraining their judgment in electing except God, with pure and free minds and the bare conscience of election, freely pursue the public utility. With every effort and solicitude, so far as their ability permits, they are to do this alone: that through their ministry the useful and most necessary provision for the whole world be accelerated, a suitable spouse being swiftly given to the same Church. Those who act otherwise are to lie under divine vengeance, their fault by no means to be effaced unless grave penance has been performed on this account.

And we nevertheless annul, invalidate, and decree to be wholly without force all pacts, agreements, obligations, compacts, and understandings, whether joined to a bond of firmness by oath or by anything else, so that no one is in any way bound to observe them, nor is anyone to fear from transgressing them the mark of faith not kept; rather, he is to merit a title of not unworthy praise, since even human law bears witness that transgressions of this kind are more acceptable to God than observances of an oath.

§ 5. But because the faithful are not so much to trust in any invention, however solicitous, as they are to hope in the urgency of humble and devout prayer, we add to this enactment that in all cities and other distinguished places where certainty of the aforesaid Pontiff's death first becomes known, after solemn obsequies have been celebrated for him by the clergy and people, humble prayers are to be poured forth to the Lord on each day, until reliable report has conveyed the truth that provision has been made for the same Church. They are to persist before him in devout prayers that he who makes concord in his high places may so bring the hearts of those cardinals into concord in electing that a swift, concordant, and useful provision—just as the salvation of souls demands and the utility of the whole world requires—may follow from their unanimity. And lest so salutary an edict of the present enactment happen to be neglected under the pretext of ignorance, we strictly command that patriarchs, archbishops, bishops, and other prelates of churches, and the others to whom it has been granted to set forth the word of God, diligently exhort the clergy and people, who are to be assembled more frequently and specially for this purpose, in their sermons to multiply the assistance of supplicating prayers for the swift and happy outcome of so great a business, and by the same

authority enjoin upon them not only frequency of prayers but also the observance of fasts, as the circumstances to be weighed shall suggest.

> Ponitur causa constitutionis et iuris veteris conservatio. Ioann. Andr. — §. 1. Ponitur, quomodo debeat fieri Romani Pontificis electio, quando moritur in civitate, in qua cum sua curia residebat. — §. 2. Quid iuris, quando moritur Romanus Pontifex extra civitatem, in qua erat curia. — §. 3. Dat exsecutores huic iuri cum poenis. Ioann. Andr. — §. 4. Obtestatur cardinales, ut in electione Romani Pontificis deponant omnem privatum affectum, et cassat omnia pacta, obligationes, et iuramenta, quae data vel facta essent de aliquo eligendo. — §. 5. Monet omnes fideles, ut statim, audita summi Pontificis morte, eius celebrent exsequias, et quotidie orent pro vigili, concordi et utili provisione Romanae ecclesiae; praelati autem in suis praedicationibus ipsos subditos ad hoc hortentur, et eis frequentiam orationum et observantiam ieiuniorum indicant. Ioann. Andr.
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> Gregorius X. in generali concilio Lugdunensi. Ubi periculum maius intenditur, ibi procul dubio est plenius consulendum. Quam gravibus autem sit onusta dispendiis, quot et quantis sit plena periculis ecclesiae Romanae prolixa vocatio, exacti consideratio temporis edocet, et considerata prudenter illius temporis discrimina manifestant. Hinc nos evidens evocat ratio, ut, dum reformandis etiam minoribus nostra sollerter vacat intentio, ea, quae periculosiora sunt, nequaquam absque remedio reformationis accommode relinquamus. Ideoque omnia, quae pro vitanda discordia in electione Romani Pontificis a nostris sunt praedecessoribus, et praecipue a felicis recordationis Alexandro Papa III. salubriter instituta, omnino immota in sua firmitate manere censentes, (nihil enim detrahere illis intendimus, sed quod experientia deesse probavit praesenti constitutione supplere).
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> §. 1. Hoc sacro concilio approbante statuimus, ut, si eundem Pontificem in civitate, in qua cum sua curia residebat, diem claudere contingat extremum, cardinales, qui fuerint in civitate ipsa praesentes, absentes exspectare decem diebus tantummodo teneantur. Quibus elapsis, sive absentes venerint sive non, extunc omnes conveniant in palatio, in quo idem Pontifex habitabat, contenti singuli singulis tantummodo servientibus clericis vel laicis, prout duxerint eligendum. Illis tamen, quibus patens necessitas id suggerit indulgeri, duos habere permittimus, eisdem* electionis arbitrio reservato. In eodem autem palatio unum conclave, nullo intermedio pariete seu alio velamine, omnes inhabitent in communi, quod, reservato libero ad secretam cameram aditu, ita claudatur undique, ut nullus illud* intrare valeat vel exire. Nulli ad eosdem cardinales aditus pateat, vel facultas secrete loquendi cum eis, nec ipsi aliquos ad se venientes admittant, nisi eos, qui de voluntate omnium cardinalium inibi praesentium pro his tantum, quae ad electionis instantis negotium pertinent, vocarentur. Nulli etiam fas sit, ipsis cardinalibus vel eorum alicui nuncium mittere vel scripturam; qui vero contra fecerit, scripturam mittendo vel nuncium, aut cum aliquo ipsorum secrete loquendo, ipso facto sententiam excommunicationis incurrat. In conclavi tamen praedicto aliqua fenestra competens dimittatur, per quam eisdem cardinalibus ad victum commode necessaria ministrentur; sed per eam nulli ad ipsos patere possit iningressus. Verum si, (quod absit,) infra tres dies, postquam, ut praedicitur, conclave praefatum & iidem cardinales intraverint, non fuerit ipsi ecclesiae de pastore provisum, per spatium quinque dierum immediate sequentium singulis diebus tam in prandio quam in coena uno solo ferculo sint contenti; quibus provisione non facta decursis, extunc tantummodo panis, vinum et aqua ministrentur eisdem, donec eadem provisio subsequatur. Provisionis quoque huiusmodi pendente negotio, dicti cardinales nihil de camera Papae recipiant, nec de aliis eidem ecclesiae tempore vacationis obvenientibus undecunque; sed ea omnia ipsa vacatione durante sub eius, cuius fidei et diligentiae camera eadem est commissa, custodia maneant, per eum dispositioni futuri Pontificis reservanda. Qui autem aliquid receperint, teneantur extunc a receptione quorumlibet redituum ad eos* spectantium abstinere, donec de receptis taliter plenariam satisfactionem impendant. Iidem quoque cardinales accelerandae provisioni sic vacent attentius, quod se nequaquam de alio negotio intromittant, nisi

forsan necessitas adeo urgens incideret, quod eos oporteret de terra ipsius ecclesiae defendenda vel eius parte aliqua providere, vel nisi aliquod tam grande et tam evidens periculum immineret, quod omnibus et singulis cardinalibus praesentibus concorditer videretur illi celeriter occurrendum. £>ane, si aliquis ex praedictis cardinalibus conclave praedictum, ut supra exprimitur, non intraverit, aut intrans absque manifesta causa infirmitatis exierit: ipso minime requisito, nec in eiusdem electionis negotio ulterius admittendo, per alios ad eligendum summum* Pontificem libere procedatur. Si vero infirmitate superveniente idem conclave ex eis aliquem exire contingat, ipsa etiam infirmitate durante poterit, eius suffragio non requisito, ad electionem* procedi. Sed si ad alios post sanitatem sibi redditam seu ante redire voluerit, vel etiam si alii absentes, quos per decem dies diximus exspectandos, supervenerint re integra, videlicet antequam eidem ecclesiae sit de pastore provisum: in eodem negotio in illo statu, in quo ipsum invenerint, admittantur, praemissa tam de clausura, quam de servientibus, cibo ac potu et reliquis cum aliis servaturi.

§. 2. Porro, si quando Romanum Pontificem extra civitatem praedictam, in qua erat cum sua curia residens, contigerit ab hac luce migrare, teneantur cardinales in civitate, in cuius territorio seu districtu idem Pontifex obiit, convenire, nisi sit forsitan interdicta, vel contra ecclesiam Romanam in aperta rebellione persistat. Quo casu in alia viciniori conveniant, quae similiter nec interdicto subiaceat, nec sit, ut praedicitur, aperte rebellis. In hac etiam civitate tam quoad exspectationem absentium, quam quoad habitationem communem, clausuram et cetera omnia in domo episcopali, vel alia qualibet eisdem cardinalibus deputanda, eadem observentur, quae superius, obeunte dicto Pontifice in ea, in qua cum sua curia residebat, sunt expressa.

§. 3. Praeterea, quia parum est iura condere, nisi sit, qui eadem tueatur, adiiciendo sancimus, ut domini* aliique rectores et officiales civitatis illius, in qua Romani Pontificis electio fuerit celebranda, auctoritate nostra, et° eiusdem adprobatione concilii potestate sibi tradita, praemissa omnia et singula plene ac inviolabiliter sine fraude ac dolo aliquo faciant observari, nec cardinales ultra, quam praemittitur, arctare praesumant. Super his autem taliter observandis statim, audito summi Pontificis obitu, coram clero et populo universo p civitatis ipsius, ad hoc specialiter convocandis, praestent corporaliter iuramentum. Quodsiq praemissa diligenter non observaverint, aut fraudem in eis vel circa ea commiserint, cuiuscunque sint praeeminendae, conditionis aut status, omni cessante privilegio eo ipso sententiam excommunicationis incurrant, et perpetuo sint infames, nec unquam eis portae dignitatis pateant, nec ad aliquod publicum officium admittantur. Ipsos insuper feudis et bonis ceteris, quae ab eadem Romana ecclesia* vel quibuslibet aliis ecclesiis obtinent, ipso facto decernimus esse privatos, ita, quod ad ecclesias ipsas plene ac libere revertantur, administratorum earundem ecclesiarum arbitrio sine contradictione aliqua disponenda. Civitas vero praedicta non solum sit interdicto supposita, sed et pontificali dignitate privata.

§. 4. Ceterum quia, quum arbitrium vel inordinatus captivat affectus, vel ad certum aliquem* obligationis cuiusque necessitas adigit, cessat electio, dum libertas adimitur eligendi: cardinales eosdem obsecrantes per viscera misericordiae Dei nostri, per adspersionem sui pretiosi sanguinis obtestamur, ut pensantes attentius, quid eis imminet, quum agitur de creatione vicarii Iesu Christi, successoris Petri, rectoris universalis ecclesiae, gregis dominici directoris, omni privatae affectionis inordinatione deposita, et cuiuslibet pactionis, conventionis, obligationis necessitate, nec non condicti et intendimenti contemplatione cessantibus, non in se reciprocent considerationis intuitum vel in suos, non quae sua sunt quaerant, non commodis privatis intendant, sed, nullo arctante ipsorum in eligendo iudicium nisi Deo, puris et liberis mentibus, nuda electionis conscientia, utilitatem publicam libere prosequantur, omni conatu et sollicitudine, prout possibilitas patitur, id acturi tantummodo, ut eorum ministerio acceleretur utilis et pernecessaria totius mundi provisio, idoneo celeriter eidem ecclesiae sponso dato. Qui autem secus egerint, divinae subiaceant ultioni, eorum culpa, nisi gravi propter hoc peracta

poenitentia, nullatenus abolenda. Et nos nihilominus pactiones, conventiones, obligationes, condicta* et intendimenta omnia, sive iuramenti sive cuiuslibet alterius fuerint* vinculo firmitatis annexa*, cassamus, irritamus et viribus decernimus omnino carere ita, quod*, nullus ad illa observanda quomodolibet sit adstrictus, nec quisquam ex eorum transgressione notam vereatur fidei non servatae, sed non indignae laudis titulum potius mereatur, quum lex etiam humana testetur, Deo magis transgressiones huiusmodi, quam iurisiurandi observationes acceptas.

§. 5. Quia vero fidelibus non est tam de sollicita quantumcunque inventione fidendum, quam de instantia orationis humilis et devotae sperandum: huic adiicimus sanctioni, ut in omnibus civitatibus ceterisque locis insignibus, ubi primum de memorati Pontificis obitu certitudo claruerit, a clero et populo, solennibus pro eo exsequiis celebratis, singulis diebus, donec de ipsius ecclesiae provisione indubitanter* rumor pertulerit veritatem, humiles preces fundantur ad Dominum, apud eum devotis orationibus insistatur, ut ipse, ui concordiam facit in sublimibus suis, sic efficiat eorunem cardinalium corda in eligendo concordia, quod provisio celer, concors et utilis, prout animarum salus exigit et totius orbis requirit utilitas, ex ipsorum unanimitate sequatur. Et ne tam salubre praesentis sanctionis edictum ignorantiae negligi praetextu contingat: districte praecipimus, ut patriarchae, archiepiscopi, episcopi et alii ecclesiarum praelati, ceterique, quibus concessum est proponere verbum Dei, clerum et populum, propter hoc specialiter frequentius congregandos, in suis sermonibus ad supplicum precum suffragia pro celeri, et felici exitu tanti negotii frequentandasollerter hortentur, et ipsis eadem auctoritate non solum orationum frequentiam, sed* observantiam, prout circumstantiae pensandae suaserint, ieiuniorum indicant.

Chapter IV

Those appealing against elections, postulations, or provisions are bound to express everything that they intend to object against the person or the form, and to swear that they believe those things to be true and that they are able to prove them. They, or those adhering to them, will not be heard concerning matters not expressed, unless those matters newly emerge or come to their knowledge, or an ability to prove them supervenes; concerning this they will have to swear. The statute of Innocent, issued against those who do not prove the things objected against the person or the form, is preserved in its force. John Andrew.

The same, at the same council. In order that, so far as possible, we may close the way to malicious devices concerning ecclesiastical elections, postulations, and provisions, lest churches remain vacant dangerously for too long or provision for personatuses, dignities, and other ecclesiastical benefices be delayed, we provide by a perpetual edict that, whenever some persons oppose elections, postulations, or provisions by proposing anything against the form of the election, postulation, or provision, or against the persons of those electing or of the person elected, or of the one for whom provision was to be made or had been made, and it happens that an appeal is made on this account, the appellants are to express in the public instrument or letters drawn up concerning the appeal each and all of the things that they intend to object against the form or the persons. Before authentic persons, or an authentic person, who are to bear witness to the truth concerning this, they are corporally to swear an oath that they believe the matters they thus express to be true and that they are able to prove them.

Otherwise, both the objectors and those adhering to them at the time the appeal is interposed or afterward are to know that the power of objecting anything that was not expressed in letters or instruments of this kind is forbidden to them, unless perhaps something should afterward emerge, or an ability to prove old matters should supervene, or some old matters should newly come to the

knowledge of the objectors that the appellants could probably have been ignorant of, and in fact were ignorant of, at the time the appeal was issued. Concerning ignorance of this kind and the supervening ability to prove, they are corporally to establish credibility by their own oath, adding in that same oath that they believe themselves to have sufficient proofs for proving those matters. We will, moreover, that the provisions that Pope Innocent IV of happy memory established against those who do not fully prove the things that they had objected against the form or the person remain in their force.

> Appellantes contra electiones, postulationes vel provisiones, omnia, quae obiicere intendunt contra personam vel formam, tenentur exprimere, et iurare, quod illa credunt vera esse, et ea se posse probare. Super non expressis ipsi, vel adhaerentes eis, non audientur, nisi de novo emergant vel perveniant, vel superveniant probandi facultas, super quo iurare debebunt. Statutum Innocentii, editum contra non probantes quae obiiciuntur in personam vel formam, in suo robore conservatur. Ioann. Andr.
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> Idem in eodem. Ut circa electiones, postulationes et provisiones ecclesiasticas viam malitiis, prout est possibile, praecludamus, ne diutius periculose vacent ecclesiae, vel personatuum, dignitatum et aliorum ecclesiasticorum beneficiorum provisio differatur: edicto perpetuo providemus, ut, si quando aliqui electionibus, postulationibus vel provisionibus se opponunt, proponendo aliqua contra electionis, postulationis seu provisionis formam, aut personas eligentium vel electi, sive illius, cui erat provisio facienda sive* facta, et propter hoc contigerit appellari: appellantes in instrumento publico seu literis super appellatione confectis omnia et singula exprimant, quae in formam intendunt obiicere vel personas, coram personis authenticis aut persona, quae super hoc testimonium perhibeant veritati, corporali praestito iuramento, quod credunt ea, quae sic exprimunt esse vera, et se posse probare. Alioquin tam opponentes, quam tempore appellationis interpositae vel postmodum adhaerentes eisdem, obiiciendi aliqua, quae non fuerint in huiusmodi literis vel instrumentis expressa, potestatem sibi noverint interdictam; nisi aliquid postea forsan emerserit, vel super antiquis supervenerit probandi facultas, aut aliqua antiqua in opponentium notitiam de novo pervenerint, quae appellantes appellationis tempore emissae verisimiliter ignorare potuerint, et etiam ignorarint. Super huiusmodi autem ignorantia et superveniente facultate probandi fidem per proprium praestandum corporaliter faciant iuramentum, hoc adiiciendo in iuramento eodem, quod ad ea probanda credunt se sufficientes probationes habere. Illa sane, quae felicis recordationis Innocentius Papa IV. contra non plene probantes ea, quae in formam vel personam obiecerant, statuit, in suo volumus robore permanere.

Chapter V

Before confirmation, one elected ought not to administer, through himself or another, in whole or in part and under any color whatever; those who act to the contrary are by the law itself deprived of the right acquired from the election. John Andrew.

The same, at the same council. The blindness of avarice and the wickedness of damnable ambition, occupying the minds of some, drive them to such temerity that they endeavor by contrived frauds to usurp things that they know are forbidden to them by law. For some persons elected to the government of churches, because the law forbids them to intrude themselves, before the confirmation of the election celebrated concerning them, into the administration of the churches to which they are called, procure that this administration be committed to them as though to procurators or oeconomi. Therefore, since indulgence is not to be given to the malicious devices of men, we, wishing to make broader provision, decree by this general constitution that henceforth no one presume, before the election celebrated concerning him is confirmed, to conduct or receive the

administration of the dignity to which he has been elected—under the name of oeconomus or procurator, or under another newly contrived color—in spiritual or temporal matters, through himself or another, in part or in whole, or to intermeddle in them. We decree that all those who act otherwise are by that very fact deprived of whatever right may have been acquired for them by the election.

> Electus ante confirmationem administrare non debet per se vel per alium in totum vel in partem sub quocunque colore; qui contra fecerint, ipso iure privati sunt iure ex electione quaesito. Ioann. Andr.
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> Idem in eodem. Avaritiae caecitas et damnandae ambitionis improbitas aliquorum animos occupantes, eos in illam temeritatem impellunt, ut quae sibi a iure interdicta noverint exquisitis fraudibus usurpare conentur. Nonnulli siquidem ad regimen ecclesiarum electi, quia eis iure prohibente non licet se ante confirmationem electionis, celebratae de ipsis, administrationi ecclesiarum, ad quas vocantur, ingerere, ipsam sibi tanquam procuratoribus seu oeconomis committi procurant. Quum itaque non sit malitiis hominum indulgendum, nos, latius providere volentes, hac generali constitutione sancimus, ut nullus de cetero administrationem dignitatis, ad quam electus est, priusquam celebrata de ipso electio confirmetur, sub oeconomatus vel procurationis nomine, aut alio de novo quaesito colore, in spiritualibus vel temporalibus, per se vel per alium, pro parte vel in totum, gerere vel recipere, aut illis* se immmiscere praesumat, omnes illos, qui secus fecerint, iure, si quod eis per electionem quaesitum fuerit, decernentes eo ipso privatos.

Chapter VI

Those electing are to present the election to the person elected as soon as they conveniently can. The person elected is to consent within a month; otherwise he is deprived of the right acquired, unless the condition of the person excuses him. After consenting, he is to seek confirmation within three months; otherwise the election is deprived of force. John Andrew.

The same, at the same council. How damaging a vacancy is to churches themselves, and how dangerous it also tends to be to souls, not only the laws attest, but effective experience, the mistress of affairs, also makes manifest. Desiring, therefore, to meet the duration of vacancies with appropriate remedies, we decree by this perpetual enactment that whenever an election has been celebrated in any church, the electors are to take care to present that election to the person elected and to seek his consent as soon as they conveniently can; the person elected, moreover, is to be bound to give that consent within one month from the time of such presentation. If the person elected delays giving it beyond that time, he is thereafter to know himself, by that very fact, deprived of whatever right had been acquired for him from his election, unless perhaps the condition of the person elected is such that, by a prohibition or any provision of the Apostolic See, he cannot consent to the election celebrated concerning him without his superior's permission.

In that case, the same person elected or his electors are to endeavor, with such speed as the presence or absence of his superior shall permit, to seek and obtain from that superior permission for him to consent. Otherwise, if, after the time to be moderated according to the presence or absence of the same superior, as set forth above, it happens that they have by no means obtained permission of this kind, the electors are thereafter to have free power to proceed to another election. Moreover, every person elected is not to omit seeking confirmation of his election within three months after the consent given to the election celebrated concerning him. But if, no just impediment existing, he

omits to do so within this three-month period, that election is by that very fact to be deprived of force.

> Eligentes, quam cito commode possunt, electionem electo praesentent. Electus infra mensem consentiat; alias privatus est iure quaesito, nisi conditio personae ipsum excuset. Post consensum confirmationem petat infra tres menses; alias electio viribus vacuetur. Ioann. Andr,
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> Idem in eodem. Quam sit ecclesiis ipsarum dispendiosa vacatio, quam periculosa etiam esse soleat animabus, non solum iura testantur, sed etiam* magistra rerum efficax experientia manifestat. Cupientes itaque competentibus remediis vacationum diuturnitatibus obviare, hoc perpetuo decreto statuimus, ut, si quando fuerit electio in aliqua ecclesia celebrata, electores electionem ipsam, quam citius commode poterunt, electo praesentare, ac petere consensum ipsius procurent*, electus vero illum adhibere infra mensem a tempore praesentationis huiusmodi teneatur. Quem si electus ipse* ultra praestare distulerit: iure, si quod ei ex sua electione fuerat acquisitum, ex tunc se noverit eo ipso privatum; nisi forsan ea sit electae personae conditio, ut electioni de se celebratae absque superioris sui licentia ex prohibitione seu quavis provisione sedis apostolicae consentire non possit. Quo casu idem electus seu electores ipsius consentiendi licentiam ab eius superiore cum ea celeritate, quam superioris ipsius praesentia vel absentia permiserit, petere studeant et habere; alioquin,si,lapso tempore, pro eiusdem superioris praesentia vel absentia, ut praemittitur, moderando, huiusmodi licentiam eos nequaquam obtinere contingat, electores extunc ad electionem aliam procedendi liberam habeant facultatem. Ceterum quivis electus infra tres menses post consensum, electioni de se celebratae praestitum, confirmationem electionis ipsius petere non omittat. Quodsi iusto impedimento cessante infra huiusmodi trimestre tempus omiserit: electio eadem eo ipso viribus vacuetur.

Chapter VII

If an election does not follow, no one is deprived of the power of electing because of consent knowingly given in the scrutiny to an unworthy person. This is what it says. John Andrew.

The same, at the same council. We declare by a perpetual pronouncement of enactment that those who knowingly nominate an unworthy person in elections are by no means deprived of the power of electing on account of a vote given in the scrutiny, unless they have persisted in it to such an extent that a common election follows from their votes; although, because in knowingly nominating an unworthy person they act against their consciences, they may not undeservedly fear both divine vengeance and the threat of apostolic punishment that the quality of the act shall suggest.

> Si non sequatur electio, non est quis ex consensu, in scrutinio scienter habito in indignum, eligendi potestate privatus. Hoc dicit Ioann. Andr.
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> Idem in eodem. Perpetuo sanctionis oraculo declaramus, quod scienter in electionibus nominantes indignum, propter suffragium in scrutinio praestitum, nisi adeo in eo perstiterint, quod ex votis eorum communis electio subsequatur, nequaquam eligendi potestate priventur; licet pro eo, quod indignum nominando scienter contra conscientias suas agunt, et divinam vindictam et apostolicae ultionis metum, quem qualitas facti suaserit, possint non immerito formidare.

Chapter VIII

One who elects, or consents to an election, cannot oppose the person elected or renounce his consent except because of a new cause or one newly disclosed to him. John Andrew.

The same, at the same council. We decree that, after someone has nominated a person in the scrutiny and an election has followed, or after he has given consent to an election of that person celebrated by others, it is lawful for no one to attack that person concerning the election itself, except on grounds arising afterward, or unless the depravity of his morals previously concealed is newly disclosed to the objector, or the truth of some other latent vice or defect that he could probably have been ignorant of is revealed. Concerning ignorance of this kind, however, he is to establish credibility by his own oath.

> Eligens, vel electioni consentiens, contra electum, nisi ex nova causa, vel noviter ei pandita, se nequit opponere vel renunciare. Ioann. Andr.
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> Idem in eodem. Nulli licere decernimus, postquam in scrutinio nominaverit aliquem, et electio fuerit subsecuta, vel postquam praestiterit electioni de ipso ab aliis celebratae consensum, illum super electione ipsa, nisi ex causis postea emergentibus, impugnare, vel nisi ei morum ipsius antea celata de novo pandatur improbitas, seu alicuius alterius latentis vitii vel defectus, quae verisimiliter ignorare potuerit, veritas reveletur. De huiusmodi autem ignorantia fidem faciat proprio iuramento.

Chapter IX

Against a person elected by a party twice as large, or against his electors, nothing can be objected by the remaining party that diminishes the weight of a vote; but something that nullifies the vote may properly be objected. John Andrew.

The same, at the same council. If at any time, two elections having been celebrated, one party of the electors is found to be twice as large in number, by the present enactment we forbid the remaining electors, or the person elected by them, every power of objecting anything against the electors who so exceed the remaining party for the purpose of diminishing the weight of their zeal, merit, or authority. But if they wish to object something that would render the vote of the person against whom it is objected null by the law itself, we do not understand this to be forbidden to them.

> Contra electum a duplo maiori parte, vel electores ipsius, nil a reliqua parte potest opponi, quod votum extenuet; sed id bene opponitur, quod votum annullet. Ioann. Andr.
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> Idem in eodem. Si quando contigerit, duabus electionibus celebratis partem alteram eligentium duplo maiorem numero inveniri, contra electores, qui partem reliquam sic excedunt, ad extenuationem zeli, meriti vel auctoritatis ipsorum, reliquis vel electo ab eis aliquid opponendi omnem praesenti decreto interdicimus facultatem. Si quid autem opponere voluerint, quod votum illius, cui opponitur, nullum redderet ipso iure: id eis non intelligimus interdictum.

Chapter X

A judicial or extrajudicial appeal devolves causes concerning elections of bishops and superiors to the Pope if it was interposed in writing and on a probable ground; otherwise it does not. The parties may withdraw from it without depravity before it has been presented to the Pope. Lower judges ought before all else to inquire whether depravity intervened in the withdrawal. If they find it, they are not to take cognizance of the cause, but are to appoint for the parties a term within which they are to present themselves before the apostolic presence with the acts and muniments. John Andrew.

The same, at the same council. Although the constitution of our predecessor Pope Alexander IV of happy memory, not undeservedly numbering causes concerning episcopal elections, or causes arising

over the elections of bishops, among the greater causes, declares that cognizance of them is devolved by any appeals whatever to the examination of the Apostolic See, we nevertheless, wishing to restrain both the rash audacity of appellants and the unbridled frequency of appeals, have judged that provision should be made by this general constitution. Thus, if in the aforesaid elections, or in elections celebrated to other dignities greater than the episcopate, an appeal happens to be made extrajudicially on an expressly stated ground that is manifestly frivolous, the business is by no means to be devolved to the same See through such an appeal. But when, in the business of those elections, an appeal is made judicially or extrajudicially in writing on a probable ground that, if proved, ought to be reputed legitimate, business of this kind is to be carried to the same See.

Moreover, in all the foregoing cases it is to be lawful for the parties to withdraw from appeals of this kind, provided no depravity intervenes, before they have been presented to the aforesaid See. The lower judges to whom cognizance of those causes belonged if the appeal were to cease are before all else diligently to inquire whether depravity intervened in this; and if they find that it did intervene, they are in no way to intermeddle in the causes themselves, but are to appoint for the said parties a suitable peremptory term within which they are to present themselves before the apostolic presence with all their acts and muniments.

> Appellatio iudicialis vel extra devolvit causas electionum episcoporum et superiorum ad Papam, si in scriptis et ex causa probabili fuerit interiecta; alias non. Et ab ea possunt partes sine pravitate recedere, priusquam Papae praesentata fuerit. Et an in recessu intervenerit pravitas, inferiores iudices ante omnia debent inquirere. Quam si repererint, de causa non cognoscent, sed statuent partibus terminum, in quo cum actis et munimentis se apostolico conspectui repraesentent. Ioann. Andr.
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> Idem in eodem. Quamvis constitutio felicis recordationis Alexandri Papae IV. praedecessoris nostri causas electionum episcopalium, seu super electionibus episcoporum exortas, non immerito maioribus causis adnumerans, cognitiones ipsarum per appellationes quaslibet devolvi asserat ad apostolicae sedis examen; nos tamen, et temerariam appellantium audaciam et effrenatam appellationum frequentiam refrenare volentes, hac generali constitutione duximus providendum, ut, si extra iudicium in praedictis electionibus, vel in aliis dignitatibus episcopatu maioribus celebratis, expressa causa manifeste frivola contigerit appellari, per appellationem huiusmodi nequaquam ad sedem eandem negotium devolvatur. Sed quum in electionum earundem negotiis in iudicio vel extra iudicium appellatur in scriptis ex causa probabili, quae probata deberet legitima reputari: ad sedem ipsam huiusmodi negotia deferantur. Ceterum in praemissis omnibus casibus liceat partibus ab huiusmodi appellationibus, nulla tamen interveniente pravitate, recedere, antequam praefatae sedi fuerint praesentatae. Inferiores autem iudices, quorum erat ipsarum causarum cognitio appellatione cessante, an in hoc pravitas intercesserit ante omnia diligenter inquirant, et, si eam intercessisse repererint, se de causis ipsis nullatenus intromittant, sed praefigant dictis partibus terminum peremptorium competentem, in quo cum omnibus actis et munimentis suis apostolico se conspectui repraesentent.

Chapter XI

If, among the other things objected against one to be promoted to a dignity, an evident defect of learning or of the person is objected, that objection will have to be examined before all else. And if it is found false, the objector is repelled from prosecuting the business and is punished just as if he had failed in proving all the objections. John Andrew.

The same, at the same council. If perhaps, among the other things objected against a person elected or postulated, or otherwise to be promoted to some dignity, an evident defect of learning or another defect of the person happens to be objected, we decree that the following order is to be observed unchangeably in the examination of the objections: the person to be promoted is before all else to be subjected to examination concerning that defect, and the outcome of this examination will either give a beginning to the examination of the others or deny it. But if the outcome of the aforesaid examination shows objections of this kind to be destitute of truth, we wholly exclude the objectors from prosecuting the cause in which they made such objections, and decree that they be punished just as if they had entirely failed in proving all the things they had objected.

> Si inter reliqua, quae obiiciuntur promovendo ad dignitatem, obiicitur evidens defectus scientiae vel personae, illud ante omnia examinari debebit. Et si reperietur falsum, opponens a prosecutione negotii repellitur, et punitur perinde, ac si defecisset in probatione omnium obiectorum. Ioann. Andr.
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> Idem in eodem. Si forte inter cetera, quae obiiciuntur electo aut postulato, seu alias promovendo ad aliquam dignitatem, evidentem scientiae vel alium personae defectum opponi contingat: in discussione obiectorum illum statuimus ordinem incommutabiliter observandum, ut promovendus super defectu ipso ante omnia subiiciatur examini, cuius eventus examinandis aliis aut dabit initium, aut negabit. Ceterum si praemissi examinis exitus huiusmodi oppositiones docuerit veritate destitui: opponentes omnino* a prosecutione causae, in qua talia obiecerunt, excludimus, et perinde puniri decernimus, ac si penitus in probatione omnium, quae obiecerant, defecissent.

Chapter XII

One who burdens an ecclesiastical person, or his blood relatives, or churches or goods, because he refused to elect the person on whose behalf he had been asked, is excommunicated by that very fact. John Andrew.

The same, at the same council. Let all those who presume to burden clerics or any other ecclesiastical persons to whom election in any churches, monasteries, or other pious places belongs because, although asked or otherwise induced, they refused to elect the person on whose behalf they were asked or induced—or presume to burden their blood relatives, or those churches, monasteries, or other places themselves, by despoiling them of their benefices or other goods through themselves or others, or by otherwise unjustly persecuting them—know themselves bound by the sentence of excommunication by that very fact.

> Qui gravaverit aliquam personam ecclesiasticam, vel eius consanguineos, vel ecclesias seu bona, pro eo, quod eum, pro quo rogabatur, eligere noluit, ipso facto excommunicatus est. Ioann. Andr.
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> Idem in eodem. Sciant cuncti, qui clericos vel quaslibet alias personas ecclesiasticas, ad quos in aliquibus ecclesiis, monasteriis aut aliis piis locis spectat electio, pro eo, quod rogati seu alias inducti eum, pro quo rogabantur sive inducebantur, eligere noluerint, vel consanguineos eorum, aut ipsas ecclesias, monasteria, seu loca cetera, beneficiis sive aliis bonis suis per se vel per alios spoliando seu alias iniuste persequendo gravare praesumpserint, se ipso facto excommunicationis sententia innodatos.

Chapter XIII

First, he punishes those who newly usurp the custody of vacant churches. Second, he punishes clerics and monks who procure that this be done. Third, he punishes clerics who do not oppose such persons. Fourth, he sets forth how those who have such custody from antiquity ought to conduct themselves. John Andrew.

The same, at the same council. We decree by a general constitution that all and singular persons who, endeavoring newly to usurp regalian rights, custody or guardianship, or a title of advocacy or defense in churches, monasteries, or any other pious places, presume to occupy the goods of the churches, monasteries, or places themselves while vacant, of however great a dignity they may bear the honor, are by that very fact subject to the sentence of excommunication. We decree the same concerning clerics of the churches, monks of the monasteries, and other persons of those places who procure that this be done. We strictly forbid those clerics who do not oppose persons doing such things, as they ought, to receive anything from the proceeds of the churches or places themselves during the time in which they permit the foregoing things without due opposition.

But those who claim for themselves rights of this kind from the foundation of those churches and other places, or from ancient custom, are so prudently to abstain from abusing them, and are diligently to cause their ministers to abstain in them, that they do not usurp the things that do not pertain to the fruits or revenues arising during the time of vacancy, nor permit the other goods whose custody they assert themselves to have to fall into decay, but preserve them in good condition.

> Primo punit usurpantes de novo custodiam vacantium ecclesiarum. Secundo punit clericos et monachos, hoc fieri procurantes. Tertio punit clericos, se talibus non opponentes. Quarto ponit, qualiter debeant se habere habentes talem custodiam ab antiquo. Ioann. Andr.
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> Idem in eodem. Generali constitutione sancimus, universos et singulos, qui, regalia, custodiam sive guardiam, advocationis seu defensionis titulum in ecclesiis, monasteriis seu quibuslibet aliis piis locis de novo usurpare conantes, bona ecclesiarum, monasteriorum aut locorum ipsorum vacantium occupare praesumunt, quantaecunque dignitatis honore praefulgeant, clericos etiam ecclesiarum, monachos monasteriorum, et personas ceteras locorum eorundem, qui hoc fieri procurant, eo ipso excommunicationis sententiae decernimus* subiacere. Illos vero.clericos, qui se, ut deberent*, talia facientibus non opponunt, de proventibus ecclesiarum seu locorum ipsorum pro tempore, quo praemissa sine debita contradictione permiserint, aliquid percipere districtius inhibemus. Qui autem ab ipsarum ecclesiarum ceterorumque locorum fundatione, vel ex antiqua consuetudine iura sibi huiusmodi vendicant, ab illorum abusu sic prudenter abstineant, et suos ministros in eis sollicite faciant abstinere, quod ea, quae non pertinent ad fructus sive reditus, provenientes vacationis tempore, non usurpent, nec bona cetera, quorum se asserunt habere custodiam, dilabi permittant, sed in bono statu conservent.

Chapter XIV

A parish church is to be conferred upon no one who is not suitable in learning, morals, and age; and if it is conferred upon one who has not reached his twenty-fifth year, the collation is not valid. One upon whom such a church has been conferred is bound to reside personally and to become a priest within one year; but if he has not been promoted when the year has elapsed, he is deprived by the law itself. His prelate, however, will be able to dispense him from residence for a time. John Andrew.

The same, at the same council. Although a canon issued by our predecessor Pope Alexander III of happy memory decreed, among other things, that no one is to undertake the government of a parish church unless he has reached his twenty-fifth year of age and is commendable in learning and morals, and that if one thus assumed to such government, after being admonished, has not been ordained priest within the time fixed by the canons, he is to be removed from the office of that government and it is to be conferred upon another, nevertheless, because many show themselves negligent in

observing the aforesaid canon, we, wishing their dangerous negligence to be supplied by execution of the law, decree by the present enactment that no one is to be assumed to the government of a parish church unless he is suitable in morals, learning, and age. We decree that collations of parish churches henceforth to be made to those who have not reached their twenty-fifth year are to be wholly without force.

Also, one who is assumed to government of this kind, so that he may be able more diligently to exercise care of the flock entrusted to him, is to be bound to reside personally in the parish church whose rector he is, and, within one year to be counted from the time the government was committed to him, to cause himself to be promoted to the priesthood. But if he has not been promoted within that time, he is, by the authority of the present constitution and without any previous admonition, to be deprived of the church committed to him. The ordinary, however, may grant the favor of a dispensation from the residence to be made as aforesaid for a time, as a reasonable cause requires it.

> Parochialis ecclesia nemini conferatur qui non sit idoneus scientia, moribus et aetate, et, si conferatur non attingenti XXV. annum, non valet collatio. Ille autem, cui talis ecclesia collata fuerit, tenetur personaliter residere, et infra annum sacerdos fieri; si autem promotus non fuerit elapso anno, privatus est ipso iure. Super residentia autem praelatus eius ad tempus poterit dispensare. Ioann. Andr.
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> Idem in eodem. Licet canon, a felicis recordationis Alexandro Papa III. praedecessore nostro editus inter cetera statuerit, ut nullus regimen ecclesiae parochialis suscipiat, nisi XXV. annum aetatis attigerit, ac scientia et moribus commendandus exsistat, quodque talis ad regimen assumptus huiusmodi, si monitus non fuerit praefixo a canonibus tempore in presbyterum ordinatus, a regiminis eiusdem amoveatur officio, et alii conferatur; quia tamen in observatione canonis memorati se multi exhibent negligentes: nos, periculosam illorum negligentiam volentes iuris exsecutione suppleri, praesenti decreto statuimus, ut nullus ad regimen parochialis ecclesiae assumatur, nisi sit idoneus moribus, scientia et aetate, decernentes, collationes de parochialibus ecclesiis his, qui non attigerint XXV. annum, de cetero faciendas viribus omnino carere. Is etiam, qui ad huiusmodi regimen assumetur, ut gregis sibi crediti diligentius curam gerere possit, in parochiali ecclesia, cuius rector exstiterit, residere personaliter teneatur, et infra annum, a sibi commissi regiminis tempore numerandum, se faciat ad sacerdotium promoveri. Quodsi infra idem tempus promotus non fuerit, ecclesia sibi commissa, nulla etiam praemissa monitione, sit praesentis constitutionis auctoritate privatus. Super residentia vero, ut praemittitur facienda, possit ordinarius gratiam dispensationis ad tempus facere, prout causa rationabilis id exposcit.

Chapter XV

A parish church is not to be commended to anyone unless he is established in the lawful age and the priesthood, and not more than one is to be commended even to such a person; and that one only when necessity or utility requires it. Such a commenda is not to endure beyond six months. Whatever is done contrary to the foregoing is void by the law itself. John Andrew.

The same, at the same council. Henceforth no one is to presume to commend a parish church to anyone who is not established in the lawful age and the priesthood, nor more than one even to such a person, and then only when the evident necessity or utility of the church itself recommends it. We declare that a commenda of this kind, duly made as aforesaid, does not endure beyond the space of six months, decreeing that whatever shall have been done otherwise concerning commendations of parish churches is void by the law itself.

> Parochialis ecclesia non commendetur, nisi constituto in aetate legitima et sacerdotio; et tali non nisi una: et illa tunc demum, quum necessitas vel utilitas exigit. Talis autem commenda ultra sex menses non duret. Quod contra praedicta factum fuerit, est irritum ipso iure. Ioann. Andr.
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> Idem in eodem. Nemo deinceps parochialem ecclesiam alicui, non constituto in aetate legitima et sacerdotio, commendare praesumat, nec tali etiam nisi unam, et evidenti necessitate vel utilitate ipsius ecclesiae suadente. Huiusmodi autem commendam, ut praemittitur, rite factam, declaramus ultra semestris temporis spatium non durare, statuentes, quicquid secus de commendis ecclesiarum parochialium actum fuerit, esse irritum ipso iure.

Chapter XVI

This decretal was very useful in its time, before the Pope reserved provisions to bishoprics to himself. The first gloss sets forth the summary, and the second the division. Dominicus.

Nicholas III. Desiring to meet dangerous vacancies of churches and to obstruct the evasions of malicious persons, to the remedies already provided we add other, tested remedies that the very experience of affairs has manifestly indicated to be useful for expediting them. We will that the provision that our predecessor Pope Gregory X of happy memory salutarily established concerning the presentation of elections to the persons elected, and concerning seeking and giving the consent of those persons elected, remain in its force, with the moderation of the time written below for presenting elections. But, tempering as regards confirmations that are sought, or ought to be sought, from the Apostolic See the provision that he established concerning the three-month period after consent for seeking confirmations—since at times the nearness of some places requires a shorter time, while the distance of others demands a longer time—we decree by this general constitution, to remain in force perpetually, that all persons elected to cathedral or regular churches whose elections an immediate subjection brings to the examination of that See for confirmation or invalidation, or an interposed appeal devolves there, are to set out upon the journey to the same See within one month after consenting, or after obtaining knowledge of their election if it did not happen to be presented in due time.

And thereafter, whether they have set out within the prescribed time or not, they are to be bound, without fraud, to appear personally before us as soon as they conveniently can, the distance of the places being considered, with all their acts, rights, and muniments and the things concerning their proceedings, in order to seek confirmation of their elections or to prosecute their elections by such lawful means as they can. But if, during the twenty days after the lapse of the awaited time to be moderated according to the character of the places, whether the electors or the opponents have come or not, they have, without the intervention of a just cause, disdained to appear personally and to seek the confirmation, prosecution, or execution of their elections, they are to be bound to establish full proof of that cause at the same See before us, or another or others to be deputed by us, within fifteen days following this period, provided it was proposed within the aforesaid twenty days and shall seem admissible. This is unless, either within those same twenty days or within the aforesaid fifteen days —the latter only in the case in which those fifteen days were granted for proving the aforesaid cause proposed and admitted as stated—matters should happen to be proposed of such a kind and so probable that, in the judgment of the person presiding, they would deservedly excuse those persons elected from the penalty written below, and on account of which it would perhaps seem that a longer time for the aforesaid appearance should be indulged to them.

Furthermore, even in the case in which some just cause for excusing the personal appearance of the persons elected happens to be proposed or admitted, unless within that same time, the just impediment ceasing, they present themselves through a procurator sufficiently instructed for all the foregoing matters, and nevertheless present themselves personally when that cause has ceased, as set forth above, we deprive the elections made concerning them of force by that very fact and decree those persons deprived of every right, if any had been acquired for them by an election of this kind.

We will that persons elected who have presented themselves, personally or through a procurator as set forth above, without their acts, rights, and muniments and the things concerning their proceedings be struck in that case with the following penalty for contempt of this constitution: for producing those things elsewhere than at the same See they cannot obtain another delay, unless for a just cause.

In addition, in order that diligent inquiry concerning the elections, the electors, and the persons elected, and full information concerning the other things relating to the foregoing matters, may be had—information that the course of causes does not find easily to result through procurators who, for the most part, are appointed while absent and ignorant of the proceedings—when the election happens to be concordant, at least two persons from the electors themselves, sufficiently instructed concerning the business itself as was set forth regarding the persons elected, are to be sent within the same time, fully instructed in all matters, by the chapter. Their expenses are to be paid from the goods pertaining to the prelate of the church whose election is at issue, if those goods are separate; otherwise, from the common goods, or from goods otherwise provided by the chapter if the expenses cannot then be obtained from the separate or common goods.

But if the election or elections proceeded in discord, then at least two persons are to be sent from each party when there are several parties, or from the party of the person elected when a single election proceeded, and at the necessary and moderate expense of the persons elected. If the persons elected disdain to furnish these expenses, unless perhaps lack of means excuses them in view of the character of the business, they are to be deprived of every right acquired for them from such an election.

And when there is a single person elected against whom someone or some persons oppose themselves, in that case both an opponent, if there is one, and the opponents of this kind, if there are only two, or, if there are more, at least two from those opponents, are to appear, at the opponents' own expense, fully instructed, as has been said, with the acts and muniments. Thus, through the aforesaid persons, either the business may be fully explained or the same See may be able to be informed whether—after the utility of the churches has been weighed and the other circumstances considered—a commission is to be made elsewhere for obtaining some proofs or for any other matters whatever, or whether, as equity counsels, the parties should instead be constrained at the same See with respect to proofs and the other matters.

Moreover, if the electors have delayed presenting the elections themselves, whether celebrated concordantly or in discord, to the persons elected within eight days after they conveniently could do so, we wholly exclude those of them who were culpable in this, so far as concerns themselves, from prosecuting the proceeding, and will that by that very fact they be suspended, for three continuous years beginning thereafter, from all their benefices that they hold in the church whose election is at

issue. If within that time they intrude themselves into those benefices by their own temerity or under another contrived color, they are by the law itself to be perpetually deprived of them.

Or if they have neglected to send the instructed persons as set forth above—even if the opponents or the persons elected disdain to send them or to come, or to supply the expenses—unless the small number of the chapter or of the contradicting parties, or another just and probable cause, manifestly excuses them, in which case they are to be bound to send a sufficiently instructed procurator and nevertheless, when the cause ceases, to send the said persons, they are to be deprived, so far as concerns themselves, both of the entire prosecution of the proceeding and of the receipt, for three continuous years, of the proceeds of the benefices that they hold in that church. When there is a single person elected, the contumacy of the opponent or opponents is to be struck with a similar penalty. Nevertheless, in the foregoing cases in which the electors or opponents, so far as concerns themselves, are deprived of prosecuting the proceeding, no prejudice is thereby to be generated for the persons elected in prosecuting their right.

Finally, when it happens that a concordant or discordant postulation is proceeded to and persons suffering from a defect in orders or age, or similar persons, are postulated—not persons who, bound to other churches, do not have free flight without our permission, concerning which persons so bound we alter nothing of the observance of the old law—we bind the persons thus postulated, and those postulating them, with the following moderated strictness. Saving this, that persons so postulated are bound neither to give consent to their postulations nor to furnish any expenses, as was said concerning persons elected, but the persons postulating them, concordantly or discordantly, are themselves to supply those expenses to such persons: the aforesaid moderation is to bind in all respects, as set forth above, the persons postulated in coming, if they have not dissented, and the persons postulating in sending instructed persons, as in a concordant or discordant election, and a similar penalty is to strike those who neglect the provisions established there. Nor, by what is established concerning persons postulated for the swift expedition of churches, are the postulations themselves to be understood to depend upon grace any less than they depended upon it before.

Furthermore, in each of the cases stated above, we decree that, in recovering or repaying the expenses of the electors, the persons elected, the persons postulating, and also the person postulated, that is to be observed which shall be just or which the equity of the canons shall adjudge.

> Haec decretalis fuit multum utilis suo tempore, antequam Papa reservaret sibi provisiones episcopatuum. Glossa prima ponit summarium, et secunda divisionem. Dominicus.
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> Nicolaus III. Cupientes ecclesiarum vacationibus periculosis occurrere, ac malignantium subterfugiis obviare, iam provisis remediis alia, quae patenter ipsa rerum experientia ad earum expeditionem indicavit utilia, remedia experta subiungimus, et, quod felicis recordationis Gregorius Papa X. praedecessor noster de electionibus praesentandis electis, etipsorum electorum petendo ac adhibendo consensu salubriter statuit, in suo robore cum infra scripti temporis moderatione in praesentandis electionibus permanere volentes; sed, quod de trimestri tempore post consensum ad petendas confirmationes instituit, quoad illas, quae petuntur vel peti debent a sede apostolica, temperantes, quum interdum aliquorum locorum vicinitas minus exigat, aliquorum distantia prolixius tempus exposcat: hac generali et in perpetuuip valitura constitutione sancimus, ut omnes electi cathedralium vel regularium ecclesiarum, quorum electionum confirmationes vel infirmationes ad ipsius sedis examen deducit immediata subiectio, vel appellatio interiecta devolvit, infra unum mensem post consensum vel post obtentam de ipsorum electione notitiam, si eam debito tempore non contigerit

praesentari, ad sedem ipsam iter arripiant, et extunc, sive infra praescriptum tempus* iter arripuerint sive non, absque fraude, quam cito poterunt commode, locorum considerata distantia, petituri suarum electionum confirmationes vel prosecuturi electiones suas, quibus poterunt modis licitis, comparere cum omnibus actis, iuribus et munimentis suis, et processus suos contingentibus coram nobis personaliter teneantur. Quodsi per viginti dies post lapsum ex qualitate locorum moderandi temporis exspectati, sive eligentes sive opponentes venerint sive non, personaliter comparere, et suarum electionum confirmationem, vel persecutionem seu exsecutionem petere nulla iusta causa interveniente contempserint, de qua infra praedictos viginti dies proposita infra quindecim dies post tempus huiusmodi coram nobis vel alio seu aliis deputando vel deputandis a nobis, si admittenda videbitur, teneantur apud sedem ipsam facere plenam fidem, nisi vel infra eosdem viginti dies, seu praedictos quindecim, eo casu tantum, quum ad praedictam causam propositam, ut praedicitur, et admissam probandam concessi fuerint, talia et tam verisimilia proponi contingeret, quae iudicio praesidentis electos ipsos ab infra scripta poena merito excusarent, et propter quae* forsitan videretur eidem ad praedictam comparitionem tempus prolixius indulgendum. Insuper etiam eo casu, quo ad personalem electorum comparitionem excusandam aliquam iustam causam proponi contigerit vel admitti, nisi tunc infra idem tempus, iusto impedimento cessante, per procuratorem ad praemissa omnia sufficienter instructum, et nihilominus, ipsa causa cessante, ut praemittitur, se personaliter praesentaverint: electiones de ipsis factas eo ipso viribus vacuantes, ipsos omni iure, si quod eis per electionem huiusmodi quaesitum esset, decernimus esse privatos. Electos vero, qui se sine actis, iuribus et munimentis suis, et processus suos contingentibus personaliter vel per procuratorem, ut praemittitur, praesentaverint, ea volumus ex contemptu constitutionis huiusmodi eo casu poena percelli, ut pro exhibendis illis alibi, quam apud sedem ipsam, nisi ex iusta causa, non possint dilationem aliam obtinere. Ad haec, ut diligens inquisitio super electionibus, et* eligentibus, et electis ac aliis praemissa contingentibus, plena informatio possit haberi, (quam informationem per procuratores, qui ut plurimum constituuntur absentes et processus ignari, cursus causarum non sentit de facili provenire, de ipsis electoribus duae personae ad minus, super negotio ipso, ut de electis praemittitur, sufficienter instructae, quando electionem concordem esse contigerit, infra idem tempus per capitulum expensis* bonorum ad praelatum ipsius ecclesiae, de cuius electione agitur, pertinentium, si sint discreta, alioquin communium vel per ipsum capitulum aliunde provisorum, si de ipsis discretis vel communibus tunc haberi non possint, ad omnia instructae* plenarie transmittantur. Si vero in discordia electio vel electiones ipsae processerint: tunc e duae personae ad minus de parte qualibet, (quum sint plures,) vel de parte electi, (quum electio una processerit,) et* necessariis et moderatis expensis electorum. Quas si electi exhibere contempserint, nisi forsan ipsos facultatum impotentia pro qualitate negotii excusaret, omni iure ipsis ex tali electione quaesito priventur. Et quando unicus est electus, cui aliquis vel aliqui se opponunt*: eo casu tam opponens quam opponentes huiusmodi, si duo tantum, vel si plures, duo ad minus ex ipsis opponentibus, expensis* ipsorum opponentium propriis*, plene (ut dictum est,) cum actis et munimentis instructae compareant, ut per praemissas personas vel negotium plenarie instrui, vel sedes eadem valeat informari, an, ecclesiarum utilitate pensata et aliis inspectis circumstantiis, super habendis aliquibus probationibus seu quibuscunque aliis sit alibi facienda commissio, vel aequitate suadente partes potius apud sedem ipsam in probationibus et aliis sint arctandae. Ceterum si eligentes electiones ipsas, concorditer vel in discordia celebratas, infra octo dies, postquam commode poterunt, electis praesentare distulerint: ipsos, qui culpabiles in hoc exstiterint, quoad se a processus prosecutione totaliter excludentes, omnibus beneficiis suis quae in ipsa ecclesia, de cuius electione agitur, obtinent, per triennium continuum extunc inchoandum volumus eo ipso fore suspensos; ad quae si infra illud tempus se propria temeritate vel alio quaesito colore ingesserint, illis ipso iure perpetuo sint privati. Vel si personas instructas, ut praemittitur, (etiamsi opponentes vel electi mittere vel venire, seu expensas ministrare contemnant, destinare neglexerint, (nisi eos capituli vel contradicentium

paucitas, seu alia iusta et probabilis causa evidenter excuset, in quo casu procuratorem sufficienter instructum mittere, et nihilominus cessante causa dictas personas dirigere teneantur,) et a totali quoad se prosecutione processus, et a proventuum beneficiorum, quae in ecclesia ipsa obtinent, per triennium continuum perceptione priventur; opponentis vel opponentium, quum unicus est electus, contumacia simili poena plectenda. Nihilominus tamen in praemissis casibus, quibus eligentes vel opponentes quoad se processus prosecutione privantur, electis super* hoc in prosecutione sui iuris nullum praeiudicium generetur. Denique, quum ad postulationem concordem vel discordem procedi contigerit, et aliqui, patientes in ordinibus vel aetate defectum, vel his similes postulentur, (non qui, aliis ecclesiis alligati, liberum non habent* sine nostra permissione volatum, circa quos taliter alligatos nihil de veteris iuris observantia immutamus,) postulatos huiusmodi et postulantes eosdem ea moderata districtione perstringimus, ut, (eo salvo, quod postulati huiusmodi nec suis postulationibus praestare consensum, nec, ut de electis dictum est, exhibere expensas aliquibus teneantur, sed postulantes ipsi concorditer vel discorditer expensas ipsas personis talibus subministrent,) postulatos in veniendo, si non dissenserint, et postulantes in mittendo personas instructas, ut in concordi vel discordi electione, per omnia, ut supra praemittitur, moderatio praemissa constringat, et negligentes statuta ibidem similis poena percellat; nec per hoc, quod de postulatis pro celeri ecclesiarum expeditione statuitur, postulationes ipsae minus dependere intelligantur a gratia, quam antea dependebant. Porro in singulis casibus supra dictis, in recuperandis vel reddendis expensis eligentium, electorum, postulantium et etiam postulati, illud servari decernimus, quod iustum fuerit seu aequitas canonum iudicabit.

Chapter XVII

The first gloss divides and summarizes the whole text. See it. Dominicus.

The same. Recalling that the foundations of the Church militant are in the holy mountains, the Prophet manifestly signifies by the mountains the Apostles and preachers, upon whom the entire fabric of this building confidently rests. As firm bases of the Church, they are made solid upon the foundation other than which no one can lay another—which is Christ Jesus—as upon the supreme cornerstone, so that the truth, which previously was carried by the proclamation of the law and the Prophets, might go forth through the apostolic trumpet for the salvation of all, as it is written: "Their sound has gone forth into all the earth, and their words unto the ends of the world." The Lord willed the sacrament of this office so to pertain to the duty of all the Apostles that he placed it principally in blessed Peter, the chief of all the Apostles, so that from him, as from a kind of head, his gifts might be diffused as though into the whole body. For the Lord willed that this man, assumed into the fellowship of indivisible unity, be named that which he himself was, saying: "You are Peter, and upon this rock I shall build my church," so that the structure of the eternal temple, constructed by God as builder, might by the wondrous gift of the grace of God stand firm in Peter. To him the wonderful providence of our Savior joined blessed Paul in the apostleship of the gentiles through the right hands of fellowship.

These are they through whom the Gospel shone forth at Rome. These are its fathers and true pastors. These are they who, suffering together on one day for merit, in one place for glory, under one persecutor with equal virtue, consecrated that City to Christ the Lord with the glorious blood of martyrdom. These are they who advanced it to this glory: that it should be a holy nation, a chosen people, a priestly and royal city, made the head of the whole world through the sacred see of blessed Peter.

And lest Mother Church herself lack temporal aids in the gathering and pasturing of the faithful, but rather, assisted by them, always advance in spiritual increases, it is understood not to have happened without a miracle that the illness of Constantine the monarch, providentially supplied by God as an occasion but cured by the ministrations of baptism, added, as it were, a certain firmness to the Church herself. For on the fourth day after his baptism, together with all the satraps and the entire senate, the magnates also and the whole people, he left the Roman City to that Church by granting it to her in the person of blessed Sylvester, and decreed by a pragmatic constitution that it was to be disposed of by him and his successors. He thereby declared the monarchy of both powers in that City to belong to the Roman Pontiffs, judging it not just that where the heavenly Emperor instituted the primacy of the priesthood and the head of the Christian religion, there the earthly emperor should have power; but rather that the See of Peter itself, now placed upon its own Roman throne, should enjoy full liberty in conducting all its affairs and be subject to no man, since it is known to be set by divine authority over all the sheep.

For it is fitting that free counsels should come to the Roman Pontiff from his brothers, the cardinals of the sacrosanct Roman Church, who stand beside him as coadjutors in executing the priestly office. It is fitting that his judgments should waver in no way: that no fear of secular power should terrify those brothers, no temporal favor engulf them, no terror threaten them, and nothing remove them from the solidity of true counsel, but that whenever it happens that their counsels are sought by the Roman Pontiff in any affairs, they, entirely free in counseling, should freely counsel and assist that Roman Pontiff in all matters arising at the time. And the election of the Roman Pontiff, the vicar of God, whenever it shall occur in their time, and the promotion of those cardinals to be made when expedient, should proceed in every freedom.

Rightly, therefore, we extend the line of our consideration to that City and its government, so that, preserved from harmful things under a happily conducted government, it may always advance in the increases desired. Has forgetfulness covered over the notorious losses that foreign governments have thus far inflicted upon the City and its inhabitants? Does not the destruction of the walls, and the deformity arising from ruins, manifest them more clearly than light? Do not the deposits of the faithful that were mishandled proclaim them? Do not the venerable temples of God themselves, wickedly violated in our days by the sacrilegious hand of the person presiding, proclaim them? Why say more? Was not the uncorrupted constancy of the City itself in past times overthrown under the nefarious government of its ruler at that time, and was not that City, the mirror of faith, besprinkled with so much infamy that, compelled as a beloved daughter to deviate from her mother, the Roman Church, it openly received, in contempt of God and of its mother and to the reproach of that City itself, the former Conradin—who appeared to have sprung as a little serpent from the poisonous root of Frederick, formerly Roman emperor, that twisting serpent condemned by the just judgment of the Church herself, and who together with his supporters was manifestly aspiring to the extermination of Mother Roman Church—and, having received him, favored him, thereby making itself the assisting daughter of so manifest an enemy of its mother the Church?

Unknown senators and unforeseen governors furnished these things to Rome herself, so that the glorious city was rendered inglorious, its stability called unstable, and the ancient solidity of its constancy called infirm by the tongues of men. Therefore, raising the debt of our office concerning such dangerous events to the balance of moderation, we cut off the occasions of so great an

overthrow by applying a salutary remedy in such a way that we may not seem to disparage the glory or merits of those who have laudably governed that commonwealth until now; the merits acquired for them by the labors already borne remain secure before the infallible Rewarder who knows all things.

Therefore, so that such solicitous care with discretion may be applied in all matters concerning that government that full liberty—which is owed to the Roman Church herself in all things and through all things—may come to her as desired, dangers already experienced may be avoided, and the Roman people, protected from the assaults of oppressors, may sit, and in sitting may rest in the beauty of peace, in tabernacles of confidence and in an abundant repose of temporal things, with the counsel of our brothers we decree by this irrefragable constitution, to remain in force perpetually, that whenever and as often as the election of a senator, or of another person by whatever name he is designated who in any manner or by any title is to preside over the government of that City, shall arise in the future, no emperor or king of the Romans, or other emperor, king, prince, marquis, duke, count, or baron, or anyone else of notable pre-eminence, might, power, excellence, or dignity, nor a brother, son, or grandson of theirs, is to be nominated, elected, or otherwise assumed as senator, captain, patrician, or rector, or to the government or an office of that City, for a time or perpetually; nor is any other person to be so nominated, elected, or assumed for a period beyond one year, in any manner, under any color or cause, through himself or another person to be interposed in any way, without the special permission of the Apostolic See expressed through letters of that See specifically granting permission of this kind.

But if it is done otherwise, we decree a nomination, election, and assumption of this kind null and devoid of every strength of firmness. Not only the nominators, electors, and those making the assumption, but also the persons nominated, elected, and assumed—if they have consented to such nomination, election, or assumption, or have intermeddled in them in any manner—and those giving heed and obedience to them, and in this all persons who publicly or secretly give aid, counsel, or favor to those nominators, electors, those making the assumption, or persons nominated, elected, or assumed, of whatever dignity, pre-eminence, condition, or status they may be, incur by that very fact the sentence of excommunication.

And nevertheless, if the persons nominated, elected, or assumed have consented to the aforesaid nomination, election, or assumption contrary to the present constitution, or have intruded themselves into those matters in any way, we judge them and their descendants perpetually deprived of all fiefs, privileges, liberties, immunities, graces, and honors that they hold in the aforesaid or other churches. Thus, those to whom their collation, grant, or disposition pertains are to have free power to resume or retain them, to grant or confer them upon others, or also to dispose of them, as pertains to them.

And lest persons thus nominated, elected, or assumed be able to glory in their pertinacity or contempt, we now pronounce entirely invalid and void every mandate, precept, ordinance, and statute that they shall make, all sentences that they shall pronounce, and absolutely everything that they shall transact in contracts and obligations or in any other matters in the name of the City or as its senators, captains, patricians, rectors, or officials. Judges and notaries who presume perhaps to give legal support concerning these things or any of them, or to draw up instruments contrary to the edict of the present constitution, are to know themselves deprived of the offices of judge and notary.

The contemners or violators of the foregoing provisions, or of any or any one of them, cannot be absolved from a sentence of excommunication of this kind, except at the point of death, save by the Roman Pontiff or after his special permission has been sought and obtained, notwithstanding any privileges, indulgences, grants, constitutions, customs, and statutes fortified by firmness of any kind. We will that these aid no persons or person in any of the foregoing matters, but decree them all not to hold as regards those matters.

So that Roman citizens who are known to have derived their natural origin from that City, or any others who have existed in it or its territory not as newcomers but as continuous inhabitants, may enjoy the gracious exercise of its honors or government, we do not intend that the present constitution exclude such persons. Rather, they may be nominated, elected, and assumed to its government and office for one year only or for another shorter time, even if they are brothers, sons, or grandsons of the aforesaid princes and others, or even if outside the City and its territory, under the name of a county, barony, or any other title, they hold some temporal or perpetual jurisdiction or power over any persons or places; provided that the aforesaid jurisdiction or power, existing outside the City and its territory, is not of such pre-eminence or notable might that, by occasion or reason of it, those holding it are reasonably included by the pronouncement of the present constitution with the others excluded from the government of the City as set forth above.

> Glossa prima dividit, et summat totum textum. Vide eam. Dominicus.
>
> Idem. Fundamenta militantis ecclesiae in montibus sanctis Propheta rememorans, per montes Apostolos et praedicatores patenter insinuat, quibus tota huiusmodi aedificii fabrica confidenter innititur. Qui firmae bases ecclesiae super fundamento, praeter quod nemo aliud ponere potest, quod est Christus Iesus, veluti summo angulari lapide solidantur, ut veritas, quae antea legis et Prophetarum praeconio vehebatur, per apostolicam tubam in salutem universitatis exiret, sicut scriptum est: ,,In omnem terram exivit sonus eorum, et in fines orbis terrae verba eorum.“ Huius autem muneris sacramentum ita Dominus ad omnium Apostolorum voluit officium pertinere, ut in beato Petro Apostolorum omnium summo principaliter collocaret, ut ab ipso, quasi quodam capite, dona sua velut in corpus omne diffunderet. Hunc enim, in consortium individuae unitatis assumptum, id, quod ipse erat, Dominus voluit nominari, dicendo: ,,Tu es Petrus, et super hanc petram aedificabo ecclesiam meam,“ ut aeterni templi structura, Deo aedificante constructa, mirabili munere gratiae Dei in Petri consisteret firmitate, cui Salvatoris nostri miranda provisio beatum Paulum in apostolatu gentium per dexteras societatis adiunxit. Isti sunt, per quos evangelium Romae resplenduit. Isti sunt eis patres verique pastores. Isti sunt, qui una die pro merito, uno loco pro gloria sub uno persecutore pro parili virtute compassi, Urbem ipsam glorioso cruore martyrii Christo Domino consecrarunt. Isti sunt, qui illam in hanc gloriam provexerunt, ut sit gens sancta, populus electus, civitas sacerdotalis et regia, per sacram beati Petri sedem caput totius orbis effecta. Ne autem ipsa mater ecclesia in congregatione et pastura fidelium temporalibus careret auxiliis, quin potius ipsis adiuta spiritualibus semper proficeret incrementis: non absque miraculo factum esse concipitur, ut occasionaliter Constantini monarchae a Deo provisa, sed curata baptismalibus fomentis infirmitas, quandam quasi adiiceret ipsi ecclesiae firmitatem, qui quarto die sui baptismatis una cum omnibus satrapis et universo senatu, optimatibus etiam et cuncto populo, in persona beati Silvestri, sibi Romanam concedendo urbem relinquens, ab eo et successoribus eius per pragmaticum constitutum disponendam esse, decernens in ipsa Urbe utriusque potestatis monarchiam Romanis Pontificibus, declararet, non iustum arbitrans, ut, ubi sacerdotii principatum et Christianae religionis caput imperator coelestis instituit, illic imperator terrenus habeat potestatem; quin magis ipsa Petri sedes, in Romano iam proprio* solio collocata,

libertate plena in suis agendis per omnia potiretur, nec ulli subesset homini,quae oves divino cunctis dignoscitur esse praelata. Decet namque ipsi Romano Pontifici per fratres suos, sacrosanctae Romanae ecclesiae cardinales, qui sibi in exsecutione officii sacerdotalis coadiutores assistunt, libera provenire consilia. Decet ipsius nullo modo vacillare iudicia, ut fratres ipsos nullus saecularis potestatis metus exterreat, nullus temporalis favor absorbeat, nullus eis terror immineat, nihil eos a veri consilii soliditate removeat, quin, quum per ipsum Romanum Pontificem in quibuscunque negotiis contingeret eorum peti consilia in consulendo, per omnia liberi eidem Romano Pontifici in omnibus, quae pro tempore imminent, libere consulant et assistant, ipsaque Romani Pontificis vicarii Dei quae suis temporis* occurrerit* electio, et eorundem cardinalium, quum expedierit*, facienda promotio, in omni libertate procedant. Digne itaque ad Urbem ipsam eiusque regimen aciem nostrae considerationis extendimus, ut felici ducto regimine praeservetur a noxiis, et optatis semper proficiat incrementis. Numquid obduxit oblivio, quae Urbi, quae incolis nota dispendia intulerunt hactenus peregrina regimina? Numquid non haec destructio moenium, deformatio proveniens ex ruinis luce clarius manifestant? Numquid non haec fidelium contrectata deposita? Numquid non haec ipsa veneranda Dei templa praesidentis manu sacrilega diebus nostris nefarie violata proclamant? Quid plura? Nonne ipsius Urbis retroactis temporibus incorrupta constantia sub regentis eo tempore nefando subversa est* regimine, ipsamque* Urbem, speculum fidei, tanta respersit infamia, ut a matre sua Romana ecclesia filia praedilecta deviare compulsa, quondam Conradinum, qui de venenosa radice Frederici quondam Romani * imperatoris, colubri tortuosi, iusto ipsius ecclesiae iudicio reprobati, prodiisse videbatur in regulum, quique ad exterminium Romanae matris ecclesiae manifestis indiciis una cum suis fautoribus adspirabat, et* in contemptum Dei et* suae matris, ac ipsius Urbis opprobrium patenter reciperet*, recepto faveret, constituens se per haec* tam patentis hostis suae matris ecclesiae filiam adiutricem? Hoc ipsi Romanae praestiterunt senatores incogniti, hoc praesides improvisi, ut gloriosa civitas redderetur ingloria, sua stabilitas vocaretur instabilis, suaeque constantiae antiquata soliditas linguis hominum vocaretur infirma. Proinde officii nostri debitum circa huiusmodi tam periculosos eventus ad libram moderaminis erigentes, tantae subversionis occasiones ita salubris remedii appositione praecidimus, ne illorum, qui ipsam rempublicam laudabiliter hactenus gubernaverunt, videamur gloriam sugillare vel merita, quae illis apud infallibilem et scientem omnia retributorem de iam perlatis quaesita laboribus salva persistunt. Ut ergo circa regimen ipsum talis adhibeatur in omnibus cum discretione sollertia, per quam ipsi Romanae ecclesiae plena libertas, quae in omnibus et per omnia sibi debetur, optata proveniat, vitentur iam experta pericula, et Romanus* populus ab opprimentium protectus incursibus sedeat, sedendo quiescat in pulchritudinem* pacis, in tabernaculis fiduciae et temporalium requie opulenta: de fratrum nostrorum consilio hac irrefragabili et in perpetuum valitura constitutione sancimus, ut, quandocunque et quotiescunque senatoris electio vel alterius, quocunque nomine censeatur, qui quocunque modo vel quocunque titulo ipsius Urbis debeat praeesse regimini, in posterum imminebit, nullus imperator seu rex Romanorum, aut alius imperator, vel rex, princeps, marchio, dux, comes aut baro, vel quicunque* alterius notabilis praeeminendae, potentiae seu potestatis, excellentiae vel dignitatis exsistat, frater, filius vel nepos eorum ad tempus vel in perpetuum, seu quivis alius ultra annale spatium quovis modo, colore vel causa, per se vel* aliam personam quomodolibet submittendam, in senatorem, capitaneum, patricium aut rectorem, vel ad eiusdem Urbis regimen seu officium nominetur, eligatur seu alias etiam assumatur absque licentia sedis apostolicae speciali, per ipsius sedis literas concessionem licentiae huiusmodi specialiter exprimentes. Quodsi secus factum fuerit, nominationem, electionem et assumptionem huiusmodi decernimus esse nullas ac carere omni robore firmitatis, et non solum nominatores, electores et assumptores, verum etiam nominati, electi et assumpti, si huiusmodi nominationi, electioni seu assumptioni consenserint, aut se de ipsis quolibet modo intromiserint, intendentes et obedientes eisdem, et in hoc omnes*, dantes ipsis nominatoribus, electoribus, assumptoribus, aut nominatis, electis vel assumptis auxilium, consilium vel

favorem publice vel occulte, cuiuscunque dignitatis vel* praeeminentiae, conditionis aut status exstiterint, eo ipso sententiam excommunicationis incurrant, ac nihilominus ipsos nominatos, electos seu assumptos, si contra constitutionem praesentem praedictis nominationi, electioni vel assumptioni consenserint, aut se quoquo modo illis ingesserint, et eorum posteros in perpetuum omnibus feudis, privilegiis, libertatibus, immunitatibus, gratiis et honoribus, quae in praedicta seu aliis tenent ecclesiis, censemus esse privatos ita, quod illi, ad quos eorum collatio, concessio seu dispositio pertinet, resumendi ea aut* retinendi, copcedendi seu conferendi aliis, seu de ipsis etiam disponendi, prout ad eos pertinet, liberam habeant potestatem. Et ne taliter nominati, electi vel assumpti de sua pertinacia vel contemptu valeant gloriari: nos quaelibet mandata, praecepta, ordinationes et statuta, quae fecerint, omnesque sententias, quas tulerint, et quicquid penitus in contractibus et obligationibus seu quibuscunque aliis Urbis nomine vel tanquam senatores, capitanei, patricii aut rectores vel officiales ipsius egerint, irrita prorsus exnunc et vacua nunciamus. Iudices vero et tabelliones, qui super his aut eorum aliquibus contra praesentis constitutionis edictum patrocinari vel instrumenta conficere forte praesumpserint, iudicatus et tabellionatus officiis se noverint esse privatos. Contemptores quoque seu violatores praemissorum, vel aliquorum vel alicuius eorum, ab huiusmodi excommunicationis sententia, praeterquam in mortis articulo, absolvi non possint, nisi per Romanum Pontificem, vel de ipsius petita et obtenta licentia speciali, non obstantibus aliquibus privilegiis, indulgentiis, concessionibus, constitutionibus, consuetudinibus et statutis quacunque firmitate vallatis, quae in praemissis omnibus nolumus aliquibus vel alicui suffragari, sed omnia quoad illa decernimus non tenere. Ut autem cives Romanorum*, qui ex ipsa Urbe naturalem duxisse noscuntur originem, aut quivis alii, qui in ipsa eiusve territorio non advenae, sed continui habitatores exstiterant*, quoad honores ipsius Urbis aut regimen gratiosis functionibus potiantur: non intendimus, quod praesens constitutio tales excludat, quin ad unum annum duntaxat, vel ad* aliud tempus brevius nominari ad ipsius regimen et officium eligi valeant ac assumi, etiamsi praedictorum principum et aliorum fratres, filii vel nepotes exsistant, aut etiamsi extra Urbem et ipsius territorium sub nomine comitatus, baroniae seu cuiuscunque alterius tituli in hominibus vel locis aliquibus iurisdictionem seu potestatem aliquam temporalem vel perpetuam obtinerent; dummodo praedicta iurisdictio vel potestas, extra Urbem et territorium praefata consistens, non tantae praeeminendae vel notabilis potentatus exsistat, quod eam* obtinentes eius occasione vel causa cum aliis, exclusis a dicto Urbis regimine, ut praemittitur, praesentis constitutionis oraculo rationabiliter includantur.

Chapter XVIII

When the canons of a cathedral church are deprived of the power of electing by the law itself or by sentence, except in a case of negligence, the right of electing devolves upon the Pope; in inferior churches it always devolves upon the nearest superior. This is what it says.

Boniface VIII. Although in a case of negligence it is established by law that, when a cathedral church is vacant, if those to whom it belongs have not celebrated the election of a prelate within the time due, the power of electing devolves upon the nearest superior, nevertheless this is not to be extended to another case. Therefore, if the electors in a church of this kind are deprived of the power of electing either by the law itself, when they knowingly elect an unworthy person, or by sentence, when they do not observe the form handed down in the general council, that power will devolve not upon the said superior but upon the Roman Pontiff. It is to be judged otherwise, however, in inferior churches.

Canonicis Cathedralis ecclesiae ipso iure vel per sententiam, praeterquam in casu negligentiae, eligendi potestate privatis, ad Papam ius devolvitur eligendi; in inferioribus ecclesiis semper ad proximum

superiorem devolvitur. H. d.

Bonifacius VIII. Quanquam in casu negligentiae sit statutum a iure, ut ecclesia cathedrali vacante, si per eos, ad quos spectat, non fuerit electio de praelato infra tempus debitum celebrata, eligendi potestas ad superiorem proximum devolvatur: hoc tamen non est ad casum alium extendendum. Igitur si electores in huiusmodi ecclesia vel ipso iure, quum eligunt scienter indignum, vel per sententiam, quum formam traditam in generali concilio non observant, eligendi potestate priventur: non ad dictum superiorem, sed ad Romanum Pontificem potestas eadem devolvetur. Secus autem in inferioribus ecclesiis est censendum.

Chapter XIX

Under the constitution "Ut circa," an appellant who swore disjunctively that he believed the things opposed to be true, or such of them as ought to suffice, did not satisfy the requirement. John Andrew.

The same. One who, objecting certain things against the form of an election or the person elected, appealed to the Apostolic See, having corporally sworn an oath that he believed the things he had expressed in his appeal, or such things from among them as ought to suffice, to be true and that he was able to prove them, is not to be heard concerning matters objected or expressed in this way. For he did not swear simply, as he was bound to do according to the constitution of our predecessor Pope Gregory X of happy memory, issued at the General Council of Lyons, that he believed those same matters expressed or objected to be true and that he was able to prove them, but indeterminately that he believed either those matters, or those from among them that ought to suffice.

Constitutione Ut circa non satisfecit appellans, qui disiunctive iuravit, se credere opposita esse vera, vel quae sufficere deberent ex eis. Ioann. Andr.

Idem. Is, qui contra electionis formam vel electi personam aliqua obiiciens ad sedem apostolicam appellavit, corporali a se praestito iuramento, quod illa, quae in appellatione sua expresserat, vel ea, quae de ipsis deberent sufficere, vera esse credebat, et se posse probare, non est super obiectis vel expressis huiusmodi audiendus, quum non simpliciter, sicuti tenebatur iuxta constitutionem felicis recordationis Gregorii Papae X.* praedecessoris nostri, editam in concilio generali* Lugdunensi, iuraverit, expressa eadem seu obiecta se credere vera esse, et se posse probare, sed indeterminate illa, vel ea, quae deberent sufficere de eisdem.

Chapter XX

One who appeals against a definite person so that he not be elected is bound to observe the constitution "Ut circa." John Andrew.

The same. One who, before an election is made, determines to appeal to the Apostolic See against a definite and named person so that he not be elected by others ought in every respect, in making the appeal, to observe the form of the constitution "Ut circa" of our predecessor Pope Gregory X of happy memory, issued at the Council of Lyons, just as if it happened that he was appealing after the election had already been made. Otherwise, if he does not observe it, he is to know himself subject to the penalty of that constitution.

Qui contra certam personam, ne eligatur, appellat, constitutionem: Ut circa servare tenetur. Ioann. Andr.

Idem. Qui contra certam et nominatam personam, ne ab aliis eligatur, ad sedem apostolicam, antequam fiat electio, duxerit appellandum, debet per omnia in appellando servare formam constitutionis felicis

recordationis Gregorii Papae X.* praedecessoris nostri: Ut circa, editae in concilio Lugdunensi, ac si electione iam facta eum contingeret appellare; alioquin non observans poenae constitutionis eiusdem se noverit subiacere.

Chapter XXI

If a compromise has been made in favor of several persons so that they elect, the pronouncement of the election is to be made through one person, just as when the procedure is by the form of scrutiny; an election made otherwise does not hold. John Andrew.

The same. Just as, when an election is proceeded to by the form of scrutiny, the common election is to be pronounced and made through one person according to the canonical institutes, so also it ought to be made through one when the procedure is by the form of compromise, although human law indicates that a pronouncement is to be made by all the arbiters chosen by compromise. Otherwise, an election made at the same time by several compromisarii does not by that very fact subsist in force.

Si compromissum est in plures, ut eligant, per unam facienda est electionis pronunciatio, sicut quando proceditur per formam scrutinii; aliter electio facta non tenet. Ioann. Andr.

Idem. Sicut, quum per formam scrutinii ad electionem proceditur, est per unum pronuncianda et facienda communis electio secundum canonica instituta: sic et per unum debet fieri, quum per formam proceditur compromissi; quamvis in arbitris compromissariis lex humana innuat, quod ab eis omnibus sit pronuntiatio facienda. Alioquin a pluribus compromissariis facta simul electio eo ipso viribus non subsistat*.

Chapter XXII

The decretal above, under the same title, "Licet canon," has no application in collegiate parish churches and to persons assumed to their government. John Andrew.

The same. The statute of our predecessor Pope Gregory X of happy memory concerning persons assumed to the government of parish churches, requiring them to be promoted to the priesthood within one year and otherwise to be deprived of those churches, is penal and therefore ought to be restricted rather than enlarged. We declare that it is not extended to collegiate churches, even if they are otherwise parochial, or to persons assumed to their government, but that the ancient laws ought rather to be observed in those churches.

Decretalis supra eodem, Licet canon, in collegiatis parochialibus ecclesiis et assumptis ad ipsarum regimen locum non habet. Ioann. Andr.

Idem. Statutum felicis recordationis Gregorii Papae X. praedecessoris nostri de his, qui ad parochialium ecclesiarum regimen assumuntur, promovendis ad sacerdotium infra annum, alioquin eisdem ecclesiis sint privati, quod, quum sit poenale, restringi potius convenit quam laxari, declaramus ad collegiatas ecclesias, etiamsi alias parochiales exstiterint, et assumptos ad earum regimen non extendi, sed antiqua iura servari debere potius in eisdem.

Chapter XXIII

If a compromissarius, according to the limit handed down to him, after the wills of the individual persons have been scrutinized and reduced to writing, elects the person upon whom not the greater part of the chapter, but more persons

in comparison with the others, had agreed, the election does not hold, since it was celebrated outside the forms of the council. John Andrew.

The same. If the power of electing has been given to someone under this form: that, after the votes of the individual members of the chapter have been secretly and individually ascertained and reduced to writing, he is to elect the person upon whom more members of the chapter have agreed in comparison with the smaller parties, even though those agreeing do not attain the greater part of the whole chapter; and if, after a scrutiny of this kind has been made and reduced to writing, he determines, according to the form handed down to him, to elect the person toward whom not the greater part, but more of the said chapter than toward any other person, had directed their votes: such an election does not obtain the strength of firmness, since it was attempted outside the forms that the general council decreed were to be observed in celebrating elections, decreeing that elections would not be valid if made otherwise.

> Si compromissarius secundum traditam sibi metam, scrutatis et in scriptis redactis voluntatibus singulorum, illum eligat, in quem non maior pars capituli, sed plures aliorum comparatione consenserant: non tenet electio, quum praeter formas concilii fuerit celebrata. Ioann. Andr.
>
> Idem. Si cui eligendi potestas data fuerit sub hac forma, ut ipse, secreto et sigillatim votis singulorum de capitulo exquisitis et in scriptis redactis, illum eligat, in quem plures de capitulo partium comparatione minorum consenserint, licet consentientes maiorem partem totius capituli non attingant, ipseque, facto huiusmodi scrutinio et in scriptis redacto, iuxta traditam sibi formam eum, in quem non maior pars, sed plures de dicto capitulo, quam in quemquam alium direxerant vota sua, duxerit eligendum: talis electio, quum praeter formas, quas generale concilium servari statuit in electionibus celebrandis decernens eas, si aliter fierent, non valere, fuerit attentata, robur non obtinet firmitatis.

Chapter XXIV

From a calling, made in any manner in discord, of a mendicant religious to a prelacy outside the administration of his order, no right is acquired for him, nor will he be able to consent even with the permission of his prelate. The same applies to a calling, made by the smaller numerical party to any prelacy, of a non-mendicant religious; and he decrees that an act done otherwise is void. He establishes that this chapter is a special rule concerning mendicants. John Andrew.

The same. The vice of ambition so blinds the eyes of some that, as though forgetful of their profession, by which, honors contemned, riches cast aside, and delights spurned, they subjected their own judgment to the dominion of another, they look back after putting their hand to the plow. They do so when they plunge headlong into the windings of litigation, involve themselves in the clamor of causes, and strive to ascend the throne of a prelacy outside the administrations of their own order, imprudently giving consent to elections, postulations, or provisions concerning themselves celebrated in discord, with permission to give assent sometimes extorted from their superior rather than obtained. We know that losses to souls and churches have arisen from this, and we reasonably fear that greater losses will arise in the future.

Wishing, therefore, to meet this plague with a salutary remedy, we decree by the present constitution that henceforth no right is acquired for any religious of the Orders of Preachers, Minors, Hermits of Saint Augustine, or any mendicant orders from an election, postulation, provision, or calling concerning him, made in discord, to any prelacy outside the administration of his order. Nor can any

one of them consent in any manner to such an election, postulation, provision, or calling, even if the permission or consent of the master, minister, or prior general of those orders has acceded to it.

Concerning other religious also, of whatever condition or status they may be, we will that this be observed: they are not to dare to give their consent to elections, provisions, or callings concerning them made by the smaller numerical party to any prelacies—which acts, by the very fact that they have proceeded from the smaller party, confer absolutely no right upon them—even if the assent or permission of their prelates has intervened concerning this. For we decree wholly void and empty whatever it happens that anyone attempts contrary to the foregoing provisions or any one of them.

> Ex vocatione, quocunque modo facta in discordia de religioso mendicante ad praelaturam extra administrationem sui ordinis, non acquiritur illi ius, nec consentire poterit etiam de praelati licentia. Idem de vocatione, facta a minori parte numero ad quamlibet praelationem de religioso non mendicante, et secus factum irritum decernit. Et ponit istud cap. unum speciale in mendicantibus. Ioann. Andr.
>
> Idem. Quorundam oculos sic vitium ambitionis excaecat, quod quasi suae professionis immemores, qua, contemptis honoribus, abiectis divitiis spretisque deliciis arbitrium proprium subiugarunt alterius ditioni, retro respiciunt ad aratrum manu missa, dum praecipitanter ruunt in litigiorum anfractus, et causarum strepitibus se involvunt, et extra administrationes proprii ordinis solium praelaturae conscendere moliuntur, electionibus, postulationibus seu provisionibus de se in discordia celebratis improvide praestando consensum, praebendi assensum a suo superiore nonnunquam extorta licentia potius, quam obtenta, ex quo animarum et ecclesiarum dispendia noscimus provenisse, et proventura maiora in antea verisimiliter formidamus. Volentes igitur huic pesti salubri remedio obviare, praesenti constitutione sancimus, ut nulli religioso Praedicatorum, Minorum, Eremitarum sancti Augustini, aut quorumlibet mendicantium ordinum ex electione, postulatione, provisione seu vocatione ad aliquam extra administrationem* sui ordinis praelaturam, in discordia de se facta, ius de cetero acquiratur; nec eorum aliquis tali electioni, postulationi, provisioni aut vocationi quoquo modo valeat consentire, etiamsi magistri aut ministri vel prioris generalium eorundem ad id accesserit licentia vel consensus. Circa religiosos quoque alios, cuiuscunque conditionis vel status exsistant, volumus hoc servari, ut nec ipsi electionibus , provisionibus aut vocationibus, a minori parte numero ad praelationes quaslibet de se factis, (quae hoc ipso, quod a minori parte processerint, nullum prorsus tribuant ius eisdem,) suum audeant praestare consensum, etiamsi super hoc assensus vel licentia suorum intervenerit praelatorum. Nos enim, quicquid contra praemissa vel eorum aliquod a quoquam contigerit attentari, omnino decernimus irritum et inane.

Chapter XXV

A person elected cannot prosecute two elections by seeking confirmation from them, even if he protests that he is content with the one through which he can obtain the effect of his intention. He therefore necessarily has to choose one; once he has chosen it, he will not be able to return to the other. John Andrew.

The same. We do not judge it consonant with reason that anyone should prosecute at the same time two elections concerning him celebrated in some church and seek confirmation from them, since he can have a right from only one of them, even if at the beginning he protests that he wills to be content with the one through which he can obtain the effect of his intention. Therefore, lest he wander in uncertainty to the danger of the church itself or of his adversary, if he has one, he must choose which of them he wishes to prosecute and seek confirmation from that one alone. He is by no

means to have a return to the other, which, by choosing the one, he is seen to renounce and to profess that no right from it belongs to him.

> Non potest electus duas electiones prosequi, petendo confirmationem ex illis, etiamsi protestetur se contentum altera, per quam consequi possit suae intentionis effectum. Necesse ergo habet alteram eligere, qua electa ad alteram redire non poterit. Ioann. Andr.
>
> Idem. Ut quis duas electiones, de se in aliqua ecclesia celebratas, prosequatur insimul, et confirmationem petat ex eis, quum non nisi ex una ipsarum valeat ius habere, rationi consonum non putamus, etiamsi se contentum esse velle altera, per quam suae intentionis consequi possit effectum, in initio protestetur. Oportet ergo eum, ne cum ipsius ecclesiae vel sui adversarii, si quem habet, discrimine in incerto vagetur, eligere, quam prosequi velit ex illis, et confirmationem petere tantummodo ex eadem, regressum ad aliam, cui per electionem alterius renunciare, sibique ius ex ea non competere profiteri videtur, nullatenus habiturum.

Chapter XXVI

If the person elected does not consent, or after consenting renounces, or dies, or the election is annulled because of a hidden vice of his, the electors will thereafter have the entire period for electing, unless they acted fraudulently concerning it. John Andrew.

The same. If an election does not obtain effect because the person elected refuses to consent, or after consenting renounces his right, or perhaps closes his last day, or because of a hidden vice of his it is invalidated, the electors, who had already done what pertained to them by electing within the term of law, will have, from the aforesaid dissent, renunciation, death, or invalidation, the entire period for celebrating another election, just as if there were a new vacancy, provided they did nothing fraudulently in the foregoing matters.

> Si electus non consentit, vel post consensum renunciat, vel moritur, vel propter occultum sui vitium electio cassatur, eligentes ad eligendum extunc integrum tempus habebunt, nisi circa id egerint fraudulenter. Ioann. Andr.
>
> Idem. Si electio ex eo non sortiatur effectum, quia electus consentire recusat, vel post consensum renunciat iuri suo, aut forte diem claudit extremum, seu propter occultum eius vitium irritatur: electores, qui iam fecerant quod spectabat ad ipsos, infra iuris terminum eligendo, habebunt a dissensu, renunciatione, morte vel irritatione praedictis, ac si vacatio nova esset, tempus integrum ad electionem aliam celebrandam, dummodo nil fraudulenter egerint in praemissis.

Chapter XXVII

If a religious, without obtaining permission, consents to an election concerning him made outside his monastery, the consent is not valid and the election is void. — § 1. The superior alone, without the convent, can give his religious permission to consent and to transfer. This is what it says.

The same. If a religious—whose judgment depends not upon his own will, since he does not possess the power to will or not to will, but upon the will of the one whom he has placed over his head in the place of God and to whose command he has subjected himself—presumes to consent to an election concerning him celebrated to some prelacy outside his monastery or his church, without the permission of his superior, who is able to give it, having been sought and obtained, the consent so given is not to hold; and as a penalty for that presumption the same election is by that very fact to be wholly deprived of force.

§ 1. But because it is sometimes doubted whether permission can be given by their superiors without the counsel of the brothers to religious to consent to elections concerning them and to transfer to the prelacies to which they have been elected, since the laws concerning this are diverse, we, to remove a doubt of this kind and so that the ordering of the churches and monasteries in which such persons have been elected may be expedited more swiftly and easily, decree that the same superiors, without consulting their convents, can give such persons elected free power to consent and to transfer.

> Si religiosus, non obtenta licentia, consentit electioni de se factae extra suum monasterium: non valet consensus, et irrita est electio. — §. 1. Solus superior sine conventu dare potest suo religioso consentiendi et transeundi licentiam. II. d.
>
> Idem. Si religiosus, cuius arbitrium non ex sua, quum velle vel nolle non habeat, sed ex illius, quem vice Dei supra caput suum posuit et cuius imperio se subiecit, voluntate dependet, electioni, de se ad praelationem aliquam extra suum monasterium vel suam ecclesiam celebratae, sui superioris, qui dare ipsam valeat, non petita licentia et obtenta, praesumpserit consentire: consensus sic praestitus non teneat, et in poenam praesumptionis illius electio eadem ipso facto viribus vacuetur omnino.
>
> §. i. Quia vero, utrum religiosis consentiendi electionibus de se factis, et ad praelationes, ad quas electi fuerint, transeundi a suis superioribus sine fratrum consilio licentia dari possit, quum iura super hoc sint varia, dubitatur interdum: nos ad huiusmodi dubitationem tollendam, et ut ordinationes ecclesiarum ac monasteriorum, in quibus tales electi exstiterint, celerius et facilius valeant expediri, decernimus, ut iidem superiores, suis irrequisitis conventibus, electis huiusmodi consentiendi et transeundi liberam dare valeant facultatem.

Chapter XXVIII

A monk cannot be elected abbot unless he has expressly professed; such a person, however, can be elected to episcopal dignity in both a secular and a regular church.

The same. Henceforth no religious is to be elected to an abbacy or prelacy of his own or another religious order unless he has previously made express profession of the regular order. But if it is done otherwise, it is by that very fact to be held void. We by no means prohibit such a person from being elected to episcopal dignity, to which novices are sometimes elected, in secular or regular churches.

> Monachus in abbatem eligi non potest, nisi sit expresse professus; ad dignitatem autem episcopalem et in saeculari et in regulari ecclesia talis eligi poterit.
>
> Idem. Nullus religiosus ad abbatiam seu praelaturam suae vel alterius religionis de cetero eligatur, nisi antea fuerit ordinem regularem expresse professus. Quodsi secus actum fuerit, eo ipso irritum habeatur. Ad dignitatem vero episcopalem, ad quam novitii eliguntur interdum, talem in saecularibus vel regularibus ecclesiis eligi minime prohibemus.

Chapter XXIX

The form of election handed down through the decretal above, under the same title, "Quum dilectus," was not abolished by the subsequent council "Quia propter." This is what it says. John Andrew.

The same. Since it is expedient to reconcile laws with laws, and to avoid corrections of them if they can be sustained, we declare that the decretal of our predecessor Pope Innocent III of happy memory, which indicates that a compromise may lawfully be made in elections under this form—that the compromisarii, after secretly and individually inquiring into the wills of all, are to be bound to elect the person upon whom the greater and sounder part of the chapter has agreed—was not abrogated by

the subsequent general council. Rather, elections may lawfully be proceeded with through that same form as before.

> Forma electionis, tradita per decretalem supra eod. Quum dilectus, non est sublata per sequens concilium Quia propter. H. d. Ioann. Andr.
>
> Idem. Quum expediat concordare iura iuribus, et eorum correctiones, si sustineri valeant, evitari: decretalem felicis recordationis Innocentii Papae III. praedecessoris nostri, quae innuit sub ea forma posse in electionibus licite compromitti, ut compromissarii, secreto et sigillatim voluntatibus omnium inquisitis, illum, in quem maior et sanior pars capituli consenserit, eligere teneantur, declaramus abrogatam non esse per subsecutum concilium generale; immo potest in ipsis electionibus ut prius procedi licite per eandem.

Chapter XXX

One who goes to the Apostolic See to give information concerning the business of an election under the decretal "Cupientes," while going for this reason, remaining there, and returning, receives in full, apart from daily distributions, the fruits of the benefices that he could receive by residing in that church. John Andrew.

The same. Since it is not fitting that anyone's office should be damaging to him, we decree that those who, according to the constitution of our predecessor Pope Nicholas III of happy memory issued concerning this, have come to the Apostolic See to give it information concerning the business of impending elections—since such persons, prosecuting the utility of their churches, ought to be judged resident—are to receive in full the fruits of their benefices that they hold in the churches whose business they prosecute, and also the fruits of other benefices that they would receive or could receive by residing in those churches, excepting daily distributions only. They are to receive them while coming to the same See for this reason, remaining there for this cause, and returning to those churches, as if they resided personally in those churches, notwithstanding any contrary customs or statutes of their churches, or any privileges through which the effect of the foregoing provisions could be impeded in any way.

> Accedens ad sedem apostolicam pro instruendo negotio electionis per decretalem Cupientes, eundo hac de causa, stando et redeundo integre, praeter quotidianas distributiones, percipit fructus beneficiorum, quos percipere posset in ipsa ecclesia residendo. Ioann. Andr.
>
> Idem. Quum non deceat alicui suum officium esse damnosum, statuimus, ut ii, qui iuxta constitutionem felicis recordationis Nicolai Papae tertii praedecessoris nostri super hoc editam ad apostolicam sedem venerint, eam circa imminentium electionum negotia instructuri, quum tales, ecclesiarum suarum prosequentes utilitatem, censeri debeant residentes, fructus beneficiorum suorum, quae obtinent in illis ecclesiis, quarum negotia prosequuntur, et etiam aliorum, quos reciperent vel possent recipere in ipsis ecclesiis residendo, integre, quotidianis distributionibus duntaxat exceptis, recipiant, ad sedem propterea veniendo eandem, ibidem hac de causa morando, et ad ipsas ecclesias redeundo, ac si personaliter in eisdem ecclesiis residerent, non obstantibus quibuslibet consuetudinibus vel statutis ecclesiarum suarum* contrariis, seu privilegiis quibuscunque, per quae praemissorum effectus posset quomodolibet impediri.

Chapter XXXI

One who objects an evident defect of learning or of the person against someone to be promoted to a dignity cannot repent of doing so. He gives the reason. John Andrew.

The same. The objection to the defect itself, or to its character, cannot afterward be revoked by one who, among the other things that he objects against a person elected, postulated, or to be promoted to some dignity, objects an evident, notorious, or manifest defect of learning or another defect of the person. For since the objector, if what he objected concerning a defect of this kind happens to be destitute of truth, ought to be wholly excluded from prosecuting the cause and punished just as if he had failed in proving all the things he had objected, it is just that, after he proceeds to that objection, he cannot afterward repent of it to the prejudice of the person against whom he objected.

> Is, qui opponit evidentem defectum scientiae vel personae contra promovendum ad aliquam dignitatem, poenitere non potest. Causam reddit. Ioann. Andr.
>
> Idem. Ab eo, qui contra electum vel postulatum seu promovendum ad aliquam dignitatem inter cetera, quae obiicit, evidentem, notorium seu manifestum scientiae vel alium personae defectum opponit, ipsius defectus oppositio vel eius qualitas nequeunt postea revocari. Quum enim opponens, si quod de defectu opposuit huiusmodi destitui veritate contingat, a prosecutione causae debeat omnino excludi, et puniri perinde, ac si in probatione omnium, quae obiecerat, defecisset, iustum est, ut, postquam ad oppositionem eandem procedit, nequeat in praeiudicium eius, contra quem opposuit, ulterius poenitere.

Chapter XXXII

A canon below the age of puberty who was not summoned to an election does not bring an action for contempt. — § 1. Those not professed ought not to take part in an election with those professed, nor lay conversi with clerics. This is what it says.

The same. Because you were not admitted with the other canons of that church to the election of a bishop celebrated in your church while you were of pupillary age, you cannot complain of contempt or attack that election, since it is a matter both of law and of reason that such persons, because they lack discretion, are by no means to be admitted to give a vote in an election.

§ 1. In regular churches or monasteries also, those who have not made tacit or express profession ought not to take part in elections with those professed, nor lay conversi with clerics.

> Canonicus impubes, ad electionem non vocatus, non agit de comtemptu. — §. 1. Non professi cum professis, vel conversi laici cum clericis electioni interesse non debent. H. d.
>
> Idem. Ex eo, quod ad electionem episcopi, quae, te in pupillari constituto aetate, in tua ecclesia exstitit, celebrata, cum ceteris eiusdem ecclesiae canonicis non fuisti admissus, de contemptu conqueri aut electionem eandem impugnare non potes, quum tam iuris quam rationis exsistat, ut tales, quum discretione careant, ad praestandum in electione suffragium nullatenus admittantur. §. i. In ecclesiis quoque regularibus vel monasteriis hi, qui non sunt tacite vel expresse professi, non debent cum professis, vel conversi laici cum clericis electionibus interesse.

Chapter XXXIII

If an appeal is made to the Pope in writing on a probable ground from an election in a cathedral or regular church, a confirmation made by the ordinary while it is pending is not valid. The decretal "Cupientes" requires not only that the person elected come, but that he prosecute the business to its end, and it also applies when an appeal is made from a confirmation or provision. John Andrew.

The same. If, after an appeal has been made to the Apostolic See in writing on a probable ground that, if proved, ought to be reputed legitimate from an election celebrated in a cathedral or regular church, it happens that the election itself is confirmed by the ordinary, such a confirmation will obtain no strength of force unless there has first been a canonical withdrawal from that appeal, since it was presumed in fact by one who had no power to make it.

But if the person elected, who according to the constitution of our predecessor Pope Nicholas III of happy memory had come to the said See to prosecute the business of his election, departs from the Roman curia without permission before that business has been concluded, his election, by authority of that constitution—which requires not only that one come but also, according to its intention, that he prosecute the business to its end—is by that very fact wholly emptied of force. When, moreover, an appeal is made to the same See from the confirmation of an election or from a provision made by one to whom the power of electing had devolved because of the negligence of inferiors, the aforesaid constitution is to be observed in coming, sending, and the other matters embraced in it.

> Si ab electione Cathedralis vel regularis ecclesiae inscriptis ex causa probabili appelletur ad Papam, ea pendente confirmatio facta per ordinarium non valet. Requirit decretalis Cupientes non solum, quod electus veniat, sed quod usque ad finem negotium prosequatur, et habet locum etiam, quum appellatur a confirmatione vel provisione. Ioann. Andr.
>
> Idem. Si, postquam ab electione in cathedrali vel regulari ecclesia celebrata fuerit in scriptis ex causa probabili, quae probata deberet legitima reputari, ad sedem apostolicam appellatum, electionem ipsam per ordinarium confirmari contingat: huiusmodi confirmatio, nisi prius fuerit canonice ab appellatione ipsa recessum, quum sit ab eo, qui non potuit, de facto praesumpta, nullam obtinebit* roboris firmitatem. Si vero electus, qui iuxta constitutionem felicis recordationis Nicolai Papae tertii praedecessoris nostri ad dictam sedem venerat pro electionis suae negotio prosequendo, de Romana curia sine licentia recesserit, antequam huiusmodi negotium sit finitum: eius electio auctoritate constitutionis ipsius, quae non solum ut quis veniat, sed etiam ex sui mente exigit, quod usque ad finem negotium prosequatur, eo ipso viribus evacuatur omnino. Quum autem ab electionis confirmatione vel facta provisione per eum, ad quem propter inferiorum negligentiam fuerat devoluta eligendi potestas, ad sedem appellatur eandem: constitutionem praedictam in veniendo et* mittendo et aliis, quae perstringuntur in ea, convenit observari.

Chapter XXXIV

Bishops and superiors can dispense those who have parish churches subject to them so that, while studying for up to seven years, they are not bound to be promoted to the priesthood; nevertheless, they ought to be promoted to the subdiaconate within one year, otherwise they are deprived. During that seven-year period, a suitable vicar, to be maintained from the fruits of the church, ought to be placed in those churches. When the seven years have elapsed, the rector ought to be promoted priest within one year.

The same. Our predecessor Pope Gregory X of happy memory decreed at the Council of Lyons that persons assumed to the government of parish churches are to cause themselves to be promoted to the priesthood within one year, counted from the time the government was committed to them, and are to reside personally in those churches; otherwise, if they have not been promoted within that time, they are to be deprived of such churches without another admonition. Because, after that provision, some persons refused to accept parish churches, and the opportunity for reading and advancing was taken away from them when their means did not suffice and the prelates of churches

in many parts of the world sometimes did not provide for them from other benefices, to the great loss and detriment of the universal Church, which is known greatly to need learned men for its government, we, frequently stirred concerning this by the insistence of many and wishing usefully to provide for those desiring to advance in learning so that in their time they may be able to bear fitting fruit in the Church of God, decree by the present constitution as follows.

Bishops and their superiors can freely dispense those who hold or in the future shall hold churches of this kind subject to them, so that, while devoting themselves to the study of letters for up to seven years, they are by no means bound to be promoted except to the order of subdiacon only. We will that they be entirely constrained to receive that order within the aforesaid year—lest, as is known formerly to have been done by many raised up from the patrimony of Christ, they be able to withdraw from the clerical state—and, if they do not receive it, that they be struck by that very fact with the penalty contained in the said council.

Moreover, during the aforesaid seven years, the same bishops and superiors are to take diligent care to provide that the care of souls be diligently exercised and divine services laudably performed through good and sufficient vicars deputed by them in churches of this kind, and that the necessary things be suitably supplied to those vicars from the proceeds of the churches themselves. When the said seven years have elapsed, those with whom a dispensation was made as set forth above are to cause themselves to be promoted to the orders of diaconate and priesthood within one year; otherwise, unless they omitted this for a just cause, they are thereafter to know themselves to have incurred the said penalty by the law itself.

> Dispensare possunt episcopi et superiores cum habentibus parochiales ecclesias sibi subiectas, quod usque ad septennium studendo non teneantur ad sacerdotium promoveri; ad subdiaconatum tamen debent promoveri infra annum; alias sunt privati. Et, illo durante septennio, debet in illis ecclesiis idoneus poni vicarius, de fructibus ecclesiae sustinendus. Elapso septennio debet rector infra annum in presbyterum promoveri.
>
> Idem. Quum ex eo, quod felicis recordationis Gregorius Papa X. praedecessor noster statuit in concilio Lugdunensi, ut ad regimen parochialium ecclesiarum assumpti se ad sacerdotium promoveri faciant infra annum a sibi commissi regiminis tempore connumerandum*, et personaliter resideant in eisdem, alioquin, si infra idem tempus promoti non fuerint, huiusmodi ecclesiis absque monitione alia sint privati, nonnullis ex tunc parochiales ecclesias recusantibus acceptare, legendi et proficiendi, quum eis facultates non suppetant, nec ab ecclesiarum praelatis de aliis beneficiis in plerisque mundi partibus interdum provideatur eisdem, opportunitas sit sublata in grande universalis ecclesiae, quae ad sui regimen viris literatis permaxime noscitur indigere, dispendium et iacturam: nos, super hoc multorum instantia excitati frequenter, volentes cupientibus in scientia proficere, ut fructum in Dei ecclesia suo tempore afferre valeant opportunum, utiliter providere, praesenti constitutione sancimus, ut episcopi eorumque superiores cum his, qui huiusmodi subiectas sibi ecclesias obtinent vel obtinuerint, in futurum dispensare possint libere, quod usque ad septennium literarum studio insistentes promoveri minime teneantur, nisi ad ordinem subdiaconatus duntaxat, ad quem infra praedictum annum recipiendum, (ne, sicut £ multis de Christi patrimonio sublimatis olim factum esse dignoscitur, a statu retrocedere valeant clericali,) omnino adstringi volumus, et, nisi receperint, poena contenta in dicto concilio eo ipso percelli. Porro septennio praedicto durante iidem episcopi et superiores sollicite providere procurent, ut per bonos et sufficientes vicarios, ab eis in huiusmodi ecclesiis deputandos, animarum cura diligenter exerceatur, et deserviatur laudabiliter in divinis, quibus de ipsarum ecclesiarum proventibus necessaria congrue ministrentur. Elapso vero dicto septennio hi, cum quibus

fuerit ut praemittitur, dispensatum, ad diaconatus et presbyteratus ordines infra annum se faciant promoveri, alioquin extunc dictam poenam, nisi iusta de causa id omiserint, ipso iure se noverint incursuros.

Chapter XXXV

It states four things. First, that the full year must be completed for the penalty of deprivation of a rector of a parish church who has not been promoted. Second, that this year does not run against one who is justly impeded. Third, that after deprivation the church cannot be conferred upon the same person. Fourth, that one not promoted, if he had received the church with the intention of receiving its fruits for a year, is bound to restore them. And one who conferred it with that intention ought to preserve the church harmless. John Andrew.

The same. Although so much of the year has passed that within it you cannot be promoted to the priesthood according to the statute of the General Council of Lyons, the parish church committed to you is not to be judged vacant until the whole year has elapsed, nor can it previously be conferred upon another against your will. A year of this kind, which began from the time when the government of the church itself was committed to you and you had peaceful possession of it—or it was due to you that you did not have it—does not run against you if, detained by a just impediment, you could not be promoted within such time.

Moreover, if you have not been promoted within the said time when no reasonable cause existed, the church itself, of which you have already been deprived by authority of the said statute, can by no means on that occasion be conferred upon you again. Otherwise, the statute itself would be made a mockery and frustrated of its due effect, and the imposed law would seem to consist in words and not in things, when the contrary should rather be done.

Furthermore, if, not intending to be promoted to the priesthood, you received a parish church so that you might receive its fruits for a year and afterward relinquish it, unless, your will having changed, you have been promoted, you will be bound to restore those fruits, since you received them fraudulently. We decree that one who conferred it upon you, when he did not believe that you would be promoted to an order of this kind, is bound—besides the divine offense that he thereby incurs—to preserve the same church harmless.

Quatuor dicit. Primo, quod ad poenam privationis rectoris parochialis ecclesiae non promoti requiritur, quod annus integer sit completus. Secundo, quod annus ille non currit iuste impedito. Tertio, quod post privationem ecclesia eidem conferri non potest. Quarto, quod non promotus, si eo animo receperat ecclesiam, ut fructus anni perciperet, tenetur ad restitutionem ipsorum. Et qui ea mente contulit, ecclesiam servare debet indemnem. Ioann. Andr.

Idem. Commissa tibi parochialis ecclesia, quanquam tantum de anno transiverit, quod infra ipsum nequeas iuxta statutum generalis concilii Lugdunensis ad sacerdotium promoveri, non est, nisi tunc demum, quum ex toto fuerit ipse annus elapsus, censenda vacare, nec potest alteri antea te nolente conferri. Annus autem huiusmodi, qui a tempore illo incepit*, quo ipsius ecclesiae regimen commissum tibi exstitit, et possessionem eius pacificam habuisti, vel per te stetit, quo minus haberes eandem, tibi non currit, si promoveri iusto impedimento detentus infra tempus huiusmodi nequivisti. Porro si infra dictum tempus non fueris rationabili causa cessante promotus, tibi ecclesia ipsa, qua dicti statuti auctoritate iam privatus exsistis*, ne statutum ipsum fiat ludibrio debitoque frustretur effectu, et non rebus, sed verbis, quum sit potius contrarium faciendum, lex imposita videatur, nullatenus ea vice poterit iterato conferri. Ceterum si promoveri ad sacerdotium non intendens, parochialem receperis

ecclesiam, ut fructus ex ea per annum percipias* ipsam postmodum dimissurus, nisi voluntate mutata promotus fueris: teneberis ad restitutionem fructuum eorundem, quum eos receperis fraudulenter. Illum autem, qui eam tibi contulit, quum te non crederet ad huiusmodi ordinem promovendum, praeter divinam, quam exinde incurrit, offensam ad servandam indemnem eandem ecclesiam decernimus obligari.

Chapter XXXVI

An exempt abbot is elected bishop, but he cannot transfer without the permission of the Pope or of a legate de latere. — § 1. A legate de latere can confirm elections of bishops and exempt persons; other legates cannot without a special mandate. John Andrew.

The same. If you have elected as your bishop an abbot immediately subject to the Roman Church, you can be reproved for this on no ground. Nevertheless, permission to leave his monastery and transfer to your church cannot be given to him by anyone other than us or a legate of the Apostolic See, if one has been sent from our side into the province.

§ 1. A legate of this kind, who is judged to have in the province decreed to him a command greater than all others after the Roman Pontiff, can by virtue of his office confirm elections of archbishops, bishops, and exempt persons. Other legates, however, cannot do this unless it has been specially committed to them by the same See.

Abbas exemptus eligitur in episcopum; sed transire non potest sine licentia Papae vel legati de latere. — §. 1. Legatus de latere potest confirmare electiones episcoporum exemptorum; reliqui non sine speciali mandato. Ioann. Andr.

Idem. Si abbatem ecclesiae Romanae immediate subiectum in vestrum episcopum elegistis, reprehendi exinde nulla ratione potestis; ei tamen ab alio, quam a nobis vel ab apostolicae sedis legato, si sit in provincia de latere nostro missus, dari non potest licentia suum deserendi monasterium, et ad vestram ecclesiam transeundi.

§. i. Huiusmodi vero legatus, qui maius omnibus post Romanum Pontificem in provincia sibi decreta imperium censetur habere, archiepiscoporum, episcoporum et exemptorum electiones potest ex officio confirmare. Alii autem legati hoc nequeunt, nisi id eis a sede ipsa specialiter sit commissum.

Chapter XXXVII

If a compromissarius does not elect within the time of law, the power of making provision devolves upon the superior. If he elects, but elects an unworthy person, it returns without distinction to those making the compromise, unless they knowingly ratified it. The same applies if a suitable person elected does not consent. If the compromissarius knowingly elects an unworthy person, he alone is suspended from ecclesiastical benefices for three years, unless those making the compromise knowingly ratified it. The aforesaid penalty of suspension does not apply to a bishop acting as compromissarius, nor in the election of persons inferior to bishops. That penalty is restricted to the benefices that he holds in the church offended. The same applies to the benefices of one who fails in proving what he objects against the person. John Andrew.

The same. If a compromissarius to whom the power of electing is transferred after the bishop has died negligently omits to elect within the time established by law, the power of making provision devolves upon the nearest superior; and those making the compromise, who transferred such power to such a person, are to impute this to themselves. But if he elects an unworthy person, whether he

did so knowingly—since his deceit ought not to be imputed to those who are not at fault—or ignorantly—since he has discharged his office—the power of electing freely returns to the same persons, unless they too knowingly ratified such an election. The same occurs when he elects a suitable person but the person elected refuses to consent.

Moreover, in the case in which an unworthy person is knowingly elected by him, those making the compromise, whom it is not fitting to burden on account of hatred for him, are by no means punished unless, as set forth above, they ratified it; but he himself, so that the penalty may hold its author, is by the law itself suspended from ecclesiastical benefices for three years according to the Lateran Council. A penalty of this kind has no application either to a bishop sinning in this way if he is made compromissarius for electing—since by law he incurs no sentence of suspension unless express mention is made of him—or in elections of persons other than bishops and their superiors when a sin occurs in them. The said penalty is also restricted solely to those benefices that the person sinning in this way holds in the church that he is known specially to have offended by electing in that manner. The same is to be judged concerning the benefices of one who, attacking someone's election, postulation, or provision, fails in proving what he objects against the person.

> Si compromissarius non eligit infra tempus iuris, ad superiorem devolvitur potestas providendi. Si eligit, sed indignum, indistincte redit ad compromittentes, nisi id scienter ratum habuerint. Idem, si electus idoneus non consentit. Si compromissarius scienter eligit indignum, ipse solus ab ecclesiasticis beneficiis triennio est suspensus, nisi id compromittentes scienter ratum habuerint. Et poena praedicta suspensionis non habet locum in episcopo compromissario, nec in electione inferiorum episcoporum. Et restringitur illa poena ad beneficia, quae obtinet in ecclesia offensa. Et idem in beneficiis illius, qui deficit in probatione eius, quod obiicit in personam. Ioann. Andr.
>
> Idem. Si compromissarius, in quem defuncto episcopo transfertur eligendi potestas, negligenter infra tempus a iure statutum eligere praetermittat, ad superiorem proximum* potestas devolvitur providendi, sibique compromittentes imputent, qui* in talem potestatem huiusmodi transtulerunt. Si vero eligat, sed indignum: tunc, sive scienter id fecerit, (quum dolus ipsius eis, qui non sunt in culpa, non debeat imputari,) sive etiam ignoranter, (quum suo sit functus officio,) eligendi potestas, nisi et scienter electionem talem ratam habuerint, libere revertitur ad eosdem. Idem fit, quum eligit idoneum, sed electus renuit consentire. Porro eo casu, quum scilicet indignus eligitur ab eodem, compromittentes, quos illius odio non convenit praegravari, nequaquam, nisi, sicut praemittitur, ratum habuerint, puniuntur; sed ipse, (ut poena suum auctorem* teneat,) a beneficiis ecclesiasticis triennio iuxta Lateranense concilium suspenditur ipso iure. Huiusmodi quoque poena nec in episcopo, si ad eligendum fiat compromissarius, sic peccante, (quum de iure nullam sententiam suspensionis incurrat, nisi de ipso expressa mentio habeatur,) nec in aliorum quam episcoporum et superiorum ipsorum electionibus, quum peccatur in ipsis, vendicat sibi locum. Restringitur etiam dicta poena solum ad ea beneficia, quae sic peccans in illa obtinet ecclesia, quam taliter eligendo specialiter noscitur offendisse. Et idem in illius beneficiis est censendum, qui, alicuius electionem, postulationem aut provisionem impugnans, in probatione deficit eius, quod obiicit in personam.

Chapter XXXVIII

A procurator for appealing according to the form "Ut circa" is not suitable unless all the objections and the form of the oath are expressed in the procuratorial instrument. This is what it says, according to Panormitanus.

The same. Henceforth, a procurator for appealing against someone's election, postulation, or provision is not to be reputed suitable unless all the things that he intends to object against the form

or the persons, and on account of which he intends to appeal, are expressed individually and clearly in his procuratorial instrument, and unless he has a special mandate to swear corporally upon the souls of those whose procurator he is that they believe the things so expressed to be true and that they are able to prove them.

> Procurator ad appellandum secundum formam Ut circa non est idoneus, nisi omnia obiecta et forma iuramenti in procuratorio exprimantur. H. d. secundum Panorm.
>
> Idem. Procurator ad appellandum contra electionem, postulationem aut provisionem alicuius* non aliter idoneus de cetero reputetur, quam si omnia, quae in formam obiicere vel personas, et propter quae appellare intendit, singulariter et clare in eius procuratorio sint expressa, habeatque speciale mandatum iurandi corporaliter in eorum animas, quorum procurator exsistit, quod ipsi credunt expressa huiusmodi vera esse, et se posse probare.

Chapter XXXIX

When a confirmation has been annulled, or pronounced null because of a defect of jurisdiction or an omitted solemnity, the election is not on that account said to be annulled. John Andrew.

The same. If it happens that the confirmation of an election is annulled, or pronounced null and void, because the due solemnity of law was omitted in the confirmation itself, or because the person who confirmed had no power to confirm, the preceding election, if it is otherwise canonical, is not on that account understood to be invalidated.

> Cassata confirmatione, vel cassa nunciata propter defectum iurisdictionis vel solennitatem omissam, non propter hoc electio cassata dicitur. Ioann. Andr.
>
> Idem. Si confirmationem electionis propter debitam iuris solennitatem, in confirmatione ipsa omissam, vel ex eo, quia ipse*, qui confirmavit, confirmandi non habuit potestatem, cassari seu cassam et irritam nunciari contingat: non propter hoc praecedens electio, si alias sit canonica, intelligitur infirmari.

Chapter XL

If, while a cathedral, regular, or collegiate church is vacant, individual persons of the chapter or convent occupy goods left by the prelate, or accruing during the time of vacancy, they are suspended from office and from all benefices until they restore them fully, notwithstanding privileges, statutes, and customs fortified by firmness of any kind. John Andrew.

The same. Because it often happens that, while cathedral, regular, and collegiate churches are vacant, their chapters, convents, colleges, and individual persons occupy, divide among themselves, steal, dilapidate, dissipate, and consume—to the grave loss and detriment of those churches—the goods left by their prelates or accruing during the time of vacancy, which ought to be spent for the utility of the said churches or faithfully reserved for future successors, we, wishing to repress their audacity and take precautions against damage to the churches, decree that those who henceforth presume to do the foregoing things are by that very fact to be, and to remain, suspended from office and from all benefices until they have fully restored whatever they received from the aforesaid goods.

This is notwithstanding any privileges or indulgences, or contrary customs, constitutions, or statutes fortified by oath, confirmation of the Apostolic See, or any other firmness. All these, as regards this matter, we revoke, annul, and invalidate by apostolic authority, and will them henceforth to have no firmness.

Si, vacante cathedrali, regulari vel collegiata ecclesia,' singulares personae capituli vel conventus occupant bona a praelato dimissa, vel vacationis tempore obvenientia, donec plene restituant, ab officio et quibuscunque beneficiis sunt suspensi, non obstantibus privilegiis, statutis et consuetudinibus, quacunque firmitate vallatis. Ioann. Andr.

Idem. Quia saepe contingit, quod, Cathedralibus et regularibus ac collegiatis ecclesiis vacantibus, capitula, conventus, collegia et singulares earundem* personae bona, a praelatis ipsarum* dimissa, vel vacationis tempore obvenientia, quae in utilitatem dictarum ecclesiarum expendi vel futuris deberent successoribus fideliter reservari, occupant, inter se dividunt, surripiunt, dilapidant, dissipant et consumunt in earum grave dispendium et iacturam: nos, ipsorum ausus reprimere, ac ecclesiarum indemnitatibus praecavere volentes, decernimus, ut hi, qui praemissa de cetero praesumpserint, eo ipso sint et tamdiu maneant ab officio et beneficiis quibuscunque suspensi, donec plene restituerint quicquid de bonis perceperint supra dictis, non obstantibus quibuslibet privilegiis vel indulgentiis, aut contrariis consuetudinibus, constitutionibus* vel statutis, iuramento, confirmatione sedis apostolicae aut alia quacunque firmitate vallatis, quae omnia quoad hoc auctoritate apostolica revocamus, cassamus et irritamus, ac nullius deinceps volumus esse firmitatis.

Chapter XLI

The decretal "Ut circa" applies only to extrajudicial appeals; in judicial appeals, however, the ancient laws are to be observed. This is what it says. John Andrew.

The same. The constitution of our predecessor Pope Gregory of happy memory, issued at the Council of Lyons and expressing the form according to which appeals ought to be made by those who oppose themselves in elections, postulations, or provisions, has no application except only when an appeal is made extrajudicially in those matters. But when it happens that an appeal is made in judicial proceedings in business of this kind, the earlier laws are to be observed, since they were not altered by it.

Decretalis Ut circa solum inextraiudicialibus appellationibus locum habet; in iudicialibus autem antiqua iura servanda sunt. H. d. Ioann. Andr.

Idem. Constitutio felicis recordationis Gregorii Papae praedecessoris nostri edita in concilio Lugdunensi, formam exprimens, secundum quam ab iis, qui in* electionibus, postulationibus aut provisionibus se opponunt, debeat appellari, locum sibi non vendicat, nisi solum, quum in eis extra iudicium appellatur. Quando vero in iudiciis in huiusmodi negotiis appellari contingit, anteriora iura, quum per eam immutata non fuerint, observari oportet.

Chapter XLII

One having the full administration of a cathedral church in spiritual and temporal matters can exercise jurisdictional acts, but not sacramental acts unless he is a bishop. This is what it says. Dominicus.

The same. One to whom the full and free procuration or administration of a cathedral church in spiritual and temporal matters has been committed by the Apostolic See, to which alone this belongs, can freely exercise all things that belong to episcopal jurisdiction and that a confirmed person elected can execute, excepting only the alienation of immovable goods. Those things that require the ministry of consecration, however, he is to cause to be expedited through other bishops unless he is a bishop.

Habens plenam administrationem Cathedralis ecclesiae in spiritualibus et temporalibus, iurisdictionalia exercere potest, sacramentalia non, nisi episcopus fuerit. H. d. Dom.

Idem. Is, cui procuratio seu administratio Cathedralis ecclesiae plena et libera in spiritualibus et temporalibus a sede apostolica, cui soli hoc competit, est commissa, potest, alienatione bonorum immobilium duntaxat excepta, omnia, quae iurisdictionis episcopalis exsistunt, et quae potest electus exsequi confirmatus, libere exercere. Illa quippe, quae ministerium consecrationis exposcunt, nisi fuerit episcopus, per alios faciat episcopos expediri.

Chapter XLIII

A nun does not elect unless she has completed her twelfth year and is tacitly or expressly professed, nor is she elected unless she has completed her thirtieth year and has been expressly professed. The first part says this, as far as "Indeed." John Andrew. — § 1. Notwithstanding any contradiction or appeal, when the procedure is by scrutiny, a woman elected by two-thirds in number is confirmed and blessed by the office of the person presiding after examination has first been made. Likewise, once the scrutiny has been published, before they turn aside to extraneous acts, the electors can accede to the woman who has the greater part of the convent in number. If through accession they reach two-thirds, she will be confirmed and blessed as in the first case; nevertheless, the power of denouncing or accusing will not be taken away from those contradicting once the abbess has been blessed and has obtained possession. Likewise, concerning things objected against a woman elected by the greater part of the convent, who nevertheless has two-thirds neither from the beginning nor through accession, inquiry will be made before confirmation without the clamor and form of a judicial proceeding. In the meantime, however, she will administer, although alienation of goods and reception of nuns are forbidden to her. Likewise, no right is acquired by a woman elected by the smaller party, nor can the others accede to her, and in this matter comparison is made only of number with number. This is what it says. — § 2. A blessing will be bestowed upon a woman elected through compromise notwithstanding the contradiction of the smaller party; but if the greater party opposes her, she will administer freely and will not be confirmed. If, however, a party twice as large opposes her, she will neither administer nor be confirmed, but will await the outcome of the litigation. This is what it says. — § 3. If an appeal is made by the opponents in the foregoing cases, the constitution "Ut circa" will be observed; but the nuns will not come personally to the Apostolic See, but will send procurators according to the constitution "Cupientes." This is what it says. John Andrew. — § 4. Those who introduce or nourish discord in an election of nuns are excommunicated by the law itself. This is what it says. John Andrew. — § 5. This constitution applies to nuns living regularly and to canonesses regular, except that none but professed women ought to elect or be elected. This cannot claim application among secular canonesses; nevertheless, by this the Pope does not approve the state of the said secular canonesses. This is what it says. John Andrew. — § 6. The laws treating of elections of men have not been changed by this chapter. This is what it says.

The same. Desiring earnestly to meet damage to monasteries of nuns, which frequently suffer great losses in spiritual and temporal matters because of elections celebrated in discord within them, we decree that, when an election is to be made in them, no nun is to be admitted to elect with the others unless she has completed her twelfth year and has been professed tacitly or expressly. Nor henceforth is anyone to be elected abbess, or prioress where the monastery is governed through a prioress, unless she has completed her thirtieth year and has expressly professed the regular order.

§ 1. Indeed, if an election is proceeded to by the form of scrutiny and, the votes being divided in different directions, it happens that several elections are celebrated in discord, the one that was celebrated by two-thirds in number is to be confirmed by the superior, notwithstanding any

exception, contradiction, or appeal of the other party, after a diligent examination has nevertheless first been made by virtue of his office, as pertains to him, provided that it is otherwise found canonical. And if the confirmed woman elected is an abbess, a blessing is to be bestowed upon her.

But if none of those elections was celebrated by two-thirds, then, notwithstanding that the scrutiny has been published and the election proceeded to, the nuns who had directed their votes toward another woman or other women may lawfully, by consent and before they turn aside to extraneous acts, every depravity ceasing, accede to the woman elected by the others making up the greater part of the convent in number. And if through accession of this kind two-thirds can be reached, counting those who previously consented to her, she is to be confirmed and blessed as though she had had two-thirds from the beginning, as was set forth in the immediately preceding case.

But if there are nuns who, after such a woman in the foregoing cases has been confirmed and blessed and has obtained possession of her administration, wish to propose something against her by way of denunciation or accusation so that she may be deposed from the dignity obtained, the power of proposing it is by no means to be taken away from them by the foregoing provisions.

But if the other nuns do not wish to accede to the woman elected by the greater party as set forth above, or if they accede but not in such number that, with the others previously consenting to her, they make two-thirds, then, before that election is confirmed or invalidated, the superior is first to inquire fully, without the clamor and form of a judicial proceeding, concerning the objections of the other party, if there are any, and the other matters into which inquiry is to be made by virtue of office in such a business. In the meantime, however, by authority of the present constitution she is freely to administer in spiritual and temporal matters, but in such a way that she alienates absolutely nothing from the property of the monastery and does not in any manner receive anyone as a nun.

But if any woman has been nominated or elected by the smaller part of the convent in number, no right is in any way acquired for her from such a nomination or election, which we will to obtain no force by the very fact that the smaller party made it; nor in this case can accession to her by others through consent be had. Moreover, so that concord may more easily be reached in elections of nuns of this kind when the procedure is by the aforesaid form, we decree that in them comparison is to be made not of zeal with zeal, nor merit with merit, but solely of number with number.

§ 2. Furthermore, if the election was proceeded to by the form of compromise and some party opposes the woman elected, then, if it is the smaller party, her election is to be confirmed, as is established for the form of scrutiny, and a blessing bestowed upon her, notwithstanding the contradiction, exception, or any appeal of that party; but by this the way of afterward denouncing or accusing her is by no means to be closed to it. If it is the greater party, her confirmation or invalidation is to be deferred until inquiry has been made concerning the objections and other matters as set forth for the same form of scrutiny; but in the meantime she is freely to administer as stated above, unless perhaps the party of the opponents is twice as large. For then we will her not to administer, but rather to await the outcome of the litigation.

§ 3. Moreover, if in the business of elections of this kind, and only in those cases in which objections are to be admitted according to the foregoing provisions, it happens that an appeal is made to the Apostolic See, the appellants are to be bound to observe more diligently the form of the constitution of our predecessor Pope Gregory of happy memory issued at the Council of Lyons. But since, on

account of the modesty of their sex and the state of their condition, it is not fitting for them, nor expedient, to be displayed before a public assembly or to wander outside their monasteries, we will that neither the women elected, nor even the electors or appellants, nor those against whom the appeal was made, come personally to the same See in any manner. Instead, they are to send sufficiently instructed procurators to that See according to the constitution of our predecessor Pope Nicholas III of pious memory, through whom they are to prosecute the business of their elections, appeals, and postulations as justice shall counsel; if they do not do this, they will incur by the law itself the penalty contained in the said constitution.

§ 4. Finally, those whom it happens henceforth to be called to direct those nuns in elections of this kind are wholly to abstain from things through which discord concerning the making of the elections themselves could arise among them or, once arisen, be nourished; otherwise, they are to know themselves subject by that very fact to the sentence of excommunication.

§ 5. We will that the things stated above be observed in all respects not only in monasteries in which there are nuns living under one of the approved religious orders, but also in those in which, according to the custom of certain provinces, there are women who neither renounce their own property nor make regular profession, but live as secular canons do in secular churches. Only the provision stated above—that women not professed are neither elected nor elect—is excepted, since this cannot claim application among them. By this, nevertheless, we neither will nor intend to approve their state, order, or rule.

§ 6. In addition, although for certain reasonable causes we have judged that the foregoing provisions, which in many respects are known to differ from the common law, should be specially established concerning elections to be made in any monasteries of women, it has by no means been our intention that anything should thereby be changed regarding elections to be celebrated in other monasteries of men or in any churches; rather, the preceding laws are to remain wholly in their force.

> Monialis non eligit, nisi peregerit duodecimum annum, et sit tacite vel expresse professa, nec eligitur, nisi peregerit tricesimum annum, et fuerit expresse professa. Hoc dicit prima pars usque ibi: Sane. Ioann. Andr.— §. 1. Non obstante contradictione vel appellatione quacunque, electa a duabus partibus numero, quum per scrutinium proceditur, examinatione praemissa per officium praesidentis confirmatur et benedicitur. Item publicato scrutinio, antequam ad actus extraneos se divertant, eligentes possunt accedere ad illam, quae maiorem partem conventus numero habet. Et si per accessum ad duas partes pervenerint, sicut in primo casu, confirmabitur et benedicetur; non tamen adimetur contradicentibus potestas denunciandi vel accusandi, quum abbatissa fuerit benedicta et possessionem adepta. Item de obiectis contra electam a maiori parte conventus, quae tamen duas partes nec a principio, nec per accessum habet, ante confirmationem sine strepitu et figura iudicii inquiretur. Ipsa tamen, alienatione bonorum et monialium receptione sibi interdictis, interim ministrabit. Item a minori parte electae nullum ius acquiritur, nec aliae possunt accedere ad eam, nec ibi fit collatio, nisi numeri ad numerum. H. d. — §. 2. Electae per compromissum benedictio impendetur, non obstante minoris partis contradictione; sed, si maior se ei opponat, libere administrabit, nec confirmabitur. Si autem ei se opponat pars in duplo maior, non administrabit, nec confirmabitur, sed exspectabit litis eventum. H. d. — §. 3. Si ab opponentibus in casibus praemissis appellatur, constitutio Ut circa servabitur, sed moniales ad sedem apostolicam personaliter non venient, sed procuratores secundum constitutionem Cupientes mittent. H. d. Ioann. Andr. — §.4. Ponentes vel nutrientes discordiam in electione monialium ipso iure sunt excommunicati. H. d. Ioann. Andr. — §. 5. Haec constitutio locum habet in monialibus

regulariter viventibus, et in canonicis regularibus, hoc excepto, quod non debeant nisi professae eligere vel eligi. Quod non potest sibi vindicare locum in canonicis saecularibus; per hoc tamen Papa non approbat statum dictarum canonicarum saecularium. H. d. Ioann. Andr. — §. 6. Iura, de virorum electionibus tractantia, per hoc capitulum non sunt mutata. H. d.

Idem. Indemnitatibus monasteriorum monialium, quae frequenter propter electiones in discordia celebratas in ipsis grandia in spiritualibus et temporalibus dispendia patiuntur, occurrere desiderabiliter affectantes, statuimus, ut, quum in eis fuerit electio facienda, nulla monialis, nisi duodecimum annum peregerit, et professa fuerit tacite vel expresse, ad eligendum cum aliis admittatur. Nec in abbatissam aut priorissam, ubi per priorissam monasterium gubernatur, de cetero eligatur aliqua, nisi tricesimum annum compleverit, et expresse professa fuerit ordinem regularem.

§. i. Sane, si ad electionem per formam scrutinii procedatur, et, votis in diversa divisis, electiones per plures in discordia celebrari contingat, ea, quae a duabus partibus numero fuerit celebrata, exceptione seu contradictione aut appellatione quacunque partis alterius non obstante, per superiorem, prius tamen ex officio, prout spectat ad ipsum, diligenti examinatione praemissa, si alias inventa fuerit canonica, confirmetur, et confirmatae electae, si abbatissa exstiterit, benedictio impendatur. Si autem nulla earundem electionum a partibus fuerit celebrata duabus: tunc, non obstante, quod sit publicatum scrutinium et ad electionem processum, possint moniales, quae in aliam vel in alias direxerant vota sua, licite per consensum, antequam ad actus divertant extraneos, omni pravitate cessante ad illam accedere, quae ab aliis maiorem partem conventus numero facientibus est electa. Et si per accessum huiusmodi ad duas partes perveniri poterit: illis, quae antea in eam consenserant, computatis, confirmetur et benedicatur, ac si duas partes ab initio habuisset, ut in casu proximo est praemissum. Verum si quae fuerint moniales, quae, postquam in praemissis casibus talis confirmata et benedicta exstiterit ac possessionem suae administrationis fuerit assecuta, voluerint in modum denunciationis vel accusationis, ut a dignitate deficiatur adepta, proponere aliquid contra ipsam: eis per praedicta proponendi minime sit sublata facultas. Si vero ad illam, quae a maiori parte, ut praemittitur, est electa, noluerint aliae accedere moniales, vel si accesserint, non tot tamen, quod cum aliis prius in eam consentientibus faciant duas partes: tunc super obiectibus partis alterius, si qui fuerint, et super aliis, quae in tali negotio sunt ex officio inquirenda, plene sine strepitu iudicii et figura per superiorem inquiratur primitus, antequam confirmetur eadem electio vel etiam infirmetur. Sed interim praesentis constitutionis auctoritate in spiritualibus et temporalibus libere administret, sic tamen, quod de rebus monasterii nil penitus alienet, nec aliquam in monialem recipiat quoquo modo. Si qua vero a minori parte conventus numero nominata fuerit vel electa, ex nominatione vel electione huiusmodi, quas eo ipso, quod pars minor eas fecerit, vires aliquas nolumus obtinere, ipsi ius aliquod quomodolibet non quaeratur, nec ad eam ab aliis per consensum in hoc casu valeat accessus haberi. Ut autem, quum per praedictam formam proceditur, facilius in huiusmodi monialium electionibus ad concordiam veniatur: decernimus, ut non zeli ad zelum, nec meriti ad meritum, sed solum numeri ad numerum fiat collatio in eisdem.

§. 2. Ceterum si per formam compromissi fuerit in electione processum, et electae pars aliqua se opponat: si minor, ipsius, ut in forma scrutinii statuitur, confirmetur electio, et eidem benedictio impendatur, partis eiusdem contradictione vel exceptione aut appellatione qualibet non obstante; sed per hoc denunciandi vel accusandi eam postmodum sibi via minime sit praeclusa. Si maior: eius, donec de obiectis et aliis, ut in eadem forma scrutinii praemittitur, fuerit inquisitum, confirmatio vel infirmatio differatur; sed interim, ut praedicitur, libere administret, nisi forsan pars opponentium exstiterit duplo maior. Tunc enim administrare ipsam nolumus, sed litis eventum potius exspectare.

§. 3. Porro si in huiusmodi electionum negotiis contigerit, in illis duntaxat casibus, in quibus oppositiones iuxta praemissa fuerint admittendae, ad sedem apostolicam appellari: appellantes formam

constitutionis felicis recordationis Gregorii Papae praedecessoris nostri editae in concilio Lugdunensi diligentius servare teneantur. Sed quum eas propter sexus verecundiam suaeque conditionis statum non deceat, nec ipsis expediat publico coetui demonstrari aut extra sua monasteria evagari: nolumus, quod electae vel etiam eligentes aut appellantes, seu hae, contra quas appellatum fuerit, ad eandem sedem personaliter veniant quoquo modo; sed procuratores sufficienter instructos iuxta constitutionem piae memoriae Nicolai Papae tertii praedecessoris nostri ad sedem ipsam transmittant, per eos electionum ac appellationum et postulationum suarum prosecuturae negotia, prout iustitia suadebit, poenam in dicta constitutione contentam ipso iure, si hoc non fecerint, incursurae.

§. 4. Postremo hi, quos ad dirigendas in huiusmodi electionibus moniales easdem deinceps contigerit evocari, ab his prorsus abstineant, per quae inter eas super faciendis ipsis electionibus oriri possit discordia vel exorta nutriri; alias eo ipso excommunicationis sententiae se noverint subiacere.

§. 5. Supra dicta siquidem nedum in monasteriis, in quibus sunt moniales, viventes sub aliqua de religionibus approbatis, sed etiam in illis, ubi sunt iuxta quarundam provinciarum consuetudinem mulieres, quae nec propriis renunciant, nec professionem faciunt regularem, sed vivunt ut in saecularibus ecclesiis canonici saeculares, volumus per omnia observari, eo, quod supra dicitur, duntaxat excepto, ut non eligantur nec eligant non professae, quum in ipsis hoc locum sibi nequeat vindicare; per hoc tamen earum statum, ordinem seu regulam nolumus nec intendimus approbare.

§. 6. Ad haec licet praemissa, quae in multis a iure communi discrepare noscuntur, circa electiones in quibuslibet mulierum monasteriis faciendas ex certis causis rationabilibus* specialiter duxerimus statuenda, intentionis tamen nostrae nequaquam exstitit*, ut per illa quoad electiones in aliis virorum monasteriis vel quibusvis ecclesiis celebrandas aliquid immutetur; sed iura praecedentia in sua omnino remaneant firmitate.

Chapter XLIV

If an ordinary, after withdrawal from an appeal interposed to the curia, proceeds, confirms, or consecrates in causes concerning elections to bishoprics without inquiring whether depravity intervened, the aforesaid acts do not hold, and he is suspended for one year from the confirmation and consecration of bishops. This is what it says. Dominicus of San Gimignano.

The same. With provident consideration the General Council of Lyons granted that the parties may withdraw, provided no depravity intervenes, from appeals interposed judicially or extrajudicially to the Apostolic See in the business of elections of bishops and their superiors, through which that business is carried to the same See, before those appeals have been presented to the Apostolic See itself. But the lower judges to whom cognizance of that business belongs if the appeal ceases are before all else diligently to inquire whether depravity intervened in this; and if they find that it intervened, they are in no way to intermeddle in it, but are to appoint for the parties a suitable peremptory term within which they are to present themselves before the apostolic presence with their acts and muniments.

But since some, abusing a grant of this kind, interpose their cognizance in that business while omitting the aforesaid inquiry, rashly proceeding to confirm elections and consecrate the persons elected, we, wishing to make more express provision concerning this, decree that such confirmations and consecrations, and any other proceedings that it happens henceforth are attempted in business of this kind without the foregoing inquiry having been held, possess absolutely no firmness. And so that they may be punished in that in which they sinned, those making the confirmations and

consecrations are by the law itself to be suspended for one continuous year from the confirmation and consecration of bishops.

> Si ordinarius, post recessum appellationis interiectae ad curiam, in causis electionum episcopatuum non inquisito, an pravitas intervenerit, procedit, confirmat vel consecrat: praedicta non tenent, et ipse ab episcoporum confirmatione et consecratione suspensus est per annum. H. d. Dominicus de sancto Geminiano.
>
> Idem. Provida consideratione generale concilium Lugdunense concessit, ut ab appellationibus, in iudicio vel extra iudicium ad sedem apostolicam in electionum episcoporum et eorum superiorum negotiis interiectis, per quas ad sedem ipsam eadem negotia deferuntur, partes nulla interveniente pravitate recedere valeant, antequam ipsi sedi apostolicae* appellationes eaedem fuerint repraesentatae*, sed inferiores iudices, quorum est appellatione cessante negotiorum cognitio eorundem, si* in hoc pravitas intercesserit, ante omnia diligenter inquirant, et, si eam intercessisse repererint, se non intromittant ullatenus de eisdem, sed praefigant ipsis partibus peremptorium terminum competentem, quo cum actis et munimentis suis apostolico se conspectui repraesentent. Verum quum nonnulli, concessione huiusmodi abutentes, suam, inquisitione praefata omissa, cognitionem in eisdem negotiis interponant, ad confirmandas electiones et consecrandos electos temere procedendo: nos, super hoc expressius providere volentes, confirmationes et consecrationes huiusmodi, et* quoscunque processus alios, quos inquisitione praemissa non habita contigerit de cetero in talibus negotiis attentari, decernimus nullius penitus exsistere firmitatis, et confirmantes et consecrantes eosdem, (ut in eo, in quo peccaverint, puniantur,) ab episcoporum confirmatione ac consecratione per annum continuum ipso iure fore suspensos.

Chapter XLV

If the Pope reserved provision for a cathedral church to himself, prohibited action, and issued a decree, an election that preceded this is not vitiated; nevertheless, everything following the reservation lacks effect. John Andrew.

The same. If at the time when, for any cause, we reserve provision for some cathedral church to the disposition or ordering of the Apostolic See, prohibiting that an election or provision be proceeded to in it in any way, and decreeing void and empty anything that anyone, knowingly or ignorantly, should attempt otherwise concerning this, an election has perhaps already been proceeded to in that church, we decree by the present constitution that, although a reservation, prohibition, and decree of this kind do not affect the election or the other things that precede them, they nevertheless affect the things that follow afterward, so that these lack effect.

> Si Papa sibi provisionem ecclesiae Cathedralis reservavit, inhibuit et decrevit, non est vitiata electio, quae praecesserat; omnia tamen, quae reservationem sequuntur, carent effectu. Ioann. Andr.
>
> Idem. Si eo tempore, quo provisionem alicuius ecclesiae Cathedralis ex quavis causa dispositioni seu ordinationi sedis apostolicae reservamus, inhibentes, ne ad electionem vel provisionem faciendam in ea quomodolibet procedatur, et decernentes, si secus super hoc a quoquam scienter vel ignoranter attentatum exstiterit, irritum et inane, iam ad electionem forsitan sit processum in ipsa: praesenti constitutione sancimus, quod, licet reservatio, inhibitio et decretum huiusmodi non afficiant electionem vel alia, quae praecedunt, afficiunt tamen, ut effectu careant ea, quae postmodum subsequuntur.

Chapter XLVI

An absent person can appoint several procurators severally for the act of election, and not otherwise; and in admitting one of them he establishes three degrees. This is what it says as far as § "Moreover." Dominicus. — § 2. A

procurator appointed to elect cannot elect one person in his own name and another in his principal's name unless he has a special mandate from the principal concerning a definite person. This is what it says. — § 3. Although no member of the chapter wishes to be procurator for an absent canon, and he cannot, against the chapter's will, appoint a procurator who is not a member of the chapter, he cannot express his vote by letters, since the vote of each person is to be expressed secretly and individually in the scrutiny. This is what it says.

The same. If anyone, detained by a just impediment, cannot conveniently be present at the business of an election, he can commit his place not only to one person, as is said in the general council, but also to several, provided that he gives full power severally to each of them; and then the condition of the one first taking up the matter will be the better. But if both concur at the same time and ask that they be admitted, it is not expedient that they be heard, because they could direct their votes toward different persons, and thus the matter would have no outcome, and what was done by them in this case would not be valid. Only the person whom the chapter or the greater part chooses is to be admitted; or, if they cannot agree, the one who was named first in the instrument or letters of procuration.

§ 1. But if none of them was deputed severally with full power, then for the same reason none of them ought to be admitted, and the person who indiscreetly appointed them in this way is to impute this to himself.

§ 2. Moreover, when one procurator has been appointed without qualification, if he determines in the scrutiny to nominate one person in his own name and another in his principal's name, he accomplishes nothing unless the principal gave him a special mandate concerning a definite person to be elected. For then he can lawfully consent to that person in the principal's name and to another in his own.

§ 3. An absent person also, although no member of the college wishes to be his procurator and, against the chapter's will, he cannot appoint an outsider, cannot in any way express his vote by letters, since it is not to be expressed before the scrutiny but only secretly and individually within the scrutiny itself.

> Absens plures procuratores ad actum electionis dare potest in solidum, et non aliter; et in altero admittendo ponit tres gradus. H. d. usque ad §. Porro. Dominicus. — §. 2. Procurator, ad eligendum constitutus, unum nomine suo, et unum nomine domini sui eligere non potest, nisi a domino de certa ^ persona speciale mandatum habeat. H. d. — §.3. Canonicus absens, licet nullus de capitulo eius procurator esse velit, et ipse procuratorem, qui non sit de capitulo, nolente capitulo deputare non possit, votum per literas exprimere non potest, quum cuiuslibet votum sit secreto et sigillatim in scrutinio exprimendum. H. d.
>
> Idem. Si quis iusto impedimento detentus in electionis negotio nequeat commode interesse, potest nedum uni, prout dicitur in concilio generali, sed et pluribus committere vices suas, dum tamen eorum cuilibet det in solidum potestatem; et erit tunc melior conditio occupantis. Verum si ambo concurrant insimul et postulent se admitti, audiri eos non expedit, quia possent vota sua dirigere in diversos, sicque res non haberet exitum, et quod ab eis hoc casu fieret non valeret. Sed is admittatur duntaxat, quem capitulum vel pars maior elegerit, vel, si concordare nequeant, is, qui primo in instrumento vel literis procurationis exstiterit nominatus.
>
> §. i. Si autem nullus ipsorum in solidum fuerit deputatus, tunc propter rationem eandem ipsorum aliquis non debebit admitti, sibique imputet, qui sic eos constituit indiscrete.

§. 2. Porro, quum unus est procurator simpliciter constitutus, si is unum suo, et alium domini sui nomine in scrutinio nominandum duxerit, nihil agit, nisi de certa eligenda persona sibi dominus dederit speciale mandatum. Tunc enim in illam eius, et in aliam suo nomine licite poterit consentire.

§. 3. Absens quoque, licet nullus de collegio velit esse procurator eiusdem, nec ipso nolente capitulo extraneum valeat deputare, non poterit aliquatenus per literas exprimere votum suum, quod non est ante scrutinium, sed in ipso scrutinio secrete et sigillatim tantummodo exprimendum.

Chapter XLVII

If a co-elect, or a person opposing the one who seeks confirmation, appears, he will be summoned by name; otherwise a general proclamation will be made in the church that persons wishing to oppose the confirmation are to come within an assigned peremptory term. Otherwise, a confirmation made does not hold. John Andrew.

The same. Because, when an election has not been celebrated in concord, the superior to whom confirmation of that election belongs is sometimes accustomed, by the speed of his confirmation, to supplant a competitor where there is another person elected, or those who wish to oppose when there is a single person elected—preferring his own cupidity to law and a disordered result even to equity—when, no one having been summoned and the business not having been examined, he quickly lays hands upon the person elected through a sudden confirmation, contrary to the Apostle's teaching, we, wishing to meet this disease and these frauds, decree by the present constitution that such confirmations are wholly without force, and decree them void and empty.

We judge that a summons of this kind must be made by name where there is a co-elect or an opponent appears; otherwise, it is to be made generally in the church in which the election was made, so that any persons who wish to oppose may appear within a suitable assigned peremptory term. We will that this also be observed even if the election was celebrated in concord.

Si apparet coelectus, vel se opponens ei, qui confirmationem petit: ille vocabitur nominatim; alias fiet in ecclesia crida generalis, quod se confirmationi volentes opponere veniant peremptorio assignato; aliter confirmatio facta non tenet. Ioann. Andr.

Idem. Quoniam, electione non in concordia celebrata, superior, ad quem electionis ipsius confirmatio pertinet, consuevit interdum suae confirmationis celeritate, praeferens cupiditatem propriam iuri et inordinatum effectum etiam aequitati, competitorem aliquando, ubi alius, vel eos, qui se volunt opponere, quando electus est unicus, supplantare, dum, nullis vocatis et non discusso negotio, per repentinam confirmationem cito contra doctrinam Apostoli imponit manus electo: nos, volentes huic morbo et fraudibus obviare, praesenti constitutione sancimus, confirmationes tales viribus omnino carere, ipsasque decernimus irritas et inanes. Vocationem autem huiusmodi nominatim, ubi est coelectus vel apparet oppositor, alias generaliter in ecclesia, in qua electio facta est, ut, si qui sint, qui se velint opponere, compareant assignato peremptorio termino competenti, faciendam esse censemus, quae, etiamsi electio in concordia celebrata fuerit, volumus observari.

Title VII: On Renunciation

Chapter I

The Roman Pontiff can freely renounce the papacy. This is what it says, according to Zenz.

Boniface VIII. Because certain curious persons, disputing about matters that are not greatly expedient and rashly desiring, contrary to the Apostle's teaching, to know more than they ought,

seemed imprudently to bring into anxious doubt whether the Roman Pontiff—especially when he recognizes himself as insufficient for governing the universal Church and supporting the burdens of the supreme pontificate—can renounce the papacy and its burden and honor, our predecessor Pope Celestine V, while he presided over the government of that Church, wished to cut away every material for hesitation concerning this. After deliberation with his brothers, the cardinals of the Roman Church, of whose number we then were, by our and all their concordant counsel and assent, he established and decreed by apostolic authority that the Roman Pontiff can freely resign.

Therefore, lest it happen that a statute of this kind be given over to oblivion through the course of time, or that the same doubt thereafter be brought back into renewed dispute, with the counsel of our brothers we have judged that it should be placed among the other constitutions for the perpetual memory of the matter.

> **DE RENUNCIATIONE.**
>
> Romanus Pontifex potest libere papatui renunciare. H. d. secundum Zenz.
>
> Bonifacius VIII.
>
> Quoniam aliqui curiosi, disceptantes de his, quae non multum expediunt, et plura sapere quam oporteat contra doctrinam Apostoli temere appetentes, in dubitationem sollicitam, an Romanus Pontifex, maxime quum se insufficientem agnoscit ad regendam universalem ecclesiam et summi pontificatus onera supportanda, renunciare valeat papatui eiusque oneri et honori, deducere minus provide videbantur: Coelestinus Papa quintus praedecessor noster, dum eiusdem ecclesiae regimini praesidebat, volens super hoc haesitationis cuiuslibet materiam amputare, deliberatione habita cum suis fratribus ecclesiae Romanae cardinalibus, de quorum numero tunc eramus, de nostro et ipsorum omnium concordi consilio et assensu auctoritate apostolica statuit et decrevit, Romanum Pontificem posse libere resignare. Nos igitur, ne statutum huiusmodi per temporis cursum oblivioni dari, aut dubitationem eandem in recidivam disceptationem ulterius deduci contingat, ipsuminter constitutiones alias ad perpetuam rei memoriam de fratrum nostrorum consilio duximus redigendum.

Chapter II

If, in fraud of one awaiting the first vacancy, someone renounces the slender benefice that he held when it was believed that a rich one would soon become vacant, the expectant is not bound to receive the former; rather, leaving it aside, he will await another becoming vacant without fraud. And if that rich benefice is afterward conferred upon the person renouncing, by this very fact the fraud is proved and he will lack both benefices.

The same. If, while you await by apostolic authority a prebend or dignity next to become vacant in some church, someone holding a slender prebend or dignity in that church fraudulently renounces it so that, by its thus becoming vacant first, the way is consequently closed to you for obtaining another, richer prebend or dignity that, by someone's death or otherwise, is reasonably believed soon to become vacant in that church, we will that no obstacle be placed in your way by a renunciation of this kind, provided that the aforesaid fraud appears at least through some probable conjectures—for example, because at the time of the said renunciation the person who held the richer prebend or dignity was detained by grave illness, or something else was impending on account of which his prebend or dignity was probably believed soon to become vacant.

Thus, leaving aside the aforesaid prebend or dignity so fraudulently renounced, you may by the aforesaid authority freely seek and have the said richer one as owed to you when it becomes vacant,

or another if that other happens first to become vacant. Furthermore, if perhaps a prebend or dignity of this kind, the richer one, is conferred upon the aforesaid person renouncing, by that very fact the said fraud is understood to be proved, and the same person renouncing is to lack entirely both the one held and the one sought.

> Si in fraudem exspectantis primam vacaturam, quum in proximo crederetur pinguis vacare, renunciet aliquis tenuem, quam habebat: non tenetur exspectans illam recipere; immo illa dimissa exspectabit aliam sine fraude vacantem. Et si illi renuncianti illa pinguis postea conferatur, hoc ipso probata sit fraus, et carebit utraque.
>
> Idem.
>
> Si, te praebendam vel dignitatem in aliqua ecclesia proximo vacaturam auctoritate apostolica exspectante, aliquis praebendam seu dignitatem tenuem obtinens in eadem, fraudulenter ei renunciet, ut, illa primo sic vacante raecludatur tibi via per consequens ad obtinendum praebendam vel dignitatem aliam pinguiorem, quae per mortem alicuius vel alias in ipsa ecclesia creditur verisimiliter in proximo vacatura: per renunciationem huiusmodi, dummodo de praemissa fraude appareat saltem per aliquas probabiles coniecturas, ut, quia dictae renunciationis tempore is, qui praebendam vel dignitatem pinguiorem habebat, infirmitate gravi detinebatur, vel aliquid aliud imminebat, propter quod illius praebenda seu dignitas vacare in proximo probabiliter credebatur, nullum tibi volumus obstaculum interponi, quo minus, praebenda vel dignitate praedicta sic fraudulenter renunciata omissa, possis dictam pinguiorem, quum eam vel aliam si prius ipsam vacare contigerit, auctoritate praefata libere petere veluti tibi debitam, et habere. Ceterum si praedicto renuncianti huiusmodi praebenda vel dignitas pinguior forsitan conferatur, eo ipso dicta fraus intelligatur esse probata, et idem renuncians habita omnino careat et ambita.

Title VIII: On Supplying the Negligence of Prelates

Chapter I

The jurisdiction of an excommunicated suffragan does not devolve upon the metropolitan. John Andrew.

Innocent IV. The Roman Church—(And below:) We wholly revoke the edict published throughout the province of Reims, that the subjects of the bishops of that province may proceed freely to the curia of Reims for their causes to be heard and terminated, because even if those bishops were held bound by the bond of excommunication for their faults, nevertheless their jurisdiction would not devolve from those faults upon the Archbishop of Reims, since this is not found granted by law. But perhaps another canonical penalty could be inflicted upon them for those faults.

> **DE SUPPLENDA NEGLIGENTIA PRAELATORUM.**
>
> Iurisdictio suffraganei excommunicati ad metropolitanum non devolvitur, Ioann. Andr.
>
> Innocentius lV.
>
> Romana ecclesia (Et infra:) Edictum vero per Remensem provinciam publicatum, ut a subditis episcoporum ipsius provinciae pro audiendis et terminandis eorum causis libere ad Remensem curiam accedatur, penitus revocamus, quia, etiamsi tenerentur iidem episcopi pro suis culpis vinculo excommunicationis adstricti, non tamen ex culpis ipsis, quum id non inveniatur a iure concessum, ad Remensem archiepiscopum iurisdictio devolveretur eorum. Sed alia forte pro illis poena ipsis canonica posset infligi.

Chapter II

If the person who presides is negligent and remiss, the superior ought to give him a suitable coadjutor. This is what it says. John Andrew.

The same, to the Barons and Counts of the Kingdom of Portugal. Not undeservedly with great … (And below:) We command that, when our beloved son the noble man, the Count of Boulogne, brother of the aforesaid King of Portugal, comes to you, you take care to receive him with all his people in the cities, castles, towns, and fortifications of the aforesaid kingdom, and that, each and all universally and individually, you attend in all respects and in all things, without any difficulty, to his disposition, ordering, and commands. He is commended in many ways for devotion, probity, and circumspection; he would by right succeed the same king in the kingdom if the king should die without a legitimate son; and, with the magnanimity and power that greatly support him and with the affection of tested love by which he pursues you and the aforesaid kingdom, it is firmly believed that he will reform the kingdom itself more maturely. This is especially so since, as we trust in the Lord, he has been salutarily assumed to the general and free care and administration of the same kingdom—both for the utility of the often-mentioned king and of the kingdom itself, if the matter is providently considered—and to the defense of the churches, monasteries, and other pious places of the aforesaid kingdom, and of ecclesiastical persons, religious as well as secular, and also of widows, orphans, and the others dwelling there, and to the recovery of the things lost there.

No fidelity, homage, oath, or pact by which you are perhaps bound to the aforesaid king or to any other person, nor even a prohibition of the king himself, is to stand in the way, provided that you faithfully preserve his person and life, and those of his legitimate son if he happens to have one, showing them the honor due. You are to furnish him counsel, aid, and favor against any persons resisting and also against violent persons, and to account to him fully, without any diminution, for the revenues, proceeds, and all rights of the aforesaid kingdom, so that from them he may be able to provide for the said king as befits his excellence, for himself and his people, and for the needs of the aforesaid kingdom according to the time and the character of the business arising.

Otherwise, by our letters we give command to our venerable brothers the Archbishop of Braga and the Bishop of Coimbra that, after admonition has first been given, they compel you to this by ecclesiastical censure, without appeal. By this, however, we do not intend to take the aforesaid kingdom away from the said king or from his legitimate son, if he has one, but rather, through the solicitude and providence of the aforesaid count, to counsel him and that kingdom, which is exposed to destruction, and you yourselves, during the lifetime of that king.

> Si ille, qui praeest, est negligens et remissus, debet superior illi dare idoneum coadiutorem. H. d. Ioann. Andr.
>
> Idem Baronibus et Comitibus* regni Portugalliae.
>
> Grandi non immerito (Et infra:) Mandamus, quatenus dilectum filium nobilem virum, comitem Boloniensem, praefati regis Portugalliae fratrem, de devotione, probitate ac circumspectione multipliciter commendatum, qui eidem regi, si absque legitimo decederet filio, iure regni succederet, quique examinatae dilectionis affectu, quo vos et praedictum regnum prosequitur, magnanimitate ac potentia sibi plurimum suffragantibus, regnum ipsum maturius reformaturus firma credulitate speratur, praesertim quum ad curam et administrationem generalem et liberam regni eiusdem, tam* pros saepe dicti regis quam ipsius regni utilitate, si provide attendatur, ac ad defensionem ecclesiarum,

monasteriorum aliorumque piorum locorum regni praefati, et personarum ecclesiasticarum tam religiosarum quam saecularium, nec non viduarum, orphanorum et ceterorum ibidem degentium, ac deperditorum inibi recuperationem salubriter, ut in Domino confidimus, sit assumptus: quum ad vos accesserit, (fidelitate, homagio, iuramento seu pacto, si aliquibus forte praefato regi vel cuicunque alii personae tenemini, aut etiam ipsius regis prohibitione, dummodo personam eius et vitam, ac legitimi sui filii, si aliquem ipsum habere contigerit, fideliter conservetis debitum eis exhibentes honorem, nequaquam obstantibus,) in civitatibus, castris, villis et munitionibus regni praedicti cum omnibus suis recipere, ac eius dispositioni, ordinationi et mandatis universaliter singuli et singulariter universi per omnia et in omnibus intendere absque difficultate qualibet procuretis, impendentes sibi contra quoslibet repugnantes ac etiam violentos consilium, auxilium et favorem, de reditibus, proventibus omnibusque praefatiregni iuribus sine diminutione aliqua plenarie respondendo, ut de illis dicto regi, secundum quod suam decet excellentiam, sibi ac suis et praefati regni necessitatibus pro tempore ac negotiorum emergentium qualitate valeat providere. Alioquin venerabilibus fratribus nostris Bracharensi archiepiscopo et episcopo Colimbriensi damus nostris literis in praeceptis, ut vos ad id monitione praemissap per censuram ecclesiasticam appellatione remota compellant. Per hoc autem non intendimus memorato regi vel ipsius legitimo filio, si quem habuerit, praedictum regnum adimere; sed potius sibi et eidem regno destructioni exposito, ac vobis ipsis in vita ipsius* regis per sollicitudinem et providentiam comitis consulere supra dicti.

Chapter III

When a bishop has been captured by pagans or schismatics, not the archbishop but the chapter administers, unless the Pope—who is to be consulted concerning this by the chapter as soon as it can be done—should order otherwise. John Andrew.

Boniface VIII. If a bishop is captured by pagans or schismatics, not the archbishop but the chapter, just as though his see were vacant through death, ought to administer in spiritual and temporal matters until it happens that he is restored to liberty or something else is ordered concerning this by the Apostolic See—which is responsible for providing for the necessities of churches and is to be consulted by the chapter itself as soon as it conveniently can be.

Episcopo a paganis vel a schismaticis capto, non archiepiscopus, sed capitulum administrat, nisi Papa, quam cito hoc fieri poterit, super hoc per capitulum consulendus, aliter ordinaret. Ioann. Andr.

Bonifacius VIII.

Si episcopus a paganis aut schismaticis capiatur, non archiepiscopus, sed capitulum, ac si sedes per mortem vacaret illius, in spiritualibus et temporalibus ministrare debebit, donec eum libertati restitui, vel per sedem apostolicam, (cuius interest ecclesiarum providere necessitatibus,) super hoc per ipsum capitulum quam cito commode poterit consulendam, aliud contigerit ordinari.

Chapter IV

While a cathedral church is vacant, only the Pope appoints a visitor, unless the archbishop should appoint one because of the chapter's negligence or fraudulent administration, after cognizance of the cause. Dominicus says this. — § 1. A visitor of a vacant church appointed by someone inferior to the Pope administers temporal and spiritual matters, except the collation of benefices pertaining to the bishop. This is what it says. Dominicus.

The same. A visitor cannot be appointed to a vacant cathedral church by anyone other than the Roman Pontiff, unless perhaps the chapter administers negligently or perversely in spiritual and temporal matters. For then the archbishop, on account of the negligence or malice of the chapter,

after it has been summoned and cognizance of the cause concerning this has first been had, can lawfully appoint a visitor or administrator to that church.

§ 1. Although a visitor of this kind is judged to have lawful administration of spiritual and temporal matters, nevertheless, if he was appointed by someone other than the Roman Pontiff, he cannot confer benefices whose collation pertains to the bishop.

> Ecclesia cathedrali vacante solus Papa visitatorem deputat, nisi archiepiscopus propter negligentiam vel dolosam capituli administrationem cum causae cognitione deputaret. Hoc dicit Dominicus. — §. 1. Visitator ecclesiae vacantis, ab inferiore a Papa deputatus, temporalia et spiritualia administrat, excepta beneficiorum collatione ad episcopum pertinente.
>
> H. d. Dominicus.
>
> Idem.
>
> Ecclesiae cathedrali vacanti visitator ab alio quam a Romano Pontifice deputari non potest, nisi forte capitulum in spiritualibus et temporalibus negligenter aut perperam administret. Tunc enim archiepiscopus ob negligentiam vel malitiam capituli, eo vocato, causaeque super hoc cognitione praemissa, visitatorem seu administratorem eidem ecclesiae licite poterit deputare. §. i. Huiusmodi quoque visitator, quanquam spiritualium et temporalium administrationem legitimam censeatur habere, beneficia tamen, quae ad collationem pertinent episcopi, conferre non potest, si ab alio quam a Romano Pontifice fuerit deputatus.

Title IX: On the Times of Ordinations and the Quality of Those to Be Ordained

Chapter I

A bishop of Italy is not to ordain an ultramontane unless by special permission of the Pope or through open letters of the candidate's bishop containing a just cause why he will not or cannot ordain him. If it is done otherwise, the ordaining bishop will be punished with a fitting penalty, and the person ordained will remain suspended in such a way that he cannot be absolved even by the Pope's penitentiaries without the Pope's special permission. John Andrew.

Clement IV. It often happens that certain clerics bound by the bond of excommunication, or apostates, irregular persons, or others unworthy to receive sacred orders, flee their native land, where knowledge of these things is had, and cause themselves to be promoted to orders of this kind in remote parts. We, therefore, wishing to meet the dangers to their souls, decree that henceforth no bishop of Italy presume to ordain any ultramontane cleric unless he has special permission from us, or permission from the bishop from whose diocese the person to be ordained derived his origin, or in whose diocese he holds a benefice, given through that bishop's open letters containing a reasonable cause why he will not or cannot ordain him.

We will that those whom it happens are ordained contrary to the foregoing provisions remain suspended, without hope of obtaining a dispensation concerning this from the Apostolic See, and that those ordaining them be punished with fitting penance. We strictly prohibit all our penitentiaries from dispensing those ordained in this way, or delivering to them letters through which a dispensation ought to be made with them, without our special permission.

> *DE TEMPORIBUS ORDINATIONUM ET QUALITATE ORDINANDORUM.**

Episcopus Italiae ultramontanum non ordinet, nisi de speciali licentia Papae, vel per patentes literas episcopi sui, continentes iustam causam, quare nolit vel non possit illum ordinare. Si secus factum fuerit, ordinans punietur poena condigna, et ordinatus manebit suspensus ita, quod etiam a poenitentiariis Papae sine ipsius speciali licentia absolvi non poterit.

Ioann. Andr.

Clemens IV.

Saepe contingit, quod nonnulli clerici, vinculo excommunicationis adstricti, aut apostatae, seu irregulares, vel alias ordinum sacrorum susceptione indigni, suam patriam, in qua de his habetur notitia, fugientes, se in remotis partibus faciunt ad huiusmodi ordines promoveri. Nos igitur, volentes animarum ipsorum periculis obviare, statuimus, ut nullus episcoporum Italiae de cetero aliquem ultramontanum clericum ordinare praesumat, nisi a nobis specialem licentiam habeat, vel ab episcopo, de cuius dioecesi traxit originem ordinandus, vel in cuius dioecesi beneficiatus exsistit, per eius patentes literas, causam rationabilem continentes, quare ipsum nolit aut nequeat ordinare. Eos vero, quos contra praemissa contigerit ordinari, manere volumus absque spe dispensationis super hoc a sede apostolica obtinendae suspensos, ac ordinantes poenitentia condigna puniri, omnibus nostris poenitentiariis inhibentes districte, ne absque licentia nostra speciali cum taliter ordinatis dispensent, vel suas eis tradant literas, per quas cum ipsis debeat dispensari.

Chapter II

Those who knowingly ordain another's cleric are suspended for one year from conferring orders; and after the suspension has become manifest, their subjects can be ordained by neighboring bishops without their permission. John Andrew.

Gregory X at the General Council of Lyons. We decree that those who knowingly, or through affected ignorance or any other contrived fiction, presume to ordain clerics of another parish without the permission of the superior of those to be ordained are suspended for one year from conferring orders, while the provisions established by the laws against persons ordained in this way are to endure in their force. We also grant to clerics of the parish of those so suspended, after their suspension has become manifest, free power meanwhile to receive orders from other neighboring bishops, even without their permission, provided this is otherwise done canonically.

Qui scienter ordinaverint clericum alienum, per annum a collectione ordinum sunt suspensi, et, postquam suspensio fuerit manifesta, poterunt subditi sine ipsorum licentia a vicinis episcopis ordinari. Ioann. Andr.

Gregorius X. in generali concilio Lugdunensi.

Eos, qui clericos parochiae alienae absque superioris ordinandorum licentia scienter, seu affectata ignorantia vel quocunque alio figmento quaesito praesumpserint ordinare, per annum a collatione ordinum decernimus esse suspensos, his, quae iura statuunt contra taliter ordinatos, in suo robore duraturis. Clericis quoque parochiae taliter suspensorum, postquam eorum suspensio fuerit manifesta, absque ipsorum etiam licentia interim recipiendi ordines ab aliis vicinis episcopis, alias tamen canonice, liberam concedimus facultatem.

Chapter III

The bishop of origin, domicile, or ecclesiastical benefice can give commendatory letters for orders; inferior prelates cannot, except by privilege, nor can officials of bishops; but those who have the administration of spiritual matters

can properly grant them. — § 1. Bishops can ordain priors of non-exempt priories and their companions for as long as they remain in those priories, although they did not originate from there. John Andrew.

Boniface VIII. Since no one ought to ordain a cleric of another parish without his superior's permission, "superior" in this case is understood to be the bishop from whose diocese the person desiring to be promoted to orders originated, or in whose diocese he holds an ecclesiastical benefice, or in which he has his domicile, even if he was born elsewhere. Inferior prelates also, whether religious or others, cannot impart permission of this kind unless it has been specially granted to them by the Apostolic See that they may cause their clerics or subjects to be ordained by whatever bishop they wish. Nor can the bishop's official impart it, since his office does not extend to this. But while the bishop is acting in remote places, his vicar general in spiritual matters, or, while the see is vacant, the chapter, or the person to whom the administration of spiritual matters is then known to pertain, can give permission to ordain.

§ 1. Religious deputed by their superiors in non-exempt priories—both the priors and their companions—can lawfully be ordained by the diocesan bishops of the places for as long as they remain in those priories, although they did not originate from their dioceses.

> Episcopus originis, domicilii, vel ecclesiastici beneficii commendatitias ad ordines dare potest, inferiores praelati non, nisi ex privilegio; nec officiales episcoporum; sed ii, qui habent administrationem spiritualium, illas bene concedunt. — §. 1. Possunt episcopi ordinare priores prioratuum non exemptorum, et ipsorum socios, quamdiu morantur in illis, licet inde non fuerint oriundi. Ioann. Andr.
>
> Bonifacius VIII.
>
> Quum nullus clericum parochiae alienae praeter superioris ipsius licentiam debeat ordinare: superior intelligitur in hoc casu episcopus, de cuius dioecesi est is, qui ad ordines promoveri desiderat, oriundus, seu in cuius dioecesi beneficium obtinet ecclesiasticum, seu habet, (licet alibi natus fuerit,) domicilium in eadem. Inferiores quoque praelati, religiosi vel alii, nisi eis, quod suos clericos aut subditos possint a quo voluerint episcopo facere ordinari, a sede apostolica specialiter sit indultum, vel officialis episcopi, quum ad hoc se ipsius officium non extendat, huiusmodi nequeunt licentiam impartiri. Episcopo autem in remotis agente, ipsius in spiritualibus vicarius generalis, vel, sede vacante, capitulum, seu is, ad cjuem tunc temporis administratio spiritualium noscitur pertinere, dare possunt licentiam ordinandi. §. i. Religiosi vero, a suis superioribus in non exemptis prioratibus deputati, priores et eorum socii possunt a locorum dioecesanis, quamdiu morantur in ipsis prioratibus, ordinari licite, licet non sint de eorum dioecesibus oriundi.

Chapter IV

A bishop or another inferior is not to confer first tonsure upon an infant unless he enters religion, nor upon an illiterate man, nor upon a man of another diocese without the permission of his own prelate; nor even upon a married man unless he enters religion or is lawfully promoted to sacred orders. Otherwise, one acting to the contrary is punished as stated here. This is what it says. Zenz.

The same. No bishop or any other person is to presume to confer clerical tonsure upon an infant, unless perhaps he enters religion, or upon an illiterate man, or, without the permission of his superior, upon a man of another diocese, nor even upon a married man unless he wishes to enter religion or be promoted to sacred orders, as is defined by the sacred canons. But one who acts to the contrary, so that he may be punished in that in which he sinned, is to know himself suspended for one year solely from conferring clerical tonsure.

Episcopus seu alius inferior primam tonsuram infanti non confert, nisi religionem intret, nec homini illiterato, nec homini alterius dioecesis absque sui praelati licentia; nec etiam coniugato, nisi religionem intret, aut ad sacros ordines promoveatur legitime; alias contra faciens punitur, ut hic. H. d. Zenz.

Idem.

Nullus episcopus vel quivis alius infanti, nisi forte religionem intraret, seu illiterato, sed nec absque sui superioris licentia homini dioecesis alienae, clericalem praesumat conferre tonsuram, nec etiam coniugato, nisi volenti religionem intrare aut ad sacros ordines promoveri, prout est sacris canonibus diffinitum. Qui vero contra fecerit, ut in eo *, in quo peccaverit, puniatur, per unum annum a collatione clericalis tonsurae duntaxat noverit se suspensum.

Title X: On the Age, Quality, and Order of Those to Be Preferred

Chapter I

A bishop dispenses persons older than twenty years concerning dignities and personatuses without cure, if nothing else stands in the way. This is what it says. Dominicus.

Boniface VIII. We permit bishops freely to dispense with those who have completed their twentieth year, if no other canonical impediment stands in the way, so that they can hold dignities or personatuses to which the cure of souls is not attached.

DE AETATE ET QUALITATE ET ORDINE PRAEFICIENDORUM.

Episcopus dispensat cum maiore XX. annis in dignitatibus et personatibus non curatis, si aliud non obstet. H. d. Dominicus.

Bonifacius VIII.

Permittimus, ut episcopi cum iis, qui XX. annum compleverint, quod dignitates vel personatus, quibus animarum cura non imminet, valeant obtinere, possint, si aliud non obstat* canonicum, libere dispensare.

Title XI: On the Sons of Priests and Others Illegitimately Born

Chapter I

Bishops dispense persons illegitimately born concerning minor orders and a benefice without cure, provided it is of a kind concerning which they can otherwise dispense. In other matters a dispensation of the Pope is required. John Andrew. — § 1. If someone has been dispensed so that, notwithstanding any defect, he can be promoted to a benefice with cure, by pretext of that dispensation he will not be able to hold two benefices at the same time. John Andrew.

Boniface VIII. One who suffers from a defect of birth can lawfully, by dispensation of the bishop, be promoted to minor orders and hold a benefice to which the cure of souls is not attached, if no other canonical impediment stands in his way, provided that the benefice is of such a kind that the bishop himself can dispense concerning it. He cannot be promoted without a dispensation of the Apostolic See to major orders or to benefices having the cure of souls, concerning which a bishop cannot dispense.

§ 1. One with whom the same See dispenses so that, notwithstanding the aforesaid defect, he can be promoted to a benefice even if it has the cure of souls cannot, by pretext of a dispensation of this

kind—which, as exorbitant from the law, must be restricted as odious—hold more than one benefice.

> **DE FILIIS PRESBYTERORUM ET ALIIS ILLEGITIME NATIS.**
>
> Cum illegitime natis dispensant episcopi in minoribus ordinibus et beneficio sine cura; dummodo sit tale, in quo alias dispensare possint. In aliis dispensatio Papae requiritur. Ioann. Andr. — §. 1. Si dispensatum fuerit cum aliquo, quod non obstante ullo defectu possit ad curatum beneficium promoveri, praetextu illius dispensationis non poterit duo beneficia insimul obtinere. Ioann. Andr.
>
> Bonifacius VIII.
>
> Is, qui defectum patitur natalium, ex dispensatione episcopi licite potest, si ei aliud canonicum non obsistat, ad ordines promoveri minores, et obtinere beneficium, cui cura non imminet animarum; dummodo sit tale, super quo per ipsum episcopum valeat dispensari. Ad ordines quoque maiores, vel beneficia curam* animarum habentia, super quibus nequit episcopus dispensare, sine dispensatione' sedis apostolicae promoveri non potest. §. i. Ille vero, cum quo per sedem dispensatur eandem, ut, praemisso non obstante defectu, valeat ad beneficium, etiamsi curam animarum habeat, promoveri, nequit praetextu dispensationis huiusmodi, (quam exorbitantem a iure oportet veluti odiosam restringi,) nisi unicum beneficium obtinere.

Chapter II

If one with whom a dispensation concerning defect of origin was made for a benefice with cure afterward obtains a dispensation for plurality while keeping that defect silent, the dispensation is not valid. John Andrew.

The same. If one with whom the Apostolic See dispensed so that, notwithstanding the defect of birth from which he suffers, he can be promoted to all orders and hold a benefice even if it has the cure of souls afterward obtains another dispensation from the aforesaid See, while keeping silent concerning the said defect, so that he can receive two or more benefices having a similar cure if they are otherwise canonically conferred upon him, and lawfully retain them together, such a dispensation is absolutely of no moment as obtained by subreption. For it is not probable that, if this had been expressed, the same See would have willed to dispense with him, suffering from the aforesaid defect, concerning a plurality of benefices of this kind.

> Si ille, cum quo super defectu originis in curato beneficio fuerit dispensatum, eo tacito, super pluralitate dispensationem obtineat: non valet dispensatio. Ioann. Andr.
>
> Idem.
>
> Si is, cum quo fuit per sedem apostolicam dispensatum, ut, non obstante defectu natalium, quem patitur, ad omnes ordines promoveri valeat, et obtinere beneficium, etiamsi curam habeat animarum, dispensationem aliam, tacito de praedicto defectu, postmodum obtineat a sede praefata, ut duo aut plura beneficia similem curam habentia possit recipere, si ei alias canonice conferantur, et ea simul licite retinere: talis dispensatio, quum non sit verisimile, sedem ipsam cum illo, praedictum patiente defectum, voluisse, si hoc fuisset expressum, eidem in pluralitate beneficiorum huiusmodi dispensare, veluti per subreptionem obtenta nullius penitus est momenti.

Title XII: On the Twice-Married

Chapter I

A twice-married man is stripped of every clerical privilege and subjected to the secular forum. A contrary custom is not valid, and under anathema he is forbidden to wear the tonsure. John Andrew.

Gregory X at the General Council of Lyons. Deciding by the pronouncement of the present declaration a doubt of ancient dispute, we declare that twice-married men are stripped of every clerical privilege and given over to the coercion of the secular forum, notwithstanding a contrary custom. We also prohibit them under anathema from wearing the tonsure or clerical habit.

> **DE BIGAMIS.**
>
> Bigamus nudatus est omni privilegio clericali, et adstrictus saeculari foro. Nec valet consuetudo in contrarium, et prohibetur ei sub anathemate, ne tonsuram deferat. Ioann. Andr.
>
> Gregorius X. in concilio generali Lugdunensi.
>
> Altercationis antiquae dubium praesentis declarationis oraculo decidentes, bigamos omni privilegio clericali declaramus esse nudatos, et coercitioni* fori saecularis addictos*, consuetudine contraria non obstante. Ipsis quoque sub anathemate prohibemus deferre tonsuram vel habitum clericalem.

Title XIII: On the Office of a Vicar

Chapter I

The successor of an excommunicated official is not excommunicated unless he communicates in the condemned crime; however, the things that he performs while the former remains excommunicated are not valid if he does this solely by jurisdiction received from him. John Andrew.

Innocent IV. The Roman Church—(And below:) When the Archbishop of Reims pronounces a sentence of excommunication against the official of one of his suffragans for some reasonable cause, he does not on that account bind with the bond of excommunication those who discharge the official's functions, since for this reason they do not communicate with that official in the crime, and they are not constrained by the rigor of ecclesiastical censure because they exercise their office. Nevertheless, if they receive jurisdiction only from that official, the things that they do in discharging functions of this kind cannot obtain force while he remains thus excommunicated.

> **DE OFFICIO VICARII.**
>
> Successor officialis excommunicati excommunicatus non est, nisi in crimine damnato communicet, illa autem, quae exercet: illo excommunicato manente non valent, si iurisdictione solum ab eo recepta hoc facit. Ioann.
>
> Andr.
>
> Innocentius IV.
>
> Romana ecclesia (Et infra:) Quum Remensis archiepiscopus in officialem alicuius suffraganei sui excommunicationis sententiam ex aliqua rationabili causa profert, illos, qui vices ipsius gerunt, propter hoc excommunicationis vinculo non adstringit, quum non communicent ob id officiali eidem in crimine, qui ecclesiasticae censurae districtione pro eo, quod suum exercent officium, non arctantur. Ea tamen, quae ipsi gerendo huiusmodi vices agunt, eotaliter excommunicato manente, si iurisdictionem tantum recipiunt ab eodem, non possunt obtinere vigorem.

Chapter II

By a general commission an official cannot inquire into, correct, depose for, and punish the excesses of subjects. John Andrew.

Boniface VIII. Although cognizance of causes is transferred to a bishop's official through a commission of office made to him in general, nevertheless, unless these things are specially committed to him, we will that the power of inquiring into, correcting, or punishing the excesses of any persons, or of removing any persons from their benefices, offices, or administrations, not be transferred to him.

> Ex generali commissione non potest officialis inquirere, corrigere, deponere, et punire subditorum excessus. Ioann. Andr.
>
> Bonifacius VIII.
>
> Licet in officialem episcopi per commissionem officii, generaliter sibi factam, causarum cognitio transferatur, potestatem tamen inquirendi, corrigendi aut puniendi aliquorum excessus, seu aliquos a suis beneficiis, officiis * vel administrationibus amovendi, transferri nolumus in eundem, nisi sibi specialiter haec committantur.

Chapter III

By a general commission an official cannot confer benefices. John Andrew.

The same. Since those things that a person would not probably grant specifically are by no means included in a general grant, and since one to whom even free administration of goods is granted cannot as a rule make gifts, a bishop's official or vicar general cannot confer benefices unless the collation of benefices has been specially committed to them.

> Ex generali commissione officialis beneficia conferre non potest.
>
> Ioann. Andr.
>
> Idem.
>
> Quum in generali concessione nequaquam illa veniant, quae non esset quis verisimiliter in specie concessurus, nec regulariter donare valeat is, cui bonorum administratio etiam libera est concessa: officialis aut vicarius generalis episcopi beneficia conferre non possunt, nisi beneficiorum collatio ipsis specialiter sit commissa.

Title XIV: On the Office and Power of a Delegated Judge

Chapter I

A conservator defends against manifest injuries and does not exercise judicial inquiry.

Innocent IV. We decree that conservators, whom we frequently grant, can defend against manifest injuries and acts of violence those whom we commit to them to be defended. They cannot extend their power to other matters that require judicial inquiry.

> **DE OFFICIO ET POTESTATE IUDICIS DELEGATI.**
>
> Conservator a manifestis defendit iniuriis, et iudicialem indaginem non exercet.
>
> Innocentius IV.
>
> Statuimus, ut conservatores, quos plerumque concedimus, a manifestis iniuriis et violentiis defendere possint quos eis committimus defendendos. Nec ad alia, quae iudicialem indaginem exigunt, suam possint extendere potestatem.

Chapter II

In coercive measures and penalties deference is shown to pontifical dignity.

Alexander IV. Because it is fitting that great deference be shown to those endowed with pontifical dignity out of reverence for the sacred office that they exercise, and that they be honored more than others, when some coercive measures or penalties are to be proceeded to against them by judges or conservators deputed by the Apostolic See, a gradation and moderation is to be observed in a proceeding of this kind. Thus, after they have been sustained with a certain fitting reverence, entrance into the church or priestly ministry is first to be forbidden to them; then they are to be suspended from office; and afterward ecclesiastical censure is to be aggravated against them, unless perhaps the excessive insolence of their contumacy or fault counsels that it be done otherwise.

> In coactionibus et poenis pontificali dignitati defertur.
>
> Alexander IV.
>
> Quia pontificali dignitate praeditis ob reverentiam sacri officii, quod exercent, plurimum deferri convenit, et eos plus aliis honorari decet, ut, quum a iudicibus vel conservatoribus a sede apostolica deputatis contra eos ad coactiones aliquas sive poenas fuerit procedendum, gradus et modestia in huiusmodi processu servetur ita, quod, eis quadam condigna reverentia supportatis, ingressus primo ipsis ecclesiae vel sacerdotale interdicatur ministerium, ac deinde ab officio suspendantur, et subsequenter aggravetur censura ecclesiastica contra eos; nisi forte aliter fieri suaserit nimia contumaciae protervitas sive culpa.

Chapter III

When a delegate proceeds with two persons subdelegated not in full, an appeal ought to be made to the Pope, not to the co-delegates. This is what it says. John Andrew.

Boniface VIII. If two of three persons delegated by the Apostolic See have subdelegated their functions, not in full, to two others, and those subdelegates have proceeded in the delegated cause with the third delegate, if an appeal is made from them, the appeal ought to be made not to the co-delegates but only to the original delegator.

> Delegato procedente cum duobus subdelegatis non in totum, ad Papam, non ad condelegatos, appellari debet. H. d. Ioann. Andr.
>
> Bonifacius VIII.
>
> Si duo ex tribus, a sede apostolica delegatis, duobus aliis non in totum subdelegaverint vices suas, ipsique subdelegati cum delegato tertio in causa processerint delegata, si appellatur* ab ipsis, non ad condelegatos, sed ad primum delegantem tantummodo appellari debebit.

Chapter IV

He establishes three cases in which a ground of suspicion is not treated before arbiters. The first is when one of the delegates given with the clause "But if not all" is challenged. The second is when a bishop's delegate is challenged. The third is when an official is challenged. John Andrew.

The same. If a legitimate ground of suspicion is proposed against one of two judges delegated by the Apostolic See with the clause, "But if both cannot be present, one of them is to proceed in the cause," that ground of suspicion ought to be proved before the co-judge who has not been challenged

—to whom, by force of the aforesaid clause, cognizance of the cause itself ought to pertain—and be expedited by him. But where the said clause is not in the rescript, recourse ought to be had to arbiters concerning this. When the bishop's delegate himself is challenged, the ground of challenge is to be proved before the bishop. The same applies if that bishop's official is challenged, although an appeal cannot be made to the bishop from that official.

> Tres casus ponit, in quibus suspicionis causa coram arbitris non tractatur. Primus, quum recusatur unus ex delegatis, datis cum clausula: „Quod si non omnes." Secundus, quum recusatur delegatus episcopi. Tertius, quum recusatur officialis. Ioann. Andr.
>
> Idem.
>
> Si contra unum ex duobus iudicibus, cum illa clausula: ,, quod si ambo interesse non possunt, alter eorum in causa procedat," a sede apostolica delegatis, suspicionis causa legitima proponatur: causa ipsa suspicionis coram non recusato coniudice, ad quem ex vi praedictae clausulae debet ipsius causae cognitio pertinere, probari et ab eo expediri debebit. Ubi vero non est dicta clausula in rescripto, debet super hoc ad arbitros recursus haberi. Quum autem ipse * delegatus episcopi recusatur, recusationis causa coram episcopo est probanda. Idem est, si officialis recusetur eiusdem, licet ad ipsum ab eodem officiali nequeat appellari.

Chapter V

He distinguishes three times for knowing whether a judge suspected can make a commission. Either no challenge has been proposed, and then a commission in full made by him holds; or it has been proposed, but a pronouncement has not yet been made concerning it, and then he can make a commission if the challenger wills, but otherwise not; or it has already been pronounced that he is suspect, and then he cannot make a commission even if the challenger wills. John Andrew.

The same. A judge given by the Apostolic See, although he can legitimately be challenged as suspect, can lawfully commit his functions before a challenge is proposed against him. If he has committed them in full, he cannot thereafter be challenged, nor can the commission made by him be attacked; it could be attacked if he had reserved some jurisdiction to himself. After a challenge has been proposed, he cannot make a commission unless it proceeds with the challenger's assent; but if the challenger wills it, he can do so even if that challenge has already been proved, provided a pronouncement has not been made concerning it. For from the time of such a pronouncement, when he has wholly ceased to be a judge, no commission can be made by him even with the challenger's assent.

> Distinguit tria tempora ad sciendum, an iudex suspectus committere possit; quia aut non est proposita recusatio: et tunc in totum per eum facta commissio tenet; aut est proposita, sed nondum pronunciatum super ea; et tunc volente recusatore committere potest, alias non; aut iam pronunciatum est, illum esse suspectum; et tunc,etiam volente recusatore, committere nequit.
>
> Ioann. Andr.
>
> Idem.
>
> Iudex ab apostolica sede datus, quamvis legitime recusari valeat ut suspectus, potest licite vices suas committere, antequam recusatio contra ipsum proponatur. Et si in totum commiserit, recusari ulterius, aut facta per eum commissio impugnari nequibit; quod posset, si sibi de iurisdictione aliquid reservasset. Post recusationem quoque propositam committere, nisi de recusatoris procedat assensu, non potest; sed eo volente hoc potest, etiamsi iam recusatio eadem sit probata, dummodo

pronunciatum non fuerit super ea. Extunc enim, quum omnino iudex esse desierit, nulla etiam cum illius assensu potest fieri commissio per eundem.

Chapter VI

A delegate who subdelegates, even in full, will be able to reassume the cause while the matter remains intact. This is what it says. John Andrew.

The same. Although you are known to have committed in full to someone your functions in a cause delegated to you by the Apostolic See, nevertheless, if, before he has exercised jurisdiction, a commission of this kind is revoked from him by you, or it happens that he is removed from human affairs, you will be able to resume the cause itself, since jurisdiction is not judged to have passed effectively to him when he had not exercised it.

Delegatus subdelegans, etiam in totum, re integra causam reassumere poterit. H. d. Ioann. Andr.

Idem.

Quamvis alicui vices tuas in causa tibi a sede apostolica delegata in totum commisisse noscaris: si tamen, antequam ille iurisdictione usus fuerit, commissio huiusmodi per te revocetur ab ipso, vel eum rebus eximi contingat humanis, causam ipsam resumere poteris, quum iurisdictio, ex quo ipsa usus non exstitit, non censeatur in eum efficaciter transivisse.

Chapter VII

If a delegate subdelegated "whenever he should be absent," or "until he should revoke," and has died after the matter ceased to be intact, the subdelegate proceeds. An appeal must always be made from the subdelegate to the delegate who reserved some jurisdiction to himself, even after sentence. This is what it says. John Andrew.

The same. If a delegate has committed his functions to you whenever it happens that he is absent, after he has been removed from human affairs you will be able freely to decide the business committed to you—since even then he is judged to be absent—provided that you began to exercise jurisdiction while he was living. You will be able to do the same when he committed his functions to you also under this form: "until he should determine that they are to be revoked." For such a commission, through which even pronouncement of sentence is judged to be committed unless it was previously revoked, by no means expires through the death of the person making the commission once the matter has ceased to be intact. An appeal also ought to be made to the person who commits his functions until he revokes them, or who reserves to himself only execution of the sentence or anything else of jurisdiction, and not to the original delegator, even if an appeal is to be made after sentence.

Si delegatus subdelegavit; „ quoties abesset, " vel ,, donec revocaret," et mortuus sit re non integra, subdelegatus procedit. Et semper de subdelegato ad delegatum, qui sibi aliquid iurisdictionis reservavit, appellari debet, etiam post sententiam. H. d. Io. Andr.

Idem.

Si delegatus, quoties eum abesse contigerit, tibi commiserit vices suas, poteris, eo rebus humanis exempto, uum et tunc censeatur abesse, commissum tibi negotium, um tamen illo vivente iurisdictione uti coeperis, libere diffinire. Idem poteris, quando tibi vices etiam* sub ea forma commisit: „donec eas duceret revocandas.^ Nam talis commissio, per quam censetur etiam sententiae prolatio, nisi antea fuerit revocata, committi, nequaquam morte committentis exspirat, ex quo res integra non exsistit. Ad

eum quoque, qui vices suas committit, donec revocet, vel qui exsecutionem sententiae tantum, aut quicquid aliud de iurisdictione sibi reservat, non ad delegantem primum appellari debebit, etiamsi post sententiam fuerit appellandum.

Chapter VIII

Each of several delegates with full power has cognizance. When one takes cognizance, the others do not intermeddle except for cause. The perpetuation made by one perpetuates jurisdiction as regards all. This is what it says. Zenz.

The same. When it happens that several judges or executors are deputed by the Apostolic See under the form, "that all, or two, or one of them execute the apostolic mandate," or another similar form, each of them can freely fulfill the mandate enjoined. Moreover, once one of them has begun the business committed, the others cannot thereafter intermeddle in it, unless it happens that he is impeded by illness or another just cause, or unless he is unwilling or maliciously refuses to proceed in it. When jurisdiction has been perpetuated during the mandator's life by one of the delegated judges in a case in which he can do so, it is understood to have been perpetuated as regards them all.

Plurium delegatorum in solidum quilibet cognoscit. Et uno cognoscente alii, nisi ex causa, se non intromittunt. Et perpetuatio unius perpetuat quoad omnes. H. d. Zenz.

Idem.

Quum plures sub illa forma: ,,ut omnes, aut duo, vel unus eorum mandatum apostolicum exsequantur," aut* alia consimili iudices vel exsecutores a sede apostolica deputari contingit: ipsorum quilibet iniunctum potest libere adimplere mandatum. Porro, uno eorum negotium inchoante commissum, alii nequibunt se ulterius intromittere de eodem, nisi vel infirmitate vel alia iusta causa illum contingeret impediri, aut si nollet, vel malitiose in eo procedere recusaret. Iurisdictione vero perpetuata mandatore vivente, per unum, eo casu, quo potest, ex iudicibus delegatis perpetuata intelligitur quod omnes.

Chapter IX

An executor given by the Pope concerning a grace granted executes the grace after the Pope has died, even while the matter remains intact. John Andrew.

The same. If executors have been deputed concerning a grace granted to someone by the Apostolic See, we judge it equitable that, just as the grace itself is not extinguished by the death of the grantor even though its execution has not yet been proceeded to, so too the power given to the executors is not extinguished while the matter remains intact. As accessory to the aforesaid grace, it is fitting that this power follow the nature of the principal, lest it happen that the same grace is at some time rendered wholly useless, or its effect is deferred for a longer time to the loss of the person to whom it was granted.

Exsecutor, super gratia facta datus a Papa, mortuo Papa etiam re integra gratiam exsequitur. Ioann. Andr.

Idem.

Si super gratia, cuiquam ab apostolica sede facta, exsecutores fuerint deputati, aequum esse censemus, ut, sicut ipsa gratia, licet nondum sit in eius exsecutione processum, morte non perimitur concedentis, sic nec etiam re integra perimatur exsecutoribus data potestas, quam, veluti gratiae praedictae accessoriam, naturam sequi congruit principalis; ne gratiam eandem vel reddi quandoque omnino inutilem, vel ipsius effectum in tempus longius cum illius dispendio, cui facta exstitit, differri contingat.

Chapter X

He establishes two cases in which an appeal is made from a subdelegate not delegated in full to the original delegator, namely when the delegate has been excommunicated or has died. He establishes other cases below, under the same title, in the chapter "Si a subdelegato." John Andrew.

The same. If one to whom a cause had been delegated by the Apostolic See, although his own name was not expressed, subdelegated his functions not in full to someone, we will that, if it happens that the delegate himself is excommunicated or removed from their midst, an appeal be made from such a subdelegate to the same See while such an impediment endures, lest the litigants be prejudiced or the cause prolonged beyond what is due by awaiting his absolution or successor.

> Duos casus ponit, quibus de subdelegato non in totum appellatur ad primum delegatum, scilicet quum delegatus excommunicatus vel mortuus est. Alios casus ponit infra eod. c. Si a subdelegato. Ioann. Andr.
>
> Idem.
>
> Si is, cui causa, licet proprio nomine non expresso, a sede fuerat apostolica delegata, subdelegaverit non in totum vices suas alicui: a subdelegato huiusmodi, si delegatum ipsum excommunicari aut de medio tolli contingat, impedimento tali durante ad sedem ipsam, ne absolutionem vel successorem exspectando illius praeiudicari litigantibus vel causa plus debito prorogari valeat, volumus appellari.

Chapter XI

An appeal is made to the Pope from arbiters of law. John Andrew.

The same. If they cause a grievance, an appeal is to be made to the Apostolic See from arbiters who, according to the form of law, are chosen to take cognizance of a ground of suspicion proposed against a judge, or who are chosen by the parties to settle a dispute of this kind when there is doubt concerning the revocation of letters and the judges cannot agree upon one opinion.

> Ab arbitris iuris appellatur ad Papam. Ioann. Andr.
>
> Idem.
>
> Ab arbitris, qui secundum formam iuris, ut de proposita contra iudicem suspicionis causa cognoscant, vel qui, quum de revocatione ambigitur literarum, iudicibus nequeuntibus in unam sententiam concordare, ad concertationem huiusmodi sopiendam a partibus eliguntur, est, si gravaverint, ad sedem apostolicam appellandum.

Chapter XII

An executor appointed by the Pope to provide for a person subdelegates if he is appointed to provide for a church; if no person is expressed, he does not subdelegate unless he has a special mandate. This is what it says, and he gives the reason. John Andrew.

The same. One to whom it is committed by the Apostolic See to make provision for a definite person from a benefice in a definite church, diocese, or province can lawfully commit his functions to another. But if, no definite person being expressed, it is committed to him that he ought to provide some suitable person for a definite church or benefice, he cannot entrust to another the provision committed to him, because his industry is then seen to have been selected for choosing the person,

unless the form of the commission contains a provision that he can expedite it through himself or another.

> Exsecutor datus a Papa, ut provideat personae, subdelegat, si detur, ut provideat ecclesiae; non expressa persona, non subdelegat, nisi habeat speciale mandatum. H. d. et causam reddit. Ioann. Andr.
>
> Idem.
>
> Is, cui ab apostolica sede committitur certae personae provisio de beneficio in certa ecclesia, dioecesi vel provincia facienda, potest alii committere licite vices suas. Sed si non expressa certa persona committatur eidem, ut alicui personae idoneae de certa ecclesia vel beneficio debeat providere, quia circa eligendam personam eius industria tunc videtur electa, provisionem sibi commissam alteri demandare non potest, nisi forma commissionis habeat, ut per se vel per alium id valeat expedire.

Chapter XIII

One to whom it is committed that something be expedited in a definite place will be able for a just cause to expedite it outside that place. This is what it says. John Andrew.

The same. We decree that one through whom the Apostolic See commands that an inquiry be made, or anything else expedited, in a definite place is to choose another suitable and secure place for executing it if, because of the power or malice of the person against whom inquiry or proceedings are to be made, or of his supporters, he cannot execute it securely in that place, lest that person report an advantage from his deceit or fraud. He is to do the same if another reasonable cause exists on account of which what is commanded cannot conveniently be completed in the place decreed, lest it happen that the apostolic mandate is impeded or delayed under such a pretext.

> Is, cui aliquid certo loco expediendum committitur, ex iusta causa illud expedire poterit extra locum. H. d. Ioann. Andr.
>
> Idem.
>
> Statuimus, ut is, per quem ab apostolica sede certo loco inquisitio fieri, vel quicquid aliud expediri mandatur, si propter potentiam vel malitiam illius, contra quem inquiri debet sive procedi, seu fautorum eiusdem non possit hoc exsequi eo loco secure, ne ipse commodum ex dolo vel fraude reportet, ad id exsequendum locum alium eligat idoneum et securum. Idem faciat, si alia rationabilis causa subsit, propter quam in loco decreto perfici nequeat commode quod mandatur, ne tali praetextu impediri contingat mandatum apostolicum vel differri. .

Chapter XIV

When an appeal is made from a subdelegate not delegated in full because he does not admit an exception by which it is denied that even the delegate has jurisdiction, the appeal will be made to the original delegator. This is what it says. John Andrew.

The same. If an appeal is to be made from a subdelegate to whom the delegate had committed his functions not in full because the subdelegate refused to admit an exception proposed before him—that before either he or the delegate himself had proceeded in anything, the delegator had entered the way of all flesh—the appeal ought to be made not to the delegate, since it is denied that he has jurisdiction, but rather to the delegator. The same will be done in other cases in which it is denied that the delegate has jurisdiction. Otherwise, if an appeal had to be made to him, the appellant, who

would thus be seen to admit that he has jurisdiction, something he had previously denied, would be contrary to himself.

> Quando a subdelegato non in totum appellatur, quia non admittit exceptionem, per quam denegatur etiam delegatum habere iurisdictionem: ad primum delegantem appellabitur. H. d. Ioann. Andr.
>
> Idem.
>
> Si a subdelegato, cui delegatus non in totum commiseratvices suas, ex eo fuerit appellandum, quia exceptionem coram se propositam, quod, antequam per eum vel per ipsum delegatum in aliquo processum fuisset, delegans viam fuerat universae carnis ingressus, admittere recusavit: non ad delegatum, quum iurisdictionem negetur habere, sed ad delegantem potius appellari debebit. Idem fiet in aliis casibus, in quibus delegatus iurisdictionem habere negatur; alias, si appellari deberet ad ipsum, esset appellans, qui sic fateri videretur, eundem iurisdictionem habere, quod ante negaverat, contrarius sibi ipsi.

Chapter XV

He establishes here who can be conservators, where they can take cognizance, whether and to whom they can delegate, how long their power endures, and concerning the expenses of such persons. This is what it says. Zenz.

The same. By this constitution, to remain in force perpetually, we decree that henceforth conservators, who are frequently granted to certain persons by the Apostolic See so that they may protect them from manifest injuries and acts of violence, cannot be deputed unless they are bishops or their superiors, abbots, or persons holding dignities or personatuses in cathedral or collegiate churches. Nor can anyone be the conservator of a conservator deputed to himself. Henceforth no one —excepting only kings and queens, whom it is fitting, just as they excel in the height of dignity, also to prefer by a prerogative of grace—is to have as conservator someone who is situated under his own ecclesiastical or temporal jurisdiction, dominion, or district.

Conservators of this kind are not to presume to proceed against anyone outside the cities or dioceses in which they were deputed, or to draw any persons beyond one day's journey from the boundary of those dioceses. They also cannot commit their functions to anyone—excepting only citations and denunciations of sentences, which they may exercise through others—unless this belongs to them by benefit of the letters; and even then only within the cities or dioceses in which they were deputed and only to persons expressed above.

Moreover, so that conservators may diligently observe through fear of penalty the limits of the power handed to them, which they frequently exceed, we decree that if they knowingly intermeddle in matters other than manifest injuries and acts of violence, or extend their power to other matters requiring judicial inquiry, they are by that very fact suspended from office for one year. The party that procures this to be done incurs the sentence of excommunication, from which it cannot be absolved unless it first makes full satisfaction for expenses to the person whom it has thus unduly wearied.

We will that the office of any conservators expire by the law itself, as regards business not begun, upon the death of the grantor. Concerning fees and expenses, assessors and notaries, and persons to be summoned for the purpose of testimony, we command that those provisions be observed in every respect for conservators of this kind that a constitution issued by us concerning these matters decreed were to be observed for delegated judges. We decree wholly void and empty whatever it happens is attempted contrary to the foregoing provisions or any one of them.

Ponit hic, qui possint esse conservatores, et ubi cognoscere, et an et quibus possint delegare, et quantum duret eorum potestas, et de expensis talium.

H. d. Zenz.

Idem.

Hac constitutione perpetuo valitura sancimus, ut con-

servatores, qui aliquibus, ut a manifestis iniuriis et violentiis tueantur eosdem, plerumque a sede apostolica conceduntur, de cetero deputari non possint, nisi episcopi vel eorum superiores, aut abbates, seu dignitates vel personatus in Cathedralibus vel collegiatis ecclesiis obtinentes, nullusque deputati sibi conservatoris esse valeat conservator. Nec aliquis, (regibus et reginis, qui, sicut dignitatis altitudine praeeminent, sic praerogativa gratiae ipsos convenit anteferri, duntaxat exceptis,) deinceps conservatorem habeat eum, qui sub ipsius iurisdictione, dominio vel districtu ecclesiastico vel temporali consistat. Conservatores autem huiusmodi extra civitates seu dioeceses, in quibus fuerint deputati, contra quoscunque procedere, aut aliquos ultra unam diaetam a fine dioecesum eorundem trahere non praesumant. Vices quoque suas, (citationibus et sententiarum denunciationibus duntaxat exceptis, quas per alios valeant exercere,) nulli committere possint, nisi hoc eis competierit ex beneficio literarum; sea nec tunc, nisi intra* civitates seu dioeceses, in quibus deputati fuerint, et personis tantum, quae superius sunt expressae. Ut autem conservatores limites sibi traditae potestatis, quos frequenter excedunt, metu poenae diligenter observent: decernimus,ut, si de aliis quam de manifestis iniuriis et violentiis scienter se intromiserint, seu ad alia, quae iudicialem indaginem exigunt, suam extenderint potestatem, eo ipso per unum annum ab officio sint suspensi. Pars vero, quae hoc fieri procurabit, sententiam excommunicationis incurrat, a qua non possit absolvi, nisi ei, quem sic fatigavit indebite, primo satisfaciat integraliter de expensis. Officium autem quorumcunque conservatorum ipso iure quoad non coepta negotia per obitum concedentis volumus exspirare. Circa munera vero et expensas, assessores ac notarios, et personas testimonii causa vocandas, illa praecipimus in huiusmodi conservatoribus per omnia observari, quae in delegatis iudicibus constitutio a nobis super his edita observanda decrevit*. Quicquid autem contra praemissa vel eorum aliquod attentari contigerit, omnino decernimus irritum et inane.

Title XV: On the Office of a Legate

Chapter I

Legates who are not cardinals cannot confer benefices by right of legation without a special mandate, but legates who are cardinals can properly do so. John Andrew.

Innocent IV. The debt of our office keeps watch over remedies for subjects, because while we shake away their burdens and remove scandals, we rest in their repose and are cherished in peace.

Therefore, by the present enactment we decree that legates of the Roman Church, however full a legation they hold, whether they have been sent by us or claim the dignity of legation for themselves by pretext of their churches, have from the office of legation itself no power to confer benefices unless we have judged that this should be specially granted to someone. We will that this not be observed concerning our brothers discharging a legation, because just as they rejoice in a prerogative of honor, so we will that they exercise a more ample authority.

DE OFFICIO LEGATI.

Legati non cardinales sine speciali mandato iure legationis beneficia conferre non possunt, sed legati cardinales hoc bene possunt. Ioann. Andr.

Innocentius IV.

Officii nostri debitum remediis invigilat subditorum*, quia, dum eorum excutimus onera, dum scandala removemus, nos in eorum quiete quiescimus et fovemur in pace.

Proinde praesenti decreto statuimus, ut ecclesiae Romanae legati, quantumcunque plenam legationem obtineant, sive a nobis missi fuerint sive suarum praetextu ecclesiarum legationis sibi vendicent dignitatem, ex ipsius legationis munere conferendi beneficia nullam habeant potestatem, nisi hoc alicui specialiter duxerimus indulgendum. Quod* in fratribus nostris legatione fungentibus nolumus observari, quia sicut honoris praerogativa laetantur, sic eos auctoritate fungi volumus ampliori.

Chapter II

A legate has ordinary jurisdiction; hence his office does not expire through the Pope's death. This is what it says. John Andrew.

Clement IV, to S., Cardinal Priest of the Title of Saint Cecilia, Legate of the Apostolic See. Regarding legates to whom the office of legation is committed in definite provinces, so that there they may uproot and destroy, build and plant, as ordinaries of the provinces committed to them, after the likeness of proconsuls and other governors to whom definite provinces have been decreed for governance, by the present edict we declare that the office of legation committed to you by our predecessor by no means expired through his death.

Legatus habet ordinariam, unde per mortem Papae non exspirat eius officium. H. d. Ioann. Andr.

Clemens IV. S. tit. sanctae Caeciliae Presbytero cardinali apostolicae sedis Legato.

Legatos, quibus in certis provinciis committitur legationis officium, ut ibidem evellant et* dissipent, aedificent atque plantent, provinciarum sibi commissarum ad instar proconsulum ceterorumque praesidum, quibus certae sunt decretae provinciae moderandae, ordinarios reputantes, praesenti declaramus edicto, commissum tibi a praedecessore nostro legationis officium nequaquam per ipsius obitum exspirasse.

Chapter III

When a legation has ended, reservations made by legates and every proceeding had concerning them expire, unless those benefices, already vacant, have then been conferred. Finally, it is said that while one reservation made by him is pending in a collegiate church, or concerning a benefice pertaining to someone's collation, the legate cannot make another in the same church or concerning a benefice pertaining to the collation of the same person; and he decrees void what is done contrary to the foregoing. John Andrew.

Boniface VIII. By the present edict we declare that reservations of any benefices made by a legate of the Apostolic See by authority of his legation, and decrees interposed concerning them, as well as denunciations, prohibitions, and any proceedings had concerning them by him or by executors deputed by him—provided that the collation of those benefices, already vacant, has by no means been proceeded to—are by that very fact wholly deprived of force when his legation ends, and that those executors cannot thereafter confer benefices so reserved.

Furthermore, desiring to restrict reservations of this kind, through which prelates and churches are sometimes excessively burdened, we prohibit a legate, after he has determined that some reservation

is to be made in a cathedral or collegiate church, from making any other in that same church while the first is pending. Nor, after he has elsewhere reserved some benefice pertaining to the collation of any person, is he in any manner to reserve for himself another benefice pertaining to that person's collation for as long as the reservation of the other is pending. Whatever it happens is attempted contrary to the foregoing provisions does not by that very fact subsist in force.

> Finita legatione exspirant reservationes legatorum, et omnis processus habitus super illis, nisi tunc illa beneficia iam vacantia sint collata. Demum dicitur, quod, pendente una sua reservatione in ecclesia collegiata, vel de beneficio spectante ad collationem alicuius, legatus in eadem ecclesia vel beneficio spectante ad collationem eiusdem, aliam facere non potest, et, quod fit contra praedicta, irritum decernit. Ioann. Andr.
>
> Bonifacius VIII.
>
> Praesenti declaramus edicto, reservationes quorumcunque beneficiorum, ab apostolicae sedis legato suae legationis auctoritate factas, et decreta interposita super ipsis, nec non denunciationes, inhibitiones et processus quoslibet, per eum vel per exsecutores deputatos ab eo habitos circa ipsas, (dummodo ad collationem eorundem beneficiorum iam vacantium minime sit processum,) eo ipso, quod illius finitur legatio, viribus penitus vacuari, nec exsecutores eosdem posse ulterius beneficia taliter reservata conferre. Ceterum reservationes huiusmodi, per quas interdum praelati et ecclesiae nimium onerantur, restringere cupientes, prohibemus, ne, postquam legatus in aliqua cathedrali vel collegiata ecclesia reservationem aliquam duxerit faciendam, aliam illa pendente faciat aliquatenus in eadem. Nec etiam, postquam alibi reservaverit aliquod beneficium, ad collationem pertinens cuiuscunque, aliud, quod ad illius collationem pertineat, quamdiu reservatio pendet alterius, sibi quoquo modo reservet. Quicquid autem contra praemissa contigerit attentari, eo ipso viribus non subsistat.

Chapter IV

Legates cannot reserve or confer cathedral, regular, or collegiate churches. The same applies to dignities of cathedral churches that are the greatest after the bishops, if their prelates ought to be assumed through election; and an act done contrary to this is void. — § 1. A delegate cannot commit to someone the power to receive the resignation of a benefice and afterward confer it, and he decrees void an act done or to be done to the contrary. This is what it says. John Andrew.

The same. With provident deliberation we have judged that it should be prohibited that any legate of the Apostolic See, however full a legation he is known to hold, reserve in any way to his own ordering, collation, provision, election, or disposition cathedral, regular, or collegiate churches, or dignities of those cathedral churches to which the persons preferred to them, who are the greatest in their chapters after the bishops, have to be assumed by way of election. Nor is he in any way to intermeddle in ordering, conferring, or disposing of them, or in any manner to place an obstacle preventing those to whom it pertains from being able to elect or postulate freely when they become vacant. We decree by that very fact void and empty whatever has been done contrary to this.

§ 1. We further prohibit that the legate himself grant to anyone, generally or specifically, that he can receive the resignation of benefices from those who, holding them within that legation, wish freely to resign them into his hands, and then confer those benefices upon suitable persons, since through this a way could be opened, contrary to the Lateran Council, to benefices that will become vacant. We decree that a grant that it happens is attempted contrary to this, and whatever has followed from it or

on account of it, has absolutely no strength of force, willing that this be extended not only to future business but also to past business still pending.

> Cathedrales, vel regulares vel collegiatas ecclesias legati reservare vel conferre non possunt. Idem in dignitatibus ecclesiarum cathedralium, quae sunt maiores post episcopos, si ipsarum praelati per electionem debent assumi; et contra hoc factum est irritum.— §. 1. Delegatus non potest alicui committere, quod recipiat resignationem beneficii, et postea illud conferat, et contra factum vel faciendum decernit irritum. H. d.
>
> Ioann. Andr.
>
> Idem.
>
> Deliberatione provida duximus inhibendum, ne aliquis apostolicae sedis legatus, quantumcunque legationem obtinere plenariam dignoscatur, cathedrales, vel regulares aut collegiatas ecclesias, seu ipsarum ecclesiarum cathedralium dignitates, ad quas hi, qui praeficiuntur eisdem, maiores in earum capitulis post episcopos exsistentes, habent per viam electionis assumi, suae ordinationi, collationi, provisioni, electioni aut dispositioni quomodocunque reservet, nec de ipsis ordinandis, conferendis vel disponendis se aliquatenus intromittat, neque aliquod, quo minus hi, ad quos pertinuerit, eligere aut postulare libere valeant, quum vacabunt, obstaculum quomodolibet interponat, decernentes, quicquid contra hoc actum exstiterit, eo ipso irritum et inane. §. i. Prohibemus insuper, ne legatus ipse in genere aut in specie cuicunque concedat, ut ab his, qui, beneficia infra legationem eiusdem habentes, ea in illius manibus voluerint libere resignare, ipsorum resignatione recepta, illa valeat idoneis conferre personis, quum per hoc aperiri posset via contra Lateranense concilium ad beneficia vacatura. Nos enim concessionem, quam contra hoc contigerit attentari, et quicquid ex ea vel ob eam secutum exstiterit, nullam prorsus habere statuimus roboris firmitatem, volentes non solum ad futura, sed etiam ad praeterita et adhuc pendentia negotia hoc extendi.

Chapter V

A legate's collation is vitiated by silence concerning an earlier benefice. Zenz says this.

The same. A collation of a benefice made to you by a legate of the Apostolic See is of no moment if mention was not made in it of another benefice that you previously held.

> Collatio legati per taciturnitatem prioris beneficii vitiatur. Hoc dicit Zenz.
>
> Idem.
>
> Collatio beneficii, per legatum sedis apostolicae tibi facta, nullius momenti exsistit, si in ea non fuerit habita mentio de alio beneficio, quod primitus obtinebas.

Title XVI: On the Office of an Ordinary

Chapter I

An archbishop cannot appoint officials for himself in the dioceses of his suffragans, even for future causes to be devolved upon him by appeal, unless he has this by custom; and even then such officials cannot issue prohibitions before an appeal has been made. — § 1. For as long as the archbishop can readily be reached, his official cannot excommunicate, suspend, or interdict a suffragan, out of reverence for the episcopal order—or, more properly stated, office. This is what it says in summary. John Andrew.

Innocent IV at the Council of Lyons. The Roman Church—(And below:) We also prohibit the Archbishop of Reims from appointing forane officials in the dioceses of his suffragans, because, since canonical institutes prohibit metropolitans from entering the dioceses of their suffragans so that they may judge, dispose of anything, or perform some other act there by their own authority, they can by no means exercise this in those dioceses through others. Nor, because they can delegate causes carried to them by appeal within the dioceses of their suffragans, is it similarly lawful for them to appoint in those dioceses officials who in their place, when an appeal is made to them, issue citations or prohibitions or restrain rebels in this regard. For in causes devolved upon them by appeal they are known already to possess jurisdiction, on account of which they can lawfully commit their functions concerning them. It is not so, however, in other causes in which an appeal has not yet been made; and therefore they ought not to appoint anyone to issue citations and prohibitions in future causes of appeal, unless the Church of Reims obtains something else concerning the appointment of such officials by a special custom. Even if officials of this kind can by custom be appointed in the province of Reims, we wholly prohibit them from issuing prohibitions against proceeding in causes before an appeal is made to the curia of Reims.

§ 1. The officials of the Archbishop of Reims, for as long as he is in his province or near it, are not to attempt to pronounce sentences of interdict, suspension, or excommunication against the suffragans. We command that this same provision be observed by officials of other metropolitans concerning their suffragans, to whom we will deference to be shown in this regard out of reverence for the pontifical office.

DE OFFICIO ORDINARII.

Archiepiscopus non potest sibi constituere officiales in dioecesi suffraganeorum suorum etiam pro futuris causis per appellationem devolvendis ad ipsum, nisi de consuetudine hoc habeat; et tunc etiam tales officiales inhibere non possunt, priusquam fuerit appellatum. — §. 1. Donec archiepiscopus de facili potest haberi, officialis eius suflfraganeum excommunicare, suspendere aut interdicere non potest, propter ordinis (melius dixisset: ,, officii “) episcopalis reverentiam. H. d. in summa Ioann. Andr.

Innocentius IV. in concilio Lugdunensi*. Romana ecclesia (Et infra:) Prohibemus quoque, ne Remensis archiepiscopus in dioecesibus suffraganeorum suorum foraneos officiales constituat, quia, quum metropolitanis, ne suorum suffraganeorum ingrediantur dioeceses, ut in eis auctoritate propria iudicent, disponant aliquidve aliud agant,canonica prohibeant instituta, nequaquam hoc possunt in illis per alios exercere. Nec pro eo, quod causas per appellationem delatas ad ipsos possunt in suffraganeorum suorum dioecesibus delegare, similiter licet eis tales officiales instituere in eisdem, qui eorum vice, quum appellatur ad ipsos, citationes vel inhibitiones faciant, seu compescant in hac parte rebelles; quia in causis per appellationem devolutis ad ipsos iam iurisdictionem obtinere noscuntur, propter quod licite possunt super illis committere vices suas. Non sic autem in aliis, in quibus nondum exstitit appellatum, et idcirco non debent aliquos constituere pro citationibus in futuris causis appellationum et inhibitionibus faciendis, nisi aliud Remensis ecclesia circa talium officialium institutionem de consuetudine obtineat speciali. A quibus, etiamsi de consuetudine huiusmodi possint in Remensi provincia constitui, inhibitiones tamen*, ne procedatur in causis, priusquam ad Remensem curiam appelletur, fieri penitus inhibemus. §. i. Officiales autem Remensis archiepiscopi, quamdiu in sua provincia vel circa illam exstiterit, in suffraganeos interdicti, suspensionis vel excommunicationis proferre sententias non attentent. Et hoc idem ab officialibus aliorum metropolitanorum circa ipsorum suffraganeos, quibus ob reverentiam pontificalis officii deferri volumus in hac parte, praecipimus observari.

Chapter II

Canons who can cease from divine services by custom or another law, if they wish to cease, are to express the cause of their cessation in a public instrument or open letters fortified with their own or another authentic seal, and are to exhibit it or them to the person against whom they cease. If this is omitted, or the cause expressed is not found legitimate, they are to restore whatever they received from the church in the meantime, are not to receive the things they ought to receive, and are to make satisfaction for injuries to the person against whom they cease. If the cause is found legitimate, that person is liable for the canons' interest and for a definite amount to the church, to be assessed at the superior's judgment. Finally, the custom by which images of saints were placed upon thorns and nettles during the said cessation is rejected, and persons acting to the contrary are decreed to be gravely punished. John Andrew.

Gregory X at the General Council of Lyons. If canons wish to cease from divine services, as in certain churches they claim for themselves by custom or otherwise, before they proceed in any manner to such a cessation, they are to express the cause of the cessation in a public instrument or open letters fortified by the protection of their own seals or another authentic seal, and deliver that instrument or those letters to the person against whom they intend to cease. They are to know that if they cease after omitting this, or if the cause they expressed is not found canonical, they will restore everything they received during the time of cessation from any proceeds of the church in which the cessation occurred. They will in no way receive the things owed to them for the same time, but those things are to fall to the church itself; and they will nevertheless be bound to make satisfaction for losses and injuries to the person against whom they had ceased.

But if that cause is judged canonical, the person who gave occasion for the cessation is to be condemned for the entire interest of the said canons and of the church from which its due office was withdrawn by his fault, in a definite amount to be assessed at the superior's judgment and converted to the increase of divine worship.

Furthermore, wholly rejecting the detestable abuse of the horrible irreverence of those who, treating with irreverent audacity images or statues of the cross, of the Blessed Virgin Mary, and of other saints, cast them upon the ground and place them upon nettles and thorns in aggravation of a cessation of this kind, we strictly prohibit anything of this kind from being done henceforth. We decree that a hard avenging sentence is to proceed against those who act to the contrary, punishing the offenders so gravely that it restrains others from presuming similar things.

> Canonici, qui a divinis cessare possunt consuetudine vel alio iure, si cessare volunt, causam suae cessationis exprimant in instrumento publico vel patentibus literis suo vel alio authentico sigillo munitis, et exhibeant illud vel illas illi, contra quem cessant. Hoc praetermisso, vel expressa causanon inventa legitima, quicquid medio tempore perceperint ab ecclesia, restituant, et quae percipere debent non percipiant, et satisfaciant de iniuriis illi, contra quem cessant. Causa legitima inventa, tenetur ille ad interesse canonicis, et ad certam quantitatem ecclesiae, superioris taxandam arbitrio. Ultimo reprobatur consuetudo, qua imagines sanctorum in dicta cessatione spinis et urticis supponebantur. Et statuitur, contrarium facientes graviter puniendos. Ioann. Andr.
>
> Gregorius X. in generali concilio Lugdunensi.
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> Si canonici a divinis cessare voluerint, prout in ecclesiis aliquibus sibi ex consuetudine vel alias vendicant: antequam ad cessationem huiusmodi quoquo modo procedant, in instrumento publico, vel patentibus literis sigillorum suorum aut alterius authentici munimine roboratis, cessationis ipsius causam exprimant, et illud vel illas ei, contra quem cessare intendunt, assignent, scituri, quod, si hoc

praetermisso cessaverint, vel causa, quam expresserint, non fuerit inventa canonica, omnia, quae de quibuscunque proventibus illius ecclesiae, in qua cessatum fuerit, cessationis tempore perceperint*, restituent. Illa vero, quae pro eodem tempore debentur eisdem, nullo modo percipient, sed ipsi ecclesiae cedere, ac nihilominus ei, contra quem cessaverant, de damnis et iniuriis satisfacere tenebuntur. Si autem causa eadem canonica fuerit iudicata, is, qui occasionem cessationi dederat, ad omne interesse dictis canonicis et ecclesiae, cui debitum officium eius est culpa subtractum, ad certam quantitatem taxandam et in divini cultus augmentum convertendam, superioris arbitrio condemnetur. Ceterum detestabilem abusum horrendae indevotionis illorum, qui crucis, beatae Mariae* virginis aliorumque* sanctorum imagines seu statuas irreverenti ausu tractantes, eas in aggravationem cessationis huiusmodi prosternunt in terram, et* urticis spinisque supponunt, penitus reprobantes, aliquid tale fieri de cetero districtius prohibemus , statuentes, ut in eos, qui contra fecerint, ultrix procedat dura sententia, quae delinquentes sic puniat graviter, quod alios a similium praesumptione compescat.

Chapter III

The Pope decrees that persons having several dignities or other benefices with the cure of souls are to be compelled by their ordinaries to exhibit, within a suitable time to be established at the superior's judgment, the dispensations that they have; if they do not exhibit them, proceedings are to be taken just as though they had none. If they exhibit them and they are sufficient, they are not to be troubled further, provision being made that the cure of souls is not neglected in the aforesaid benefices. But if there is doubt about a dispensation, recourse is to be had to the Apostolic See. Another benefice is not to be conferred upon persons holding several similar benefices unless a sufficient dispensation is exhibited; and then it is to be conferred only if by the dispensation they can retain it with the others, or if they have renounced the earlier ones. Otherwise, a collation made does not hold. John Andrew.

The same. The ordinaries of places are strictly to compel their subjects who hold several dignities or churches to which the cure of souls is attached, or a personatus or dignity with another benefice to which a similar cure is annexed, to exhibit, within a time to be moderated at the judgment of those ordinaries according to the character of the fact, the dispensations by authority of which they assert that they canonically hold churches, personatuses, or dignities of this kind. But if, no just impediment existing, it happens that no dispensation is exhibited within that time, the churches, benefices, personatuses, or dignities that it is established are by that very fact illicitly detained without any dispensation are to be freely conferred upon suitable persons by those to whom their collation pertains.

Furthermore, if a dispensation exhibited manifestly appears sufficient, the person exhibiting it is by no means to be troubled concerning benefices of this kind that he canonically holds. Nevertheless, the ordinary is to provide that neither the cure of souls in those churches, personatuses, or dignities be neglected nor the benefices themselves be defrauded of the services owed. But if there is doubt about the sufficiency of the dispensation exhibited, recourse is to be had concerning this to the Apostolic See, whose part it is to determine what measure it wills its own favor to have.

Moreover, in conferring personatuses, dignities, and other benefices having the cure of souls annexed, the same ordinaries are to observe such diligence that they do not presume to confer a personatus, dignity, or other benefice having a similar cure of souls upon anyone holding several similar benefices before a dispensation manifestly sufficient concerning those held is shown to them. Even when it has been shown, we will that the collation be proceeded to only if it appears through the same

dispensation that the person to whom the collation is to be made can freely retain such personatus, dignity, or benefice with those held, or if he freely and voluntarily resigns those that he thus holds. Otherwise, a collation made of such personatuses, dignities, and benefices is absolutely of no moment.

> Statuit Papa, quod habentes plures dignitates, vel alia beneficia curam animarum habentia, per ordinarios compellantur ostendere infra tempus competens superioris arbitrio statuendum dispensationes, quas si non ostenderint, perinde procedatur, ac si nullas haberent. Et si ostenderint, et sufficientes, non amplius molestentur, proviso, ne in praedictis beneficiis cura negligatur animarum. Si autem dubitetur de dispensatione, ad sedem apostolicam recurratur. Talibus plura similia beneficia obtinentibus aliud non conferatur beneficium, nisi ostensa dispensatione sufficienti; et tunc ita demum conferatur, si per dispensationem possunt illud cum aliis retinere, vel si prioribus renunciaverint; aliter collatio facta non teneat.
>
> Ioann. Andr.
>
> Idem.
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> Ordinarii locorum subditos suos, plures dignitates vel ecclesias, quibus animarum cura imminet, obtinentes, seu personatum aut dignitatem cum alio beneficio, cui cura similis est annexa, districte compellant dispensationes, auctoritate quarum huiusmodi ecclesias, personatus seu digni-
>
> tates canonice tenere se asserunt, infra tempus, pro facti qualitate ipsorum ordinariorum moderandum arbitrio, exhibere. Quod si forte iusto impedimento cessante nullam dispensationem infra idem tempus contigerit exhiberi: ecclesiae beneficia, personatus seu dignitates, quae sine dispensatione aliqua eo ipso illicite detineri constabit, per eos, ad quos eorum collatio pertinet, libere personis idoneis conferantur. Ceterum si dispensatio exhibita sufficiens evidenter appareat, exhibens nequaquam in beneficiis huiusmodi, quae canonice obtinet, molestetur. Provideat tamen ordinarius, qualiter nec animarum cura in eisdem ecclesiis, personatibus seu dignitatibus negligatur, nec beneficia ipsa debitis obsequiis defraudentur. Si vero de dispensationis exhibitae sufficientia dubitetur, super hoc erit ad sedem apostolicam recurrendum, cuius est aestimare*, quem modum sui beneficii esse velit. In conferendis insuper personatibus, dignitatibus et aliis beneficiis, curam habentibus animarum annexam, iidem ordinarii diligentiam illam observent, ut personatum, dignitatem vel aliud* beneficium, similem curam habens animarum*, alicui plura similia obtinenti non ante conferre praesumant, quam eis super obtentis dispensatio evidenter sufficiens ostendatur. Qua etiam ostensa ita demum ad collationem procedi volumus, si appareat per eandem, quod is, cui est collatio facienda, huiusmodi personatum, dignitatem vel beneficium retinere libere valeat cum obtentis, vel si ea, quae sic obtinet, libere ac sponte resignet. Aliter autem de personatibus, dignitatibus et beneficiis talibus facta collatio nullius penitus sit momenti.

Chapter IV

The Pope commands prelates not to prohibit subjects from disclosing the state of churches and persons to superiors conducting inquiries, nor to bind them by oaths, promises, obligations, or other penalties to conceal it. He decrees that anything done to the contrary is void and empty, that sentences, oaths, promises, or penalties do not bind, and commands the same superiors to punish presumptuous persons with a fitting penalty. John Andrew.

Boniface VIII. Because many prelates, not without great audacity of temerity, sometimes prohibit their subjects from intimating or explaining the state of their churches, monasteries, or places, of the persons and their property, to the prelates' superiors, to legates of the Apostolic See, or to inquisitors deputed by that See to inquire, correct, and reform in those churches, monasteries, or places, or to

any other persons through whom this can come to the knowledge of the aforesaid persons—pronouncing against them, if they act otherwise, sentences of excommunication, suspension, or interdict, and nevertheless binding them to conceal this by oaths, promises, obligations, and other penalties—we, wishing to meet this malice, lest inquiry, correction, or reform in the same churches, monasteries, and places, when they are to be made, be impeded under such a pretext, strictly prohibit henceforth the foregoing acts and each of them from being attempted.

We decree by apostolic authority that whatever has been attempted contrary to the present prohibition possesses absolutely no firmness, and that no one is in any manner bound or constrained by sentences, oaths, promises, obligations, or penalties of this kind. Moreover, lest their temerity pass unpunished in any manner, we command that those presumptuous persons be chastised with fitting correction by the aforesaid superiors, legates, or inquisitors.

> Praecipit Papa, ne praelati subditis interdicant, ne statum ecclesiarum et personarum superioribus inquirentibus manifestent, nec ad id celandum iuramentis, promissionibus, obligationibus aut aliis poenis adstringant. Decernit autem, quod contra factum fuerit, irritum et inane, et sententias, iuramenta, promissiones vel poenas non ligare, et praesumptores praecipit poena condigna a superioribus eisdem puniri. Ioann. Andr.
>
> Bonifacius VIII.
>
> Quia pleri que praelati non sine multa temeritatis audacia suis subditis aliquando interdicunt, ne ipsorum superioribus aut apostolicae sedis legatis, vel inquisitoribus ad inquirendum, corrigendum et reformandum in eorum ecclesiis, monasteriis sive locis a sede deputatis eadem, vel aliis quibuscunque personis, per quas ad notitiam praedictorum valeat pervenire, statum ecclesiarum,monasteriorum seu locorum suorum, personarum et rerum ipsorum insinuent vel exponant, in ipsos, si secus egerint excommunicationis, suspensionis vel interdicti sententias proferentes, eosque ad hoc celandum iuramentis, promissionibus et obligationibus aliisque* poenis nihilominus adstringentes: nos, huic malitiae, ne tali praetextu in ecclesiis, monasteriis et locis eisdem inquisitio, correctio seu reformatio, quum faciendae fuerint, valeant impediri, occurrere cupientes, praedicta et eorum quodlibet attentari de cetero districtius inhibemus, decernentes auctoritate apostolica, quicquid contra praesentem inhibitionem attentatum exstiterit, nullius penitus exsistere firmitatis, nec quemquam sententiis, iuramentis, promissionibus, obligationibus vel poenis huiusmodi obligari quomodolibet vel adstringi. Praesumptores autem eosdem, ne ipsorum temeritas quoquo modo transeat impunita, a superioribus vel legatis seu inquisitoribus memoratis animadversione condigna praecipimus castigari.

Chapter V

Jurisdiction attributed to an archbishop in one diocese does not benefit him in others. This is what it says. Zenz.

The same. So that litigants may be relieved of labors and expenses, we decree that an archbishop is not to hear, or commit to be heard, causes carried to him by appeal or otherwise by metropolitan law anywhere except in his own city or diocese, or in those places in which an appeal was made or the causes themselves are known to be situated, unless by custom something else belongs to him in this regard.

> Iurisdictio, archiepiscopo attributa in una dioecesi, sibi in aliis non prodest.
>
> H. d. Zenz.
>
> Idem.

> Ut litigantes releventur a laboribus et expensis, statuimus, ne archiepiscopus causas, quae per appellationem vel alias iure metropolitico deferuntur ad ipsum, alibi, quam in sua propria civitate vel dioecesi, aut in eis, in quibus appellatum exstitit, vel causae ipsae consistere dignoscuntur, audiat vel etiam audiendas committat, nisi sibi aliud de consuetudine competat in hac parte.

Chapter VI

If a bishop, when he is able, visits his diocese through another, he has to provide that person with necessities; those visited, however, will provide the visiting vicar with victuals, and not the bishop. This is what it says. John Andrew.

The same. If a bishop causes his diocese to be visited by another where this is permitted to him by law, although he himself has to provide that person with other necessities, nevertheless those who are visited are bound to furnish the visiting person with the expenses of victuals, since according to the Apostle it is not a great thing if temporal things are reaped by the person through whom spiritual things are sown. Nevertheless, when the same bishop does not visit personally, he can or ought to exact absolutely nothing from those who were visited through the person whom he deputes.

> Si episcopus, quum potest, suam dioecesin visitat per alium, habet illi in necessariis providere; visitati autem in victualibus providebunt ipsi vicario visitanti, et non episcopo. H. d. Ioann. Andr.
>
> Idem.
>
> Si episcopus suam dioecesin, ubi ei a iure permittitur, faciat per alium visitari, licet ipse illi habeat in aliis necessariis providere: hi tamen, qui visitantur, ministrare tenentur expensas victualium visitanti, quum secundum Apostolumnon sit magnum, si ab eo metantur temporalia, per quem spiritualia seminantur. Idem tamen episcopus, quum personaliter non visitat*, nil prorsus ab his, qui per illum, quem deputat, fuerint visitati, exigere poterit aut debebit.

Chapter VII

In every non-exempt place of the diocese, a bishop can sit as a tribunal through himself or another and freely execute the things pertaining to his office. John Andrew.

The same. Since a bishop is known to have ordinary jurisdiction throughout his entire diocese, there is no doubt that in every non-exempt place of that diocese he can, through himself or another, sit as a tribunal, hear causes pertaining to the ecclesiastical forum, seize ecclesiastical persons when their excesses require it and commit them to prison, and freely exercise the other things pertaining to his office.

> In quolibet loco dioecesis non exempto per se et per alium potest episcopus pro tribunali sedere, et libere exsequi quae ad ipsius spectant officium.
>
> Ioann. Andr.
>
> Idem.
>
> Quum episcopus in tota sua dioecesi iurisdictionem ordinariam noscatur habere, dubium non exsistit, quin in quolibet loco ipsius dioecesis non exempto per se vel per alium possit pro tribunali sedere, causas ad ecclesiasticum forum spectantes audire, personas ecclesiasticas, quum earum excessus exegerint, capere ac carceri deputare, nec non et cetera, quae ad ipsius spectant officium, libere exercere.

Chapter VIII

Canons who can cease from divine services, when they wish to cease, will summon absent persons just as if an election were impending, and will deliberate with them concerning the cessation. If they resolve to cease, they will first require the person against whom they cease to amend the offense inflicted. If he does so, they will not cease; otherwise, they will be able to cease in such a way that, within one month from the cessation, each party—both the party ceasing and the person against whom they cease—sets out to go to the Pope, either personally or through sufficiently instructed procurators, unless concord intervenes between them in the meantime. Continuing the days of journey, they are to present themselves before the Pope as soon as they can, so that, both parties being present or one contumaciously absent, the Pope may decide the business and punish the culpable; and if the party ceasing does not observe the foregoing provisions, the cessation is not to be observed. John Andrew.

The same. Although sufficiently manifest institutes concerning cessations from divine services—which are many times attempted without reasonable cause by chapters, convents, or colleges of secular or regular churches—emanated from our predecessors Innocent III and Gregory X of happy memory, nevertheless, because after those institutes it has frequently been discovered that those cessations were made irrationally, we, to avoid so pernicious an abuse, with the counsel of our brothers strictly prohibit that those cessations be attempted by a secular or regular chapter, college, or convent of any church unless all persons have been summoned as they are to be summoned for the business of an election, diligent deliberation has been had, and the bishop or any other cleric or layman, of whatever dignity, pre-eminence, condition, or status, on account of whose injury or offense the cessation appears to be made, has, after the aforesaid summons and deliberation concerning cessation, been required to amend the injury or offense inflicted. Even then they are not to cease if they have obtained suitable amendment from him, or if it was due to them that they did not obtain it.

But if, the foregoing provisions having been observed, the chapter, college, or convent of some church determines that the cessation is to be proceeded to, then within the space of one month each party—namely, those who cease and also those on account of whose act there is a cessation from divine services—is to set out, personally or through suitable procurators with the muniments and acts pertaining to the business itself, on the journey to the Apostolic See, unless, concord supervening between them, that cessation ceases. Continuing the days of journey, they are to present themselves before the apostolic presence as soon as they conveniently can, so that, the parties being present, or one being present and the other neither coming nor sending, the business may be examined at the same See. Besides the other penalties established by the said canons, the party found culpable in the foregoing matters is, if it seems expedient to the Roman Pontiff, to learn through a teaching penalty how greatly it transgressed—whether it reasonably gave cause for the cessation made or ceased without reasonable and manifest cause.

Moreover, if the party ceasing from divine services does not observe the things written above, both in ceasing and in coming or sending to the Apostolic See, the cessation is not to be observed; notwithstanding it, divine services are to be celebrated in that church as before.

> Canonici, qui a divinis cessare possint, quum cessare voluerint, vocabunt absentes, sicut si immineret electio facienda, cum quibus de cessatione deliberabunt. Et si deliberant cessare, requirent prius eum, contra quem cessant, ut irrogatam offensam emendet. Quod si fecerit, non cessabunt; alioquin cessare poterunt, ita, quod a cessatione infra mensem utraque pars, et cessans et contra quem cessatur, iter

arripiat eundi ad Papam vel per se, vel per procuratores sufficienter instructos, nisi interim intervenerit concordia inter ipsos. Et continuatis diaetis, quam cito poterunt, se coram Papa praesentent, ut, utraque parte praesente, vel altera contumaciter absente, Papa diffiniat negotium, et culpabiles puniat, et, si pars cessans praedicta non servet, cessatio non servetur. Ioann. Andr.

Idem.

Quamvis super cessationibus a divinis, quae a capitulis, conventibus sive collegiis saecularium vel regularium ecclesiarum multoties sine causa rationabili attentantur, manifesta satis a felicis recordationis Innocentio III. et Gregorio X.praedecessoribus nostris manaverint instituta, quia tamen post illa est plerumque compertum, cessationes easdem irrationabiliter esse factas: nos, ad tam perniciosum evitandum abusum, eadem statuta cum infra scripta moderatione in suo volentes robore perdurare, de fratrum nostrorum consilio districtius inhibemus, ne a saeculari vel regulari capitulo, collegio seu conventu ecclesiae cuiuscunque cessationes ipsae, nisi vocatis omnibus, (prout sunt pro electionis negotio evocandi,) et deliberatione habita diligenti, ac episcopo aliove quocunque clerico sive laico, (cuiuscunque dignitatis, praeeminendae, conditionis aut status exsistat,) propter cuius iniuriam vel offensam eadem videtur cessatio facienda, post praedictas vocationem et deliberationem de cessando habitam requisito, quod irrogatam iniuriam vel offensam emendet, aliquatenus attententur, neque tunc etiam, si emendam inde habuerint, vel per eos steterit, quo minus habeant competentem. Si autem, praemissis servatis, capitulum, collegium vel conventus alicuius ecclesiae ad cessationem eandem duxerint procedendum: extunc infra unius mensis spatium pars utraque, videlicet ii, qui cessant, et illi etiam, propter quorum factum a divinis cessatur, (nisi superveniente concordia inter eos cessatio illa cesset,) iter arripiant per se vel per procuratores idoneos cum munimentis et actis ad negotium ipsum spectantibus ad sedem apostolicam veniendi, et continuatis diaetis, quam cito commode poterint, se apostolico conspectui repraesentent, ut, partibus praesentibus, aut una praesente, altera non veniente vel mittente, examinato negotio apud sedem eandem, pars, quae culpabilis inventa fuerit in praemissis, praeter alias poenas a dictis canonibus institutas, si Romano Pontifici videbitur expedire, poena docente cognoscat, quantum excesserit, quae cessationi factae rationabiliter causam dedit, vel quae sine rationabili et manifesta causa cessavit. Parte insuper a divinis cessante supra scripta tam in cessando quam in veniendo sive mittendo ad sedem apostolicam non servante, non servetur cessatio; sed ea non obstante ut prius in ipsa ecclesia celebretur.

Chapter IX

First, he establishes a constitution that the goods of vacant dignities or churches are not to be occupied by those to whom collation or custody pertains unless this belongs to them by a special right, and imposes a penalty upon persons acting to the contrary. Second, he shows which goods are understood when this belongs to someone by a special right. Third, he says that the decretal "Quia saepe," above in the same book under the title On Election, is not corrected. John Andrew.

The same. By the present edict we prohibit bishops or their superiors, abbots, or any other regular or secular prelates, or any ecclesiastical persons, from presuming in any manner, while dignities, personatuses, priories, or any churches subject to them, or pertaining to their collation, ordering, presentation, or custody, are vacant, to occupy or convert to their own uses the goods found in those institutions when their rectors or ministers die, or accruing during the time of their vacancy, which ought to be spent for their utility or faithfully reserved for future successors, unless this is known to belong to them by a special privilege or a custom already lawfully prescribed, or another reasonable cause. Otherwise, bishops and their superiors are to know themselves suspended by that very fact

from entrance into the church, and the others from office and benefice, until they have made restitution of the aforesaid goods.

Moreover, where any of the aforesaid persons asserts that the goods stated above belong to him by privilege or custom, or for another reasonable cause, this ought to be understood only of those goods found to remain after debts, if there are any, have been paid and suitable provision has been reserved for servants and ministers and for supporting incumbent burdens until new revenues arrive.

Indeed, we will that the constitution we specially issued above against chapters, colleges, convents, or individual persons occupying the goods of vacant cathedral, regular, or collegiate churches is not derogated from in any respect by the present constitution, which we judge to apply to dignities, personatuses, priories, and other churches.

> Primo ponit constitutionem de bonis dignitatum vel ecclesiarum vacantium, non occupandis per eos, ad quos collatio vel custodia pertinet nisi de speciali iure id eis competat; et contra facientibus poenam imponit. Secundo ostendit, de quibus bonis intelligatur, quum de speciali iure id alicui competit. Tertio decretalem Quia saepe, supra eodem libro de elect., dicit non esse correctam. Ioann. Andr.
>
> Idem.
>
> Praesenti prohibemus edicto, ne episcopi vel eorum superiores, aut abbates seu quivis alii regulares vel saeculares praelati, aut ecclesiasticae quaecunque personae, vacantibus dignitatibus, personatibus, prioratibus vel ecclesiis quibuscunque sibi subiectis, seu ad collationem, ordinationem, praesentationem vel custodiam pertinentibus eorundem, bona morientibus eorum rectoribus vel ministris in ipsis inventa, sive vacationis ipsorum tempore obvenientia, quae in utilitatem eorundem expendi vel futuris debent successoribus fideliter reservari, occupare, aut in usus suos convertere quoquo modo praesumant, nisi de speciali privilegio vel consuetudine iam praescripta legitime, seu alia causa rationabili hoc eisdem competere dignoscatur. Alioquin episcopi et eorum superiores ab ingressu ecclesiae, ceteri vero ab officio et beneficio tamdiu eo ipso noverint se suspensos, quousque restitutionem fecerint de praedictis. Porro, ubi ex privilegio vel consuetudine, seu alia de causa rationabili sibi aliquis praedictorum asserit bona competere supra dicta: hoc de illis bonis solum debet intelligi, quae solutis debitis, si qua sint, et his, quae fuerint necessaria pro servitoribus et ministris, ac incumbentibus oneribus usque ad novos reditus supportandis, congrue reservatis, ex ipsis reperta fuerint superesse. Sane constitutionem*, quam superius specialiter edidimus contra capitula, collegia, conventus* seu singulares personas, bona cathedralium vel regularium aut collegiatarum ecclesiarum vacantium occupantes, per constitutionem praesentem, quam in dignitatibus, personatibus, prioratibus et ecclesiis aliis locum habere censemus, nolumus in aliquo derogari.

Title XVII: On Superiority and Obedience

Chapter I

While the see is vacant, the chapter, or the person to whom administration pertains, will absolve those whom the bishop could absolve if he were living, unless this has been prohibited by the Apostolic See. John Andrew.

Boniface VIII. While an episcopal see is vacant, the chapter, or the person to whom episcopal jurisdiction is then known to pertain, can impart the benefit of absolution from a sentence of excommunication, whether of law or of man, to those to whom the bishop could impart it if he were living, unless this power has been specially prohibited to it or him by the Apostolic See.

DE MAIORITATE ET OBEDIENTIA.

Capitulum, vel is, ad quem administratio pertinet, vacante sede eos absolvet, quos absolvere posset episcopus, si viveret; nisi a sede apostolica id fuerit interdictum. Ioann. Andr.

Bonifacius VIII.

Episcopali sede vacante potest capitulum, seu is, ad quem episcopalis iurisdictio tunc temporis noscitur pertinere, iis, quibus posset episcopus, si viveret, ab excommunicationis sententia, sive iuris sive hominis fuerit, absolutionis beneficium impertiri, nisi ei fuerit a sede apostolica specialiter interdicta potestas.

Title XVIII: On Pacts

Chapter I

If monks having free burial by grant of the Apostolic See make a pact not to receive some or certain parishioners of a church, they are compelled to observe the pact and cannot bury them, although those persons chose to be buried among them, since through the pact they renounced the privilege. John Andrew.

Boniface VIII. You ought wholly to observe the pact made by you with the rector of a parish church that you will not receive for ecclesiastical burial some or certain parishioners of that church, although free burial has been granted to your monastery by the Apostolic See and those persons chose to be buried among you, since a grant of this kind is derogated from through the said pact.

DE PACTIS.

Monachi, habentes liberam a sede apostolica sepulturam, si paciscuntur de non recipiendis aliquibus vel certis parochianis ecclesiae alicuius, servare compelluntur pactum, nec illos sepelire poterunt, licet apud eos elegerint sepeliri, quum per pactum privilsgio renunciaverunt. Ioann. Andr.

Bonifacius VIII.

Pactum cum rectore parochialis ecclesiae factum a vobis, ne aliquos vel certos ipsius ecclesiae parochianos recipiatis ad ecclesiasticam sepulturam, omnino servare debetis, quanquam sepultura libera sit monasterio vestro ab apostolica sede indulta, et illi apud vos elegerint sepeliri: quum per dictum pactum induito huiusmodi derogetur.

Chapter II

A pact made to a father by a daughter when she was given in marriage, that, content with her dowry, she will have no recourse to her paternal goods, will be bound to be observed entirely if the daughter herself swore it. John Andrew.

The same. Although civil law disapproves a pact made to a father by a daughter when she was given in marriage, that, content with her dowry, she would have no recourse to her paternal goods, nevertheless, if it was confirmed by her with an oath given neither by force nor deceit, it ought to be observed entirely, since it does not tend toward loss of eternal salvation or redound to another's detriment.

Pactum, factum patri a filia, dum tradebatur nuptui, quod dote contenta nullum habebit ad bona paterna regressum, si iuraverit id ipsa filia, omnino servare tenebitur. Ioann. Andr.

Idem.

Quamvis pactum, patri factum a filia, dum nuptui tradebatur, ut dote contenta nullum ad bona paterna regressum haberet, improbet lex civilis: si tamen iuramento non vi nec dolo praestito firmatum fuerit ab eadem, omnino servari debebit, quum non vergat in aeternae salutis dispendium, nec redundet in alterius detrimentum.

Chapter III

Pacts entered into by the Friars Preachers, Friars Minor, or other mendicants with rectors of parish churches concerning parochial rights, if made by priors or guardians with the consent of their convents in those places, are to be observed, provided they are otherwise lawful and honorable, although the authority of the Apostolic See or the permission of the prior general, minister general, master, provincial minister, or provincial chapter did not intervene. This is what it says. John Andrew.

The same. Because many scandals arise in diverse parts of the world, and great detraction is made from the reputation and honor of the Friars Preachers and Minors and other mendicants—whom it befits to observe complete purity in their actions and to abstain more readily from things through which ruinous example can be generated for others—because they refuse to observe compositions and pacts entered into or made by them or their predecessors with the prelates, chapters, rectors, and persons of the churches, cities, castles, towns, and places in which their houses or habitations exist, concerning parochial rights or any other articles, and strive to infringe them under the pretext that the assent of their masters, ministers, or priors general or provincial was not present in them and that they were not approved by their general or provincial chapters, we, intending to meet these things with the zeal of paternal solicitude, decree as follows by the present enactment.

Compositions and pacts of this kind made or approved with the aforesaid prelates, chapters, rectors, and persons by the conventual priors or guardians of the friars themselves, with the counsel and assent of their convents, provided they are otherwise lawful and honorable, ought perpetually and inviolably to be observed by those friars in the places in which they were made. It does not stand in the way that the assent of the aforesaid masters, ministers, or priors general or provincial did not intervene in them, that they were not approved by their general or provincial chapters, or that the Apostolic See did not furnish its authority or assent in those things made by the aforesaid Friars Minor.

Pacta, inita per fratres Praedicatores, vel Minores, vel alios mendicantes, cum rectoribus parochialium ecclesiarum super parochialibus iuribus, si facta sunt per priores vel guardianos de conventuum ipsorum locorum consensu, licet auctoritas sedis apostolicae non intervenerit, vel licentia prioris vel ministri generalis, aut magistri vel provincialis ministri, vel capituli provincialis, servanda sunt, dummodo alias sint licita et honesta.

H. d. Ioann. Andr.

Idem.

Quia ex eo, quod fratres Praedicatores et Minores et alii mendicantes, compositiones et pacta, cum praelatis, capitulis, rectoribus et personis ecclesiarum, civitatum, castrorum, villarum et locorum, in quibus domus seu habitationes eorum exsistunt, super iuribus parochialibus vel aliis quibuscunque articulis ab eis vel eorum antecessoribus inita sive facta, servare recusant, et ea eo praetextu infringere moliuntur, quia magistri aut ministri vel prioris generalium seu provincialium eorundem non adfuit assensus in ipsis, nec approbata per ipsorum generalia vel provincialia capitula exstiterunt, multa in diversis mundi partibus insurgunt scandala, et ipsorum fratrum, (quos decet puritatem omnimodam in

suis observare actionibus*, et ab his abstinere propensius, per quae possit aliis exempli pernicies generari,) famae detrahitur plurimum et honori: nos, his occurrere paternae sollicitudinis studio intendentes, praesenti decreto sancimus, compositiones et pacta huiusmodi, cum praelatis, capitulis et rectoribus et personis praedictis ab ipsorum fratrum conventualibus prioribus seu guardianis facta vel approbata de suorum conventuum consilio et assensu, (dum tamen alias sint licita et honesta,) debere ab ipsis fratribus in locis, in quibus fuerint facta, perpetuo inviolabiliter observari, non obstante, quod magistri vel ministri aut prioris generalium seu provincialium praedictorum non intervenerit in eisdem assensus, nec ab ipsorum generalibus vel provincialibus capitulis exstiterint approbata, seu quod sedes apostolica in his, quae per praedictos fratres Minores facta fuerint, auctoritatem suam non praestiterit vel assensum.

Title XIX: On Procurators

Chapter I

A layman can be a procurator for bringing and defending spiritual causes. — § 1. After joinder of issue a procurator can appoint another procurator, but not before, unless he was appointed concerning his own affair or received a mandate from his principal to substitute another, even without a definite person being named. — § 2. A procurator appointed for business can freely appoint another procurator at any time. This is what it says.

Boniface VIII. A judge is not judged to have acted indiscreetly by admitting a lay procurator to bring or defend spiritual causes, since, as a rule, one who is not expressly prohibited from exercising the office of procurator ought to be reputed suitable.

§ 1. Although after joinder of issue another procurator can be appointed by a procurator, since he has been made master of the litigation, nevertheless he cannot do so beforehand unless he was appointed concerning his own affair, or the power to substitute another—even without a definite person being expressed—was granted to him by the principal.

§ 2. A procurator appointed for business, however, can freely depute another at any time.

DE PROCURATORIBUS.

Laicus potest esse procurator ad agendum et defendendum in causis spiritualibus. — §. 1. Procurator post litem contestatam potest dare alium Procuratorem, ante non, nisi datus fuerit in rem suam, vel a domino habuerit mandatum de substituendo etiam non certam personam. — §. 2. Procurator ad negotia potest dare alium procuratorem libere et etiam quandocunque. H. d.

Bonifacius VIII.

Non indiscrete iudex censetur egisse, procuratorem laicum ad agendum vel defendendum in causis spiritualibus admittendo, quum regulariter, qui non prohibetur expresse ad exercendum procurationis officium, idoneus debeat reputari. §. i. Licet autem a procuratore post litem contestatam ab eo possit, quum dominus sit litis effectus, dari alius procurator: antea tamen non potest, nisi in rem suam sit datus, vel a domino substituendi alium, etiam certa non expressa persona, sibi fuerit concessa potestas. §. 2. Procurator vero datus ad negotia potest libere quandocunque alium deputare.

Chapter II

Before joinder of issue a procurator can be revoked even without cause, but after joinder of issue not without reasonable cause; nevertheless, the principal can properly be present in the cause with the procurator, especially if he fears collusion.

The same. Although a procurator can be freely revoked by the principal before joinder of issue, even without cause, afterward he cannot be revoked against his will unless it happens that he becomes hostile to the principal, becomes suspect, is joined by affinity to the adversary, becomes his heir, enters religion, travels on a long pilgrimage, is detained by illness or bonds, or another reasonable cause exists on account of which he is deservedly to be revoked. But although he cannot be revoked except as set forth above, the principal is by no means prohibited from being present in his cause together with that procurator, especially if he fears collusion.

> Procurator ante litem contestatam etiam sine causa revocari potest, post litem contestatam non sine rationabili causa; dominus tamen bene potest adesse causae cum ipso procuratore, maxime si de collusione timeat.
>
> Idem.
>
> Quamvis procurator possit ante litem contestatam etiam sine causa libere a domino revocari: postea tamen ipso nolente nequibit, nisi eum cum* domino inimicum fieri, vel suspectum, aut adversario affinitate coniungi, vel eius heredem fieri*, seu ingredi religionem, aut in longum peregrinari, vel aegritudine aut vinculis detineri contingat, seu alia rationabilis causa subsit, propter quam sit merito revocandus. Verum, quanquam, nisi ut praemittitur, revocari non possit: dominus tamen suae causae una cum eodem procuratore, maxime si de collusione timeat, minime prohibetur adesse.

Chapter III

A procurator having a mandate to substitute cannot revoke the person substituted by him after the mandate has been accepted, even if that person has not exercised it, unless he also had power to revoke. But if he was procurator for several causes and substituted in one, he remains procurator in the others. John Andrew.

The same. One who was substituted as procurator by a procurator having power from the principal concerning this cannot, after accepting the mandate, be revoked thereafter by that procurator, even if he has not exercised it—although it is judged otherwise concerning a delegate of the Apostolic See who commits his functions to another—unless the power to revoke had been granted to that procurator. But if, when he had been appointed generally for several or all causes, he substituted in only one of them, he is by no means prohibited from exercising the office of procurator in the others.

> Procurator, habens mandatum substituendi, substitutum a se post mandatum susceptum, etiamsi eo non sit usus, revocare non potest, nisi et potestatem habuit revocandi. Si autem erat procurator ad plures causas, et in altera substituit: in aliis remanet procurator. Ioann. Andr.
>
> Idem.
>
> Is, qui a procuratore, super hoc a domino potestatem habente, procurator exstitit substitutus, non potest post mandatum susceptum, etiamsi eo usus non fuerit, (licet in delegato sedis apostolicae vices suas alteri committente aliud censeatur,) ulterius revocari ab illo, nisi revocandi potestas concessa fuisset eidem. Verum si, quum ad plures vel ad omnes causas generaliter constitutus fuisset, in una tantum substituerit earundem: in aliis nequaquam prohibetur procurationis officium exercere.

Chapter IV

A general procurator does not perform acts requiring a special mandate unless there is either a specification of some of them or free power. This is what it says. Zenz.

The same. One who is appointed procurator for bringing and defending actions, and generally for all things, even if they require a special mandate, ought not by force of such generality to be admitted to an article in which a special mandate is required. But if some one or more of the articles requiring a special mandate had been specified and a general clause added, then he will also be admitted to those not expressed. Nor can a procurator, without a special mandate, tender an oath, transact, or make a pact, unless free administration of the goods or cause has been granted to him.

> Procurator generalis non agit exigentia speciale mandatum, nisi cum aliqua illorum specificatione vel libera potestate. H. d. Zenz.
>
> Idem.
>
> Qui ad agendum et defendendum, ac generaliter ad omnia, etiamsi mandatum exigant speciale, constituitur procurator, ex vi generali tatis huiusmodi ad aliquem articulum, in quo speciale mandatum exigitur, admitti non debet. Sed si aliquis vel aliqui de articulis speciale mandatum exigentibus specificati fuissent adiecta clausula generali: tunc ad non expressos etiam admittetur. Procurator quoque absque speciali mandato iuramentum deferre, transigere vel pacisci non potest, nisi ei bonorum vel causae administratio libere* sit concessa.

Chapter V

A general mandate for business extends also to judicial proceedings. — § 1. A son under paternal power can be a procurator even without his father's consent. Zenz. — § 2. One older than twenty-five years can be deputed procurator for judicial proceedings, and one older than seventeen for business. This is what it says. Zenz.

The same. One who is generally appointed procurator for business can bring actions and litigate, except in those cases requiring a special mandate.

§ 1. A son under paternal power can become procurator not only for business but also for judicial proceedings without his father's assent.

§ 2. Although someone can lawfully be deputed procurator for business after his seventeenth year, he cannot be deputed for judicial proceedings unless he is older than twenty-five years.

> Mandatum generale ad negotia etiam ad iudicia se extendit. — §. 1. Potest filius familias esse procurator etiam absque patris consensu. Zenz. — §. 2. Maior annis XXV. ad iudicia, maior XVII. ad negotia deputari potest procurator. H. d. Zenz.
>
> Idem.
>
> Qui generaliter constituitur ad negotia procurator, agere ac experiri potest, exceptis his casibus, qui mandatum exigunt speciale. §. 1. Nedum vero ad negotia, sed etiam ad iudicia potest filiusfamilias absque patris assensu fieri procurator. §. 2. Licet autem quis post XVII. annum procurator ad negotia licite deputetur: ad iudicia tamen, nisi maior XXV. annis fuerit, deputari nequibit.

Chapter VI

Of two procurators appointed together without qualification, one alone ought not to be admitted. But if they were appointed severally with full power, the one who first joins issue is admitted and the other wholly excluded, unless it was added that the condition of the one first taking up the matter is not to be better. In that case, if one does not prosecute and does not substitute another, the remaining procurator is to be admitted. This is what it says. — § 1. A procurator appointed severally with full power who had taken up the business and is excluded through an impediment does not reassume it unless the other is impeded. This is what it says. Dominicus. — § 2. In spiritual

causes, of two procurators appointed together without qualification, the judge chooses the more suitable, who alone will be able to prosecute; nor is the other admitted even if the first is legitimately excluded. This is what it says. Dominicus.

The same. If two procurators are deputed together without adding "severally with full power," one ought not to be admitted without the other. It is otherwise if they were appointed severally with full power; but then the condition of the one who first takes up the business through joinder of issue will be better. After such taking up, the other cannot thereafter intermeddle, since the former has been made master of the litigation, unless it was stated in the appointment that the condition of the one taking up the matter would not be better. For then, if it happens that the one who took it up becomes ill, dies, is absent, or is otherwise impeded, or perhaps is unwilling to prosecute, the other can undertake and complete the business begun by him, provided that the first did not substitute another. For if he did, that person ought to be preferred to the other procurator.

§ 1. Furthermore, where, no one having been substituted, the other undertakes to prosecute the business, the person who first took it up cannot later reassume it when the impediment ceases, unless perhaps it happens that the other is impeded.

§ 2. Indeed, in causes concerning elections, postulations, provisions, and other spiritual business, since such matters are known to require swifter expedition, we will that the following be specially observed: if several procurators were deputed together in them, not severally with full power, the judge, lest it happen that the business becomes entangled through their concurrence, may choose the more suitable from among them, and he alone is to prosecute. Whatever is done with the person thus chosen is to have full strength of force; nor is another afterward to be admitted to prosecute except in the manner in which we judged above that the person who did not take up the business is to be admitted after it was taken up by another.

> Ex duobus procuratoribus, simul simpliciter constitutis, alter solus admitti non debet. Si vero in solidum: qui primo contestatur litem, admittitur altero totaliter excluso, nisi adiectum fuerit, quod non sit melior conditio occupantis. Quo casu, altero non prosequente, nec alium substituente, reliquus admittatur. H. d. — §. 1. Procurator datus in solidum, qui occupaverat negotium ex impedimento exclusus, non reassumit, nisi altero impedito. H. d. Dominicus. — §. 2. In causis spiritualibus ex duobus procuratoribus, simul simpliciter datis, iudex eligit magis idoneum, qui solus prosequi poterit, nec alius admittitur, etsi primo legitime excluso. H. d.
>
> Dominicus.
>
> Idem.
>
> Si duo procuratores simul, non adiecto: „in solidum," deputentur: unus sine altero non debebit admitti. Secus, si sint in solidum constituti; sed tunc illius melior erit conditio, qui per litis contestationem negotium primitus occupabit. Post occupationem autem huiusmodi alter se intromittere nequibit ulterius, quum ille litis dominus sit effectus; nisi dictum in constitutione fuisset, quod non fieret melior conditio occupantis. Tunc enim, si eum, qui occupavit, infirmari, mori, absentari vel alias impediri contingat, aut si prosequi forte nolit, poterit alter suscipere ac perficere negotium ab alio inchoatum, dum tamen ab alio* non fuerit alius substitutus. Nam si sit, is praeferri debebit eidem. §. 1. Ceterum ubi nullo substituto alter suscipit negotium prosequendum: is, qui occupavit primitus, ipsum resumere postea impedimento cessante nequibit, nisi forsan illum contingeret impediri. §. 2. Sane, in electionum, postulationum, provisionum et aliorum spiritualium negotiorum causis, quum talia celeriorem expeditonem exigere dignoscantur, volumus specialiter observari, ut, si plures procuratores simul in eis

fuerint non in solidum deputati, iudex, ne propter eorum concursum negotia eadem intricari contingat, idoneiorem ex ipsis eligere valeat, et ille solummodo prosequatur, habeatque, quicquid cum illo sic electo factum exstiterit, plenam roboris firmitatem; nec ad prosequendum alius admittatur postmodum, nisi prout eum, qui non occupat negotium, censuimus post occupationem, factam ab alio, superius admittendum.

Chapter VII

A procurator who refuses to accept a mandate can change his mind for as long as the person appointing him perseveres in the same will.

The same. Although one who is appointed procurator by an absent person has said that he does not wish to undertake the mandate presented to him, nevertheless, notwithstanding this, he can accept it whenever he pleases for as long as the person appointing him perseveres in the same will.

Procurator, qui renuit acceptare mandatum, poenitere potest, quamdiu constituens in eadem perseveraverit voluntate.

Idem.

Licet is, qui procurator constituitur ab absente, dixerit, praesentatum sibi suscipere nolle mandatum: hoc tamen nequaquam obstante, quamdiu constituens in eadem perstiterit voluntate, ipsum acceptare poterit, quandocunque placebit.

Chapter VIII

A principal appointing a procurator whenever it happens that he is absent is not understood to revoke the procurator by conducting the cause himself; it is otherwise if he appointed him without qualification, unless he expressly protests that he does not intend to revoke him or this otherwise appears from probable conjectures. John Andrew.

The same. If you appoint someone procurator for a cause under the form, "whenever it happens that you are absent," you are not known to revoke that procurator merely because you afterward conduct the cause yourself; rather, the same procurator will assume the office of procurator whenever it happens that you are absent.

It is otherwise if he was appointed by you without qualification. For then, whether before or after joinder of issue, if you come to the cause not to assist that procurator but to conduct the same cause, by conducting it you are judged to revoke him, unless you expressly say that you will him to remain in the office of procurator notwithstanding this, or unless it appears from some conjectures that you do this without an intention to revoke him—for example, if perhaps some article is impending concerning which you know the truth better, if the procurator himself is ill or perhaps absents himself, or if anything else happens on account of which your presence is opportune for the cause.

Dominus, dans procuratorem, quoties contingit eum abesse, causam tractando procuratorem non intelligitur revocare; secus, si simpliciter, nisi expresse protestatur, quod ipsum revocare non intendit, vel alias hoc appareat ex probabilibus coniecturis. Ioann. Andr.

Idem.

Si quem sub ea forma: „quoties te abesse contigerit,'" constitueris procuratorem ad causam: non ideo, licet tractes eam postmodum per te ipsum, procuratorem ipsum dignosceris revocare, quin immo procurator idem procuratoris assumet officium, quandocunque te contigerit absentare.

Secus, si simpliciter a te fuerit constitutus. Tunc enim, sive ante litem contestatam sive post ad causam ipsam venias, non ut ipsi procuratori assistas, sed ut causam tractes eandem, tractando ipsam eum revocare censeris; nisi dicas expresse, quod ipsum vis in officio procurationis hoc non obstante manere, vel nisi, quod non animo revocandi hoc facias, ex aliquibus appareat coniecturis, ut, si forsan aliquis immineat articulus, in quo tu melius nosti veritatem, aut si sit procurator ipse infirmus, vel forsitan se absentet, seu quicquid aliud accidat, propter quod ipsi causae tua sit praesentia opportuna.

Chapter IX

It says three things. First, that a procurator for contracting marriage ought to have a special mandate. Second, that such a procurator does not substitute another unless he has a mandate for this. Third, that if such a procurator, after being revoked, contracts marriage even in ignorance of the revocation, the marriage does not hold. John Andrew.

The same. A procurator is not judged suitable to contract marriage unless he has a special mandate for this. And although in other cases one appointed procurator for business can appoint another, nevertheless, in this case, because of the great danger that could threaten from so weighty an act, he cannot depute another unless this was specially committed to him. Indeed, if the procurator was revoked by the principal before he contracted, the marriage afterward contracted through him is of no moment, although both he and the woman with whom he contracted were wholly ignorant of a revocation of this kind, since the consent of the principal was lacking, without which the marriage could not have firmness.

Tria dicit, primo, quod procurator ad contrahendum matrimonium debet habere speciale mandatum; secundo, quod talis procurator non substituit, nisi ad hoc mandatum habeat; tertio, quod, si talis procurator revocatus etiam ignoranter contrahit, non tenet matrimonium. Ioann. Andr.

Idem.

Procurator non aliter censetur idoneus ad matrimonium contrahendum, quam si ad hoc mandatum habuerit speciale. Et quamvis alias is, qui constituitur ad negotia procurator, alium dare possit: in hoc tamen casu, propter magnum quod ex facto tam arduo posset periculum imminere, non poterit deputare alium, nisi hoc eidem specialiter sit commissum. Sane si procurator, antequam contraxerit, a domino fuerit revocatus, contractum postmodum matrimonium ab eodem, licet tam ipse quam ea, cum qua contraxerit*, revocationem huiusmodi penitus ignorarent, nullius momenti exsistit, quum illius consensus defecerit, sine quo firmitatem habere nequivit.

Title XX: On Things Done by Force or Because of Fear

Chapter I

An absolution from or revocation of excommunication, suspension, or interdict extorted through force does not hold, and the person extorting it is excommunicated by the law itself. John Andrew.

Gregory X at the General Council of Lyons. By authority of the present constitution we wholly deprive of force the benefit of absolution from a sentence of excommunication, or any revocation of it, or of suspension or even interdict, extorted through force or fear. Moreover, lest the audacity of violence increase without punishment, we decree that those who extort an absolution or revocation of this kind by force or fear are subject to the sentence of excommunication.

DE IIS, QUAE VI METUSVE CAUSA FIUNT.

Excommunicationis, suspensionis vel interdicti absolutio vel revocatio per vim extorta non tenet, et extorquens excommunicatus est ipso iure.

Ioann. Andr.

Gregorius X. in concilio generali Lugdunensi.

Absolutionis beneficium ab excommunicationis sententia, vel quamcunque revocationem ipsius, aut suspensionis, seu etiam interdicti, per vim vel metum extorta, praesentis constitutionis auctoritate omnino viribus vacuamus. Ne autem sine vindicta violentiae crescat audacia, eos, qui absolutionem seu revocationem huiusmodi vi vel metu extorserint, excommunicationis sententiae decernimus subiacere.

Title XXI: On Restitution in Integrum

Chapter I

After four years a church is not admitted to seek restitution against a sentence or contract unless some reasonable cause counsels it. John Andrew.

Gregory IX. A church that petitions to be admitted by the benefit of restitution in integrum to retract a sentence or contract is not to be admitted to a benefit of this kind if the space of four years has afterward elapsed and it negligently omitted to act, unless it is manifestly proved that a contrivance of prevarication or fraud intervened concerning this, or another reasonable cause exists that ought to move the superior to grant the same benefit.

DE RESTITUTIONE IN INTEGRUM.

Ecclesia post quadriennium non admittitur ad petendum restitutionem contra sententiam vel contractum, nisi rationabilis aliqua causa hoc suadeat. Ioann. Andr.

Gregorius IX.

Ecclesia, quae ad retractandam sententiam vel contractum per beneficium restitutionis in integrum postulat se admitti, si quadriennii spatium post sit lapsum*, et negligenter omiserit, non est ad beneficium huiusmodi admittenda, nisi praevaricationis vel fraudis manifeste probetur super hoc intervenisse commentum, aut alia rationabilis causa subsit, quae superiorem movere debeat ad idem beneficium concedendum.

Chapter II

A church is admitted within four years, through the benefit of restitution in integrum, against a confession by which it was harmed; afterward it is not, except by the way of the common law. John Andrew.

Boniface VIII. If a church harmed by a confession made by it in a judicial proceeding negligently omits to seek the benefit of restitution in integrum within four years, counted from the time of that confession, it is not thereafter to be admitted to seek this unless something reasonable appears that counsels that it be done otherwise. But where a church wishes to aid itself against its confession by the common way of revoking an error that it alleges in fact, it can do this at any time until the business has been concluded.

Ecclesia contra confessionem, qua laesa fuit, admittitur infra quadriennium per beneficium restitutionis in integrum, postea non, nisi per viam iuris communis. Ioann. Andr.

Bonifacius VIII.

Si adversus confessionem in iudicio a se factam laesa ecclesia beneficium restitutionis in integrum infra quadriennium, ab ipsius confessionis tempore computandum, petere negligenteromittat: non est, nisi aliquid rationabile appareat, quod aliud suaserit faciendum, ad hoc petendum ulterius admittenda. Ubi vero per viam communem revocationis erroris, quem in facto praetendit, vult adversus suam confessionem ecclesia se iuvare: hoc quandocunque poterit, donec negotium sit finitum.

Title XXII: On Arbiters

Chapter I

If two of three arbiters agree on an amount, their decision holds; if all disagree, the decision concerning the smaller amount holds.

Boniface VIII. If two of three arbiters condemn you in ten and the third in five, the decision of the two ought to prevail. But when one pronounces for fifteen, another for ten, and the third for five, the decision of the one who stated the smaller amount is judged effective, since they all agree upon that amount.

DE ARBITRIS.

Si ex tribus arbitris duo concordant in summa, tenet illorum sententia; si omnes discordant, tenet sententia de summa minori.

Bonifacius VIII.

Si ex tribus arbitris te duo in X., et tertius in V. condemnent, debet sententia praevalere duorum; licet, quum unus in XV., alius in X., tertius vero in V. pronunciant, illius, qui dixit de summa minori, (quum in illa omnes concordes exsistant,) sententia efficax censeatur.

Chapter II

If one of three arbiters is unwilling to take part in examining or deciding the business, the two will be able to proceed as if he were present. Concerning judges, however, the ancient laws are to be observed. John Andrew.

The same. So that questions that frequently remain undecided because of an arbiter's voluntary or malicious absence may be ended more swiftly, we decree that if one of three arbiters chosen by the parties, after being lawfully required by the others, does not take care, no lawful impediment existing, to assemble with them to examine or decide the business concerning which a compromise was made in their favor, the two present—among whom we decree the entire power to remain in that case, although civil law appears to indicate otherwise—can, notwithstanding his malicious or voluntary absence, examine the said business and freely decide it, just as they could if he were present and unwilling to agree with them in one decision. Thus his absence, supplied by the divine presence, is to cause him to be reputed present. Concerning judges, however, we will that the ancient laws not be altered.

Si ex tribus arbitris unus nolit examinando vel diffiniendo negotio interesse: duo procedere poterunt, ac si ille praesens esset. Circa iudices autem antiqua iura serventur. Ioann. Andr.

Idem.

Ut quaestionibus, quae plerumque propter arbitrorum voluntariam seu malitiosam absentiam remanent indecisae, finis celerius imponatur, statuimus, ut, si ex* tribus arbitris a partibus electis eorum aliquis, ab aliis legitime requisitus, ad examinandum vel diffiniendum una cum eis negotium, super quo in ipsos

exstitit compromissum, non curaverit, cessante impedimento legitimo, convenire, duo praesentes, penes quos, licet lex civilis aliud innuere videatur, totalem eo casu remanere decernimus potestatem, possint,malitiosa seu voluntaria illius absentia non obstante, dictum examinare negotium et libere diffinire, sicut possent illo praesente, nec volente cum eis in unam sententiam concordare; ut sic ipsius absentia, praesentia repleta divina, eum reputari faciat pro praesente. Circa iudices vero antiqua iura nolumus immutari.

Book II

Title I: On Judicial Proceedings

Chapter I

A delegated judge who does not have a special mandate for this from the Pope cannot compel a party to appear personally before him except for a reasonable cause. John Andrew.

Innocent IV at the General Council of Lyons. It does not appear doubtful in law that a delegated judge who has not received a special mandate for this from the Apostolic See cannot order either party to appear personally before him in a judicial proceeding, unless the cause is criminal, or unless the necessity of stating the truth, taking the oath of calumny, or otherwise of law requires the parties to be presented personally before him.

> **DE IUDICIIS.**
>
> Iudex delegatus, non habens ad hoc speciale mandatum a Papa, non potest compellere partem, ut personaliter coram eo compareat, nisi ex rationabili causa. Ioann. Andr.
>
> Innocentius IV. in generali * concilio Lugdunensi .
>
> Iuris esse ambiguum non videtur, iudicem delegatum, qui a sede apostolica mandatum ad hoc non receperit speciale, iubere non posse alterutram partium coram se personaliter in iudicio comparere, nisi causa fuerit criminalis, vel nisi pro veritate dicenda, vel pro iuramento calumniae faciendo, vel alias iuris necessitas partes coram eo exegerit personaliter praesentari.

Chapter II

Women are not unwillingly to be drawn personally to a judicial proceeding for any cause not expressed in law; but if their testimony is necessary in a cause, the judge, at the expense of the producing party, will sometimes go and sometimes send another. A judge who goes fraudulently is excommunicated. Religious women, even if willing, cannot be drawn personally outside their monastery to a judicial proceeding for any cause. What is done contrary to the foregoing is void. John Andrew.

Boniface VIII. We prohibit women, whom it is not fitting to wander about or mingle in assemblies of men, from being personally summoned or drawn unwillingly to a judicial proceeding by authority of letters of the Apostolic See or of its legates, or by any other authority, for the purpose of bearing testimony or for any other cause not expressed in law. But when their testimony is necessary, the judge, at the expense of the party producing them, is to send a notary or another suitable person to them. Or, if perhaps such a case arises in which the reception of witnesses cannot, by prohibition of law, be committed to another, the judge is then to go to them personally for this purpose; or if the condition of the person judging is such that it is not fitting or possible for him to do this, he is to send to them. Provision is to be made that such a case—namely, one in which the judge is to go personally—is not feigned and that no fraud intervenes in this regard. Otherwise, a person contriving or committing such fraud incurs by that very fact the sentence of excommunication.

§ 1. Furthermore, religious women, especially those who ought to remain under enclosure, are not to be summoned or drawn personally outside their monastery or enclosure to a judicial proceeding for

any cause, even if their will acceded to this. We also decree that anything it happens is attempted contrary to the foregoing provisions is void and empty by the law itself.

> Mulieres personaliter ad iudicium quacunque causa, in iure non expressa, invitae trahendae non sunt; sed si necessarium sit ipsarum testimonium in causa, iudex expensis producentis interdum ibit, interdum mittet; et iudex fraudulenter vadens excommunicatus est. Mulieres religiosae, etiam volentes, extra monasterium suum ex aliqua causa personaliter ad iudicium trahi non possunt. Quod contra praedicta fit, est irritum. Ioann. Andr.
>
> Bonifacius VIII.
>
> Mulieres, quas vagari non convenit, nec virorum coetibus immisceri, auctoritate literarum sedis apostolicae, vel legatorum ipsius, aut alia quacunque ad iudicium personaliter evocari vel trahi invitas causa ferendi testimonium, aut alia qualibet, quae in iure non exprimitur, prohibemus. Sed quum necessarium fuerit testimonium earundem, iudex, in expensis partis producentis easdem, tabellionem aut aliam personam idoneam ad eas transmittat, vel, si forte talis casus occurrerit , quo iure prohibente receptio testium alteri committi non possit, iudex * tunc * propter hoc personaliter ad illas accedat , aut, si talis sit personae iudicantis conditio, quod id * per ipsum non deceat fieri vel non possit , mittat ad eas, proviso, quod casus huiusmodi, (videlicet ut iudex vadat personaliter,) non fingatur, nec fraus interveniat in hac parte. Alioquin fictor huiusmodi vel fraudator ipso facto sententiam excommunicationis incurrat. §. i. Ceterum feminae religiosae, praesertim quae debent sub clausura morari, extra suum monasterium vel clausuram non vocentur ad iudicium vels trahantur ex quavis causa personaliter, etiamsi ad hoc voluntas accederet earundem. Decernimus quoque, ut ipso iure sit irritum et inane, si quid contra praemissa contigerit attentari.

Chapter III

One older than fourteen years can bring and defend a spiritual cause personally and through a procurator; one younger than fourteen does not act personally, but through a procurator or through a curator appointed by authority of the ordinary ecclesiastical judge, and also of a judge delegated for those causes. A son under paternal power brings a spiritual cause without his father's assent. This is what it says. John Andrew.

The same. If you have completed the fourteenth year of your age, in beneficial and other spiritual causes and in causes dependent upon them you ought to be admitted to bring and defend an action through yourself or through a procurator whom you determine to appoint for this, just as though you were older than twenty-five years. But if you are under the fourteenth year, you will not be able personally to bring or defend an action concerning those matters; rather, either a curator will be given to you by your bishop or his official for conducting litigation of this kind, or you yourself, if you are older than an infant, can with the authority of one of them depute a procurator for it. A delegate of the Apostolic See and a person subdelegated by him can also give you a curator if you do not have one, or furnish authority for appointing a procurator, solely for those causes or litigations that are to be conducted before them. In litigation or causes of this kind, although you are under your father's power and otherwise cannot as a rule be in a judicial proceeding without his assent, his assent ought by no means to be required, since he has no right to intermeddle in these matters.

> Maior XIV. annis per se et per procuratorem potest agere, et defendere causam spiritualem; minor XIV. per se non agit, sed per procuratorem vel per curatorem, datum auctoritate ordinarii ecclesiastici iudicis, et etiam delegati ad causas illas. Filiusfamilias sine patris assensu agit causam spiritualem. H. d. Ioann. Andr.

Idem.

Si annum quartum decimum tuae peregisti aetatis, in beneficialibus et aliis causis spiritualibus, nec non et dependentibus ab eisdem, ac si maior XXV. annis exsisteres, ad agendum et defendendum per te vel per procuratorem, quem ad hoc constituendum decreveris, admitti debebis. Si vero infra XIV. annum exsistas, per te agere aut defendere non poteris super ipsis; sed vel per tuum episcopum vel per officialem eiusdem tibi curator dabitur ad lites huiusmodi exercendas, aut tu ipse, si maior infante fueris, cum auctoritate alterius eorundem procuratorem ad eas poteris deputare. Delegatus etiam apostolicae sedis et subdelegatus ab eo tibi, si non habeas, curatorem dare valeant, vel auctoritatem constituendi procuratorem praestare, ad illas causas vel lites duntaxat, quae coram ipsis fuerint ventilandae . In huiusmodi quoque litibus sive causis, quanquam in potestate patris exsistas, nec alias absque ipsius assensu in iudicio regulariter esse possis, eius, quum de his se intromittere non habeat, nequaquam requiri debebit assensus.

Title II: On the Competent Forum

Chapter I

An archbishop, if the matter of appeal is omitted, or by way of complaint, does not take cognizance of a cause concerning subjects, even with the consent of the suffragans. This is what it says as far as § "Nor." — § 1. An archbishop cannot compel a suffragan's subjects to undertake causes delegated by him, execute his sentences and commands, or bear testimony in causes devolved upon him, unless custom disposes otherwise. This is what it says. Dominicus. — § 2. Unless custom disposes otherwise, an archbishop is not a competent judge against the officials or prelates of his suffragans, or against their subjects, concerning the fees of advocates and procurators in causes of the archbishop's forum. This is what it says. — § 3. An archbishop will not compel unwilling persons of other dioceses who contract in his own diocese to answer before him unless they are found there. But if, after being cited, they refuse to appear, or maliciously conceal themselves lest they be cited, he can make a placing in possession of their goods in his own diocese, or decree that one be made in another through its ordinaries. This is what it says. — § 4. An archbishop cannot send his clerics into the diocese of a suffragan so that contracts may be made before them or contracts already made approved. Nor, if they were made or approved before them, can they compel the suffragans' subjects to litigate before themselves concerning them, or excommunicate the officials or subjects of suffragans if they refuse to litigate before him. This is what it says to the end, according to Dominicus.

Innocent IV. The Roman Church—(And below:) Neither when the matter of appeal has been passed over, nor otherwise when no appeal has been made, are the Archbishop of Reims or his official to take cognizance of causes of clerics as judges without the will of those clerics' diocesans, even if the same clerics consent to them in fact.

§ 1. Nor are they to compel the subjects of the suffragans of the Church of Reims to undertake their delegation, execute their sentences and commands, or bear testimony in causes devolved upon them by appeal, unless by custom they obtain something else in these three matters.

§ 2. Nor, unless a contrary custom grants them something else, are they to compel the officials of those suffragans, or archdeacons, archpriests, and other inferior prelates subject to the same suffragans, or the subjects of those suffragans, to answer complainants in their presence concerning the fees of advocates and procurators in causes conducted in the curia of Reims.

§ 3. They ought not unwillingly to draw before themselves persons of other dioceses who contract concerning contracts entered into by them in the diocese of Reims unless those persons are found there. Nevertheless, if persons cited by their authority disdain to appear, they can make a placing in possession against them of the goods that they have there, even when they make themselves available elsewhere. Or if perhaps they maliciously conceal themselves lest citation reach them, they can decree that a placing in possession be made of goods that they are known to hold even in another diocese; but then the diocesan of the place will make such a placing upon their denunciation.

§ 4. Nor are they to send their clerics into the dioceses of their suffragans for contracts to be entered into or acknowledged before them, nor compel the subjects of those suffragans to stand to law before them on such an occasion. Nor can the archbishop himself exercise ecclesiastical censure against the officials and subjects of his suffragans because, although summoned by him, they refuse to answer complainants in his presence.

DE FORO COMPETENTI.

Archiepiscopus, omisso appellationis articulo, vel per viam querelae, de causa subditorum, suffraganeis etiam ipsis consentientibus, non cognoscit. H. d. usque ad §. Neque. — §. 1. Archiepiscopus subditos suffraganei non potest compellere causas, delegatas ab eo, suscipere, suas sententias et praecepta exsequi, vel testimonia in causis ad eos devolutis ferre nisi consuetudo aliud disponat. H. d. Dominicus. — §. 2. Archiepiscopus contra officiales vel praelatos suffraganeorum, consuetudine aliud non disponente, et contra subditos ipsorum, pro salariis advocatorum et procuratorum causarum fori archiepiscopi, iudex competens non est. H. d. — §. 3. Archiepiscopus non compellet invitos contrahentes aliarum dioecesum in sua propria coram se respondere, nisi ibi inveniantur. Sed si citati nolunt comparere, vel malitiose se occultant, ne citentur: in bonis ipsorum suae dioecesis potest missionem facere, vel in alia decernere per ordinarios faciendam. H. d. — §. 4. Non potest archiepiscopus suos clericos mittere in dioecesim suffraganei, ut coram eis fiant contractus, vel iam facti approbentur. Nec, si facti vel approbati fuerint coram illis, possunt suffraganeorum subditos coram se compellere litigare super illis, nec excommunicare suffraganeorum officiales vel subditos, si nolunt litigare coram ipso. H. d. ad finem, secundum Dominicum.

Innocentius IV.

Romana ecclesia (Et infra:) Nec appellationis articulo praetermisso, nec alias etiam, quum minime appellatum exstiterit , Remensis archiepiscopus vel eius officialis de causis clericorum tanquam iudices, licet in ipsos iidem clerici de facto consentiant, absque dioecesanorum suorum voluntate cognoscant. §. i. Neque suffraganeorum Remensis ecclesiae subditos ipsorum delegationem suscipere, vel sententias et praecepta exsequi, aut in causis, per appellationem devolutis ad eos, testimonium, nisi aliud in his tribus de consuetudine obtineant , perhibere compellant. §. 2. Nec etiam suffraganeorum ipsorum officiales, aut archi-diaconos, archipresbyteros et alios inferiores praelatos, suffraganeis eisdem subiectos, dummodo aliud eis contraria consuetudo non tribuat, nec subditos suffraganeorum ipsorum super salariis advocatorum et procuratorum in causis, quae in Remensi ventilantur curia, cogant querelanti-bus in sua praesentia respondere. §. 3. Contrahentes vero aliarum dioecesum super contractibus, initis in Remensi dioecesi ab eisdem, nisi inveniantur ibidem, trahere coram se non debent invitos, licet in possessionem bonorum, quae ibi habent, etiam quum alibi copiam sui faciant *, si eorum auctoritate citati comparere contemnant, possint missionem facere contra eos, vel, si forte malitiose se ipsos occultent, ne citatio perveniat ad eosdem, decernere faciendam in possessionem bonorum, quae in alia etiam dioecesi obtinere noscuntur; sed tunc loci dioecesanus ad denunciationem ipsorum faciet huiusmodi missionem. §. 4. Nec clericos suos mittant ad suffraganeorum ipsorum *

dioeceses pro ineundis vel recognoscendis contractibus coram ipsis, nec eorundem suffraganeorum subditos compellant coram se occasione huiusmodi iuri stare. Neque potest archiepiscopus ipse in suorum suffraganeorum officiales et subditos pro eo, quod vocati ab ipso nolunt querelantibus in sua praesentia respondere, ecclesiasticam exercere censuram.

Chapter II

A secular judge who wishes to compel a cleric to pay debts, even liquidated debts, is to be compelled by the ecclesiastical judge to desist. John Andrew.

Boniface VIII. We decree that secular judges who, although no jurisdiction belongs to them in this regard, with damnable presumption compel ecclesiastical persons to pay debts concerning which letters are exhibited or other proofs introduced against them before those judges, are to be restrained from temerity of this kind by ecclesiastical censure through the ordinaries of the places.

Iudex saecularis, qui vult clericum compellere ad debita etiam liquida solvenda, per ecclesiasticum iudicem desistere compellatur. Ioann. Andr.

Bonifacius VIII .

Saeculares iudices, qui, licet ipsis nulla competat iurisdictio in hac parte, personas ecclesiasticas ad solvendum debita, super quibus coram eis contra ipsas earum exhibentur literae vel probationes aliae inducuntur, damnabili praesumptione compellunt, a temeritate huiusmodi per locorum ordinarios censura ecclesiastica decernimus compescendos.

Chapter III

By reason of an oath, a layman is sued before an ecclesiastical judge so that he may observe it.

The same. Since C., a layman, for whom you paid a definite amount of money in which you had bound yourself for him in the name of surety, refuses to preserve you harmless, rashly acting contrary to the oath given by him, you can by law sue him before the ecclesiastical judge, to whose forum cognizance of a cause of this kind is known to pertain by reason of the oath, so that, after admonition has first been given, the judge may compel him through ecclesiastical censure, reason going before, to preserve you harmless concerning the foregoing matters as he is bound to do.

Ratione iuramenti laicus, ut illud servet, coram iudice ecclesiastico convenitur.

Idem .

Quum C. laicus, pro quo solvisti certam pecuniae quantitatem, in qua pro eo te fideiussorie nomine obligaveras, te servare recuset indemnem, contra iuramentum a se praestitum temere veniendo: ipsum coram ecclesiastico iudice, ad cuius forum ratione iuramenti causae huiusmodi cognitio noscitur pertinere, de iure poteris convenire, ut ipsum monitione praemissa per censuram ecclesiasticam, quod te super praedictis, ut tenetur, servet indemnem, praevia ratione compellat.

Title III: On Joinder of Issue

Chapter I

A peremptory exception does not prevent joinder of issue unless it concerns a matter once concluded. John Andrew.

Innocent IV at the Council of Lyons. The objection, before joinder of issue, of a peremptory exception or any principal defense touching cognizance of the business is not to impede or delay

joinder of issue, unless the litigant pleads that the matter has been adjudged, settled, or concluded, even if the objector says that the rescript would not have been obtained if the things opposed to the petitioner had been explained to the delegator.

> **DE LITIS CONTESTATIONE.**
>
> Peremptoria litis contestationem non impedit, nisi sit de re semel finita.
>
> Ioann. Andr.
>
> Innocentius IV. in concilio Lugdunensi .
>
> Exceptionis peremptoriae seu defensionis cuiuslibet principalis cognitionem negotii contingentis ante litem contestatam obiectus, nisi de re iudicata, transacta seu finita excipiat litigator, litis contestationem non impediat, nec retardet, licet dicat obiector, quod * rescriptum non fuisset * obtentum, si quae sunt impetranti opposita fuissent exposita deleganti.

Chapter II

Joinder of issue is not made through a peremptory exception. John Andrew.

Boniface VIII. If, after a libel has been offered by the plaintiff, a peremptory exception is proposed on the defendant's behalf, joinder of issue is by no means understood to have been made through this. Rather, notwithstanding that exception, joinder of issue will have to be made unless it is among those exceptions that impede joinder of issue.

> Per exceptionem peremptoriam non fit litis contestatio. Ioann. Andr.
>
> Bonifacius VIII.
>
> Si, oblato ab actore libello, ex parte rei exceptio peremptoria proponatur: nequaquam per hoc litis contestatio intelligitur esse facta; immo, ea non obstante, nisi sit de illis exceptionibus, quae litis contestationem impediunt, fieri oportebit eandem.

Title IV: On the Oath of Calumny

Chapter I

It is not of the substance of the proceeding that the oath of calumny be taken immediately after joinder of issue. John Andrew. — § 1. The proceeding is not annulled although the oath of calumny is tacitly omitted. This is what it says. — § 2. He commands that in spiritual causes an oath be taken concerning both calumny and the truth at the same time. John Andrew.

Boniface VIII. If an oath concerning calumny or stating the truth is not taken at the first beginning of the litigation as it ought to be, it can afterward be taken at any part of the litigation, since that oaths of this kind be furnished at the beginning is not of the substance of the judicial order.

§ 1. Nor, because the oath of calumny has been tacitly omitted throughout the whole cause, is a judicial proceeding otherwise lawfully conducted null or to be annulled.

§ 2. Although in spiritual causes, in which an oath concerning stating the truth ought to be taken, the canons do not enjoin the oath of calumny upon anyone, nevertheless, because we see that calumny is frequently committed in them, we judge it useful that in those causes, as many observe, an oath

ought to be taken at the same time both concerning stating the truth and concerning calumny, so that the way may be closed to calumnies.

> **DE IURAMENTO CALUMNIAE.**
>
> Non est de substantia, quod statim post litem contestatam iuretur de calumnia. Ioann. Andr. — §. 1. Non annullatur processus, licet tacite omittatur calumniae iuramentum. H. d. — §. 2. Praecipit, quod in spiritualibus simul de calumnia et de veritate iuretur. Ioann. Andr.
>
> Bonifacius VIII.
>
> Si de calumnia seu de veritate dicenda in primo litis exordio non iuretur, ut debet: poterit postmodum in qualibet parte litis iurari, quum huiusmodi iuramenta praestari ab initio de substantia ordinis iudiciarii non exsistat. §. i. Propter omissum quoque tacite in tota causa calumniae iuramentum iudicialis processus, alias factus legitime, non est nullus nec etiam annullandus. §. 2. Quamvis in causis spiritualibus, in quibus debet de veritate dicenda iurari, canones non indicant alicui calumniae iuramentum: nos tamen, quia frequenter calumniari videmus in ipsis, utile reputamus, quod simul, sicut plerique observant, tam de veritate dicenda quam de calumnia, ut via praecludatur calumniis, iurari debeat in eisdem.

Chapter II

In an appeal cause an oath ought to be taken concerning calumny and stating the truth. — § 1. A procurator deputed after the oath of calumny will take the oath of calumny. This is what it says. — § 2. Whenever it seems good to him, the judge requires an oath of malice even if an oath concerning calumny or the truth has been taken. John Andrew.

The same. In an appeal cause, although an oath was taken in the principal cause, we command that the oath of calumny be furnished; and we will that the same be observed concerning the oath of stating the truth.

§ 1. We will that procurators who are deputed after the oath of calumny are also bound to undergo an oath of this kind, so that calumny may be avoided by them, even if they have been instructed by their principals concerning what they ought to plead, answer, or do.

§ 2. In all causes, not only before but also after issue has been joined, whether an oath concerning the truth or concerning calumny has been taken in them, the judge can require from the parties an oath of malice whenever he sees that it is expedient.

> In causa appellationis iurari debet de calumnia et veritate dicenda. — §. 1. Procurator, deputatus post iuramentum calumniae, iurabit de calumnia. H. d. — §.2. Iudex, quoties sibi videtur, exigit iuramentum malitiae, etiamsi de calumnia vel veritate iuratum sit. Ioann. Andr.
>
> Idem.
>
> In appellationis causa, quanquam in principali iuratum fuerit, praestari iubemus calumniae iuramentum, et idem in iuramento de veritate dicenda volumus observari. §. 1. Procuratores quoque, qui post iuramentum calumniae deputantur, teneri volumus, ut calumnia vitetur ab ipsis, ad subeundum huiusmodi iuramentum, etiamsi a suis dominis, quid ponere aut respondere seu agere debeant, sint instructi. §. 2. In omnibus autem causis, nedum ante, sed etiam postquam lis fuerit contestata, sive de veritate sive de calumnia sit iuratum in ipsis, potest iudex a partibus exigere iuramentum malitiae, quoties viderit expedire.

Chapter III

A procurator having a special mandate takes the oath of calumny. John Andrew.

The same. The judge who admitted your adversary's procurator, appointed for the cause and having a special mandate concerning this, to furnish the oath of calumny in it is judged to have done you no injury.

> Procurator, habens speciale mandatum, iurat de calumnia. Ioann. Andr.
>
> Idem.
>
> Nullam tibi iudex iniuriam fecisse censetur, qui procuratorem tui adversarii constitutum ad causam, habentem super hoc speciale mandatum, admisit ad praestandum in ea calumniae iuramentum.

Title V: On the Restitution of Those Despoiled

Chapter I

In civil matters an exception of spoliation committed by someone other than the plaintiff is not admitted. In criminal matters it is admitted when committed by a third party, provided it concerns the whole substance or its greater part. The exception ought to be proved within fifteen days; otherwise condemnation in expenses is made. John Andrew. — § 1. One pleading an exception of spoliation committed by a third party ought to seek restitution within a definite time to be established by the judge; otherwise he will be accused notwithstanding the exception. John Andrew. — § 2. An exception of spoliation of private property does not stand in the way of one bringing an action concerning ecclesiastical property, or conversely. John Andrew.

Innocent IV at the Council of Lyons. Frequent and continual complaint resounds around us that an exception of spoliation, sometimes calumniously proposed in judicial proceedings, impedes and disturbs ecclesiastical causes. For while the exception is insisted upon, it happens that appeals are interposed, and thus cognizance of the principal cause is interrupted and frequently extinguished. Therefore, we, who seek voluntary labors so that we may prepare repose for others, desiring an end to be imposed upon litigation and the material of calumny to be cut away, decree that in civil business a judge is not to postpone proceeding in the principal cause because of an objection of spoliation alleged to have been committed by someone other than the plaintiff.

But if in civil matters the defendant asserts that he was despoiled by the plaintiff, or in criminal matters by anyone, he is to prove what he asserts within the space of fifteen days after the day on which it is proposed. Otherwise, after a judicial assessment has first been made, he is to be condemned in the expenses that the plaintiff incurred in the meantime on this account, and otherwise punished if it seems equitable to the judge. In this case, when he is criminally accused, we will that a person be understood to have been despoiled if he affirms that he was violently deprived of his whole substance or its greater part. It is to be believed that the canons speak according to this sound understanding, because we ought neither to contend naked nor to oppose our enemies unarmed. For a despoiled person has the privilege that, already stripped bare, he cannot be stripped again.

§ 1. It is customary to doubt among scholars whether, if one despoiled by a third party pleads spoliation as an exception against his accuser, a time ought to be indulged to him by the judge within which he may implore restitution, lest perhaps he should thus wish to remain so as to elude every

accusation. We judge that this is sufficiently consonant with equity and law. But if within the time indulged he has not sought restitution and does not bring the cause to an end when he could, he can thereafter be accused notwithstanding the exception of spoliation.

§ 2. In addition, we decree that spoliation of private property is by no means to be opposed to one bringing an action concerning ecclesiastical property, or conversely.

> **DE RESTITUTIONE SPOLIATORUM.**
>
> In civilibus non admittitur spoliationis exceptio, facta ab alio quam ab actore. In criminalibus admittitur facta a tertio, dummodo sit de tota substantia vel maiori parte. Exceptio probari debet infra quindecim dies; alias fit condemnatio expensarum. Ioann. Andr. — §. 1. Excipiens de spoliatione facta a tertio, infra certum tempus a iudice statuendum debet restitutionem petere; alias accusabitur exceptione non obstante. Ioann. Andr. — §. 2. Agenti super rebus ecclesiasticis non obstat exceptio spoliationis privatarum rerum vel e converso. Ioann. Andr.
>
> Innocentius IV. in concilio Lugdunensi .
>
> Frequens et assidua nos querela circumstrepit, quod spoliationis exceptio, nonnunquam in iudiciis calumniose proposita, causas ecclesiasticas impedit et perturbat . Dum enim exceptioni insistitur, appellationes interponi contingit, et sic intermittitur et plerumque perimitur causae cognitio principalis. Et propterea nos, qui voluntarios labores appetimus, ut quietem aliis praeparemus, finem litibus cupientes imponi et calumniae materiam amputare *, statuimus, ut in civilibus negotiis spoliationis obiectu, quae ab alio quam ab actore facta proponitur, iudex in principali procedere non postponat. Sed si in civilibus ab actore , in criminalibus autem se spoliatum reus asserat a quocunque: infra quindecim dierum spatium post diem, in quo proponitur, quod asserit comprobabit ; alioquin in expensis, quas interim actor ob hoc fecerit, iudiciali taxatione praehabita condemnetur, alias, si iudici aequum visum fuerit, puniendus. Illum autem spoliatum intelligi volumus in hoc casu, quum criminaliter accusatur, qui tota sua substantia vel maiori parte ipsius se per violentiam destitutum affirmat. Et secundum hoc loqui canones sano credendum est intellectu, quia nec nudi contendere, nec inermes inimicis opponere nos debemus. Habet enim spoliatus privilegium, ut non possit exui iam nudatus. §. i. Solet autem inter scholasticos dubitari, si spoliatus s a tertio de spoliatione contra suum accusatorem * excipiat, an ei tempus a iudice debeat indulgeri, infra quod restitutionem imploret, ne forte sic velit exsistere ut omnem accusationem eludat ; quod satis aequitati et iuri consonum aestimamus *. Quodsi infra tempus indultum restitutionem non petierit, et causam, quum potuerit, non ducat ad finem: non obstante spoliationis exceptione deinceps poterit accusari. §. 2. Ad hoc sancimus , ut rerum privatarum spoliatio agenti super ecclesiasticis , vel e contrario, nullatenus opponatur.

Chapter II

A church that seeks restitution of tithes that it says it possessed within another's parish is not heard unless it proves lawful possession. John Andrew.

Boniface VIII. The canons of Saint Nicholas ought by no means to be restored to the tithes that they assert they possessed for some time within the parish of the church of the cleric B., and of which they were despoiled by that cleric, unless they clearly show that they had lawfully obtained possession of them. For they are probably presumed to have occupied them unjustly, since they arise from estates situated within another's parish and it is manifest, unless something else is shown, that by the common law they pertain to the same church.

Ecclesia, quae petit restitutionem decimarum, quas se dicit infra parochiam alterius possedisse, non auditur, nisi probet possessionem legitimam.

Ioann. Andr.

Bonifacius VIII.

Ad decimas, quas canonici sancti Nicolai se asserunt infra parochiam ecclesiae B. clerici possedisse aliquamdiu, et eis per eundem clericum spoliatos fuisse, nequaquam debent restitui, nisi evidenter docuerint, quod earum possessionem legitime assecuti fuissent , quia eas occupasse iniuste verisimiliter praesumuntur, quum proveniant ex praediis infra alienam parochiam constitutis, sitque manifestum, nisi aliud ostendatur, eas de iure communi ad eandem ecclesiam pertinere.

Title VI: On Fraud and Contumacy

Chapter I

A contumacious plaintiff is condemned in expenses, and the defendant is not thereafter cited concerning his petition unless the plaintiff gives security for coming and appearing.

Innocent IV. A plaintiff who did not take care to come at the term to which he had caused his adversary to be cited is lawfully to be condemned in the expenses incurred on this account by the defendant who came. He is by no means to be admitted to another citation unless he has given sufficient security that he ought faithfully to appear at the term.

DE DOLO ET CONTUMACIA.

Actor contumax condemnatur in expensis, nec citatur ulterius ad suam petitionem reus, nisi caveat de veniendo et comparendo.

Innocentius IV .

Actor, qui ad terminum venire, ad quem citari adversarium fecerat, non curavit, venienti reo in expensis propter hoc factis legitime condemnetur, ad citationem aliam minime admittendus, nisi sufficienter caverit, quod in termino fideliter debeat comparere.

Chapter II

A judge is not bound thereafter to cite an appellant who departs, if he wishes to proceed in the cause, unless perhaps the appellant renounces the appeal. John Andrew.

Boniface VIII. You are not bound to cite, for the other things afterward incumbent to be done in the judicial proceeding or even for hearing the sentence, one who, appealing from your interlocutory judgment or from a grievance that he alleges was inflicted upon him by you, departs from your presence, since by that very fact he is seen to protest that he is unwilling thereafter to litigate before you, unless he voluntarily renounces his appeal. Nor, because you proceed in his absence, ought your proceeding for that reason to be reputed any less valid.

Iudex appellantem et recedentem citare ulterius non tenetur, si vult in causa procedere, nisi forsitan appellationi renunciet. Ioann. Andr.

Bonifacius VIII.

Eum, qui a tua interlocutoria vel gravamine , quod per te sibi proponit illatum, a tua praesentia recedit appellans, quum protestari videatur hoc ipso, se nolle coram te de cetero litigare, citare ad alia, quae

postea in iudicio facienda incumbunt, vel etiam ad sententiam audiendam, nisi sponte appellationi suae renunciet, non teneris; nec ideo minus, quod in eius absentia processeris , tuus processus validus reputari debebit.

Title VII: On One Placed in Possession for the Purpose of Preserving the Thing

Chapter I

When an ecclesiastical benefice is at issue, a placing in possession is not made because of the defendant's contumacy; rather, judgment is proceeded to without joinder of issue.

Innocent IV. We decree that one who litigates with a possessor concerning the obtaining of a dignity, personatus, or ecclesiastical benefice is not, because of the opposing party's contumacy, to be placed in possession of them for the purpose of preserving the thing, lest through this a vicious entrance to them be able to lie open. But in this case, the divine presence supplying the presence of the contumacious person, it is lawful, even without joinder of issue, after the business has been diligently examined, to terminate it with its due conclusion.

DE EO, QUI MITTITUR IN POSSESSIONEM CAUSA REI SERVANDAE.

Quando agitur de beneficio ecclesiastico, ob contumaciam rei non fit missio in possessionem, sed ad sententiam lite non contestata proceditur.

Innocentius IV .

Eum, qui super dignitate, personatu vel beneficio ecclesiastico obtinendis cum aliquo litigat possessore, ob partis adversae contumaciam causae rei servandae in ipsorum possessionem statuimus non mittendum, ne per hoc ad ea ingressus patere valeat vitiosus; sed liceat in hoc casu, contumacis absentiam divina replente praesentia, etiam lite non contestata, diligenter examinato negotio, ipsum fine debito terminare.

Title VIII: That Nothing Be Altered While Litigation Is Pending

Chapter I

If one of two persons elected who are litigating dies, renounces, or is excluded from prosecuting the cause, another election made while litigation with the remaining person is pending does not hold.

Boniface VIII. Desiring to meet the losses that churches sometimes suffer because of diverse elections, we decree that if, while some persons are litigating before the Apostolic See or elsewhere concerning elections about themselves celebrated in discord, it happens that one of them dies, renounces his right, or is excluded in any way from prosecuting it, another election is by no means to be proceeded to while litigation concerning the election of the surviving person elected is pending. Otherwise, an election attempted contrary to this does not subsist in force by the law itself.

UT LITE PENDENTE NIHIL INNOVETUR.

Si ex duobus litigantibus electis alter decedat, renunciet vel a prosecutione causae excludatur, si lite pendente cum reliquo fuerit alia electio facta, non terfet.

Bonifacius VIII.

> Dispendiis, quae propter electiones diversas ecclesiae patiuntur interdum, occurrere cupientes, statuimus, ut, si, aliquibus apud sedem apostolicam vel alibi litigantibus super electionibus de se in discordia celebratis, aliquem ipsorum mori, vel suo iuri renunciare, aut a prosecutione ipsius contigerit quoquo modo excludi, ad electionem aliam, lite super electione superstitis electi pendente, nullatenus procedatur; alias attentata contra hoc electio ipso iure viribus non subsistat.

Chapter II

If a beneficed person against whom litigation concerning the benefice is conducted resigns or dies, and another is elected while litigation with the survivor is pending, the election is not valid. But if any persons whose interest is involved wish to be admitted to defend the litigation, they will be admitted in the state in which the cause stood. John Andrew.

The same. If persons against whom litigation is conducted concerning dignities, personatuses, or other ecclesiastical benefices that they possess resign while litigation is pending, or perhaps die, we decree, lest it happen that litigation is prolonged to the loss of churches because of new adversaries who are sometimes maliciously substituted against the petitioners, that dignities, personatuses, or benefices of this kind are by no means to be conferred upon others, nor is anyone to be elected or even presented to them, until the litigation against the survivors has been concluded. But if it is done otherwise, it is by that very fact to be held void. Indeed, if any persons whose interest is involved petition to be admitted to defend the litigation itself, we decree that they are to be admitted in the state in which they find it.

> Si beneficiatus, contra quem super beneficio litigatur, cedit vel decedit, si alius, lite pendente cum superstite, fuerit electus, non valet electio. Si vero aliqui, quorum intersit, ad defensionem litis velint admitti, in eo statu, in quo erat causa, admittentur. Ioann. Andr.
>
> Idem.
>
> Si ii, contra quos super dignitatibus, personatibus vel aliis ecclesiasticis beneficiis, quae possident, litigatur, lite pendente cedant, vel forte decedant, ne propter novos adversarios, qui malitiose interdum petitoribus subrogantur, litigia in ecclesiarum dispendium prorogari contingat: statuimus, ut dignitates, personatus vel beneficia huiusmodi, donec contra superstites lis finita fuerit, aliis nullatenus conferantur, nec ad ea eligatur quispiam vel etiam praesentetur. Quodsi secus actum fuerit, eo ipso irritum habeatur. Sane si ad defensionem ipsius litis aliqui, quorum interierit, petierint se admitti, eos in illo statu, in quo ipsam invenerint, decernimus admittendos.

Title IX: On Confessions

Chapter I

Concerning a negative fact that cannot be proved by the party, a position is to be admitted if it seems good to the judge. Dominicus.

Innocent IV at the General Council of Lyons. We decree that judges can admit negative positions that cannot be proved except through the adversary's confession, if, with equity counseling it, they see that this is expedient.

> **DE CONFESSIS.**
>
> Super facto negativo, per partem improbabili, si iudici videbitur, est admittenda positio. Dominicus.

Innocentius IV. in concilio Lugdunensi .

Statuimus, ut positiones negativas, quae probari non possunt nisi per confessionem adversarii, iudices admittere possint, si aequitate suadente viderint expedire.

Chapter II

If a defendant ordered to answer positions refuses, or if he departs contumaciously, the positions will be held confessed; it is otherwise if he was contumacious before he was thus ordered. For then proceedings will be taken against him as against a contumacious person. John Andrew.

Boniface VIII. If, after the oath concerning truth or calumny has been furnished, a defendant or his procurator, questioned concerning positions made to him by the adversary and ordered by the judge to answer, refuses without reasonable cause, or is unwilling, or contumaciously absents himself, he ought to be held as having confessed concerning the things about which he was questioned in those positions. But if it happens that he is contumaciously absent before he was thus ordered to answer, then he ought not to be held as having confessed; rather, proceedings are otherwise to be taken against him as against a contumacious person, as reason shall dictate.

Si reus iussus positionibus respondere recusat, vel si contumaciter recedit, habebuntur pro confessatis; secus, si prius, quam sic iussus esset, contumax fuerat. Nam tunc procedetur contra eum tanquam contra contumacem.

Ioann. Andr.

Bonifacius VIII .

Si post praestitum veritatis aut calumniae iuramentum reus vel procurator ipsius, positionibus ab adversario sibi factis interrogatus iussusque a iudice respondere, absque rationabili causa recuset, aut nolit, seu contumaciter se absentet: haberi debet super iis, de quibus in eisdem positionibus interrogatus exstitit, pro confesso. Verum si, antequam respondere sic iussus fuerit, eum contumaciter absentari contingat: tunc pro confesso non debet haberi; sed est alias contra eum, tanquam contra contumacem, prout ratio dictaverit, procedendum.

Title X: On Witnesses and Attestations

Chapter I

An accomplice in the crime of simony is admitted as a witness if he is only an accomplice in the crime and the action is civil; otherwise he is not. John Andrew.

Gregory IX at the Council of Lyons. In detestation of the crime, intermediaries through whom the crime of simony is frequently committed are admitted to give testimony against the authors of that same crime if the action is not criminal but civil and they obtained no emolument from it.

**DE TESTIBUS ET ATTESTATIONIBUS* .

Socius in crimine simoniae admittitur in testem, si sit socius criminis tantum, et agatur civiliter; alias non. Ioann. Andr.

Gregorius IX. in concilio Lugdunensi * .

Mediatores, per quos scelus simoniae plerumque committitur, ad testimonium contra sceleris eiusdem auctores * in detestationem criminis admittuntur, si non agatur criminaliter, sed civiliter, et

emolumentum exinde non fuerint assecuti.

Chapter II

He establishes the manner of a remission from the curia, gives the manner of swearing upon positions and says by whom the oath ought to be taken, gives the manner of responding, and the manner of discrediting probatory witnesses and of discrediting the witnesses who discredit them in turn. This is what it says. John Andrew.

The same. By authority of the present letters we command that, in the cause conducted between the abbot and convent of Saint Nicholas of Angers on the one side, and the prior and convent of Paldigen of the diocese of Lyconensis on the other, concerning the assertion of the same abbot and convent that they were despoiled by the prior and convent of Paldigen of possession of the subjection of that priory, and concerning the invalidation of a certain composition formerly entered into between the parties and other matters, you receive from the same abbot and prior, in their own name and upon the souls of those convents or of their greater and sounder parts, an oath concerning stating the truth. You are then to enjoin upon the said abbot and prior that, both in making positions and in responding, they state the truth that they themselves know concerning the positions transmitted to you under our seal and understand through those upon whose souls they swore.

Furthermore, you are to cause the parties to respond sufficiently to one another, individually concerning each article contained in each position, receiving absolutely no contradiction from them concerning those positions. Without an oath, however, you are to inquire of the syndic of each party what he knows or believes concerning positions of this kind.

You are also diligently to examine, by the Kalends of next November, according to the interrogatories of the opposing party that we transmit to you under the same seal, the witnesses whom the party of the said prior and convent determines to produce concerning the articles transmitted under that seal in order to discredit the witnesses produced by the other party in the principal cause, whose names are contained in those articles. Nevertheless, a separate specification is first to be made against the person of each witness produced by the aforesaid abbot and convent of the crimes and other objections against him contained in those articles.

But if the said abbot and convent produce any witnesses before you against the witnesses to be produced by the same prior and convent, you are to take care to receive them according to the articles that the abbot and convent themselves produce to you concerning the discrediting of the witnesses produced by the prior and convent in the same cause, and to examine them diligently by the Kalends of next February. A similar specification of the crimes and other things objected against the witnesses of that prior and convent is to be observed, after an oath has first been furnished by the procurator of the said abbot and convent that they do not proceed to this through malice.

Ponit modum remissionis curiae, et dat modum iurandi super positionibus, et dicit, per quem iurari debeat; dat modum respondendi, et modum testes probatorios reprobandi, et reprobatorios iterum reprobandi H. d, Ioann. Andr.

Idem .

Praesentium auctoritate mandamus, quatenus in causa, quae inter abbatem et conventum S. Nicolai Andegavensis ex una parte, et priorem et conventum de Paldigen *. Lyconensis * dioecesis ex altera super eo, quod iidem abbas et conventus se ab ipsis priore et conventu de Paldigen, possessione subiectionis eiusdem prioratus asserunt spoliatos, et super irritanda quadam compositione olim inita

inter partes, et rebus aliis vertitur, ab eisdem abbate et priore nomine suo , et in animas conventuum eorundem, vel s maioris et sanioris partis ipsorum , recepto iuramento de veritate dicenda, iniungas dictis abbati et priori, ut tam ponendo quam respondendo dicant veritatem, quam super positionibus tibi sub bulla nostra transmissis ipsi sciunt, et per illos intelligunt, in quorum animas iuraverunt. Praeterea sigillatim super quolibet articulo in qualibet positione contento facias a partibus sufficienter adinvicem responderi, nulla prorsus ab eis super ipsis positionibus contradictione recepta. Sine iuramento autem a syndico utriusque partis, quid sciat de huiusmodi positionibus vel credat, inquiras. Testes etiam, quos super articulis sub eadem bulla transmissis pars dictorum prioris et conventus duxerit producendos ad reprobandos testes partis alterius in causa principali productos, (quorum nomina in eisdem articulis continentur,) usque ad Kalendas Novembris proximo futuri examines secundum partis adversae interrogatoria, quae tibi sub eadem bulla transmittimus , diligenter, primo tamen in personam cuiuslibet testis, a praedictis abbate et conventu producti, facta sigillatim specificatione criminum, et aliorum obiectorum sibi in eisdem articulis contentorum. Si vero dicti abbas et conventus aliquos testes coram te produxerint, contra testes ab eisdem priore et conventu producendos, iuxta articulos, quos ipsi abbas et conventus tibi super reprobatione testium productorum prioris et conventus in eadem causa * produxerint, recipere, ac eos usque ad Kalendas Februarii proximo futuri diligenter examinare procures, simili specificatione criminum et aliorum, quae contra testes eorundem prioris et conventus obiecta fuerint, observata; prius tamen praestito iuramento ° a procuratore dictorum p abbatis et conventus, quodq ad hoc ex malitia non procedant .

Chapter III

An advocate or procurator in the principal cause cannot testify in the appeal cause; an oath, however, ought not to be tendered to the appellant because the presumption favors him unless it seems good to the judge. Dominicus.

Innocent IV at the General Council of Lyons. The Roman Church—(And below:) In the appeal cause, one who had been the appellant's procurator or advocate in the prior judicial proceeding is not to be received as a witness. Nor, merely because a presumption favors him, is an oath indiscriminately to be tendered even to the appellant himself, but only when, after the circumstances of the persons and the cause itself have been considered, it ought to be done.

Advocatus vel procurator principalis causae in causa appellationis testificare non potest; iuramentum autem, praesumptione faciente pro appellante, sibi deferri non debet, nisi iudici videatur. Dominicus.

Innocentius IV. in generali concilio Lugdunensi .

Romana ecclesia (Et infra:) In appellationis causa is , qui appellantis procurator vel advocatus in priori iudicio fuerat , non recipiatur in testem. Neque indistincte ipsi appellanti, praesumptione faciente pro eo, deferatur etiam iuramentum, sed tunc, quum inspectis personarum et ipsius causae circumstantiis id fuerit faciendum .

Title XI: On Oaths

Chapter I

Prelates, canons, rectors, and officials of places who swear to observe the statutes and customs of a place or church are not bound by pretext of such an oath to things unlawful, impossible, or contrary to ecclesiastical liberty, nor ought their intention to be referred to them. John Andrew.

Nicholas III. It happens that in certain churches it is observed by their custom that neither their prelates, when they first come to those churches, are admitted, nor canons, when the reception of new canons there is at issue, are otherwise received in them unless they swear inviolably to observe the written and unwritten statutes and customs of those churches. Among laymen also, in many cities, castles, and lands, the disease of custom has crept into the assumption of their podestàs, rectors, or officials, so that podestàs, rectors, and officials of this kind are by no means admitted to those podestàships, rectorships, and offices unless they have first sworn that they will observe the closed statutes of those places.

But because in the aforesaid statutes and customs some things are sometimes found that are unlawful or impossible, or contrary to ecclesiastical liberty, lest an occasion for sinning be furnished to those swearing under such a generality of oath, since an oath was not instituted to be a bond of iniquity, we, desiring by this general constitution to obstruct dangers to souls, command that oaths of this kind are in no way to be furnished by any persons who know that unlawful or impossible things, or things contrary to ecclesiastical liberty, are contained in the aforesaid customs and statutes.

We decree that such oaths made or to be made with the intention that even unlawful or impossible things, or things contrary to ecclesiastical liberty, be observed—since even with such an intention they cannot be furnished without offense to the divine majesty—are not to be observed as regards things of this kind that are unlawful, impossible, or contrary to ecclesiastical liberty. Rather, for the salvation of souls, if it happens that any persons ignorant of the aforesaid unlawful or impossible things, or things contrary to ecclesiastical liberty, swear under the aforesaid or a similar form, the intention of the persons swearing ought to be referred solely to observing things lawful, possible, and not contrary to ecclesiastical liberty. We also declare that oaths furnished or to be furnished under such a generality in any manner and under any form of words extend only to things lawful, possible, and not contrary to ecclesiastical liberty, and that those swearing are not bound to other things by furnishing an oath of this kind.

> **DE IUREIURANDO.**
>
> Praelati, canonici, rectores et officiales locorum, qui iurant statuta et consuetudines loci vel ecclesiae servare, praetextu talis iuramenti non obligantur ad illicita, impossibilia vel obviantia ecclesiasticae libertati, nec ad ea debet intentio sua referri. Ioann. Andr.
>
> Nicolaus III .
>
> Contingit in nonnullis ecclesiis de earum consuetudine observari, quod nec * ipsarum praelati, quum primo ad ecclesias ipsas accedunt *, admittuntur, nec canonici, quum de recipiendis ibidem novis canonicis agitur, aliter recipiuntur in ipsis, nisi iurent statuta et consuetudines ipsarum ecclesiarum scripta et non scripta inviolabiliter observare. Inter laicos etiam in multis civitatibus, castris et terris in suis potestatibus, rectoribus vel * officialibus assumendis consuetudinis morbus irrepsit, quod potestates , rectores et officiales huiusmodi ad potestarias, rectorias et officia eadem, nisi prius servaturos se statuta ipsorum locorum clausa iuraverint, nullatenus admittantur. Quia vero in statutis et consuetudinibus supra dictis interdum aliqua reperiuntur illicita seu impossibilia, vel obviantia ecclesiasticae libertati, ne sub tali generalitate iurandi sic iuranti-bus peccandi occasio praebeatur, quum iuramentum non fuerit, ut esset iniquitatis vinculum, institutum: hac generali constitutione animarum periculis obsistere cupientes, praecipimus , a quibuscunque, scientibus contineri in praedictis consuetudinibus et statutis illicita, impossibilia vel libertati ecclesiasticae obviantia, iuramenta huiusmodi aliquatenus non praestari. Et talia iuramenta, ea intentione facienda vel facta, ut etiam

illicita vel impossibilia, seu ecclesiasticae libertati obviantia observentur, quum etiam sub tali intentione praestari non possint absque divinae maiestatis offensa, decernimus in huiusmodi illicitis, impossibilibus seu libertati ecclesiasticae obviantibus non servanda; quin potius pro animarum salute, si sub forma praedicta vel simili aliquos, ignorantes praedicta illicita seu impossibilia, vel libertati ecclesiasticae obviantia, iurare contigerit, ad observanda duntaxat licita, possibilia et non obviantia libertati ecclesiasticae iurantium referri debet intentio. Declaramus quoque iuramenta, sub huiusmodi generalitate qualitercunque et sub qualicunque verborum forma praestita vel praestanda, ad licita, possibilia et libertati ecclesiasticae non obviantia tantum extendi, ipsosque iurantes ad alia per praestationem iuramenti huiusmodi non teneri.

Chapter II

A secular judge is compelled by the ordinary ecclesiastical judge of the place, through ecclesiastical censure, to observe canon law established for the provision of souls.

Boniface VIII. Although women who consent to alienations of dowries and gifts on account of marriage, confirming by their own oath that they will not act to the contrary, are bound by canon law to observe an oath of this kind furnished neither through force nor deceit, nevertheless, because certain secular judges hear them against the aforesaid alienations although it is lawfully established for those judges that such an oath was taken, we, wishing to meet dangers to souls, decree that those judges are to be compelled through ecclesiastical censure by the ordinaries of the places to observe this canon law.

Per ecclesiasticum iudicem ordinarium loci compellitur iudex saecularis ecclesiastica censura, ius canonicum, quod ad provisionem animarum statutum est, servare.

Bonifacius VIII .

Licet mulieres, quae alienationibus dotium et donationum propter nuptias consentiunt, non contravenire proprio iuramento firmantes, servare iuramentum huiusmodi non vi nec dolo praestitum de iure canonico teneantur: quia tamen quidam iudices saeculares eas contra praefatas alienationes audiunt, quamvis eis constet legitime de huiusmodi iuramento: nos, animarum periculis obviare volentes, eosdem iudices ad servandum hoc ius canonicum per locorum ordinarios censura ecclesiastica decernimus compellendos.

Chapter III

A person elected who, after the oath, makes positions or answers things directly contrary is repelled from confirmation as perjured unless he is reasonably excused. The same applies if his procurator did this at his command, or with his ratification, or without his revoking it. This is what it says. John Andrew.

The same. Since manifest contradiction is found in the positions given by you concerning the business of your election after the oath was furnished in the cause, or in the responses that you are known to have made to your adversary's positions, perpetual silence ought to be imposed upon you concerning that election as upon a perjured person, unless a just and reasonable cause excuses you. The same will be done if your procurator in your name made contrary positions or responses of this kind at your express command, or with your subsequently knowing and ratifying them, or not revoking them.

Electus, post sacramentum ponens vel respondens contraria directe, nisi rationabiliter excusetur, velut periurus a confirmatione repellitur. Idem, si hoc fecerit procurator, ipso mandante, vel ratum habente

vel non revocante. H. d. Ioann. Andr.

Idem.

Quum in positionibus super electionis tuae negotio post iuramentum in causa praestitum a te datis, seu responsionibus, quas ad positiones tui adversarii fecisse dignosceris, reperiatur contrarietas manifesta: tibi tanquam periuro, nisi iusta causa et rationabilis te excuset, super ipsa electione perpetuum silentium imponi debebit. Idem fiet,,si, te expresse mandante, vel etiam ex postfacto sciente ac ratum habente, seu non revocante, positiones aut responsiones huiusmodi contrarias tuo nomine tuus fecerit procurator.

Title XII: On Exceptions

Chapter I

Six things are stated in this decretal. First, he sets forth the preamble, the ancient law, and the reason for the constitution. Second, he says that a defendant who pleads the plaintiff's excommunication as an exception in order to repel him from bringing an action ought to express the kind of excommunication and the name of the person excommunicating, and to prove it within eight days; otherwise, the judge will proceed in the cause and condemn him in expenses. Third, he establishes that if the same or another excommunication is again objected and proved, the plaintiff is repelled, but the things already done will be valid. Fourth, that this exception is not to be opposed more than twice, except for cause. Fifth, that if it is opposed after the matter has been adjudged, execution is impeded, but the sentence nevertheless remains valid. Sixth, it is said that a judge ought by virtue of his office to repel from bringing an action a person publicly excommunicated, even if the defendant does not object. John Andrew.

Innocent IV at the Council of Lyons. With pious consideration Mother Church established that an exception of major excommunication, opposed at any stage of judicial proceedings, is to delay litigation and repel plaintiffs, so that ecclesiastical censure may thereby be feared more, the danger of communion avoided, the vice of contumacy restrained, and excommunicated persons, while they are excluded from common acts, may, suffused with shame, be more easily inclined to the grace of humility and the desire for reconciliation. But, with the malice of men increasing, what was provided as a remedy tends toward harm. For while this exception is more frequently opposed through malice in ecclesiastical causes, it happens sometimes that business is delayed and the parties wearied by labors and expenses. Therefore, because this disease has crept in as though common, we have judged that a common medicine should be applied.

Accordingly, if anyone opposes an excommunication, he is to express its kind and the name of the person excommunicating, knowing that he ought to bring into public notice a matter that he can prove by the clearest documents within the space of eight days, the day on which it is proposed not being counted. But if he does not prove it, the judge is not to omit proceeding in the cause, condemning the defendant, after an assessment has first been made, in the expenses that the plaintiff shows that he incurred during those days on this account.

But if afterward, while the judicial instance endures and an opportunity for proof supervenes, the same or another excommunication is again pleaded as an exception and proved, the plaintiff is to be excluded from subsequent acts until he merits obtaining the grace of absolution, while the things that preceded nevertheless endure in their force. Provision is to be made that this exception is not

opposed more than twice, unless a new excommunication has arisen or evident and ready proof concerning the old one has supervened.

But if such an exception is proposed after the matter has been adjudged, it will impede execution; the sentence that preceded will nevertheless obtain its due force no less. This is saved: if the plaintiff is publicly excommunicated and the judge knows this, at any time, even if the defendant does not plead an exception concerning it, the judge is not to postpone repelling the plaintiff by virtue of his office.

> **DE EXCEPTIONIBUS.**
>
> Sex sunt dicta huius decretalis. Primo ponit arengam et ius antiquum, et constitutionis causam. Secundo dicit, quod reus, qui contra actorem de excommunicatione excipit, ut ipsum repellat ab agendo, debet ipsius excommunicationis speciem et nomen excommunicatoris exprimere, et eam infra octo dies probare; alias iudex procedet in causa, et illum in expensis condemnabit. Tertio statuit, quod si iterum obiiciatur et probetur eadem vel alia excommunicatio, actor repellitur; sed quae acta sunt valebunt. Quarto, quod ultra duas vices haec exceptio non opponatur, nisi ex causa. Quinto, quod, si opponitur post rem iudicatam, impeditur exsecutio, sententia nihilominus valet. Sexto dicitur, quod iudex publice excommunicatum, reo non opponente, ex suo officio debet ab agendo repellere. Ioann. Andr.
>
> Innocentius IV. in concilio Lugdunensi .
>
> Pia consideratione statuit mater ecclesia, quod maioris excommunicationis exceptio, in quacunque parte iudiciorum opposita, lites differat, et repellat agentes, ut ex hoc magis censura ecclesiastica timeatur, communionis * periculum evitetur, contumaciae vitium reprimatur, et excommunicati, dum a communibus actibus excluduntur, rubore suffusi ad humilitatis gratiam et reconciliationis affectum facilius inclinentur. Sed hominum succrescente malitia quod provisum est ad remedium tendit ad noxam. Dum enim in causis ecclesiasticis frequentius haec exceptio per malitiam opponitur , contingit interdum differri negotia, et partes fatigari laboribus et expensis. Proinde , quia morbus iste quasi communis irrepsit, dignum duximus communem adhibere medelam. Si quis igitur excommunicationem opponit , speciem illius et nomen excommunicatoris exprimat, sciturus eam rem se deferre debere in publicam notionem, quam infra octo dierum spatium, (die, in quo proponitur, minime computato,) probare valeat apertissimis documentis. Quod si non probaverit, iudex in causa procedere non omittat, reum in expensis, quas actor ob hoc diebus illis se fecisse docuerit, praehabita taxatione condemnans. Si vero postmodum, instantia durante iudicii et probationis copia succedente, de eadem excommunicatione vel alia excipiatur iterum et probetur: actor in sequentibus excludatur, donec meruerit absolutionis gratiam obtinere, iis, quae praecesserunt, nihilominus in suo robore duraturis; proviso,quod * ultra duas vices haec non opponatur exceptio, praeterquam si excommunicatio nova emerserit, vel evidens et prompta probatio supervenerit de antiqua. Sed si post rem iudica-tam talis exceptio proponatur, exsecutionem impediet; sed sententia, quae praecessit, non minus robur debitum obtinebit, eo' tamen salvo, ut, si actor excommunicatus sit publice, et hoc iudex noverit, quandocunque, etsi de hoc reus non excipiat, iudex exs officio suo actorem repellere non postponat.

Chapter II

An exception of a matter adjudged by an ecclesiastical judge ought to be admitted in the secular forum, and conversely. John Andrew.

Boniface VIII. Since certain secular judges, when an exception concerning a matter adjudged by an ecclesiastical judge is pleaded before them in a case in which cognizance belongs to him by custom or law, refuse to hear the persons pleading the exception, in derogation and contempt of ecclesiastical

jurisdiction, we decree that persons of this kind are to be restrained from iniquity through ecclesiastical censure and compelled by the ordinaries of the places to admit the same exception where it otherwise ought by law to be admitted. Similarly, if an exception concerning a matter adjudged by a secular judge is pleaded before ecclesiastical judges, they are to admit that exception in matters that do not introduce danger to souls; if they do not, they are to be chastised by their superiors with due correction.

> Exceptio rei iudicatae per ecclesiasticum iudicem admitti debet in foro saeculari, et e converso. Ioann. Andr.
>
> Bonifacius VIII .
>
> Quum quidam saeculares iudices, dum coram eis excipitur de re per ecclesiasticum iudicem iudicata, in casu, quo * ad eum pertinet cognitio de consuetudine vel de iure, recusent excipientes audire in derogationem iurisdictionis ecclesiasticae et contemptum: decernimus, ut per censuram ecclesiasticam ab iniquitate coerceantur huiusmodi, et ad admittendum exceptionem eandem, ubi alias de iure debet admitti, a locorum ordinariis compellantur. Similiter ecclesiastici iudices, si coram ipsis excipiatur de re per saecularem iudicem iudicata, exceptionem ipsam admittant in iis, quae animarum periculum non inducunt, per superiores suos, nisi fecerint, animadversione debita castigandi.

Title XIII: On Prescriptions

Chapter I

For prescriptions, good faith suffices where the common law or a presumption is not against the person prescribing; otherwise, a title ought to be alleged and proved, unless it is a prescription of such a kind that no memory of the contrary exists. This is what it says. John Andrew.

Boniface VIII. A bishop who proposes that he has lawfully prescribed the churches and tithes that you reclaim from him, although they are situated in your diocese, must, since the common law operates against him, allege and prove a title for a prescription of this kind. For although good faith suffices for one who prescribes an ecclesiastical thing if the common law is not contrary to him and there is no presumption against him, nevertheless, where the common law is contrary to him or there is a presumption against him, good faith does not suffice; rather, a title is necessary that furnishes the possessor with a cause for prescribing, unless a prescription of so long a time is alleged that no memory of the contrary exists.

> **DE PRAESCRIPTIONIBUS.**
>
> De praescriptionibus sufficit bona fides, ubi ius commune vel praesumptio non est contra praescribentem; alias debet allegari titulus et probari, nisi sit praescriptio, cuius contrarii non exstat memoria. H. d. Ioann. Andr.
>
> Bonifacius VIII .
>
> Episcopum, qui ecclesias et decimas, quas ab eo repetis, proponit, (licet in tua sint constitutae dioecesi,) se legitime praescripsisse, allegare oportet, (quum ius commune contra ipsum faciat,) huiusmodi praescriptionis titulum et probare. Nam licet ei, qui rem praescribit ecclesiasticam, si sibi non est contrarium ius commune, vel contra eum praesumptio non habeatur , sufficiat bona fides; ubi tamen est ei ius commune contrarium, vel habetur praesumptio contra ipsum: bona fides non sufficit,

sed est necessarius titulus, qui possessori causam tribuat praescribendi; nisi tanti temporis allegetur praescriptio, cuius contrarii memoria non exsistat.

Chapter II

One deprived by the law itself or by sentence of goods that he holds from the Roman Church or other churches does not prescribe them against the Roman Church in a period shorter than one hundred years, or against other churches in a period shorter than forty. But children of heretics who were thought Catholics prescribe paternal goods against the Roman and other churches in a period of forty years, and the same applies to strangers. John Andrew.

The same. If any persons, because their faults or excesses committed require it, have been deprived by sentence or by the law itself of goods that they hold from the Roman Church or other churches, we decree that, when those goods are afterward at any time apprehended or occupied, no lapse of time is to stand in the way of those churches, although human laws appear to establish other periods concerning this, unless a prescription of one hundred years has lawfully been completed against the Roman Church itself or one of forty years against other churches.

If, after the death of heretics who were thought to be Catholics while they lived, their goods have been possessed in good faith for the space of forty years by their Catholic children or grandchildren, or by any strangers, we decree that they are not thereafter to be troubled concerning such goods, even if they ought to come to the Roman Church, although those whose goods they had been are now discovered to have been heretics.

Privatus ipso iure vel per sententiam bonis, quae tenet a Romana vel aliis ecclesiis, illa minori spatio centum annorum contra Romanam, vel quadraginta contra alias non praescribit. Filii autem haereticorum, qui catholici putabantur, bona paterna contra Romanam et alias ecclesias praescribunt spatio quadraginta annorum, et idem in extraneis. Ioann Andr.

Idem.

Si qui, exigentibus culpis vel excessibus ab eisdem commissis, bonis, quae a Romana vel ab aliis tenent ecclesiis, sint per sententiam vel ipso iure privati: statuimus, ut in apprehendendis vel occupandis postea quandocunque bonis eisdem nullus, licet leges humanae super hoc alia tempora statuere videantur, ipsis ecclesiis temporis lapsus obsistat, nisi contra ipsam Romanam ecclesiam centenaria, vel contra ecclesias alias quadragenaria praescriptio legitime sit completa. Si post mortem haereticorum, qui, dum viverent, catholici putabantur, bona ipsorum a catholicis eorum filiis vel nepotibus aut extraneis quibuscunque spatio XL. annorum fuerint bona fide possessa: sancimus, eos super bonis huiusmodi, etiamsi ad Romanam pervenire deberent ecclesiam, in hoc casu non esse ulterius molestandos, quanquam illi, quorum bona fuerant , nunc detegantur haeretici exstitisse.

Title XIV: On Sentence and a Matter Adjudged

Chapter I

A judge who, through favor or sordid gain, does anything in a judicial proceeding contrary to justice and conscience to the grievance of a party is to be condemned to the injured party in the assessed value of the litigation and is suspended for one year, and perpetually if in the meantime he intrudes himself into divine services, unless the Pope dispenses him. John Andrew.

Innocent IV at the Council of Lyons. Since the tribunal of the eternal Judge does not hold as guilty the person whom a judge unjustly condemns, as the Prophet bears witness—"nor will he condemn him when judgment is given against him"—let ecclesiastical judges take care and prudently attend that in the proceedings of causes hatred vindicate nothing, favor usurp nothing, fear be banished, and reward or expectation of reward not overturn justice. Rather, let them bear the scales in their hands and suspend the pans with equal balance, so that in all things to be done in causes, especially in conceiving and pronouncing sentences, they may have God alone before their eyes, imitating the example of him who, after entering the tabernacle, referred the complaints of the people to the Lord so that he might judge according to his command.

But if any ecclesiastical judge, ordinary or delegated, prodigal of his reputation and a persecutor of his own honor, does anything in a judicial proceeding contrary to conscience and justice, through favor or sordid gain, to the grievance of one party, he is to know himself suspended from executing his office for one year and nevertheless to be condemned to the party whom he injured in the assessed value of the litigation. He is to know that if during the suspension he damnably intrudes himself into divine services, according to the canonical sanctions he will entangle himself in the snare of irregularity, from which he can be freed only by the Supreme Pontiff, saving the other constitutions that introduce and inflict penalties upon judges judging badly. For it is fitting that one who presumes to offend in so many things be chastised with a manifold penalty.

> **DE SENTENTIA ET RE IUDICATA.**
>
> Iudex, qui contra iustitiam et contra conscientiam aliquid in iudicio fecerit in gravamen partis per gratiam vel per sordes, condemnandus est parti laesae in aestimationem litis, et per annum est suspensus, et perpetuo, si medio tempore ingerat se divinis, nisi Papa cum ipso dispenset. Ioann. Andr.
>
> Innocentius IV. in concilio Lugdunensi -.
>
> Quum aeterni tribunal iudicis illum reum non habeat, quem iniuste iudex condemnat, testante Propheta : „nec damnabit eum, quum iudicabitur illi: " caveant ecclesiastici iudices et prudenter attendant, ut in causarum processibus nil vindicet odium vel favor usurpet, timor exsulet, praemium aut exspectatio praemii iustitiam non evertat , sed stateram gestent in manibus, lances appendant aequo libramine, ut in omnibus, quae in causis agenda fuerint, praesertim in concipiendis sententiis et ferendis, prae oculis habeant solum Deum, illius imitantes exemplum, qui querelas populi tabernaculum ingressus ad Dominum referebat, ut secundum eius imperium iudicaret. Si quis autem iudex ecclesiasticus, ordinarius aut etiam delegatus, famae suae prodigus et proprii persecutor honoris, contra conscientiam et contra iustitiam in gravamen partis alterius in iudicio quicquam fecerit per gratiam vel per sordes, ab exsecutione officii per annum noverit se suspensum, ad aestimationem * litis parti, quam laeserit, nihilominus condemnandus, sciturus, quod, si suspensione durante damnabiliter ingesserit se divinis, irregularitatis laqueo se involvet secundum canonicas sanctiones, a qua * non nisi per summum Pontificem poterit liberari, salvis aliis constitutionibus, quae iudicibus male iudicantibus poenas ingerunt et infligunt. Dignum est enim, ut qui in tot praesumit offendere poena multiplici castigetur.

Chapter II

The Pope can depose the emperor for legitimate causes. This is what it says, according to Paul.

The same, with the sacred council present, for perpetual remembrance. To the apostolic dignity —(And below:) Indeed, since the harsh commotion of wars had for too long afflicted certain

provinces of Christian profession, we judged that special envoys and men of great authority should be sent to Frederick, the principal secular prince and the author of dissension and tribulation of this kind, who had been bound by our predecessor Pope Gregory IX of happy memory with the bond of anathema for his excesses: namely, our venerable brothers P., Bishop of Albano, and H., Bishop of Sabina, and our beloved son William, Cardinal Priest of the Basilica of the Twelve Apostles, who zealously sought his salvation.

Through them we caused it to be proposed to him that we and our brothers, so far as lay in us, desired in every respect to have peace with him and also with all men, being ready to give peace and tranquility to him and even to the whole world. And because the restoration of the prelates, clerics, and all the others whom he held captive, and of all clerics and laymen whom he had captured in the galleys, could be greatly conducive to peace, we caused him to be asked and petitioned through those same men to restore them, since both he and his envoys had promised this before we were called to the office of the apostolate.

It was further to be proposed that those same men were prepared on our behalf to hear and treat of peace, and also to hear the satisfaction that the prince wished to make concerning all the things for which he was bound by the bond of excommunication. They were moreover to offer that if the Church had injured him in anything contrary to what was due—which it did not believe—it was prepared to correct it and reform it to its due state. And if he himself should say that he had injured the Church in nothing contrary to justice, or that we had injured him contrary to justice, we were prepared to summon kings, prelates, and princes, ecclesiastical as well as secular, to some secure place where they might assemble personally or through solemn envoys. The Church was prepared, with the counsel of the council, to make satisfaction to him if it had injured him in anything, and to revoke a sentence if it had pronounced any against him unjustly; and with all meekness and mercy, so far as this could be done with God and its honor, it wished to receive satisfaction from him concerning the injuries and offenses inflicted by him upon the Church and its people, to place all his friends and adherents in peace, and to have them enjoy full security so that they could never undergo any danger on this occasion.

But although we thus took care to press him for peace with paternal admonitions and the gentleness of prayers, nevertheless, imitating the hardness of Pharaoh and stopping his ears in the manner of the asp, he despised prayers and admonitions of this kind with exalted obstinacy and obstinate exaltation. On account of this, unable any longer to tolerate his iniquities without grave offense to Christ, we are compelled, our conscience urging us, justly to proceed against him.

And, to be silent for the present concerning his other crimes, he has committed four most grave ones that can be concealed by no tergiversation. For he has perjured himself many times by rashly violating the peace formerly reformed between the Church and the Empire. (And below:) He perpetrated sacrilege by causing cardinals of the Holy Roman Church, and prelates and religious and secular clerics of other churches, coming to the council that our same predecessor had determined to convoke, to be captured. (And below:) He is also held suspect of heresy by arguments not doubtful and slight, but weighty and evident. (And below:) Besides these things, he has already reduced the Kingdom of Sicily—which is the special patrimony of blessed Peter and which the same prince held in fief from the Apostolic See—to such depletion and servitude among clerics and laymen that, with them having almost nothing at all and nearly all honorable persons having been expelled from there,

he compels those who remain there to live as though under a servile condition and in many ways to offend and hostilely attack the Roman Church, whose men and vassals they principally are. He could also deservedly be reproved because for nine years and more he omitted to pay the annual pension of one thousand squifati in which he is bound to the Roman Church for that kingdom.

We, therefore, after diligent deliberation concerning the foregoing and very many other nefarious excesses of his with our brothers and the holy council, since, though unworthy, we hold the place of Jesus Christ on earth, and it was said to us in the person of blessed Peter, "Whatever you bind upon earth will be bound also in heaven," show and denounce that the aforesaid prince—who has rendered himself so unworthy of the Empire, the kingdoms, and every honor and dignity, and who because of his iniquities has been cast away by God so that he may neither reign nor command—is bound by his sins, cast away, and deprived by the Lord of every honor and dignity; and nevertheless by sentence we deprive him. We perpetually absolve all those who are held bound to him by an oath of fidelity from an oath of this kind, strictly prohibiting by apostolic authority that anyone henceforth obey or attend to him as emperor or king, and decreeing that any persons who thereafter furnish him counsel, aid, or favor as emperor or king are subject by that very fact to the sentence of excommunication. Those to whom the election of an emperor in that Empire belongs are freely to elect a successor. We will take care to provide concerning the aforesaid Kingdom of Sicily with the counsel of those same brothers of ours, as we shall see to be expedient.

> Papa imperatorem deponere potest ex causis legitimis. H. d. secundum Paulum.
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> Idem, sacro praesente concilio, ad memoriam sempiternam .
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> Ad apostolicae dignitatis (Et infra :) Sane, quum dura guerrarum commotio nonnullas professionis Christianae provincias diutius addixisset, nos ad Fridericum , praecipuum principem saecularem, huiusmodi dissensionis et tribulationis auctorem , *a felicis recordationis Gregorio Papa IX. * praedecessore nostro pro suis excessibus anathematis vinculo innodatum, speciales nuncios et s magnae auctoritatis viros, videlicet venerabiles fratres P. Albanensem* et H . Sabinensem episcopos, ac dilectum filium Guillelmum basilicae XII. Apostolorum presbyterum cardinalem , qui salutem zelabantur ipsius, duximus destinandos, facientes sibi proponi per ipsos, quod nos et fratres nostri, quantum in nobis erat, pacem per omnia secum habere , nec non cum omnibus hominibus optabamus, parati sibi pacem et tranquillitatem dare ac mundo etiam universo. Et quia praelatorum, clericorum omniumque aliorum, quos detinebat captivos, et omnium tam clericorum quam laicorum, quos ceperatP in galeis, restitutio poterat esse pacis q plurimum inductiva: eum , ut illos restitueret, quum hoc idem tam ipse quam sui nuncii, antequam ad apostolatus vocati essemus officium, promisissent, rogari et peti ab ipso fecimus per eosdem, ac proponi insuper, quod iidem pro nobis parati erant audire et tractare pacem, ac etiam audire satisfactionem, quam facere princeps vellet de omnibus, pro quibus erat vinculo excommunicationis adstrictus, et offerre * praeterea, quod, si ecclesia eum in aliquo contra debitum laeserat, quod non credebat, parata erat corrigere ac in statum debitum reformare. Et, si diceret ipse, quod in nullo contra iustitiam laeserat ecclesiam, vel quod nos eum contra iustitiam laesissemus, parati eramus vocare reges, praelatos et principes tam ecclesiasticos quam saeculares ad aliquem tutum locum, ubi per se vel per solennes nuncios convenirent . Eratque parata ecclesia dey consilio concilii sibi satisfacere, si eum laesisset in aliquo, ac revocare sententiam , si quam contra ipsum iniuste tulisset, et cum omni mansuetudine et misericordia, (quantum cum Deo et honore suo fieri poterat,) recipere de iniuriis et offensis ipsi ecclesiae suisque per eum irrogatis satisfactionem ab eo * volebat, et omnes amicos suos sibique adhaerentes in pace ponere, plenaque securitate gaudere, ut nunquam hac occasione possent aliquod subire discrimen. Sed, licet sic apud eum pro pace paternis monitis et precum curaremus insistere

lenitate: idem tamen, Pharaonis imitatus duritiam, et obturans more aspidis aures suas, preces huiusmodi et monita elata obstinatione ac obstinata elatione^ despexit ; propter quod, non valentes absque gravi offensa Christi eius iniquitates amplius tolerare, cogimur urgente nos conscientia, iuste animadvertere in eundem. Et , ut ad praesens de ceteris eius sceleribus taceamus, quatuor gravissima, quae nulla possunt tergiversatione celari, commisit. Deieravit enim multoties, pacem quondam inter ecclesiam et imperium reformatam temere violando . (Et infra:) PerpetravitPP sacrilegium, capi faciens cardinales sanctae Romanae ecclesiae, ac aliarum ecclesiarum praelatos et clericos religiosos et saeculares, venientes ad concilium, quod idem praedecessor noster * duxerat convocandumqq. (Et infra:) De haeresi quoque non dubiis et levibus, sed difficilibus et evidentibus argumentis suspectus habetur . (Et infra:) Praeter haec regnum Siciliae, quod est speciale patrimonium B. Petri, et * idem princeps ab apostolica sede tenebat in feudum, iam ad tantam in clericis et laicis exinanitionem servitutemque redegit, quod, eis paene penitus nihil habentibus, et omnibus exinde fere probis eiectis , illos, qui remanserunt ibidem, sub servili quasi conditione vivere, ac Romanam ecclesiam, cuius sunt homines principaliter et vasalli, offendere multipliciter et hostiliter impugnare compellit. Posset etiam merito reprehendi, quod mille squifatorum annuam pensionem, in qua pro eodem regno ipsi ecclesiae Romanae tenetur, per novem annos et amplius solvere praetermisit. Nos itaque, super praemissis et quam pluribus aliis eius nefandis excessibus cum fratribus nostris et sancto concilio deliberatione praehabita diligenti yy, quum Iesu Christi vices, licet immeriti, teneamus in terris, nobisque in B. Petri persona sit dictum : „Quodcunque ligaveris super terram, ligatum erit et in coelis: “ memoratum principem, qui se imperio et regnis, omnique honore et dignitate reddidit tam indignum, quique propter suas iniquitates a Deo , ne regnet vel imperet, est abiectus, suis ligatum peccatis et abiectum, omnique honore ac dignitate privatum a Domino ostendimus, denunciamus et nihilominus sententiando privamus, omnes , qui ei iuramento fidelitatis tenentur adstricti, a iuramento huiusmodi perpetuo absolventes , auctoritate apostolica firmiter&gs inhibendo, ne quisquam de cetero sibi tanquam imperatori vel regi pareat et intendat, decernendo , quoslibet, qui ei deinceps velut imperatori vel regi consilium vel auxilium praestiterint seu favorem, ipso facto excommunicationis sententiae * subiacere. Illi autem, ad quos in eodem imperio imperatoris spectat electio, eligant libere successorem. De praefato * Siciliae regno providere curabimus cum eorundem fratrum nostrorum consilio, sicut viderimus expedire.

Chapter III

One who seeks a definite thing with a cause expressed loses if he does not prove that cause, although he proves another cause, especially one arising afterward. John Andrew.

The same, to the Preceptor of the Hospital of Saint John of Jerusalem in Spain, and to the Commander and Brothers of the House of Curvaria of the same Hospital. Indeed, the abbot— (And below:) The Abbot of Bonefac., proposing for himself and his convent that the place of Rosellis belonged to the aforesaid monastery by right of ownership or quasi-ownership, and that with its boundaries it pertained to that monastery by grant of the King of Aragon, petitioned that the place itself be adjudged to that monastery and that you be removed from it.

It was alleged on your behalf that the donation made to you concerning the aforesaid property was valid, although at that time it was under the power of the Saracens, because it was donated not simply but under a condition, namely, if it should come into the hands of the faithful. In that case the grant could and ought to have force, because the nature or quality of the things donated did not stand in the way of the donation itself, and it was indeed salutary and laudable to await and look forward to

the time when they would be subjected to the dominion of Christians. Therefore, as soon as they came to them, they were wholly devolved upon you.

It also made a great difference whether the donation had been made by the same king to the monastery of Bonefac. or to the aforesaid monastery of Populetum. For although it was clear that the property had been conferred by the king himself upon the aforesaid monastery of Populetum, and by that monastery upon the abbot and convent of Bonefac., it was nevertheless not established on that account that the said king had donated it to the monastery of Bonefac. itself or had commanded it to be donated. Nor, because he willed and established that a monastery be built there, could or ought it to be understood that he donated the aforesaid property, or any of it, to the monastery being constructed, since his intention appeared rather to be that, because he was enriching the aforesaid monastery of Populetum with the grant of so many and such great goods, its abbot and convent should be bound to construct a monastery for his salvation and that of his people; especially because no donation could be made to a monastery that did not yet exist.

The aforesaid grant made to the monastery of Bonefac. by the abbot and convent of the monastery of Populetum appeared to furnish it absolutely no assistance, most especially because it had been made after joinder of issue and the progress of the judicial proceeding, as was clearly apparent from the aforesaid instrument. Hence, since it had by no means brought into the judicial proceeding whatever right belonged to the monastery of Bonefac. in the aforesaid property from such a grant, because that which happened afterward cannot be seen to have come into the proceeding, judgment concerning the things petitioned could not be pronounced from that grant.

On the other party's behalf, however, it was said that since the king himself, by his probity and zeal, had conquered the above-mentioned places from the infidels, the donation of his grandfather or father previously made concerning them for the time when they should come to the worship of the faith could not bind the same king as regards things thus afterward acquired through him, since they had become his own property and appeared separated from the other hereditary goods.

Moreover, the aforesaid grant made to the monastery of Bonefac. by the monastery of Populetum, although it intervened after the judicial proceeding had been accepted and the cause had progressed, nevertheless ought to assist and be valid, since for a plaintiff it appears sufficiently to suffice that his right is apparent from a suitable cause, although one supervening, and to be sufficient if, just as is observed in the case of a defendant, his interest exists at the time the sentence is to be pronounced.

But to these things your party responded that, since both the above-mentioned donation of the grandfather and the acquisition of the aforesaid places were made in the name of the kingdom, the said king was bound to observe a donation of this kind. Furthermore, the aforesaid grant of the monastery of Populetum could not assist the monastery of Bonefac. in this regard. For when someone has brought an action from some definite and special cause, and afterward either another cause or one similar to that which he set forth arises, that cause cannot be seen to have come into the judicial proceeding, since the judge ought then carefully to foresee and attend whether the plaintiff's intention is founded upon entirely the same cause that was previously expressed, as one that also belonged to him at that time.

It is otherwise when he has brought an action or petitioned in general, making mention of no definite or special cause, because perhaps he generally proposed that someone was bound to him or that

some thing pertained to him by right of ownership or quasi-ownership. For then the judge is principally to inspect whether the plaintiff's right or intention is or is not sufficiently established. Hence, if this is clear from a cause arising even afterward, the judge can and ought to inform his mind from it, even if it appears that the action was brought less justly at the beginning. For although the thing had been unduly petitioned, the judicial proceeding that followed was nevertheless not for that reason any less valid and effective, nor were its acts or transactions for that reason any less valid; nor could the judge himself, the truth having thus become known, pronounce to the contrary with a free and secure conscience. Nor would it greatly benefit the defendant if perhaps condemnation were not then pronounced against him from a supervening cause of this kind, since, as soon as another judicial proceeding was instituted, he would deservedly be condemned from it.

Hence, although it suffices for a plaintiff to have founded his intention upon a supervening cause when he brought an action without a special cause being expressed, it is otherwise if he appended a definite and special cause to his petition, unless afterward he founded his intention entirely upon the same cause that he previously expressed and that then also belonged to him. Therefore, since the aforesaid abbot of the monastery of Bonefac. proposed that the often-mentioned place of Rosell. with its boundaries pertained to that monastery by grant of the aforesaid king, and did not prove any grant concerning this made by that king to the monastery itself, but showed a donation of these things formerly made to it by the abbot and convent of the monastery of Populetum—a donation that had neither been expressed in his petition nor made before it—he certainly ought to report no advantage from it.

Accordingly, the aforesaid cardinal, after diligently hearing all the foregoing matters and the others proposed on each side, and weighing the merits of each party in the equal balance of justice, prudently considered that the proposition made by the aforesaid abbot and convent of Bonefac.—namely, that the plaintiff's intention could be founded upon things arising after joinder of issue and that those things ought to come into the judicial proceeding—has application, as was fittingly alleged above, when the action was not brought specially from a definite and expressed cause.

For when a special cause was set forth, the judge's mind neither ought nor can be informed for pronouncing sentence by things that arise after the judicial proceeding was begun. Since mention was made of a definite cause, such as donation, sale, or another special cause, it is necessary to attend to the time the judicial proceeding began, so that it may be clearly known whether the plaintiff's interest then existed by reason of the things that accompany a special cause and must necessarily be present, such as place and time and matters of this kind, which are to be carefully considered and without which the cause would be judged empty and invalid.

But when a thing is petitioned in general without a declaration of any cause, it is not necessary in the same way to inspect the time the judicial proceeding was accepted, because accompaniments of this kind are neither required nor opportune and cannot be considered in this case. And although it may perhaps appear otherwise to certain curious persons who often dispute about things that are not greatly expedient when an action was brought upon some unexpressed cause, nevertheless it appears more useful that business be expedited by such compendium than prolonged with great loss through a certain exact subtlety, especially since certain things are known to be tolerated for the common utility, from the mildness of equity, contrary to the harshness of law.

Hence the same cardinal, considering that the abbot and convent of Bonefac. did not prove that a royal grant concerning these things was lawfully made to them—from which grant they appeared specially to attack you—determined by sentence, at our command and after taking the counsel of our brothers, that you were to be absolved from an attack of this kind by that abbot and convent. Therefore, holding valid the sentence of that cardinal, we confirm it by apostolic authority.

> Qui petit rem certam causa expressa, si illam causam non probat, succumbit; licet aliam probet, maxime postmodum emergentem. Ioann. Andr.
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> Idem Praeceptori hospitalis S. Ioannis Hierosolymitani in Hispania, et Commendatori ac Fratribus domus de Curvaria hospitalis eiusdem .
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> Abbate sane (Et infra:) Abbas de Bonefac. pro se et conventu suo proponens, locum de Rosellis esse praedicti monasterii iure dominii vel quasi, et cum suis finibus ex largitione regis Aragoniae * ad ipsum monasterium pertinere, petiit adiudicari eidem monasterio locum ipsum, et vos exinde amoveri. Allegabatur autem pro parte vestra, quod facta vobis donatio de praedictis valida exsistebat, quamvis illa sub Sarracenorum tunc exsisterent potestate, quia non simpliciter, sed sub conditione fuere donata, videlicet si ad manus fidelium devenirent. In quo casu concessio poterat et debebat habere vigorem, quia ipsi donationi rerum donatarum natura vel qualitas non obstabat, et salubre ac laudabile quidem erat spectare ac praestolari tempus, quo illa Christianorum dominio subderentur; quare mox, quum pervenerunt ad ipsos, fuerunt ad vos totaliter devoluta. Multum quoque distabat, an ipsi monasterio de Bonefac. vel praedicto monasterio Populeti ab eodem rege facta donatio fuisset; quia etsi liquebat praedicta monasterio Populeti ab ipso rege, ac ab illo abbati et conventui de Bonefac. fuisse collata, non tamen ob hoc constabat, dictum regem ipsi monasterio de Bonefac. illa donasse vel mandasse donari. Nec pro eo, quod voluit et statuit, ut aedificaretur ibi monasterium, poterat et debebat intelligi, eum praedicta vel eorum aliqua construendo monasterio donavisse, quum illa potius sua videretur * intentio, ut, quia praefatum monasterium Populeti tot et tantorum bonorum largitione ditabat, abbas et conventus ipsius pro sua suorumque salute monasterium construere tenerentur; praesertim quia monasterio, quod nondum erat, aliqua fieri donatio non valebat. Praemissa vero concessio, facta monasterio de Bonefac. ab abbate et conventu monasterii Populeti, nullum prorsus ei videbatur afferre suffragium, pro eo potissime, quod post litem contestatam et processum iudicii facta fuerat, sicut clare patebat ex instrumento praefato. Unde quum ius, si quod in praedictis ipsi monasterio de Bonefac. ex concessione huiusmodi competebat,in iudicio * minime deduxisset, quia videri non potest illud venisse, quod postmodum accidit: pronunciari utique super petitis non poterat ex eadem. Pro parte autem altera dicebatur, quod, quum rex ipse sua probitate ac studio ab infidelibus loca conquisiverit supra dicta, donatio avi vel patris ipsius, prius facta de illis, quum ad cultum fidei pervenirent, regem eundem quoad haec , sic per eum postmodum adquisita, obligare non potuit, quum sua propria facta essent, et viderentur ab aliis bonis hereditariis separata. Porro, praefata concessio, facta monasterio de Bonefac. a monasterio Populeti, licet post acceptum iudicium causaeque processum intervenerit, prodesse tamen et valere debebat, quum pro actore, quod de iure suo ex causa idonea, quamvis supervenienti, appareat, satis sufficere videatur satisque esse, si, prout servatur in reo, intersit ipsius tempore sententiae proferendae. Sed ad haec pars vestra respondit, quod, quum tam supra dicti avi donatio quam locorum acquisitio praemissorum fuerint nomine regni factae, memoratus rex donationem servare huiusmodi tenebatur. Ceterum praedicta monasterii Populeti concessio monasterio de Bonefac. auxiliari non poterat in hac parte, quia, quum quis egit ex aliqua certa et speciali causa, et postea sive alia, sive similis ei, quam exposuit, accidit, videri non potest illa in iudicio * devenisse, quum iudex tunc prospicere ac attendere debeat diligenter, an ex ea * omnino eadem, quae prius expressa exstitit, utpote, quae tunc etiam competeret, actoris intentio sit fundata. Secus autem, quum egit vel petiit in genere,

nullius certae vel specialis causae faciens mentionem, videlicet quia generaliter forte proposuit, aliquem obnoxium esse sibi, vel ad se iure dominii vel quasi rem aliquam pertinere. Tunc enim hoc praecipue est inspiciendum iudici, an sufficienter vel minime de iure vel intentione constet actoris. Unde, si de hoc ex causa, etiam postmodum accidenti, liqueat: potest et debet iudex, etiamsi appareat minus iuste a principio fore actum, suum exinde animum informare, quoniam, etsi petitum fuerit indebite, non ob hoc tamen minus valuit et tenuit iudicium subsecutum, nec illius acta vel gesta propterea minus valida exstiterunt, nec etiam iudex ipse, cognita taliter veritate, pronunciare in contrarium posset cum libera conscientia et secura. Non prodesset etiam multum reo, si tunc forte in ipsum ex huiusmodi supervenienti causa condemnatio non ferretur, quum, mox alio instituto iudicio, foret ex illa merito condemnandus. Unde, etsi actori suam ex supervenienti causa intentionem sufficiat fundavisse, quum egit aliqua causa specialiter non expressa: secus tamen est, si certam et specialem in sua petitione subiunxerit , nisi postmodum intentionem suam * ex eadem prorsus, quam prius expressit, tunc * etiam competenti causa fundarit. Quare quum memoratus abbas monasterii de Bonefac. proposuerit , saepe fatum locum de Rosell. cum suis terminis ad ipsum monasterium ex praedicti regis largitione spectare, nec de aliqua facta ipsi monasterio super hoc ab eodem rege concessione docuerit, ostenderit autem, donationem quondam factam illi de his ab abbate et conventu monasterii Populeti, quae nec in sua petitione fuerat expressa, nec etiam ante facta: nullum profecto commodum ex ea reportare debebat. Praefatus igitur cardinalis, praemissis omnibus et aliis, quae hinc inde fuerunt proposita, diligenter auditis, ac utriusque partis meritis aequa iustitiae lance discussis, prudenter attendit, id, quod praedicti abbas et conventus de Bonefac. proposuerunt, intentionem videlicet actoris, ex iis, quae post litis contestationem * accidunt, posse fundari, eaque debere in iudicium devenire, tunc locum habere, sicut congrue allegatum est supra, videlicet * quando ex certa et expressa causa specialiter non est actum. Ex iis enim, quae post inchoatum iudicium eveniunt, quando causa fuit exposita specialis , nec debet nec potest iudicis animus ad proferendam sententiam informari, quia, quum certae causae facta est mentio, utpote donationis vel venditionis aut alterius specialis, oportet inceptis iudicii tempus attendi, ut liquido cognoscatur , an tunc interfuerit actoris, propter illa, quae specialem comitantur causam et necessario adesse debent, veluti locus et tempus, et huiusmodi, quae sunt sollicite attendenda, et sine quibus causa * vacua et invalida censeretur. Sed quum est in genere absque alicuius causae declaratione petitum, non sic oportet accepti iudicii tempus inspici, quia non requiruntur, nec sunt opportuna, nec attendi possunt huiusmodi comitantia in hoc casu. Et licet aliquibus curiosis, qui de iis, quae non multum expediunt, saepe disceptant, aliter forsan appareat, quando actum est causa aliqua non expressa: utilius tamen videtur negotia tali expediri compendio, quam per quandam exactam subtilitatem longo dispendio prorogari, praesertim quum nonnulla pro utilitate communi contra iuris asperitatem ex aequitatis mansuetudine tolerari noscantur. Unde idem cardinalis, considerans, quod ipsi abbas et conventus de Bonefac. non probaverunt, largitionem super his regiam legitime * sibi factam, ex qua specialiter vos impetere videbantur, ab huiusmodi eorundem abbatis et conventus impetitione de mandato nostro, praehabito fratrum nostrorum consilio, vos duxit sententialiter absolvendos. Nos igitur, cardinalis eiusdem sententiam ratam habentes, eam auctoritate apostolica confirmamus. .

Chapter IV

If one of several judges or arbiters, while the others are present and direct it, pronounces sentence in words of the plural number, the sentence holds; an election, however, is to be pronounced in singular words. This is what it says. John Andrew.

Boniface VIII. When a written sentence is recited by one of the arbiters or judges while the others are present and direct it, it is held just as if it had been recited by all together. Nevertheless, the

person reciting must use not words of the singular number but of the plural, so that he says: "We, such judges or arbiters, pronounce or establish in this manner." It is otherwise observed in an election, in which, so that it may more evidently be judged one and common, whether the procedure is by compromise or scrutiny, the pronouncement of the election is to be made by one person in the place of all through words of the singular number.

> Si ex pluribus iudicibus vel arbitris unus, aliis praesentibus et mandantibus, per verba pluralis numeri ferat sententiam, tenet sententia; electio autem pronuncianda est per verba singularia. H. d. Ioann. Andr.
>
> Bonifacius VIII.
>
> Quum ab uno arbitrorum vel iudicum, aliis praesentibus et mandantibus, scripta sententia recitatur: habetur perinde, ac si simul esset ab omnibus recitata. Oportet tamen, ut is, qui recitat, non utatur verbis singularis numeri, sed pluralis, ut dicat: „nos, tales iudices vel arbitri, pronunciamus seu statuimus in hunc modum," licet secus in electione servetur, in qua, ut censeatur evidentius unica et communis, est ab uno vice omnium, sive per compromissum sive per scrutinium procedatur, electionis pronunciatio per verba singularis numeri facienda.

Chapter V

He establishes three cases of nullity of a sentence and excepts one case from the first. This is what it says. John Andrew.

The same. Although a definitive sentence, after it has been written, ought to be pronounced by the judge, not another, through recitation of the writing—otherwise it merits neither to have the name of a sentence nor is it necessary to appeal from it—nevertheless, it will be lawful for a bishop, whom it is fitting on account of the prerogative of dignity to shine with more ample honor, to have a sentence to be pronounced by him recited through another, after the likeness of illustrious persons. A sentence that it happens the judge issues to the litigants in writing but does not recite, or that he pronounces while standing rather than sitting, is absolutely of no moment.

> Ponit tres casus nullitatis sententiae, et a primo unum casum excipit. H. d. Ioann. Andr.
>
> Idem.
>
> Etsi sententia diffinitiva, postquam scripta fuerit, debeat a iudice, non ab alio, de scripti recitatione proferri, alias nec nomen sententiae mereatur habere, nec ab ea sit appellare necesse: episcopo tamen, quem propter dignitatis praerogativam ampliori convenit honore fulgere, sententiam ab eo ferendam licebit ad instar illustrium personarum per alium recitare. Sententia, quam scriptam edi a iudice litigatoribus, non recitari, vel quam ab ipso stando, non sedendo proferri contingit, nullius penitus est momenti.

Title XV: On Appeals

Chapter I

One appealing to the Pope judicially or extrajudicially ought to appeal in writing, express the cause, and seek appellate letters. If the appellee wishes and petitions it, the principal persons ought to proceed to the Pope personally or through procurators instructed concerning the principal cause. Nothing is changed in appeals interposed from a definitive sentence. Finally, a penalty is imposed upon either party acting to the contrary. John Andrew.

Innocent IV at the Council of Lyons. It is in our heart to diminish litigation and relieve subjects from labors. We therefore decree that if anyone determines, judicially or extrajudicially, to appeal to us from an interlocutory judgment or some grievance, he is to hasten to assign the cause of appeal in writing and seek appellate letters, which we command to be exhibited to him. In them he is to express the cause of appeal and why the appeal was not admitted, or whether perhaps deference was shown to the appeal out of reverence for the superior.

After this, a period for prosecuting the appeal having been indulged to the appellant according to the distance of places and the character of the persons and business, if the appellee wishes and petitions it, the principal persons are to proceed to the Apostolic See personally or through instructed procurators with a mandate to act and with the reasons and muniments pertaining to the cause. They are to come so prepared that, if it seems expedient to us, after the matter of appeal has been concluded or omitted by the parties' will, proceedings may be taken in the principal business so far as can and ought to be done by law. The provisions that antiquity established for appeals interposed from definitive sentences are not changed.

But if the appellant does not observe the foregoing provisions, he will be reputed not to have appealed and will return to the examination of the prior judge, to be condemned in lawful expenses. If the appellee contemns this statute, proceedings are to be taken against him as contumacious, both in expenses and in the cause, so far as is permitted by law. For it is just that the laws rise up against one who eludes the law, the judge, and the party.

> **DE APPELLATIONIBUS.**
>
> Appellans ad Papam in iudicio vel extra, appellare debet in scriptis, et causam exprimere, et apostolos petere. Si vult et petit appellatus, principales personae per se vel per procuratores, instructos super principali, accedere debent ad Papam. In appellationibus a sententia diffinitiva interpositis nil mutatur. Demum utri que contra facienti imponitur poena. Ioann. Andr.
>
> Innocentius IV. in concilio Lugdunensi .
>
> Cordi nobis est lites minuere et a laboribus relevare subiectos. Sancimus igitur, ut, si quis in iudicio vel extra super interlocutoria vel gravamine aliquo ad nos duxerit appellandum, causam appellationis in scriptis assignare deproperet, petat apostolos, quos ei praecipimus exhiberi; in quibus appellationis causam exprimat, et cur appellatio non sit admissa, vel si appellationi forsan ex superioris reverentia sit delatum. Post hoc appellatori secundum locorum distantiam, personarum et negotii qualitatem tempore prosecutionis induito, si voluerit appellatus et petierit, principales personae s per se, vel per procuratores instructos cum mandato ad agendum et cum rationibus et munimentis ad causam spectantibus, accedant ad sedem apostolicam sic parati, ut, si nobis visum fuerit expedire, finito appellationis articulo, vel de* partium voluntate omisso , procedatur in negotio principali, quantum de iure poterit et debebit, his, quae in appellationibus a diffinitivis sententiis interpositis antiquitas statuit, non mutatis. Quodsi appellator quae praemissa sunt non observet: reputabitur non appellans, et ad prioris iudicis redibit examen, in expensis legitimis condemnandus. Si autem appellatus contempserit hoc statutum: in eum tanquam in contumacem tam in expensis quam in causa, quantum a iure permittitur, procedatur . Iustum est equidem, ut in eum iura insurgant, qui ius et * iudicem et partem eludit.

Chapter II

A judge who is challenged establishes for the arbiters a suitable time for concluding the cause; when it has elapsed, if the cause has not been concluded, he proceeds in the principal cause. John Andrew.

The same. After a legitimate ground of suspicion has been assigned against a judge and arbiters have been chosen by the parties according to the form of law to take cognizance of it, it often happens that, because they are unwilling to agree upon the same result and do not summon a third person with whom both or one of them is to proceed to decide the business, as they are bound to do, the judge pronounces a sentence of excommunication against them. They contemn it for too long, sometimes because of hatred and sometimes because of favor toward the parties, and therefore, the cause itself being prolonged beyond what is due, the principal business is not taken into cognizance. Wishing, therefore, to apply a necessary medicine to a disease of this kind, we decree that a suitable term is to be appointed for the arbiters by the judge, within which they are to agree upon the same result or concordantly summon a third person with whom both or one of them is to take care to terminate the business concerning that suspicion. Otherwise, the judge is thereafter not to omit proceeding in the principal business.

> Iudex, qui recusatur, statuit competens tempus arbitris ad finiendam causam; quo elapso, si finita non fuerit, in principali procedit. Ioann. Andr.
>
> Idem .
>
> Legitima suspicionis causa contra iudicem assignata, et arbitris a partibus secundum formam iuris electis, qui de ipsa cognoscant, saepe contingit, quod, ipsis in idem convenire nolentibus, nec tertium advocantibus, cum quo ambo vel alter eorum procedat ad decisionem ipsius negotii, ut tenentur iudex proferat excommunicationis sententiam contra ipsos *, quam ipsi tum propter odium, tum propter favorem partium diutius vilipendunt; quare, causa ipsa plus debito prorogata, non proceditur ad cognitionem negotii principalis. Volentes igitur morbo huiusmodi necessariam adhibere medelam, statuimus, ut ipsis arbitris per iudicem competens terminus praefigatur, infra quem in idem conveniant, vel tertium concorditer advocent, cum quo ambo vel alter eorum eiusdem suspicionis negotium terminare procurent; alioquin iudex extunc in principali negotio procedere non omittat.

Chapter III

An appeal is made from a bishop's official not to the bishop but to the archbishop. — § 1. An appeal is made from a bishop's subject to the bishop, not to the archbishop, unless custom provides otherwise. This is what it says. — § 2. An archbishop ought not to commit a cause of appeal interposed from a bishop, or cite the parties, unless a probable cause is expressed in the appeal. — § 3. If it is denied that the business was devolved by appeal, the archbishop will not prohibit the judge of the principal cause from proceeding unless the devolution has first been established. This is what it says. — § 4. If it is said that an appeal was made for an unjust cause, the archbishop cannot prohibit proceedings unless, having first received the appeal as probable, he begins to take cognizance of the truth of the cause. This is what it says. — § 5. Although it is said that an appeal was made from a definitive sentence in a case prohibited by law, once the archbishop has begun to take cognizance of this he can prohibit the sentence from being committed to execution. This is what it says. — § 6. An archbishop cannot exercise jurisdiction over a third person who alters something in a cause devolved upon him by appeal after his prohibition. This is what it says. — § 7. An archbishop cannot exempt an appellant from the bishop's jurisdiction in other causes. — § 8. By law, an appeal ought to be made to the archbishop from bishops in causes in which they have temporal jurisdiction, unless a special law introduces something else. This is what it says. — § 9. An archbishop cannot revoke ecclesiastical censure

pronounced by a bishop against an appellant unless the parties have been summoned and the cause lawfully taken into cognizance. This is what it says. — § 10. Once the archbishop has pronounced that an appeal before sentence was badly made, he ought immediately to remit the cause to the suffragan. This is what it says.

The same. The Roman Church—(And below:) Since the suffragans of the Church of Reims and their officials, who generally take cognizance of causes pertaining to their forum by supplying their functions, are to be judged one and the same consistory or audience, an appeal is to be made by law from those officials not to the said suffragans—lest an appeal appear to be interposed from themselves to themselves—but to the curia of Reims.

§ 1. From archdeacons and other inferior prelates subject to the same suffragans, and from their officials, an appeal ought to be made to the suffragans themselves and not, with the said suffragans omitted, to the same curia, unless by custom something else belongs to the Church of Reims in this regard.

§ 2. When an appeal has been made to the aforesaid curia from the audience of those suffragans or their officials, the Archbishop of Reims for the time being, or his official, is by no means to cite the parties in the cause of an appeal interposed before a definitive sentence, nor commit it to others, unless a probable or legitimate cause of that appeal is expressed.

§ 3. But if, after the parties have been summoned, it is alleged either that no appeal at all was made, or that it was not made within ten days after the interlocutory or definitive sentence, or something else similar, and that the business was thus not devolved by appeal upon that archbishop or his official, they are not to presume to prohibit proceedings in that cause, or proceedings toward execution of the sentence, unless it has first been established for them that the cause itself was wholly carried to them.

§ 4. But if it is objected that an appeal before sentence was interposed from an unjust or insufficiently legitimate cause and that an appeal of this kind is therefore not to be admitted, the aforesaid archbishop or his official cannot prohibit proceedings in the cause unless, after first receiving the appeal as one issued from a probable cause, they begin to take cognizance whether a cause of this kind is true.

§ 5. But if it is said that an appeal after sentence was made in cases prohibited by law—for example, from a sentence promulgated concerning a manifest and notorious crime, or one that a person confessed in law, or similar cases—they can prohibit the sentence from being committed to execution after they have begun to take cognizance whether the appeal interposed from it is to be received or not.

§ 6. Nor can he claim any jurisdiction on such an occasion over another person who, concerning the thing about which controversy is conducted between the appellant and appellee, attempts something after their prohibition.

§ 7. Since one who utters the voice of appeal to the curia of Reims concerning some cause is nevertheless subject to the jurisdiction of his ordinary in other causes, the Archbishop of Reims or his official is by no means to impede that jurisdiction in other matters so as wholly to exempt such an appellant from the power of the same ordinary.

§ 8. An appeal ought to be made to them from the bishops of the aforesaid province concerning causes in which they exercise temporal jurisdiction, unless perhaps by custom, privilege, or another special law an appeal is to be made to someone else.

§ 9. Nor are they in any way to revoke, or denounce as null, sentences of interdict, suspension, or excommunication promulgated against the appellant by the person from whom the appeal is alleged to have been made, unless the parties have been summoned and the appeal lawfully taken into cognizance.

§ 10. When an appeal has been made to the Archbishop of Reims before sentence from the audience of his suffragan concerning some cause, the same archbishop, after taking cognizance of the appeal and establishing that it was insufficiently reasonable, is not to postpone remitting the cause to that suffragan.

> De officiali episcopi non ad episcopum, sed ad archiepiscopum appellatur. — §. 1. De subdito episcopi ad ipsum, non ad archiepiscopum appellatur, nisi aliud esset de consuetudine. H. d. — §.2. Archiepiscopus causam appellationis ab episcopo interpositae non debet committere, vel partes citare, nisi in appellatione probabilis causa sit expressa. — §. 3. Si negetur, per appellationem negotium devolutum, non inhibebit archiepiscopus iudicem principalis causae procedere, nisi prius de devolutione constiterit. H. d. — §.4. Si dicitur, ex iniusta causa appellatum, archiepiscopus inhibere non potest, nisi, prius, recepta appellatione ut probabili, incipiat cognoscere de causae veritate. H. d. — §. 5. Licet dicatur appellatum a diffinitiva in casu prohibito a iure, ex quo de hoc archiepiscopus cognoscere coeperit, potest inhibere, ne sententia exsecutioni mandetur. H. d. — §. 6. Archiepiscopus in tertiam personam, post inhibitionem suam in causa per appellationem delata ad ipsum, aliquid innovantem, iurisdictionem exercere non potest. H. d. — §. 7. Archiepiscopus appellantem in aliis causis a iurisdictione episcopi non potest eximere. — §. 8. Ab episcopis in causis, quibus iurisdictionem temporalem habent, de iure debet ad archiepiscopum appellari, nisi speciale ius aliud inducat. H. d. §. 9. Censuram ecclesiasticam, in appellantem prolatam per episcopum, archiepiscopus revocare non potest, nisi partibus vocatis, et de causa legitime cognito. H. d. — §. 10. Ex quo archiepiscopus pronunciaverit, male appellatum ante sententiam: statim debet causam ad suffraganeum remittere. Hoc dicit.
>
> Idem .
>
> Romana ecclesia (Et infra:) Quum suffraganeorum Remensis ecclesiae, suorumque officialium, qui generaliter de causis ad ipsorum forum pertinentibus eorum * vices supplendo cognoscunt, unum et idem consistorium sive auditorium sit censendum: ab ipsis officialibus non ad dictos suffraganeos, ne ab eisdem ad se ipsos interponi appellatio videatur, sed de iure ad Remensem est curiam appellandum, §. i. Ab archidiaconis vero aliisque inferioribus praelatis, suffraganeis subiectis eisdem, et eorum officialibus, ad suffraganeos ipsos debet, et non ad eandem curiam omissis dictis suffraganeis appellari, nisi aliud Remensi ecclesiae de consuetudine competat in hac parte. §. 2. Quum autem ad praefatam curiam ab eorundem suffraganeorum vel suorum officialium audientia fuerit appellatum, Remensis archiepiscopus, qui pro tempore fuerit, vel officialis ipsius nullatenus in appellationis causa interpositae ante diffinitivam sententiam citent partes, nec etiam aliis illam * committant, appellationis eiusdem causa probabili seu legitima non expressa. §. 3. Sivero vocatis partibus, vel nullatenus, aut non infra decem dies post interlocutoriam vel diffinitivam sententiam appellatum fuisse, seu aliquid aliud simile, sicque non esse per appellationem ad eundem archiepiscopum vel * eius officialem devolutum negotium proponatur: iidem, nisi prius ipsis constiterit, causam ipsam ad eos totaliter * fuisse delatam, prohibere, ne in causa * illa, vel ne ad exsecutionem procedatur sententiae, non praesumant. §. 4. Quodsi obiiciatur ex iniusta causa seu minus legitima ante sententiam appellationem interpositam exstitisse, et

ex eo non esse appellationem huiusmodi admittendam: nequeunt praedicti archiepiscopus vels eius officialis * prohibere, ne procedatur in causa, nisi prius appellatione recepta, velut emissa ex causa probabili, cognoscere incipiant de causa huiusmodi, an sit vera. §. 5. Si autem post sententiam in casibus a iure prohibitis, (utpote a sententia super manifesto et notorio crimine, vel de quo quis in iure confessus exstitit, promulgata, vel consimilibus) appellatum fuisse dicatur: possunt, ne sententia exsecutioni mandetur, postquam cognoscere coeperint, utrum sit recipienda vel non appellatio ab eo interposita, inhibere. §. 6. In alium quoque, qui circa rem, de qua inter appellantem et appellatum controversia vertitur, aliquid post eorum inhibitionem attentat non valet * occasione huiusmodi iurisdictionem aliquam vindicare. §. 7. Quum vero is, qui ad Remensem curiam super aliqua causa vocem appellationis emittit, nihilominus in causis aliis ordinarii sui iurisdictioni sublidatur*: Remensis archiepiscopus vel officialis ipsius * nequaquam iurisdictionem ipsam in aliis * impediant, ut * ab eiusdem ordinarii potestate totaliter eximant taliter appellantem. §. 8. Debet autem ad eos ab episcopis praefatae provinciae super causis, in quibus temporalem iurisdictionem exercent, nisi forte de consuetudine aut privilegio sive iure alio speciali sit appellandum ad alium, appellari. §. 9. Sententias quoque interdicti, vel suspensionis seu excommunicationis, in appellantem ab eo, a quo appellatum proponitur, promulgatas, nullatenus, nisi vocatis partibus et de appellatione legitime cognito, revocent aut denuncient esse nullas. §. 10. Quum autem ad Remensem archiepiscopum ab audientia suf-fraganei sui super aliqua causa fuerit ante sententiam appellatum: idem archiepiscopus, postquam de appellatione cognito constiterit, eam minus rationabilem exstitisse, causam * ad eundem suffraganeum remittere non postponat.

Chapter IV

If a judge who has been required does not deliver appellate letters and afterward proceeds in the cause, the proceeding is not valid unless the appeal had been renounced. John Andrew.

The same. So that instruction concerning an appeal and its cause may more easily be had in the proceeding, we strictly command that the person from whom the appeal is made, when required, give the appellant appellate letters according to the tenor of our constitution issued concerning this. But if he does not exhibit them and thereafter perhaps proceeds in the cause, his proceeding is invalid and void unless the appeal has been renounced.

Si iudex requisitus non tradit apostolos, et postea procedit in causa, non valet processus, nisi renunciatum fuisset appellationi. Ioann. Andr.

Idem .

Ut super appellatione ac eius causa instructio facilior valeat in processu haberi: districte praecipimus, quod ille, a quo appellatur, apostolos appellanti iuxta tenorem constitutionis nostrae super hoc editae tribuat requisitus. Si vero non exhibuerit, extunc, si forte in causa procedat, nisi appellationi renunciatum fuerit, eius invalidus et irritus sit processus.

Chapter V

The appellate judge ought to remit an appellant who appeals unjustly before sentence to the judge of the principal cause and condemn him in expenses; this applies if the principal judge had not deferred to the appeal. But if he deferred to it, remittal will not be made of necessity. In appeals interposed from a definitive sentence, the ancient laws are to be observed. John Andrew.

Clement IV. Since justice neither defers to frivolous appeals nor ought a judge to defer to them, if a lower judge does not admit an insufficiently legitimate appeal but the appellant nevertheless

prosecutes it, the superior, taking cognizance of it, is without difficulty to remit the cause to the prior judge according to the canonical sanctions, making a condemnation in expenses on the same day. But if the judge admits that appeal, although both the appeal and the deference of the judge himself can be rejected by the superior, nevertheless, because the judge himself, so far as lay in him, divested himself of that jurisdiction by deferring to the appeal insufficiently justly, decision of the whole cause is transferred into the superior's power, and the cause is not of necessity to be remitted to the former judge. The provisions established concerning appeals interposed after sentence remain saved.

> Iudex appellationis inique appellantem ante sententiam remittere debet ad iudicem principalem, et in expensis condemnare, et hoc, si principalis iudex non detulerat appellationi; sed, si detulit, non fiet remissio de necessitate. In appellationibus interpositis a definitiva antiqua iura serventur. Ioann. Andr.
>
> Clemens IV.
>
> Quum appellationibus frivolis nec iustitia deferat, nec sit a iudice deferendum, si iudex inferior appellationem minus legitimam non admittat, eam appellatore nihilominus prosequente: superior, de ipsa cognoscens, causam ad priorem iudicem iuxta sanctiones canonicas sine difficultate remittat, eadem die condemnationem faciens expensarum. Si vero iudex admittat eandem, licet tam appellatio quam ipsius iudicis delatio a superiore valeant refutari: quia tamen iudex ipse, quantum in se fuit, a se iurisdictionem abdicavit eandem, appellationi deferens minus iuste, totius causae decisio in superioris est potestate transfusa, nec est illi causa de necessitate ulterius remittenda, salvis iis quae super appellationibus post sententiam interpositis sunt statuta.

Chapter VI

If an appellant does not insistently seek appellate letters within thirty days, he renounces the appeal. If the judge, duly required, does not deliver them but afterward proceeds, his proceeding is not valid. John Andrew.

Boniface VIII. Appellate letters ought to be insistently sought by one who appeals within thirty days, and exhibited to him by the judge within the said time. Otherwise, if the appellant omits to seek them within that time, he is presumed to renounce his appeal, even if he goes or sends someone to prosecute an appeal of this kind. The provision that our predecessor Pope Innocent IV of happy memory decreed was to be established—that if the person from whom the appeal is made does not give appellate letters to the appellant when required, and thereafter perhaps proceeds in the cause, his proceeding is invalid unless the appeal has been renounced—applies only when the judge, required concerning this with due insistence at a suitable place and time, expressly denies them or maliciously or negligently omits to deliver them to him within the aforesaid time.

> Si appellans infra XXX. dies instanter non petit apostolos, appellationi renunciat. Si iudex, modo debito requisitus, illos non tradit, sed postea procedit: non valet eius processus. Ioann. Andr.
>
> Bonifacius VIII.
>
> Ab eo, qui appellat, infra triginta dies instanter apostoli peti debent, et eidem infra dictum tempus a iudice exhiberi; alias praesumitur appellationi suae renunciare appellans, si eos infra idem tempus petere praetermittat, etiamsi vadat aut mittat ad appellationem huiusmodi prosequendam. Illud autem, quod felicis recordationis Innocentius Papa IV. praedecessor noster statuendum decrevit, ut, si is, a quo appellatur, apostolos appellanti non tribuat requisitus, extunc, si forte in causa procedat, nisi appellationi renunciatum fuerit, eius invalidus sit processus, tunc demum obtinet, quum iudex, super hoc cum debita instantia loco et tempore congruo requisitus, eos expresse denegat, vel infra praemissum tempus malitiose aut negligenter illi tradere praetermittit.

Chapter VII

Innovations made by a judge after a definitive sentence from which an appeal was made are immediately revoked by the appellate judge, even if they were made before the appeal. But things attempted after an appeal before a definitive sentence are not revoked unless the truth of the appeal has first been established, unless they were attempted after a prohibition duly made. John Andrew.

The same. Not only ought innovations made after an appeal interposed from a definitive sentence always to be wholly revoked before all else by the appellate judge—except in cases in which the laws prohibit an appeal after sentence—but also all things that it happens are altered in the intervening time between the sentence and the appeal that is afterward interposed from it within ten days, just as if they had been altered after that appeal.

But things altered after an appeal interposed before a definitive sentence ought not to be revoked until it is established that the cause of appeal is true, unless the appellate judge, after it has been established for him that the business was devolved upon him through an appeal issued from a probable cause, canonically prohibits the judge from whom the appeal was made from proceeding. For then, whatever was altered after such a prohibition is, even if the same cause is not true, to be reduced before all else to its former state by the same appellate judge.

> Innovata per iudicem post diffinitivam sententiam, a qua appellatum exstitit, revocantur statim per iudicem appellationis, etiamsi ante appellationem fuerint innovata. Attentata vero post appellationem ante diffinitivam, non revocantur, nisi primo de veritate constiterit, nisi post inhibitionem debito modo factam attentata fuissent. Ioann. Andr.
>
> Idem .
>
> Non solum innovata post appellationem, a diffinitiva sententia interiectam, debent semper, exceptis casibus, in quibus iura post sententiam prohibent appellare, ante omnia per appellationis iudicem penitus revocari: sed etiam * ea omnia, quae medio tempore inter sententiam et appellationem, quae postmodum infra decendium interponitur ab eadem, contingit * innovari, ac si post appellationem eandem innovata fuissent. Illa vero, quae post appellationem interpositam ante diffinitivam sententiam innovantur, donec appellationis causam veram esse constiterit, revocari non debent: nisi iudex appellationis, postquam sibi constiterit, per appellationem emissam ex probabili causa fore ad se negotium devolutum, inhibeat canonice iudici, a quo appellatum exstitit, ne procedat. Tunc enim, quicquid post inhibitionem huiusmodi fuerit innovatum, est licet causa eadem non sit vera, per eundem appellationis iudicem ante omnia in statum pristinum reducendum.

Chapter VIII

One who appeals extrajudicially ought to appeal within ten days from when he learned of the grievance; afterward he will be heard through the remedy of the common law, but not through the remedy of appeal. John Andrew.

The same. Wishing by the present constitution to impose an end upon ancient dispute, we decree that from elections, postulations, provisions, and any extrajudicial acts in which an appeal can be interposed, anyone who, reputing himself aggrieved by them, desires the grievance inflicted to be revoked through the benefit of appeal is, if he wills, to appeal within ten days after he learns of it. After ten days, however, access to appeal is not to lie open to him. But if through due contradiction or other remedies of law he petitions that the grievance be revoked, the lapse of ten days is not to stand in his way, provided that in the meantime he did not consent to those acts.

Qui appellat extra iudicium, infra decem dies, ex quo scivit gravamen, appellare debet; postea per remedium iuris communis audietur, sed non per appellationis remedium. Ioann. Andr.

Idem.

Concertationi antiquae finem imponere praesenti constitutione volentes, statuimus, ut ab electionibus, postulationibus, provisionibus et quibuslibet extraiudicialibus actibus, in quibus potest appellatio interponi, quisquis ex eis, gravatum se reputans, per appellationis beneficium gravamen illatum desideraverit revocari, infra decem dies, postquam sciverit, si velit, appellet; post decendium vero eidem aditus non pateat appellandi. Sed si per contradictionem debitam vel alia iuris remedia petierit revocari gravamen: ei, dummodo medio tempore his non consenserit, lapsus decendii non obsistat.

Chapter IX

An appeal tendered in writing is valid although it is not read before the judge. Zenzel says this.

The same. An appeal that you allege you tendered in writing to the judge from whom you wished to appeal cannot reasonably be attacked because it was not read before him.

Valet appellatio in scriptis porrecta, licet coram iudice non legatur. Hoc dicit Zenzel.

Idem.

Appellatio, quam in scriptis iudici, a quo appellare volebas, te porrexisse proponis, non potest ex eo, quod coram ipso lecta non fuerit, rationabiliter impugnari.

Chapter X

The judge from whom an appeal is made cannot compel one appealing from a grievance to prove its truth, although he can cite him to hear its revocation; once it has been revoked, he will be able to proceed in the cause notwithstanding the appellant's contumacy, as though he had never appealed. This is what it says. Zenz.

The same. If the judge from whom you appeal because of a grievance that you allege was inflicted upon you appoints for you a term to prove that you were aggrieved and to hear the revocation of the same grievance if you prove it, you are bound neither to prove this before him—since he has the duty to see it through himself—nor to appear as before a judge, since his jurisdiction has been suspended through the appeal, except solely to hear that revocation if he determines that it is to be made. Otherwise, if you do not appear and he effectually revokes the grievance at the term, he will thereafter be able freely to proceed in the cause as though the appeal had not been interposed.

Iudex a quo compellere non potest appellantem a gravamine, ipsius veritatem probare, licet citare potest ad ipsius revocationem audiendam; qua facta in causa procedere poterit, eius contumacia non obstante, ac si nunquam appellasset. H. d. Zenz.

Idem.

Si a iudice, a quo propter gravamen, quod tibi proponis illatum, appellas, ad docendum, te fore gravatum, et ad audiendam revocationem eiusdem gravaminis, si de ipso docueris, tibi terminus praefigatur: nec coram eo, (quum ipse per se id videre habeat,) hoc docere, nec etiam tanquam coram iudice, (quum per appellationem sit suspensa ipsius iurisdictio,) comparere teneris, nisi ad hoc solum, ut revocationem ipsam audias, si eam duxerit faciendam; alias, si non comparueris, et ipse in termino gravamen revocaverit cum effectu, poterit extunc libere in causa procedere, ac si appellatio interposita non fuisset.

Chapter XI

An appeal is made from a chapter's collation to the bishop if he took part as a canon; it is otherwise if he took part as a prelate. This is what it says. Dominicus.

The same. From a collation of a benefice that you allege was made to your prejudice jointly by the bishop and chapter, you ought to have appealed not to the bishop himself, if he took part in it as prelate, but to a superior. Otherwise, if he had taken part in it as a canon, you could lawfully have appealed to him.

> A collatione capituli ad episcopum appellatur, si ut canonicus interfuit, secus, si ut praelatus. H. d. Dominicus.
>
> Idem.
>
> A collatione beneficii, quum communiter per episcopum et capitulum in tuum praeiudicium factam esse proponis, non ad ipsum episcopum, si in ea ut praelatus interfuerit , sed ad superiorum te oportuit appellare; alias, si ut canonicus interfuisset in ea, potuisti appellare licite ad eundem.

Chapter XII

Through an appeal interposed from a definitive sentence, an interlocutory judgment prejudicing the principal business can be revoked; otherwise it cannot. John Andrew.

The same. Although no appeal was made from an interlocutory judgment through which an exception of pact or prescription, or another exception prejudicing the principal business or rendering the judicial proceeding null, was rejected, nevertheless, if it happens that an appeal is made from the definitive sentence that is afterward promulgated, even beyond ten days, the grievance inflicted through that interlocutory judgment can lawfully be corrected in the appeal cause by the appellate judge. But where an interlocutory judgment is pronounced concerning something that does not prepare prejudice to the principal business or render the judicial proceeding null, unless an appeal was made from that interlocutory judgment, the grievance inflicted can by no means be revoked through an appeal afterward interposed from the definitive sentence.

> Per appellationem interpositam a diffinitiva revocari potest interlocutoria, principali negotio praeiudicans; alias non. Ioann. Andr.
>
> Idem.
>
> Licet ab interlocutoria, per quam pacti vel praescriptionis , aut alia. principali negotio praeiudicans vel iudicium nullum reddens exceptio est repulsa, non fuerit appellatum, si tamen a diffinitiva quae postmodum etiam ultra decendium promulgatur, appellari contingat: potest in appellationis causa ipsum gravamen, per interlocutoriam eandem illatum \ licite per appellationis iudicem emendari. Ubi vero interlocutoria super eo profertur, quod non parat praeiudicium negotio principali, vel iudicium nullum reddit, nisi fuerit appellatum ab ipsa: per appellationem, a diffinitiva postea interiectam, gravamen illatum nequaquam poterit revocari.

Book III

Title I: On the Life and Honesty of Clerics

Chapter I

A cleric who practices the entertainer's art for a year loses clerical privilege by the law itself if, after being admonished a third time, he does not desist. John Andrew.

Boniface VIII.

Clerics who, detracting in no small measure from the dignity of the clerical order, make themselves entertainers or goliards or buffoons shall, if they have practiced that ignominious art for a year, be deprived by the law itself of every clerical privilege; but if for a shorter time, they shall be deprived of it if, after being admonished a third time, they have not come to their senses.

> **DE VITA ET HONESTATE CLERICORUM.**
>
> Clericus, ioculatoriam artem per annum exercens, si tertio monitus non desistat, ipso iure perdit privilegium clericale. Ioann. Andr.
>
> Bonifacius VIII.
>
> Clerici, qui, clericalis ordinis dignitati non modicum detrahentes, se ioculatores seu goliardos faciunt aut bufones, si per annum artem illam ignominiosam exercuerint, ipso iure, si autem tempore breviori, et tertio moniti non resipuerint, careant omni privilegio clericali.

Title II: On Married Clerics

Chapter I

If a married cleric wears clerical dress and the tonsure, he enjoys clerical privilege; otherwise, he does not. John Andrew.

Boniface VIII.

Clerics who have contracted marriage with women married only once and virgins shall, if they wear the tonsure and clerical garments, retain the privilege of the canon issued by Pope Innocent II, our predecessor, in favor of the whole clerical order. And since, according to the Council of Paris, no cleric ought to be constrained or condemned by a secular judge, by the present edict we declare that married clerics of this kind cannot, for excesses or delicts committed by them, be drawn criminally or civilly before a secular court, nor ought they in any way to be condemned personally, or even pecuniarily, by the secular judges themselves—lest by one route there be granted to those judges what is denied them by another. In other matters, however, or unless, as was premised, they wear the tonsure or clerical garments, we do not wish them to enjoy clerical privilege even in the aforesaid matters.

> **DE CLERICIS CONIUGATIS.**
>
> Si clericus coniugatus ferat habitum et tonsuram, clericali privilegio gaudeat; alias non. Ioann. Andr.
>
> Bonifacius VIII.

Clerici, qui cum unicis et virginibus contraxerunt, si tonsuram et vestes deferant clericales, privilegium retineant * canonis ab Innocentio Papa II. praedecessore nostro editi in favorem totius ordinis clericalis. Et quum iuxta Parisiense concilium nullus clericus distringi aut condemnari debeat a iudice saeculari: praesenti declaramus edicto, huiusmodi clericos coniugatos pro commissis ab eis excessibus vel delictis trahi non posse criminaliter aut civiliter ad iudicium saeculare, nec ab ipsis saecularibus iudicibus eos debere personaliter * vel etiam pecunialiter, (ne per unam viam concedatur eisdem iudicibus quod per aliam denegatur,) ullatenus condemnari. In ceteris autem, vel nisi, ut praemittitur, tonsuram vel * vestes deferant clericales,etiam in praemissis eos gaudere nolumus privilegio clericali.

Title III: On Clerics Not Residing in Their Church or Prebend

Chapter I

Daily distributions ought to be given only to those present who take part in the divine offices, notwithstanding custom. And those who have received them otherwise do not make them their own; the same applies to distributions given for the anniversaries of the dead. John Andrew.

Boniface VIII.

Entirely disapproving the custom that has grown up in certain regions, by which canons and other benefice-holders, or clerics of cathedral and other collegiate churches, receive daily distributions in full—which are otherwise called manual benefices or victuals and are granted only to residents—provided that in some manner they are present in the cities or other places in which the churches themselves are situated, although they do not take part in the divine offices, just as if they were continually serving in those offices in the churches themselves, we decree that these daily distributions, in whatever things they consist, shall be granted to the canons and other benefice-holders and clerics of those churches who have been present at those offices in those churches, according to the reasonable ordinance of each church already made or also to be made. But whoever has otherwise received anything from those distributions—excepting those whom infirmity, or a just and reasonable bodily necessity, or an evident utility of the church would excuse—shall not acquire ownership of the things so received nor make them his own; rather, he shall be bound to restore everything that he has received contrary to this our constitution. We decree that the same is also to be observed concerning distributions to be bestowed for the anniversaries of the dead.

DE CLERICIS NON RESIDENTIBUS IN ECCLESIA VEL PRAEBENDA.

Distributiones quotidianae solum praesentibus, qui intersunt divinis, dari debent, consuetudine non obstante. Et qui aliter illas receperunt, non faciunt illas suas, et idem de distributionibus, quae dantur pro anniversariis defunctorum. Ioann. Andr.

Bonifacius VIII.

Consuetudinem, quae in quibusdam partibus inolevit, qua canonici et alii beneficiati, seu clerici cathedralium et aliarum collegiatarum ecclesiarum, distributiones quotidianas, quae alias manualia beneficia seu victualia nuncupantur, et tantum residentibus tribuuntur, qualiter-cunque in civitatibus seu aliis locis, in quibus ipsae consistunt ecclesiae, sint praesentes, licet divinis officiis non intersint, ex integro percipiunt , ac si continue in * ipsis ecclesiis in eisdem officiis deservirent, penitus improbantes: statuimus, ut distributiones ipsae quotidianae, in quibuscunque rebus consistant, canonicis ac aliis beneficiatis, et clericis ecclesiarum ipsarum, qui eisdem officiis in ipsis ecclesiis affuerint, tribuantur iuxta ecclesiae cuiuslibet ordinationem rationabilem iam factam seu etiam faciendam. Qui vero aliter de

distributionibus ipsis quicquam receperit, (exceptis illis, quos infirmitas, seu iusta et rationabilis corporalis necessitas, aut evidens ecclesiae utilitas excusaret,) rerum sic receptarum dominium non acquirat, nec faciat eas suas, immo ad omnium restitutionem, quae contra huiusmodi nostram constitutionem receperit, teneatur. De distributionibus etiam pro defunctorum anniversyiis largiendis idem decernimus observandum.

Title IV: On Prebends and Dignities

Chapter I

At the presentation of religious, even exempt religious, rectors ought not to be instituted in their churches unless there is first assigned to them enough from which they can bear the incumbent burdens and be suitably maintained; nor does a contrary custom have force. John Andrew.

Clement III, otherwise IV.

The care of the governance we have undertaken makes us solicitous that we take care to provide diligently for the interests of our subjects, especially in those matters by which provision is made for the salvation of souls, now through the promulgation of new laws, now through the renewal of old ones. Indeed, it was once providently established by the Apostolic See that the diocesan bishops of places should receive no one into any church at the presentation of religious unless there has been assigned to him before them enough from the revenues of that church that he can pay the episcopal dues and have suitable maintenance. But, as the frequent complaint of many intimates to us, exempt religious receive annually so much from the revenues of parish churches in which they possess the right of patronage, or the presentation of rectors belongs to them, that the rectors of those churches cannot from the remainder be suitably maintained, pay the episcopal dues, and support the other burdens incumbent upon them. For this reason it often happens that suitable persons are not found who are willing to receive churches of this kind, and thus they are frequently conferred upon less suitable persons, from which dangers to souls are imminent. We therefore, wishing that a salutary remedy be applied in this matter, by the present decree establish and command that this constitution be inviolably observed with regard to all religious patrons of churches, exempt as well as nonexempt, and others, notwithstanding any contrary custom.

DE PRAEBENDIS ET DIGNITATIBUS.

Ad praesentationem religiosorum, etiam exemptorum, non debent in ecclesiis ipsorum rectores institui, nisi primo tantum eisdem assignetur, unde incumbentia onera subire possint, et congrue sustentari; nec valet contraria consuetudo. Ioann. Andr.

Clemens III. alias quartus * .

Suscepti regiminis nos * cura sollicitat, ut utilitatibus subiectorum in illis praecipue, per quas animarum saluti consulitur, nunc novorum editione iurium, nunc antiquorum innovatione sollicite providere curemus. Sane fuit olim per sedem apostolicam provide constitutum, ut dioecesani locorum ad praesentationem religiosorum nullum ad aliquam ecclesiam recipiant , nisi tantum ei de proventibus ipsius ecclesiae coram eis fuerit assignatum, unde iura episcopalia possint solvere, et congruam sustentationem habere. Verum, sicut nobis querela multorum frequens insinuat, religiosi exempti de proventibus parochialium ecclesiarum, in quibus ius obtinent patronatus, seu rectorum praesentatio pertinet ad eosdem, tantum percipiunt annuatim, quod rectores ecclesiarum ipsarum non possunt de residuo commode sustentari, et episcopalia iura persolvere * ac alia incumbentia eis onera supportare,

propter quod saepe contingit, quod non inveniuntur personae idoneae quae huiusmodi ecclesias velint recipere, sicque frequenter minus idoneis conferuntur, ex quo pericula imminent animarum. Nos itaque, volentes super hoc salubre remedium adhiberi, praesenti decreto statuimus et mandamus, constitutionem huiusmodi quoad omnes patronos ecclesiarum religiosos tam exemptos quam non exemptos et alios inviolabiliter observari, consuetudine ^ contraria non obstante.

Chapter II

No one other than the Pope can confer benefices vacant at the Curia; if anyone does so, the collation is invalid. John Andrew.

The same.

Although the plenary disposition of churches, personates, dignities, and other ecclesiastical benefices is known to belong to the Roman Pontiff, so that he can by law not only confer them when they are vacant, but also grant a right in them when they are to become vacant, nevertheless ancient custom has reserved to the Roman Pontiffs, more particularly than the rest, the collation of churches, personates, dignities, and benefices vacant at the Apostolic See. We therefore, judging a custom of this kind praiseworthy, approving it by apostolic authority, and wishing nevertheless that it be inviolably observed, establish by the same authority that no one other than the Roman Pontiff, furnished with whatever authority in this regard, shall presume to confer upon anyone or any persons churches, dignities, personates, and benefices that shall hereafter happen to become vacant at that See, whether their election, provision, or collation belongs to him by right of ordinary power, or whether he has received general or even special letters concerning provision for certain persons under whatever form of words—unless special and express authority to confer those same things vacant in the Roman Curia has been attributed to him by the Supreme Pontiff himself. For if anything should be done or attempted otherwise, we decree it null and void.

Beneficia vacantia in curia alius quam Papa conferre non potest; quod si fecerit, irrita est collatio. Ioann. Andr.

Idem .

Licet ecclesiarum, personatuum, dignitatum aliorumque beneficiorum ecclesiasticorum plenaria dispositio ad Romanum noscatur Pontificem pertinere ita, quod non solum ipsa, quum vacant, potest de iure conferre, verum etiam ius in ipsis * tribuere vacaturis *: collationem tamen ecclesiarum, personatum, dignitatum et beneficiorum apud sedem apostolicam vacantium specialius ceteris antiqua consuetudo Romanis Pontificibus reservavit. Nos itaque, laudabilem reputantes huiusmodi consuetudinem, et eam auctoritate apostolica approbantes, ac nihilominus volentes ipsam inviolabiliter observari, eadem auctoritate statuimus, ut ecclesias, dignitates, personatus et beneficia, quae apud sedem ipsam deinceps vacare contigerit, aliquis praeter Romanum Pontificem, quacunque super hoc sit auctoritate munitus, sive iure ordinariae potestatis ipsorum electio, provisio seu collatio ad eum pertineat, sive literas super aliquorum provisione generales vel etiam speciales sub quacunque forma verborum receperit, (nisi ei sit super conferendis eisdem in curia Romana vacantibus specialis et expressa ab ipso Pontifice summo auctoritas attributa,) conferre alicui seu aliquibus non praesumat. Nos enim, si secus actum seu attentatum fuerit, decernimus irritum et inane.

Chapter III

If the Pope does not confer benefices vacant at the Curia within a month from the day of vacancy, those to whom the collation belonged will be able to confer them. John Andrew.

Gregory X, in the General Council of Lyons.

We decree that the statute of Pope Clement, our predecessor of happy memory, concerning dignities and benefices vacant in the Roman Curia being conferred by no one other than the Roman Pontiff, is to be modified in such a way that those to whom the collation of those benefices and dignities belongs may, notwithstanding the aforesaid statute, but only after a month, reckoned from the day on which the dignities or benefices themselves became vacant, validly confer them personally or, if they themselves are acting in distant places, through their vicars general existing in their dioceses, to whom this has been canonically committed.

> Si Papa beneficia vacantia in curia non conferat infra mensem a die vacationis : illi, ad quos collatio pertinebat, poterunt illa conferre. Ioann. Andr.
>
> Gregorius X. in concilio generali Lugdunensi .
>
> Statutum felicis recordationis Clementis Papae praedecessoris nostri de dignitatibus et beneficiis in curia Romana vacantibus nequaquam per alium quam per Romanum Pontificem conferendis decernimus taliter moderandum, ut ii, ad quos eorundem beneficiorum et dignitatum spectat collatio, statuto non obstante praedicto, demum post mensem a die, quo dignitates seu beneficia ipsa vacaverint, numerandum, ea conferre valeant tantummodo per se ipsos vel, ipsis agentibus in remotis, per suos vicarios generales, in eorum dioecesibus exsistentes, quibus id canonice sit commissum.

Chapter IV

In benefices, or applications for benefices, through a provision up to a certain sum, a pension is not owed. "The churches of a city or diocese" does not include the cathedral; but "the churches of a province" includes the metropolitan church and the remaining cathedrals. John Andrew.

Boniface VIII.

Although in other respects the fullest interpretation is to be made in matters of benefices, nevertheless letters obtained concerning the acquisition of benefices ought, since they are ambitious, to be restricted. And therefore, if we command that provision be made for someone up to a certain sum, we wish provision to be made for him not by a pension, but only by ecclesiastical benefices, unless express mention of a pension is made in our letters. Although under the designation "the churches of a city" the cathedral church is in other circumstances included, nevertheless, when we command that provision be made for someone from a benefice in one of the churches of a city or diocese, a mandate of this kind does not extend to the cathedral church, which, on account of its honor, we do not wish in this case to be included under this general expression. It is otherwise, however, when we command that provision be made in one of the churches of a province. For then both the metropolitan church and the other cathedral churches are included under such a mandate, since in this case we appear to make a more abundant grant to the applicant than in the other case.

> In beneficiis vel impetrationibus ad beneficia per provisionem usque ad certam summam pensio non debetur. Per ecclesias civitatis vel dioecesis non comprehenditur Cathedralis; sed per ecclesias provinciae metropolitana et cathedrales reliquae includuntur. Ioann. Andr.

Bonifacius VIII .

Quamvis plenissima sit alias in beneficiis interpretatio facienda: literae tamen super obtinendis beneficiis impetratae debent, quum sint ambitiosae, restringi. Et ideo, si alicui usque ad certam summam provideri mandamus , ei non in pensione, sed in beneficiis ecclesiasticis tantum volumus provideri, nisi de pensione in nostris literis mentio habeatur expressa. Quanquam sub nomine ecclesiarum civitatis comprehendatur alias ecclesia Cathedralis: quum | tamen alicui de beneficio mandamus in aliqua ecclesiarum civitatis vel dioecesis provideri, ad cathedralem ecclesiam, quam propter ipsius honorem sub hac generalitate nolumus hoc casu includi, se mandatum huiusmodi non extendit. Secus autem *, quum mandamus in aliqua ecclesiarum provinciae provideri. Tunc enim et metropolitana et ceterae cathedrales ecclesiae includuntur sub tali mandato, quum uberiorem hoc casu, quam alio, impetranti gratiam facere videamur.

Chapter V

One applying for a secular benefice is provided for from a benefice possessed by secular clerics up to the completion of lawful prescription. This is the first point. A secular cleric who applies simply for a priory is not provided for from one customarily governed by religious. This states the second point. Dominicus.

The same.

When it is commanded that provision be made from an ecclesiastical benefice customarily assigned to secular clerics, this ought to be understood of one that was continuously and peacefully governed for so long a time by one or more secular clerics instituted as rectors in it that lawful prescription has been completed, even if religious at times ministered in it before or afterward. But when it is written that provision be made for a secular cleric from some priory, provision cannot be made from a priory that has customarily been governed by religious according to the aforesaid manner, unless this is expressly provided in the letters.

Impetranti beneficium saeculare providetur de beneficio per saeculares clericos usque ad praescriptionem legitimam possesso. Hoc primo. Clerico saeculari, prioratum impetranti simpliciter, non providetur de consueto per religiosos gubernari. H. d. secundo. Domin.

Idem.

Quum de beneficio ecclesiastico, consueto clericis saecularibus assignari, provideri mandatur, de illo debet intelligi, quod tanto tempore ab uno vel pluribus saecularibus clericis, institutis in eo rectoribus, exstitit continue ac pacifice gubernatum, ut praescriptio legitima sit completa, etiamsi ante vel post religiosi quandoque ministraverint in eodem. Quando vero scribitur, ut provideatur de aliquo prioratu alicui clerico saeculari: provideri non potest de prioratu, qui per religiosos iuxta modum praemissum est solitus gubernari, nisi hoc in literis caveatur expresse.

Chapter VI

To have a personate with cure, and a prebend to which a parish church is annexed, is not contrary to the General Council. John Andrew.

The same.

Concerning the fact that you hold, together with personates—upon some of which the cure of souls is incumbent—prebends to which parish churches are annexed, in which you have spiritual jurisdiction according to the approved custom of your church, and thus, according to the

interpretation of some, the cure of souls: since this is not contrary to the General Council, a dispensation is not necessary for you.

> Habere personatum cum cura, et praebendam, cui annexa est parochialis ecclesia, non est contra concilium generale. Ioann. Andr.
>
> Idem.
>
> Super eo, quod praebendas, quibus parochiales ecclesiae sunt annexae, in quibus spiritualem iurisdictionem secundum ecclesiae vestrae consuetudinem approbatam, et sic secundum aliquorum interpretationem curam animarum habetis, simul cum personatibus, quorum aliquibus cura imminet animarum, in eadem ecclesia obtinetis, vobis, quum hoc generali concilio non obviet, dispensatio necessaria non exsistit.

Chapter VII

In applications for benefices, the date is considered, not presentation or reception. John Andrew.

The same.

We decree that the person upon whom a canonry of some church has been conferred by the Apostolic See, although he has not yet been received in it, is to be preferred in obtaining a prebend, according to the order of his provision, to all those upon whom a similar grant was afterward conferred in that church, although the latter first presented their letters and were first received in it.

> In impetratione beneficiorum inspicitur data, non praesentatio vel receptio.
>
> Ioann. Andr.
>
> Idem.
>
> Eum, cui Canonicatus alicuis ecclesiae a sede apostolica est collatus, licet nondum sit in ea receptus, decernimus in assecutione praebendae iuxta suae provisionis ordinem omnibus praeferendum, quibus postmodum in ipsa ecclesia similis gratia est concessa; licet isti primo suas literas prae-sentaverint, et primo recepti fuerint in eadem.

Chapter VIII

By apostolic letters making no mention of a defect of orders, provision can be made for the applicant from a benefice with cure; he shall nevertheless cause himself to be promoted to orders at the next appointed times. John Andrew.

The same.

If it should happen that you receive our letters for poor clerics or others, directing you to provide them with benefices even if the cure of souls is annexed to them, you may lawfully provide them with benefices having cure, although they have neither been constituted in sacred orders nor is mention of the defect of orders made in those letters; nor can your provision be impugned under pretext of the said defect. It will nevertheless be necessary for them to cause themselves to be promoted, at the next times appointed by law, to the orders that the benefices conferred upon them require.

> Per literas apostolicas, non facientes de defectu ordinis mentionem, potest impetranti de curato beneficio provideri; ad ordines tamen se faciet proximis temporibus promoveri. Ioann. Andr.
>
> Idem .

> Si pro clericis pauperibus vel aliis nostras literas, ut eis | de beneficiis provideas, etiamsi animarum cura sit annexa eisdem, recipere te contingat: ipsis, (licet nec in sacris sint constituti ordinibus, nec de defectu ordinum in eisdem literis mentio habeatur,) poteris de beneficiis curam habentibus licite providere, nec praetextu dicti defectus tua poterit provisio impugnari. Oportebit tamen, ut ipsi ad ordines, quos requirunt collata eis beneficia, se faciant in proximis statutis a iure temporibus promoveri.

Chapter IX

When another's mandate concerning a provision to be made by the Pope is fulfilled, the provision is understood to have been made by the Pope's authority. This states the point according to Zenzel.

The same.

If we command that one concerning whose provision a legate of the Apostolic See had sent his letters to a certain church, to which obedience had not been rendered, be received by our authority in that church as canon and brother, and that provision be made for him from a prebend according to the tenor of the legate's letters, a person so received by authority of this our mandate is understood to have been received not by the legate's authority but by ours. And therefore, in obtaining a prebend, he is to be preferred to all persons received after him by the same authority in the said church.

> Mandato alterius super provisione facienda per Papam impleto, provisio auctoritate Papae intelligitur esse facta. H. d. secundum Zenz.
>
> Idem .
>
> Si eum, super cuius provisione apostolicae sedis legatus in certa ecclesia suas literas, quibus obtemperatum non fuerat, destinarat mandemus auctoritate nostra in ipsa ecclesia in canonicum recipi et in fratrem, sibique provideri de praebenda iuxta ipsius legati continentiam literarum: talis receptus huiusmodi nostri auctoritate mandati non legati, sed nostra intelligitur auctoritate receptus, et ideo est in assecutione praebendae omnibus, post eum eadem auctoritate receptis, in dicta ecclesia praeferendus.

Chapter X

A mandate alternatively including several collators takes effect in the first benefice to become vacant; but when several become vacant at the same time, the order of the writing is observed. This states the point according to Dominicus.

The same.

When our mandate is directed to you under this form, that you provide someone with a benefice belonging to your collation or that of another, you ought to provide the person for whom it is written with the benefice that first becomes vacant, whether it belongs to your collation or to his. But if several benefices perhaps belonging to your collation and his become vacant at the same time, then you will have to observe the order of the writing, so that you provide him only with that benefice which is known to belong to you.

> Mandatum, alternative plures collatores includens, verificatur in primo vacante; insimul vero vacantibus ordo scripturae servatur. Hoc dicit secundum Dominicum.
>
> Idem .

Mandato nostro sub ea forma tibi directo, ut alicui provideas de beneficio, ad collationem tuam vel alterius pertinente, de beneficio, quod primo vacabit, sive ad tuam sive ad illius collationem pertinuerit, ei, pro quo scribitur, providere debebis. Si vero plura beneficia ad tuam et illius collationem forsan spectantia simul vacent: tunc scripturae ordinem servare habebis, ut illi solum provideas de illo beneficio, quod ad te noscitur pertinere.

Chapter XI

If a cleric for whom provision from the first vacant prebend had been commanded neglects to seek the prebend owed to him, the grant is extinguished. But if a canonry had been conferred upon him, he will then have the prebend when no one there is awaiting one by apostolic authority. John Andrew.

The same.

If a cleric for whom you received a mandate from the Apostolic See that you provide him with the prebend next to become vacant in a certain church, and afterward cause him to be received as canon and brother of that church, negligently omits to seek the prebend owed to him when it becomes vacant, he will not afterward be able to seek another prebend to become vacant in that church under pretext of the said mandate, nor will you be able to provide him with it, since the grant made to him has been extinguished through his negligence. But if the aforesaid cleric had from the beginning been made a canon in the aforesaid church by apostolic authority, then, since he remained a canon in it notwithstanding the said negligence, and consequently by reason of his canonry is to be preferred to the others for another prebend owed by law to no one else, he will be able to seek another prebend next to become vacant, provided that there are not some persons awaiting prebends in that church by the same authority. And provision from it ought to be made for him not by you, since you did not receive a mandate concerning it, but by the person to whom the collation of prebends in that church belongs; otherwise, the collation of a prebend of this kind made to another to the prejudice of that cleric shall by that very fact lack force.

Si clericus, cui mandabatur provideri de praebenda primo vacante, negligit petere praebendam sibi debitam, exstincta est gratia. Si autem sibi collatus fuerit Canonicatus, tunc habebit praebendam, quum nullus est ibi exspectans auctoritate apostolica. Ioann. Andr.

Idem.

Si clericus, pro quo a sede apostolica recepisti mandatum, ut ei de praebenda proximo vacatura in certa ecclesia provideres, eumque postea in canonicum ipsius ecclesiae recipi faceres et in fratrem, praebendam sibi debitam, quando vacat, petere negligenter omittat: aliam postmodum in ipsa ecclesia vacaturam nequibit praetextu dicti mandati petere, nec tu de ipsa sibi poteris providere, quum facta ei gratia per ipsius negligentiam sit exstincta. Verum si praefatus clericus fuisset auctoritate apostolica effectus ab initio canonicus in ecclesia praelibata, tunc, quum remanserit in ea canonicus dicta negligentia non obstante, ac per consequens ratione Canonicatus sit in alia praebenda, nulli alii de iure debita, ceteris praeferendus, petere poterit praebendam aliam, proximo vacaturam, dummodo non sint aliqui eadem auctoritate praebendas in ipsa ecclesia exspectantes. Et eidem de ipsa non per te,, quum mandatum non susceperis super illa, sed per eum, ad quem spectat in eadem ecclesia praebendarum collatio, provideri debebit; alias facta de praebenda huiusmodi alteri collatio in illius praeiudicium eo ipso viribus non subsistat.

Chapter XII

One received by the Pope's authority, even at another's mandate, is to be preferred to others for a prebend. This states the point according to Zenzel.

The same.

Those who by apostolic authority have been received as canons in some church ought, in obtaining prebends, to be preferred to others who had previously been received in that church by the authority of legates or of any other persons whatsoever. Nor is there doubt that one who is received at the mandate of a legate or another exercising apostolic authority specially granted to him in this regard has been received by apostolic authority.

> Receptus auctoritate Papae etiam ad mandatum alterius, praeferendus est aliis in praebenda. H. d. secundum Zenz.
>
> Idem.
>
> Hi, qui auctoritate apostolica in aliqua ecclesia in canonicos sunt recepti, debent in praebendarum assecutione ceteris anteferri, legatorum vel aliorum quorumcunque auctoritate receptis antea in eadem. Eum quoque, qui ad mandatum legati vel alterius, auctoritate apostolica sibi specialiter in hac parte concessa fungentis, recipitur, auctoritate apostolica receptum esse dubium non exsistit.

Chapter XIII

If, after a grant made to me by the Pope of a canonry and prebend, the canons of Bologna, ignorant of this, confer upon an ignorant person the prebend that afterward becomes vacant, the collation does not have force. This states the point. John Andrew.

The same.

If, after we have conferred upon you a canonry in some church and commanded that provision be made for you from a prebend next to become vacant there and owed by law to no one else, those to whom the collation of prebends in it belongs, of their own motion and ignorant of the grant made to you, should decide to confer upon another the prebend that afterward becomes vacant there, such a collation, attempted to your prejudice, possesses no validity. For by the very fact that you were made a canon by apostolic authority, a right to obtain the prebend next to become vacant there was acquired by you; and as soon as it became vacant, since it was owed to no one else, you could justly seek it. Therefore, it could not be conferred upon another by the aforesaid persons, although they were ignorant.

> Si post gratiam, mihi factam a Papa de canonicatu et praebenda, Bononienses canonici, hoc ignorantes et ignoranti praebendam conferunt post vacantem: non tenet collatio. H. d. Ionn. Andr.
>
> Idem.
>
> Si, postquam canonicatum in aliqua ecclesia tibi contulimus, et de praebenda nulli alii de iure debita, inibi proxime * vacatura, mandavimus provideri, hi, ad quos in ea spectat collatio praebendarum, praebendam, quae vacabit * ibi postmodum, motu proprio, ignorantes tibi gratiam factam, alii duxerint conferendam: talis collatio in tuum prae-iudicium attentata nullam obtinet firmitatem. Nam eo ipso, quod canonicus auctoritate apostolica fuisti effectus, ius ad obtinendum praebendam proximo vacaturam ibidem tibi acquisitum exstitit, eandemque *, quam cito vacavit, ex quo nulli alii debebatur, iuste petere potuisti, et ideo a praedictis, licet ignorantibus, alteri conferri nequivit.

Chapter XIV

If the Pope gives his legate license to receive by apostolic authority resignations, freely made into his hands, of benefices within his legation, and to confer those benefices; secondly, if the Pope, without mention being made of the aforesaid power, confers upon me a canonry and a prebend, if one is vacant, or the one that first becomes vacant in some church of the legation; thirdly, if a canon of that church resigns and the legate, likewise ignorant of the collation made to me, confers the aforesaid prebend upon you: the legate's collation does not have force, but that prebend is owed to me. This states the point. John Andrew.

The same.

Some time ago, when power had been granted by our letters to our venerable brother S., Bishop of Palestrina, whom we sent to the regions of Gaul, to receive by our authority the resignation of holders of ecclesiastical benefices in those regions who wished freely to resign them into his hands, and to confer those benefices upon suitable persons, we afterward, without mention being made of a grant of this kind, conferred upon Nicholas de Bonefac., chamberlain of our beloved son N., cardinal priest of the title of Saint Lawrence in Damaso, a canonry of the Church of Lisieux, which exists in those regions, and a prebend owed by law to no one else, if any was then vacant in the said church, and provided him with the same. But if no such prebend was vacant there, we decided to reserve to an apostolic grant the conferral upon the said chamberlain, when it should become vacant, of the prebend next to become vacant there, decreeing from that time as null and void anything that anyone should happen to attempt otherwise concerning this, and appointing certain executors for him for this purpose.

And when afterward Nicholas Vasalli, a cleric, had resigned into the hands of the said bishop the canonry and prebend that he held in the said Church of Lisieux, and, under pretext of the said power, that bishop—perhaps ignorant of the aforesaid collation, provision, reservation, and decree—had conferred them upon William Vasalli, a priest, the said executors, notwithstanding the aforesaid collation, by authority of our letters conferred that same prebend upon the said chamberlain as being owed to him. Under pretext of the collation made to him by the said bishop, the said priest does not permit the chamberlain to possess that prebend peacefully; for this reason that chamberlain humbly petitioned us that we deign to provide him with an appropriate remedy in this matter.

We therefore attend to the fact that, although we granted the aforesaid power to the said bishop, a greater power nevertheless remained with us, even though it was the same power in the aforesaid matters; for which reason our position, as we preoccupied that power, ought to be the stronger, especially because according to canonical and lawful enactments a specific provision derogates from a general one, although no mention of the general is made in the derogating specific provision. We also consider that, if the aforesaid power had been disclosed to us, we would nevertheless issue letters of grace in the said regions without mention being made of it, because it would be absurd if our power, so extensive, were impeded, and if in all the letters of our provisions that we granted in the aforesaid regions it were necessary for us to make special mention of the often-mentioned power. We consider also that our aforesaid decree—especially here, where the said chamberlain had already been made a canon of Lisieux by us before the said resignation—had immediately bound those who were ignorant, since it was not issued concerning an uncertain matter, nor did it depend upon another's judgment or upon the will of anyone who had power to accept. For that reason, through it we also appear to have expressed that no other could confer, and to have revoked the aforesaid power with regard to the

present specific case. That power could be revoked by one ignorant of it in this case, in which only the gain of the said William is at issue and not the prejudice of the aforesaid bishop; nor, after a revocation of this kind, could a right in the revoked matter be transferred by him to another who was likewise ignorant. This is also after the likeness of a slave placed in charge of a cashbook, who, after the death of the master who placed him in charge, does not make the monies lent become those of the recipient, although the death of the master, which revoked the appointment, was unknown between the contracting parties; and of a master who immediately extinguishes the peculium that he had granted to his own slave when he has changed his will concerning it.

We command your discretion, therefore, that, after prior admonition, you compel the aforesaid priest by ecclesiastical censure entirely to release that prebend to the said chamberlain and thereafter in no way to trouble him concerning it, notwithstanding the collation of the aforesaid canonry and prebend made to the priest by the said bishop, which was null.

> Si Papa det licentiam legato suo recipiendi auctoritate apostolica resigna-tiones beneficiorum legationis suae, libere in manibus suis factas, et illa beneficia conferendi; secundo Papa, de praedicta potestate non habita mentione, canonicatum et praebendam, si vacat, vel quam primo vacaverit in aliqua ecclesia legationis, mihi conferat; tertio canonicus ipsius ecclesiae renunciet, et legatus etiam, ignorans collationem mihi factam, confert tibi praebendam praedictam: non tenet collatio legati, sed mihi illa praebenda debetur. Hoc dicit Ioann. Andr.
>
> Idem.
>
> Dudum venerabili fratri nostro S. episcopo Praenestino , quem ad partes destinavimus Gallicanas, recipiendi auctoritate nostra resignationem ab obtinentibus beneficia ecclesiastica in eisdem partibus, qui ea vellent libere in eius manibus resignare, ac beneficia ipsa personis idoneis conferendi per nostras literas potestate concessa, nos postmodum, de concessione huiusmodi non habita mentione, Nicolao de Bonefac. , camerario dilecti filii nostri N. tituli sancti Laurentii in Damaso presbyteri cardinalis, canonicatum Lexoniensis ecclesiae, quae in partibus illis exsistit, et praebendam nulli alii de iure debitam, si qua tunc vacabat in dicta ecclesia, contulimus, et sibi providimus de eisdem. Si vero nulla talis praebenda vacabat ibidem: nos praebendam, proximo inibi vacaturam, conferendam dicto camerario, quum vacaret, donationi apostolicae duximus reservandam, decernentes extunc irritum et inane, si secus super hoc a quoquam contingeret attentari, certis sibi ad hoc exsecutoribus deputatis. Quumque postmodum Nicolaus Vasalli clericus canonicatum et praebendam, quos in dicta Lexo-niensi ecclesia obtinebat, in dicti episcopi manibus resig-nasset, et dictae potestatis praetextu eos idem episcopus, collationis, provisionis, reservationis et decreti praedictorum forsan ignarus, Guilielmo Vasalli presbytero contulisset, dicti exsecutores, collatione non obstante praedicta litera-rum nostrarum auctoritate praebendam eandem dicto camerario, velut sibi debitam, contulerunt, quem dictus presbyter, praetextu collationis per dictum episcopum sibi factae, quod praebendam ipsam pacifice possidere valeat, non permittit; propter quod idem camerarius nobis supplicavit humiliter, ut providere sibi super hoc de opportuno remedio dignaremur. Nos igitur, attendentes, quod, etsi memorato episcopo praedictam concessimus potestatem, penes nos tamen nihilominus remansit maior, licet eadem potestas etiam in praedictis, propter quod nostra, qui eandem praeoccupavimus potestatem, potior debet esse conditio, praesertim quod secundum canonicas et legitimas sanctiones per speciem generi derogatur, quanquam de genere in derogante specie mentio nulla fiat; considerantes quoque, quod nos, exposito nobis de potestate praedicta, nihilominus literas gratiosas daremus in dictis partibus, non habita mentione de ipsa, quia foret absurdum, si tam lata * nostra impediretur potestas, et si in omnibus provisionum nostrarum literis, quas concederemus in partibus supra dictis, oporteret nos de saepe dicta potestate specialem facere mentionem, et quod decretum nostrum praedictum,

maxime hic, ubi iam dictus camerarius ante dictam renunciationem per nos erat Lexoniensis effectus * canonicus, statim ignorantes ligaverat, quum super incerto non esset editum, nec ex alieno penderet arbitrio vel voluntate cuiusvis, qui acceptandi potestatem haberet, et idcirco per illud etiam expressisse videmur, ne alius posset conferre, et potestatem praedictam, quantum ad praesentem speciem, revocasse, quae in hoc casu, ubi de lucro dicti G. tantum agitur, et non de praeiudieio episcopi memorati, ab ignorante potuit revocari, nec post revocationem huiusmodi ius, per eum in alium etiam ignorantem in re revocata transferri, ad instar etiam servi calendario praepositi, qui post mortem domini praeponentis mutuatas pecunias accipientis non facit, licet inter contrahentes mors domini praepositum revocans fuerit ignorata, et domini, qui peculium, quod proprio servo concesserat, statim perimit, quum in eo suam mutaverit voluntatem: discretioni vestrae mandamus, quatenus praefatum presbyterum monitione praemissa per censuram ecclesiasticam compellatis, ut, collatione de canonicatu et praebenda praedictis per dictum episcopum sibi facta, quae nulla exstitit, non obstante, dicto camerario praebendam ipsam omnino dimittat, et eum super ea deinceps nullatenus inquietet.

Chapter XV

The second person, who applied for a dignity and a prebend, is preferred to the first, who had applied only for a prebend, if the prebend is annexed to the dignity; otherwise, he is not. This states the point. John Andrew.

The same.

Because many often doubt who, if a canonry of some church has successively been conferred upon two persons by the Apostolic See, and it was commanded that provision be made for the first from a prebend, but for the second from a prebend and a dignity, personate, or office when the opportunity should present itself, ought by law to be preferred between them for the prebend that afterward becomes vacant there together with a dignity, personate, or office, we, wishing to settle a doubt of this kind, declare by the present edict that the first person, since he is earlier in time and his right ought neither to be prejudiced nor swallowed up by the second mandate—since no contrary intention of the mandator appears—is to be preferred for the said prebend, unless it is annexed to the vacant dignity, personate, or office. For if it were annexed, the second person, to whom the dignity, personate, or office is owed, would be preferred for it.

Secundus, qui impetravit dignitatem et praebendam, praefertur priori, qui solum praebendam impetraverat, si praebenda dignitati est annexa; alias non. H. d. Ioann. Andr.

Idem.

Quia saepe dubitatur a multis, si Canonicatus alicuius ecclesiae sit collatus a sede apostolica successive duobus, fueritque mandatum primo de praebenda, secundo vero de praebenda et dignitate, personatu vel officio, quum se facultas obtulerit, provideri, quis ipsorum in praebenda, quae cum dignitate, personatu vel officio vacat ibi, postmodum debeat de iure praeferri: nos, dubitationem huiusmodi sopire volentes, praesenti declaramus edicto, primum, quum sit tempore anterior, cui per mandatum secundum praeiudicari, aut ius ipsius absorberi non debet, ex quo de intentione mandantis contraria non apparet, praeferendum esse in dicta praebenda, nisi vacanti dignitati, personatui vel officio sit annexa. Nam si esset annexa, secundus, cui debetur dignitas, personatus vel officium, praeferretur in ipsa.

Chapter XVI

A mandate to provide from dignities or other ecclesiastical benefices does not include benefices with cure when the cure is not expressed. This states the point as far as § "But for those." — § 1. In provision of a benefice, the elective

mode is not included if other modes of providing are expressed. This states the point. — § 2. Beneficial letters expressing one mode do not include the others. This states the point. — § 3. A mandate simply including two persons does not bind one of them alone, and conversely, one directed to one person does not affect two. This states the point. Dominicus.

The same.

Since greater suitability is required in those to whom benefices having the cure of souls are committed than in those who are promoted to others, it is in no way our intention that, when we command that certain persons be provided with churches, personates, dignities, or any other benefices whatsoever without mention being made of the cure of souls, provision can or ought to be made for them from those upon which a cure of this kind is incumbent.

§ 1. But those for whom we write that provision be made for them from personates or dignities, even if they have the cure of souls, belonging to the collation, provision, presentation, or disposition of any persons whatsoever, will not be able to be provided with prelacies, personates, or dignities to which those who are to be placed over them are assumed by election.

§ 2. Moreover, since a great difference is known to exist between collation, presentation, and institution, if it is commanded that someone be provided with a benefice belonging to the collation of another, provision cannot be made from one that belongs to his presentation or institution, nor conversely. For when one of the aforesaid cases has been expressed, the mandate made concerning it, which by its nature ought to be restricted, ought not to be extended to the others.

§ 3. But if provision is ordered to be made from a benefice belonging to the collation or presentation of certain persons, without the addition "jointly or separately," it cannot be fulfilled in a benefice that belongs only to the collation or presentation of one of them; just as, if provision had been ordered from a benefice belonging to the collation of one person, it could not be fulfilled in a benefice whose collation belonged to him together with another.

> Mandatum provideri de dignitatibus vel beneficiis aliis ecclesiasticis, curata non includit, non expressa cura. H. d. usque ad §. Illis. — §. 1. In beneficii provisione modus electivus non includitur, si alii modi providendi exprimantur. H. d. — §. 2. Beneficiales literae, unum modum exprimentes, alios non includunt. H. d. — §. 3. Mandatum, simpliciter duos includens, alterum solum non adstringit, et e converso directum uni duos non afficit.
>
> H. d. Dom.
>
> Idem.
>
> Quum in illis, quibus beneficia curam animarum habentia committuntur, maior quam in iis, qui ad alia promoventur, idoneitas requiratur: intentionis nostrae nequaquam exsistit, ut, quum aliquibus de ecclesiis, personatibus, dignitatibus vel aliis beneficiis quibuscunque de animarum cura mentione non habita provideri mandamus, ipsis de iis, quibus huiusmodi cura imminet, possit aut debeat provideri. §. i. Illis vero, pro quibus scribimus, ut provideatur eisdem de personatibus vel dignitatibus, etiamsi curam habeant animarum, ad collationem, provisionem, praesentationem vel dispositionem spectantibus quorumcunque, provideri nequibit de praelaturis, personatibus vel dignitatibus, ad quos seu quas per electionem ii, qui eis habent praefici, assumuntur. {. 2. Quum autem inter collationem, praesentationem et institutionem differentia magna esse noscatur: si cui de beneficio ad alicuius collationem spectante provideri mandetur, de illo, quod ad eius praesentationem vel institutionem pertinet, provideri non poterit, nec etiam e converso. Expresso enim uno casuum praedictorum,

mandatum super hoc factum, quod debet de sui natura restringi, ad alios extendi non debet. §. 3. Si vero de beneficio ad aliquorum collationem vel praesentationem spectante, non adiecto: „ communiter vel divisim, provisio iniungitur facienda: in beneficio, quod ad collationem vel praesentationem alterius ipsorum tantum pertinet, adimpleri non potest; sicuti, si de beneficio, spectante ad collationem unius, provisio iniuncta fuisset, impleri non posset in beneficio, cuius collatio ad eum simul cum alio pertineret.

Chapter XVII

A benefice conferred upon me cannot be conferred upon another before my dissent, unless the term given to me for consenting has elapsed; and even then, after the term but before it is conferred upon another, I will be able to consent. John Andrew.

The same.

If a benefice is conferred upon you in your absence by your bishop, although by a collation of this kind, until you have ratified it, you do not acquire a right in the benefice itself such that it can be called yours, nevertheless the bishop himself, or any other person, will not be able to make a disposition of that benefice in favor of another person unless you refuse to consent. If he should do so, his disposition, made concerning a benefice that was not free, will lack force. But if the bishop, after the collation has been notified to you, assigns a suitable term for consenting, then, unless you have consented, after it has elapsed he will be able freely to confer the benefice upon whomever he sees fit. Nevertheless, before he has conferred it, you will be able to give your consent, notwithstanding that the term has elapsed, and from that time it will not be possible to dispose of the benefice otherwise.

Beneficium mihi collatum ante dissensum meum alteri conferri non potest, nisi terminus mihi datus ad consentiendum esset elapsus, et tunc etiam post terminum, antequam alteri conferatur, potero consentire. Ioann. Andr.

Idem.

Si tibi absenti per tuum episcopum conferatur beneficium, licet per collationem huiusmodi, donec eam ratam habueris, ius in ipso beneficio, ut tuum dici valeat, non acquiras : ipse tamen episcopus vel quicunque alius de ipso beneficio, nisi consentire recuses, in personam alterius ordinare nequibit. Quodsi fecerit, eius ordinatio, facta de beneficio non libero, viribus non subsistet. Sed si episcopus, notificata tibi collatione, ad consentiendum terminum competentem assignet: nisi consenseris, poterit, eo lapso, bene-cium libere cui viderit expedire conferre. Antequam tamen ipsum contulerit, tuum poteris, non obstante, quod lapsus sit terminus, praestare consensum *, et extunc de ipso non poterit aliter ordinari.

Chapter XVIII

One who by force or unjustly occupies a second benefice with cure is deprived of the first. But one who occupies any benefice with cure is by the law itself deprived of the right that he had in it or to it. This states the point. John Andrew.

The same.

We decree that one who occupies by force a benefice upon which the cure of souls is incumbent, or knowingly intrudes himself into it unjustly, is by the law itself deprived of the benefice with a similar

cure that he held first. For it is not fitting that the foolish person should be in a better position than the skilled, or that an invader should enjoy a stronger privilege than one who enters justly. Moreover, so that violent persons, who do not fear to occupy dignities, personates, or any other ecclesiastical benefices by their own authority—or, more truly, temerity—may, if not from love of virtue, at least through fear of punishment, be restrained from the audacity of their temerity, they shall by that very fact lose whatever right perhaps belonged to them in or to the dignities, personates, and benefices thus occupied.

> Qui vi vel iniuste occupat secundum beneficium curatum, privatus est primo. Qui autem beneficium curatum aliquod occupat, est ipso iure privatus iure, quod in illo vel ad illud habebat. H. d. Ioann. Andr.
>
> Idem.
>
> Eum, qui beneficium, cui animarum cura imminet, vi occupat, seu se scienter iniuste intrudit in eo, decernimus ipso iure fore privatum beneficio, quod cum cura simili primitus obtinebat. Non enim decet, ut stultus melioris quam peritus conditionis exsistat, vel quod invasor eo, qui iuste ingreditur, privilegio gaudeat potiori. Insuper ut violenti, qui auctoritate, vel verius temeritate, propria occupare dignitates, personatus aut alia quaecunque ecclesiastica beneficia non verentur, etsi non virtutis amore, poenae saltem formidine a suae temeritatis audacia refrenentur: eo ipso ius, si quod in dignitatibus, personatibus et beneficiis occupatis taliter, vel ad ea ipsis forsitan competebat, amittant.

Chapter XIX

One having apostolic power to provide a suitable person with a benefice will not be able to provide for someone otherwise sufficiently beneficed unless this is expressed in the letters; and then he will provide for one holding a single simple benefice. But if it is granted that he provide for one holding benefices, this refers to only two, and an act contrary to this is null. This states the point. Dominicus.

The same.

One to whom it is granted that he may by apostolic authority provide one suitable person in his own or another church cannot provide for someone holding another sufficient benefice unless the latter first entirely resigns the benefice that he holds, or unless it is expressed in a grant of this kind that he may provide for a person otherwise beneficed. For then he will be able to provide for one holding only a single benefice, provided that the cure of souls is not incumbent upon it. But if it has been granted that he may provide for one who is known to hold other benefices, plurality of this kind ought to be restricted to only two benefices without cure. A provision made contrary to the foregoing shall likewise by that very fact lack force.

> Habens potestatem apostolicam personae idoneae de beneficio providendi, alias beneficiato sufficienter providere non poterit, nisi in literis hoc exprimatur, et tunc unicum simplex obtinenti providebit. Si vero conceditur, ut provideat beneficia obtinenti: ad duo tantum refertur, et contra factum est nullum. H. d. Dominicus.
>
> Idem.
>
> Is, cui conceditur, ut auctoritate apostolica possit uni personae idoneae in sua vel alia ecclesia providere, alicui, aliud beneficium sufficiens obtinenti, providere non potest, nisi primo ille beneficium, quod obtinet, omnino dimittat, vel nisi in concessione huiusmodi sit expressum, quod alias beneficiatae valeat providere personae. Tunc enim providere poterit unicum duntaxat beneficium obtinenti, dum tamen illi cura non immineat animarum. Si vero concessum fuerit, ut providere illi valeat, qui alia

beneficia noscitur obtinere: huiusmodi pluralitas debet solum ad duo beneficia sine cura restringi. Provisio quoque facta contra praemissa eo ipso viribus non subsistat *.

Chapter XX

If someone in ignorance receives a benefice previously reserved or conferred upon another by the Pope, then, if from the time he learns of this he relinquishes it without difficulty, he recovers the former benefices relinquished because of it; otherwise, he does not. John Andrew.

The same.

If it should sometimes happen that benefices conferred by the Apostolic See or reserved by an interposed decree are de facto conferred by those to whom their collation otherwise belongs upon persons ignorant of a collation or reservation of this kind, and that the benefices those persons previously held and relinquished after obtaining the aforesaid benefices are assigned to others, then, lest such ignorance be prejudicial to them when they are without fault, we establish that if, after afterward being made more certain of the aforesaid collation or reservation, they entirely relinquish without any difficulty the benefices thus de facto conferred upon them, they may freely return to their former benefices, notwithstanding any collation of those benefices made to any persons whatsoever. Otherwise, if they have raised a difficulty in relinquishing the other benefices, the faculty of returning to the former ones is to be entirely forbidden to them. We decree that the same method is to be observed in every respect, both in relinquishing what was received and recovering what was relinquished, with regard to all others who perhaps relinquished their benefices on the aforesaid occasion and obtained benefices relinquished by others.

Si quis ignorans recipiat beneficium, prius reservatum vel alteri collatum per Papam, si, ex quo scivit, illud sine difficultate dimittit, recuperat priora beneficia, propter illud dimissa, alias non. Ioann. Andr.

Idem.

Si beneficia, quae per sedem apostolicam conferuntur aut decreto interposito reservantur, interdum contingat ab iis, ad quos alias pertinet collatio eorundem, aliquibus huiusmodi collationem seu reservationem ignorantibus de facto conferri, et beneficia, quae illi tenebant antea et * post praedictorum adeptionem dimissa per eos aliis assignari: ne talis ignorantia eis, quum sint sine culpa, praeiudicialis exsistat, statuimus, ut, si ipsi, de collatione seu reservatione praedicta postea certiores effecti, sublata difficultate quacunque omnino dimiserint beneficia, sic sibi de facto collata, ad beneficia sua priora, collatione quibuscunque personis facta de ipsis nequaquam obstante, libere revertantur; alioquin redeundi ad ea, si difficultatem adhibuerint in aliis dimittendis, sit ipsis penitus interdicta facultas. Eundem quoque modum in dimittendo recepta et recuperando dimissa quoad omnes alios, qui forsan occasione praedicta sua dimiserint beneficia, et dimissa per alios fuerint assecuti, per omnia decernimus observandum.

Chapter XXI

The concealment of a benefice, even a small one, vitiates a dispensation concerning plurality of benefices; even when lawfully obtained concerning two, such a dispensation refers to the first two received. Likewise, provision made for someone from a benefice, notwithstanding that he has another, does not introduce a dispensation to retain both. This states the point according to Zenzel.

The same.

A dispensation concerning plurality of benefices granted to an applicant cannot benefit one who concealed in it any benefice, however small. Moreover, that indult of the Apostolic See by which someone may receive and lawfully retain together two benefices having the cure of souls, if they are otherwise canonically conferred upon him, is understood of the first two benefices with cure that he happens to obtain after the said indult. But when it happens that provision is made for you by the aforesaid See from some benefice, notwithstanding that you are known to hold another benefice, it is not thereby understood that a dispensation has been made for you to retain the first benefice with the second. For the aforesaid expression effects only this: that the grant made to you cannot be judged subreptitious.

> Taciturnitas beneficii, etiam modici, vitiat dispensationem super pluralitate beneficiorum, quae, etiam legitime super duobus obtenta, ad duo prima recepta refertur. Item provisio alicui facta de beneficio, non obstante, quod aliud habeat, dispensationem super utroque retinendo non inducit.
>
> H. d. secundum Zenz.
>
> Idem.
>
> Non potest dispensatio super pluralitate beneficiorum concessa impetranti prodesse, qui aliquod, quantumcunque modicum, beneficium subticuit in eadem. Illud autem apostolicae sedis indultum, ut quis duo beneficia curam animarum habentia, si alias canonice conferantur eidem, possit recipere ac simul licite retinere, intelligitur de duobus primis beneficiis, quae cum cura post dictum indultum obtinere contingit eundem. Quum vero tibi, non obstante, quod aliud beneficium obtinere noscaris, a sede praedicta * de aliquo beneficio provideri contingit: per hoc tecum, ut primum beneficium cum secundo retinere valeas, non intelligitur dispensatum. Hoc enim solum praedicta operatur expressio, quod facta tibi gratia nequeat subreptitia iudicari.

Chapter XXII

A legate's mandate concerning provision to be made, when confirmed by the Pope, is to be regarded as a papal grant. Zenzel.

The same.

If a legate of the Apostolic See, wishing by authority of his legation to provide for you in a certain church, reserves to his own collation a canonry and prebend owed by law to no one else and next to become vacant in that church, decrees as null and void anything that should happen to be attempted otherwise concerning this, and by his letters appoints certain executors to confer them upon you when they become vacant; and if we afterward, a full account of these things having been given, hold as ratified and acceptable what was done by the legate himself, confirm it by apostolic authority, and by our letters command the same executors or others to proceed by our authority in the business of such provision according to the tenor of the legate's letters: it is certain that, since the provision of the legate himself is regarded as having been effected by our authority after authority was imparted by us, you will by law have to be preferred, for the prebend afterward to become vacant there, to all those for whom we subsequently commanded provision to be made in that church, even if we decided to confer upon them a canonry of that church.

> Mandatum legati super facienda provisione, per Papam confirmatum, papalis gratia est censenda. Zenzel.
>
> Idem.

Si apostolicae sedis legatus, volens tibi suae legationis auctoritate in certa ecclesia providere, canonicatum et praebendam nulli alii de iure debitos, proximo in ipsa ecclesia vacaturos, collationi suae reservet, et decernat irritum et inane, si secus super hoc contigerit attentari, certis, qui eos tibi conferant, quum vacabunt, exsecutoribus per suas literas deputatis; nosque postmodum, plena de his facta narratione, quod ab ipso legato factum exstitit ratum et gratum habentes, id auctoritate apostolica confirmamus, et eisdem exsecutoribus vel aliis nostris damus literis in mandatis, ut in huiusmodi provisionis negotio auctoritate nostra procedant iuxta ipsius legati continentiam literarum: certum est, quod, quum ipsa provisio ipsius legati * post impertitam a nobis auctoritatem nostra censeatur effecta, omnibus, quibus postea mandavimus in eadem ecclesia provideri, etiamsi canonicatum ipsius ecclesiae duxerimus conferendum eisdem, de iure praeferri debebis in praebenda postmodum inibi vacatura.

Chapter XXIII

The concealment of a benefice held, even a small one, is an obstacle unless it is established that the provision was made on the Pope's own motion; this is understood only if it is expressed in the letter. This states the point. Zenzel.

The same.

If on our own motion we confer another benefice upon someone holding a benefice, without mention being made of the latter, we do not wish a grant of this kind, which proceeded from our mere liberality, to be regarded as invalid on that account. It is otherwise if we make such a grant at that person's petition, or at another's petition offered on his behalf. For then, however small the benefice concealed in it, we do not wish the grant to obtain force, as being subreptitious. Moreover, a grant is to be regarded as having been made on our own motion only when this has been expressly provided in it.

Obstat taciturnitas obtenti beneficii, licet modici, nisi constet, provisionem factam proprio motu Papae; qui demum intelligitur, si hoc in litera exprimatur. H. d. Zenz.

Idem.

Si motu proprio alicui, aliquod beneficium obtinenti, conferamus aliud, de illo non habita mentione: non ob hoc gratiam huiusmodi, quae de nostra mera liberalitate processit, invalidam volumus reputari. Secus, si ad petitionem illius, vel alterius pro eodem oblatam gratiam huiusmodi faciamus. Tunc enim, quantumcunque modicum beneficium taceatur in ea, ipsam veluti subreptitiam vires nolumus obtinere. Motu quoque proprio tunc solum gratia fieri censeatur, quum hoc expresse cautum fuerit in eadem.

Chapter XXIV

A collation made on the Pope's own motion, when several benefices in the same church are vacant at once, is understood to have been made from the richer one; but if the benefices are equal, the choice belongs to the person to whom the grant was made. A collation made at another's petition is restricted to the lesser benefice. If they are equal, the person who otherwise made the collation chooses. If that person neglects to do so, the other chooses, and conversely. This states the point according to Zenzel.

The same.

If, when several dignities or prebends are vacant at the same time in some church, we, uncertain of this vacancy, confer upon someone in general a dignity or prebend, if any owed by law to no one else is vacant in that church, then, if we made such a grant on our own motion, so that the fullest interpretation is then made in it, we wish it to refer to the dignity or prebend that is regarded as

being of greater value among them; or, if perhaps they are equal, to the one that the person upon whom we confer it decides to choose within ten days after receiving knowledge of the said vacancy. But if the grant was made by us at another's petition, we decree that it is to refer—so that in this case it may be restricted as accords with law—to the one that is of lesser value; or, if there is equality among them, to the one that the person to whom their collation belongs chooses within the said time after such grant has become known to him. Moreover, if either of them neglects to choose within the due time, insofar as the choice belongs to him, the choice shall from that time freely devolve upon the other.

> Collatio, facta motu proprio Papae, pluribus beneficiis in eadem ecclesia vacantibus simul, intelligitur facta de pinguiori; sed, si beneficia sunt aequalia, ad eum spectat electio, cui gratia est concessa. Collatio vero, facta ad petitionem alterius, ad minus beneficium restringitur. Si sint aequalia, eligit qui alias conferebat. Quo negligente alius eligit, et etiam contra. Hoc dic ^ t secundum Zenz.
>
> Idem.
>
> Si, pluribus simul in aliqua ecclesia vacantibus dignitatibus vel praebendis, nos de hac vacatione incerti dignitatem vel praebendam, si qua nulli alii de iure debita in ipsa vacat ecclesia, cuiquam in genere conferamus: gratiam huiusmodi, si motu proprio eam fecerimus, ut tunc fiat interpretatio plenissima in eadem, referri volumus ad dignitatem vel praebendam, quae inter illas maioris censetur esse valoris; seu si sint forsan aequales, ad eam, quam is, cui conferimus, infra decendium post habitam de dicta vacatione notitiam duxerit eligendam. Si vero ad petitionem alterius ipsa gratia fuerit per nos facta: eam, (ut hoc casu, prout iuri congruit, restringatur,) ad illam, quae minoris valoris exsistit, seu, si sit aequalitas in eisdem, ad eam, quam is, ad quem ipsarum spectat collatio, infra dictum tempus elegerit, postquam sibi huiusmodi gratia erit nota, decernimus referendam. Alterutro quoque ipsorum, prout ad eum pertinet, infra tempus debitum eligere negligente, ad alium extunc electio libere devolvatur.

Chapter XXV

A prebend that becomes vacant through the death of the bishop who holds it is not owed to one awaiting a prebend. This states the point according to Zenzel.

The same.

Since you state that in your church, which has a number of twelve canons and thirteen prebends, there is a custom that the bishop for the time being has a voice in the chapter as though a canon, although he is not a canon, and holds one of the said prebends in it just as one canon does, it is certain that a person for whom provision is commanded by apostolic authority from a prebend owed by law to no one else and next to become vacant in that church cannot have the prebend that happens to become vacant through the bishop's death—lest, contrary to the said custom, which is not understood to be derogated from by the aforesaid mandate, the future bishop lack a prebend and the said number of canons be increased—but he will have to await until another becomes vacant.

> Non debetur exspectanti praebenda, quae per episcopi praebendarii mortem vacat. H. d. secundum Zenz.
>
> Idem.
>
> Quum in ecclesia tua, quae XII. canonicorum et XIII. praebendarum habet numerum, consuetudinem esse proponas, ut episcopus, qui est pro tempore, vocem habeat in capitulo tanquam canonicus, licet canonicus non exsistat, et unam de dictis praebendis sicut unus canonicus obtineat in eadem: certum

est, eum, cui auctoritate apostolica provideri mandatur, de praebenda, nulli alii de iure debita, proximo in ipsa ecclesia vacatura, praebendam, quam per mortem episcopi vacare contingit, (ne contra dictam consuetudinem, cui per praefatum mandatum non intelligitur derogari, futurus episcopus praebenda careat, et dictus canonicorum numerus amplietur,) habere non posse, sed exspectare debere , quousque vacet alia, oportebit eundem.

Chapter XXVI

Through the effective acquisition of a second benefice with cure, the fruits of which another receives for a reason, the first does not become vacant. John Andrew.

The same.

If, after it has been granted by us to you that you may receive the fruits of benefices that shall become vacant in your diocese up to a certain time in order to pay the debts with which your church is burdened, it should happen that you confer upon someone holding a similar benefice a benefice that afterward becomes vacant and has the cure of souls annexed, it is equitable that, for as long as you receive its fruits, the first benefice ought not to be regarded as vacant.

Per adeptionem secundi beneficii curati, cuius fructus alter ex causa percipit, non vacat primnm. Ioann. Andr.

Idem.

Si, tibi concesso a nobis, ut fructus beneficiorum, quae usque ad certum tempus in tua vacabunt dioecesi, percipere valeas pro solvendis debitis, quibus est tua ecclesia onerata, beneficium vacans postmodum, curam habens animarum annexam, alicui simile beneficium obtinenti te conferre contingat: aequum est, ut, quamdiu fructus ipsius perceperis, primum non debeat reputari vacare.

Chapter XXVII

When it is commanded that a nonsacerdotal, or whole, or specified-value prebend be conferred upon someone, a sacerdotal, half, or lesser-value prebend cannot be conferred upon him even if he is willing.

The same.

Upon one for whom provision from a nonsacerdotal prebend is commanded, a sacerdotal prebend cannot be conferred by authority of a mandate of this kind, even if he is willing. Similarly, if in a church in which there are whole and half prebends it is commanded that a whole prebend be conferred, although the person for whom it was written wishes to be content with a half prebend, provision cannot be made for him from it. The same applies when it is enjoined that provision be made for someone from a prebend of a specified value, so that the mandate cannot be fulfilled in a prebend of lesser value even if he is willing. For mandates of this kind, whose limits ought to be diligently observed, ought not to be extended to cases other than those expressed.

Quum mandatur alicui non sacerdotalis, vel integra, vel certi valoris conferri praebenda: sacerdotalis dimidia vel minoris valoris illi etiam volenti conferri non poterit.

Idem.

Cui de non sacerdotali praebenda provideri mandatur, sibi etiam volenti sacerdotalis auctoritate mandati huiusmodi conferri nequibit. Similiter, si in ecclesia, in qua integrae ac dimidiae praebendae habentur, mandetur integra conferri praebenda, quamquam ille, pro quo scriptum exstitit, dimidia velit

esse contentus, ei de ipsa non poterit provideri. Idem, quum iniungitur provideri alicui de praebenda certi valoris, ut in praebenda minoris valoris etiam illo volente mandatum non possit adimpleri . Non enim huiusmodi mandata, (quorum fines diligenter servari oportet,) debent ad casus alios, quam expressos, extendi.

Chapter XXVIII

After a second benefice with cure has been effectively acquired, the first similar benefice may be conferred without its possessor being summoned, but possession of it may not be given. According to Zenzel.

The same.

Although the bishop may by law confer upon another the benefice with the cure of souls that you held after you received another similar one and had peaceful possession of it, or after it was owing to you that you did not have such possession, nevertheless, without you being summoned, he ought not to induct the person upon whom he has conferred it into bodily possession of it, since a right to retain it may perhaps belong to you.

Secundo beneficio curato effectualiter adepto, primum consimile, eius possessore irrequisito, conferri potest, non autem eius possessio dari.

Secundum Zenz.

Idem.

Licet episcopus beneficium, quod cum animarum cura tenebas, postquam aliud recepisti consimile, ac ipsius possessionem pacificam habuisti, vel per te stetit, quo minus haberes eandem, possit alteri de iure conferre: illum tamen, cui contulerit, non debebit, te non vocato, quum tibi forsan ius possit competere retinendi, in possessionem ipsius inducere corporalem.

Chapter XXIX

A sacerdotal prebend, under a simple mandate to provide, is to be conferred only upon one fit for the priesthood. This states the point according to Zenzel, and this summary can be adapted to either reading set down in the third gloss. Dominicus.

The same.

Upon one for whom provision is commanded simply from a prebend next to become vacant, a sacerdotal prebend cannot be conferred if he is not yet of such an age that he can be promoted to the priesthood; rather, he will have to await another.

Sacerdotalis praebenda per simplex mandatum de providendo non nisi apto ad sacerdotium est conferenda. H. d. secundum Zenz. et istud summarium potest adaptari utrique lecturae, positae in tertia glossa.

Domin.

Idem.

Ei , cui provideri mandatur simpliciter de praebenda proximo vacatura, sacerdotalis praebenda conferri non potest, si nondum in aetate tali exsistat, quod possit ad sacerdotium promoveri; sed aliam exspectare debebit.

Chapter XXX

One awaiting a benefice by mandate of the Apostolic See for a certain reason is barred from seeking the benefice when that reason ceases. This states the point according to Zenzel.

The same.

If a poor cleric, for whom, when he had no benefice, it was commanded that the bishop provide him with a benefice according to the merits of his probity, has obtained another benefice before provision is made for him, the bishop is no longer bound to provide for him, since the reason for the mandate ceases.

> Ex mandato sedis apostolica exspectans ex certa causa, ea deficiente beneficium petere impeditur. H. d. secundum Zenz,
>
> Idem.
>
> Si pauper clericus, cui, quum beneficium nullum haberet, mandabatur de beneficio iuxta suae probitatis merita per episcopum providere, aliud, antequam sit provisum eidem, beneficium fuerit assecutus: providere sibi episcopus, quum cesset causa mandati, de cetero non tenetur.

Chapter XXXI

Where the priority of a benefice conferred upon several persons is not established, first possession, and then the greater prerogative, is preferred. This states the point according to Zenzel.

The same.

If on the same day the same benefice is conferred by the Apostolic See or its legate upon one person, and by the ordinary upon another, and it does not appear which collation was made first, the position of the possessor will be stronger. But if neither possesses it, the person upon whom the See itself or its legate conferred it will be preferred to the other on account of the greater prerogative of the one conferring.

> Ubi de prioritate beneficii pluribus collati non constat: primo possessio, deinde maior praerogativa praefertur. H. d. secundum Zenz.
>
> Idem.
>
> Si a sede apostolica vel legato ipsius uni, et ab ordinario alteri eodem die idem beneficium conferatur, nec appareat, quae collatio fuerit primo facta: erit potior conditio possidentis. Si vero neuter possideat: is, cui sedes ipsa contulit vel legatus, propter conferentis ampliorem praerogativam erit alteri praeferendus.

Chapter XXXII

A religious who has a priory or a church with cure, if he receives a second without the Pope's license, vacates the first by the law itself. If he does not immediately relinquish it, he becomes ineligible and is deprived of both. The same penalty applies to those who held several before this constitution unless within a month they choose one and relinquish the other. This states the point as far as § "We prohibit." John Andrew. — § 1. Priories, churches, or administrations of one monastery customarily governed by its own monks shall not, without the license of the Apostolic See, be committed to monks of another monastery, nor shall those already committed be left to them. Those who act contrary to this shall for that occasion be deprived of the power to dispose of the aforesaid offices, and disposition devolves upon the diocesan in the case of nonexempt houses and upon the Pope in the case of exempt

houses. Those receiving or retaining them—or, according to another reading, those choosing—are ineligible by the law itself. This states the point.

The same.

Since individual offices are to be committed to individual persons, and occasion for dissoluteness and wandering is to be removed from religious above all others, by the present edict we prohibit any monks or other religious from presuming, without authority of the Apostolic See, to preside over several priories or churches having the cure of souls, even if that cure is exercised not by them personally but by priests instituted by bishops at their presentation, unless perhaps one of them depends upon another or they are annexed to one another. We establish that whoever among them, while holding such a priory or church, receives another is bound immediately and entirely to relinquish the first, of which he is deprived by the law itself, so that it may freely be conferred upon another by the person to whom this belongs. If he does not do so, from that time he shall by that very fact be rendered ineligible and, as ambitious, be wholly expelled from both. Concerning those who now hold several priories or churches of this kind, however, we provide that within one month after the present constitution comes to them, they are bound to choose one of them that they wish to retain, relinquishing the others; otherwise, from that time they shall be subject to the aforesaid penalties.

§ 1. Moreover, we prohibit priories or churches, or administrations or offices of one monastery that are customarily governed by its monks, from hereafter being committed, without authority of the same See, to monks of another monastery to be governed, and prohibit those hitherto committed from being left to them. Rather, they shall freely be disposed of by those to whom they belong, since it is not lawful for such monks to have a place in different monasteries, of which one does not depend upon the other, or to govern the priories, churches, administrations, or offices of other monasteries unless they are canonically transferred to them. Those who hereafter commit the aforesaid things to monks of another monastery contrary to the present prohibition, or leave to them things already committed, shall for that occasion be deprived of the power to dispose of them; and they shall be disposed of by the diocesan bishops if they are not exempt, but otherwise by the Apostolic See. Those who presume to receive them or to retain them after they have been received shall be rendered ineligible by the law itself.

> Religiosus habens prioratum vel ecclesiam curatam, si recipit secundum sine licentia Papae: ipso iure vacat primum. Quod si statim non dimiserit: efficitur ineligibilis, et privatur utroque. Eadem est poena in iis, qui habebant ante hanc constitutionem, nisi infra mensem alterum elegerint et alterum dimiserint. H. d. usque ad §. Prohibemus. Ioann. Andr. — §. 1. Prioratus ecclesiae vel administrationes unius monasterii, solitae per ipsius monachos gubernari, absque sedis apostolicae licentia alterius monasterii monachis non committantur, nec commissa dimittantur. Qui contra fecerint, sint privati potestate ordinandi praedicta ea vice, et defertur ad dioecesanum in non exemptis, et ad Papam in exemptis. Recipientes vel detinentes, alias: eligentes, sunt ineligibiles ipso iure. H. d.
>
> Idem.
>
> Quum singula officia sint singulis committenda personis, et dissolutionis ac evagationis materia sit religiosis prae ceteris auferenda: praesenti prohibemus edicto, ne aliqui monachi vel religiosi alii pluribus prioratibus vel ecclesiis, curam habentibus animarum, etiamsi eadem cura non per ipsos, sed per presbyteros, ad eorum praesentationem per episcopos institutos, habeat exerceri, absque sedis

apostolicae auctoritate praeesse praesumant, nisi forte unus ex eis ab alio dependeat, vel adinvicem sint annexi; statuentes, ut, quicunque ipsorum prioratum vel ecclesiam talem obtinens alium receperit; primum, quo sit ipso iure privatus, statim omnino dimittere teneatur, per eum, ad quem pertinuerit, libere alteri conferendum. Quod nisi fecerit, ex tunc eo ipso efficiatur ineligibilis, et tanquam ambitiosus ab utroque penitus repellatur. Circa eos autem, qui plures prioratus vel ecclesias huiusmodi nunc detinent, providemus, ut infra mensem, postquam praesens constitutio pervenerit ad eosdem, unum ex ipsis, quem retinere voluerint, reliquis dimissis eligere teneantur, alioquin extunc poenis subiaceant supra dictis. §. i. Prohibemus insuper, ne prioratus vel ecclesiae, aut administrationes seu officia unius monasterii, consueta per eiusdem monachos gubernari, committantur deinceps absque auctoritate sedis eiusdem alterius monasterii monachis gubernanda, nec hactenus commissa dimittantur eisdem; sed per eos, ad quos pertinent, libere ordinentur, quum illis non liceat habere locum in diversis monasteriis, quorum unum ab alio non dependet, nec aliorum monasteriorum, nisi canonice transferantur ad ipsa, prioratus, ecclesias, administrationes vel officia gubernare. Qui vero contra prohibitionem praesentem praedicta de cetero alienis monachis commiserint, vel dimiserint iam commissa, ea vice ordinandi de ipsis sint potestate privati et de eis per dioecesanos, si exempta non fuerint, alioquin per sedem apostolicam ordinentur . Ii autem, qui ea suscipere vel suscepta praesumpserint detinere, reddantur ineligibiles ipso iure.

Chapter XXXIII

Absent monks or canons can pursue contempt if they are not summoned for a reception or collation, unless there is a custom that they are not summoned. This states the point according to Zenzel.

The same.

When the reception of canons or the collation of prebends or benefices is to be made in churches, absent canons are to be summoned, if this can conveniently be done, unless there is a custom that they are not summoned for such matters. Otherwise, what happens to be done in their absence will have to be invalidated at their instance.

Contemptum possunt prosequi, si ad receptionem vel collationem absentes monachi vel canonici non vocentur; nisi consuetudo habeat, eos non vocari. H. d. secundum Zenz.

Idem.

Quum in ecclesiis canonicorum receptio aut praebendarum vel beneficiorum collatio imminet facienda: absentes canonici, si commode fieri valeat, sunt vocandi; nisi consuetudo habeat, eos ad talia non vocari. Alioquin, quod in eorum absentia fieri contigerit, eis instantibus irritari debebit.

Chapter XXXIV

The benefices of persons dying even in a place within two lawful days' journeys of the Roman Curia—or while that See is vacant—who do not have a cause, domicile, or origin there; or of those who do have these but are curial officials and are staying there by reason of the Roman Curia; or of those who follow the Curia when it is transferred and die on the journey; or of those who remain ill in the place from which the Curia departed, cannot be conferred by anyone other than the Pope. This states the point according to Zenzel.

The same.

By the present edict we declare that the statute of Pope Clement, our predecessor of happy memory, concerning benefices vacant at the Apostolic See being conferred by no one other than the Roman Pontiff, applies to benefices known to be held by legates or nuncios of that See, or by any others

coming to the Roman Curia or even departing from it, if it happens that they die in places near the Curia itself, just as if they died in the place where that Curia resides. The same applies if a curial official—even while the Roman Church is vacant—withdraws to a place near the Curia for the sake of pilgrimage, infirmity, recreation, or any other cause, and dies in a neighboring place of this kind, provided that his domicile or own house does not exist there, even if he intended to return to the Curia itself. In the foregoing matters, places are understood to be near that Curia when they are not situated more than two lawful days' journeys—which in this case we specifically wish to be computed in this manner—from the place where the Curia is staying. Indeed, if someone who has the house of his origin in the place where the Curia resides meets his last day in that house, his benefices are included under the aforesaid statute only if he had previously been a curial official and was staying there by reason of the Curia. Furthermore, when the Curia happens to be transferred from place to place, if curial officials are taken from human affairs on the journey while following that Curia, or if, perhaps remaining ill in the place from which the Curia departs, they die there, the aforesaid statute extends to their benefices, however far the place where they die is from the Curia itself.

> Beneficia morientium etiam in loco vicino curiae Romanae per duas diaetas legales, vel sede ipsa vacante, ibi causam, domicilium vel originem non habentium, vel etiam habentium, sed curialium, et ibi causa Romanae curiae morantium, vel translata curia eam sequentium, et in itinere decedentium, vel in loco, unde recessit curia, in quo remanserant infirmi, conferri nequeunt per alium, quam per Papam. H. d. secundum Zenz.
>
> Idem.
>
> Praesenti declaramus edicto, statutum felicis recordationis Clementis Papae praedecessoris nostri de beneficiis apud sedem apostolicam vacantibus, per alium quam per Romanum Pontificem minime conferendis, locum habere in beneficiis, quae legati aut nuncii sedis eiusdem vel quivis alii ad Romanam curiam venientes, vel etiam recedentes ab ipsa, obtinere noscuntur, si eos in locis vicinis ipsi curiae mori contingat, quemadmodum si in loco, ubi eadem curia residet, morerentur. Idem est, si aliquis curialis, (etiam ecclesia Romana vacante,) peregrinationis, infirmitatis, aut recreationis seu alia quavis causa ad locum curiae vicinum secedens , in huiusmodi loco vicino decedat; dummodo ibi, etiamsi erat ad ipsam curiam reversurus, eius domicilium seu domus propria non exsistat. Loca vero intelligantur vicina eidem curiae in praemissis, quae remota ultra duas diaetas legales, quas hoc casu sic specialiter volumus computari, a loco, ubi moratur ipsa curia, non exsistunt. Sane, si quis in loco, ubi degit curia, suae originis domum habens, diem claudat extremum in ea: ipsius beneficia sub praedicto non aliter includantur statuto, quam si curialis esset antea, et ibidem occasione curiae moraretur. Porro, quum curiam de loco ad locum transferri contingit, si curiales, in itinere, (dum curiam sequuntur eandem,) vel in loco, unde recedit ipsa curia, forsitan remanentes infirmi, rebus inibi eximantur humanis: praemissum statutum, quantumcunque locus ubi decedunt, ab ipsa curia sit remotus, ad illorum beneficia se extendit.

Chapter XXXV

The Pope's death prevents parish churches from being said to become vacant at the Curia. This states the point according to Zenzel.

The same.

If, while the Apostolic See is vacant, it should hereafter happen that any parish churches become vacant at that See, we establish that they may be freely disposed of by those to whom this belongs,

lest their prolonged vacancy bring danger to souls, notwithstanding the constitution of Pope Clement, our predecessor of happy memory, concerning benefices vacant at that See being conferred by no one other than the Roman Pontiff, or any other contrary constitution issued concerning this. We wish the same concerning those parish churches that shall become vacant there while the Roman Pontiff is alive, if they have not been disposed of by him before his death.

> Mors Papae tollit, ne parochiales ecclesiae in curia vacare dicantur. H. d.
>
> secundum Zenz.
>
> Idem.
>
> Si apostolica sede vacante aliquas parochiales ecclesias vacare de cetero contigerit apud ipsam: statuimus, ut de eis, ne ipsarum vacatio diutina periculum valeat animabus afferre, per eos, ad quos pertinet, possit libere ordinari, constitutione felicis recordationis Clementis Papae praedecessoris nostri de beneficiis, apud sedem ipsam vacantibus, per alium quam per Romanum Pontificem minime conferendis , vel alia quavis contraria super hoc edita non obstante. Idem volumus et de illis, quae ibidem ipso Romano Pontifice vivente vacabunt, si de ipsis per eum ante ipsius obitum non fuerit ordinatum.

Chapter XXXVI

A grant made to someone that he may provide suitable persons in a certain church, when the persons are not expressed, does not expire while the matter remains untouched through the death of the grantor; it is otherwise if the persons were expressed. John Andrew.

The same.

If, without any persons being expressly named, the faculty has graciously been granted to someone that he may by apostolic authority provide certain suitable persons in a specified church, or confer benefices whose collation has lawfully devolved upon the Apostolic See, restraining contradictors by ecclesiastical censure under the same authority, a grant of this kind—which, since it contains a special grace, it is fitting should endure—does not expire through the grantor's death, even while the matter remains untouched. It is otherwise if power was given to him to make provision for a specified person, not as a grace or favor to himself but to the person for whom provision is commanded; that power indeed expires entirely if the grantor dies while the matter remains untouched.

> Gratia alicui concessa, ut providere possit personis idoneis in certa ecclesia, personis non expressis, non exspirat re integra obitu concedentis; secus, si personae essent expressae. Ioann. Andr.
>
> Idem.
>
> Si cui, nulla personarum facta expressione, sit gratiose concessa facultas, ut auctoritate apostolica possit aliquibus personis idoneis in certa ecclesia providere, vel beneficia, quorum collatio est ad sedem apostolicam legitime devoluta, conferre, contradictores eadem auctoritate per censuram ecclesiasticam compescendo: huiusmodi concessio, quam, quum specialem gratiam contineat, decet esse mansuram, non exspirat etiam re integra per obitum concedentis. Secus, si super provisione certae personae facienda sit data potestas eidem non ob suam, sed eius, cui provideri mandatur, gratiam vel favorem; illa quidem exspirat omnino, si concedens re integra moriatur.

Chapter XXXVII

One who, by a license granted concerning unspecified persons, promotes clerics to sacred orders without a title is bound to provide for them. A person giving license to the one promoting, or even to those to be promoted, will be bound to provide for them if they are promoted to sacred orders without a title. This states the point. Zenzel.

The same.

If a bishop whom, without the express naming of any persons, you commissioned in general to celebrate ordinations in your diocese in your place promotes to sacred orders someone who does not have a title, he will be bound to furnish that person with the necessities of life, since he was at fault in ordaining him in this way, until provision is made for him by that bishop or another from a suitable benefice. But if you commissioned him to ordain specified persons, you—who in this case ought to have foreseen whether they had a title—stand obligated to furnish the aforesaid things to a person so ordained until he has been beneficed by you. Moreover, when license is given to diocesan subjects that they may be promoted to all sacred orders by whatever bishop they wish, not those who ordain, but those who grant the license—since they ought not to grant it to one who has no title—are obligated to furnish the aforesaid things if the subjects have no title.

> Qui ex licentia circa incertos concessa absque titulo ad sacros ordines clericos promovet, eis tenetur providere. Dans licentiam promoventi vel etiam promovendis, eis, promotis ad sacros sine titulo, providere tenebitur, H. d. Zenz,
>
> Idem.
>
> Si episcopus, cui nullis personis expressis in genere commisisti, ut vice tua ordines in tua dioecesi celebraret, ad sacros ordines promoverit quempiam titulum non habentem: ei, quum in culpa fuerit taliter ordinando eundem, tenebitur vitae necessaria ministrare, donec sibi per eum vel alium de competenti beneficio sit provisum. Si vero certas commisisti * eidem ordinare personas: tu, qui praevidere hoc casu, an haberent titulum, debuisti, taliter ordinato ad praedicta, donec per te beneficiatus fuerit, obligatus exsistis. Eis autem, quibus dioecesanis datur licentia, ut possint a quo voluerint episcopo ad omnes sacros ordines promoveri, non qui ordinant, sed qui tribuunt licentiam, quum eam dare non debeant titulum non habenti, ad praemissa, si titulum non habeant, obligantur.

Chapter XXXVIII

If, first, the Pope gives license to confer benefices becoming vacant in a specified manner, or devolved upon the Pope, and, secondly, specially confers one of these or commands it to be conferred, the specific derogates from the general, so that the benefice is owed to the second person. This states the point. John Andrew.

The same.

Although we recently gave you in general the power to confer by our authority upon suitable persons the benefices of six of your clerics who resign or die, nevertheless you cannot confer the canonry and prebend that one of those clerics of yours, now deceased, held in your church, in which, after the aforesaid grant was made to you, we commanded that provision be made specially for a certain person, since they are owed to the person for whom we wrote. For the later special grant derogates from the first general grant made to you, although it made no mention of the latter. For a similar reason, if, after a faculty was granted to you by us to confer benefices of your diocese whose collation has devolved upon the Apostolic See, we, before you confer one of them, specially confer it upon

someone or command it to be conferred, without mention being made of the grant made to you, the collation made by us is to be regarded as canonical.

> Si primo loco Papa dat licentiam conferendi beneficia certo modo vacantia, vel ad Papam devoluta, secundo aliquod de his conferat specialiter, vel conferri mandet: species generi derogat ita, quod secundo beneficium debetur. H. d. Ioann. Andr.
>
> Idem.
>
> Quamvis tibi nuper in genere potestatem dederimus beneficia sex clericorum tuorum cedentium vel decedentium auctoritate nostra personis idoneis conferendi: canonicatum tamen et praebendam, quos in tua ecclesia, in qua post praedictam gratiam tibi factam mandavimus cuidam specialiter provideri, obtinebat quidam ex iisdem tuis clericis nunc defunctus, conferre non potes, quum illi, pro quo scripsimus, debeantur. Nam primae generali gratiae tibi factae derogat posterior specialis, licet de illa non fecerit mentionem. Simili ratione, si post facultatem tibi concessam a nobis conferendi beneficia tuae dioecesis, quorum collatio est ad sedem apostolicam devoluta, nos eorum aliquod, antequam tu conferas, conferamus specialiter alicui vel conferri mandemus, de concessione tibi facta non habita mentione: facta per nos collatio canonica est censenda. /

Chapter XXXIX

Revocation of a grant does not take away an acquired right, but a right yet to be acquired, unless the law of annexation introduces something else; nevertheless, it does not take away a right yet to be acquired that is annexed to a right more dignified than the acquired right. This states the point according to Zenzel.

The same.

If a person to whom, by letters of our predecessors Nicholas or Celestine of happy memory, a grant of a canonry, prebend, and dignity, personate, or office had been made in some church had, at the time of our revocatory constitution, obtained the canonry and prebend, which was not annexed to any dignity, personate, or office, then, although he was awaiting the dignity, personate, or office there, by reason of that expectation he is not understood to be deprived of the right that he had canonically acquired in the canonry and prebend. Nevertheless, the right belonging to him to the dignity, personate, or office is understood to have been revoked according to the words of the said revocation.

It is not so, however, if he had obtained a canonry together with a dignity, personate, or office customarily conferred only upon a canon, while awaiting a prebend; for the more dignified right that he already had in such dignity, personate, or office preserves the less dignified right of the canonry, by reason of which canonry the right to a prebend owed to no one else remains saved to him against one received after him by apostolic authority. But the same is also to be held if the aforesaid person, who already had the canonry by apostolic authority, had obtained in the same church, by the collation or provision of the bishop or anyone else, a dignity, personate, or office customarily conferred only upon a canon.

> Revocatio gratiae non tollit ius quaesitum, sed quaerendum, nisi ius. annexionis aliud inducat; nec tamen tollit ius quaerendum, annexum iuri digniori, quam quaesito. H. d. secundum Zenz.
>
> Idem.
>
> Si is, cui de canonicatu, praebenda et dignitate, per-sonatu vel officio per felicis recordationis Nicolai vel Coelestini praedecessorum nostrorum literas gratia in aliqua ecclesia facta erat, constitutionis nostrae revocatoriae tempore canonicatum et praebendam, dignitati, personatui vel officio alicui non annexam,

erat adeptus: licet dignitatem, personatum seu officium inibi exspectaret, propter exspectationem huiusmodi privatus non intelligitur iure, quod in canonicatu et praebenda fuerat canonice assecutus; ius tamen, quod ad dignitatem, personatum vel officium competebat eidem, iuxta verba dictae revocationis intelligitur revocatum. Non sic autem, si canonicatum cum dignitate, personatu aut officio, conferri tantum canonico consuetis *, fuerat assecutus sub exspectatione praebendae; quum ius magis dignum, quod iste in dignitate, personatu seu officio huiusmodi iam habebat , ius minus dignum Canonicatus retineat, cuius Canonicatus ratione ius eidem salvum remanet , ad praebendam nulli alii debitam apostolica ante ipsum auctoritate recepto. Sed et si episcopi vel alterius cuiuscunque collatione vel provisione adeptus fuerat in eadem ecclesia dignitatem, personatum sive officium, conferri tantum canonico consueta , praefatus, qui canonicatum auctoritate apostolica iam habebat , idem erit censendum.

Chapter XL

Revocation of a grant and the interposition of a decree are an obstacle even to an ignorant person awaiting a prebend. This states the point. Zenzel.

The same.

When a certain person held by letters of Pope Nicholas, our predecessor of happy memory, a canonry in a specified church while awaiting a prebend to become vacant, his successor Celestine made a similar grant in the same church to a certain other person, whom he wished, with the interposition of a decree, to be preferred to all persons received in that church even before him by apostolic or any other authority. Before knowledge of the second grant reached the first person and his executors, however, a vacant prebend was conferred upon that first person by his executors. After this, but before collation of that prebend was made to the second person, our revocatory constitution was issued. And because it is doubted which of them has a right in that prebend, we decree that neither of them has a right in it. For the first collation, made after and contrary to the decree interposed by the said Celestine, possesses no validity, although it was made by ignorant persons and even to an ignorant person. But the right that belonged to the second person to the prebend, not in the prebend itself, was entirely taken away by our revocation, since his collation did not precede that revocation.

Obest revocatio gratiae praebendam exspectanti et decreti interpositio etiam ignoranti. H. d. Zenz.

Idem.

Quodam per literas felicis recordationis Nicolai Papae praedecessoris nostri canonicatum sub exspectatione vacaturae praebendae in certa ecclesia obtinente, successor eius Coelestinus cuidam alteri similem in eadem ecclesia gratiam fecit, quem omnibus, etiam ante ipsum auctoritate apostolica vel quavis alia in ecclesia ipsa receptis, voluit anteferri, cum interpositione decreti. Priusquam tamen ad primum et eius exsecutores secundae gratiae notitia pervenisset: vacans praebenda eidem primo per suos fuit exsecutores collata. Post huiusmodi autem et ante factam secundo collationem ipsius praebendae, nostra constitutio revocatoria emanavit. Et quoniam quis eorum ius habeat in praebenda huiusmodi * dubitatur: nos neutrum illorum habere ius decernimus in eadem. Prima enim collatio, post et contra decretum a dicto Coelestino interpositum facta, licet ab ignorantibus et etiam ignoranti, non obtinet firmitatem. Ius vero, quod secundo ad praebendam, non in praebenda huiusmodi competebat, quum nostram revocationem eius collatio non praecesserit, per eam penitus est sublatum.

Chapter XLI

A mandate to provide from a benefice belonging to the collation of a chapter does not touch the right of an individual canon. This states the point according to Zenzel.

The same.

An apostolic mandate directed to you that you provide T., a cleric, with a benefice belonging to the collation of the Chapter of Narbonne rightly includes benefices of that chapter, whether they are given in common by the chapter itself, or by individual canons of that church in the place and by the authority of the chapter, or from the chapter's right by custom or statute. Nevertheless, a mandate of this kind in no way extends to benefices belonging to the collation of those canons by reason of dignities, personates, or offices that some of them hold in that church. We judge the same to apply if the collation of the said benefices is known to belong individually to the canons themselves by reason of their prebends, unless perhaps the mandate contains the provision that you provide the same cleric with a benefice belonging to the collation of the Chapter of Narbonne jointly or separately. For then you will be able to provide from benefices that belong to their collation by reason of prebends of this kind.

> Mandatum de providendo de beneficio, ad collationem capituli pertinente, non tangit ius singularis canonici. Hoc dicit secundum Zenz.
>
> Idem.
>
> Mandatum apostolicum tibi directum, ut T. clerico de beneficio spectante ad collationem Narbonensis capituli provideres, beneficia eiusdem capituli, sive dentur in communi per ipsum, sive per canonicos eiusdem ecclesiae singulares vice ac auctoritate capituli, aut ex iure ipsius de consuetudine vel statuto, merito comprehendit. Ad beneficia tamen ratione dignitatum, personatuum vel officiorum , quae nonnulli ex eisdem canonicis obtinent in ipsa ecclesia, ad eorundem collationem spectantia , mandatum huiusmodi minime se extendit. Idem esse censemus, si ratione praebendarum suarum ad ipsos canonicos collatio dictorum beneficiorum singulariter pertinere noscatur, nisi contineatur forsitan in mandato, quod eidem clerico provideas de beneficio ad collationem Narbonensis capituli pertinente communiter vel divisim. Tunc enim de beneficiis, quae ad ipsorum collationem pertinent, ratione huiusmodi praebendarum poteris providere.

Title V: On an Ailing or Disabled Cleric

Chapter I

The appointment of coadjutors for bishops and their superiors is among the greater causes and belongs to the Pope alone. A bishop impeded by old age or perpetual infirmity can nevertheless, with the consent of his chapter or its greater part, assume by apostolic authority one or two coadjutors for himself; and if he is mentally incapacitated, the chapter or two thirds of it do this. But if the bishop contradicts, the chapter shall then innovate nothing, but shall notify the Pope of the condition of the bishop and church as quickly as it can. Those coadjutors shall have moderate expenses from the revenues of those prelates. John Andrew.

Boniface VIII.

Executing the duty of the pastoral office, we declare and establish that the appointment of coadjutors for bishops and superior prelates is to be understood as among the greater causes, is to be referred to the Apostolic See, and, notwithstanding any contrary custom, is to be requested from it alone. But

lest under this pretext churches, especially those situated in remote places, suffer losses, we, wishing to guard against harm to them in this regard, decree by this general constitution that a bishop burdened by old age or bodily ill health, or otherwise so perpetually impeded that he cannot exercise his office, can, with the counsel and consent of his chapter or its greater part, assume by apostolic authority one or two coadjutors to execute the said office. But if the bishop is mentally incapacitated and does not know or cannot express what he wishes or does not wish, then his chapter or two thirds of it shall by the same authority assume one or two suitable coadjutors to execute his office.

But if a bishop, burdened by old age or an incurable disease, or detained by a perpetual impediment, is rendered incapable of executing his office and is unwilling to assume or have a coadjutor, although requested by his own chapter, perhaps asserting that he does not need the coadjutor's assistance, then nothing shall be innovated by the chapter; but in this case and also the immediately preceding one, that chapter shall, as quickly as it can, faithfully and explicitly report to the knowledge of the said See the condition and state of its bishop and church and all the circumstances of the fact, humbly to receive and effectually to fulfill whatever the See itself happens to ordain concerning this.

We also add to the present enactment that coadjutors of this kind shall receive moderate expenses from the revenues of the prelates to whose assistance they are assumed, entirely abstaining from making any alienation whatsoever of the ecclesiastical goods of those prelates or their churches, and that they shall render a full account not only in a strict examination, but also to the same prelates, if they are of sound mind, and to their chapters, or even to the successors of those prelates if they have not done this previously. Moreover, we wish and understand that what is premised concerning bishops is also to be referred to superior prelates.

DE CLERICO AEGROTANTE VEL DEBILITATO.

Datio coadiutorum episcoporum et suorum superiorum est de maioribus causis, et spectat ad solum Papam. Potest tamen episcopus, senio vel infirmitate perpetua impeditus, de consensu capituli sui vel maioris partis sibi auctoritate apostolica unum vel duos coadiutores assumere, et, si demens fuerit, capitulum aut duae partes ipsius hoc faciunt. Sed si episcopus contradicit, tunc nil innovabit capitulum, sed episcopi et ecclesiae conditionem, quam cito poterit, intimabit Papae. Et coadiutores illi sumptus moderatos habebunt de proventibus praelatorum ipsorum, Ioann. Andr.

Bonifacius VIII.

Pastoralis officii debitum exsequentes declaramus atque statuimus, coadiutorum episcoporum et superiorum praelatorum dationem intelligendam esse de causis maioribus, et referendam ad sedem apostolicam, ac ab ea, consuetudine non obstante contraria, tantummodo postulandam. Verum ne hoc praetextu ecclesiae exsistentes praecipue in remotis dispendia patiantur: nos, earum in hac parte indemnitatibus praecavere volentes, hac generali constitutione sancimus, ut episcopus, senio aut valetudine corporali gravatus, vel etiam * alias adeo impeditus perpetuo, ut officium suum nequeat exercere, possit de sui consilio et assensu capituli, vel maioris partis ipsius, unum vel duos auctoritate apostolica coadiutores assumere ad dictum officium exsequendum. Si vero episcopus demens fuerit, et quid velit aut nolit exprimere nesciat vel non possit: tunc eius capitulum vel duae ipsius partes eadem auctoritate unum aut duos coadiutores assumant idoneos, qui eius officium exsequantur. Si autem episcopus, senio aut incurabili morbo gravatus, vel perpetuo impedimento detentus, ad sui exsecutionem officii reddatur inutilis, et coadiutorem assumere vel habere noluerit, licet a capitulo requisitus proprio, se illius non indigere suffragio forsitan asserendo: tunc nil per capitulum, innovetur, sed hoc casu et etiam proximo idem capitulum episcopi et ecclesiae suae conditionem et statum, ac facti

circumstantias universas, quam cito poterit, fideliter et expli-cite referat * ad notitiam dictae sedis, recepturi humiliter et efficaciter impleturi quod super hoc per sedem ipsam contigerit ordinari. Praesenti quoque adiicimus sanctioni, ut coadiutores huiusmodi de proventibus praelatorum, in quorum assumentur auxilium, sumptus recipiant moderatos, ab alienatione qualibet de bonis ecclesiasticis praelatorum ipsorum vel ecclesiarum suarum quomodolibet facienda penitus abstinentes, rationem non solum in districto examine, sed et praelatis eisdem, si sanae mentis exstiterint, ac capitulis eorundem, seu etiam ipsorum praelatorum successoribus, si hoc antea non fecerint, plenariam reddituri. Ceterum quod de episcopis praemittitur ad superiores etiam praelatos esse volumus et intelligimus referendum.

Title VI: On Institutions

Chapter I

Although a chapter cannot, while the see is vacant, confer benefices belonging to the bishop's collation, it can nevertheless institute persons presented to them. This states the point. Zenzel.

Boniface VIII.

Although a chapter cannot, while the see is vacant, confer benefices that belong to the bishop's collation, it can nevertheless admit persons presented by patrons, if they are suitable, and institute them in the benefices to which they were presented, although such admission and institution would belong to the bishop if he survived.

DE INSTITUTIONIBUS.

Capitulum sede vacante licet beneficia ad episcopi collationem spectantia conferre non possit, tamen ad illa praesentatos instituere potest. H. d, Zenz.

Bonifacius VIII.

Etsi capitulam sede vacante beneficia, quae ad collationem episcopi pertinent, conferre non possit: praesentatos tamen a patronis potest admittere, si sint idonei, et eos instituere in beneficiis, ad quae fuerint praesentati, licet ad episcopum, si superesset, admissio et institutio huiusmodi pertineret.

Chapter II

Defect of sacred orders does not exclude a person presented. This states the point. Zenzel.

The same, in the same council.

If the person to whom the presentation of a rector in some parish church is known to belong presents to it someone not constituted in sacred orders, we decree that he is to be admitted, provided that he is otherwise suitable and can, within the time established by law, be promoted to the orders that the cure of that church requires.

Non repellit praesentatum defectus sacrorum ordinum. H. d. Zenz.

Idem in eodem *.

Si is, ad quem rectoris praesentatio in aliqua parochiali ecclesia noscitur pertinere, quempiam non constitutum in sacris praesentet ad eam: ipsum, dummodo alias sit idoneus, et infra tempus a iure statutum ad ordines, quos ipsius ecclesiae cura requirit, valeat promoveri, decernimus admittendum.

Title VII: On the Grant of a Prebend or Church Not Vacant

Chapter I

If it is commanded that provision be made for someone from a dignity to become vacant that he decides to accept, and a dignity becomes vacant that the ordinary confers before the acceptance, his collation has force, even if the applicant's executor, before the acceptance, made a reservation, prohibition, and proceedings concerning the first dignity to become vacant. John Andrew.

Innocent IV, to his beloved son Andrew, our chaplain.

Because to all—(And below:) It was therefore proposed on your behalf that, since the aforesaid provostship, while it was vacant, had been conferred upon you by the person who was able to confer it, a collation of this kind was canonical, especially since no prohibition by the prior himself that could impede it had preceded it.

The opposing party, however, said that, since the aforesaid letters had been published in the chapter while the See of Chartres was vacant, and the aforesaid bishop was then a member of that chapter and was present there, he could not have been ignorant that an apostolic mandate had been directed to another person concerning the conferral upon the aforesaid D. of a prebend or dignity without cure that he himself should decide to accept, when one first became vacant in the aforesaid church. Thus, consequently, the faculty of conferring a dignity of this kind had been taken away from the bishop. For this reason it appeared that neither personally nor through another could he have conferred upon any person the aforesaid provostship, which did not have the cure of souls annexed and was the first to become vacant in the aforesaid church after the mandate, especially since the said prior, immediately after the same mandate was published, had conferred upon the aforesaid D. the prebend or dignity without such cure that should first happen to become vacant in that church. Nor, as was alleged, could the bishop's ignorance otherwise benefit him in this regard. For if it is granted to someone by the Apostolic See that he cannot be excommunicated, although his bishop perhaps does not know this, nevertheless that person is not bound by the bishop's sentence if he pronounces one against him. Similarly, if power to confer a certain prebend is granted to someone by the Apostolic See, by that very fact the bishop's faculty to confer it then appears to be entirely forbidden.

Nor would it be an obstacle if perhaps it were objected that a law or constitution and a mandate bind no one until they have come to their knowledge, or until after the time within which they ought by no means to have remained ignorant of them; because it is otherwise in privileges, indulgences, or special concessions, in which it suffices that they come to the knowledge of those to whom they are granted, as is evident when it is granted to someone that he cannot be excommunicated, as was expressed above. And indeed, when power to confer a prebend is granted to someone, something special undoubtedly appears to be granted to him. It was moreover added that, since a sentence immediately binds even an ignorant person—because if a sentence of deposition is pronounced against some absent prelate, contracts that he afterward enters into in ignorance as prelate obtain no strength of validity—and since in the aforesaid letters we decree as null and void whatever should happen to be attempted concerning such a prebend or dignity contrary to our mandate, the collation that the same bishop made, personally or through another, of the aforesaid provostship after such our decree was not valid, whether he was ignorant of it or not.

On your behalf, however, it was replied that, with equity counseling it, these things ought to be understood of those privileges and indulgences that have their force immediately when they reach those to whom they are granted, and from whose tenor it can plainly be known that such was the intention of the grantor concerning them, as when it is granted to someone that he cannot be excommunicated. For from this it is manifestly apparent that the faculty to excommunicate him has been entirely taken away from others. But it is not so if power to confer a prebend, whether a specified or unspecified one, is granted to someone. For then the intention of the one granting does not appear to be that the possibility of conferring the prebend should thereby be taken away from the person to whose gift it belongs, unless the grantee first notifies him that he wishes to confer it by power of this kind, or forbids him to collate it, or, after notifying him that such power has been granted to himself, decrees as null and void anything that he presumes otherwise concerning it. For since no more extensive power is given to him than the Roman Pontiff himself has in this regard, just as the power the Roman Pontiff himself possesses does not take away from another the faculty to confer a benefice or prebend unless the Pontiff makes his will known, similarly the power granted to a person by the Pontiff in this manner does not take away from the person to whom the collation of that prebend belongs the power of conferring it before the grantee makes known to him that he wishes to grant it, or even before he confers it if it should be vacant, unless perhaps it is expressed in the grant of such power that the ordinary cannot confer it. For then, although the ordinary perhaps is ignorant of such a grant, his collation is nevertheless of no effect if he afterward confers the prebend, since the grantor's intention is sufficiently recognized concerning this, just as when it is granted to someone that he cannot be excommunicated, as was premised above.

It was also added that, since by the aforesaid letters we had commanded the said prior to confer upon the aforesaid D. a prebend or dignity without cure that he decided to accept, if one was then vacant, or the one that should first happen to become vacant in the aforesaid church, that prior had no power to provide him with the prebend or dignity itself until after D.'s acceptance of it. Hence, since the often-mentioned provostship was conferred upon you by authority of the aforesaid bishop before the same D. accepted it, a collation of this kind could not be invalidated under pretext of such our mandate, even if the bishop himself had previously known of it. Our decree in this regard, moreover, ought to have been referred to the prebend or dignity that the aforesaid D. accepted; otherwise it would have been issued concerning an uncertain matter and would have bound no one.

But it was answered on the other side that, although the aforesaid prior could not confer upon the said D. a prebend or dignity of this kind when it became vacant before an acceptance of this kind, nevertheless the same D. could lawfully and freely accept such a prebend or dignity. Therefore, because the aforesaid bishop did not first ask whether D. wished to accept the aforesaid provostship, he could not confer it upon anyone; indeed, his collation ought to be invalidated since D. afterward accepted the provostship itself, and the grant made to him by the said archpriest ought to remain stable. This is so just as when one of several slaves whom a person should choose or select is left to him by legacy, and the heir, before that person's selection or choice, manumits or alienates one of them: the manumission or alienation is certainly invalidated, and the slave falls to the legacy if the legatee decides to choose him.

Conversely, however, it was proposed on your behalf that this rule holds in last wills, and that the foregoing provisions do not apply to legacies of future things in the way they do to legacies of

existing things, because a period cannot even be assigned for choosing or selecting among the former as it can among the latter. It would be a burdensome condition and would appear incongruous if, whenever it was commanded that provision be made for someone from a benefice that he decided to accept in some province when it first happened to become vacant, that person had to be consulted concerning every benefice subsequently vacant there, with their collation prolonged, perhaps not without danger to them. Hence, since it had been enjoined upon the often-mentioned prior that, if a prebend or dignity that the said D. decided to accept was vacant in the aforesaid church, or as soon as one should happen to become vacant, he should confer it upon D. by apostolic authority, and thus an option was given to D. concerning such future or to-be-vacant prebends or dignities of that church, the bishop's collation of them when they became vacant could not thereby be impeded, unless perhaps D. accepted one of them before the bishop conferred it, or unless, before the vacancy of any of those to become vacant, he decided to accept the first of them, or, omitting it for some reason, a later one; because the bishop could not afterward confer one accepted in this manner.

We therefore, having more fully understood both your arguments and those of the aforesaid D., because we know that the often-mentioned provostship belongs to you, have taken care, with the counsel of our brothers, to adjudge it to you, imposing perpetual silence upon D. concerning it.

DE CONCESSIONE PRAEBENDAE ET ECCLESIAE NON VACANTIS.

Si mandetur alicui provideri de dignitate vacatura, quam duxerit acceptandam, et vacat dignitas, quam ante acceptationem ordinarius confert: tenet ipsius collatio, etiamsi exsecutor impetrantis ante acceptationem fecerit reservationem, inhibitionem et processus super prima vacante. Ioann. Andr.

Innocentius IV. dilecto filio Andreae Capellano nos tro .

Quia cunctis (Et infra:) Proponebatur itaque pro parte tua, quod, quum praedicta praepositura, dum vacabat, tibi per eum, qui conferre potuit ipsam, collata fuisset, collatio huiusmodi canonica exsistebat, maxime quum nulla per priorem ipsum, quae illam impedire posset , inhibitio praecessisset. Dicebat autem pars altera, quod, quum praemissae literae sede Carnotensi vacante fuissent in capitulo publicatae, ac praefatus episcopus tunc de capitulo ipso esset, ibique praesens exsisteret, ignorare non potuit mandatum apostolicum super conferenda memorato D. praebenda vel dignitate sine cura, quam ipse duceret acceptandam, quum primo in ecclesia ipsa praedicta * vacaret alii fuisse directum, et sic per consequens facultatem sibi esse sublatam conferendi huiusmodi dignitatem. Propter quod videbatur, quod nec per se, nec per alium praefatam , praeposituram, curam non habentem animarum annexam, quae primo post mandatum ipsum in ecclesia praedicta vacavit, potuerit alicui personae conferre; praesertim quum iam dictus prior, eodem publicato mandato, mox praefato D. praebendam vel dignitatem, curam huiusmodi non habentem, quam primo in eadem ecclesia vacare contingeret, contulisset, nec alias etiam, prout allegabatur, prodesse poterat ipsius episcopi ignorantia in hac parte. Nam si alicui a sede apostolica concedatur, quod excommunicari non possit, licet id forsan suus ignoret episcopus: non tamen propter hoc eius ligatur sententia, si quam proferat in eundem. Similiter, si alicui conferendi praebendam aliquam tribuatur a sede apostolica potestas, ex hoc ipso videtur, quod sit episcopo conferendi tunc eam penitus interdicta facultas. Nec obstaret, si forte obiiceretur, quod lex seu constitutio et mandatum nullos adstringunt, nisi postquam ad notitiam pervenerint eorundem, aut nisi post tempus, infra quod ignorare minime debuissent; quia in privilegiis et indulgentiis seu concessionibus specialibus secus exsistit, in quibus sufficit, quod ad illorum, quibus conceduntur, notitiam perveniant, ut patet, quum indulgetur alicui, quod excommunicari non possit, sicut superius est expressum. Et quidem, quum tribuitur alicui potestas conferendi praebendam, videtur procul dubio ei concedi aliquid speciale. Adiiciebatur insuper, quod, quum sententia statim arctet etiam ignorantem,

quoniam, si contra praelatum aliquem absentem depositionis sententia proferatur, contractus, quos iniit ignoranter postea ut praelatus, nullum robur obtinent firmitatis, et in supra dictis literis irritum decernimus et inane quicquid super huiusmodi praebenda vel dignitate contra nostrum contigerit * attentari mandatum, collatio, quam idem episcopus post tale nostrum decretum, sive illud ignoraverit sive non, de praefata praepositura per se vel per alium fecerat, non valebat. Ex parte vero tua exstitit replicatum, quod haec de illis privilegiis et indulgentiis aequitate suadente debent intelligi, quae vim suam habent mox, quum ad illos , quibus conceduntur, perveniunt; ex quorum tenore liquido nosci potest, quod talis circa ea fuerit intentio concedentis, utpote quum alicui conceditur, quod excommunicari non possit. Ex hoc enim evidenter apparet, aliis ipsum * excommunicandi ademptam esse penitus facultatem. Non sic autem, si alicui conferendi praebendam, sive certam sive incertam, tribuatur potestas. Non enim tunc esse videtur tribuentis intentio, ut per hoc ei, ad cuius donationem praebenda ipsa pertinet, conferendi possibilitas adimatur, nisi prius ille sibi notificet, quod eam velit per huiusmodi potestatem conferre, aut ei collationem interdicat illius, vel postquam illi notificaverit, talem potestatem fore sibi concessam, vacuum decernat et irritum, si secus de ipsa praesumat; quia, quum illi non amplior detur potestas, quam ipse Romanus Pontifex habeat in hac parte, sicut per eam, quam obtinet ipse Romanus Pontifex, facultas conferendi beneficium vel praebendam, nisi suam insinuet voluntatem, alicui non aufertur, similiter et per eam, quae taliter illi ab ipso conceditur, ei, ad quem ipsius praebendae spectat collatio, priusquam insinuet ille sibi, quod eam velit concedere, vel etiam conferat, si forte vacet, potestas non tollitur conferendi, nisi forsan, quod ipsam conferre non possit, exprimatur in concessione huiusmodi potestatis. Tunc enim, licet talem concessionem fortassis ignoret, sua tamen collatio, si post- ' modum praebendam ipsam conferat, nihil valet, quum satis super hoc concedentis intentio agnoscatur, sicut quum indulgetur alicui, quod excommunicari non valeat, ut in superioribus est praemissum. Subiunctum etiam exstitit, quod, quum memorato priori per praefatas literas man-dassemus, ut memorato D. praebendam vel dignitatem sine cura, quam acceptandam duceret, si vacaret tunc, vel quam primo vacare contingeret in ecclesia praedicta, conferret, idem prior providendi ei de praebenda vel dignitate ipsa, nisi post acceptationem ipsius, non habebat aliquam potestatem. Unde, quum saepe dicta praepositura fuerit tibi, antequam illam idem D. acceptaret, praefati episcopi auctoritate collata: huiusmodi collatio talis mandati nostri praetextu, etiamsi prius illud episcopus ipse scivisset, non poterat vacuari. Nostrum autem in hac parte decretum ad praebendam seu dignitatem, quam praedictus D. acceptaret, referri debebat; alioquin super incerto fuisset editum,nec aliquem adstrinxis-set. Sed exstitit ex adverso responsum, quod, etsi praefatus prior iam dicto D. praebendam vel dignitatem huiusmodi, quum vacaret, ante huiusmodi acceptationem conferre nequiret, idem tamen D. praebendam vel dignitatem talem licite posset et libere acceptare. Quare praedictus * episcopus praefatam * praeposituram, quum non prius eum requisierit, an acceptare vellet eandem, cui quam conferre non potuit; quin immo ipsius collatio, quum idem D. praeposituram ipsam postmodum acceptaverit, irritari debebat , et concessio per iam dictum archipresbyterum sibi facta debet stabilis permanere; sicut, quum legatur alicui unus ex servis, quem elegerit vel optaverit, et heres ante optionem * vel electionem illius manumittit aliquem vel alienat ex illis: profecto manumissio vel alienatio irritatur, ceditque ille legato, si legatarius eum duxerit eligendum. E contra vero pro parte tua propositum exstitit, quod id in ultimis voluntatibus tenet, nec praemissa in legatis futuris, quemadmodum in exstantibus habent locum, quia nec etiam ad optandum seu eligendum ex illis, sicut ex istis potest terminus assignari, et gravis inesset conditio, quoddamque in-congruum videretur, si, quando mandaretur alicui de beneficio, quod duceret acceptandum in aliqua provincia, quam primo illud vacare contingeret, provideri, oporteret ipsum in singulis beneficiis postmodum inibi vacantibus, prorogata non absque periculo forsitan ipsorum collatione, requiri. Unde quum saepe praefato * priori fuisset iniunctum, ut dictos D. praebendam vel dignitatem *, quam acceptandam duceret, si vacaret in ecclesia memorata, vel quam cito contingeret eam vacare , sibi auctoritate apostolica conferret, et ita

eidem D. circa futuras sive vacaturas praebendas vel dignitates tales ipsius ecclesiae optio data esset: non poterat per hoc memorati episcopi in illis , quando vacarent, collatio impediri, nisi forsan quum aliquam ex eis vacare contingeret, illam ipse D., priusquam eam conferret episcopus, acceptaret, vel etiam nisi ante vacationem alicuius ipsarum vacaturarum ex his primam, vel, ea omissa, ex aliqua causa ulteriorem duceret acceptandam; quia taliter acceptatam conferre postmodum episcopus non valeret. Nos itaque, tam tuis quam praefati D. rationibus plenius intellectis, quia saepe dictam praeposituram ad te novimus pertinere, ipsam tibi, habito fratrum nostrorum consilio, ad-iudicare curavimus, ipsi * D. super ea perpetuum silentium imponentes.

Chapter II

Every promise by which a way is opened toward benefices to become vacant is condemned. John Andrew.

Boniface VIII.

The detestable perversity of the wicked, which knows neither how to abstain from forbidden things nor how to rejoice in things granted in the due manner, often deservedly arouses the office of the one presiding to revoke, after prior deliberation, things granted upon just consideration when he perceives that they are tending toward abuse. Indeed, although it was once decreed by canonical constitution that those who promise certain persons that they will provide them with ecclesiastical benefices when they are able, or when the opportunity presents itself, ought to fulfill their promises when the opportunity presents itself, nevertheless, as experience has taught, through promises of this kind—which for the most part are extorted through excessive importunity, by which things not to be granted are frequently granted, and through wicked ambition—a way is opened under such a cloak of words to promise damnably, contrary to the Lateran Council, benefices to become vacant; a desire for another's death is instilled; and many burdens are inflicted upon churches, prelates, and ecclesiastical persons. We, therefore, desiring to oppose evils of this kind and dangers to souls, by apostolic authority entirely condemn those promises and any others whatsoever hereafter to be made under any manner or form of words by which a way may directly or indirectly be opened to benefices to become vacant, and we render them entirely without force, decreeing that no one is hereafter in any way obligated by them or any of them to provide for another.

Omnis promissio, per quam datur via ad benficia vacatura, est reprobata.

Ioann. Andr.

Bonifacius VIII.

Detestanda iniquorum perversitas, abstinere nesciens a vetitis, nec gaudere debito modo concessis, digne plerumque officium excitat praesidentis ad ea, quae iusta fuerant consideratione concessa, quum in abusum ea vergere circumspicit, discretione praevia revocanda. Sane, licet olim fuerit canonica constitutione decretum, quod * hi, qui promittunt aliquibus de beneficiis ecclesiasticis, quum poterunt , vel quum facultas se obtulerit providere, promissiones suas facultate se offerente debeant adimplere; quia tamen, sicut experientia docuit, per promissiones huiusmodi, quae per importunitatem nimiam, per quam non concedenda multoties conceduntur, et per * ambitionem improbam ut plurimum extorquentur, aperitur via sub tali

E alliatione verborum ad promittenda damnabiliter contra ateranense concilium beneficia vacatura, mortis alienae votum ingeritur, et ecclesiis, ac praelatis et personis ecclesiasticis gravamina plurima inferuntur: nos, malis huiusmodi et animarum periculis occurrere cupientes, promissiones easdem, et alias quascunque, sub quovis modo aut forma verborum de cetero faciendas , per quas directe vel

indirecte aperiri via valeat ad beneficia vacatura, auctoritate apostolica penitus reprobamus et omnino viribus vacuamus, decernentes, per eas vel ipsarum aliquam ad providendum alicui nullum deinceps quomodolibet obligari.

Chapter III

One having letters of the Apostolic See concerning the first benefice, dignity, or prebend that he decides to accept cannot accept a specified one; but he can accept the first that becomes vacant, or for cause the second or a later one. Reservations, proceedings, and decrees made contrary to this have no force. John Andrew.

The same.

Lest an occasion for seeking another's death be afforded from the benevolence of the grants of the Apostolic See, we have decided to declare that one to whom a grant is known to have been made by that See that provision be made for him from a prebend, dignity, personate, or other benefice in some province, diocese, or church that he decides to accept, with specified executors appointed for him concerning this, can indeed accept in general the first personate, dignity, prebend, or benefice to become vacant in that province, diocese, or church, or the second or a later one if there is a reasonable cause, but he cannot accept a specified and expressly designated one before it becomes vacant. If he should do so, even if his executors, in accordance with an acceptance of this kind, made a reservation and prohibition and conducted various proceedings and promulgated sentences, both the acceptance itself and the proceedings shall lack force and obtain no strength of validity. Indeed, unless that acceptor, through a collation or institution afterward made concerning the vacant dignity, prebend, personate, or benefice accepted and reserved in this manner, has already obtained it or acquired a right in it, provision from it when vacant can freely be made for another by the person to whom its collation or provision belongs, notwithstanding the said acceptance and the executors' proceedings ensuing from it.

Habens literas apostolicae sedis super primo beneficio, dignitate vel praebenda, quod duxerit acceptandum, certum acceptare non potest; sed primum, quod vacabit, vel ex causa secundum, vel ulterius poterit acceptare. Reservationes, processus et decreta, contra hoc facta, non valent. Ioann. Andr.

Idem .

Ne captandae alienae mortis occasio ex benignitate gratiarum sedis apostolicae tribuatur: declarandum duximus, quod is, cui ab eadem sede, ut ei provideatur de praebenda, dignitate, vel personatu aut alio beneficio in aliqua provincia, dioecesi vel ecclesia, quem seu quod duxerit acceptandum, certis sibi super hoc exsecutoribus deputatis, gratia noscitur esse facta, licet in genere primum personatum, dignitatem, praebendam seu beneficium, in eadem provincia, dioecesi vel ecclesia vacaturum, aut secundum, seu ulterius, si rationabilis causa subsit, valeat acceptare, certum tamen et expressum, priusquam vacet, acceptare non potest. Quodsi fecerit, etiamsi per exsecutores eius secundum acceptationem huiusmodi facta fuerit reservatio, inhibitio, variique processus ac sententiae promulgatae: tam acceptatio ipsa quam processus viribus careant, nec aliquam obtineant roboris firmitatem. Immo, nisi acceptator ille dignitatem, praebendam, personatum seu beneficium , taliter acceptatum et reservatum per collationem vel institutionem postmodum factam de vacanti, iam adeptus, vel ei ius in ipso fuerit acquisitum: per eum, ad quem eiusdem personatus, dignitatis, praebendae aut beneficii collatio seu provisio pertinet, dictis acceptatione ac exsecutorum processibus inde secutis nequaquam obstantibus, de illo vacanti libere poterit alii provideri.

Chapter IV

Without a special mandate, an executor does not generally prohibit the collation of benefices in a province; but he specially reserves the first and prohibits the further collation of it only with a mandate. A collation made contrary to such a prohibition does not have force. This states the point. Dominicus.

The same.

An executor appointed by the Apostolic See through general letters concerning provision for someone in some province cannot generally prohibit the prelates and others to whom the collation of benefices in that province belongs from proceeding to make provision for anyone until provision has been made for the person for whom it is written, unless a faculty to make such a prohibition is expressly granted in the letters themselves. He can nevertheless make a special reservation and prohibition to the same persons concerning the first benefice to become vacant there—or, if this belongs to that person by benefit of the letters, concerning the second or a later benefice—to be conferred upon that cleric. What is attempted contrary to such a reservation and prohibition by the person to whom the collation of the reserved benefice belonged does not have force.

> Sine speciali mandato non inhibet exsecutor generaliter collationem beneficiorum provinciae, specialiter vero reservat primum, et inhibet ulteriorem non sine mandato; nec tunc tenet collatio contra facta. H. d.
>
> Dominicus.
>
> Idem .
>
> Exsecutor, super provisione alicuius a sede apostolica per generales literas in aliqua provincia deputatus, praelatis et aliis, ad quos beneficiorum in eadem provincia spectat collatio, ne ad provisionem aliquorum procedant, donec illi, pro quo scribitur, sit provisum, non potest generaliter inhibere, nisi expresse in ipsis literis facultas huiusmodi inhibitionis concedatur. Potest tamen reservationem et eisdem inhibitionem facere specialem de primo, vel, si hoc illi ex beneficio competat literarum, de secundo vel ulteriori beneficio inibi ivacaturo, eidem clerico conferendo. Quod autem contra talem reservationem et inhibitionem ab eo, ad quem beneficii reservati collatio pertinebat, fuerit attentatum, non tenet.

Chapter V

If it is commanded that a chapter receive me as canon and confer a prebend, when this belongs to it, with an executor appointed to make provision, the prebend is affected by presentation alone made to the chapter; and if the chapter neglects within the term established by the executor to receive me and confer the prebend, the executor can perform this without the chapter being summoned. John Andrew.

The same.

If our writings were directed to the chapter of some church—when the reception of canons and collation of prebends belonged to it—that it receive you as canon and provide you with a prebend there if one was then vacant or when the opportunity presented itself, and to an executor that he execute the apostolic mandate if that chapter neglected to do so, then by the presentation of those writings alone made to the chapter itself, without any other notification, prohibition, or reservation by the executor, the benefice concerning whose conferral upon you it was written is so affected that a collation of it made to another possesses no validity. Indeed, if the chapter does not decide to fulfill, insofar as it can, the apostolic mandate directed to it on your behalf within a suitable term fixed for it

by the executor, from that time the power to make provision of this kind shall be transferred to the executor. The executor himself will immediately be able to give you the canonry and also the prebend, without another summons or admonition of the chapter, if it is vacant or when the opportunity presents itself.

> Si mandetur capitulo, ut me recipiant in canonicum, et praebendam conferant, quum id pertineret ad eos, dato exsecutore ad providendum: per solam praesentationem factam capitulo affecta est praebenda, et exsecutor, negligente capitulo infra terminum per eum statutum me recipere et praebendam conferre, non vocato capitulo id exsequi poterit, loann. Andr.
>
> Idem.
>
> Si capitulo alicuius ecclesiae, quum ad ipsum canonicorum receptio ac praebendarum collatio pertinebat, ut te in canonicum reciperet, et tibi de praebenda, si tunc vacaret, inibi provideret, vel quum se facultas offerret, ac exsecutori, qui eodem capitulo negligente mandatum apostolicum exsequatur, directa fuerint scripta nostra: per solam illorum praesentationem capitulo ipsi factam absque alia etiam exsecutoris insinuatione, inhibitione seu reservatione, beneficium, pro quo tibi conferendo scriptum exstiterat, adeo est affectum, quod de illo alteri facta collatio non obtinet firmitatem. Immo si capitulum infra terminum competentem, sibi ab exsecutore praefixum, mandatum apostolicum ei pro te directum, in quantum poterit , non duxerit adimplendum: extunc in ipsum exsecutorem potestas provisionis huiusmodi transferatur, et exsecutor ipse canonica-tum in continenti poterit tibi dare, ac praebendam, etiam sine alia capituli vocatione vel monitione, si vacat, vel quum obtulerit se facultas.

Chapter VI

If it is written to the ordinary alone, or to an executor alone for the purpose of compulsion, or to the ordinary and such an executor, the prebend is not affected by the presentation of such a mandate unless there was a decree in the letters, or that executor had given notice and prohibited a collation; especially is it affected when reception to the canonry had already been made by the decree or by reason of the mandate. In these cases, or either of them, the prebend is so affected that a collation made to another does not have force. John Andrew.

The same.

If an apostolic mandate is directed to the ordinary alone to provide you with a benefice, no executor being appointed; or to the ordinary and an executor that the latter compel him to do what is commanded; or to an executor alone that he cause provision to be made for you from a canonry and prebend or another benefice in a certain church, diocese, or province: through presentation of such a mandate made to the ordinary himself, although he is to be punished if he acts contrary to it, the power to confer is nevertheless not taken away from him in such a way that a collation made by him to another does not have force. It is otherwise if, in the grant made to you, we had decreed as null and void what should be done contrary to it; or if the executor, making his power known to such ordinary, had prohibited him from conferring upon another the benefice from which provision is to be made for you according to the tenor of such apostolic mandate, especially with the interposition of a decree; or if you had already been received as canon according to the said mandate. For then the collation of the prebend made to another would possess no validity.

> Si soli ordinario, vel soli exsecutori ad compellendum, vel ordinario et tali exsecutori sit scriptum: per praesentationem talis mandati non afficitur praebenda, nisi in literis esset decretum, aut exsecutor ille insinuasset et interdixisset; maxime quum decreto vel ratione mandati iam esset facta receptio ad

canonicatum. In his casibus vel ipsorum altero affecta est praebenda ita, quod collatio alteri facta non tenet. loann. Andr.

Idem.

Si soli ordinario pro te beneficiando, exsecutore non dato, vel ordinario et exsecutori, ut eum ad faciendum quod mandatur compellat, aut soli exsecutori, ut tibi faciat de canonicatu et praebenda vel alio beneficio in certa ecclesia, dioecesi seu provincia provideri, mandatum apostolicum sit directum: per talis praesentationem mandati, ordinario ipsi factam, licet, si contra faciat, pu* niendus exsistat, ei tamen potestas sic non adimitur conferendi, quin teneat alteri facta collatio ab eodem: nisi nos in gratia tibi facta decrevissemus irritum et inane quod fieret contra ipsam, aut exsecutor, huiusmodi ordinario suam insinuans potestatem, ne alteri conferret beneficium, de quo tibi est secundum tenorem huiusmodi mandati apostolici providendum, interdixisset eidem, praesertim cum interpositione decreti, vel, nisi tu iuxta dictum mandatum esses in canonicum iam receptus. Tunc enim praebendae collatio alteri facta firmitatem aliquam non haberet.

Chapter VII

If three persons are awaiting prebends in one church, one by Martin's authority, another by Boniface's authority, and the third by the same authority with the prerogative that he be preferred to all received otherwise than by Boniface's authority, they will obtain prebends in this order: the second will have the first, the third the second, and the first the third. This is proved by a legal analogy. John Andrew.

The same.

When a certain person had first been received by authority of Pope Martin, our predecessor, as a canon of the Church of Parma to await the prebend first to become vacant there and owed by law to no one else, and another had second obtained from us a similar grant in the same church, a third person was thereafter received by our authority as canon and brother in that Church of Parma with the prerogative of a grant that he ought, in obtaining a prebend, to be preferred to all persons received by authority of our predecessors, but not by ours. After this a certain prebend became vacant in the aforesaid church. It is asked which of them is to be preferred to another, and according to what order the aforesaid three ought to obtain prebends. Since, therefore, from the tenor of the grant conferred by us upon the third person it is manifestly apparent that we wished the third to be preferred to the first and the second to the third, we decree that the second ought to obtain the first prebend, the third the second, and the first the third; otherwise the form of the mandate would by no means be observed.

For although the second could not obtain the first prebend through his own person, he has it through the person of the third, who overcomes the first. So it happens in the succession of a person who dies intestate, leaving a father constituted in an adoptive family, a mother, and a brother. In that succession the father by himself excludes the mother; but because an agnate defeats such a father, while the mother defeats the agnate, the mother is preferred to the father in such succession not through herself but through the person of the agnate.

Si tres exspectantes sunt in una ecclesia, unus auctoritate Martini, alter auctoritate Bonifacii, tertius eiusdem auctoritate cum praerogativa, ut praeferatur omnibus receptis non auctoritate Bonifacii: praebendas hi consequentur hoc ordine, quia primam habebit secundus, secundam tertius, tertiam primus; quod probatur argumento legali. loann. Andr.

Idem.

Auctoritate Martini Papae praedecessoris nostri quodam * ad praebendam primo in Parmensi ecclesia vacaturam, nulli alii de iure debitam, in eiusdem ecclesiae canonicum recepto, et, alio a nobis in eadem ecclesia similem gratiam adepto secundo, tertius deinde auctoritate nostra in ipsa Parmensi ecclesia in canonicum et in fratrem recipi* tur cum praerogativa gratiae, quod omnibus praedecessorum nostrorum auctoritate, non autem nostra, receptis in assecutione praebendae debeat anteferri. Post haec autem quaedam vacavit praebenda in ecclesia memorata; quaeritur, quis eorum alteri praeferatur, et secundum quem ordinem praebendas assequi debeant tres praedicti? Quum igitur ex tenore gratiae tertio a nobis concessae appareat evidenter, nos voluisse primo tertium, et secundum tertio anteferri: decernimus, quod primam secundus, secundam tertius, et tertiam primus debet obtinere praebendam; alias forma mandati minime servaretur. Licet enim ex persona sua secundus primam obtinere non posset: ex persona tamen tertii, qui primum superat, illam habet, sicut contingit in successione illius, qui ab intestato relictis patre in adoptiva familia constituto, matre atque fratre decedit, in qua successione pater ex se matrem excludit; sed, quoniam talem patrem agnatus, materque vincit -agnatum, mater patri non ex semetipsa, sed agnati persona in successione huiusmodi antefertur.

Chapter VIII

The revocation of grants includes persons received as canons who await a distinct prebend, even if they received daily distributions; it is otherwise if they do not await a distinct prebend but an increase of their portion. It includes those having a right to a benefice to become vacant if the matter has not yet proceeded to collation. This states the point according to Dominicus.

The same.

Because many doubts arise from our constitution—by which, shortly after our promotion to the summit of the Supreme Pontificate, in the presence of our brothers and by apostolic authority, we entirely quashed, invalidated, and annulled all collations, provisions, reservations, and grants made or conceded by our predecessors Pope Nicholas IV and Celestine V of happy memory concerning canonries, dignities, personates, prebends, offices, portions, prestimonies, parish churches, rural churches, and any other ecclesiastical benefices whatsoever to become vacant, by whatever name they were designated, and also concerning canonries under expectation of dignities or any other benefices whatsoever in which a right had not been acquired in the thing, although there was a right to the thing; pronounced them quashed, invalid, and annulled; and decreed them to possess no validity—we have decided to declare by the present enactment, so that the interpretation of the aforesaid revocatory constitution may proceed from the same source from which its promulgation proceeded, that this constitution applies to those who, at the time of the aforesaid promulgation, had been made canons by the same predecessors beyond the established number while awaiting prebends or even portions.

But if persons of this kind, received beyond the number, at the time of the said revocation possessed distributions and other things as canons existing within the number did, in such a manner that by the resignation or death of those who were within the number they expected to obtain nothing more by force of the prior grant except an increase of their distributions or portions—since perhaps it was a church in which there was an established number of canons but not a number of portions or a distinction of prebends, and the fewer persons among whom the revenues of any church are divided, the greater the portions of each recipient can become—it is certain that the aforesaid constitution

does not extend to these persons, or to those who by letters of faculty of our said predecessors had been received as canons of certain churches, although they awaited prebends or other benefices.

But there is no doubt that the aforesaid constitution applies by reason of such expectation to those who, having already been received beyond the number by the aforesaid authority as canons of certain churches, then had the fullness of canonical right with regard to the chapter and choir and the receipt of daily distributions, but awaited in those churches dignities, personates, prebends, portions, or other benefices that are given only to persons existing within the number.

Indeed, the aforesaid constitution applies to those who obtained from our said predecessors letters concerning canonries, prebends, and dignities, parish or other churches, or any benefices whatsoever, even if reservations, interpositions of a decree, and various proceedings were made by their executors, and even if those benefices were then vacant and the applicants had petitioned the executors to confer them upon them, if, nevertheless, collations of the vacant benefices had not then been made. Thus all grants of this kind, by reason of which no proceeding to collation had then occurred and consequently no right in the thing had been acquired by the applicants themselves, are understood to have been entirely revoked.

> Revocatoria gratiarum includit receptos in canonicos, praebendam distinctam exspectantes, etiamsi percipiebant distributiones quotidianas; secus si praebendam distinctam non exspectant, sed augmentum portionis. Includit habentes ius ad vacaturam, si nondum est deventum ad collationem.
>
> H. d. secundum Domin.
>
> Idem.
>
> Quoniam ex constitutione nostra, per quam paulo post promotionem nostram ad summi Pontificatus apicem omnes collationes, provisiones, reservationes et concessiones, super canonicatibus, dignitatibus , personatibus, praebendis, officiis, portionibus, praestimoniis, ecclesiis parochialibus, ruralibus, et aliis quibuscunque beneficiis ecclesiasticis vacaturis, quocunque nomine censerentur, ac etiam super canonicatibus sub exspectatione dignitatum, vel aliorum quorumcunque beneficiorum, in quibus ius non esset quaesitum in re, licet ad rem, a felicis recordationis Nicolao Papa IV. et Coelestino V. praedecessoribus nostris factas sive concessas, auctoritate apostolica in fratrum nostrorum praesentia omnino cassavimus, irritavimus et vacuavimus, cassas, irritas et vacuas nunciavimus, et nullius fore decrevimus firmitatis, multae dubitationes insurgunt, ut, unde praefatae constitutionis revocatoria processit editio, interpretatio eius quoque procedat: praesenti declarandum duximus sanctione, quod in illis , qui editionis tempore supra dictae ultra statutum numerum erant per eosdem praedecessores canonici sub exspectatione praebendarum vel etiam portionum , eadem constitutio locum habet. Si autem huiusmodi recepti ultra numerum distributiones, et alia, ut canonici de numero exsistentes, sic tempore dictae revocationis habebant, quod per cessionem vel decessum illorum, qui erant intra numerum, ex vigore prioris gratiae nil amplius assequi exspectabant, nisi distributionum seu partium suarum augmentum, quum forsan esset ecclesia, in qua canonicorum, non autem portionum numerus vel. praebendarum distinctio habebatur , quantoque inter pauciores cuiusvis ecclesiae dividuntur, proventus, tanto maiores fieri possunt singulorum percipientium portiones: 'ad istos vel eos, qui per literas facultatis dictorum praedecessorum nostrorum in aliquarum ecclesiarum canonicos erant recepti, licet praebendas vel alia beneficia exspectarent, constitutionem certum est non extendi praefatam. In illis vero, qui ultra numerum auctoritate praefata in aliquarum ecclesiarum canonicos iam recepti, quantum ad capitulum et ad chorum ac distributionum perceptionem quotidianarum plenitudinem iuris canonici tunc habebant, sed in eis dignitates, personatus, praebendas, portiones vel alia beneficia, quae dantur tantum exsistentibus de numero, exspectabant, constitutionem praefatam locum habere, ratione

huiusmodi exspectationis dubium non exsistit. Sane in iis, qui super canonicatibus, praebendis et dignitatibus, parochialibus vel aliis ecclesiis seu beneficiis quibuscunque a dictis praedecessoribus nostris literas impetraverunt, etiamsi per exsecutores illorum factae fuerint reservationes, decreti interpositiones variique processus, et, etiamsi eadem beneficia tunc vacabant, et per impetrantes petitum fuerat ab exsecutoribus, quod eis illa conferrent, non tamen ipsorum beneficiorum vacantium collationes tunc temporis erant factae, locum habet constitutio supra dicta, ut omnes huiusmodi gratiae, quarum ratione tunc non erat ad collationem processum, et sic per consequens ius in re non fuerat ipsis impetrantibus acquisitum, intelligantur penitus revocatae.

Title VIII: That Nothing Be Innovated While the See Is Vacant

Chapter I

When collation belongs jointly to the bishop and chapter, if one of them is rendered incapable, the other confers. This states the point as far as § "But when," according to Dominicus. — § 1. When collation belongs to the bishop with the counsel or assent of the chapter, if the bishop is incapable, the chapter does not confer unless he is in default. This states the point. — § 2. One having the power to confer with the counsel of the bishop confers without it when death or remote absence intervenes. This states the point. Dominicus.

Boniface VIII.

If the collation of prebends belongs jointly to the bishop and chapter, then, when the bishop is dead or suspended from the collation of benefices, the chapter will be able to confer vacant prebends, even if the bishop participates in a collation of this kind as prelate. The bishop will be able to do the same if it happens that the chapter is suspended from the collation itself, or all the individual members of the chapter are bound by the bond of major excommunication.

§ 1. But when the collation of prebends belongs to the bishop alone with the counsel or assent of his chapter, the chapter cannot intermeddle with them when the bishop is dead or suspended, unless the bishop is in default in seeking relaxation of such suspension.

§ 2. But where, by the special custom or statute of some church, the collation of benefices is known to belong to someone with the counsel of the bishop, when the bishop has been removed from their midst, since counsel cannot then be sought from him, the collation of a vacant benefice is not on that account to be deferred. Nor is it to be deferred if he is staying in remote places so that his presence cannot shortly be obtained, because danger could be imminent to the vacant benefice in seeking or awaiting his counsel.

NE SEDE VACANTE ALIQUID INNOVETUR.

Collatione communiter ad episcopum et capitulum pertinente, uno ipsorum effecto inhabili, alter confert. H. d. usque ad §. Quum vero, secundum Dominicum. — §. 1. Collatione spectante ad episcopum de consilio vel assensu capituli, illo exsistente inhabili, nisi sit in mora, non confert capitulum. Hoc dicit. — §. 2. Habens conferre cum consilio episcopi, sine illo confert, morte et remota absentia interveniente. H. d. Dominicus.

Bonifacius VIII.

Si ad episcopum et capitulum communiter pertineat collatio praebendarum, mortuo episcopo vel a beneficiorum collatione suspenso, poterit capitulum vacantes conferre praebendas, etiamsi episcopus interesse habeat in collatione huiusmodi ut praelatus. Idem poterit episcopus, si capitulum ab ipsa

collatione suspendi contingat, vel singulariter omnes de capitulo maioris excommunicationis vinculo innodari. §. i. Quum vero ad solum episcopum praebendarum spectat collatio cum consilio sui capituli vel assensu: defuncto episcopo vel suspenso, nisi episcopus in petenda relaxatione suspensionis huiusmodi sit in mora, capitulum se non potest intromittere de eisdem. §. 2. Ubi vero de speciali alicuius ecclesiae consuetudine vel statuto beneficiorum collatio ad aliquem cum consilio episcopi noscitur pertinere: sublato episcopo de medio, quum consilium nequeat tunc peti ab eo, non erit propter hoc vacantis beneficii collatio differenda, nec etiam, si egerit in remotis ita, quod non possit ipsius praesentia in brevi haberi, quia in petendo vel exspectando eius consilio posset vacanti beneficio periculum imminere.

Title IX: On the Property of a Church Not to Be Alienated

Chapter I

A perpetual alienation made from the property of a vacant church without prior deliberation and without just cause has no force. John Andrew.

Innocent IV.

Some time ago—(And below:) The said archdeacon, however, answered in opposition that those tithes ought not to be restored to that church, bringing forward a certain ordinance made by the Bishop of Dulmen with the consent of his chapter, containing among other things that the same bishop, observing that the revenues of the Archdeaconry of Dulmen were so meager and slight that they did not suffice to support its burdens, granted the aforesaid tithes to that archdeaconry. (And below:) But because in a grant of this kind the aforesaid church, while vacant, lacked a lawful defender, who ought first to have been appointed for it by the same bishop; and because the solemn and diligent deliberation required in such perpetual grants and alienations of ecclesiastical property was not held in it, we, with the counsel of our brothers, decree that the ordinance and grant itself possesses no force, especially since there was no evident necessity or utility for which it ought to be made, taking care judicially to adjudge the said tithes to that church as belonging to it.

DE REBUS ECCLESIAE NON ALIENANDIS.

Perpetua alienatio, facta de rebus ecclesiae vacantis non praecedente tractatu et sine iusta causa, non valet. Ioann. Andr.

Innocentius IV.

Dudum (Et infra:) Dictus vero archidiaconus ex adverso respondit, illas decimas illi ecclesiae restitui non debere, proferens in medium ordinationem quandam episcopi Dul-mensis * de consensu capituli sui factam, inter alia continentem, quod idem episcopus, attendens, proventus archidiaconatus Dulmensis adeo fore tenues et exiles, quod non sufficiebant ad eius onera supportanda, praefatas decimas archidiaconatui memorato concessit. (Et infra:) Quia vero * in concessione huiusmodi praedicta ecclesia, quum vacaret, legitimo caruit defensore, qui sibi prius ab eodem episcopo debuerat deputari; quia etiam tractatus solennis et diligens, qui in talibus concessionibus perpetuis et alienationibus rerum ecclesiasticarum exigitur, non fuit habitus in eadem: ordinationem et concessionem ipsam , praesertim quum evidens necessitas, quare fieri deberet, vel utilitas non subesset, de fratrum nostrorum consilio decernimus non valere, dictas decimas ipsi ecclesiae, tanquam pertinentes ad eam, sententialiter adiudicare curantes.

Chapter II

First, it prohibits churches, their immovable goods, or their rights from being subjected to laymen without the consent of the chapter and the Pope's license. Secondly, it annuls contracts hereafter made contrary to this, whatever confirmation fortifies them. Thirdly, it punishes prelates who act contrary to this, clerics who do not oppose it, and laymen who compelled or shall compel those prelates to do so. Fourthly, it commands that laymen not usurp beyond what is owed through such contracts in the case in which they have force, and it imposes a penalty. This states the point. John Andrew.

Gregory X, in the General Council of Lyons.

By this most carefully considered edict we prohibit each and every prelate from submitting, subjecting, or placing under laymen the churches committed to them, or the churches' immovable goods or rights, without the consent of their chapter and the special license of the Apostolic See—not by granting the goods or rights themselves in emphyteusis, or otherwise alienating them in the form and cases permitted by law, but by establishing, acknowledging, or professing that they hold them from those laymen as from superiors; or by declaring themselves their advocates, as is commonly called *avoher* in certain regions; or by establishing those laymen perpetually, or for no short time, as patrons or advocates of the churches or their goods.

We decree that all contracts concerning such alienations that happen to be celebrated without such license and consent, even those fortified by the addition of an oath, penalty, or any other confirmation whatsoever, and whatever has followed from them, are so entirely without force that they neither confer any right nor even furnish a basis for prescription. Nevertheless, we establish that prelates who act otherwise are suspended by the fact itself from office and administration, and that clerics who, knowing that something has been presumed contrary to the aforesaid prohibition, neglect to denounce it to a superior are suspended for three years from receipt of the benefices that they hold in the church thus burdened.

Laymen who have hitherto compelled prelates or chapters of churches, or other ecclesiastical persons, to make submissions of this kind shall be bound by a sentence of excommunication unless, after suitable admonition and with the submission that they exacted by force or fear remitted, they leave in their liberty the churches and ecclesiastical goods thus subjected to them. Those who hereafter compel prelates or the same persons to do such things, of whatever condition or status they may be, shall likewise be bound by a sentence of excommunication.

Moreover, from contracts concerning the aforesaid matters hitherto entered into with such license and consent intervening, or those that happen to be entered into in the future, or on their occasion, laymen shall not usurp anything beyond what is permitted by the nature of the contracts themselves or by the law applied in them. Those who act otherwise shall, unless after lawful admonition they desist from such usurpation and also restore the things that they usurped in this manner, by that very fact incur a sentence of excommunication; and from that time proceedings may freely be taken, if necessary, to place their land under ecclesiastical interdict.

> Primo prohibet submissionem ecclesiarum, suorum immobilium bonorum vel iurium fieri laicis absque consensu capituli et licentia Papae. Secundo cassat contractus, quacunque firmitate vallatos, contra hoc de cetero faciendos. Tertio punit praelatos contra facientes, et clericos non contradicentes, et laicos, qui

ipsos praelatos ad hoc compulerunt vel compellent. Quarto praecipit, laicos per tales contractus, eo casu, quo valent, ultra debitum non usurpare, et poenam apponit. H. d. Ioann. Andr.

Gregorius X. in concilio generali Lugdunensi .

Hoc consultissimo prohibemus edicto, universos et singulos praelatos ecclesias sibi commissas, bona immobilia seu iura ipsarum laicis submittere, subiicere seu supponere absque capituli sui consensu et apostolicae sedis licentia speciali, non concedendo bona ipsa vel iura in emphyteusin, seu alias alienando in forma et casibus a iure permissis, sed constituendo, vel recognoscendo, seu profitendo ab illis ea tanquam a superioribus se tenere, seu ab ipsis eadem advocando, prout in quibusdam partibus vulgariter dicitur „avoher ," vel ipsos patronos vel advocatos ecclesiarum seu bonorum ipsarum perpetuo aut ad tempus non modicum statuendo. Contractus autem omnes, etiam iuramenti, poenae vel alterius cuiuslibet firmitatis adiectione vallatos, quos de talibus alienationibus sine huiusmodi licentia et consensu contigerit celebrari, et quicquid ex eis secutum fuerit, decernimus adeo viribus omnino carere, ut nec ius aliquod tribuant, nec praescribendi etiam causam parent. Et nihilominus praelatos, qui secus fecerint , ipso facto ab officio et administratione, clericos etiam , qui, scientes contra inhibitionem praedictam aliquid esse praesumptum, id superiori denunciare neglexerint, a perceptione beneficiorum, quae in ecclesia obtinent sic gravata, triennio statuimus esse suspensos. Laici vero, qui praelatos vel capitula ecclesiarum seu alias personas ecclesiasticas ad submissiones huiusmodi faciendas hactenus compulerunt, nisi post competentem monitionem, (remissa submissione, quam per vim vel metum exegerant), ecclesias et bona ecclesiastica eis submissa taliter in sua libertate dimittant; illi vero , qui de cetero praelatos, vel personas easdem ad talia facienda compulerint, cuiuscunque sint conditionis aut status, excommunicationis sint sententia innodati. Ex contractibus praeterea super praemissis, (huiusmodi licentia et consensu intervenientibus,) hactenus initis, vel quos in futurum iniri contigerit seu occasione illorum, laici ultra id, quods ex nafura contractuum ipsorum vel adhibita in illis lege permittitur, aliquid non usurpent. Qui vero secus egerint, nisi legitime moniti ab huiusmodi usurpatione destiterint, restituendo etiam ea , quae taliter usurparunt, eo ipso sen-tententiam excommunicationis incurrant, et extunc ad supponendum terram ipsorum, si opus fuerit, ecclesiastico interdicto libere procedatur.

Title X: On the Exchange of Property

Chapter I

An exchange can be made notwithstanding expectations of benefices. John Andrew.

Boniface VIII, to the Bishop of Béziers.

Although certain persons in your diocese await by apostolic authority benefices next to become vacant, nevertheless, preferring equity to rigor in this regard, we do not wish those who, desiring to exchange their benefices in the same diocese that belong to your collation according to the form of law, freely and without fraud resign them into your hands to be impeded in any way, on the aforesaid occasion, from making an exchange of benefices of this kind, which otherwise they would by no means have resigned.

DE RERUM PERMUTATIONE.

Non obstantibus exspectationibus beneficiorum permutatio fieri potest.

Ioann. Andr.

Bonifacius VIII. Biterensi Episcopo *.

Licet in tua dioecesi aliqui auctoritate apostolica beneficia proximo vacatura exspectent: illos tamen, qui, secundum formam iuris sua beneficia in eadem dioecesi ad tuam collationem spectantia permutare volentes, libere ac sine fraude in manibus tuis ipsa resignant, nolumus occasione praemissa, (aequitatem praeferentes in hac parte rigori,) circa faciendam permutationem beneficiorum huiusmodi, (quae alias minime resignassent,) ullatenus impediri.

Title XI: On Testaments and Last Wills

Chapter I

The deduction of fourths applies in fideicommissary substitutions, but not in direct substitutions. And we ought to interpret substitutions as direct, provided that they accord with the words and the persons instituted. John Andrew.

Boniface VIII.

If a father who has an impubescent son and daughter and a wife institutes the daughter as heir to a specified thing, but the son as universal heir to the rest of his goods, and bequeaths certain things to his wife in his testament, adding that, if the daughter died without children, she should have that son as heir, and if he died without children, the son should have the aforesaid daughter as heir, while instituting the poor of Christ as heirs if it happened that both children died without children, then, when the testator has died, and thereafter the son and subsequently the daughter have died before the age of puberty while the mother survives, all the goods are carried to the poor themselves without a deduction being made of the Trebellian fourth or of the portion owed by natural law.

For the aforesaid substitutions made from the son to the daughter and conversely, and from them to the poor, ought to be understood as direct pupillary substitutions, since in substitutions an interpretation is always to be made—provided, as in the case proposed, that it accords with their words and the persons instituted—so that the substitution is understood as direct rather than indirect, although a direct substitution is sometimes drawn for cause into a fideicommissum. Although a son cannot by his testament deprive his mother of the portion owed by natural law, nevertheless a father can do so in the testament that he makes for his impubescent son. For a pupillary testament of this kind is to be regarded as the father's testament, or rather as part of the father's.

DE TESTAMENTIS ET ULTIMIS VOLUNTATIBUS.

In fideicommissariis substitutionibus locum habet quartarum deductio; in directis non. Et substitutiones interpretari debemus directas, dummodo conveniant verbis et personis institutis. Ioann. Andr.

Bonifacius VIII.

Si pater, filium et filiam habens impuberes et uxorem, filiam in re certa, filium vero in ceteris bonis suis universalem heredem instituit, et uxori aliqua in suo testamento legavit, adiiciens, ut, si decederet filia sine liberis, eidem filio, et, si ipse absque liberis obiret, filius praefatae filiae moreretur, Christi pauperes instituendo heredes, si utrumque sine liberis mori contingeret filiorum: testatore mortuo, ac deinde filio, subsequenter et filia superstite matre defunctis ante tempora pubertatis, absque deductione Trebellianicae sive partis iure naturae debitae facienda, ipsis pauperibus bona omnia deferuntur. Praemissae namque substitutiones, factae de filio ad filiam, et e contra, et de illis ad pauperes, directae debent intelligi pupillares, quum in substitutionibus semper sit interpretatio facienda, (dummodo, sicut

in casu proposito, earum verbis et personis conveniat institutis,) ut substitutio directa intelligatur potius quam obliqua, quanquam directa interdum ad fideicommissum ex causa trahatur . Licet autem filius testamento suo matrem portione iure naturae debita privare non possit: pater tamen in testamento, quod filio impuberi facit, potest. Nam testamentum huiusmodi pupillare paternum, vel paterni pars potius est censendum.

Chapter II

A superior must consent when religious are appointed executors. This states the point according to Zenzel. — § 1. When several executors are appointed, if one has died, is in remote places, or is unwilling to execute, one will exercise the office of execution, lest the testator's will be impeded, unless the testator disposed otherwise. This states the point according to Zenzel.

The same.

A religious appointed by someone as executor in his last will cannot, since he does not have the power to will or not to will, undertake or execute an office of this kind unless license concerning this has been sought from and obtained from his superior.

§ 1. Indeed, when several executors have been appointed simply by the testator, if one of them has died, is staying in remote places, or perhaps is unwilling to execute it, another can freely fulfill the office of the enjoined execution, lest the testator's will happen to be impeded or excessively deferred, unless the testator expressed otherwise.

Superior habet consentire religiosis, deputatis exsecutoribus. Hoc dicit, secundum Zenz. — §. 1. Pluribus exsecutoribus datis, uno mortuo, vel in remotis exsistente, vel exsequi nolente, unus officium exsecutionis exercebit, ne impediatur testatoris voluntas; nisi aliud per testatorem disponeretur.

H. d. secundum Zenz.

Idem.

Religiosus, exsecutor ab aliquo in sua voluntate ultima deputatus, non potest, quum velle vel nolle non habeat, huiusmodi officium suscipere vel exsequi, nisi a superiore suo petita super hoc licentia et obtenta. §. i. Sane, pluribus a testatore simpliciter exsecutoribus deputatis, uno eorum mortuo, vel in remotis agente, aut id exsequi forte nolente, ne voluntatem testatoris impediri vel nimium differri contingat, poterit alius, nisi testator aliud expresserit, officium exsecutionis iniunctae libere adimplere.

Title XII: On Burials

Chapter I

Here a pact concerning the choice of burial is prohibited. Notwithstanding a pact concerning the choice of burial, or concerning a burial already chosen not being changed, a person is to be buried where he was otherwise to be buried by law; and if buried elsewhere, he is to be restored together with all proceeds of the burial. Otherwise, the penalty contained here is incurred. This states the point according to Zenzel.

Boniface VIII.

Wishing to oppose the dangers to souls and scandals that frequently arise from these things, in virtue of holy obedience and under threat of eternal malediction, we most strictly prohibit all religious and secular clerics, of whatever status or condition they may be, from inducing any persons to vow, swear,

promise with a pledge of faith, or otherwise promise that they will choose burial at their churches or will thereafter not change a burial already chosen. For if it is done otherwise, we decree that such a choice possesses no validity at all, establishing that those who have chosen in this way can neither be buried in any way at the churches so chosen nor choose burial elsewhere, lest they have occasion to act contrary to a vow, oath, or promise of this kind made by themselves. Rather, all contradiction ceasing, they shall be buried entirely at those churches at which they would have been buried by law if they had perhaps died without otherwise choosing burial.

But if the same religious or clerics presume to bury the aforesaid persons in their churches or cemeteries, we judge them obligated to make full restitution within ten days both of the bodies buried, if they are sought, and also of everything that came to them in any manner on the occasion of those persons' burial. Unless they do this, the churches at which they were buried, as well as their cemeteries, shall from that time by that very fact be placed under ecclesiastical interdict and remain so until full restitution of all the aforesaid things has been made by them.

> **DE SEPULTURIS.**
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> Hic prohibetur pactum de sepultura eligenda. Non obstante pacto de sepultura eligenda, vel electa non mutanda, sepeliendus est quis, ubi alias erat de iure sepeliendus, et alias sepultus cum omnibus sepulturae obventibus restituendus est; alias poena incurritur hic contenta. H. d. secundum Zenz.
>
> Bonifacius VIII.
>
> Animarum periculis et scandalis, quae frequenter ex his proveniunt, obviare volentes, universis religiosis et saecularibus clericis, cuiuscunque status vel conditionis exsistant, in virtute sanctae obedientiae ac sub interminatione maledictionis aeternae districtissime prohibemus, ne aliquos ad vovendum, iurandum, vel fide interposita seu alias promittendum inducant, ut apud eorum ecclesias sepulturam eligant, vel iam electam ulterius non immutent. Nos enim, si secus actum fuerit, electionem talem decernimus nullius penitus exsistere firmitatis, statuentes, ut hi, qui sic elegerint, nec apud sic electas ecclesias ullatenus sepeliri, nec alibi, ne contra votum, iuramentum aut promissum huiusmodi a se factum materiam habeant veniendi, possint eligere sepulturam; sed, contradictione quacunque cessante, sepeliantur omnino apud illas ecclesias, apud quas sepeliendi de iure fuissent, si alias sepultura non electa forsitan decessissent. Si vero iidem religiosi vel clerici praedictos in suis ecclesiis vel coemeteriis praesumpserint sepelire: ad restitutionem tam sepultorum corporum, si petantur, quam etiam omnium, quae occasione sepulturae illorum pervenerint quomodolibet ad eosdem, infra decendium integraliter faciendam ipsos obligatos esse censemus. Quam nisi fecerint, ecclesiae ipsae, apud quas sepulti fuerint, nec non et coemeteria earundem extunc eo ipso sint et tamdiu maneant ecclesiastico supposita interdicto, donec ab eis facta fuerit restitutio plenaria omnium praedictorum.

Chapter II

The canonical portion is not owed to the church that was left, but to the parish church, and to several churches if there are several. — § 1. A new burial can be chosen even in a less religious place. This states the point according to Zenzel.

The same.

When someone whose ancestors were accustomed from ancient times to be buried in some church leaves it and chooses burial elsewhere, the canonical portion is not owed to the church that was left, but only to the church in which that person was accustomed to hear the divine offices and receive the ecclesiastical sacraments. When burial is chosen in a third place by someone who has two domiciles

and establishes himself equally in each, the churches of the domiciles shall divide the canonical portion between themselves.

§ 1. If anyone, leaving the ancient burial, chooses a new burial even in a less religious place, we do not wish a choice of this kind to be impugned in any way, although the laws concerning this appear to differ.

> Ecclesiae dimissae non debetur canonica portio, sed parochiali, et pluribus, si sint plures. — §. 1. In loco etiam minus religioso potest nova eligi sepultura. H. d. secundum Zenz.
>
> Idem.
>
> Quum quis, cuius maiores sunt soliti ab antiquo in aliqua ecclesia sepeliri, ea dimissa eligit alibi sepulturam: canonica portio dimissae non debetur ecclesiae, sed illi duntaxat, in qua ille officia consuevit audire divina, et ecclesiastica recipere sacramenta. Quum ab eo, qui duo habet domicilia, se collocans aequaliter in utroque, in loco tertio eligitur sepultura, domiciliorum ecclesiae habebunt inter se dividere canonicam portionem. §. i. Si quis, antiqua dimissa, novam etiam in loco minus religioso elegerit sepulturam, electionem huiusmodi, (licet iura super hoc videantur esse diversa,) nequaquam volumus impugnari.

Chapter III

The transfer of a person to a certain place for a time does not take away the church's right of burial. This states the point according to Zenzel. — § 1. A deceased woman who married several men is buried with her last husband. This states the point.

The same.

A person who has a domicile in a city or town and sometimes transfers himself to a rural village for the sake of recreation or to carry out rural work there shall, if he dies there without having chosen burial, be buried not in the church of that village, but in his own parish church, or rather in the church in which the burial place of his ancestors existed from ancient times, provided that he can be conveyed to it without danger.

§ 1. A woman who successively had several husbands, if she does not choose burial, is to be interred with her last husband, whose domicile and honor she retains.

> Translatio personae, ad certum locum facta ad tempus, ecclesiae ius sepulturae non aufert. H. d. secundum Zenz. — §. 1. Mulier mortua, quae pluribus nupsit, cum viro ultimo sepelitur. Hoc dicit.
>
> Idem.
>
> Is, qui habet * domicilium in civitate vel castro, quandoque ad villam ruralem se transfert recreationis causa, vel ut ruralia exerceat in eadem, si non electa sepultura decedat ibidem, non in ecclesia dictae villae, sed in sua parochiali, vel in ea potius, in qua maiorum ipsius ab antiquo sepultura exstitit, sepeliri debebit, dummodo absque periculo ad ipsam valeat deportari. §. i. Mulier autem, quae plures viros habuit successive, si sepulturam non eligat, est cum viro ultimo, cuius domicilium retinet et honorem, tumulanda.

Chapter IV

By custom a father can choose burial for an impubescent child, but one who has reached puberty chooses for himself. And this states the point according to Zenzel with regard to the title, but not with regard to the text. Hence this

could be added: and he may not bequeath non-castrense goods for his soul without his father's assent. Dominicus.

The same, in the same council.

Although a father can, if the custom of the land so provides, bury his minor children—who cannot choose burial before they reach the age of puberty—wherever he wishes, nevertheless he cannot do this where a custom of this kind does not exist; rather, they are to be interred with their ancestors or in the parish church. Although a son under paternal power can freely choose burial for himself without his father's assent, nevertheless, without that assent he cannot dispose of anything for his own soul unless he has a castrense or quasi-castrense peculium.

> Ex consuetudine potest pater impuberi eligere sepulturam; pubes autem eligit per se ipsum. Et hoc dicit secundum Zenz. quoad titulum, sed non quoad textum. Unde posset addi: et pro anima non legat sine assensu patris bona non castrensia. Domin.
>
> Idem in eodem *.
>
> Licet pater minores filios, qui nequeunt, antequam ad annos pubertatis perveniant, eligere sepulturam, possit, si consuetudo terrae id habeat, quo voluerit sepelire: hoc tamen non potest, ubi consuetudo huiusmodi non habetur, sed sunt cum suis maioribus vel in parochiali ecclesia tumulandi. Quamvis autem filiusfamilias absque patris assensu sibi possit libere eligere sepulturam: pro anima tamen sua praeter ipsius assensum, nisi peculium castrense aut quasi castrense habeat, aliquid iudicare non potest.

Chapter V

Religious cannot choose burial elsewhere unless they are very far from their monastery. This states the point according to Zenzel's understanding.

The same, in the same council.

Religious, unless perhaps they are so far from their own monasteries that they cannot conveniently be carried to them when they die, cannot choose burial for themselves, since they do not have the power to will or not to will; rather, they are to be interred at their own monasteries.

> Religiosi, nisi multum remoti a monasterio, nequeunt alibi eligere sepulturam. H. d. secundum intellectum Zenz.
>
> Idem in eodem *.
>
> Religiosi, nisi a propriis monasteriis adeo forsitan sint remoti, quod ad ea, quum moriuntur, commode portari non possint, nequeunt, quum velle vel nolle non habeant, sibi eligere sepulturam; sed sunt apud sua monasteria tumulandi.

Title XIII: On Tithes, First Fruits, and Offerings

Chapter I

The people are to be exhorted in sermons and otherwise to pay the rights owed to churches. This states the point according to Zenzel.

Gregory IX, to the Friars Preachers and Minors.

We command your discretion, strictly prohibiting you from hereafter presuming, in your sermons or elsewhere, to put forward things that may draw your hearers away from payment of tithes or of other things owed to churches, or may otherwise corrupt the souls of your hearers. Rather, by word and deed you shall instruct them to be intent, with a mind of ready will, upon payment of the aforesaid things.

> **DE DECIMIS, PRIMITIIS * ET OBLATIONIBUS;.**
>
> Populus, ut ecclesiis iura debita persolvat, est in praedicationibus et aliis exhortandus. H. d. secundum Zenz.
>
> Gregorius IX. fratribus Praedicatoribus et Minoribus.
>
> Discretioni vestrae mandamus districtius inhibentes, ne talia, quae audientes a decimarum seu aliarum rerum ecclesiis debitarum solutione retrahant, vel alias animas corrumpant audientium, in sermonibus vestris vel alibi proponere de cetero praesumatis. Immo verbo et opere informetis eosdem, ut ad solutionem praedictorum promptae voluntatis animo sint intenti.

Chapter II

A privilege granting tithes from newly cultivated lands does not include tithes from newly cultivated lands possessed by others at the time of the application, and it includes only places where the old tithes were received, and only to the old proportion. This states the point as far as § "We establish," according to Dominicus. — § 1. A privilege of tithes from newly cultivated lands, limited to the measure of the old tithes, cannot include more than half; the rule fails in the case of Cistercians and Carthusians. This states the point. — § 2. Those privileged concerning the receipt of tithes ought freely to assign to parish churches a portion for supporting the burdens owed. This states the point. Dominicus. — § 3. Tithes received in fief by laymen from religious before the Lateran Council, and acknowledged by the laymen to be held in fief, cannot be granted to those religious without the consent of the diocesan bishops. This states the point. Dominicus. — § 4. Diocesan bishops compel exempt religious to pay tithes to parish churches if exempt property is not at issue. This states the point. Dominicus. — § 5. Religious, even exempt religious, ought to pay tithes from possessions acquired and to be acquired to parish churches if they are not privileged. This states the point. Dominicus. — § 6. Those who have old tithes by the gift of laymen do not receive tithes from newly cultivated lands subsequently arising in the same place. This states the point. Dominicus.

Alexander IV.

By a perpetual statute we declare that the apostolic indult granted to very many persons, that they may receive the tithes from newly cultivated lands in the proportion in which the old tithes fall to them, in no way extends to those tithes from newly cultivated lands that others possessed at the time when this indult was applied for or obtained, since no mention of this is made in it. Nor does it extend to any others except only in those places where the applicants themselves had the old tithes when the said indult was applied for, and only in the proportion in which they received the old tithes at the time of such application.

§ 1. We establish, moreover, that the same indult, when obtained by persons who at the time of the application received the old tithes in their entirety, shall in no way extend beyond half of the tithes from newly cultivated lands. For it is not probable that, if full and entire receipt of the old tithes had then been expressed, the Apostolic See would equally and similarly have granted the tithes from newly cultivated lands to the so-grave loss of parish churches. By reason of such an indult, whether already applied for or to be applied for hereafter, no more than half of the tithes from newly

cultivated lands can be claimed, acquired, or received in newly cultivated lands that shall be made from now on, even if more was held in the old tithes. For it is not to be called harsh, but rather pious and benign, if opposition is made in this manner concerning tithes of future newly cultivated lands to a burden upon parish churches that can arise from the distinction of an indult of this kind. Nevertheless, with regard to these two articles, namely concerning half of the tithes from newly cultivated lands, we do not wish religious of the Cistercian and Carthusian orders to be included in or constrained by a statute and declaration of this kind.

§ 2. But where through grants of tithes of this kind parish churches happen to be so burdened that their rectors cannot be suitably maintained from their revenues, conveniently render the episcopal dues, and support the other burdens owed, provision and disposition shall be made by the ordinaries of the places in such a way that so much from their revenues is left to those rectors that they can thereby have suitable maintenance, pay the episcopal dues, and support the other burdens owed.

§ 3. Indeed, although perhaps exempt religious and others make infeudations of tithes detained by laymen, and those laymen acknowledge that they hold them in fief from the religious themselves, nevertheless, after such an infeudation or acknowledgment thus de facto presumed, it is not lawful for the religious to acquire or receive tithes of this kind from the hands of those laymen without the assent of the diocesan bishops. We understand that those tithes can thus be received or acquired by religious from the hands of laymen that were granted perpetually in fief to the laymen before the Lateran Council.

§ 4. At the request of the rectors of parish churches, the diocesan bishops shall render the fullness of justice against the religious themselves concerning tithes that the religious have or happen to have, and that otherwise belonged to those churches, unless exempt property is at issue.

§ 5. Moreover, those religious, exempt as well as nonexempt, shall pay tithes in full from lands and possessions acquired hitherto and to be acquired from now on to those churches to which the same possessions and lands were previously subject to tithes, unless they are furnished with a special right or privilege concerning this.

§ 6. Nor, because perhaps in certain parishes they acquire from the hands of laymen all the greater tithes or a part of them, can they seek or receive, for the same or a similar proportion, the tithes from newly cultivated lands in those places if newly cultivated lands are afterward made there, unless there is a reasonable cause by which they may do this.

> Privilegium, decimas novalium concedens, non includit decimas novalium, per alios possessas tempore impetrationis, et loca tantum includit, ubi percipiebantur antiquae, et ad portionem antiquam. H. d. usque ad §. Statuimus secundum Domin. — §. 1. Privilegium decimarum novalium, limitatum ad mensuram antiquarum, non potest ultra dimidiam includere; fallit in Cisterciensibus et Carthusiensibus. H. d. — §. 2. Privilegiati super decimis recipiendis ecclesiis parochialibus gratis assignare debent portionem pro debitis oneribus supportandis. H. d. Dominicus. — §. 3. Decimae, per laicos ante Lateranense concilium in feudum receptae a religiosis, per eos recognitae in feudum, non possunt ipsis religiosis concedi sine dioecesanorum consensu. Hoc dicit. Dominicus. — §. 4. Dioecesani compellunt religiosos exemptos solvere decimas parochialibus ecclesiis, si non agatur de rebus exemptis. Hoc dicit. Dominicus. — §. 5. Religiosi etiam exempti de possessionibus acquisitis et acquirendis ecclesiis parochialibus solvere debent decimas, si privilegiati non sunt. H. d. Dominicus. —

§. 6. Ex donatione laicorum habentes decimas antiquas, novales supervenientes in eodem loco non percipiunt. H. d. Dom.

Alexander IV.

Statuto perpetuo declaramus, quod indultum illud apostolicum, quod plerisque conceditur, ut novalium decimas pro ea portione percipere valeant, qua veteres eos contingunt, ad illas novalium decimas, quas tempore illo, quo impetratum vel obtentum exstitit hoc indultum, alii possidebant, quum de hoc in ipso mentio nulla fiat, nullatenus se extendit, nec ad alias etiam, nisi in his tantum locis, ubi veteres tunc, quando dictum indultum impetratum fuit, ipsi impetratores habebant, et pro ea solummodo portione, qua ipsi tempore impetrationis huiusmodi percipiebant antiquas. §. i. Statuimus praeterea, quod idem indultum, obtentum ab iis, qui tempore impetrationis totaliter veteres percipiebant decimas, ultra medietatem decimarum novalium nullatenus extendatur; quia non est verisimile, si tunc de plena et integra perceptione veterum fuisset expressum, quod apostolica sedes pariter et similiter novalium decimas, in tam grave parochialium ecclesiarum dispendium indulsisset, quodque ratione talis indulti, sive impetrati iam sive impetrandi deinceps, non possit in novalibus, quae a modo fient, vindicari et acquiri vel percipi plus quam medietas decimarum ipsorum novalium, etiamsi amplius in veteribus habebatur, quum non sit dicendum asperum, sed pium potius et benignum, si super decimis futurorum novalium contra parochialium ecclesiarum gravamen, quod ex distinctione indulti huiusmodi possit * accidere, taliter obviatur. Religiosos tamen Cisterciensis et Carthusiensis ordinum statuto et declaratione huiusmodi, quantum ad hos duos articulos, videlicet de medietate decimarum novalium, comprehendi nolumus vel constringi. §. 2. Ubi autem per huiusmodi concessiones decimarum parochiales ecclesias adeo gravari contingit, quod earum rectores de ipsarum reditibus congrue sustentari, et commode iura episcopalia exhibere non possunt: provideatur per locorum ordinarios et ordinetur taliter, quod eisdem rectoribus tantum de illarum relinquatur proventibus, quod exinde competentem sustentationem habere, et episcopalia iura solvere valeant aliaque onera debita supportare. §. 3. Sane, quamvis forte a religiosis exemptis et aliis fiant infeudationes de decimis detentis a laicis, et iidem laici, quod illas ab ipsis religiosis in feudum teneant, recognoscant: non tamen licet religiosis eisdem post talem infeudationem vel recognitionem, sic de facto praesumptam, huiusmodi decimas de manibus laicorum ipsorum acquirere, vel recipere absque dioecesanorum episcoporum assensu. Illas autem decimas intelligimus posse taliter a religiosis de manibus laicorum recipi vel acquiri, quae ante Lateranense concilium ipsis laicis in feudum perpetuo fuere concessae. §. 4. Dioecesani vero parochialium ecclesiarum ad requisitionem rectorum earundem de ipsis religiosis super decimis, quas habent vel eos habere continget, quae quidem alias ad ipsas spectaverunt ecclesias, nisi de rebus exemptis agatur, exhibeant iustitiae complementum. §. 5. Ceterum iidem religiosi, tam exempti quam non exempti, de terris et possessionibus acquisitis hactenus et a modo acquirendis decimas integre solvant illis ecclesiis, quibus eaedem possessiones et terrae prius fuerant decimales, nisi super hoc speciali iure vel privilegio sint muniti. §. 6. Nec pro eo, quod forte in aliquibus parochiis omnes maiores decimas seu partem illarum acquirunt de manibus laicorum, possunt pro eadem vel simili portione, si de novo postmodum fiant novalia, in eisdem petere vel percipere novalium decimas eorundem, nisi * rationabilis, per quam hoc facere valeant, causa subsit.

Title XIV: On Regulars and Those Passing to Religion

Chapter I

If one under fourteen years enters religion, he freely leaves in his fifteenth year unless in that fifteenth year he makes profession, receives the habit of the professed, or expressly ratifies a profession previously made by him. But if throughout the whole fifteenth year he wore the habit where it is not distinct, he is understood to be professed, unless

the lack of distinction is so great that those living with them are clothed in a similar habit. If one over fourteen years enters and wears the habit for a year, however indistinct it may be, he is understood to be professed. John Andrew. — § 1. Here it declares which habits are distinct. This states the point.

Innocent IV.

One who enters a monastery before his fourteenth year in order to become a monk can freely return to the world within the following year unless, after completing that year of age, he makes profession in the next, receives the religious habit customarily given to those making profession, or expressly ratifies a profession previously made by him. But if he remains throughout the whole following year in a monastery where the habits of the professed and novices are indistinct, he appears thereby to have made profession, or to have ratified one that he previously made, unless there is so great an indistinction of habit there that the professed and novices, and also others leading the common life with them, are clothed in an entirely similar habit.

But one who assumes the religious habit after his fourteenth year, if he wears it for that year, is presumed from that time to have truly professed the religion where the professed are by no difference of habit distinguished from novices, even if others dwelling with them use similar garments. For since he has now reached the years of discretion, he knows what he is doing, and therefore, after he has tested for the span of a year the order undertaken at the age of discretion, he is understood firmly to have approved it. It is otherwise for one who puts on the regular habit before the years of discretion, since he does not have a full understanding of the things he then does.

§ 1. We understand the habits to be distinct or dissimilar whether dissimilar garments are given to novices and the professed, or whether the garments are blessed when they are granted to those making profession, or whether something else is done by which the habit of novices is distinguished from that of the professed.

> **DE REGULARIBUS ET TRANSEUNTIBUS AD RELIGIONEM.**
>
> Si minor XIV. annis ingreditur religionem, in XV. anno liber exit, nisi in ipso XV. anno professionem fecerit, vel habitum professorum receperit, vel expresse ratam habuerit professionem prius a se factam. Si autem per totum XV. annum portavit habitum, ubi non est distinctus: intelligitur professus, nisi tanta sit indistinctio, quod viventes cum eis simili habitu induantur. Si maior XIV. annis ingreditur, si portat habitum per annum: quantum cunque sit indistinctus, intelligitur professus. Ioann. Andr, — §. 1. Hic declarat, qui sunt habitus distincti. Hoc dic.
>
> Innocentius IV.
>
> Is, qui monasterium ante XIV. annum, ut monachus efficiatur, ingreditur, nisi eo completo professionem faciat in sequenti, vel habitum religionis suscipiat, qui dari profiten-tibus consuevit, seu professionem a se prius factam ratam expresse habeat, libere potest infra sequentem * annum ad saeculum remeare. Quodsi per totum sequentem annum in monasterio permanserit, ubi professorum et novitiorum sunt habitus indistincti: professionem per hoc fecisse, vel, si quam prius fecerat, ratam habuisse videtur, nisi tanta in-distinctio ibi habitus habeatur, quod et professi et novitii, ac etiam alii, communem vitam cum eis ducentes, simili penitus habitu induantur. Qui vero post quartum decimum annum habitum religionis assumpserit, si per annum illum gestaverit, extunc religionem assumptam praesumitur veraciter esse professus, ubi professi a novitiis dissimilitudine habitus minime distinguuntur, etiamsi alii, degentes cum eis, similibus vestibus coutantur; quoniam, quum iam hic ad discretionis annos pervenerit, quid agat agnoscit, et * ideo susceptum discretionis tempore ordinem, postquam hunc anni

probaverit spatio, intelligitur firmiter approbasse. Secus autem in illo, qui ante discretionis annos habitum induit regularem, quum eorum, quae tunc agit, plenum non habeat intellectum. §. i. Distinctos quoque seu dissimiles intelligimus esse habitus, sive novitiis sive professis dissimiles vestes dentur, sive benedicantur, quum profitentibus conceduntur, sive etiam aliquid aliud fiat, per quod novitiorum a professorum habitu discernatur.

Chapter II

The Friars Preachers and Minors cannot receive anyone to profession in their order within the year of probation. If they do so, the person received is not bound to their order, and they are suspended from receiving the profession of others and are to be punished with the penalty customarily inflicted upon them for more serious faults. John Andrew.

Alexander IV, to the Friars Preachers and Minors.

Not only—(And below:) Although, having zeal for souls, you solicitously desire to win them for the Lord, nevertheless, because it is fitting and expedient that judgment of reason not be wanting to purity of conscience, lest loss of salvation follow from the source from which spiritual advancement is sought, with the counsel of our brothers, by authority of the present letters, in virtue of obedience and under penalty of excommunication, we strictly prohibit you from presuming to receive anyone, before the completion of the year of probation regularly instituted especially as an aid to human frailty, to profession in your order or to making renunciation in the world. Nor shall you in any way impede one situated within such year from passing during it to another religious order that he prefers, or from returning entirely to the world as proceeds from his own will, unless—being nevertheless more than fourteen years old—he has tacitly or expressly professed, or it is clearly established that he wished to change his life, which is not, however, presumed unless demonstrated by clear proof or sufficient indications.

But if perhaps you presume to receive anyone contrary to this our prohibition, we decree that one so received is in no way bound to your order, that you are by the fact itself suspended from receiving any persons to profession in the same order, and that you are moreover to be subjected to the penalty customarily inflicted upon brothers of that order for more serious faults.

Praedicatores et Minores infra annum probationis quemquam ad sui ordinis professionem recipere non possunt. Quodsi fecerint, receptus alligatus non est eorum ordini, et ipsi a receptione professionis aliorum sunt suspensi, et puniendi poena, quae pro gravioribus culpis eis consuevit infligi.

Ioann. Andr.

Alexander IV. * fratribus Praedicatoribus et Minoribus .

Non solum (Et infra:) Licet zelum animarum habentes eas lucrari Domino sollicite cupiatis, quia tamen decet et expedit, ut conscientiae puritati non desit iudicium rationis, ne, unde spiritualis profectus quaeritur, salutis dispendium subsequatur: vobis de fratrum nostrorum consilio in virtute obedientiae et sub poena excommunicationis auctoritate praesentium districtius inhibemus, ne ante annum probationis elapsum, qui est maxime in subsidium fragilitatis humanae regulariter institutus, quemquam ad professionem vestri ordinis seu renunciationem in * saeculo faciendam recipere, nec constitutum infra huiusmodi annum aliquatenus impedire, quo minus infra ipsum ad aliam religionem, quam maluerit, transeat, vel, nisi, maior tamen quatuordecim annis exsistens, professus sit tacite vel expresse, aut evidenter constet, illum vitam voluisse mutare, quod tamen non praesumitur, nisi clara probatione vel competentibus indiciis ostendatur, omnino ad saeculum redeat, sicut de sua voluntate processerit, praesumatis. Quodsi forte contra hanc nostram prohibitionem quem quam s recipere

praesumpseritis : decernimus, eum, qui taliter receptus fuerit, nullatenus vestro esse ordini alligatum, vosque a receptione quorumlibet ad professionem eiusdem ordinis fore ipso facto suspensos, et insuper poenae subiiciendos, quae fratribus ipsius ordinis pro culpis infligi gravioribus consuevit.

Chapter III

The decretal "Not only" extends to all Mendicants; in other orders, however, express profession within the year binds to the religious order to which it is made, but tacit profession binds generally to religion. This states the point according to Zenzel.

Boniface VIII.

Pope Alexander IV of pious memory, our predecessor, declared that the Innocentian constitution prohibiting the profession of converts from being received before the completion of the year of probation extended only to the orders of Friars Preachers and Minors. Hence we, induced by a like parity of reason, extend the same declaration to the orders of other Mendicants. In other religious orders, however, profession can lawfully be made expressly or tacitly within the year. But an express profession, even if secular dress has not been changed, binds specifically to that religious order which the person making profession has professed. A tacit profession made within the year of probation by reception of a habit given only to those making profession binds the recipient not specially to the religious order whose habit was received, but generally to some religious order, if he is of suitable age, knowing and willing, and perseveres for three days.

Decretalis Non solum extenditur ad omnes Mendicantes; in aliis vero professio expressa religioni, cui fit, tacita autem generaliter obligat infra annum. H. d. secundum Zenz.

Bonifacius VIII.

Constitutionem Innocentianam, quae prohibet conversorum professionem recipi ante annum probationis elapsum, piae memoriae Alexander Papa IV. praedecessor noster ad fratrum Praedicatorum et Minorum ordines duntaxat declaravit extendi. Unde nos, pari similitudine rationis inducti, declarationem eandem ad aliorum Mendicantium ordines prorogamus. In aliis autem religionibus professio expresse vel tacite fieri potest licite infra annum. Sed expresse emissa, etiam saeculari habitu non mutato, illi religioni praecise obligat, quam profitens est professus. Tacite vero facta infra probationis annum per susceptionem habitus, qui profitentibus tantum datur, non illi specialiter, cuius habitus est susceptus, sed generaliter religioni alicui recipientem obligat, si aetatis aptae sit, si sciens et voluntarius, ac triduo perseveret.

Chapter IV

The benefice of one entering religion is not to be conferred upon another within the year of probation, except in the cases twice expressed; meanwhile, however, the benefice ought to be served by another, with a suitable portion assigned to that substitute from which he can live. This states the point. Johannes de Fano.

The same, to the Chapter of Paris.

The benefice of one who enters religion is not to be conferred upon anyone within the year of probation unless his assent to this is given, or it is established that he wished absolutely to change his life, or he made an express profession, or knowingly received the habit of the professed. But meanwhile the benefice itself ought to be served by another, with a suitable portion assigned to him from its revenues.

Beneficium ingredientis religionem infra annum probationis, exceptis casibus bis expressis, non est alteri conferendum; interim tamen debebit per alium beneficio deserviri, assignata eidem substituto congrua portione, unde vivere possit. H. d. Ioann. de Fan.

Idem Parisiensi Capitulo.

Beneficium illius, qui religionem ingreditur, non est infra probationis annum alicui conferendum, nisi ad id ipsius accedat assensus, aut constet, quod vitam voluerit absolute mutare, vel professionem expressam fecerit, seu scienter habitum receperit professorum. Sed interim eidem beneficio per alium deserviri debebit, assignata sibi congrua de ipsius proventibus portione.

Chapter V

A second solemn vow of religion derogates from an earlier simple vow. This states the point. Johannes de Fano.

The same.

One who, after a vow made by him to enter a specified religious order, enters another, even laxer, religious order and makes profession in it can, notwithstanding the prior vow—from which, as a simple vow, the second solemn vow is known to derogate—lawfully remain in the latter. Penance is nevertheless to be imposed upon him for the unfulfilled vow.

Secundum votum solenne religionis derogat priori simplici. H. d. Ioann.

de Fan.

Idem.

Qui post votum, a se de certa religione intranda emissum, religionem aliam etiam laxiorem ingreditur et profitetur in ipsa, potest, voto non obstante priori, cui tanquam simplici per secundum solenne noscitur derogatum, manere * licite in eadem, pro voto tamen non completo erit eidem poenitentia imponenda.

Chapter VI

When a monastery is vacant, the convent receives a new monk if this belongs jointly to the abbot and convent; if it belongs to the abbot alone, it is otherwise. This states the point. Dominicus.

The same.

If the creation of monks belongs to the abbot alone, after his death a new monk cannot be created by the convent; otherwise it can be done if their creation belongs jointly to both.

Vacante monasterio conventus novum recipit monachum, si communiter ad abbatem et eos spectat; si ad abbatem solum, secus. H. d. Dominicus.

Idem.

Si ad solum abbatem pertineat creatio monachorum: eo defuncto nequibit novus monachus a conventu creari; alias poterit, si eorum creatio spectat * insimul ad utrumque.

Title XV: On a Vow and the Redemption of a Vow

Chapter I

A vow solemnized by reception of sacred order or by profession made in one of the religious orders approved by the Apostolic See renders void a marriage subsequently contracted; otherwise, a vow only impedes and does not render it

void. This states the point according to Zenzel.

Boniface VIII, to the Bishop of Béziers.

You wished to consult us concerning what vow ought to be called solemn and effectual for rendering marriage void. We therefore, observing that the solemnity of a vow was devised solely by a constitution of the Church, but that the bond of marriage received its union and indissolubility from the very head of the Church, the creator of all things, when he instituted it in paradise and in the state of innocence, have decided to declare by the pronouncement of the present enactment that, with regard to rendering void a marriage contracted afterward, only that vow ought to be called solemn which was solemnized by the reception of sacred order or by express or tacit profession made in one of the religious orders approved by the Apostolic See. Other vows, even if they sometimes impede a marriage to be contracted—and the more manifestly they were made, the harsher the penance owed to transgressors because of the scandal and example of many—nevertheless cannot dissolve marriages contracted afterward.

> **DE VOTO ET VOTI REDEMPTIONE.**
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> Votum, solennisatum per susceptionem sacri ordinis vel per professionem, factam alicui de religionibus per sedem apostolicam approbatis, dirimit matrimonium post contractum; alias solum impedit, et non dirimit. H. d. secundum Zenz.
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> Bonifacius VIII. Biterensi Episcopo.
>
> Quod votum debeat dici solenne ac ad dirimendum matrimonium efficax, nos consulere voluisti. Nos igitur, attendentes, quod voti solennitas ex sola constitutione ecclesiae est inventa, matrimonii vero vinculum ab ipso ecclesiae capite rerum omnium conditore, ipsum in paradiso et in statu innocentiae instituente, unionem et indissolubilitatem acceperit *: praesentis declarandum duximus oraculo sanctionis, illud solum votum debere dici solenne, quantum ad post contractum matrimonium dirimendum, quod solennisatum fuerit per susceptionem sacri ordinis, aut per professionem expressam vel tacitam, factam alicui de religionibus per sedem apostolicam approbatis. Reliqua vero vota, etsi quandoque matrimonium impediant contrahendum, et quanto manifestius sunt emissa, tanto propter plurium scandalum et exemplum durior poenitentia transgressoribus debeatur, non tamen rescindere possunt matrimonia post contracta.

Title XVI: On the State of Regulars

Chapter I

Nuns who have professed tacitly or expressly cannot leave the enclosures of the monastery, nor can others enter to them, unless a legitimate cause and the superior's license intervene. This states the point. — § 1. In a monastery of non-Mendicants, as many sisters ought to be received as can be maintained without want, and reception beyond that number has no force. This states the point. Dominicus. — § 2. Abbesses bound to secular princes to render an oath of fealty shall, if they cannot swear through a procurator, swear by personally leaving the monastery and shall return to the monastery without delay. Dominicus. — § 3. Temporal lords are compelled by ecclesiastical censure to admit abbesses to litigate through procurators in their courts; ecclesiastical judges ought to admit their procurators in temporal and spiritual matters. Dominicus. — § 4. Ordinaries of places ought to procure enclosure by their own authority in monasteries subject to them, and by apostolic authority in exempt monasteries; jurisdiction over exempt persons in other cases is not attributed to them on this account. This states the point. Dominicus.

Boniface VIII.

Desiring to provide salutarily for the dangerous and detestable state of certain nuns—who, having loosened the reins of honor and shamelessly cast aside monastic modesty and the reserve of their sex, sometimes run about outside their monasteries through the dwellings of secular persons and frequently admit suspect persons within those monasteries, to the burden and offense of him to whom by their spontaneous will they vowed their integrity, to the reproach of religion, and to the scandal of many—we decree by the present constitution, to remain perpetually unalterably in force, that each and every nun, present and future, of whatever religious order or institute, existing in any parts of the world, ought hereafter to remain under perpetual enclosure in her monastery. Accordingly, no nun who has professed religion tacitly or expressly shall or can for any reason or cause have the faculty hereafter to leave the monastery itself—unless perhaps it is manifestly established that one of them suffers from so great and such a disease that she cannot dwell with the others without grave danger or scandal. Nor shall any access or entry to them be open in any way to a dishonorable person, or even to an honorable person, unless there is a reasonable and manifest cause and the special license of the person to whom this belongs, so that, entirely separated from public and worldly sight, they may thus serve God more freely and, with opportunity for wantonness removed, more diligently guard their hearts and bodies for him in all holiness.

§ 1. Indeed, so that this salutary statute can be observed more conveniently, we strictly prohibit any persons hereafter from being received as sisters in monasteries of non-Mendicant orders beyond the number that can be maintained without want from the goods or revenues of the monasteries themselves, decreeing as invalid anything done otherwise.

§ 2. But when an abbess or prioress of any monastery is required to render homage or an oath of fealty for a fief that the monastery itself holds from some prince or temporal lord, she can lawfully leave the monastery in that case with an honorable and suitable company, unless she can arrange with him to render it through a procurator. Once the homage has been done or the oath of fealty rendered, she shall return immediately to the monastery as soon as she conveniently can, so that nothing whatever is done in fraud of residence or remaining in the cloister.

§ 3. Furthermore, lest nuns have cause or occasion to wander, we ask, require, and beseech secular princes and other temporal lords through the bowels of the mercy of Jesus Christ, nevertheless counseling them in remission of their sins, to permit the abbesses, prioresses, and any nuns whatsoever who manage the care, administration, or business of their monasteries, by whatever names they are designated, to litigate through procurators in their tribunals or courts, lest those nuns have to wander in order to appoint procurators—who in some regions are called attorneys—or for other matters of this kind. But if any presume to act contrary to this and refuse to obey an exhortation so reasonable and holy, since it is contrary to law that women, especially religious women, be compelled to litigate personally, departs from the path of honor, and introduces danger to souls, they shall be compelled to this by their ecclesiastical ordinaries through ecclesiastical censure. We enjoin bishops and all other superior and inferior prelates that they likewise cause the causes or business that the aforesaid nuns have to conduct before them or in their courts—whether homages, oaths of fealty, lawsuits, or anything else—to be conducted and treated through the nuns' procurators.

§ 4. And because it would be of little use to establish laws unless there were persons to commit them to due execution, under adjuration of the divine judgment and threat of eternal malediction, in virtue of holy obedience, we strictly command all patriarchs, primates, archbishops, and bishops that each of them, in his own city and diocese, take care by his own authority to provide, in monasteries of nuns subject to him by ordinary law, and by authority of the Apostolic See in those belonging immediately to the Roman Church, for suitable enclosure to be constructed diligently, where it does not exist, at the expense of the monasteries themselves and from alms of the faithful that they shall procure for this, and for the nuns themselves to be enclosed as soon as they conveniently can. Abbots and other prelates, exempt as well as nonexempt, of any churches, monasteries, and orders whatsoever shall do the same in monasteries of this kind subject to them, if they wish to avoid the severity of divine indignation and ours. They shall restrain contradictors and rebels through ecclesiastical censure, appeal being set aside, invoking for this, if necessary, the aid of the secular arm. By this, however, the ordinaries of places are not to believe that any jurisdiction or power is attributed to them in exempt monasteries with regard to other matters.

DE STATU REGULARIUM.

Moniales, tacite vel expresse professae, clausuras monasterii exire non possunt, nec alii ad illas intrare, nisi causa legitima et superioris licentia interveniat. H. d. — §. 1. In monasterio non Mendicantium tot sorores debent recipi, quot poterunt sine penuria sustentari; et ultra non valet receptio. Hoc dicit Dominicus. — §. 2. Abbatissae, principibus saecularibus ad fidelitatis sacramentum praestandum adstrictae, si non possunt per procuratorem iurare, personaliter exeundo monasterium iurabunt, absque dilatione ad monasterium redituraе. Domin. — §. 3. Compelluntur domini temporales per censuram ecclesiasticam, ut in suis curiis admittant abbatissas per procuratores litigare; ecclesiastici vero in temporalibus et spiritualibus earum procuratores admittere debent. Domin. — §. 4. Ordinarii locorum, in subiectis monasteriis propria, in exemptis apostolica auctoritate clausuram procurare debent; nec est propter hoc in aliis casibus iurisdictio in exemptos eis attributa. H. d. Dominicus.

Bonifacius VIII.

Periculoso et detestabili quarundam monialium statui, (quae, honestatis laxatis habenis et monachali modestia sexusque verecundia impudenter abiectis, extra sua monasteria nonnunquam per habitacula saecularium personarum discurrunt, et frequenter infra eadem monasteria personas suspectas admittunt, in illius, cui suam integritatem voluntate spontanea devoverunt, gravamen , *offensam, in religionis opprobrium et scandalum plurimorum,) providere salubriter cupientes, praesenti constitutione perpetuo irrefragabiliter valitura sancimus, universas et singulas moniales, praesentes atque futuras, cuiuscunque religionis sint vel ordinis, in quibuslibet mundi partibus exsistentes, sub perpetua in suis monasteriis debere de cetero permanere clausura ita, quod nulli earum, religionem tacite vel expresse professae, sit vel esse valeat quacunque ratione vel causa, (nisi forte tanto et tali morbo evidenter earum aliquam laborare constaret, quod non posset cum aliis absque gravi periculo seu scandalo commorari,) monasteria ipsa deinceps egrediendi facultas; nullique aliquatenus inhonestae personae nec etiam honestae, (nisi rationabilis et manifesta causa exsistat, ac de illius, ad quem pertinuerit, speciali licentia,) ingressus vel accessus pateat ad easdem, ut sic a publicis et mundanis conspectibus separatae omnino servire Deo valeant liberius, et, lasciviendi opportunitate sublata eidem corda sua et corpora in omni sanctimonia diligentius custodire. §. i. Sane, ut hoc salutare statutum commodius valeat observari, districtius inhibemus, ne in monasteriis ordinum non Mendicantium aliquae recipiantur de cetero in sorores, nisi quot poterunt de ipsorum monasteriorum bonis sive proventibus absque penuria sustentari, si secus actum fuerit, irritum decernentes. §. 2. Verum quando abbatissa vel priorissa cuiusvis monasterii pro feudo, quod monasterium ipsum tenet ab aliquo principe seu domino temporali, sibi debebit homagium vel fidelitatis sacramentum praestare, (nisi, quod per procuratorem illud praestet, possit efficere*

*apud eum,) de monasterio cum honesta et decenti societate exire poterit eo casu licenter, homagio facto, quam primum commode poterit, seu fidelitatis praestito sacramento ad ipsum monasterium e vestigio reversura, sic, quod in fraudem residendae sive morae claustralis nihil fiat omnino. §. 3. Porro, ne moniales causam seu occasionem habeant evagandi, principes saeculares ac alios dominos temporales rogamus, requirimus et obsecramus per viscera misericordiae Iesu Christi, eisdem in remissionem peccaminum nihilominus suadentes, quod abbatissas ipsas et priorissas ac moniales quascunque, monasteriorum suorum curam, administrationem negotiave gerentes, quibuscunque nominibus censeantur, per procuratores in suis tribunalibus seu curiis litigare permittant, ne pro constituendis procuratoribus, qui atornati in aliquibus partibus nuncupantur, seu aliis huiusmodi easdem oporteat evagari. Si qui vero contra praesumpserint, exhortationi huiusmodi rationabili atque sanctae obtemperare nolentes, quum sit iuri contrarium, quod mulieres, praesertim religiosae, per se ipsas litigare cogantur, et * a via deviet honestatis et periculum animarum inducat, ad hoc per suos ordinarios ecclesiasticos censura ecclesiastica compellantur. Episcopis autem et aliis praelatis superioribus et inferioribus quibuscunque iniungimus, quod et ipsi causas seu negotia, quae praefatae moniales habebunt agere coram ipsis aut in curiis eorundem, sive sint homagia, fidelitatis sacramenta, lites vel quicquid aliud, ipsa per procuratores earum fieri faciant et tractari. §. 4. Et quoniam parum esset condere iura, nisi essent qui ea exsecutioni debitae demandarent: patriarchis, primatibus, archiepiscopos et episcopis universis districte in virtute sanctae obedientiae sub obtestatione divini iudicii et interminatione maledictionis aeternae praecipiendo mandamus, quatenus eorum quilibet in civitate ac dioecesi propria in monasteriis monialium sibi ordinario iure* subiectis sua, in iis vero, quae ad Romanam immediate spectant ecclesiam, sedis apostolicae auctoritate, abbates vero et alii, tam exempti quam non exempti praelati ecclesiarum, monasteriorum et ordinum quorumcunque, in monasteriis huiusmodi sibi subiectis de clausura convenienti, ubi non est, ipsorum monasteriorum expensis et fidelium eleemosynis, quas ad hoc procurent, diligentius facienda, et de ipsis monialibus includendis quam primum commode poterunt providere procurent, si divinae ac nostrae indignationis voluerint acrimoniam evitare, contradictores atque rebelles per censuram ecclesiasticam appellatione postposita compescendo, invocato ad hoc, si opus fuerit, auxilio brachii saecularis. Per hoc autem in monasteriis exemptis ordinarii locorum quoad alia nullam sibi credant iurisdictionem vel potestatem aliquatenus attributam.

Title XVII: On Religious Houses

Chapter I

It is not lawful to create a new order or religious institute, or to create or assume the habit of a new religious institute. And Mendicant orders created after the council and not approved by the Pope are revoked. Dominicus. — § 1. Mendicant religious approved and instituted by the Pope after the council cannot receive anyone to profession, acquire a house or place anew, alienate those acquired without license, preach to outsiders, hear their confessions, or admit them to burial. An act to the contrary has no force, and one acting contrary is excommunicated. This states the point. Dominicus. — § 2. The revocation of Mendicant orders does not include the Preachers, Minors, Hermits, and Carmelites. This states the point. Dominicus. — § 3. A person belonging to the revoked orders can pass individually, but not corporately, to other orders. This states the point. Dominicus.

Gregory X, in the General Council of Lyons.

The General Council, by a carefully considered prohibition, forbade excessive diversity of religious institutes, lest it introduce confusion. But because not only did the importunate eagerness of petitioners afterward extort their multiplication, but the presumptuous temerity of certain persons also devised an almost unbridled multitude of different orders, especially Mendicant orders, which have not yet merited the beginning of approval, we repeat the constitution and strictly prohibit

anyone hereafter from devising a new order or religious institute, or assuming the habit of a new religious institute. We subject all the religious institutes and Mendicant orders devised in abundance after the said council that have merited no confirmation from the Apostolic See to perpetual prohibition and revoke them insofar as they had proceeded.

§ 1. Those confirmed by the same See but instituted after that council, whose profession or any rule forbids them to have revenues or possessions for suitable maintenance, but whose uncertain mendicancy customarily provides sustenance through public begging, we decree shall subsist in the manner written below: namely, that professors of those orders may remain in them if they wish, but they shall hereafter admit no one to their profession, shall not acquire a house or any place anew, and shall not be able to alienate the houses or places they have without the special license of the same See. For we reserve those things to the disposition of the Apostolic See, to be converted, through the ordinaries of the places or those to whom the See itself commits this, to the aid of the Holy Land, the poor, or other pious uses. If anything is presumed otherwise, neither the reception of persons, the acquisition of houses or places, nor the alienation of them or of other goods shall have force, and those acting contrary shall nevertheless incur a sentence of excommunication. We also entirely prohibit persons of those orders from the office of preaching to outsiders and hearing their confessions, or even from admitting them to burial.

§ 2. Indeed, we do not permit the present constitution to extend to the Orders of Preachers and Minors, which the manifest utility proceeding from them to the universal Church testifies to have been approved. Moreover, we wish the Orders of Hermits of Saint Augustine and of Carmelites, whose institution preceded the said General Council, to remain in a sound state.

§ 3. In addition, we grant persons of the orders to which the present constitution extends a general license to pass to the remaining approved orders, in such a way that no order shall transfer itself and its places entirely to another order, nor one convent to another convent, unless special permission of the same See concerning this has been obtained.

DE RELIGIOSIS DOMIBUS.

Non licet novum ordinem vel religionem, aut habitum novae religionis creare et assumere. Et revocati sunt ordines Mendicantium, per Papam non approbati, creati post concilium. Dominicus. — §. 1. Religiosi mendicantes, per Papam post concilium approbati et instituti non possunt aliquem ad professionem recipere, domum vel locum de novo acquirere, nec acquisita sine licentia alienare, nec extraneis praedicare, confessiones eorum audire, vel ad sepulturam admittere. Et contra factum non tenet, et contra faciens excommunicatus est. H. d. Dominicus. — §. 2. Revocatio ordinum Mendicantium Praedicatores, Minores, Eremitanos et Carmelitas non comprehendit. Hoc dicit Dominicus. — §. 3. Exsistens de ordinibus revocatis non collegi aliter, sed singulariter ad alios ordines transire potest.

H. d. Dominic.

Gregorius X. in concilio generali Lugdunensi .

Religionum diversitatem nimiam, ne confusionem induceret, generale concilium consulta prohibitione vetavit *. Sed quia non solum importuna petentium inhiatio illarum postmodum multiplicationem extorsit, verum etiam aliquorum praesumptuosa temeritas diversorum ordinum, praecipue Mendicantium, quorum nondum approbationis meruere principium, effrenatam quasi multitudinem adinvenit: repetita constitutione districtius inhibentes, ne aliquis de cetero novum ordinem aut

religionem adinveniat *, vel habitum novae religionis assumat, cunctas affatim religiones et ordines mendicantes, post dictum concilium adinventos, qui nullam confirmationem sedis apostolicae meruerunt, perpetuae prohibitioni subiicimus, et quatenus processerant revocamus. §. i. Confirmatos autem per sedem eandem, post idem tamen concilium institutos, quibus ad congruam sustentationem reditus aut possessiones habere professio sive regula * quaelibet interdicunt, sed per quaestum publicum tribuere victum solet incerta mendicitas, modo decernimus subsistere infra scripto, ut videlicet professoribus eorundem ordinum ita liceat in illis remanere, si velint, quod nullum deinceps ad eorum professionem admittant, ne de novo domum vel aliquem locum acquirant, nec domus seu loca, quae habent, alienare valeant sine sedis eiusdem licentia speciali. Nos enim ea dispositioni sedis apostolicae reservamus, in terrae sanctae subsidium, vel pauperum vel * alios pios usus per locorum ordinarios, vel eos, quibus sedes ipsa commiserit, convertenda. Si vero secus praesumptum fuerit: nec personarum receptio, nec domorum vel locorum acquisitio aut ipsorum ceterorumque bonorum alienatio valeat, et nihilominus contrarium facientes sententiam excommunicationis incurrant. Personis quoque ipsorum ordinum omnino interdicimus quoad extraneos praedicationis et audiendae confessionis officium aut * etiam sepulturam. §. 2. Sane ad Praedicatorum et Minorum ordines, quos evidens ex eis utilitas ecclesiae universali proveniens s perhibet approbatos, praesentem non patimur constitutionem extendi. Ceterum Eremitarum sancti Augustini et Carmelitarum ordines, quorum institutio dictum concilium generale praecessit, in solido statu volumus permanere. §. 3. Ad haec personis ordinum, ad quos constitutio praesens extenditur, transeundi ad reliquos ordines approbatos licentiam cedimus generalem ita, quod nullus ordo ad alium, vel conventus ad conventum se ac loca sua totaliter transferat, sedis eiusdem super hoc permissione specialiter non obtenta.;

Title XVIII: On the Chapels of Monks

Chapter I

Those instituted in the churches of monks for the cure of the people by a bishop at the monks' presentation are, if cause exists, to be removed by the same bishop. This states the point. Dominicus.

Boniface VIII.

Priests who are presented by monks to bishops for the cure of the people in the monks' churches and are instituted by the bishops, since they ought to be perpetual, cannot be removed from those churches except by the bishops and for a reasonable cause, notwithstanding any contrary custom or statute.

DE CAPELLIS MONACHORUM.

Instituti in ecclesiis monachorum ad curam populi per episcopum ad ipsorum praesentationem, per eundem, si causa subsit, sunt destituendi.

H. d. Dominicus.

Bonifacius VIII.

Presbyteri, qui ad curam populi per monachos in eorum ecclesiis praesentantur episcopis, et instituuntur ab ipsis, quum debeant esse perpetui, consuetudine vel statuto quovis contrario non obstante, ab eisdem nequeunt ecclesiis nisi per episcopos et ex causa rationabili amoveri.

Title XIX: On the Right of Patronage

Chapter I

A gift of a layman's right of patronage made to an ecclesiastical place has force even without the bishop's consent; nevertheless, it does not prejudice the bishop's right. This states the point. Dominicus. — § 1. A layman has a period of four months for presenting, but a church has six months, even if it acquired the right of patronage from a layman. This states the point. Dominicus.

Boniface VIII.

If a layman decides to confer upon a church, or upon another church or religious place, a right of patronage over the church that belongs to him, a collation of this kind is to be regarded as effectual although it was made without the bishop's assent. Nevertheless, through the aforesaid collation we do not wish any derogation to be made from the right of the bishop who did not furnish his assent to it.

§ 1. But although a lay patron has a period of only four months for presenting, a church or monastery upon which the collation of the right of patronage was made by a layman has a period of six months and, with regard to presentation, is to be regarded in every respect not as a lay patron but as an ecclesiastical patron.

> **DE IURE PATRONATUS.**
>
> Donatio iuris patronatus laici, facta loco ecclesiastico, etiam sine consensu episcopi tenet; non tamen praeiudicat iuri episcopi. H. d. Dominic. — §. 1. Laicus quadrimestre tempus habet ad praesentandum, ecclesia vero semestre, licet a laico acquisiverit ius patronatus. Hoc dicit Dominicus.
>
> Bonifacius VIII.
>
> Si laicus ius patronatus ecclesiae sibi competens eidem vel alteri ecclesiae seu loco religioso duxerit conferendum : •huiusmodi collatio, quamvis absque assensu episcopi facta fuerit, efficax est censenda, per praefatam tamen collationem iuri episcopi, qui eidem assensum non praebuit, nolumus in aliquo derogari. §. 1. Verum licet patronus laicus ad praesentandum tempus habeat quadrimestre duntaxat: ecclesia tamen vel monasterium, cui facta est a laico iuris patronatus collatio, tempus habet semestre, et omnino, quantum ad praesentationem pertinet, non ut patronus laicus, sed ut patronus debet ecclesiasticus reputari.

Title XX: On Rents, Exactions, and Procurations

Chapter I

An archbishop wishing to visit the province ought first to visit his own church, city, and diocese and their clerics and laypeople. This states the point. Dominicus. — § 1. After visiting his own diocese, the archbishop visits in part or in whole all ecclesiastical places, clergy, and people of the province, receiving a procuration from the places visited. This states the point. Dominicus. — § 2. An archbishop, after beginning visitation in one diocese and passing to another, cannot return to the first unless he begins again throughout the whole province. Dominicus. — § 3. After completing the visitation, the archbishop does not repeat it without the counsel of the suffragans and a determination first made in writing; he ought, however, to begin again with those who had not been visited in the first visitation. This states the point. Dominicus. — § 4. A visiting archbishop ought to set forth the word of God and inquire, without an oath, into the life of ministers and matters pertaining to divine worship; he shall denounce persons of ill repute to their

ordinaries and punish notorious crimes. This states the point. Dominicus. — § 5. The visitor shall receive a moderate procuration not in money but in provisions; his household cannot receive anything even under pretext of office, and neither he nor his people shall receive any gift, even if offered. This states the point. Dominicus. — § 6. The aforesaid form of visitation ought to be observed by bishops and other inferior prelates, excepting the customs of regulars. This states the point. Dominicus.

Innocent IV.

The Roman Church—(And below:) We establish that every archbishop wishing to visit his province shall first take care fully to visit the chapter of his own church and his own city and diocese, and shall be intent not only upon visitation of greater churches but also of lesser ones, and not only of clerics but also of the people. If he cannot conveniently or without difficulty approach each one, he shall endeavor to summon clerics and laypeople from several places to one suitable place, lest visitation in those places be postponed.

§ 1. He may thereafter exercise the office of visitation throughout the whole province or a part of it, freely visiting the cities and dioceses, his suffragans and their subjects, the chapters of cathedral and other churches, monasteries, churches, and other religious and pious places, the clergy, and the people, and receiving procurations only from places visited.

§ 2. But once he has begun to visit one of those dioceses, he shall never afterward, whether he has visited the whole or part of it, return to it for the purpose of visitation before all the remaining dioceses of his province that he can safely visit, in whole or in part, and his own diocese have again been visited. But if perhaps that diocese or some church there needs visitation more than the others, then, interrupting the visitation of the others, he shall return to it if he was requested by the diocesan of the place, or if this proceeded from the counsel and assent of all or the greater part of the bishops of that province. They shall show themselves disposed to this, lest the advancement of souls be neglected in any way. But if they maliciously raise a difficulty in these matters, the archbishop shall confidently petition the Apostolic See for license concerning this.

§ 3. After he has once visited all the dioceses of his province, it shall be lawful for him afterward to repeat the visitation throughout the same province according to the manner noted above, after nevertheless first requesting the counsel of his suffragans and making a determination concerning this before them—which we wish to be reduced to writing so that it can be known to others—even if the assent of those suffragans does not intervene. He shall always employ this foresight: in later visitations he shall first visit those churches and those clerics and peoples who were not visited by him in the earlier visitations, unless the office of visitation is more opportune for others.

§ 4. Indeed, one intending to perform an office of this kind shall, after setting forth the word of God, inquire into the life and conduct of those ministering in churches and other places deputed to divine worship, and into other matters pertaining to the office itself, without any compulsion or exaction of an oath. He shall diligently apply himself to their amendment through salutary admonitions, now mild, now harsh, according to the prudence given him by God. But if ill repute has arisen against any persons, he shall, if he sees fit, denounce them to their ordinaries so that the latter may solemnly inquire into these matters. Notorious crimes, however, which do not require examination, he shall freely correct by inflicting the penalty owed for them, since the negligence of those ordinaries can deservedly be noted concerning them.

§ 5. He shall receive procurations according to what is established in the canons; nevertheless, neither he nor anyone of his household shall receive any money in their name on account of any office or custom, or in any other manner, but only moderate expenses in provisions. Moreover, he shall take care that neither he nor any of his people presume to receive any gift, whatever it may be and however it is offered, so that he may appear to seek not the things that are his own, but those that are Jesus Christ's. If anything is presumed contrary to this, the recipient shall incur a curse from which he shall never be released unless he restores double. For we wish every fraud in these matters to be entirely avoided.

§ 6. We command that this form of visitation be fully observed by all persons, including bishops and other prelates visiting their subjects by ordinary right, saving reasonable and approved customs of religious and regular institutes concerning this.

DE CENSIBUS, EXACTIONIBUS ET PROCURATIONIBUS.

Archiepiscopus, volens provinciam visitare, prius debet visitare ecclesiam, civitatem et dioecesim propriam, clericos et laicos earundem. H. d. Dominicus. —• §. 1. Visitata sua dioecesi archiepiscopus in parte vel in totum visitat omnia loca ecclesiastica, clerum et populum provinciae, procurationem a visitatis recipiendo. H. d. Domin. — §. 2. Archiepiscopus, post inceptam visitationem in una dioecesi, transiens ad aliam, ad primam redire non potest, nisi de novo reiteret in tota provincia. Dominic. — §. 3. Expedita visitatione non reiterat illam archiepiscopus sine consilio suffraganeorum, et diffinitione inscriptis prius facta; debet tamen reincipere ab illis, qui in prima non fuerant visitati. H. d. Dominicus. — §. 4. Archiepiscopus visitans debet proponere verbum Dei, inquirere de vita ministrorum, et de pertinentibus ad divinum officium, absque iuramento; infamatos ordinarii denunciet, et notoria crimina puniat. H. d. Domin. — §. 5. Visitator non in pecunia, sed victualibus recipiet procurationem moderatam; nec familia sua aliquid recipere potest etiam praetextu officii, nec ipse nec sui aliquod munus, etiam oblatum, recipient. H. d. Dominicus. — §. 6. Forma visitationis praemissa servari debet in episcopis et aliis praelatis inferioribus, regularium consuetudinibus exceptis. H. d. Dominicus.

Innocentius IV.

Romana ecclesia (Et infra:) Statuimus, ut quilibet archiepiscopus, suam volens visitare provinciam, prius ecclesiae suae capitulum ac civitatem et dioecesim propriam plene visitare procuret, nec sit solum erga maiorum, sed etiam minorum ecclesiarum, nec circa clericorum tantum, sed etiam populorum visitationem intentus. Et si commode vel absque difficultate accedere ad unamquamque non poterit, de pluribus locis ad unum congruum clericos et laicos studeat convocare, ne in illis visitatio postponatur. §. i. Deinde liceat ei per totam provinciam vel eius partem visitationis officium exercere, civitates et dioeceses, suffra-ganeos suos et eorum subditos, cathedralium et aliarum ecclesiarum capitula et * monasteria, ecclesias et alia religiosa et pia loca, cleros * et populos libere visitando, ac procurationes a locis tantum recipere visitatis. §.2. Ex quo tamen aliquam de .ipsis dioecesibus visitare coeperit , nunquam postea, sive totam sive partem eius visitaverit, revertatur causa visitationis ad illam, priusquam omnes reliquae ipsius provinciae dioeceses in toto vel in parte, quas secure visitare poterit, et sua denuo fuerint visitatae. Quodsi forte eadem dioecesis vel aliqua ibi ecclesia plus aliis indiguerit visitari: tunc, aliarum visitatione intermissa, redeat ad eandem, sialoci dioecesano requisitus exstiterit, vel de omnium aut maioris partis episcoporum eiusdem provinciae processerit consilio et assensu, ad quod iidem se pronos exhibeant, ne animarum profectus aliquatenus negligatur. Si vero malitiose in his difficultatem adhibuerint, archiepiscopus licentiam super hoc a sede apostolica postulet confidenter. §. 3. Postquam autem semel omnes provinciae suae dioeceses visitaverit, licitum sit ei postea, prius tamen suffraganeorum suorum requisito consilio, et ipsius diffinitione super hoc habita coram eis, (quae in

scriptis redigi volumus, ut possint aliis esse nota,) visitationem per eandem reiterare provinciam iuxta modum superius annotatum, etiamsi non interveniat in hoc suffraganeorum ipsorum assensus, illam semper providentiam adhibendo, ut in posterioribus visitationibus illas ecclesias eosque clericos et populos prius visitet, qui non fuerant ab eo in prioribus visitati, nisi magis sit aliis visitationis officium opportunum. §. 4. Sane huiusmodi impensurus officium proposito verbo Dei quaerat de vita et conversatione ministrantium in ecclesiis et locis aliis divino cultui deputatis, ac ceteris, quae ad officium ipsum spectant, absque coactione et exactione qualibet iuramenti, ad ipsorum emendationem per salubria monita, nunc levia, nunc aspera, iuxta datam sibi a Deo prudentiam * diligenter intendens. Quodsi de aliquibus orta fuerit infamia contra eos ordinariis ipsorum, ut super his solenniter inquirant, denunciet, si viderit expedire. Notoria vero crimina, quae examinatione non egeant *, quum super his merito notari possit ordinariorum negligentia eorundem, libere corrigat, poenam pro illis debitam infligendo. §. 5. Procurationes autem recipiat, secundum quod est in canonibus constitutum; nullam tamen pecuniam ipse vel aliquis de sua familia, occasione alicuius officii aut consuetudinis, seu quolibet alio modo earum * nomine, sed in victualibus expensas tantum recipiat moderatas. Caveat insuper, ne ipse vel quisquam suorum aliquod munus, quodcunque sit et qualitercunque offeratur, praesumat recipere, ut non quae sua sunt videatur quaerere, sed quae Iesu Christi. Quodsi fuerit contra praesumptum, recipiens maledictionem incurrat, a qua nunquam, nisi duplum restituat, liberetur. Volumus enim in his fraudem quamlibet penitus evitari. §. 6. Hanc autem visitandi formam ab universis, etiam episcopis aliisque praelatis, ordinario iure suos subiectos visitantibus, plene observari praecipimus, salvis super hoc rationabilibus et approbatis religiosorum consuetudinibus et regularibus institutis.

Chapter II

Because the immediately preceding decretal of Innocent IV was not well observed in the chapter in which he commanded that procurations be received in provisions, not money, that gifts not be received, and that procurations in provisions not be received from places not visited, this decretal confirms it and adds penalties. John Andrew.

Gregory X, in the General Council of Lyons.

The audacity of the perverse requires that we not be content solely with prohibition of offenses, but also impose a penalty upon offenders. Therefore, wishing that the constitution of Pope Innocent IV, our predecessor of happy memory, issued concerning procurations not being received in money and prohibiting visitors and their households from receiving gifts—a constitution that the temerity of many is reported to transgress—be inviolably observed, we decree that it is to be aided by the addition of a penalty. We establish that each and every person who presumes, on account of a procuration owed to him by reason of visitation, to exact money or even receive it from one willing to give, or otherwise to violate the constitution itself by receiving gifts, or by receiving a procuration in provisions or anything else on account of a procuration when the office of visitation has not been performed, is bound within one month to return double what he received to the church from which it was received. Otherwise, from that time patriarchs, archbishops, and bishops who defer restoring that double beyond the aforesaid time shall feel entry into a church interdicted to them. Inferiors shall know themselves suspended from office and benefice until they render full satisfaction concerning such double to the burdened churches, no remission, liberality, or grace of those giving having force for them in this matter.

Quia decretalis Innocentii IV. supra proximo non bene servabatur in illo capitulo, quo praeceperat, procurationes in victualibus, non in pecunia recipi, et non recipi munera, nec etiam procurationes in

victualibus a locis non visitatis; illam confirmat, poenas adiiciens. Ioann. Andr.

Gregorius X. in generali concilio Lugdunensi .

Exigit perversorum audacia, ut non simus sola delictorum prohibitione contenti, sed etiam poenam delinquentibus imponamus. Constitutionem itaque felicis recordationis Innocentii Papae IV. praedecessoris nostri, editam super non recipiendis in pecunia procurationibus, ac super receptione munerum visitantibus eorumque familiaribus * interdicta, quam multorum fertur temeritas praeterire, volentes inviolabiliter observari, eam decernimus poenae ad-iectione iuvandam, statuentes, ut universi et singuli, qui ob procurationem sibi ratione visitationis debitam exigere pecuniam, vel etiam a volente recipere, vel alias constitutionem ipsam recipiendo munera, sive, visitationis officio non impenso, procurationem in victualibus, aut aliquid aliud procurationis occasione violare praesumpserint, duplum eius, quod receperint, ecclesiae, a qua id receptum fuerit, infra mensem reddere teneantur. Alioquin extunc patriarchae, archiepiscopi, episcopi duplum ipsum ultra & praedictum tempus restituere differentes, ingressum sibi ecclesiae sentiant * interdictum; inferiores vero ab officio et beneficio noverint se suspensos, quousque de duplo huiusmodi gravatis ecclesiis plenariam satisfactionem impendant, nulla eis in hoc dantium remissione, liberalitate seu gratia valitura.

Chapter III

A visitor can receive a procuration in money when those visited are willing, but in one day he shall not receive more than one procuration, although he visits several places. This states the point. Dominicus.

Boniface VIII.

Pope Gregory X of happy memory, our predecessor, prohibited in the Council of Lyons anyone from presuming to exact money on account of a procuration owed to him by reason of visitation, or even from receiving it from one willing to give. But because experience of affairs has instructed us that many harmful inconveniences arise from this both for persons visiting and for places and churches visited, we grant that patriarchs, archbishops, bishops, and others to whom it belongs by office to visit may lawfully receive money from willing rectors or persons of the churches and places visited for moderate expenses to be made in provisions on the days on which they personally exercise the office of visitation. We add that it shall not be lawful for a visitor to receive more than one procuration in one day, whether he visits only one place or several, even if every place visited by him would suffice to pay a full procuration, since it ought to suffice for him that he reap temporal things from the places personally visited for the days on which he supplies them with spiritual things. We wish the other provisions contained in the constitution of the same predecessor to endure in their force.

Visitator recipere potest procurationem in pecunia, volentibus visitatis; sed una die ultra unam procurationem non recipiet, licet plura visitaverit loca.

H. d. Dominicus.

Bonifacius VIII.

Felicis recordationis Gregorius Papa X. praedecessor noster prohibuit in concilio Lugdunensi, ne aliqui ob procurationem sibi ratione visitationis debitam exigere pecuniam praesumerent, vel etiam recipere a volente. Verum quoniam rerum experientia nos instruxit, ex hoc tam personis visitantibus quam locis et ecclesiis visitatis multa incommodorum dispendia provenire: concedimus, ut patriarchae archiepiscopi, episcopi et alii, quibus ex officio competit visitare, a volentibus ecclesiarum et locorum visitatorum rectoribus seu personis pecuniam licite recipere valeant pro sumptibus moderatis faciendis in victualibus, diebus, quibus visitationis officium personaliter exercebunt, adiicientes, quod non liceat

visitanti nisi unam procurationem recipere una die, sive unum locum solum visitaverit sive plura, etiamsi locus quilibet visitatis ab illo sufficeret ad procurationem integram persolvendam; quum eidem sufficere debeat, ut temporalia metat a locis personaliter visitatis pro diebus, quibus eius spiritualia subministrat. Cetera vero, in eiusdem praedecessoris constitutione contenta, in suo volumus robore perdurare.

Chapter IV

If a community or individual person compels churches or ecclesiastical persons to pay tolls, conduct fees, or exactions for their persons or for their property that they are not carrying for trade, the individuals are excommunicated and the community is interdicted; a contrary custom does not benefit them. The final Clementine in this title adds that diocesan bishops who establish that any persons incurred these sentences ought to publish their names and cause the sentences to be observed, in the same title, "By the present." John Andrew.

The same.

Although exactions of tolls are as a rule deservedly condemned by both canon and civil law, nevertheless it is necessary to prohibit such things from being exacted from churches and ecclesiastical persons all the more strictly because, if this is done, guilt for a greater transgression is thereby incurred and a more manifest offense is proved. Since, therefore, churches, ecclesiastical persons, and their property are immune from the exactions of secular persons not only by human law but indeed by divine law, we wish to assist by the aid of a penalty, on account of the insolence and abuse of many, the constitution of Pope Alexander IV, our predecessor of happy memory, who established that churches and ecclesiastical persons are entirely not bound to tolls and conduct fees, nor to render or pay such things for their own property that they do not carry, cause to be carried, or transmit for the sake of trade.

We add, by strictly prohibiting—any contrary custom of any persons whatsoever, which is more truly to be called a corruption, notwithstanding—that neither a college, community, nor any individual person, of whatever dignity, condition, or status, shall personally or through another, in his own name or another's, exact or extort such things from the aforesaid churches or persons for those persons themselves or the aforesaid property, or compel them to pay such things. Those who act contrary, if they are individual persons, shall by the fact itself incur sentences of excommunication; but if they are a college or community of a city, town, or any other place, the city, town, or place itself shall incur a sentence of interdict. They shall not obtain absolution from such excommunication or relaxation of the interdict until they have fully restored what was exacted and made suitable satisfaction for the transgression.

Si universitas vel singularis persona ecclesias vel ecclesiasticas personas compulerit solvere pedagia, vel guidagia, vel exactiones pro rebus suis, quas causa negotiationis non deferunt, vel pro personis: singulares sunt excommunicati, et universitas interdicta, nec prodest contraria consuetudo. Clem. ult. hoc. addit, quod dioecesani, quibus constat, aliquos has sententias incidisse, illos publicare debent, et ipsas sententias facere observari, eod. tit. Praesenti. Ioann. Andr.

Idem.

Quanquam pedagiorum exactiones tam iure canonico quam civili regulariter merito sint damnatae: tanto tamen districtius, ne ab ecclesiis et personis ecclesiasticis talia exigantur, prohiberi oportet, quanto, si id fiat, maioris inde transgressionis reatus incurritur, et offensa evidentior comprobatur.

Quum igitur ecclesiae, ecclesiasticaeque personae ac res ipsarum non solum iure humano, quin immo et divino, a saecularium personarum exactionibus sint im-munes: constitutionem felicis recordationis Alexandri Papae IV. praedecessoris nostri , qui statuit, ecclesias et personas ecclesiasticas ad pedagia et guidagia penitus non teneri, nec ad exhibendum vel solvendum talia pro rebus suis propriis, quas non causa negotiandi deferunt vel deferri faciunt seu transmittunt, volentes propter multorum insolentiam et abusum poenae adminiculo adiuvare, adiicimus districtius inhibendo, (contraria consuetudine quorumcunque, quae dicenda est corruptela verius, non obstante,) ut nec collegium nec universitas, nec aliqua etiam singularis persona, cuiuscunque sit dignitatis, conditionis aut status, a praefatis ecclesiis aut personis pro personis ipsis aut rebus praedictis talia exigat vel extorqueat per se vel per alium, suo nomine vel etiam alieno, aut eas ad huiusmodi persolvenda compellat. Qui vero contra fecerint, si personae fuerint singulares, excommunicationis, si autem collegium vel universitas civitatis, castri seu loci alterius cuiuscunque, ipsa civitas, castrum vel locus interdicti sententias ipso facto incurrant, nec ab excommunicatione huiusmodi absolutionem vel interdicti relaxationem obtineant, donec exacta plenarie restituerint, et de transgressione satisfecerint competenter.

Chapter V

An archbishop can visit the province and also repeat the visitation although the suffragans are not negligent, and then hear everyone's confessions, absolve them, and impose penances. This states the point. Dominicus.

The same.

By a perpetual edict we declare that an archbishop can freely visit his province according to the tenor of the constitution of Pope Innocent IV, our predecessor of happy memory, issued concerning this, although his suffragans are not negligent; repeat the same visitation; and receive procurations from places visited, notwithstanding any custom contrary to the foregoing that is perhaps alleged by the suffragans themselves or by others. The same archbishop can also, while he visits, hear the confessions of the suffragans' subjects, absolve those confessing, and enjoin salutary penances upon them.

Archiepiscopus visitare potest provinciam ac etiam iterare, licet suffraganei non sint negligentes, et tunc confessiones omnium audire, absolvere, et poenitentias imponere. H. d. Domin.

I d e m .

Perpetuo declaramus edicto, archiepiscopum posse secundum tenorem constitutionis felicis recordationis Innocentii Papae IV. praedecessoris nostri super hoc editae suam provinciam visitare libere, licet non sint eius suffraganei negligentes, et iterare visitationem eandem, ac procurationes a locis recipere visitatis, consuetudine, si qua forsan ab ipsis suffraganeis vel ab aliis allegetur, praemissis contraria non obstante. Potest etiam idem archiepiscopus, dum visitat, confessiones subditorum suffraganeorum audire, ac absolvere confitentes, et ipsis poenitentias iniungere salutares.

Title XXI: On the Consecration of a Church or Altar

Chapter I

When a church is polluted, a cemetery contiguous to it is polluted, but not a remote one. Pollution of a cemetery does not pollute the church, although it is contiguous. When one cemetery is polluted, another contiguous to it is not polluted, although entrance from one to the other is provided through a gate. This states the point. Dominicus.

Boniface VIII.

If it happens that a church is polluted by the shedding of blood or semen, its cemetery, if contiguous to it, is regarded as polluted. Hence no one ought to be buried in it before it has been reconciled; it is otherwise if it is remote from the church. Nor in the converse case do we judge that, when a cemetery is polluted, a church ought to be regarded as polluted although it is contiguous to it, lest the less worthy appear to draw the greater, or the accessory the principal, to itself. Those that, although adjoining one another, are nevertheless separated by an intervening wall are known to be not one but several cemeteries. Therefore, if one of them is violated, the other will not on that account be regarded as violated, although access is had from one to the other through an intervening gate.

> **DE CONSECRATIONE ECCLESIAE VEL ALTARIS.**
>
> Polluta ecclesia pollutum est coemeterium illi contiguum, sed non remotum. Pollutio coemeterii ecclesiam non polluit, licet contigua exsistat. Polluto uno coemeterio aliud illi contiguum pollutum non est, licet per portam de uno in aliud detur ingressus. Hoc dicit. Dominicus.
>
> Bonifacius VIII.
>
> Si ecclesiam pollui sanguinis aut seminis effusione contingat: ipsius coemeterium, si contiguum sit eidem, censetur esse pollutum. Unde, antequam reconciliatum fuerit, non debet in eo aliquis sepeliri; secus, si remotum fuerit ab eadem. Non sic quoque in casu converso sentimus, ut videlicet polluto coemeterio, quamvis ecclesiae contiguo, debeat ecclesia reputari polluta, ne minus dignum maius, aut accessorium principale ad se trahere videatur. Non unum, sed plura coemeteria esse noscuntur, quae, quamvis sibi cohaerentia, pariete tamen medio seiunguntur . Ideoque, violato eorum altero, alterum, licet de uno ad «aliud per portam intermediam habeatur accessus, non propter hoc reputabitur violatum.

Title XXII: On Relics and the Veneration of Saints

Chapter I

The feasts of the twelve Apostles, the four Evangelists, and the four Doctors and Confessors of the Church—namely Gregory, Augustine, Ambrose, and Jerome—ought to be solemnly celebrated with a double office. John Andrew.

Boniface VIII.

God, glorious in his saints and wonderful in majesty, whose ineffable depth of wisdom, enclosed by no bounds and comprehended by no limits, disposes things heavenly and earthly alike by the rule of right judgment, although he magnifies all his ministers, adorns them with high honors, and makes them possessors of heavenly beatitude, nevertheless, so that he may render worthy things to the worthy, exalts with stronger insignia of dignities and pursues with a more abundant recompense of rewards those whom he recognizes as more worthy and whom a greater excellence of merits commends.

So too holy mother Church, pursuing his sacred footprints and led by a praiseworthy example, although she does not cease to honor with solicitous endeavors and extol with resonant praises all those established in the heavenly kingdoms, nevertheless arranges to extol with the highest voices, resound with special praises, and venerate with special honors the most glorious princes of the Christian faith, the chosen athletes of God, the just judges of the age, the true lights of the world—namely the Apostles of Christ the Redeemer, contained in the number twelve, who, living in the

flesh, planted the aforesaid Church with their precious blood, sublimely erecting her and directing her by most holy teachings; also the most reverend fathers and most illustrious men, the four Evangelists of the Lord, through whose most diligent and faithful endeavors the sacred Gospels shone upon that Church; and likewise the eminent Doctors of the Church herself, blessed Gregory, illustrious in merits, who bore the care of the Apostolic See, Augustine and Ambrose, venerable prelates, and Jerome, adorned with the title of priesthood, exceptional confessors.

For the luminous and salutary teachings of these Doctors illuminated the aforesaid Church, adorned her with virtues, and formed her in morals. Moreover, through them, as through luminous and burning lamps placed upon a lampstand in the house of the Lord, with the darkness of errors driven away, the whole body of the Church shines like the morning star. Their fertile eloquence also, with the grace of heavenly irrigation flowing in, unlocks the enigmas of the Scriptures, unties knots, elucidates obscure things, and explains doubtful things. By their profound and beautiful discourses, too, the vast fabric of the Church herself shines like blossoming gems, and, raised more gloriously by a singular elegance of words, gleams.

Therefore, the circumspect prudence of the said See, intent upon salutary acts and devoted to works of piety, willingly and skillfully executes the things that are God's. Carefully and worthily considering the foregoing and examining it with due meditation, for the honor and glory of the divine name, the exaltation of the Catholic faith, and the salvation of the faithful, it has deservedly judged and duly provided that the same Apostles, Evangelists, and Confessors be exalted throughout the universal Church by observances of greater honor, so that they may perceive themselves honored by her all the more earnestly, the more excellently they illuminated her above others.

We therefore, led by pious counsels and aroused by worthy endeavors, intending carefully to imitate certain of our predecessors, Roman Pontiffs who, pursuing an affection of special devotion, ordained that the feasts of certain saints be celebrated with a double office, with the counsel and assent of our brothers wish, establish, and command that the principal festivities of the same Apostles, Evangelists, and Confessors be solemnly celebrated with a double office each year in perpetuity throughout all the churches of the world.

> **DE RELIQUIIS ET VENERATIONE SANCTORUM.**
>
> Festa duodecim Apostolorum, quatuor Evangelistarum, et quatuor Doctorum et Confessorum ecclesiae, scilicet Gregorii, Augustini, Ambrosii et Hieronymi, sub officio duplici debent solenniter celebrari. Ioann. Andr.
>
> Bonifacius VIII.
>
> Gloriosus Deus in sanctis suis et in maiestate mirabilis, cuius ineffabilis altitudo prudentiae , nullis inclusa limitibus, nullis terminis comprehensa, recti censura iudicii coelestia pariter et terrena disponit, etsi cunctos eius ministros magnificet, altis decoret honoribus, et coelestis efficiat beatitudinis possessores: illos tamen,ut dignis digna rependat,potioribus attollit insigniis dignitatum, et praemiorum uberiori retributione prosequitur, quos digniores agnoscit, et commendat ingentior excellentia meritorum. Sic et alma mater ecclesia, eius sacra vestigia prosequens, et exemplo ducta laudabili, licet universos in regnis coelestibus constitutos studiis honorare sollicitis, et sonoris efferre praeconiis non desistat, gloriosissimos tamen Christianae fidei principes, athletas Dei electos, iustos saeculi iudices, lumina vera mundi, videlicet Christi redemptoris Apostolos numero duodeno contentos, qui, viventes in carne, praedictam ecclesiam suo pretioso sanguine plantaverunt, ipsam erigendo sublimiter et

disciplinis sanctissimis dirigendo, reverendissimos etiam patres virosque clarissimos quatuor Evangelistas Domini, per quorum diligentissima et fidelissima studia eidem ecclesiae sacra evangelia illuxerunt, egregios quoque ipsius Doctores ecclesiae, beatos Gregorium, qui meritis inclytus sedis apostolicae curam gessit, Augustinum et Ambrosium, venerandos antistites, ac Hieronymum, sacerdotii praeditum titulo, eximios confessores summis attollere vocibus, laudibus personare praecipuis, et specialibus disponit honoribus venerari. Horum quippe doctorum perlucida * et salutaria documenta praedictam illustrarunt ecclesiam, decorarunt virtutibus, et moribus informarunt. Per ipsos praeterea, quasi luminosas ardentesque lucernas super candelabrum in domo Domini positas, errorum tenebris profugatis, totius corpus ecclesiae tanquam sidus irradiat matutinum. Eorum etiam foecunda facundia, coelestis irrigui gratia influente, scripturarum aenigmata reserat, solvit nodos, obscura dilucidat, dubiaque declarat; profundis quoque ac decoris illorum sermonibus ampla ipsius ecclesiae fabrica, velut gemmis vernantibus, rutilat, et verborum elegantia singulari gloriosius sublimata coruscat. Ideoque circumspecta prudentia dictae sedis, quae, actibus intenta salubribus et operibus exposita pietatis, libenter et sollerter exsequitur quae sunt Dei, praemissa sollicite digneque considerans, et debita meditatione perlustrans, ad divini nominis honorem et gloriam, exaltationem catholicae fidei, salutemque fidelium, merito censuit riteque providit, Apostolos, Evangelistas et Confessores eosdem in universali ecclesia honorificentiae potioris impendiis attollendos, ut ab ea tanto propensius honorari se sentiant, quanto ipsam prae ceteris excellentius illustrarunt. Nos itaque, piis ducti consiliis dignisque studiis excitati, nonnullos praedecessores nostros Romanorum Pontificum, qui, specialis devotionis prosequentes affectum, aliquorum festa sanctorum sub duplici ordinaverunt officio celebranda, imitari sollicite intendentes, eorundem Apostolorum, Evangelistarum et Confessorum festivitates praecipuas de fratrum nostrorum consilio et assensu sub officio duplici per universas orbis ecclesias volumus, statuimus et praecipimus annis singulis perpetuis futuris temporibus solenniter celebrari.

Title XXIII: On the Immunity of Churches, Cemeteries, and Other Religious Places

Chapter I

Secular powers shall not presume to exact tallages or exactions from churches or ecclesiastical persons for property or possessions acquired or to be acquired, nor compel them to sell or place those things outside their ownership. This states the point. John Andrew.

Alexander IV.

Because certain persons who possess temporal lordship or bear the office of secular power endeavor to harm and diminish ecclesiastical liberty and immunity, as though envious of the honor and privilege of churches, it is expedient that, through the diligence and authority of the Apostolic See, which has the care and protection of all churches, a suitable remedy be applied against the daring and endeavors of such persons, so that the churches themselves may rejoice in the fullness of their right and the integrity of their liberty, and the detestable audacity of the wicked and the impious temerity of the insolent may be driven back.

Indeed, we have understood that in the Kingdom of France the communes, aldermen or consuls, and other temporal lords, and those who exercise temporal jurisdiction in those communes, cities, towns, and villages, or to whom execution of secular justice is committed in them, are excessively troublesome and hostile to churches in many matters. Among other things, they endeavor and strive that those same churches render and pay to them assessments, tallages, and other things of this kind

under pretext of goods that they have acquired, or that they place acquisitions of this kind outside their ownership.

Wishing, therefore, to provide carefully concerning all these things as is expedient, and to oppose so many rash attempts with suitable safeguards, by apostolic authority, after diligent deliberation previously held with our brothers, we decree that it is not lawful for the aforesaid communes, aldermen, and those who possess temporal jurisdiction or exercise temporal justice in them to impose tallages, assessments, or any exactions whatsoever upon churches or ecclesiastical persons, or exact them from those persons for houses, estates, or any possessions lawfully acquired hitherto or to be acquired in the future by those churches or ecclesiastical persons, even if those churches, persons, or things are situated within their district or territory. Nor shall it be lawful for them in any way to constrain those churches or persons to sell, alienate, or place outside their ownership things already acquired or those that they shall hereafter acquire.

> **DE IMMUNITATE ECCLESIARUM, COEMETERIORUM ET ALIORUM LOCORUM RELIGIOSORUM.**
>
> Saeculares potestates ab ecclesiis vel ecclesiasticis personis tallias vel exactiones pro rebus vel possessionibus acquisitis vel acquirendis exigere non praesumant, nec eas compellere ad ipsas distrahendum, vel extra manum suam ponendum. H. d. Ioann. Andr.
>
> Alexander IV.
>
> Quia nonnulli, habentes temporale dominium, vel potestatis gerentes officium saecularis, libertatem et immunitatem ecclesiasticam laedere ac minuere tanquam honoris et privilegii ecclesiarum invidi moliuntur: expedit, quod per diligentiam et auctoritatem sedis apostolicae, quae curam habet ecclesiarum omnium et tutelam, contra talium ausus et conamina opportunum remedium apponatur, ut ecclesiae ipsae in plenitudine iuris sui et libertatis integritate laetentur, ac detestabilis malignorum audacia et insolentium nefaria temeritas propulsetur. Sane intelleximus, quod in regno Franciae communiae, scabini seu consules et alii domini temporales, et ii, qui iurisdictionem in ipsis communiis, civitatibus , castris et villis temporalem exercent, vel quibus in illis commissa est exsecutio iustitiae saecularis, molesti sunt nimium ecclesiis super pluribus et infesti, et inter cetera nituntur et student, ut illis collectas et * tallias et alia huiusmodi eaedem ecclesiae praetextu bonorum, quae acquisiverunt, tribuant et persolvant, vel extra manum suam ponant huiusmodi aequisjtas. Volentes itaque super his omnibus, prout expedit, sollicite providere, totque temerariis ausibus congruis praesidiis obviare, auctoritate apostolica praehabita cum fratribus nostris diligenti deliberatione decernimus , non licere praefatis communiis, scabinis, et iis, qui in eis iurisdictionem temporalem obtinent vel iustitiam temporalem * exercent , tallias, vel collectas seu exactiones quascunque ecclesiis vel ' personis ecclesiasticis imponere, vel exigere ab eisdem pro domibus, praediis vel quibuscunque possessionibus, ab eisdem ecclesiis vel personis ecclesiasticis legitime hactenus acquisitis vel in posterum acquirendis, etiamsi ipsae ecclesiae vel personae vel res huiusmodi sint infra illorum districtum vel territorium constitutae. Nec etiam liceat illis, ipsas ecclesias vel personas ad distrahendum vel alienandum, aut extra manum suam ponendum acquisita iam, vel quae deinceps acquirent, aliquatenus coarctare .

Chapter II

Churches ought to be entered humbly and prayer pursued there, with shouting and seditions, councils of lay communities and their public parliaments, vain conversations, business dealings, fairs, and secular judgments—especially criminal ones—excluded. This states the point as far as § "The ordinaries." Dominicus. — § 1. Ordinaries

of places ought to execute what is contained here; judgments held in churches are null, and those acting contrary are to be punished. This states the point. Dominicus.

Gregory X, in the General Council of Lyons.

Holiness befits the house of the Lord; it is fitting that the worship of him whose place was made in peace be peaceful with due veneration. Therefore, let entry into churches be humble and devout, and conduct in them quiet, pleasing to God and agreeable to those observing it, so that, when they consider it, it may not only instruct but also refresh them. Those assembling there shall exalt, by the exhibition of special reverence, that name which is above every name, other than which no name under heaven has been given to men in which those believing must be saved—namely, the name of Jesus Christ, who will save his people from their sins. Individually fulfilling in themselves what is written generally, that at the name of Jesus every knee should bend, especially while the sacred ministries of Masses are being performed, whenever that glorious name is recalled they shall bend the knees of their hearts, which they shall attest at least by an inclination of the head.

Let sacred solemnities be attended to in the same places with intent hearts; let devout prayers be pursued. Let no one in those places, in which it is fitting that vows be celebrated with peace and quiet, stir up sedition, raise a clamor, or commit an assault. Let councils, assemblies, and public parliaments of any communities and associations cease in those places. Let vain conversations, and much more shameful and profane conversations, cease; let all idle talk cease. Finally, let all other things that can disturb divine worship or offend the eyes of the divine majesty be entirely foreign to those places, lest an occasion of sinning be given, or sins be found to be committed, where pardon for sins is to be sought. Let business dealings cease in churches and their cemeteries, and especially the tumult of fairs and of any market. Let all din of secular judgments be still in them. Let no cause, especially a criminal one, be conducted there by laymen; let the same places be foreign to the judicial cognizance of laymen.

§ 1. The ordinaries of places shall cause this to be observed, shall counsel the things to be counseled, and by authority of this canon shall restrain the things prohibited, appointing for this even others who are more regularly present in the churches themselves and suitable for the foregoing. Nevertheless, the proceedings of secular judges, and especially judgments pronounced in the same places, shall lack every strength of validity. Those who with a wanton spirit contemn the foregoing prohibitions will be able, in addition to the proceeding of the ordinaries and persons appointed by them, to fear the severity of divine vengeance and ours until, having confessed their guilt, they resolve with firm purpose to abstain from similar acts.

> In ecclesiis dato humili ingressu debet orationibus insisti, exclusis clamoribus et seditionibus, conciliis universitatis laicorum, et eorum publicis parlamentis, vanis colloquiis, negotiationibus, et nundinis ac iudiciis saecularibus, et maxime criminalibus. H. d. usque ad §. Ordinarii. Dominicus. — §. 1. Locorum ordinarii exsequi debent hic contenta; et sententiae, in ecclesiis habitae, sunt nullae, et contra facientes puniri debent. H. d. Dominicus.
>
> Gregorius X. in generali concilio Lugdunensi .
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> Decet domum Domini sanctitudo, decet, ut, cuius in pace factus est locus, eius cultus sit cum' debita veneratione pacificus. Sit itaque ad ecclesias humilis et devotus ingressus, sit in eis quieta conversatio, Deo grata, inspicientibus placita *, quae considerantes non solum instruat, sed et reficiat. Convenientes ibidem nomen illud, quod est super omne nomen, a quo aliud sub coelo non est datum hominibus, in

quo salvos fieri credentes oporteat, nomen videlicet Iesu Christi, qui salvum faciet populum suum a peccatis eorum, exhibitione reverentiae specialis attollant, et, quod generaliter scribitur, ut in nomine Iesu omne genu flectatur, singuli singulariter in se ipsis implentes, praecipue dum aguntur missarum sacra ministeria *, gloriosum illud nomen quandocunque recolitur, flectant genua cordis sui, quod vel capitis inclinatione testentur *. Attendantur in locis eisdem intentis praecordiis sacra solennia, devotis * orationibus insistatur *. Nullus in locis eisdem, in quibus cum pace ac quiete vota convenit celebrari, seditionem excitet, conclamationem moveat impetumve committat. Cessent in locis * illis universitatum et societatum quarumlibet concilia, conciones et publica parlamenta. Cessent vana et multo fortius foeda et profana colloquia, cessent confabulationes quaelibet. Sint postremo quaecunque alia, quae divinum possunt turbare officium, aut oculos divinae maiestatis offendere , ab ipsis prorsus extranea, ne, ubi peccatorum est venia postulanda, ibi peccandi detur occasio, aut deprehendantur peccata committi. Cessent in ecclesiis earumque coemeteriis negotiationes , et praecipue nundinarum ac fori cuiuscunque tumultus. Omnis in eis saecularium iudiciorum strepitus conquiescat. Nulla inibi causa per laicos, criminalis maxime, agitetur; sint loca eadem a laicorum cognitionibus aliena. §. i. Ordinarii locorum hoc faciant observari, suadenda suadeant, interdicta huius canonis auctoritate compescant, ad hoc alios etiam in ecclesiis ipsis magis assiduos et ad praemissa idoneos deputando. Et nihilominus processus iudicum saecularium, ac specialiter prolatae sententiae in eisdem locis omni careant robore firmitatis. Qui vero praemissas inhibitiones animo petulanti contempserint, praeter processum ordinariorum et deputandorum ab ipsis, divinae ultionis et nostrae poterunt acrimoniam formidare, donec suum confessi reatum a similibus firmato proposito deliberaverint abstinere.

Chapter III

It sets forth the excesses of laymen who imposed assessments, tallages, and burdens upon clerics, and the excesses of clerics who consented to such things. — § 1. It commands that ecclesiastical persons ought to pay nothing to laymen for their own property or that of churches without license of the Apostolic See, under any pretext of a loan, subvention, gift, or any other; likewise, that the laymen themselves neither exact nor receive tallages nor occupy in any manner things deposited by churches or ecclesiastical persons. It excommunicates individuals acting contrary and interdicts communities. These penalties apply to promises made even before this constitution if payment or receipt occurs afterward; the Pope alone absolves from these sentences, except at the point of death. This states the point. — § 2. It quashes and invalidates all privileges derogating from this constitution.

Boniface VIII.

Antiquity relates that laymen are exceedingly hostile to clerics, a fact that the experiences of the present times also manifestly declare. Not content with their own limits, they strive toward what is forbidden, loosen the reins toward unlawful things, and do not prudently consider how power over clerics or ecclesiastical persons and goods is forbidden to them. They impose grave burdens upon prelates of churches, churches, and ecclesiastical persons, regular and secular; impose tallages and assessments upon them; exact and extort from them a half, tenth, twentieth, or any other portion or quota of their revenues or goods; and endeavor in many ways to subject them to servitude and submit them to their dominion. And, what we report with sorrow, certain prelates of churches and ecclesiastical persons, trembling where there is no cause to tremble, seeking transitory peace, and fearing more to offend the temporal majesty than the eternal, acquiesce in such abuses not so much rashly as improvidently, without authority or license of the Apostolic See having been obtained.

§ 1. We therefore, wishing to oppose such wicked acts, with the counsel of our brothers establish by apostolic authority that any prelates and ecclesiastical persons, religious or secular, of whatever

orders, condition, or status, who, without authority of the same See, pay or promise to laymen assessments or tallages, a tenth, twentieth, or hundredth of their own or their churches' revenues or goods, or consent that they will pay them, or pay or promise any other quantity, portion, or quota of those revenues or goods or of their valuation or value under the name of assistance, loan, subvention, subsidy, or gift, or under any other title, manner, or devised pretext, shall by the fact itself incur a sentence of excommunication.

Likewise, emperors, kings or princes, dukes, counts or barons; magistrates, captains, officials, or rectors, by whatever name they are designated, of cities, towns, or any places whatsoever situated anywhere; and any others of whatever preeminence, condition, or status, who impose, exact, or receive such things, or presume anywhere to arrest, seize, or occupy things of churches or ecclesiastical persons deposited in sacred buildings, or command them to be arrested, seized, or occupied, or receive things occupied, seized, or arrested, as well as all who knowingly give aid, counsel, or favor in the foregoing, publicly or secretly, shall by the fact itself incur a sentence of excommunication. We also place communities that are culpable in these matters under ecclesiastical interdict.

We strictly command the aforesaid prelates and ecclesiastical persons, in virtue of obedience and under penalty of deposition, that without the express license of the said See they shall in no way acquiesce in such things, and that under pretext of any obligation, promise, or acknowledgment hitherto made or to be made hereafter—before a constitution, prohibition, or precept of this kind has come to their knowledge—they shall pay nothing, nor shall the aforesaid secular persons receive anything. If they pay or the aforesaid persons receive, they shall by the fact itself incur a sentence of excommunication. No one shall be able to be absolved from the aforesaid sentences of excommunication and interdict, except at the point of death, without authority and special license of the Apostolic See, since it is our intention in no way to pass over under dissimulation so horrible an abuse of secular powers.

§ 2. Notwithstanding any privileges granted to emperors, kings, and the other aforesaid persons under any tenors, forms, manners, or conceptions of words whatsoever, which we do not wish to assist any person or persons in anything contrary to the foregoing.

> Ponit excessus laicorum, qui clericis collectas, tallia et onera imponebant, et excessus clericorum, qui talibus consentiebant. — §. 1. Praecipit, personas ecclesiasticas pro rebus suis vel ecclesiarum nil laicis solvere debere absque licentia apostolicae sedis, sub quocunque colore mutui, subventionis, doni vel alio quolibet, ut etiam ipsi laici tallias non exigant vel recipiant, nec occupent quocunque modo deposita ecclesiarum vel personarum ecclesiasticarum; singulares contra facientes excommunicat, universitates interdicit. Quae poenae locum habeant in promissionibus, factis etiam ante hanc constitutionem, si postmodum solvantur vel recipiantur, et ab his sententiis solus Papa absolvit, praeterquam in mortis articulo. Hoc dicit. — §. 2. Omnia privilegia derogantia huic constitutioni cassat et irritat.
>
> Bonifacius VIII.
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> Clericis laicos infestos oppido tradit antiquitas, quod et praesentium experimenta temporum manifeste declarant, dum suis finibus non contenti nituntur in vetitum, ad illicita frena relaxant, nec prudenter attendunt, quam sit eis in clericos ecclesiasticasve personas et bona interdicta potestas, ecclesiarum praelatis, ecclesiis, ecclesiasticisque personis regularibus et saecularibus imponunt onera gravia,

ipsosque talliant, et eis collectas imponunt, ab ipsis suorum proventuum vel bonorum dimidiam decimam, seu vicesimam, vel quamvis aliam portionem aut quotam exigunt et extorquent, eosque moliuntur multifarie subiicere servituti, sUaeque submittere ditioni, et, (quod dolenter referimus,) nonnulli ecclesiarum praelati ecclesiasticaeque personae, trepidantes ubi trepidandum non est, transitoriam pacem quaerentes, plus timentes maiestatem temporalem offendere quam aeternam, talium abusibus non tam temerarie quam improvide acquiescunt, sedis apostolicae auctoritate seu licentia non obtenta. §. i. Nos igitur, talibus iniquis actibus obviare volentes, de fratrum nostrorum consilio apostolica auctoritate statuimus, quod, quicunque praelati ecclesiasticaeque personae, religiosae vel saeculares quorumcunque ordinum, conditionis seu status , collectas vel tallias, decimam, vicesimam seu centesimam suorum et ecclesiarum proventuum vel bonorum laicis solverint vel promiserint, vel se soluturos consenserint, aut quamvis aliam quantitatem, portionem aut quotam ipsorum proventuum vel bonorum aestimationis vel valoris ipsorum, sub adiutorii, mutui, subventionis, subsidii vel doni nomine, seu quovis alio titulo, modo vel quaesito colore absque auctoritate sedis eiusdem, nec non imperatores, reges seu principes, duces, comites vel barones, potestates, capitanei, vel * officiales vel rectores, quocunque nomine censeantur, civitatum, castrorum seu quorumcunque locorum, constitutorum ubilibet, et quivis alii cuiuscunque prae eminentiae, conditionis et status, qui talia imposuerint, exegerint vel receperint, aut apud aedes sacras deposita ecclesiarum vel ecclesiasticarum personarum ubilibet arrestaverint, saisi-verint seu occupare praesumpserint, vel arrestari, saisiri aut occupari mandaverint, aut occupata, saisita seu arrestata receperint, nec non omnes, qui scienter dederint in praedictis auxilium, consilium vel favorem publice vel occulte, eo ipso sententiam excommunicationis incurrant. Universitates quoque, quae in his culpabiles fuerint, ecclesiastico supponimus interdicto, praelatis et personis ecclesiasticis supra dictis in virtute obedientiae, et sub depositionis poena districte mandantes, ut talibus absque expressa licentia dictae sedis nullatenus acquiescant, quodque praetextu cuiuscunque obligationis , promissionis et confessionis , factarum hactenus vel faciendarum in antea, priusquam huiusmodi constitutio, prohibitio seu praeceptum ad notitiam ipsorum pervenerint, nil solvant, nec supra dicti saeculares quoquo modo recipiant. Et si solverint, vel praedicti receperint, excommunicationis sententiam incidant ipso facto. A supra dictis autem excommunicationum et interdicti sententiis nullus absolvi valeat, praeterquam in mortis articulo, absque sedis apostolicae auctoritate et licentia speciali, quum nostrae intentionis exsistat, tam horrendum saecularium potestatum abusum nullatenus sub dissimulatione transire. §. 2. Non obstantibus quibuscunque privilegiis, sub quibuscunque tenoribus, formis seu modis aut verborum conceptione, concessis imperatoribus, regibus et aliis supra dictis, quae contra praemissa in nullo volumus alicui vel aliquibus suffragari.

Chapter IV

Those who impede letters from being obtained from the Apostolic See, or litigation from being conducted concerning them before ecclesiastical ordinaries or delegates, in causes that belong to the ecclesiastical forum by law or custom, are excommunicated. John Andrew.

The same.

Because, as we have understood, the presumptuous temerity of certain justiciars, bailiffs, secular judges, and temporal lords in certain regions has so increased that persons within their lands or districts who obtain apostolic letters, or have recourse to ordinary ecclesiastical judges concerning causes, business, or questions that, by reason of persons or things, belong by law or ancient custom to the ecclesiastical forum, cannot obtain the fullness of justice in those lands through the same ordinary judges or apostolic letters, but rather are compelled concerning them to have recourse to

secular judgment or to desist from the lawsuit, cause, or question, we, who support others in their justice, are unwilling to neglect our own justice and that of the Church, our bride.

We therefore establish by strict prohibition that no one shall, personally or through another, by capture of the same ecclesiastical judges, applicants, litigants, persons wishing to litigate, their relatives, their property, or even their churches, or by any other means whatsoever, compel or cause or procure applicants for our letters, or others litigating or wishing to litigate in the delegated or ordinary ecclesiastical forum—whether both parties wish this or one alone—concerning ecclesiastical causes, or causes known to belong by law or ancient custom to the ecclesiastical forum by reason of persons, business, or things, to desist or to litigate questions of this kind in the secular forum. Nor shall anyone, personally or through others, impede complainants before delegated or ordinary ecclesiastical judges from being able freely to obtain justice concerning causes that, as was premised, belong to the cognizance of those judges; nor shall anyone give aid, counsel, or favor toward doing the aforesaid things.

If anyone presumes to act contrary, he shall know himself subject by the fact itself to excommunication, from which he shall in no way be absolved unless he has first made full satisfaction for the injury, damages, expenses, and interest both to the judge whose cognizance was impeded or jurisdiction usurped, and to the party who was disturbed in pursuit of his right.

> Excommunicati sunt, qui impediunt super causis, quae ad forum ecclesiasticum de iure vel de consuetudine pertinent, literas a sede apostolica impetrari, vel super ipsis coram ordinariis vel delegatis ecclesiasticis litigari.
>
> Ioann. Andr.
>
> Idem.
>
> Quoniam, ut intelleximus, quorundam iustitiariorum, ballivorum iudicumve saecularium ac temporalium dominorum in quibusdam partibus presumptuosa temeritas sic excrevit, ut in terris eorum sive districtibus literas apostolicas impetrantes, vel ad iudices ordinarios ecclesiasticos recurrentes super causis, negotiis seu quaestionibus, quae ratione personarum aut rerum de iure aut antiqua consuetudine ad forum ecclesiasticum pertinent, obtinere non possunt in eis per eosdem ordinarios iudices vel apostolicas literas iustitiae complementum, quin potius super illis recurrere ad iudicium saeculare, vel a lite , causa seu quaestione desistere compelluntur : nos, iustitiam nostram et ecclesiae sponsae nostrae nolentes negligere, qui alios in sua iustitia confovemus, statuimus districtius inhibendo *, ne quis impetratores literarum nostrarum, vel alios in foro * ecclesiastico delegato seu ordinario litigantes seu litigare volentes, sive ambae partes hoc voluerint sive una, super causis ecclesiasticis, sive quae ad forum ecclesiasticum ratione personarum, negotiorum vel rerum, de iure vel de antiqua consuetudine pertinere noscuntur, per se vel per alium ad desistendum, vel in foro saeculari de quaestionibus huiusmodi litigandum per eorundem iudicum ecclesiasticorum vel impetrantium aut litigantium, seu volentium litigare, aut propinquorum ipsorum seu rerum illorum, aut ecclesiarum suarum etiam captionem, modisve aliis quibuscunque compellat, seu compelli faciat vel procuret, nec per se aliosve impediat, quo minus coram iudicibus ecclesiasticis, delegatis seu ordinariis querelantes de causis, quae, ut praemissum est, ad cognitionem pertinent eorundem, possint libere iustitiam obtinere, nec ad praedicta facienda det auxilium, consilium vel favorem. Si quis vero contra praesumpserit : excommunicationi se ipso facto noverit subiacere, a qua, nisi tam iudici, cuius cognitio fuerit impedita vel iurisdictio usurpata, quam parti, quae turbata in prosecutione fuerit sui iuris, de

iniuria, damnis, expensis et interesse prius per eundem integre fuerit satis factum, nullatenus absolvatur.

Chapter V

Temporal lords who prohibit their subjects from contracting with ecclesiastical persons or rendering customary services to them incur excommunication by the fact itself. This states the point. Dominicus.

The same.

We decree that those who possess temporal lordship and sometimes prohibit their subjects from selling anything to prelates, clerics, or ecclesiastical persons, buying anything from them, grinding their grain, baking their bread, or presuming to render other services to them are by that very fact subject to a sentence of excommunication, since such acts are presumed in derogation of ecclesiastical liberty.

Domini temporales, prohibentes subditis, ne cum personis ecclesiasticis contrahant, vel communia obsequia exhibeant, ipso facto excommunicationem incurrunt. H. d. Dom.

Idem.

Eos, qui, temporale dominium obtinentes, suis subditis, ne praelatis aut clericis seu personis ecclesiasticis quicquam vendant, aut emant aliquid ab eisdem, neque ipsis bladum molant, coquant panem, aut alia obsequia exhibere praesumant, aliquando interdicunt, quum talia in derogationem libertatis ecclesiasticae praesumantur, eo ipso excommunicationis sententiae decernimus subiacere.

Title XXIV: Lest Clerics or Monks Involve Themselves in Secular Business

Chapter I

The chapter "On the Watchtower," which prohibits the hearing of laws or medicine, does not include those having parish churches unless they are mother churches having chapels under them in which clerics are perpetually instituted. This states the point. Dominicus.

Boniface VIII.

Following in the footsteps of Pope Clement IV of pious memory, our predecessor, we declare by the pronouncement of the present constitution that the statute of Pope Honorius III of happy memory, our predecessor, which prohibits deans, archdeacons, provosts, plebani, cantors, and other clerics having personates from hearing laws or medicine, does not extend by reason of such churches to those known to hold parish churches, unless those churches are plebaniae having chapels under them in which perpetual clerics are instituted who cannot be removed from them without reasonable cause.

DE CLERICI VEL MONACHI SAECULARIBUS NEGOTIIS SE IMMISCEANT.

Capitulum super Specula, prohibens audientiam legum vel physicae, non includit parochiales ecclesias habentes, nisi sint plebaniae, habentes sub se capellas, in quibus clerici perpetuo instituantur. H. d. Domin.

Bonifacius VIII.

Statutum felicis recordationis Honorii Papae III. praedecessoris nostri, quod decanis, archidiaconis, praepositis, plebanis, cantoribus et aliis clericis, habentibus personatus, audire leges vel physicam

interdicit, ad eos, qui parochiales ecclesias obtinere noscuntur, piae memoriae Clementis Papae IV. praedecessoris nostri vestigiis inhaerentes, declaramus praesentis constitutionis oraculo ratione ecclesiarum huiusmodi non extendi, nisi eaedem ecclesiae fuerint plebaniae sub se capellas habentes, in quibus instituantur clerici perpetui, nequeuntes ab ipsis absque causa rationabili amoveri.

Chapter II

A professed religious who rashly lays aside the habit, or approaches any course of study without obtaining the license of the prelate and convent, is excommunicated by the fact itself. Doctors who knowingly teach, or retain in schools for laws or medicine, such religious likewise incur excommunication. This states the point. Dominicus.

The same.

So that dangerous occasion for wandering may be taken away from religious, we strictly prohibit anyone who has tacitly or expressly professed any religious order from hereafter rashly laying aside the habit of his religious order in schools or elsewhere, or approaching any studies of letters, unless license to go to study has first been granted to him by his prelate with the counsel of his convent or its greater part. If anyone is a rash violator of these things, he shall by the fact itself incur a sentence of excommunication. Doctors or masters who presume knowingly to teach religious who have laid aside their habit and are hearing laws or medicine, or to retain them in their schools, shall by that very fact be bound by a similar sentence.

Excommunicatus est ipso facto religiosus, professus, habitum temerarie dimittens, vel ad quaecunque studia accedens, non obtenta licentia praelati et conventus. Doctores, scienter docentes, vel in scholis retinentes ad leges vel physicam tales religiosos, similiter excommunicationem incurrunt. H. d. Dominicus.

Idem .

Ut periculosa religiosis evagandi materia subtrahatur, districtius inhibemus, ne de cetero aliquis, quamcunque religionem tacite vel expresse professus, in scholis vel alibi temere habitum religionis suae dimittat, nec accedat ad quaevis studia literarum, nisi a suo praelato cum consilio sui conventus vel maioris partis eiusdem sibi eundi ad studium licentia primitus sit concessa. Si quis autem horum temerarius violator exstiterit: excommunicationis incurrat sententiam ipso facto. Doctores quoque sive magistri, qui religiosos, habitu suo dimisso, leges vel physicam audientes scienter docere, aut in scholis suis praesumpserint retinere, simili eo ipso sint sententia innodati.

Chapter III

A cleric who, in a place under his temporal jurisdiction, delegates concerning a delict committed there that, after the truth has been inquired into, justice be executed, does not become irregular, although a punishment of blood is inflicted. This states the point. Dominicus.

The same.

A bishop or any other prelate or cleric possessing temporal jurisdiction, if he enjoins his bailiff or anyone else concerning a homicide or other malefaction committed by certain persons within his jurisdiction to inquire into the truth concerning it and execute what justice requires, ought not to be regarded as irregular, although the bailiff himself or another proceeds through justice against the malefactors to a punishment of blood. For although it is not lawful for clerics to conduct causes of

blood, when they possess temporal jurisdiction they nevertheless ought and can, fear of irregularity ceasing, delegate them to others.

> Clericus, in loco temporalis iurisdictionis suae super delicto ibi commisso delegans, ut veritate inquisita iustitiam exsequatur, irregularis non efficitur, licet poena sanguinis inferatur. H. d. Domin.
>
> Idem.
>
> Episcopus seu quicunque alius praelatus vel clericus, iurisdictionem obtinens temporalem, si homicidio aut alio maleficio, ab aliquibus in iurisdictione sua commisso, ballivo suo aut alii cuicunque iniungat, ut super hoc veritatem inquirens iustitiae debitum exsequatur, irregularis censeri non debet, quamvis ipse ballivus vel alius contra malefactores ad poenam sanguinis processerit iustitia mediante. Nam licet clericis causas sanguinis agitare non liceat: eas tamen, quum iurisdictionem obtinent temporalem, debent et possunt metu irregularitatis cessante aliis delegare.

Book IV

Title I: On Betrothals and Marriages

Chapter I

Pure and certain betrothals, valid by reason of consent, although otherwise null, induce public honesty, which has the force of dissolving subsequent betrothals, but not preceding ones. — § 1. Conditional betrothals do not induce public honesty before the occurrence of the condition. This states the point. Johannes Andreae.

Boniface VIII.

From pure and certain betrothals, even if they are null by reason of consanguinity, affinity, frigidity, religious profession, or any other reason whatsoever, provided that they are not null from defect of consent, there arises an impediment of the justice of public honesty effective for impeding and dissolving subsequent betrothals or marriages, but not for dissolving preceding ones. Therefore, he who contracted betrothals purely and definitely with one woman and afterward did the same with a second woman who is a blood relative of the first remains bound, by force of the prior betrothals—which are in no way derogated by the justice of public honesty arising subsequently from the second betrothals—to contract marriage with the first.

§ 1. But he who contracted betrothals with a woman under a condition, if afterward, before the occurrence of the condition, he contracts through words of the present with another woman who is a blood relative of the first, ought to remain with the second, since from conditional betrothals before the condition exists, as from betrothals lacking consent and uncertain, no justice of public honesty arises.

> **DE SPONSALIBUS ET MATRIMONIIS.**
>
> Sponsalia pura et certa, ex consensu valida, licet alias nulla inducunt publicam honestatem, quae habet dirimere sequentia sponsalia, sed non praecedentia. — §. 1. Publicam honestatem non inducunt sponsalia conditionalia ante conditionis eventum. H. d. Ioann. Andr.
>
> Bonifacius VIII.
>
> Ex sponsalibus puris et certis, etiamsi consanguinitatis, affinitatis, frigiditatis, religionis aut alia quavis ratione sint nulla, dummodo non sint nulla ex defectu consensus, oritur efficax ad impediendum et dirimendum sequentia sponsalia vel matrimonia, non autem ad praecedentia dissolvendum, impedimentum iustitiae publicae honestatis. Quare ille, qui sponsalia pure ac determinate cum aliqua muliere contraxit et postmodum cum secunda prioris consanguinea idem fecit, ex priorum sponsaliorum vigore, quibus per publicae honestatis iustitiam ex secundis sponsalibus subsecutam minime derogatur, ad matrimonium contrahendum cum prima remanet obligatus. §. 1. Ille vero, qui sponsalia cum aliqua muliere sub conditione contraxit, si postmodum ante conditionis eventum cum alia, prioris consanguinea, per verba contraxerit de praesenti, cum secunda remanere debebit, quum ex sponsalibus conditionalibus ante conditionem exstantem, sicuti consensum non habentibus et incertis, nulla publicae honestatis iustitia oriatur.

Title II: On the Betrothal of Persons Below Puberty

Chapter I

The betrothals of two children, or of only one child with another, are not validated by the supervening of greater age and do not induce public honesty unless they have been ratified tacitly or expressly. This states the point as far as § "Likewise." Dominicus. — § 1. Betrothals contracted through words of the present between one below puberty and one who has attained puberty, or between persons below puberty who are not near puberty, are valid as betrothals of the future; nor do they pass into marriage by mere continuance to the requisite age unless they are otherwise approved; they nevertheless induce public honesty. This states the point. Dominicus. — § 2. Betrothals made on behalf of absent children do not bind unless the children were present, or unless they afterward approved them tacitly or expressly. This states the point. Dominicus.

Boniface VIII.

If children contract betrothals with each other, or if one older than seven and the other younger contracts them, either by themselves or through their parents acting for them, such betrothals, which were null from the beginning, do not at all acquire validity through the lapse of the said time unless, through their mutual cohabitation or otherwise through their own word or deed, it clearly appears that, after becoming older than seven, they continued in the same will. And therefore, since they are null by reason of defect of consent, they do not induce the justice of public honesty.

§ 1. The same is true if one who has attained puberty and one below puberty, or two persons below puberty who were not near puberty and in whom malice did not supply age, contracted through words of the present. For those betrothals, which by interpretation of law were only betrothals of the future, although they contained words expressing consent in the present and those contracting intended to contract marriage, do not pass into marriage in the present through the arrival of puberty. Nor does a marriage which did not hold as a marriage because age prohibited it acquire validity through the lapse of the said time, unless through subsequent carnal union or in some other manner it is clearly established that the same contracting parties reached the time of puberty with the same will continuing; nevertheless, through the said contract, which was valid insofar as it could be, though not as it was transacted, the justice of public honesty was induced.

§ 2. Moreover, from betrothals which parents often contract on behalf of children who have or have not attained puberty, the children themselves are bound if they consented expressly or tacitly—as when they were present and did not contradict them—and from them arises the justice of public honesty. The same is true if the children, absent and even ignorant at the time of the betrothals, afterward, having learned of them, ratified the same betrothals tacitly or expressly; otherwise, from betrothals contracted by parents for their children, neither are the children themselves bound nor does the justice of public honesty arise from them.

> **DE DESPONSATIONE IMPUBERUM.**
>
> Sponsalia amborum infantium, vel alterius tantum, per supervenientiam maioris aetatis non validantur nec publicam honestatem inducunt, nisi fuerint ratificata tacite vel expresse. H. d. usque ad §. Idem quoque. Domin. — §. 1. Sponsalia, per verba de praesenti contracta inter impuberem et puberem, vel inter impuberes, non proximos pubertati, valent ut sponsalia de futuro; nec in matrimonium transeunt ex sola perseverantia aetatis, nisi aliter approbentur; inducunt tamen publicam honestatem. H. d. Dom.

— §. 2. Sponsalia pro absentibus filiis non tenent, nisi ipsis praesentibus, vel nisi approbaverint tacite vel expresse ex postfacto, H. d. Domin.

Bonifacius VIII.

Si infantes ad invicem, vel unus maior septennio, et alter minor, sponsalia contraxerint ipsi, vel parentes pro eis, nisi per cohabitationem eorum mutuam, seu alias verbo vel facto ipsorum liquido appareat, eosdem in eadem voluntate factos maiores septennio perdurare: sponsalia huiusmodi, quae ab initio nulla erant, per lapsum dicti temporis minime convalescunt, et ideo, quum sint nulla, ratione defectus consensus publicae honestatis iustitiam non inducunt. §. 1. Idem quoque, si pubes et impubes, vel duo impuberes non proximi pubertati, et in quibus aetatem malitia non supplebat, per verba contraxerint de praesenti. Sponsalia enim illa, quae iuris interpretatione tantum fuerunt sponsalia de futuro, licet verba consensum exprimentia de praesenti haberent, et matrimonium contrahere intenderent contrahentes, per adventum pubertatis in matrimonium non transeunt de praesenti. Nec matrimonium, quod ut matrimonium aetate non tenuit prohibente, per lapsum dicti temporis convalescit, nisi per carnis copulam subsecutam, vel aliquem modum alium contrahentes eosdem cum eiusdem perseverantia voluntatis ad pubertatis tempora pervenisse constiterit evidenter; per dictum tamen contractum, qui valuit, ut potuit, non sicuti agebatur, publicae honestatis iustitia est inducta. §. 2. Porro ex sponsalibus, quae parentes pro filiis puberibus vel impuberibus plerumque contrahunt, ipsi filii, si expresse consenserint vel tacite, ut si praesentes fuerint, nec contradixerint, obligantur, et ex eis oritur iustitia publicae honestatis. Et est idem, si filii, tempore sponsaliorum absentes, et etiam ignorantes, eadem sponsalia post scientes ratificaverunt tacite vel expresse; alias ex sponsalibus, contractis a parentibus pro filiis, nec ipsi filii obligantur, nec publicae honestatis iustitia inde surgit.

Title III: On Spiritual Kinship

Chapter I

Spiritual kinship is contracted between the baptized person and the person lifting him from the font; between the baptized person and the children and wife of the latter, if she was carnally known before the lifting; between the person receiving and the father and mother of the person received; and similarly concerning the person baptizing. This states the point as far as § "From confirmation." Dominicus. — § 1. Confirmation of the forehead induces spiritual kinship just as baptism does. This states the point. Dominicus.

Boniface VIII.

It is established by law that spiritual kinship is contracted in baptism not only between the baptized person and the one who received him from baptism, and between the same baptized person and the children of the receiver and the receiver's wife who was carnally known by him before the reception, but also between the receiver and the father and mother of the baptized person. This kinship both impedes a marriage to be contracted and dissolves one after it has been contracted. And the same things said concerning the receiver are also to be held concerning the one baptizing.

§ 1. From confirmation also, or the chrismation of the forehead, spiritual kinship is contracted in the same ways, similarly impeding marriages to be contracted and dissolving them after they have been contracted.

DE COGNATIONE SPIRITUALI.

Inter baptizatum et levantem, filios et uxorem levantis, ante carnaliter cognitam, et suscipientem et patrem et matrem suscepti, et similiter de baptizante, spiritualis contrahitur cognatio. H. d. usque ad §.

Ex confirmatione. Domin. — §. 1. Confirmatio frontis inducit spiritualem cognationem, sicut baptisma. H. d. Domin.

Bonifacius VIII.

Nedum inter baptizatum et illum, qui eum suscepit de baptismo, ac inter eundem baptizatum et suscipientis filios et uxorem, ante susceptionem carnaliter cognitam ab eodem, immo etiam inter suscipientem, patremque baptizati et matrem, cognationem spiritualem in baptismo contrahi iure constat, quae cognatio et contrahendum matrimonium impedit, et dirimit post contractum. Et eadem, quae de suscipiente sunt dicta, sunt etiam de baptizante censenda. §. 1. Ex confirmatione quoque seu frontis chrismatione spiritualis cognatio eisdem modis contrahitur, matrimonia similiter impediens contrahenda, et dirimens post contracta.

Chapter II

Co-parenthood contracted through catechism impedes marriage but does not dissolve it. Johannes Andreae.

The same.

Through catechism, which precedes baptism, the foundation of the sacraments and the gate of the others, spiritual kinship is contracted, through which a marriage to be contracted is impeded, as is clearly gathered from a decretal of our predecessor Pope Clement III. For by saying that such a matter would scarcely bring an impediment to the contracting of marriage, he seems to mean that it does bring one. For what is scarcely done nevertheless undoubtedly is done. Yet through that kinship a marriage contracted after it is in no way separated.

Compaternitas per catechismum contracta impedit matrimonium, sed non dirimit. Ioann. Andr.

Idem.

Per catechismum, qui praecedit baptismum, sacramentorum fundamentum et ianuam reliquorum, cognatio spiritualis contrahitur, per quam contrahendum matrimonium impeditur, ut ex praedecessoris nostri Clementis Papae III. decretali colligitur evidenter. Dicendo enim, quod talis res vix contrahendo matrimonio impedimentum afferret, velle videtur, quod afferat. Nam quod vix fit, fieri tamen dubium non exsistit. Per illam tamen cognationem matrimonium, post eam contractum minime separatur.

Chapter III

Only one person ought to take part in lifting an infant from the sacred font or in the chrismation of the forehead; nevertheless, if several take part, they contract spiritual kinship. And kinship is not contracted from the other sacraments. This states the point. Dominicus.

The same.

Although no more than one man or one woman ought, according to the statutes of the sacred canons, to approach to receive an infant from baptism, nevertheless, if several approach, spiritual kinship is thereby contracted, impeding marriages to be contracted and also dissolving them after they have been contracted. Moreover, with respect to this, the same judgment is to be held concerning confirmation. But from the conferral of the other sacraments no spiritual kinship at all arises that impedes or dissolves marriage.

Unus tantum intervenire debet in levatione infantis de sacro fonte, vel chrismatione frontis; tamen, si plures interveniunt, cognationem contrahunt spiritualem. Et ex aliis sacramentis cognatio non contrahitur. H. d. Domin.

Idem.

Quamvis non plures, quam unus vir, vel una mulier accedere debeant ad suscipiendum de baptismo infantem iuxta sacrorum canonum instituta: si tamen plures accesserint, spiritualis cognatio inde contrahitur matrimonia contrahenda impediens, et etiam post contracta dissolvens. De confirmatione insuper, quantum ad hoc, idem iudicium est habendum. Ex datione vero aliorum sacramentorum cognatio spiritualis nequaquam oritur, quae matrimonium impediat vel dissolvat.

Book V

Title I: On Accusations, Inquisitions, and Denunciations

Chapter I

From a confession made before a delegate appointed to inquire concerning specified crimes, the person confessing is punished, although he says that he had not previously been defamed or had not received the articles of the inquisition. This states the point. Dominicus.

Boniface VIII.

After you confessed those same crimes before the one who had been appointed inquisitor against you concerning specified crimes, you strive in vain to challenge your confession so that you may not be punished from it as justice shall counsel, under the pretext that you had not previously been defamed concerning those crimes, or that the articles concerning which the same inquisitor wished to inquire against you had not been delivered to you.

> **DE ACCUSATIONIBUS, INQUISITIONIBUS ET DENUNCIATIONIBUS.**
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> Ex confessione coram delegato, inquirente super certis criminibus deputato, facta, punitur confitens, licet dicat, se prius diffamatum non fuisse, vel inquisitionis capitula non habuisse. H. d. Domin.
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> Bonifacius VIII.
>
> Postquam coram eo, qui contra te super certis criminibus inquisitor fuerat deputatus, eadem crimina fuisti confessus : frustra confessionem tuam, quo minus puniaris ex ea prout iustitia suadebit, eo praetextu impugnare contendis, quod super eisdem criminibus non fueras antea diffamatus, vel quod per eundem inquisitorem capitula, super quibus contra te volebat inquirere, tibi tradita non fuerunt.

Chapter II

An inquisition made concerning the truth of crimes, with an inquisition concerning infamy omitted, is valid if the accused, being present, remained silent. This states the point according to Johannes Andreae.

The same.

If the one to whom an inquisition to be conducted against you concerning specified crimes had been simply committed proceeded, while you were present and neither protested nor raised any exception concerning this, to inquire into the truth of those crimes with an inquisition concerning infamy omitted, you will not afterward be able to challenge a process of this kind on the ground that an inquiry concerning infamy was not first made.

> Valet inquisitio, facta super veritate criminum, omissa inquisitione infamiae, si reus praesens tacuit. H. d. secundum Ioann. Andr.
>
> Idem.
>
> Si is, cui contra te commissa fuerat simpliciter inquisitio super certis criminibus facienda, processerit te praesente, nec reclamante, aut quicquam super hoc excipiente, infamiae inquisitione omissa, ad veritatem eorundem criminum inquirendam: processum huiusmodi ex eo, quod non fuit de infamia primitus inquisitum, ulterius impugnare nequibis.

Title II: On Heretics

Chapter I

For the crime of heresy, a cleric constituted in any sacred order whatsoever can be degraded by his bishop alone. This states the point. Dominicus.

Gregory IX to the Archbishop of Reims and his suffragans.

Because the number of bishops established by the canons for the degradation of clerics cannot easily assemble, we grant that when a priest or another cleric constituted in sacred orders is to be abandoned to the secular court for heresy or to be immured perpetually, his bishop alone may degrade him, after summoning abbots and other prelates and religious and learned persons of his diocese whom it shall appear expedient to summon.

> **DE HAERETICIS.**
>
> Propter crimen haeresis clericum, in quibuscunque sacris ordinibus constitutum, solus eius episcopus degradare poterit. H. d. Domin.
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> Gregorius IX. Remensi Archiepiscopo et suis Suffraganeis. Quoniam episcoporum numerus, ad degradationem clericorum a canonibus constitutus, non potest de facili convenire: concedimus, ut sacerdotem vel alium clericum in sacris ordinibus constitutum, quum pro haeresi fuerit curiae saeculari relinquendus, aut perpetuo immurandus , convocatis abbatibus, aliisque praelatis et religiosis personis ac literatis suae dioecesis, de quibus expedire videbitur, suus solus possit episcopus degradare.

Chapter II

One who knowingly buries heretics, or their receivers, defenders, or supporters, incurs excommunication and is not absolved unless he exhumes their bodies; the place, moreover, is deprived of burial. This states the point as far as § "We also prohibit." Dominicus. — § 1. Laypersons publicly or secretly disputing concerning the faith ought to be excommunicated. This states the point. Dominicus. — § 2. The promotion of heretics, of those who believe them, of their supporters, receivers, and defenders, and of their children to the second generation, to ecclesiastical benefices or public offices is invalid. This states the point. Dominicus. — § 3. Those who have obtained ecclesiastical benefices at the entreaties of heretics are deprived of them and are rendered incapable of obtaining others if they knowingly received such benefices. This states the point. Dominicus. — § 4. An emancipation of children or subjects made by heretics is null, even if the defect is discovered afterward. This states the point. Dominicus.

Alexander IV.

Whoever shall knowingly presume to consign heretics, believers in them, their receivers, defenders, or supporters to ecclesiastical burial shall know that they are subject to a sentence of excommunication until suitable satisfaction, and they shall not merit the benefit of absolution unless with their own hands they publicly disinter and cast out the bodies of such condemned persons; and that place shall perpetually lack burial.

§ 1. We also prohibit any layperson from being permitted to dispute publicly or privately concerning the Catholic faith. But one who acts contrary to this shall be bound by the snare of excommunication.

§ 2. Moreover, heretics, those believing them, their receivers, defenders, and supporters, and their children to the second generation shall be admitted to no ecclesiastical benefice or public office. If it is done otherwise, we decree it null and void.

§ 3. In addition, we now deprive of dignities, personates, and any other ecclesiastical benefices acquired in such a manner all ecclesiastical men who have obtained them at the entreaties of pestilential persons of this kind, willing that such persons perpetually lack both what they have obtained and, if they received those things knowingly, that they by no means be admitted in the future to other or similar things.

§ 4. We will that an emancipation of the children whose parents, even after an emancipation of this kind, shall appear to have departed before it from the way of truth into the trackless way of heretical superstition shall be of no force, as though made concerning persons legally independent, since it is fitting that, on account of the enormity of so great a crime, the children cease to be in the power of heretical parents.

> Excommunicationem incurrit sepeliens scienter haereticos, vel eorum receptatores, defensores vel fautores; nec absolvitur, nisi exhumet eorum corpora; locus vero privatur sepultura. H. d. usque ad §. Inhibemus. Domin. — §. 1. Excommunicari debent laici, publice vel occulte disputantes de fide. H. d. Domin. — §. 2. Non valet promotio haereticorum, eis credentium, fautorum, receptatorum, et defensorum eorum, nec filiorum suorum usque ad secundam generationem ad beneficia ecclesiastica vel officia publica. H. d. Dominic. — §. 3. Privati sunt habentes beneficia ecclesiastica ad preces haereticorum, et inhabiles efficiuntur ad alia obtinenda, si scienter talia receperunt, H. d. Domin. — §. 4. Nulla est emancipatio filiorum vel subditorum per haereticos facta, etiamsi postea vitium detegatur. H. d. Dominicus.
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> Alexander IV. Quicunque haereticos, credentes, receptatores, defensores vel fautores eorum scienter praesumpserint ecclesiasticae tradere sepulturae, usque ad satisfactionem idoneam excommunicationis sententiae se noverint subiacere, nec absolutionis beneficium mereantur, nisi propriis manibus publice extumulent, et proiiciant huiusmodi corpora damnatorum, et locus ille perpetua careat sepultura.
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> §. 1. Inhibemus quoque, ne cuiquam laicae personae liceat publice vel privatim de fide catholica disputare. Qui vero contra fecerit, excommunicationis laqueo innodetur.
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> §. 2. Haeretici autem, credentes, receptatores, defensores et fautores eorum, ipsorumque filii usque ad secundam generationem, ad nullum ecclesiasticum beneficium seu officium publicum admittantur. Quod si secus actum fuerit, decernimus irritum et inane.
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> §. 3. Ad haec quoscunque viros ecclesiasticos, qui ad preces huiusmodi pestilentium personarum dignitates, personatus et quaecunque alia ecclesiastica beneficia sunt adepti, ex nunc privamus taliter acquisitis, volentes, quod tales et habitis careant perpetuo, et, si receperunt illa scienter, ad alia vel similia nequaquam in posterum admittantur.
>
> §. 4. Illorum autem filiorum emancipationem, quorum parentes post emancipationem etiam huiusmodi apparuerit ante ipsam a via veritatis ad haereticae superstitionis invium declinasse, nullius volumus esse momenti, velut factam de hominibus sui iuris, quum dignum sit, ut propter tanti atrocitatem delicti filii esse in parentum haereticorum desierint potestate.

Chapter III

The children and heirs of those who in their illness sought the consolation of heretics are not admitted to prove that they received it while not of sound mind or after losing speech, if it is established that they were of sound mind, or if they had previously been suspected or defamed concerning heresy; otherwise they are admitted, namely through trustworthy and unsuspected witnesses. Dominicus states this.

The same, to the inquisitors of heretical depravity.

The children or heirs of those who, while lying on a bed of sickness, sought heretics who would console them, so that from them through the imposition of hands they might receive consolation according to the most wicked custom of the same heretics, and who thus entered the way of all flesh, ought not to be admitted to prove that the deceased, having become not of sound mind, received that consolation—or rather desolation—or received it after speech had already been lost, since it is their custom, as is said, to console in that manner no one who is not of sound mind and does not have an ordered memory, if, while they lived, they had been defamed concerning heresy or suspected of it, or if it has been lawfully established that, while of sound mind, they sought heretics of this kind. Otherwise the aforesaid children or heirs will be able to be admitted to prove the aforesaid things, yet not through wives, children, household members, or any of their own people, but through other trustworthy witnesses, and especially zealots of the faith.

> Filii et heredes petentium in infirmitate sua haereticorum consolationem, non admittuntur ad probandum, quod non sana mente vel perdita loquela susceperint, si constat, quod erant sanae mentis, vel prius suspecti vel diffamati erant de haeresi; alias admittuntur, scilicet per testes fide dignos, non suspectos. Hoc dicit Dominicus.
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> Idem Inquisitoribus haereticae pravitatis. Filii vel heredes illorum, qui, dum in aegritudinis lecto decumberent, petierunt haereticos consolaturos , ut ab eis per manus impositionem consolationem reciperent secundum pessimam consuetudinem eorundem, sicque viam fuerint universae carnis ingressi, ad probandum, quod ipsi defuncti consolationem illam, immo verius desolationem, non sanae mentis effecti susceperint, vel post perditam iam loquelam, (quum tamen moris sit, ut dicitur, apud eos, quod nullum taliter consolentur, qui non sit sanae mentis, et memoriam habeat ordinatam,) admitti non debent , si, dum vivebant, diffamati erant de haeresi vel suspecti, aut legitime constiterit, quod sanae mentis exsistentes huiusmodi haereticos petierunt. Alioquin admitti poterunt praedicti filii vel heredes ad probandum praemissa, non tamen per uxores, filios, familiares, vel de suis aliquos, sed per testes alios fide dignos, et specialiter fidei zelatores.

Chapter IV

Those who have relapsed into heresy are to be handed over to the secular court, although they repent and return to the faith; nevertheless, the sacraments of penance and the Eucharist are not denied them. This states the point. Dominicus.

The same, to the same.

Concerning what is read in writing, "The Church closes her bosom to no one returning," and concerning the fact that those who, after abjuring error or after purging themselves by the examination of their own bishop, are discovered to have fallen back into the heresy abjured are decreed to be abandoned to secular judgment entirely without a hearing, you petitioned to be instructed by the Apostolic See what is to be held, since writings of this kind seem to be opposed to each other. We therefore, with the counsel of our brothers, respond to your inquiry that, although persons discovered in this manner are, as was said, to be abandoned to secular judgment entirely without a hearing, nevertheless, if they afterward repent and manifest signs of repentance appear in them, the sacraments of penance and the Eucharist, humbly sought, are by no means to be denied them.

> Relapsi in haeresim sunt tradendi curiae saeculari, licet poeniteat eos, et ad fidem redeant; non tamen denegantur eis sacramenta poenitentiae et eucharistiae. H. d. Domin.

Idem eisdem. Super eo, quod scriptum legitur: "Ecclesia nulli claudit gremium redeunti," quodque hi, qui post abiurationem erroris, vel postquam se proprii antistitis examinatione purgaverint, si deprehensi fuerint in abiuratam haeresim recidisse, saeculari decernuntur iudicio sine ulla penitus audientia relinquendi, quum scripturae huiusmodi videantur sibi invicem adversari, quid tenendum sit per sedem edoceri apostolicam postulastis. Nos itaque inquisitioni vestrae de fratrum nostrorum consilio respondemus, quod taliter deprehensis, etiamsi , (ut dictum est,) sine ulla penitus audientia relinquendi sint iudicio saeculari, si tamen postmodum poeniteant, et poenitentiae signa in eis apparuerint manifesta, nequaquam sunt humiliter petita sacramenta poenitentiae ac eucharistiae deneganda.

Chapter V

Excommunicated participants and associates in the crime are admitted as witnesses against heretics if they are believed likely to depose the truth. This states the point. Dominicus.

The same, to the same.

In favor of the faith we grant that, in the business of the inquisition of heretical depravity, excommunicated persons and participants or associates in the crime be admitted to testimony, especially in the absence of other proofs, against heretics, believers in them, their supporters, receivers, and defenders, if, from likely conjectures, from the number of the witnesses, from the quality both of the persons deposing and of those against whom deposition is made, and from other circumstances, those testifying in this manner are presumed not to speak falsely.

Excommunicati participes et socii criminis admittuntur in testes contra haereticos, si sciunt verisimiliter veritatem deponere. H. d. Dom.

Idem eisdem . In fidei favorem concedimus, ut in negotio inquisitionis haereticae pravitatis excommunicati et participes vel socii criminis ad testimonium admittantur, praesertim in probationum aliarum defectum, contra haereticos, credentes, fautores, receptatores et defensores eorum, si ex verisimilibus coniecturis, et ex numero testium aut personarum tam deponentium, quam eorum, contra quos deponitur, qualitate, ac aliis circumstantiis sic testificantes falsa non dicere praesumantur.

Chapter VI

Ordinaries or their delegates, and inquisitors, may without the penalty of excommunication have justice executed against heretics by those possessing secular jurisdiction in the place, although the latter are excommunicated or possess that jurisdiction only in fact. This states the point. Dominicus.

The same, to the same.

Those presiding over the government of any kingdom, province, or place, although excommunicated, or possessing jurisdiction only in fact and not in law, and their officials, at the requisition of the ordinaries or their delegates, or of inquisitors of heretical depravity who cannot without loss from delay or danger to the business have recourse to superiors who can lawfully execute justice in those places, can and ought to exercise justice and their office against heretics, believers in them, their supporters, receivers, and defenders. Nor do those who make requisition of such excommunicated persons incur a sentence of excommunication on that account. Nevertheless, nothing is for this reason to be understood as granted or permitted to the aforesaid presiding persons or their officials in other cases.

Ordinarii vel eorum delegati, et inquisitores sine poena excommunicationis facere habent exsecutionem iustitiae contra haereticos per habentes iurisdictionem saecularem in loco, licet excommunicati sint, vel de facto tantum illam iurisdictionem possideant. H. d. Dominic.

Idem eisdem . Praesidentes regimini alicuius regni, provinciae sive loci, licet excommunicati, vel de facto tantum, et non de iure iurisdictionem habentes, ac eorum officiales ad requisitionem ordinariorum vel delegatorum ipsorum, aut inquisitorum haereticae pravitatis, non valentium sine morae dispendio vel negotii periculo recursum habere ad superiores, qui legitime in locis ipsis possint iustitiam exsequi, possunt et debent contra haereticos, credentes, fautores, receptatores et defensores eorum iustitiam et suum officium exercere. Nec requirentes huiusmodi excommunicatos propter hoc sententiam excommunicationis incurrunt. Non tamen praesidentibus praelibatis vel officialibus eorundem propterea in aliis casibus intelligatur concessum aliquid vel permissum.

Chapter VII

One excommunicated for the contumacy of not answering concerning heresy of which he was suspected is condemned as a heretic after a year. This states the point. Dominicus.

The same, to the same.

Since contumacy, especially in a cause of faith, adds a vehement presumption to suspicion, if one suspected of heresy, summoned by you to answer concerning the faith, has been bound by you with the bond of excommunication because he evades obedience or contumaciously absents himself, and if he sustains it with a pertinacious mind for a year, from that time he shall be condemned as a heretic.

Excommunicatus propter contumaciam non respondendi super haeresi, de qua erat suspectus, post annum damnatur ut haereticus. H. d. Dom.

Idem eisdem. Quum contumacia, in causa praesertim fidei, suspicioni praesumptionem adiiciat, vehementem; si suspectus de haeresi, vocatus a vobis, ut de fide respondeat, excommunicationis vinculo pro eo, quod parere subterfugit, aut contumaciter se absentat, per vos fuerit innodatus, quam si per annum animo sustineat pertinaci, extunc velut haereticus condemnetur.

Chapter VIII

One who in judgment abjures heresy on account of a vehement presumption, if he lapses again, is called relapsed, although the heresy had not been fully proved; it is otherwise if the presumption was slight. This states the point as far as § "But him." Dominicus. — § 1. One culpable in one article of heresy who afterward abjures generally is called relapsed if he commits an offense even in another distinct article. This states the point. Dominicus. — § 2. One who, after the abjuration of a heresy of which he had been convicted or is afterward convicted, communicates by deed or word with heretics in the matters prohibited here is called relapsed. This states the point. Dominicus. — § 3. A witness who deposes falsely in a cause of heresy, although perjured, furnishes proof by saying the contrary, provided that it is established from indications that the statement contains not corruption but truth. This states the point. — § 4. Inquisitors appointed concerning heresy are not to involve themselves in divinations or sorceries that do not manifestly savor of heresy. This states the point. Dominicus. — § 5. Inquisitors of heresy cannot involve themselves in questions of usury. This states the point. — § 6. Inquisitors can compel the heirs of supporters of heretics who were not themselves heretics to fulfill a penance imposed upon temporal goods; it is otherwise if those persons died before a penance was imposed. This states the point. Dominicus. — § 7. After the death of a heretic, it can be declared that he had been a heretic, for the purpose of confiscation. Dominicus. — § 8. Clerics who instruct witnesses

so that inquisitors may not investigate the truth can be punished by them; and religious are punished more gravely. Dominicus states this.

The same, to the same.

One accused of heresy or suspected of it, against whom a great and vehement suspicion concerning this crime had arisen, if he abjured the heresy in judgment and afterward commits an offense in it, ought by a certain fiction of law to be considered relapsed, although before his abjuration the crime of heresy had not been fully proved against him. But if that suspicion was slight and modest, although he is to be punished more gravely on account of this, he ought not nevertheless to be punished with the punishment of those relapsed into heresy.

§ 1. But him who committed an offense in one species or sect of heresy, or erred in one article of faith or sacrament of the Church, and afterward abjured heresy simply or generally, we will to be judged relapsed into heresy if from that time he commits an offense even in another species or sect of heresy, or in another article or sacrament.

§ 2. He also whose lapse into heresy had been established before his abjuration, or is now established, if after it he receives, escorts, visits, or accompanies heretics, or gives or sends gifts or presents to them, or extends to them favor which cannot be excused even without adoration—to use your words—ought deservedly to be judged relapsed, since it is not doubtful that he did this as a consequence of the error previously approved by him.

§ 3. Although perjured persons are repelled from testimony even after penance, nevertheless, if those who before inquisitors swore to tell the truth concerning the fact of heresy, both about themselves and others, falsely swore by concealing it, and afterward wish to correct their statement by deposing against themselves and their other accomplices, then, because a crime of this kind is excepted, if it shall appear from manifest indications that such persons wish to correct their statement and now to reveal what they had previously kept silent, not through levity of mind, the stimulus of hatred, or corruption by money, but through zeal for the orthodox faith, in favor of the faith their attestations are to be accepted both against themselves and against the others, unless something else stands in the way.

§ 4. Certainly, since the business of the faith—which is supremely privileged—ought not to be impeded by other occupations, inquisitors of heretical depravity appointed by the Apostolic See ought not to involve themselves in divinations or sorceries unless they manifestly savor of heresy, nor punish those practicing such things, but leave them to be punished by their own judges.

§ 5. Moreover, they cannot involve themselves in questions of usury, even those raised against persons upon whom, in penance for the crime of heresy, they imposed restitution of usury, and who bound themselves and their goods in the judgment of the Church to do this, lest through causes of this kind a stumbling block be prepared for the business of the faith.

§ 6. But if, for things which someone committed concerning heresy by receiving or defending heretics, or by supporting them, while nevertheless not being a heretic, he bound himself and his goods to the inquisitors to receive and fulfill penance from them, and, though it was imposed, died before it was completed, then, if through a penance of this kind a burden profitable to salvation was imposed to be executed upon his temporal goods, his heirs or others to whom goods of this kind

have passed with their burden ought to be compelled by the inquisitors to complete it. Moreover, if someone, on account of receiving, defending, or supporting heretics in this manner, bound his goods to the same inquisitors for doing whatever penance they should wish to impose, and died before a penance was imposed upon him, satisfaction for the crime, now extinguished, is not to be enjoined upon his heirs.

§ 7. But in the case in which heirs ought not to be admitted to succession on account of the heresy of the person from whom they derive title, notwithstanding that while the same person was living this had not been declared by sentence, upon the intervention of his death there shall nevertheless be a proceeding toward confiscation of his goods after his death.

§ 8. Moreover, priests and other clerics who are found to impede the business of the inquisition by instructing cited heretics or believers in them to conceal the truth or state a falsehood, or by unduly freeing them, since there is no doubt that they do those things in favor of heretical depravity, can be restrained from such conduct by the inquisitors and chastised with due punishment, both through seizure of their persons and otherwise, as the fault of the delinquent shall require. Religious also are to be punished more gravely than secular persons, by the punishment of immurement or another punishment, if they are found to have committed an offense in heresy or like matters.

> Abiurans in iudicio haeresim propter vehementem praesumptionem, si iterato labitur, licet non fuisset probatum plene, relapsus dicitur; secus, si levis erat praesumptio. H. d. usque ad §. Eum vero. Dominicus. — §. 1. Culpabilis in uno articulo haeresis, generaliter postea abiurando relapsus dicitur, si committit etiam in alium articulum separatum. H. d. Domin. — §. 2. Qui post abiurationem haeresis, de qua convictus fuerat, vel postea convincitur, facto vel verbo haereticis communicat in rebus hic prohibitis, relapsus dicitur. H. d. Domin. — §. 3. Testis, in causa haeresis falsum deponens, licet periurus sit, probat dicendo contrarium; dum tamen ex iudiciis constet, dictum non corruptionem, sed veritatem continere. H. d.— §. 4. Inquisitores, super haeresi deputati, non se intromittant de divinationibus vel sortilegiis, non sapientibus haeresim manifestam. H. d. Dominic. — §. 5. Inquisitores haeresis de quaestionibus usurarum se intromittere non possunt. H. d. — §. 6. Inquisitores possunt compellere heredes fautorum haereticorum, qui tamen haeretici non erant, ad implendum poenitentiam iniunctam in bonis temporalibus; secus, si mortui sint, antequam fuerit poenitentia iniuncta. H. d. Dom. — §. 7. Post mortem haeretici declarari potest, eum haereticum fuisse, ad finem confiscandi. Dom. — §. 8. Clerici, instruentes testes, ne inquisitores veritatem investigent, puniri possunt per eos; et religiosi gravius puniuntur. Hoc dicit Dominicus.
>
> Idem eisdem. Accusatus de haeresi vel suspectus, contra quem de hoc crimine magna et vehemens suspicio orta erat, si haeresim in iudicio abiuravit, et postea committit in ipsa, censeri debet quadam iuris fictione relapsus, licet ante abiurationem suam haeresis crimen plene probatum non fuerit contra ipsum. Si autem levis et modica suspicio illa fuerit, quanquam ex hoc sit gravius puniendus: non tamen debet in haeresim relapsorum poena puniri.
>
> §. 1. Eum vero, qui in una haeresis specie vel secta commisit, aut in uno fidei articulo seu ecclesiae sacramento erravit, et postmodum haeresim simpliciter vel generaliter abiuravit, si extunc in aliam etiam haeresis speciem sive sectam, aut alio articulo seu sacramento committat, volumus ut relapsum in haeresim iudicari.
>
> §. 2. Ille quoque, de cuius lapsu in haeresim ante abiurationem constiterat , vel nunc constat, si post illam haereticos receptet, deducat, visitet sive associet, aut dona vel munera eis donet vel mittat, seu favorem eis impendat, qui excusari non possit etiam sine adoratione, (ut verbis vestris utamur,) merito

debet iudicari relapsus, quum illum ex approbati a se prius erroris consequentia non sit dubium id fecisse.

§. 3. Licet vero periuri a testimonio etiam post poenitentiam repellantur, si tamen ii, qui, coram inquisitoribus iurantes tam de se quam de aliis super facto haeresis dicere veritatem, eam celando deierent , et postmodum velint corrigere dictum suum, contra se ac alios suos complices deponendo: quum crimen huiusmodi sit exceptum, si ex manifestis indiciis apparuerit, tales non animi levitate, aut odii fomite, seu corruptione pecuniae, sed zelo fidei orthodoxae dictum suum velle corrigere, ac modo quae prius tacuerant revelare: in favorem fidei,nisi aliud obsistat , stari debet tam contra se quam contra reliquos attestationibus eorundem.

§. 4. Sane, quum negotium fidei, (quod summe privilegiatum exsistit), per occupationes alias non debeat impediri: pestis inquisitores haereticae, a sede apostolica deputati, de divinationibus aut sortilegiis, nisi haeresim saperent manifeste, intromittere se non debent, nec punire talia exercentes, sed eos relinquere suis iudicibus puniendos.

§. 5. De quaestionibus praeterea usurarum, motis etiam contra illos, quibus restitutionem usurarum in poenitentia pro haeresis crimine iniunxerunt, ac illi se et sua ad hoc faciendum in iudicio ecclesiae obligarunt, intromittere se non possunt, ne per causas huiusmodi offendiculum negotio fidei praeparetur.

§. 6. Si vero pro his, quae in haeresi, receptando vel defendendo haereticos, seu eis favendo, non tamen exsistens haereticus, quis commiserit, sub obligatione bonorum suorum inquisitoribus se adstrinxit ad recipiendam ab eis poenitentiam et complendam, et, ea licet iniuncta, non tamen peracta, decessit; si per huiusmodi poenitentiam onus impositum fuerit proficiens ad salutem, in bonis eius temporalibus exsequendum, ad complementum ipsius per inquisitores cogi debent heredes vel alii, ad quos cum suo onere bona huiusmodi devenerunt. Porro, si propter huiusmodi haereticorum receptationem, defensionem seu favorem quis ad faciendam poenitentiam, quam inquisitores ipsi iniungere vellent, bona sua obligaverit eisdem, et, antequam ei poenitentia iniungeretur, decesserit: eius heredibus non est satisfactio pro exstincto iam crimine iniungenda.

§. 7. In eo vero casu, quo heredes ad successionem non debent ob haeresim sui auctoris admitti, non obstante, quod auctore ipso vivente hoc non fuerit, interveniente ipsius morte, per sententiam declaratum, ad confiscationem bonorum post mortem eiusdem nihilominus procedatur.

§. 8. Sacerdotes insuper et alii clerici, qui negotium inquisitionis instruendo citatos haereticos vel eorum credentes de celanda veritate vel dicenda falsitate, seu eos indebite liberando inventi fuerint impedire, quum non sit dubium, eos ipsa facere in favorem haereticae pravitatis, per inquisitores a talibus compesci possunt, et poena debita castigari tam per captionem personarum quam alias, prout culpa exegerit delinquentis. Religiosi etiam sunt immurationis poena vel alia gravius puniendi quam saeculares, si inventi fuerint in haeresi, vel consimilibus deliquisse.

Chapter IX

Statutes by which the office of an inquisitor of heresy is impeded or delayed are invalid.

Urban IV.

We decree that a statute of a city, castle, town, or other place through which it happens that the business of the inquisition of heretical depravity is impeded directly or indirectly so that it cannot proceed freely there, or is delayed in any manner, shall have no force; and that the lord, podestà, captain, consuls, or rectors of the city or place itself, by whom the same city or place is governed, by whatever name they are designated, are to be compelled by ecclesiastical censure to exhibit without

loss from delay such a statute to the diocesan of the place or his vicar, or to the inquisitor or inquisitors of the aforesaid stain, and, if such a statute is found, wholly to revoke it or at least to moderate it to the extent that through it the processes of the inquisition are neither impeded nor in any way delayed.

> Non valent statuta, per quae inquisitoris haeresis officium impeditur, vel retardatur.
>
> Urbanus IV.
>
> Statutum civitatis, castri, villae vel alterius loci, per quod negotium inquisitionis haereticae pravitatis directe vel indirecte, ne in eo libere procedi valeat, contigerit impediri vel quomodolibet retardari, nullius exsistere firmitatis, ipsiusque civitatis vel loci dominum, potestatem, capitaneum, consules vel rectores, per quem vel quos eadem civitas seu locus regitur, quocunque nomine censeantur, ad statutum huiusmodi loci dioecesano vel eius vicario, aut inquisitori seu inquisitoribus labis praefatae sine morae dispendio exhibendum, et, si tale inventum fuerit, revocandum omnino, vel saltem eatenus moderandum, quod per illud inquisitionis processus non impediantur vel aliquatenus retardentur, per censuram ecclesiasticam decernimus compellendos.

Chapter X

The office of an inquisitor of heresy does not expire with the death of the one granting it, even with respect to business not previously begun or arisen. This states the point.

Clement IV, to the inquisitors of heretical depravity.

Lest some, arousing an anxious doubt, call into doubt whether the office of the inquisition of heretical depravity, committed by the Apostolic See to your solicitude within certain limits, expires through the death of the Roman Pontiff who committed it, by the present edict we declare that the office itself endures in favor of the faith after the death of the one committing it, not only with respect to business begun while the mandator was living, but also with respect to matters untouched and not begun, and, what is more, with respect to those which had not arisen at that time at all.

> Officium inquisitoris haeresis morte concedentis non exspirat, etiam quoad negotia prius non coepta vel exorta. H. d.
>
> Clemens IV. Inquisitoribus haereticae pravitatis .
>
> Ne aliqui, dubitationem sollicitam excitantes, in dubium revocent, an officium inquisitionis haereticae pravitatis, sollicitudini vestrae intra certos limites ab apostolica sede commissum, exspiret per mortem Romani Pontificis, qui commisit: praesenti declaramus edicto, ipsum officium non solum quoad negotia vivente mandatore incepta, immo etiam quoad integra et non coepta, et quod plus est, quantum ad ea, quae tunc nequaquam emerserant, in favorem fidei post committentis obitum perdurare.

Chapter XI

He instructs the inquisitors before God to put fear of him before fear of men in proceeding together or separately against heretics and their supporters, and also in absolving them when they have truly returned. — § 1. He instructs the inquisitors concerning the manner of examining witnesses and concerning the persons who ought to write down the testimony. This states the point. — § 2. He instructs the inquisitors concerning persons through whom the business of the inquisition might be impeded or deferred. This states the point.

The same, to the same.

So that you may more effectively fulfill by apostolic authority the office of inquisition against heretics in the province in which the same office has been committed to you, through apostolic writings we command your discretion that everywhere in the aforesaid province, together, separately, or individually, as the utility of the business shall counsel, you proceed according to the canonical sanctions against heretics, believers in them, their receivers, supporters, and defenders, and also against those defamed concerning heresy or suspected of it, placing divine fear before fear of men. But if anyone of the aforesaid, having first abjured the heretical stain, should wish to return to the unity of the Church, you shall extend to him the benefit of absolution according to the form of the Church and enjoin upon him what is customarily enjoined upon such persons, prudently taking care that they do not return fraudulently with a feigned conversion and, deceiving you—indeed, themselves—bear a wolf under the appearance of a lamb.

§ 1. But because it is necessary to proceed with much caution in so grave a crime, so that the hard and deserved severity of vengeance may be pronounced against the guilty without any error, we will and command that in the examination of witnesses whom it shall be necessary to receive concerning the aforesaid crime and matters touching it, you employ two religious and discreet persons, in whose presence the depositions of those witnesses are faithfully written down by a public person, if you can conveniently have one, or by two suitable men. We strictly command that, when required by you, all and singular brothers of your order who are known to have held or exercised the office of notary while they were in the world, and also those to whom the same office of notary was committed by the Apostolic See by reason of the aforesaid business of the faith, or shall be committed in the future, be bound to write down depositions of witnesses of this kind and to do all things which in the office committed to you belong to the office of a registrar or notary. We grant to brothers of this kind, and also to any other religious who similarly held and exercised the office of notary while they were in the world, and to secular clerics holding that office, even if those religious brothers and clerics are constituted in sacred orders, the power freely to exercise that office with respect to the aforesaid matters, notwithstanding any contrary statute of canon or order fortified by whatsoever safeguard.

§ 2. Moreover, by the authority of the present writing we grant to you and each of you the free faculty, after prior warning, to restrain by ecclesiastical censure, appeal being set aside, questing preachers from the office of preaching—which in no way pertains to them, since it belongs to them only humbly to seek charitable subsidies and to expound an indulgence, if perhaps they have one—where it happens that an assembly is held for the business of the inquisition or of the faith, or otherwise that some impediment is in any manner brought from this to the same business. Finally, so that concerning the aforesaid matters a ready and inviolable authority of coercion may be fully present to you and each of you, we will that you execute them all manfully, invoking, if necessary, the aid of the secular arm, restraining contradictors by ecclesiastical censure, appeal being set aside, notwithstanding any privileges or indulgences granted, or to be granted in the future, by the aforesaid See specially or generally, under whatsoever expression of words or form, to any persons of whatever condition, dignity, grade, religious institute, or order, or to counties or corporate bodies of cities and places, since we will that no obstacle be interposed for you in a business of such piety by privileges or indulgences of this or any other kind; the constitution enacted in the general council concerning two days' journeys notwithstanding.

We establish, moreover, that the podestà, captain, rector, consuls, or any others who preside over a city or another place at present, or shall preside in the future, at the requisition of the diocesans or their vicars, or of the inquisitors of heretical depravity, shall swear precisely to attend to and inviolably observe, and cause their subjects to observe, throughout the whole time of their government, in lands subject to their jurisdiction or government, the constitutions promulgated and also approved by the Apostolic See against heretics, believers in them, their receivers, supporters, and defenders, and their children and grandchildren. One who refuses to swear and observe them shall, as infamous and as a supporter of heretics and one suspected concerning the faith, be stripped of the office and honor of his government; nor shall he thereafter be regarded in any respect as podestà, captain, consul, or rector, or afterward be assumed into any dignity or public office, and the things which he has done as podestà, bailiff, consul, or rector shall obtain no force.

> Informat inquisitores ad Deum, ut eius timorem hominum metui anteponant, in procedendo simul vel separatim contra haereticos et suos fautores, et etiam in eos absolvendo, quum vere redierint. — §. 1. Instruit inquisitores in modo examinationis testium, et in personis, quae testificata scribere debeant. H. d. — §. 2. Instruit inquisitores circa personas per quas impediri posset vel differri inquisitionis negotium. H. d.
>
> Idem eisdem.
>
> Ut officium inquisitionis contra haereticos in provincia, in qua vobis idem officium est commissum, auctoritate apostolica possitis efficacius adimplere: discretioni vestrae per apostolica scripta mandamus, quatenus ubique in praefata provincia simul vel separatim aut singulariter, prout negotii utilitas suadebit, contra haereticos, credentes, receptatores, fautores et defensores eorum, nec non contra infamatos de haeresi vel suspectos, iuxta sanctiones canonicas, hominum metu divino timori postposito, procedatis. Si vero aliquis ex praedictis, haeretica labe primitus abiurata, redire voluerit ad ecclesiae unitatem: ei iuxta formam ecclesiae absolutionis beneficium impendatis, et iniungatis eidem quod iniungi talibus consuevit, proviso sollerter, ne simulata conversione redeant fraudulenter, et vos , immo se ipsos, fallentes sub agni specie lupum gerant. §. 1. Verum, quia in tam gravi crimine cum multa oportet cautela procedi, ut in reos sine ullo proferatur errore durae ac dignae severitas ultionis: volumus et mandamus, ut in examinatione testium, quos recipi super crimine praedicto ipsumque contingentibus oportuerit, adhibeatis duas religiosas et discretas personas, in quarum praesentia per publicam, si commode potestis habere, personam, aut per duos viros idoneos, fideliter eorundem depositiones testium conscribantur . Ad conscribendas quoque huiusmodi depositiones testium, et ad faciendum omnia, quae in commisso vobis officio ad scriniarii seu tabellionis officium pertinent, teneri districte praecipimus, quum per vos fuerint requisiti, omnes et singulos vestri ordinis fratres, qui, dum essent in saeculo, tabellionatus officium habuisse aut exercuisse noscuntur, et illos etiam, quibus idem tabellionatus officium ratione praefati negotii fidei fuit ab apostolica sede commissum et in posterum committetur, concedentes huiusmodi fratribus, nec non et aliis religiosis quibuslibet, qui similiter, dum essent in saeculo, tabellionatus officium habuerunt et exercuerunt, quibusvis etiam clericis saecularibus officium ipsum habentibus, etiamsi iidem fratres religiosi et clerici sint in sacris ordinibus constituti, exercendi libere officium ipsum quoad praemissa, non obstante statuto aliquo contrario canonis vel ordinis quocunque vallato munimine, potestatem . §. 2. Compescendi praeterea monitione praemissa per censuram ecclesiasticam, appellatione postposita, praedicatores quaestuarios, (ubi contigerit pro inquisitionis seu fidei negotio congregationem fieri, vel alias eidem negotio quomodolibet ex hoc impedimentum aliquod afferri,) a praedicationis officio, quod ad ipsos nullatenus pertinet, (quorum interest tantum caritativa subsidia suppliciter petere, ac indulgentiam, si forte habent, exponere,) liberam vobis et singulis vestrum concedimus auctoritate praesentium facultatem. Denique, ut circa

praemissa plene vobis et singulis vestrum coercitionis expedita et inviolabilis adsit auctoritas, volumus, ut ea omnia viriliter exsequamini, si opus fuerit, invocato auxilio brachii saecularis, contradictores per censuram ecclesiasticam appellatione postposita compescendo, non obstantibus aliquibus privilegiis vel indulgentiis quibuscunque personis cuiusvis conditionis, dignitatis vel gradus, religionis vel ordinis, comitatibus vel universitatibus civitatum et locorum specialiter vel generaliter sub quacunque verborum expressione vel forma a memorata sede concessis, vel in posterum concedendis, quum ex huiusmodi vel aliis privilegiis vel indulgentiis nullum vobis in tantae pietatis negotio velimus obstaculum interponi, et constitutione de duabus diaetis edita in concilio generali. Statuimus, insuper, ut potestas, capitaneus, seu rector vel consules, seu quivis alii, qui civitati praesunt vel loco alteri ad praesens, aut praeerunt in futurum, ad requisitionem dioecesanorum vel vicariorum suorum, seu inquisitorum haereticae pravitatis, iurent praecise attendere inviolabiliter et observare ac facere a suis subditis observari toto tempore sui regiminis in terris suae iurisdictioni regiminive subiectis constitutiones contra haereticos, credentes, receptatores, fautores et defensores eorum, ipsorumque filios et nepotes a sede apostolica promulgatas ac etiam approbatas, quas qui iurare noluerit et servare, ut infamis, et tanquam haereticorum fautor ac de fide suspectus officio et honore sui regiminis spolietur, nec ulterius potestas, capitaneus, consul vel rector habeatur in aliquo, aut de cetero in aliquam dignitatem vel officium publicum ulterius assumatur, et quae ut potestas, ballivus, consul vel rector fecerit, nullam obtineant firmitatem.

Chapter XII

This decretal contains many things useful for carrying out the office of inquisitors. For it gives them the power to commit citations and denunciations of sentences. It gives the power to summon experts, the clergy, and the people so that they may assist them. It gives the power to proceed against those who have transferred themselves from their own province into another. It gives the power to demand books and records of processes, to commute and mitigate punishments, and to deprive heretics and their supporters and defenders of offices and honors and pronounce them deprived, provided, however, that this be done with the counsel of the diocesans or, in their absence, their vicars, unless the same persons knowingly conferred benefices upon such persons. This states the point. Johannes Andreae.

Boniface VIII, to the inquisitors of heretical depravity.

So that you may execute the duty of the office committed to you more usefully and fruitfully, adhering to the footsteps of our predecessors of holy memory Innocent, Alexander, and Clement, we grant to you and each of you the full faculty of committing citations and denunciations of sentences which you have rendered against any heretics, believers in them, their receivers, defenders, and supporters; of summoning also, as shall be expedient, any experts so that they may assist you and provide opportune counsel in rendering sentences of this kind, and of enjoining upon them in virtue of obedience that they humbly obey you concerning these things; of convoking also the clergy and people of cities, castles, and other places, as you shall see to be expedient for the said business of the faith; and of proceeding against those who are established to have committed the crime of heresy in the province in which the office of inquisition has been committed to you, although they have chosen to transfer themselves to other regions. We also grant the full faculty of causing to be assigned to you by any persons books or registers and other writings in which are contained inquisitions made and processes conducted against heretics by any persons under authority of the Apostolic See or its legates; of mitigating or changing, together with the prelates to whose jurisdiction they are subject, the punishment of those who, humbly obeying your mandates, remain confined in prison or within walls on account of heresy, when you shall see it to be expedient; and, with the counsel of the

diocesans or, in their absence, of their vicars, of depriving or pronouncing deprived of dignities and other ecclesiastical benefices, and of public offices and any honors whatsoever, the same heretics, believers in them, their receivers and defenders, and their children and grandchildren. The diocesans are to be consulted in depriving such persons of benefices of this kind or pronouncing them deprived, unless perhaps it is lawfully established that those same diocesans knowingly conferred those benefices upon persons of this kind. For then we judge that they are not to be consulted in these matters, but rather are to be punished by their own judge.

> Comprehendit ista decretalis plura utilia pro expediendo officio inquisitorum. Dat enim eis potestatem committendi citationes et sententiarum denunciationes. Dat potestatem vocandi peritos, clerum et populum, ut eis assistant. Dat potestatem procedendi contra illos, qui de sua in aliam provinciam se transtulerunt. Dat potestatem repetendi libros et processus, commutandi et mitigandi poenas, privandi et privatos nunciandi officiis et honoribus haereticos, fautores et defensores eorum, ita tamen, quod hoc fiat de dioecesanorum, vel, in eorum absentia, vicariorum suorum consilio, nisi iidem scienter talibus beneficia contulissent. H. d. Ioann. Andr.
>
> Bonifacius VIII. Inquisitoribus haereticae pravitatis.
>
> Ut commissi vobis officii debitum utilius et uberius exsequamini, sanctae memoriae Innocentii, Alexandri et Clementis praedecessorum nostrorum vestigiis inhaerentes, vobis et vestrum singulis committendi citationes et denunciationes sententiarum, quas in quoslibet haereticos, credentes, receptatores, defensores et fautores eorum tuleritis; advocandi quoque, prout expedierit, peritos quoslibet, ut vobis assistant et in huiusmodi ferendis sententiis praebeant consilium opportunum, ac eis, quod super his vobis humiliter pareant, in virtute obedientiae iniungendi; convocandi etiam clerum et populum civitatum, castrorum aliorumque locorum, prout dicto negotio fidei videritis expedire, et contra illos, quos in provincia , in qua vobis inquisitionis officium est commissum, haeresis crimen constiterit commisisse, (licet ad alias partes se transferendos duxerint,) procedendi; nec non faciendi a quibuslibet assignari vobis libros, seu quaternos et alia scripta, in quibus inquisitiones factae, ac processus per quoscunque auctoritate sedis apostolicae vel legatorum eius habiti contra haereticos continentur; et illorum, qui, vestris mandatis obedientes humiliter, stant propter haeresim in carcere vel muro reclusi, poenam una cum praelatis, quorum iurisdictioni subsunt, mitigandi vel mutandi, quum videritis expedire; privandi praeterea vel privatos nunciandi dignitatibus ac aliis beneficiis ecclesiasticis de dioecesanorum, vel, eis absentibus, vicariorum suorum consilio, et officiis publicis ac honoribus quibuscunque eosdem haereticos, credentes, receptatores et defensores ipsorum , eorumque filios et nepotes , plenam concedimus facultatem. Sunt autem dioecesani in privando tales vel nunciando privatos beneficiis huiusmodi requirendi, nisi forte constaret legitime, quod iidem scienter huiusmodi personis eadem beneficia contulissent. Tunc enim eos in his requirendos non esse censemus, sed potius a suo iudice puniendos.

Chapter XIII

Christians passing or returning to Judaism are regarded as heretics. This states the point according to Zenzelinus.

The same.

Against Christians who have passed or returned to the rite of the Jews, even if those returning were baptized while they were infants or from fear of death, yet were not absolutely or precisely coerced, there shall be a proceeding as against heretics if they have confessed concerning this or have been convicted by Christians or Jews; and as there is a proceeding against the supporters, receivers, and

defenders of heretics, so there is to be a proceeding against the supporters, receivers, and defenders of such persons.

> Christiani, ad Iudaismum transeuntes et redeuntes, haeretici reputantur.
>
> H. d. secundum Zenz.
>
> Idem.
>
> Contra Christianos, qui ad ritum transierint vel redierint ludaeorum, etiamsi huiusmodi redeuntes, dum erant infantes, aut mortis metu, non tamen absolute aut praecise coacti, baptizati fuerunt , erit tanquam contra haereticos, si fuerint de hoc confessi, aut per Christianos seu Iudaeos convicti, et, sicut contra fautores, receptatores et defensores haereticorum, sic contra fautores, receptatores et defensores talium est procedendum.

Chapter XIV

The dowries of innocent wives are not confiscated on account of the heresy of their husbands. This states the point according to Zenzelinus.

The same.

Pope Innocent IV of happy memory decreed that the dowries of Catholic wives ought not to be confiscated on account of the heresy of their husbands. We judge that this is to be understood unless perhaps the women themselves contracted marriages with men whom at that time they knew to be heretics.

> Non confiscantur dotes uxorum innocentium propter haeresim maritorum.
>
> H. d. secundum Zenz.
>
> Idem.
>
> Decrevit felicis recordationis Innocentius Papa IV., quod propter haeresim maritorum uxorum catholicarum dotes non debeant confiscari. Quod intelligendum fore censemus, nisi forte mulieres ipsae cum viris matrimonia contraxissent, quos haereticos tunc sciebant.

Chapter XV

The children of heretics to the second degree in the paternal line, but to the first in the maternal line, are incapable of an ecclesiastical benefice or secular office if their fathers were not reincorporated into the Church before death. This states the point according to Dominicus.

The same.

We declare that the statute of our predecessors of happy memory Innocent and Alexander—namely, that heretics, believers in them, their receivers, defenders, and supporters, and their children to the second generation, are not to be admitted to any ecclesiastical benefice or public office, and that if it is done otherwise it is null and void—comprehends the first and second degree through the paternal line; but through the maternal line we will it to be extended only to the first. Certainly, this seems to be understood concerning the children and grandchildren of heretics, believers, and other persons of this kind who are proved to be such or also to have died as such, but not of those who are established to have been corrected and reincorporated into the unity of the Church, and to have received, at the command of the Church, penance for a fault of this kind, which they either have already completed, or humbly persist in pursuing, or have been prepared to receive.

Filii haereticorum usque ad secundam lineam paternam, ad primam vero maternam, sunt inhabiles ad beneficium ecclesiasticum vel officium saeculare, si patres ante mortem ecclesiae reincorporati non fuerint. H. d. secundum Dom.

Idem.

Statutum felicis recordationis Innocentii et Alexandri praedecessorum nostrorum, ne videlicet haeretici, credentes, receptatores, defensores et fautores eorum, ipsorumque filii usque ad secundam generationem, ad aliquod beneficium ecclesiasticum seu publicum officium admittantur, quod, si secus actum fuerit, sit irritum et inane, primum et secundum gradum per paternam lineam comprehendere declaramus; per maternam vero ad primum duntaxat volumus hoc extendi. Hoc sane de filiis et nepotibus haereticorum , credentium et aliorum huiusmodi, qui tales esse vel tales etiam decessisse probantur, intelligendum esse videtur, non autem illorum, quos emendatos esse constiterit et reincorporatos ecclesiae unitati, et pro culpa huiusmodi ad mandatum ecclesiae poenitentiam recepisse, quam ipsi vel iam perfecerunt, vel humiliter prosecutioni eius insistunt, vel parati fuerint ad recipiendam eandem.

Chapter XVI

An inquisitor of the Pope concerning heresy does not inquire against a bishop without a special mandate; but if he knows him to be culpable, he shall report it to the Pope. This states the point. Johannes Andreae.

The same.

Inquisitors of heretical depravity appointed by the Apostolic See or by any other person or persons cannot inquire concerning a crime of this kind against bishops or, under its pretext, proceed against them unless it is expressly contained in the letters of apostolic commission that they can do this. Nevertheless, if the inquisitors themselves know or discover that bishops or other superior prelates have committed an offense concerning the crime of heresy, or that they are defamed concerning this or suspected of it, they shall be bound to report it to the Apostolic See.

Inquisitor Papae super haeresi sine speciali mandato non inquirit contra episcopum, sed, si eum culpabilem sciverit, nunciabit Papae. H. d.

Ioann. Andr.

Idem.

Inquisitores haereticae pravitatis, ab apostolica sede seu alio vel aliis quibuslibet deputati, de huiusmodi crimine inquirere contra episcopos nequeunt, aut eius praetextu procedere contra eos, nisi in literis commissionis apostolicae, quod hoc possint, contineatur expresse. Si tamen inquisitores ipsi episcopos vel alios superiores praelatos sciverint vel invenerint circa crimen haereseos commisisse, aut eos de hoc diffamatos exsistere vel suspectos: id tenebuntur sedi apostolicae nunciare.

Chapter XVII

The authority of ordinaries concerning proceedings against heretics is not derogated although the Pope generally delegates them to another. And concerning the same fact, a bishop and an inquisitor can proceed jointly or separately, or pronounce sentence; if they disagree concerning it, they ought to report to the Pope. And bishops, however they proceed, ought to observe the manner imposed upon inquisitors. This states the point. Dominicus.

The same.

Through the fact that the business of heretical depravity is generally delegated by the Apostolic See to one or more persons in some province, city, or diocese, we do not will to derogate from diocesan bishops so that they cannot themselves proceed in the same business by ordinary authority, or by delegated authority if they possess it. But so that the said business of inquisition may proceed more effectively, better, and more usefully, we grant that inquiry concerning the same fact may be made by the bishops themselves and by the inquisitors jointly or separately. And if they proceed separately, they shall be bound to communicate their processes to one another, so that through this the truth may be discovered better. And unless in this case the inquisitors in pronouncing sentence deem that deference should be given to the diocesans, or conversely, sentence shall be pronounced by both together. If they do not agree in rendering it, the business, sufficiently instructed, shall be remitted by both to the Apostolic See. But whether the bishops proceed by ordinary or delegated authority, in proceeding they shall observe that manner which inquisitors can and ought to observe through the common laws or through special grants or ordinances of the Apostolic See.

> Non derogatur ordinariis super processu haereticorum, licet Papa generaliter alteri deleget. Et super eodem facto episcopus et inquisitor possunt procedere communiter vel divisim, vel proferre sententiam; in qua si discordant, debent Papae referre. Et episcopi, qualitercunque procedant, debent servare modum inquisitoribus impositum. H. d. Domin.
>
> Idem.
>
> Per hoc, quod negotium haereticae pravitatis alicui vel aliquibus ab apostolica sede generaliter in aliqua provincia, civitate vel dioecesi delegatur, dioecesanis episcopis, quin et ipsi auctoritate ordinaria vel delegata, si habent, in eodem procedere valeant, nolumus derogari. Verum, ut dictum inquisitionis negotium efficacius, melius utiliusque procedat, concedimus, quod per episcopos ipsos et per inquisitores de facto eodem inquiri valeat communiter vel divisim. Et si divisim processerint, teneantur sibi invicem communicare processus, ut per hoc possit melius veritas inveniri. Et nisi hoc casu inquisitores in sententiae prolatione dioecesanis vel econtra duxerint deferendum, per utrosque simul sententia proferatur. In qua ferenda si non convenerint, per utrosque negotium sufficienter instructum ad sedem apostolicam remittatur. Sive autem ordinaria sive delegata episcopi potestate procedant: illum in procedendo modum observent, quem inquisitores possunt et debent per iura communia, vel per speciales concessiones seu ordinationes sedis apostolicae observare.

Chapter XVIII

Temporal lords shall not resist bishops and inquisitors of heresy, but shall obey them entirely, and shall not take cognizance of that crime; otherwise they are punished as stated here. This states the point according to Zenzelinus.

The same.

So that the business of inquisition against heretical depravity may prosper in our times to the glory of God and the increase of the faith, approving and willing to be observed certain laws promulgated by Frederick, formerly Emperor of the Romans, while he was then persisting in devotion to the Roman Church, insofar as they advance the honor of God and of his holy Church, pursue the extermination of heretics, and do not oppose canonical statutes, we require and admonish all secular powers and temporal lords, and the rectors of provinces, lands, cities, and other places, by whatever dignities, offices, or names they are designated, that, just as they desire to be regarded and held as faithful, so, for the defense of the faith, they obey and give heed to the diocesan bishops and the inquisitors of heretical depravity appointed, or to be appointed in the future, by the Apostolic See, in the

investigation, seizure, and diligent custody of heretics, believers in them, their supporters, receivers, and defenders, when they have been required by them. And they shall conduct, or cause to be conducted without delay, the aforesaid pestiferous persons into the power or prison of the said bishops or inquisitors, or to the place concerning which they themselves or any of them shall have commanded, within the district of the same lords or rectors, where they are to be held under strict and diligent custody by Catholic men appointed by the aforesaid bishops or inquisitors, or any of them, until their business is terminated by the judgment of the Church. The aforesaid powers, temporal lords, or rectors, or their officials or messengers, shall also immediately receive those condemned for heresy by the diocesan bishop or by the inquisitor or inquisitors and abandoned to them, to be punished without delay by the due penalty, notwithstanding the appeals or proclamations of the aforesaid sons of wickedness, since both according to the ordinance of our predecessors and according to imperial law the benefit of appeal and proclamation is expressly forbidden to heretics and believers in them, and to their receivers, supporters, and defenders.

We also more strictly prohibit the aforesaid powers, temporal lords, rectors, and their officials from taking cognizance of or judging this crime in any manner, since it is purely ecclesiastical; from freeing persons seized for the same crime from prison without the license or mandate of the said bishops or inquisitors, or at least one of them; from refusing promptly to perform or fulfill, as pertains to their office, an execution enjoined upon them for a crime of this kind by the diocesan or by the inquisitors or inquisitor; or from otherwise presuming directly or indirectly to impede the judgment, sentence, or process of the diocesans or inquisitors. But if any of the aforesaid powers, temporal lords, rectors, or their officials or bailiffs acts contrary to the aforesaid things, or perhaps presumes to oppose or in any way impede the aforesaid business of the faith incumbent upon the often-mentioned diocesan bishop or inquisitors, he, and also anyone who knowingly gives aid, counsel, or favor in the aforesaid things, shall know himself struck by the sword of excommunication. If he sustains it with a pertinacious mind for a year, from that time he shall be condemned as a heretic.

> Episcopis et inquisitoribus haeresis non resistant, sed omnino pareant domini temporales, et de eo crimine non cognoscant; alias, prout dicitur hic, puniuntur. H. d. secundum Zenz.
>
> Idem.
>
> Ut inquisitionis negotium contra haereticam pravitatem ad Dei gloriam et augmentum fidei nostris temporibus prosperetur, leges quasdam, per Federicum olim Romanorum imperatorem, tunc in devotione Romanae persistentem ecclesiae, promulgatas, quatenus Dei et ecclesiae sanctae suae honorem promovent, et haereticorum exterminium prosequuntur, et statutis canonicis non obsistunt, approbantes et observari volentes, universos saeculi potestates et dominos temporales, ac provinciarum, terrarum, civitatum aliorumque locorum rectores, quibuscunque dignitatibus vel officiis aut nominibus censeantur, requirimus et monemus, ut, sicut reputari cupiunt et haberi fideles, ita pro defensione fidei dioecesanis episcopis et inquisitoribus haereticae pravitatis, a sede apostolica deputatis aut in posterum deputandis, pareant, et intendant in haereticorum, credentium, fautorum, receptatorum et defensorum ipsorum investigatione, captione ac custodia diligenti, quum ab eis fuerint requisiti, et ut praefatas personas pestiferas in potestatem seu carcerem episcoporum aut inquisitorum dictorum , vel ad locum, de quo ipsi vel aliqui ex eis mandaverint, infra eorundem dominorum potestatem vel rectorum districtum ducant vel duci faciant sine mora, ubi per viros catholicos a praefatis episcopis seu inquisitoribus , vel eorum aliquo deputatos sub arcta et diligenti custodia teneantur, donec eorum negotium per ecclesiae iudicium terminetur, utque de haeresi a dioecesano episcopo vel inquisitore seu inquisitoribus condemnatos praefati potestates, domini temporales sive rectores, vel eorum officiales

seu nuncii sibi relictos statim recipiant indilate animadversione debita puniendos, non obstantibus appellationibus seu proclamationibus praedictorum nequitiae filiorum, quum tam secundum ordinationem praedecessorum nostrorum, quam secundum legem imperialem appellationis et proclamationis beneficium expresse sit haereticis et credentibus, ac eorum receptatoribus, fautoribus et defensoribus interdictum. Prohibemus quoque districtius potestatibus, dominis temporalibus et rectoribus eorundemque officialibus supra dictis, ne ipsi de hoc crimine, quum mere sit ecclesiasticum, quoquo modo cognoscant vel iudicent, sive captos pro eodem crimine absque dictorum episcoporum sive inquisitorum, aut saltem alterius eorundem licentia vel mandato a carcere liberent, aut exsecutionem, sibi pro huiusmodi crimine a dioecesano vel inquisitoribus seu inquisitore iniunctam, prompte, prout ad suum spectat officium, facere seu adimplere detrectent, vel alias dioecesanorum aut inquisitorum iudicium, sententiam seu processum directe vel indirecte impedire praesumant. Si quis vero de praedictis potestatibus, dominis temporalibus, rectoribus, vel eorum officialibus seu ballivis, contra praedicta fecerit, aut praefato fidei negotio, saepefatis dioecesano episcopo vel inquisitoribus incumbenti, se opponere forte praesumpserit vel ipsum aliquatenus impedire, nec non et qui scienter in praedictis dederit auxilium consilium vel favorem: excommunicationis se noverit mucrone percussum. Quam si per annum animo sustinuerit pertinaci: extunc velut haereticus condemnetur.

Chapter XIX

The goods of heretics are confiscated by the law itself, which is proved by a threefold argument from civil law. But the seizure of the goods ought not to be made by the secular lord unless judgment concerning the crime has first been pronounced by an ecclesiastical judge who has power to do this. Johannes Andreae.

The same.

Since, according to the civil laws, those contracting wicked, unnatural, and incestuous marriages by that very fact lose ownership of their property; and a woman who transgresses human law and, especially without the consent of her parents, chooses marriage with her abductor loses by the law itself all goods which had come to her through law from the abductor and the other participants in the abduction, and in a certain case they are assigned to the fisc; and also one transporting prohibited kinds of merchandise, or omitting the declaration of transported things, is by that very fact deprived of ownership of those kinds and things, and ownership of the said things and kinds is acquired by the fisc: with the counsel of our brothers we decree confiscated by the law itself the goods of heretics, who offend more gravely, horribly, and detestably than the aforesaid persons. Nevertheless, the execution of confiscation of this kind or the occupation of the goods themselves ought not, according to the declaration of our predecessor Pope Gregory, to be made by princes or other temporal lords before sentence concerning the same crime has been promulgated by the bishop of the place or another ecclesiastical person who has power concerning this.

Bona haereticorum ipso iure sunt confiscata, quod probatur triplici argumento legali. Sed apprehensio bonorum fieri non debet per dominum saecularem, nisi prius pronunciatum fuerit super crimine per iudicem ecclesiasticum, qui hoc possit. Ioann. Andr.

Idem.

Quum, secundum leges civiles, nefarias, naturae contrarias, incestas nuptias contrahentes eo ipso suarum dominium rerum perdant, et mulier, humanam legem transgrediens, et, praesertim parentibus suis non consentientibus, raptoris nuptias eligens, bona omnia, quae per legem sibi obvenerant a raptore ac aliis consortibus raptus , ipso iure amittat, certoque casu deferantur in fiscum, ac etiam illicitas species transvehens, aut rerum vectarum professionem omittens earundem specierum et rerum

proprietate hoc ipso privetur, et fisco rerum et specierum dictarum proprietas acquiratur: bona haereticorum, qui gravius, horribilius ac detestabilius quam praedicti delinquunt, ipso iure de fratrum nostrorum consilio decernimus confiscata. Confiscationis tamen huiusmodi exsecutio vel bonorum ipsorum occupatio fieri non debet per principes aut alios dominos temporales iuxta Gregorii Papae praedecessoris nostri declarationem, antequam per episcopum loci, vel aliam personam ecclesiasticam, quae super hoc habeat potestatem, sententia super eodem crimine fuerit promulgata.

Chapter XX

In a cause of heresy there is a proceeding simply and summarily, and the statements of witnesses and accusers are not published if danger is feared. This states the point according to Zenzelinus.

The same.

Reviewing certain statutes of our predecessors of happy memory Innocent, Alexander, and Clement, with certain things declared and added, we grant that in the business of the inquisition of heretical depravity there can be a proceeding simply and summarily, and without the din and formal order of advocates and judicial proceedings. We command, however, that if the bishop or inquisitors perceive grave danger to threaten accusers or witnesses intervening or deposing in a cause of heresy, on account of the power of the persons against whom inquiry is made, if the publication of their names should occur, their names shall be expressed not publicly but secretly: when the inquisitors proceed, before the diocesan bishop or, in his absence, his vicar; but when the bishop proceeds, before the inquisitors, if access to them can conveniently be had; and nevertheless, whether the bishop or the inquisitors have proceeded, before certain other prudent and honorable persons learned in law, whom we will to be called for this purpose, and to whom the whole process upon which deliberation is to be made is to be disclosed methodically and explained in its entirety, with a proceeding to sentence or condemnation on their counsel. And thus, notwithstanding that the names of those who deposed in this manner were not published to the persons against whom they deposed, full credence shall be given to the depositions of the same witnesses for instructing the cognition of the judge.

And so that the dangers to the same accusers and witnesses may be met more effectively and there may be a more cautious proceeding in the business of the inquisition, by authority of the present constitution we permit the bishop or inquisitors to be able to enjoin secrecy upon those to whom, as was stated before, they shall explain a process of this kind, and, if it shall seem expedient to them, to promulgate against them a sentence of excommunication which they shall incur by the fact itself from violation of the secrecy, if, without their license, they disclose to others the secrets of the counsel or process revealed to them under secrecy by the same bishop or inquisitors. This is to be done, however, so that the inquisitors do not excommunicate the bishop, or the bishop the inquisitors, for this cause, but they themselves shall be bound to secrecy of this kind by the strict precept now enjoined by us under virtue of holy obedience. But when the aforesaid danger has ceased, the names of the accusers and witnesses shall be published, as is done in other judgments.

Moreover, in all these things we command both bishops and inquisitors to have a pure and provident intention, lest, where there is security, they say that danger exists in order to suppress the names of accusers or witnesses, or, where such danger threatens, assert security to their peril, burdening their consciences concerning this. But we will that the other constitutions, ordinances, and mandates of our predecessors made and granted in the business of heretical depravity, and also responses to

consultations which do not conflict with the above-written constitutions enacted concerning the same depravity, remain in their force.

> In causa haeresis proceditur simpliciter et de plano, et dicta testium et accusatorum non publicantur, si periculum timeatur. H. d. secundum Zenz.
>
> Idem.
>
> Statuta quaedam felicis recordationis Innocentii, Alexandri et Clementis praedecessorum nostrorum, quibusdam declaratis et additis, recensentes, concedimus, quod in inquisitionis haereticae pravitatis negotio procedi possit simpliciter et de plano, et absque advocatorum ac iudiciorum strepitu et figura. Iubemus tamen, quod, si accusatoribus vel testibus in causa haeresis intervenientibus seu deponentibus propter potentiam personarum, contra quas inquiritur, videant episcopus vel inquisitores grave periculum imminere, si contingat fieri publicationem nominum eorundem, ipsorum nomina non publice, sed secreto coram dioecesano episcopo, vel, eo absente, ipsius vicario, quando inquisitores procedunt, quando vero procedit episcopus, coram inquisitoribus, si haberi commode possit copia eorundem, ac nihilominus, sive episcopus sive inquisitores processerint, aliquibus aliis personis providis et honestis iurisque peritis, quas ad hoc vocari, et eis per totum processum, super quo deliberandum est, seriose manifestari ac integraliter explicari, et de ipsorum consilio ad sententiam vel condemnationem procedi volumus, exprimantur, sicque, (non obstante, quod illis, contra quos huiusmodi deposuerunt, nomina ipsorum non fuerint publicata,) adhibeatur ad cognitionem iudicis instruendam plena fides depositionibus testium eorundem. Et ut eorundem accusatorum et testium periculis efficacius occurratur, et cautius in inquisitionis negotio procedatur: praesentis constitutionis auctoritate permittimus , quod episcopus vel inquisitores secretum possint indicere illis, quibus, (ut praemissum est), processum huiusmodi explicabunt, et in eos, si arcana consilii seu processus, sibi sub secreto ab eisdem episcopo vel inquisitoribus patefacta, praeter eorum licentiam aliis patefecerint, excommunicationis sententiam, quam ex secreti violatione ipso facto incurrant, (si eis expedire videbitur,) promulgare, sic tamen, quod inquisitores episcopum, vel episcopus inquisitores non excommunicent hac de causa, sed ipsi ex iniuneto ex nunc a nobis sub virtute sanctae obedientiae districto praecepto ad secretum huiusmodi teneantur. Cessante vero periculo supra dicto, accusatorum et testium nomina, prout in aliis sit iudiciis, publicentur . Ceterum in his omnibus praecipimus tam episcopos quam inquisitores puram et providam intentionem habere, ne ad accusatorum vel testium nomina supprimenda, ubi est securitas, periculum esse dicant, nec in eorum discrimen securitatem asserant, ubi tale periculum immineret, super hoc eorundem conscientias onerantes. Constitutiones vero, ordinationes et mandata alia praedecessorum nostrorum, in negotio haereticae pravitatis facta, concessa seu etiam ad consulta responsa, quae constitutionibus supra scriptis, super eadem editis pravitate, non obvient, in suo volumus robore permanere.

Title III: On Schismatics

Chapter I

In the first part he sets forth a preamble as far as the words "namely James," in which he says that the Colonnas James and Peter, formerly cardinals, and the sons of John—that is, the brothers of the said Peter—although awaited for a long time, refused to return to their heart, but, descending into the depth of evils, aggravated their offenses; therefore he rendered various punishments against them, which, for the certainty of those present and the memory of those to come, he inserts here. Secondly, as far as the words "Against the children," he sets forth the punishments which he rendered against James and Peter themselves. There, thirdly, as far as the word "Every," he sets forth the punishments which he rendered against the sons and descendants of the said John. There, fourthly, as far as the

words "These and other things," he imposes punishments upon those who thereafter deliberately regard the said James and Peter as cardinals, or furnish favor to them or to the aforesaid sons of John. There, fifthly and lastly, he ratifies, renews, and confirms the aforesaid things, commands them to be inviolably observed, and orders similar excesses to be punished by similar penalties in the future. This states the point. Johannes Andreae.

Boniface VIII.

Rising in the power of the Most High to cut away the fruitless, pestiferous, and harmful branches which, like an insipid fig tree, the house of Colonna produced—namely James of Colonna and Peter his nephew, formerly cardinals of the Holy Roman Church, and the sons of the late John of Colonna, brother of the said James and father of the aforesaid Peter, their descendants, supporters, and followers—who, although awaited for a long time, did not know how to direct their steps in the paths of justice, return to their heart, and produce fruits worthy of repentance, we have deemed it necessary to proceed against them spiritually and temporally.

Thereafter the said James and Peter, descending into the depth of evils and striving to tear the seamless tunic of the Lord—that is, the unity of Holy Church—and, as though sharpening their tongues like a sword, broke forth into words not so much blasphemous and schismatic as insane. Having reduced them to writing under the seals which they used before they were deposed, they sent them throughout the City and diverse regions of the world. Judging loquacity to be eloquence and speaking evil to be a sign of a good conscience, and contriving material for disputation because they could not do so by truth, they presumed at least to lacerate us with reproaches. Although we could have overcome their statements by a superior assertion and refuted them with reasons clearer than light, we deemed that no answer should be given to their barking, so that their shattered rage might be broken by the resounding authority of the one presiding on the supreme throne of judgment, manifest truth might of itself come to public knowledge, and our silence might be a punishment to them.

Nevertheless, we successively instituted various processes against them and others, at diverse times, containing spiritual and temporal penalties, sentences, and fines. Since it would be lengthy to insert in the present constitution their whole tenor, we have deemed that certain things gathered from them in summary should be inserted into this our constitution for the certainty of those present and the memory of those to come, namely: that, for causes which reasonably moved us, with the counsel of our brothers we deposed the said James and Peter from the cardinalates of the same Church and from every advantage and honor of the cardinalate; judged them schismatics and blasphemers and persons to be punished as heretics; exposed their persons to seizure by the faithful; perpetually deprived them of all benefices, offices, honors, dignities, and prelacies and rendered them incapable of holding them; and declared all their movable and immovable goods, rights, and jurisdictions forfeit.

Against the children and descendants of the said John, moreover, we have deemed that a manifold proceeding should be made spiritually and temporally, their goods and rights being declared forfeit and confiscated, and the descendants of the said John, descending through the male and female line, being rendered perpetually unworthy of the honor of the cardinalate and of any offices, benefices, and ministries in the aforesaid Church or its curia, but elsewhere as far as the fourth generation.

Every present and future person, of whatever preeminence, condition, dignity, or ecclesiastical or worldly status—even if he were a cardinal of the Holy Roman Church—who knowingly and deliberately has regarded and held the same James and Peter, or either of them, as cardinals, or has admitted them to the cardinalate, or has admitted their vote or the suffrage of either of them in the election of the Roman Pontiff, or has elected, nominated, assumed, or received either as Roman Pontiff, or has given aid, counsel, or favor in or toward these things, we have deemed should be bound by a sentence of excommunication, from which he cannot be absolved without the express license of the Roman Pontiff, not even by the college of the Apostolic See while that See is vacant. We also deprive such a person entirely of ecclesiastical prelacy, dignity, status, and honor, and nevertheless bind with a sentence of excommunication all who furnish favor or aid to the said James and Peter otherwise, and to the sons of the said John, while they persist in rebellion or schism.

These and other things done by us in our aforesaid processes and contained in our sealed letters drawn up concerning them, we ratify, confirm, and also renew by this constitution, to remain perpetually in force, and, with the counsel of our aforesaid brothers, we enact the same anew. And so that the malice of the said persons may not find a successor, the example of punished transgression may draw others back from offense, and truth coming into oblivion may not wander uncertain, we establish and decree both that these things be inviolably observed and that similar excesses and faults be punished by similar penalties in the future.

DE SCHISMATICIS.

In prima parte ponit arengam usque ad vers. Iacobum videlicet, in qua dicit, quod Columnenses Iacobus et Petrus, olim cardinales et filii Ioannis, fratres scilicet dicti Petri, diutius exspectati, noluerunt ad cor redire, sed in profundum malorum descendentes sua aggravabant delicta; quare varias poenas tulit in eos, quas ad certitudinem praesentium et memoriam futurorum hic inserit. Secundo ponit poenas, quas protulit in ipsos Iacobum et Petrum, usque ad vers. Contra natos. Ibi tertio ponit poenas, quas tulit contra filios et posteros dicti Ioannis, usque ad vers. Omnem. Ibi quarto imponit poenas iis, qui de cetero deliberate dictos Iacobum et Petrum pro cardinalibus habuerint, vel eis vel praedictis natis Ioannis favorem praebuerint, usque ad vers. Haec et alia. Ibi quinto et ultimo ratificat, innovat et confirmat praedicta, et ea praecipit inviolabiliter observari, et iubet similes excessus puniri similibus poenis in posterum. H. d. Ioann. Andr.

Bonifacius VIII.

Ad succidendos infructuosos palmites pestiferos et nocivos, quos, quasi ficus fatua, domus de Columna produxit, nescientes in semitis iustitiae dirigere gressus suos, ad cor reverti, et agere poenitentiae dignos fructus, licet diutius exspectatos, (Iacobum videlicet de Columna, et Petrum nepotem ipsius, olim sanctae Romanae ecclesiae cardinales, et filios quondam Ioannis de Columna, fratris dicti Iacobi, et patris Petri praefati posteros, et fautores et sequaces eorum,) in virtute Altissimi exsurgentes, spiritualiter et temporaliter contra eos duximus procedendum. Consequenter dictis Iacobo et Petro, descendentibus in profundum malorum, et molientibus inconsutilem tunicam Domini, sanctae videlicet ecclesiae scindere unitatem, et ut gladium acuentibus linguas suas, et prorumpentibus non tam in verba blasphemiae et schismatica, quam insana, quae in scriptis redacta sub sigillis, quibus, antequam essent depositi, utebantur, per Urbem et diversa mundi climata destinaverunt, aestimantes loquacitatem facundiam, et maledicere conscientiae bonae signum, et conficta materia disputandi, quia veritate non poterant, nos saltem lacerare conviciis praesumpserunt. Quorum dicta licet possemus superiori assertione convincere, et luce clarioribus rationibus confutare, duximus eorum latratibus non dare responsum, ut contrita eorum rabies auctoritate sonora praesidentis in supremo iudicii solio

frangeretur, et patens veritas per se ipsam veniret in publicam notionem, nostrumque silentium in supplicium eis foret. Processus tamen contra ipsos et alios fecimus successive varios, diversisque temporibus spirituales et temporales poenas et sententias continentes et mulctas. Quorum, (quia totum tenorem constitutionis in praesenti inserere longum esset,) ex eis quaedam compendiose collata huic nostrae constitutioni duximus inserenda ad certitudinem praesentium et memoriam futurorum, videlicet: quod ex causis, quae rationabiliter nos moverunt, de fratrum nostrorum consilio deposuimus dictos Iacobum et Petrum a cardinalatibus eiusdem ecclesiae et ab omni cardinalatus commodo et honore, ipsosque iudicavimus schismaticos et blasphemos, et tanquam haereticos puniendos, expositis personis eorum a fidelibus capiendis, omnibus beneficiis, officiis, honoribus, dignitatibus et praelaturis perpetuo privantes eosdem, et reddentes inhabiles ad habenda, cunctis eorum bonis mobilibus et immobilibus, iuribus et iurisdictionibus publicatis. Contra natos insuper et posteros dicti Ioannis spiritualiter et temporaliter duximus multipliciter procedendum, eorum bonis et iuribus publicatis et confiscatis, ipsisque posteris dicti Ioannis, per masculinam et femininam lineam descendentibus, indignis perpetuo redditis ad cardinalatus honorem et quaelibet officia, beneficia et ministeria in ecclesia memorata vel eius curia, alibi vero usque ad quartam generationem. Omnem personam, praesentem et futuram, cuiuscunque fuerit praeeminentiae, conditionis, dignitatis aut status ecclesiastici vel mundani, (etiamsi foret sanctae Romanae ecclesiae cardinalis,) quae ipsos Iacobum et Petrum, vel eorum alterum scienter et deliberate pro cardinalibus habuerit et tenuerit, aut ad cardinalatum admiserit, seu votum eorum vel alicuius ipsorum suffragium in electione Romani Pontificis admiserit, aut in Pontificem Romanum elegerit, nominaverit, assumpserit vel receperit, seu dederit in his vel ad hoc auxilium, consilium vel favorem, excommunicationis sententia duximus innodandum, a qua absque expressa licentia Romani Pontificis non possit absolvi, nec etiam per collegium apostolicae sedis eadem sede vacante. Eamque praelatione, dignitate, statu et honore ecclesiasticis omnino privamus, nihilominus omnes, qui dictis Iacobo et Petro alias et natis dicti Ioannis favorem praebuerint vel auxilium in rebellione vel schismate persistentibus, excommunicationis sententia innodantes. Haec et alia, per nos facta in praedictis nostris processibus, et in literis nostris bullatis super eis confectis contenta, hac constitutione perpetuo valitura ratificamus, confirmamus et etiam innovamus, eandemque de novo facimus de fratrum nostrorum consilio praedictorum. Et ut dictorum malitia non inveniat successorem, et punitae transgressionis exemplar retrahat alios ab offensa, ac in oblivionem veritas veniens non vagetur incerta: statuimus atque decrevimus, ut et ipsa inviolabiliter observentur, et quod similes excessus et culpae poenis similibus in posterum puniantur.

Title IV: On Homicide

Chapter I

One who causes or merely orders someone to be killed through assassins, as one renounced by all, incurs by the fact itself, without pronouncement of any sentence, sentences of excommunication and deposition from office and benefice. This states the point according to Zenzelinus.

Innocent IV, in the Council of Lyon.

Descending for the redemption of the human race from the heights of heaven to the lowest parts of the world, and at last undergoing temporal death, Jesus Christ the Son of God, so that, when about to ascend after the resurrection to the Father, he might not leave without a shepherd the flock redeemed by the price of his glorious blood, committed its care to blessed Peter the Apostle, so that by the stability of his faith he might confirm the others in the Christian religion and kindle their minds to works of salvation with the ardor of his devotion. Whence we, having been made by the Lord's

disposition, although unworthy, successors of the same Apostle, and holding, however unworthily, the place of the Redeemer himself on earth, aroused by solicitous vigils concerning the guardianship of the same flock, ought with the unceasing attention of thought to devote ourselves to the salvation of souls, removing harmful things and doing profitable ones, so that, having shaken from ourselves the sleep of negligence, and with the eyes of our heart watching through assiduous diligence, we may be able to gain souls for God, with his grace cooperating with us.

§ 1. Since, therefore, those who thirst for the death of others with such horrendous inhumanity and detestable savagery that they cause them to be killed through assassins procure not only the death of bodies but also of souls—unless overflowing divine grace anticipates them so that they are fortified with spiritual arms—and since every power is bestowed by the Lord for the exercise of justice and right judgment, we, wishing to meet so great a peril of souls and to strike such wicked presumptions with the sword of ecclesiastical correction, so that fear of punishment may be the boundary of presumption of this kind, especially since certain magnates, fearing to be destroyed in this manner, have been compelled to obtain security from the lord of those assassins and thus, not without reproach to Christian dignity, in a certain way to redeem their lives from him:

§ 2. With the approval of the sacred council we establish that whatever prince, prelate, or other ecclesiastical or secular person causes or even commands any Christian to be killed through the said assassins—even though death perhaps does not follow from this—or receives, defends, or conceals them, shall by the fact itself incur sentences of excommunication and deposition from dignity, honor, order, office, and benefice, and let these be freely conferred upon others by those to whom their collation pertains. He shall also, together with all his worldly goods, be perpetually renounced as an enemy by the entire Christian people, as a rival of the Christian religion; and after it is established by probable arguments that someone has committed so execrable a crime, no other sentence of excommunication, deposition, or renunciation against him shall in any way be required.

DE HOMICIDIO.

Per assassinos faciens vel tantum mandans aliquem interfici, tanquam ab omnibus diffidatus absque alicuius prolatione sententias incurrit excommunicationis et depositionis ab officio et beneficio. H. d. secundum Zenz.

Innocentius IV. in concilio Lugdunensi .

Pro humani redemptione generis de summis coelorum ad ima mundi descendens, et mortem tandem subiens temporalem Dei Filius Iesus Christus, ne gregem sui pretio sanguinis gloriosi redemptum, adscensurus post resurrectionem ad Patrem, absque pastore desereret, ipsius curam B. Petro Apostolo, ut suae stabilitate fidei ceteros in Christiana religione firmaret eorumque mentes ad salutis opera suae accenderet devotionis ardore, commisit. Unde nos, eiusdem Apostoli effecti disponente Domino, licet immeriti, successores, et ipsius redemptoris locum in terris, quanquam indigne, tenentes, circa gregis eiusdem custodiam sollicitis excitati vigiliis et animarum saluti iugis attentione cogitationis intendere submovendo noxia et agendo profutura debemus, ut, excusso a nobis negligentiae somno, nostrique cordis oculis diligentia sedula vigilantibus, animas Deo lucrifacere sua nobis cooperante gratia valeamus. §. 1. Quum igitur illi, qui sic horrenda inhumanitate detestandaque saevitia mortem sitiunt aliorum, ut ipsos faciant per assassinos occidi, non solum corporum, sed mortem procurent etiam animarum, nisi eos exuberans gratia divina praevenerit , ut sint armis spiritualibus praemuniti, ac omnis potestas tribuatur a Domino ad iustitiam rectumque iudicium exercendum: nos, tanto periculo volentes occurrere animarum, et tam nefarias praesumptiones ecclesiasticae animadversionis mucrone

ferire, ut metus poenae meta huiusmodi praesumptionis exsistat, praesertim quum nonnulli magnates, taliter perimi formidantes, coacti fuerint securitatem ab eorundem assassinorum domino impetrare, sicque ab eo non absque Christianae dignitatis opprobrio redimere quodammodo vitam suam: §. 2. Sacri approbatione concilii statuimus, ut, quicunque princeps, praelatus seu quaevis alia ecclesiastica saecularisve persona quempiam Christianorum per dictos assassinos interfici fecerit vel etiam mandaverit, (quanquam mors ex hoc forsitan non sequatur,) aut eos receptaverit vel defenderit seu occultaverit, excommunicationis et depositionis a dignitate, honore, ordine, officio et beneficio incurrat sententias ipso facto, et illas libere aliis per illos, ad quos eorum pollatio pertinet, conferantur. Sit etiam cum suis bonis mundanis omnibus tanquam Christianae religionis aemulus a toto Christiano populo perpetuo diffidatus, et, postquam probabilibus constiterit argumentis , aliquem scelus tam exsecrabile commisisse, nullatenus alia excommunicationis vel depositionis seu diffidationis adversus eum sententia requiratur.

Chapter II

Without the penalty of irregularity, clerics can complain concerning their malefactors before a secular judge, even concerning crimes for which a punishment of blood is due, by expressly protesting that they do not intend a punishment of blood. This states the point. Johannes Andreae.

Boniface VIII.

It ought not to be imputed to any prelates or clerics who, lodging a complaint before a secular judge against laypersons who have wronged them, petition that amends be made to them and provision be made lest such things be presumed against them thereafter, while expressly protesting that they do not intend vengeance or a punishment of blood, if the judge, with justice requiring it, inflicts death upon those persons, although otherwise in such a case a punishment of blood ought by law to be imposed. Otherwise, if prelates or clerics, on account of fear of this kind, because the judge could proceed to a punishment of blood, did not dare to complain in this manner concerning their malefactors, material would be given to very many persons to slaughter them and freely plunder their goods.

Sine poena irregularitatis possunt clerici de suis malefactoribus conqueri coram iudice saeculari, etiam de criminibus, ex quibus debetur poena sanguinis, expresse protestando, quod ad poenam sanguinis non intendunt.

H. d. Ioann. Andr.

Bonifacius VIII.

Praelatis vel clericis quibuscunque, qui, de laicis suis malefactoribus querelam penes saecularem iudicem deponentes, petunt emendam sibi fieri, et provideri, ne contra eos talia de cetero praesumantur, protestando expresse, quod ad vindictam seu poenam sanguinis non intendunt, imputari non debet, quamvis alias in tali casu de iure debeat poena sanguinis irrogari, si iudex mortem illis inferat iustitia exigente. Alioquin si praelati aut clerici propter metum huiusmodi, quia iudex ad poenam sanguinis posset procedere, de suis malefactoribus taliter conqueri non auderent: daretur plerisque materia trucidandi eosdem, et ipsorum bona libere depraedandi.

Chapter III

The resulting death is imputed to one ordering another to be beaten. This states the point according to Zenzelinus.

The same.

One who orders someone to be beaten, although he expressly prohibits that the person be killed in any way or mutilated in any member, becomes irregular if the mandatary, exceeding the limits of the mandate, mutilates or kills him, since he was at fault in giving the mandate and ought to have considered that this could happen.

> Mandanti aliquem verberari secuta mors imputatur. H. d. secundum Zenz.
>
> Idem.
>
> Is, qui mandat aliquem verberari, licet expresse inhibeat, ne occidatur ullatenus vel membro aliquo mutiletur, irregularis efficitur, si mandatarius, fines mandati excedens, mutilet vel occidat, quum mandando in culpa fuerit, et, hoc evenire posse, debuerit cogitare.

Title V: On Usury

Chapter I

First, as far as the words "And because," he renews and commands to be observed the Lateran council enacted against usurers; there he commands all lords and corporate bodies of lands not to permit foreigners in their lands to hire houses for practicing usury or to retain houses already hired, and that no one lease houses to them for this purpose, as far as the words "But those who"; there he imposes a penalty upon clerics acting contrary to this, as far as the words "Moreover"; there he imposes a penalty upon laypersons, and he does this as far as the end. Johannes Andreae.

Gregory X, in the general Council of Lyon.

Desiring to restrain the abyss of usury, which devours souls and exhausts resources, under threat of the divine curse we command the constitution of the Lateran council enacted against usurers to be inviolably observed. And because, the less opportunity for lending at usury that is available to moneylenders, the more the freedom of practicing usury will be removed, by this general constitution we establish that neither a college, another corporate body, nor an individual person, of whatever dignity, condition, or status, shall permit foreigners and others not originating from their lands, who publicly practice or wish to practice the lending of money at usury, to hire houses for this purpose in their lands, to retain houses already hired, or otherwise to dwell there; rather, they shall expel all manifest usurers of this kind from their lands within three months, never thereafter to admit any such persons. No one shall lease houses to them for practicing usury or grant houses under any other title whatsoever.

But those who act contrary to this, if they are ecclesiastical persons—patriarchs, archbishops, and bishops—shall know that by the fact itself they will incur a sentence of suspension; lesser individual persons, one of excommunication; and a college or other corporate body, one of interdict. If they sustain it with hardened mind for a month, their lands, for as long as the same usurers remain in them, shall from that time be subject to ecclesiastical interdict. Moreover, if they are laypersons, they shall, every privilege ceasing, be restrained by their ordinaries from excess of this kind through ecclesiastical censure.

> **DE USURIS.**
>
> Primo innovat et observari praecipit Lateranense concilium contra usurarios editum, usque ad vers. Et quia, ubi praecipit omnibus dominis et universitatibus terrarum, ne permittant alienigenas in terris suis conducere domos ad exercendum foenus, vel conductas habere, et quod aliquis eis ad hoc domos non

locet, usque ad vers. Qui vero, ubi imponit poenam clericis contra facientibus, usque ad versic. Ceterum, ubi imponit poenam laicis, et hoc facit usque in finem. Ioann. Andr.

Gregorius X. in generali concilio Lugdunensi.

Usurarum voraginem, quae animas devorat et facultates exhaurit, compescere cupientes, constitutionem Lateranensis concilii contra usurarios editam sub divinae maledictionis interminatione praecipimus inviolabiliter observari. Et quia, quo minor foeneratoribus aderit foenerandi commoditas, eo magis adimetur foenus exercendi libertas: hac generali constitutione sancimus, ut nec collegium, nec alia universitas vel singularis persona, cuiuscunque sit dignitatis, conditionis aut status, alienigenas et alios non oriundos de terris ipsorum, publice foenebrem pecuniam exercentes aut exercere volentes, ad hoc domos in terris suis conducere vel conductas habere, aut alias habitare permittant, sed huiusmodi usurarios manifestos omnes infra tres menses de terris suis expellant, nunquam aliquos tales de cetero admissuri. Nemo illis ad foenus exercendum domos locet, vel sub alio titulo quocunque concedat. Qui vero contra fecerint, si personae fuerint ecclesiasticae, patriarchae, archiepiscopi, episcopi suspensionis, minores vero personae singulares excommunicationis, si autem collegium seu alia universitas, interdicti sententiam ipso facto se noverint incursuros. Quam si per mensem animo sustinuerint indurato: terrae ipsorum, quamdiu in eis iidem usurarii commorantur, extunc ecclesiastico subiaceant interdicto. Ceterum si laici fuerint, per suos ordinarios ab huiusmodi excessu omni cessante privilegio per censuram ecclesiasticam compescantur.

Chapter II

Ecclesiastical burial shall be denied to manifest usurers, although they have ordered usury to be restored, unless satisfaction is first made or suitable security is given according to the form of this decree. Those who bury them contrary to this constitution incur the penalty of the Lateran council. Their testaments made otherwise are invalid, nor ought anyone to take part in them, absolve them, or admit them to confession. This states the point. Johannes Andreae.

The same.

Although manifest usurers have in their last will ordered satisfaction to be made concerning the usury which they had received, with the amount expressed or without distinction, ecclesiastical burial shall nevertheless be denied them until full satisfaction has been made concerning the usury itself, according as their resources permit; or until suitable security for making restitution has been given to those to whom restitution is to be made, if they are present, or to others who can acquire a right of action for them; or, if they are absent, to the ordinary of the place or the one acting in his stead, or to the rector of the parish in which the testator dwells, in the presence of certain trustworthy persons of that parish—by authority of the present constitution it being lawful for the said ordinary, vicar, and rector to receive security of this kind in their name in the aforesaid manner, so that a right of action is thereby acquired for them—or to a public official at the mandate of the ordinary himself.

Moreover, if the amount of the usury received is manifest, we will that it always be expressed in the aforesaid security; otherwise, another amount is to be moderated according to the judgment of the person receiving security of this kind. Nevertheless, he shall not knowingly moderate it at less than is probably believed; and if he acts otherwise, he shall be bound to make satisfaction for the remainder. We establish that all religious and others who dare to admit manifest usurers to ecclesiastical burial contrary to the form of the present sanction are subject to the penalty of the Lateran council

promulgated against usurers. No one shall take part in the testaments of manifest usurers, admit them to confession, or absolve them unless they have made satisfaction concerning the usury, or, according to the measure of their resources, furnish suitable security for making satisfaction, as stated before.

§ 1. Testaments of manifest usurers made otherwise shall likewise be invalid, but shall be null by the law itself.

> Manifestis usurariis, licet mandaverint usuras restitui, ecclesiastica sepultura negabitur, nisi primo satisfiat, vel secundum formam huius decreti idonee caveatur. Sepelientes eos. contra hanc constitutionem Lateranensis concilii poenam incurrunt. Testamenta ipsorum aliter facta non valent, nec debet eis aliquis interesse, vel eos absolvere vel ad confessionem admittere. H. d. Ioann. Andr.
>
> Idem .
>
> Quanquam usurarii manifesti de usuris, quas receperant, satisfieri expressa quantitate vel indistincte in ultima voluntate mandaverint: nihilominus tamen eis ecclesiastica sepultura denegetur, donec de usuris ipsis fuerit, (prout patiuntur facultates eorum,) plenarie satisfactum, vel illis, quibus facienda est restitutio, si praesto sint ipsi, aut aliis , qui eis possint acquirere, vel, eis absentibus, loci ordinario aut eius vices gerenti, sive rectori parochiae, in qua testator habitat, coram aliquibus fide dignis de ipsa parochia, (quibus quidem ordinario, vicario et rectori praedicto modo cautionem huiusmodi eorum nomine liceat praesentis constitutionis auctoritate recipere, ita, quod illis perinde actio acquiratur,) aut servo publico de ipsius ordinarii mandato idonee de restitutione facienda sit cautum. Ceterum si receptarum usurarum sit quantitas manifesta, illam semper in cautione praedicta exprimi volumus, alioquin aliam recipientis cautionem huiusmodi arbitrio moderandam; ipse tamen scienter non minorem, quam verisimiliter creditur, moderetur, et, si secus fecerit, ad satisfactionem residui teneatur. Omnes autem religiosos et alios, qui manifestos usurarios contra praesentis sanctionis formam ad ecclesiasticam ausi fuerint admittere sepulturam, poenae Lateranensis concilii contra usurarios promulgatae statuimus subiacere. Nullus manifestorum usurariorum testamentis intersit, aut eos ad confessionem admittat, sive ipsos absolvat, nisi de usuris satisfecerint, vel de satisfaciendo pro suarum viribus facultatum praestent, ut praemittitur, idoneam cautionem. §. 1. Testamenta quoque manifestorum usurariorum aliter facta non valeant, sed sint irrita ipso iure.

Title VI: On the Excesses of Prelates and Subjects

Chapter I

Mendicants cannot acquire new places for dwelling, or alienate or exchange old ones, without a special license of the Pope which makes mention of this prohibition. The prohibition nevertheless ceases for those acquiring places for leading the eremitical life. This states the point. Johannes Andreae.

Boniface VIII.

Since from the fact that Preachers, Minors, and other mendicant religious receive anew houses or places for dwelling in cities, castles, towns, or other places, or abandon places received formerly, transferring themselves there to others, diverse scandals sometimes arise and frequent complaints are brought to the Apostolic See, we, wishing to make provision concerning this, by this perpetual edict prohibit anyone or any persons of the aforesaid, by whatever privileges concerning this they may be fortified—which we will to afford them no support at all contrary to the tenor of the present constitution—from hereafter presuming, without a special license of the Apostolic See making full

and express mention of a prohibition of this kind, to receive anew any houses or places for dwelling in any city, castle, town, or place whatsoever; to exchange those received thus far; or to transfer them to others by title of sale, exchange, donation, or any alienation whatsoever. If they act otherwise, we decree the act null. Through this, however, we do not understand it to be forbidden to those who, with the license of their superiors, have chosen to lead an eremitical or solitary life to acquire and exchange cells, lodgings, or dwellings in a wilderness or in places where human habitation is not nearby.

> **DE EXCESSIBUS PRAELATORUM ET SUBDITORUM.**
>
> Mendicantes non possunt acquirere nova loca ad habitandum vel antiqua alienare vel mutare absque speciali licentia Papae, quae de hac prohibitione faciat mentionem. In acquirentibus tamen loca pro eremitica vita ducenda cessat prohibitio. H. d. Ioann. Andr.
>
> Bonifacius VIII.
>
> Quum ex eo, quod Praedicatores, Minores, et religiosi alii mendicantes, in civitatibus, castris, villis aut aliis locis ad habitandum domos vel loca de novo suscipiunt, seu olim suscepta dimittunt, se ibidem ad alia transferentes, diversa scandala quandoque proveniant, et frequentes clamores ad sedem apostolicam perferantur: nos, super hoc providere volentes, hoc perpetuo prohibemus edicto, ne deinceps aliquis vel aliqui de praedictis, quibuscunque super hoc privilegiis muniti exsistant, (quae ipsis contra tenorem constitutionis praesentis nullatenus volumus suffragari,) in aliqua civitate, castro, villa seu loco quocunque ad habitandum domos vel loca quaecunque de novo recipere, seu hactenus recepta mutare, vel ea venditionis, permutationis, donationis aut cuiusvis alienationis titulo quocunque in alios transferre praesumant absque sedis apostolicae licentia speciali, plenam et expressam faciente de prohibitione huiusmodi mentionem; si secus egerint, irritum decernentes. Per hoc tamen eis, qui vitam duxerint eremeticam seu solitariam eligendam, de maiorum suorum licentia, quin cellas, mansiones seu habitacula in eremo , sive locis, ubi non sit hominum habitatio de propinquo, possint acquirere ac mutare, non intelligimus interdictum.

Title VII: On Privileges

Chapter I

Exempt persons, or persons privileged not to be bound to answer except before a specified judge, are sued before the ordinary by reason of a delict, contract, or thing, if these were committed, entered into, or situated in a non-exempt place, but not by reason of domicile. — § 1. In the case of a monastery privileged so that its monks cannot be interdicted, suspended, or excommunicated by anyone, the jurisdiction of ordinaries ceases over them with respect to those matters, unless those monks are sent to priorates subject to the ordinaries; for then, even though they are monks of both places, the ordinaries judge them also with respect to the aforesaid matters for as long as they remain there. This states the point.

Innocent IV, in the general Council of Lyon.

Wishing the liberty which the Apostolic See has granted to certain persons by privilege of exemption to be observed intact in such a way that others neither infringe it nor those persons themselves exceed its limits, by an irrefragable declaration we determine that, however much persons exempted in this way enjoy liberty, they can nevertheless rightly be sued before the ordinaries of places by reason of a delict, a contract, or the thing concerning which action is brought against them, and those ordinaries can exercise their jurisdiction over them with respect to this, as law requires. Do they

therefore entirely lack the advantage of liberty in these matters? Certainly not: for they cannot in any way be sued concerning them before the ordinaries themselves, provided that the delict was committed, the contract entered into, or the thing in dispute situated in an exempt place; nor can they be sued where they have domicile if they commit a delict or enter a contract elsewhere, or if the thing itself is situated elsewhere. Nor, under pretext of their domiciles, do the diocesans of those places have any power to remit them there or enjoin upon them that they answer there if they are sued where they committed the delict or entered the contract, or where the thing itself is situated; nevertheless, other cases in which canonical statutes command them to be subject to the jurisdiction of bishops remain unaffected. And we decree the very same concerning those to whom it has been granted by apostolic privilege that they are not bound to answer complainants concerning themselves except under one specified judge.

§ 1. But over those to whom it has been granted by the Apostolic See that they cannot be interdicted, suspended, or excommunicated by anyone—as are very many religious, in whose privileges it is contained that no bishop or archbishop shall presume for any cause or in any place to interdict, suspend, or excommunicate the monks of their monasteries—the same ordinaries cannot anywhere exercise their jurisdiction at all with respect to those matters, unless perhaps those monks have been sent to priorates of their monasteries subject to the same ordinaries, either to conduct their government or to reside in them as the proper monks of those places. For then, although they can freely be recalled to those monasteries and are regarded as monks both of them and of their priorates, since it is not incongruous for someone to have a monastic place in both, while one monastery is known to be subject to or dependent upon the other, nevertheless, by reason of the same priorates, the said ordinaries may lawfully exercise their jurisdiction over them, even with respect to the aforesaid matters, for as long as they remain in them.

DE PRIVILEGIIS.

Exempti vel privilegiati, ut non teneantur nisi sub certo iudice respondere, ratione delicti, contractus aut rei, si haec sint inita vel sita in loco non exempto, conveniuntur coram ordinario; sed ratione domicilii non. — §. 1. Monasterio privilegiato, ut eius monachi a quocunque interdici, suspendi vel excommunicari non possint, cessat in illis ordinariorum iurisdictio quoad illa, nisi illi monachi mitterentur ad prioratus subiectos ordinariis, quia tunc, etiam licet utrobique sint monachi, ordinarii etiam quoad praedicta illos iudicant, quamdiu ibi manent. Hoc dicit.

Innocentius IV. in concilio generali Lugdunensi.

Volentes libertatem, quam nonnullis apostolica sedes privilegio exemptionis indulsit, sic integram observari , ut et illam alii non infringant, et ipsi eius limites non excedant, declaratione irrefragabili diffinimus, quod , quantumcunque sic exempti gaudeant libertate, nihilominus tamen ratione delicti, sive contractus, aut rei, de qua contra ipsos agitur, rite possunt coram locorum ordinariis conveniri, et illi quoad hoc suam in ipsos iurisdictionem, prout ius exigit, exercere. Numquid ergo carent omnino in his commodo libertatis? Non utique, quia nec coram ordinariis ipsis, dummodo sit in loco exempto commissum delictum, vel contractus initus, aut res litigiosa, nec ubi domicilium habent, si alibi delinquant, vel contrahant, aut res ipsa consistat, conveniri possunt aliquatenus super istis: nec domiciliorum praetextu locorum dioecesani, (si, ubi deliquerunt , vel contraxerunt, aut res ipsa consistit, illi conveniantur,) remittendi eos illuc, vel ipsis, ut illic respondeant, iniungendi habeant aliquam potestatem, salvis nihilominus casibus aliis, in quibus eos episcoporum iurisdictioni subesse canonica praecipiunt instituta. Et id ipsum decernimus circa illos , quibus, ut non nisi sub uno certo

iudice teneantur de se conquerentibus respondere, apostolico privilegio est concessum. §. 1. In eos autem, quibus, ne interdici, suspendi vel excommunicari a quoquam valeant, a sede apostolica est indultum, sicut sunt religiosi quam plures, in quorum privilegiis continetur, ne quisquam episcopus vel archiepiscopus monasteriorum suorum monachos pro ulla causa ullove loco interdicere, suspendere vel excommunicare praesumat, iidem ordinarii iurisdictionem suam quantum ad ista, ubicunque illi fuerint, penitus exercere non possint : nisi forsan ipsi monachi ad monasteriorum suorum prioratus ordinariis eisdem subiectos, ut vel gerant eorum regimen, vel in eis tanquam proprii locorum ipsorum monachi resideant, fuerint destinati. Tunc enim, etsi libere possint ad eadem monasteria revocari, ac tam illorum quam ipsorum prioratuum monachi reputentur, quum non sit inconveniens, aliquem utrobique locum habere monachicum, unum alteri subesse monasterio, vel ab ipso noscitur dependere, ratione tamen eorundem prioratuum dicti ordinarii sua iurisdictione in ipsis etiam quoad praemissa, quamdiu morantur in illis, licite uti possunt.

Chapter II

The Roman Curia has a studium generale and its privileges. This states the point. Johannes Andreae.

The same.

Since many persons flow from diverse parts of the world to the Apostolic See as though to a mother, we, directing paternal solicitude to their common advantage and advancement, as well as that of all others, so that a stay of this kind may be fruitful to them, have provided that henceforth a studium of divine and human law, namely canon and civil law, shall be governed and flourish there. Whence we will and establish that students in those schools at the same See shall enjoy entirely such privileges, liberties, and immunities as students enjoy in schools where a studium generale is governed, and shall receive their ecclesiastical revenues in full just as they do.

Curia Romana habet studium generale et eius privilegia. H. d. Ioann. Andr.

Idem.

Quum de diversis mundi partibus multi confluant ad sedem apostolicam quasi matrem: nos, ad communem tam ipsorum quam aliorum omnium commodum et profectum paterna sollicitudine intendentes, ut sit eis mora huiusmodi fructuosa, providimus, quod ibidem de cetero regatur et vigeat studium iuris divini et humani, canonici videlicet et civilis. Unde volumus et statuimus, ut studentes in scholis ipsis penes sedem eandem talibus privilegiis omnino, libertatibus et immunitatibus gaudeant, quibus gaudent studentes in scholis, ubi generale regitur studium, ac recipiant integre proventus suos ecclesiasticos sicut illi.

Chapter III

He states how the privilege which certain abbots have of blessing the people is to be understood, and upon whom abbots may confer the tonsure. Johannes Andreae.

Alexander IV.

Abbots whom the Apostolic See has distinguished by a special privilege in the imparting of a blessing over the people can, in churches which pertain to them by full right, when they celebrate divine offices in them, bestow a solemn blessing over the people after the solemnities of masses and the evening and morning praises. But elsewhere in public, or along roads, in cities, castles, and towns, they cannot give or impart a blessing to peoples and congregations unless this has been granted to

them by express apostolic privilege. Nor shall it be lawful for them to confer the first clerical tonsure upon persons other than the lay brothers of their monasteries, those who have flocked to them, and those over whom they possess ecclesiastical and quasi-episcopal jurisdiction, unless this belongs to them by a full indult of the aforesaid See.

> Dicit, quomodo intelligatur privilegium, quod habent quidam abbates de populo benedicendo, et quibus possint abbates conferre tonsuram.
>
> Ioann. Andr.
>
> Alexander IV.
>
> Abbates, quos apostolica sedes in exhibitione benedictionis super populum speciali privilegio insignivit, in ecclesiis, quae ad eos pertinent pleno iure, quando in eis divina officia celebrant, possunt post missarum solennia et vespertinas ac matutinas laudes benedictionem solennem super populum elargiri . Alibi autem publice, aut per vias, civitates, castra et villas, populis et plebibus benedictionem facere vel impertiri non valeant, nisi hoc eis expresso apostolico privilegio sit concessum. Nec eis licitum sit , aliis quam monasteriorum suorum conversis, et qui ad illa convolaverint, et in quos ecclesiasticam et quasi episcopalem iurisdictionem obtinent, primam clericalem conferre tonsuram, nisi eis id competat ex pleno praefatae sedis induito .

Chapter IV

Exempt persons cannot construct oratories or chapels in non-exempt places without the license of the diocesans, nor in exempt places without the license of the Pope. Nor can exempt persons assume in themselves the personal causes of their free men, even if those men are their censuals. Johannes Andreae.

The same.

By authority of the Apostolic See, with the counsel of our brothers, we establish that exempt persons shall not presume to construct oratories or chapels in non-exempt places without the license of the diocesans of those places, nor celebrate or cause divine offices to be celebrated in places constructed in this manner, or during a time of interdict, except only in the cases expressed in law. If they presume such things, they shall be restrained from them by the ordinaries of those places; and if any conservators of the exempt persons have rendered sentences against those ordinaries on account of this, we revoke those sentences entirely. We prohibit, moreover, those exempt persons from daring to do this even in exempt places unless they have a special license or privilege of the Apostolic See concerning these things. The same exempt persons shall not in any way assume in their own name, either as plaintiffs or as defenders, the personal causes or lawsuits of their free men—namely, those which pertain only to the men themselves—even if the said men are their censuals, since this is by no means lawful for them.

> Exempti in locis non exemptis oratoria vel capellas sine dioecesanorum licentia construere non possunt, nec in exemptis sine licentia Papae. Nec possunt exempti assumere causas proprias suorum liberorum hominum in se, etiamsi illi sint sui censuales. Ioannes Andreae.
>
> Idem.
>
> Auctoritate sedis apostolicae de fratrum nostrorum consilio statuimus, quod oratoria vel capellas in locis non exemptis sine dioecesanorum locorum ipsorum licentia exempti construere non praesumant, neque in sic constructis, nec tempore interdicti, (casibus expressis in iure duntaxat exceptis,) celebrent vel faciant celebrari divina. Quodsi talia praesumpserint: ab his per locorum ipsorum ordinarios

compescantur, et, si quas propter hoc exemptorum ipsorum conservatores in eos sententias protulerint, illas penitus revocamus. Inhibemus insuper , ne in locis etiam exemptis hoc ipsi exempti facere audeant, nisi super his licentiam vel privilegium habeant sedis apostolicae speciale. Causas quoque sive lites proprias suorum hominum liberorum, quae videlicet tantum ad ipsos homines pertinent, iidem exempti suo nomine, sive ut actores sive ut defensores, aliquatenus non assumant, etiamsi sint ipsis dicti homines censuales; quum id nequaquam licitum sit eisdem.

Chapter V

A privilege of the Pope that someone cannot be excommunicated, suspended, or interdicted does not extend to sentences of ordinaries unless such a privilege was granted to kings, queens, or their children, or to a religious place or order. This states the point. Johannes Andreae.

Clement IV.

Lest some, trusting in apostolic indults, molest others in their right more confidently and alike contemn and elude the jurisdiction of ordinaries, with the counsel of our brothers we prohibit by perpetual edict all indulgences and privileges granted under whatsoever form of words to any individual ecclesiastical or secular persons, of whatever preeminence, dignity, condition, or status, providing that they cannot be interdicted or excommunicated by anyone, or that their lands or churches cannot be placed under ecclesiastical interdict, from being extended to sentences and processes of ordinaries. We except only those through which immunity of this kind is granted in this matter to kings and queens and their children, and also to any religious, not only by reason of persons but by reason of privileged orders or places.

Privilegium Papae, quod quis excommunicari, suspendi vel interdici non possit, non extenditur ad sententias ordinariorum, nisi tale privilegium sit concessum regibus, reginis vel ipsorum filiis, vel religioso loco vel ordini.

H. d. Ioann. Andr.

Clemens IV.

Ne aliqui, de indultis apostolicis confidentes, alios confidentius in suo iure molestent, et ordinariorum iurisdictionem contemnant pariter et eludant: omnes indulgentias et privilegia, quibuscunque singularibus personis ecclesiasticis vel saecularibus , cuiuscunque sint praeeminentiae, dignitatis, conditionis aut status, quod interdici a quocunque vel excommunicari non possint, nec terrae vel ecclesiae ipsorum ecclesiastico interdicto supponi, sub quacunque forma verborum concessa, (illis, per quae regibus et reginis eorumque filiis, nec non et religiosis quibuscunque, non personarum tantum , sed ordinum privilegiatorum vel locorum ratione in hoc immunitas huiusmodi conceditur, duntaxat exceptis,) de fratrum nostrorum consilio ad ordinariorum sententias et processus edicto perpetuo prohibemus extendi.

Chapter VI

Inferior prelates to whom the use of the miter is granted by privilege, if they are exempt, can use miters ornamented with gold embroidery, but not having plates or gems, in provincial councils and episcopal synods. And if they are not exempt, they shall use white and plain miters; in other places they shall use them as the indults permit.

The same.

So that the kindness of the Apostolic See—which has granted to certain abbots and other prelates to whom it does not belong by their own dignity that they may use the miter and other pontifical insignia, for the glory and honor of their churches—may providently prevent scandals from arising from this, yet in such a way that those privileged persons are not frustrated of the effect of their privileges and that the greater rank of dignities may appear from the greater rank and splendor of ornaments, with the counsel of our brothers we establish by the present decree that abbots and others to whom use of the miter has been granted by the same See may, if exempt, use in provincial councils and episcopal synods which some of them are bound to attend only miters ornamented with gold embroidery, but not having gold or silver plates or gems; but those not exempt shall use simple, white, and plain miters. In other places, however, exempt and non-exempt persons may use miters as the indults granted to them by the same See permit.

> Inferiores praelati, quibus per privilegium conceditur usus mitrae, si sunt exempti, in provincialibus et episcopalibus conciliis uti possunt mitris aurifrisiatis, non habentibus laminas aut gemmas. Et si non sunt exempti, albis et planis utentur; in aliis locis utantur, ut indulta permittunt.
>
> Idem.
>
> Ut apostolicae sedis benignitas, quae nonnullis abbatibus aliisque praelatis, quibus non competit ex propria dignitate, concessit in ecclesiarum suarum gloriam et honorem, quod mitra et aliis pontificalibus uti possint, provideat, ne inde scandala oriantur, sic tamen, quod ipsi privilegiati suorum privilegiorum non frustrentur effectu, et ex maioritate ac decore maiori ornatuum maioritas appareat dignitatum: de fratrum nostrorum consilio praesenti decreto statuimus, ut abbates et alii, quibus mitrae usus est ab eadem sede concessus, exempti quidem in provincialibus conciliis et episcopalibus synodis, quibus nonnulli eorum interesse tenentur, mitris tantummodo aurifrisiatis, (non tamen aureas vel argenteas laminas aut gemmas habentibus,) uti possint, non exempti vero simplicibus et albis ac planis utantur; in aliis vero locis exemptis et non exemptis mitris liceat illis uti, prout concessa eis ab eadem sede indulta permittunt.

Chapter VII

In the first part he shows what the law is when someone says that he is exempt by privilege alone. In the second, at the words "But if," what the law is when he alleges prescription concerning this. In the third, at the words "But if such persons," what the law is when he alleges both. Johannes Andreae.

Boniface VIII.

Since ecclesiastical persons, both religious and secular, presume many things which produce infamy for themselves and inflict injury upon others, evading the corrections and ordinances of ordinaries and declining their forum or judgment under pretext of an exemption or liberty which they assert themselves to possess, we, wishing to provide a salutary remedy concerning this, establish that those who assert themselves exempt through privileges or indulgences of the Apostolic See, when required by the ordinaries of places, shall be bound, when a just impediment has ceased, to show the privileges or indulgences of this kind with which they say they are fortified, and to exhibit them to be read in their entirety, to the ordinaries themselves in a suitable and secure place or to certain prudent men lacking every suspicion who have been appointed for this by the said ordinaries, within a competent term to be moderated according to the quality of the fact by the judgment of the ordinaries themselves or their delegates; and also to deliver a transcript of the articles concerning which there is controversy.

But if they deem that only canonical prescription is to be opposed in order to found their claim concerning liberty of this kind, they ought to prove such prescription to the same ordinaries or to prudent and unsuspected men delegated by them. But if such persons assert themselves fortified by privilege and prescription, they shall indeed exhibit the privilege itself, as is expressed above in the first article of this constitution. And if the privilege exhibited is not fully sufficient of itself to prove exemption or liberty of this kind, but is such that it at least furnishes cause for prescribing, they shall be bound to prove before the aforesaid persons a prescription of forty years. And while proof of the prescription is pending, although the claim of the ordinaries is founded upon the common law, nevertheless, because they prove the privilege which at least furnishes cause for prescribing, they shall not be disturbed in the possession of liberty or exemption which is not violent, clandestine, or granted by sufferance, and concerning which they have furnished proof before the same persons. But if, when they defend themselves by privilege alone, they have not exhibited a privilege sufficient of itself, or, when they allege prescription, at least one of such a kind as to furnish cause for canonical prescription, as was stated, then, since the claim of the ordinaries is founded upon the common law, those ordinaries may freely exercise their jurisdiction over them until they have furnished full proof concerning canonical prescription, as stated before.

> In prima parte demonstrat, quid iuris, quum quis solo privilegio se dicit exemptum. In secunda, ibi: Si autem, quid iuris, quum super hoc praescriptionem allegat. In tertia, ibi: Quodsi tales, quid iuris, quum allegat utrumque. Ioann. Andr.
>
> Bonifacius VIII.
>
> Quum personae ecclesiasticae tam religiosae quam saeculares plura praesumant, quae ipsis infamiam pariunt, et aliis inferunt laesionem, praetextu exemptionis vel libertatis, quam asserunt se habere, ordinariorum correctiones et ordinationes subterfugientes, ac eorum forum sive iudicium declinantes: nos, volentes super hoc de salubri remedio providere, statuimus, ut hi, qui se asserunt per privilegia seu indulgentias apostolicae sedis exemptos, a locorum ordinariis requisiti huiusmodi privilegia vel indulgentias, quibus se dicunt fore munitos, ipsis ordinariis in loco congruo et securo, aut aliquibus prudentibus viris omni suspicione carentibus, ad hoc per dictos ordinarios deputatis, infra terminum competentem, pro facti qualitate ipsorum ordinariorum vel delegatorum suorum arbitrio moderandum, iusto impedimento cessante ostendere, ac ad legendum integraliter exhibere, nec non de articulis, de quibus controversia fuerit, transscriptum tradere teneantur. Si autem ad fundandam intentionem suam super huiusmodi libertate solummodo praescriptionem canonicam duxerint opponendam : eisdem ordinariis vel delegatis ab eis viris prudentibus non suspectis de praescriptione huiusmodi facere debent fidem. Quodsi tales privilegio et praescriptione asserant se munitos: privilegium quidem ipsum exhibeant, ut in primo huiusmodi constitutionis articulo superius est expressum. Et si privilegium exhibitum non ad plenum per se sufficiat ad exemptionem seu libertatem huiusmodi comprobandam, sed tale est, quod saltem causam praebeat praescribendi; coram personis praedictis annorum XL. praescriptionem teneantur probare, praescriptionisque probatione pendente, licet ordinariorum intentio de iure communi fundetur, tamen, quia de privilegio, quod saltem causam praescribendi praebet, faciunt fidem, in libertatis vel exemptionis possessione non violenta, non clandestina, nec concessa precario, de qua fidem coram eisdem fecerint, non turbentur. Si vero privilegium per se sufficiens, quando solo privilegio se defendunt, vel saltem tale, quod praescriptioni canonicae causam praestet, quum praescriptionem allegant, non exhibuerint, ut est dictum: quum de iure communi ordinariorum intentio sit fundata, sua iurisdictione uti possint in eosdem libere, donec de praescriptione canonica, ut praemissum est, fecerint plenam fidem.

Chapter VIII

Entrance into a church is interdicted to regular or secular persons, although exempt, who knowingly celebrate or cause divine offices to be celebrated in interdicted cities or places except according to the permission of law, or who publicly admit excommunicated or interdicted persons to divine offices, sacraments, or burial. This states the point. Johannes Andreae.

The same.

Aroused by the frequent complaints and querulous cries of bishops and other prelates, we have deemed it necessary to establish by the present decree that no secular or regular persons, however fortified by privileges of exemption or liberty of the Apostolic See, of whatever order, religious institute, status, or condition they may be, shall knowingly celebrate or cause divine offices to be celebrated in cities, castles, towns—except to the extent granted to them by law—or other places interdicted by ordinaries, delegated judges, or by law, or publicly admit excommunicated or interdicted persons to divine offices, ecclesiastical sacraments, or ecclesiastical burial. But those who presume to act contrary to this shall know that, besides the other penalties established by law, entrance into a church is interdicted to them until they have made competent satisfaction for a transgression of this kind according to the judgment of the person whose sentence they contemned.

> Interdictus est ingressus ecclesiae regularibus vel saecularibus, quamvis exemptis, qui scienter celebrant vel celebrari faciunt divina in civitatibus vel locis interdictis, nisi secundum permissionem iuris, vel qui excommunicatos vel interdictos publice ad divina officia, sacramenta vel sepulturam admittunt. H. d. Ioann. Andr.
>
> Idem.
>
> Episcoporum et aliorum praelatorum querelis frequentibus et querulosis clamoribus excitati, praesenti decreto duximus statuendum, ne aliqui saeculares aut regulares, quantumcunque exemptionis seu libertatis sedis apostolicae privilegiis communiti, cuiuscunque ordinis, religionis, status vel conditionis exsistant, scienter celebrent vel faciant celebrari divina in civitatibus, castris, villis, (nisi quatenus eis a iure conceditur,) seu locis aliis interdictis ab ordinariis sive delegatis iudicibus vel a iure, aut excommunicatos publice vel interdictos ad divina officia seu ecclesiastica sacramenta vel ecclesiasticam sepulturam admittant. Qui vero contra praesumpserint, praeter alias poenas a iure statutas ingressum ecclesiae sibi noverint interdictum, donec de transgressione huiusmodi ad arbitrium eius, cuius sententiam contempserunt , satisfecerint competenter.

Chapter IX

First he establishes what is imported when a church is exempted; secondly, when its canons are exempted; thirdly, when its clerics are exempted. And he declares these things in order, speaking affirmatively and negatively in each of the parts, according to Johannes Andreae.

The same.

By an exemption granted to a church, the church itself and its monks or canons, and also its clerics, lay brothers, and persons perpetually offered to it, are understood to be exempt, but not the priest of the same church who has the care of parishioners with respect to those things which pertain to the same care, nor the parishioners themselves. But if the canons of a church are exempted, only the canons themselves, and not the church or its other clerics, are exempt. If, however, the clerics of any

church are exempted, then both the canons and the other clerics are exempted, but not the church, unless something else is expressed in the privilege of exemption.

> Primo ponit, quando eximitur ecclesia, quid importet. Secundo, quando ipsius canonici. Tertio, quando clerici. Et ista ordinate declarat, in qualibet partium affirmative et negative loquendo, secundum Ioann. Andr.
>
> Idem.
>
> Per exemptionem ecclesiae concessam ipsa ecclesia et ipsius monachi vel canonici, clerici etiam et conversi perpetuoque oblati, non autem ecclesiae eiusdem presbyter, qui parochianorum curam habet, quoad ea, quae ad curam eandem pertinent, nec ipsi parochiani etiam intelliguntur exempti. Verum si canonici alicuius ecclesiae eximantur, ipsi soli canonici, non autem ecclesia vel alii eius clerici sunt exempti. Si autem clerici cuiusvis ecclesiae eximantur, tunc tam canonici quam alii clerici eximuntur, non tamen ecclesia, nisi aliud in exemptionis privilegio exprimatur.

Chapter X

This decretal sets forth forms of privileges, some of which confer exemption and some do not. Johannes Andreae.

The same.

If the Pope, in some privilege or writing not made principally concerning the grant or sentence of exemption or even of liberty, relates that a church pertains to the right and property of the Roman Church, or uses similar words, the exemption of that church is not thereby proved unless its liberty is otherwise established. But if, in granting a privilege of exemption to a church or monastery, or in pronouncing sentence concerning its exemption when the business of that exemption was at issue, he asserts that the church itself is exempt, or that it belongs to the right of blessed Peter, pertains to the right and property of the Roman Church, or pertains specially, immediately, or even simply to the Roman Church, then through this such a church ought fully to be judged exempt. For since by the common law all churches spread throughout the world pertain to the Roman Church, if this is granted to a church or adjudged concerning it by sentence, its exemption is proved from this, so that the grant of a privilege which otherwise would bring nothing to the one to whom it is granted, and a sentence which otherwise would give no assistance to the church for which it is rendered, may confer a prerogative of special grace, since words ought to produce some effect.

And it is the same if the privilege contains—or the Pope himself expresses in the above-written manner—that the church is free, that it enjoys the liberty of the Roman Church, or that in this it enjoys a special prerogative; or if he says without qualification that it shall pay an annual census to the Roman Church as an indication of the liberty received; or if he exempts that church from the power of the ordinary; or if he says that the bishop shall not dare to place a cathedra there or to exercise any power of commanding or of making any ordinance, however slight. Similarly, if any persons are received as proper and special subjects, they are considered exempt. It is not so if they have been received as proper and special sons of the Roman Church, for such persons are not exempt on that account. But if it is simply said that a church shall pay an annual census to the Roman Church, the church ought not on this account to be called exempt. We say the same if liberty concerning certain matters is granted through a privilege and a clause concerning payment of an annual census follows—for example, if it is specially granted to some by the Apostolic See that they cannot be excommunicated, suspended, or interdicted by anyone other than the Pope or his legate, or

if some other thing is granted, or if it is said that they have been assumed as special sons of the Roman Church, and it follows in the privilege that they shall pay an annual census to the Roman Church as an indication of the liberty received. For in these and similar cases, those privileged in specified articles are subject to the jurisdiction of the ordinaries with respect to other matters.

Although we have thus deemed that the diverse tenors of privileges by which churches and monasteries are exempted should be designated in order to cut away material for litigation, through this we do not will in any way to derogate from other modes of exemption, if they are found, or of other liberties, or from their effects.

> Formas privilegiorum ponit haec decretalis, quarum quaedam exemptionem conferunt, quaedam non. Ioann. Andr.
>
> Idem.
>
> Si Papa in aliquo privilegio vel scriptura, non facta principaliter super donatione vel sententia exemptionis seu etiam libertatis, aliquam ecclesiam ad ius et proprietatem Romanae ecclesiae pertinere, vel consimilia verba narret: non propterea illius ecclesiae exemptio est probata, nisi de libertate aliter doceatur. Si autem ecclesiae vel monasterio exemptionis privilegium concedendo, vel super ipsius exemptione sententiando, (quum de ipsius exemptionis negotio ageretur,) asserat, ipsam ecclesiam fore exemptam, aut eam iuris beati Petri exsistere, sive ad ius et proprietatem Romanae ecclesiae, vel ad Romanam ecclesiam specialiter, aut sine medio, vel etiam simpliciter pertinere: per hoc plene debet exempta huiusmodi ecclesia iudicari. Quum enim iure communi omnes ecclesiae per orbem diffusae ad Romanam ecclesiam pertineant , si id alicui concedatur ecclesiae , vel de ea per sententiam iudicetur: ex hoc ipsius comprobatur exemptio, ut privilegii nihil alias allatura concessio ei, cui conceditur, et sententia nullum aliter datura subsidium ecclesiae, pro qua fertur, praerogativam, quum verba aliquid operari debeant, conferat gratiae specialis . Et est idem, si privilegium contineat, vel ipse Papa per modum exprimat supra scriptum, quod ecclesia sit libera, seu quod potiatur Romana ecclesiae libertate, vel quod in hoc praerogativa gaudeat speciali; aut si dicat indiffinite, quod ecclesiae Romanae annuum censum solvat ad perceptae indicium libertatis, sive quod ipsam ecclesiam eximit ab ordinarii potestate, vel quod non audeat illic episcopus cathedram collocare, aut imperandi seu ordinationem quamvis levissimam faciendi exercere aliquam potestatem. Similiter, si aliqui recipiantur in proprios et speciales subiectos, censentur exempti. Non sic, si in proprios et speciales filios Romanae ecclesiae sint suscepti: tales quippe exempti propterea non exsistunt. Si vero dicatur simpliciter, quod aliqua ecclesia Romanae ecclesiae annuum censum solvat: non propter hoc exempta ecclesia dici debet. Idem dicimus, si circa aliqua per privilegium concedatur libertas, et clausula de censu annuo persolvendo sequatur, ut si aliquibus, quod ab alio quam a Papa seu eius legato excommunicari, suspendi aut interdici non possint, vel aliquid aliud specialiter a sede apostolica sit indultum, vel etiam dicatur, quod in speciales Romanae ecclesiae filios sint assumpti, et sequatur in privilegio, quod ecclesiae Romanae ad indicium libertatis perceptae annuum censum solvant. His enim et consimilibus casibus sic in certis privilegiati articulis ordinariorum iurisdictioni quantum ad alia sunt subiecti. Licet autem sic diversos privilegiorum, quibus ecclesiae ac monasteria eximuntur, tenores ad litium materiam amputandam duxerimus designandos: per hoc tamen aliis exemptionum, si reperiantur, seu aliarum libertatum modis vel eorum effectibus nolumus aliquatenus derogari.

Chapter XI

Persons privileged to be able to celebrate divine offices behind closed doors during a time of interdict cannot admit other outsiders also. And if an individual person has been privileged concerning this, he admits his household

members; it is otherwise with the household of a convent privileged in this manner. The person through whose fault the interdict is imposed does not enjoy this privilege. This states the point. Dominicus.

The same.

Although it has been granted to you that during a time of interdict, behind closed doors, with excommunicated and interdicted persons excluded, you may celebrate divine offices in a subdued voice, nevertheless you ought for no reason to receive anyone at them, even if they have come from elsewhere, unless they are privileged concerning this. When it is granted to an individual person that, in the aforesaid manner, he may celebrate or hear divine offices during a time of interdict, his domestic household members are lawfully admitted to hear with him and to celebrate divine office for him. But it is not to be judged thus concerning the household members of a convent or college. For they ought not to be admitted unless they have been privileged. Nor can he enjoy a grant of this kind through whose cause or fault, fraud or deceit, the sentence of interdict was pronounced, or who furnished counsel, aid, or favor toward perpetrating the delict on the occasion of which it was rendered.

> Privilegiati, ut tempore interdicti celebrare possint divina clausis ecclesiis, alios etiam extraneos admittere non possunt. Et si fuerit singularis persona super hoc privilegiata, familiares suos admittit; secus in familia conventus taliter privilegiati. Hoc privilegio non gaudet ille, cuius culpa ponitur interdictum. H. d. Dominicus.
>
> Idem.
>
> Licet vobis concessum exsistat, ut interdicti tempore, ianuis clausis, excommunicatis et interdictis exclusis, voce submissa divina celebrare possitis: ad ea tamen aliquos, etiamsi aliunde venerint, nisi super hoc privilegiati exsistant, recipere nulla ratione debetis. Quum conceditur singulari personae, ut modo praemisso tempore interdicti celebrare valeat vel audire divina: eius familiares domestici ad audiendum cum ea et celebrandum sibi divinum officium licite admittuntur . Non sic autem in familiaribus alicuius conventus seu collegii est censendum. Illi enim, nisi privilegiati fuerint, admitti non debent. Huiusmodi quoque concessione gaudere non potest is, cuius causa seu culpa, dolo vel fraude, fuit sententia interdicti prolata, seu qui ad perpetrandum delictum, cuius occasione lata exstitit, praebuit consilium, auxilium vel favorem.

Chapter XII

Bishops can celebrate with a portable altar and cause celebration for themselves, provided that they do not violate an interdict. This states the point. Johannes Andreae.

The same.

Because bishops and their superiors must for diverse causes frequently absent themselves from their churches and dioceses, and cannot always conveniently approach churches to celebrate or hear mass in them—without which it does not become them to let any day pass without a reasonable cause—by the present constitution we grant them that they may have a portable altar, and celebrate and cause celebration upon it wherever it is permitted to them to celebrate or hear divine offices without transgression of an interdict.

> Episcopi cum altari viatico celebrare possunt et sibi facere celebrari, ita tamen, quod non violent interdictum. H. d. Ioann. Andr.
>
> Idem.

> Quoniam episcopi eorumque superiores se habent diversis ex causis a suis ecclesiis et dioecesibus absentare frequenter, nec semper possunt commode ad ecclesias accedere pro missa celebranda vel audienda in ipsis, sine qua eos transire non decet absque causa rationabili ullam diem : praesenti constitutione indulgemus eisdem, ut altare possint habere viaticum, et in eo celebrare ac facere celebrari, ubicunque absque interdicti transgressione illis permittitur celebrare vel audire divina.

Title VIII: On Injuries and Damage Inflicted

Chapter I

Reprisals ought not to be granted against ecclesiastical persons, nor ought reprisals already granted to be extended to them; individual persons acting contrary to this are excommunicated, and corporate bodies interdicted, unless they revoke them within a month. Johannes Andreae.

Gregory X, in the general Council of Lyon.

Although seizures of pledges which common speech calls reprisals, in which one person is burdened for another, are prohibited by civil legislation as grave and contrary to laws and natural equity, nevertheless, so that their prohibition may be feared all the more with respect to ecclesiastical persons, the more specially they are forbidden in their case, by the present decree we more strictly prohibit reprisals from being granted against the aforesaid persons or their goods, or reprisals granted however generally under pretext of any custom—which we regard rather as an abuse—from being extended to them. But those who act contrary to this by granting seizures or reprisals against the same persons or extending them to those persons, unless they revoke a presumption of this kind within a month from the time of the grant or extension, shall incur a sentence of excommunication if they are individual persons; but if a corporate body, it shall be subject to ecclesiastical interdict.

> **DE INIURIIS ET DAMNO DATO.**
>
> Repressaliae contra personas ecclesiasticas concedi vel concessae extendi non debent; contra facientes, nisi revocent infra mensem, singulares sunt excommunicati, universitates interdictae. Ioann. Andr.
>
> Gregorius X. in concilio generali Lugdunensi.
>
> Etsi pignorationes, quas vulgaris elocutio repressalias nominat, in quibus alius pro alio praegravatur, tanquam graves legibus et aequitati naturali contrariae civili sint constitutione prohibitae, ut tamen earum prohibitio in personis ecclesiasticis tanto amplius timeatur, quanto in illis specialius inhibentur: eas concedi contra personas praedictas seu bona ipsorum , aut quantumcunque generaliter praetextu cuiusvis consuetudinis, quam potius reputamus abusum fore , concessas, ad illas extendi praesenti decreto districtius inhibemus. Illi autem, qui contra fecerint, adversus personas easdem pignorationes seu repressalias concedendo, vel extendendo ad eas, nisi praesumptionem huiusmodi revocaverint a concessionis vel extensionis tempore infra mensem, si personae singulares fuerint, sententiam excommunicationis incurrant, si vero universitas, ecclesiastico subiaceat interdicto.

Title IX: On Punishments

Chapter I

Under the old law, when an archbishop exercises his jurisdiction in his province, he can punish notorious persons who injure him, his messengers, and his household if his jurisdiction is impeded through this; otherwise he cannot,

unless custom grants him more. But today he then punishes such injuries even if they do not impede his jurisdiction. This states the point.

Innocent IV.

The Roman Church. (And below:) It is lawful for the Archbishop of Reims, when visiting his province, by his own authority to punish for an injury of this kind—provided that it is notorious—those who then presume to injure him, his household, or others whom he directs throughout the same province for this purpose, and also, when he convokes a council, those who injure his messengers whom he sends for it or otherwise throughout the province itself while exercising his due jurisdiction, if on this occasion his jurisdiction is impeded in these matters; unless it is recognized that more belongs to him by the custom of the Church of Reims. By our special grant, there shall also be a free faculty for him and for other metropolitans in their provinces, while they thus exercise jurisdiction in them, to punish manifest and notorious offenses then inflicted upon them or their people, even if jurisdiction of this kind does not happen to be impeded thereby.

> **DE POENIS.**
>
> De veteri iure poterit archiepiscopus, quum in provincia sua iurisdictionem suam exsequitur, punire notorios iniuriantes sibi, nunciis et familiae suae, si per id sua iurisdictio impeditur; alias non, nisi consuetudo amplius tribuat. Sed hodie tales iniurias tunc punit, etiamsi iurisdictionem non impediant. H. d.
>
> Innocentius IV.
>
> Romana ecclesia (Et infra:) Licet autem Remensi archiepiscopo suam provinciam visitanti eos, qui tunc sibi, vel suae familiae, aut aliis, quos propter hoc per eandem provinciam dirigit, et etiam, quando concilium convocat, eos, qui nunciis suis, quos pro illo vel alias per provinciam ipsam sua debita iurisdictione utendo transmittit, iniuriari praesumunt, si hac occasione sua in his impediatur iurisdictio, pro iniuria huiusmodi, (dummodo exsistat notoria,) propria auctoritate punire, nisi amplius ei de Remensis ecclesiae consuetudine competere dignoscatur. Sibi etiam et metropolitanis aliis in suis provinciis, dum sic in illis iurisdictionem exercent, puniendi manifestas et notorias offensas tunc eisdem illatas vel suis, etiamsi exinde impediri iurisdictionem huiusmodi non contingat, libera sit de nostra speciali concessione facultas.

Chapter II

This decretal teaches in the presence of whom a degradation ought to be performed, of which garments, ornaments, books, and instruments the stripping is to be made in degradation, and which words the person degrading is to use. Johannes Andreae.

Boniface VIII, to the Bishop of Béziers.

Your fraternity asked us how degradation ought to be performed. Concerning this we respond to you in this manner: verbal degradation or deposition from ecclesiastical orders or grades is to be performed by the cleric's own bishop, with the specified number of bishops defined by the canons assisting him in the degradation of clerics constituted in sacred orders, although the sentence of the proper bishop without the presence of other bishops suffices in the degradation of those who received only minor orders. But the actual or solemn degradation of a soldier of the heavenly army, that is, of a cleric, when there is to be a proceeding to it, shall be made like the discharge of one who

serves in the armed military: the military insignia are taken from him, and thus, removed from military service, he is cast out of the camp, deprived of military fellowship and privilege.

Therefore, the cleric to be degraded, clothed in sacred vestments and holding in his hands a book, vessel, or other instrument or ornament pertaining to his order, as if he ought solemnly to minister in his office, shall be brought into the presence of the bishop. The bishop shall publicly take from him each thing individually—whether vestments, chalice, book, or any other things which were delivered or conferred upon him by the bishop according to the custom of clerics being ordained in his ordination—beginning from that vestment or ornament which had been given or delivered last, and, descending by degrees, shall continue the degradation as far as the first vestment which is given in the conferral of the tonsure. Then his head shall be shaved or shorn, lest a trace of the tonsure or clerical state remain upon him.

The bishop may use in a degradation of this kind certain words for terror, opposed to those which were pronounced in the conferral of orders, saying to the priest these or similar words in removing the chasuble: "We take from you the priestly vestment, and deprive you of priestly honor." And thus, using similar words in the removal of the remaining insignia, in taking away the last thing which in the conferral of orders was first, he shall pronounce or say in the following or another similar manner: "By the authority of God almighty, Father and Son and Holy Spirit, and by our own, we take from you the clerical habit, and depose, degrade, despoil, and strip you of every clerical order, benefice, and privilege."

> Docet haec decretalis, quibus assistentibus fieri debeat degradatio, de quibus vestibus, ornamentis, libris et instrumentis in degradatione fiat exspoliatio, et quibus verbis utatur ipse degradans. Ioann. Andr.
>
> Bonifacius VIII. Bitterensi Episcopo.
>
> Degradatio qualiter fieri debeat, a nobis tua fraternitas requisivit. Super quo tibi taliter respondemus, quod verbalis degradatio seu depositio ab ordinibus vel gradibus ecclesiasticis est a proprio episcopo, sibi assistente in degradatione clericorum in sacris constitutorum ordinibus certo episcoporum numero diffinito canonibus, facienda, quanquam proprii episcopi sententia sine aliorum episcoporum praesentia sufficiat in degradatione eorum, qui minores duntaxat ordines receperunt. Actualis vero sive solennis coelestis militiae militis, id est clerici, degradatio, quum ad eam fuerit procedendum, fiet ut exauctorizatio eius, qui militiae deservit armatae, cui militaria detrahuntur insignia, sicque a militia remotus castris reiicitur, privatus consortio et privilegio militari. Clericus igitur degradandus, vestibus sacris indutus, in manibus habens librum, vas, vel aliud instrumentum seu ornamentum ad ordinem suum spectans, ac si deberet in officio suo solenniter ministrare, ad episcopi praesentiam adducatur, cui episcopus publice singula, sive sint vestes, calix, liber, seu quaevis alia, quae illi iuxta morem ordinandorum clericorum in sua ordinatione ab episcopo fuerint tradita seu collata, singulariter auferat, ab illo vestimento seu ornamento , quod datum vel traditum fuerat ultimo, inchoando, et descendendo gradatim degradationem continuet usque ad primam vestem, quae datur in collatione tonsurae. Tuncque radatur caput illius seu tondeatur, ne tonsurae seu clericatus vestigium remaneat in eodem. Poterit autem episcopus in degradatione huiusmodi uti verbis aliquibus ad terrorem, illis oppositis, quae in collatione ordinum sunt prolata, dicendo presbytero haec vel similia verba in remotione planetae: "Auferimus tibi vestem sacerdotalem, et te honore sacerdotali privamus." Sicque in remotione reliquorum insignium similibus verbis utens, in ablatione ultimi, quod in collatione ordinum fuit primum, infra scripto vel alio simili modo pronunciet sive dicat: "Auctoritate Dei omnipotentis Patris et

> Filii et Spiritus sancti, ac nostra, tibi auferimus habitum clericalem, et deponimus, degradamus, spoliamus et exuimus te omni ordine, beneficio et privilegio clericali."

Chapter III

Although prison was devised for custody, someone can nevertheless be punished by the penalty of imprisonment perpetually or for a time. Johannes Andreae.

The same.

Although prison is known to have been specially appointed for the custody of the accused, not for punishment, we nevertheless do not disapprove if, after weighing with provident deliberation their excesses, persons, and other circumstances, you consign clerics subject to you who have confessed to or been convicted of crimes to prison perpetually or for a time, as you shall see to be expedient, to perform penance.

> Quamvis inventio carceris fuerit ad custodiam, tamen potest quis puniri poena carceris perpetuo et ad tempus. Ioann. Andr.
>
> Idem.
>
> Quamvis ad reorum custodiam, non ad poenam carcer specialiter deputatus esse noscatur: nos tamen non improbamus, si subiectos tibi clericos confessos de criminibus seu convictos, eorum excessibus et personis, ceterisque circumstantiis provida deliberatione pensatis, in perpetuum vel ad tempus, prout videris expedire, carceri mancipes ad poenitentiam peragendam.

Chapter IV

A punishment imposed upon someone and his descendants is not extended to descendants of the female line unless something else is expressed in the law or sentence. This states the point. Zenzelinus.

The same.

Whenever a punishment is imposed by a person or by law upon someone and his sons or descendants as far as a specified generation, the punishment itself affects only those who are recognized to descend through the male, not the female, line, unless something else is expressed in the law or sentence.

> Poena, alicui imposita et eius posteris, non extenditur ad posteros lineae femineae, nisi aliud in iure vel sententia sit expressum. H. d. Zenz.
>
> Idem.
>
> Ubicunque alicui et eius filiis seu posteris usque in certam generationem poena imponitur ab homine vel a iure: poena ipsa eos tantum afficit, qui per masculinam, non per femininam lineam descendere dignoscuntur, nisi aliud in iure vel sententia sit expressum.

Chapter V

First, he punishes those who pursue, strike, or seize cardinals, and the associates of that crime. Secondly, their sons and grandsons. Thirdly, he adds a punishment for the pursuers themselves. Fourthly, what satisfaction they ought to make when they are absolved and what they obtain through absolution. Fifthly, concerning persons culpable only through counsel or simply favoring this crime. Sixthly, he permits the punishments to be extended to collateral relatives. Seventhly, he establishes concerning those who pursue clerics or religious of the household of the Pope or of

the cardinals. Eighthly, he establishes concerning those who kill cardinals. Ninthly, he says that secular powers ought nevertheless to employ the legal penalties against such persons and also cause this constitution to be observed, and he imposes a punishment upon those acting contrary to it. Johannes Andreae.

The same.

Adhering to the footsteps of our predecessor Pope Honorius III of happy memory, with certain things added and withdrawn, with the common counsel of our brothers we establish by this constitution, to remain perpetually in force, that if anyone hereafter falls into this kind of sacrilege, so that he has pursued a cardinal of the Holy Roman Church in a hostile manner, struck him, or seized him; or was an associate of the one acting; commanded it to be done or ratified the deed; gave counsel or favor; or afterward knowingly received or defended the same person, then, like one guilty of the crime of injured majesty, he shall be perpetually infamous, and likewise publicly renounced as an enemy and placed under ban. He shall be incapable of testament, so that he neither has free capacity to make a testament nor is called to anyone's goods by testament or intestacy, so that, repelled from every succession and confounded by public rejection, he may find less readily a successor to his malice. His dwellings shall be made desolate, and, so that there may be no one to inhabit them, all his buildings shall be given over to ruin; and so that perpetual ruin may testify to a perpetual mark of infamy, they shall at no time be repaired. No one shall be bound to repay debts to him or to answer him in judgment. Whatever is found among his goods shall be applied to the ownership of the fisc or the commonwealth, so that he may transmit none of them to descendants, but rather that his goods may in a certain manner be condemned with him.

If he holds any fiefs, leases, office, or spiritual or temporal benefice from any churches, he shall be deprived of them by the law itself, and they shall freely return to the churches in such a way that the rectors of the churches may dispose of them according to their will. But if any of the aforesaid persons has a son or sons, grandson or grandsons descending in the direct line, beneficed with any benefice, even if he or they have obtained pontifical dignity, they shall be deprived of them by the law itself, with hope of promotion entirely removed. To none of such sons and grandsons descending from them through the male sex shall the gate to any ecclesiastical or worldly dignity or honor be opened, nor shall there be an ascent to the government of any place. The faculty of postulating shall be denied them; the notariate, judgeship, and every other public office or ministry shall be interdicted to them. In judgments their assertion against anyone shall find no faith and no credibility, so that they are rendered entirely unworthy of testimony. Ascent to orders shall be prohibited to them; access to a benefice or ecclesiastical office shall be denied. And, so that their infamy may be more notorious, no approach to legitimate acts shall lie open to them; no gate shall be opened to them concerning any of the aforesaid things, every hope of dispensation being removed.

We likewise add to the present sanction that, from the aforesaid pursuit as from the laying on of violent hands, anyone shall incur by the fact itself a sentence of excommunication; and both the pursuer and the other aforesaid participants in so great an evil, for as long as they continue in their contumacy, shall be publicly denounced as excommunicated on every Sunday and feast day, with bells rung and candles lit, throughout all the churches of the place in which so great a crime was attempted, and also of neighboring cities and dioceses. They cannot obtain the benefit of absolution from anyone other than the Roman Pontiff, except only when constituted at the point of death.

But when they are to be absolved, first they shall give sufficient and suitable security that they will obey the punishment to be imposed and, with the Lord's aid, perform the penance to be enjoined; then, on Sundays and solemn days, throughout all the principal churches of that place and of neighboring places, they shall proceed naked before the people, wearing only loincloths and carrying rods in their hands, with which they shall be publicly scourged throughout the same churches. They shall afterward go overseas and perform penance there for at least three years, and shall not afterward return from there without a special license of the Apostolic See. But when such a person has merited the grace of reconciliation, after obtaining the benefit of absolution, license shall be granted to him to prosecute an injury to himself and his people, and recovery from later-acquired goods of those debts which were contracted shall not be denied him.

We have not deemed it proper to omit this: if anyone is culpable in the aforesaid matters by bare counsel or simple favor, the judge shall measure the punishment of such a person from his fault, so that vengeance may proceed according as the excess shall require. Moreover, because it is fitting that the severity of vengeance be extended more widely by reason of the unspeakable crime, that the measure of blows overflow on account of the enormity of the faults, and that it not be content with the customary punishments, we establish that the circumspection of the Roman Pontiff may extend the punishments contained in this our constitution to collateral relatives—namely, the brothers, nephews, and grandnephews of such persons—as reasonable circumstances shall counsel.

We have also judged it fitting that this be joined to the aforesaid things: if anyone should presume to afflict any cleric or religious of our household or of the cardinals with any of the aforesaid excesses, the punishment shall be proportioned to the delict, so that, with vengeance corresponding equally to the excess, rash hands which reverence for God, us, or our brothers does not restrain may henceforth be restrained from offense by fear of vengeance. But if anyone, by himself or through another, kills a cardinal—which God forbid—or gives cause of death, then beyond what the aforesaid things contain, the power of jurisdiction shall rise against him and the rigor of vengeance shall leap upon him in such a way that, against the support of life, he invokes the solace of death, while living a spectacle of punishment, not of fault; of vengeance, not of offense.

Through this we do not remove from secular powers the faculty of using against such persons the laws which Catholic princes enacted against sacrilegious persons. For what place of government can be safe, what ruler will enjoy security, if the Roman Church, which by the Lord's disposition is the head and teacher of all churches, is subjected to these misfortunes? If her special sons are exposed to dangers of this kind? What son of the Church, what zealot of the faith, would not be touched by so great an insult and moved by so harsh a confusion? Indeed, if he is a son he will grieve; if faithful, he will be injured when the mother of the faith is injured.

Therefore, if a prince, senator, consul, podestà, other lord, or rector does not cause the tenor of the present constitution to be observed against the aforesaid presumptuous persons, both he and his officials shall by the fact itself incur a sentence of excommunication within a month after the matter has come to their knowledge. But any city other than Rome which has given counsel, aid, or favor to the person or persons acting or presuming such things, or has not deemed that persons offending in this way should be punished within at least a month, as the enormity of so great a crime shall require and the faculty is available to it, shall by the fact itself be deprived of pontifical dignity and what is above it, and shall nevertheless remain interdicted.

Primo punit insequentes, percutientes aut capientes cardinales, et eius criminis socios. Secundo eorum filios et nepotes. Tertio ipsis insectatoribus poenam addit. Quarto, quam satisfactionem, quum absolventur, facere debeant, et quid per absolutionem consequantur. Quinto de nudis consiliariis vel simpliciter faventibus huic crimini. Sexto ad collaterales permittit poenas extendi. Septimo ponit de insequentibus clericos vel religiosos, familiares Papae vel cardinalium. Octavo ponit de occidentibus cardinales. Nono dicit, potestates saeculares nihilominus poenis legalibus contra tales uti debere, et hanc constitutionem etiam facere observari, et contra facientibus poenam imponit. Ioann. Andr.

Idem.

Felicis recordationis Honorii Papae III. praedecessoris nostri vestigiis inhaerentes, quibusdam additis et detractis, de communi fratrum nostrorum consilio hac in perpetuum valitura constitutione sancimus, ut, si quis deinceps in hoc sacrilegii genus irrepserit, quod sanctae Romanae ecclesiae cardinalem fuerit hostiliter insecutus, vel percusserit aut ceperit vel socius fuerit facientis, aut fieri mandaverit vel factum ratum habuerit, aut consilium dederit vel favorem, aut postea receptaverit vel defensaverit scienter eundem, sicut reus criminis laesae maiestatis perpetuo sit infamis, diffidatus nihilominus et bannitus. Sit intestabilis, ut nec testamenti liberam habeat factionem, nec ad alicuius bona ex testamento vel ab intestato vocetur, quatenus ab omni successione repulsus, publicaque repulsa confusus, minus inveniat suae malitiae successorem. Fiant habitationes eius desertae, et, ut non sit qui eas inhabitet, dentur cuncta ipsius aedificia in ruinam, et, ut perpetuae notam infamiae perpetua ruina testetur, nullo tempore reparentur. Nullus ei debita reddere, nullus respondere in iudicio teneatur. Quicquid etiam in bonis invenitur ipsius, fisci vel reipublicae dominio applicetur, ut ex illis nil transmittat ad posteros, sed potius cum ipso quodammodo damnentur et sua. Si qua vero feuda, locationes, officium vel beneficium spirituale vel temporale ab aliquis ecclesiis obtinet: sit eis ipso iure privatus, quae sic libere ad ecclesias revertantur, quod ecclesiarum rectores de ipsis pro sua voluntate disponant. Quodsi quis praedictorum filium vel filios habeat, nepotem vel nepotes per rectam lineam descendentes, beneficiatum seu beneficiatos quovis beneficio, etiamsi pontificalem adeptus vel adepti fuerint dignitatem: sint eis ipso iure privati, spe promotionis omnino sublata. Nulli praeterea talium filiorum atque nepotum, ex virili sexu descendentium ab eisdem alicuius aperiatur ianua dignitatis aut honoris ecclesiastici vel mundani, seu ad alicuius loci regimen sit ascensus. Sit eis postulandi negata facultas; sit notariae iudicatus et quodlibet aliud officium seu ministerium publicum interdictum. In iudiciis eorum assertio contra quemquam nihil fidei, nihil credulitatis inveniat, ut ad testimonium prorsus reddantur indigni . Sit eis ad ordines ascensus inhibitus, sit ad beneficium vel officium ecclesiasticum denegatus accessus. Et, ut magis famosa sit eorum infamia, ad actus legitimos nullus eis pateat aditus, nulla porta pandatur eisdem super aliquo praemissorum, omni spe dispensationis adempta. Praesenti nihilominus adiicimus sanctioni, ut ex insecutione praedicta, sicut ex iniectione manuum violenta, ipso facto excommunicationis sententiam quis incurrat, et tam insecutor quam alii supra dicti tanti mali participes, quam diu in sua contumacia perdurarint , singulis diebus dominicis et festivis, pulsatis campanis et candelis accensis, per omnes illius loci ecclesias, in quo tantum facinus fuerit attentatum, nec non civitatum et dioecesum vicinarum excommunicati publice denuncientur , nec ab alio quam a Romano Pontifice possint absolutionis beneficium obtinere, nisi duntaxat in mortis articulo constituti. Quum autem fuerint absolvendi, primo sufficienter et idonee caveant, quod inferendae poenae parebunt, et auxiliante Domino poenitentiam peragent iniungendam; deinde per omnes illius loci ecclesias principales vicinorumque locorum diebus dominicis et sollennibus incedant nudi coram populo, femoralia tantum habentes, et ferulas deferentes in manibus, cum quibus per easdem ecclesias publice fustigentur, ituri postmodum ultra mare, et ibidem acturi poenitentiam per tres annos ad minus, nec exinde postmodum reversuri absque sedis apostolicae licentia speciali. Verum quum talis gratiam reconciliationis meruerit: beneficio absolutionis obtento indulgeatur ei licentia, ut suam et

suorum iniuriam prosequatur, et debitorum illorum, quae contracta fuerint, de postmodum acquisitis repetitio non negetur. Illud autem non duximus omittendum, quod, si quis fuerit in praemissis nudo consilio aut simplici favore culpabilis, iudex in talem poenam metiatur ex culpa, ut secundum quod excessus exegerit vindicta procedat. Ceterum, quia dignum est, ut nefandi ratione flagitii ultionis severitas amplius extendatur, et propter enormitatem culparum plagarum modus exuberet, nec poenis solitis contentetur: statuimus, ut ad collaterales, fratres videlicet, nepotes et pronepotes talium possit extendere poenas in huiusmodi nostra constitutione contentas circumspectio Romani Pontificis, prout circumstantiae rationabiles suadebunt. Praemissis etiam dignum censuimus annectendum, ut, si quisquam aliquo praedictorum excessuum quemquam de clericis vel religiosis nostrae familiae vel cardinalium afficere forte praesumpserit, proportionetur poena delicto ita, quod, vindicta ex aequo excessui respondente, ab offensa nostrorum cohibeantur deinceps manus temerariae formidine ultionis, quas Dei vel nostra seu fratrum nostrorum reverentia non coercet. Si quis vero per se vel per alium occiderit cardinalem, (quod absit,) vel dederit causam mortis: ultra, quam praemissa contineant, sic in eum potestas iurisdictionis insurgat, sic rigor ultionis insiliat, quod contra vitae subsidium mortis solatium invocet, vivens poenae, non culpae, vindictae speculum, non offensae. Per hoc quoque saecularibus potestatibus non adimimus facultatem utendi legibus contra tales, quas adversus sacrilegos catholici principes ediderunt. Quis enim locus regiminis poterit esse tutus, quis rector securitate gaudebit, si Romana ecclesia, quae omnium ecclesiarum disponente Domino caput est et magistra, casibus istis subiicitur? si eius filii speciales huiusmodi periculis exponuntur? Quem ecclesiae filium, quem fidei zelatorem contumelia tanta non tangeret, et confusio tam aspera non moveret? Porro, si filius est, dolebit, si fidelis, matre fidei laesa laedetur. Quapropter si princeps, senator, consul, potestas vel alius dominus sive rector contra praesumptores praedictos praesentis constitutionis tenorem non fecerit observari: tam ipse quam officiales ipsius infra mensem, postquam res ad notitiam eorum pervenerit, eo ipso sententiam excommunicationis incurrant. Civitas vero quaevis alia praeter Urbem, quae talia facienti vel facientibus seu praesumentibus in his consilium vel auxilium dederit aut favorem, vel infra mensem saltem taliter delinquentes, prout tanti facinoris enormitas exegerit, et facultas ei adfuerit, non duxerit puniendos, pontificali et supra sit eo ipso dignitate privata, et nihilominus, remaneat interdicta.

Title X: On Penances and Remissions

Chapter I

Collectors do not cite anyone, although they can admonish them, and in granting indulgences the archbishop shall not exceed the statute of the general council. This states the point. Zenzelinus.

Innocent IV, in the Council of Lyon.

The Roman Church. (And below:) The Archbishop of Reims or his officials shall by no means grant to the collectors for the fabric of the Church of Reims power to cite subjects of the suffragans of that church, whom the same collectors have said resist them or refuse to obey them, so that they appear concerning this before them. But concerning their kindly reception and the assistance to be made to the fabric itself, they can charitably admonish the same suffragans and other faithful of Christ of the province of Reims. In granting indulgences also, the Archbishop of Reims shall not exceed the statute of the general council.

DE POENITENTIIS ET REMISSIONIBUS.

> Quaestores non citant aliquos, licet eos monere possint, et in concedendis indulgentiis non excedant archiepiscopi statutum concilii generalis.
>
> H. d. Zenz.
>
> Innocentius IV. in concilio Lugdunensi.
>
> Romana ecclesia (Et infra:) Quaestoribus autem fabricae Remensis ecclesiae Remensis archiepiscopus sive eius officiales citandi suffraganeorum ipsius ecclesiae subditos, quos iidem quaestores sibi resistere aut nolle parere dixerint, ut super hoc compareant coram ipsis, nequaquam tribuant potestatem. Super benigna vero ipsorum receptione ac subventione ipsi fabricae facienda possunt eosdem suffraganeos et alios Christi fideles Remensis provinciae caritative monere. In concedendis quoque indulgentiis non excedat Remensis archiepiscopus statutum concilii generalis.

Chapter II

A general grant of a confessor does not touch cases specially reserved to the bishop, nor can anyone choose a confessor for himself by reason of custom. This states the point. Zenzelinus.

Boniface VIII.

If a bishop grants to his subject that he may choose a suitable confessor for himself, the one whom the subject chooses has no power at all in the cases which are specially reserved to the same bishop, since those things which one would not probably grant in particular do not come within that general grant. Nor can it be introduced by any custom that anyone, without the license of his superior, may choose for himself a confessor who can loose or bind him.

> Concessio generalis confessoris non tangit episcopo specialiter reservata, nec obtentu consuetudinis potest quis sibi eligere confessorem. H. d. Zenz.
>
> Bonifacius VIII.
>
> Si episcopus suo subdito concesserit, ut sibi possit idoneum eligere confessorem: ille, quem is eligerit, in casibus, qui eidem episcopo specialiter reservantur, nullam habet penitus potestatem, quum in generali concessione illa non veniant, quae non esset quis verisimiliter in specie concessurus. Nulla quoque potest consuetudine introduci, quod aliquis praeter sui superioris licentiam confessorem sibi eligere valeat, qui eum possit solvere vel ligare.

Chapter III

The decretal "Since from this" has place when several bishops grant indulgences. This states the point. Zenzelinus.

The same.

Indulgences which are granted by one or several bishops at dedications of churches or in any other cases do not obtain force if they have exceeded the statute of the general council.

> Decretalis Quum ex eo in pluribus episcopis indulgentibus locum habet.
>
> H. d. Zenz.
>
> Idem.
>
> Indulgentiae, quae ab uno vel pluribus episcopis in ecclesiarum dedicationibus vel aliis quibuscunque casibus conceduntur, vires non obtinent, si statutum excesserint concilii generalis.

Title XI: On a Sentence of Excommunication, Suspension, and Interdict

Chapter I

A judge who excommunicates, suspends, or interdicts shall do this in writing, shall write down the cause, and, when required, shall deliver a copy of the sentence within a month. One who acts contrary to this is suspended for a month from entrance into a church and from divine offices; that sentence shall be relaxed by the superior without difficulty, and its issuer shall be condemned in expenses and otherwise by a fitting punishment. If persons suspended in this manner celebrate as before, they are irregular and are not absolved by anyone other than the Pope. This states the point. Johannes Andreae.

Innocent IV, in the Council of Lyon.

Since excommunication is medicinal, not mortal, disciplining, not uprooting—provided, however, that the person against whom it has been rendered does not contemn it—the ecclesiastical judge shall cautiously take care that in rendering it he shows himself to pursue what belongs to one correcting and healing. Therefore, whoever excommunicates shall pronounce the excommunication in writing and shall expressly write down the cause of the excommunication for which the excommunication is pronounced. He shall be bound to deliver a copy of writing of this kind to the excommunicated person within a month, if he has been required; concerning which requisition we will a public instrument to be made or testimonial letters furnished and sealed with an authentic seal.

But if any judge is a rash violator of this constitution, he shall know himself suspended for one month from entrance into a church and from divine offices. The superior to whom recourse is made, relaxing the sentence itself without difficulty, shall condemn its issuer to the expenses and every loss of the excommunicated person and otherwise punish him with fitting correction, so that judges, with punishment teaching them, may learn how grave it is to fulminate sentences of excommunication without due maturity. And we will these same things to be observed in sentences of suspension and interdict. But all prelates and judges of churches shall beware lest they incur the aforesaid punishment of suspension, because, if it should happen that, while thus suspended, they execute divine offices as before, they will not escape irregularity according to the canonical sanctions, concerning which dispensation can be made only by the Supreme Pontiff.

> **DE SENTENTIA EXCOMMUNICATIONIS, SUSPENSIONIS ET INTERDICTI.**
>
> Iudex, qui excommunicat, suspendit vel interdicit, in scriptis hoc faciat, et causam conscribat, et requisitus exemplum sententiae tradat infra mensem. Qui contra fecerit, per mensem ab ingressu ecclesiae et divinis est suspensus, et relaxabitur illa sententia per superiorem absque difficultate, et condemnabitur lator in expensis et alias poena condigna. Si sic suspensi celebrant, ut prius, sunt irregulares, nec absolvuntur ab alio quam a Papa.
>
> H. d. Ioann. Andr.
>
> Innocentius IV. in concilio Lugdunensi.
>
> Quum medicinalis sit excommunicatio, non mortalis, disciplinans, non eradicans, dum tamen is, in quem lata fuerit, non contemnat: caute provideat iudex ecclesiasticus, ut in ea ferenda ostendat se prosequi quod corrigentis fuerit et medentis. Quisquis igitur excommunicat, excommunicationem in scriptis proferat, et causam excommunicationis expresse conscribat, propter quam excommunicatio proferatur. Exemplum vero huiusmodi scripturae teneatur excommunicato tradere infra mensem, si

fuerit requisitus; super qua requisitione fieri volumus publicum instrumentum vel literas testimoniales confici sigillo authentico consignatas.

Si quis autem iudicum huiusmodi constitutionis temerarius exstiterit violator: per mensem unum ab ingressu ecclesiae et divinis officiis noverit se suspensum. Superior vero, ad quem recurritur, sententiam ipsam sine difficultate relaxans, latorem excommunicato ad expensas et omne interesse condemnet, et alias puniat animadversione condigna, ut poena docente discant iudices, quam grave sit excommunicationum sententias sine maturitate debita fulminare. Et haec eadem in suspensionis et interdicti sententiis volumus observari. Caveant autem ecclesiarum praelati et iudices universi, ne praedictam poenam suspensionis incurrant; quoniam, si contingeret eos sic suspensos divina officia exsequi sicut prius, irregularitatem non effugient iuxta canonicas sanctiones, super qua non nisi per summum Pontificem poterit dispensari.

Chapter II

One who seeks to be absolved as a precaution, showing that a sentence of excommunication rendered against him is null, shall be absolved notwithstanding anyone's contradiction, unless it is said and proved within eight days that he was excommunicated for a manifest offense. One who proves that he was excommunicated after an appeal shall, while the proof is pending, be avoided in judicial proceedings, but not outside judgment. This states the point. Johannes Andreae.

The same, in the same council.

It is customarily called into doubt by some whether, when someone petitions to be absolved by a superior as a precaution, while asserting that the sentence of excommunication rendered against him is null, the gift of absolution ought to be extended to him without the obstacle of contradiction; and whether, before absolution of this kind, one who offers to prove in judgment that he was bound by excommunication after a lawful appeal, or that an intolerable error was patently expressed in the sentence, is to be avoided in other matters, except the article of that proof. Therefore, concerning the first doubt, we establish that this is to be observed: absolution shall not be denied to the petitioner, although the excommunicator or an adversary opposes himself in this, unless he says that the petitioner was excommunicated for a manifest offense. In that case, a term of eight days shall be granted to the one saying this, so that, if he proves what he opposes, the sentence shall not be relaxed unless sufficient amends are first furnished, or competent security for obeying the law if the offense is alleged to be doubtful.

But concerning the second question, we establish that one who is admitted to prove shall, while the article of proof is pending, meanwhile be avoided in the other things which he attempts as plaintiff in judicial proceedings. Outside judgment, however, he shall nevertheless be admitted in offices, postulations, elections, and other legitimate acts.

Qui petit absolvi ad cautelam, docens, excommunicationis sententiam in se latam esse nullam, absolvetur cuiuscunque contradictione non obstante, nisi dicatur et probetur infra octo dies excommunicatus pro manifesta offensa. Qui probat, se excommunicatum post appellationem, probatione pendente in iudiciis evitabitur, extra iudicium vero non. H. d. Ioann. Andr.

Idem in eodem .

Solet a nonnullis in dubium revocari, an, quum aliquis per superiorem absolvi postulat ad cautelam, dum in se latam excommunicationis sententiam asserit esse nullam, sine contradictionis obstaculo

munus ei debeat absolutionis impendi, et an ante absolutionem huiusmodi is , qui se offert in iudicio probaturum, se post appellationem legitimam excommunicatione innodatum , vel intolerabilem errorem in sententia fuisse patenter expressum, sit in ceteris, excepto probationis illius articulo, evitandus? In prima igitur dubitatione sic statuimus observandum, ut petenti absolutio non negetur, quamvis in hoc excommunicator vel adversarius se opponat; nisi eum excommunicatum pro manifesta dicat offensa. In quo casu terminus octo dierum indulgebitur sic dicenti, ut, si probaverit quod opponit, non relaxetur sententia; nisi prius sufficiens praestetur emenda, vel competens cautio de parendo iuri, si offensa dubia proponatur. In secunda vero quaestione statuimus, ut is, qui ad probandum admittitur, pendente probationis articulo in ceteris, quae ut actor in iudiciis attentaverit, interim evitetur. Extra iudicium vero in officiis, postulationibus, et electionibus ac aliis legitimis actibus nihilominus admittatur.

Chapter III

An excommunication rendered against those participating with excommunicated persons in speech and similar matters, without prior canonical warning, does not bind. Johannes Andreae.

The same, in the same council.

We establish that no judge shall presume, before canonical warning, to excommunicate by greater excommunication those participating in speech and other things with persons excommunicated by him, through which a participant is bound by lesser excommunication, without prejudice to constitutions lawfully promulgated against those who presume to participate in a condemned crime. But if, from speech and the other things through which a participant falls into lesser excommunication, the excommunicated person grows more obstinate, the judge will be able, after canonical warning, to condemn participants of this kind with a similar censure. Otherwise, an excommunication pronounced against participants shall not bind, and those pronouncing it will have cause to fear the lawful punishment.

Excommunicatio, lata in participantes excommunicatis in locutione et similibus, canonica monitione non praemissa non tenet. Ioann. Andr.

Idem in eodem.

Statuimus, ut nullus iudicum participantes cum excommunicatis ab eo in locutione et aliis , quibus ligatur participans excommunicatione minori, ante monitionem canonicam excommunicare maiori excommunicatione praesumat, salvis constitutionibus contra illos legitime promulgatis, qui in crimine praesumunt participare damnato. Quodsi ex locutione et aliis, quibus participans labitur in minorem, excommunicatus fortius indurescat: poterit iudex post monitionem canonicam huiusmodi participantes consimili damnare censura. Aliter autem in participantes excommunicatio prolata non teneat , et proferentes poenam legitimam poterunt formidare.

Chapter IV

Bishops incur no sentence of interdict or suspension unless they are expressly named in the sentence. This states the point. Johannes Andreae.

The same, in the same council.

Because it is dangerous for bishops and their superiors, on account of the execution of pontifical office which is frequently incumbent upon them, to incur by the fact itself a sentence of interdict or

suspension in any case, we have deemed it necessary to establish with provident deliberation that bishops and other superior prelates shall not in any way incur the aforesaid sentence by the law itself on the occasion of any constitution, sentence, or mandate, unless express mention of bishops is made in them.

> Episcopi nullam interdicti vel suspensionis incurrunt sententiam, nisi in sententia sint expressi. H. d. Ioann. Andr.
>
> Idem in eodem .
>
> Quia periculosum est episcopis et eorum superioribus propter exsecutionem pontificalis officii, quod frequenter
>
> incumbit, ut in aliquo casu interdicti vel suspensionis incurrant sententiam ipso facto, nos deliberatione provida duximus statuendum, ut episcopi et alii superiores praelati nullius constitutionis occasione, sententiae sive mandati, praedictam incurrant sententiam ullatenus ipso iure, nisi in ipsis de episcopis expressa mentio habeatur .

Chapter V

This decretal makes five statements. The first is that an archbishop shall not relax sentences rendered by subjects of his suffragans unless he has this by custom. The second is that a general sentence of an archbishop binds only his subjects. The third is that a sentence rendered by them for past or present faults, without prior warning, is unjust. The fourth is that they ought not to excommunicate for future faults, or for those already committed—namely, unless satisfaction is made—unless delay, fault, offense, or another just cause is present. The fifth is that a sentence of excommunication shall not be rendered against a corporate body or college, but against those who were culpable. Johannes Andreae.

The same.

The Roman Church. (And below:) Moreover, the Archbishop of Reims and his officials shall not, passing over the excommunicators themselves, relax sentences of interdict, suspension, or excommunication rendered by officials of archdeacons or by any others having jurisdiction against subjects of the suffragans of the Church of Reims, without prejudice to a contrary custom concerning this, if they have one. Furthermore, sentences of excommunication promulgated generally by the Archbishop of Reims and his officials bind only those subject to the jurisdiction of the same archbishop. But neither in particular nor in general shall they promulgate sentences of excommunication for past or present faults and offenses without prior competent warning; and if they presume to act contrary to this, they shall know those sentences to be unjust.

They shall also beware lest they presume to pronounce such sentences of excommunication, either particularly or generally, against anyone for future faults—namely, if they do such a thing—or even for faults already committed under this form, "if they have not made satisfaction concerning them within such a time," unless delay in exhibiting satisfaction, or a fault or offense, has preceded, through which they are deservedly induced to enjoin satisfaction of this kind and to prohibit similar things in this manner, or unless another reasonable cause, which they shall express in the sentences themselves, is present. We entirely prohibit a sentence of excommunication from being pronounced against a corporate body or college, willing to avoid the danger to souls which could follow from this, since it would sometimes happen that innocent persons were ensnared by a sentence of this kind; but

it shall be promulgated only against those of the college or corporate body who are established to have been culpable.

> Huius decretalis quinque sunt dicta: primum, quod archiepiscopus sententias, latas a subditis suorum suffraganeorum, nisi hoc habeat de consuetudine, non relaxet. Secundum, quod generalis sententia archiepiscopi ligat tantum subditos. Tertium, quod pro praeteritis vel praesentibus culpis, monitione non praemissa, ab eis lata sententia est iniusta. Quartum, quod pro futuris culpis vel iam commissis, scilicet nisi satisfaciant, excommunicare non debent, nisi mora, culpa, vel offensa vel alia iusta causa subsit. Quintum, quod in universitatem vel collegium non feratur excommunicationis sententia, sed in illos, qui culpabiles exstiterunt. Ioann. Andr.
>
> Idem.
>
> Romana ecclesia (Et infra:) Ceterum interdicti, suspensionis vel excommunicationis sententias, latas ab officialibus archidiaconorum, seu quibuslibet aliis iurisdictionem habentibus, suffraganeorum Remensis ecclesiae subditis, Remensis archiepiscopus et eius officiales omissis ipsis excommunicatoribus non relaxent, salva contraria super hoc consuetudine, si quam habent. Porro excommunicationum sententiae, a Remensi archiepiscopo suisque officialibus generaliter promulgatae, subiectos eiusdem iurisdictioni archiepiscopi tantum ligant. Sed nec in specie nec in genere pro culpis et offensis praeteritis vel praesentibus excommunicationum sententias absque competenti monitione praemissa promulgent, et, si contra praesumpserint, iniustas noverint esse illas. Caveant etiam, ne tales sententias excommunicationis sive specialiter sive generaliter in aliquos pro futuris culpis, videlicet si tale quid fecerint, vel etiam pro iam commissis sub hac forma: "si de illis infra tale tempus minime satisfecerint," proferre praesumant, nisi mora in exhibenda satisfactione, vel culpa seu offensa praecesserit , quibus merito ad iniungendam satisfactionem huiusmodi et taliter prohibenda similia inducantur, aut alia rationabilis, quam in ipsis sententiis exprimant, causa subsit. In universitatem vel collegium proferri excommunicationis sententiam penitus prohibemus, volentes animarum periculum vitare, quod exinde sequi posset, quum nonnumquam contingeret innoxios huiusmodi sententia irretiri; sed in illos duntaxat de collegio vel universitate, quos culpabiles esse constiterit, promulgetur.

Chapter VI

A prelate can defend himself against temporal power even with the spiritual sword, namely ecclesiastical censure. This states the point. Johannes Andreae.

The same, in the same council.

To the beloved son, the Dean of Orléans. (And below:) Moreover, since all laws and every body of law permit all persons to repel force with force and to defend themselves, it was certainly lawful for the dean himself, if the aforesaid bailiff presumed wrongfully to despoil him of his worldly goods or violently to occupy them, as is expressed above, to defend himself against that man's violence and injury. And because sufficient temporal defense was perhaps not available to him against the man's excessive power, he was also able to defend himself spiritually, namely by using the ecclesiastical sword, and on this account to have recourse to spiritual arms, which are proper to the Church, and to use them for his protection; especially since, after sentences of excommunication had been rendered against the said bailiff by the same dean for other causes, as the same dean asserted, the bailiff, as though provoked thereby, had, in contempt of those sentences, despoiled him of those same goods, and on this account the dean himself afterward rendered a sentence of interdict, defending himself as

though with a spiritual sword against the injury and violence inflicted upon him by the same bailiff on the occasion of the aforesaid sentences and in contempt of them.

And indeed, since it is lawful for anyone to impart his aid to his neighbor or fellow person to repel an injury to him—and indeed, if he can and neglects to do so, he seems to support the person inflicting the injury and to be a participant in his fault—it was assuredly lawful for the dean himself to come to his own aid by his own assistance, and to protect his own temporal injury by his own spiritual defense, and thus in a certain manner to aid each sword, the temporal and the ecclesiastical, one with the other; especially because these two swords have been accustomed, when necessity requires, to support one another and very frequently to be exercised for the aid of the other by mutual assistance.

> Praelatus contra potentiam temporalem etiam spirituali gladio, scilicet ecclesiastica censura, se tueri potest. H. d. Ioann. Andr.
>
> Idem in eodem .
>
> Dilecto filio decano Aurelianensi (Et infra:) Praeterea quum omnes leges omniaque iura vim vi repellere, cunctisque sese defensare permittant: licuit utique ipsi decano, si praedictus ballivus eum bonis suis mundanis iniuriose spoliare, vel ea violenter occupare praesumpserit , ut superius est expressum, contra illius violentiam iniuriamque se tueri. Et quoniam adversus eius nimiam potentiam sufficiens temporalis defensio sibi forte non aderat: potuit se etiam spiritualiter, gladio videlicet utendo ecclesiastico, defensare, ac recurrere propter hoc ad arma spiritualia, quae sunt ecclesiae propria, et pro suo munime illis uti; praesertim quum dictus ballivus post latas in eum ab eodem decano ex aliis causis excommunicationis sententias, sicut idem decanus asseruit, ipsum tanquam exinde provocatus, sententiis ipsis contemptis, bonis spoliasset eisdem, et propter hoc postmodum ipse decanus sententiam tulerit interdicti, tanquam spirituali se mucrone defendens contra illius iniuriam et violentiam, sibi ab eodem occasione praedictarum sententiarum et in ipsarum contemptum illatam. Et quidem quum liceat cuilibet suo vicino vel proximo pro repellenda ipsius iniuria suum impertiri auxilium, immo, si potest et negligit , videatur iniuriantem fovere, ac esse particeps eius culpae: licuit profecto ipsi decano proprio sibimet subvenire subsidio, et suammet temporalem iniuriam sua propria spirituali defensione tueri, sicque utrumque quodammodo gladium, et temporalem et ecclesiasticum, alterum videlicet altero adiuvare, maxime quia hi duo gladii consueverunt exigente necessitate sibi ad invicem suffragari, et in iuvamen alterius subventione mutua frequentius exerceri.

Chapter VII

Archbishops cannot absolve those excommunicated by the subjects of their suffragans, but they can indeed absolve those excommunicated by the suffragans or their officials, if appeal has been made to them. This states the point. Johannes Andreae. — § 1. In cases in which he has jurisdiction, before cognizance of the cause an archbishop absolves an excommunicated person at the petition of a party or by virtue of his office, unless the person is said to have been excommunicated for a manifest offense or contumacy; and he gives examples of presumed and manifest contumacy. This states the point. Johannes Andreae. — § 2. An excommunication rendered after an appeal interposed for a probable cause is not immediately pronounced null; but relaxation as a precaution can be made, even before he begins to take cognizance of the truth of the cause. The same applies if it is said to have been rendered through an intolerable error and that error is probably defended to the contrary. Johannes Andreae. — § 3. If it is certain that the excommunication is just, remittal is made; if it is certain that it is unjust, it is not made. If it is doubtful, relaxation can be made, but it is more honorable to remit; nevertheless, the relaxation holds where the archbishop is judge, although remittal is not made. This states the point. Johannes Andreae. — § 4. In cases in which an archbishop can excommunicate, he can exact monetary amends if custom so holds. This states the point.

Johannes Andreae. — § 5. It is summarized above in § "But if from a cause"; see there. — § 6. The summary is given above in § "But if from a cause"; see there.

The same.

To the venerable. (And below:) Moreover, it is not lawful for the Archbishop of Rouen or his official to impart the benefit of absolution to those excommunicated by archdeacons or other subjects of the suffragans of that archbishop, since they are judges neither of the excommunicators nor of the excommunicated; but they can absolve those excommunicated by the suffragans themselves or their officials, if an appeal has been made to them by the litigants themselves. But if neither party appeals, and either of them petitions to be absolved by the archbishop or his official from an excommunication rendered against him for the benefit of the other, or otherwise, without interposition of an appeal, lodges a complaint before them concerning the opposing party, he is not to be heard in this by them, since they are not his judges. But if the excommunicated person lodges before them a complaint concerning the suffragan, so that a penalty may be imposed upon him, and a complaint concerning an unjust excommunication with respect to his own interest, they certainly ought to hear him. It is otherwise, however, if he complains concerning the suffragan himself so that a sentence of this kind, promulgated against him by the suffragan for another person, may be relaxed, because it belongs not to the suffragan himself but to the person for whom the sentence was rendered to defend this cause. Nevertheless, if a suffragan, either outside judicial proceedings for the defense of his rights, or even in judicial proceedings while proceeding by virtue of his office—that is, by making an inquiry or doing something similar—excommunicates someone, in this case the suffragan himself is to be sued before the archbishop or his official, because it is in his interest to defend his cause.

§ 1. Furthermore, before they begin to hear the cause, an archbishop or his officials must always absolve, according to the form of the Church, those excommunicated by suffragans, in cases in which jurisdiction belongs to them; for example, if a sentence of excommunication was promulgated after a definitive sentence and an appeal was made to them, except in cases in which the laws prohibit an appeal after sentence. Similarly, if a suffragan outside judicial proceedings excommunicates someone for an offense against him or for the defense of his own right, and that person presents a complaint concerning this, he is first to be absolved according to the form of the Church, unless the suffragan offers to prove that he bound him with the bond of excommunication for a manifest offense. The same also applies if he constrains anyone by excommunication for presumed contumacy, namely because, after being cited, he did not appear at the term fixed for him. For if one so bound, having presented a complaint, petitions to be absolved by the archbishop—whether the suffragan proceeded by virtue of his office or an appeal was made to the archbishop himself before the definitive sentence—and the adversary alleges that he is not to be absolved and that access to judgment ought not to be opened to him unless he first reimburses the expenses and provides security that he will appear in judgment, while he himself answers that he ought not rightly to be deemed contumacious because, having been captured on the journey or detained by some other impediment, he was unable to appear at the term, then the benefit of absolution must immediately be bestowed upon him according to the form of the Church. It is otherwise, however, if he admits himself to be contumacious or if his contumacy is otherwise established, perhaps because he had foretold in court that he would by no means appear. For then, since the contumacy is manifest and the offense is deemed manifest,

absolution is not to be bestowed upon him unless satisfaction for the expenses has first been made and security for standing in judgment has been furnished. And this same rule is to be observed in similar cases, as when someone is cited to a certain place and he alleges that it is not safe for him, and afterward the judge promulgates a sentence of excommunication against him because he did not prove this and did not appear. For then, if the excommunicated person appeals to the superior and before all else petitions to be absolved by him, since he wishes to prove before him that the place is not safe for him, he is without doubt to be heard in this, since his contumacy appears to be only presumed. But if the judge had pronounced that the place was suitable and safe and he had not appeared, and for that reason had excommunicated him, he ought afterward by no means to be heard concerning this unless he had appealed within ten days after the interlocutory sentence was rendered.

§ 2. But if someone appeals for a legitimate or probable cause—for example, because the place is not safe—and after an appeal of this kind is bound by excommunication, and it is thereafter established for the superior that appeal was made to him for such a cause, nevertheless he ought not immediately to pronounce the sentence of excommunication null, but he can relax it as a precaution according to the form of the Church.

§ 3. Indeed, if it is certain that the sentence of excommunication is just, as when it has been promulgated against someone because of a manifest transgression, the superior judge, unless there is danger in delay, must wholly remit the excommunicated person to the excommunicator and ought not to absolve him unless, after being requested, the excommunicator maliciously refuses to grant him the benefit of absolution. But if it is established that a sentence of this kind is unjust, the excommunicated person is by no means to be remitted to his excommunicator, but must at once be absolved without any difficulty. But if it is doubtful whether it is just or unjust, the superior, unless he defers to the excommunicator, can relax it according to the form of the Church, although he acts more honorably and fittingly if he defers to him in this case. But where it belongs to the superior to take cognizance of the excommunication, an absolution or relaxation made by him holds, although perhaps it is unjust, because, even if he absolves contrary to the right of the litigant, he nevertheless does not absolve contrary to the right of the constitution.

§ 4. Finally, from the subjects of a suffragan an archbishop can exact monetary amends according to the custom of the region in cases in which it is lawful for him to bind them with the bond of excommunication.

§ 5. An archbishop can also sometimes bestow the benefit of absolution as a precaution according to the form of the Church, as, for example, if it is asserted that an intolerable error was patently expressed in the sentence of excommunication—that is, that something is openly contained in it under the force of a precept or command which commonly, or in its kind, is a sin. Thus, for example, someone may say that he was excommunicated by a suffragan because he was giving alms to a poor person, or because he was doing some other thing that is good in itself, or because he was not performing that which in its own act is unlawful and wicked, and the suffragan himself may assert that for a worthy and reasonable cause, or for preserving or executing justice, he had prohibited or even enjoined this upon him. For then the archbishop can absolve him as a precaution.

§ 6. Similarly, if someone alleges that, after an appeal interposed for a legitimate cause, he was bound with the bond of excommunication in judicial proceedings or outside them before the definitive

sentence, the archbishop, after this has been established for him, can bestow upon him the benefit of absolution as a precaution according to the form of the Church, even before he begins to take cognizance of the truth of the cause of appeal.

> Excommunicatos a subditis suffraganeorum archiepiscopi non possunt absolvere, sed excommunicatos a suffraganeis vel officialibus bene, si ad eos appellatum fuerit. H. d. Ioann. Andr. — §. 1. Archiepiscopus in casibus, in quibus iurisdictionem habet, ante cognitionem causae absolvit excommunicatum ad petitionem partis, vel ex officio, nisi dicatur excommunicatus pro manifesta offensa vel contumacia; et contumaciae praesumptae et manifestae ponit exempla. H. d. Ioann. Andr. — §. 2. Excommunicatio, lata post appellationem interpositam ex causa probabili, non statim pronunciate nulla; sed fieri potest relaxatio ad cautelam, etiam antequam incipiat de veritate causae cognoscere. Idem, si dicatur lata per intolerabilem errorem, et in contrarium error ille probabiliter defendatur. Ioann. Andr. — §. 3. Si certum est, excommunicationem esse iustam, fit remissio; si certum est eam iniustam, non fit. Si est dubium, fieri potest relaxatio, sed honestius est remittere; tenet tamen relaxatio, ubi archiepiscopus est iudex, licet non fiat remissio. H. d. Ioann. Andr. — §. 4. Archiepiscopus in casibus, in quibus excommunicare potest, si consuetudo habet, emendas pecuniarias exigere potest. H. d. Ioann. Andr. — §. 5. Summatur supra in §. Sed si ex causa, ibi videas. — §. 6. Summarium habet supra in §. Sed si ex causa, ibi vide.
>
> Idem.
>
> Venerabilibus (Et infra:) Ceterum Rothomagensi archiepiscopo vel eius officiali non licet excommunicatis ab archidiaconis vel aliis subditis suffraganeorum ipsius archiepiscopi, (quum nec excommunicantium, nec excommunicatorum sint iudices,) absolutionis beneficium impertiri; excommunicatos autem ab ipsis suffraganeis vel eorum officialibus possunt absolvere, si ab ipsis litigantibus ad eos fuerit provocatum. Neutra vero partium appellante, si qua ipsarum per archiepiscopum vel eius officialem ab excommunicatione contra eam lata pro reliqua postulet se absolvi, vel alias coram eis de parte adversa querimoniam sine appellationis interpositione deponat: non est in hoc ab ipsis, (quum sui non sint iudices,) audienda. Sed si excommunicatus deponat apud eos de suffraganeo, ut imponatur ei poena, et pro suo interesse super iniusta excommunicatione querelam: audire utique debent eum. Secus autem, si conqueratur de ipso, ut relaxetur huiusmodi sententia, contra se ab eo pro alio promulgata: quoniam tueri hanc causam non ad ipsum suffraganeum, sed eum, pro quo est sententia lata, spectat. Attamen si suffraganeus vel extra iudicium pro suorum defensione iurium, vel etiam in iudicio ex suo procedens officio, inquirendo videlicet vel simile quid agendo, aliquem excommunicet: in hoc casu conveniendus est ipse suffraganeus coram archiepiscopo vel eius officiali, quia ipsius interest defendere causam suam. §. 1. Porro archiepiscopus vel eius officiales excommunicatos a suffraganeis semper, antequam audire causam incipiant, in casibus, in quibus eis iurisdictio competit, iuxta ecclesiae formam debent absolvere, utpote si post diffinitivam fuerit excommunicationis sententia promulgata, et ad eos fuerit appellatum, exceptis casibus, in quibus iura prohibent post sententiam appellare. Similiter, si suffraganeus extra iudicium excommunicet aliquem pro eius offensa, vel pro sui defensione iuris, et super hoc querimoniam ille proponat; est ille primitus iuxta formam ecclesiae absolvendus, nisi suffraganeus probaturum se offerat, quod pro manifesta offensa excommunicationis eum vinculo innodavit. Idem est etiam, si quemquam pro praesumpta contumacia, videlicet quia citatus praefixo sibi termino non comparuit, excommunicatione constringat: quia, si sic ligatus proposita querimonia petat ab archiepiscopo se absolvi, sive quando suffraganeus ex suo processit officio, sive quando est ad ipsum archiepiscopum ante sententiam diffinitivam appellatum, et ab adversario proponatur, quod absolvendus non sit, nec pandi ei debeat iudicii aditus, nisi prius expensas restituat, et iudicio sisti exhibeat cautionem, ipseque respondeat, quod recte contumax reputari non debet pro eo, quod in itinere captus vel etiam alio impedimento detentus in termino

comparere nequivit, tunc protinus sibi iuxta formam ecclesiae beneficium debet absolutionis impendi. Secus autem, si se contumacem confiteatur, vel alias de contumacia sua constet, quia forte praedixerat in iudicio, quod minime compareret. Tunc enim, quum manifesta sit contumacia, et manifesta reputetur offensa, non est ei, nisi primo expensarum satisfactione ac de stando iudicio cautione praestita, absolutio impendenda. Et hoc ipsum est in similibus observandum, sicut si aliquis ad certum locum citetur, et ille proponat, ipsum non esse sibi tutum, et iudex postea in eum, quia non probavit hoc, nec comparuit, sententiam excommunicationis promulget. Nam tunc, si excommunicatus ipse ad superiorem appellet, et ante omnia se ab eo petat absolvi, quum probare coram eo velit, ipsum locum non exsistere sibi tutum, in hoc est procul dubio audiendus, quum praesumpta solummodo eius contumacia videatur. Sed si iudex pronunciasset, locum illum esse idoneum et securum, et ille non comparuisset, ac ideo excommunicasset eundem: ipse postmodum super hoc, nisi post latam interlocutoriam infra decendium provocasset, nullatenus audiri debet. §. 2. Sed si ex causa legitima seu probabili quis appellet, puta quia locus non est tutus, et post appellationem huius modi excommunicatione ligetur, ac deinde constet superiori, quod ad ipsum ex tali causa exstitit provocatum: non tamen illico pronunciare debet excommunicationis sententiam fore nullam, sed potest eum ad cautelam iuxta formam ecclesiae relaxare. §. 3. Sane, si certum est, excommunicationis sententiam esse iustam, velut quum propter manifestum excessum est in aliquem promulgata: superior iudex, nisi periculum sit in mora, excommunicatum ad excommunicatorem prorsus remittere debet, nec debet eum absolvere, nisi excommunicator requisitus malitiose illi absolutionis beneficium deneget exhibere. Si vero constet, huiusmodi sententiam esse iniustam: nequaquam remittendus est ad suum excommunicatorem excommunicatus, sed debet sine difficultate aliqua mox absolvi. Quodsi dubitetur, utrum iusta sit vel iniusta: superior, nisi excommunicatori deferat, relaxare iuxta formam ecclesiae potest illam, quamquam honestius et convenientius agat, si ei deferat in hoc casu. Ubi autem superiori competit de excommunicatione cognoscere: absolutio seu relaxatio, quam ipse fecerit, tenet, licet forsitan sit iniusta, quoniam, etsi contra ius litigatoris, non tamen contra ius constitutionis absolvit. §. 4. Denique a subditis suffraganei emendas pecuniarias potest archiepiscopus secundum consuetudinem regionis exigere in casibus, in quibus ei licet eos excommunicationis vinculo innodare. §. 5. Potest quoque archiepiscopus beneficium absolutionis iuxta formam ecclesiae nonnunquam impendere ad cautelam, utpote si asseritur, in excommunicationis sententia intolerabilem errorem fuisse patenter expressum, id est, aliquid sub vi praecepti vel mandati aperte in ea contineri, quod communiter vel in suo genere est peccatum, veluti si dicat forte aliquis, se a suffraganeo excommunicatum fuisse pro eo, quod eleemosynam pauperi tribuebat, vel quia faciebat aliquid aliud, quod in se bonum est, aut quia non operabatur id, quod suo actu illicitum est et pravum, et suffraganeus ipse asserat, quod pro digna et rationabili causa, vel pro conservanda vel exsequenda iustitia hoc illi prohibuisset vel etiam iniunxisset. Nam tunc archiepiscopus ad cautelam absolvere potest eum. §. 6. Similiter, si aliquis proponat se ante diffinitivam sententiam in iudicio vel extra post appellationem ex causa legitima interpositam vinculo excommunicationis adstrictum: potest archiepiscopus, postquam sibi de hoc constiterit, etiam priusquam incipiat de veritate causae appellationis cognoscere, absolutionis illi beneficium ad cautelam iuxta formam ecclesiae impertiri.

Chapter VIII

An ecclesiastical judge compels a lay judge to exclude excommunicated persons from judicial acts prohibited to them. This states the point. Johannes Andreae.

Alexander IV.

We decree that secular judges are to be compelled by ecclesiastical judges, through ecclesiastical censure after canonical admonition has first been given, to exclude excommunicated persons from acting, pleading, and testifying in their courts and judicial proceedings.

> Iudex ecclesiasticus compellit iudicem laicum, repellere excommunicatos ab actibus iudiciariis sibi prohibitis. H. d. Ioann. Andr.
>
> Alexander IV.
>
> Decernimus, ut iudices saeculares per censuram ecclesiasticam ab ecclesiasticis iudicibus, canonica monitione praemissa, repellere excommunicatos ab agendo, patrocinando et testificando in suis curiis et iudiciis compellantur.

Chapter IX

An excommunication rendered against participants does not hold unless they were admonished by name. And an admonition is called canonical when it has intervals of days, unless the necessity of the matter counsels otherwise. This states the point. Johannes Andreae.

Gregory X, in the general Council of Lyons.

The constitution of our predecessor Pope Innocent IV of happy memory, which prohibits those participating with excommunicated persons in that participation which induces only the lesser excommunication from being bound by the greater excommunication unless canonical admonition has first been given, decreeing that a sentence of excommunication otherwise promulgated does not hold, we declare, in order to remove every scruple of ambiguity, and decree that an admonition is canonical in this case only if, with the other requirements duly observed, it specifies by name those who are admonished. We also establish that, between the admonitions which the laws establish must precede in order that a sentence of excommunication be canonically promulgated, judges—whether they use three admonitions or one in place of all—are to observe suitable intervals of some days, unless the necessity of the matter counsels that they be regulated otherwise.

> Non valet excommunicatio lata in participantes, nisi fuerint moniti nominatim. Et canonica monitio dicitur, quae habet dierum intervalla, nisi necessitas facti aliud suadeat. H. d. Ioann. Andr.
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> Gregorius X. in generali concilio Lugdunensi.
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> Constitutionem felicis recordationis Innocentii Papae IV. praedecessoris nostri, quae prohibet, participantes excommunicatis ea participatione, quae solam minorem excommunicationem inducit, monitione canonica non praemissa maiori excommunicatione ligari, decernens, promulgatam aliter excommunicationis sententiam non tenere, ad tollendum omnem ambiguitatis scrupulum declarantes, decernimus, ita demum esse monitionem canonicam in hoc casu, si aliis rite servatis eos, qui monentur, exprimat nominatim. Statuimus quoque, ut inter monitiones, quas, ut canonice promulgetur excommunicationis sententia, statuunt iura praemitti, iudices, sive monitionibus tribus utantur sive una pro omnibus, observent aliquorum dierum competentia intervalla, nisi facti necessitas aliter ea suaserit moderanda.

Chapter X

Relaxation as a precaution has no place in a general interdict. This states the point. Dominicus.

The same, in the same council.

By this general edict we declare that the benefit of relaxation as a precaution has no place whatsoever with respect to sentences of interdict promulgated generally against cities, castles, or any other places or lands.

> Relaxatio ad cautelam in generali interdicto non habet locum. H. d. Domin.
>
> Idem in eodem.
>
> Praesenti generali declaramus edicto, beneficium relaxationis ad cautelam, quoad interdicti sententias, in civitates, castra vel quaelibet alia loca sive terras aliquas generaliter promulgatas, locum aliquatenus non habere.

Chapter XI

First, with certain limitations, he excommunicates those who give license to offend in the persons or goods of themselves or their people those who exercise ecclesiastical censure against anyone, cause it to be exercised, or observe it. Second, at "By the same," he extends the penalty to one who uses the license or does this on his own initiative. Third, at "But those who," he aggravates the penalty. This states the point. Johannes Andreae.

The same, in the same council.

Whoever, because a sentence of excommunication, suspension, or interdict has been promulgated against kings, princes, barons, nobles, bailiffs, or any ministers of theirs, or against any others, gives anyone license to kill, capture, or otherwise burden in their persons or goods, or those of their people, those who rendered such sentences, those on whose occasion they were rendered, those observing the same sentences, or those unwilling to communicate with persons so excommunicated —unless they revoke that license while the matter remains intact, or, if the seizure of goods has proceeded on the occasion of that license, unless the goods seized are restored within a period of eight days or satisfaction is rendered for them—shall by that very fact incur a sentence of excommunication. By the same sentence also shall all those be bound who have dared to use the aforesaid license once given, or on their own initiative otherwise to commit any of the foregoing acts for whose commission we have prohibited license from being given. But those who remain in that sentence for a period of two months shall thereafter be unable to obtain the benefit of absolution from it except through the Apostolic See.

> Primo excommunicat certis limitationibus dantes licentiam offendendi in personis vel rebus suis vel suorum, exercentes contra aliquos ecclesiasticam censuram, vel exerceri facientes, vel illam servantes. Secundo ibi: Eadem, poenam prorogat ad utentem, vel motu proprio id agentem. Tertio ibi: Qui autem, poenam aggravat. H. d. Ioann. Andr.
>
> Idem in eodem.
>
> Quicunque pro eo, quod in reges, principes, barones, nobiles, ballivos vel quoslibet ministros eorum, aut quoscunque alios excommunicationis, suspensionis seu interdicti sententia fuerit promulgata, licentiam alicui dederint occidendi, capiendi, seu alias in personis aut bonis suis vel suorum gravandi eos, qui tales sententias protulerunt, sive quorum sint occasione prolatae, vel easdem sententias observantes, seu taliter excommunicatis communicare nolentes, (nisi licentiam ipsam re integra revocaverint, vel si ad bonorum captionem occasione ipsius licentiae sit processum, nisi bona in ipsa fuerint infra octo dierum spatium restituta, aut satisfactio pro ipsis impensa,) eo ipso sententiam excommunicationis incurrant. Eadem quoque sententia sint innodati omnes, qui ausi fuerint praedicta licentia data uti, vel aliquod praemissorum, ad quae committenda dari licentiam prohibuimus, alias

committere suo motu. Qui autem in eadem sententia permanserint duorum mensium spatio, extunc ab ea non possint nisi per easdem apostolicam absolutionis beneficium obtinere.

Chapter XII

If a wrongdoer captured by a lay judge says that he is a cleric, cognizance of this matter belongs to the ecclesiastical judge. And if he is notoriously, or by public reputation or common estimation, held to be a cleric, remittal is made immediately. The same applies if he previously conducted himself as a cleric and was now apprehended in clerical habit. But if he previously conducted himself as a layman, although he was now apprehended in clerical habit, remittal will not be made until clerical status has been proved; but meanwhile the judge will proceed against him in no respect. This states the point. Johannes Andreae.

Boniface VIII.

If a lay judge detains a wrongdoer who has been captured, and the latter, saying that he is a cleric, petitions to be remitted to the ecclesiastical court, or that court itself claims him back as its cleric, while the judge denies that he is a cleric and, for this reason, that he is to be remitted at all, cognizance of a doubt of this kind—namely, whether the person claimed back is a cleric—shall belong to the ecclesiastical judge, because it concerns an ecclesiastical and spiritual matter, although the secular judge or another person whose interest is involved is to be summoned. And if it is notorious that the same wrongdoer is a cleric who ought to enjoy a privilege of this kind, he is immediately to be restored without any other cognizance; or if there is public reputation concerning this, or he was commonly held to be a cleric, he must be returned to the ecclesiastical court immediately, even before cognizance concerning his clerical status.

We judge the same to apply if the accused himself, not having publicly conducted himself as a layman before his apprehension, was apprehended in clerical habit, namely wearing the tonsure and clerical garments. For we ought to deem such a person a cleric until the contrary is established, just as legal authority has decreed concerning one who is in possession of freeborn status, if he is said by another to be a freedman, that not he but his adversary is bound by the necessity of proving it. For it is just that, until something else appears, a person of this kind be presumed from the habit which he wears to be such as the person whose habit he is shown to bear. For from the brand customarily impressed upon workers in the imperial workshops, a worker of those workshops who is hiding is recognized; and the guardians of waters, whom they call *hydrophylaces*, marked with the designation customarily impressed upon them, are manifest to all and are not held liable under the heading of compulsory service. And a person's status is considered to be that in which he is apprehended, until the contrary is shown.

But we do not will this to be observed in the same way if, before his apprehension, he publicly conducted himself as a layman and was commonly held as such, although at the time of apprehension he was found in clerical habit. For then he is not to be restored until he has made proof of his clerical title, the burden of proving which rests upon him because of the presumption that arose against him from his prior wearing of lay habit; meanwhile, however, every proceeding of the judge against him is to cease entirely.

Si malefactor, captus a iudice laico, dicit se clericum: huius rei cognitio ad iudicem ecclesiasticum spectat. Et si notorie, vel publica fama vel communi aestimatione habetur pro clerico: statim fit remissio. Idem, si prius se gerebat pro clerico, et modo deprehensus fuit in habitu clericali. Si autem

prius se gerebat pro laico, licet modo in clericali habitu deprehensus fuerit, non fiet remissio, donec fuerit de clericatu probatum; sed interim contra eum iudex in nullo procedet. H. d. Ioann. Andr.

Bonifacius VIII.

Si iudex laicus malefactorem captum detineat, et is, se clericum dicens, ad curiam ecclesiasticam petat remitti, vel curia ipsa, eum tanquam suum clericum repetat, iudice illum inficiante clericum, ac ob hoc minime remittendum: dubitationis huiusmodi, an scilicet sit qui repetitur clericus, ad iudicem ecclesiasticum, quia de re ecclesiastica et spirituali, vocato tamen iudice saeculari, vel alio, cuius interest, cognitio pertinebit. Et si notorium fuerit, quod idem malefactor sit clericus, qui huiusmodi privilegio gaudere debeat, statim absque alia cognitione, vel fama publica de hoc exstiterit, aut ipse pro clerico communiter habebatur: in continenti etiam ante cognitionem de clericatu ecclesiasticae curiae debet reddi. Idem esse censemus, si reus ipse, ante deprehensionem pro laico publice se non gerens, deprehensus fuit in habitu clericali, tonsuram videlicet et vestes deferens clericales. Nam talem debemus clericum, donec constet de contrario, reputare; sicut de illo, qui in possessione ingenuitatis exsistit, si dicatur ab alio libertinus, legalis sanxit auctoritas, ut probandi necessitate non ipse, sed adversarius adstringatur. Iustum est enim, ut ipse talis quem gestat ex habitu, quousque appareat aliud, praesumatur, qualis is esse, cuius fert habitum, comprobatur. Ex stigmate namque, consueto fabricensibus imprimi, latitans fabricensis agnoscitur, et custodes aquarum, quos hydrophylacas nominant, quae eis infigi solet adnotatione signati, manifesti sunt omnibus, et angariarum nomine non tenentur. Isque status alicuius esse videtur, in quo ipse deprehenditur, donec contrarium doceatur. Non sic autem volumus observari, si ante deprehensionem pro laico publice se gerebat, ac pro tali communiter habebatur; quamvis deprehensionis tempore repertus fuerit in habitu clericali. Tunc enim restituendus non est, quousque fidem de titulo fecerit clericali, cuius eidem probationis onus incumbat propter praesumptionem, quae adversus ipsum orta est ex delatione laicalis habitus procedenti; contra eum tamen interim quivis processus iudicis penitus conquiescat.

Chapter XIII

A suspension or interdict rendered against participants without canonical admonition first being given does not hold. This states the point. Johannes Andreae.

The same.

We command that the statute of Pope Gregory X, made in declaration of the Innocentian constitution which prohibits those participating with excommunicated persons in that participation which induces only the lesser excommunication from being bound by the greater excommunication without canonical admonition first being given, be inviolably observed in sentences of suspension and interdict which are frequently promulgated for participation of this kind by ordinaries or delegated judges, decreeing that those sentences do not hold when promulgated otherwise.

Non tenet suspensio vel interdictum, lata in participantes non praemissa monitione canonica. H. d. Ioann. Andr.

Idem.

Statutum Gregorii Papae X. factum ad declarationem constitutionis Innocentianae, quae prohibet, participantes excommunicatis ea participatione, quae solum minorem inducit, maiore excommunicatione ligari monitione canonica non praemissa, in suspensionis et interdicti sententiis, quae pro huiusmodi participatione plerumque ab ordinariis vel delegatis iudicibus promulgantur, praecipimus inviolabiliter observari, decernentes, easdem sententias non tenere aliter promulgatas.

Chapter XIV

Through the negligence of one who does not prosecute an appeal at the due time, an excommunication rendered after it does not acquire validity; but he will then be able to be denounced and will have to be avoided until he proves the nullity of the sentence. This states the point. Johannes Andreae.

The same.

Although a sentence of excommunication promulgated after a legitimate appeal is not ratified or even made valid through the negligence of an appellant who fails to prosecute his appeal, nevertheless a person excommunicated by name, or specially and expressly, who asserts that a sentence of excommunication was rendered against him after a legitimate appeal, if he has not prosecuted that appeal as he ought within the time established by man or by law for prosecuting it, must, when that time has elapsed, be publicly announced as excommunicated, and must be avoided not only in judicial but also in extrajudicial acts and removed from legitimate acts, until he proves that he was excommunicated after a legitimate appeal, or otherwise proves the nullity of the sentence itself.

> Per negligentiam non prosequentis debito tempore appellationem excommunicatio post eam lata non convalescit; sed poterit tunc denunciari, et debebit vitari, donec de sententiae nullitate docuerit. H. d. Ioann. Andr.
>
> Idem.
>
> Licet excommunicationis sententia, post appellationem legitimam promulgata, per negligentiam appellantis, appellationem suam minime prosequentis, non ratificetur nec etiam convalescat: excommunicatus tamen nominatim, vel specialiter et expresse, qui post appellationem legitimam excommunicationis sententiam asserit in se latam, si appellationem eandem infra tempus, ad ipsam prosequendam ab homine vel a iure statutum, non fuerit, ut debuit, prosecutus, lapso eodem tempore excommunicatus publice nunciari, et nedum in iudicialibus, sed etiam in extraiudicialibus evitari, ac a legitimis actibus removeri debebit, quousque, quod post appellationem legitimam excommunicatus fuerit, vel alias de ipsius sententiae docuerit nullitate.

Chapter XV

A prelate who causes a cleric not yet incorrigible to be captured and confined, even through laymen, is not excommunicated, nor are those who capture him. Second, it is stated that, if such a person gives sureties that he will obey the law, he ought not to be detained unless a just cause counsels it. This states the point. Johannes Andreae.

The same Boniface VIII.

If, because of transgressions committed, you cause clerics subject to your jurisdiction to be captured, even through laymen, and confine them in prison lest they flee, afterward to be chastised with the due penalty, we do not believe that you or those capturing them are bound by any excommunication, although it does not yet appear that they are incorrigible, since in these acts neither rashness nor injury can be detected unless in some other way one deliberately goes beyond due measure in them. You also ought not to detain the same clerics if they have given you surety that they will obey the law, unless the enormity of the transgression or another reasonable cause counsels that they be detained.

> Praelatus, capi faciens et includens, etiam per laicos, clericum nondum incorrigibilem, excommunicatus non est, nec etiam ipsi capientes. Secundo dicitur, si talis dat fideiussores de parendo iuri: detineri non debet, nisi iusta causa id suadeat. H. d. Ioann. Andr.

Idem Bonifacius VIII.

Si clericos tuae iurisdictioni subiectos propter commissos excessus etiam per laicos capi facias, et eos, ne fugiant, in carcere poena debita postea castigandos includas: te vel capientes eosdem, licet nondum appareat incorrigibiles illos esse, nulla credimus excommunicatione nodari, quum in his, nisi alias ex proposito excedatur in ipsis, temeritas vel iniuria nequeat deprehendi. Eosdem quoque clericos, si de parendo iuri tibi fideiussoriam dederint cautionem, detinere non debes, nisi excessus enormitas vel alia causa rationabilis eos suaserit detinendos.

Chapter XVI

When the clergy are interdicted, the people are not interdicted, nor conversely. When a city is interdicted because of the offense of its lord, citizens who are not themselves interdicted hear divine offices outside it. When a people are interdicted, the individual persons of the people are understood to be interdicted. This states the point. Johannes Andreae.

The same.

If a sentence of interdict is rendered against the clergy, the people are not understood to be interdicted, unless something else is expressed in it, nor conversely. Hence, when one of them is interdicted, the other is lawfully admitted to divine offices. Moreover, when a city is interdicted because of the offense of its lord or ruler, its citizens who are not culpable—provided they have not themselves been interdicted in order that the lord or ruler may be punished in them—can lawfully attend divine offices outside it. But when the people of some land are marked by an interdict, the individual persons from that people who are established to be interdicted, lest the sentence lack effect—since the hearing of divine offices and reception of sacraments do not belong to the people as a corporate whole—ought not anywhere, excepting only the cases expressed by law, to hear divine offices or receive ecclesiastical sacraments.

Interdicto clero non est interdictus populus, nec e converso. Interdicta civitate propter delictum domini cives non interdicti extra ipsam audiunt divina. Interdicto populo singulares de populo intelliguntur interdicti.

H. d. Ioann. Andr.

Idem.

Si sententia interdicti proferatur in clerum: non intelligitur, nisi aliud sit expressum in ea, interdictus populus, nec etiam e converso. Unde uno interdicto ipsorum alius licite admittitur ad divina. Ceterum quum propter delictum domini vel rectoris est civitas interdicta, cives eiusdem, qui culpabiles non exsistunt, (dummodo et ipsi propter dominum vel rectorem puniendum in eis non fuerint interdicti,) possunt extra ipsam licite interesse divinis. Quum vero, alicuius terrae populus interdicto notatur: singulares ex eo personae, quas interdictas esse constat, ne sententia effectu careat, quum divinorum auditio et sacramentorum perceptio populo ut universis non competant, non debent alicubi, (casibus expressis a iure duntaxat exceptis,) audire divina vel ecclesiastica recipere sacramenta.

Chapter XVII

When a city is interdicted, its suburbs and contiguous buildings are said to be interdicted. And when a church is interdicted, a contiguous chapel and contiguous cemetery are said to be interdicted. This states the point. Johannes Andreae.

The same.

If a city, castle, or town is subjected to an ecclesiastical interdict, we will that its suburbs and contiguous buildings be understood to be interdicted by that very fact. For although the aforesaid places otherwise appear to be bounded by the circuit of their walls, nevertheless in this case, lest the sentence of interdict be capable of being despised—which would happen if it were possible lawfully to celebrate as before in their suburbs or contiguous buildings—it is expedient that a broader interpretation be made. For a similar reason, if a church is placed under or subjected to interdict, it will be possible neither to celebrate in its chapel nor to bury in its cemetery when they are contiguous to that church; it is otherwise if they are not contiguous to it.

> Interdicta civitate suburbia et continentia aedificia dicuntur interdicta. Et interdicta ecclesia capella contigua et coemeterium contiguum dicitur interdictum. H. d. Ioann. Andr.
>
> Idem.
>
> Si civitas castrum aut villa subiiciantur ecclesiastico interdicto: illorum suburbia et continentia aedificia eo ipso intelligi volumus interdicta. Nam, licet praedicta videantur alias murorum ambitu terminari: hoc tamen casu, ne vilipendi valeat sententia interdicti, (quod fieret, si posset in ipsorum suburbiis vel continentibus aedificiis licite celebrari ut prius,) expedit interpretationem fieri latiorem. Ratione quoque simili, si sit ecclesia interdicto supposita vel subiecta, nec in capella eius celebrari, nec in coemeterio ipsius eidem ecclesiae contiguis poterit sepeliri; secus, si ei contigua non exsistant.

Chapter XVIII

One who knowingly celebrates in a polluted church or in the presence of a person under the greater excommunication does not contract irregularity. Dominicus. — § 1. One who knowingly celebrates in an interdicted place in cases not permitted is irregular and ineligible. This states the point. Dominicus.

The same.

One who presumes knowingly to celebrate in a church polluted by the shedding of blood or semen, or in the presence of persons bound by the greater excommunication, although he acts rashly in this, nevertheless does not incur the snare of irregularity, since this is not expressed in the law.

§ 1. But one who knowingly celebrates in a place placed under interdict—unless he is privileged with respect to this, or it has been granted to him by law—incurs an irregularity from which he cannot be freed by anyone other than the Roman Pontiff, and he is rendered ineligible to such a degree that he ought not even to be admitted to elect with others.

> Celebrans scienter in ecclesia polluta, vel praesente excommunicato maiori excommunicatione, irregularitatem non contrahit. Domin. — §. 1. Scienter celebrans in loco interdicto in casibus non permissis, irregularis et ineligibilis est. H. d. Domin.
>
> Idem.
>
> Is, qui in ecclesia sanguinis aut seminis effusione polluta, vel qui praesentibus maiori excommunicatione nodatis scienter celebrare praesumit, licet in hoc temerarie agat, irregularitatis tamen, (quum id non sit expressum in iure), laqueum non incurrit. §. 1. Is vero, qui scienter in loco celebrat supposito interdicto, (nisi super hoc privilegiatus exsistat, aut a iure sit concessum eidem,) irregularitatem incurrit, a qua nequit per alium, quam per Romanum Pontificem liberari, et adeo efficitur ineligibilis, quod nec ad eligendum cum aliis debebit admitti.

Chapter XIX

During a time of interdict chrism can be prepared on the day of the Lord's Supper. This states the point.

The same.

Since in baptism and confirmation, which may lawfully be administered not only to children but also to adults during a time of interdict because of the danger of delay, we use the anointing of chrism, there is no doubt that chrism can be prepared on the day of the Lord's Supper, although the land is under interdict.

> Tempore interdicti chrisma die coenae Domini confici potest. Hoc dicit.
>
> Idem.
>
> Quoniam in baptismo et confirmatione, quae nedum pueris, sed et adultis propter morae periculum exhiberi possunt licite tempore interdicti, chrismatis utimur unctione: posse, licet terra interdicta exsistat, chrisma die coenae Domini confici, dubium non exsistit.

Chapter XX

One suspended from entering a church who celebrates divine offices in it is irregular, and, if he dies impenitent while that suspension endures, he lacks ecclesiastical burial. And a suspension from entering a church or from office is not suspended through a subsequent appeal. This states the point. Dominicus.

The same.

A person to whom entry into a church is forbidden, since the celebration of divine offices in it is consequently deemed forbidden to him, is rendered irregular if, contrary to an interdict of this kind, he intrudes himself into divine offices there, acting in his office as before. Such a person also, if he dies while this interdict endures, ought not to be buried in a church or ecclesiastical cemetery unless he has repented. Indeed, just as an excommunication, so a suspension rendered from office or from entering a church, or its effect, is by no means suspended through a subsequent appeal.

> Suspensus ab ingressu ecclesiae, in ea divina celebrans, est irregularis, et moriens impoenitens suspensione illa durante, caret ecclesiastica sepultura. Et suspensio ab ingressu ecclesiae vel officio per appellationem sequentem non suspenditur. H. d. Dom.
>
> Idem.
>
> Is, cui est ecclesiae interdictus ingressus, quum sibi per consequens censeatur in ipsa divinorum celebratio interdicta, irregularis efficitur, si contra interdictum huiusmodi divinis in ea se ingerat, in suo agens officio sicut prius. Talis quoque, si hoc interdicto durante decedat, non debet in ecclesia vel coemeterio ecclesiastico, nisi poenituerit, sepeliri. Sane, sicut excommunicatio, sic ab officio vel ab ingressu ecclesiae lata suspensio aut ipsius effectus per appellationem sequentem minime suspenduntur.

Chapter XXI

A bishop absolves a religious who strikes a cleric in the case in which he would absolve a cleric. This states the point. Dominicus. — § 1. One who strikes a novice of a religious order incurs excommunication.

The same.

To a religious who has laid violent hands upon a secular cleric, lest under this pretext he have material for wandering abroad, the benefit of absolution can be granted by the bishop in the case in which it could be granted to a secular cleric if he had struck another cleric.

§ 1. Moreover, although one who enters a religious order cannot be deemed a religious in effect until he has made profession tacitly or expressly, nevertheless, if anyone lays violent hands upon him, he does not escape the bond of excommunication rendered by the canon.

> Religiosum clericum verberantem absolvit episcopus eo casu, quo absolveret clericum. H. d. Domin. — §. 1. Verberans novitium religionis excommunicationem incurrit.
>
> Idem.
>
> Religioso, qui manus violentas in clericum saecularem iniecit, (ne hoc praetextu habeat materiam evagandi,) poterit ab episcopo eo casu absolutionis beneficium exhiberi, quo saeculari clerico posset, si alium clericum percussisset. §. 1. Quamvis autem is, qui religionem ingreditur, religiosus censeri cum effectu non possit, donec sit tacite vel expresse professus: si quis tamen violentas manus in eum iniiciat, excommunicationis latae a canone vinculum non evadit.

Chapter XXII

One absolved because of danger of death or another impediment by a person by whom he otherwise could not be absolved, if, when the impediment ceases, he does not present himself, when he conveniently can, to the person by whom he otherwise ought to have been absolved, falls again into the same sentence. The same applies to an absolved person who is required to present himself before someone, if he does not do this. Johannes Andreae.

The same.

Those who, when they cannot have recourse for the benefit of absolution to the person by whom they otherwise ought by law to have been absolved, because of an imminent danger of death or another legitimate impediment, are absolved by another from a sentence of canon or man, if, after the danger or impediment of this kind has ceased, they scorn to present themselves, as soon as they conveniently can, to the person by whom they ought to have been absolved when these impediments had ceased, humbly to receive his command concerning those matters for which they had been excommunicated and to render satisfaction as justice counsels, we decree—lest they thus make sport of ecclesiastical censure—that they fall again into the same sentence by the law itself. We establish the same concerning those upon whom, when they obtain from the Apostolic See or its legates the benefit of absolution from any sentences, it is enjoined that they present themselves before their ordinaries or any other persons, to receive penance from them, and that they render suitable satisfaction to those who suffered the injury or to those to whom they are bound because of it, if they do not take care to fulfill these things as soon as they conveniently can.

> Absolutus propter mortis periculum vel aliud impedimentum ab eo, a quo alias non poterat, si cessante impedimento se non praesentat, quum commode potest, ei, a quo alias absolvi debebat, recidit in eandem sententiam. Idem in absoluto, qui se debet alicuius conspectui praesentare, si hoc non faciat. Ioann. Andr.
>
> Idem.
>
> Eos, qui a sententia canonis vel hominis, quum ad illum, a quo alias de iure fuerant absolvendi, nequeunt propter imminentis mortis articulum aut aliud impedimentum legitimum pro absolutionis beneficio habere recursum, ab alio absolvuntur, si, cessante postea periculo vel impedimento

huiusmodi, se illi, a quo his cessantibus absolvi debebant, quam cito commode poterunt, contempserint praesentare, mandatum ipsius super illis, pro quibus excommunicati fuerant, humiliter recepturi et satisfacturi, prout iustitia suadebit, decernimus, (ne sic censurae illudant ecclesiasticae,) in eandem sententiam recidere ipso iure. Idem statuimus de his, quibus, quum a sede apostolica vel a legatis ipsius absolutionis beneficium a quibusvis sententiis consequuntur, iniungitur, ut ordinariorum suorum vel aliorum quorumlibet, suscepturi poenitentiam ab eisdem, se conspectui repraesentent, et passis iniuriam, seu his, quibus propter hoc obligati exsistunt, satisfactionem exhibeant competentem, si haec, quum primum commode poterunt, non curaverint adimplere.

Chapter XXIII

If I ratify a striking committed against a cleric without my command but in my name, I am excommunicated; it is otherwise if it was not committed in my name. Johannes Andreae.

The same.

When someone without your command lays violent hands upon a cleric in your name, if you ratify this, you unquestionably incur the excommunication rendered by the canon, since ratification is carried back to the time of the act and ought to be equated with a command. But if that laying-on of hands was not done in your name, then, although you sin by ratifying it, you are nevertheless not on account of this bound by the bond of any excommunication, since someone cannot ratify that which was not done in his name.

Si percussionem, in clericum sine meo mandato, tamen nomine meo factam, ratam habeam: excommunicatus sum; secus, si meo nomine non sit facta.

Ioann. Andr.

Idem.

Quum quis absque tuo mandato manus iniicit in clericum tuo nomine violentas, si hoc ratum habueris: excommunicationem latam a canone incunctanter incurris, quum ratihabitio retrotrahatur, et mandato debeat comparari. Si vero iniectio eadem tuo nomine non sit facta: tunc, licet pecces ratam habendo eandem, non tamen propter hoc excommunicationis ullius vinculo innodaris, quum quis ratum habere nequeat quod eius nomine non est gestum.

Chapter XXIV

During a time of interdict even the healthy are admitted to penance, unless they are excommunicated, who will be admitted only at the point of death, or unless they gave cause for the interdict, who will not be admitted unless they make satisfaction or give security according to their ability. Likewise, during that time masses are celebrated and other divine offices are performed in churches as before, under penalty of loss of distributions, but with the doors closed, in a low voice, without excommunicated and interdicted persons, and without the ringing of bells. And four times in the year they can celebrate in a loud voice, with bells and doors open, and, after excluding excommunicated persons, admit interdicted persons, yet in such a way that those because of whose transgression it was rendered do not approach the altar. In other matters the interdict is to be observed. And privileges granted to anyone beyond this have been revoked. This states the point. Johannes Andreae.

The same.

Holy Mother Church frequently and with deliberation reasonably ordains certain things which afterward, when the advantage of her subjects counsels it, she more deliberately and reasonably

revokes or changes for the better. Indeed, it was long ago established by our predecessors that, in lands or places placed under ecclesiastical interdict, no divine offices are to be celebrated and no ecclesiastical sacraments administered, certain cases and sacraments excepted. But because from the rigor of statutes of this kind the people's lack of devotion increases, heresies spring up, and innumerable dangers to souls arise, and due services are withdrawn from churches through no fault of theirs, after diligent deliberation concerning these matters with our brothers, we grant that, during a time of interdict rendered by man or by law, not only the dying but also the living, both the healthy and the infirm, may lawfully be admitted to penance—which, because of the proneness and readiness of human beings to sin, is supremely necessary—provided, however, that they have not been excommunicated; for we do not will that excommunicated persons be admitted to it except at the point of death.

Also, the benefit of penance is in no way to be granted to those because of whose fault, deceit, or fraud the sentence of interdict was rendered, or who provided aid, counsel, or favor for committing the offense on whose occasion the interdict itself was rendered, unless they have first made satisfaction for the offense itself, if they are such persons as are able to do so, or have given suitable security for making satisfaction; or, if they cannot make satisfaction or furnish security of this kind, unless they have sworn that, when they are able, they will make satisfaction, and that they will give counsel and aid and faithfully labor according to their ability so that satisfaction of this kind may be furnished by the person or persons who ought and are able to make it. And even then, with respect to these or others who have not at all offended in this matter, where a city or another place or a corporate body is under interdict, relaxation of the interdict is not to be made, but salutary penance alone is to be enjoined upon them.

We add, moreover, that every day in churches and monasteries masses are to be celebrated and other divine offices said as before, yet in a low voice and with the doors closed, with excommunicated and interdicted persons excluded and the bells also not rung. And both canons and clerics of churches in which daily distributions are given to those who attend the canonical hours, if they do not come to the aforesaid offices, shall lose those distributions, just as they would lose them if no interdict existed and they did not attend the divine offices.

But on the feasts of the Nativity of the Lord, Easter, Pentecost, and the Assumption of the Glorious Virgin, bells are to be rung and divine offices solemnly celebrated in a loud voice with the doors open, excommunicated persons being wholly excluded but interdicted persons admitted. Out of reverence for the said solemnities, and so that interdicted persons may more readily be inclined toward the grace of humility and a disposition for reconciliation, we permit them participation in divine offices on the aforesaid days, yet in such a way that those because of whose transgression an interdict of this kind was rendered are by no means to approach the altar. The other provisions established by our predecessors concerning the observance of interdicts are to remain in their force, notwithstanding any privileges granted by the Apostolic See, under any form or expression of words, to churches, monasteries, orders, religious institutes, or ecclesiastical persons, secular or regular, exempt and nonexempt. We will that such privileges avail no one against the tenor of this constitution, since it ought to suffice for all persons, both secular and regular, that during a time of interdict they celebrate on the aforesaid days in the manner set forth above.

Tempore interdicti etiam sani ad poenitentiam admittuntur, nisi sint excommunicati, qui non nisi in mortis articulo admittentur, vel nisi causam dederint interdicto, qui non admittentur, nisi satisfaciant vel caveant, prout possunt. Item illo tempore missae et alia divina officia sub poena distributionum sicut prius in ecclesiis celebrantur ianuis clausis, plane sine excommunicatis et interdictis, et sonitu Campanarum. Et quater in anno alte cum campanis et ianuis apertis celebrare possunt, et exclusis excommunicatis interdictos admittere, ita tamen, quod hi, propter quorum excessum latum est, non appropinquent altari. In ceteris servandum est interdictum. Et revocata sunt privilegia ultra id quibuscunque concessa. H. d. Ioann. Andr.

Idem.

Alma mater ecclesia plerumque nonnulla rationabiliter ordinat et consulte, quae suadente subiectorum utilitate postmodum consultius ac rationabilius revocat in meliusve commutat. Sane a nostris dudum fuit praedecessoribus constitutum, ut in terris seu locis, ecclesiastico suppositis interdicto, nulla, certis casibus et sacramentis exceptis, divina celebrentur officia, vel ministrentur ecclesiastica sacramenta. Quia vero ex districtione huiusmodi statutorum excrescit indevotio populi, pullulant haereses, et infinita pericula animarum insurgunt, ac ecclesiis sine culpa earum debita obsequia subtrahuntur: cum fratribus nostris deliberatione habita super his diligenti concedimus, quod tempore interdicti, ab homine vel a iure prolati, non tantummodo morientes, sed etiam viventes, tam sani etiam quam infirmi, ad poenitentiam, (quae propter pronitatem et facilitatem hominum ad peccandum summe necessaria est,) licite admittantur; dum tamen excommunicati non fuerint, quos admitti, praeterquam in mortis articulo, nolumus ad eandem. Illis etiam, propter quorum culpam, dolum vel fraudem lata est sententia interdicti, vel qui ad perpetrandum delictum, cuius occasione ipsum interdictum est latum, praebuerunt auxilium, consilium vel favorem, nisi de ipso delicto, (si sint tales, quod id facere valeant), prius satisfecerint, vel de satisfaciendo idoneam dederint cautionem, aut si satisfacere nequeunt, vel huiusmodi cautionem praestare iuraverint, quod, quum poterunt, satisfacient, et ad satisfactionem huiusmodi per eum vel per eos, qui facere ipsam debent et possunt, praestandam, dabunt consilium et auxilium, ac iuxta posse suum fideliter laborabunt, non est poenitentiae beneficium aliquatenus concedendum. Nec tunc etiam quoad istos vel alios, qui circa hoc minime deliquerunt, (ubi civitas vel locus alius, seu universitas interdicti exsistunt,) facienda est relaxatio interdicti, sed est eis solummodo iniungenda poenitentia salutaris. Adiicimus praeterea, quod singulis diebus in ecclesiis et monasteriis missae celebrentur, et alia dicantur divina officia sicut prius, submissa tamen voce et ianuis clausis, excommunicatis ac interdictis exclusis, et campanis etiam non pulsatis. Et tam canonici quam clerici ecclesiarum, in quibus distributiones quotidianae illis, qui horis intersunt canonicis, tribuuntur, si ad officia non venerint supra dicta, distributiones easdem amittant, sicut interdicto perderent non exstante, si divinis officiis non adessent. In festivitatibus vero Natalis Domini, Paschae, ac Pentecostes et Assumptionis Virginis gloriosae campanae pulsentur, et ianuis apertis alta voce divina officia solenniter celebrentur, excommunicatis prorsus exclusis, sed interdictis admissis; quibus ob reverentiam dictarum solennitatum, et ut ipsi ad humilitatis gratiam et reconciliationis affectum facilius inclinentur, praefatis diebus participationem permittimus divinorum, sic tamen, quod illi, propter quorum excessum interdictum huiusmodi est prolatum, altari nullatenus appropinquent. Ceteris, quae circa observationem interdictorum a nostris sunt praedecessoribus instituta, in suo robore duraturis, non obstantibus quibusvis privilegiis, ecclesiis, monasteriis, ordinibus, religionibus, seu personis ecclesiasticis, saecularibus vel regularibus, exemptis et non exemptis, sub quavis forma vel expressione verborum ab apostolica sede concessis, quae contra tenorem praesentis constitutionis nullis volumus suffragari, quum quibuslibet tam saecularibus quam regularibus sufficere debeat, ut tempore interdicti modo praemisso diebus celebrent supra dictis.

Title XII: On the Signification of Words

Chapter I

Here Innocent declares what the words of a privilege, "We have received you as the proper sons of the Roman Church," signify, and what place is said to be deserted. This states the point. Johannes Andreae.

Innocent IV.

Coming. (And below:) We declare that by those words of the privilege, "We have received you as the special and proper sons of the Roman Church," the said brothers are not to be understood to be exempt, or thereby to have been received as the proper sons of the same Church in such a way that they cannot be interdicted or excommunicated by anyone other than the Roman Pontiff or a legate sent from his side. In the foregoing matters we understand as deserted that place which has been neither inhabited at all nor cultivated, or which beyond the memory of human beings has been held under the power of the Saracens, according to the indulgence of Lucius. We decree that churches constructed or to be constructed by the brothers themselves in deserted places of this kind enjoy full liberty in this respect: that, according to the indulgence of Lucius, nothing can be exacted from them by bishops in the name of diocesan law; that, according to the privilege of Alexander, they cannot be placed under interdict or excommunication; and that the said brothers have power, after permission has been sought from the Apostolic See, to construct them in places of this kind and to govern them with their parish communities through their own suitable clerics. These clerics are to be presented to the bishops to be examined on account of their parish communities, so that they may receive the cure of souls from them, since the parish communities are subject to the bishops.

Moreover, the said brothers are to pay in full the tithes from their labors and newly cultivated lands, which they cultivate by their own hands or at their own expense, or from other goods granted to them by God, to the convents of clerics of their order, from which no fourth or third part is to be exacted at all, saving the moderation of the general council, while in their other possessions the common law or any other right is reserved to the parochial churches and the diocesan bishop. But by a declaration of this kind we do not will to derogate from the other defenses or rights of the parties.

DE VERBORUM SIGNIFICATIONE.

Declarat hic Innocentius, quid significet verbum privilegii: „ recepimus vos in proprios filios ecclesiae Romanae," et quis locus dicatur esse desertus.

H. d. Ioann. Andr.

Innocentius IV.

Veniens (Et infra:) Per illa verba privilegii: „In speciales et proprios ecclesiae Romanae filios vos recepimus dictos fratres exemptos non intelligi, et ipsos ex illo in proprios eiusdem ecclesiae filios fuisse receptos, quod ab alio quam a Romano Pontifice vel legato ab eius latere destinato interdici vel excommunicari a quoquam non valeant, declaramus. Illum locum desertum in praemissis intelligimus, qui non habitatus penitus neque cultus fuerit vel ultra memoriam hominum (secundum indulgentiam Lucii) est sub Sarracenorum potestate detentus, censentes, ecclesias, in talibus desertis locis a fratribus ipsis constructas seu etiam construendas, in eo plena libertate gaudere, ut secundum indulgentiam Lucii nihil ab ipsis legis dioecesanae nomine valeat per episcopos exigi; quae (secundum privilegium Alexandri) non possunt interdicto seu excommunicationi supponi; quas in locis huiusmodi dicti fratres habeant potestatem (petita a sede apostolica licentia) construendi, easque cum suis plebibus per suos

clericos idoneos gubernent, qui ratione plebium examinandi episcopis praesententur, ut ab eis curam recipiant animarum, quum plebes episcopis sint subiectae. Ceterum dicti fratres decimas de laboribus et novalibus suis, quos propriis manibus aut sumptibus excolunt, aut aliis bonis sibi a Deo praestitis, conventibus clericorum ordinis sui, a quibus quarta vel tertia nullatenus exigatur, cum integritate persolvant, salva moderatione concilii generalis, in aliis eorum possessionibus iure communi seu quolibet alio ecclesiis parochialibus et dioecesano episcopo reservato. Per declarationem autem huiusmodi nolumus defensionibus aliis seu iuribus partium derogari.

Chapter II

He declares that "manifest" and "evident" are synonyms and signify the same thing with respect to the case of the decretal "If perhaps," On Election. Johannes Andreae. — § 1. He declares to be conspirators and sworn confederates those who swore and established that they would not receive anyone as a canon at the Pope's command so long as they could resist. Johannes Andreae. — § 2. A statute concerning not receiving anyone at the Pope's command is detestable and unlawful for many reasons. This states the point.

Nicholas III.

The constitution of our predecessor Pope Gregory of happy memory, issued in the Council of Lyons, provides that if perhaps, among the other matters alleged against a person elected or postulated, or otherwise to be promoted to some dignity, an evident defect in knowledge or another personal defect happens to be alleged, cognizance is first to be taken of that defect; and if the person making the allegation is found to lack truth, he is to be wholly excluded from the prosecution of that cause and otherwise punished as if he had failed in proving all the matters alleged. We declare that this constitution has place in the case of one who alleges against the person elected a manifest defect in sight, hearing, and the other bodily senses, as well as in memory and also in intellect; and we declare that, with respect to the intention of that constitution, "manifest" and "evident" denote the same thing.

§ 1. Moreover, the canons of any church who made a statute and solemnly confirmed it by oath, providing that they would defend their church and themselves against all persons impetrating a canonry of that church, as far as they were able, until a right or sentence, a judgment of the lord Pope, or his special mandate; that the same defense would be made at common expense and with a procuratorial instrument sealed with the seal of the chapter; and that, so long as any one of the canons of the same church wished to undertake a defense and opposition of this kind in the aforesaid manner, the other canons could not and ought not receive the impetrant as a canon or hold him as a canon within or outside the chapter—we declare to be conspirators and sworn confederates against the holy Roman Church and its liberty, obedience, and authority, and we decree that they are to be punished as conspirators and sworn confederates according to the canonical sanctions.

§ 2. We also deem the statute itself utterly detestable and unlawful, since it plainly contains a conspiracy and sworn confederacy against the liberty and authority of the Apostolic See: it clearly forbids the aforesaid chapter and each of its persons the liberty of rendering the obedience owed to the same Roman Church, at least until a sentence, a judgment of the Roman Pontiffs, or a special mandate; it brings upon them the ready peril of future burdens and expenses contrary to legitimate sanctions; it forbids a praiseworthy vow to abhor lawsuits; it compels the bringing of an unjust suit;

by yielding to an iniquitous controversy or suit, it prohibits acknowledging good faith or conscience; and it drives them to sin.

> Declarat manifestum et evidens esse synonyma, et idem significare quoad casum decret. de elect. Si forte. Ioann. Andr. — §. 1. Declarat conspiratores et coniuratores, qui iuraverunt et statuerunt de non recipiendo aliquem in canonicum ad mandatum Papae, donec possent resistere. Ioann. Andr. — §. 2. Statutum de non recipiendo aliquem ad Papae mandatum multis ex causis est detestabile et illicitum. H. d.
>
> Nicolaus III.
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> Constitutionem felicis recordationis Gregorii Papae praedecessoris nostri editam in concilio Lugdunensi, ut, si forte inter cetera, quae obiiciuntur electo, aut postulato seu alias promovendo ad aliquam dignitatem, evidentem scientiae vel alium personae defectum opponi contingat, de illo primitus cognoscatur, et, si opponentem inventum fuerit destitui veritate, a causae illius prosecutione totaliter sit exclusus, et alias puniatur, ac si in obiectorum probatione omnium defecisset, in illo, qui manifestum defectum in visu, auditu et aliis corporis sensibus, nec non et in memoria, et etiam intellectu opponit electo, locum habere, ac quoad intentionem constitutionis ipsius manifestum et evidens idem supponere declaramus. §. 1. Ceterum canonicos cuiusvis ecclesiae, qui statutum fecerunt solenniter et iuramento firmarunt, quod ecclesiam suam et se ipsos contra omnes impetrantes canonicatum ipsius ecclesiae defenderent usque ad ius vel sententiam, quantum possent, ad iudicium domini Papae, vel specialis mandati eiusdem et quod communibus expensis ac cum procuratorio sigillo capituli sigillato eadem defensio fieret, et quod, quamdiu aliquis de canonicis eiusdem ecclesiae defensionem huiusmodi et oppositionem vellet praedicto modo subire, alii canonici non possent nec deberent recipere in canonicum, nec habere pro canonico in capitulo vel extra capitulum impetrantem, conspiratores et coniuratores contra sanctam Romanam ecclesiam, ac libertatem, obedientiam et auctoritatem ipsius decernimus, et eosdem tanquam conspiratores ac coniuratores secundum sanctiones canonicas puniendos. §. 2. Statutum quoque ipsum, quod capitulo praelibato et singulis eius personis libertatem, obedientiam eidem ecclesiae Romanae debitam exhibendi saltem usque ad sententiam et Pontificum Romanorum iudicium seu speciale mandatum liquido interdicit, promptum futurorum gravaminum et expensarum discrimen ingerens contra legitimas sanctiones, laudabile votum exsecrandum lites vetat, iniustam litem movere compellit, iniquae controversiae seu liti cedendo, bonam fidem seu conscientiam agnoscere prohibet, et adigit ad peccandum, conspirationem et coniurationem continere contra libertatem et auctoritatem sedis apostolicae manifeste, ac alias detestabile prorsusque illicitum reputamus.

Chapter III

A most extensive constitution, declaring nearly all the doubts that can arise concerning the Rule of Saint Francis; especially whether the Friars Minor, whom they call Cord-bearers, as professors of that Rule, are bound to all the counsels of the Gospel. And whether they can have anything of their own, receive money, and acknowledge legacies left to them, together with many other ambiguities most lucidly resolved here.

The same.

The sower went out to sow his seed: the Son of God, Jesus Christ, went from the bosom of the Father into the world, clothed, namely, with the garment of humanity, to sow the evangelical word in every kind of person—the upright and the reprobate, the foolish and the ignorant, the diligent and the idle—and, according to the Prophet, to become a husbandman in the land. He scattered his seed, the evangelical doctrine, without distinction among all, he who, being about to draw all things to

himself, had come to save all, and who at last sacrificed himself to God the Father for the salvation of all as the price of human redemption.

Although this seed, scattered among every kind of person by the communicative charity of God, fell in part beside the way, namely upon hearts open to the suggestions of demons; in part upon the rock, namely hearts penetrated by no ploughshare of faith; and in part among thorns, namely hearts of persons torn by the cares of riches—and thus one part was trampled down by wicked affections, another was dry because it lacked the moisture of grace, while the remainder is read to have been choked by disordered cares—nevertheless the good earth received another part, a meek and teachable heart. Such also is the meek and teachable religious order of the Friars Minor, rooted in poverty and humility through Francis, the gracious confessor of Christ. Sprouting from that true seed, he spread that shoot through the Rule among the sons whom, by his ministry, he begot for himself and for God in the observance of the Gospel.

These are the sons who, as James teaches, received in meekness the Word, the eternal Son of God, engrafted upon human nature in the garden of the virginal womb, who is able to save souls. These are the professors of that holy Rule which is founded upon the evangelical word, strengthened by the example of the life of Christ, the founder of the Church militant, and confirmed by the words and deeds of his Apostles. This is religion pure and undefiled before God and the Father; descending from the Father of lights, it was delivered through his Son to the Apostles by example and word, and afterward inspired by the Holy Spirit in blessed Francis and those following him, so that it contains in itself, as it were, the testimony of the whole Trinity. This is the religion concerning which, as the Apostle Paul bears witness, no one ought henceforth to be troublesome; Christ confirmed it with the stigmata of his Passion, willing notably to distinguish its founder with the signs of his own Passion.

Yet not even thus did the craftiness of the ancient enemy cease against the Friars Minor themselves and their Rule. Rather, striving to sow weeds among them, it sometimes stirred up rivals agitated by envy, anger, and undiscerning ignorance, who assailed the friars and tore their Rule with dog-like barking as though it were unlawful, unobservable, and dangerous. They failed to attend to the fact that, as aforesaid, this holy Rule was instituted with salutary precepts and admonitions, strengthened by apostolic observances, approved by several Roman Pontiffs, and also confirmed by the Apostolic See; and that it was fortified by so many divine testimonies, which have been made exceedingly credible in so many holy men who lived and ended their days in the observance of this Rule, some of whom that same See, on account of their lives and miracles, caused to be enrolled in the catalogue of the saints. Most recently, as though in these very days, it was declared in the general Council of Lyons to have been approved by our predecessor Pope Gregory IX of pious memory, on account of the evident benefit that the universal Church obtains from it.

Nor do we attend to this any less; rather, we consider it more profoundly, just as the other professors of the Catholic faith ought to weigh it more subtly. For God himself, looking upon the aforesaid Order and its observers, so preserved them by salutary aid from the hostile passions rising against them that the tempestuous waves neither struck them down nor laid low the spirits of those dwelling in the Order. Instead, they increase in the vigor of the Rule and are enlarged in the observance of its commands.

Nevertheless, so that the aforesaid Order, every winding obstruction having been cut away, may flourish in distinct and pure clarity, and in accordance with what the brothers of that Order, recently

assembled in a general chapter, had provided—our beloved sons the minister general and certain other provincial ministers of the same Order who had convened in that chapter being established in our presence, since their intention is known to burn with vigor of spirit for the full observance of that Rule—it has seemed good to us to close the ways of biting to those who bite in this fashion; to declare certain things that could appear doubtful in the Rule itself; to discuss with fuller clarity some things also declared by our predecessors; and, in certain matters touching the Rule itself, to provide for the purity of their consciences.

Moreover, from our tender years we raised our affections toward this Order and, as those years succeeded one another, with some companions of that same confessor, to whom his life and conduct were known, we treated in frequent conference concerning the Rule itself and the holy intention of blessed Francis. Finally, having become a cardinal and afterward, by the aforesaid See, governor, protector, and corrector of the same Order, we learned by direct experience the conditions of the aforesaid Order through the care incumbent upon us. In the office of the apostolate, informed by the foregoing and also by long experience, both concerning the pious intention of the aforesaid confessor and concerning the matters that touch the Rule itself and its observance, we turned our thoughts toward the aforesaid Order. With full maturity we examined both those things known to have been approved and declared by those same predecessors and the Rule itself and the matters touching it. In the present document we establish certain matters, declare them, approve them more certainly, confirm those already approved, issue and grant them, and arrange many matters more seriously and clearly, which are more fully expressed in the articles written below.

First, as we understand that some persons doubt whether the brothers of the same Order are bound both to the counsels and to the precepts of the Gospel, because at the beginning of the aforesaid Rule it is provided: "The Rule and life of the Friars Minor is this: namely, to observe the holy Gospel of our Lord Jesus Christ by living in obedience, without property, and in chastity"; and because the same Rule contains this: "When the year of probation has ended, they are to be received into obedience, promising always to observe this life and the Rule"; and also because at the end of that Rule these words are contained: "Let us observe poverty and humility, and the holy Gospel of our Lord Jesus Christ, which we have firmly promised"—although our predecessor Pope Gregory IX of happy memory declared this article and certain other articles of the same Rule, nevertheless his declaration, because of the disorderly or biting attacks of some who rise against the friars and the Rule, and because the outcomes of many cases arising afterward must be considered, appears obscure in some things, only half complete in others, and insufficient in many matters contained in the Rule itself.

Willing, therefore, to remove the obscurity and insufficiency of the aforesaid interpretation by a declaration, and by the certainty of a fuller exposition to cut away from the minds of all persons every scruple of ambiguity in these matters, we say that, since at the beginning of the Rule it is set down not absolutely but with a certain modification or specification—"The Rule and life of the Friars Minor is this: namely, to observe the holy Gospel of our Lord Jesus Christ by living in obedience, without property, and in chastity"—and since the same Rule treats these three matters very strictly and nevertheless joins to them certain other matters by commanding, prohibiting, counseling, admonishing, exhorting, and by other words reducible to one of the aforesaid modes, the intention of the Rule can be made more clearly evident. Thus, that which appears to be joined almost absolutely in the profession—"promising always to observe this life and the Rule"—and that which is added at

the end—"and let us observe the holy Gospel of our Lord Jesus Christ, which we have firmly promised"—are all to be referred to the modified, determined, or specified beginning of the Rule itself, namely to the observance of the Gospel, modified, determined, or specified by the Rule itself in those three matters, as aforesaid.

For it is not likely that the holy phrase itself, once pronounced by Francis with a certain modification, determination, or specification, although afterward repeated as though in summary, was intended by him, in its repetition, to lack without a definite cause the modification or specification that he had given it. Arguments from both laws teach us that matters at the beginning are often referred to the middle and the end; those in the middle to the end and the beginning; and those at the end to both of these or to either one.

And granted that it were said absolutely, "I promise wholly to observe the holy Gospel," if a person making such a profession intended to bind himself to the observance of all the counsels—which he could scarcely or never observe according to the letter, on account of which such a promise would appear to ensnare the soul of the person professing—it clearly appears that a promise of this kind ought not, without the promisor's intention, to be confined to another understanding, but is to be understood so that the Gospel is observed just as it is found to have been delivered by Christ: namely, that precepts are observed as precepts and counsels as counsels by those making the promise.

Blessed Francis himself manifestly shows, in the course of his treatment in the Rule, that he had this understanding in those same words, since he designates certain evangelical counsels as counsels under words of admonition, exhortation, and counsel, but others under prohibition and a word of precept. From this it is evident that the speaker's intention was not that, by profession of a Rule of this kind, the brothers should be bound to all the counsels as though to evangelical precepts, but only to those counsels expressed in the same Rule preceptively, prohibitively, or under equivalent words. Therefore, to render entirely serene the consciences of the brothers of that Order, we declare that, by profession of the same Rule, the brothers themselves are bound to observe only those evangelical counsels that are expressed in the Rule itself preceptively, prohibitively, or under equivalent words.

With respect to certain other counsels given through the Gospel, however, according to the demand of their state they are bound more than other Christians, in proportion as, through the state of perfection assumed by a profession of this kind, they have offered themselves to the Lord as a holocaust filled with marrow through contempt for all worldly things. As for everything contained in the Rule itself—precepts, counsels, and other matters—they are bound by the vow of this profession in no other way than the manner in which those matters are delivered in the Rule itself: namely, they are bound to observe those things that are imposed upon them in that Rule under obligatory words. As for the observance of the other things contained under admonitory, exhortatory, informative, instructive, or any other words, it is the more fitting, in goodness and equity, that they pursue it, in proportion as, having become imitators of so great a father, they have chosen the paths of Christ.

Furthermore, since the Rule itself expressly contains that the brothers are to appropriate nothing to themselves, neither house, nor place, nor any thing, and since it was declared by our predecessor Gregory IX and certain others that they must observe this both individually and also in common, while the senseless cunning of some has condemned so strict an abdication with poisonous

detractions, we say—lest the brightness of the perfection of those brothers be torn by the unskilled discourses of such persons—that an abdication of ownership of this kind in all things, not only individually but also in common, for God's sake, is meritorious and holy. Christ, showing the way of perfection, taught it by word and confirmed it by example; and the first founders of the Church militant, desiring to live perfectly according as they had drawn from that fountain, transmitted it to their successors by examples of doctrine and life.

> Constitutio amplissima, paene cunctas declarans haesitationes, quae circa divi Francisci regulam contingere possunt; praesertim an fratres Minores, quos Cordigeros vocant, illius regulae professores, sint ad omnia evangelii consilia obligati. Et utrum aliquid proprium habere, et pecuniam recipere, legataque sibi relicta agnoscere valeant, cum multis aliis ambiguitatibus, hic luculentissime resolutis.
>
> Idem.
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> Exiit, qui seminat, seminare semen suum, de sinu patris in mundum, veste scilicet humanitatis indutus Dei filius Iesus Christus, verbum evangelicum saturus in singulos probos et reprobos, insipientes et ignaros, studiosos et desides, et iuxta Prophetam colonus futurus in terra, semen suum, doctrinam evangelicam, sine delectu dispersit in omnes, qui, omnia tracturus ad se, omnes salvare venerat, qui tandem se ipsum Deo Patri pro salute omnium in redemptionis humanae pretium immolavit. Licet autem hoc semen, in singulos communicativa Dei caritate dispersum, aliud ceciderit secus viam, super corda scilicet daemonum suggestionibus pervia, aliud supra petram, corda scilicet nulla fidei vomere penetrata, aliud inter spinas, corda scilicet hominum divitiarum sollicitudinibus lacerata, et ideo unum pravis affectibus conculcatum, aliud aridum, quia gratiae carebat humore, reliquum vero legitur inordinatis sollicitudinibus suffocatum: aliud tamen mite cor et docile, terra bona, suscepit, hoc et Minorum fratrum mitis et docilis in paupertate ac humilitate per almum Christi confessorem Franciscum radicata religio, qui, ex illo vero semine germinans, germen illud per regulam sparsit in filios, quos sibi et Deo per suum ministerium in observatione evangelii generavit. Isti sunt filii, qui, docente Iacobo, verbum, aeternum Dei filium, insitum humanae naturae in horto virginalis uteri, potens salvare animas, in mansuetudine susceperunt. Hi sunt illius sanctae regulae professores, quae evangelico fundatur eloquio, vitae Christi roboratur exemplo fundatoris militantis ecclesiae, Apostolorum eius sermonibus actibusque firmatur. Haec est apud Deum et Patrem munda et immaculata religio, quae, descendens a patre luminum, per eius filium exemplariter et verbaliter Apostolis tradita, et deinde per Spiritum sanctum beato Francisco et eum sequentibus inspirata, totius in se quasi continet testimonium Trinitatis. Haec est, cui, attestante Paulo Apostolo, nemo de cetero debet esse molestus, quam Christus stigmatibus suae passionis confirmavit, volens institutorem ipsius passionis suae signis notabiliter insigniri. Sed nec sic contra fratres ipsos Minores et regulam hostis antiqui cessavit astutia, quin potius contra eos nitens superseminare zizaniam, interdum aemulatores, agitatos invidia, iracundia et indiscreta inscitia, concitavit, mordentes fratres, et eorum regulam quasi illicitam, inobservabilem et discriminosam caninis latratibus lacerantes, non attendentes hanc sanctam regulam, ut praedicitur, praeceptis ac monitis salutaribus institutam, apostolicis observationibus roboratam, per plures Romanos Pontifices approbatam, et etiam per sedem apostolicam confirmatam, tot divinis testimoniis communitam, quae credibilia facta sunt nimis in tot sanctis viris, in observantia huius regulae agentibus et finientibus dies suos, quorum nonnullos sanctorum catalogo sedes eadem ex eorum vita et miraculis fecit adscribi. Ac novissime quasi diebus istis per piae memoriae Gregorium Papam nonum praedecessorem nostrum approbatam esse, ex evidenti utilitate, quam de ipsa consequitur universalis ecclesia, in generali Lugdunensi concilio declaratur. Nec nos minus attendimus, immo profundius cogitamus, sicut pensare debent subtilius ceteri catholicae fidei professores, quia ipse Deus, ordinem praedictum et eius observatores inspiciens, sic eos ab insurgentibus in ipsos rancoribus

salutari subsidio praeservavit, quod nec ipsos fluctus tempestuosos allisit, nec animos in ordine ipso degentium constravit, quin potius in vigore regulari concrescant, et amplientur in suorum observantia mandatorum. Verumtamen, ut ordo praedictus, quibuslibet praecisis anfractibus, distincta et pura vigeat claritate, et, sicut fratres eiusdem ordinis nuper in generali capitulo congregati providerant, dilectis filiis generali et nonnullis aliis provincialibus eiusdem ordinis ministris, qui in capitulo ipso convenerant, in nostra praesentia constitutis, quum ad plenam observationem regulae eiusdem in vigore spiritus eorum fervere noscatur intentio: visum est nobis, ut mordacibus huiusmodi mordendi vias praecluderemus, aliqua, quae in ipsa regula videri poterant dubia, declarare, nonnulla, per praedecessores nostros etiam declarata, pleniori claritate disserere, in aliquibus etiam regulam ipsam contingentibus puritati eorundem conscientiae providere. Nos autem, qui a teneris annis ad ordinem ipsum affectus nostros ereximus in illis succedendo, cum aliquibus eiusdem confessoris sociis, quibus eius vita et conversatio nota erat, super ipsa regula et sancta ipsius beati Francisci intentione frequenti collatione tractavimus. Et tandem cardinalis, ac postmodum eiusdem ordinis per praedictam sedem gubernator et protector et corrector effecti, conditiones praedicti ordinis ex imminenti nobis cura palpavimus in apostolatus officio, tam de pia intentione confessoris praedicti, quam de his, quae regulam ipsam et eius observantiam contingunt, ex praedictis longa etiam experientia informati, nostros ad ordinem praefatum convertimus cogitatus, et tam ea, quae per eosdem praedecessores approbata et declarata esse noscuntur, quam etiam ipsam regulam et eam contingentia maturitate plena discussimus, nonnulla in praesenti serie statuimus, declaravimus, certius approbavimus, approbata confirmavimus, edidimus et concessimus, plura etiam ordinando seriosius et clarius, quae infra scriptis articulis plenius exprimuntur. In primis, quia, sicut intelleximus, ab aliquibus haesitatur, an fratres eiusdem ordinis tam ad consilia quam ad praecepta evangelii teneantur, tum quia in regulae praedictae principio habetur: „Regula et vita Minorum fratrum haec est: scilicet Domini nostri Iesu Christi sanctum evangelium observare, vivendo in obedientia, sine proprio, et in castitate;“ tum ex eo, quod in eadem regula continetur sic: „ finito vero anno probationis recipiantur ad obedientiam, promittentes vitam istam semper et regulam observare;“ tum etiam, quia in fine ipsius regulae continentur haec verba: „paupertatem, et humilitatem, ac sanctum evangelium Domini nostri Iesu Christi, quod firmiter promisimus, observemus: “ licet felicis recordationis Gregorius Papa IX. praedecessor noster hunc articulum et nonnullos alios eiusdem regulae declaraverit, quia tamen eius declaratio propter aliquorum insurgentium in fratres et regulam inordinatos vel mordaces insultus, et multorum postea emergentium casuum considerandos eventus, in aliquibus obscura, in aliquibus semiplena, et in multis etiam contentis in ipsa regula insufficiens videtur: nos, obscuritatem ac insufficientiam huiusmodi praefatae interpretationis declaratione amovere volentes, et cuiuslibet ambiguitatis scrupulum in eisdem de singulorum mentibus plenioris expositionis certitudine amputare, dicimus, quod, quum in principio regulae non absolute, sed cum quadam modificatione, seu specificatione ponatur: „Regula et vita Minorum fratrum haec est: scilicet Domini nostri Iesu Christi sanctum evangelium observare, vivendo in obedientia, sine proprio, et in castitate“ quae tria eadem regula multum arcte prosequitur, et nihilominus alia nonnulla subnectit praecipiendo, prohibendo, consulendo, monendo, hortando, et sub aliis verbis ad aliquem modorum reducibilibus praedictorum, de intentione regulae liquere valeat apertius, ut illud, quod in professione quasi absolute subnecti videtur: „promittentes vitam istam semper et regulam observare“ et quod in fine subiungitur: „et sanctum evangelium Domini nostri Iesu Christi, quod firmiter promisimus, observemus“ totum ad ipsius regulae modificatum, vel determinatum seu specificatum principium reducatur, videlicet ad observantiam evangelii, ut praedicitur, per ipsam regulam in illis tribus modificatam, vel determinatam seu specificatam; quum non sit verisimile, ipsum sanctum verbum, ab ipso semel cum quadam modificatione, vel determinatione seu specificatione prolatum, licet quasi succinctorie repetitum, voluisse in sui repetitione data sibi per eum modificatione seu specificatione sine certa causa carere, et utriusque iuris

> argumenta nos doceant, ea, quae in principio ad medium et ad finem, illa vero, quae in medio, ad finem atque principium, et ea, quae in fine, ad utrumque vel eorum alterum saepe referri. Et dato, quod absolute diceretur: „omnino promitto sanctum evangelium observare“ quum professor huiusmodi intenderet se ad omnem consiliorum observantiam obligare, (quod vix aut nunquam posset ad literam observare, propter quod talis promissio illaqueare profitentis animum videretur): clare videtur, promissionem huiusmodi et alium intellectum absque intentione promittentis non debere perstringi, nisi ut observantia evangelii sic, sicut tradita reperitur a Christo, videlicet quod praecepta ut praecepta, et consilia ut consilia a promittentibus observentur. Quem intellectum etiam in eisdem verbis habuisse idem beatus Franciscus in serie sui processus in regula patenter ostendit, quum aliqua evangelica consilia indicat ut consilia sub verbis monitionis, exhortationis et consilii, nonnulla vero sub prohibitione ac verbo praecepti. Per quod patet, quod non fuit loquentis intentio, quod fratres ex professione huiusmodi regulae ad omnia consilia sicut ad praecepta evangelica tenerentur, sed solum ad illa consilia, quae in eadem regula praeceptorie vel inhibitorie, seu sub verbis aequipollentibus sunt expressa. Unde nos ad fratrum eiusdem ordinis conscientias plenarie serenandas declaramus, quod ex professione eiusdem regulae fratres ipsi ad ea tantum evangelica observanda consilia sunt adstricti, quae in ipsa regula praeceptorie vel inhibitorie, seu sub verbis aequipollentibus exprimuntur. Ad nonnulla vero alia per evangelium data consilia eo magis secundum exigentiam sui status tenentur plus quam ceteri Christiani, quo per statum perfectionis, quem per professionem huiusmodi assumpserunt, se obtulerunt Domino holocaustum medullatum per contemptum omnium mundanorum. Ad omnia autem, quae in ipsa regula continentur, tam praecepta, quam consilia, quam cetera, ex voto professionis huiusmodi non aliter tenentur, quam eo modo, quo in regula ipsa traduntur, ut scilicet teneantur ad eorum observantiam, quae in eadem regula ipsis sub verbis obligatoriis indicuntur. Ceterorum vero observantiam, quae sub verbis monitoriis, exhortatoriis, informatoriis, et instructoriis, seu quibuscunque aliis continentur, eatenus magis condecet de bono et aequo eos prosequi, quo imitatores tanti patris effecti Christi semitas elegerunt. Porro, quum ipsa regula expresse contineat, quod fratres nihil sibi approprient, nec domum, nec locum, nec aliquam rem, sitque declaratum per eundem praedecessorem nostrum Gregorium IX. et nonnullos alios, hoc servare debere tam in speciali quam etiam in communi, quam sic arctam abdicationem venenosis obtrectationibus aliquorum insensata damnaverit astutia: ne fratrum eorundem perfectionis claritas in talium imperitis sermonibus laceretur, dicimus, quod abdicatio proprietatis huiusmodi omnium rerum non tam in speciali, quam etiam in communi propter Deum meritoria est et sancta, quam et Christus, viam perfectionis ostendens, verbo docuit et exemplo firmavit, quamque primi fundatores militantis ecclesiae, prout ab ipso fonte hauserant, volentes perfecte vivere, per doctrinae ac vitae exempla in eos derivarunt.

Nor should anyone think that the statement sometimes made that Christ had a purse stands in the way of these conclusions. For Jesus Christ, whose works are perfect, so practiced the way of perfection in his actions that, sometimes condescending to the imperfections of the weak, he both exalted the way of perfection and did not condemn the weak paths of the imperfect. Thus Christ assumed the person of the weak in the matter of the purse; and thus in certain other matters, assuming the weaknesses of human flesh, as evangelical history bears witness, he condescended to the weak not only in flesh but also in mind. For he so assumed human nature that, while remaining perfect in his own works, made humble in ours, he remained exalted in his own. Thus, by the graciousness of supreme charity, he was also led to certain actions conforming to our imperfection without being bent away from the rectitude of supreme perfection.

For Christ performed and taught works of perfection; he also performed weak things, as is sometimes evident in his flight and in the purse. Yet, remaining perfectly perfect, he did both so that he who had

come to save both the perfect and the imperfect might show himself as the way of salvation to both, and at last he willed to die for both.

Nor should any erroneous assertion arise from these matters that those who thus abdicate ownership of all things for God's sake, as though murderers of themselves or tempters of God, commit themselves to danger in living. For they commit themselves to divine providence in living in such a way that they do not despise the way of human provision. Rather, they are supported from those things freely offered, or those things humbly begged, or those things acquired through labor; this threefold manner of living is expressly provided in the Rule. Certainly, if according to the Savior's promise the faith of the Church will never fail, consequently works of mercy will not be withdrawn, by which every ground for any distrust appears to have been removed from the poor of Christ.

And indeed, if—which is in no way to be presumed—all these things should fail, the way granted to all persons held by extreme necessity for providing for the sustenance of nature at the point of extreme necessity is not closed by heavenly law to the brothers themselves, just as it is not closed to others, since extreme necessity is exempt from every law. Nor should so complete an abdication of ownership appear to anyone to induce a renunciation of the use of things. For since the principal matters to be considered in temporal things are ownership, possession, usufruct, a right of using, and simple use of fact, and mortal life needs the last of these as necessary although it can lack the first ones, there can be no profession at all which excludes from itself the use of necessary sustenance. But it was fitting for that profession which voluntarily vowed to follow the poor Christ in such poverty to abdicate ownership of all things and to be content with the necessary use of the things granted to it.

Nor, because it appears to have abdicated ownership of use and dominion over every thing, is it proved to have renounced the simple use of every thing. This use, I say, bears the name not of right but only of fact; because it is only of fact, it furnishes those using a thing no right in the act of using it. Indeed, a moderate use of necessary things, both for the sustenance of life and for the execution of the offices of their state—excepting what is joined below concerning money—has been granted to the brothers according to their Rule and the complete truth, so that the brothers may lawfully use those things while the grantor's permission endures and in accordance with what is contained in the present document.

Nor is the humanely framed provision of civil law in human affairs known to stand in the way of this: namely, that use or usufruct cannot be perpetually separated from dominion. Looking only to temporal utility in establishing this rule, civil law decreed it lest dominion be rendered useless to owners when use always departed from it. For the retention of dominion over such things, when their use is granted to poor persons, is not fruitless to the owner, since it is meritorious for eternal things and opportune for the profession of poor persons; and it is deemed the more useful to him insofar as it exchanges temporal things for eternal ones.

Certainly, the intention of the confessor of Christ who instituted the Rule was not otherwise; rather, he wrote the contrary in that Rule and observed the contrary in his life, since he himself used temporal things out of necessity, and in many places in the Rule he shows that such use is lawful for the brothers. For he says in the Rule that the clerics are to perform the divine office, for which purpose they can have breviaries, manifestly indicating by this that his brothers would have the use of a breviary and of books suitable for the divine office. In another chapter it is also said that the

ministers and custodians, through spiritual friends, are to exercise solicitous care for the needs of the sick and for clothing the other brothers, according to places, times, and cold regions, as they see to be expedient for their need. Elsewhere, exhorting the brothers to avoid idleness through a suitable exercise of labor, he says that from the reward of their labor they are to receive the necessities of the body for themselves and their brothers. Another chapter also contains that the brothers are to go confidently for alms.

It is also provided in the same Rule that, in the preaching which the brothers perform, their words are to be considered and chaste for the benefit and edification of the people, by announcing to them vices and virtues, punishment and glory. But it is certain that these things presuppose knowledge; knowledge requires study; and the practice of study cannot fittingly be maintained without the use of books. From all these matters it is sufficiently clear that the necessary use of things for food, clothing, divine worship, and the study of wisdom is granted to the brothers by the Rule. It is therefore evident to those who understand soundly from the foregoing that the Rule, with respect to an abdication of this kind, is not only observable, possible, and lawful, but meritorious and perfect; and all the more meritorious insofar as through it its professors are more removed from temporal things for God's sake, as aforesaid.

Moreover, since the brothers themselves can acquire nothing for themselves individually, or even for their Order in common, and since, when something is offered, granted, or given to them for God's sake, the intention of the person offering, granting, or giving it—unless he expresses otherwise—is probably believed to be that he grants the thing so offered, granted, or given completely, until he takes it away; that he abdicates it from himself and desires to transfer it to others for God's sake; and since there is no person to whom, in God's place, the dominion of such a thing may more suitably be transferred than the aforesaid See or the person of the Roman Pontiff, the vicar of Christ, who is the father of all and nevertheless the special father of the Friars Minor, lest the dominion of such things appear to be uncertain—for a son in his manner acquires for his father, a servant for his lord, and a monk for his monastery the things offered, granted, or given to him—we decree by this present constitution, to remain valid forever, that the ownership and dominion of all utensils and books, and of their present and future movable goods whose usufruct it is lawful for the orders or the brothers themselves to have, belongs fully and freely to us and the Roman Church. Our predecessor Pope Innocent IV of happy memory is known also to have done this.

Furthermore, by the same authority we similarly receive into our right, dominion, and ownership and that of the aforesaid Church places purchased from various alms and offered or granted to the brothers under any form of words by different persons who possess them in indivision or have definite shares in those places, where those possessing in indivision or having definite shares reserved nothing to themselves in an offering or grant of this kind—although the brothers ought to take care not to use words of this kind that are inconsistent with their state.

But if places or houses for the brothers' habitation, to be granted or offered in their entirety by an individual person or a college to the brothers themselves, happen to be inhabited by the brothers at the grantor's will, they are to inhabit them only so long as the grantor's will perseveres. When the grantor's will has changed and been made known to the brothers, they are freely to leave those places, excepting the church, the oratories destined for the church, and the cemetery, which, both present and future, we receive in a similar manner and by similar authority into our right and

ownership and that of the aforesaid Roman Church. In the dominion or ownership of those places we retain absolutely nothing for ourselves or the aforesaid Roman Church unless they are specially received with our assent or that of the Roman Church itself. And if, in making the grant, the grantor reserved dominion in those same places for himself, apart from the brothers' habitation no special dominion is to pass into the right of the aforesaid Church; rather, it is to remain fully free to the grantor.

Moreover, they are to receive neither utensils nor other things beyond their use for necessity and for executing the offices of their state—for, as has been said, they ought not to have the use of all things—with a view to any superfluity, riches or abundance derogating from poverty, the accumulation of treasure, or with the intention that they transfer or sell them, whether under color of provision for the future or on another occasion. Rather, in all things complete abdication with respect to dominion and necessity in use are to appear in them. According to the requirements of persons and places, the ministers and custodians, jointly and separately in their administrations and custodies, are to arrange these matters with discretion, since in such matters the quality of persons, diversity of times, condition of places, and certain other circumstances sometimes require provision to be made in a greater, lesser, or different manner. Yet they are to do these things in such a way that holy poverty, as it is found to have been enjoined upon them by their Rule, always shines forth in them and in their acts.

Moreover, since in the same Rule it is prohibited under the rigor of a precept that the brothers receive coins or money in any manner, by themselves or through others, and since the brothers desire to observe this forever and necessarily to fulfill it as something enjoined upon them, lest their purity in observing a precept of this kind be stained in any respect and lest their consciences be pricked by any goads, we take up this article more deeply than our predecessors did because of the bites of their detractors, and pursue it with clearer determinations.

First, we say that the brothers themselves are to abstain from contracting loans, since, their state being considered, it is not lawful for them to contract a loan. Nevertheless, to make satisfaction for needs that arise from time to time, when alms from which satisfaction could conveniently be made at that time are lacking, they can say, without any bond of obligation, that they intend faithfully to labor through alms and other friends of the brothers to make a payment of this kind. In this case the brothers are to arrange for the person who will give the alms to make that satisfaction, in whole or in part as the Lord inspires him, by himself or through another person. If it can be done, that other person is not to be named by the brothers, but rather selected by the giver according to his good pleasure.

If, however, the giver is unwilling or unable to do this, whether because his departure is imminent, because he does not know faithful persons to whom he wishes to entrust it, or for any other occasion or cause, we declare and say that the purity of the Rule is infringed in no respect and its observance stained in no manner if the brothers take care to inform him of one or more persons, or to name or even present one or more persons to whom, if it pleases the person making the alms, the execution of the aforesaid matters can be committed; and if his assent is obtained concerning the substitutions written below. This is nevertheless to be done in such a way that, while dominion, ownership, and possession of the money itself, together with free power always to recall the money to himself until its conversion to the thing designated, remain fully, freely, and integrally with the giver himself, the

brothers have absolutely no right in the money, nor its administration or dispensation, and bring against the person named or not named by them, of whatever condition that person may be, neither an action or proceeding in court or outside it nor any other right, however that person conducts himself in a commission of this kind.

Nevertheless, it is lawful for the brothers to indicate, specify, or explain their needs to the aforesaid person and to ask him to pay. They can also exhort and induce that same person to conduct himself faithfully in the matter committed to him and to provide for the salvation of his soul in executing the commission, yet in such a way that the brothers abstain in every manner from all administration or dispensation of that money and from any action or proceeding against the aforesaid person, as has been stated.

But if it happens that a person of this kind, named or not named by the brothers, is impeded from personally executing the foregoing by absence, sickness, unwillingness, the distance of places to which he is unwilling to travel and in which payment or satisfaction is to be made, or another occasion, it is lawful for the brothers, with purity of conscience, to act with this person in naming another person to be substituted for the foregoing matters and in other things—if they cannot or do not wish to have recourse to the first giver—just as we declared immediately above that they may act with the first person. For the ministry of two persons by way of substitution, as has been stated, appears more commonly and generally capable of sufficing for execution of the foregoing, since the aforesaid satisfaction is presumed capable of being dispatched quickly.

If, however, as has sometimes been stated, a case arises in which the ministry of several substituted persons appears useful because of the distance of the places in which satisfaction is to be made and because of other conditions or circumstances, it is lawful for the brothers in this case, according to the quality of the business and observing the aforesaid manner, to select, name, or present several persons to execute that ministry.

> Nec his quisquam putet obsistere, quod interdum dicitur, Christum loculos habuisse. Nam sic Iesus Christus, cuius perfecta sunt opera, in suis actibus viam perfectionis exercuit, quod, interdum infirmorum imperfectionibus condescendens, et viam perfectionis extolleret, et imperfectorum infirmas semitas non damnaret, sic infirmorum personam Christus suscepit in loculis, sic et in nonnullis aliis infirma humanae carnis assumens, (prout evangelica testatur historia,) non tantum carne, sed et mente condescendit infirmis. Sic enim humanam naturam assumpsit, quod in suis operibus perfectus exsistens, in nostris factus humilis, in propriis permansit excelsus. Sic et summae caritatis dignatione ad actus quosdam nostrae imperfectioni conformes inducitur, quod a summae perfectionis rectitudine non curvatur. Egit namque Christus et docuit opera perfectionis, egit etiam infirma, sicut interdum et in fuga patet et loculis: sed utrumque perfecte perfectus exsistens, ut perfectis et imperfectis se viam salutis ostenderet, qui utrosque salvare venerat, qui tandem mori voluit pro utrisque. Nec quicquam ex his insurgat erroneum, quod taliter propter Deum proprietatem omnium abdicantes, tanquam homicidae sui vel tentatores Dei, vivendi discrimini se committant. Sic enim se ipsos committant divinae providentiae in vivendo, ut viam non contemnant provisionis humanae: quin vel de iis, quae offeruntur liberaliter, vel de iis, quae mendicantur humiliter, vel de iis, quae conquiruntur per laboricium, sustententur; qui triplex vivendi modus in regula providetur expresse. Profecto, si iuxta promissum Salvatoris nunquam deficiet fides ecclesiae: per consequens nec opera misericordiae subtrahentur, ex quo Christi pauperibus omnis ratio diffidentiae cuiuslibet videtur esse sublata. Et quidem, ubi, (quod non est aliquatenus praesumendum,) haec cuncta deficerent, sicut nec ceteris, sic

nec ipsis fratribus iure poli in extremae necessitatis articulo ad providendum sustentationi naturae via, omnibus extrema necessitate detentis concessa, praecluditur, quum ab omni lege extrema necessitas sit exempta, nec talem abdicationem proprietatis omnimodae renunciationem usus rerum cuiquam videatur inducere. Nam quum in rebus temporalibus sit considerare praecipuum proprietatem, possessionem, usumfructum, ius utendi, et simplicem facti usum, et ultimo tanquam necessario egeat, licet primis carere possit vita mortalium: nulla prorsus potest esse professio, quae a se usum necessariae sustentationis excludat. Verum condecens fuit ei professioni, quae sponte devovit Christum pauperem in tanta paupertate sectari, omnium abdicare dominium, et rerum sibi concessarum necessario usu fore contentam. Nec per hoc, quod proprietatem usus et rei cuiusque dominium a se abdicasse videtur, simplici usui omnis rei renunciasse convincitur, qui, inquam, usus non iuris, sed facti tantummodo nomen habens, quod facti est tantum, in utendo praebet utentibus nihil iuris, quin immo necessariarum rerum tam ad vitae sustentationem quam ad officiorum sui status exsecutionem, (excepto, quod de pecunia infra subiungitur,) moderatus usus, sed secundum eorum regulam et veritatem omnimodam concessus est fratribus, quibus rebus fratres licite uti possent, durante concedentis licentia, et iuxta id, quod in praesenti serie continetur. Nec his obviare dignoscitur, quod civilis providentia in humanis rebus humane constituit, videlicet non posse usum vel usumfructum a dominio perpetuo separari, quod, ne dominium dominis semper abscedente usu redderetur inutile, temporalem utilitatem tantum in constituendo prospiciens ista decrevit. Retentio namque dominii talium rerum, cum concessione usus facta pauperibus, non est infructuosa domino, quum sit meritoria ad aeterna et professioni pauperum opportuna; quae tanto sibi censetur utilior, quanto commutat temporalia pro aeternis. Profecto non fuit confessoris Christi regulam instituentis intentio, quin immo contrarium in ipsa conscripsit, contrarium vivendo servavit, quum et ipse temporalibus ad necessitatem usus fuerit, et in pluribus locis in regula usum talem licere fratribus manifestet. Dicit namque in regula, quod clerici faciant divinum officium, ex quo habere poterunt breviaria, ex hoc patenter insinuans, quod fratres sui habituri essent usum breviarii et librorum, qui sunt ad divinum officium opportuni. In alio quoque capitulo dicitur, quod ministri et custodes pro necessitatibus infirmorum et aliis fratribus induendis per amicos spiritales sollicitam curam gerant secundum loca et tempora et frigidas regiones, sicut eorum necessitati viderint expedire. Alibi etiam exhortans fratres per congruum laboris exercitium ad otium evitandum, dicit, quod de mercede laboris pro se et suis fratribus corporis necessaria recipiant. In alio quoque capitulo continetur, quod fratres vadant pro eleemosynis confidenter. Habetur etiam in eadem regula, quod in praedicatione, quum fratres faciunt, sint examinata et casta eorum eloquia ad utilitatem et aedificationem populi, annunciando eis vitia et virtutes, poenam et gloriam. Sed constans est, quod haec praesupponunt scientiam, scientia requirit studium, exercitium vero studii convenienter haberi non potest sine usu librorum. Ex quibus omnibus satis claret, ex regula ad victum, vestitum, divinum cultum et sapientiale studium necessarium rerum usum fratribus esse concessum. Patet itaque sane intelligentibus ex praedictis, regulam quoad abdicationem huiusmodi non solum observabilem, possibilem et licitam, sed meritoriam et perfectam, et eo magis meritoriam, quo per ipsam professores ipsius magis a temporalibus propter Deum, sicut praedicitur, elongantur. Ad haec quum fratres ipsi nihil sibi in speciali acquirere, vel eorum ordini possint etiam in communi, et quum aliquid propter Deum ipsis offertur, conceditur vel donatur, ea, si secus non exprimat, offerentis, concedentis vel donantis verisimiliter credatur intentio, ut rem huiusmodi oblatam, concessam vel donatam perfecte concedat, donec auferat, a se abdicet, ac in alios transferre cupiat propter Deum, nec sit persona, in quam loco Dei congruentius huiusmodi rei dominium transferat, quam sedes praefata vel persona Romani Pontificis Christi vicarii, qui pater est omnium et fratrum Minorum nihilominus specialis: ne talium rerum sub incerto videatur esse dominium, quum patri filius suo modo, servus domino, et monachus monasterio res sibi oblatas, concessas vel donatas acquirant: omnium utensilium et librorum, ac eorum mobilium praesentium et futurorum, quae et quorum usumfructum scilicet

ordinibus vel fratribus ipsis licet habere, proprietatem et dominium, quod et felicis recordationis Innocentius Papa IV. praedecessor noster fecisse dignoscitur, in nos et Romanam ecclesiam plene et libere pertinere hac praesenti constitutione in perpetuum valitura sancimus. Praeterea loca, empta de eleemosynis diversis, et oblata seu concessa fratribus sub quacunque forma verborum, (licet fratres sibi cavere debeant, quod huiusmodi verbis statui suo incompetentibus non utantur,) a diversis seu pro indiviso possidentibus, seu certas partes in ipsis locis habentibus, in quibus ipsi possidentes pro indiviso, seu certas partes habentes nihil sibi in oblatione seu concessione huiusmodi reservarint, similiter et in ius et dominium ac proprietatem nostram et ecclesiae praedictae eadem auctoritate suscipimus. Loca vero seu domos, pro habitatione fratrum a singulari persona vel collegio, vel ipsis fratribus ex integro concedenda seu etiam offerenda, si talia de voluntate conferentis fratres inhabitare contigerit, perseverante tantum voluntate concedentis inhabitent, ac illa libere, praeter ecclesiam et oratoria ad ecclesiam destinata, et coemeterium, quae tam ad praesentia quam ad futura in ius et proprietatem nostram et praedictae Romanae ecclesiae simili modo et auctoritate recipimus, mutata concedentis voluntate ac ipsis fratribus patefacta dimittant. In quorum locorum dominio seu proprietate nihil nobis vel praefatae Romanae ecclesiae retinemus omnino: nisi ea specialiter de nostro seu ipsius Romanae ecclesiae recipiantur assensu. Et si in eisdem locis reservaverit dominium sibi in concedendo concedens: praeter inhabitationem fratrum speciale dominium in ius ecclesiae saepe dictae non transeat, sed potius plene liberum maneat concedenti. Insuper nec utensilia, nec alia praeter eorum usum ad necessitatem et officiorum sui status exsecutionem, (non enim omnium rerum usum habere debent, ut dictum est,) ad ullam superfluitatem, divitias seu copiam, quae deroget paupertati, vel ad thesaurizationem, vel eo animo, ut ea distrahant sive vendant, recipiant, nec sub colore providentiae in futurum, nec alia occasione: quin immo in omnibus appareat in eis quoad dominium omnimoda abdicatio et in usu necessitas. Hoc autem secundum exigentiam personarum et locorum ministri et custodes simul et separatim in suis administrationibus et custodiis cum discretione disponant, quum de talibus interdum personarum qualitas, temporum varietas, locorum conditio, et nonnullae aliae circumstantiae plus minusve ac aliter provideri requirant; ista tamen sic faciant, quod semper in eis et eorum actibus paupertas sancta reluceat, prout ipsis ex eorum regula invenitur indicta. Ceterum quum in eadem regula sit sub praecepti districtione prohibitum, ne fratres recipiant per se vel per alios denarios vel pecuniam ullo modo, idque fratres in perpetuum servare cupiant, et velut iniunctum necesse habeant adimplere, ne ipsorum puritas in huiusmodi observatione praecepti maculetur in aliquo, et ne fratrum conscientiae aliquibus aculeis stimulentur: articulum istum propter detrahentium morsus profundius, quam nostri praedecessores fecerint, assumentes, ac ipsum clarioribus determinationibus prosequentes, dicimus in primis, quod fratres ipsi a mutuis contrahendis abstineant, quum eis mutuum contrahere, ipsorum statu considerato, non liceat. Possint tamen ipsi pro satisfactione facienda, pro eorum necessitatibus, quae pro tempore occurrerint, (cessantibus eleemosynis, de quibus satisfieri commode tunc non posset,) citra cuiuslibet obligationis vinculum dicere, quod per eleemosynas et alios amicos fratrum ad solutionem huiusmodi faciendam intendant fideliter laborare. Quo casu procuretur a fratribus, quod ille, qui dabit eleemosynam, per se vel per alium, non nominandum ab ipsis, si fieri poterit, sed ab eo potius iuxta suum beneplacitum assumendum, huiusmodi satisfactionem faciat in totum vel in partem, prout sibi Dominus inspirabit. Si tamen ipse hoc nollet facere, vel non posset, vel quia recessus eius immineat, aut quia, quibus hoc velit committere, notitiam non habet fidelium personarum, seu quacunque alia occasione vel causa: declaramus et dicimus, quod in nullo regulae puritas infringitur, aut quomodolibet ipsius observantia maculatur, si fratres ipsi alicuius vel aliquorum sibi curent dare notitiam, vel aliquos seu aliquem nominare aut etiam praesentare, cui vel quibus, si eleemosynam facienti placuit, committi possit exsecutio praedictorum, ac ipsius habeatur assensus super subrogationibus infra scriptis, ita tamen, quod penes ipsum dantem dominio, proprietate, ac possessione ipsius pecuniae, cum libera potestate

> revocandi sibi pecuniam ipsam semper usque ad conversionem ipsius in deputatam, plene, libere ac integre remanentibus, in ipsa pecunia nihil omnino fratres iuris habeant, nec administrationem seu dispensationem, nec contra personam nominatam vel non nominatam ab eis, cuiuscunque conditionis exsistat, in iudicio vel extra actionem, persecutionem aut aliquod aliud ius intentent, qualitercunque persona praedicta in commissione huiusmodi se habeat. Liceat tamen fratribus suas necessitates insinuare, ac specificare vel exponere personae praedictae, ac eam rogare, quod solvat. Possint etiam personam eandem exhortari ac inducere, quod fideliter in re commissa se habeat, et animae suae saluti in commissa sibi exsecutione provideat, ita tamen quod ab omni eiusdem pecuniae administratione, seu dispensatione, et contra praedictam personam actione seu persecutione, (ut praedictum est,) fratres abstineant omni modo. Si vero personam huiusmodi nominatam vel non nominatam a fratribus, (quo minus per se possit exsequi quod praedicitur,) contigerit per absentiam, infirmitatem, voluntatem seu locorum distantiam, ad quae ipse nollet accedere, in quibus esset solutio seu satisfactio facienda, vel per occasionem aliam impediri: liceat fratribus cum conscientiae puritate quandam aliam personam subrogandam ad praemissa in nominando et aliis, (si ad primum dantem non possint vel nolint habere recursum,) cum ista persona facere, sicut supra proxime declaravimus eis licere cum prima. Duarum enim personarum ministerium per viam subrogationis, (ut dictum est,) communius et generalius videtur posse in praedictorum exsecutione sufficere, quum praedicta satisfactio praesumatur posse celeriter expediri. Si tamen, (ut interdum dictum est,) propter locorum distantiam, in quibus esset satisfactio facienda, et conditiones seu circumstantias alias casus emergeret, in quo videretur plurium personarum subrogandarum ministerium opportunum: liceat ipsis fratribus in hoc casu iuxta negotii qualitatem, (servato modo praedicto,) plures personas assumere, nominare seu praesentare ad istud ministerium exsequendum.

Because it is necessary and expedient to provide beneficially, with the aforesaid moderation, for the brothers' needs—not only those for which payment or satisfaction must already be made, as was stated immediately above, but also impending needs, whether they are impending needs that can be dispatched in a short time, or needs, comparatively few although they may be, whose provision by its nature necessarily requires a period of time, as in the writing of books, the construction of churches or buildings for their habitation, the purchase of books and cloth in remote places, and other similar things if any occur—we make a clear distinction in these needs and declare that in them the brothers can proceed safely and with a sound conscience.

Namely, with respect to an urgent or impending need that can be dispatched in a short time, or sometimes, because of certain circumstances, not so quickly, as was stated in the immediately preceding case, the procedure is to be in all things and through all things, both with respect to the giver of alms and with respect to the person named or substituted, as we declared immediately above in the article concerning payment to be made for past needs.

But in a need, however presently urgent, that nevertheless by its nature has a period of time attached to it, as aforesaid, it is likely that cases would frequently occur in which the money assigned for such a need would have to pass through different hands and persons in order to dispatch the need, both because of the distance of the places which the dispatch of that need would by its nature require and because the circumstances of the need itself had been weighed. It would be almost impossible for the principal owner assigning the money for that need, or his substitute, or even a third person afterward substituted by that substitute if such a case occurred, to know all those persons.

Therefore, in addition to the two aforesaid modes to be observed for past and urgent needs that can be dispatched quickly, or sometimes not quickly, as expressed above, and in order to observe the complete purity of the Rule itself and of those professing it, we declare and say with respect to this article that, if the giver of such alms or his messenger, who is able and willing to do this, is present, the brothers are expressly to tell him that it should please him that, through whosoever's hands the money or alms is handled, whether through persons named by him or by the brothers, the whole matter is to proceed with his consent, will, and authority. Dominion of such money, together with free power to recall it to himself, is always to remain freely with him until its conversion to the designated thing, as has been stated above in the other two cases. When he has given his assent to the foregoing, the brothers can safely use the thing bought or acquired from that money through any person according to the manner noted above.

For the greater clarity of all the foregoing, by this provision to remain valid forever we declare that, when the aforesaid modes concerning money for supporting their past and urgent needs have been observed, as aforesaid, the brothers are not understood or able to be said to receive money by themselves or through an interposed person contrary to the Rule or the purity of the profession of their Order. For it is manifestly evident from the foregoing that the brothers themselves are wholly alien not only from receiving, owning, having dominion over, or using the money itself, but also from any handling of it whatsoever and from the money itself.

In the case where the person granting the money happens to die before the money itself has been converted into a lawful transaction for a thing to be had or used, if the grantor, in making the grant, said or expressed that the designated person was to expend the money itself for the necessary use of the brothers whatever might happen to the grantor himself in life or death, then, whether or not such a grantor has left an heir, the brothers can have recourse to the designated person for expenditure of that money, notwithstanding the grantor's death or the heir's opposition, just as they could have had recourse to the lord who made the grant.

Because we zealously cherish the purity of that Order with the intimate affection of our heart, when in the aforesaid cases it happens that money is granted by someone for a determinate need, as aforesaid, the grantor of the money can be asked by the brothers that, if anything from the money remains after the determinate need has been met, the grantor himself consent that the residue of the aforesaid money be converted into other things for the other aforesaid needs of those brothers. If he does not consent to the foregoing, the residue, if any, is to be returned to him. Nevertheless, the brothers are carefully to adapt themselves so that they do not knowingly consent to the granting of more than can probably be estimated as the value of the necessary thing for which the money itself is granted.

And because error can easily be made by the giver or recipient in a detailed exposition of the foregoing, so that provision may more clearly and securely be made on both sides for the benefit of givers, the purity of the Order, the simplicity of certain simple persons, and the salvation of souls, by the present constitution, to remain valid eternally, we clarify the understanding that is sufficiently perceived in this case by one who understands soundly, willing it to be brought to common knowledge. Namely, whenever money is sent or offered to the brothers themselves—unless something else is expressly stated by the sender or offeror—it is to be understood to be bound and sent entirely in the aforesaid manners. For it is not probable that anyone, without express words,

would fix for his alms that mode by which either the giver is defrauded of merit, or those for whose needs he intends provision to be made by such a gift are defrauded of the effect of the gift, or he is defrauded of the purity of his conscience.

Moreover, because certain things are sometimes bequeathed to the brothers themselves in last wills under different modes, and neither the Rule nor the declarations of our predecessors expressly contain what is to be done concerning them, we declare, ordain, and say—providing for those who make bequests and taking precautions for the brothers' consciences, lest doubt concerning them happen in the future—that, if a testator in making a bequest expresses a mode according to which it would not be lawful for the brothers to receive, their condition being considered, as if he were to bequeath to the brothers a vineyard or field to cultivate, a house to lease, or were to employ similar words in similar matters or observe similar modes in leaving property, the brothers are to abstain in every way from such a legacy and its reception.

But if in making the bequest the testator expresses a mode lawful for the brothers, as if he were to say, "I bequeath money to be expended for the brothers' needs, or a house, field, vineyard, and similar things, so that they may be sold by a certain suitable person or persons and the money received from those things converted into buildings or other necessities of the brothers," or if he uses similar modes or words in making the bequest, in this case, after consideration of their aforesaid needs and moderations, we decree that with respect to the brothers the same thing is to be observed in all things and through all things as was declared by us above concerning granted pecuniary alms.

Both the heirs of testators and their executors are to show themselves liberal in paying such legacies; and prelates and secular persons to whom provision of this kind belongs by law or custom are also, when it is expedient, to show themselves ready by virtue of their office to fulfill the pious wills of the deceased. For we also intend to provide, through lawful modes consonant with the brothers' Rule, that the greed of heirs be struck by lawful blows, lest the pious intention of the deceased be frustrated and the poor brothers themselves be defrauded of useful assistance.

But if something is bequeathed generally to the brothers themselves without expression of a mode, in this legacy so indeterminately left we will that the same thing be understood and observed in all things and through all things, and by the present constitution forever command the observance of what we willed and expressed above concerning money or alms indeterminately offered or sent to the brothers: namely, that it be understood to have been left to the brothers under a lawful mode, so that neither the person making the bequest be defrauded of merit nor the brothers themselves of the effect of the thing left.

Because it sometimes happens or is expedient for books and other movable things used by the Order and the brothers, whose dominion is known specially to belong to the aforesaid Church when they are not owned by others, to be sold or even exchanged, we, willing to provide for the brothers' advantages and consciences, grant by the same authority that the exchange of such things for those things whose use it is lawful for the brothers to have may proceed by the authority of the ministers general and provincial, jointly or separately in their administrations. We also grant them authority to ordain concerning the disposition of the use of such things.

But if it happens that a thing of this kind is sold at an appraised price, since it is not lawful for the brothers themselves to receive money by themselves or through another, the Rule prohibiting it, we

ordain and will that such money or price be received and expended upon a lawful thing whose use it is lawful for the brothers to have, through a procurator to be appointed by the aforesaid See or by the cardinal who, through that See, conducts the governance of the same Order, according to the mode ordained above for past and urgent needs. But from this present grant of ours it is lawful for the brothers, from a consideration of piety or devotion or for another honorable and reasonable cause, first having obtained the permission of their superiors in this matter, to bestow upon others within and outside the Order movable things that are cheap or of little value, in accordance with what has been ordained among the brothers in general or provincial chapters both concerning those cheap things or things of little value and their value and concerning the aforesaid permission, namely from whom and in what manner it is to be obtained.

> Et quia oportet et expedit fratrum necessitatibus, non solum illis, pro quibus iam esset solutio seu satisfactio facienda, (ut superius proxime dictum est,) sed etiam imminentibus, sive tales necessitates ingruentes immineant, quae brevi tempore expediri valeant, sive tales, (licet paucae comparative,) quarum provisio ex sui conditione necessario tractum temporis habet, ut in libris scribendis, ecclesiis seu aedificiis ad usum habitationis ipsorum construendis, libris et pannis in locis remotis emendis, et aliis similibus, si quae occurrerint, cum moderamine supra dicto salubriter provideri: sic in istis necessitatibus clare distinguimus, sic in eis fratres posse tute et salva conscientia procedere declaramus, videlicet ut ingruenti vel imminenti necessitate, quae brevi tempore, vel quae interdum ex aliquibus circumstantiis non sic brevi, (ut supra in proximo casu dictum est,) valeat expediri, tam quoad dantem eleemosynam, quam quoad nominatum vel substitutum in omnibus et per omnia, (sicut in articulo solutionis pro necessitatibus praeteritis faciendae supra proxime declaravimus,) procedatur. In ea vero necessitate, quantumcunque praesentialiter ingruenti, quae tamen ex qualitate sui, (ut praedicitur,) tractum temporis habet annexum, quia in eo casu verisimile est, quod tum ratione distantiae locorum, quae expeditio necessitatis ipsius ex sui conditione requireret, tum etiam circumstantiarum ipsius necessitatis ratione pensata frequenter casus acciderent, in quibus ad expeditionem necessitatis huiusmodi oporteret, quod per diversas manus et personas transiret pecunia necessitati huiusmodi deputata, quarum omnium personarum impossibile quasi esset, dominum principalem pro ipsa necessitate pecuniam deputantem, seu etiam substitutum ab eo, et tertium etiam ab ipso substituto, (si casus talis accideret,) postea subrogatum, habere notitiam: declaramus et dicimus, quod in hoc articulo, praeter dictos duos modos in necessitatibus praeteritis et ingruentibus, quae possint brevi tempore, vel interdum non brevi, (ut supra exprimitur,) expediri, (ut praediximus,) observandos, ad observandam ipsius regulae ac professorum eius omnimodam puritatem. Quodsi praesto sit eleemosynae huiusmodi elargitor, vel eius nuncius, qui possit hoc facere et velit: expresse illi praedicatur a fratribus, quod sibi placeat, ut, (dominio talis pecuniae cum libera potestate revocandi sibi pecuniam ipsam penes ipsum semper usque ad conversionem ipsius in rem deputatam libere remanente, ut in aliis duobus casibus superius dictum est,) per quorumcunque manus pecunia seu eleemosyna ipsa tractetur, sive personas ab eo vel a fratribus nominatas, totum suo consensu, voluntate ac auctoritate procedat: quo assensum suum praebente praedictis, secure fratres re empta vel acquisita de illa pecunia per quemcunque iuxta modum adnotatum superius uti possint. Ad maiorem autem praedictorum omnium claritatem hac in perpetuum valitura provisionis serie declaramus, quod fratres, (praefatis modis, ut praedicitur, circa pecuniam in supportandis eorum praeteritis et ingruentibus necessitatibus observatis,) non intelligantur nec dici possint per se vel per interpositam personam pecuniam recipere contra regulam vel professionis sui ordinis puritatem, quum manifeste pateat ex praemissis, ipsos fratres non solum a receptione, proprietate, dominio sive usu ipsius pecuniae, verum etiam a contrectatione qualibet ipsius, et ab ea pecunia penitus alienos. In eo vero casu, quando, (antequam ipsa pecunia in licitum rei habendae vel utendae commercium sit conversa,) concedentem pecuniam mori contigerit, si concedens

in concedendo dixerit vel expresserit, quod persona deputata pecuniam ipsam in necessarium usum fratrum expenderet, quicquid de ipso concedente vivendo vel moriendo contingeret, sive concedens huiusmodi heredem reliquerit sive non, possint fratres ad personam deputatam, (non obstante concedentis morte vel heredis contradictione,) pro ipsa pecunia expendenda recurrere, sicut poterant ad ipsum dominum concedentem. Quia vero puritatem ipsius ordinis intima cordis affectione zelamus, quum in praedictis casibus ad determinatam necessitatem, (ut praedicitur,) per aliquem pecuniam concedi contigerit: concedens pecuniam rogari possit a fratribus, quod, si quid de pecunia ipsa, (habita necessitate determinata) supererit, consentiat ipse concedens, quod residuum praefatae pecuniae in res alias pro aliis ipsorum fratrum praedictis necessitatibus convertatur; quo non consentiente praedictis, ipsum residuum, si quod fuerit, restituatur eidem. Caveant tamen fratres, quod sollicite se coaptent, ut non plus scienter concedi consentiant, quam verisimiliter aestimari possit, rem necessariam, pro qua pecunia ipsa conceditur, valituram. Et quia praedictorum seriosa expositione a dante vel recipiente de facili possit errari, ut clarius utilitati dantium, puritati ordinis, simplicitati aliquorum simplicium, saluti animarum hinc inde securius consulatur: intellectum illum, qui satis in hoc casu a sane intelligente percipitur, praesentis ac in aeternum valiturae constitutionis serie lucidamus, volentes illum ad communem deduci notitiam, videlicet quod semper, quando pecunia fratribus ipsis mittitur vel offertur, (nisi expresse per mittentem vel offerentem aliud exprimatur,) praedictis modis prorsus obligata intelligatur et missa. Non enim verisimile est, aliquem eleemosynae suae sine expressione modum illum praefigere, per quem et donans merito, vel illi, quorum necessitatibus intendit per donum huiusmodi provideri, vel effectu doni vel suae conscientiae puritate fraudentur. Ad haec, quia fratribus ipsis interdum in ultimis voluntatibus sub diversis modis nonnulla legantur, nec expresse, quid de his agendum sit, in regula vel praedecessorum nostrorum declarationibus continetur: ne in ipsis dubitari contingat in posterum, providendo legantibus et fratrum conscientiis praecavendo declaramus, ordinamus et dicimus, quod, si testator modum, secundum quem fratribus, (eorum conditione inspecta,) recipere non liceret, exprimat in legando, ut si legaret fratribus vineam vel agrum ad excolendum, domum ad locandum, vel similia verba in similibus proferret, aut modos similes in relinquendo servaret, a tali legato et eius receptione per omnem modum fratres abstineant. Si vero modum licitum fratribus in legando testator expresserit, ut, si diceret: „lego pecuniam pro fratrum necessitatibus expendendam, vel domum, agrum, vineam et similia ad hoc, quod per certam personam vel personas idoneas distrahantur, et pecunia, de rebus ipsis accepta, in aedificia vel alia fratrum necessaria convertatur," aut in legando similibus modis vel verbis utatur: in hoc casu illud in omnibus et per omnia, (consideratis eorum necessitatibus et moderaminibus supra dictis,) quantum ad fratres servari decernimus, quod per nos est superius in concessis pecuniariis eleemosynis declaratum. Ad quae legata solvenda tam heredes testatorum quam exsecutores se liberales exhibeant, et etiam praelati et saeculares, quibus de iure vel consuetudine provisio ista competeret, quum expedierit, se ex officio suo promptos exhibeant ad pias voluntates deficientium adimplendas. Nam et nos etiam per modos licitos et fratrum regulae congruos intendimus providere, quod heredum cupiditas legitimis ictibus feriatur, ne pia defunctorum destituatur intentio, ac ipsi fratres pauperes opportunis auxiliis non fraudentur. Si vero fratribus ipsis generaliter aliquid absque modi expressione legetur: in hoc legato, sic indeterminate relicto, in omnibus et per omnia intelligi ac servari volumus et in perpetuum praesenti constitutione iubemus, quod supra in pecunia seu eleemosyna, fratribus indeterminate oblata vel missa voluimus ac expressimus observari, videlicet, ut sub modo licito fratribus intelligatur esse relictum, ita, quod nec legans merito, nec fratres ipsi effectu relicti fraudentur. Quia vero libros et alia mobilia, quibus tam ordo quam fratres utuntur, quorum dominium, (quum non sint dominii aliorum,) ad praefatam ecclesiam specialiter spectare dignoscitur, interdum contingit seu expedit vendi vel etiam commutari: fratrum utilitatibus et eorum conscientiis providere volentes, eadem auctoritate concedimus, ut commutatio talium rerum, et ad eas res, quarum usum fratribus licet habere, de generalium et

> provincialium ministrorum in suis administrationibus coniunctim vel divisim auctoritate procedat, quibus etiam de dispositione usus talium rerum concedimus ordinare. Si vero res huiusmodi aestimato pretio vendi contingat, quum fratribus ipsis per se vel per alium recipere pecuniam, regula prohibente non liceat: ordinamus et volumus, quod talis pecunia seu pretium recipiatur et expendatur in rem licitam, cuius usum fratribus licet habere, per procuratorem, a praefata sede vel a cardinali gubernationem per ipsam sedem gerenti eiusdem ordinis deputandum, iuxta modum in superioribus necessitatibus praeteritis et ingruentibus ordinatum. De vilibus autem mobilibus vel parum valentibus liceat ex praesenti nostra concessione fratribus (pietatis seu devotionis intuitu, vel pro alia honesta et rationabili causa,) obtenta super hoc prius superiorum suorum licentia, iuxta quod inter fratres in generali vel in provincialibus capitulis tam de ipsis rebus vilibus seu parum valentibus et earum valore, quam praefata licentia, scilicet, a quibus et qualiter sit habenda, exstiterit ordinatum, intra et extra ordinem aliis elargiri.

Although it is contained in the Rule that the brothers are to have one tunic with a hood and another without a hood, and it could appear to have been the intention of the founder that, when necessity ceases, they are not to use more, we declare that with the permission of the ministers and custodians, jointly or separately in the administrations committed to them, the brothers can, when it appears proper to them, use more tunics, after the needs and other circumstances which appear to require consideration according to God and the Rule have been weighed. Nor are they on this account to appear to deviate from the Rule, since it is also expressly said in the Rule that the ministers and custodians are to exercise solicitous care for the needs of the sick and for clothing the brothers according to places, times, and cold regions.

And although the aforesaid Rule contains that only the ministers and custodians are to exercise solicitous care concerning the clothing of the brothers and the needs of the sick, and that word "only" appears so to restrict the ministers and custodians in this care that at first sight it excludes the others from it, nevertheless it is fitting for us carefully to consider both the time when the Rule was instituted, when these brothers were few in number in comparison with the present and perhaps the ministers and custodians then appeared capable of sufficing to procure these things, and, nonetheless, the multiplication of the brothers and the condition of modern times. Since it is not probable that blessed Francis, the founder of the Rule, wished either to impose a yoke of impossibility upon those ministers and custodians or, as a consequence of that impossibility, to will the brothers themselves to lack their necessities, we grant that the ministers and custodians themselves may exercise the solicitude of this care through others. The other brothers must also diligently exercise this care, which by this Rule rests principally upon the aforesaid ministers and custodians, when it has been committed to them by those ministers and custodians.

It is also contained in the Rule that the brothers to whom the Lord has given the grace of working are to work faithfully and devoutly, in such a way that, idleness, the enemy of the soul, having been excluded, they do not extinguish the spirit of holy prayer and devotion. But because from this phrase some have previously attempted wickedly to mark the brothers themselves with idleness of life and transgression of the Rule, repressing such wicked bites we declare that, after consideration of the aforesaid words and the form or manner of speech under which the brothers are led to an exercise of this kind, it does not appear to have been the founder's intention to subject to manual labor or work, or to constrain to it, those who are occupied with study or with the performance of divine offices and

ministries. For, by the example of Christ and many holy Fathers, this spiritual labor outweighs the other as greatly as things of the soul are preferred to bodily things.

But we declare that the aforesaid words extend to others who do not exercise themselves in the aforesaid spiritual works, unless such persons are occupied with lawful services for other brothers, so that they do not live idly, or unless such persons are of such excellent and notable contemplation and prayer that for this reason they ought not deservedly to be withdrawn from so great a good for an exercise of this kind. For any brothers not occupied with study or divine ministries, but adhering only to the services of other brothers occupied with study or other divine offices and ministries, deserve on account of those services to be supported together with those whom they serve. This is supported by that equitable law by which that vigorous warrior David justly decreed that the portion of those descending into battle and of those remaining with the baggage was to be equal.

But because it is expressly contained in the Rule that the brothers are not to preach in the diocese of any bishop when he has opposed them, we, both deferring to the Rule in this and nevertheless preserving the authority of apostolic plenitude, say that the aforesaid phrase is to be observed according to the letter, just as the Rule itself pronounced it, unless something else has been granted or ordained by the Apostolic See in this matter for the benefit of the Christian people, or is granted or even ordained in the future.

And because in the same chapter of the Rule it is immediately added that no brother at all is to dare to preach to the people unless he has been examined and also approved by the minister general and the office of preaching has been granted to him by that minister, we, considering, as is fitting, both the past state of the Order in the fewness of its members, its modern state in the enlarged number of brothers, and the advantage of souls, grant that not only may the minister general examine and approve brothers who will preach among the people and grant them permission to preach, insofar as that permission concerns the suitability of the person and the office of preaching, as is contained in the Rule, but the provincial ministers may also do this in provincial chapters with the definitors. This is also said to be observed today and to be contained in the brothers' privileges. The aforesaid ministers may revoke, suspend, and restrict that permission as and when it appears expedient to them.

But because this is borne in our desires, that to the glory of God the salvation of souls may advance and the merit and number of the said Order may increase, through which the affection of the Christian religion is continually kindled toward divine love, we grant and confirm by the present statute that it is lawful not only for the minister general but also for the provincial ministers to receive into the brotherhood persons fleeing from the world. The permission of the provincial ministers can be restricted by the minister general himself as he sees to be expedient. But the vicars of the provincial ministers are to know that, by virtue of the office of vicar, this permission is forbidden to them unless it is specially committed to those vicars by the ministers themselves, to whom we decree it lawful to be able to commit this to vicars and others.

Nevertheless, the provincial ministers themselves are to take care that they commit this not indiscriminately or generally, but so considerately that they support with faithful counsels those to whom it happens to be committed, so that all things proceed discreetly. Nor are all persons indiscriminately to be admitted to the Order, but only those who, with learning, suitability, or other

circumstances supporting them, can be useful to the Order, can profit themselves through the merit of life, and can profit others through example.

Moreover, since the brothers of the aforesaid Order doubt whether, because it is said in the Rule that, when the minister general dies, the election of his successor is to be made by the provincial ministers and custodians in the chapter of Pentecost, the whole multitude of custodians must convene at the general chapter, or whether, so that all matters may be treated with greater tranquility, it can suffice for certain persons from the individual provinces, who have the voice of the others, to be present, we answer in this manner: the custodians of the individual provinces are to appoint one of themselves, whom they are to send with their provincial minister to the chapter on their behalf, committing their votes or representatives to him. We have deemed it proper to approve a statute of this kind, which they also established by themselves, and which our predecessor Gregory IX is said to have answered in a case of this kind.

Finally, because it is contained in the aforesaid Rule that the brothers are not to enter monasteries of nuns except those brothers to whom special permission has been granted by the aforesaid See, although the brothers believed that this was more particularly to be understood of the monasteries of poor enclosed nuns, since the aforesaid See has special care of them, and although an understanding of this kind is believed to have been declared by the provincial ministers in a general chapter through a certain constitution given at the time of the Rule, while blessed Francis was still living, those same brothers nevertheless petitioned to be made certain whether this is to be understood generally of all monasteries, since the Rule excepts none, or only of the monasteries of the aforesaid nuns.

We answer that this is indeed prohibited generally with respect to convents of nuns of every kind, and we will that by the name of "monastery" the cloister, houses, and inner offices are to be understood. For the brothers to whom this has been granted by their superiors on account of their maturity or suitability can enter other places where secular persons convene for the purpose of preaching or seeking alms, always excepting the monasteries of the aforesaid enclosed nuns, to which no one is given power of access without the special permission of that same See. Our same predecessor Gregory IX is also said to have answered this in that case.

Moreover, Francis, the confessor of Christ of holy memory, is said near the end of his life to have commanded—his command is called his Testament—that the words of his Rule not be glossed and, to use his own words, that it not be said that they ought to be understood "thus or thus." He added that the brothers should in no manner petition the Apostolic See for any letters, and inserted certain other matters that could not be observed without great difficulty. Consequently, the brothers, doubting whether they were bound to observe the aforesaid Testament, petitioned that a doubt of this kind be removed from their consciences by our same predecessor Gregory IX. As is asserted, considering the danger to souls and the difficulties that they could incur on account of this, he removed the doubt from their consciences and said that the brothers themselves were not bound to observe that command, because Francis could not bind them without the consent of the brothers, and especially of the ministers, whom it touched universally; nor did he in any way bind his successor, since an equal has no power over an equal. We have deemed that nothing is to be changed concerning the present article.

In addition, we understand that various letters have emanated from certain of our predecessors, the Roman Pontiffs, concerning the declaration of that Rule and matters touching the Rule itself. But not

even through this did the attack of the aforesaid biting persons against the Rule itself and the brothers cease; nor did those letters provide in many matters for the brothers' state, in which the experience of many cases later arising indicated that new or different provision was necessarily to be made.

Therefore, lest the diversity of such letters and of the present constitution, or an opposition in their understanding, disturb the spirits of the brothers in observing the foregoing, and so that fuller, clearer, and more certain provision may be made for their state and for the observance of the aforesaid Rule, we decree that in all and each of the articles that this constitution contains—even though they or some of them are contained in the other aforesaid apostolic letters—this constitution, declaration, or ordinance of ours alone is to be observed precisely and inviolably by the brothers themselves in perpetuity.

Since, therefore, from the foregoing and other matters discussed by us with great maturity, the Rule itself clearly appears lawful, holy, perfect, observable, and exposed to no danger, by the plenitude of apostolic power we approve and confirm it and all the matters written above that were established, ordained, granted, disposed, decreed, declared, and also supplied by us, and we will them to possess perpetual firmness. By virtue of obedience we strictly command that this constitution be read in the schools just like the other constitutions or decretal letters.

And because, under color of what is lawful, certain persons could pour out against the brothers themselves and the Rule in reading, expounding, and glossing it the dreadful poison of their iniquity, and, by bringing the understanding of the constitution itself into diverse and opposed opinions, could corrupt it by their inventions; and because diversity of opinions and distortion of understanding could entangle the pious minds of many and withdraw the hearts of many from entering the religious life, the perversity of such detractors, which must be avoided, compels us to close their way to the foregoing and to prescribe a definite mode of proceeding for those reading this constitution.

Therefore, under penalty of excommunication and deprivation of office and benefice, we strictly command that, when the present constitution happens to be read, it is to be expounded faithfully according to the letter just as it was promulgated. Concordances, contradictions, or diverse or opposed opinions are by no means to be introduced by readers or expositors. No glosses are to be made upon the constitution itself, except perhaps those by which a word, the sense of a word, or a construction, or the construction itself, is explained as though grammatically according to the letter or more intelligibly. Nor is its understanding to be corrupted in any respect by the reader or distorted to something other than what the letter itself declares.

And lest it be necessary for the aforesaid See to labor further against detractors of this kind, we strictly command all and each person, of whatever preeminence, condition, or status, not to dogmatize, write, determine, preach, or speak wickedly, publicly or secretly, against the aforesaid Rule and the state of the aforesaid brothers, or against the foregoing matters established, ordained, granted, disposed, decreed, declared, supplied, approved, and also confirmed by us. But if any ambiguity concerning these matters arises for anyone, it is to be brought to the summit of the aforesaid Apostolic See so that, by its apostolic authority, its intention in this matter may be manifested; to it alone has it been granted in these matters to grant statutes and declare those issued.

Those who gloss the constitution itself in writing otherwise than in the manner we have stated, and moreover teachers and readers who, while teaching publicly, knowingly and deliberately corrupt the understanding of such a constitution, as well as those who make a commentary, writings, or booklets and knowingly and deliberately determine in the schools or preach against the foregoing matters or any or one of them, are to know that they lie under the sentence of excommunication which we now render against them, from which they cannot be absolved by anyone except the Roman Pontiff. This is notwithstanding any privileges, indulgences, or apostolic letters granted generally or individually, under any form or expression of words, to any dignities, persons, orders, or religious or secular places, which we will to avail no one in any manner in the foregoing matters.

Moreover, we will that both those against whom the sentence of excommunication has been rendered by us and any others who come against the foregoing matters or any of them be brought to the notice of the aforesaid See, so that the rigor of apostolic vengeance may restrain from forbidden acts those whom the well-considered measure of equity does not restrain.

Therefore, let it be lawful for no person whatsoever to infringe this page of our declaration, ordinance, grant, disposition, approval, confirmation, and constitution, or to oppose it with rash daring. But if anyone presumes to attempt this, let him know that he will incur the indignation of Almighty God and of his blessed Apostles Peter and Paul. Given at Soriano on the eighteenth day before the Kalends of September, in the second year of our pontificate.

> Licet autem contineatur in regula, quod fratres habeant unam tunicam cum caputio, et aliam sine caputio, et videri possit illa fuisse instituentis intentio, quod necessitate cessante pluribus non utantur: declaramus, quod possint fratres de licentia ministrorum et custodum coniunctim et divisim in administrationibus sibi commissis, quum eis videbitur, (pensatis necessitatibus et aliis circumstantiis, quae secundum Deum et regulam attendendae videntur,) uti pluribus, nec per hoc videantur a regula deviare, quum etiam in ipsa dicatur expresse, quod ministri et custodes de infirmorum necessitatibus et fratribus induendis sollicitam curam gerant secundum loca et tempora et frigidas regiones. Et quamquam praedicta regula contineat, quod de fratribus induendis et necessitatibus infirmorum ministri tantum et custodes sollicitam curam gerant, et dictio illa: „tantum " adeo ministros et custodes in hac cura perstringere videatur, quod ab ea ceteros prima facie excludat: quia tamen sollicite considerare nos convenit et tempus regulae institutae, quo fratres isti ad comparationem praesentem numero pauci erant, et forsan ministri et custodes videbantur tunc ad ista procuranda posse sufficere, ac nihilominus multiplicationes fratrum et moderni temporis qualitatem, nec sit verisimile, beatum Franciscum institutorem regulae vel ipsis ministris et custodibus impossibilitatis iugum voluisse praefigere, vel ex ipsius impossibilitatis consequentia fratres ipsos suis necessitatibus velle carere: concedimus, quod ipsi ministri et custodes possint per alios huiusmodi curae sollicitudinem exercere. Debent etiam et alii fratres curam huiusmodi, quae praefatis ministris et custodibus praecipue incumbit ex hac regula, quum sibi ab illis commissa fuerit, gerere diligenter. Continetur quoque in regula, quod fratres, quibus gratiam dedit Dominus laborandi, laborent fideliter et devote, ita, quod, excluso otio animae inimico, sanctae orationis et devotionis spiritum non exstinguant. Quia vero ex verbo isto fratres ipsos de otiositate vitae et de regulae transgressione improbe notare interdum hactenus aliqui sunt conati: nos, morsus huiusmodi nefarios reprimentes, declaramus, quod, consideratis verbis praedictis et forma seu modo loquendi, sub quibus fratres ad huiusmodi exercitium inducuntur, non videtur ea fuisse intentio, quod vacantes studio vel divinis officiis et ministeriis exsequendis manuali labori seu operationi subiiceret, vel ad hoc illos arctaret, quum exemplo Christi et multorum sanctorum Patrum labor iste spiritualis tanto illi praeponderet, quanto quae sunt animae corporalibus praeferuntur.

Ad alios vero, qui se in praedictis spiritualibus operibus non exercent, nisi tales aliorum fratrum licitis servitiis occupentur, (ne otiose vivant,) verba praedicta declaramus extendi, nisi et tales tam excellentis et notabilis contemplationis et orationis exsisterent, quod merito propter hoc non essent a tanto bono pro huiusmodi exercitio subtrahendi. Fratres enim quicunque studio vel divinis ministeriis non vacantes, sed aliorum fratrum studio vel aliis divinis officiis et ministeriis vacantium servitiis inhaerentes tantum, pro servitiis eisdem cum ipsis, quibus serviunt, sustentari merentur; quod adstruitur illa aequa lege, qua strenuus pugnator ille David iuste decrevit, videlicet quod descendentium ad praelium et remanentium ad sarcinas portio aequaretur. Verum quia expresse continetur in regula, quod fratres non praedicent in episcopatu alicuius episcopi, quum ab eo illis fuerit contradictum: nos, in hoc et deferentes regulae, et nihilominus auctoritatem apostolicae plenitudinis conservantes, dicimus, quod praedictum verbum ad literam, sicut regula ipsa protulit, observetur, nisi per sedem apostolicam circa hoc pro utilitate populi Christiani sit concessum vel ordinatum aliud, vel in posterum concedatur seu etiam ordinetur. Et quia in eodem capitulo regulae immediate subiungitur, quod nullus fratrum populo penitus audeat praedicare, nisi a ministro generali fuerit examinatus et etiam approbatus, ac ab eo praedicationis officium sibi sit concessum: nos, et statum praeteritum ipsius ordinis in paucitate sui, et modernum in ampliato fratrum numero, ac utilitatem animarum, (ut condecet,) advertentes, concedimus, nedum generalem examinare et approbare fratres praedicaturos in populis, ac illis concedere licentiam praedicandi, quatenus personae idoneitatem et praedicationis officium licentia ipsa respiceret, prout in regula continetur, verum etiam provinciales ministri hoc possint in capitulis provincialibus cum definitoribus, quod etiam hodie observari dicitur et in fratrum privilegiis contineri; quam quidem licentiam praefati ministri revocare et suspendere valeant et arctare, sicut et quando id eis videbitur expedire. Sed quoniam in desideriis nostris hoc geritur, ut ad Dei gloriam salus proficiat animarum, ac dicto ordini, per quem iugiter ad amorem divinum affectio Christianae religionis accenditur, meritum et numerus augeatur: concedimus et praesenti statuto firmamus, licere non solum generali, sed etiam provincialibus ministris personas fugientes a saeculo in fratres recipere, quae ministrorum provincialium licentia per ipsum generalem, (sicut expedire viderit,) possit arctari. Vicarii vero provincialium ministrorum ex officio vicariae licentiam hanc sibi noverint interdictam, nisi per ministros eosdem, (quibus hoc posse committere vicariis et aliis licere decernimus,) hoc ipsis vicariis specialiter committatur. Caveant tamen ipsi provinciales, quod hoc non indiscrete, non passim, sed sic considerate committant, ut illos, quibus hoc committi contigerit, fidelibus consiliis fulciant, quo omnia discrete procedant. Nec indifferenter omnes admittantur ad ordinem, sed illi tantum, qui, suffragantibus eis literatura, idoneitate vel aliis circumstantiis, possint utiles esse ordini, sibique per vitae meritum, ac aliis proficere per exemplum. Insuper dubitantibus fratribus praedicti ordinis, an pro eo, quod in regula dicitur, ut, decedente generali ministro, a provincialibus ministris et custodibus in capitulo pentecostes fiat electio successoris, omnium custodum multitudinem oporteat ad generale capitulum convenire, aut, (ut omnia cum maiori tranquillitate tractentur,) sufficere possit, ut aliqui de singulis provinciis, qui vocem habeant aliorum, intersint, taliter respondemus, ut scilicet singularum provinciarum custodes unum ex se constituant, quem cum suo provinciali ministro pro se ipsis ad capitulum dirigant, voces aut vices suas committentes eidem. Quod etiam constituerint per se ipsos, statutum huiusmodi duximus approbandum, quod idem praedecessor noster Gregorius IX. in casu huiusmodi dicitur respondisse. Denique, quia continetur in regula supra dicta, quod fratres non ingrediantur monasteria monacharum, praeter illos, quibus a sede praedicta concessa fuerit licentia specialis: quamquam hoc de monasteriis pauperum monialium inclusarum fratres attentius intelligendum esse crediderint, quum eorum sedes praefata curam habeat specialem, et intellectus huiusmodi per constitutionem quandam tempore regulae datae, vivente adhuc B. Francisco, per provinciales ministros fuisse credatur in generali capitulo declaratus: iidem fratres certificari nihilominus postulaverunt, an hoc de omnibus generaliter, quum regula nullum excipiat, an de illis

solum monasteriis monialium praedictarum debeat intelligi. Nos utique generaliter id esse prohibitum de quarumlibet coenobiis monialium respondemus, et nomine monasterii voluimus claustrum, domos et officinas interiores intelligi, pro eo, quod ad alia loca, ubi homines saeculares conveniunt, possunt fratres illi causa praedicationis vel eleemosynae petendae accedere, iis, quibus id a superioribus suis pro sua fuerit maturitate vel idoneitate concessum, exceptis semper praedictarum monasteriis inclusarum, ad quae nulli datur accedendi facultas sine sedis eiusdem licentia speciali, quod etiam ipsum idem praedecessor noster Gregorius IX. in eo casu dicitur respondisse. Ceterum sanctae memoriae confessor Christi Franciscus mandasse dicitur circa ultimum vitae suae, (cuius mandatum ipsius dicitur testamentum,) quod verba ipsius regulae non glossentur, et, (ut verbis utamur eisdem,) quod sic vel sic intelligi debeat, non dicatur, adiiciens quod fratres nullo modo literas aliquas ab apostolica sede petant, et alia quaedam interserens, quae non possent sine multa difficultate servari, propter quod fratres haesitantes, an tenerentur ad observantiam testamenti praedicti, dubitationem huiusmodi per eundem praedecessorem nostrum Gregorium IX. petierunt de ipsorum conscientiis amoveri, qui, (sicut asseritur,) attendens periculum animarum, et difficultates, quas propter hoc possent incurrere, dubietatem de ipsorum conscientiis amovendo, dixit, fratres ipsos ad ipsius mandati observantiam non teneri, quod sine consensu fratrum, et maxime ministrorum, quos universos tangebat, obligare nequivit, nec successorem suum quomodolibet obligavit, quum non habeat imperium par in parem. Nos autem circa praesentem articulum nihil duximus innovandum. Ad hoc a nonnullis praedecessoribus nostris Romanis Pontificibus circa declarationem ipsius regulae et ipsam regulam contingentia diversas literas intelleximus emanasse. Sed nec per hoc mordacium praedictorum contra regulam ipsam et fratres quievit insultus, nec per ipsas literas statui fratrum providere in multis, in quibus de novo vel aliter necessario providendum esse multorum postea casuum contingentium experientia indicavit. Nos itaque, ne literarum huiusmodi et praesentis constitutionis diversitas vel intellectus adversitas in praedictorum observatione fratrum animos perturbaret, et ut plenius, clarius et certius eorum statui et observantiae praedictae regulae consulatur in omnibus et singulis illis articulis, quos constitutio ipsa continet, quamquam ipsi vel eorum aliqui contineantur in aliis literis apostolicis supra dictis: hanc nostram constitutionem, declarationem seu ordinationem tantum a fratribus ipsis praecise ac inviolabiliter decernimus perpetuis temporibus observandam. Quum igitur ex praedictis et aliis, per nos cum multa maturitate discussis, regula ipsa licita, sancta, perfecta et observabilis, nec ulli patens discrimini evidenter appareat: illa et omnia supra scripta per nos statuta, ordinata, concessa, disposita, decreta, declarata etiam et suppleta, de apostolicae potestatis plenitudine approbamus, confirmamus et volumus exsistere perpetuae firmitatis, in virtute obedientiae districte praecipientes, quod haec constitutio sicut ceterae constitutiones vel decretales epistolae legatur in scholis. Et quia sub colore liciti nonnulli contra fratres ipsos et regulam in legendo, exponendo atque glossando possent dirum virus suae iniquitatis effundere, ac ipsius constitutionis intellectum ipsum in diversas et adversas sententias producentes suis adinventionibus depravare, et opinionum diversitas ac distortio intellectus multorum pios animos posset involvere, et a religionis ingressu multorum corda subtrahere: talium detrahentium vitanda perversitas cogit nos viam ipsis ad praedicta praecludere, et certum procedendi modum hanc constitutionem legentibus praefinire. Itaque sub poena excommunicationis et privationis officii ac beneficii districte praecipimus, ut praesens constitutio, quum ipsam legi contigerit, sicut prolata est, sic fideliter exponatur ad literam, concordantiae, contrarietates seu diversae vel adversae opiniones a lectoribus seu expositoribus nullatenus inducantur. Super ipsa constitutione glossae non fiant, nisi forsan, per quas verbum vel verbi sensus, seu constructio, vel ipsa constructio quasi grammaticaliter ad literam vel intelligibilius exponatur. Nec intellectus ipsius per legentem depravetur in aliquo, seu distorqueatur ad aliud, quam litera ipsa sonat. Et ne sedem praedictam contra detractores huiusmodi oporteat ulterius laborare: universis ac singulis cuiuscunque praeeminentiae, conditionis aut status, districte praecipimus, ne contra praedictam regulam et statum fratrum praedictorum, seu contra

praemissa per nos statuta, ordinata, concessa, disposita, decreta, declarata, suppleta, approbata, et etiam confirmata, dogmatizent, scribant, determinent, praedicent, seu prave loquantur publice vel occulte. Sed si quid penes aliquem in his ambiguitatis emerserit, ad culmen praedictae sedis apostolicae deducatur, ut ex auctoritate apostolica sua in hoc manifestetur intentio, cui soli concessum est in his statuta concedere et edita declarare. Glossantes vero in scriptis constitutionem ipsam aliter, quam eo modo, quem diximus, doctores vero insuper et lectores, dum docent in publico, ex certa scientia et deliberate intellectum constitutionis huiusmodi depravantes, facientes quoque commentum, scripturas seu libellos, ac ex certa scientia et deliberate determinantes in scholis, seu praedicantes contra praedicta, vel aliqua seu aliquod praedictorum, (non obstantibus aliquibus privilegiis, vel indulgentiis aut literis apostolicis, quibuscunque dignitatibus, personis, ordinibus, aut locis religiosis vel saecularibus generaliter vel singulariter sub quacunque forma vel expressione verborum concessis, quae nolumus aliquibus in praemissis quomodolibet suffragari,) excommunicationis sententiae, quam nunc in ipsos proferimus, se noverint subiacere, a qua per neminem nisi per Romanum Pontificem possint absolvi. Insuper tam istos, contra quos per nos excommunicationis est prolata sententia, quam alios, (si qui fuerint,) contra praemissa vel eorum aliquod venientes, ad sedis memoratae volumus deduci notitiam, ut, quos provisus modus aequitatis non arcet a vetitis, compescat rigor apostolicae ultionis. Nulli ergo omnino hominum liceat hanc paginam nostrae declarationis, ordinationis, concessionis, dispositionis, approbationis, confirmationis et constitutionis infringere, vel ei ausu temerario contraire. Si quis autem hoc attentare praesumpserit, indignationem omnipotentis Dei et beatorum Petri et Pauli Apostolorum eius se noverit incursurum. Datum Siriani XVIII. Kalend. Septembris, Pontificatus nostri anno secundo.

Chapter IV

When the cells of a certain monastery are exempt, he shows here what the designation "cell" signifies. Johannes Andreae.

Boniface VIII.

The privilege granted to your monastery, providing that monks or brothers dwelling in cells belonging to that monastery cannot be excommunicated or suspended by anyone other than the Pope or his legate, or that those cells cannot be placed under interdict, protects not brothers dwelling in priories, churches, or chapels of the same monastery, nor those priories, churches, or chapels in any respect from the jurisdiction of the ordinaries, but only those residing in cells and the cells themselves—that is, secret and solitary places, separated from human society and specially designated for contemplation and devotion to God.

Exemptis cellis alicuius monasterii, quid appellatio cellae significet, hic ostendit. Ioann. Andr.

Bonifacius VIII.

Privilegium monasterio tuo concessum, ut monachi sive fratres in cellis ad monasterium ipsum spectantibus habitantes ab alio quam a Papa vel eius legato excommunicari aut suspendi, vel ipsae cellae interdicto supponi non possint, non fratres in prioratibus, ecclesiis seu capellis eiusdem monasterii commorantes, aut ipsos prioratus, ecclesias vel capellas ab ordinariorum iurisdictione in aliquo, sed residentes tantum in cellis, et cellas ipsas, (hoc est loca secreta et solitaria, quae ab hominum separata convictu sunt ad contemplandum et Deo vacandum specialiter deputata,) defendat.

Chapter V

When someone is privileged so that he can confer the benefices of his clerics, he shows what the designation "his clerics" denotes. Johannes Andreae.

The same.

As you took care to signify to us, we graciously granted to you that you can confer the benefices of your clerics who resign or die, and that those same clerics may receive the fruits of their prebends as if they resided personally in their churches. But because you doubt who ought to be contained under the designation "your clerics," we answer by a brief oracle that in these and similar cases we will those persons to be understood as your clerics who, not having been sought out or received by you for that reason, are without any fraud or pretense truly your familiar clerics, and are continuously members of your household and table at your expense, even if it happens that some of them are at times absent for conducting your affairs.

> Privilegiato aliquo, ut possit conferre beneficia clericorum suorum, quid appellatio clericorum suorum designet, ostendit. Ioann. Andr.
>
> Idem.
>
> Sicut nobis significare curasti, tibi gratiose concessimus, ut beneficia clericorum tuorum cedentium vel decedentium possis conferre, quodque iidem clerici praebendarum suarum fructus percipiant, ac si in suis ecclesiis personaliter residerent. Verum quia dubitas, qui clericorum tuorum appellatione debeant contineri: brevi respondemus oraculo, quod illos in his et similibus casibus tuos volumus intelligi clericos, qui per te non quaesiti propterea, vel recepti, sine fraude et fictione qualibet vere tui clerici familiares exsistunt, et in tuis expensis continue domestici commensales, etiamsi quos ex illis aliquando pro tuis gerendis negotiis abesse contingat.

Rules of Law (Regulae iuris)

Rule I

Boniface VIII. Rule I.

An ecclesiastical benefice cannot lawfully be obtained without canonical institution.

> Bonifacius VIII. Regula I. Beneficium ecclesiasticum non potest licite sine institutione canonica obtineri.

Rule II

The same. Rule II.

A possessor in bad faith never acquires by prescription.

> Idem. Regula II. Possessor malae fidei ullo tempore non praescribit.

Rule III

The same. Rule III.

Prescription does not proceed without possession.

> Idem. Reg. III. Sine possessione praescriptio non procedit.

Rule IV

The same. Rule IV.

A sin is not forgiven unless what was taken is restored.

> Idem. Reg. IV. Peccatum non dimittitur, nisi restituatur ablatum.

Rule V

The same. Rule V.

Pardon for sin is not given except to one who has been corrected.

> Idem. Reg. V. Peccati venia non datur, nisi correcto.

Rule VI

The same. Rule VI.

No one can be bound to the impossible.

> Idem. Reg. VI. Nemo potest ad impossibile obligari.

Rule VII

The same. Rule VII.

A personal privilege follows the person and is extinguished with the person.

> Idem. Reg. VII. Privilegium personale personam sequitur, et exstinguitur cum persona.

Rule VIII

The same. Rule VIII.

One who was once wicked is always presumed to be wicked.

> Idem. Reg. VIII. Semel malus semper praesumitur esse malus.

Rule IX

The same. Rule IX.

No one can ratify what was not done in his name.

> Idem. Reg. IX. Ratum quis habere non potest quod ipsius nomine non est gestum.

Rule X

The same. Rule X.

There is no doubt that ratification is carried back and is equated with a mandate.

> Idem. Reg. X. Ratihabitionem retrotrahi, et mandato non est dubium comparari.

Rule XI

The same. Rule XI.

When the rights of the parties are obscure, the defendant is to be favored rather than the plaintiff.

> Idem. Reg. XI. Quum sunt partium iura obscura, reo favendum est potius quam actori.

Rule XII

The same. Rule XII.

In judgments no partiality toward persons is to be shown.

> Idem. Reg. XII. In iudiciis non est acceptio personarum habenda.

Rule XIII

The same. Rule XIII.

Ignorance of fact, not of law, excuses.

> Idem. Reg. XIII. Ignorantia facti, non iuris, excusat.

Rule XIV

The same. Rule XIV.

When someone succeeds to the right of another, he is deemed to have a just cause of ignorance.

> Idem. Reg. XIV. Quum quis in ius succedit alterius: iustam ignorantiae causam censetur habere.

Rule XV

The same. Rule XV.

Odious matters ought to be restricted, and favors enlarged.

> Idem. Reg. XV. Odia restringi, et favores convenit ampliari.

Rule XVI

The same. Rule XVI.

It is fitting that a benefit granted by a prince remain in force.

> Idem. Reg. XVI. Decet concessum a principe beneficium esse mansurum.

Rule XVII

The same. Rule XVII.

A benefit granted by law is not to be taken away from anyone.

> Idem. Reg. XVII. Indultum a iure beneficium non est alicui auferendum.

Rule XVIII

The same. Rule XVIII.

That which by law does not subsist from the beginning is not validated by the passage of time.

> Idem. Reg. XVIII. Non firmatur tractu temporis quod de iure ab initio non subsistit.

Rule XIX

The same. Rule XIX.

One who involves himself in a matter that does not belong to him is not without fault.

> Idem. Reg. XIX. Non est sine culpa, qui rei, quae ad eum non pertinet, se immiscet.

Rule XX

The same. Rule XX.

No one is prohibited from using several defenses.

> Idem. Reg. XX. Nullus pluribus uti defensionibus prohibetur.

Rule XXI

The same. Rule XXI.

What has once pleased cannot afterward displease.

> Idem. Reg. XXI. Quod semel placuit amplius displicere non potest.

Rule XXII

The same. Rule XXII.

No one ought to be burdened because of another's hatred.

> Idem. Reg. XXII. Non debet aliquis alterius odio praegravari.

Rule XXIII

The same. Rule XXIII.

Without fault, unless a cause underlies it, no one is to be punished.

> Idem. Reg. XXIII. Sine culpa, nisi subsit causa, non est aliquis puniendus.

Rule XXIV

The same. Rule XXIV.

What someone does at a judge's command is not deemed to have been done fraudulently, since he necessarily has to obey.

> Idem. Reg. XXIV. Quod quis mandato facit iudicis, dolo facere non videtur, quum habeat parere necesse.

Rule XXV

The same. Rule XXV.

Each person's own delay is harmful to him.

> Idem. Reg. XXV. Mora sua cuilibet est nociva.

Rule XXVI

The same. Rule XXVI.

Things done by a judge, if they do not belong to his office, have no force.

> Idem. Reg. XXVI. Ea, quae fiunt a iudice, si ad eius non spectant officium, viribus non subsistunt.

Rule XXVII

The same. Rule XXVII.

Neither injury nor fraud is done to one who knows and consents.

> Idem. Reg. XXVII. Scienti et consentienti non fit iniuria neque dolus.

Rule XXVIII

The same. Rule XXVIII.

Things that depart from the common law are by no means to be drawn into precedent.

> Idem. Reg. XXVIII. Quae a iure communi exorbitant, nequaquam ad consequentiam sunt trahenda.

Rule XXIX

The same. Rule XXIX.

What touches all ought to be approved by all.

> Idem. Reg. XXIX. Quod omnes tangit debet ab omnibus approbari.

Rule XXX

The same. Rule XXX.

In obscure matters the minimum is to be followed.

> Idem. Reg. XXX. In obscuris minimum est sequendum.

Rule XXXI

The same. Rule XXXI.

One who is certain need not be made more certain.

> Idem. Reg. XXXI. Eum, qui certus est, certiorari ulterius non oportet.

Rule XXXII

The same. Rule XXXII.

That which is not lawful for the defendant is not lawful for the plaintiff.

> Idem. Reg. XXXII. Non licet actori quod reo licitum non exsistit.

Rule XXXIII

The same. Rule XXXIII.

No one can change his decision to the detriment of another.

> Idem. Reg. XXXIII. Mutare consilium quis non potest in alterius detrimentum.

Rule XXXIV

The same. Rule XXXIV.

The general is derogated from by the specific.

> Idem. Reg. XXXIV. Generi per speciem derogatur.

Rule XXXV

The same. Rule XXXV.

That which is greater always contains within itself that which is less.

> Idem. Reg. XXXV. Plus semper in se continet quod est minus.

Rule XXXVI

The same. Rule XXXVI.

One who has fraudulently ceased to possess is held as a possessor.

> Idem. Reg. XXXVI. Pro possessore habetur qui dolo desiit possidere.

Rule XXXVII

The same. Rule XXXVII.

The useful ought not to be vitiated by the useless.

> Idem. Reg. XXXVII. Utile non debet per inutile vitiari.

Rule XXXVIII

The same. Rule XXXVIII.

No one ought to obtain fruit from that which he strove to oppose.

> Idem. Reg. XXXVIII Ex eo non debet quis fructum consequi, quod nisus exstitit impugnare.

Rule XXXIX

The same. Rule XXXIX.

When something is prohibited, everything that follows from it is prohibited.

> Idem. Reg. XXXIX. Quum quid prohibetur, prohibentur omnia, quae sequuntur ex illo.

Rule XL

The same. Rule XL.

A plural expression is satisfied by the number two.

> Idem. Reg. XL. Pluralis locutio duorum numero est contenta.

Rule XLI

The same. Rule XLI.

If someone does not do what was to be done through him, it ought not to be imputed to him when the failure does not rest with him.

> Idem. Reg. XLI. Imputari non debet ei, per quem non stat, si non faciat quod per eum fuerat faciendum.

Rule XLII

The same. Rule XLII.

It is fitting for the accessory to follow the nature of the principal.

> Idem. Reg. XLII. Accessorium naturam sequi congruit principalis.

Rule XLIII

The same. Rule XLIII.

One who is silent appears to consent.

> Idem. Reg. XLIII. Qui tacet, consentire videtur.

Rule XLIV

The same. Rule XLIV.

One who is silent does not confess; but neither indeed does he appear to deny.

> Idem. Reg. XLIV. Is, qui tacet, non fatetur; sed nec utique negare videtur.

Rule XLV

The same. Rule XLV.

In obscure matters we consider what is more probable, or what usually happens more often.

> Idem. Reg. XLV. Inspicimus in obscuris quod est verisimilius, vel quod plerumque fieri consuevit.

Rule XLVI

The same. Rule XLVI.

One who succeeds to the right of another must use the same right as that other person.

> Idem. Reg. XLVI. Is, qui in ius succedit alterius, eo iure, quo ille, uti debebit.

Rule XLVII

The same. Rule XLVII.

Ignorance is presumed where knowledge is not proved.

> Idem. Reg. XLVII. Praesumitur ignorantia, ubi scientia non probatur.

Rule XLVIII

The same. Rule XLVIII.

No one ought to be enriched through the injury or loss of another.

> Idem. Reg. XLVIII. Locupletari non debet aliquis cum alterius iniuria vel iactura.

Rule XLIX

The same. Rule XLIX.

In penalties a more benign interpretation is to be made.

> Idem. Reg. XLIX. In poenis benignior est interpretatio facienda.

Rule L

The same. Rule L.

Legitimate acts admit neither a condition nor a day.

> Idem. Reg. L. Actus legitimi conditionem non recipiunt neque diem.

Rule LI

The same. Rule LI.

What has once been dedicated to God is not thereafter to be transferred to human uses.

> Idem. Reg. LI. Semel Deo dicatum non est ad usus humanos ulterius transferendum.

Rule LII

The same. Rule LII.

That which by law obtains no effect presents no impediment.

> Idem. Reg. LII. Non praestat impedimentum quod de iure non sortitur effectum.

Rule LIII

The same. Rule LIII.

One to whom the greater is lawful is certainly permitted the lesser.

> Idem. Reg. LIII. Cui licet quod est plus, licet utique quod est minus.

Rule LIV

The same. Rule LIV.

One who is earlier in time is stronger in right.

> Idem. Reg. LIV. Qui prior est tempore potior est iure.

Rule LV

The same. Rule LV.

One who experiences the burden ought to experience the advantage, and conversely.

> Idem. Reg. LV. Qui sentit onus, sentire debet commodum, et e contra.

Rule LVI

The same. Rule LVI.

In a common matter the condition of the person prohibiting is stronger.

> Idem. Reg. LVI. In re communi potior est conditio prohibentis.

Rule LVII

The same. Rule LVII.

An interpretation is to be made against one who could have spoken more clearly.

> Idem. Reg. LVII. Contra eum, qui legem dicere potuit apertius, est interpretatio facienda.

Rule LVIII

The same. Rule LVIII.

An oath taken contrary to good morals is not binding.

> Idem. Reg. LVIII. Non est obligatorium contra bonos mores praestitum iuramentum.

Rule LIX

The same. Rule LIX.

One acts fraudulently who seeks what he himself ought to restore.

> Idem. Reg. LIX. Dolo facit, qui petit quod restituere oportet eundem.

Rule LX

The same. Rule LX.

One who can protect himself by a legitimate exception is not in delay.

> Idem. Reg. LX. Non est in mora qui potest exceptione legitima se tueri.

Rule LXI

The same. Rule LXI.

What is granted out of favor for someone is not to be turned to his detriment.

> Idem. Reg. LXI. Quod ob gratiam alicuius conceditur, non est in eius dispendium retorquendum.

Rule LXII

The same. Rule LXII.

No one is bound on account of advice, provided that it was not fraudulent.

> Idem. Reg. LXII. Nullus ex consilio, dummodo fraudulentum non fuerit, obligatur.

Rule LXIII

The same. Rule LXIII.

One who raises an exception does not appear to admit the claim of his adversary.

> Idem. Reg. LXIII. Exceptionem obiiciens non videtur de intentione adversarii confiteri.

Rule LXIV

The same. Rule LXIV.

Things done contrary to law ought indeed to be held as not done.

> Idem. Reg. LXIV. Quae contra ius fiunt debent utique pro infectis haberi.

Rule LXV

The same. Rule LXV.

In equal fault or cause, the condition of the possessor is stronger.

> Idem. Reg. LXV. In pari delicto vel causa potior est conditio possidentis.

Rule LXVI

The same. Rule LXVI.

When it does not rest with the person to whom it belongs that a condition is not fulfilled, it ought to be held just as if the condition had been fulfilled.

> Idem. Reg. LXVI. Quum non stat per eum, ad quem pertinet, quo minus conditio impleatur: haberi debet perinde, ac si impleta fuisset;

Rule LXVII

The same. Rule LXVII.

What is not lawful for someone in his own name will not be lawful in another's name either.

> Idem. Reg. LXVII. Quod alicui suo non licet nomine, nec alieno licebit.

Rule LXVIII

The same. Rule LXVIII.

Someone can do through another what he can do by himself.

> Idem. Reg. LXVIII. Potest quis per alium, quod potest facere per se ipsum.

Rule LXIX

The same. Rule LXIX.

In evil promises it is not expedient that faith be kept.

> Idem. Reg. LXIX. In malis promissis fidem non expedit observari.

Rule LXX

The same. Rule LXX.

In alternatives the choice belongs to the debtor, and it is sufficient that one alternative be fulfilled.

> Idem. Reg. LXX. In alternativis debitoris est electio, et sufficit alterum adimpleri.

Rule LXXI

The same. Rule LXXI.

One who is admitted to bring an action is much more to be admitted to raise an exception.

> Idem. Reg. LXXI. Qui ad agendum admittitur, est ad excipiendum multo magis admittendus.

Rule LXXII

The same. Rule LXXII.

One who acts through another is in the same position as if he acted by himself.

> Idem. Reg. LXXII. Qui facit per alium, est perinde, ac si faciat per se ipsum.

Rule LXXIII

The same. Rule LXXIII.

What has been done lawfully ought not to be retracted, although a case afterward occurs from which it could not have been begun.

> Idem. Reg. LXXIII. Factum legitime retractari non debet, licet casus postea eveniat, a quo non potuit inchoari.

Rule LXXIV

The same. Rule LXXIV.

What is graciously granted to someone ought not to be drawn by others into precedent.

> Idem. Reg. LXXIV. Quod alicui gratiose conceditur, trahi non debet ab aliis in exemplum.

Rule LXXV

The same. Rule LXXV.

Someone vainly asks that faith be kept with him by a person with whom he refuses to keep the faith pledged by himself.

> Idem. Reg. LXXV. Frustra sibi fidem quis postulat ab eo servari, cui fidem a se praestitam servare recusat.

Rule LXXVI

The same. Rule LXXVI.

The offense of a person ought not to redound to the detriment of the church.

> Idem. Reg. LXXVI. Delictum personae non debet in detrimentum ecclesiae redundare.

Rule LXXVII

The same. Rule LXXVII.

It accords with reason that one who is substituted in honor should succeed to the burden.

> Idem. Reg. LXXVII. Rationi congruit, ut succedat in onere, qui substituitur in honore.

Rule LXXVIII

The same. Rule LXXVIII.

Things that have at times been granted because of necessity cannot be drawn into an argument.

> Idem. Reg. LXXVIII. In argumentum trahi nequeunt, quae propter necessitatem aliquando sunt concessa.

Rule LXXIX

The same. Rule LXXIX.

No one can transfer to another more right than is known to belong to himself.

> Idem. Reg. LXXIX. Nemo potest plus iuris transferre in alium, quam sibi competere dinoscatur.

Rule LXXX

The same. Rule LXXX.

There is no doubt that the part is contained in the whole.

> Idem. Reg. LXXX. In toto partem non est dubium contineri.

Rule LXXXI

The same. Rule LXXXI.

In a general grant those things are not included which someone would probably not grant specifically.

> Idem. Reg. LXXXI. In generali concessione non veniunt ea, quae quis non esset verisimiliter in specie concessurus.

Rule LXXXII

The same. Rule LXXXII.

One who purchases contrary to the laws is presumed not to have good faith.

> Idem. Reg. LXXXII. Qui contra iura mercatur, bonam fidem praesumitur non habere.

Rule LXXXIII

The same. Rule LXXXIII.

Good faith does not permit what has once been exacted to be exacted again.

> Idem. Reg. LXXXIII. Bona fides non patitur, ut semel exactum iterum exigatur.

Rule LXXXIV

The same. Rule LXXXIV.

When something is prohibited to someone by one way, he ought not to be admitted to it by another.

> Idem. Reg. LXXXIV. Quum quid una via prohibetur alicui, ad id alia non debet admitti.

Rule LXXXV

The same. Rule LXXXV.

Contracts are known to receive their law from the agreement.

> Idem. Reg. LXXXV. Contractus ex conventione legem accipere dinoscuntur.

Rule LXXXVI

The same. Rule LXXXVI.

The loss that someone experiences through his own fault he ought to impute to himself, not to others.

> Idem. Reg. LXXXVI. Damnum, quod quis sua culpa sentit, sibi debet, non aliis, imputare.

Rule LXXXVII

The same. Rule LXXXVII.

Let the gates of dignities not stand open to infamous persons.

> Idem. Reg. LXXXVII. Infamibus portae non pateant dignitatum.

Rule LXXXVIII

The same. Rule LXXXVIII.

It is certain that one transgresses the law who, embracing the words of the law, strives against the law's intention.

Given at Rome at Saint Peter's, on the fifth day before the Nones of March, in the fourth year of our pontificate.

> Idem. Reg. LXXXVIII. Certum est, quod is committit in legem, qui, legis verba complectens, contra legis nititur voluntatem. Data Romae apud sanctum Petrum, V. Nonas Martii, Pontificatus nostri anno quarto.