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THE LETTERS APOSTOLIC

OF

POPE PIUS IX.

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CONSIDERED,

WITH REFERENCE TO

THE LAW OF ENGLAND

AND

THE LAW OF EUROPE.

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" Quid ad me de Litteris Apostolicis ?" ait Rex: " Jura regni mei nolo amittere."

WILH. DE MALM.

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## P R E F A C E.

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THE title of the present work may have sufficiently prepared the reader for a discussion of a purely legal and political character. But lest the reader's attention should not have been arrested by the title-page, the Author thinks it right to state, that he has endeavoured, as far as the subject would admit, to keep clear of the religious question involved in the principles of the Reformation, as contrasted with those of the Papacy. Conscious that his own convictions on this head are beyond the reach of argument, he has refrained from assailing with argument the convictions of others. Besides, he feels that the subject is out of his province, and should be left to other pens, more competent than his own, to fathom its difficulties. Accordingly the reader must be prepared to find many questions examined exclusively from the point of view which they occupy as historical facts, and not in subordination to any general theory. The Author's object has been rather to supply premises from which others may reason, than to impose his own conclusions upon the judgment of the reader.

It is a singular coincidence, that almost immediately upon the bearer of the Papal Brief landing

on the shores of England, the Bible of Wycliffe should have come forth from the press of the University of Oxford, as it were to confront its ancient adversary. Let the omen be accepted! The Rock of the Scriptures shall still prove the fortress of Protestant England:

“ Signifer, statue signum: hic manebimus optime.”

The object of this treatise is to examine the late proceeding of Pope Pius IX. in its bearings upon the law of England, and the law of Europe. The result of the inquiry seems to show conclusively, that the Brief, in one of its provisions, entails a direct violation of the Statute Law of the land, with reference to the title of the See of St. David's, and that in its general object of erecting Sees for Bishops in Ordinary within the dominions of an independent Sovereign, without the consent of the Crown, it involves a departure from long-established practice, which in such matters constitutes the law. On either ground the Brief is most objectionable.

After discussing the law, the Author has ventured to notice, briefly and very imperfectly, some of the numerous arguments, which have been mooted in various quarters, as to the necessity of assimilating the condition of England in accordance with the provisions of the Papal Brief, to the condition of Ireland, as founded on an immemorial usage, as well as to the propriety of abandoning the outwork thrown up in 1829, as having served its purpose to notify the aggressive advances of the Papal Power.

It is well known that the legislative arrangement of 1829 was a hurried measure, and that the Cabinet



of the Duke of Wellington, almost immediately after the Emancipation Act was passed, retired from office. The ancient frontier was thus somewhat hastily abandoned without any well-defined lines of future defence having been marked out, worthy of the great genius which conceived the defence of the lines of Torres Vedras; a few outworks alone were here and there thrown up, which, as the Duke well observed, could not serve the purposes of real security at all. One of those outworks has now been assailed, and the Papal Power has endeavoured to effect a lodgment in it. The first question is, shall the Papal Power be permitted to retain its position, or shall the gauntlet, which it has thrown down in the face of the law of the land, be taken up?

This question, however, although it involves a principle of great importance, for the law of the land has been violated, may be of comparatively minor consequence in a practical point of view for determining the issue of the contest, upon which the Papacy has avowed itself to be embarked. That contest must be fought, if it is to be fought successfully, in the School-room, not in the House of Commons. The Bible, and not the law of the land, is the weapon with which our forefathers won the victory. The law of the land secured to them, in a manner and for a time, the victory which they had earned, and there may be again danger that, reliance having been placed upon the law of the land under very different circumstances, a false issue should be raised in the House of Commons, and the question be supposed to be set at rest by an Act of the Legislature, adapted to meet the emergency of the moment.

Whatever the wisdom of Parliament may devise, one thing should be kept in mind, that the Emancipation Act has been accidentally left incomplete. There is now a great opportunity for marking out broadly and clearly the boundary, across which the Papal Power shall not be allowed to intrude itself. The true meaning of the movement throughout England is, that there is a general sense of existing insecurity against the inroads of the Papal Power. The instinct of self-defence suggests a cry of alarm. Let it be the future glory of the Statesman, who may have to guide the vessel of the State through the present crisis, to have satisfied that instinct not by a paltry palliative, but by a great and comprehensive measure, which, whilst it confirms the religious liberties of the Roman Catholic subjects of her Majesty, shall place the religious liberties of her Majesty's Protestant subjects in security from alarm, and beyond the reach of future aggression.

A series of documents has been annexed in the Appendix to elucidate the general argument. A copy of the Latin edition of the Brief of Pope Pius IX., from the press of the Propaganda at Rome, will be found amongst them, which edition may be presumed to contain the substance of the Brief, although not authenticated, as an authorised copy is required to be, by the seal of an Ecclesiastical dignitary. The earlier Briefs are extracted either from the Roman edition of the Bullarium, or from the best historial sources. It will be seen that these earlier Briefs were addressed "with personal limitations," and, in that respect, differ altogether from the Brief of Pope Pius IX.

Selections from Reports laid before the House of Commons on the subject of Bishops in the British Colonies have been subjoined, with some legal and historical extracts in illustration of the Royal Placet and the Exequatur of the Crown. A few diplomatic papers, illustrating the relations between the Great European Powers and the Holy See, complete the list.

Doctors' Commons,  
Jan. 16. 1851.



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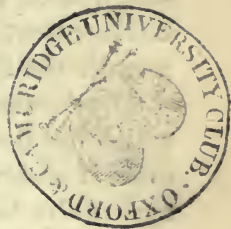
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THE  
LETTERS APOSTOLIC  
OF  
POPE PIUS IX.

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INTRODUCTORY CHAPTER.

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“Hoc solet habere præcipuum Apostolica sedes, ut non erubescat revocare quod a se forteprehenderit fraude elicitum, non veritate promeritum.”  
*Epistola 180ma Sti. Bernardi.*

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THE Letters Apostolic of Pope Pius IX., which purport to restore the Episcopal Hierarchy in England, have excited so much astonishment, and awakened so much indignation among all classes of her Majesty's subjects, that, it may be presumed, no apology will be needed for inviting the attention of the English reader to the argument contained in the following pages; more especially as “an appeal to the reason and good feeling of the English people” has been put forth by Cardinal Wiseman, as if there were not just grounds for the national dissatisfaction. On the contrary, an examination of the document itself, and the publications issued from authorised sources in explanation and defence of it, must lead to the conclusion, that the See of Rome has on this occasion illadvisedly embarked upon a measure, which in its details imports a violation of the law of England, and

in its principle is a departure from the law of Europe, or, in other words, from the established rules which have hitherto regulated the action of the Holy See in relation to the sovereign powers of Europe. It thus places the Roman Catholic subjects of her Majesty in a false position with reference to the Constitution of the Realm, whilst it involves a glaring infringement of a branch of the law of Nations as regards the Sovereignty of the Crown of England.

The document of the date of 29th September, 1850, which has been circulated with the signature of Cardinal Lambruschini attached to it, is not what is technically termed a Papal Bull, i. e. Letters Patent issued from the Roman Chancery with a leaden seal (*bullæ*) attached to them (*sub plumbo*), but Letters Apostolic in the form of a Brief, given under the Fisherman's Ring (a seal on which an image of St. Peter is engraved), and subscribed by the Secretary of Briefs. It corresponds in some respect to what is termed a Writ of Privy Seal in England, as distinguished from Letters Patent of the Crown.

A Brief, as its name imports, may be and generally is a shorter and less formal document than a Bull, but it has equal force with any other apostolic writing, when issued in the complete form which the Letters in question exhibit; as may be inferred from the provisions of the present Brief, which purports to abrogate all the constitutions of the ancient English Church and the subsequent missions, as well as all the rights and privileges of the ancient English sees. There is, therefore, no doubt that it is a document of the highest authority. A Brief, however, seems to differ from a Bull in several respects, which are not unimportant. In the first place it may be suppressed, as it is not issued in the same open form as a Bull;

and there are instances of Briefs being suppressed altogether. In the second place, it may be cancelled or superseded by a second Brief issued in a similar manner; whereas a Bull can only be cancelled by a Bull; so that there is less difficulty and expense in the way of cancelling or superseding a Brief than a Bull, the latter having to pass through the Roman Chancery. A Brief is also, for the most part, of less extensive application than a Bull, the latter being sometimes binding on the entire Christian world in communion with the See of Rome.

The purport of the Brief\* may be stated in a few words. It professes on the part of the Roman Pontiff, in the plenitude of his apostolic power, to restore the ordinary hierarchy of bishops in the kingdom of England; and accordingly to erect one archiepiscopal see, and to re-establish or create twelve episcopal sees, and to parcel out the entire realm of England and Wales into thirteen dioceses, respectively assigned to the archbishop and his twelve suffragans. The Brief then proceeds to declare that the aforesaid archbishop and his twelve suffragans shall enjoy, as the *archbishop and bishops of England*, all the rights and functions which other Catholic archbishops and bishops of other nations enjoy, according to the sacred canons and the apostolic constitutions. It then abrogates all the constitutions, privileges, and customs of the ancient English Church and the subsequent missions, and re-establishes in England the Common Law of the Church, in other words, the whole body of Canon Law sanctioned by the Popes. It concludes with decreeing that the Brief itself shall be valid and hold good to all intents and purposes, notwith-

\* Cf. Appendix.

standing all general or special enactments, whether apostolic or published in synodal, provincial, or universal councils, the special sanctions as well as the rights and privileges of the ancient sees of England and of the missions and apostolic vicariates therein afterwards established; and of certain churches and pious places, even though sustained by oath, apostolic confirmation, or any other security; in a word, notwithstanding all things else to the contrary.

The wide scope of this document could not but arrest attention, purporting, as it does, to deal *ecclesiastically* with the realm of England in the most free and open manner, and not to confine itself to Roman Catholic congregations, whether subjects of the Sovereign of the Roman States and other foreign Princes, or subjects of her Majesty the Queen of England. If any doubts could have arisen upon this head, they were destined to be speedily dispelled by a Pastoral Letter given out of the Flaminian Gate of Rome on 7th October, 1850, and subscribed Nicholas, Archbishop of Westminster, who is further entitled in the preamble as Cardinal Priest of the church of St. Pudenziana in Rome, and Administrator Apostolic of the diocese of Southwark in England. In this letter the Cardinal announces, that by virtue of his appointment to the archiepiscopal see of Westminster and to the administration of the episcopal see of Southwark, he *governs* at present, and until such time as the Holy See shall think fit otherwise to provide, *shall continue to govern*, the counties of Middlesex, Hertford, and Essex, as *ordinary* thereof; and those of Surrey, Sussex, Kent, Berks, and Hants, with the *islands annexed*, as administrator with *ordinary jurisdiction*. The Cardinal then goes on, in somewhat highflown language, to announce to the faithful of his



said archdiocese and diocese, that "*their beloved country* has received a place among the fair churches, which, normally constituted, form the splendid aggregate of Catholic Communion; and that *Catholic England* has been restored to its orbit in the ecclesiastical firmament, from which its light had long vanished, and begins now anew its course of regularly adjusted action round the centre of unity," &c. &c. He concludes with enjoining, that his pastoral letter shall be publicly read in all the churches and chapels of the archdiocese of Westminster and the diocese of Southwark, on the Sunday after its being received.

The language of this remarkable pastoral was not calculated to soothe any alarm which might have been already caused by the contents of the brief; and it is not unreasonable that the subjects of her Majesty should have taken the Cardinal at his word, and believed him to be in earnest, when he announced that, by virtue of the Letters Apostolic of his Holiness Pope Pius IX., he claimed and intended to exercise, *as Ordinary*, over eight English counties and the adjacent islands, magisterial functions well known to the law of England.

It is needless to refer to the excitement which the circulation of the Papal brief and of the various pastoral letters of the newly created bishops has produced. We may proceed to consider the argument which has been put forth *by authority* in behalf of the new hierarchy by Mr. Bowyer. The position which Mr. Bowyer lately held of Reader of Law at one of the Inns of Court, would entitle a treatise which proceeds from his pen on the legal character of the late act of the Pope to respectful consideration; but his argument of itself merits attention from its temperate tone, at the same time that the mys-

terious words "by authority" on the title-page, announce the writer to speak as the legal organ of the new hierarchy.

Mr. Bowyer's argument divides itself into two heads, the first having relation to the *supremacy* of the Crown of England, the second to its *sovereignty*; the one bearing upon the duty of her Majesty's Roman Catholic subjects in England and Wales, the other upon the relations of the Pope himself to the imperial Crown of England.

Mr. Bowyer's legal acumen could not fail to recognise the distinction involved in the two questions, which Dr. Wiseman has strangely confused in his Appeal, where the latter infers, that "if the act of *a subject* of her most gracious Majesty, which by law he is perfectly competent to do, be not an infringement of her royal prerogative, then that prerogative has not been violated by this new creation of Catholic bishops." There is in reality no parallelism between the acts of a subject of her Majesty and the acts of the Pope, who is not her subject. For instance, it might be perfectly true that the *municipal law of England* does not expressly forbid her Majesty's Roman Catholic subjects to take the style and title of bishops of English sees erected by the Pope without the consent of the Crown of England, yet it may be against the *public law of Europe* for the Pope to erect a bishop's see within the realm of a Sovereign Prince, without having previously obtained the consent of the Prince. If this latter fact should be established as against the recent proceedings of Pope Pius IX., then we shall have to consider a very different question from that which has been so much discussed, namely, whether the act of the Pope, although it may not touch the *supremacy* of the British

crown in *spiritual matters*, does not constitute an invasion of its *temporal superiority* within the realm of England.

Mr. Bowyer's pamphlet has been followed by "An Appeal to the English People," on the part of Cardinal Wiseman. This is a production of a very different character from Mr. Bowyer's, both in its mode of treating the subject, which is more rhetorical, and its tone, which is replete with irony and sarcasm; but some allowance must in fairness be made for the writer, smarting for the moment under the revival of mediæval indignities directed against the memory of the system, which he seeks to revive.

Dr. Wiseman's position naturally constitutes him the legitimate exponent of the proceedings of the Holy See; and it may reasonably be presumed that we have now before us, in his Appeal, and in Mr. Bowyer's pamphlet, all that is thought advisable to put forth in the way of statement, in explanation of the brief. And here it may be necessary to say a word upon the use of certain expressions by both the above writers. They persist in distinguishing the spiritual and temporal power of the Pope, and also of the Queen of England. And they say that they admit the spiritual power of the Pope, and the temporal power of the Queen, but reject the temporal power of the Pope and the spiritual power of the Queen. Now, there is a real distinction between spiritual or moral influence and obligation on the one hand, and temporal power, civil or ecclesiastical, on the other. But there is a distinction of *degree*, not of *kind*, between the powers by which *outward regulations* are enforced. The Apostles, for instance, had a great moral and spiritual influence *in foro conscientia*, but no ecclesiastical power

in *foro externo* confirmed by any laws civil or otherwise. The Pope, on the other hand, does not exert a mere moral influence, but exercises an ecclesiastical power, regulated by the Roman Catholic law, which is a *foreign law*, but not recognised by the laws of the realm. Mr. Bowyer is, therefore, not quite accurate, when he speaks of the erection of episcopal sees in England as an exercise of the *spiritual power* of the see of Rome: it is an exercise of its *ecclesiastical jurisdiction*, and although it may not touch the spiritual supremacy of the Crown of England, it by no means follows that it does not affect its temporal superiority.

To return to Mr. Bowyer's argument. It appears from the contents of the brief itself, that ever since the settlement of the Reformation of the English Church, in the reign of Queen Elizabeth, England has been considered by the Holy See as a country *in partibus infidelium*, and the Roman Catholic subjects of the Crown of England have been regarded as under the immediate spiritual authority of the Pope, as Bishop of Rome. In the year 1623, memorable for the arrival in England of Henrietta Maria of France, the Roman Catholic bride of Prince Charles, the Pope, for the first time, delegated his episcopal authority over the Roman Catholics in England to the Bishop of Chalcedon, as his vicar apostolic resident in England.

The Puritan outburst in the following reign, — a fact never to be lost sight of in studying the religious features of the English character, — swept away the successor of the first vicar apostolic; nor was it until the accession of the last of the Stuarts, in 1685, that Innocent III. ventured to revive the office in the person of the Bishop of Adrumetum. Three years afterwards, in an evil day for King James II., the apostolic Nuncio landed in England; and in the

most memorable, perhaps, of all years in English history (A.D. 1688), three additional vicars apostolic were associated with the Bishop of Adrumetum in administering the spiritual affairs of the Roman Catholics in England. The period which followed the accession of William and Mary is one of comparative obscurity as to the organisation of the Roman Catholic clergy. Thus much, however, is certain, that no step in advance of 1688 has been made by the Holy See until very recent times, when the number of vicars apostolic was further increased from four to eight (A.D. 1840).

It would thus appear, from the practice, that the system of administering the spiritual affairs of the Roman Catholic body in England by vicars apostolic had been sanctioned by an usage of more than two centuries, and as it seems to have been capable of expanding itself so as to meet any increase in the *spiritual wants* of that body, there could be no *religious necessity* for its abandonment. It might doubtless have certain inconveniences, which however may be inseparable from the position of the Roman Catholic clergy in a country where their church is only tolerated; and they do not appear to have been considered by Mr. Bowyer or Dr. Wiseman as worthy of notice, or as furnishing a sufficient explanation of the change. On the contrary, when it is considered that the vicars apostolic in England possessed the powers of *ordinary bishops*, and other powers delegated to them by the Pope *beyond those of an ordinary bishop*, it may well be doubted whether the system of an hierarchy will be in this respect so convenient to the Roman Catholic body at large as the system of vicars apostolic, even if the Cardinal-archbishop should be furnished with *general* legantine authority, as legate à *Latere* of the Holy See.

It is said that during the last ten years the number of the Roman Catholic laity and clergy, as well as of their churches and chapels, has considerably increased, chiefly, indeed, from the immigration of Irish settlers, but in some respects, as Mr. Bowyer has justly observed, in consequence of the liberty of religious discussion which the Roman Catholics have of late years enjoyed. It was reasonably to be expected, amongst the immediate consequences of the removal of the political disabilities, to which the profession of the Roman Catholic faith had heretofore exposed her Majesty's subjects in England, that some stragglers from the Church of England would seek a refuge in the ranks of the Roman Catholic body. The existing result, however, whatever it may be, has been for the most part brought about not so much by the operation of elements within the Roman Catholic Church, as by causes external and foreign to it, to which it is only necessary to allude on the present occasion, in order that their *accidental and abnormal* character may not be overlooked.

Mr. Bowyer states that the system of government by vicars apostolic was "avowedly of a mere missionary character, being such as the Church uses in heathen countries, e. g. China, or in countries where she is barely tolerated, and that such a missionary state seemed unworthy of the liberality of this country. It seemed to imply a distrust of the justice and toleration of public opinion."

This is the language of compliment; and if the Pope himself really intended to pay a compliment to the liberality of England, he has been most unfortunate in his choice of measures. But a truce to such trifling! It could never be supposed by any

reasonable person, that this country could wish to see two Churches established in England, because she had come to tolerate, by the side of her national Church, a Roman Catholic community, with a numerous clergy exercising over it episcopal and other functions, such as were really necessary for the religious wants of that community. The voice of the State has never spoken in language which permits such an inference. On the contrary, the practice of England herself should have taught Rome a very different lesson. Highly valued as her own Episcopal Church is by England, she has not sought to set it up on the northern bank of the Tweed by the side of the Established Presbyterian Church of Scotland, but she has been content, as her own legislative act shows (32 Geo. III. cap. 63.), to secure to the Episcopal Communion in Scotland a similar measure of religious toleration to that which she has granted to the Roman Catholic Communion in England. The Protestant Episcopalian Church in Scotland is maintained by the law of the land under the spiritual authority of bishops exercising episcopal functions within given districts, but without any fixed sees or titles recognised by law.

“But a change was required *by the constitutional principles* of the Church, and for the *spiritual* interests of the people!” It is not very intelligible what is meant by the *constitutional principles* of the Church. The constitution of the Roman Catholic body in England before September, 1850, was founded on the regulations of a Brief\*, issued by Pope Benedict XIV. in 1753, and known as the “Apostolicum Ministerium,” being the words with which it commences.

\* Cf. Appendix.

As that constitution was expressly adapted to the system of Vicars Apostolic, there could not be anything in it which required the erection of Episcopal Sees in England. Mr. Bowyer must, therefore, allude to the constitution of the Roman Catholic Church itself, as it exists in other States than England.

There is no doubt, however, that a very considerable change would be required, in order to admit the full system of the Roman Catholic Church into England, and such is Cardinal Wiseman's explanation. According to the statement of his Eminence, a change would seem to have been required *in* rather than *by* the constitutional principles of the Roman Catholic Church in England. The choice lay between "another and full constitution which should supply all wants," and "the real and complete code of the Church," in other words, "the entire body of the Canon Law." "It was agreed," he says, "that the old constitution had become a clog and embarrassment rather than a guide." This may have been the case, but if so, it is one of the many signs that the Roman Catholic clergy seek to take up a new position in England, and, with that object, are striving to obtain a more efficient organisation. The Roman Catholics must not be surprised that Protestant England should feel alarm at such signs.

But it is said "that a change was required for the spiritual interests of the people!" It is not very obvious how the spiritual interests of the Roman Catholic body can be affected by a change, which transfers them from the immediate superintendence of the vicars apostolic of the Pope, to the immediate superintendence of a local metropolitan and his suffragans, more especially, if the ancient vicars are to be themselves the new bishops. For as it has been



already observed, the vicars in the first place possessed all the powers of ordinary bishops, and in the second place had other delegated powers beyond those of ordinary bishops, and, in their special character of delegates of the Holy See, could grant dispensations in certain matters, many of which were of a spiritual nature, which the new bishops will not be able to grant by virtue of their own ordinary authority. Again, the coadjutors of the vicars apostolic, for there were other bishops by the side of the eight vicars, enjoyed a participation in all the faculties and powers of the vicars apostolic, their participation in them being sanctioned by the Holy See itself\*, so that the spiritual wants of the Roman Catholic body lacked nothing essential for their legitimate satisfaction.

But it may be said, there are well known differences between a temporary mission and an established church. No doubt, in an *ecclesiastical* point of view this may not be gainsayed, but there is no *spiritual element* wanting in a Mission, and it is for the *spiritual* interests of the people that the change is said to have been required. As far as the decision of the vicars apostolic might need revision, an appeal from them lay in all matters to the tribunal or Congregation of Propaganda Fide at Rome, whose decrees were not received except with the confirmation of the Pope himself. In future, indeed, it may happen, if the decrees of the Council of Trent are to be imported into England under the new arrangement, that the appeal may lie to another tribunal, to wit, the Congregation of the Council of Trent, in-

\* See Evidence of the Right Reverend N. Wiseman, D.D., Coadjutor to the Vicar Apostolic of the Central District of England, before the House of Lords in the Sussex Peerage, June 25. 1844.

stead of the Propaganda Fide. But this cannot affect the *spiritual interests* of the Roman Catholics in England, nor can the decrees of Trent well do so, except so far as the introduction of the decrees of that Council would imply that the Roman Catholic Church had developed not merely *its episcopal* but *its parochial system* throughout England, as a necessary condition for those decrees to be executed. For instance, in the matter of marriage, the old Canon Law, which merely required *a priest* to be present to give the benediction of the Church, has hitherto prevailed amongst Roman Catholics in England and even in Ireland till a very recent period. The Decree of Trent, on the other hand, annuls and declares void all marriages which are not celebrated in the presence of the *parish priest* (*coram parochio*) and two witnesses. The *parish* is thus a necessary element in the Tridentine system, and as the decrees of Trent have of late been introduced into Ireland, it may be reasonably presumed, that what has been thought requisite for the spiritual interests of the Irish will not be kept back from the English Roman Catholics. But it is worthy of remark, that much temporal inconvenience in matters of marriage has already resulted to the Roman Catholic laity in Ireland, from the introduction of the decrees of Trent into that kingdom.

On the other hand, as the Brief is silent as to the decrees of Trent, and enjoins, "the aforesaid archbishop and bishops to furnish, at due seasons, reports of the state of their churches to our Congregation of the Propaganda," England seems still to be allowed by the Holy See to remain in the catalogue "of other States than Catholic States." It thus becomes more difficult to understand in what respect her Majesty's

Roman Catholic subjects in England are benefited spiritually by the abandonment of the ancient system : and be it remarked, that the system of vicars apostolic is not a system confined to heathen countries, but is the recognised mode of administering the spiritual affairs of the Roman Catholic body in such European States as are not in ecclesiastical communion, or at least, under treaty-engagements with the Holy See ; but this subject will be considered more fully in a subsequent place.

As far as the Roman Catholic laity is concerned, the change is likely to prove in a temporal point of view most inconvenient to them. Hitherto the Roman Catholic body in England has, under its peculiar constitution, been favoured with an exemption from many of the provisions of the Canon Law which were at variance with the institutions of the country. They now become subject to it in its totality ; and a legal writer, a Roman Catholic member of the House of Commons, has already called attention to the fact, that it would appear, in the present state of the law, to be almost impossible for the delegated power of the new cardinal and his suffragans " to be so exercised as not to affect the temporalities of the Roman Catholic Church, and consequently the legal rights of persons whether spiritual or lay."

The greatest caution, according to Mr. Anstey, will be necessary in this instance ; " since the legislative authority " (conveyed by the Pope in his brief to the archbishop and his suffragans) " being conferred directly by Rome, any excess, such as the Court of Chancery may be called upon to set aside, is not only an offence against the temporal supremacy of the Queen, but is within the express letter of the Præmunire Act."

Thus much for the internal change effected in the condition of the Roman Catholic body in England by the brief. In a *spiritual point of view*, the brief is quite inoperative for the advantage of the laity \*; and in a *temporal point of view*, it is positively prejudicial to their best interests. It remains that we should consider whether the change contemplated by the brief is or is not fraught with political inconvenience and even danger to the State.

Dr. Wiseman in his "Appeal" states, that it was a point of no light weight and of no indifferent interest to Catholics, to have the sarcasm of Anglican writers silenced, "that the Pope durst not name ordinary bishops in England, because conscious of not having authority to do so." Now the sarcasm would have been more safely and more effectively silenced by Dr. Wiseman, had he established by argument that the Pope had authority to name *ordinary bishops*, because, as far as Dr. Wiseman's position in the controversy with Anglican writers is concerned, he has only cut away an unsound portion of ground from their feet, in order to compel them to find a firmer footing. It would not have been very difficult for Dr. Wiseman to have shown that the argument of his controversial opponents, although rhetorically effective, was logically unsound. They, that is, the Roman Catholics, were told, it is said, "that the very

\* Dr. Wiseman very justly observes in his first lecture, "The change does not consist in this, that up till lately (Roman) Catholics had *no bishops*, and now have them; for their Vicars Apostolic were *bishops with foreign titles*," — and again, "It has been merely a change of *title*. Bishops who before bore foreign titles, under which *spiritually to govern* British Catholics (that is, Roman Catholics in England and Wales), have now received domestic titles."

outlandish names of their Sees proved them to be foreigners, and that they were not even real Bishops." Surely Dr. Wiseman himself entertained no doubt of the *reality* of his episcopal office, and if his title of Bishop of Melipotamus sounded outlandish to English ears, that of Cardinal Priest of the Church of St. Pudenziana in Rome grates even more harshly upon them ; and, if names can have any weight, must prove him still to be a foreigner. Measures of so sweeping a kind have assuredly not been adopted by the Pope on the suggestion of the Vicars Apostolic, in order to enable Dr. Wiseman to contend with more effect in argument against the sarcasm of his opponents. "The Catholics must have a Hierarchy," is the language of the Appeal ; "the Canon Law is inapplicable under Vicars Apostolic, and besides *many points* would have to be *synodically* adjusted, and without a metropolitan and suffragans, a *Provincial Synod* was out of the question."

Dr. Wiseman has here furnished us with the true key, which will explain the otherwise unaccountable proceeding of the Holy See. It is clear that all the *spiritual* wants of the members of the Roman Catholic communion in England were satisfied under the existing organisation of the Mission. The Roman Catholic laity in England had complete religious liberty, but the Roman Catholic clergy, it must be admitted, had not complete ecclesiastical power. They wanted the means of organising themselves for united action ; they had no power, under the system of Vicars Apostolic, to meet in a Provincial Council. Nothing, however, is suggested by Dr. Wiseman as to the nature of the points, which, as he states, required to be *synodically* adjusted. If it could be made out that there were spiritual anomalies under the existing system.

of Vicars Apostolic, which the Pope was unable, though desirous, to remove, and which pressed upon the consciences of the Roman Catholic subjects of her Majesty, it is reasonable for the English people to ask that these anomalies should be set forth, and that a Provincial Synod should be shown to be necessary, and alone adequate, for their removal. Unity of practice as well as of belief could surely, if they were wanting, have been enforced by the power which radiated from a common centre through the Vicars Apostolic to every part of the Mission. Dr. Wiseman has, indeed, in the second of his Lectures on the new Hierarchy explained most clearly the distinction between the old and new systems. "For in a country divided into Vicariates, however numerous, each has a perfectly free and independent action, as much as if each were situated in a different country; there is no organic bond of union between them, no one who can convoke them into a Synod, no power to give their joint acts a general authority. Hence great diversity in matters of practice might prevail among them without any regulating or adjusting power. But in a Hierarchy this is at once corrected: the Bishops of the Sees are connected together through a metropolitan, or primate, if there be more than one Archbishop; he can unite them, and from their combined decisions, canonically approved and sanctioned, emanate rules and principles of conduct, which bind all and secure uniformity."

Now it is precisely in respect of its *organic bond of union* that the new system, as compared with the old, is fraught with political danger; and it is precisely in regard to its power of combined decision and uniform action, that the new Hierarchy is an institution opposed to the genius of the constitution of the realm,

which allows of no rival legislative body within the realm, whose decrees shall conflict with and prevail against those of the Queen and her Parliament. For it must be remembered, that the sphere of what is held to be *ecclesiastical action* by the Roman Catholic Church embraces much which, by the law of the land, is considered to be within the precincts of the supreme legislature. Of this fact the late edict of the Synod of Thurles in Ireland is evidence. There, indeed, at a council of Roman Catholic prelates, convened by the nominee of the Pope, in whose appointment as the Roman Catholic Archbishop in Armagh, the Irish Roman Catholic subjects of her Majesty had, for the first time, no voice, it was carried by a majority of one that a statute of the land which had been voted for by the leading Roman Catholic members of the legislature, should, as far as possible, be frustrated in its execution and rendered inoperative; yet it is evident from the fact that thirteen episcopal members of the council are reported to have entered a protest, that no *spiritual* question could have been involved in the resolution. Yet under the system of Provincial Synods this decision of the majority becomes binding on the minority, and thirteen Roman Catholic Bishops in Ireland are constrained, *against their conscience*, to oppose and thwart the execution of the law. If the desire to possess this power — to have a Hierarchy — through which alone it can be given, “is,” as Dr. Wiseman states, “essentially a Catholic purpose and a Catholic object,” then Catholic objects and Catholic purposes are not those which the law of the land can be expected to further; and Catholic organisation, in the manner in which it is provided for by the Letters Apostolic, and in the sense in which it is intended, according to Dr. Wise-

man's own avowal, to be carried into execution in England, becomes inconsistent with the safety of the State, for it saps the foundation of the pillars of obedience to the law of the land, upon which the safety of the State rests.

Let us for a moment turn our eyes from England to a neighbouring country, where the Roman Catholic Church is *protected* alike with all other religious communions, and is not merely *tolerated*, as in England. "How little fear," says Dr. Wiseman, in his first Lecture, "is entertained in that country (Belgium) of dangers to the State from the action of the Papal power, in parcelling out the land into *spiritual territories*, — how simple the definition of the reciprocal rights of a Church not established in monopoly, and of the civil government." Be it so admitted for the purpose of the argument, yet very considerable fear has been entertained in that country of danger to the State from the *ecclesiastical encroachments* of the Roman Catholic Bishops upon the law of the land, and from a one-sided reciprocity on their part. For instance, by the 84th Article of the Loi Commune of March 30. 1836, the Council of the Commune was to nominate the professors and teachers attached to the communal establishments for public instruction. By the 6th Article of the Loi Organique de l'Instruction Primaire, "religious and moral instruction was to be given at the communal colleges, under the direction of the ministers of the worship professed by the majority of the pupils of the school," — the minority being dispensed with from attendance on such occasions. It was also provided by the 7th Article, that "the religious and moral instruction should be carried on under the superintendance of the delegates of the heads of each



denomination of worship (*chefs des cultes*),” who, as well as the ministers of religion, should further have the right of inspecting the schools at all times. Not content with so liberal a provision on the part of the State, and with so exclusive a dominion in religious matters, the Bishops made *secret conventions* with the communal authorities, the purport of which was to concede to the Bishops a *veto* on all the professors and teachers, as a condition of allowing their clergy to give any religious instruction in the communal schools. The existence of these secret conventions became disclosed first of all in the diocese of Tournai, when it was found, on inquiry, that not fewer than seventeen conventions had been secretly enforced by the Bishops on the communal authorities. The State was accordingly called upon, in 1845, to put down this attempt to fetter the freedom of the communal authorities in the discharge of the duties imposed upon them by the civil power; and it accordingly took the necessary measures to prevent the communal colleges maintained by the State from becoming, as in fact they were on the point of becoming, colleges of the Roman Catholic Church. Since that time the Roman Catholic Bishops have refused to allow their clergy to give any religious instruction in the communal colleges; and in that respect, the new law of last year on Secondary Instruction is not yet carried into execution by the Bishops. Surely Belgium, to which a further reference will be made in the next chapter, cannot be safely quoted in illustration of the political harmlessness of Papal Aggression.

A further observation may be added upon the attitude of the Roman Catholic Church in Belgium. It is well known that the Belgian clergy gave in their adherence *en masse*, with a very few exceptions, to the

famous Encyclical Letter of Gregory XVI. (18 Sept. 1832). That Encyclical Letter condemned, in the most absolute manner, "that absurd and erroneous maxim, or rather wild notion, that *liberty of conscience* ought to be assured and guaranteed to every person."\* Whether the Pope on this occasion adopted a sound view, it boots not to inquire; but this at least may be said, that it would ill become those who deny liberty of conscience to others, to demand, under the plea of liberty of conscience, an impunity in infringing the solemn sanctions of the Law of the Land.

\* "Atque ex hoc putidissimo *indifferentismi* fonte absurda illa fluit ac erronea sententia, seu potius deliramentum, asserendam esse ac vindicandam cuilibet *libertatem conscientia*." — *Epistola Encyclica Gregorü Divina Providentia Papæ XVI.*"

## CHAP. II.

It is said by Dr. Wiseman that the Emancipation Act (10 Geo. 4. c. 7.), preceded and followed by others of less magnitude, has admitted the (Roman) Catholics of the British Empire to complete religious toleration. In its strict sense this statement is correct. But in granting them complete *religious* toleration, the law has not conceded to them the full power of *ecclesiastical* action, such as they possess in countries foreign to the dominion of her Majesty, *e.g.*, within the territory of the Holy See itself, for they are restrained from many ecclesiastical observances and practices, in which they may elsewhere indulge, by the charter itself of their political rights. Besides, it may be observed, that the 10 Geo. 4. c. 7. is not so much entitled to be regarded as the Toleration Act of her Majesty's Roman Catholic subjects as 31 Geo. 3. c. 32. (A. D. 1791), which removed the pains and penalties attaching by the Statute Law to the exercise of the Roman Catholic religion. The Relief Act (A. D. 1829), on the other hand, or, as it is commonly called, the Emancipation Act, bestowed upon them a *political status*, many years after they had been allowed freely to exercise *their religion*. It was further an Act of the *Imperial* Parliament, and at once extended to Ireland, but it made no change in the *religious status* of the Roman Catholics. Dr. Wiseman, however, contends "that when Emancipation was granted to

(Roman) Catholics, full power was given to them to have an *Episcopate*." Now the Toleration Act (s. 5.) had permitted them to have *Bishops*, when it allowed their "ministers of any higher rank or order than priests," to perform ecclesiastical functions in their assemblies for religious worship, whereas the Emancipation Act introduced no change in the law with regard to their Bishops, nor did it by any of its provisions give to the Roman Catholics full power to have an *Episcopate*, if by that term is meant a Hierarchy, or body of episcopal rulers. There is a double fallacy in Dr. Wiseman's argument; the first is in the matter of fact, and the second in the mode of statement. The first has been disposed of already, and as to the second the fallacy consists in not distinguishing a *collective body* of Bishops, from an *aggregate number* of Bishops. Where the Bishops of a country can act collectively as a *body*, as well as separately as *individuals*, there is said to be in that country an *Episcopate*\*, but when they can only act as individuals, whether singly or aggregated together in numbers, there is no Episcopate, although there are Bishops. Now that this is not an ideal distinction may be gathered from the course of events in a neighbouring country. In Belgium, for instance, where the Roman Catholic Church is protected, and has been guaranteed by the 14th Article of the Constitution of the land, alike with every other religious community, the *public exercise of its religious worship*, there are of course Roman Catholic Bishops, but there is no Roman Catholic *Episcopate*. The Bishops have indeed sought to obtain a recognition of themselves in a corporate capacity from the State, but the State has distinctly refused to re-

\* "Episcopat — dignité d'Evêque; il se dit aussi *d'un corps d'Evêques*." — *Dict. de l'Académie Française*.

cognise them as an Episcopate, although it acknowledges them as Bishops.\* In fact it is in this point, amongst others, that *establishment* differs from *protection*, and, *à fortiori*, from *toleration*. Consequently, when Dr. Wiseman says, that when Emancipation was granted to (Roman) Catholics, full power was given them to have an *Episcopate*, he overstates the legal consequences of toleration; and it is on this fundamental error that the whole of his argument is built up. He would fain represent that there is a mere difference of *degree*, as it would seem from his reasoning, between an Episcopacy in its *ordinary form*, and Bishops exercising authority as Vicars Apostolic *in partibus infidelium*. "Not to allow Bishops," he says, "would have amounted to a total denial of religious toleration." Be it so admitted. Bishops were allowed by the Toleration Act of Geo. 3., but it does not follow, because a denial of *Bishops* would have been a denial of religious toleration, that the concession of an *Episcopate* is the necessary result of political emancipation. There is not merely a difference of kind, between *titular* Bishops acting as Vicars Apostolic of the Pope, and *local* Bishops acting by their own authority, but there is a further difference of degree, if not even of kind, between the action of local Bishops accidentally aggregated together, and the action of local Bishops in the collective capacity of an Episcopate.

M. Portalis, in his *Rapports sur le Concordat de Juillet 15. 1801*, makes some pertinent remarks on the distinction between *establishment* and *protection*.

\* On the occasion of this refusal, which occurred in 1845, the Prime Minister of Belgium, in reply to the Archbishop of Malines, produced from the archives a rescript of the Empress Maria Theresa, expressly forbidding the Belgian Bishops to address the Imperial Crown as *l'Episcopat Belge* under heavy penalties.

An Established Church admits of degree; it may be either *exclusive*, like the Roman Church within the States of the Holy See and in Spain, or *dominant*, like the Greek Church in Russia and the National Church in England. Protection, on the other hand, may be accorded to *several*, as in France, or to *all* religions, as in Belgium. Protection also admits of degree. It may be full ecclesiastical protection, which, however, stops short of establishment, inasmuch as if the State protects all religions equally, they must be restricted from entering into conflict and collision with one another, otherwise one will become dominant over the others; or it may be so slight a protection as to become mere toleration, and that too rather of a religious than an ecclesiastical kind. The system of protection, however, differs essentially from that system of indifference, which is termed toleration, under which the law is said to *ignore* the existence of the tolerated religion, or rather to close its eyes against its existence. *Toleration* is thus a sort of halting-place between *exclusion* and *protection*, and may not always prove to be a position permanently tenable.

But it may be argued, that the religious toleration of her Majesty's Roman Catholic subjects has been rendered more complete by the statutes subsequent to 10 Geo. 4. c. 7. Be it so admitted: but no degree of toleration is equivalent to establishment, as is evident from the state of affairs in Belgium, in which the Roman Catholics have *ecclesiastical protection*, which they do not, as already shown, possess in England, having here only *religious toleration*. For the later statutes have not made *lawful* anything in respect of the supremacy of the Pope, as claimed, used, or usurped within this realm before the reign of Queen Elizabeth. For example, 7 & 8 Vict. c. 102.,

entitled "An Act to repeal certain Penal Enactments made against her Majesty's Roman Catholic Subjects," repeals the enactments of 1 Eliz. c. 1. ss. 29, 30, in respect of the penalties of Præmunire attached to the *second* offence, and of High Treason attached to the *third* offence of any person, "who shall maintain or defend the authority, pre-eminence, power, or jurisdiction, spiritual or ecclesiastical, of any foreign prince, prelate, person, state, or potentate, whatsoever, heretofore claimed, used, or usurped within this realm, or any dominion, or country being within or under the power, dominion, or obeisance of your Highness; or shall advisedly, maliciously, or directly put in ure (use) or execute any thing for the extolling, advancement, setting forth, maintenance, or defence of any such pretended or usurped jurisdiction, power, pre-eminence, and authority, or any part thereof;" but it left unrepealed those enactments of 1 Eliz. c. 1. ss. 27, 28., "that then every such person and persons so doing and offending, their abettors, aiders, procurers, and counsellors, being thereof lawfully convicted and attainted according to the due order and course of the common law of this realm, for his or their *first offence* shall forfeit and lose unto your Highness, your heirs and successors, all his and their goods and chattels as well real as personal."

"And if any such person so convicted or attainted shall not have or be worth of his proper goods and chattels, to the value of twenty pounds, at the time of his conviction or attainder, that then every such person so convicted or attainted, over and besides the forfeiture of all his said goods and chattels, shall have and suffer imprisonment by the space of one whole year, without bail or mainprise."

The subsequent statute, 9 & 10 Vict. c. 59., enti-

tled "An Act to relieve her Majesty's Subjects from certain Penalties and Disabilities in regard to Religious Opinions," further repealed so much of 1 Eliz. c. 1. and 2 Eliz. c. 1. (Irish) as *makes it punishable* "to affirm, hold, stand with, set forth, maintain, or defend as therein is mentioned, the authority, pre-eminence, power, or jurisdiction, spiritual or ecclesiastical, of any foreign prince, prelate, person, state, or potentate, theretofore claimed, used or usurped within this realm, or any dominion or country, being within or under the power, dominion, or obeisance of her Highness, or to put in ure (use) or execute any thing for the extolling, advancement, setting forth, maintenance, or defence of any such pretended or usurped jurisdiction, power, pre-eminence, and authority, or any part thereof, or to abet, aid, procure, or counsel any person so offending."

But having removed the *statutory punishment*, the Legislature stayed its hand, and left the *offence* precisely as it was by 1 Eliz. c. 1., or any earlier statute, or by the Common Law, as will be seen from the tenor of the following provision: "*Provided always and be it declared, that nothing in this enactment contained shall authorize or render it lawful for any person or persons to affirm, hold, stand with, set forth, maintain, or defend any such foreign power, pre-eminence, jurisdiction, or authority, nor shall the same extend further than to the repeal of the particular penalties and punishments therein referred to, but in all other respects the law shall continue the same, as if this enactment had not been made.*"

Now it would appear on the face of this last provision, that it is still against the law of the land, for a subject of her Majesty to *maintain or defend* the spiritual or ecclesiastical authority of the Pope, as



*heretofore claimed or used* by him, within this realm, or to put in use or execute any thing for the maintenance or defence of it. On the other hand, the Roman Catholic subjects of her Majesty have been relieved from the necessity of making any *positive renunciation* of the Pope's spiritual authority as a *condition of enjoying their full civil rights*. Whilst their religion is thus completely tolerated, and they are not called upon to do or declare any thing against their religious convictions, they are, on the other hand, restricted from putting into use or execution the complete ecclesiastical system of their church. The contrary position cannot be reasonably maintained in the face of the provision and declaration of the statute just recited.

But Cardinal Wiseman is not content to infer that Emancipation conveyed to the Roman Catholics the right to have an *Episcopate*, but he says, "the law plainly foresaw and provided for our having regular Bishops one day instead of Vicars." To prove this he first appeals to the language of debate in the House of Lords, before he discusses the Statute Law; but it is a well known rule in the interpretation of statutes, that the intention of the Legislature must be sought for within "the four corners" of the statute, and not be gathered from the speeches of individual legislators. He then sets up an analogy between the concession to a *distant country* of the power to rule itself by a monarchical government, and the concession to the Roman Catholics of religious toleration, as if there could be any similarity of relation between such a supposed condition of political independence and the religious condition of her Majesty's Roman Catholic subjects *within this realm*.

Having so far smoothed the way for the discussion,

Dr. Wiseman proceeds to grapple with the Municipal Law, by stating, secondly, "*that the law did put on a restriction.*" Now it is assumed, in this proposition, that a Statute is expressly needed to restrict the full ecclesiastical action of the Roman Catholic Church in England, as if there could be no such restriction at Common Law; and an axiom of law is accordingly made to do duty both by Dr. Wiseman and Mr. Bowyer with considerable confidence in its conclusiveness. It is said, "*expressio unius est exclusio alterius.*" Under cover of this general proposition, it is maintained by both writers, that the Emancipation Act, by *forbidding* any one from assuming or using the style or title of any Archbishopric or Bishopric of the Established Church, *virtually allows* Roman Catholics to assume *any others*. Now the axiom of law is an approved axiom, but it is on this occasion misapplied. In the first place, the statute does not in words *forbid* the use of such titles; on the contrary, it is assumed in the statute that *it is an offence* at Common Law to use them, unless *authorized by law*. The statute simply enacts that a penalty of one hundred pounds shall attach to the *offence*. "Be it therefore enacted, that if any person, after the commencement of this Act, other than the person thereto *authorized by law*, shall assume or use the name, style, or title of Archbishop of any province, Bishop of any diocese, or Dean of any deanery, in England or Ireland, he shall, for *every such offence*, forfeit and pay the sum of one hundred pounds." The offence, then, is not created by any enactment of this statute; on the contrary, the assumption and use of the style and title, without lawful authority, is dealt with penally \*, as being an offence.

\* A penalty alone implies a prohibition, though there are no prohibitory words in the statute, (*Bartlett v. Vinor*, Carthew's

The only inference which the axiom above cited might warrant, would be, not as Mr. Bowyer asserts, that the assumption and use of *new ecclesiastical titles*, not belonging to the Established Church, is *lawful*, but that it does not *expose the party so offending to the penalty* specified in the statute, it being supposed, for argument's sake, that the operation of the statute is limited to the titles of the Established Church. For instance, if the Bishop of Rome had chosen to consecrate a Bishop *in partibus*, with the title of Bishop of London or Oxford, without professing to *erect a new See* of London or Oxford, the titular Bishop would still have exposed himself to the penalty; but if he had ordained him Bishop of Dorchester *in partibus*, the party assuming and using in England the title of that extinct See would not have come within the provision of the statute. But it may be worthy of notice here, that the Brief of Pope Pius IX. contemplates an illegality, even on Mr. Bowyer's and Dr. Wiseman's interpretation of the statute, for it constitutes, in Wales, according to the version of the Brief published, as far as it can be, *by authority*, in her Majesty's realm of England, a Bishopric of *Menevia*, or *St. David's*, united with Newport, and it speaks in express terms of the Bishop of St. David's.\*

Reports, p. 252.); but it does not follow, where an act is otherwise treated as an offence, that the remission of the penalty by a subsequent statute affects the legal character of the act.

\* "In the district of Wales there will be two Bishoprics, viz. that of Shrewsbury, and that of *Menevia*, or *St. David's*, with Newport."

"We assign to *the Bishop of St. David's* and Newport as his diocese northward, the counties of Brecknock, Glamorgan, Pembroke, Radnor, and the English counties of Monmouth and Hereford."

It is worthy of remark that there are two English versions of

Now the style and title of *Episcopus Menevensis*, or *Bishop of St. David's*, cannot be assumed by the nominee of the Holy See without a direct violation of the statute 10 Geo. 4. c. 7. s. 24., and the consequent forfeiture on each occasion of one hundred pounds of good and lawful money of the Queen. This may have been an oversight on the part of the Holy See, unless it is to be considered in the light of a further experiment upon the elasticity of the Statute Law of England.

Again, Mr. Bowyer writes: "It is clear that the Act forbids the assumption and use, not of the style and title of Archbishop, Bishop, or Dean of *any place* whatever in England or Ireland, but only of any Archbishopric, Bishopric, or Deanery *belonging to the Established Church.*" Such, it is possible, might prove to be the decision of her Majesty's Judges, if this question should ever come to be raised in Westminster Hall, but it is by no means clear that the purview of the statute is so limited. On the contrary, it is probable, for it is within *the spirit* of the

the Brief in circulation, the one dated 24th September, the other 29th September. In the former, which first appeared, the name of St. David's does not occur, but *Merioneth* is written, as the English equivalent of *Menevia*, although the county of Merioneth (Mervinensis) is, in the very next sentence, placed in the diocese of Shrewsbury. The latter, which is the more correct version, has been adopted at the "Metropolitan Catholic Printing Office" in London, and from that version the above passages have been extracted: it corresponds with the Latin edition, issued from the press of the Congregation of the Propaganda Fide at Rome, a copy of which will be found in the Appendix. The Tablet newspaper (October 26. and November 2.), which published the Latin edition, and professed to give an English version of it (October 26.), has omitted to translate the word *Menevia*, and so the Papal appropriation of the title of an existing English See is gracefully veiled in the obscurity of a learned language. A similar reserve has been exercised by the editor of the Roman Catholic Directory for 1851.

statute, that the statutory penalties may be held to extend to the use of such titles as Archbishop of Westminster, Bishop of Northampton, &c., being the titles severally of *an Archbishop of a Province, and a Bishop of a Bishopric in England.*

The statute, for instance, speaks of the *style or title of Archbishop of any Province, Bishop of any Bishopric* in England or Ireland, in an indefinite sense, and does not confine itself, by the use of the definite article, to the style or title of *the* Archbishop of any Province, *the* Bishop of any Bishopric, *i. e.* of any existing Province or Bishopric. Yet it seem reasonable to suppose, that if the assumption or use of the styles or titles of the existing Archbishops of Provinces and Bishops of Bishoprics in England and Ireland had been alone in view, the indefinite form of expression would not have been used, when the definite form would have been the proper form. At the same time it must be admitted, in fairness to Dr. Wiseman and Mr. Bowyer, that the statute, being a penal statute, must be construed strictly.

The words of the twenty-fourth clause are, “ And whereas the Protestant Episcopal Church of England and Ireland, and the doctrine, discipline, and government thereof, and likewise the Protestant Presbyterian Church of Scotland, and the doctrine, discipline, and government thereof, are, by the respective Acts of Union of England and Scotland, and of Great Britain and Ireland, established permanently and inviolably: and whereas the right and title of Archbishops to their respective Provinces, of Bishops to their Sees, and of Deans to their Deaneries, as well in England as in Ireland, *have been settled and established by law*: Be it therefore enacted, That if any person, after the commencement of this Act, *other than the*

*person thereunto authorised by law*, shall assume or use the name, style, or title of *Archbishop of any Province, Bishop of any Bishopric*, or Dean of any Deanery in England or Ireland, he shall, for every such offence, forfeit and pay the sum of one hundred pounds."

Mr. Anstey, in commenting upon this clause of the statute, admits, that if Parliament should *hereafter* create a new See of the Established Church, and give it one of the Papal titles, there is reason to believe that the statutory penalty would at once attach to the continued assumption of the title by the Roman Catholic Prelate. But this admission, if correctly made, is fatal to the strict interpretation of the statute; for if we are to limit the application of the penal enactment by any words in the preamble of the clause, then only those Archbishoprics and Bishoprics would be protected which had been *settled and established by law* at the passing of the statute, that is, before A. D. 1829.

But to suppose that the clause could be satisfied by such an interpretation, which would allow, in 1850, two Bishops of Ripon, and two Bishops of Manchester, but only permit one Bishop of London or one Bishop of St. David's, is to suppose the law deliberately contemplated a result which would be not merely anomalous, but also at variance with the very principle elicited by Mr. Bowyer and Dr. Wiseman from the preamble, as the basis of their argument.

Again, whenever a statute is enacted for the purpose of restraining a liberty hitherto allowed by law, it may be presumed, that the liberty, which the statute does not expressly take away, still remains. But it would be unreasonable to contend that, prior to the 10 Geo. 4. c. 7. s. 24, the liberty of assuming titles from

local Sees, other than those of the Established Church, was enjoyed by her Majesty's Roman Catholic subjects. Yet, unless that should have been the case, the presumption would be, not in favour of the liberty of the subject, but of the prerogative of the Crown, and the legal axiom of "the exclusion of one class implying the admission of all others," does not apply.

It has been observed, that the Emancipation Act treats the assumption of such titles as an offence, although there is no clause of the statute which forbids it. Accordingly, if the *penalty* were even to be repealed, the *offence* at Common Law would still remain, and it would still continue to be not lawful to take the name, style, or title of Archbishop of *any* Province, Bishop of *any* Bishopric in England or Ireland.

There are, therefore, great difficulties in the way of accepting Mr. Bowyer's and Dr. Wiseman's interpretation of the statute as being clear in the subject-matter of its restriction, more particularly when we look to the practice since the statute. And here it may be allowable to bring into the field, out of the opposite camp, a well-known axiom of law, as well as of common sense, to wit, "*Optimus interpres legum usus.*" The practice which has grown up within the United Kingdom, to which the operation of the statute is confined, must throw no inconsiderable light on the meaning of the penal clause, if it be obscure. Now the practice is clear: there have been no Roman Catholic Bishops who have held themselves forth to be Bishops of Sees situated in England, until the issuing of the Papal Brief. But in Ireland the case is otherwise; yet on no occasion has the assumption and use of the *name, style, or title* of Archbishop of any Province or Bishop of any Bishopric by the Ro-

man Catholic Prelates in Ireland been recognised directly or indirectly, as lawful. Their *episcopal orders* have, indeed, been recognised in a recent act of the legislature, and *Social rank* has been conceded to them by the Government in 1844, in carrying out its provisions, by giving them precedence immediately after the prelates of the Established Church of the same degree, in the Commission under the Charitable Bequests Act (13th January, 1845).\*

Now the Act itself (7 & 8 Vict. c. 97.), intituled "An Act for the more effectual application of Charitable Donations and Bequests in Ireland," speaks of "any *Archbishop* or *Bishop*, or other person in holy orders of the Church of Rome officiating in any district," thereby recognising the episcopal office with a gradation of rank in it; and accordingly the executive Government has followed out this principle in the Commission just alluded to, in which the Roman Catholic Prelates are designated as the Most Reverend Archbishop William Crolly, the Most Reverend Archbishop Daniel Murray, the Right Reverend Bishop Cornelius Denvir.

But Mr. Bowyer states further that, in the instrument appointing the visitors of the new colleges, Dr. Cullen and Dr. Murray are described as the Most Reverend the Roman Catholic Archbishop of Armagh, and the Most Reverend the Roman Catholic Archbishop of Dublin. But, if it be assumed for the moment, on Mr. Bowyer's authority, that such is the fact, these designations are not, as he supposes, *terri-*

\* It appears from certain "Reasons for not signing an Address to her Majesty," published by the Earl of St. German's, that the order in which the names of the Commissioners were arranged, was simply intended to denote the order, in which they were entitled to take the chair at the meetings of the Board.



*torial titles*, such as are borne and enjoyed by Prelates of the Established Church, but mere *descriptions* severally of Dr. Cullen and Dr. Murray with reference to their archiepiscopal offices. *The Queen of England*, for instance, to take an illustrious example, is the territorial title of her Majesty Queen Victoria; *the reigning Queen of England* is a description of her Most Gracious Majesty with reference to her office of supreme governor. So the *Archbishop of Dublin* is a territorial title borne by the Most Reverend Dr. Whately; the *Protestant Archbishop of Dublin* would be a description of his Grace with reference to his archiepiscopal office.

Mr. Bowyer has thus unintentionally confused two very different ideas; but further than this, he is unfortunately in error as to the matter of fact, which is the more to be regretted, as her Majesty's Government is sought to be placed by him in the wrong. For example, in the warrant appointing the visitors of Queen's College, Belfast, the Roman Catholic Prelates are designated as the Most Reverend Archbishop Paul Cullen, the Right Reverend Bishop Cornelius Denvir; and in the warrant for Queen's College, Cork, they are described as the Most Reverend Archbishop Michael Slattery, the Right Reverend Bishop William Delany; and in the warrant for Queen's College, Galway, they are named as the Most Reverend Archbishop John M'Hale, the Right Reverend Bishop Lawrence O'Donnell. There is therefore no precedent in this measure for Mr. Bowyer to rely upon, in respect of what are, in his estimation; *territorial titles*.

He has not been more happy in speaking of the *style* of the "Irish Catholic Prelates" having been recognised by the Government on the ground that

they are *styled* as "Archbishops." The term *style*, in 10 Geo. 4. c. 7., has a well-known legal meaning\*, being, for instance, the *style* in which all archiepiscopal or episcopal acts run; *e. g.* "We, John Bird, by Divine Providence, Lord Archbishop of Canterbury," &c., or, "We, Charles James, by Divine Permission, Lord Bishop of London," &c. There is also, to speak somewhat loosely, the ordinary style of designation of the spiritual peers, such as "His Grace the Lord Archbishop of Canterbury," "His Lordship the Bishop of London," and the concise style of signature, as "J. B. Cantuar." or "C. J. London." both of which may reasonably come within the purview of the statute, as well as the full legal style; but it is verging on an absurdity to say, that the *style* of the Irish Catholic Prelates has been recognised by the executive Government, because they are described by their office of *Archbishops*.

Again, a local Act, 9 & 10 Vict. c. 361. s. 28., known as the Dublin Cemeteries Act†, speaks of "His Grace Daniel Murray, Archbishop, and his successors exercising the same *spiritual* jurisdiction as he now exercises in the Diocese of Dublin, as an Archbishop." It then proceeds to give him power to appoint, from time to time, a clergyman of the Roman Catholic Church as chaplain, and enacts that such chaplain shall be licensed by, and subject to the juris-

\* Gray's Ecclesiastical Law, p. 338.

† It is specially enacted that this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such. This provision, however, does not constitute it a public Act to which every body is considered as assenting (*per* Lord Hardwick, 1 Term Reports, 93.), but merely enables a copy, printed by the king's printer, to be made evidence in a court of law; otherwise it would be necessary to produce an examined copy, which had been compared with the original roll at Westminster.

diction of the said Archbishop, who shall have power to revoke his licence, and to remove him for any cause which the Archbishop may deem to be *canonical*. This statute, having thus acknowledged Dr. Murray as exercising a *spiritual* jurisdiction as Archbishop, *virtute ordinis*, proceeds to give him an *ecclesiastical* jurisdiction in the appointment and removal of a chaplain, allowing him to regulate his judgment in this matter by the Canon Law. It does not, however, allow the chaplain to have an appeal to Rome, nor does it recognise in any way the supremacy of the See of Rome, but makes the Archbishop the absolute judge as to the propriety of his removal. Whatever powers, therefore, Dr. Murray may choose to exercise over a Roman Catholic clergyman, in licensing him to such chaplaincy of the cemetery, in accordance with the provisions of this statute, or in removing him therefrom, he will exercise it by virtue of an Act of the United Parliament, not by virtue of his appointment from the Pope; so that, practically, this statute does not carry the question any further in its declaratory part with respect to the *territorial* title, although it admits, for the first time in such matters, the arbitrary application of a foreign law (*lex*). It is an instance of a statute most incautiously worded in this respect, as well as in regard to the *Diocese of Dublin*, which is an expression open to ambiguity, there being one Diocese according to the law of the land, and another Diocese according to the foreign law.

It is to be regretted, that greater care has not been taken with the phraseology of several documents of a public nature in which *spiritual jurisdiction* is spoken of, where *spiritual authority* would have been the more appropriate and less ambiguous phrase, as *juris-*

*diction* properly implies a *forum externum*, authority need only refer to the *forum conscientiæ*.\*

Let us pass on to the colonies, inasmuch as Mr. Bowyer has again fallen into error in a very important statement in regard to our Australian colonies.

Now, the earliest occasion of any Roman Catholic Prelate being allowed to exercise episcopal authority in any of our Australian colonies was in the year 1835, when her Majesty's Government, in a spirit of benevolent consideration for the religious wants of the Roman Catholic population, acceded to the proposal, that Dr. Polding, who was, when first selected, intended only to officiate as chaplain, should be permitted to exercise episcopal authority.† In the same year, her Majesty was pleased to erect, by letters patent, the Archdeaconry of New South Wales, and to nominate Mr. Broughton to the new See, as Bishop of Australia. Dr. Polding, as it appears, continued to exercise episcopal functions as Vicar Apostolic, under the title of Bishop of Hiero-Cæsarea *in partibus*, for about five years, when he quitted the colony

\* Lord St. German's calls attention to the fact that a petition was once received by the House of Commons from a Roman Catholic prelate styling himself Archbishop of Tuam, and that it was argued on that occasion, that the law did not prohibit the assumption of that title by a Roman Catholic, there being no longer an Archbishop of Tuam of the Established Church. It seems, however, that there was a division against the reception of the petition, so that the principle was disputed on a question involving the Right of the Subject to petition the House of Commons, in which the greatest possible latitude is allowed. The resolution of the House on this occasion does not in any way establish the law, but merely records the opinion of a majority of members then present, as to the objection not being fatal to the reception of the petition.

† See Appendix A.

for a time, and returned to it once more in March, 1843. On his return he seems to have brought back with him the title of Archbishop of Sydney, in lieu of Bishop of Hiero-Cæsarea\*. He does not, however, appear to have sought at once an authoritative recognition of his local title, but left his name at the Government House, as "the Most Reverend Dr. Pol-  
ding."

The circumstance, indeed, of an archiepiscopal See being erected in the city of Sydney, within the already existing Diocese of the Bishop of Australia, led to a formal protest on behalf of the Bishop and his clergy, and her Majesty's Government has hitherto never recognised any *archiepiscopal See* of Sydney.† Moreover, her Majesty had been pleased to take into consideration the great extent of the existing Diocese of Australia, and accordingly, in 1847, directed that it should be divided into four dioceses; and thereupon erected the Metropolitan See of Sydney, and the three diocesan Sees of Newcastle, Adelaide, and Melbourne, and at the same time, the diocesan Sees of Tasmania and New Zealand, the five last being suffragans of the Metropolitan See of Sydney. This increase in the number of Bishops of the Church of England in New South Wales was accompanied by an increase in the number of Roman Catholic Bishops, and her Majesty's Secretary of State for the Colonies was called upon to lay down more precise rules, as to the mode in which the Roman Catholic Prelates were to be recognised by the Colonial Authorities. The Metropolitan Bishop of Sydney was directed to take precedence of the Roman Catholic Archbishop, as being

\* See Appendix B.

† See Appendix C.

‡ See Appendix D.

of equal rank, although bearing a different title, and the Bishops of the Church of England\* were to take precedence of the Roman Catholic Bishops. The former were, of course, to bear the title of their Sees † ; the latter to continue to be designated, in accordance with the existing regulation, by their names, as “ the Right Reverend Bishop ——,” and not by the titles of the Dioceses, which had been assigned to them by their own Church, or else as “ the Bishop of the Roman Catholic Church at ——,” &c. The latter was ruled to be the proper description in a deed, of which the provisions were to apply to the Bishop for the time being.

Mr. Bowyer states, that in the “ case of the Bishopric of Melbourne, the Anglican Bishop contended that the Catholic Diocesan had been guilty of a violation of the law by the assumption of the style of his See: *but the law officers of the colony, to whom the question was referred by the Government, held that the Catholic Bishop might, WITHOUT ILLEGALITY, call himself Bishop of Melbourne.*”

Now it is really of importance that a statement of this kind should be accurate, inasmuch as it is intended to preclude discussion, and if accurate, would be conclusive. But such is not the fact. The question which was referred to the Colonial law officers had regard to the *penalty* specified in the 24th clause of 10 Geo. 4. c. 7., and they gave an opinion that, although the Act itself had been adopted by an act of the colonial legislature, the provisions of the 24th section of that Act, which relate to the penalty, were

\* It must be kept in mind that the Bishops of the Church of England in the colonies, have not the rank of Spiritual Peers of Parliament.

† See Appendix E.

limited to England and Ireland solely. Of the soundness of this opinion there can be but little doubt ; but it stopped far short of the statement, that the law officers held that the Catholic Bishop might, *without illegality*, call himself Bishop of Melbourne. That question does not appear from Governor Fitzroy's despatch to have been submitted to the Colonial law officers, but rather to be under reference at the present time to the authorities at home.\*

It may therefore be safely said, that her Majesty's Government has carefully declined to recognise the territorial titles assumed by Roman Catholic Bishops from Sees assigned to them by their Church within the Australian colonies. And so far from no remonstrance having been ever made, as Dr. Wiseman asserts, in consequence of the erection of the Papal Sees, and the assumption of the style and title of the Australian Bishops of the English Church, that the printed correspondence on the subject laid before the House of Commons in 1849 and in 1850 supplies very full evidence to the contrary.†

Nor has her Majesty's Government observed any other rule in the island of Mauritius, on the occasion, in 1849, of the Pope withdrawing from Bishop Collier his office of Vicar Apostolic, and his title of Bishop of Melevé *in partibus*, and substituting in lieu of this, the title of Bishop of Port Louis or Mauritius.‡ Her Majesty's Secretary of State for the Colonies, on this occasion, expressly ruled, that the Roman Catholic Prelates were not to be recognised by the local Government under the titles assigned to them by their own Church.

\* See Appendix F.

† See Appendixes F. and G.

‡ See Appendix H.

“But,” Mr. Bowyer writes, “the fact of the Government not recognising the provincial or diocesan, or *territorial* style of these colonial Bishops, is immaterial, for we do not *ask* the Government to recognise the style of Archbishop of Westminster, or Bishop of Liverpool, this would hardly be a reasonable request to a Protestant Government, in a Protestant country, though of course we should rejoice if they were to do so.”

Now the answer to this remark is obvious. Either it is lawful for the Roman Catholic Bishops to bear the titles, or it is not lawful. If it is lawful, her Majesty's Government are bound in justice to recognise them; if it is unlawful to bear them, it is unlawful to have accepted them: yet they have been both accepted and borne. After the gauntlet has thus been thrown down in the face of her Majesty's Government, it is idle to say, “we do not *ask* her Majesty's *Government* to recognise the style of Archbishop of Westminster, or Bishop of Liverpool.” Yet her Majesty's *subjects* are publicly invited to recognise them, in an Appeal to the English People, on the part of Cardinal Wiseman himself; in which his Eminence expressly discusses his newly assumed title, its decorousness, and the little less than necessity for its adoption. “London was a title inhibited by law; Southwark was to form a separate See.” Surely there is a vein of humour in the irony of this passage; his Eminence pleads a necessity for taking Westminster on the ground that Southwark was not available, after his own Pastoral Letter had announced his approaching advent in his united character of Archbishop of the Metropolitan City, and Administrator Apostolic of the separate See!

It has been already pointed out, that the title of an existing Bishopric of the Established Church



(Menevia, or St. David's) has been made free with in the Papal Brief. In accordance with this act of the Pope, Dr. Wiseman taunts the Church of England with the assertion that the restriction in the Emancipation Act was not supposed at the time to give the slightest security to the English Church. "Speaking of it," he writes, "the Duke of Wellington remarked, that the clause was *no security*, but it would give satisfaction to the United Church of England and Ireland; *according to the laws of England the title of a Diocese belonged to the person appointed to it by his Majesty*, but it was desirable that others appointed to it by an assumed authority should be discountenanced, and that was the reason why the clause was introduced." Surely the Duke did not allude to any thing very singular about the clause in question. No law, as such, gives security; it is the moral feeling of respect for the law, and its consequent observance, not the enactments of a law, which gives security: and the Duke, as experience shows, was not very wide of the mark in anticipating that the law would be violated "by an assumed authority." The Duke, whose discernment is appealed to by Dr. Wiseman, said, "the *title of a Diocese belonged to the person appointed to it by his Majesty.*" If this be so, his Eminence must admit, that the title of St. David's cannot be lawfully borne by the nominee of the Holy See, even if it should be found practically impossible for the executive Government to enforce perfect obedience to the law, from the nature of its subject-matter.

The questions which arise in regard to the Law of England will be more simply solved, if the character of the recent act of the Pope can be precisely determined. It is contended by Roman Catholic writers, that the *erection of the new Sees* is a *spiritual act* on

the part of his Holiness, and that the Roman Catholic subjects of her Majesty who maintain the right of the Pope to erect such Sees, maintain only the spiritual supremacy of the Holy See, and are within the law. But it may be observed, in the first place, that, neither the erection of a See, nor the appointment of a Bishop is a spiritual act. The consecration of a Bishop, by the laying on of hands, is the spiritual act; the appointment is a temporal act, even if it should happen to be the act of an ecclesiastic. For instance, if the *appointment* were a spiritual act, in the sense in which the *consecration* is a spiritual act, it could not be performed by laymen; yet Bishops in communion with the Holy See have, from time to time, been appointed freely by the Church at large, *i. e.* have been *elected* by the laity and clergy. Such, it may be said, was the rule of the Church until the twelfth century; and even now the temporal Power in many Roman Catholic states, in accordance with a direct or implied Concordat, *nominates* the Bishops of the land, and the Pope accepts such nomination, and by his confirmation of it, recognises its valid origin. If, on the other hand, the appointment is called spiritual in another sense from that in which the consecration is so termed, it is a loose and improper sense, and only leads to confusion of thought. The *appointment* of a Bishop should rather be termed "an ecclesiastical act of a temporal nature;" the *consecration* being, on the contrary, "an ecclesiastical act of a spiritual nature." The appointment does not give the spiritual *office*, but merely designates the person for the spiritual office, which is conveyed to him at consecration. Thus it may be perfectly true, as Mr. Bowyer justly states, that Rome alone, *i. e.* the Pope alone, can give to the Bishops of that Church *mission*;

but to give mission to a Bishop is a different thing from erecting a See for that Bishop within the realm of an independent sovereign, or even from appointing a Bishop. So far is it from "the erection of Bishoprics being an integral and essential part of the exercise of the Pope's spiritual authority," as Mr. Bowyer would contend, meaning thereby to exclude from the act all participation of the temporal power of the State, that, on the contrary, the annals of every country in Europe furnish evidence adverse to his view.\*

If, on the other hand, it is merely meant to be asserted, that the spiritual sanction of the Holy See was thought in all countries which have continued in communion with the Pope to be essential in the erection of a Bishopric, this assertion may be within the mark; but the exercise of the Pope's general spiritual authority in such a matter, in the way of confirming the act, does not exclude the exercise of the temporal authority of the individual sovereign, in whose territory the See happens to be erected. On the contrary, as will be seen, when the law of Europe comes to be discussed, the temporal authority of the prince was as essentially requisite in the erection of episcopal Sees, as the spiritual authority of the Pope. If this should prove to be the case in respect of the princes of Europe, who acknowledge the spiritual supremacy of the Pope, on what principle can the Pope claim to set aside the temporal supremacy of those sovereigns, who do not acknowledge his spiritual supremacy?

Again, if the erection of an episcopal See were held by the Law of England to be a purely spiritual

\* See Chapter III.

act, then there might be some plausibility in the Pope turning against the law of the land the weapon which it may have itself furnished to him ; but by the Law of England, no episcopal See can be erected by the Crown within her Majesty's realm of England except with the consent of the legislature\*, in which it is true the Bishops of the Established Church form part, but do not thereby impart to its acts a spiritual character. There is accordingly no argument furnished by the law of the land to distinguish the realm of the Protestant Queen of England from that of a prince in communion with the See of Rome, in a sense more favourable to the pretensions of the See of Rome. It may consequently happen, that the temporal, and not the spiritual, supremacy of the Crown of England, is impugned by those who would carry into execution the will of the Pope in erecting Bishops' Sees throughout the length and breadth of England, *mero motu suo*. It is, further, with respect to that temporal supremacy that legal difficulties may arise

\* The Sees of Oxford, Gloucester, Peterborough, Bristol, and Chester, known as King Henry VIII.'s Bishoprics, were erected by letters patent of the Crown, pursuant to an Act of Parliament 31 Henry 8. c. 9., authorising the King's Highness to erect Sees and nominate Bishops by letters patent under the Great Seal of England, and to endow them with such possessions as his Highness should think convenient. This statute was repealed by 1 Philip and Mary, c. 8., and has not been revived. The Sees of Ripon and Manchester were erected by order of the Queen in Council, pursuant to the provisions of 6 & 7 William 4. c. 77., and 10 & 11 Vict. c. 108., authorising her Majesty in Council to carry into effect the recommendations of the Ecclesiastical Commissioners. The necessity of an Act of Parliament in the case of new Sees in England, as distinguished from Sees in the colonies, or in British settlements, arises from the fact that the erection of a new See in England involves an interference with the established rights of an old See.

for her Majesty's loyal and faithful Roman Catholic subjects, from which they have been exempt under the previous condition of the English mission. For if it should be a correct view of the law, that the Pope, as a foreign prelate or potentate, in erecting his new sees, has invaded the sovereignty of the Crown of England, such subjects of her Majesty as seek to put the writ of the Pope into use and execution will thereby risk to maintain his temporal superiority and pre-eminence; and thus the Roman Catholic peers and members of the House of Commons, who have taken the oath embodied in the Relief Act, whereby they deny that the Pope of Rome, or any other foreign prince, prelate, person, state, or potentate, hath, or ought to have any temporal or civil jurisdiction, power, superiority, or pre-eminence, directly or indirectly, within this realm, may find themselves ensnared.

A further point remains to be considered in reference to the publication and execution of the Brief itself. It would seem that, on the occasion of the enthronement of Cardinal Wiseman, the letter of the Pope was read aloud in a public assembly for religious worship of the Roman Catholic communion with open doors. It has been further put into execution by the Archbishop and several of the Bishops assuming the titles of the new sees, and issuing pastoral and other letters in the names of the Archbishop of Westminster, the Bishops of Hexham, Birmingham, &c. Now the statute 13 Eliz. cap. 2. intituled "An Act against the bringing in and putting in execution of bulls, writings, or instruments, and other superstitious things from the see of Rome," having in its preamble recited that "many persons minding to bring this realm and the temporal Crown thereof (being in very

deed of itself most free) into the thralldom and subjection of that foreign, usurped, and unlawful jurisdiction, pre-eminence, and authority claimed by the said see of Rome, have lately procured and obtained to themselves from the said Bishop of Rome, and his said see, divers Bulls and writings," enacted, by the third section, "That if any person shall obtain or get from the said Bishop of Rome, or any of his successors, or see of Rome, any manner of Bull, writing, or instrument, written or printed, containing any thing, matter, or cause whatsoever, or shall publish, or by any ways or means *put in ure (use) any such Bull, writing, or instrument*, that then all and every such act and acts, offence and offences shall be deemed and adjudged by the authority of this Act to be *high treason*, and the offender or offenders therein, their procurers, abettors, and counsellors to the fact and committing of the said offence shall be deemed and adjudged *high traitors* to the Queen and the realm, and being lawfully indicted and attainted according to the course of the laws of this realm, shall suffer *pains of death*, and also *lose and forfeit* all their lands, tenements, hereditaments, goods, and chattels, as in cases of high treason by the laws of this realm ought to be lost and forfeited."

The statute then proceeds, in the fourth and fifth sections, to enact "That all aiders, comforters, and maintainers of the said offenders, shall incur the *pains and penalties* of *Præmunire*, and that the concealers of a Papal Bull, writing, or instrument shall incur the penalty of misprision of high treason." It further attaches the penalties of *Præmunire* to a variety of secondary offences specified in the seventh section. Now the 9 & 10 Vict. cap. 59. repeals the 13 Eliz. cap. 2. "*so far only as the same imposes the*

*penalties or punishments therein mentioned, but it is hereby declared that nothing in this enactment contained shall authorise or render it lawful for any person or persons to import, bring in, or put in execution within this realm, any such Bulls, writings, or instruments, and that, in all respects, save as to the said penalties or punishments, the law shall continue the same as if this enactment had not been made."*

The penalties and punishments of 13 Eliz. are thus removed, but *the law is declared to continue the same*. In regard to the minor offences specified in the 4th, 5th, and 7th sections, there being no express words in the statute defining their character by terms well known to the law, *e. g.* misdemeanour, felony, or otherwise, they cease to be legal offences with the abolition of the penalties which alone implied their prohibition. If, however, the law had said that such acts should be a high misdemeanour, and should be punished with transportation beyond the seas for the space of fourteen years, or otherwise, the abolition of the specific penalty would still have left untouched the legal character of the acts, which would have remained a misdemeanour, and been punishable as such, according to the Common Law, with fine and imprisonment. So likewise with the major offence in the 3rd section, the statute defined the *legal character* of that offence in terms well known to the law, independently of the penalty which it attached to it, when it pronounced the act of importing and putting into execution within this realm any manner of writing or instrument whatever from the Bishop of Rome to be *High Treason*. As, therefore, the law continues the same in all respects, save as to the penalties, the legal character of the act remains unaltered, although the penalty under the statute may be

remitted, and the offence be only punishable under the general Statute of Treasons\* (25 Edw. III. s. 5. c. 2.). But as this is a question of constructive repeal, it may be open to argument to what extent it operates, until the judgment of a court of competent jurisdiction shall conclude the question. Thus much, however, may be asserted, that if the putting into execution a Papal Bull is still an offence under 13 Eliz., it can only be the statutory offence of High Treason, as there is no express prohibition in the statute, which would leave it a misdemeanour at Common Law after the penalties had been repealed. Yet it is admitted by all parties that the statute still prohibits the introduction of Bulls and other Papal instruments: the prohibition, therefore, must be implied in the description of the offence, and the prohibition remains, because there is nothing in the 9 & 10 Vict. c. 59., which has changed the legal character of the act; in other words, the offence is *crimen læsæ Majestatis coronæ*, the highest civil crime which a subject of the Crown can possibly commit. Such an offence is a breach of the duty of allegiance which binds every subject of the Queen to be true and faithful to her. †

\* The statute 7 Anne c. 21. which makes it high treason to slay any Lord of Session, or to counterfeit the great seal of Scotland, simply declares that such offence "shall be construed, adjudged, and taken to be high treason." It cannot be reasonably contended, that this statute is not fully operative by reason of no express penalty being recited after the words, which mark the offence with a specific legal character.

† It is a great satisfaction to the author to find, that his opinion as to the state of the law and its positive infringement is countenanced by the eminent authority of Sir Edward Sugden, in his address to the county of Surrey, on December 17. 1850. The Ex-Lord Chancellor of Ireland does not appear to have expressly stated, on that occasion, his opinion of the precise legal character



Dr. Wiseman complains that old and long-dormant statutes should be awakened up, and obsolete legislation should be turned against himself and his colleagues. But the Pope himself has awakened up a long-dormant hierarchy, and has turned against England an obsolete code of law. Surely if the spectre of Popery once more stalks at large on the banks of the Thames, and casts the shadow of its gaunt form before it, if the Pope has disinterred what were believed to be dry bones, and they have come together at his bidding, and he has sought to breathe life into them, shall Dr. Wiseman with reason complain that the guardians of the Temple of the Laws of England rouse themselves up to confront their ancient foe? But the statute law has not been mute since the reign of Elizabeth; it was heard to speak forth in clear and distinct tones in 1846, when it expressly declared the laws of Queen Victoria to continue in this respect the same as those of Queen Elizabeth.

It may be a more debateable point, whether *the Statute of Præmunire* would apply to a Brief of the character of that in question on the present occasion. If indeed it should be rightly held that the provisions of the present Brief touch the sovereignty of the Queen of England and her Crown, although it may not touch its regality (i. e. *quoad regalia*), or that they touch her realm, in the sense of 16 Richard II. c. 5., then Dr. Wiseman and his coadjutors will have made themselves subject to the penalty of Præmunire. In Cardinal Wolsey's case before the Reformation, it was

of the offence; but whatever may be, under the circumstances, the legal punishment of publishing and putting into execution the Papal Brief, it is difficult to avoid the conclusion that the offence is still such in *its legal character*, as it is declared to be by the statute of Queen Elizabeth.

held by the Judges of the Court of Queen's Bench, that the obtaining a Papal Bull from Clement VII. granting to him the dignity and jurisdiction of Legate à Latere, and which Bull was publicly read in Westminster, and the exercising jurisdiction under it, was a contempt of the King and his Crown and contrary to the statute. Wolsey was accordingly convicted. Subsequently to the Reformation, we have the well-known case of Robert Lalor\*, who was indicted for exercising jurisdiction as Vicar-General of the Apostolic See in Ireland, by virtue of a Bull or Brief procured from Rome, and which Bull was said to touch the King's Crown, and Royal dignity. It appeared that Lalor had exercised *Ecclesiastical Jurisdiction* as Vicar-General, and done various acts pertaining to *Episcopal Jurisdiction*, within the Dioceses of Dublin, Kildare, and Ferns, which acts were said to be against the King, his Crown, and Royal dignity, in contempt of his Majesty and disherison of the Crown and contrary to the statute. Lalor pleaded not guilty to the charge, and was tried before a jury of the city of Dublin. He was convicted of having accepted his office by virtue of a Papal Bull, of having styled and entitled himself Vicar-Apostolic of the Dioceses of Dublin, Kildare, and Ferns, and of having issued letters of institution, dispensations for matrimony, sentences of divorce, &c., thereby usurping and exercising *Episcopal Jurisdiction*, and he was sentenced according to the form of "the Statute of Præmunire." Here then is an instance of a law made by the King, Lords, and Commons of the realm, when England was in communion with the See of Rome, being held to apply to a state of things subsequent

\* 2 Howell's State Trials, p. 555., also Sir John Davies' Reports, p. 82.

to the Reformation, the indictment having been intentionally framed by the law officers of the Crown upon the older statute of Richard II. rather than upon the more recent one of Elizabeth. With this precedent by way of warning, it would be an act of questionable discretion for Cardinal Wiseman to proceed to put into execution the canon law within the realm of England, and to govern eight English counties and the islands adjacent as *Ordinary thereof*.\* Lalor contended, in his defence, that he had exercised his office *in foro conscientie*, not *in foro judicii*; but his plea was overruled by the Chief Justice on the ground that he exercised jurisdiction, as manifested *by the nature of his acts, in foro judicii*. It is difficult to conceive how a foreign law, such as the canon law of Rome, can be put into execution in the present day with any other legal result than that which attended its exercise in the fourth year of the reign of King James I. (anno 1607.)

The legal inference from this very important judgment seems to be that the statutes of the realm which were enacted with the object of restraining the encroachments of the Papal power upon the sovereignty of the English Crown before the Reformation, were held to be still applicable to restrain any analogous attempts of the same power subsequently to the

\* Dr. Richard Smith, the second Vicar-Apostolic in England, on his arrival in London, assumed the title of *Ordinary* of England and Scotland, which led to a proclamation on the part of the king's government, on 11th December 1628, for his apprehension. This was followed by a second proclamation, on 24th March 1629, with an offer of one hundred pounds reward to any person who should discover his place of concealment. He thereupon fled into France and contrived to exercise his functions in England by his Grand Vicar. — *Butler's Historical Memoirs of the English Catholics*, vol. ii. p. 305. Cf. Appendix. xviii.

Reformation. If this should still be held to be sound law, then neither the Toleration Act of George III. nor the Emancipation Act\* of George IV. have conceded to the See of Rome any authority, which it was restricted from exercising *before* the Reformation. The importance of this position of law will be more apparent in the following chapter.

\* Cardinal Wiseman, in discussing the provisions of the Act of Emancipation in his appeal, p. 16., makes a singular statement as to an important matter of fact. Having concluded the inference of law to be this, that the titles of the new Bishops are not against any law, so long as they are not the actual titles held by the Anglican Hierarchy, his Eminence proceeds to say, that, "*all these conditions having been exactly observed* in the late erection of the Catholic Hierarchy, this is perfectly legal, perfectly lawful, and unassailable by our present law." The authority of Dr. Wiseman himself can hardly avail in this matter against the authority of the Press, of the Congregation of the Propaganda, which declares *the title of St. David's* to be appropriated to one of the new Bishops.

## CHAP. III.

WE may now proceed to consider, how far the act of the Pope, in erecting episcopal Sees within the realm of England without the consent of the sovereign of that realm, is a departure from established law, and violates the sovereignty of the Crown of England. And here it may be convenient at the outset to remove an objection which has been raised by Mr. Bowyer, and adopted by Dr. Wiseman, that the Crown of England has barred its right of remonstrance and its claim to redress against the See of Rome, by having itself, in two instances, abandoned the received rules of European law *in pari materia*, and so far, not coming into court with clean hands, must submit to be nonsuited. Accordingly it is said by Dr. Wiseman, that the Crown of England has erected "a Bishopric of Jerusalem, assigning to it a Diocese, in which the three great Patriarchates of Antioch, Jerusalem, and Alexandria were mashed into *one See*;" and Mr. Bowyer has adopted the same view in stating that "the Crown of England has created a Bishopric in parts beyond the sea, where her Majesty's writ runneth not, to wit, at Jerusalem." After discussing the details of the appointment of Dr. Alexander, Mr. Bowyer concludes, "that the case of the Anglican Bishopric of Jerusalem is exactly in point, and it establishes, that the Legislature and the Crown of England hold, that there is nothing unlaw-

ful, or in any respect wrong, in the act of *erecting a Bishopric*, and appointing a Bishop, and assigning to him a Diocese in a foreign country, without the consent of the Government of that country.”

Now if the facts upon which this reasoning is based, were correctly set forth by Mr. Bowyer, there would be some weight in the argument in the way of what logicians term an *argumentum ad verecundiam*; but it happens that both Mr. Bowyer and Dr. Wiseman have been misled by incorrect information, or have gone astray in the absence of correct *data*. Mr. Bowyer says, “the plain honest question is this—Did or did not the Crown constitute and erect a *Bishop’s See and Bishopric* in foreign parts at Jerusalem?”

The issue being thus concisely raised, the answer to Mr. Bowyer’s question is not far to seek. The Crown of England *has not constituted or erected a Bishop’s See, or Bishopric, at Jerusalem*. If Mr. Bowyer had only had recourse to the authorised sources of information, he would not have made so great a mistake as to confound the proceedings under 5 Vict. c. 6. with those usual in the *erection of episcopal Sees* by the Crown of England. Dr. Alexander was merely consecrated to the *office of a Bishop* by virtue of a License\* from the Crown, granted to the Archbishop of Canterbury pursuant to 5 Vict. c. 6., which provided that “such Bishop or Bishops so consecrated may exercise within such limits as may from time to time be assigned for that purpose in such foreign countries by us, *spiritual jurisdiction over the Ministers of British Congregations* of the United Church of England and Ireland, and over *such other Protestant*

\* See Appendix, p. lxxxix.

*congregations* as may be desirous of placing themselves under his or their authority." Dr. Alexander accordingly went to Jerusalem invested with the episcopal office, and empowered by the Crown of England to exercise spiritual authority over British congregations. But there was not any See or local Bishopric in his case any more than in the case of the Roman Catholic Bishops *in partibus*, to whom, in their superadded character of Vicars Apostolic, Dr. Alexander bore some resemblance. He had been consecrated "Bishop of the United Church of England and Ireland in Jerusalem." This was not the title of a See, but the description of his Office. He was not addressed by the Crown of England as the Bishop of Jerusalem, in like manner as the colonial Bishops are addressed by the titles of their Sees, but he was addressed as the Right Rev. Dr. Alexander. Again, Dr. Alexander was only empowered to exercise *spiritual* jurisdiction *in foro conscientiae* over certain congregations; he had not what is properly termed *ecclesiastical* jurisdiction *in foro externo*, such as the Bishop of a See may exercise: and although permitted to superintend other Protestant congregations than British, it is well known that the King of Prussia, whose subjects were here contemplated, was a consenting party to this arrangement. But it is said by Mr. Bowyer, that the Bishop was to receive into his Church Jewish and Gentile converts, at least that it is so alleged in "an authorised statement of the proceedings." Who may be responsible for this statement does not appear; but thus much is certain, that the Crown of England is not bound by the statement. On the contrary, the Crown took especial care to communicate to the Ottoman Porte, through its envoy at Constantinople, that Bishop Alexander went to Syria under strict

injunctions not to meddle with the religious concerns either of the Mahommedan or of the Christian subjects of the Porte, and that he was not to attempt to make proselytes to the Church of England from either of those classes.

We may consequently conclude, that the case of the Anglican Bishop in Jerusalem is not at all in point; for even if the consent of the King of Abyssinia has not been asked, upon which Dr. Wiseman lays great stress, it would still not be in point, for *no See* has been erected within the territory of the said King, nor is even any *spiritual* jurisdiction over his subjects likely to be exercised, since Dr. Wiseman himself states, that there is not a single Protestant congregation in Abyssinia.

“Under the same statute,” continues Dr. Wiseman, “the Bishop of Gibraltar was named. His See was in a British territory; but its jurisdiction extended over Malta, where there was a Catholic Archbishop formally recognised by *our* Government as Bishop of Malta, and *over Italy.*” It does not appear clear from the context whether the Cardinal in this passage alludes to the Papal government or the British government, when he speaks of the recognition of the Roman Catholic Bishop of Malta. However, we may assume that he speaks of the British government. To the same effect Mr. Bowyer writes, “*under that same statute* the Crown has erected another Bishopric, deriving its title from a place within her Majesty’s dominions, but invested with pastoral functions more extensive than that title imports, I mean the Anglican Bishopric of Gibraltar. We have to consider, not words, but things; not form, but substance. Now it cannot be denied that the Anglican Bishop of Gibraltar has committed to him, by his Church and



the Government of this country, the pastoral episcopal care of all Protestants, whether converts or otherwise, in communion with that Church, or who may place themselves under his authority, not only in Gibraltar and Malta, *but also in Italy.*"

It is much to be regretted that mistakes of this kind should be made by writers in the position of Mr. Bowyer and Dr. Wiseman, and it is painful to have to correct such writers so repeatedly in matters of fact, which a little ordinary care, such most assuredly as their readers were entitled to expect at their hands, would have enabled them to set forth with accuracy. The statute alluded to by both these writers, namely 5 Vict. c. 6., in no way applied to the Bishopric of Gibraltar. The Crown, by virtue of its prerogative, erected, by Letters Patent\*, the Church of the Holy Trinity, within the town of Gibraltar, into a Cathedral Church and *Bishop's See*, precisely as it has erected various episcopal Sees in other British settlements and colonies; and it ordained that henceforth the town of Gibraltar should be a city, and be called the City of Gibraltar. It then, by the same Letters Patent, empowered the Bishop to exercise jurisdiction, *spiritual and ecclesiastical*, within the said Cathedral Church of the Holy Trinity, and throughout the said *Diocese of Gibraltar*, and also within the "Churches, Chapels, and other places aforesaid in the said *island of Malta and its dependencies*, according to the ecclesiastical laws now in force in England." Not a word is said in the Letters Patent *concerning Italy or Rome*, nor is the Bishop of Gibraltar empowered to exercise ecclesiastical jurisdiction in any place out of the Queen's dominions. Even in Malta his jurisdiction is

\* See Appendix, p. xci.

confined to the Churches and Chapels, and other places, *i. e. ejusdem generis*; and he is not to visit ecclesiastically the religious establishments of the Roman Catholics in that island. It may be perfectly true, however, that Dr. Tomlinson has exercised episcopal functions under the very walls of Rome, though not, as Mr. Bowyer says, "in the Holy City;" but to exercise *spiritual functions* as a Bishop is one thing, to exercise *ecclesiastical jurisdiction* as a Bishop is another. The Bishop of London, for instance, has exercised his episcopal functions *virtute ordinis* repeatedly both in France and in Belgium; but he has never attempted to exercise ecclesiastical jurisdiction in either country. In a similar manner, the Roman Catholic Bishops *in partibus* resident in England have exercised episcopal functions *virtute ordinis* for two centuries at least, but have not exercised ecclesiastical jurisdiction as Bishops. In a similar manner the Bishop of Gibraltar has exercised a spiritual superintendence *virtute ordinis* over the ministers of various British congregations resident in Italy, who have been instructed to respect his *spiritual* authority, provided his injunctions did not require any disrespect to the laws, customs, and opinions of the country in which such ministers exercise their clerical duties. Dr. Wiseman therefore is in error when he classes the Bishop of Gibraltar with the Anglican Bishop in Jerusalem, as persons "sent under the same statute, not only to British subjects, but to such other Protestant congregations as may be desirous of placing themselves under his or their authority." So that the argument which is built by his Eminence upon this assumption falls to the ground: "If the Queen of England, as head of the English Church, could send Bishops into *Abyssinia and Italy*,

surely Catholics had good right to suppose that *no less* would be permitted to them, without censure or rebuke."

Mutuality is doubtless a fundamental principle of the Law of Nations, but in this case *no less* has long been permitted to the Roman Catholics in England, under the system of Vicars-Apostolic. It is to be lamented that Dr. Wiseman and his colleagues, at whose earnest solicitation the Brief is stated to have been issued, should have led the Pope to suppose, erroneously, that the Crown of England had established a precedent against itself by infringing the sovereignty of the Holy See in its own dominions, more especially as there is the formal clause towards the conclusion of the Brief, providing that it shall never be impugned, "*de subreptionis et obreptionis vitio.*"\* In other words, the Brief is to be valid and observed inviolably, although the Pope may himself have been led, by a misrepresentation of facts, either in the way of a *suggestio falsi*, or a *suppressio veri*, to promulgate an ordinance, which violates the law of the land, where it is to be executed!

This consideration naturally leads us to the inquiry, before we examine the substance of the Brief itself, as to the form of proceeding adopted by the Holy See on this occasion. The form in which the Letters Apostolic are conceived is almost identical with that adopted by Pope Pius VII. in the Brief of excommunication against the Emperor Napoleon (10 June 1809), with this exception, that there is no special clause relating to their publication †, but only the

\* See notes to the Brief, in the Appendix, p. xxii.

† As the letters of excommunication against Napoleon could not be safely published in France, it was specially and expressly provided that their publication at certain places in Rome should give them the force of law.

usual provision, that a notarial copy, certified by the seal of an ecclesiastical dignitary, shall have as full credit as the original instrument.

The act of publication, and the mode of publishing the Brief, has accordingly been left free to Cardinal Wiseman, who seems to have first promulgated it by his Pastoral Letter, and subsequently to have authorised its more formal publication on the occasion of his own enthronisation. If the Brief itself has thus been published, there can be no doubt that the law of the land has been violated by the Cardinal or his agent, although the Pope himself may have refrained, by his silence as to publication, from personally encroaching in this matter on the right of supreme superintendence (*jus supremæ inspectionis*) over the realm, inherent in the Crown of England, as in every independent Crown. There is no position of law so completely established with reference to the relations between the Holy See and the Sovereign Princes of Europe, as that the Exequatur of the Crown, or the Royal *Placet*\*, is requisite as an antecedent condition for the publication of a Papal Rescript within the territory of a Sovereign Prince. A comparatively recent instance of the mode of maintaining the Exequatur in a neighbouring kingdom is to be found in M. Dupin's "Manuel du Droit Public Ecclésiastique Français," p. 68. The Bishop of Poitiers having ordered a Papal Brief *to be read in all the Parish Churches* of his Diocese without having obtained the previous assent of the Crown to its publication, Charles X. issued an ordinance, dated Dec. 23. 1820, to the effect that there was an *abuse* on the part of the Bishop, and that his mandate was suppressed; it appearing from the statement of the Bishop himself, to have been an act of pure inadvertence on his part,

\* See Appendix, p. c.

without any intention of contravening the laws of the realm. The custom of the Placet has been so universally observed in every independent kingdom in Europe, where it has not been especially relaxed by the municipal law, that it has been held by writers of the highest note\* to form a part of those customs, the aggregate of which make up the Law of Nations. The Exequatur has also been accounted to be so intimately and essentially connected with royal majesty, that no prince can abdicate or renounce it to the prejudice of his successor and the State.†

The exercise, indeed, of the right may be suspended on the part of the Crown, as is virtually the case at present in the dominions of the Emperor of Austria since the ordinance of last year, but the right can never be alienated from the Crown without its abdicating its territorial sovereignty. With respect, however, to the publication of the present Brief, the history of the Bull of Paul V., "In Cœna Domini," is not without a moral. In that celebrated Bull, issued in 1567, and re-issued in 1568, the publication of which has been expressly forbidden by the State-authorities in almost every kingdom of Europe, there was a special provision, "Quod sola publicatio Romæ facta sufficiat." All the Christian world was, in fact, to obey it, without any publication beyond that made in Rome; but it was further enjoined that every year, on Holy Thursday, *it should be read from the pulpit,*

\* Cf. Van Espen de Promulgatione Legum Ecclesiasticorum, part II. ch. 1.

† Cf. Schram, Institutiones Juris Ecclesiastici Germanici, § 136.; Rechberger, Enchiridion Juris Ecclesiastici Austriaci, § 272. These authors amongst others are quoted in the Report of the Select Committee of the House of Commons, on the Regulations of Roman Catholic Subjects in Foreign States, 25th June, 1816.

*in all parishes, to the people\**, and copies of it should be affixed to the doors of the Churches. We have therefore in this Bull a formal instance of the mode of publication, as enjoined to be adopted in a foreign country where the law of the land did not allow the free publication of Papal Rescripts; and in accordance with that received mode, we find that the Brief of Pope Pius IX. has been read in England to the people from the pulpit of the Roman Catholic church of St. George's, Southwark. So much for the open publication of it to the subjects of her Majesty within her realm of England.

Let us now proceed to consider the subject-matter of the Brief, for, although the Pope himself may have formally respected the established practice, and not have in words directed his Letters to be published within the realm of an independent Queen without her consent, or rather against her expressed will, as recorded amongst the written Laws of her realm, yet the substance of his Letters may involve in their operation a departure from established practice, and in that respect violate the sovereign rights of the Imperial Crown of England. Now it is patent on the face of the Letters, that the Pope has erected one archiepiscopal and twelve episcopal Sees in the realm of her Majesty Queen Victoria, and has parcelled out the entirety of her realm into thirteen districts, assigning to each Bishop a portion of the Queen's territory as subject to his jurisdiction. The instrument could not have been externally more complete, if the Queen of England had placed her realm at the disposal of the Holy See for all ecclesiastical purposes, nor could the Pope have dealt with his own territory in a more free

\* Cf. Giannone, *Storia di Napoli*, lib. xxxiii. ch. 4. and 5., in which the *Regium Placitum* is very fully discussed, Appendix, p. ciii.

and absolute manner. But if there be any one principle of law which has received the sanction of that high usage and practice which constitutes it a binding obligation on all the powers of Christendom, it is this, that *the Pope cannot set up the See of a Bishop within the territory of an independent prince without his consent.* Common sense suggests, that none other than the sovereign power of the land can give a Bishop a *Seat* within the land. The Pope may give a Bishop *mission*, *i. e.* may authorise him to go forth as the spiritual ambassador of the Holy See, but that the Pope should establish a territorial *Seat* for his Bishop in the realm of a Sovereign Power without its consent, would be to usurp an attribute of local sovereignty, and to take possession of the land for ecclesiastical purposes. For it matters not that the possession is only formal and figurative, for such is also, for the most part, the character of civil occupation. *Words* are for such purposes taken to represent *things*. But the Pope has not been content merely to declare his will to erect Sees, he has gone further. He has sent his subject, a Prince of his Court, to take effective possession of his See, and to execute such acts as serve for external signs to mark his ecclesiastical occupation of the land. All that is now required to establish an irrefragable title is, that the Sovereign of the Land should acquiesce in the settlement of the Cardinal.

It must not be lost sight of, that the authority which has issued the decree upon which her Majesty's subjects are encouraged to act, is a *foreign* authority. It is a foreign voice which speaks in the Brief: there is a foreign name prefixed to it, which holds a recognised position amongst the sovereign Powers of Europe; the edict itself is dated from a foreign capital,

and it is subscribed by the minister of a foreign Power. It is idle to say that England ignores diplomatically that Power. True it may be that England has held no regular diplomatic intercourse with the Holy See, but England was a party to the Treaty of Vienna, and therein recognised, by the 103rd Article, the Holy See as one of the Sovereign Powers of Europe; and the absence of diplomatic intercourse cannot affect the question. Denmark, for instance, has no regular diplomatic intercourse with the kingdom of the Two Sicilies. Several of the sovereign princes of Europe have no diplomatic agents at the Ottoman Porte; and Rome herself has no diplomatic relations with Sweden, or Saxony, or Denmark, &c.\*; but these Powers do not thereby *ignore* one another, or cease to have the reciprocal rights and duties towards one another, which attach to them in common with the other members of the great European Family of Nations, by the Common Law. It is only within the last twenty years that the Ottoman Porte has abandoned its objection to send regular diplomatic agents to the courts of the great European Powers. But the Ottoman Porte was not theretofore ignored either by Prince or Pontiff. This circumstance then cannot derogate from the mutual rights and obligations of Sovereign Powers as such; they can only be affected by some special practice, which may have established an exceptional case. Such a special practice did exist at one time in regard to Turkey herself, and her dependencies, the Barbary powers; but the latter states have almost disappeared from the catalogue of nations, and Turkey is every

\* It is assumed that consuls are not diplomatic agents, otherwise England might be said to have maintained diplomatic intercourse with Rome for many years.



day assimilating her practice to the custom of Europe. So also, in regard to the Holy See, it cannot be denied that a special practice has obtained in Europe with regard to its relations with the various Sovereign Powers growing out of the complex character of the Holy See, and the union of ecclesiastical with civil power in the person of the Roman Pontiff; but that practice is as well defined as any other portion of the public Law of Europe, and the Holy See can claim no privilege within the dominions of a foreign Power or in relation to his subjects, which does not rest either upon treaty or usage. If this were not the case, then the Roman Pontiff would be Lord Paramount over all temporal Powers. That the Roman Pontiff, however, is not exempt from the general law, may be gathered from the annals of Europe, which supply us with a host of conventions and diplomatic negotiations between the Holy See and the Great Powers, in matters where the sovereignty of the latter barred the free ecclesiastical action of the Holy See. These treaties and negotiations serve as a sort of text-book for this particular branch of the Law of Nations; and where this text-book is confirmed by usage, there the Holy See must be expected to conform, if it does not wish to place itself out of the pale of the law.

Now the text law, so to speak, as to the erection of Episcopal Sees and the creation of Bishops in countries in communion with the See of Rome, is fully set forth by Thomassinus in his *Vetus et Nova Ecclesiæ Disciplina*, pt. I. l. i. c. 54—58. It appears, as an historical fact, that during the five first centuries of the Christian era, the Royal authority took no part in the creation of Bishoprics, neither was the Pope of Rome, as such, allowed any right of supreme spiritual superintend-

ence in such matters. Bishops were every where instituted by the various Metropolitans. But with the fifth century, when Christianity had become the received faith of the civilized world, the rule became established, that no new Bishoprics could be made without the consent of the Metropolitan Bishop, the Synod of the Province, the Prince, and the Pope.\* In illustration of this rule, Thomassinus gives a series of examples, and shows, in regard to almost every country of Europe, that the assent of the Prince was a preliminary condition in the establishment of Bishops' Sees within his territory. To the same effect, Balsamon of Constantinople, Patriarch of Antioch, and so far representing the opinions of the Eastern Church, in his Commentary on the 60th Canon of the Council of Carthage, writes, towards the conclusion of the 12th century †: "You must know that it is a canonical observance, that the districts of the Bishops shall remain undisturbed; but that new Bishops should be made in Dioceses which are subject to other Bishops is not permitted *without the royal mandate*, even if the Bishop in possession should consent a thousand times. For it has been synodically established, that *not even a great Synod can make new Bishops without the royal permission*. Other writers ‡ might be cited to

\* "Novi nulli, temporibus his mediæ ætatis sæculo vi. vii. et viii., creabantur Episcopatus nisi de Metropolitanis, Synodi Provincialis, Principis, et Papæ consensu." — *Thomassinus*, p. 1. l. i. c. 55.

† "Tu autem scias quod Episcoporum quidem regiones immotas manere, ut canonicum, servatur. Fieri autem Episcopos de novo in parochiis, quæ sunt aliis Episcopis subditæ, sine regio mandato non permittitur, etiam si millies consenserit, qui eam habet, Episcopus. Synodice enim constitutum est, ut nec ipsa magna Synodus sine jussu regio posset novare Episcopos." Cf. Beveridge, *Pandectæ Canonum*, tom. i. p. 592.

‡ Petrus de Marca de *Concordia Sacerdotii et Imperii*, l. iv.; Baronii *Annales*, passim.

the same effect, as the matter is not one of general speculation, but of historical fact.

On the other hand, it may be said that the Pope has at times created *local*, as distinguished from *titular* Bishops, *mero motu suo*, without having previously obtained the consent of the Prince of the land. There are doubtless a few instances of this kind to be found, chiefly in the North of Europe; but in these cases, the Legate of the Pope expressly claimed to act in the name, not only of the Pope, but of the Emperor, as Lord Paramount over the Princes of Northern Europe.\*

It may, however, be safely said, that in all the chief states of Europe, even in the most Catholic, if Catholicism admits of degree, the consent of the Crown has been obtained as a preliminary measure; and in the Papal Rescripts for the erection of Sees which are preserved in the *Bullarium Romanum*, it is generally specified, particularly in later times, that it has taken place at the instance and demand of the Sovereign of the land. But further than this, when the question of right has been raised on the part of the Crown, the Pope has consented to retrace his steps, and has cancelled his previous act. A remarkable instance is to be found in Thomassinus, part 1. l. i. c. 57. s. 7. The Duke of Savoy had, through the favour and influence of the Emperor Maximilian, obtained from Pope Leo X., in 1515, that the borough of Bresse should be made a city and the See of a Bishop. The diploma of the

\* “Adelbertus Hamburgensis et ipse Episcopus ac Legatus pari saltem vigore explicuit Legationem suam, quâ Septentrionales omnes gentes complectebatur — frequens illud in ore habens, Duobus se dominis tantum obnoxium esse, Papæ et Imperatori. Itaque fidentius quandoque excitavit Cathedras regibus haudquaquam assentientibus.”—*Baronii Annales*, anno 1067, quoted by Thomassinus, who adds, “Ea sane tempestate omnes illi ad Boream Reges Imperatorum potestati obnoxii quodammodo erant.”

Pope to that effect had been already issued; but on the expostulation of the French King it was recalled towards the close of the year, *expressly because the King of France had not assented to it*, nor the Archbishop of Lyons, from whose Province the new Diocese was to be subducted. The same Pontiff, six years afterwards, was once more induced to re-establish the suppressed Bishopric; but *since that was done without the consent of the King of France*, who succeeded shortly afterwards in re-establishing his dominion over Bresse, the latter succeeded without difficulty in persuading Paul III. to extinguish the See.

Nor has England been in any way an exception to the general rule. We learn from the historian Bede\*, that Pope Gregory arranged with the Archbishop of Arles to ordain the missionary Augustine to the office of Bishop, on the condition of his having been first received by the English nation; and that it was Ethelbert, King of Kent, not the Roman Pontiff, who assigned to Augustine, on his second coming, as Bishop, the metropolitan city of Canterbury as his See. On a similar principle we find one of the earliest kings of England, Edward the Elder, the immediate successor of King Alfred, erecting in a National Council five new Sees, and Pope Formosus giving his subsequent confirmation to the King's Act. Again, in the reign of William the Norman, we find that the King's consent was obtained by Archbishop Lanfranc to the establishment of three episcopal Sees, in Chester, Salisbury, and Chichester. Again, in the reign of the second William, Anselm, the successor of Lanfranc, is described by a contemporary historian as

\* *Historia Ecclesiastica Gentis Anglorum*, lib. i. ch. 23. and 26. Cf. Godwin de Præsulibus Angliæ, vox *Cantuarensis*.

“knowing that no new Bishopric could be instituted *without the consent of the King*, and the confirmation of the Pope\*,” and accordingly writing to Paschal II., in reference to the division of Lincoln into two Sees, that the King and Bishops of England had consented to the measure. In a similar manner it is stated by Matthew Paris, that King Henry I. converted the Abbey of Ely into a Bishop’s See; and Matthew of Westminster recounts, that King Henry II. erected a See of Carlisle, and bestowed it upon his confessor. In both these cases the Pope’s confirmation was no doubt required; on the other hand, the King on no occasion abdicated his authority as territorial sovereign.

Such then appears to have been the practice of Europe before the Reformation of the Church in England, and the publication of the Decrees of Trent. It remains to be seen whether any other practices have grown up in Europe since the Reformation.

Here indeed a distinction at once suggests itself between states which continue to acknowledge the ecclesiastical supremacy of the See of Rome, and states which have protested against it, and renounced ecclesiastical communion with that See. In the former case the relations of the Holy See are for the most part regulated by the ancient practice before the Reformation, in the absence of any special treaty-engagements in the form of “Concordats;” but in no case has there been any departure from the ancient rules, as to the consent of the Crown being a requisite condition for the erection of a Bishop’s See. The Bullarium Romanum supplies ample evidence, that the

\* “Anselmus, sciens præter Regium consensum et Romani Pontificis auctoritatem, novum Episcopatum nusquam rite institui posse, scribit, &c.”—*Eadmerus, Nov. Hist.* ch. 4.

consent, nay the request, of the Sovereign, is still a condition precedent to the erection of an episcopal See within his territory, and the *factum* of such consent is, for the most part, although not always, recorded in the body of the Brief itself. The Bulls, or Letters Apostolic, as the case may be, generally, run in the form of “precibus annuere volentes, tamque pio desiderio satisfacere ipsius Philippi Regis\*,” or “piis igitur ejusdem Reginae de Apostolica Sede optime meritae votis annuere opportunum in Domino censentes†,” or to some similar purport, showing that the consent of the Crown is the foundation on which the Pope proceeds to deal with a foreign territory, and to assign a See within it to the newly created Bishop.

It remains for us to consider how far the practice may have undergone a change with respect to those States which have renounced ecclesiastical communion with the Roman See. These States may be distributed into two classes — such as have entered into direct diplomatic relations with the See of Rome, and such as have held themselves completely aloof. The former class again divide themselves into such as have treaties with the Holy See by way of *Concordat*, and such as have made arrangements with the Pope by means of *diplomatic negotiations*. The kingdom of the Netherlands, as constituted by the treaty of Vienna, supplies an instance, perhaps the only one, of a Concordat between a Protestant prince and the Holy See. The convention between King William I. and Pope

\* Bull of Paul IV., anno 1559, erecting various archiepiscopal and episcopal Sees in Belgium at the prayer of Philip II. of Spain. Bullarium, tom. iv. pars i. p. 360.

† Bull of Pius VII., anno 1806, erecting an episcopal See in the city of Leghorn, at the prayer of Maria Louisa, Queen of Etruria. Bullarii Continuatio, tom. xiii. p. 64.

Leo XII. (June 18. 1827) remains recorded in the Collection of Marten's *Traités* \* ; the foundation of it being the French Concordat of 1801, which continued in force for the southern provinces, and was extended by this convention to the northern provinces.

In pursuance of this Concordat, Letters Apostolical *sub plumbo* were issued by the Pope on the 17th of August, 1827, incorporating the Concordat itself, and reciting that the Pope †, in *concert with his Majesty King William*, had resolved to erect three new Sees of Bishops ; to wit, Bruges, Amsterdam, and Bois le Duc. This arrangement, however, was never carried into effect. The disruption of Belgium from Holland supervened in 1830, and it has been held that the Concordat, by the change of circumstances consequent thereupon, has become null and void. The result is, that the Netherlands is still considered as a *mission in partibus infidelium*, under the superintendence of Vicars Apostolic ; and it is not unworthy of remark, that the Bishop *in partibus* designed by the Pope to reside at Amsterdam, as Vicar, has not as yet ventured to take possession of the building assigned to him for a residence, in the presence of the difficulties raised in his way by the Protestant communions of Holland.

In the other category of States which have made arrangements with the Holy See, not by way of treaty, but by means of diplomatic negotiations, stand Prussia

\* Nouveau Recueil, tom. vii. p. 242.

† “*Nos, collatis cum serenissimo rege Gulielmo consiliis, ad Catholicæ religionis incrementum, atque ad animarum salutem, præter quinque jam actu existentes, tres alias pro nunc episcopales Sedes restituere, vel de novo erigere, sicque universum Belgicum regnum in octo Dioceses dividere, totidemque inibi cathedrales ecclesias constabilire decrevimus.*”

and Hanover. In both these cases the Holy See has issued what is termed a Bull of Circumscription \*, to which the subsequent sanction of the Crown has been given. The Prussian Bull of Circumscription (16th July, 1821) expressly refers to *the co-operation of the King of Prussia*, whilst the Hanoverian Bull of 26th of March, 1824, no less recites that the King of Hanover, *George IV. †*, had been previously consulted by the Holy See in the matter.

Amongst other provisions of these Bulls, the Crown is admitted to exercise a *veto* against a candidate for election into a vacant Bishopric. But the preliminary negotiations must not be overlooked, more especially those between Prussia and the Holy See. In the course of those negotiations it was hinted at, as a wish of the Pope, that there should be certain Bishoprics established in the Protestant provinces, *e. g.* at Magdeburg and Berlin or Potsdam. M. Niebuhr, the Prussian minister at the Court of Rome, at once objected to the proposal in the most decided manner, and it was accordingly abandoned by Cardinal Gonsalvi; nor was it once attempted to be pressed in the written negotiations. It may also be observed, that the Crown abolished the See of Aix-la-Chapelle, which had been erected by the French during their occupation of the west bank of the Rhine, and united the Archbishoprics of Gniesen and Posen into the See of a Primate; in both of which arrangements the Holy See acquiesced. The Pope further adopted in the

\* Cf. Vollständige Sammlung aller ältern und neuern Konkordate, von Dr. E. Münch, 2er Theil, Leipzig, 1831; Lehrbuch des Kirchen-Rechts, von F. Walther, Bonn, 1839.

† "*Re propterea collata cum Serenissimo Georgio Quarto Regnorum Magnæ Britanniae et Hiberniae unitorum, necnon Hanoveriae Rege, ac Brunsvicensi, et Lunebergensi Duce.*"



Bull this provision, to meet the necessity arising from the great extent of the Prussian territory,—namely, that the ordinary Bishops should have the aid of Bishops *in partibus* as suffragans; a most anomalous arrangement, which was rendered necessary by the objection on the part of the Crown to any increase in the number of Sees.

Apart from the Protestant states which have entered into treaties or negotiations with the Holy See, stand those which have kept themselves aloof from Rome altogether in religious matters. The former have been constrained, for the most part, to make arrangements with the Pope by political considerations, arising out of the circumstance of their having acquired accessions of territory by conquest or cession from Roman Catholic princes, and so far coming to rule over a Roman Catholic population. The latter, on the other hand, have either remained restricted to their ancient territorial limitations, or have extended their dominion without at the same time admitting under their sceptre a population with a foreign religious element. In the former cases, the Roman Catholic population has received full ecclesiastical protection; in the latter it has only been allowed religious toleration, and that too in very various degrees. In Denmark, for instance, where the Lutheran Church is established by the Lex Regia of 1665, the severe laws of King Christian V. have been considerably mitigated by more recent ordinances; but the Roman Catholics enjoy only a permissive exercise of their religion, and their clergy have to seek ordination at the hands of a neighbouring Roman Catholic Bishop *in partibus*, who exercises, at Hildersheim, the delegated authority of a Vicar Apostolic. In the duchies of Schleswig and Holstein, a more ex-

tended toleration exists ; but it varies with each town, and in no case exceeds mere *religious* toleration. In Sweden, the edict of toleration issued by Gustavus III., in 1781, for the first time authorised the profession of the Roman Catholic religion in that kingdom on the part of Swedish subjects. Three years afterwards, Pope Pius VI., *with the consent of the Crown*, erected a Roman Catholic parish in Stockholm, and delegated the spiritual superintendence of it to a Vicar Apostolic. The Vicar is usually a Bishop *in partibus*, and is authorised by royal diploma to exercise his functions within the realm of Sweden, subject to his conformity with the provisions of the edict of toleration.

In Saxony, on the other hand, where there is the singular phenomenon of a Roman Catholic king and a Lutheran people, no Prelate of episcopal rank in the Roman Catholic Church has existed since the Reformation, until a comparatively recent period, when the King's Confessor, who is appointed to that office by the Crown, has, *at the request of the Crown*, of late been accustomed to receive the title of a Bishop *in partibus*, with the authority of Vicar Apostolic. Formerly, indeed, the Bishop of Hildersheim appears to have had vicarial authority delegated to him from the Holy See, in respect of the Roman Catholics in Saxony, as well as in Denmark ; but his interference was formally repudiated by the King of Saxony, on the occasion of Pope Clement XIV. transmitting through his hands the Brief "*Dominus ac Redemptor Noster*," for the suppression of the Society of Jesus. In Upper Lusatia the Chapter of the Cathedral church of Budissin, or Bautzen, is still Roman Catholic, and the Dean, or Præses (who is generally the same person with the King's Confessor, although not invariably so), exercises a spiritual

superintendence over the Roman Catholics in that province. At times he has further exercised episcopal functions as a Bishop *in partibus*, but never in the character of a Saxon Bishop.

It is said that Pope Gregory XVI., shortly after his accession to the Chair of St. Peter, was anxious to erect a Bishop's See at Meissen, as Pius VII. had been similarly desirous to re-establish monasteries in Saxony. The official answer in the latter case was, that the Pope could not do what he wished without the consent of the Crown. In the former case there does not appear to be any written record of what transpired, any more than of the oral negotiations between Cardinal Gonsalvi and M. Niebuhr, in regard to the overture to erect episcopal Sees in the Protestant districts of Prussia; but the fact may not be gainsayed, that the plan, if conceived, was never brought to maturity, and formally carried out by a Rescript of the Holy See; or if matured and promulgated, has never been substantially put into execution within the realm of Saxony.\* Bishop Loch, the two Bishops Mauermann, and Bishop Dietrich, who have successively filled the offices of Confessor of the King and Vicar Apostolic during the last quarter of a century, do not appear to have borne any other episcopal titles than those of Bishops *in partibus*, nor is there at present any trace to be found in the Papal Red Book (Notizie) of a See of Meissen in Saxony.

The result of these cases is to establish an uniformity of practice on the part of the Holy See in exer-

\* When the elector of Saxony, in 1697, espoused the Roman Catholic religion, the rights and privileges of his Lutheran subjects were guaranteed by him in the Diet; and he resigned, on behalf of the Crown, all power over the Lutheran Church and schools to his privy council, which is not responsible to him in these matters.

cising its spiritual superintendence over the members of the Church of Rome resident in countries which do not acknowledge the ecclesiastical supremacy of that See.

Russia has not as yet been noticed, as it does not come under the category of those states which have been hitherto considered. But Russia is a state which must not be left unnoticed in this inquiry, inasmuch as it holds no religious communion with the See of Rome, whilst it possesses a considerable Roman Catholic population in its western provinces, and it has local Bishops of the Latin, as well as the Greek Rite. The Bullarium\* exhibits a Brief issued by Pope Pius VI., under the Fisherman's Ring (15th April, 1783), and addressed to the Archbishop of Chalcedon, the Papal Nuncio at the Court of Stanislaus Augustus of Poland, and at that time on a diplomatic mission to the Court of St. Petersburg. By this Brief, the Pope erects the city of Mohilow, and the chief church therein, into the See of an Archbishop, and directs the Nuncio to place a suitable person over the newly-erected Metropolitan Church, and to consecrate him; or if he should already possess the episcopal character, to deliver to him the *pallium*, and administer the usual oath of fidelity to the Holy See, which is to be found in the Roman Pontifical. The Brief further instructs the Nuncio to consecrate a titular Bishop of Gadara, as coadjutor to the Archbishop. It might be supposed, from the official tenor of this document, that this proceeding of the Holy See was an act on its part, substantially as well formally, as derogatory to the sovereignty of the Crown of Russia, as the Brief of Pope Pius IX is derogatory to the sovereignty of the Crown

\* Bullarii Continuatio, tom. viii. p. 122.

of England. "Every official document," writes Dr. Wiseman, "has its proper forms, and had those who blame the tenor of this taken any pains to examine those of Papal documents, they would have found nothing new or unusual in this." His Eminence is perfectly justified in this observation; but he has omitted to take into consideration the form of procedure, as well as the form of the document itself. It is not by reason of the document issued under the Fisherman's Ring being in an *unusual* form of words that the English nation complains, and the Prime Minister of the Crown protests, but it is precisely because it is conceived in the *usual form* under circumstances of most *unusual procedure*. Thus, in regard to the Brief of Pope Pius VI., an ukase of the Empress Catherine II. had been previously published on the 17th January, 1782, erecting the city of Mohilow into the See of an Archbishop, and nominating a Russian subject to the newly erected archiepiscopal See, who was already exercising episcopal functions in Russia, as a Bishop *in partibus*, with the direct permission of the Empress herself, granted to him in 1773. By the same Ukase, the Empress had nominated a Canon of the archiepiscopal Church of Mohilow to aid the Archbishop as his Coadjutor, and announced that she had given orders for suitable measures to be taken to procure his elevation to the Episcopacy. It was further, by the same Ukase, specially ordained, in accordance with the established law of Russia, that no Papal Bull or other writing should be made public in the Empire without having been previously submitted to, and sanctioned by, the Senate.

The Empress accordingly directed a diplomatic communication to be made on the part of the Russian Crown to the Holy See, of the measures which the

Crown had adopted ; and in reply, Pope Pius VI. instructed his Nuncio in Poland to proceed on a special mission to St. Petersburg, and to complete the arrangements of the Empress, by delivering the pallium to the Archbishop, and consecrating his Coadjutor. So different altogether was the procedure observed on that occasion from that which has been practised by Pope Pius IX.

It is worthy of remark, that the Brief of Pope Pius VI. directed the usual Pontifical oath \* to be administered to the Archbishop and his coadjutor, but the Empress objected to its being taken by her subjects. The Pope accordingly “condescended to substitute,” to use the language of Cardinal Antonelli, in the place of the ancient form of oath, a new form, which was satisfactory to the Court of St. Petersburg, to be publicly repeated by the Archbishop and his Coadjutor in the presence of the Empress. This circumstance is worthy of note, not merely because it is an instance of the Holy. See *cancelling or dispensing with a most important provision in a Brief which was at variance with the law of the country*, within which its provisions were to take effect, but because it was the same form of oath which was allowed by Pope Pius VI. to be substituted, in 1791, for the ordinary Pontifical oath theretofore taken by the Roman Catholic Bishops of Ireland at their consecration, and by the Archbishops on receiving the *pallium*. The Pontifical oath had caused much political scandal in Ireland by the words “*hæreticos persequar et impugnabo*,” and it was represented to the

\* “Recepto tamen prius nostro, et Romanæ Sedis nomine juramento, quod tam in electi consecratione quam in pallii traditione ab omnibus noviter electis Archiepiscopis hæc Apostolica Sedes recipere consuevit.”

Pope that the maintenance of it might probably stand in the way of the Roman Catholic body obtaining religious toleration, which was granted to them in the course of that year by 31 Geo. 3. c. 32. The Pope accordingly assented to the prayer of the Irish Roman Catholic Bishops, and sanctioned an accommodation of the oath to the peculiar circumstances under which they were placed as British subjects, upon the precedent furnished in the case of the Muscovite Archbishop of Mohilow.

The Holy See has thus clearly and unequivocally been a party to the establishment of a precedent, in regard to the form of procedure to be observed in *the erection of the See* of a Roman Catholic Bishop within the territory of a sovereign not in ecclesiastical communion with Rome, from which the Crown of England may justly claim, that it shall not depart.\* The Sovereign of Russia further nominates to all vacant Bishoprics within his dominions, and the Pope sends letters of institution.

Poland is somewhat differently circumstanced from the other provinces of the Russian Empire. There were Concordats of early date between the kings of Poland and the Holy See; and in like manner as Prussia has more or less observed the provisions of the German Concordats in regard to Silesia, and of the Polish Concordats in regard to the duchy of Posen, as the basis of its existing relations with the See of Rome in reference to those provinces under the Bull of Circumscription of July 16. 1821, so the Empress Catharine, in taking possession of that portion of the Polish provinces which devolved to

\* The erection of the See of a Roman Catholic Bishop at Cherson, within a very recent period, is a further confirmation of the same principle.

Russia, conformed to the usage of Poland, without, however, renewing formally its treaty-engagements with the Holy See.

But the usage of Poland had been remarkably independent; so that the Emperor continues to nominate the Roman Catholic Bishops, as was the custom of the kings of Poland, and the Pope used, through his Nuncio at Warsaw, to send them institution. But the kingdom of Poland, as at present constituted, is not a Roman Catholic country, although the majority of its population are Roman Catholics. By the charter of 15th Nov. 1815, all forms of religious worship, without excepting even that of the Mahommedan Tatars established in Poland from time immemorial, were allowed to be fully and publicly followed and practised, without any difference resulting therefrom in regard to civil and political rights; and the ministers of all religions were declared to be under the protection and superintendence of the laws, and of the government.

Poland thus comes under the class of states where the Roman Catholic religion is *protected*, and so far resembles Belgium and France; with this notable difference, however, that it is likewise *superintended* by the State. "Les ministres de toutes les cultes sont sous la *protection* et la *surveillance* des lois et du gouvernement." (Article XIII. de la Charte Constitutionnelle du Royaume de Pologne, a° 1815.) Of course the State does not interfere in matters which are in their strict and proper sense *spiritual*; as, for instance, in *cases of conscience*, which are reserved and submitted by the Bishops, under the Sacramental Seal, to the Apostolic Penitentiary at Rome; but all other communications between the Bishops and the See of Rome are required to be transmitted through the hands of the Minister of Public Worship



to the Imperial Embassy at Rome, and so far are submitted in theory to the eye of the Emperor.\*

Russia therefore furnishes no exception to the practice which has been observed by the See of Rome in regard to the Protestant States of Europe since the Reformation: on the contrary, it serves to confirm the rule; for the Holy See has bound itself more openly in regard to Russia than any other State which possesses a National Church not in communion with that of Rome, to respect the territorial sovereignty of the Crown in the matter of erecting Bishops' Sees.

The practice in regard to England since the Reformation, as set forth in the Brief itself, may be considered to complete the last link in the chain of evidence. And here it may again be observed, that the Holy See exercises an authority which, as far as England is concerned, is essentially a *foreign authority*. It is an accident, though inseparable in the considerations of law which attend the matter of fact, that the Holy See is a sovereign power; but the argument would be precisely the same, as far as the exercise of foreign authority in the territory of an independent prince is concerned, if the Patriarch of Rome were the subject of a foreign Sovereign, like the Patriarch of Constantinople happens to be. The temporal sovereignty of the foreign authority only

\* There is no Concordat between the Emperor of Russia and the Holy See, but a Bull of Circumscription, or rather of New Distribution of the Dioceses of Poland, "*Ex imposita*," was issued by Pope Pius VII., on June 30. 1818, with the consent of the Emperor, "*curisque nostris mirifice obsecundante laudato Russorum Imperatore ac Poloniæ rege, cujus egregiam etiam in nos voluntatem probe jamdiu experti sumus.*"—*Bullarii Continuatio*, tom. xv. p. 61. A subsequent Brief was issued on Feb. 26. 1820, to assist the execution of the Bull.

affects the mode in which redress is to be obtained, namely, that it is to be sought directly at the hands of that authority itself; whereas in the other case, application must be made to the sovereign power to whom that foreign authority may be personally subject. If, for instance, the Patriarch of Constantinople were to issue his Letters Apostolical, and deal ecclesiastically with the realm of England like the Pope has ventured to do, constituting seats for Greek Bishops in various parts of the realm, assigning to them ordinary jurisdiction over the entire territory and its adjacent islands, and in the plenitude of his Apostolic power, decreeing that the Common Law of his Church shall be observed throughout the kingdom of England, appointing subjects of the Queen to carry that law into execution within her realm, without the "Exequatur" of the Crown, whose subjects they are, the Crown of England would doubtless have to seek redress against the usurped authority of the Patriarch of Constantinople at the hands of the sovereign whose subject he is. In other respects the cases would be parallel. The Patriarch of Constantinople, precisely like the Roman Pontiff, is not subject to the municipal law of England. It can not be maintained, however, for a moment, that the Crown of England has no rights as against these foreign Patriarchs, or that they are under no obligation to respect the sovereignty of the Crown of England within the realm of England, in any matter which they shall choose to pronounce to be spiritual; or, further, that the subjects of the Crown may safely execute the ordinances of these foreign Patriarchs within the realm of England, although such ordinances import a violation of the municipal law.

This position is not tenable, either in principle or

practice. In such a matter speculative general principles alone are not sufficient; more must be proved. It is not sufficient for either of these Patriarchs to assert, that the matter in which they claim jurisdiction is spiritual, and within their exclusive competency, and something which lies beyond the sovereignty of the Crown of England. In order to derogate from the rights of sovereignty, which are paramount, it must be shown, that the claims are conformable to usage and practice; and it is clear from the historical survey just completed, that in the matter of erecting Sees of Bishops in foreign countries, as distinguished from the granting of Mission to Bishops, the usage and practice of Europe are adverse to the claims of the Pope.

It will not be inopportune here to cite a judgment of Lord Stowell's, when it was endeavoured before him, in a Court of the Law of Nations, to set aside the practice of Europe in the matter of an enemy's tribunal pretending to be authorised to exercise jurisdiction within the dominions of a neutral Power:—“It is for the very first time in the world,” he says, “that in the year 1799, an attempt is made to impose upon the Court a sentence of a tribunal not existing in the belligerent country, but of a person pretending to be authorised within the dominions of a neutral country. In my opinion, if it could be shewn that, regarding mere speculative general principles, such a condemnation ought to be deemed sufficient, that would not be enough; more must be proved, *it must be shown that it is conformable to the usage and practice of nations.*”

“A great part of the law of nations stands on no other foundation: it is introduced, indeed, by general principles; but it travels with those general principles

only to a certain extent; and if it stops there, you are not at liberty to go further, and to say, that mere general speculations would bear you out in a further progress. Thus, for instance, on mere general principles it is lawful to destroy your enemy; and mere general principles make no great difference as to the manner by which this is to be effected; but the conventional law of mankind, which is evidenced in their practice, does make a distinction, and allows some, and prohibits other modes of destruction; and a belligerent is bound to confine himself to those modes which the common practice of mankind has employed, and to relinquish those which the same practice has not brought within the ordinary exercise of war, however sanctioned by its principles and purposes.

“Now, it having been the constant usage that the tribunals of the Law of Nations in these matters shall exercise their functions within the belligerent country, if it was proved to me in the clearest manner, that on mere general theory such a tribunal might act in the neutral country, I must take my stand on the ancient and universal practice of mankind, and say, that as far as that practice has gone, I am willing to go, and where it has thought proper to stop, there I must stop likewise.

“It is my duty not to admit, that because one nation has thought proper to depart from the common usage of the world, and to treat the notice of mankind in a new and unprecedented manner, that I am on that account under the necessity of acknowledging the efficacy of such a novel institution, merely because general theory might give it a degree of countenance, independent of all practice from the earliest history of mankind; the institution must conform

to the text law, and likewise to the constant usage upon the matter; and when I am told, that before the present war no sentence of this kind has ever been produced in the annals of mankind, and that it is produced by one nation only in this war, I require nothing more to satisfy me, that it is the duty of this Court to reject such a sentence as inadmissible." (1 Robinson's Reports, p. 140.)

It is possible, that to ultra-montanist members of the Roman Catholic body, this reasoning may not be quite conclusive. They may object to the idea itself of the Pope becoming bound by any usage or practice; but that is a question with them of conscience, which may be extended to any degree, and is beyond the reach of argument, and into which other parties, who do not admit the Roman Pontiff to be above all law, cannot follow them. The *question of fact*, however, is separate from the *question of conscience*. Either there has been a practice and usage in such matters, or there has not been any such practice or usage. Thus much at least, ultra-montanist members of the Church of Rome must admit, that from the earliest period since the Roman Pontiff has exercised any authority in the business of erecting sees for Bishops in foreign lands, he has exercised such authority, be it either spiritual or ecclesiastical, with the assent and consent of the territorial sovereign. That practice originated when the Pope was not a sovereign prince. It was observed invariably by him for three centuries, during which he continued to possess no temporal power. It has continued to be the rule, with very rare exceptions in such matters, since the Popes separated themselves from, and became independent of, the princes of Constantinople, down to the Reformation, in all countries which have acknowledged the spiritual

supremacy of the Patriarch of the Western Church ; whilst, subsequently to the Reformation, we find that no contrary practice has grown up in regard either to those states which have continued in ecclesiastical communion with the Holy See, or those which have renounced such communion. It is difficult to understand how a principle of such importance, if it involved a spiritual question, should never have been asserted by the Pope in his relations with sovereign princes, who have professedly acknowledged and recognised the spiritual supremacy of the Holy See, and that meanwhile a use and practice should have intervened, which has shifted the matter altogether from its foundations on abstract principle. The necessity of protection at the hands of the territorial sovereign has introduced the right of consent on his part, and the practice of Europe has established it.

## CHAP. IV.

MR. BOWYER, in discussing the question whether the rights of the nation and the sovereignty of the Crown have been violated, says, that “the erection of Bishoprics is an integral and essential part of the exercise of the Pope’s spiritual authority, as the only *primary* source of spiritual or ecclesiastical jurisdiction, and the centre of Catholic unity on earth. How then can it be said, that by erecting Bishoprics in England, the Pope has exceeded his *legally recognised* and *admitted* spiritual power, and exercised a civil or temporal jurisdiction or authority?”

The answer to Mr. Bowyer’s question; after the survey in the preceding chapter of the practice which has obtained in Europe, is obvious. We have seen that in Roman Catholic countries, as Mr. Bowyer himself admits, new Bishoprics are not created by the Pope’s authority without the consent of the Government. We have seen that in countries not in Ecclesiastical Communion with the Church of Rome, the temporal power has claimed and exercised a control over the erection of Episcopal Sees. It has either not consented to the Roman Catholic Church being *normally constituted* under a territorial hierarchy, in which case the spiritual affairs of the Roman Catholic body have been administered by Vicars Apostolic of the Holy See, or it has consented, and in that case exercised its voice in some mode or

other, either directly by way of "Concordat" with the See of Rome, or indirectly by means of diplomatic negotiations, in settling the *territorial basis* of the Episcopal Constitution.

It may be useful here to notice an objection which has been thought to be of weight, that the Bishoprics which the Pope has erected, are not *territorial* in a sense, which concerns the sovereignty or *dominium eminens* of the Crown. An answer to this remark seems to be suggested at once by Dr. Wiseman's own statement, that the new Bishops are Bishops *belonging to the country*, and that they are immoveable by the Pope, unlike the Vicars Apostolic, who were *unconnected with the country*, and revocable *ad nutum Pontificis*. Either the epithet *territorial* is altogether inadmissible in regard to Bishoprics, or the Bishops created by the Papal Brief are not improperly classed under that head, as exercising jurisdiction within the territory from which they take their titles. *Titular* Bishops, on the other hand, have a barren title; they possess the episcopal character and dignity, but have no *territorial* relation, as Bishops, to the land wherein they accidentally exercise episcopal functions.

A *territorial dukedom* and a *titular dukedom* are distinctions which import a well-known difference. A territorial duke has temporal jurisdiction in the territory from which he takes his title: whereas a titular duke has the title, but no territorial attributions. A territorial dukedom does not necessarily carry with it "some tangible possession of something solid," but only the exercise of certain rights and privileges *quâ* the territory and its inhabitants are concerned. A *territorial* duke is not necessarily a *pro-*



*prietary* duke; on the contrary, he may be dependent for "ways and means" altogether upon the supplies which the inhabitants furnish to him. So likewise a territorial Bishopric, as distinguished from a titular Bishopric, needs not imply a tangible possession of the land, or any right of property in it, but only the exercise of jurisdiction *quâ* the territory, from which the Bishop is entitled, and its inhabitants are concerned; and a territorial Bishop may be as dependent upon the contributions of the faithful as a titular Bishop.

Dr. Wiseman speaks of *local* Bishops, which is a convenient expression; yet, if it were courteous to cavil at the phrase, it might be said that all Bishops are Bishops of some *place* or other. Titular Bishops, for instance, are ordained to the *title of a place*, where a Church is supposed still to exist, so that "*local*" would be rather a generic than a specific term. The ancient titular Bishops, against whom Archbishop Anselm complained so loudly in a letter to one of the Irish kings, "*Dicitur Episcopus in terra vestrâ passim eligi, et sine certo Episcopatus loco constitui,*" are supposed to have been rather *abusive* Bishops, or in the nature of Chor-Episcopi, a species, it is thought, of suffragan Bishops. On the other hand, the English suffragan Bishops, appointed under 26 Hen. 8. c. 14., were as much *local* Bishops as the ordinary Bishops; for these Suffragans had English Sees, and might have been aptly styled *local Suffragans*, in contradistinction to *titular Suffragans*, such as the Suffragans of the ordinary Bishops in Prussia who are consecrated Bishops *in partibus*.

The statute 26 Hen. 8. c. 14., deserves a cursory notice. By that Act it was provided, that twenty-

five Towns in England and Scotland, and *the Isle of Wight* in addition, should be taken and accepted for Sees of suffragan Bishops: that the Archbishops and Bishops in ordinary should severally have the power, if they so pleased, to select two honest and discreet spiritual persons to be named by them for Suffragans, and should present them to the King, who should have the power to give to one of those persons the style, title, and name of a Bishop of such of the Sees aforesaid, as the King should think fit, provided it be within the same province, "whereof the Bishop, that doth name, is." Letters Patent were thereupon to be issued under the Great Seal, addressed to the Archbishop of Canterbury or York, as the province might be, signifying the name of the person presented, and the style and title of dignity of Bishopric whereunto he shall be nominated, requiring the Archbishop to consecrate the said person so nominated and presented to the same name, title, style, and dignity of Bishop that he shall be nominated or presented unto. It was further provided, that these Suffragans should not use, have, or execute any jurisdiction, or episcopal power or authority within their Sees, but such only as they should be licensed to use by any Archbishop or Bishop of this realm, within their diocese, to whom they shall be Suffragans. This Act is still in force, having been repealed by 1 & 2 Philip and Mary, c. 8., but revived by 1 Eliz. c. 1. A curious question may accordingly arise upon its construction, in conjunction with the Roman Catholic Relief Act. Shrewsbury and Nottingham are amongst the twenty-five towns which are to be taken and accepted for Sees of Suffragan Bishops, but they are likewise towns which the Pope has erected into Sees for his Ordinary

Bishops, who are accordingly to take the style, title, and name of Bishops of those Sees, which are apparently Sees established by Law, and consequently protected from usurpation under a heavy penalty.

To resume the argument, it is not very easy to understand, upon the review of the practice which has obtained from time immemorial throughout Europe, how it can be contended that the Pope's power to erect Bishoprics *motu proprio* within the territory of an independent Sovereign Prince has ever been *legally recognised and admitted*. The record of such a fact no where exists. True it may be in a certain sense, "that the erection of Bishoprics is an essential part of the Pope's spiritual authority," in other words, that without the Pope's spiritual co-operation, the erection of a Roman Catholic Bishopric would not be complete; but it does not follow that the Pope's spiritual power is *all that is required* for the erection of a Bishopric. The spiritual authority of the Pope may be a *necessary condition*, where the will of the Prince is the *efficient cause*; but, on the other hand, the consent of the Prince is likewise a necessary condition, if ever the will of the Pope should be the originating cause.

"Alterius sic

Altera poscit opem res, et conjurat amice."

This is a matter of historical fact, as well as of legal deduction.

If Mr. Bowyer therefore had written, "no power *without* the Pope," instead of "no power *except* the Pope, can erect or create Roman Catholic Bishoprics here," the position might have been maintained by the side of a parallel statement on behalf of the ter-

ritorial sovereign, that no power *without the Crown*, i. e. *without the consent of the Crown*, can erect Sees for Roman Catholic Bishops within its territory,

The question is accordingly asked by Mr. Bowyer, "ought we to have applied for Bishops to the Crown? If not, whence could the creation of our Archbishoprics and Bishoprics proceed, except from Rome?" There is either an unintentional confusion of thought, or an intentional confusion of statement, in this passage. It is one thing to have applied to the Crown *for Bishops*, as the gift exclusively of the Crown, which the Roman Catholics, it may be observed, had already, and another thing to have applied to the Crown *for its consent*, as the Crown of the realm, that the Pope should erect Bishoprics, i. e. Sees for Bishops within the Realm. But it is suggested, that "the position of the British Government with reference to the Holy See precluded the Crown from giving to that measure a direct sanction." If this be so, it refutes at once Mr. Bowyer's assumption, that such creation of Bishops is not forbidden by the law of the land; for if the Crown through its ministers be precluded by the law of the land from giving its sanction to any such measure, the measure cannot be a lawful measure. If, on the other hand, it is meant that the Crown was precluded by the *accidental* position of its Government, in respect of the Crown having no direct diplomatic intercourse with the Court of Rome, there was no such insuperable difficulty which could justify the Holy See in having recourse to so summary a mode of procedure as involves the present "*coup de main*," more particularly since the Imperial Legislature has, within the last two years, relieved the Crown from any doubt, if it existed, as to its power to modify the position of its executive

government. Besides, the absence of direct diplomatic intercourse between the Vatican and the Court of St. James is not a valid excuse for the act of Pope Pius IX. under any circumstances. His immediate predecessor, Pope Gregory XVI., had no diplomatic Envoy at the Court of St. Petersburg in 1841; yet that circumstance, which the Pope declared was much against his will\*, was not held by him to constitute such a barrier as to preclude him from directly communicating to the Emperor Nicholas, by a letter under his own hand and seal, his full compliance with the Emperor's demands. Yet if there ever was an occasion in which the Pope might have justly stood upon diplomatic punctilio, it was in a case which involved the Emperor's appointment of an actual Bishop *in partibus* to an Archiepiscopal See, and the resignation by a Bishop in ordinary of his See, enforced upon him by the will of the territorial sovereign. So entirely does modern Rome invert the practice observed by the ancient Queen of the Seven Hills,

“Parcere subjectis et debellare superbos.”

It is said, however, “that the British Government ignores the Pope diplomatically, except as the *Sovereign of the Roman States*, and ought not to complain that his Holiness did not ask a consent which the Crown could not give, as though there were a Concordat subsisting between the See of Rome and her Majesty.” It does not seem on this occasion to

\* “Licet in ea conditione molestissime simus, ut nec aliquem istic habeamus qui nostram Sanctæque hujus sedis personam gerat, nec facultas detur cum Episcopis vastissimæ ditionis tuæ circa Ecclesiæ negotia libere communicandi.” Cf. Risposta del S. Padre de 7 Aprile 1841, in Appendix, p. cxii.

have occurred to the writer, that diplomatic intercourse is peculiarly an intercourse between Sovereign Powers, and that her Majesty Queen Victoria is at full liberty, according to the Custom of Europe, to accredit a public minister at the Papal Court, on the express ground of the Pope being the Sovereign of the Roman States, and upon no other ground, for it is only to *Sovereign Powers* that the *right of embassy* belongs.

The Pope, it is true, as already observed, claims to possess a twofold character, that of Universal Bishop, or Primate of the Christian World, and that of a Sovereign Prince. As Universal Bishop he is a *purely spiritual* character, and can neither send nor receive ambassadors. If he were to cease to be a Sovereign Prince, the *right of embassy* would cease to attach to him in his mere spiritual character. Hence, for the purpose of diplomatic intercourse, it is as unnecessary that England should acknowledge in the person of the Pope the character which he claims of Successor of St. Peter, and Universal Bishop of Christendom, as it is unnecessary for England to acknowledge in the person of the Sultan of Turkey the character of Successor of the Prophet and Defender of Islam. The spiritual character belongs to religion, not to politics, and diplomacy neither ventures nor cares to meddle with theological claims.

It is sufficient for the purpose of diplomatic intercourse, that the Pope should be the Sovereign of the Roman States, and if England recognises the Pope in such a character, England does not in any way ignore him for any legitimate diplomatic purpose. It is perhaps much to be regretted, that England has clung so long to the traditional fiction of the Pope being only Bishop of Rome and not a Sovereign

Prince ; and that the Crown has accordingly refrained from accrediting a resident minister at the Court of Rome. But that tradition has been abolished by an act of the Legislature (11 & 12 Vict. c. 108.), which has directly declared that her Majesty may accredit a diplomatic envoy to the Sovereign of the Roman States. Hence, indeed, there is the more ground for complaint, that his Holiness has on the present occasion neglected to ask the consent of the Crown of England. The observation as to the non-existence of any Concordat is wide of the mark, for, as already shewn, there is no Concordat with Prussia, or Hanover, or Russia, yet in the settlement of the affairs of the Roman Catholic Church in all these countries, the consent of the Crown was the basis of the arrangement, and it was obtained by means of diplomatic negotiations without any Concordat.

It is a subject not unworthy of remark, that all the Courts of Europe treat and negotiate with the Holy Father as a *Foreign Power*. At some Courts Papal Nuncios reside, who are received and rank amongst the members of the diplomatic body, and who address all communications to the sovereign to whom they are accredited, through the Minister of Foreign Affairs, and not through the Minister of Public Worship. Again, in such States\* as do not receive a Nuncio from the Holy See, communications between the Sovereign and the Pope are carried on by the Minister of Foreign Affairs through the Legation accredited to the Court of Rome. Belgium, for example, supplies us with a notable illustration of

\* For instance, there is no longer a Nuncio at Brussels, or at Warsaw, as was once the case ; whilst, on the other hand, many Courts have never received a Nuncio.

this fact. Pope Pius IX. on the 20th May, 1850, delivered an allocution in Secret Consistory, in which he advanced grave allegations against the Belgian government "on account of the perils which menaced the Catholic religion in Belgium." In reference to this we find in the first of Cardinal Wiseman's lectures, printed "by authority," a passage from the speech of "the Minister of Justice in Belgium," in the debate which took place in the Belgian Chamber of Representatives on 16th Nov. 1850. "How little fear," the Cardinal observes in the moral which he draws from the language of the minister, "is entertained in that country of danger to the state, from the action of the Papal power!"

It might be supposed from the Cardinal's representation, that the Minister of Justice was called upon in his capacity of Minister of the Department of Religious Affairs to give explanations to the Chamber; and that his explanations were perfectly satisfactory, and allayed all their fears. But his Eminence, in referring his readers to this debate, has omitted to notice the debate of the 15th Nov., which was on the subject of the allegations of his Holiness against the Belgian government, and of which the debate of the 16th Nov. was, as it were, a renewal.

The Minister of Foreign Affairs was the member of the Cabinet, who was called upon by M. de Percival on the first day of the opening of the Chambers after the lamented death of the Queen of the Belgians, to give explanations as to the attitude assumed by the Belgian government in consequence of "the Allocution of the Holy Father;" and he thereupon laid before the Chamber the written despatches from the Foreign Office to the Belgian Chargé d'Affaires\*

\* See Appendix, p. cxiv.



at Rome, with the substance of the verbal note communicated officially in reply to the Chargé d'Affaires by the Cardinal Secretary of State. The purport of this diplomatic communication was to claim the attention of the Pope to the real state of the law in Belgium, and to appeal to his high impartiality to do justice in regard to the misrepresentations which had been spread abroad concerning the measures of the Belgian government.

His Holiness on this occasion directed the Secretary of State to correct an inaccuracy in the report of his allocution, and to explain that his language as to the Catholic Faith being in peril, had reference to the law of education at that time (May, 1850), under the consideration of the Belgian Chamber. The Belgian Government, in answer to this explanation, declared that they did not consider this reply on the part of his Holiness to be sufficient; and the Chamber, after a long debate, approved the language and the conduct of the Government by a division of fifty against twenty-four.

It thus appears that his Holiness the Pope did not consider his authority in such a matter to be out of the reach of diplomatic negotiation, and that Belgium, to which country Cardinal Wiseman directs the attention of his readers, as illustrating in the simplest manner "the reciprocal right of a Church not established in monopoly, and of the civil Government," deals and negotiates with the Papal Power as a Foreign Power. Further, to mark the dissatisfaction of the Belgian Crown, a discontinuance of the usual mode of friendly intercourse has been adopted according to the practice of Europe between independent Sovereign Powers, and the Belgian Envoy to the Court

of Rome is not for the present to resume his diplomatic functions at that Court.

It is further said, that any interference on the part of the Sovereign with the restoration of the Roman Catholic Hierarchy, "is an interference with the internal government of the Roman Catholic Church, which is as absurd on *Protestant* as on *Catholic* grounds." This remark of Mr. Bowyer's tends to change the issue altogether, and to transfer the question from the domain of law, to the region of theology. It is not a question of Protestant or Catholic interference, which is involved in the present issue between Rome and England: it is a question of *Public Authority and National Preservation*.

Let us consider for a moment what the present Brief purports to effect. And here, indeed, a serious question arises for the Roman Catholic body in England. The Pope ordains that his Letters Apostolical shall be valid and take effect, *notwithstanding the sanctions of Universal Councils* to the contrary. In other words, the Pope here proclaims himself to be above the authority of Universal Councils. This principle of Ultra-Montanism\* has hitherto never been accepted on the Northern side of the Alps.

\* Cf. Bellarmine de Auctoritate Conciliorum, l. 2. c. 13., who discusses "An Concilium sit supra Papam," and says, "et quamvis postea in Concilio Florentino et Lateranensi ultimo videatur quæstio diffinita, tamen quia Florentinum Concilium non ita expresse hoc diffinivit, et de Concilio Lateranensi, quod expressissime rem diffinivit, nonnulli dubitant, an fuerit necne Generale, ideo usque quæstio superest etiam inter Catholicos." The Councils of Constance (1414-1418) and Basle (1431-1443) rejected the doctrine of the Pope's authority being paramount to that of General Councils. That doctrine, in its most extravagant form, was set forth in the Bull "Pastor Æternus," published by Leo X., in 1516, almost immediately after the last Council of Lateran,

If the omnipotence of the Holy See be thus openly maintained at the very outset, what power but the temporal power of the State remains, which can be successfully invoked to limit the things *appurtenant to the spiritual function*? If the Pope's Brief shall run *vigore suo* within the realm of England on the present occasion, notwithstanding it is admitted to be contrary to the Law of the Land that it should be published and put into execution, to what sanction can an appeal be made to stay the execution of any other Brief? If it should prove to be *an article of faith* amongst the majority of the Roman Catholic body in England, that the Pope's authority is above that of Universal Councils, they must bow to his ordinances, whatever be the nature of their subject-matter, and it becomes a *spiritual duty* for them to carry into execution the Papal decrees, however much they may be opposed even to the judgment of the Universal Church; and, according to the doctrine set forth on the present occasion, the majesty of the Law of the Land, if it forbids the particular act enjoined by those decrees, must veil its head before the majesty of Individual Conscience! If this doctrine be not destructive of public authority—if it be not fatal to national preservation—let it be publicly recorded in the Tables of the Laws of the Realm, so that all who pass by may note it.

But the Roman Catholic body in England, if it accepts the Brief of Pope Pius IX. and its territorial

for the purpose of condemning the Pragmatic Sanction in the kingdom of France. This Bull recites that the Eternal Shepherd "migraturus ex mundo in soliditate petrae, Petrum ejusque successores Vicarios suos instituit, quibus, ex libri Regum testimonio, ita obedire necesse est, ut *qui non obedierit, morte moriatur.*" — Bullarium, tom. iii. pars iii. p. 430.

Hierarchy, must accept the doctrine that the Pope is above the authority of Universal Councils; it must, in fact, accept *Popery*, as distinguished from the *Catholic Faith*, in its most ultramontane form. For the Catholic Faith does not require *that doctrine* to be received; and the Roman Catholic Church in Germany and France still maintains with Pope Zosimus, “*contra statuta Patrum condere aliquid, vel mutare, nec hujus quidem sedis Apostolicæ potest auctoritas.*”\*

It cannot therefore be matter of surprise, on the contrary, it was to be expected, that the Chiefs of the Roman Catholic Laity in England, who hold the Catholic Religion of their ancestors, which admitted no such doctrine, should raise their voices and protest with instinctive good sense against an Act of the Pope, which places them “in a position where they must either break with Rome, or violate their allegiance to the Constitution of these realms.”

Here we may revert once more to the proceedings of the Synod of Thurles, to which allusion has been already made in an earlier chapter. Her Majesty’s Government, anxious to afford to the middle classes of Ireland the means of educating their sons in a manner suitable to their station and wants, seeing that half a million of the children of the lower classes attend the national schools, proposed to establish three colleges in Ireland, in which, by appointment of the Crown, professors were to lecture in all departments but theology, in which

\* Cf. Déclaration du Clergé de France, touchant la Puissance Ecclésiastique, du 19 Mars, 1682, in the fourth volume of *Les Libertés de l’Eglise Gallicane*, par Durand de Maillane, p. 458. “Le jugement du Pape n’est pas irréfornable, à moins que le consentement de l’Eglise n’intervienne.”

subject it was left open for the students to seek instruction at the hands of their own Clergy beyond the walls of the colleges. It was reasonable to expect that as the Government carefully avoided the reality as well as the appearance of seeking to give a bias to the religious opinions of the youths who might frequent the colleges, the Irish laity would welcome institutions of such importance brought to their own doors. They did so welcome them; for, be it observed, it was not proposed to confine the students within the walls of the colleges, so that they should not be approached by the ministers of their religion; but the students were to live with their parents, or such friends as their parents might select, were to frequent the place of worship which their parents frequented, were to receive religious instruction and exhortation from the pastors whom their parents attended. The State, as such, could not be expected to do more.

In Belgium, where the State has attempted to do more, the system has failed precisely in that part of it which bears upon religion.

The Irish Roman Catholic laity welcomed these collegiate institutions. They saw in them a further token of the sincerity of Her Majesty's Government in their policy of impartiality. The Roman Catholic clergy, on the other hand, were divided in opinion: a part of them were in favour of the colleges: and nearly a moiety of the Bishops placed themselves at their head. Had Dr. Crolly, who knew so well the interests and wants of his fellow countrymen, not been removed from his post by death, it is not too much to say that he would have coöperated with Dr. Murray in rendering the civilizing element of the new colleges as available for the middle classes, as

the schools have hitherto proved to be for the lower classes.

We shall now find the evil of the *foreign element* in the Roman Catholic system. On the death of Dr. Crolly, the usual rule in the election of Bishops of the Roman Catholic Church in Ireland was observed by the clergy upon whom the election devolved; and the names of three candidates were transmitted to Rome as *dignus, dignior, dignissimus*. The Pope, however, violated on this occasion all the rules which have hitherto governed such appointments, and nominated a fourth party to the vacant post of Archbishop. Dr. Cullen, whom the Pope thus arbitrarily nominated as the successor of Dr. Crolly, is an Irishman by birth, but by education an Italian monk; he has never discharged any pastoral duty in Ireland, and is a stranger to its wants and the interests of its people; but he has been selected for a special mission, to defeat an Act of the Imperial Legislature, which had established the colleges, and to extinguish all education not *octroyé* by the Roman Catholic clergy. Accordingly a Synod of the Roman Catholic Bishops — a thing unheard of in Ireland since the Reformation — was convoked at Thurles; and a “Synodical Address of the Fathers of the National Council of Thurles” was put forth by authority. “Far be it from us,” they say, “to impugn for a moment the motives of the originators (of the system of education in the Collegiate Institutions). The system may have been devised in a *spirit of generous and impartial policy*: but the statesmen who framed it were not acquainted with the *inflexible nature of our doctrines*, and with the jealousy with which we are obliged to avoid everything opposed to the purity and integrity of our faith. Hence those institutions which would have called for

our profound and lasting gratitude, *had they been framed in accordance with our religious tenets and principles*, must now be considered as an evil of a formidable kind, against which it is our imperative duty to warn you with all the energy of our zeal, and all the weight of our authority."

We find here precisely the same attitude adopted by Dr. Cullen, as by the Roman Catholic Bishops in Belgium. The State, as such, cannot undertake to furnish education in accordance with the theological tenets and principles of every religious community; it must therefore abandon, if Dr. Cullen's view is to prevail, the important duty which it has undertaken to discharge in Ireland, and must be content to promote the civilization of the people by purely material means! Yet the State cannot consent, with safety to itself, to abdicate one of its highest functions; it cannot safely fold its hands in the presence of a moral barbarism which occasionally paralyses the law, and rest satisfied, as heretofore, with punishing the peasantry for offences, as they arise, against an order of things which they have never been taught to respect.

There was, however, as already stated, a difference of opinion amongst the members of the Synod; and the question was referred to Rome, where the matter was laid before a council of foreign Prelates, who could have no acquaintance or sympathies with the moral wants and interests of the Irish people. The result was accordingly announced in a rescript from Cardinal Frasoni, of the date of 9th October, 1847, to each of the four Roman Catholic Archbishops in Ireland, informing them that "The Sacred Congregation, on the subject of the Academical Colleges, considers that Institutions of the sort would be a *detriment to religion.*"

“All controversy is now at an end,” writes Dr. Cullen, “*the Judge has spoken, the question is decided.*”

As a compensation to the Irish people for the boon of which they are to be deprived, — and be it remembered, that the College at Galway was placed under the headship of a distinguished Roman Catholic ecclesiastic, and that of Cork under the headship of a distinguished Roman Catholic layman, — the Propaganda gravely proposes that a Catholic academy, on the model of that which the prelates of Belgium founded in the city of Louvain, should be erected by the united exertions of the Roman Catholic Bishops in Ireland. It is strange that this Foreign Body, which claims to thwart the Act of the Parliament of Great Britain and Ireland, instead of working hand in hand with the Executive, and contributing, by the promotion of a *subsidiary scheme* of religious education for the Irish Roman Catholics, to make good those defects which in its opinion may exist in the arrangements of the State, should have overlooked the fact, that the Bishops whom it exhorts to found a Catholic Academy for the *laity* of Ireland, are indebted to the State for the means of educating their *clergy*! The State may henceforth deem it imprudent to subsidise a college for the education of the Roman Catholic clergy, seeing that it thereby relieves the Roman Catholic Bishops of that duty, and indirectly places funds at their disposal for the purpose of defeating the enactments of the Legislature. But Dr. Cullen does not stop here. “The solemn warning,” he says, “which we addressed to you against the dangers of those Collegiate Institutions, extends, of course, to every *Establishment* known to be replete with danger to the Faith and morals of your children — to every



*school* in which the doctrines and practices of your Church are impugned, and the legitimate authority of your Pastors set at nought. Alas! *Our country abounds with too many public Institutions of this kind*, which have been the occasion of ruin to thousands of those souls that were redeemed by the precious blood of Jesus Christ."

It is not publicly known, by what means the Synod has resolved to enforce upon the Irish laity the decision of the Propaganda at Rome, but if the Synod should have resolved to deny the sacraments of the Roman Catholic Church to the students at the Colleges, and their parents, and to extend the same principle to the National Schools, where 500,000 children of the poor are at present educated, the formidable character of the mixed power, which Rome wields in matters which are not purely spiritual, becomes strikingly apparent. It is not by reason of the Roman Catholic body in Ireland rejecting, as a matter of conscience, the civilising influence which the State has placed at their command, that the State complains, but on the ground that in a matter of a purely *domestic* nature, the decision of a *foreign* tribunal intervenes, to mar an enterprise which so many Roman Catholic subjects of Her Majesty conscientiously approve.

The Roman Catholic Clergy have been forbidden by a further rescript of 18th April, 1850, to discharge any function having reference to the said Colleges, and, to give an air of completeness to the proceedings, the Address of the Synod is published "by authority," and subscribed, in defiance of the Statute Law of the Realm, "Paul, Archbishop of Armagh, Primate of all Ireland, and Delegate of the Apostolic See, President of the Synod."

Where the highest Minister of Religion in the Roman Catholic Church in Ireland thus openly and flagrantly violates the Law of the Realm, it is worse than idle for him to caution his flock against "those publications in which loyalty is treated as a crime, and a spirit of sedition is insinuated." The curse of Ireland, *socially*, has been the want of good example in the laity: and now, the *political* curse of bad example is to be enforced upon the Roman Catholic clergy, by the servant of a Foreign Power.

It has been sagaciously remarked by a foreign statesman, that England has one great advantage in respect of other states, which have passed from the condition of absolute monarchy to that of mixed monarchy, that there has been hitherto no dispute in England, where the sovereignty resides. There has been no question raised in England between the Sovereignty of the Crown, and the Sovereignty of the People, like that which has been raised in many States, and compromised in a manner so as not to prevent its being renewed on those critical occasions of State policy, where the sovereignty may not be questioned with safety to the State itself. We have a Sovereign Legislature in the Queen, Lords, and Commons, but the Sovereign Executive power is in the Crown itself. No collision of authority, except in some unforeseen and very extreme case, can well arise in England; for the majesty of the law reigns supreme in the hearts and understanding of Englishmen. It is only where the *foreign power* of Rome steps in, that we see the traditions of England broken, the law of the land openly set at nought, and its prohibitions infringed, because its penalties are not enforced.

Considerable stress has been laid by Mr. Bowyer

and Mr. Anstey on the circumstance that the House of Lords, in the Sussex Peerage case, received the evidence of the Right Rev. Dr. Brown, and the Right Rev. Dr. Wiseman, the former being a Vicar Apostolic, the latter the Coadjutor Bishop of a Vicar Apostolic, while it rejected the evidence of the Jesuit Superior of Stonyhurst College. Mr. Bowyer contends that the evidence was received on the ground that a Vicar Apostolic was *virtute officii peritus* in the matrimonial law of Rome. Mr. Anstey, on the other hand, maintains, that "the House of Lords attached no importance to their character as *ex officio* members of the Roman tribunals, and considered them to be *periti* only by reason of their exercising *Canonical jurisdiction* in England and Wales under the Bulls of the Roman Pontiff." It is somewhat difficult to ascertain on what grounds precisely the evidence of these witnesses was admitted, as the House of Lords has not stated the reason of its decision. It should be kept in mind, however, that the question before the House of Lords did not regard the matrimonial law administered amongst the Roman Catholics in England, but the matrimonial law administered in Rome itself, and it appeared from Dr. Wiseman's evidence, that the Decree of the Council of Trent, which is a portion of the Law of Marriage at Rome, was no part of the law which he administered in regard to marriages in England. It would seem rather from the long series of questions put to Dr. Wiseman\*, that his office in England was

\* It appeared from Dr. Wiseman's evidence, that he had held the office of Superior of the English College at Rome from 1818 to 1840, and had then an opportunity of making himself acquainted with the practice and doctrine of the law at Rome. It further

not held to make his evidence admissible, but that it was admitted rather on the general result of his examination satisfying the House of Lords, that he had studied the Matrimonial Law of Rome, and was *de facto peritus*. Mr. Lithgow's evidence, on the other hand, was rejected immediately upon his stating that he had taken an oath as a Jesuit, not to accept any ecclesiastical dignity, and therefore was disqualified from becoming a member of the Congregation, which has the decision of all questions of Matrimonial Law at Rome.

"The Counsel were thereupon informed that the witness did not appear, from his position, to come within the description of *peritus*."

Sir Thomas Wilde then stated, "that he proposed to ask for an opportunity of producing *other persons filling the office of Bishop*, for the purpose of giving the testimony which he intended to obtain from this witness." The result of a careful consideration of these several facts, (1) that Dr. Wiseman's evidence was admitted, although he was not a Vicar Apostolic, but only a coadjutor Bishop; (2) that Dr. Brown appeared to be both a Bishop and a Vicar Apostolic\*; (3) that Mr. Lithgow was rejected, although he stated in his evidence, that he had a peculiar jurisdiction incident upon questions of marriage under the Vicar Apostolic; and (4) that the eminent lawyer who produced Mr. Lithgow stated, on his rejection, that he should ask to produce other persons filling the *office of Bishop*, leads to the conclusion,

appeared that Dr. Brown had made himself practically familiar at Rome with the proceedings of the Congregation of the Council of Trent, and the Law of Marriage as therein administered.

\* It is very properly observed by Mr. Bowyer, that the episcopal character is not essential to Vicars Apostolic.

that it was not upon the question of the spiritual jurisdiction of the *Vicars Apostolic* that the House of Lords decided to admit Dr. Wiseman and Dr. Brown as witnesses, and reject Mr. Lithgow, but upon the fact that Dr. Wiseman and Dr. Brown were both *Bishops* of the Church of Rome, and that Mr. Lithgow had no such position in that Church. In fact, the inference is entirely in this direction, since Dr. Wiseman's evidence was *admitted*, although he was not a Vicar Apostolic; whilst Mr. Lithgow's evidence was *rejected*, although he stated that he was, in the first instance, a Judge upon the subject of marriages, and exercised a peculiar jurisdiction received from the Vicar Apostolic.

If this view should prove to be correct, then the decision of the Highest Court of Common Law in these realms does not carry the question as to the recognition of the spiritual authority of the Pope over the Roman Catholic subjects of her Majesty any further than the Acts of the Legislature, which have recognised the *Episcopal office* of their Bishops.



## CHAP. V.

LET us now proceed to examine a little more closely the principle involved in the change from Vicars Apostolic to Bishops in Ordinary, inasmuch as it seems to be maintained by Dr. Wiseman, that the change is a mere question of *form*, not of *substance*, and that there is no principle of law involved in it. "It has been merely a change of *title*," writes Dr. Wiseman, in his first lecture. "Bishops who before bore *foreign* titles, under which spiritually to govern British Catholics, have now received *domestic* titles; and the sphere of their jurisdiction is called a *diocese* instead of a *district*."

In the first place, then, let it be understood, that the office and title of Vicar Apostolic is an office and title unknown to the Canon Law. No trace of it occurs in the collection of Decrees and Canons known as the *Corpus Juris Canonici*, further than that every Bishop has power to delegate a Vicar. Writers such as Van Espen, Thomassinus, and even Reiffenstuel and Schmalzgrueber are silent upon the subject of Vicars Apostolic, further than that the two latter canonists say, that the Vicar General of a Bishop may be delegated by the Apostolic See to execute its mandates and graces. The title indeed, and office of Vicar Apostolic, have their foundation rather in the *Curial* Law of the Roman Pontiffs, than in the *Canon* Law of the Roman Catholic Church.

Dr. Watson, who had been appointed Bishop of

Lincoln, under a Papal Bull in the reign of Queen Mary, was the last survivor of the English Prelates who were expelled from their Sees by Queen Elizabeth. He died in 1584. A scheme for reviving the separate Episcopacy in England, by the establishment of new Sees, was thereupon submitted to the Pope on behalf of the Roman Catholics in England; but it was held at Rome, that political circumstances did not admit of the establishment of any episcopal Sees, just as, we find from Van Espen \*, it was ruled at a later period in the case of the Dutch Churches, which had passed into the hands of the Jansenists. An Archpriest (Archipresbyter), a sort of Rural Dean, was accordingly sent over by Cardinal Cajetan, in virtue of a Brief from Pope Gregory XIII. † (24th May, 1598), granting to him licence to perform certain offices of benediction and consecration with discretion and secrecy. Mr. Blackwell, who accepted the office, was further furnished with Letters, addressed to himself from Cardinal Cajetan ‡, deputing him to govern the secular clergy in the Anglican Vineyard, in like

\* “Exemplum vidimus in Ecclesiis nobis vicinis, nimirum metropolitana Ultrajectensi et Cathedrali Harlemensi, quæ a centum circiter annis in potestate Aatholicorum constitutæ, numerosum admodum populum cum suo proprio clero et ordinariis pastoribus retinuerunt: quibus et Episcopus datus fuit, qui tametsi ad eas Ecclesias regendas et administrandas ordinaretur, quin et earum Ecclesiarum vulgo a populo et clero haberetur et reputaretur Episcopus, nihilominus propter *politicas rationes* non sinebatur ad titulum eorum Ecclesiarum ordinari, sed *peregrinæ Ecclesiæ* nomen mutuare debebat et *ab eo nomen Episcopi gerere*.”—Part 1. tit. xv. § 8.

† This Brief was addressed to Mr. George Blackwell, Robert Gwin, and Vivian Haddock, according as one or other of them should accept the office. The date of 1578, in Dodd's Church History, is evidently a misprint.

‡ The Protector of the English *Nation* at Rome.

manner as we find an Archpriest resident in Holland, so late as at the conclusion of the last century. The authority of the Archpriest was at first energetically resisted by the Roman Catholic Clergy in England; but they ultimately gave way, after a Brief of Pope Clement VIII. (6th April, 1599) had been issued to confirm the institution of Mr. Blackwell as Archpriest, and in deference to a special Brief\* (17th August, 1601), issued for the purpose of putting an end to the Anglican dissensions. The authority of the High Priest, as defined by the Letters of Cardinal Cajetan, which were specially confirmed by the former of these Briefs, was confined to the direction and correction of the secular clergy, the regular Orders and the Society of Jesus being specifically exempted.

This system of governing the Roman Catholic Clergy in England through a succession of Archpriests was continued down to 1623, when political affairs in England had assumed a more favourable aspect in regard to Rome, in connection with the visit of Prince Charles to the Court of Spain, as a suitor for the hand of the Infanta. Mr. Butler, in the second volume of his "Historical Memoirs of the English Catholics," states that King James I., in order to promote the marriage of his son with the Infanta, agreed, by secret articles, to procure a free and liberal toleration of the Roman Catholic religion in his realms, and thereby was enabled to procure from the Holy See a dispensation for the marriage of his son with the Infanta, which however never took place.

\* This Brief was addressed to George Blackwell, Notary of the Apostolic See, and Archpriest of the Kingdom of England, and to the rest of the priests and clergy of that kingdom, and the whole Catholic people. Cf. Appendix, p. xxiv.



A marriage with a Princess of France was then projected ; but the necessity for a dispensation from the Holy See was equally great in order to secure the hand of Henrietta Maria, and accordingly the basis of their marriage was the adoption of the articles which had been concluded with the view of propitiating the Infanta. \*

On the Ides of March, 1622, the Pope issued a Bull † for the consecration of Dr. William Bishop, the Elect of the Church of Chalcedon *in partibus*, with a special reservation, that no prejudice should arise to the Patriarch of Constantinople, to whose metropolitan jurisdiction the Church of Chalcedon was subject. There is no allusion of the slightest kind to England in this Bull. In the following year (23rd March, 1623) a Brief ‡ was issued by Pope Gregory XV., addressed to William, the Elect of Chalcedon, licensing him to use, expressly for the consolation and spiritual welfare of faithful Catholics in England and Scotland, all the faculties enjoyed by the Archpriests in England, as well as those which are enjoyed by Ordinaries in their Cities and Dioceses, during the pleasure of the Holy See, notwithstanding the decrees of General Councils and all things to the contrary. No mention of the title or office of Vicar Apostolic is to be found in this Brief, nor in the subsequent Brief § of Pope Urban VIII. (4th Feb. 1625), appointing a successor to Dr. Bishop in the person of Dr. Richard Smith. It may be remarked, that this Brief was also addressed to Richard, the Elect of Chalcedon, and that the cog-

\* The priests, who accompanied Henrietta Maria, were of the religious order called Oratorians, whose peculiar habit has recently resumed a place amongst the costumes of the streets of London, in spite of 10 G. 4. c. 7. s. 26. which imposes a penalty of 50*l.* for every offence of so exhibiting it.

† Appendix, p. xliii. ‡ Appendix, p. xlvi. § Appendix, p. xlvii.

nisance of all causes in the second instance was specially reserved to the Nuncio at Paris, as heretofore exercised by him.

It has been a subject of dispute amongst Roman Catholics, as may be seen by referring to the Church History (Dodd's) of England published at Brussels in 1742, whether the Bishops of Chalcedon exercised original or delegated power, as Bishops. There can be no doubt, however, on referring to two Decrees\* published by the Congregation of the Propaganda at Rome, that the Vicar Apostolic had no *ordinary jurisdiction*, and that he was expressly admonished by the Nuncio at Paris to lay aside the title of Ordinary which he had assumed, and not to permit himself to be so entitled.

The theory involved in the system of Vicars Apostolic, which official designation seems to have crept in and established itself by use, was, that the Roman Catholics in England and Scotland were under the *immediate episcopal authority* of the See of Rome; that authority being exercised through a Vicar, who was for the most part himself a Bishop *in partibus*, and so far personally capable of performing all things appertaining to the episcopal office; such as conferring Holy Orders, consecrating the Chrism, &c.

The number of Vicars Apostolic was increased to four at the request of King James II.†, who assigned to each of them an annual salary of 1000*l.* per annum, payable out of the Exchequer. This salary ceased with the Revolution of 1688; but the arrangement of four districts was preserved down to 1840; and the system itself was more completely developed by the Brief‡ of Pope Benedict XIV., in 1753, which gave

\* Appendix, p. xlvi. † Butler's Historical Memoirs, iv. 400.

‡ Appendix, p. 1.

to the Vicars authority over the *Regular* clergy in addition to that which they enjoyed in common with Ordinaries over the *Secular* clergy. Nothing indeed was wanting, as declared in the fourth section of this Brief, which could conduce to the sound government of either the regular or secular clergy. The great link, however, of the ancient chain which connected England with the Holy See before the Reformation, was still wanting, namely, the link of Ordinary Jurisdiction, without which, the *Supremacy of the Pope*, as Pope, was still suspended with regard to England.

Under the system of Vicars Apostolic, the Pope, in fact, exercised over the Roman Catholics in England the pastoral superintendence of a Bishop, and not the appellate jurisdiction of Supreme Pontiff through the channels of a regular Hierarchy, and according to the rules of the Canon Law. Henceforth, however, the Canon Law is imported into the system of the Roman Catholics in England; and by that law, the ancient jurisdiction and pre-eminence of the See of Rome, as claimed and used within this realm before the Reformation, is revived in all its vigour. "*Siquis putaverit se a proprio Metropolitano gravari, apud Primatem diocesanos, aut penes Universalis Apostolicæ Ecclesiæ Papam judicetur.*" (Decreti Pars II. Causa II. Qu. VI. s. 15.)

Mr. Barnes, the Registrar of the Diocese of Exeter, in a very valuable notice of the Papal Brief, has remarked upon the absence of any provision in the Brief for an appeal to the Pope, but he has probably omitted to take into consideration, that if the Canon Law is introduced into England in all its completeness by the Brief, the appeal to the Pope follows, as part of that law. Dr. Wiseman, in his Appeal, has observed, that the Canon Law was inapplicable under Vicars

Apostolic; in other words, that the authority of the Pope under the system of Vicars Apostolic was quite a distinct authority, both in principle and in practice from that which was claimed and used before 1 Eliz. c. 1., and which was declared in 1846, by 9 & 10 Vict. c. 59., to be subject to the same considerations of law which attached to it in 1558 by the statute of Elizabeth.

The nature of the power claimed by the Pope before the Reformation, and which it is still contrary to law in England to maintain and defend, is the power asserted *by implication* in the present Brief—"to dispense with all human laws, uses, and customs of all realms in all causes which be called spiritual." The Brief, for instance, specially abolishes all rights and privileges of the ancient Sees of England, and of all Churches whatsoever in England, by *whatever security established*.

Dr. Wiseman very justly observes, "every official document has its proper forms, and had those who blame the tenor of this, taken any pains to examine those of Papal documents, they would have found nothing unusual in this." But it is precisely because this Brief runs in the usual form in which Papal Briefs were used to run in England before 25 Hen. VIII., and in which they still run in those countries where the Exequatur of the Crown is a preliminary condition of their publication, that the Brief is not admissible within the realms of England, and it is precisely because the Pope exercises the power which was usurped and practised by his predecessors of dispensing with all human laws within this realm, that it is unlawful for a subject of her Majesty to obey the Brief.

The Pope, for instance, creates a See of *Menevia*, or *St. David's*, and creates Dr. Brown, late Bishop of

Apollonia *in partibus*, Bishop of St. David's. The law of the land, however, has declared, that it is a misdemeanour for Dr. Brown to take the name, style, and title of *Bishop of St. David's*, not being authorised by law so to do. The Pope, on the other hand, has dispensed with all the rights of the ancient Sees, *by whatever security* established; and Dr. Brown puts the Brief into execution by taking the title of the See, in defiance of the law of the land. Now let it be always kept in mind, that the Pope did not give to the Bishops of the English Church their temporalities when he issued his Briefs before the reign of Henry VIII. to *confirm their election*. The temporalities were a civil accident of the Sees, into which they were put in possession by an act of the Crown, after their *consecration* had taken place at the hands of the Metropolitan in England. Neither did the Pope give to the Archbishops their temporalities when he sent them the *pallium*. The Crown in their case also was the fountain of temporal wealth. It was not therefore in any way by reason of temporalities being connected with the Sees of the English Bishops, over whom the Pope exercised ecclesiastical jurisdiction before the Reformation, that the Pope was held to claim and use an usurped authority; it was not in temporal matters, but in causes which be called spiritual, that his power to dispense with the laws of the realm was disputed by the Crown of England, and ultimately declared to be unlawful.

The statute concerning Peter-pence and dispensations (25 Hen. 8. c. 21.) recites, that the Pope was to be blamed not merely for the premises recited in the preamble, but "for his abusing and beguiling your subjects, pretending and persuading them that he hath power to dispense with all human laws, uses,

and customs of all realms *in all causes which be called spiritual*, which matter hath been usurped and practised by him and his predecessors for many years in great derogation of your Imperial Crown and authority royal, contrary *to right* and conscience."

We have here a clear exposition of the usurped authority of the Pope as it had been practised before this Statute — that he claimed to dispense with the laws of the realm in all causes which be called spiritual. It is now contended, that the erection of Sees for Bishops is "an integral and essential part of the exercise of the Pope's spiritual authority." Let Mr. Bowyer's statement pass current for argument's sake. The Brief therefore is issued "in a cause which is called spiritual," and it claims to dispense with the law of the land with regard to *the title of Bishop of St. David's*. If this be not that power of the Pope which her Majesty's subjects on their allegiance are bound not to maintain, it is difficult to understand what is the power which 9 & 10 Vict. c. 59. declares to be still forbidden, as used of old by the Pope before the reign of Queen Elizabeth.

For the Pope has placed himself in this dilemma: the erection of a Bishop's See is either a spiritual matter, as Roman Catholic writers contend, or a temporal matter, as English lawyers say. If it be a temporal matter, the Pope clearly cannot execute it within the realm of an independent sovereign without the consent of that sovereign; if, on the other hand, it is a spiritual matter, he claims to exercise a power to dispense with a law of the realm "in causes which be called spiritual," and that power is expressly declared to be unlawful for the Roman Catholic subjects of her Majesty to carry into effect within her Majesty's dominions.

It will be seen, on referring to the Appendix, that

the Briefs by which the offices of Archpriest and Vicar Apostolic are instituted, were addressed to the individual Roman Catholic priests upon whom the offices were respectively bestowed; that in the Brief addressed to the Archpriest there was a special provision, that it should cease to be valid after the kingdom of England should have returned to the unity of the Roman Church and been publicly and duly reconciled. There was thus, no pretension in this Brief on the part of the Holy See to deal with the realm of England as an integral part of the Roman Church.

Further, in the Briefs, which were addressed to Dr. Bishop and Dr. Richard Smith, there was a special reference to the faculties granted to the Archpriests, and an express declaration that the Vicars Apostolic were removable at the pleasure of the Holy See. Again, the Apostolicum Ministerium of Benedict XIV. was addressed to the Vicars Apostolic, the Secular and Regular Priests, the Apostolic Missionaries of the Anglican Missions.

On the present occasion, we find that a Brief has been issued "*ad perpetuam rei memoriam*," reuniting the kingdom of England to the Holy See, and re-establishing in that kingdom "according to the Common Law of the Church, a Hierarchy of Ordinary Bishops, deriving their titles from Sees constituted by the present Letters;" and it is formally recited, "that it has been granted\* to the insufficient merits of the Pope, to renew episcopal Sees in England precisely as St. Gregory the Great in his age accom-

\* "Nobis etiam meritis adeo imparibus datum nunc est episcopales Sedes in Anglia renovare, prout ille cum summa Ecclesiæ utilitate ætate sua perfecit." All annalists agree, that the express consent of King Ethelbert was obtained by Augustine, as a preliminary measure.

plished it." The Roman Catholic mission in England is thus brought to an end, and the "form of ecclesiastical government has been restored in England after the mode in which it *freely* exists amongst other nations where there is no peculiar cause why they should be ruled by the extraordinary ministry of Vicars Apostolic."

Let us for a moment consider the aspect which an analogous proceeding in civil matters would present. The subjects of the Christian powers of Europe, who are resident in the Ottoman dominions, are, for the most part, under the temporal authority and control of the respective Chiefs of the Missions, or the Consular agents of their respective Governments, resident in various parts of the Ottoman dominions, as the case may be, who exercise a permissive jurisdiction over them in civil matters; the law of the land being held to be inapplicable to the settlement of many questions which may from time to time arise amongst Christians. Let us suppose that one of the sovereigns of Europe who claim to inherit the Crown of Jerusalem—and there are not fewer than five crowned heads who bear the title of King of Jerusalem on their coins—were to issue a Commission to the effect, that, as the number of his subjects was increasing daily in Judæa, he had thought that the time was come when the form of governing them through the extraordinary ministry of the Mission should cease, and the form of ordinary civil government according to the common Law of their own country should be established. Let us suppose still further, that, in accordance with this commission, a Viceroy of Jerusalem, with an army of executive officers, should be sent forth; that they should land in the country, and issue proclamations announcing that Judæa was once more restored to Christendom, and that they had



taken upon themselves their office under the Commission of their Sovereign. Let us also suppose that the authority asserted in these proclamations was without personal limitations, and as full and comprehensive as could be asserted after a formal cession of Judæa on the part of the Ottoman Porte to the *soi-disant* heir of the King of Jerusalem. Let us suppose all this to have been carried into execution without the consent of the Ottoman Porte; and that in answer to the remonstrance of the Ottoman Porte, it should have been said, that the authority claimed by the heir of the King of Jerusalem was a purely *voluntary* authority; that it was only over the *minds*, not the *persons*, of those who were resident within the dominions of the Sultan, that any power was intended to be exercised; that every commission of a Christian King had its proper form, and that had the Sultan who blamed the tenor of the commission just issued, taken any pains to examine the tenor of the commissions of Christian Powers, he would have found nothing new and unusual in the form of that which he objected to. So far from such an answer founding a justification for the proceeding, it would rather aggravate the outrage; and the Sultan would have every reason to conclude, that there “was a pretension to sovereignty over his realm, and a claim to sole and undivided sway;” and he would be justified in resisting to the utmost such an encroachment on his rights of sovereignty, and such a departure from received practice. It is not sufficient to say, in reply to such an imaginary case, that there is no parallel between temporal and spiritual matters, if there should happen to be a parallel between them in respect of *an infringement of the law of the land*, and if that infringement be inconsistent with due respect to those attributes of sovereignty which appertain to the Crown

of an independent Prince. The Holy See may, of course, say, that it is not bound, as a Foreign Power, by the Municipal Law of England; but if its proclamations hurt the sovereignty of the British Crown, the Holy See, for all purposes of redress, is not out of the reach of the same arguments which it is customary to address to other Foreign Powers, who violate the received practice.

In order to test this principle, let it be applied to an extreme case. Under the system established by the present Brief, it is competent for the Pope to lay the kingdom of England under an Interdict, which the Roman Catholic Clergy, though subjects of her Majesty, would be ecclesiastically bound to execute, as they are henceforth made subject to all the regulations of the Common Law of the Roman Catholic Church. But the Crown of England could not ignore such an application of so-called spiritual authority on the part of the Pope to matters, which the law of the land should hold to be of a temporal character, in the nineteenth, any more than in the fifteenth century. Let us suppose that the Rescripts of the Pope, which have been issued in accordance with the resolution of the Synod of Thurles, should not be obeyed in Ireland, and that it should be in contemplation to lay that kingdom under an Interdict, and so constrain its Roman Catholic population to withdraw their children from the national schools; would not the Crown of England be as much entitled to exercise its rights of sovereignty in preventing the publication of the Interdict, as the Crown of France was in the time of its Parliaments? and would not the issuing of such an Interdict constitute a *casus belli* as much in the nineteenth century as in the fifteenth, although the interdict might be spiritually operative only upon a third of the population of the British

Islands? Yet, if the doctrine is to prevail, that religious toleration implies the absence of all interference on the part of the State in "matters which are called spiritual," the action of the Crown of England is paralysed by *religious toleration*, whilst the action of the Crown of France remained unfettered in the presence and in despite of an *Established Church*.

But it is said that the case involved in the present Brief is concluded against England by reason of the circumstances of Ireland, and that the same proceedings must be tolerated in England, which are tolerated in Ireland. It is said also, that in Ireland the law is systematically violated, and that this has been immemorially done without let or hindrance. Lord St. Germans has set forth, in a very simple form, the difficulties which suggest themselves under this head, and which deserve a more particular examination.

In the first place, then, it may be observed, that Ireland is pre-eminently *the land of anomalies*. Dr. Cullen, for instance, in the very document in which he inculcates loyalty to the Crown, commits a flagrant violation of the law of the land, by assuming the title of an Archbishop of the Established Church of England and Ireland. Dr. Cullen may, indeed, cite the precedent of Richard Creagh, consecrated Archbishop of Armagh by Pius V., as far back as the reign of Queen Elizabeth, although that See was already filled by Dr. Loftus, the Primate of the Established Church; and he may point to a long series of Bishops in Ireland created by the Pope's authority, and contend that the government of the Roman Catholic Church by Titular Bishops in Ordinary has never been practically intermitted in Ireland, although it has been totally abandoned in England. Lord St. Germans may also be quite correct in stating, for the subject must have been peculiarly within the knowledge of the Secretary for

Ireland, that the appointment of Bishops with territorial titles in Ireland has been immemorially practised in that country without let or hindrance. But these, and similar arguments, instead of establishing a precedent for England, seem rather to point in another direction.

The ancient titles, for instance, in Ireland, have been habitually usurped, in spite of the laws against recusants; and the Pope has been accustomed to appoint Titular Bishops to Irish Sees from the reign of Queen Elizabeth. These Bishops have thus the sanction of custom and usage long prior to the Act of Union, and the Notizie of Rome furnish a long catalogue of them. They were, however, for the most part resident out of the Queen's dominions, and delegated their authority to ordinary Priests as their Vicars-general.

Such, however, has not been the case with England. The Sees of the English Church have never been filled with Titular Bishops of the Roman Church; nor has the Pope ventured to erect new Sees within the realm of England until the present moment. It is said, indeed, by Dr. Wiseman, that the Warden who has governed the tribes of Galway in spiritual matters from time immemorial, was created a Bishop in 1831, when the Wardenship was converted by Pope Gregory XVI. into a Bishopric. This may have been done secretly in a corner of Ireland, without any remonstrance at this exercise of Papal power, but the present measure is "proclaimed from the housetops!" The law of the land is, in this case, not evaded, but defied! and a Cardinal Prince of the Roman Court sets up his Archiepiscopal throne over against the Sanctuary of the Legislature, and it is now gravely contended, that the English nation is not at liberty

to remonstrate, because the Irish nation has acquiesced in a wrongful act of Pope Gregory XVI.

It is not necessary to disapprove of the generous spirit of toleration which the legislature has of late years exhibited towards the Roman Catholics of Ireland, in order to justify a resolution to repel a wholesale act of aggression upon England. On the other hand, it is not necessary to bring down England to the same level with Ireland in order to maintain the integrity of the United Church of England and Ireland. The distinction has, in a previous place, been pointed out between the several conditions of *toleration*, *protection*, and *establishment*. These distinctions do not rest upon theory, but upon facts. There are three separate conditions in which the Roman Catholic Communion may be studied as existing in connection with independent sovereign states. In the first place, it may be under the superintendence of *Bishops in partibus*, as *Vicars Apostolic* of the See of Rome, as in Sweden, Denmark, and Saxony. This condition is one of *religious toleration*, under which the exercise of religion is free, and perfect liberty of conscience is permitted in matters of doctrine, but positive restrictions are imposed by the law of the land in matters of discipline. In the second place, it may be under superintendence of *Bishops in Ordinary*, as in Belgium, and in the Rhenish Provinces of Prussia, and in Poland, and in Little Russia. This condition is one of *ecclesiastical protection*, under which perfect liberty in matters both of doctrine and discipline is enjoyed within the general limits of the law of the land; but the law of the land stops short with the bare recognition of this liberty, and does not aid the law of the Church by the process of the civil courts. Thus in Belgium, the law of the land does not aid the foreign law of the

Roman Catholic Church in preventing priests from marrying; on the contrary, the tribunals have expressly declared such marriages to be lawful in Belgium.\* It may, thirdly, be under the superintendence of an *Episcopate* formally recognised in its collective capacity by the State, and whose decrees are carried into execution, if resisted, by the process of the civil courts. This is the condition of an *Established Church*. The Orthodox Greek Church, for instance, is the Established Church in Russia; the United Greek Church, *i. e.* the Church in union with the See of Rome, is a protected Church. Its local Sees are recognised by the law of the land, but the sanctions of its law are not enforced by the tribunals of the State.

Although the above sketch of the peculiar features of each condition is very imperfect, it may suffice to establish the fact of a real diversity in the three conditions. The practical question resulting from their acknowledged existence seems to be this: whether the Pope can, *motu proprio*, without the consent of the Sovereign of the land, convert the condition of *toleration* into that of *protection*.

It may be thought, at first sight, that such is not a fair statement of the question involved in the present measure of Pope Pius IX.; that the law of the land is not *asked*, as it were, to recognise the act of the Pope, but that the whole proceeding merely concerns the *forum conscientiæ*. Now if the proceedings of his Holiness involved *no violation of the law of the land*, there might be some force in the argument, because it is possible that the political institutions of a particular country might dispense with the observation of the ordinary rules, which have hitherto

\* Thus the marriage of an Ex-Curé was celebrated *civilly* at Gand, on May 29. 1850.

been observed by the Pope in regard to his dealings with other sovereign states of Europe. The circumstance of religious separation cannot affect the question; for even within the last four years the consent of the government of the Protestant Canton of St. Gall, in Switzerland, was held to be a necessary condition to enable Pope Pius IX. to erect a See for a Roman Catholic Bishop in the capital of that Canton.

But the institutions of England, in the first place, do not dispense with the ordinary rules: so far from it, that the execution of the Brief by which the change has been effected is itself a heinous offence against the Statute Law; and further, a provision of the Brief itself entails a positive breach of the law of the land. Now these are matters which concern the *forum externum*, and no plea can avail to bring them within the legitimate domain of conscience. They are, in the language of the statute of Henry VIII., contrary to *right*.

And here again it may be observed, that the circumstances of Ireland form no precedent for England. In Ireland there has always been a Roman Catholic Church; in England there has been ever since the Reformation a Roman Catholic Mission. In Ireland there have always been local Roman Catholic Bishops; in England there have been no local Bishops, but Vicars Apostolic. In Ireland the Pope has always appointed to the ancient Sees; in England he has established new Sees. In Ireland the Canon Law has always been in force amongst the Roman Catholics; in England it has been re-introduced by the Brief of Pope Pius IX.

But it may be said that the law may *ignore* the Brief, and the measures consequent on its publication. If the law were perfectly silent as to Papal Rescripts

and Bishops' Sees, the tribunals might remain mute, and so far ignore all the facts connected with and consequent on the publication of the Brief. But the law cannot *ignore its own violation*, any more than a man can ignore his own death. It may be a question whether the state of the law is perfectly satisfactory, whether some change in its provisions may not be desirable, or even absolutely necessary; but the Judges of the land cannot refuse to take cognisance of the law, if the question of its violation should be raised in Westminster Hall.

In Ireland, indeed, an *established custom* may be set up against a *positive law*; and although no custom can set aside a statute, still there is an equity of construction in cases of conflicting sanctions, which the common sense of mankind inclines to uphold. But where the established custom has been not contrary to, but in accordance with, the Statute Law, as in England, what equity of construction can be invoked to palliate the execution of the present Brief?

But it is said, that if what is permitted in Ireland is prohibited in England, the unity of the Church of England and Ireland will be thereby weakened.

Now the Act of Union between England and Ireland (39 & 40 Geo. 3. c. 67.) provides, "That it be the fifth Article of Union, that the Churches of England and Ireland, as now by law established, be united into one Protestant Episcopal Church, to be called the United Church of England and Ireland, and that the doctrine, worship, discipline, and government of the said United Church shall be, and shall remain in full force for ever, *as the same are* now by law established for the Church of England; and that the continuance and preservation of the United Church, as the Established Church of England and Ireland,



shall be deemed and taken to be an essential and fundamental part of the Union: and that in like manner, the doctrine, worship, discipline, and government of the Church of Scotland, shall remain and be preserved as the same are now established by law, and by the Acts for the Union of the two kingdoms of England and Scotland.”

The substance of this article refers mainly to the *internal constitution* of the Protestant Church of Ireland, and establishes a perfect identity of doctrine, worship, discipline, and government, between the two Churches, uniting them into one Protestant Episcopal Church: it further provides that it shall be a fundamental principle of the Union to maintain the United Church as the Established Church. In other words, the State is bound to aid the law of the Church, whenever the process of the civil courts should be required. Such is the only necessary principle involved in State-Establishment. The temporalities are accidents, which vary in their character in different states; but wherever the Church is established, there indeed its laws are maintained by the secular arm. These facts, it must be repeated, are matters of history, not of speculation.

Further, if we examine the condition of things in such of the great European states as present any features of similarity to the circumstances of the British Empire, we shall find, that it has not been thought necessary in Russia, for instance, or in Prussia, or in Denmark, to assimilate the heart of the empire to the extremities, because it has been found impracticable to change the condition of the extremities. On the contrary, where the conditions have been different, it has been thought reasonable that the system of legislation should be accommodated to those

conditions. Thus, in the dominions of the Emperor of Austria, before the Charter of 4th of March, 1849, we find in the Tyrol\* the Roman Catholic Church was established to the exclusion of all others; in Styria and Carinthia the Roman Catholic Church was dominant, but the Protestant communions were tolerated; in Hungary the Roman Catholic Church was the dominant Church of the kingdom, but the Greek and the Protestant Churches were protected; in Transylvania the Roman Catholic and the Reformed Churches were all alike protected, whilst the Greek Church was tolerated. It is false statesmanship to ignore facts, and it is equally false statesmanship to overlook practical diversities of condition in the subject-matter which invites legislation.

\* It may be within the recollection of the reader, that the inhabitants of certain villages in the Zillertal, in the Upper Tyrol, renounced communion with the Roman Catholic Church, and were obliged, by the laws of the Tyrol, to emigrate. They were offered, by the Emperor Francis, an asylum in other parts of the empire, where the Roman Catholic Church was not exclusively established, but they preferred to emigrate into Prussian Silesia. The cause of their separation from Rome was singular in itself, whilst it illustrates in a remarkable manner the part, which the Pope *personally* filled in the religious system of a simple-minded peasantry. They had been led to adopt the extraordinary notion, that the reigning Pope was not the true Pope, for that Pius VII. was still alive, and in a dungeon at Rome. The Emperor listened with great kindness to their representations, and sent a deputation of the chiefs of the villages to Rome, in order to satisfy themselves that their scruples were unfounded. On their return, the deputies had an interview at Vienna with the Emperor, when, in answer to his inquiries whether they had seen the actual Pope, and satisfied themselves that he was the true Pope, they replied that they had seen him, but that he was not the true Pope; for that *the true Pope, as the successor of the Apostles, knew all languages*, whereas the Pope, whom they had seen, could neither speak nor understand German, and was obliged to make use of an interpreter!

It cannot be denied that the Roman Catholic Church in Ireland has, by *custom*, a constitution in many respects analogous to the condition of a *protected* Church by the side of an Established Church. It is admitted also, on all sides, that this position of the Roman Catholic Church in Ireland is opposed to the Statute Law; and upon the strength of such a state of things in Ireland, where the law has been from time immemorial systematically violated, either from the force of the national character, or the weakness of the executive Government, it is contended that the Crown must submit to a similar violation of the law in England, where the law has been from time immemorial respected. Surely this reasoning cannot be sound. If it be expedient that the Pope should be allowed to exercise full power in England, the law at least should be altered, so as not to impose on those subjects of her Majesty who execute the Papal Rescripts the hard necessity of violating the law of the land.

Again it has been said, that if the English nation should refuse to submit to a similar condition of things to that which prevails in Ireland, it would be like the strong man refusing to share the burden of his weaker companion; it would be like the man who lives under a roof of slate refusing to lend a helping hand to extinguish the flames in his neighbour's roof of thatch.

Such, however, is not a correct view of the case. It would be far more just to liken the resolution of the English nation to the man who does not hesitate to extinguish the fire which has reached his own roof, although it may be impossible for him to stay the fire which is devouring his neighbour's house. He may regret, indeed, that his neighbour's house should be devoured by the flames, but he will at least have succeeded in preserving a refuge for his houseless neigh-

bour, instead of both having to seek for shelter in vain amongst blackened walls and smouldering rafters. It may be urged, however, that there is *a question of principle* involved in the maintenance of identity between the legal systems of England and of Ireland. If this be so, it must in this case be either a religious or a political principle. If a *religious principle* is contended for, it is impossible to overlook the all-important fact, that the religious principle was abandoned in 1791 — when religious toleration was granted to the Roman Catholic subjects of her Majesty — precisely as it has been abandoned in almost every state of Europe, exclusive of those in the Iberian and Italian peninsulas. But although the religious *principle* has been abandoned, the question of *degree* remains open. This indeed is a matter of *positive* law, and is properly subject to political considerations. The practice of European states confirms this view.

On the other hand, if it be said that a *political principle* is involved in maintaining an uniformity of legislation in regard to England and Ireland, it is difficult to understand how it has come to pass that uniformity of legislation has been so repeatedly disregarded.

Uniformity has never existed in matters of finance, as Ireland is subject neither to an excise duty, nor to the assessed taxes, nor to the income or property tax. Uniformity has not been adopted in regard to the Electoral franchise and the law of Elections. Uniformity has not been kept in view with reference to the Poor-laws and their administration. Uniformity has not been sought in regard to a State-subsidy for the education of the Roman Catholic Clergy of Maynooth, nor with regard to the *Regium Donum* to the Presbyterian

Clergy of Ulster. Uniformity has not been maintained in reference to the system of national education. The difficulty is far greater to discover in what respects uniformity of legislation has been observed, than to detect where diversity exists: and in the presence of the prominent diversity to which the instances just cited testify, it would be very unreasonable to contend that any political principle is at stake in refusing to maintain an uniformity of law between the two countries.

On the other hand, if it should be thought expedient to maintain an uniformity of law and practice between England and Ireland, two courses present themselves. It is admitted as a fact, on all hands, that at present, the Statute Law is a dead letter in *Ireland*. One alternative, therefore, which is suggested, is, that the executive Government shall ignore the violation of the law in *England*.

In the present case, we may expect that either the traditional reverence of the English people for the law will not tolerate its infringement, or its good sense will revolt at allowing an inoperative law to remain upon the statute-book. Besides, the practice of ignoring an open violation of the law is most dangerous in the way of precedent, and is a provocative to anarchy.

The other alternative, which would be far more worthy of a great nation, consists in repealing the laws which are now systematically broken, as involving a matter of detail substantially indifferent, after the principle of toleration has once been conceded. *Popery* at present, as distinguished from the Roman Catholic religion, is in fact an article of contraband, and it is smuggled into the country in defiance of the law. If the State recoils from enforcing the statutory

penalties against the violators of the law, let the law be repealed, for it has become a scandal. This would be a statesman-like method of dealing with a difficulty, if it should prove to be of a character that eludes legislation. But the embarrassment which this policy would entail, cannot be overlooked. If there were any definite bounds in the ecclesiastical system of Rome to the Papal authority; if the system itself were not inflexible, and its claims unlimited, nothing would be more simple than to deal with the question in the way of positive arrangement, through the medium, not indeed of Concordat, but negotiation; or even irrespectively of any communication with the Court of Rome. But the spirit of the Papacy is more *ultramontane* in proportion as the Holy See finds its position in Europe more isolated, and its claims to enlarge its so-called spiritual circle of activity increase in proportion as its temporal sphere of action becomes restricted. A Pope who is feeble in a temporal point of view, is obliged, *ex necessitate rei*, to fall back upon his spiritual power, in order to maintain his consideration, at home as well as abroad. Hence the necessity which the great Catholic powers have felt to maintain the political independence of the Holy See, as an element in the balance of power in Europe. Hence, when Napoleon proposed to Austria to establish the Pope permanently in France, and provide a dotation for him, the Emperor of Austria replied by a similar offer, on a more liberal scale.\*

\* The importance of being able to deal with the Pope immediately, as a sovereign power, in the way of request or remonstrance, is obvious in the case of Roman Catholic powers. England, by persisting so long in ignoring the political power of the Pope, has renounced the use of the vantage position, which other sovereign powers occupy in that respect.

The following circumstance, however, which the history of Europe establishes beyond a doubt, must be placed in the opposite scale. Every state of Europe, whether in ecclesiastical communion or not in such communion with the Holy See, has been forced, at some stage or other of its relations with the Papacy, to make a stand against its encroachments, and say, resolutely, "thus far shalt thou come, and no further;" for the Papal power being, according to its own theory, unlimited, knows, in practice, no other bounds than those which are set to it by the civil power. The duty, accordingly, of prescribing limits to its action, must devolve, sooner or later, upon the State in every country. Even in Belgium, where the constitution has been most carefully and most skilfully adjusted, in order to escape any collision with the Papal power, the attempt has failed. Austria, it is true, has embarked upon a great experiment, by suspending the "Placet" of the Crown, which the Emperors of Germany, in the plenitude of their greatness as the temporal stay of the Papacy, dared not hazard. The fruits of this experiment will not be ripe for many years.

The question, therefore, under this head, may resolve itself into a *question of opportunity*; and its solution will depend upon the answer to another question—whether the existing restraints upon the action of the Papal power within the realm of England, can be relaxed without immediate inconvenience to the State, and without compromising the result of a future struggle with the Papacy, whenever the necessity for it shall arrive.

On the other hand, it may be said, that the genius of Popery, as distinguished from the Roman Catholic religion, is essentially opposed to the spirit of the English

constitution, and that they are like diverging rays of light which can never meet. Hence, the policy which counsels further concession to the development of the Papal system in England, may be likened to the tactics of a general who allows his adversary to lead his columns in safety from the further bank of the river, in front of his position, across the bridge which separates the two armies, and to deploy them in perfect order on the near bank of the river. The general may justly have confidence in the strength of an entrenched position, and await the assault of the enemy on vantage ground with perfect security as to the result; but in the majority of cases, the defence of the bridge may be an important element of success.

Accordingly, in Belgium we find that the State maintains the command of the bridge which separates the province of religion from the domain of politics, and resolutely beats back the Papal force, whenever it seeks to effect a passage-across it. For instance, when the Roman Catholic Clergy have sought to control the exercise of the political franchise by abusing their pulpits to electioneering purposes, the Belgian tribunals have inflicted upon them the penalties of the law imposed upon the political offence. The case of the Curé of one of the principal Communes near Brussels may be instanced amongst others, as showing that the privilege of the pulpit was not allowed by the Courts of Belgium to shelter an act which was not within the true intent of the privilege. Again, several Curés have been sentenced to fines for performing the religious ceremony of marriage before the civil preliminaries have been complied with, and the sentences have been confirmed on appeal.

It is not within the province of this work to suggest the course which ought to be adopted on the



present occasion ; the responsibility of that decision may be allowed to rest with the executive Government, or the Legislature. But thus much may be affirmed, that they cannot both stay their hands. Either the Executive must enforce the law as it stands, or the Legislature must alter the provisions of the statute-book. The determination of this question will depend in a great degree on the feelings of the English people. Those feelings have been outraged by the Pope in their most sensitive quarter, and it is natural that the outrage should be resented. At present, indeed, the voice of the upper classes has been mainly heard ; but if once the fears of the great middle class should become alive to the idea that there was any positive danger of the fond dream of the Papacy being realised,—if a religious panic should seize the English nation at large, as on more than one occasion has happened in former times,—if it should be thought for a moment likely to come to pass in England, that the Director would succeed in wresting from the father the education of his child, and the Confessor in intercepting from the husband the confidence of his wife, and that the *family* which at present exists in its integrity almost exclusively in England, and which is the sheet anchor of the State, would be broken up and disappear in the manner in which it has perished, as an institution, in most Roman Catholic states,—a great revulsion would in all probability ensue in the tolerant spirit of the English people. No greater misfortune could befall the Roman Catholics in England, than that the enterprise of Cardinal Wiseman should be attended with some notable success at the outset. The institutions of Rome are totally opposed to the manners of the people of England ; and when individuals attribute the success of the Reformation in England to

causes of State policy, they forget that in religion, as in politics, the same maxim holds good—*γίνονται μὲν αἱ στάσεις οὐ περὶ μικρῶν, ἀλλ' ἐκ μικρῶν, στασιάζουσι δὲ περὶ μεγάλων.* A spark of fire will serve to kindle a conflagration that shall burn a city down to its foundations, but if the materials upon which it falls are not inflammable, the spark will fall harmless.

It is to be hoped that the occasion for a reaction may never arise. England at present stands purely on the defensive. We have an established order of law, which has been violated in England in obedience to a Foreign Power. That Power, being a Foreign Power, may have been misled by wrongful information as to the state of the law in England. It is right that the truth should be brought to its cognisance, in the usual manner in which Foreign Powers receive information as to the municipal law of other sovereign states. That Foreign Power has further departed from received practice. It is fair again to suppose that it may have been misled in this respect by some misinformation as to the state of the law in England. This might also be a subject of diplomatic representation to the Court of Rome, for it must be presumed that the Pope is accessible to truth and reason.

The new dignitaries, who are the subjects of her Majesty, stand in a different category. They seem disposed to contend that they have not violated the law of the land. This fact may be at once ascertained by a reference to Westminster Hall. If it should be held by the judges of the land that no violation of the law has been committed, *cadit quæstio*. If, on the other hand, the law should prove to be obscure, it should be cleared up: if technically inoperative, it should be formally repealed. There can be no greater scandal to a State, than to have laws in its statute-book

which speak only to the ear, or are too obscure to be obeyed. But this may not be assumed with respect to any law, until its authorised interpreters have pronounced it to be unintelligible. If, on the other hand, the law shall be found to speak distinctly and clearly, there is no alternative but obedience to it. But its present harshness should be accommodated to the milder manners of the age. The law as to Papal Rescripts, which, in its present form, would continue to be inoperative, should be modified, so as to be practically available to check any abuse of the spiritual power of the Pope to temporal purposes, and when so modified, it should be inflexibly maintained.

The friends of civil and religious liberty will probably be divided in opinion as to the measures to be pursued. Some will be anxious that the arm of the law should not be put forth on the present occasion; but others, whose sincerity is beyond question, and who know that the maintenance of civil and religious liberty in England rests upon the sanctions of the law, may reasonably apprehend, that if the law falters on the present occasion, before a power which is the inflexible adversary of civil and religious liberty, the sanctions of civil and religious liberty may themselves be endangered, and that the moderation of feeling, and equity of judgment, which has hitherto characterised the English people, will not be preserved under the aggravations of further outrage.

The Continent of Europe has been, within the last two years, convulsed from one end to the other. From the Tiber to the Danube, from the Seine to the Eyder, the triumph of self-will, under the form of anarchy, has been momentarily complete. The Papal Tiara has bowed its head to the storm equally with the Imperial Crown. But the tempest has scarcely

passed away, ere the spirit of self-will reappears under the garb of absolutism. No sooner does the Roman Pontiff resume possession of his tiny sceptre by the aid of a foreign power, than he casts the torch of dissension across the straits which separate one of the few havens of political repose from the regions of political turmoil; and he sends a messenger of discord, with instructions to brave the authority of the law in a country, where respect for the authority of the law is enshrined in the hearts of the people. The conduct of the Holy See is one of those moral anomalies, which perplex the philosopher to explain their cause, whilst they embarrass the statesman to control their effects.

It is to be hoped, indeed, that the arrow of civil discord has fallen wide of the mark on this occasion. The spirit of the Roman Catholic laity is equal to the crisis: they know and feel that it is not the cause of their religious liberties, but the cause of the Papal Power, which is staked upon the present move; and their natural leaders have spoken forth in language which argues a heartfelt allegiance to their sovereign and her laws. There is no *united* political action, even amongst the Roman Catholic Clergy, against her Majesty's Government. It would be a slander on them as men and citizens to assert this. The golden words of the Fathers of the Fourth Council of Toledo find a response in many breasts: "*Quicumque a modo ex nobis, vel cunctis Hispaniæ populis, qualibet meditatione vel studio sacramentum fidei suæ, quod pro patriæ salute, gentisque Gothorum statu, vel incolumitate regiæ potestatis pollicitus est, violaverit, anathema sit, atque ab Ecclesia Catholica, quam perjurio profanaverit, efficiatur extraneus, et ab omni communione Christianorum alienus.*"

Many of the Irish Roman Catholic Bishops are friendly and useful to her Majesty's Government, and are only prevented by fear from being more so. Of late the machinery of Synods has been introduced in Ireland, with a view to stifle all independent action of the Bishops; and a Rescript has been sent from the Prefect of the Propaganda at Rome, enjoining that these sacerdotal assemblies shall be held in due order, "otherwise difference of opinions will daily increase." In like manner, the Brief of Pope Pius IX. has been issued expressly in order to enable a Roman Cardinal to organise the machinery of a Synod in England; and the provision in the Brief, by which the Pope reserves to himself the power of creating more Archbishops and more Bishops, intimates a further extension of the system. It is for England to take counsel where she shall make a stand. The Roman Catholic Relief Act has been clearly infringed with respect to the title of the See of St. David's. The State cannot safely ignore that fact. The point of the Papal wedge has been inserted: another Brief may drive it home, and the laws of England will then be scattered to the winds.

Whatever may be the decision on the present occasion of those, to whose hands the destinies of England are entrusted, one thing is certain, — that England must not enter upon a struggle with Rome in haste, or with imperfect preparation. England must not carry on "a little war" even with such an enemy as the Pope. The Bill of Rights, the Act of Settlement, the Coronation Oath, alike attest the resolution of the English nation that their land shall remain a Protestant land. If, in consideration of these and other impregnable bulwarks, any of the outworks thrown up in 1829 should be deemed worthless, and

it should be held to be a waste of power to maintain them, it must not be forgotten that the spirit of the garrison has been roused by the assault of the enemy, and it may prove a difficult task to persuade it to abandon the defence of the outworks, unless some measure of a comprehensive nature shall be proposed, which shall place it in security from future aggression.

England has ample resources to bring the Papacy to terms, if her existing laws should only be enforced. It seems to be forgotten, that the whole machinery of the Religious Orders, upon which the Pope must rely for carrying out his scheme of propagating his power, so as to fulfil the pompous promise of his Brief, is proscribed within the United Kingdom, by the very law which secures to the Roman Catholic laity their civil and political liberties. Precautions were thus taken in 1829, that no *ex post facto law* should be required in that respect to authorise the Crown to repress any aggression of the Papacy upon the Protestantism of England through these organs. The law, however, has hitherto remained a dead letter\*, owing to the mode prescribed for recovering the penalties.

Two centuries have now elapsed since Milton penned his masterpiece, the "Areopagitica." It was written upon the wreck of a Throne, and amidst the ruins of a Church. Those results had been accomplished by a religious reaction of the English people against measures which tended, as they believed, to deprive them of their birthright in the Reformation. The same spirit burst forth at a later epoch, under similar provocation, and sealed the fate of an entire dynasty. Can it be

\* It appears from the Catholic Directory for 1851, that there are seventeen Religious Houses of men in England alone.

doubted for a moment what the result of the struggle against Rome must be, if the moment shall arrive for England to put forth all her strength ?

"Methinks I see in my mind a noble and puissant nation rousing herself like a strong man after sleep, and shaking her invincible locks : methinks I see her as an eagle muing her mighty youth, and kindling her undazzled eyes at the full midday beam, purging and unscaling her long-abused sight at the fountain itself of heavenly light ; while the whole noise of timorous and flocking birds, with those also who love the twilight, flutter about, amazed at what she means, and in their envious gabble would prognosticate a year of sects and schisms."





APPENDIX.

SANCTISSIMI DOMINI NOSTRI

PII

DIVINA PROVIDENTIA

PAPAE IX.

LITTERAE APOSTOLICAE

QUIBUS

HIERARCHIA EPISCOPALIS IN ANGLIA  
RESTITUITUR.

ROMAE

TYPIS SACRAE CONGREGATIONIS DE PROPAGANDA FIDE

MDCCL.

LETTERS APOSTOLIC  
OF OUR MOST HOLY LORD  
**PIUS IX.**

BY DIVINE PROVIDENCE

POPE,

BY WHICH

THE EPISCOPAL HIERARCHY IS RESTORED  
IN ENGLAND.

ROME:

FROM THE PRESS OF THE SACRED CONGREGATION FOR  
THE PROPAGATION OF THE FAITH.

MDCCCL.

## PIUS PP. IX.

### AD PERPETUAM REI MEMORIAM.

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UNIVERSALIS Ecclesiae regendae potestas Romano Pontifici in Sancto Petro Apostolorum Principe a Domino Nostro Jesu Christo tradita praeclaram illam in Apostolica Sede sollicitudinem quacumque aetate servavit, qua Religionis Catholicae bono ubicumque terrarum consuleret, ejusque incremento studiose provideret. Id autem Divini ipsius fundatoris consilio respondit, qui capite constituto Ecclesiae incolumitati usque ad consummationem saeculi singulari sapientia prospexit. Pontificiae hujus sollicitudinis fructum sensit una cum aliis populis inclytum Angliae Regnum, cujus historiae testantur Christianam Religionem vel a primis Ecclesiae saeculis in Britanniam invectam esse, atque in ea deinde plurimum floruisse; sed medio circiter saeculo quinto, posteaquam Angli et Saxones in eam Insulam advocati sunt, non modo publicas illic res, sed etiam Religionem maximis fuisse detrimentis affectam. Constat vero simul Sanctissimum Praedecessorem Nostrum Gregorium Magnum missis primum cum sociis Augustino Monacho, atque eo postmodum aliisque pluribus ad Episcopalem Dignitatem evectis, additaque iis magna *Presbyterorum Monachorum* (A) copia, Anglo-Saxones adduxisse, ut Christianam Religionem amplecterentur, et virtute sua effecisse, ut in Britannia, quae Anglia etiam appellari coepit, Catholica iterum restituta undique fuerit, et amplificata Religio. Sed ut quae sunt

# PIUS PP. IX.

FOR THE

PERPETUAL REMEMBRANCE OF THE THING.

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THE power of ruling the universal Church, committed by our Lord Jesus Christ to the Roman Pontiff, in the person of St. Peter, Prince of the Apostles, hath preserved, through every age, in the Apostolic See, that remarkable solicitude by which it consulteth for the advantage of the Catholic religion in all parts of the world, and studiously provideth for its extension. And this correspondeth with the design of its Divine Founder, who, when he ordained a head to the Church, provided for its safety, by his excelling wisdom, to the end of time. Amongst other nations the famous realm of England hath experienced the effects of this solicitude on the part of the Supreme Pontiff. Its historians testify, that in the very earliest ages of the Church the Christian religion was introduced into Britain, and subsequently flourished greatly there; but about the middle of the fifth century, after the Angles and Saxons had been invited into the island, not only the affairs of the nation, but religion itself, suffered most grievous injury. But it is well known that our most holy predecessor, Gregory the Great, sent first Augustine the Monk, with his companions, who subsequently, with several others, were raised to the dignity of bishops; and a great company of *Benedictine Priests* (A) having been sent to join them, the Anglo-Saxons were brought to embrace the Christian religion; and by his influence it was brought to pass, that in Britain, which had now come to be called England, the Catholic religion was every where again restored and extended. But to recount more recent events, the history

recentiora commemoremus, nihil in tota Anglicani schismatis, quod saeculo decimo sexto excitatum est, historia manifestius arbitramur, quam Romanorum Pontificum Praedecessorum Nostrorum impensam curam, et nunquam intermissam, ut Religioni Catholicae in eo Regno in maximum periculum, et ad extremum discrimen adductae succurrerent, et quacumque possent ratione auxilium afferrent. Quo inter alia spectant, ea quae a Summis Pontificibus, vel ipsis mandantibus, atque probantibus provisa gestaue sunt, ut in Anglia haudquaquam deessent, qui Catholicarum illic rerum curam susciperent, itemque ut Adolescentes Catholici bonae indolis, ex Anglia in continentem venientes, educarentur, atque ad scientias praesertim Ecclesiasticas diligenter informarentur; qui Sacris subinde Ordinibus insigniti et in patriam reversi sedulam navarent operam popularibus suis Verbi et Sacramentorum ministerio juvandis, et verae fidei ibidem tuendae ac propagandae. Verum ea sunt fortasse clariora, quae Praedecessorum Nostrorum studium respiciunt, ut Angli Catholici, quos tam atrox, et saeva tempestas Episcoporum praesentia, et pastoralis cura privaverat, Praesules iterum haberent Episcopali caractere insignitos. Jam vero Gregorii XV. Litterae Apostolicae incipientes "Ecclesia Romana" datae die XXIII. Martii An. MDCXXIII. ostendunt, Summum Pontificem, ubi primum potuit, Guillelmum Bishopium consecratum Episcopum Chalcedonensem cum satis ampla facultatum copia, et cum Ordinariorum propria potestate ad Angliae, et Scotiae Catholicos gubernandos destinasse; quod postea Urbanus VIII., Bishopio mortuo, missis ad Richardum Smith similis exempli Litteris Apostolicis die IV. Februarii An. MDCXXV. renovavit, Episcopatu Chalcedonensi, et iisdem, quae Bishopio concessae fuerant, facultatibus Smithio tributis. Visa sunt in posterum, quum Jacobus II. in Anglia regnare coepisset, Catholicae Religioni feliciora tempora obventura esse. Hac vero opportunitate Innocentius XI. statim usum Joannem Leyburnium Episcopum Adrumetenum totius Angliae Regni Vicarium Apostolicum An. MDCLXXXV. deputavit. Quo facto aliis Litteris Apostolicis die XXX. Januarii

of the Anglican schism in the sixteenth century presents no feature so remarkable as the care unremittingly exercised by the Roman Pontiffs our predecessors to give succour, in its hour of extremest peril, to the Catholic religion in that realm, and by all means in their power to afford it assistance. Amongst other instances of this care are the enactments and provisions made by the chief Pontiffs, or under their direction and approval, for the unfailing supply of persons to take charge of Catholic interests in that country; and also for the education of Catholic youths of good abilities on the Continent, and their careful instruction in all branches of theological learning; so that, when subsequently promoted to holy orders, they might return to their native land and labour diligently to benefit their countrymen, by the ministry of the Word and of the sacraments, and by the defence and propagation of the true faith.

Perhaps even more conspicuous have been the exertions made by our predecessors for the purpose of enabling the English Catholics to have superiors invested with the episcopal character, as the fierce and cruel storms of persecution had deprived them of the presence and pastoral care of their own bishops. The Letters Apostolical of Pope Gregory XV., commencing with the words "Ecclesia Romana," and dated March 23. 1623, set forth that the chief Pontiff, as soon as he was able, had deputed William Bishop, consecrated Bishop of Chalcedon, with an ample supply of faculties, and the authority of ordinary, to govern the Catholics of England and of Scotland. Subsequently, on the death of the said William Bishop, Pope Urban VIII., by Letters Apostolical, dated Feb. 4. 1625, to the like effect, and directed to Richard Smith, renewed the mission, and conferred on him, as Bishop of Chalcedon, the same faculties and powers as had been granted to William Bishop. When King James II. ascended the English throne, there seemed to be a prospect of happier times for the Catholic religion. Innocent XI. immediately availed himself of this opportunity to ordain, in the year 1685, John Leyburn, Bishop of Adrumetum, Vicar Apostolic of all England. Subsequently, by other Letters Apostolical, issued January 30.

An. MDCLXXXVIII. editis, quarum initium est "Super Cathedram" Leyburnio tres alios Episcopos Ecclesiarum in partibus infidelium titulis insignitos Vicarios Apostolicos adjunxit: quapropter Angliam universam, operam dante Apostolico in Anglia Nuntio Ferdinando Archiepiscopo Amasiensi, in quatuor districtus Pontifex ille partitus est, Londinensem scilicet, Occidentalem, Medium, et Septentrionalem, quibus omnibus Vicarii Apostolici cum opportunis facultatibus, et cum Ordinarii locorum propria potestate praeesse coeperunt. Eis autem auctoritate sua, sapientissimisque responsis tum Benedictus XIV. edita die XXX. Maii (An.) MDCCLIII. Constitutione, quae incipit "Apostolicum ministerium" tum alii Pontifices Praedecessores Nostri, ac Nostra Propagandae Fidei Congregatio ad tam grave munus rite recteque gerendum normae, et adjumento fuerunt. Haec vero totius Angliae in quatuor Vicariatus Apostolicos partitio usque ad Gregorii XVI. tempora perduravit, qui Litteris Apostolicis die III. Julii An. MDCCCXL. datis incipientibus "Muneris Apostolici" habita praesertim ratione incrementi, quod Religio Catholica in eo Regno jam acceperat, novaque facta regionum Ecclesiastica partitione, duplo majorem Vicariatuum Apostolicorum numerum excitavit, et Angliam totam Vicariis Apostolicis Londinensi, Occidentali, Orientali, Centrali, Walliensi, Lancastriensi, Eboracensi, et Septentrionali, in spiritualibus gubernandam commisit. Quae cursim hoc loco, aliis pluribus praetermissis, indicavimus, perspicuo documento sunt, Praedecessores Nostros in id vehementer incubuisse, ut, quantum auctoritate sua valebant, ad Ecclesiam in Anglia ex per magna calamitate recreandam, ac reficiendam adniterentur, et laborarent. Habentes itaque ob oculos praeclarum hujusmodi Decessorum Nostrorum exemplum, illudque pro Supremo Apostolatus officio aemulari volentes, et animi etiam Nostri inclinationi erga dilectam illam Dominicae vineae partem obsecundantes vel *ab ipso Pontificatus Nostri exordio Nobis proposuimus opus tam bene coeptum proseguere*, et ad Ecclesiae utilitatem in eo Regno quotidie magis augendam Nostra impensiora studia revocare. Quamobrem universum,



1688, and commencing with the words "Super Cathedram," he associated with Leyburn, as Vicars Apostolic, three other bishops with titles taken from churches *in partibus infidelium*; and accordingly, with the assistance of Ferdinand, Archbishop of Amaria, Apostolic Nuncio in England, the same Pontiff divided England into four districts, namely, the London, the Western, the Midland, and the Northern; each of which a Vicar Apostolic began to govern, furnished with all suitable faculties, and with the powers proper to a local Ordinary. Benedict XIV. by his Constitution, dated May 30. 1753, beginning "Apostolicum Ministerium," and the other Pontiffs, our predecessors, and our Congregation of Propaganda, both by their authority and by their wise answers, supplied them with a rule of conduct, and with aid towards the right discharge of their important functions. This partition of all England into four Apostolic Vicariates lasted till the time of Gregory XVI., who, by Letters Apostolic, dated July 3. 1840, beginning "Muneris Apostolici," having taken into consideration the increase which the Catholic religion had already received in that kingdom, made a new ecclesiastical arrangement of the districts, doubling the number of the Apostolic Vicariates, and committing the government of the whole of England in spirituals to the Vicars Apostolic of London, the West, the East, the Centre, Wales, Lancaster, York, and the North. These facts that we have here cursorily touched upon, to omit all mention of others, are a clear proof that our predecessors have earnestly laboured, that as far as their influence could effect it, the Church in England might be refreshed and re-erected from the midst of the great calamity that had befallen her.

Having, therefore, before our eyes the illustrious example of our predecessors, and wishing to emulate it, in accordance with the duty of the Supreme Apostolate, and also giving way to the inclination of our own heart towards that beloved part of our Lord's vineyard, *we have purposed, from the very first commencement of our pontificate, to prosecute a work so well commenced,* and to devote our closer attention to the promotion of the Church's advantage in that kingdom.

ut nunc est, in Anglia rei Catholicae statum diligenter considerantes, ac permagnum catholicorum numerum qui passim ibi amplior evadit, animo repedentes, atque impedimenta illa in dies auferri Nobiscum cogitantes, quae Catholicae religionis propagationi valde obfuerunt, tempus advenisse reputavimus, ut regiminis Ecclesiastici forma in Anglia ad eum modum restitui possit, in quo libere est apud alias gentes, in quibus nulla sit peculiaris causa, ut extraordinario illo Vicariorum Apostolicorum ministerio regantur. Temporum scilicet ac rerum adjuncta effecisse sentiebamus, ut necesse non sit diutius Angliae catholicos a Vicariis Apostolicis gubernari, immo vero talem inibi rerum conversionem factam esse, ut Ordinarii Episcopalis regiminis formam flagitaret. Accessit his, Angliae Vicarios Apostolicos ipsos id interea a Nobis communi suffragio petiisse, permultos tam clericos, quam laicos virtute, ac genere spectatos viros hoc idem a Nobis precatos esse, aliosque Angliae catholicos longe plurimos id in votis habere. Haec animo volventes non omisimus Dei Optimi Maximi auxilium implorare, ut in rei tam gravis deliberatione id quod ad Ecclesiae bonum augendum expeditius futurum esset, Nos intelligere et recte implere possemus. Beatissimae praeterea Mariae Virginis Deiparae, et Sanctorum, qui Angliam virtute sua illustrarunt, opem invocavimus, ut ad negotium istud feliciter absolvendum suo apud Deum patrocinio Nobis adesse dignarentur. Tum vero rem universam Venerabilibus Fratribus Nostris Sanctae Romanae Ecclesiae Cardinalibus Nostrae Congregationis Propagandae Fidei sedulo graviterque perpendendam commisimus. Eorum autem sententia fuit desiderio illi Nostro prorsus consentanea, quam libenter probandam, et ad effectum perducendam iudicavimus. Itaque post rem universam a Nobis etiam accurata consideratione perpensam, motu proprio, certa scientia, ac de plenitu-

Wherefore, having taken into earnest consideration the general state of Catholic affairs at present in England, and reflecting on the very large and every where increasing number of Catholics there; considering also that the impediments which stood so much in the way of the propagation of Catholicism are daily being removed, we have thought that the time had arrived, when the form of ecclesiastical government in England might be restored to that shape in which it exists freely amongst other nations, where there is no special cause for their being ruled by the extraordinary ministry of Vicars Apostolic. We felt that *the adjuncts of times and circumstances had brought it to pass*, that it was not necessary for the English Catholics to be any longer governed by Vicars Apostolic; nay more, that such a change of circumstances had taken place as to demand the form of Ordinary Episcopal government. In addition to this, the Vicars Apostolic of England themselves, had, with united voice, besought this of us; many also, both of the clergy and laity, highly esteemed for their virtue and rank, had made the same petition; and this was also the earnest wish of by far the majority of other Catholics of England. Whilst we pondered on these things, we did not omit to implore the aid of Almighty God, that in deliberating on a matter of such weight, we might be enabled both to discern, and rightly to fulfil that which might be most conducive to promote the good of the Church.

We also invoked the assistance of the most blessed Mary the Virgin, Mother of God, and of those Saints, who have rendered England illustrious by their virtues, that they would vouchsafe to aid us by their advocacy with God towards the happy accomplishment of this affair. In addition, we committed the whole matter to our venerable brethren the Cardinals of the Holy Roman Church, our Congregation for the Propagation of the Faith, to be carefully and gravely considered. Their opinion was entirely in accordance with our own desires, and we freely approved of it; and judged that it be carried into execution. The whole matter, therefore, having been carefully and deliberately weighed, We, of our own proper motion, on certain knowledge, and in the ple-

dine Apostolicae Nostrae potestatis constituimus, atque decernimus, ut in Regno Angliae refloreat juxta Communes Ecclesiae Regulas Hierarchia Ordinariorum Episcoporum, qui a Sedibus nuncupabuntur, quas hisce ipsis Nostris Litteris in singulis Apostolicorum Vicariatuum Districtibus constituimus. Atque ut a Districtu Londinensi initium faciamus, duae in eo Sedes erunt, Westmonasteriensis scilicet, quam ad Metropolitanæ seu Archiepiscopalis dignitatis gradum evehimus, et Suthwarcensis, quam uti et reliquas mox indicandas, eidem suffraganeas assignamus. Et Westmonasteriensis quidem Dioecesis eam habebit memorati Districtus partem, quae ad Septentrionem protenditur fluminis Tamesis, et Comitatus Middlesexiensem, Essexiensem atque Hertfordiensem complectitur: Suthwarcensis vero partem reliquam ad meridiem fluminis, videlicet Comitatus Berche-riensem, Suth-Hantoniensem, Surreiensem, Sussexiensem, et Kantiensem, una cum Insulis Vecta, Ierseia, Gerneseia, aliisque prope illas sitis. In Districtu Septentrionali unica erit Sedes Episcopalis, ab Urbe Hagulstadensi nuncupanda, cujus Dioecesis iisdem, quibus Districtus ille, finibus continebitur. Eboracensis etiam Districtus unicam efficiet Dioecsim, cujus Episcopus in Urbe Beverlaco sedem habebit. In Districtu Lancastriensi duo erunt Episcopi, quorum alter a Liverpoolitana Sede appellandus, pro Dioecesi habebit, cum Insula Mona, Centurias Lonsdale, Amounderness, et West Desby (Derby): alter vero Sedem habiturus a Salfordensi urbe nuncupandam, pro Dioecesi obtinebit Centurias Salford, Blackburn et Leyland. Quod vero attinet ad Cestriensem Comitatum, etsi ad Districtum ipsum pertineat, eum nunc alii Dioecesi adjungemus. In Districtu Walliensi erunt binae Sedes Episcopales, Salopiensis scilicet, ac *Menevensis* (B) et Newportensis invicem unitae: Salopiensis quidem Dioecesis ad Septentrionalem Districtus partem complectetur Comitatus qui dicuntur Angleseia, Caernarvonensis, Denbighensis, Flintensis, Merviniensis et Montgomeriensis, quibus adjungimus Cestrensem Comitatum ex Districtu Lan-

nitude of our Apostolical power, constitute and decree, that in the kingdom of England, according to the common rules of the Church, the Hierarchy of Ordinary Bishops shall flourish, who shall be named from Sees, which we constitute by these very Letters of ours, in the several districts of the Apostolic Vicariates. To begin with the London District, there shall be in it two Sees; that of Westminster, which we elevate to the degree of the Metropolitan or Archbishopal dignity, and that of Southwark, which, as also the others (to be named presently), we assign as suffragan to Westminster. The diocese of Westminster shall embrace that part of the above-named district which extends to the north of the river Thames, and includes the counties of Middlesex, Essex, and Hertford; that of Southwark shall contain the remaining part to the south of the river, viz., the counties of Berks, Southampton, Surrey, Sussex, and Kent, with the Islands of Wight, Jersey, Guernsey, and the others adjacent to them.

In the Northern District there shall be only one Episcopal See, to be named from the city of Hexham, the diocese of which shall be bounded by the same limits as the district itself.

The York District shall also form one diocese; and the bishop shall have his see in the city of Beverley.

In the Lancaster District there shall be two bishops; of whom the one shall receive his title from the See of Liverpool, and shall have for his diocese the Isle of Man, the hundreds of Lonsdale, Amounderness, and West Derby. The other shall take the name of his See from the city of Salford; and shall have for his diocese the hundreds of Salford, Blackburn, and Leyland: as to the county of Chester, although it has hitherto belonged to that district, we shall now annex it to another diocese.

In the District of Wales there shall be two bishoprics, viz. that of Shrewsbury, and that of *St. David's* (B) and Newport united with each other. The diocese of Shrewsbury shall contain, northwards, the counties of Anglesey, Carnarvon, Denbigh, Flint, Merioneth, and Montgomery; to which we annex the county of Chester, out of the Lancaster District, and

castriensi, et ex Centrali Districtu Comitatum Salopiensem: *Episcopo* autem *Meneviensi* (sic) et Newportensi pro Dioecesi assignamus ad Meridionalem Districtus partem Comitatus Brechiniensem, Maridunensem, Cereticensem, Glamorganiensem, Penbrochiensem et Radnoriensem, necnon anglos Comitatus Monumethensem et Herefordensem. In Districtu Occidentali duas constituimus Episcopales Sedes Cliftoniensem, et Plymuthensem, quarum illi pro Dioecesi assignamus Comitatus Glocestriensem, Somersettensem et Wiltoniensem; huic vero Comitatus Devoniensem, Dorcestriensem, et Cornubiensem. Centralis Districtus, a quo Salopianum Comitatum jam sejunximus, duas habebit Episcopales Sedes Nottinghamiensem, et Birminghamiensem: quarum primae pro Dioecesi assignamus Comitatus Nottinghamiensem, Derbiensem, Leicestriensem, nec non Comitatus Lincolniensem et Rutlandensem, quos a Districtu Orientali separamus; alteri vero Staffordiensem, Warwicensem, Wigorniensem, et Oxoniensem. Tandem in Districtu Orientali unica erit Episcopalis Sedes, quae a Northantoniensi Urbe nuncupabitur, habebitque pro Dioecesi Districtum iisdem quibus in praesens limitibus definitum, exceptis tamen Comitatibus Rutlandensi, et Lincolnensi quos supradictae Nottinghamiensi Dioecesi jam assignavimus. Ita igitur in florentissimo Angliae Regno unica erit Provincia Ecclesiastica ex uno Archiepiscopo seu Metropolitano Antistite, et duodecim Episcopis illius suffraganeis constituta; quorum studiis et pastoralibus curis Catholicam illic rem Deo dante uberibus in dies auctibus amplificandam confidimus. Quare Nobis et Romanis Pontificibus Successoribus Nostris jam nunc reservatum volumus, ut Provinciam ipsam in plures dispertiamus, et augeamus prout res tulerit Dioecesium numerum; ac generatim, ut quemadmodum opportunum in Domino visum fuerit, novas illarum circumscriptiones libere decernamus. Interea Archiepiscopo et Episcopis supradictis mandamus, ut relationes de suarum Ecclesiarum statu

the county of Salop, from the Central District. We assign to the Bishop of *St. David's* and Newport, as his diocese, northwards, the counties of Carmarthen, Cardigan, Glamorgan, Pembroke, and Radnor, also the English counties of Monmouth and Hereford.

In the Western District we establish two Episcopal Sees, that of Clifton and that of Plymouth. To the former of these we assign as a diocese the counties of Gloucester, Somerset, and Wilts; to the latter those of Devon, Dorset, and Cornwall.

The Central District, from which we have already detached the county of Salop, shall have two Episcopal Sees; that of Nottingham and that of Birmingham. To the former of these we assign, as a diocese, the counties of Nottingham, Derby, and Leicester, together with those of Lincoln and Rutland, which we hereby separate from the Eastern District. To the latter we assign the counties of Stafford, Warwick, Worcester, and Oxford.

Lastly: in the Eastern District, there shall be but one bishop's see, which shall take its name from the city of Northampton, and shall have its diocese comprised within the same limits as have hitherto bounded the district, with the exception of the counties of Lincoln and Rutland, which we have already assigned to the aforesaid diocese of Nottingham.

Thus, then, in the most flourishing kingdom of England, there shall be a single Ecclesiastical Province, constituted of One Archbishop, or Metropolitan Prelate, and Twelve Bishops his suffragans; by whose zeal and pastoral care we trust, under God's favour, that the Catholic estate in that country shall have a fruitful and daily increasing extension. Wherefore, we now reserve to ourselves and our successors, the Pontiffs of Rome, the power of again dividing the said province into more than one, and of increasing the number of dioceses, as occasion shall require; and in general, of freely decreeing, as it shall seem meet before the Lord, new boundaries to them.

In the meanwhile we command the aforesaid archbishop and bishops, that they transmit, at due times, to our Con-

ad Nostram Congregationem Propagandae Fidei debitis temporibus transmittant, nec desistant eandem instructam reddere de iis omnibus, quae spirituali suarum ovium bono noverint profutura. Nos enim in rebus ad Anglicanas Ecclesias pertinentibus ministerio ejusdem Congregationis uti pergemus. Verum in sacro Cleri Populique regimine, atque in ceteris quae ad pastorale officium pertinent, Archiepiscopus et Episcopi Angliae jam nunc omnibus fruuntur juribus et facultatibus, quibus alii aliarum gentium Catholici Archiepiscopi et Episcopi ex Communi Sacrorum Canonum, et Apostolicarum Constitutionum ordinatione utuntur et uti possunt, atque obstringentur pariter iis obligationibus quae alios Archiepiscopos et Episcopos ex eadem Communi Catholicae Ecclesiae disciplina obstringunt. Quaecumque autem sive in antiqua Ecclesiarum Angliae ratione, sive in subsequenti missionum statu ex specialibus Constitutionibus, aut privilegiis, vel consuetudinibus peculiaribus viguerint, mutata nunc temporum causa, nullum posthac sive jus sive obligationem inducent: qua de re ut nulla remanere dubitatio valeat, Nos iisdem illis peculiaribus Constitutionibus, ac privilegiis cujusque generis, et consuetudinibus a quocumque etiam vetustissimo et immemorabili tempore inductis omnem prorsus obligandi aut juris afferendi vim ex plenitudine Apostolicae Nostrae Auctoritatis tollimus et abrogamus. Hinc Archiepiscopo et Episcopis Angliae integrum erit ea porro discernere, quae ad communis juris executionem pertinent, quaeve ex generali ipsa Ecclesiae disciplina Episcoporum auctoritati permissa sunt. Nos autem haud certe omittemus adesse illis Apostolica Auctoritate Nostra, et perlubenti etiam animo obsecundabimus eorundem postulationibus in iis, quae ad majorem Divini Nominis gloriam animarumque salutem conducere visa fuerint. Enimvero Nos in restitutione Ordinariae Episcoporum Hierarchiae, et Communis Ecclesiae Juris observatione Nostris hisce Litteris



gregation for the Propagation of the Faith reports of the state of their Churches, and that they never omit to keep the said Congregation fully informed respecting all matters which they know will conduce to the spiritual welfare of their flocks. For we shall continue to avail ourselves of the services of the said Congregation in administering all matters appertaining to the Anglican Churches. But in the sacred government of the clergy and the people, and in all other things appertaining unto the pastoral office, the archbishop and bishops of England shall henceforward enjoy all the rights and faculties which other Catholic archbishops and bishops of other nations, according to the Common Ordinances of the Sacred Canons and Apostolic Constitutions, use, and may use: and shall be equally bound by those obligations which bind other archbishops and bishops according to the same common discipline of the Catholic Church. Further, whatever regulations, either in the ancient system of the Anglican Churches, or in the subsequent state of the missions, may have been in force, either by special constitutions or privileges or peculiar customs, shall henceforth, circumstances having been changed, carry no right nor obligation with them; and in order that no doubt may remain on this point, We, by the plenitude of our Apostolic authority, take away and abrogate all power whatsoever of imposing obligation or conferring right from those peculiar constitutions and privileges of whatever kind they may be, and from all customs, at whatever period, even the most ancient or immemorial, they may have been introduced. Hence it shall for the future be open for the archbishop and bishops of England to decree such things as belong to the execution of the Common Law, and such as, according to the common discipline of the Church, are left to the authority of bishops. We, certainly, shall not omit to assist them with our Apostolic authority, and most readily will we second all their applications in those things which shall seem to conduce to the greater glory of God's name and the salvation of souls. Our principal object, indeed, in decreeing by these our Letters Apostolic, the restoration of the Ordinary Hierarchy of Bishops, and the observation of

decernenda eo quidem praecipue spectavimus, ut Catholicae Religionis per Angliae Regnum prosperitati et incremento prospiceremus; sed una simul propositum Nobis fuit votis annuere tum Venerabilium Fratrum eo in Regno sacras res Vicaria Apostolicae Sedis Auctoritate moderantium, tum plurimorum Dilectorum Filiorum ex Catholico Clero ac Populo, a quibus impensissimas in eum finem preces acceperamus. Hoc ipsum non semel postulaverant illorum majores a Praedecessoribus Nostris, qui sane Vicarios Apostolicos tum demum in Anglia deputare orsi fuerant cum nulli ibidem manere poterant Catholici Antistites propriam in Regno ipso Ecclesiam Ordinario jure obtinentes, atque hinc illorum consilium in Vicariorum numero et Vicarialibus ipsis Districtibus deinceps iterum atque iterum multiplicandis, non eo certe spectabat ut Catholicam rem in Angliae Regno extraordinaria jugiter ratione moderarentur, sed potius ut ejus incremento prout tempora ferebant prospicientes viam una simul pararent Ordinariae illic Hierarchiae tandem aliquando instaurandae. Itaque Nos, quibus tantum opus perficere summo Dei beneficio datum est, hoc ipso in loco declaratum volumus, longe prorsus abesse a mente consiliisque Nostris, ut Antistites Angliae, Ordinariorum Episcoporum nomine ac juribus insigniti quacumque alia in re commodis destituantur, quibus antehac una cum Apostolicorum Vicariorum titulo fruebantur. Nec enim ratio sinit, ut in illorum detrimentum cedant quae a Nobis ex Catholicorum Anglorum voto in bonum Sacrae apud ipsos rei decreta sunt. Juxta haec firmissima immo spe nitimur fore ut iidem Dilecti Nostri in Christo Filii qui in Regno Angliae Catholicam rem, et Antistites Vicaria illam auctoritate moderantes in tanta varietate temporum elemosynis ac largitionibus suis juvare numquam destiterant, majori porro liberalitate usuri sint erga Episcopos ipsos Anglicanis Ecclesiis stabiliori nunc vinculo alligatos, quo scilicet iisdem minime desint temporalia subsidia in Templorum et Divini cultus splendorem, in Cleri pauperumque

the Common Law of the Church, has been to consult the well-being and extension of the Catholic religion throughout the realm of England; but, at the same time, it has been our purpose to gratify the wishes both of our venerable brethren *who rule over sacred matters in that kingdom by the delegated authority of the Apostolic See*, and also of very many of our well-beloved children of the Catholic clergy and people, from whom we had received the most urgent prayers to that effect. The same application had repeatedly been made by their ancestors to our predecessors, who, indeed, had first commenced to depute Vicars Apostolic in England at a time when it was impossible for any Catholic prelate to remain there in possession of his own Church *by right as Ordinary*; and hence their design in successively augmenting the number of Vicars and Vicarial districts, was not certainly that the Catholic estate in England should be perpetually under an extraordinary form of government, but rather that, looking forward to its extension in process of time, they might prepare the way for *the ultimate restoration of the Ordinary Hierarchy* there.

And therefore we, to whom by God's great goodness it hath been granted to complete this great work, do now hereby declare, that it is very far from our intention or design that the prelates of England, now possessing the title and rights of Bishops in Ordinary, should, in any other respect, be deprived of any advantages which they have enjoyed heretofore under the character of Vicars Apostolic. For it would not be reasonable, that the enactments we now make at the instance of the English Catholics, for the benefit of religion amongst them, should turn to the detriment of the Vicars Apostolic. Moreover, we rely most firmly on the hope that the same, our beloved children in Christ, who have never ceased to contribute by their alms and liberality, under such various circumstances to the support of the Catholic estate, and of the Vicars Apostolic, will henceforward manifest even greater liberality towards the bishops themselves who are now bound by a stronger tie to the Anglican Churches, so that they may never be in want of the temporal supplies requisite for the splendour of the temples, and of

sustentationem, atque in alios usus Ecclesiasticos eroganda. Ad extremum, levantes oculos Nostros in montes, unde veniet auxilium Nobis a Deo Optimo Maximo in omni oratione, et obsecratione, cum gratiarum actione, supplices poscimus, ut quae a Nobis pro Ecclesiae bono decreta sunt, Divini auxilii sui virtute confirmet, iisque, ad quos rerum a Nobis decretarum exequutio plurimum pertinet, gratiae suae robur adjiciat, ut pascant, qui in iis est gregem Dei, atque ut ad majorem Ejus Nominis gloriam propagandam semper impensius incumbant. Atque ad uberiora in idipsum caelestis gratiae praesidia impetranda, deprecatores apud Deum denuo invocamus Sanctissimam Dei Matrem, Beatos Apostolos Petrum et Paulum, cum ceteris Caelitibus Angliae Patronis, ac nominatim *S. Gregorium Magnum*, ut, quoniam Nobis etiam meritis adeo imparibus *datum nunc est Episcopales Sedes in Anglia renovare, prout ille cum summa Ecclesiae utilitate aetate sua perfecit*, haec quoque facta a Nobis in eo Regno Episcopaliurn Dioecesium restitutio Religioni Catholicae benevertat.

Decernentes has Nostras Apostolicas Litteras nullo unquam tempore de *subreptionis*, et *obreptionis vitio* (c), vel intentionis Nostrae aut alio quocumque defectu notari, vel impugnari posse, sed semper validas, et firmas fore, suosque effectus in omnibus obtinere, atque inviolabiliter observari debere. *Non obstantibus* Apostolicis, atque in Synodalibus, Provincialibus, et *Universalibus Conciliis* editis generalibus, vel specialibus Sanctionibus, necnon *veterum Angliae Sedium*, et Missionum, ac Vicariatuum Apostolicorum inibi postea constitutorum, et quarumcumque Ecclesiarum, ac Piorum Locorum *juribus*, aut *privilegiis* juramento etiam, confirmatione Apostolica, aut alia quacumque firmitate roboratis, ceterisque contrariis quibuscumque. His enim omnibus, tametsi pro illorum derogatione specialis mentio facienda esset, aut alia quantumvis exquisita forma servanda,

divine service, and for the support of the clergy and the poor, and other ecclesiastical uses. In conclusion, lifting up our eyes unto the hills, from whence cometh our help, to God Almighty and All-merciful, with all prayer and supplication and thanksgiving, we humbly beseech Him, that He would confirm by the power of His Divine assistance all that we have now decreed for the good of the Church; and that He would bestow the strength of His grace on those to whom the execution of our decrees chiefly belongs, that they may feed the Lord's flock which is amongst them, and that they may always apply themselves more diligently to advance the greater glory of His Name. And in order to obtain the more abundant succours of heavenly grace for this purpose, We again invoke, as deprecators before God, the most Holy Mother of God, the Blessed Apostles Peter and Paul, with the other heavenly patrons of England; and especially *St. Gregory the Great*, that since it is now granted to such our insufficient deserts *to renew Episcopal Sees in England, precisely as he in his age accomplished it*, to the very great advantage of the Church, this restoration also which we make of Episcopal Dioceses in that kingdom may redound to the benefit of the Catholic religion. Decreing that these our Letters Apostolical may never at any time be objected against or impugned, through *fault of mis-suggestion and mis-suppression*, or any defect either of our intention, or otherwise; but shall always be valid and in force, and ought to take effect in all particulars, and be inviolably observed. All general or special enactments notwithstanding, whether Apostolic, or issued in Synodal, Provincial, or *Universal Councils*; *notwithstanding also all rights and privileges of the ancient Sees of England*, and of the Missions, and of the Apostolic Vicariates subsequently there established, and of all Churches whatsoever, and pious places, whether established by oath, by Apostolic confirmation, or by any other security whatsoever; notwithstanding, lastly, all other things to the contrary whatsoever. For all these, in as far as they contravene the foregoing enactments, although it should be requisite that a special mention of them should be made for their repeal, or some other form, however

quatenus supradictis obstant, expresse derogamus. Irritum quoque, et inane decernimus si secus super his a quoquam quavis auctoritate scienter vel ignoranter contigerit attentari. Volumus autem ut harum Litterarum exemplis etiam impressis, manuque publici Notarii subscriptis, et per constitutum in Ecclesiastica dignitate virum suo sigillo munitis eadem habeatur fides, quae Nostrae voluntatis significationi, ipso hoc Diplomate ostenso haberetur.

Datum Romae apud S. Petrum sub annulo Piscatoris die XXIX. Septembris MDCCCL. Pontificatus Nostri Anno Quinto.

A. CARD. LAMBRUSCHINI.

(A) *Presbyterorum Monachorum*. Regular Priests ; *i. e.* Priests who are members of a Monastic Order, in opposition to Secular Priests, who have merely the status of Parish Priests. Selden, in a note to Eadmer's History, p. 213., observes that the word *Monachus*, standing alone (nullius familiae nota adjecta), always means, in ancient writers, a Benedictine Monk. The monks who accompanied Augustine are supposed to have been Benedictines, like himself.

(B) *Menevia, or St. David's*. Menevia is reckoned by the early English annalists, as one of the twenty-eight original British Sees which existed in this island antecedently to the arrival of the Monk Augustine. In the sixth century, it was the seat of a Metropolitan Bishop, from whom the city derived its modern name of St. David's. Pope Pius has not merely made free with the title of an existing British Bishopric, but he has annulled in words all the rights of the ancient See.

(C) *De subreptionis, et obreptimus vitio*. Through fault of mis-suggestion and mis-suppression. This formula, which frequently occurs in Papal instruments, is explained by Calvinus in his *Lexicon Juridicum*. "*Obreptimus*, cum tacendo aliquid impetramus, quod exprimere necesse erat, expressumque Principem a concessione abalienasset: *surreptimus* vero, cum a Principe per falsam rei narrationem aliquid extorquemus." In accordance with this possibility of the Pope being deceived, against which contingency his theoretical infallibility seems to be guarded by this phrase,

particular, be observed, we expressly repeal. Moreover, we decree, that if, in any other manner, any attempt shall be made by any person, or by any authority, knowingly or ignorantly, to set aside these enactments, such attempt shall be null and void. And it is our will and pleasure that printed copies of these our Letters, when subscribed by the hand of a notary public, and sealed with the seal of a constituted ecclesiastical dignitary, shall have the same credit as would be given to the expression of our will upon the production of this diploma.

Given at Rome, at St. Peter's, under the Fisherman's ring, this 29th day of September, 1850, in the fifth year of our Pontificate,

A. CARD. LAMBRUSCHINI.

Van Espen, in his *Tractatus de Romanis Congregationibus*, ch. 4. § 4, writes: "Et sane quandoquidem, ut in paragrapho præcedenti notatum fuit, summus Pontifex nonnunquam per *sub- vel obreptionem* aliove modo circumveniri aut induci possit, ut quidpiam decernat aut edicat, quod populo aut reipublicæ minus conveniat, aut interdum legem generalem promulgare, quæ *particularia jura aut consuetudines Patriæ*, quas ipse Pontifex ignorare potest, violaret non sine gravi incommodo, sui officii esse autumant Reges et Principes, ut per se aut suos ministros, salva omni erga Sedem Apostolicam et Romanum Pontificem reverentia et submissione, cognoscere possint, an ea quæ e Romana Curia emanant Diplomata, nihil adversus regni statum, privilegia, inveteratas consuetudines, aut quietem publicam contineant; et si quid ejusmodi invenerint, publicationem eo usque suspendant, quoadusque Romanus Pontifex de totâ re melius fuerit informatus. Hoc usu, sive jure, solide stabilito, *præsumentum est quod Ecclesia nolit obligare filios suos ad legum suarum observantiam, nisi juxta usum et recepta Patriæ jura fuerint promulgatæ* Ut enim recte advertit sæpe citatus auctor anonymus, Ecclesia ad imitationem sui magistri, non solum fortiter sed etiam suaviter volens regere filios suos in legibus promulgandis, *honoris Principibus debiti meminit, illorum jura illæsa servat*, ordinem et dignitatem Episcoporum veneratur, populorum studia et usus attendit."

(No. 2.)

## PAPAL BRIEFS.

*Breve Gregorii Papæ XIII. mutatis mutandis, ad D. Georgium Blackwell, D. Robertum Gwin, D. Vivianum Haddock.\**

Dilecte fili, salutem, &c. Sinceræ devotionis affectus, quem ad nos et Romanam geris ecclesiam, promeretur, ut petitionibus tuis, per quos divinus cultus, et animarum salus valeat procurari, quantum cum Deo possumus, favorabiliter annuamus. Exponi siquidem nobis nuper fecisti, quòd in regno Angliæ duo Catholici antistites, quorum unus est archiepiscopus, alter vero episcopus, duntaxat ad præsens reperiantur, et in tutâ custodia detineantur, ut non possint ullâ episcopali functione necessitatibus Catholicorum ibi succurrere. Nos salutem animarum, et spiritualem consolationem eorum, qui in medio hæreticorum vivunt, desiderantes; teque a quibusvis excommunicationis, &c. absolventes et absolutum esse censentes, tuis in hac parte supplicationibus inclinati tibi, licet episcopus non sis, in dicto regno Angliæ et illi adjacentibus, et parentibus insulis, ubi Catholici episcopi non sunt, et non alibi; cujuscunque generis ornamenta sacerdotalia, corporalia, et alia quæcunque ad divinum cultum, et usum ministerii altaris pertinentia et dedicata; nec non altaria portatilia benedicendi, et consecrandi licentiã et facultatem autoritate apostolicâ tenore præsentium concedimus et impertimur: hortantes te in Domino, ut interim dicta facultate discretè, secretè, et reverenter sine periculo Catholicorum, et contemptu rerum hujusmodi sacramentalium, quantum fieri poterit, utaris; non obstantibus quibuscunque constitutionibus, et ordinationibus apostolicis, cæterisque contrariis quibuscunque; præsentibus postquam dictum regnum Angliæ Dei

\* The original of this Brief is stated, in the Church History (Dodd's) of England, published at Brussels in 1737, from which this copy is taken, to be in the Archives of Douai College.



beneficio ad unitatem Romanæ ecclesiæ redierit, ac publicè, ac ritè reconciliatum fuerit, minimè valituris. Dat. Romæ apud St. Petrum die 24 Maii 1578. Pontificatûs nostri anno sexto.

CÆ. GLORIERIUS.

*Literæ Cardinalis Cajetani, quarum Vigore Georgius Blackwello constituitur Archipresbyter in Angliâ. \**

Henricus tituli sanctæ Potentianæ, cardinalis Cajetanus  
S. R. E. camerarius, Anglicanæ nationis protector,  
Georgio Blackwello sacerdoti Anglo, sacræ theologiae baccalaureo formato, in vinea Anglicana laboranti, salutem.

Scitum est, atque usu fere quotidiano compertum, divinâ providentiâ ad bonorum examen atque exercitationem sic disponente, ubi majora eduntur ad Dei gloriam opera, ibi acriores etiam existere, ad hæc ipsa impugnanda, vel retardanda, Satanæ atque communis hostis conatus. Neque ullum sanè vidimus his annis illustrius, quàm in causâ Anglicanâ, exemplum: quæ, ut insignem accepit a Domino, pietatis, fortitudinis, patientiæ, atque constantiæ gratiam, clarissimamque tum confessorum, tum etiam martyrum gloriam; sic acerrimam quoque ab hæreticis impugnationem passa esse noscitur; ita ut locum in eâ habeat illud, quod de animâ electâ Spiritus sanctus pronuntiat: *Certamen forte dedit ei Deus ut vinceret*; et de vase electionis Christus Dominus: *Ostendam illi, quantum oporteat eum pati pro nomine meo*. Imò Catholicos ipsos, et sacerdotes nonnullos seminariorum, qui cæterorum duces, atque antesignani ad omnem excelsæ virtutis laudem hactenus exstiterunt, aggredi Satanæ non dubitavit, ut inter se collideret, et unionis murum, quo omnis nititur Christianæ pietatis spes, dissiparet. Cui hostis conatui, Romæ quoque nuper emergenti, cùm sanctissimi D. N. summa prudentia, ac paternus amor remedium salutare, per Dei gratiam, diebus præteritis, adhibuerit; cu-

\* A copy of this Brief is said to be in the Archives of Douai College.

piatque ad hujus collegii Romani exemplum, quod summâ pace, ac tranquillitate fruitur, reliquis quoque in partibus eandem curari, et conservari animorum concordiam, sine quâ nihil boni exitûs sperari potest; speciali mandato nobis injunxit, ut huic rei procurandæ omni nos, quâ possumus, vigilantîâ impendamus. Quod perlibenter quidem facimus, eò quod hoc cardine potissimum totius causæ momentum versari non ignoremus. Cùm igitur non parum interesse, ad hoc ipsum, nonnulli censeant, si subordinatio aliqua inter sacerdotes Anglicanos constituatur, et rationes ab ipsis sacerdotibus pro ea re redditæ à sanctissimo D. N. probatæ fuerint: nos sanctitatis suæ piissimam providentissimamque voluntatem sequentes, hoc ipsum statuere decrevimus. Atque pro iis quidem sacerdotibus Anglicanæ nationis dirigendis, ac gubernandis, qui in Angliæ, Scotiæve regnis in præsentia versantur, vel in posterum eò venturi sint, dum hæc nostra ordinatio duraverit; te delegimus, cui vices nostras pro tempore delegamus, inducti relatione ac famâ publicâ virtutis, eruditionis, prudentiæ, ac laborum tuorum in ista vinea Anglicana per multos annos excolenda. Facultates autem, quas ad hoc ipsum tibi concedimus hæc sunt: primum; ut cæteris omnibus seminariorum sacerdotibus secularibus (ut dictum est) auctoritate archipresbyteri præsis, quoad sua sanctitas, aut nos, ejus mandato, aliud statuerimus. Deinde ut eosdem sacerdotes dirigere, admonere, reprehendere, vel etiam castigare possis, cùm erit opus; hocque vel facultatum sibi à quocunque, seu quandocunque concessarum, restrictione, aut etiam revocatione, si id necessitas postulaverit. De iisdem præterea sacerdotibus disponere, ac de una residentia in aliam (cùm major Dei gloria, animarumque lucrum illud exigat) movere, ac commutare: dubia quoque et controversias exorientes audire, et pro rerum æquitate ex æquo bonoque determinare; schismata, divisiones, et contentiones amovere vel etiam compescere; earumque rerum causâ quemcunque sacerdotem ad se vocare et convenire; plures etiam in unum locum convocare, cùm necesse fuerit, et cùm sine probabili periculo fieri posse in Domino videbitur; congregatis verò præesse, eisque proponere, vel quæ istis observatu necessaria judicaveris, auditis assistentibus, de quibus mox dicemus; vel quæ huc, aut ad doctorem Barrettum, collegii Duaceni præsidem (cui

his etiam in rebus specialis à nobis, sanctissimi jussu, tributa est potestas, ut vobis assistat) scribenda duxeris. Quòd si quis his in rebus (quod futurum sanè, de virtute omnium confisi, non timemus) inobedientem se, aut inquietum, aut contumacem ostenderit; hunc post debitas admonitiones, ac reprehensiones, fraternâ charitate præmissas, liceat etiam pœnis coercere ecclesiasticis; ablatione nimirum facultatum, vel suspensione, quoad se emendaverit; vel, si hinc etiam emendatio non sequatur, tunc vel ad D. Barrettum, vel ad nos scribatur; ut vel inde evocetur, qui hujusmodi est, vel gravioribus etiam censuris istic humilietur. Ut verò faciliùs suaviùsque hanc sollicitudinis partem tibi commendatam exequi possis, sex quoque consultores, seu coadjutores assignamus, qui, oneris participatione, nonnihil te labore levare possint. Johannem nimirum Bavandum, Henricum Henshawum, theologiæ doctores, Nicolaum Trivettum, Henricum Shawum, Georgium Birkettum, et Jacobum Standishium, qui nuper apud nos Romæ fuit, quos ex antiquioribus esse, optimèque meritis, multorum relatione accepimus. Tibi verò facimus potestatem, alios quoque sex, præter hos, isthinc eligendi; iisdem habitis, antiquitatis, gravitatis, ac laborum rationibus; præcipuè tamen prudentiæ, moderationis, atque studii unionis, atque concordiæ: non parum etiam auctoritatis atque existimationis, quam in provinciis habent, in quibus vices tuas et nostras gerunt. Omnes vero 12, tam à te, quàm à nobis nominatos, tibi subordinatos esse oportebit, ut melius conservetur unionis ratio: ad quam omnia diriguntur tuendam. Cùm verò eos delegeris ad hoc munus, quos maximè idoneos in Domino judicaveris; admonendos nos curabis de eorum nominibus, ac qualitatibus: ipsi etiam, quoad fieri sine periculo possit, suis literis, saltem hoc initio, significant, quo animo sint ad hoc præstandum, quod ab iis pro conservandâ unione postulatur. Deinceps verò tum iis tum tibi injungimus, ut sexto quoque mense, si fieri possit, communibus vel privatis literis ad nos datis de statu rerum apud vos scribatis; ut ex iis sanctissimo D. N. referamus, quæ scitu erunt digna; vel quæ causæ vestræ interesse judicabuntur, ut à suâ sanctitate cognoscantur. Si quis verò ex his 12, quos tibi in consilium rei melius peragendæ assignavimus, absens fuerit, vel captus, carcereque detentus, aut extra Angliam egressus, aut in-

firmitate, morbo, aliove justo impedimento retardatus, quo minus officium suum implere possit, aut recte in eo non se gesserit, facultatem tibi facimus alium ejus loco substituendi, ita ut nos deinde eâ de re literis tuis admoneas. Si vero archipresbyter ipse moriatur, vel ex Angliâ egrediatur, vel in hostium manus incidat, sic ut officio suo commode fungi nequeat, tum antiquissimus ex consultoribus, qui Londini per id tempus, vel proximè Londino resederit, vices archipresbyteri sustineat, quoad nos admoniti alium assignemus. Illud denique imprimis scire debetis, quod jam supra attigimus præcipuam sanctissimi D. N. meamque in his rebus intentionem eò ferri, ut disciplina ecclesiastica, quantum per temporum hominumque rationes isthic fieri possit, conservetur: et præ cæteris, pax, unioque animarum, atque concordia inter fratres, ac sacerdotes, nominatim etiam cum patribus societatis Jesu, qui unâ vobiscum laborant in eâdem vineâ, quod sua sanctitas dignata est quibusdam sacerdotibus, hinc in Angliam discedentibus, nuper ore proprio ac instanter præcipere. Neque hoc sine justissimâ causâ. Nam patres illi non solum hic, atque alibi, strenuè impigrèque laborant, pro causa Anglicana sustinenda, fundandis seminariis, juventute instituenda, egenis fovendis, aliisque mediis plurimis, verùm etiam in Anglia quoque eadem charitatis opera prosequuntur; hocque usque ad sanguinis profusionem, ut eventis factisque demonstratum est. Cùmque nullam ipsi habeant, nec habere prætendant, in sacerdotes seculares jurisdictionis, aut potestatis partem; neque ullam illis molestiam exhibere; manifesta sanè hostis astutia, ac diaboli fraus censenda videtur, ad universum opus Anglicanum evertendum comparata, ut quisquam Catholicus æmulationem in eos exerceat, vel excitet; cùm contrâ potiùs omni amore, ac reverentia prosequendi sint, quo ipsi majore alacritate sacerdotes et reliquos (ut hactenus) officiis, beneficiis, ac paternâ planè charitate complectuntur, ut sic conjunctis animis operisque, opus hoc sanctissimum promoveatur. Unde, si quis fuerit, qui hanc concordiam labefactare studeat, eum juxta apostoli præceptum, et apostolicæ sedis intentionem, notare debet; ut vel admonitione corrigatur, vel pœna coerceatur. Reliqua, si qua erunt, ea vel in instructiones his annexas conjiciantur, vel postea perscribentur, cùm ex literis vestris intellexerimus, quibus

ampliùs rebus isthic indigeatis. Ut finem igitur imponam, nescio quibus vos alloquar potiùs verbis quàm illis, quibus toties apostolus suos alloquebatur simili in causâ, et non dissimili fortasse occasione neque tempore. *Idem sapite: pacem habetote.* Et adhuc longè instantius: *Si qua consolatio in Christo, si quod solatium charitatis: si qua societas spiritûs si qua viscera miserationis; implete gaudium meum, idem sapiatis, eandem charitatem habentes unanimes, idipsum sapientes, nihil per contentionem, nec per inanem gloriam, sed in humilitate superiores sibi invicem arbitrantes, non quæ sua sunt singuli considerantes, sed ea quæ aliorum.* Hanc apostoli regulam, atque exhortationem, si sequamini, omnia vobis tuta erunt, atque gloriosa, sicut hactenus. Si ab hâc unionis constantiâ vos dejici, hostis insidiis, patiamini; magnos scopulos incursum est causa vestra, patriaque vestra: quod Deus avertat, vosque semper tueatur. Vestris orationibus me ex animo commendo, patres, fratresque amantissimi, ac reverendissimi Christi confessores. Romæ Martii 7. 1598.

Ræ. væ.

Uti amantissimus Frater

HENRICUS Cardinalis CAJETANUS, Protector.

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*A Second Letter of Cardinal Cajetan to the Archpriest  
Mr. Blackwell. \**

Henricus Cardinalis Cajetanus S. R. E. camerarius, Angliæ protector, &c. admodum reverendo, et dilecto in Christo Georgio Blackwello archipresbytero salutem in auctore salutis.

Admodum reverende, ac in Christo dilecte, uti frater, vehementer sanè delectati sumus iis literis, quas satis frequentes ad me his diebus, tum charitas tua, tum consultores etiam tui presbyteri assistentes, aliique viri graves non pauci dederunt, de justa lætitia, communique approbatione subordinationis illius, quam sanctissimus Dominus justissimis piissimisque de causis per nos in clero isto Anglicano institu-

\* A copy of this is said to be preserved in Douai College.

endam curavit. Hoc enim et à virtutis vestræ singulari opinione, et vitæ quoque professione excellentis expectandum omnino erat, ut qui ad restituendam Christi vicario sedique apostolicæ obedientiam debitam tot pericula, ac labores obitis, ipsi obedire ejusdem sanctæ sedis ordinationibus, non recusaretis: sed alacri potius animo (quod fecistis) summi pastoris vestri statuta, ad utilitatem, pacem, et corroborationem vestram edita, obviis, ut aiunt, ulnis amplecteremini. Itaque ex hac vestra, bonorumque omnium presbyterorum adeò prompta, hilarique obedientia, quam literis contestati sunt, cùm sanctissimus Dominus, tum ipse etiam pro officii mei ratione, ac eo prætereà, quem in vos sentio singularem amorem, gaudium profectò atque ædificationem non mediocrem accepimus, quam optassem quidem perpetuam, vel certè diuturnam. Sed posterioribus quidem nunciis turbari aliquantulum cœpit, cùm esset perlatum, quosdam (uti fieri solet) refragari cœpisse, ac contentiones ciere; conventicula quoque agitare, ut superiorum mandata in questionem vocentur. Tandem denique ad sanctitatem suam per ministros, in partibus Borealibus (uti videtur) existentes, significatum est, duos ex Anglia presbyteros à tumultuantibus his emissos jam esse, qui huic subordinationi ecclesiæ Anglicanæ, sanctitatis suæ jussu institutæ, contradicant. De qua re factus certior sanctissimus, permolesto animo (prout æquum est) accepit: voluitque pleniùs de perturbatoribus informari. Cùmque charitas tua nihil adhuc certi hac de re, neque de hominum istorum moribus, vel actionibus ad nos scripserit (quod tuæ sanè modestiæ, ac pietati tribuitur, ne faciliè ad fratrum descendas accusationem), nunc tamen, sanctissimo id postulante, ut informatio debita de omnibus habeatur, faciendum tibi erit omnino; ut rerum veritas per te patefiat, acceptis et ad nos transmissis (quoad commodè et sine periculo fieri poterit) bonorum tecum conspirantium sententiis, ac reluctantium etiam separatim, notatis nominibus, causisque percensitis, quas reluctantioni suæ prætendunt. Quod ut faciliùs citiùsque ex nostræ ordinationis autoritate perficias, hoc tibi, cæterisque presbyteris injungimus, ut statim ac diligenter fiat, variaque harum literarum autographa ad te mittenda jussimus, quo facilius multis ad rei peragendæ breviter ostendi possint: Dominum precantes, ut magna bonorum suorum abundantia vos compleat,

et pace, veraque charitate, quæ perfectionis omnis vinculum est, dignos efficiat, neque defatigemini animis, ut apostolus hortatur, si difficultates et contradictiones nonnullas in hoc vestro regimine experiamini: id enim vel optimis semper ecclesiarum rectoribus ab initio contigit; et idem apostolus ipsius Christi Domini exemplum vobis proponit: *Qui talem, inquit, sustinuit a peccatoribus adversum semetipsum contradictionem.* Sed omnia tandem ipse Dominus pacabit, fluctusque exurgentes compescet; vosque de laboribus vestris ac patientiâ cumulatè remunerabitur. Ipse vos custodiat semper. Romæ die 10 Novembris ann. 1598.

Uti Frater,

HENRICUS Cardinalis CAJETANUS, Protector.

*Breve Clementis VIII. Papæ pro tollendis dissidiis Anglicanis, circa Georgium Blackwellum Archipresbyterum.\**

Dilectis filiis Georgio magistro Blackwello, nostro et sedis apostolicæ notario, regni Angliæ archipresbytero, cæterisque ejus regni presbyteris et clericis, et populo Catholico universo.

CLEMENS Papa VIII.

Dilecti filii, salutem et apostolicam benedictionem. Cum nobilissimum Angliæ regnum, quod olim studio sinceræ pietatis, ac Catholicæ fidei cultu maxime floruit, à multis annis, pravis hæresum erroribus infectum, et à Catholicæ ecclesiæ unitate, ac Romani pontificis, Christi in terris vicarii, obedientia sejunctum fuerit; facere non potuimus, quin gravissimæ hujus jacturæ causâ, intimo sensu cordis et magno animi dolore semper afficeremur. Non mediocri tamen lætitia perfusi postea sumus, quòd intelligeremus, orthodoxam religionem in eodem regno paulatim reviviscere; et aliquos fideles presbyteros, strenuos verbi Dei ministros, potestates hujus mundi non timentes, ac Deo potiùs, quàm hominibus obedire cupientes, ibi diligentem navare operam, non solùm ut Catholici, qui residui sunt, in fide conserventur, sed etiam,

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qui à recto veritatis tramite recesserunt, ipsorum ductu et exemplo in viam salutis redeant, et fidem Romanæ ecclesiæ, illiusque obedientiam amplectantur. Nuper verò, ingenti gaudio fuimus affecti, quòd, Deo nostra bonorumque vota adjuvante, Catholicæ religionis cultores in tantum numerum crevisse audiremus, ut diutiùs sine rectore animarum esse non possent, sed superiore aliquo spirituali indigerent, qui eam multitudinem in Domino regeret, atque ad optatum felicitatis portum traduceret. Habita igitur jam à biennio super hac rematurâ deliberatione, bonæ memoriæ Henrico titulo sanctæ Potentianæ presbytero cardinali Caietano nuncupato, nationis Anglorum protectori, commisimus, ut virum aliquem probum qui hoc onus, ad communem Catholicorum utilitatem, posset sustinere, deligeret; eumque archipresbyterum ejusdem regni Angliæ, autoritate nostra, constitueret. Qui Henricus cardinalis protector, multorum relatione et famâ probitatis ac prudentiæ tuæ, fili archipresbyter, adductus, te in universo Angliæ regno archipresbyterum eadem autoritate deputavit, omnibusque ibidem fidelibus Catholicis præfecit; cum nonnullis declarationibus, privilegiis, indultis, instructionibus, facultatibus; prout in ejusdem Henrici cardinalis protectoris literis latiùs continetur. Et licet hæc archipresbyteri in eo regno institutio, quæ prima fuit post cultum Catholicum ibi per hæresim dissipatum, multorum approbatione et gaudio accepta fuerit, qui se tuis mandatis libenter obtemperaturos dixerunt: nonnullos tamen reluctari cœpisse audivimus: Primò quidem eo prætextu, quòd cuperent voluntatem nostram per literas apostolicas, aut aliàs certiùs sibi innotescere: deinde, quòd eorum aliqui ejusdem Henrici cardinalis protectoris literas in dubium vocare non dubitaverint. Quâ in contentione atque animorum discrepantia, multa inter eos, qui fidem literis dicti Henrici cardinalis protectoris adhibendam, tibi obtemperandum esse statuerant, et illos, qui autoritati tuæ subjicere se recusarunt, mutua cum offensione, acerbè dicta factaque esse, non sine animi nostri molestiâ accepimus. Atque imprimis, adversus eos, qui tibi obedire recusabant, tractatum quendam de schismate editum fuisse intelleximus, in quo multa de obedientiâ Romano Pontifici denegata, de fide et humanâ autoritate contemptâ, de schismate et rebellionem, ac de excommunicationis et irregu-



laritatis incursu, aliisque multis, contra eos scripta et divulgata fuerunt. Quare cùm gravis admodum in eorundem animis agitatio commota esset, tum vero longè major indignatio suboriri cœpit, quòd tu, certis causis adductus, rogantibus illis, ut eum tractatum revocares, per literas tuas respondisti: medicinam non priùs amovendam esse, quàm ulcus persanaretur. Cùmque hisce tuis, ac privatis aliorum literis, iidem inobedientiæ, et schismatis insimularentur, ac ne ii quidem ab injuriis in alios inferendis temperarent, acrior inter eos dissensio visa fuit excitari. Quare nos, ad tollendam hanc omnem discordiam, literas nostras in formâ brevis ad te, fili archipresbyter, misimus; quibus, literarum prædicti Henrici cardinalis protectoris tenorem pro expresso habentes, ejus de tua persona electionem, et in dicti regni archipresbyterum constitutionem, cum omnibus privilegiis, indultis, instructionibus, declarationibus, et facultatibus, tibi per dictum Henricum cardinalem protectorem concessis, autoritate apostolicâ approbavimus et confirmavimus. Quæ nostræ literæ simulatque promulgatæ ad vestram, filii presbyteri, devenerunt notitiam, omnem illicò sedatam fuisse discordiam, et summam pacem, reconciliatâ inter vos gratiâ, depositisque odiis et simultatibus initam fuisse, magno nostro cum gaudio cognovimus. At verò, quia nonnullorum animis adhuc hærebat offensio quædam, quòd illi, qui primo tibi, fili archipresbyter, obtemperare recusaverant, à quibusdam schismatici esse censerentur; eaque de re satisfactionem aliquam sibi fieri postularent; tu, iisdem causis adductus, constitutæ autoritatis detractores videri tibi schismaticos fuisse, respondisti: (quod dolentes referimus) et ideo consilium judiciumque tuum fuisse, ut ipsi aliquam ejus rei rationem priùs haberent, et satisfactionem facerent, quàm absolutionis beneficium acciperent. Quæ res simulatque proposita fuit, subitò, quasi novo inflictio vulnere, illa omnia, quæ jam consenuisse videbantur, recrudescere cœperunt; pristinaque dissensiones et discordiæ renovatæ sunt: quòd videlicet illi neque schismaticos se fuisse, neque tales se haberi, aut existimari, velle dicerent. In quo dissidio, licet aliqua edicta à te facta essent, ea tamen illorum animos magis irritarunt. Quamobrem ii ad nos, et ad sedem apostolicam appellarunt: nosque eorum appellationem, non-

nullas causas et brevem quandam rei gestæ relationem continentem aliquorum presbyterorum manibus subscriptam, vidimus atque perlegimus. Cæterum his omnibus visis, atque attentè consideratis, facilè primò advertimus, omnem hanc dissensionum procellam à patre discordiarum diabolo esse suscitatum: qui cùm eo in regno salutem animarum omni studio conetur impedire, nullam sibi faciliorem viam esse putat quàm si intestina inter presbyteros Catholicos, ad eam promovendam ibi constitutos, odia, dissensionesque excitet ac foveat: ut, dum privatis contentionibus intenti sunt, communem animarum procurationem negligant. Quocirca, ut iis incommodis et malis, pro nostrâ pastoralis sollicitudine, et paternâ in regnum istud charitate, consulamus; literarum tam dicti Henrici cardinalis protectoris, quàm nostrarum supradictarum tenores præsentibus pro insertis habentes, te imprimis in tuâ dignitate et officio archipresbyteri, in eodem Angliæ regno, cum facultatibus per alias nostras literas tibi attributis, eâdem apostolicâ autoritate tenore præsentium confirmamus; et quatenus opus sit, de novo præficimus; necnon ea, quæ per dictas literas tibi attributa fuerunt, sine ulla contradictione exercere posse, ac debere volumus et declaramus: quanquam hoc te etiam meminisse convenit, totam hanc autoritatem ad animarum ædificationem, non ad destructionem, à nobis tibi esse concessam, *teque non modò omnium, qui ibidem sunt Catholicorum spiritualem superiorem*, sed etiam patrem esse, eorumque curam ita gerere oportere, ut pascas eum, qui sub te est, gregem domini; providens non coactè, sed spontancè secundum Deum, nec dominans in clero, sed forma factus gregis ex animo; ut cùm apparuerit princeps pastorem, percipias inmarcessibilem gloriæ coronam. Omnium itaque salutem, pacem et animorum tranquillitatem debes procurare: quod non difficile tibi fore putamus, si pari omnes facilitate paternaque charitate complectaris; neque te hisce magis quàm illis propensum esse demonstres. Is enim, qui in ecclesiastica dignitate cæteris præest, et omnibus prodesse cupit, in hoc maximè eniti debet, ut summis virtutibus, et singulari charitate, reliquis antecellat, spectata prudentia, ad alios regendos necessariâ, et patientia Christiano homine et præsule dignâ præditus existat. Sit verus omnium pater, æquus iudex,

pastor bonus, qui animam suam, exemplo Christi Domini, ponat pro ovibus suis. Atque ideo etiam te monemus, ut in hoc delato tibi regimine severitati mansuetudinem admiscens, munus tuum et fortiter et suaviter exequaris; ne scilicet aut hi benignitate tua abutantur, aut isti à te tua severitate avertantur. Disciplina enim, et misericordia multum destituitur, si una sine altera teneatur. Præterea non priùs verbo, aut scripto quemquam damnes, quàm re maturè deliberatâ, atque compertâ. Fidelium verò tibi subditorum libellos famosos in vulgus edi, minimè patiaris: omnem demum subortam inimicitarum et contentionum segetem, antequam altiùs crescat, celeri manu præcides; ne qui mutuis altercationibus atque dissidiis vacant, graviora mala non præcavescentes, in deterius miserè prolabantur. At verò vos, filii presbyteri, qui libenter institutum à nobis archipresbyterum suscepistis, valdè in Domino commendamus, et vehementer exhortamur, ut ea, quæ ad initam pacem conservandam pertinent, sedulo procuretis. Cæterùm, quia non licet Christianæ humilitatis et obedientiæ fines transilire, vos etiam monendos esse duximus, ne in vestris bonis operibus vobis plus æquo arrogare velitis, neque ullos damnare, aut contemnere præsumatis: præcipuè verò, ne obloquentes aliis exprobetis; neque scripto aut verbo quenquam offendatis: lingua enim universitas iniquitatis, instar ignis urentis, corpus animumque inflammat, et odio provocat. Verùm, si quis adversus fratrem suum aliquid habuerit, corripiat eum secretò in charitate, et spiritu mansuetudinis, ut eum lucretur. Quòd si ille ejusmodi monitioni non acquiescet, tum demum ecclesiæ dicat, cujus est examinare; et quod justum est, judicare. Unusquisque verò vestrùm in summa lenitate, et charitate non ficta, muneri et officio suo diligenter incumbat. Neminem irretet, neminem verbis provocet. Quòd si æmulationem Dei habetis; videte, ut secundum scientiam habeatis. Nunc autem ambulate in sapientia; non quæ terrena est, sed quæ deorsum est, quæ pacifica est, modesta, plena misericordia et fructibus bonis; non judicans. Sine simulatione denique diligite alterutrum: omnis enim lex in hoc sermone impletur: *diliges proximum tuum sicut teipsum*. Quòd si invicem mordetis et comeditis; videte ne ab invicem consumamini.

Quare iterum vos hortamur, ut spiritu ambuletis: fructus autem spiritus est charitas, gaudium, pax, patientia, et benignitas. Vos autem, filii presbyteri, qui archipresbytero, superiori vestro, obedire neglexistis, quid causæ habuistis, cur prædicti Henrici cardinalis protectoris literis fidem non habere-  
retis? Sane vestro superiori vos submittere, atque ei obedire debebatis. Quare vos paterne monemus, et toto animi nostri affectu hortamur, ut omni memoriâ discordiarum perpetua oblivione deletâ, simultatibusque depositis, in veram ac sinceram amicitiam redeatis, et omnia libenter pro Christo, cujus causam agitis, invicem condonetis. Nos enim nihil à quoquam vestrûm, hac in causa, ulteriùs requiri debere decernimus: et propterea vobis, et aliis quibuscunque vestræ nationis, super præmissis omnibus et singulis, perpetuum silentium imponimus. Vestræ autem appellationi minimè deferendum duximus. Communem enim unionem et concordiam, non vestram dissensionem desideramus; quam, si eidem appellationi detulissetus, magis augeri posse existimavimus. Ut verò totius discordiæ fomes è medio tollatur, tractatum illum de schismate, scriptaque omnia hac occasione edita, ex quibus odium dissidiumque rursus excitari posset, autoritate apostolica suppressimus: atque ut illa, aliave ejusmodi, ad hanc rem spectantia, nullo unquam tempore conscribantur, divulgentur, aut retineantur; seu conscribi, divulgari aut retineri ab aliquo consentiatur, sub excommunicationis, ipso facto incurrendæ, pœna, per præsentem vobis præcipimus et mandamus: ac nomen schismatis, hac de causa, inter vos penitus extinguimus et abolemus: et ne ullam amplius illius mentionem faciatis, vobis sub iisdem pœnis interdiciamus et prohibemus. Præterea, vos omnes ejusdem regni presbyteros per viscera Domini nostri Jesu Christi obsecramus, ut id ipsum dicatis omnes, et sitis perfecti in eodem sensu, et removentes omnem dissensionem: cum omni humilitate, mansuetudine, et patientia supportantes invicem in charitate; solliciti servare unitatem spiritûs in vinculo pacis; contentiones verò, æmulationes, animositates, distractiones, neque sint inter vos, neque ullo modo nominentur. Verum si diligenter propriæ vitæ institutum attendatis, speramus fore, ut in concordiam facilè redeatis. Nonne animas vestras tradidistis in ministerium evangelii pacis?

Unde igitur dissensiones inter vos, qui pacem prædicatis? Nonne multos quotidie Christo lucrifacere studetis in laboribus plurimis, in fame et siti, in periculis, in persecutionibus? Ac vosmet ipsos ad carceres, ad cruces, ad mortes denique pro nomine Domini nostri Jesu Christi comparatis? Cur igitur invicem non suffertis, qui tanta perferre parati estis? Verum hæc summa est fallacis diaboli astutia, quâ vos non apertis armis oppugnat, sed occultis inimicitiarum insidiis à mutua charitate conatur separare; ut qui conjunctis animis ecclesiam Christi ædificare debetis, divisi in vestram et aliorum perniciem magno cum dedecore ruatis. Omnia denique facite sine mormurationibus et hæitationibus, ut sitis sine querela, et simplices filii Dei, sine reprehensione in medio nationis pravæ et perversæ. Obedite igitur omnes unanimiter præpositis vestris, humiliantes animas vestras sub potenti manu Dei, ut vos exaltet in tempore visitationis. Omnes honorate; omnes invicem humilitatem insinuate; fraternitatem diligite. Verum, si forte laicorum aliqui istius regni Angliæ, ad quos harum rerum notitia pervenit, ex hac ecclesiasticorum dissensione offensi fuerint, nos eosdem pariter in Domino hortamur, ne id sibi scândalo sumant, aut ob eam causam aliquid debitæ religiosi ac sacerdotibus reverentiæ detrahant, vel à procuranda Catholicæ fidei propagatione retardentur: sed animadvertentes, omnem hanc contentionis originem et progressionem à communi humani generis hoste factam esse: religiosos omnes et sacerdotes debito honore prosequantur; et in amplificandæ Catholicæ religionis studio magis accendantur. Fides enim nostra super firmam petram ædificata est, adversus quam portæ inferi prævalere nunquam poterunt; et religio Catholica rebus adversis crescere, et positis impedimentis dilatari consuevit. Volumus autem, ut præsentium nostrarum literarum exemplaria, etiam impressa, manuque notarii publici, et sigillo prælati ecclesiastici, aut illius curiæ obsignata, eandem ubique locorum fidem faciant, quam ipsæ præsentis facerent, si essent exhibitæ vel ostensæ. Dat. Romæ apud St. Mareum die 17 Augusti 1601. Anno 10 pontificatus nostri.

M. VESTRIUS BARBIANUS.

*Breve Clementis VIII. Papæ in favorem Sacerdotum Appellantium, contra Blackwellum Ecclesiæ Anglicanæ Archipresbyterum.\**

Dilecto filio Georgio Blackwello nostro et sedis apostolicæ notario regni Angliæ archipresbytero,  
Clemens Papa VIII.

Dilecte fili, salutem et apostolicam benedictionem. Venerunt nuper ad nos nonnulli sacerdotes Angli, qui de gravaminibus sibi à te illatis vehementer conquesti sunt, ac multo ante à te ad nos et sedem apostolicam appellarunt: quibus auditis, et diligenter, quæ pro utraque parte faciunt, consideratis, nos ante omnia te monendum esse censuimus, ut autoritate, à nobis et apostolica sede tibi concessa, cautè et prudenter utaris; neque facultates tuas excedas, ut visus fuisti, quibusdam in rebus, excessisse. Nam jurisdictionem quidem habere te volumus *in omnes Angliæ sacerdotes*, juxta formam, in literis deputationis tuæ in archipresbyterum, à bonæ memoriæ Henrico cardinali Caietano tibi hactenus descriptam, et in casibus in iisdem literis contentis tantùm. Nullam tamen volumus te exercere potestatem in presbyteros, qui seminariorum alumni non fuerunt; aut in laicos: neque facultatem tibi competere infligendi censuras, et statuta condendi; neque contra presbyteros appellantes, qui ad Romanam curiam venerunt, procedendi, nisi regni Angliæ protectore, nunc et pro tempore existente, priùs consulto, et de omnibus certiore facto, ejusque sententia expectata; neque auferendi, vel suspendendi facultates à sede apostolicâ, vel aliis superioribus, quovis modo, certis presbyteris, qui ad nos appellarunt, concessas, nisi de consensu, et de mandato ejusdem superioris: neque eosdem presbyteros de una in aliam residentiam, nisi ex causa, transferendi: quas quidem facultates iidem presbyteri appellantes sibi antea concessas, causâ et occasione præsentis schismatis, rebellionis, et inobedientiæ, nunquam amiserunt; prout nec eos illas amisisse, quatenus opus sit, per has nostras literas declaramus. Atque ut tu, sine ulla cujuscunque offensione, ac majori cum animarum quiete, et omnium pace et concordia, officio tuo fungaris; autoritate apostolicâ tenore præsentium, tibi in virtute

\* A copy is said to be preserved in Douai College.

sanctæ obedientiæ mandamus, ut nulla negotia ad officium tuum spectantia expedias, communices, aut tractes cum provinciali societatis Jesu, vel aliis religiosis ejusdem societatis, in Anglia existentis; ne scilicet novæ discordiæ et contentionis inter eos et presbyteros appellantes occasio præbeatur: ac propterea instructionem tibi à dicto Henrico cardinali Caietano super hac re traditam, pari autoritate per præsentem tollimus et abrogamus. Insuper tibi præcipimus, ne de ecclesiæ Anglicanæ administratione, et regimine, vel de rebus ad dictum regimen et officium tuum pertinentibus, per literas, vel instructam personam, vel alio quovis modo cum religiosis ejusdem societatis in Romanâ curiâ, vel alibi ubicunque commorantibus, agas; sed omnia ad nos, et Romanum pontificem, aut ad protectorem pro tempore existentem referas. Non quòd nos aliquid sinistri, aut mali, de iisdem religiosis suspicamur, quos scimus sincero pietatis zelo duci, et quæ Dei sunt quærere: sed quòd, pro pace et quiete inter Catholicos in eo regno tuendâ, sic convenire judicamus: quod iidem religiosi societatis verum esse, atque expedire consuerunt. Licitum tamen sit rectoribus collegiorum seu seminariorum ejusdem societatis, alumnis, in eorum recessu, dare literas testimoniales et commendatitias tibi, et pro tempore existenti archipresbytero directas, juxta formam à protectore præscribendam: atque integrum sit, dictis religiosis in Anglia commorantibus, in eorum accessu, fovere, dirigere, ac adjuvare. Simulatque verò contigerit, aliquos ex modernis assistentibus deficere, similiter tibi mandamus, ut tres ex presbyteris appellantibus in eorum locum successivè, ut eos deficere contigerit, substituas; quorum operâ in officii tui negotiis utaris. Monemus etiam, ut eleemosynas, quæ quotannis ex largitione fidelium copiosè admodum, ut accepimus, colliguntur, personis indigentibus, ac præsertim iis, qui pro fide Catholicâ in carcere detinentur, largè ac fideliter distribuas: utque appellationibus ad nos et sedem apostolicam interpositis, in casibus quibus de jure deferendum erit, deferas. Quæ quidem appellationes ad protectorem nunc, et pro tempore existentem, dirigentur. Verùm, ut omnis hujus controversiæ memoria penitus aboleatur, eâdem autoritate damnamus et prohibemus omnes libros, ubicunque im-

pressos, in quibus aliquid continetur contra institutum societatis Jesu, seu contra privatas illius personas; et qui etiam in alterutram partem criminosi, seu quovis modo injuriosi sunt; illosque ab omnibus damnari, prohiberi, ac interdicti mandamus: ac insuper omnibus et singulis sive laicis, sive clericis secularibus, aut cujusvis ordinis ac instituti regularibus, et nominatim ipsis presbyteris appellantis, et religiosis societatis Jesu, aliisque quibuscunque ejusdem regni Angliæ, sive in eodem regno, sive extra illud existentibus, sub amissionis omnium facultatum, à sede apostolica, vel aliis superioribus, quovis modo, ipsis, ut præfertur, concessarum; necnon excommunicationis, ipso facto absque alia declaratione incurrendæ, pœnis, interdicimus et prohibemus, ne libros istos pro alterutra parte in posterum edant, nisi prius obtentâ protectoris similiter, et pro tempore existentis, approbatione et licentia. Quicumque verò aliquod genus librorum, literarum, aut tractatum, in quibus alicujus viri Catholici fama violari poterit in posterum, aut aliquando fuerit violata; aut ex quibus excitari possent veteres, aut novæ contentiones; vel quæcunque alia scripta contumeliosa, ex quibus odium, dissidiumve inter partes, quovis modo, renovari posset, communicaverint, seu penes se retinuerint, vel evulgaverint, aut aliquid de hac controversia publicè vel privatim scripserint, defendendo vel impugnando unam, vel alteram partem, aut personas aliquas; vel denique, qui cum hæreticis, in præjudicium Catholicorum, quovis prætextu, vel causa, participaverint, aut communicaverint; eos in supra dictis omnibus et singulis casibus, iisdem amissionis facultatum suarum, necnon excommunicationis ipso facto, ut præfertur, incurrendæ, pœnis volumus subjacere. Et quamvis ex iis, quæ pro utraque parte audivimus, longè plura scribere ad te poteramus; tamen, cùm te mentem nostram, ex his, quæ diximus, intelligere posse arbitramur, paucis contenti fuimus: ac solummodò te, ac omnes tam religiosos, quàm presbyteros sæculares quoscunque, et eos, qui ad nos appellarunt, hortamur in Domino, ut communi privatæque inter vos paci et concordie studeatis; ac idipsum invicem sentientes, non alta sapientes, sed humilibus consentientes. Nam si evangelicam prædicationem in charitate Christi suscepistis, cur evangelicam pacem in eadem charitate non sectamini? Caritas omnia



suffert; non irritatur, non æmulatur. Charitas docet vos inimicos diligere; quanto magis amicos et socios fidei, ac laborum? Itaque vos per viscera misericordiæ Dei et Christi obsecramus, ut diligatis invicem; nemini de iis ullam offensionem, nulli malum pro malo reddatis, ut non vituperetur ministerium vestrum: sed beneficiatis omnibus, providentes bonum, non solum coram Deo, sed etiam coram hominibus; et, quod ex vobis est, pacem cum omnibus habentes; ut fructum, quem laboribus vestris, in summis periculis et tribulationibus quæritis, et nos cum universa ecclesia toto animo, expectamus, tandem adjuvante Domino, qui est vera pax, et charitas, cum animi vestri exultatione referatis. Datum Romæ, apud St. Marcum. Sub annulo Piscatoris die 5 Octobris 1602. Pontificatus nostri II.

M. VESTRIUS BARBIANUS.

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*Breve Clementis Papæ VIII. confirmans Institutionem Georgii Blackwellii Archipresbyteri.\**

#### CLEMENS PAPA VIII.

Ad futuram rei memoriam, &c. Inter gravissimas nostræ pastoralis sollicitudinis curas, illæ de Catholica religione, nimirum conservanda, et propaganda, præcipuum locum obtinent. Propterea, quæcunque ad hunc finem mandato nostro per S. R. E. cardinales gesta, et ordinata sunt, ut debitum consequantur effectum, apostolicæ confirmationis robore communivimus. Nuper siquidem, dilectus filius noster, Henricus tituli sanctæ Potentianæ, presbyter cardinalis Caietanus, S. R. Ecclesiæ camerarius, ac nationis Anglicanæ apud nos et apostolicam sedem protector, pro felici gubernio et regimine, ac mutua dilectione, pace, et unione Catholicorum regnorum Angliæ et Scotiæ, et pro disciplina ecclesiastica conservanda, et augenda, de mandato nostro, dilectum filium Georgium Blackwellum sacerdotem Anglum, sacræ theologiæ baccalaureum, ob ejus pietatem, doctrinam, Catholicæ reli-

\* A copy is said to be preserved in Douai College.

gionis zelum, et alias virtutes in archipresbyterum Catholicorum Anglorum, cum nonnullis facultatibus per eum, et alios 12 sacerdotes, illius assistentes, respective exercendis, per ipsius patentes literas expeditas, quarum initium est: *Scitum est, atque usu ferè quotidiano compertum, &c.*: finis verò: *vestrisque orationibus me ex animo commendo, patres fratresque amantissimi Christi confessores.* Die 7 Martii an. 1598, deputavit, prout in prædictis patentibus literis, quarum tenorem præsentibus, ac si ad verbum insererentur, pro expresso habere volumus, plenius continetur. Nos autem cupientes deputationem prædictam, ac omnia in præfatis literis contenta tamquam de mandato, et ordine nostro, ac cum participatione, ac plena scientia nostris facta, et ordinata, plenariè executioni, ut par est, demandari: et ut illa omnia pleniorum roboris firmitatem obtineant, providere volentes, motu proprio, et ex certa scientia, et matura deliberatione nostra, deque apostolicæ autoritatis plenitudine deputationem supradictam ac præ-nominatas Henrici cardinalis protectoris patentes literas de-super expeditas, cum omnibus et singulis in illis expressis facultatibus, privilegiis, indultis, instructionibus, declarationibus, ac aliis quibuscunque contentis; in omnibus, et per omnia perinde ac si omnia hic nominatim expressa et specificata essent, autoritate apostolica tenore præsentium confirmamus, et approbamus; illisque apostolicæ ac inviolabilis firmitatis robur adjicimus; et omnes, ac singulos defectus, si qui in iisdem intervenerint, supplemus; eaque omnia, et singula, de expresso mandato, et ordine, et cum participatione, et certâ scientiâ nostris facta, et ordinata fuisse, et esse; ac propterea valida, firma, et efficacia existere, et fore; ac plenissimam roboris firmitatem obtinere; suumque plenarium effectum sortiri, et obtinere; sicque ab omnibus censeri, et, ita per quoscunque iudices, ac commissarios judicari, ac definiri debere; ac irritum et inane quicquid secus super his à quoquam, quavis auctoritate, scienter vel ignoranter contigerit attentari, decernimus, non obstantibus constitutionibus et ordinationibus Apostolicis, cæterisque contrariis quibuscunque. Datum Romæ apud sanctum Petrum sub annulo Piscatoris die 6 Aprilis. an. 1599. Pont. nostri ann. 8.

M. VESTRIUS BARBIANUS.

*Bulla Consecrationis Gulielmi Bishop Episcopi an. 1622.\**

Gregorius † episcopus, servus servorum Dei, dilecto filio Gulielmo Bishopo electo Chalcedonensi, salutem et apostolicam benedictionem. Apostolatus officium, meritis licet imparibus, nobis commissum, quo ecclesiarum omnium regimini divina dispositione præsidemus, utiliter exequi coadjuvante Domino cupientes, solliciti corde reddimur et solertes; ut cùm ecclesiarum ipsarum regiminibus agitur, tales eis in pastores præficere studeamus, qui populum, suæ curæ creditum, sciant non solùm doctrina verbi, sed etiam exemplo boni operis informare, commissasque sibi ecclesias in statu pacifico et tranquillo velint ac valeant authore Domino stabiliter regere et feliciter gubernare. Cùm itaque, sicut accepimus, ecclesia Chalcedonensis, quæ in partibus Infidelium consistit, certo modo quem præsentibus pro expresso haberi volumus ad præsens pastoris solatio destituta sit; nos vacatione hujusmodi ex fide dignis intellecta, ad provisionem ejusdem ecclesiæ, celerem ac felicem, ne ecclesia ipsa longæ vacationis exponatur incommodis, paribus et sollicitis studiis intendentes, post longum mentis nostræ discursum, quem de præficiendo eidem ecclesiæ personam utilem, ac etiam fructuosam, intra nos ipsos habuimus, demum ad te, presbyterum Wigorniensis diocesis, magistrum in theologia, de legitimo matrimonio, ac Catholicis parentibus procreatum, et in ætate legitima constitutum, direximus oculos nostræ mentis. Quibus omnibus debitâ meditatione pensatis, te à quibusvis excommunicationis, suspensionis, et interdicti, aliisque ecclesiasticis sententiis, censuris et pœnis, à jure vel homine quavis occasione, vel causa latis, si quibus quomodolibet innodatus existis, ad effectum præsentium duntaxat consequendum, harum serie absolventes, et absolutum fore censentes: motu proprio; non ad tuam, vel alterius pro te, nobis, super hoc, oblatæ petitionis instantiam; sed ex mera liberalitate nostra, eidem ecclesiæ de persona tua, nobis ob tuorum exigentiam meritorum acceptâ, autoritate apostolica providemus: teque illi in episcopum præficientes et pastorem, curam et adminis-

\* Original in the English College at Douai.

† Greg. XV.

trationem ipsius ecclesiæ tibi in spiritualibus et temporalibus plenariè committimus; firma spe fiduciaque conceptis, quòd, gratiâ assistente divinâ ecclesia prædicta per tuæ circumspectionis industriam, et studium fructuosum, regetur utiliter, et prosperè dirigetur, ac grata in iisdem spiritualibus et temporalibus suscipiet incrementa. Jugum igitur Domini, tuis impositum humeris, prompta devotione suscipiens, curam et administrationem prædictam sic exercere studeas sollicitè et prudenter, quòd ecclesia ipsa gubernatori provideo, et fructuoso administratori gaudeat se commissam; tuque præter æternæ retributionis præmium, nostram ac dictæ sedis benedictionem et gratiam exinde ulterius consequi merearis. Hoc etiam tibi, ut ad dictam ecclesiam, quamdiu ab ipsis infidelibus detinebitur, adire, et apud illam personaliter residere minimè tenearis, autoritate apostolica prædicta, eorundem tenore præsentium, de speciali gratia indulgemus. Præterea, ad ea, quæ in tuæ commoditatis augmentum cedere valeant, favorabiliter intendentes, tuis in hac parte supplicationibus inclinati, tibi, ut à quocunque, quem malueris, Catholico antistite, gratiam et communionem dictæ sedis habente, accitis, et in hoc sibi assistentibus, duobus vel tribus Catholicis episcopis, similem gratiam et communionem habentibus, munus consecrationis accipere valeas, ac eidem antistiti, recepto priùs à te, nostro, et Romanæ ecclesiæ nomine, fidelitatis debitæ solito juramento, juxta formam, quam sub bulla nostra mittimus introclusam, munus prædictum tibi impendere licitè possit, plenam et liberam, eorundem tenore præsentium, concedimus facultatem. Volumus autem, et dicta autoritate statuimus atque decernimus, quòd, nisi recepto à te per ipsum antistitem hujusmodi juramento, ipse antistes munus prædictum tibi impendere, et tu illud suscipere præsumperitis, idem antistes à pontificalis officii exercitio, et ipse tu ab administratione tum spiritualium, tum temporalium ecclesiarum vestrarum suspensi sitis eo ipso. Postremò etiam volumus, quòd formam à te tunc præstiti juramenti hujusmodi nobis de verbo ad verbum per tuas patentes literas, tuo sigillo munitas, per proprium nuncium quantocyùs destinare procures; quòdque per hoc venerabili fratri nostro patriarchæ Constantino-politano, cui prædicta ecclesia metropolitico jure subesse

dignoscitur, nullum in posterum præjudicium generetur. Decernentes, promissionem, præfectionem, indultum, aliaque præmissa valere, plenamque roboris firmitatem obtinere, tibi-que suffragari debere in omnibus, et per omnia, perinde ac si illa in consistorio nostro secreto, ac de venerabilium fratrum nostrorum sacræ Romanæ ecclesiæ cardinalium consilio, ut moris est, servatis omnibus solemnitatibus, in similibus observari solitis et consuetis, facta fuissent et emanassent. Sicque et non aliàs, per quoscunque iudices, ordinarios vel delegatos, quavis autoritate fungentes, etiam causarum palatii apostolici auditores, ac ejusdem Romanæ ecclesiæ cardinales, etiam de latere legatos, et vicelegatos, ac sedis apostolicæ nuncios; sublata iis, et eorum cuilibet quâvis aliter judicandi et interpretandi facultate in quacunque instantia, ubique judicari et definiri debere: irritum declarantes, si secus super his à quoquam, quavis autoritate scienter, vel ignoranter contigerit attentari; non obstantibus præmissis, ac quibusvis constitutionibus et ordinationibus apostolicis, dictæque ecclesiæ Chalcædonensis juramento, confirmatione apostolica, et quavis firmitate aliâ roboratis statutis et consuetudinibus, cæterisque contrariis quibuscunque. Volumus autem, quòd, antequam munus consecrationis suscipias, fidem Catholicam, juxta articulos jampridem à sede apostolica propositos, in manibus alicujus Catholici antistitis, gratiam et communionem dictæ sedis habentis, profiteri, eamque fidei professionem, sic per te emissam, in publicam et authenticam formam de verbo ad verbum, nihil penitus omisso, cum tuâ et dicti antistitis subscriptione redactam, ad sedem prædictam quantocyùs transmittere tenearis: alioquin præsens gratia nulla sit, eo ipso. Datum Romæ apud St. Petrum: anno incarnationis Dominicæ millesimo sexcentesimo vigesimo secundo. Idibus Martii Pontificatus nostri anno tertio.

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*Brief of Pope Gregory XV. to William, Bishop of Chalcedon.\**

GREGORIUS P. P. XV.

Dilecte fili, salutem et apostolicam benedictionem. Ecclesia Romana, sollicita de salute filiorum mater, in eos præcipuè cordis sui affectum intendit, qui pastoralis providentiæ auxilio magis indigent. Itaque non sine viscerum nostrorum commotione considerantes, Catholicos regnorum Angliæ et Scotiæ, hæresis violentiâ oppressos, utilitatibus iis destitui, quas cæteri ecclesiæ filii ab episcoporum ministerio percipiunt, episcopi solatio, quantum cum domino possumus, eos sublevare decrevimus. Quapropter in tua fide, prudentia, integritate, catholicæ religionis zelo, ac doctrinâ plurimum in domino confisi; Tibi, ut, postquam munus consecrationis susceperis, et ad eadem regna te contuleris, ad solatium animarum et spirituale bonum Christi fidelium catholicorum, in regnis Angliæ et Scotiæ prædictis existentium, sive quos pro tempore ibi existere contigerit; ad nostrum et sedis apostolicæ beneplacitum, omnibus et singulis facultatibus, olim archipresbyteris Angliæ à sede apostolica deputatis per fel. record. Clementem VIII. et Paulum V. Romanos pontifices prædecessores nostros concessis, nec non *quibus ordinarii in suis civitatibus et diocesisibus utuntur*, fruuntur, et gaudent, ac uti, frui, et gaudere possunt similiter uti, frui, et gaudere liberè et licitè possis et valeas, apostolica auctoritate tenore præsentium concedimus et indulgemus, ac licentiam facultatem impertimur: non obstantibus apostolicis, ac in universalibus provincialibusque et synodalibus conciliis editis generalibus vel specialibus constitutionibus et ordinationibus cæterisque contrariis quibuscumque. Datum Romæ apud S. Petrum sub annulo Piscatoris, die vigesimâ tertiâ Martii anno Domini millesimo sexcentesimo vigesimo tertio. Pontificatûs nostri anno tertio.

(Signed) S. CARDINALIS SANCTÆ SUSANNÆ.

Seal'd with red wax and endorsed :

*Dilecto filio, Gulielmo electo  
Chalcedonensi.*

\* From Dodd's Church History, vol. iii. p. 7.

*Brief whereby England and Scotland were put under the Jurisdiction of Richard, Bishop of Chalcedon, anno 1625.\**

URBANUS P. P. VIII.

Dilecte fili, salutem et apostolicam benedictionem. Ecclesia Romana sollicita de salute filiorum mater, in eos præcipuè cordis sui affectum intendit, qui pastoralis providentiæ auxilio magis indigent. Hinc est quòd, non sine viscerum nostrorum commotione, considerantes, catholicos regnorum Angliæ et Scotiæ, hæresis violentia oppressos, utilitatibus iis destitui, quas cæteri ecclesiæ filii ab episcoporum ministerio percipiunt, episcopi solatio, quantum cum domino possumus, eos sublevare decrevimus. Quapropter de tua fide, prudentia, integritate, catholicæ religionis zelo ac doctrina plurimum in domino confisi; Tibi, ut, postquam munus consecrationis susceperis, et ad eadem regna te contuleris, ad solatium animarum et spirituale bonum Christi fidelium catholicorum, in regnis Angliæ et Scotiæ prædictis existentium, sive quos pro tempore ibi existere contigerit; ad nostrum et sedis apostolicæ beneplacitum, omnibus et singulis facultatibus olim archipresbyteris Angliæ à sede apostolica deputatis per fel. record. Clementem VIII. et Paulum V. Romanos pontifices prædecessores nostros concessis, nec non *quibus ordinarii in suis civitatibus et diœcesibus utuntur*, fruuntur et gaudent, ac uti, frui, et gaudere possunt, similiter uti, frui, et gaudere liberè et licitè possis et valeas, apostolica auctoritate, tenore præsentium, licentiam et facultatem impertimur; teque ad præmissa omnia et singula auctoritate et tenore prædictis delegamus. Causarum tamen in secunda instantiâ cognitionem et terminationem, omnemque à quocumque gravamine recursum nostro apud charissimum filium Ludovicum Francorum regem christianissimum nunc et pro tempore existenti nuncio reservamus, et reservata esse volumus; cui non intendimus per præsentem ullatenus præjudicare. Non obstantibus apostolicis, ac in universalibus provincialibusque ac synodalibus

\* From Dodd's Church History, vol. iii. p. 7.

conciliis editis generalibus constitutionibus et ordinationibus, cæterisque contrariis quibuscumque. Datum Romæ apud S. Petrum, sub annulo Piscatoris die 4 Februarii, anno Domini MDCXXV. Pontificatus nostri anno secundo.

V. THEATINUS.

Endorsed: *Dilecto filio*  
 Richardo *electo* Chalcedonensi.

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*Decretum Congregationis circa Episcopum Chalcedonensem.\**

S. congregatio R R. P P. cardinalium, de mandato Smi Dni nostri ab hinc biennio rescripsit, missionarios Angliæ, qui à sede apostolica facultatem habent audiendi confessiones laicorum, vel obtinuerunt à suis superioribus, ab eadem sancta sede hanc facultatem impertiendi potestatem habentibus, non teneri sistere se coram episcopo Chalcedonensi, vel ejus vicariis ad habendas novas approbationes, vigente maximè persecutione: sed dictis facultatibus liberè uti posse. Sacramenta autem baptismi, matrimonii et extremæ unctionis, eadem S. Congregatio rescripsit, non esse à missionariis ministranda sine consensu episcopi Chalcedonensis, seu vicariorum ejusdem.

F. CARDINALIS À BALNEO.

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*Decretum Alterum Congregationis circa Episcopum Chalcedonensem.†*

Sedes apostolica nunquam censuit constituere Rmum. Chalcedonensem *ordinarium* Angliæ et Scotiæ; sed tantùm

\* A decree in the Bishop of Chalcedon's handwriting, in the English Seminary in Paris.

† Ibid.



ei potestatem impertiri, ut, ad beneplacitum ejusdem sedis, *vices ordinariorum*, qui ob schisma ibi desunt, suppleat. Inconveniens enim foret ex tot antiquissimis Angliæ, et Scotiæ dioccesibus unam dioccesim constituere, illamque uni ordinario subicere.

Monitus fuit Rdmus Chalcedonensis à Galliarum nuncio, ut *nomen ordinarii Angliæ et Scotiæ, quod assumpserat, deponeret*; nec talem se dici pateretur.

Censuit sacra congregatio, hoc tempore persecutionis non expedire, Rdmum Chalcedonensem, cogere regulares, à sanc. sede, vel ab habentibus potestatem ab eadem approbatos ad audiendas confessiones, ut novam ab ipso, vel à suis vicariis approbationem accipiant. Monitus pluries fuit, nec tamen acquiescit.

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*Regulæ Observandæ in Anglicanis Missionibus, ab Apostolicis Vicariis, nec non a Sacerdotibus Missionariis Sæcularibus, ac Regularibus.\**

Venerabilibus Fratribus, Episcopis Vicariis Apostolicis, et Dilectis Filiis, Sacerdotibus tam Sæcularibus, quam cujusvis Ordinis et Instituti, etiam Societatis Jesu, Regularibus, Missionariis Apostolicis Anglicanarum Missionum.

#### BENEDICTUS PAPA XIV.

Venerabiles Fratres, Dilecti Filii, Salutem, et Apostolicam Benedictionem.

Apostolicum ministerium, quod vos, Venerabiles Fratres, Dilecti Filii, tanta cum alacritate suscepistis, satis superque admonere vos, et assidue in memoriam revocare non dubitamus, præceptum mandatumque Supremi Pastorum Principis JESU-CHRISTI Apostolos suos edocentis, cujus divina legatione in procuranda æterna Christifidelium salute fungimini cooperatores; nimirum, ut mutua vosmetipsi invicem charitate diligentes, opus vobis injunctum consummare satagatis, quo debitam laboribus vestris mercedem in Cœlis a justo remuneratore Deo recipere valeatis. Nobis sane, qui gravissimas Sacrosancti Apostolatus curas, et omnium Ecclesiarum sollicitudinem gerentes, pene deficimus, nihil accidere potest molestius, quam cum accipimus scissuras esse inter vos, propter quas propagatio Catholicæ Fidei, et Christifidelium salus retardatur. Eapropter, ut opportunum, consentaneumque præcidendis et e medio auferendis dissidiis, quæ jamdudum inter vos exorta, sæpe sæpius emergere, ac magis invalescere plenissime docti vehementer dolemus, et pristinæ animorum concordia conciliandæ, et in perpetuum confirmandæ remedium afferremus; primum quidem non solum exhibita Nobis utriusque partis rationum momenta per Nos ipsos accurate expendimus; sed nonnullis etiam

\* Bullorum Benedict XIV. tom. iv. p. 59.

Venerabilibus Fratribus nostris sanctæ Romanæ Ecclesiæ Cardinalibus negotiis Congregationis Propagandæ Fidei præpositis examinanda mandavimus; deinde vero iisdem Cardinalibus ad Nos accitis, eorundem sententiam consiliumque requisivimus. Quos postquam Nobiscum convenire, et consentire comperimus, hæc, quæ sequuntur, statuimus, decrevimus, et a vobis districtè servanda proponimus, et mandamus.

§ 1. Cum ab anno 1688, constitutum fuerit, ut Missio Anglicana per quatuor Apostolicos Vicarios administraretur, qui Episcopi in *Partibus* Infidelium existant; cumque sui limites, et confinia præscripta sint, in quibus ipsorum singuli suo munere perfungantur, nihil omnino immutetur in iis omnibus, quæ pertinent ad eosdem Vicarios Apostolicos, eorumque deputationem, et limites, quos modo indicavimus.

§ 2. Cum nonnulla Seminaria, et Collegia instituta sint, ex quibus Missionarii Cleri Secularis in Angliam mittuntur, nulla diligentia, et cura prætermittatur, ut Alumni ad Sacras Missiones obeundas destinati, optimis moribus, pietate, ingenio, doctrina exornentur, et ut periti sint in exercendis Functionibus Ecclesiasticis, et Cantu Gregoriano, quantum fieri poterit, imbuti. Præses Collegii Duacensis in Belgio, Litteris datis die 25 Januarii, Congregationem de Propaganda Fide sincere certiores fecit de ratione, qua Alumni in prædicto Collegio instituuntur. Hisce proinde Litteris per honorificum responsum redditum fuit. Romæ existit Collegium Anglicanum a Sancto Thoma nuncupatum, curæ ac disciplinæ Patrum Societatis Jesu commissum, cujus visitationem susceperunt jussu Prædecessoris nostri Clementis XII. duo Cardinales vita jam functi, Davia scilicet, et Riviera, sustinuitque Secretarii munus Cardinalis Monti vitam adhuc agens, qui id temporis munus a Secretis Congregationis de Propaganda Fide gerebat. Itaque plurima statuta fuere, peculiari Decreto Summi Pontificis confirmata, quod die 28 Septembris anno 1739, in lucem emanavit. Sancitum in primis est, ut eodem in Collegio duo Præceptores in posterum commorentur, quorum unus Controversiis, et Sacris

Scripturis explanandis, alter Theologiæ Morali tradendæ incumberet, eorumque Lectiones Anglicanæ Missionis utilitati forent maxime accommodatæ. Quamobrem operam suam impendat Cardinalis, cujus in fide, et patrocínio Collegium *pro tempore* recipitur, ut executioni mandentur quæ eadem in Visitatione salubriter decreta fuere; atque illud in primis, quod paulo ante innuimus, quippe quod ad finem propositum unice conducere videatur. Pariter compertum est, Collegium Ulissippone Anglis recipiendis erectum esse; alterum Parisiis, Hispali unum, Vallisoletti alterum. Verumtamen cum eorundem institutio, atque existentia, nihil præterea, innotescat, curæ erit a Secretis Congregationis de Propaganda Fide, consiliis cum Cardinale primo Pontificiæ ditionis Administro collatis, ut dentur Litteræ Nunciis Apostolicis in Lusitania, Gallia, et Hispania commorantibus, ut impensius de prædictis Collegiis inquiratur, eorumque gubernatio omnino explorata fiat. Neque id eo tendere opinandum est, ut quidquam detrahatur auctoritati, vel regimini cujuscumque, qui legitima ipsorum fruatur possessione; sed eo dumtaxat fine, ut inter Nos, eosdemque plenissime conveniat iis in rebus, quæ ad Alumnos spectant ex Seminariis in Angliam ad Missiones obeundas profecturis.

§ 3. Quoniam vero versantur in Anglia Missionarii ex Familiis Regularibus, scilicet Societatis Jesu, Sancti Benedicti, S. Dominici, S. Francisci, Carmelitarum Excalceatorum; cavere omnino debent earum Provinciales, ne in Missionarios deligant nisi viros numeris omnibus absolutos, singulari nimirum pietate, ingenii dotibus præditos, quæ ad tantam Provinciam, tamque laboriosam requiruntur. Quamobrem ne ob immodicum eorum numerum perturbationes, et incommoda oboriantur, ipsis Regularium Provincialibus immutabiliter præscribitur, ut eos dumtaxat in Angliam mittant, qui vel Sacellis Regiis præfici debeant, aut apud aliquem nobili sanguine natum versari, aut in Locis, quæ pro Regularibus fundata, et constituta sunt. Porro a Missionibus Anglicanis se repelli intelligant Regulares, qui ex propria Natione non obtinēt Cœnobium, vel Provinciam in Catholicis Regionibus: iis tamen, qui

ibidem in præsentiarum commorantur, revertendi necessitas non infertur. Enim vero cum Hiberni Sacerdotes ad sustinendam Insulæ ejusdem Missionem deputentur, quæ plurimos, sapientesque expetit Operarios; cumque in Anglia permulti sint Sacerdotes indigenæ tam Seculares, quam Regulares, consentaneum esse arbitramur, si iidem ipsa in Patria labores suos potissimum impendant, et prædicti Hiberni Sacerdotes Missionariis Anglis tunc solum cooptentur, cum horum paucitas id exigere videatur; ideoque a Vicariis Apostolicis Angliæ ad Missionem exoptentur, et evocentur.

§ 4. Sed, ut ad Vicarios Apostolicos revertamur, præter eam omnem auctoritatem, quæ *ipsis communis est in propriis confiniis cum quolibet Ordinario in sua Civitate, et Diœcesi*, Apostolica Sancta Sedes facultates *formulæ secundæ* ipsis elargitur, cum potestate illas simplicibus Sacerdotibus, qui idonei videbuntur communicandi, iis tamen exceptis, quæ vel in Ordinem Episcopalem unice spectant, vel exerceri sine Sacrorum Oleorum usu minime possunt. Nihil proinde recensitis Vicariis deest, quod ad sanum regimen, et directionem tam Regularium; quam Cleri Sæcularis conducat, qui nullas in hanc diem controversias excitavit, quæ debitam Vicariis Apostolicis obedientiam, et subordinationem labefactarent.

§ 5. Attamen quoniam inter privilegia, quibus gaudent Regulares, cuilibet peculiari Ordini a Summis Pontificibus attributa, illud adnumeratur, per quod Regulares Familiæ ab Episcopali, vel Ordinaria auctoritate eximuntur, vel Sanctæ Sedis Jurisdictioni immediate subjiciuntur, ne altercationes ea de re in posterum enascantur, quas plurimas elapsis temporibus constat extitisse, et in dies suboriri, necessitas postulat, ut finis aliquando iis imponatur: quod ita præstari oportet, quemadmodum inferius exponemus.

§ 6. Itaque Regulares Missionarii cum Provinciam adventaverint, ubi Sacras Missiones obire debent, Apostolicum Vicarium convenient, uti facere semper consueverunt, in cujus ditione Ministerium Apostolicum suscepturi sunt. Siquidem institutum Canonicum est, Sacri Concilii Chalcedonensis auctoritate firmatum, nemini Advenæ in Sacris

constituto licere, Ordinem, quo se insignitum asserit, exercere, adeoque Sacrum peragere, si Sacerdotem se esse profiteatur, nisi Litteras authenticas Ordinarii palam faciat, testimoniumque exhibeat, se nullo suspensionis, vel irregularitatis vinculo irretiri. Ita *Canon. 7. dist. 71.*, cui apprime consentit Sacrum Concilium Tridentinum *sess. 22. de Sacrificio Missæ*; Decreto *de observandis, et evitandis in celebratione Missæ, et cap. 13. Sess. 23. de Reform.*: Porro hujusmodi præscriptum Regulares etiam respicit, quoties extra Diocesim versantur, in qua ad Sacros Ordines promoti fuere; proindeque susceptum Ordinem exercere minime possunt, præsertim in Ecclesiis, quæ ad propriam Sodalitatem non spectant, nisi prius Episcopis, aut Vicariis Generalibus, vel Foraneis, Superiorum suorum documenta proferant, quibus et obtenti Ordinis testimonium, et libertas ab omni Canonico impedimento irregularitatis, vel suspensionis perspecta fiat. Quamobrem id etiam est in mandatis Regularibus Missionariis, ut nimirum Vicariis Apostolicis, ea ratione, qua dictum est, sese exhibeant, ubi ad Missionis locum pervenerint.

§ 7. Nullus Sæcularis Sacerdos pœnitentiæ Sacramentum administrare potest, qui actualis Parochus non existat, vel idoneus ad id in præmisso examine repertus non fuerit, quod Ordinarius Loci, ubi confessiones excepturus est, de eo habere potest. Idem et Regularibus Sacerdotibus edicitur, quoties velint Sæcularium Confessiones audire, quemadmodum ad literam decernitur a Concilio Tridentino *sess. 23. cap. 15. de Reform.*, quo in loco derogat Sacrum Concilium privilegio cuicumque, et consuetudini immemorabili, quæ contrarium præ se ferret, inquires: *privilegiis et consuetudine quacumque, etiam immemorabili, non obstantibus.* Idque eo vel magis, quod ad Summo Pontifice S. Pio V. ea in Constitutione, cui initium est *Romani Pontificis 133. Bullarii Romani, tom. ii.* declaratum est, prædictam Concilii Tridentini sanctionem ad omnes quoscumque Regulares extendi, vel Mendicantes, vel non Mendicantes, quamvis Lector, atque Magister in Sacra Theologia præfulgeat, et potestas Sæcularium Confessiones excipiendi illi facta fuerit a suis Superioribus Regularibus. Sancto

Pio V. omnino consonat Urbanus VIII. in Constitutione, quæ incipit: *Cum sicut accepimus* 92. *Bullarii*, tom. 4., per quam amplissime rescidit privilegium quodcumque alias Regularibus attributum, cujus prætextu Sæcularium Confessiones exciperent, priusquam examen sustinuerint, et consensum ab Ordinario Diœcesano impetraverint. Ac ne Regularium Familiæ, quæ nisi expresse nominentur, se minime comprehendi putant, ab eadem Constitutione immunes se jactarent, eas nominatim, et singulas recensendas optimum duxit. Ultimo tandem S. Pontifex Clemens X. edita Constitutione *Superna* 7. in *Bullario Romano* tom. vi. § 4. ita confirmavit: *Religiosos ab Episcopo ad Confessiones Sæcularium in sua Diœcesi audiendas approbatos, non posse in alia Diœcesi eas absque Episcopi Diœcesani approbatione audire, quamvis pœnitentes subditi sint ejus episcopi, a quo ipsi Religiosi jam fuerant approbati.*

§ 8. Quare si insistamus Canonice institutis, quæ superius numeravimus, nullum afferri potest impedimentum Ordinario, quominus examen indicat Sacerdotibus tam Sæcularibus, quam Regularibus, per quos Pœnitentiæ Sacramentum in Locis ipsius Jurisdictioni subjectis administrandum est; Regulares inquam, in examen vocare potest Ordinarius, si velint Sæcularium Confessiones excipere. At vero quoniam Missionarii, et imprimis Regulares, longa et difficilia suscipiunt itinera, relictis Cœnobiis, in quibus versantur, ut in Angliam ad obeundas Missiones se conferant, ne dubietas admissionis ad Confessiones audiendas in subeundo examine, illos ab Apostolico munere deterreat, cavebunt imposterum, antequam relinquunt Monasteria, in quibus degunt, et in Angliam tendant, cavebunt, inquam, examen ad Confessiones Sæcularium audiendas subire coram Ordinario, et Examinatoribus Loci, in quo situm est Monasterium, et consequi testimonium, quo idonei declarentur; quod insuper poterit indicari Vicariis Apostolicis, in Anglia commorantibus per Litteras Ordinarii, qui ad examen eos excepit, et peritos, idoneosque judicavit. Quod si cuiquam ex Regularibus commodius, atque itineri opportunius videretur Bruxellis ante Apostolicum Nuncium propriæ scientiæ

periculum facere, id erit eorum in libitu; cum utraque ratione duplex auferatur incommodum; unum scilicet, ne Regulares animum mentemque dimoveant a Missionibus Anglicanis, eo timore, ne a Vicariis Apostolicis admittantur ad Sæcularium Confessiones excipiendas; alterum vero, ne iidem Vicarii destituantur auctoritate approbandi illos, qui intra limites suæ Jurisdictionis Pœnitentiæ Sacramentum velint administrare. Etenim duos omnino actus complectitur adprobatio, quorum primus ad intellectum, alter spectat ad voluntatem. Proprium enim est intellectus, debita, ac necessaria scientia in Examinato deprehensa, illum Confessionis muneri obeundo aptum existimare. At non nisi voluntatis est, facultatem Confessionum audiendarum liberam, plenamque facere, sententiamque de eo proferre, qui Adprobatori subjicitur. Primum itaque ab Examinatore præstat; cujus fidei, et integritati innititur, atque acquiescit, qui Confessiones audiendi facultatem, in limitibus, et confiniis sibi assignatis, impertitur. Alterum immediate peragitur ab ipsomet superiore, cujus est prædictam facultatem concedere.

§ 9. His itaque constitutis, cum Regularis examinatus jam, et idoneus judicatus, uti diximus, sese offerat Vicariis Apostolicis, cumque id perpendi minime debeat tanquam urbanitas aliqua, seu cœremonia; cum insuper Vicarius Apostolicus opportunam facultatem elargiri intelligat ad suscipiendas Fidelium Confessiones, qui ditione sua continentur: absoluta penitus hac ratione controversia omnis judicari deberet. Cæterum Confessarii munus Regularibus deferri potest sine temporis determinatione, vel cum limitatione: quod luculenter constat tum ex Brevi a Summo Pontifice Urbano VIII. dato Cardinali de Sandoval anno 1639, inserto a Cabasutio in Theoria, et Praxi Juris Canonici *lib. 1. cap. 10. num. 13.* tum ex recensita Constitutione Clementis X. *Superna, ad § 4.* Porro hujusmodi facultates ad præstitutum tempus collatas, post elapsum temporis intervallum, jus competit Ordinario vel abrogandi, vel eas renovando, Sacerdotem ad novum examen compellendi. Facultates vero nulla cum temporis limitatione delatæ, non nisi cum ipso officio desinunt, nec suspendi



propterea possunt sine nova causa, quæ Confessiones directe respiciat, quemadmodum patet ex Constitutione: *Cum sicut accepimus*, ab Innocentio X. in lucem edita xxxii. § 2. *Bullarii tom v. An Episcopus Regularem pro Confessionibus semel approbatum, sine nova causa, suspendere possit ab ipsis Confessionibus audiendis? Respondetur, Regulares alias libere ab Episcopo, prævio examine, approbatos ad audiendas Confessiones Personarum Sæcularium, ab eodem Episcopo suspendi non posse sine nova causa, eaque ad Confessiones ipsas pertinente.* Quæ cum ita sint, ut omni dissidio aditus ocludatur, decernimus, atque statuimus, ut facultas superius exposita, a Vicariis Apostolicis Regulari examinato, et approbato concedenda, ad sexennium extendatur, atque ad aliud sexennium sine prævio examine confirmetur, cum Regulares Missionarii, iis peractis, quæ *num. 20.* exponuntur, Anglicanæ Missionis exercitium denuo suscipient.

§ 10. In medium igitur proferri minime potest tam Breve Summi Pontificis Urbani VIII. quod incipit: *Britannia*: vulgatum anno 1631, quam Bulla ejusdem Pontificis: *Plantata*, edita anno 1633, aut aliud quodcumque documentum ad firmandam Regularium independentiam a Vicariis Apostolicis in administratione Pœnitentiæ Sacramenti, aliorumque Sacramentorum. Brevia enim, et hujusmodi documenta emissa fuere, antequam quatuor Vicarii Apostolici in Anglia constituti forent, cum omni auctoritate, quæ competit cuilibet Ordinario in sua Civitate, et Diœcesi. Quamobrem sancito libero, et tranquillo ordinariæ Episcoporum auctoritatis exercitio, eo ipso desinit Regularium immunitas pro Sacramentis administrandis, quæ tunc temporis iisdem concessa fuit, cum prædictum liberum exercitium nullatenus permittebatur; quemadmodum Regulares ipsi luculenter agnoverunt, et confessi sunt in celebri disputatione Parisiis habita, quæ in *Collectione Judiciorum tom. iii. pag. 45.* continetur. Accedit præterea, quod idem prorsus decretum fuit pro statuendo Indiarum Orientalium regimine, nequicquam refragantibus amplis S. Pii V. et Gregorii XIV. privilegiis, ut legere cupienti innotescet ex nostra Constitutione:

*Quamvis ad confirmandum, tom. xvii. nostri Bullarii.* Eadem plane ratione cum in præsentiarum constitutum sit regimen Vicariorum Apostolicorum, finem habere debet recensita Regularium Missionariorum immunitas, iis delata, antequam prædictis Vicariis Apostolicis regimen, et ordinaria auctoritas tribueretur, et sua cuilibet confinia assignarentur. Notæ, et pervulgatæ sunt controversiæ agitatae, et discussæ in Congregatione de Propaganda Fide anno 1701 et 1702, inter Macai Episcopum, Vicarios Apostolicos Sinarum, atque Regulares Missionarios, qui tueri conabantur, ob sua privilegia licitum sibi esse Sacramenta administrare, et quolibet Parochiali officio perfungi, quin ab Episcopo, et Vicariis Apostolicis dependerent. Porro cum sapienter Congregatio animadvertisset, ab Innocentio XII. fel. rec. suos præfinitos fuisse limites cuilibet Vicario Apostolico, decrevit, atque mandavit, ne cuiquam Missionario vel Sæculari, vel Regulari in posterum liceret Pœnitentiæ Sacramentum Sæcularibus impertiri, vel aliis Parochialibus officiis fungi, quidquid in contrarium præ se ferrent privilegia iis concessa, quin prius facultatem obtinisset ab Ecclesiastico Superiore, ab Episcopo nimirum, quoties Sacramenta administranda essent in ejus Diœcesi, vel a Vicario Apostolico, si in ipsius ditione id foret peragendum. Hæc enim habet decretum vulgatum die 14 Februarii anni 1702. *Missionariis autem, sive Sæcularibus sive Regularibus etiam Societatis Jesu, non liceat etiam vigore suorum privilegiorum Sacramenta administrare, aut alia munia parochialia obire, nisi de licentia præfatorum Ordinariorum, sive Vicariorum Apostolicorum, in quorum respective Provinciis aut Diœcesibus eosdem Missionarios commorari contigerit.* Hæc profecto luculenter ostendunt nullatenus esse provocandum ad immunitatis privilegia, Anglicanis Missionariis concessa, antequam in Anglia Vicarii Apostolici constituerentur. Idque discussum etiam fuit in peculiari Congregatione de his negotiis habita die 6 Octobris anno 1695, cujus Decreta Innocentius XII. Brevi dato die 5 Octobris anno 1696, confirmavit. Accedit Decretum emissum ab universa Congregatione de

Propaganda Fide *die 16 Augusti anno 1645*, quod nostro Brevi sub *die 5 Septembris anno 1745* firmatum fuit.

§ 11. Cum ab hac Sancta Sede animadversum sit, plurima sæpe contingere in Regionibus longe dissitis, quibus ut consulatur, peculiare dispensationes, et privilegia quandoque opportuna; quandoque etiam ad animarum regimen necessaria requiruntur; ad quæ obtinenda difficile est Romam confugere, eadem Sancta Sedes in more habuit, habetque in præsentibus, Episcopis in remotioribus Provinciis commorantibus quasdam facultates impertiri, quibus uti possint vel immediate, vel per inferiores Sacerdotes a se designatos: atque idem plane cum Missionum Præfectis, atque Apostolicis Vicariis facere consuevit. Verumtamen, cum nec Episcopi, nec Missionum Præfecti in Anglia hoc tempore versentur, supervacaneum est facultates recensere, quæ his, vel illis deferuntur. Sedem habent in Anglia Vicarii Apostolici, qui sibi commissis Provinciis præsentibus, atque iis dumtaxat *Formulae secundæ* facultates tribuuntur; proindeque Regulares Angliæ Missionarii iis solum Facultatibus perfruuntur, quas obtinent ab Apostolicis Vicariis, qui sane eas communicare aliis possunt, uti ex *Formula secunda* manifestum est: *Prædictas Facultates communicandi, non tamen illas, quæ requirunt Ordinem Episcopalem, vel non sine Sacrorum Oleorum usu exercentur, Sacerdotibus idoneis, qui in ejus Diœcesi laborabunt.* In recensitis notatu dignum imprimis est vocabulum illud *idoneis*, quo cognitio indicatur, quam Largitor facultatum habere debet de illo, qui ipsas consequitur, an videlicet idoneus existimetur. Hinc et arbitrium examinis de illo instituendi subsequitur, quoties ejus scientia ad facultatem exercendam aliunde non innotescat. Observationem illud etiam exigit, quod necessitas non infertur Vicario Apostolico, ut omnino prædictas facultates communicet; sed, veluti commodum quoddam, hujusmodi potestas illi delata est pro animarum utilitate: quod quidem nunquam non opportunum, sæpius etiam necessarium est, cum Superior omnia per se præstare minime valeat. In arbitrio Vicarii Apostolici positum quoque est, vel omnium suarum facultatum Sacerdotem participem facere, vel aliquas tantum-

modo communicare. Nam Vicarius Apostolicus in hoc facultatum genere, specialis Sanctæ Sedis Delegati Personam gerit, cui liberum est subdelegare, nedum ex communi jure, verum etiam ex singulari auctoritate illi demandata: cumque in delegantis potestate constitutum sit suspendere, vel omnino etiam auferre factam Delegato procurationem, ex his omnibus illud consequitur, in Anglia scilicet, quod jam dictum est, eas tantum facultates per Vicarium Apostolicum collatas a Missionariis exerceri posse: Ille siquidem cum Apostolicus Depositarius earumdem existat, communes eas facturum cum Sacerdotibus Sæcularibus, aut Regularibus, jus retinet (quod repetere supervacaneum non erit) dignoscendi, an revera idonei sint; aliquas tantummodo, non omnes communicandi, ac denique eas suspendendi, penitusve auferendi. Attamen summopere commendatur humanitas in examine peragendo; insuper debita, et prudens cautio in suspendendis, vel adimendis facultatibus, quæ semel concessæ fuerunt. Nec opus est, ut facultates exprimantur, quas Vicarius sibi reservare, aut quas Sacerdotibus Sæcularibus, vel Regularibus elargiri debet, quæve uni potius, quam alteri sint impertiendæ; id enim arbitrio relinquitur Vicarii Apostolici, qui cum in loco consistat, et Personas dignoscit, quibus facultates conceduntur, animarum necessitates animadvertat, et casuum frequentiam, decernere facilius potest, quæ magis opportuna, et salutaria videantur. Inter cæteras illa adnumeratur facultas, per quam copia fit Sacerdoti bis Sacrum peragendi uno eodemque die, licet id expresse prohibeatur *cap. Consulisti, de celebratione Missarum*; cui tamen derogatur ob necessariam causam, videlicet ob Sacerdotum paucitatem; vel cum eorum numerus, qui diebus festis tenentur sacris assistere, talem exhibeat necessitatem, ut, nisi alicui Sacerdoti duas Missas eodem die celebrandi potestas concedatur, Ecclesiæ mandato plures non satisfacerent: quod copiose declaratum est *Constitutione 3. in præsentis nostri Pontificatus emissa, et Oscensi Episcopo inscripta Tom. xvii. Bullarii*. Hinc facile apparet abusio intolerabilis, quæ patraretur, si cuiquam Sacerdoti rem divinam faciendi bis in diem facultas

tribueretur, cum in finem, ut duplici eleemosyna decentius se sustentaret, quantoque magis Sacerdos peccaret, si Missæ Sacrificium bis uno die conficeret sine opportuna Vicarii Apostolici concessione; vel sub Populi necessitatis prætextu eam peteret, atque obtineret, licet reipsa plurium eleemosynarum cupiditate ad id moveretur.

§ 12. Adprobationis necessitatem, quam diximus competere cuilibet Vicario Apostolico in sua Provincia, non solum quoad Sæculares, sed etiam quoad Regulares Sacerdotes, qui Sæcularium Confessiones sint excepturi; necessitatem pariter ab ipsis accipiendi facultates *Formula secundæ*, quæ prædictis Vicariis Apostolicis a Sancta Sede tribuuntur, una cum potestate eas communicandi Sacerdotibus Sæcularibus, et Regularibus, ut illis solummodo Missionarii utantur, quemadmodum superius exposuimus, has, inquam, necessitates subsequitur actualis administratio curæ Animarum, et Sacramentorum; ac proinde in iis, quæ ad utrumlibet horum capitum spectant, nedum Missionarii Sæculares, sed etiam Regulares subjiciuntur jurisdictioni, et correctioni Vicariorum Apostolicorum. *Personæ tam Regulares, quam Sæculares hujusmodi curam exercentes, subsint immediate, in iis, quæ ad eandem curam, et administrationem Sacramentorum pertinent, jurisdictioni, visitationi, et correctioni Episcopi, in cujus Diœcesi sitæ sunt: Hæc ferme habet Concilium Tridentinum, sess. 25. de Regularibus, cap. 11.*

§ 13. Quamvis autem in hoc cap. 11. non derogetur privilegiis, quæ hanc in rem producere possent Regulares, nihilo tamen minus, quia hujusmodi derogatio apertis verbis exprimitur cap. 22. *novissimo ipsius sessionis 25. de Regularibus*; ideo hæc ipsa complectitur singula capita anteriora *ipsius sessionis 25. de Regularibus*; ac propterea recensitum etiam caput undecimum, quemadmodum enunciatum est Constitutione Innocentii XIII., quæ incipit *Apostolici Ministerii*, confirmata a Benedicto XIII. in altera, quæ incipit: *In supremo data anno 1724, num. 23. Sciant omnes derogationem hujusmodi non ad ea tantum referri, quæ in prædicto capite (id est 22.) continentur; sed*

*etiam ad alia, quæ in singulis superioribus (adeoque etiam in cap. 11.) ejusdem sessionis constituta sunt.*

§ 14. Superioribus annis suscitata nonnullis fuit infirma nimis controversia, nempe in dubium revocata fuit prædicta Concilii Tridentini dispositio, et contendebatur eos tantum Regulares affici, qui Parochi existant, alios vero Regulares Sacerdotes, qui licet Parochi non sint, tamen Sacramentum aliquod Sæcularibus administrent, vel nullimode comprehendendi, vel si comprehendantur, id referendum esse ad eos solummodo, qui rem *de facto* agerent, et sine prævia Ordinarii facultate; verum Gregorius XV. edita Constitutione *Inscrutabili*, quæ est 18. *Bullarii Romani tom. iii.* declaravit Regulares Sacerdotes, qui vel Parochi sunt, vel aliquod administrant Sacramentum, *sive alias Ecclesiastica Sacramenta, aut unum ex iis ministrant*, sive id præstent *prævia Episcopi licentia, et approbatione*, aut agant *de facto absque ulla auctoritate*, subesse debere in iis omnibus, quæ curam, vel administrationem Sacramentorum spectant jurisdictioni, et correctioni Ordinarii tanquam Sedis Apostolicæ Delegati: *In his, quæ hujusmodi curam, seu administrationem concernunt, omnimodæ jurisdictioni, visitationi, et correctioni Diocesani Episcopi, tanquam Sedis Apostolicæ Delegati, plene in omnibus subjiciuntur.* Idem prorsus renovatum est in Bulla *Cum sicut* 32. Innocentii X. § 4. in *Bullario Romano, tom. v.*, tum in Constitutione *Firmandis*, 109. § 3. *Bullarii, tom. i.* in præsentis Pontificatu evulgata.

§ 15. Jus hujusmodi in Regulares Sacerdotes delegatum in iis, quæ animarum curam, Sacramentorumque administrationem concernunt, cessare certum est, cum eorum quicumque sui Regularis instituti observantiam aliquo modo violaret; id enim Ordinarii muneris non est, sed respectivi Superioris Regularis: *Cujus quidem agendi rationem in iis, quæ spectant ad observationem proprii ipsius Regularis Instituti*, non est Episcopi inquirere, cum ad ipsum Superiorem Regularem privative id pertineat; Verba ipsa sunt recensitæ Constitutionis *Firmandis* - § 8. Non ignoramus Sacrum Concilium Tridentinum, *Sess. 6. cap. 3. de Reformatione*, nulla admissa distinctione, decrevisse, quod

Regularis extra Monasterium degens, etiam sui Ordinis privilegii prætextu, si deliquerit, ab Ordinario Loci, tanquam super hoc a Sede Apostolica delegato, secundum Canonicas Sanctiones visitari, puniri, et corrigi valet: atque hinc factum esse, ut dubium a nonnullis proponeretur, utrum commorantes Missionarii Regulares apud privatos, atque ut plurimum seorsim, ut in Anglia contingit, utrum, inquam, prædicti Regulares, veluti Religiosi extra Monasteria viventes censendi sint, ac propterea Ordinarii jurisdictioni tanquam Apostolici Delegati in omnibus subjecti, quod definitum est in allata Innocentii X. Constitutione 34. *cum sicut*, § 15. Quandoquidem tamen illud perpendi debet, Regulares scilicet Anglicanæ Missioni destinatos, illuc proficisci in bonum sanctæ nostræ Religionis, eorumque mansionem in privatis domiciliis, non item in Monasteriis, ex publici regiminis Legibus dimanare, quibus Cœnobia quæcumque prohibentur; æquum profecto est, ut recenseri non debeant adinstar illorum, qui extra proprium Monasterium vitam agunt, atque hinc subsunt omnimodæ Ordinarii jurisdictioni, quemadmodum sancitum fuit a Summo Pontifice Clemente VIII. in suis Litteris Apostolicis in forma Brevis editis anno 1601, quæ incipiunt: *Quorumcumque Religiosorum* recensitis in Constitutione: *Quamvis*; Quæ ordine est prima præsentis nostri Pontificatus tom. xvii. *Bullarii*. Quamobrem cum iis potius procedendum est veluti cum Regularibus in propriis Monasteriis degentibus, qui, si aliquod crimen foris patraerent, scandalum Populo afferens, insistente Ordinario, ut puniantur, plecti debent a suo Superiore Regulari, qui insuper tenetur inflictam castigationem ipsi Ordinario indicare: *Regularis intra Claustra Monasterii degens, si extra ea ita notorie deliquerit, ut Populo scandalo sit, Episcopo instante, a suo Superiore intra tempus ab Episcopo præfigendum severe puniatur ac de punitione Episcopum certiore faciat, sin minus, a suo Superiore officio privetur, et delinquens ab Episcopo puniri possit*: Hæc habet Sacrum Concilium Tridentinum *sess. 25. de Regularibus, cap. 14.* Quibus apprime insistens ipsemet Summus Pontifex Clemens VIII., alteram vulgavit Constitutionem, cui initium

fecit *Suscepti muneris xxxix. Bullarii Romani, tom. iii.*, ubi accurate animadvertit, atque enunciavit quidquid ad eorum executionem conducere videretur.

§ 16. Harum ope regularum, quæ non ad libitum effectæ, nec recentes, sed juris Canonici, et Sacri Tridentini Concilii auctoritate suffultæ, nec non anteriorum Pontificum Constitutionibus firmatæ sunt, dubitandum non est, quin perfecta interesse debeat consensus inter Episcopos, et Regulares Missionarios, eorumque Superiores, dummodo reipsa in eorum animis vigeat, quod juvat sperare, verum pacis, et concordiaë desiderium. Atque ea animorum conjunctio eo vel magis speranda, quod ipsorum juri, atque auctoritati certi limites, et confinia præfinita sint. Siquidem non deest Superioribus Regularibus privativum jus in proprios Religiosos, qui sui Instituti observationem præfererint. Quod si ab iisdem quodquam gravioris notæ crimen perpetretur, atque in primis, si contra bonos mores deliquerint, non destituuntur Superiores eos castigandi facultate; nec conquerendi locus Vicario Apostolico relinquitur, si ab eodem Superiore post acceptam facti notionem debita punitio non omittatur: adeo ut Vicarius Apostolicus, quod supra indicatum est, se in eam rem ingerere nullatenus possit; nisi forte contingeret, ut Regularis Superior vel nihil præstaret, vel æquas pœnas a reo minime desumeret. Habent itidem Vicarii Apostolici, utpote Sanctæ Sedis Delegati, potestatem supra Regulares in iis omnibus, quæ animarum curam, et Sacramentorum administrationem respiciunt. At vero hujusmodi jus non solum iis competit; verum etiam Regularibus Superioribus, quibus concessum est suos Religiosos animarum regimen, sive Sacramentorum administrationem male exercentes punire. Porro Jus Privativum Ordinarii complectitur tantum actus, quos ipse ratione Ministerii sui tenetur peragere in bonum populi disciplinaë Regularis Parochi demandati.

§ 17. Ne autem de jure cumulativo, quod habent tam Vicarii Apostolici, quam Regulares Superiores in Regulares, qui vel Parochi existunt, vel qui Sacramenta administrant, ulla oboriatur disceptatio, decretum jam est, ut



dissidente Ordinario Superiore, vel Episcopus ille sit, sive Vicarius Apostolicus, a Regulari Superiore, prioris sententia alterius præstet opinioni; itidemque, ut cum velit Superior Regularis, ab animarum regimine, et Sacramentorum administratione Regularem sibi subditum remove, efficere id possit, quin prius Ordinarium de causa certiorum faciat: quod vicissim ab Ordinario fieri posse tenendum est, secluso debito causam patefaciendi Regulari Superiore. Adeatur superius recensita Constitutio *Firmandis* 109. § 10. et 11. *Bullarii tom. i.* præsentis nostri Pontificatus, ubi auctoritate veterum decretorum id fusius declaratum, et confirmatum est. Nec Regularis ab officio suspensus, vel amotus, ullimode valet appellationis beneficii Mandati executionem impedire, vel protrahere; sed post præstitam obedientiam, ad proprium tuendum nomen, innocentiamve vindicandam, si eam læsam existimaret, reclamationibus unice locus erit, et excusationibus, suo Judici competenti ferendis, uti præscribitur in superius allata Constitutione: *Inscrutabili*: Gregorii XV. atque in alia posteriori, cui initium *Ad militantis*, in præsentis nostro Pontificatu vulgata scilicet 18. § 19. *Bullarii tom. i.*

§ 18. Ne felici Britanniae Missionum regimini quicquam deesse videatur, subsequentes adnectuntur regulæ, quibus prætermis, haud omnino obtineretur, quod vehementer exoptatur. Sedulo igitur incumbant Vicarii Apostolici, ut Missionarii Sæculares probe, honesteque in omnibus se gerant, quo aliis bono exemplo sint; et imprimis Sacris Officiis celebrandis, opportunisque Institutionibus Populo tradendis, atque infirmis opera sua sublevandis præsto sint, ut a publicis otiosorum cætibus, et cauponis omnimode caveant; addita etiam suspensionis pœna cuilibet, si quis ad easdem divertere non vereretur. At potissimum ipsimet Vicarii, omni, qua possunt ratione, severe tamen, illos puniant, qui de publico Regimine cum honore sermonem non haberent. Quandoquidem illi in Anglia versantur, non ad rumores, et perturbationes excitandas, sed Sanctæ Catholicæ Religionis servandæ causa, eosque excipiendi, qui Divino Spiritu afflati, et Sanctis Fidei Mysteriis apprime instructi, se promptos, paratosque ad eam amplec-

tendam exhibent; cum interim *a quibuslibet conversionibus debeant abstinere* quæ utpote sine præviis, debitisque conditionibus peractæ, non modo nullam utilitatem, sed *damna* potius, et incommoda plurima solent afferre. In iis autem, quæ Missionarios Regulares spectant, munus suum Vicarii Apostolici præ oculis semper ferant, quo tenentur in eorum actiones intendere semper in illis, quæ animarum curam, Sacramentorumque administrationem respiciunt; necnon auctoritatem pariter sibi delegatam comminiscantur. Cæteras vero prædictorum Regularium corruptelas, si quæ contigerint, si nimirum eorum quisquam cauponas, et coetus otiosos frequentaret, seu publico Regimini obloqueretur, sive denique alienis negotiis sese immisceret; has, inquam, corruptelas reparare studeant remediis superius expositis, atque a Concilio Tridentino desumptis, quibus Regulares afficiuntur in Monasteriis degentes, et qui extra Septa ipsius Monasterii scandalum aliquod committunt.

§ 19. In primis curæ sit Superioribus Regularibus Missionarios indistincte nequaquam mittere, sed quod dictum jam est, eos deligere, qui et vitæ probitate, atque sufficienti opportuna doctrinæ copia tales existant, ut sibi traditum Ministerium probe complere valeant: Præterea studeant præficere in Anglia unum ex Religiosis, cui visitatio sibi subditorum singulos in annos obeunda committatur, qui diligenter eorum vivendi rationem ad examen revocet, et congestarum eleemosynarum usum perscrutetur. Sic enim fiet, ut quælibet negotiationis suspicio de medio tollatur, incommodis quibuslibet, et malis provide consulatur; Porro Visitor ipse de his, quæ gerenda sunt, conferat cum Vicariis Apostolicis, ut et ipsi auxiliarem manum præbeant, atque ita scandalis quibuslibet aditus occludatur.

§ 20. Quandoquidem, degentibus Missionariis Regularibus in Anglia extra Monasteria in privatis domiciliis, et *sæculares vestes adhibentibus*, et ea libertate utentibus, qua sane carerent, si in Monasteriis degerent, inauditum minime esset, si etiam religiosa corda mundano pulvere sordescerent, ideo edicitur cuilibet Missionario, ut post singula sexennia ad Catholicas Regiones sese restituat,

propriæ Familiæ Regularis Claustra subeat, Religiosum induat habitum, ibique per tres integros menses commoretur, atque interim Spiritualibus Exercitiis per quindecim dies sedulo incumbat. Hinc est, quod Vicarii Apostolici, quorum arbitrio, atque prudentiæ, uti expositum est, committitur potestas communicandi Missionariis facultates *formulæ secundæ*, ipsam *ultra sexennium* non debent prorogare, sed impertiri ad summum *ad sexennium*, et *interim ad libitum*, eamque, si consentaneum judicaverint, simili modo restituere, cum Regulares absoluto jam præscripti secessus tempore ad Missionem revertentur.

§ 21. Etsi Regularis Superior, qui statuit aliquem ex suis Religiosis a Sacramentis administrandis, sive a Missionibus exercendis remove, ex superius allatis, non teneatur remotionis causam Vicario Apostolico significare, et eadem ratione liberum sit Vicario Apostolico, insciis, atque inconsultis iisdem Superioribus contra Missionarios Regulares, quos delinquentes in Sacramentis administrandis, vel ineptos, atque rudes, negligentessve in suo munere adimplendo deprehenderit, animadvertere, prout ipsi expedire videbitur, tamen consentaneum erit, si unanimi voluntate, et consensu rem gerant, ne Missiones Operariis destituantur, et uni Missionario amoto alter continuo subrogetur, qui ejus subeat vices; idemque exhibeatur officium a Superioribus Regularibus cum Apostolicis Vicariis, ubi velint suos in alium Locum transferre, vel eos revocare in Catholicas Regiones, atque uno eodemque tempore successores expediant, videlicet ne Missio necessariis Operariis careat.

§ 22. De Foundationibus nihil omnino innovetur; sed tam Sæculares, quam Regulares in earum possessione perseverent, quas in præsentiarum obtinent; atque adeo Sacramenta, etiam Confessionis omnibus indiscriminatim per eos administrentur in Urbibus, et Oppidis muro circumdatis, ubi limites præfiniti non sunt; ea plane ratione, qua in nostris Civitatibus ad Confessionem adprobati ab Episcopo sine ulla Loci, vel peculiaris Ecclesiæ limitatione, in qua Confessiones possint excipere, in qualibet Urbis Ecclesia Confessiones audiunt, debitis tamen officiis cum

ipsius Rectore antea persolutis. Verum Missionariis, in Pagis, et apud Ruricolos commorantibus non liceat Sacramenta, nec etiam Pœnitentiæ extra præscriptos limites administrare; eum ad Confessiones extra confinia excipiendas necessaria omnino sit Vicarii Apostolici licentia, cui illa subijcitur Provincia. Etenim apud Nos etiam Confessarius ab Episcopo pro Sæcularibus adprobatus in sua Diœcesi, extra Diœcesim eam facultatem exercere nequit sine alterius Episcopi adprobatione, in cujus ditione Pœnitentiæ Sacramentum administratur, etiamsi Pœnitens subdit Episcopo, qui illum ad Confessiones excipiendas adprobavit. Idque constat ex Bulla *Superna*, Clementis X. quæ est 7. tom. vi. *Bullarii Romani* § 4., solus enim Parochus a Moralis Theologiæ Scriptoribus eximitur, qui si forte extra Diœcesim versetur, sui Parochiani ibi degentis Confessiones potest audire, quamvis Episcopo Loci, ubi sui Parochiani se præbet Confessarium, adprobationem ad Confessiones non obtinuerit. Necessaria igitur omnino est Vicariorum Apostolicorum licentia, ut Missionarii in Pagis, vel Agris commorantes, Pœnitentiæ Sacramentum ministrent intra limites cuilibet illorum respective subjectos. Attamen ipsosmet Vicarios Apostolicos hortari non præmittimus, ut meminerint valde consentaneum esse (nisi aliqua legitima causa contrarium persuaserit) facultates illis elargiri saltem ad Confessiones excipiendas. Quandoquidem vero licentiæ administrandi Sacramenta, quæ conceduntur Missionariis Campestribus, ut plurimum certis limitibus arctari solent, extra quos nulla ipsis ministrandi facultas permittitur, quamvis Locus, ubi Sacramenta vellet conferre, intra limites Vicario Apostolico subjectos contineretur, qui permissionem ministrandi impertitus est, tamen Vicarium Apostolicum adhortamur, ut facilem se præbeat Missionario Campestri Sacramenta aliquando conferendi extra limites ipsi præfinitos, nisi forte legitimum aliquod impedimentum id fieri prohibeat.

§ 23. Hæc omnia proficuum animarum curam, et pacem, concordiamque inter Missionarios; faustum denique Vicariorum Apostolicorum regimen respiciunt. At quoniam a Viris optimis, et fide dignis indicatum fuit consentaneum

fore, si definiatur, utrum Regularibus, qui vel in Regiis Sacellis, vel in Locis pro illis fundatis, sive apud Nobiles commorantur, liceat Indulgentias suis Ordinibus concessas evulgare, ideo, ut omnes molestæ tricæ evitentur, sequens regula proponitur, quæ executioni demandari omnino debet. In bonum Anglicanæ Missionis adprobantur quilibet pietatis actus, preces, jejunia, atque opera meritoria, quæ a Sancta Romana Ecclesia comprobantur. Ad Indulgentias quod spectat ipsis operibus adnexas ratione privilegiorum, quæ uni, vel alteri Regularium Ordini a Summis Pontificibus concessa fuerunt, suspenduntur: atque, ut Fideles spirituali Sanctarum Indulgentiarum emolumento tranquille, et copiose simul perfruantur, cuilibet Vicario Apostolico auctoritas in ditione sui Vicariatus conceditur, ut quater in annum in iis Solemnitatibus, quæ ipsis magis opportuna videbuntur, Indulgentiam Plenariam impertiantur, quam lucrari possint quicumque Pœnitentiæ Sacramento expiati, et Sacra Eucharistia refecti Sacellum aliquod visitabunt, ubi Missæ Sacrificium celebratur, pacem Ecclesiæ suæ a Deo rogabunt, paratique erunt pauperes aliqua eleemosyna pro suis viribus sublevare, vel Catechismo, et Sacris Concionibus frequenter interesse, quoties absque gravi incommodo id fieri liceat, sive infirmis, aut morti proximis operam suam Christiana charitate præbere; et quoniam non deerunt, qui vel carcere, aut gravi morbo, sive alia legitima causa impediti, præscripta pietatis officia minime poterunt adimplere, singuli Vicarii Apostolici potestatem habeant ea commutandi, et alia, quæ perfici valeant, decernendi. Porro ne morientes e vita decedant sine Benedictione *in articulo mortis*, et sine Indulgentia ipsi conjuncta, iisdem Vicariis Apostolicis facultas conceditur, ut illam impertiant, atque etiam Sacerdotes alios subdelegare possint, qui eam morientibus elargiantur, servata tamen forma, quæ indicitur in Constitutione hujus nostri Pontificatus tempore in lucem evulgata, quam hisce regulis ad majorem commoditatem adjungimus.

§ 24. Ultimo tandem, cum Anglicanæ Missionis perduratio Principum Catholicorum Ministris, Nobilibus Catholicis, Foundationibusque jam constitutis accepta referri

debeat, eos magnopere adhortamur, ut illos tantum Sacerdotes Sæculares, vel Regulares suis Sacellis inservire permittant, qui se prius obtulerint Vicariis Apostolicis, et obtentas ab illis adprobationes exhibuerint: secus enim contingere posset, ut præter eorum voluntatem admittatur celebrando Missæ Sacrificio in Sacellis, et ministrandis Sacramentis, qui vel Sacerdos minime existat vel si fuerit Sacerdos, suspensionis fortasse, vel irregularitatis vinculo obstringatur.

§ 25. Porro omnia et singula hujusmodi a Nobis, prout præmittitur, statuta et decreta, quo firmius subsistant, et serventur exactius, tenore præsentium Apostolica auctoritate, quatenus opus sit, confirmamus, et Apostolica firmitatis robore communimus, et districte servanda præcipimus et mandamus, salva tamen in præmissis nostra, Successorumque nostrorum Romanorum Pontificum, et ejusdem Congregationis Cardinalium Propagandæ Fidei auctoritate. Decernentes easdem præsentis Litteras, et in eis contenta quæcumque semper firma, valida, et efficacia existere et fore; suosque plenarios et integros effectus sortiri et obtinere, et a vobis et illis, ad quos spectat, et pro tempore quandocumque spectabit, inviolabiliter observari debere; sicque in præmissis per quoscumque Judices Ordinarios et Delegatos, etiam Causarum Palatii Apostolici Auditores, et ejusdem S. R. E. Cardinales, eorundemque Cardinalium Congregationes, et quosvis alios quacumque præeminentia et potestate fungentes et functuros, sublata eis et eorum cuilibet quavis aliter judicandi et interpretandi facultate et auctoritate, judicari et definiri debere, ac irritum et inane, si secus super his a quoquam quavis auctoritate scienter, vel ignoranter contigerit attentari. Non obstantibus Apostolicis sive sub Plumbo, sive in simili forma Brevis expeditis quorumcumque Prædecessorum nostrorum Litteris, et præsertim felicitis recordat. Urbani Papæ VIII. quarum initium est: *Britannia non minus, &c.*, necnon: *Plantata in Agro Dominico, &c.*, aliisque Constitutionibus et Ordinationibus, necnon quorumcumque Ordinum, Congregationum, et Institutorum, etiam Societatis Jesu, etiam juramento, confirmatione Apostolica, vel quavis firmitate

alia roboratis statutis, et consuetudinibus; privilegiis quoque, indultis, et Litteris Apostolicis in contrarium præmissorum quomodolibet concessis, confirmatis, et innovatis. Quibus omnibus, et singulis illorum tenores præsentibus pro plene et sufficienter expressis, ac de verbo ad verbum insertis habentes, illis alias in suo robore permanens, ad præmissorum effectum hac vice dumtaxat specialiter et expresse derogamus, et derogatum esse volumus, cæterisque contrariis quibuscumque.

§ 26. Cæterum Vos, Venerabiles Fratres, Dilecti Filii, per Domini Nostri Jesu Christi charitatem, qui animas nostras pretioso Sanguine redemit, rogamus, et in Domino hortamur, ut non in contentione et æmulatione, sed induentes eundem Dominum Nostrum Jesum Christum, perficiatis opus vestrum. Ad cujus prosperi successus auspiciam Apostolicam Benedictionem studiosæ nostræ voluntatis pignus Vobis, Venerabiles Fratres, Dilecti Filii, peramanter impertimur.

§ 27. Volumus autem, ut earundem præsentium Litterarum transumptis seu exemplis etiam impressis, et ab ejusdem Congregationis Venerabilium Fratrum nostrorum Sanctæ Romanæ Ecclesiæ Cardinalium negotiis Propagandæ Fidei præpositorum Præfecto, et Secretario pro tempore existentibus subscriptis, ac Sigillo ejusdem Congregationis munitis eadem prorsus fides adhibeatur, quæ ipsis præsentibus adhiberetur, si forent exhibitæ, vel ostensæ.

Datum Romæ apud Sanctam Mariam Majorem sub Annulo Piscatoris die XXX. Maii MDCCLIII. Pontificatus Nostri Anno Decimotertio.

CAJETANUS AMATUS.

(No. 3.)

## COLONIAL BISHOPS.

## APPENDIX A.

*Extract from a Return on Religious Instruction, Australia, ordered by the House of Commons to be printed, 11th March, 1837.*

COPY OF A DESPATCH FROM THE EARL OF ABERDEEN TO GOVERNOR SIR RICHARD BOURKE, K.C.B.

Downing Street, 20 February, 1835.

Sir,

With reference to my despatch of the 22d of December, 1834, apprising you of the intention of the Government to appoint four additional chaplains to the establishment of the Roman Catholic clergy at New South Wales, I have the honour to acquaint you that the following priests have been selected, and will shortly take their departure for the colony; viz. Rev. Dr. Polding, Rev. Mr. Cotham, Rev. Mr. Corcoran, and Rev. Mr. Sumner.

To each of the above persons an allowance of 150*l.* has been issued by the colonial agent in aid of the expense of their passage to the colony; and you will understand that they will respectively be entitled to receive, from the date of their arrival, a stipend of 150*l.* per annum.

“There is one point connected with the position of the first-named clergyman, to which I beg to call your attention. Dr. Polding, when first selected, was intended only to officiate as a chaplain, but as it was subsequently considered advisable by the church to which he belongs that, with the view of giving to him greater influence over the clergy in the colony, *he should be permitted to exercise episcopal authority*



*the sanction of the Government was given to the arrangement.* The powers and authority thus proposed to be vested in Dr. Polding are superior to those conferred upon the Rev. Mr. Ullathorne as vicar-general, whilst the salary of the latter is higher than that assigned to the former. I am not prepared to sanction the augmentation of Dr. Polding's allowance, so long as there is another Roman Catholic clergyman in the colony entitled to the same amount; but, on the other hand, it appears desirable to avoid the possibility of any unpleasant feelings existing between them. I therefore propose that Mr. Ullathorne should be removed to Van Diemen's Land upon the same rate of pay as he now receives, when, if you should deem it advisable, Dr. Polding's salary might be augmented to 200*l.* per annum. As I do not anticipate any objection on the part of Mr. Ullathorne to this arrangement, the necessary communication on the subject of it will be made to Colonel Arthur; but as the transfer of that clergyman's services to another colony may, if too early pressed, be attended with personal inconvenience to him, you will of course give him every reasonable latitude in this respect which he shall require; and upon his removal to Van Diemen's Land, you will furnish him with a letter of introduction to Colonel Arthur, defraying, at the same time, the expenses of his passage thither.

Dr. Polding will be accompanied by three students, Messrs. Gregory, Spencer, and Kenny, who are in course of preparation for holy orders, but who are intended to act for the present as catechists. The colonial agent has issued to each of them the sum of 100*l.* in aid of the expenses of their passage to the colony; but no expectation has been held out to any of them by this department, that they will receive any salary or allowance whatever from the Government.

As it is very desirable that Dr. Polding should be enabled to exercise a salutary influence over the conduct of the Roman Catholic chaplains, I beg to suggest the propriety of your adopting some arrangement with a view to insure that object.

I am, &c.

(Signed) ABERDEEN.

COPY OF A DESPATCH FROM GOVERNOR SIR R. BOURKE, K. C. B.  
TO LORD GLENELG.

Government House, Sydney, 4 October, 1835.

My Lord,

By the despatch of the Earl of Aberdeen, dated the 20th February last, I am informed of the appointment of four additional chaplains to the establishment of Roman Catholic clergy in this colony. Amongst these is the Rev. Dr. Polding, who, I am apprised, has been permitted, with the sanction of His Majesty's Government, to *exercise episcopal authority*. Dr. Polding has lately arrived; and very shortly after his landing, a memorial of which I have the honour to transmit a copy, was presented to the governor and legislative council, praying that a stipend of a larger amount than that issued to a chaplain might, for the reasons stated, be allowed to Dr. Polding. Having no authority from His Majesty's Government to issue any larger sum than 200*l.* a year to Dr. Polding, and that sum only in the event of Mr. Ullathorne's removal to Van Diemen's Land, I deemed it proper to take the advice of the council upon the amount of stipend which they would be willing to assign to Dr. Polding, if His Majesty's Government consented to enlarge it. The council came to the resolution, of which a copy is transmitted, recommending that he be allowed a salary of 500*l.* a year. Being of opinion that this sum is not too much for the office Dr. Polding holds, and that, in truth, he could not discharge, with the requisite efficiency his various duties upon so low a stipend as 200*l.*, I have the honour to submit for your Lordship's favourable consideration the recommendation of council, that Dr. Polding be allowed 500*l.* a year, at which sum I would propose that his salary be rated from the 22d ultimo, the date of the minute transmitted herewith.

I have, &amp;c.

(Signed) RICHARD BOURKE.

*Extract from the Minutes of the Votes and Proceedings of the Legislative Council on 22d September, 1835.*

Resolved, — That his Excellency the Governor be requested to convey to the Right Hon. the Secretary of State for the Colonies, the recommendation of this council, that an annual salary of 500*l.* be allowed to the *Roman Catholic clergyman exercising episcopal authority* in this colony, with the sanction of His Majesty's Government.

(A true extract.)

L. DEAS THOMSON, Clerk of the Council.

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*To His Excellency Major-General Sir Richard Bourke, K.C.B. Governor of New South Wales and its Dependencies, and the Honourable the Legislative Council in Council assembled.*

This respectful Memorial of the Lay Members of the Committee of St. Mary's Church, Sydney, in name of the Roman Catholics of New South Wales,

Respectfully showeth,

That the Members of the Roman Catholic Church in this colony and penal settlements of New South Wales, with its dependencies, taking the last census as a test, comprise the proportion of *one-third* to the entire population.

That this Roman Catholic portion of the population consists either of free subjects contributing their proportionate share to the support of the revenue, and consequently entitled to equal benefits of all kinds derived from that revenue, with their Protestant fellow colonists, or of prisoners of the Crown, equally demanding clerical aid for their moral reformation from the Government with their Protestant fellow prisoners.

That until the period of your Excellency's government, the Catholic population of this colony endured much privation, and consequent degradation before God, and humiliation before man, from their being destitute of a sufficient number of religious pastors and instructors, with places of worship, and of a sufficient number of teachers, with schools for the

children of their communion, from all which much and manifest evil has resulted.

That the Roman Catholics of New South Wales feel it but their duty, whilst it is their pleasure to acknowledge, and *they do acknowledge with heartfelt gratitude*, that under the paternal government of your Excellency these, their moral and religious wants, have not been neglected, nor their calls for assistance disregarded.

Catholic schools have been increased in number, assistance towards the erection of places of worship has been afforded, and we are now made happy with the intelligence that a *bishop of our church*, of whose personal character, piety, zeal, and attainments we hear the highest praises, *may be hourly expected to preside over and regulate the affairs of our church*, and to provide for its necessities in this colony, and that he is accompanied by a number of clergymen, not adequate certainly to the demands of the colony; but who will yet contribute very much to relieve our hitherto bereaved condition.

That whilst we are prepared to hail and congratulate the arrival of our right reverend prelate, and his reverend co-operators as a most welcome visitation, we cannot withhold from your Excellency and the honourable the Legislative Council the respectful expression of our regret to find that, after having been recognised in his high station by His Majesty's Government, our right reverend prelate should yet come out to this diocese unprovided with temporal means at all adequate to the dignity of his station, or to the efficient fulfilment of its duties.

That beyond the ordinary expenditure, to meet which 150*l.* per annum is utterly inadequate, our right reverend prelate will have to provide himself a genteel residence, suitable episcopal paraphernalia, travelling expenses, a library, stationery, a secretary or clerk; all which, with other et ceteras, are indispensable to his efficiency as the head of his department.

That your memorialists respectfully hope it is not the intention of Government to leave the head of a department, one enjoying its sanction, one whose object will be to second

its best efforts towards the good order and amelioration of society, and one destined to wield much of that influence which is most essential towards the reformation of this penal settlement, and the moral well-being of this colony, without means adequate to the fulfilment of his high functions; and your memorialists are not unaware, that a government lives and is efficient but in its officers, that it fails in their deficiencies, and is disregarded in their degradation.

From all which your memorialists conclude, that it was not part of the beneficent plan of religious aid to the Roman Catholic community, which led to the sanction of a Catholic bishop for New South Wales by the Home Government, to leave our right reverend prelate unprovided after his appointment, but rather to refer to the local government as most competent to judge what salary may be requisite and indispensable to his station.

And your memorialists, in the name of their Roman Catholic brethren, respectfully solicit and pray that your Excellency and the honourable the Legislative Council would be pleased to take into your consideration the expediency and justice of providing the Right Reverend Dr. Polding with such a salary as may be deemed adequate to the respectability of his station, and the due fulfilment of its functions.

(Signed)

|                   |                  |
|-------------------|------------------|
| John H. Plunkett. | R. Murphy.       |
| R. Therry.        | Richd. Sullivan. |
| John Ryan Brenan. | John Leary.      |
| Adam Wilson.      | Andrew Byrne.    |
| J. Blair.         | Edward Redmond.  |
| William Davis.    | Thomas Higgins.  |
| James Dempsey.    | Andrew Higgins.  |
| William Reynolds. | Thos. Connelly.  |
| John O'Sullivan.  |                  |

(A true copy.)

L. DEAS THOMSON,  
Clerk of the Council.

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COPY OF A DESPATCH FROM LORD GLENELG TO GOVERNOR SIR  
RICHARD BOURKE, K. C. B.

Downing Street, 9 April, 1836.

Sir,

I have received your despatch of the 4th of October last, enclosing a copy of a memorial addressed to you in council by the lay members of the committee of the Catholic Church at Sydney, praying for an increase to the salary of the Rev. Dr. Polding, together with a copy of a resolution of the Legislative Council, recommending that the salary of Dr. Polding should be increased to 500*l.* a year.

Under the circumstances which you have stated, I shall not object to sanction the rate of salary proposed to that gentleman, which may be calculated from the 22d of September last, the date of the minute of the council.

I have, &c.

(Signed) GLENELG.

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## APPENDIX B.

*Extract from a Return to an Address for a Copy of any Despatch in relation to the first Mission of Dr. John Bede Polding, as Bishop of the Roman Catholic communion in New South Wales. Ordered to be printed 25th March, 1850.*

COPY OF A DESPATCH FROM LORD GLENELG TO GOVERNOR SIR  
RICHARD BOURKE.

Downing Street, 21 December, 1835.

Sir,

In my despatch, No. 81\*, of the 30th ultimo, I intimated that His Majesty's Government had acceded to your recommendation of erecting the archdeaconry of New South Wales into a bishopric, and that His Majesty had been graciously pleased to nominate Mr. Broughton to the new see.

I have now the pleasure of acquainting you that Mr.

\* House of Commons paper on Religious Instruction, Australia, No. 112, 18 February, 1837. p. 14.

Broughton will shortly be consecrated, and will return to the colony to assume the duties of the episcopal office, with the title of Bishop of Australia, and as a suffragan of the Archbishop of Canterbury.

This arrangement has been carried into effect solely for the purpose of remedying the inconvenience arising from the necessity of an appeal in certain cases to the Bishop of Calcutta, and of enabling the head of the Church of England within the Australian colonies to exercise that immediate and effective control over the clergy of that church which is so essential for the maintenance of discipline and good order. The office of archdeacon is to merge into the higher office of bishop. The bishop is to hold the same rank in the council as he now holds as archdeacon, and is, in other respects, to stand precisely in the same position as the archdeacon has hitherto stood, excepting in regard to those ecclesiastical powers, the extent of which will be defined in his patent.

As Mr. Broughton will derive no additional emolument from this change, I have thought it right to relieve him from those charges which, on a fair calculation, may be considered necessarily connected with the constitution of the bishopric. On this principle he will be exonerated from the payment of the fees chargeable on the letters patent creating the bishopric, and from the further expenses attending his consecration, &c. I have also agreed to allow him the sum of 600*l.* on account of his expenses in coming to this country and returning to the colony, as, under any circumstances, it would have been necessary for him to have come home for consecration. These charges will, it is calculated, amount to between 1300*l.* and 1400*l.*, and will be defrayed by the Colonial Agent out of that moiety of Mr. Broughton's salary, which, although included of course in the full salary voted to him during his absence, he is not, according to the general rule regulating the salaries of absent officers, entitled to receive. During the whole period of his absence he will be entitled to half his salary, whether as archdeacon or as bishop.

I have, &c.

(Signed) GLENELG.

## APPENDIX C.

*Extract from the same Return.*

COPY OF A DESPATCH FROM GOVERNOR SIR GEORGE GIPPS TO  
LORD STANLEY.

Government House, Sydney, 28 March, 1843.

My Lord,

I have the honour herewith to forward a letter addressed to your lordship by the Bishop of Australia, and to explain that, though the letter is a sealed one, a copy of it has been furnished to me by the Lord Bishop.

It is scarcely necessary for me to observe that the Lord Bishop's letter has been written, and the protest contained in it made, in consequence of the recent assumption by the Rev. Dr. Polding of the *style and title* of Archbishop of Sydney.

The Rev. Dr. Polding was, by Lord Aberdeen's despatch, No. 26, of the 20th of February, 1835 \*, *authorised to exercise episcopal functions* in New South Wales; and having, before his first arrival in the colony, been consecrated Bishop of Hiero Cæsarea, has generally been called the "Catholic Bishop," though by the local government he was, previously to his going to England in 1841, never addressed in any other form than that of the Right Rev. Dr. Polding.

Since his assumption of the dignity of Archbishop, I find he has (though without any order from me) been on one or two occasions addressed by the Colonial Secretary as the Most Rev. Dr. Polding; and by the visiting-book at Government House, it appears that he left his name as the Most Rev. Dr. Polding on the 25th instant.

In my despatch of the 20th of November, 1840, No. 179, I reported that Dr. Polding had proceeded to Europe on leave of absence, and I have now to add that he reached Sydney on his return only on the 9th instant.

I have, &c.

(Signed) GEO. GIPPS.

\* Pp. i. ii.



## APPENDIX D.

*Copy of a Circular addressed by Her Majesty's Secretary of State for the Colonial Department to the Governors of the British Colonies, dated the 20th day of November, 1847, relating to the Precedence of Roman Catholic Prelates. Ordered by the House of Commons to be printed, 31 July, 1848.*

(CIRCULAR.)

Downing Street, 20 November, 1847.

Sir,

My attention has lately been called by the Lord Lieutenant of Ireland to the fact, that the prelates of the Roman Catholic Church in the British Colonies have not hitherto, in their official correspondence with the Governor and authorities, been usually addressed by the title to which their rank, in their own church, would appear to give them a just claim. Formerly there were obvious reasons for this practice; but as Parliament has, by a recent Act (that relating to Charitable Bequests in Ireland), *formally recognised the rank* of the Irish Roman Catholic prelates, by giving them precedence immediately after the prelates of the Established Church of the same degree — the Roman Catholic archbishops and bishops taking rank immediately after the Protestant archbishops and bishops respectively — it has appeared to Her Majesty's Government that it is *their duty to conform to the rule* thus laid down by the Legislature, and I have accordingly to instruct you hereafter officially to address the prelates of the Roman Catholic Church in your government by the title of "Your Grace," or "Your Lordship," as the case may be.

*Parliament not having thought proper to sanction the assumption* by the prelates of the Roman Catholic Church in Ireland of *titles derived from the sees* which they hold, a similar rule will be followed in the colonies; thus, for example, the Roman Catholic prelate in New South Wales

will be addressed as the Most Reverend Archbishop Polding, and in Van Diemen's Land, as the Right Reverend Bishop Willson.

I have, &c.  
(Signed) GREY.

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## APPENDIX E.

*Extract from a Return relative to the Titles and Rank of Roman Catholic Prelates in the Colonies, ordered by the House of Commons to be printed 26th July, 1849.*

COPY OF A DESPATCH FROM EARL GREY TO GOVERNOR SIR C. A. FITZ ROY\*, NEW SOUTH WALES, AND ACTING GOVERNOR ROBE, SOUTH AUSTRALIA.

Downing Street, 27 December, 1848.

Sir,

1. My attention has been lately called, in several instances, to the position of Roman Catholic prelates in the Australian colonies, and the necessity which appears to exist of establishing some general rules, both as to the respectful attentions which they ought to receive from the local governments, and also the manner of conducting their correspondence with those governments.

2. In official correspondence and intercourse, it is advisable that the local government should *recognise that rank* which Roman Catholic prelates are by the members of their own church recognized as possessing in it; that is, the *rank of archbishop or bishop*, as the case may be, *with the proper honorary prefixes attached to those titles*. But they *must not be allowed to assume* for their church, in any public and official documents, *the style* of the "Catholic Church." That assumption is injurious to the feelings of other communities, and especially of the Church of England,

\* A similar despatch was addressed to the Governors of Van Diemen's Land and Western Australia, 27 December, 1848.

as it confines the character of Catholicity to the Roman Church alone, and impliedly represents all others as schismatical. The style invariably used for the purpose above mentioned should be that of the Roman Catholic Church, which at once recognises the Catholicity of that community, and does not deny the same quality to others. In a deed, for instance, executed in order to carry out the provisions of a legislative enactment in favour of that church, and subject to the superintendence of the Government, this latter description should be adopted.

3. The bishops of that church *must be styled*, as directed by my circular of the 20th November last, *by their names*; as,

“The Most Reverend Archbishop ——,”

“The Right Reverend Bishop ——,” &c.

and *not by the titles of their dioceses*, which are assigned to them by their own church; or else, as “The Bishop of the Roman Catholic Church at ——,” &c., which last would be the proper title in various instances; for example, in a deed of which the provisions apply to the bishop for the time being.

4. In conducting their official correspondence with the Government, either local or home, the prelates of the Roman Catholic Church must conform to the same rules by which all other persons in the colonies are governed. They must forward their letters to the Secretary of State through the Governor. In their correspondence with the Governor himself, the usage in their case must be the same with that which is followed by the prelates of the Church of England. If it is customary for the latter to address the Governor direct, the Roman Catholic prelates may do so likewise. If, on the contrary, the practice is for the bishop of the Church of England to address the Governor through the Colonial Secretary, the Roman Catholic should conform to the same rule. The Roman Catholic prelates should also (if the bishops of the Church of England do so) address the Governor in their own person, and not through the medium of the vicar-general or other subordinates; this being the ordinary usage in other colonies as regards Roman Catholic and Anglican bishops.

alike, and one from which I see no reason for sanctioning a departure.

I have, &c.  
(Signed) GREY.

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APPENDIX F.

*Extract from the same Return.*

COPY OF A DESPATCH FROM GOVERNOR SIR C. A. FITZROY TO  
EARL GREY.

Government House, Sydney, 17 February, 1849.

My Lord,

1. I deem it my duty to transmit to your lordship copies of a correspondence which has taken place between the officers of this government, named in the margin, and the head of the Roman Catholic Church in this colony, with respect to the designation of the prelates of that church.

2. The circumstances out of which this correspondence originated are briefly as follows, premising that the whole of these circumstances occurred subsequently to the promulgation in the colony of the instructions conveyed in your Lordship's circular despatch of the 20th November 1847\*, touching the proper designation of the Roman Catholic prelates in the colonies.

3. It would seem that a letter, franked by Archbishop Polding, and bearing the superscription noted in the margin, was forwarded through the post-office to the Lord Bishop of Melbourne. The letter being evidently intended for the Right Reverend Dr. Goold, was not opened by the Bishop of Melbourne; but his lordship took occasion to advert to the practical inconvenience, not less than the illegality, of any other person assuming the title conferred on his Lordship by Her Majesty.

\* Parl. Paper. No. 568. 1848.

4. His lordship's communication was brought under my notice by his honour the Superintendent of Port Phillip, whose remarks were entirely in accordance with the bishop's views.

5. As the matter had thus been brought pointedly and officially under my notice, I caused a letter to be forwarded to His Grace Archbishop Polding, pointing out, that not only must confusion and inconvenience necessarily arise if the prelates of the Church of Rome were *addressed by the same style and title* as those of the Church of England, but that *such a practice was contrary to law*, and to the instructions of Her Majesty's Government, of which his Grace had then recently been supplied with a copy.

6. In the archbishop's reply, after stating such particulars connected with the address of the letter alluded to, as tended to show that its misdirection occurred in its passage through the post, his Grace forwarded a copy of a legal opinion taken on the subject, to the general effect, that the designating the Right Reverend Dr. Goold in the manner complained of by the Bishop of Melbourne, was not contrary to law.

7. At this stage of the correspondence I felt it necessary to ask the opinion of the Crown Law Officers, and, in the reply, transmitted by the Attorney-general and the Solicitor-general, those functionaries stated their opinion, that the *provisions of the 24th section* of the Imperial Act 10 Geo. 4. c. 7. which was adopted by the local Act 10 Geo. 4. No. 9. *are limited to England and Ireland* solely; and that the Right Reverend Dr. Goold *would not have rendered himself liable to the penalty specified* in the Imperial Act, even though he had himself assumed the title of Bishop of Melbourne.

8. Under these altered circumstances of the case, I caused a letter to be addressed to Archbishop Polding, in which, in addition to a disclaimer (rendered necessary by the terms of his Grace's letter) of any desire on my part to act otherwise than with that strict impartiality which has always been evinced by the local government to the several religious denominations, or to give personal offence either to his Grace

or the Right Reverend Dr. Goold, it was explained to his Grace, that, whatever might be the literal interpretation of the Imperial Act referred to, it was clear that it was *according to the spirit and intendment of the local Act* that its provisions should be generally observed; and it was added, that I trusted his Grace would see the expediency of using other titular distinctions in addressing the prelates of the Church of Rome than those conferred by Her Majesty on the prelates of the Church of England.

9. I had hoped that the matter would have rested here: a second letter has, however, been addressed by the Bishop of Melbourne to the Superintendent of Port Phillip, and by that officer forwarded to me, complaining of a disposition exhibited by the Right Reverend Dr. Goold to maintain the assumption of the title of Bishop of Melbourne.

10. In reply to this renewed remonstrance on the part of the Bishop of Melbourne, I have stated in effect that, under the opinion given by the Crown Law Officers as to the proper interpretation of the law, I am unable to take any other step than to place the matter in your Lordship's hands.

I have, &c.

(Signed) C. A. FITZROY.

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## APPENDIX G.

### *Extract from the same Return.*

COPY OF A DESPATCH FROM GOVERNOR SIR W. M. GOMM TO  
EARL GREY.

Mauritius, 14 February, 1849.

My Lord,

Bishop Collier called upon me this morning to impart that he had received an official communication from Rome, notifying to him the withdrawal by the Pope of his titles, hitherto borne by appointment from the Holy See, of Vicar Apostolic and Bishop of Melevè, and substituting in lieu of them that of Bishop of Port Louis, or of Mauritius.

2. Bishop Collier further intimated that he thought the

change had been made in conformity with some Romish prelatical appointments to sees which had recently been given effect to in the United Kingdom.

3. “ Bishop Collier *entirely concurred with me in opinion, that I could not acknowledge, on the part of Her Majesty’s Government, the validity of any such appointment or designation, expressly at variance with the provisions of your Lordship’s Circular Despatch of 20th November 1847; and he further explained, that his object in calling upon me was to express this opinion, and thereby to anticipate any imputation of a contrary bearing to which he felt he might be exposed by allowing the notice, received by himself from Rome, to reach the local government indirectly.*

4. I should hope that the Bishop of Ceylon, when visiting Mauritius, would be commissioned to assume his definite designation, as including this colony also under his pastoral Anglican charge.

I have, &c.

(Signed) W. M. GOMM,  
Lieut.-General.”

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COPY OF A DESPATCH FROM EARL GREY TO GOVERNOR SIR G. ANDERSON.

Downing Street, 25 June, 1849.

Sir,

I have to acknowledge your predecessor’s despatch, No. 45, of the 14th February last, in which he mentions that he had received a visit from Bishop Collier, Vicar Apostolic and Bishop of Melevè, to inform him of a communication lately received from Rome, notifying the withdrawal of those titles, and the substitution of that of Bishop of Port Louis or Mauritius.

2. Sir William Gomm did not apply in that despatch for instructions as to any proceedings which he was to take in consequence of that notification; and I collect from his despatch that the course which he meant to adopt was a perfectly proper one. In order, however, that there may be no misapprehension on the subject, I think it as well to transmit

to you the same instructions which I have recently issued to the Governors of Colonies on the like occasion.

3. In official correspondence and intercourse, the local Government should recognize that rank which Roman Catholic prelates are by the members of their own church recognised as possessing in it; that is, the rank of archbishop, or bishop, as the case may be, with the proper honorary prefixes attached to those titles. They must be styled, as directed by my Circular of the 20th November, 1847, by their names, as,

“ The Most Reverend Archbishop ——,” or

“ The Right Reverend Bishop ——,”

and *not by the titles which are assigned to them by their own church*; or else, as,

“ The Bishop of the Roman Catholic Church at ——,”

which last would be the proper title in various instances; for example, in a deed or public document, of which the provisions apply to the bishop for the time being.

I am not prepared to sanction the adoption by the Roman Catholic prelate, of the style of

“ Bishop of Port Louis,” or

“ Bishop of Mauritius,”

without the addition of some words showing that it is only of the Roman Catholic Church that he is bishop, since *this might create doubts as to the position of a prelate of the English Church*, should the Queen think proper, hereafter, to appoint a bishop of that church in the Mauritius.

I have, &c.

(Signed)            GREY.

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## APPENDIX H.

*Copy of the Queen's Licence to consecrate Dr. Alexander Bishop of the United Church of England and Ireland in Jerusalem.*

Victoria, by the Grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, &c. &c. &c., to the Most Reverend Father in God, William, By Divine Providence, Lord Archbishop of Canterbury, Primate of all England, and Metropolitan, greeting: Whereas, by an Act passed in the fifth year of our reign, intituled "An Act to amend an Act made in the twenty-sixth year of the reign of His Majesty, King George the Third, intituled, An Act to empower the Archbishop of Canterbury, or the Archbishop of York, for the time being, to consecrate to the office of a bishop, persons being subjects or citizens of countries out of His Majesty's dominions," it was amongst other things enacted, that it should and might be lawful for the Archbishop of Canterbury, or the Archbishop of York, for the time being, together with such other bishops as they should call to their assistance, to *consecrate British subjects*, or the subjects or citizens of any foreign kingdom or state *to be bishops in any foreign country*, whether such foreign subjects or citizens be or be not subjects or citizens of the country in which they are to act, and without the Queen's licence for their election or *the Royal mandate under the great seal* for their confirmation and consecration, and *without requiring* such of them as may be subjects or citizens of any foreign kingdom or state, to take the oaths of allegiance and supremacy, and the *oath of due obedience to the Archbishop* for the time being. And whereas, it is by the said Act further enacted, that such bishop or bishops so consecrated may exercise, within such limits as may from time to time be assigned for that purpose in such foreign countries by Us, spiritual jurisdiction *over the ministers of British congregations of the United Church of England and Ireland*, and over such *other Protestant congregations* as may be desirous

of placing themselves under his or their authority. And whereas it is by the said Act provided, that no person should be consecrated a bishop in the manner therein provided until the Archbishop of Canterbury, or the Archbishop of York, for the time being, should have first applied for and should have obtained Our licence by warrant, under the Royal signet and sign manual, authorising and empowering him to perform such consecration and expressing the name of the person so to be consecrated, nor until the said archbishop has been fully ascertained of the sufficiency of such person in good learning, of the soundness of his faith, and of the purity of his manners. And whereas, you, the said William, Archbishop of Canterbury, have humbly applied to Us for Our licence by warrant, under Our Royal signet and sign manual, authorising and empowering you to consecrate The Reverend Michael Solomon Alexander, Clerk, a British subject, to be *Bishop of the United Church of England and Ireland in Jerusalem*, you having certified to Us that you had fully ascertained the sufficiency of the said Michael Solomon Alexander in good learning, the soundness of his faith, and the purity of his manners, and praying that We would be graciously pleased to assign Syria, Chaldea, Egypt, and Abyssinia, as the limit within which the said Michael Solomon Alexander might *exercise spiritual jurisdiction over the ministers of British congregations* of the United Church of England and Ireland, and over such other Protestant congregations as may be desirous of placing themselves under his authority, subject to such alterations in respect to the limits of the jurisdiction so to be exercised as may hereafter be made by Our authority. Now it is Our Royal will and pleasure, and We do by this, Our licence, under our Royal signet and sign manual, authorise and empower you, the said Archbishop, to consecrate the said Michael Solomon Alexander to be *Bishop of the United Church of England and Ireland in Jerusalem*. And We are graciously pleased to assign Syria, Chaldea, Egypt, and Abyssinia, as the limit within which the said Michael Solomon Alexander may *exercise spiritual jurisdiction*, pursuant to the said Act, subject, nevertheless, to such alterations in the said limit, as

We from time to time may be pleased to assign. Given at Our Court at Buckingham Palace, the sixth day of November, 1841, in the fifth year of Our reign.

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## APPENDIX I.

*Copy of the Queen's Letters Patent, erecting the Church of the Holy Trinity within the town of Gibraltar into a Cathedral Church and Bishop's See.*

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: to all to whom these presents shall come, greeting: Whereas it hath been represented unto Us by the Most Reverend Father in God, William, by Divine Providence, Lord Archbishop of Canterbury, Primate of all England, and Metropolitan; and by the Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London, that the clergy and laity of the communion of the United Church of England and Ireland, resident within our possessions of Gibraltar and Malta, and divers places within the islands and countries situated in and around the Mediterranean Sea, being, from the divided state of Christendom, and from other causes, destitute of the pastoral superintendence of *local bishops and ordinaries*, have been customarily subject to the jurisdiction of the Bishop of London, in subordination to the metropolitanical See of Canterbury, but that, owing to the remoteness of our said possessions, and of the other places aforesaid, and to the increased and increasing number of the clergy and laity of the said communion, resident within the same, the said clergy and laity are exposed, in matters spiritual and ecclesiastical, to grave detriment and inconvenience. And whereas the said Most Reverend and Right Reverend Fathers in God have further represented unto us, that the evils aforesaid might, in some degree, be remedied by the erection of a bishop's see within our town and territory of Gibraltar aforesaid, and have prayed of us that We would,

by Our Royal authority, erect and constitute the same : And whereas, We, having taken their said petition into Our Royal consideration, are persuaded that, by granting the same, We shall, under the blessing of Almighty God, promote the well-being of the said united Church of England and Ireland, and of the clergy and laity thereof, in the parts and places aforesaid, and have resolved to grant the same accordingly : And whereas the church of the Holy Trinity, within our said town of Gibraltar, is apt and convenient to be erected, and it is Our intention to erect the same, into a cathedral church and bishop's see : Now know ye, that, in pursuance of such Our Royal intention, We do, by these *Our Letters Patent under the great seal* of Our United Kingdom of Great Britain and Ireland, *erect, ordain, make, and constitute*, the said church of the Holy Trinity, within our said town of Gibraltar, to be *a cathedral church and bishop's see*. And We do ordain that the whole town of Gibraltar shall henceforth be a city, and be called the City of Gibraltar. And We do ordain, make, constitute, and declare, the said city, and *all the territory comprised in our said possession of Gibraltar, and its dependencies to be the diocese of the Bishop of Gibraltar* hereinafter named, and of his successors Bishops of Gibraltar, and to be called in all time the diocese of Gibraltar; saving, nevertheless, unto Us, Our heirs, and successors, the power of extending, from time to time, with the consent of the Archbishop of Canterbury for the time being, if the said see be vacant, or otherwise of the said Archbishop, and of the Bishop of the said see for the time being, the limits of the said diocese, or of the jurisdiction of the bishops thereof. And to the end that this Our intention may be carried into due effect, We, having great confidence in the learning, morals, and probity of Our well-beloved George Tomlinson, Doctor in Divinity, do name, make, and appoint him to be ordained and consecrated Bishop of the said See of Gibraltar. And do hereby signify to the most Reverend Father in God, William, by Divine Providence, Lord Archbishop of Canterbury, Primate of all England and Metropolitan, the erection and constitution of the said see and diocese, and Our nomination of the said George Tomlinson, requiring, and by the faith

and love whereby he is bound unto us, commanding the said Most Reverend Father in God to ordain and consecrate the said George Tomlinson to be bishop of the said see and diocese, in manner accustomed, and diligently to do and perform all other things appertaining to his office in this behalf with effect. And We do ordain and declare that the said George Tomlinson, so by us nominated and appointed, after having been ordained and consecrated thereunto as aforesaid, may, by virtue of such appointment and consecration, enter into, and possess, the said bishop's see as bishop thereof, without let or impediment from Us, Our heirs, and successors, for the term of his natural life; subject, nevertheless, to the right of resignation herein-after more particularly expressed. Moreover, We will and grant, by these presents, that the said bishop shall be a body corporate, and do ordain, make, and constitute him to be a perpetual corporation, and to have perpetual succession; and that he and his successors be for ever hereafter called and known by the name or title of the Lord Bishop of Gibraltar, and that he and his successors, by the name or title aforesaid, shall be able or capable in the law, and have full power to purchase, have, take, hold, and enjoy manors, messuages, lands, rents, tenements, annuities, and hereditaments, and of what nature or kind soever in fee and in perpetuity, or for a term of life or years, and also all manner of goods, chattels, and things personal whatsoever, of what nature or kind soever; and that he and his successors by, and under the said name or title may prosecute, claim, plead, and be impleaded, defend, and be defended, answer, and be answered, in all manner of Courts of Us, Our heirs and successors, and elsewhere, in and upon all and singular causes, actions, suits, writs, and demands, real and personal, and mixed as well spiritual as temporal, and in all other things, causes, and matters whatsoever; and that the said Bishop of Gibraltar and his successors shall, and may for ever hereafter, have and use a corporate seal, and the said seal from time to time, at his and their will and pleasure, break, change, alter, or make new, as he or they shall deem expedient. And We do hereby further grant, ordain, and declare, that the said Cathedral Church of

the Holy Trinity shall henceforth be *the Cathedral Church and Episcopal See* of the said George Tomlinson and his successors, Bishops of Gibraltar, and that the said Bishop of Gibraltar and his successors shall be subject and subordinate to the Metropolitan See of Canterbury and to the Archbishops thereof, in the same manner as any bishop of any See within the province of Canterbury, in our kingdom of England, is under the Metropolitan See and the Archbishops thereof. And We do further will and ordain, that every Bishop of Gibraltar shall, at the time of his consecration, *take an oath of due obedience to the Archbishop of Canterbury* for the time being as his Metropolitan, which oath shall and may be ministered by the said archbishop or by one of the bishops assisting at the said consecration. And We do further by these presents expressly declare that the said Bishop of Gibraltar and his successors having been respectively by Us, Our heirs, and successors, named and appointed, and by the said Archbishop of Canterbury for the time being, as Metropolitan of the said see, canonically ordained and consecrated thereunto according to form and usage of the United Church of England and Ireland, *may perform all the functions peculiar and appropriate to the office of bishop* within the said Cathedral Church of the Holy Trinity, and *the said diocese of Gibraltar*, and likewise within all churches, chapels, and other places within *our Island of Malta and its dependencies* which now are or may hereafter be founded, set apart, or used for the service of Almighty God, according to the ritual of the said United Church of England and Ireland, and more especially within the church now or late founded by the pious munificence of our dearly beloved Aunt Adelaide, the Queen Dowager, in the City of Valetta, and also by himself or themselves, or by the archdeacon or archdeacons, or the vicar-general, or other officer or officers herein-after mentioned, *exercise jurisdiction spiritual and ecclesiastical* within the said Cathedral Church of the Holy Trinity, and throughout the said diocese of Gibraltar, and also within the churches, chapels, and other places aforesaid in the said Island of Malta and its dependencies, *according to the ecclesiastical laws now in force in England.*

And for a declaration of the spiritual causes and matters in which the aforesaid jurisdiction may be more effectually exercised, We do by these presents further declare that the aforesaid Bishop of Gibraltar and his successors may exercise and enjoy full power and authority by himself or themselves, or by the archdeacon or archdeacons, or the vicar-general or other officer or officers herein-after mentioned, to give institution to benefices, to grant licences to officiate to all rectors, curates, ministers, and chaplains of all the churches or chapels or other places within Our said possessions of Gibraltar and Malta, wherein Divine Service shall be celebrated according to the Rites and Liturgy of the Church of England; and to *visit* all rectors, curates, ministers and chaplains, and all priests and deacons in holy orders of the United Church of England and Ireland *resident within our said possessions* with all and all manner of jurisdiction, power, and coercion ecclesiastical that may be requisite in the premises; as also to call before him or them, or before the archdeacon or archdeacons, or the vicar-general, or other officer or officers herein-after mentioned, at such competent days, hours, and places, when and so often as to him or them shall seem meet and convenient, the aforesaid rectors, curates, ministers, chaplains, priests and deacons, or any of them, and to enquire by witnesses sworn in due form of law, and by all other lawful ways and means by which the same may be best and most effectually done, as well concerning their morals as their behaviour in their said offices and stations respectively. And We do hereby authorise and empower the said Bishop of Gibraltar and his successors, and the archdeacons, vicar-general, or other officer or officers herein-after mentioned, being respectively delegated thereunto by the said bishop or his successors, to administer all such oaths as are accustomed and by law may be administered *according to the ecclesiastical laws of Our realm of England*; and to punish and correct the aforesaid rectors, curates, chaplains, ministers, priests and deacons, according to their demerits, by deprivation, suspension, or other such ecclesiastical censure or correction as they would be liable to according to the ecclesiastical laws aforesaid; subject, nevertheless, to such rights of review and appeal as are herein-after given and reserved. And for the

better accomplishment of the purposes aforesaid, We do hereby grant and declare that the said Bishop of Gibraltar and his successors may found and constitute within the said Cathedral Church of the Holy Trinity one or more archdeaconries, and one or more canonries, and may collate fit and proper persons to be the first and other archdeacons and canons of the said archdeaconries and canonries respectively ; and may also from time to time nominate and appoint fit and proper persons to be respectively the officers herein-after mentioned ; that is to say, to be vicar-general, official principal, chancellor, rural deans and commissaries, either general or special ; and may, at his or their discretion, delegate to the said archdeacons and to the officers aforesaid, respectively, such of the powers and functions to the said bishopric appertaining as may, by the ecclesiastical laws of this realm, be committed to persons who have not received episcopal consecration. And may also appoint one or more fit and proper persons to be registrars and actuaries. Provided always, that the archdeacons aforesaid shall be subject and subordinate to the said Bishop of Gibraltar, and his successors, and shall be assisting to him and them in the exercise of his and their episcopal jurisdiction and functions, and shall exercise only such and so much jurisdiction, as shall be committed to them by the said bishop and his successors as aforesaid. And we will and declare that during a vacancy of the said See of Gibraltar, by the demise of the bishop thereof or otherwise, the said archdeacons, and the said vicar-general, and other officers respectively appointed as aforesaid, shall continue to exercise, so far as by law they may or can, the jurisdictions and functions delegated to them, and that the said registrars and actuaries shall respectively continue to discharge the duties whereunto they have been appointed, until a new bishop of the said See of Gibraltar shall have been duly nominated and consecrated, and his arrival within the limits of our said possessions of Gibraltar and Malta, or either of them, shall have been notified to the said parties respectively. And moreover, We command, and by these presents, for Us, Our heirs and successors, do strictly enjoin all and singular our governors, judges, and justices, and all



and singular rectors, curates, chaplains, ministers, and all other our subjects within our said possessions of Gibraltar and Malta, that they and every of them be, in and by all lawful ways and means, aiding and assisting to the said bishop and his successors, and to the said archdeacons, and to the vicar-general, and other officer or officers aforesaid in the execution of the premises in all things. Nevertheless, We will and do by these presents declare and ordain, that in all grave matters of correction which are accustomed according to the practice of the ecclesiastical law of Our realm of England to be judicially examined, the same shall in like manner be judicially examined and proceeded in, before the said bishop of Gibraltar and his successors, or the said archdeacons, or the said vicar-general, or other officer or officers aforesaid. And all such causes shall be proceeded in to final sentence in due form of law. And further, We will and do by these presents declare and ordain, that it shall be lawful for any party against whom any judgment, decree, or sentence, shall be pronounced by any of the said archdeacons, or by the vicar-general, or other officer or officers of the said bishop, or his successors, to demand a re-examination and review of such judgment, decree, or sentence, before the bishop or his successors in person, who, upon such demand made, shall take cognizance thereof, and shall have full power and authority to affirm, reverse, or alter the said judgment, sentence, or decree. And if any party shall conceive himself aggrieved by any judgment, decree, or sentence pronounced by the said Bishop of Gibraltar, or his successors, either in case of such review, or in any cause originally instituted before the said bishop or his successors, *it shall be lawful for the said party to appeal to the said Archbishop of Canterbury*, or his successors, who shall finally decide and determine the said appeal. Provided always that, in any such case of appeal, or review, notice of the intention of the party to make such appeal, or demand such review, shall be given to the bishop, or subordinate judge by whom the sentence appealed from or to be reviewed shall have been pronounced, within fifteen days from the promulgation thereof. And We do further will, and by these presents ordain, that in

all cases in which an appeal shall be made, or review demanded, as aforesaid, a copy of the judgment or sentence in such case promulgated or given, setting forth the causes thereof, together with a copy of the evidence on which the same was founded, shall without delay be certified and transmitted by such subordinate judge to the said bishop, or his successor; or by the said bishop or his successor, to the said Archbishop of Canterbury, as the case may require. And such judgments, sentences, and decrees shall respectively remain in force until the same shall have been reversed or altered by the said bishop, or the said archbishop. And We further will and ordain, that the supreme courts of justice exercising jurisdiction within our said possessions of Gibraltar and Malta respectively shall have such and the like jurisdiction and power of interfering, *by writ of prohibition or mandamus*, subject to the same laws, restrictions, and rules of practice as is or may be exercised by Our Court of Queen's Bench at Westminster, in regard to *proceedings in the Ecclesiastical Courts of England*; regard being had, nevertheless, to any special provisions or exceptions contained in these our Letters Patent, and to any other laws and regulations specially applicable to or concerning our said possessions, or either of them. Moreover it is Our will and pleasure, and We do hereby declare and ordain, that nothing in these presents contained shall extend, or be construed to extend, to repeal, vary, or alter the provisions of any charter whereby ecclesiastical jurisdiction has been given to any courts of judicature within Our said possessions, or either of them, so far as the same do not appertain to the correction of clerks in Holy Orders of the United Church of England and Ireland, or to matters and causes merely spiritual, and relating to the communion of the said United Church; or to give to the said Bishop of Gibraltar, or his successors, any authority or jurisdiction whatever in matters now depending in the said courts, except as herein excepted. And for removing doubts with respect to the validity of the resignation of the said office and dignity of Bishop of Gibraltar, it is Our further will that, if the said bishop or any of his successors shall, by instrument under his hand and seal delivered and sent to the

Archbishop of Canterbury for the time being, and by him accepted and registered in the office of Faculties of the said archbishop, *resign the office and dignity* of Bishop of Gibraltar, such bishop shall forthwith cease to be Bishop of Gibraltar to all intents and purposes; but without prejudice to any responsibility to which he may be liable in law or equity, in respect of his conduct in his said office. And, lastly, to the end that all things aforesaid may be firmly holden and done, We will and grant to the aforesaid George Tomlinson that he shall have our Letters Patent, under Our great seal of Our said United Kingdom duly made and sealed. In witness whereof We have caused these our Letters to be made patent. Witness Ourselves at Westminster the twenty-first day of August, in the sixth year of Our reign.

(No. 4.)

## FOREIGN LAW.

## APPENDIX J.

*Extract from the Institutes of Public and Private Ecclesiastical Law, adapted to the modern Usages of the German Universities, by Father Dominick Schram, a Benedictine Monk at Bantz, formerly Professor of Divinity and the holy Canons. In 3 vols. Augsburg, 1774, with the permission and approbation of Superiors.*

WHAT THE ROYAL *PLACET* IS, AND THE JUSTICE OF IT.

One of the prerogatives of the Gallican Church is the Royal *Placet*, or letters patent, by which the secular Sovereign allows and approves the publication and execution of Ecclesiastical Bulls and Rescripts, concerning the discipline and external policy of the Church, sent to his Dominions; it is also called *Pareatis* or *Exequatur*. The use of such a *Placet* has been adopted not only in France, Spain, Portugal, Savoy, in the kingdom of Naples and Sicily, in the Netherlands, and formerly in England; but its necessity in Germany and Bohemia appears also to be proved by the Rescript of Rudolphus II. emperor and king of Bohemia, of the year 1586, on the subject of the Bull *in Cœna Domini*, in which the Emperor enacted in general, that in future no Papal Bulls should be published and executed without his knowledge and assent. The Emperor moreover promises in his capitulation on his accession to the Holy Roman Empire of Germany, that he will intercede in the best possible manner with the Holy Father, and the See of Rome, that nothing be obtained by improper graces, rescripts, &c. against the concordats of princes, and the treaties entered into between the Papal See and the nation, nor against the special privileges, statutes,

usages and customs of Churches and Chapters. This Royal *Placet* is not required in Dogmatical Bulls, in which the Church has the perpetual assistance of the Holy Ghost, and is infallible. *Dogmatical matters*, besides, *do not affect the state, or the rights and privileges of citizens, like points of discipline*; the royal *Placet* is therefore justly excluded from Dogmatical Bulls as such, according to the most orthodox opinion, because it would be repugnant to the jurisdiction, infallibility, and unity of the Church. The Doctrine of Van Espen, in his Tract. de Promulg. Leg. Eccl. part v. c. 2. § 10. is not to be unconditionally received, when he admits the authority and use of the Royal *Placet* in the publication and external propounding of Dogmatical Laws and in public Articles of Faith, to prevent the solemn publication of new tenets, and to insist upon the continuance of the ancient articles of Faith. But the ecclesiastical jurisdiction ought to be allowed this prerogative in dogmatical points, in order that the decisions of the Church, in continuing unchanged the Discipline of the Altar, and enacting and publishing Dogmatical Laws, may be revered as independent and peremptory, and that the Royal Guardianship of the Church may serve to promote, and not to impede, the publication of the Dogmatical Laws of the Church, for the sole purpose of having a uniform profession of Faith amongst the faithful, in the exterior symbols of that Faith. The author just quoted, loco citato, § 2. and 4. has however very properly protected both the ecclesiastical jurisdiction and the royal authority, when he approves the Royal *Placet*, with regard to clauses inserted in Dogmatical Decrees, strongly affecting the rights of sovereigns and kingdoms, such as those establishing new tribunals, summoning subjects out of the country, introducing the Inquisition, or the execution of either secular or clerical punishments. The Royal *Placet* may likewise be admitted in Dogmatical Bulls, as far as they may contain articles of external discipline, prejudicial alike to the policy of the state and to public tranquillity. But with respect to the laws of the Church, which *concern its discipline and external policy*, the Royal *Placet* is perfectly consonant with justice. 1. *By the right of supreme superintendence over the*

*state*, and by the concurrent power which belongs to the civil authority in cases of discipline and external policy. 2. It is likewise proved by the mode of proceeding in three kinds of questions that were agitated in the Synod of Francfort of the year 974, in which a point of Faith, viz. the confirmation of the condemnation decreed in the Synod of Rome against the heresy of Elipandus; and the explanation of the second Council of Nice, respecting the worship of images, was settled by the sole authority of the Bishops: but the Canonical regulations in matters of Church Discipline were made in the name of the Synod and of the King, Can. 6. and 7.; whilst civil cases, such as the pardon granted to Tassilon, Duke of Bavaria, and the article concerning coin (Can. 5.) were published in the name of the king alone. If it be objected, I. That the legislative power of the Church is not dependent on the civil power, we observe that in the examination of Ecclesiastical decrees in cases of discipline and external policy, *the Sovereign uses his political right extra-judicially, to know whether they are suitable, or prejudicial to the state, that the ecclesiastical matter may be left to the jurisdiction of the Church, and the political to that of the State.* See *D. Barthel*, de jur. ref. antiq. a. 8. § 24. II. That because the Church has the right to declare Civil Laws unjust in consequence of their containing a manifest sin, it does not follow that the Civil Laws require the approbation of the Church; therefore there is no occasion for a Royal *Placet* in disciplinary Church Laws. Further, that many think even the indirect power of the Pope in the temporal concerns of princes repugnant to the majesty of their authority, and that therefore the Royal *Placet* is equally repugnant to the supreme ecclesiastical power. But in answer to these two objections, we observe respecting the first, that there is no parity, since Civil Laws can contain a sin only by chance, but that *the subjects of disciplinary Church Laws are necessarily mixed on account of their connection both with the ecclesiastical and political state*: and respecting the second objection, that the indirect power of the Pope in the temporal concerns of princes, is a temporal right, not conformable to the spiritual object of the Church: but *the Royal Placet is grounded*

*in the right of supreme superintendence, for the good of the state and the prerogatives of majesty, which leaves the liberty and independence of the Church unfringed. III. If it be said that the Royal Placet opens to the civil power the road to ecclesiastical jurisdiction, and disturbs the harmony of the temporal and sacerdotal authorities, we answer that the Royal Placet does not open to the civil power the road to ecclesiastical jurisdiction in concerns merely spiritual, and articles of faith, since it is limited to cases of discipline and external policy, and if these proper limits be observed, it does not impair the union between Church and State. IV. Lastly, to the objection that the Royal Placet is simply a prerogative granted by the See of Rome, we answer in the negative. It is a part of royal majesty so intimately and essentially connected with it, that no prince can abdicate or renounce it to the prejudice of his successor and of the state.*

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## APPENDIX K.

*Extract from Giannone's History of Naples, book 33. ch. 5.*

The *Exequatur Regium*\*, which is given in the kingdom, not only in collations of prelatures, and other benefices of the kingdom sent from Rome, but to all the Pope's bulls and rescripts, even to the briefs of jubilees and indulgences, and to whatever other provision comes from Rome, does not proceed from this principle, nor did it begin in the troublesome times of war, when the contending princes were frequently driving one another out, and therefore had reason to be cautious in receiving bishops. Its origin is more ancient; it had its beginning not only in the kingdom of Naples, but in all the dominions of Christian princes, with principality itself, and belongs to them *titulo sui principatus*, or *jure regalæ*, as the above-mentioned Van Espen † fully proves. *It was con-*

\* Chioce. tom. iv. de Regio Exequatur.

† Van Espen, Tract. de Promulgat. Legum Eccl. pars 2. cap. 3.

trived for the preservation of the state, and to prevent an inlet to commotions and disorders from foreign parts; therefore it has always been lawful for princes, and commendable in them, that whenever *foreign writs* came within their dominions, whereby it was pretended to exercise jurisdiction, either spiritual or temporal in them, to examine such writs before they were put in execution; so much the rather, that the Court of Rome, for a very long time, had assumed an authority far exceeding the bounds of a spiritual power, and often took upon them to decide points belonging to the temporal power of princes, and not within their province: whence the custom was introduced, that if writs from Rome are to be executed against laicks, they cannot be put in execution without applying to the secular magistrates for their concurrence, who, not as bare executors, but after having considered and examined the affair, if they find it just, they give their concurrence, otherwise they put a stop to the execution. If the writ concerns ecclesiastical affairs only, or if it relates to things merely spiritual, and that its being put in execution will not be prejudicial to the King's prerogatives, the state, or his subjects, or does not clash with the usages and customs of the country, it gets the *Exequatur Regium*; so that it is not pretended thereby to add force to, or undo what the Pope has done, as if in ecclesiastical and spiritual matters he stood in need of the authority of secular princes\*; but it is required only, that the prince, who ought to be careful and vigilant that the government of his dominions be not disturbed, may know what is contained in writs that come from abroad into his territories, that under that colour or pretence, nothing be introduced that may disturb the peace and tranquillity of his state; and this is all that is intended by the *Exequatur Regium*, as Van Espen, in his treatise *De Placito Regio* † has at large demonstrated, which was very well understood by Bishop Covarruvias ‡, Belluga §, and the Cardinal Di Luca ||,

\* Salgad. in Tract. de Retent. Bull & Reg. protect.

† Van Espen, loc. cit. cap. 3. per tot.

‡ Covar. Pract. Qu. cap. 10. num. 56.

§ Belluga in Speculo Principis, rubr. 13. verb. restat.

|| Card. de Luca, Relat. Rom. Cur. disc. 2. num. 36.



the last of which wrote, that for this end the *Exequatur Regium* was practised in our kingdom.

Whence it comes, that no bull, brief, rescript, decree, or any other writ whatsoever that comes to us from Rome, is exempted from it; and even the bulls of jubilees and indulgences must have it\*; yea, Van Espen, by many arguments, proves, that it must likewise be obtained to the very dogmatical bulls †: not that it belongs to the prince to decide or reason upon matters of faith; but because the clauses which are usually inserted in them, and with which, *according to the modern style of Rome*, they are generally coloured, the manner, time, juncture, and the occasion of publishing such bulls ought to be known by the prince, perhaps, to see if, besides the doctrine and the spiritual punishments therein defined, the temporal be incroached upon; perhaps, for other weighty reasons of state, it may not be proper to publish them at that time, but to wait till a more fit opportunity, and for other motives and reasons at large discussed by that writer: whence it likewise comes, that the *Exequatur Regium* is sought to all decrees of the tribunals of the Inquisition of Rome, and of the *Index Expurgatorius*, of which we have elsewhere discoursed at large. And whence it also comes, that the manner of proceeding in such cases is not by the ordinary way of taking cognizance, but by an extrajudicial method, and according to the rules of state and government, not of the courts of justice; so that we see how little this matter is understood by the casuists and canonists, who, thinking that these examinations ought to be made according to the methods of the courts of justice, prate and write ‡, that the Pope's bulls and rescripts can neither be stopped nor examined by laick judges, because they have no jurisdiction over spiritual or ecclesiastical matters, handling this subject after their own manner, and making use of law terms foreign to the purpose.

\* Van Espen, loc. cit. pars 3. cap. 1. s. 1 & 2.

† Idem, loc. cit. pars 5. per tot.

‡ Marta de Jurisdict. pars 4. cap. 4. Tomaso del Bene de Immunit. c. 3. dub. 10. num. 4. 6. and 16. Diana, p. 4. tr. 1. resol. 9. s. igitur. Accosta in Bull. Cruciat. q. 69. per tot. Bellet. Disquis. Cler. pars 1. de Exempt. Cl. s. 3. num. 26 and 27.

Whence likewise proceeded, that all tribunals of justice, though supreme, have not power to grant this *Exequatur Regium*, but that power is reserved to the King's supreme councils and counsellors only; so with us, it belongs solely to the collateral council, of which the viceroy is head, to grant it, but to no other tribunal of justice, be it ever so supreme.\* And in the dominions of the other Christian princes of Europe, such as France and Spain, it is reserved to the King's supreme councils only: As in Flanders to the supreme council of Brabant, and the other supreme councils of those provinces †; therefore, in 1551, the regent and judges of the vicariate were deservedly reprimanded by the viceroy Toledo, for having taken upon them to grant the *Exequatur Regium*, by admonishing and ordering them to do so no more for the future, because that prerogative belonged solely to the viceroy and his collateral council, not to the tribunals of justice. ‡

Nor is this prerogative peculiar to our kings and kingdom only, as some have believed; it is common to all princes, who in their dominions practise the same. In *Spain*, as Covarruvius §, Belluga ||, and Cevallos ¶ testify, the bulls and all other provisions that come from Rome, before they are published, are examined in the royal council, and often, when they have no mind they should be executed, they retain them; so that Salgado, in order to justify that custom and constant practice, wrote that treatise *De Retentione Bullarum*, and that other, *De Supplicatione ad Sanctissimum*, &c.; and Agostino Manuel, in his History of John II. witnesseth, that the same is practised in *Portugal*.\*\*

It is well known, that in *France* and *Flanders*, nothing that comes from Rome is published till it be first examined by the King's officers; yea, they don't so much as make use of the

\* Camil. Borrel. in Comm. ad Stat. Neap.

† Van Espen, de Plac. Reg. pars 2. cap. 3. s. 3.

‡ Chiocc. tom. 4. MS. Giur. de Reg. Exequatur.

§ Covar. Pract. Qu. cap. 35. num. 4.

|| Belluga in Speculo Princ. rubr. 13. verb. restat.

¶ Cevallos, Comm. contr. Com.

\*\* Manuel, Ist. di Gio. II. lib. 4.

humble and respectful word *Exequatur*\* (although they once designed to have changed it into *Obediatur*), or, as is practised in *Milan* †, of *Pareatis*, but of *Placet*; and when the provisions don't please them, they are rejected. ‡ The same, according to Argentreus §, is practised in the duchy of *Bretaigne*, and in the duchy of *Savoy*, as Antonio Fabro || witnesseth. In *Sicily* the same is practised; and Mario Cutello ¶ gives us the form and custom made use of in that kingdom concerning it. P. Servita declares it to be the practice of *Italy* and *Venice*. Angelo\*\* writes the same of the duchy of *Florence*; and Antonio Amato gives the same account of all the other countries of *Italy* ††.

It was unalterably practised in our kingdom of *Naples*, not only under the Norman and Suevian princes, but likewise under the kings of the family of Anjou themselves, who were very submissive to the Roman pontiffs, and who in their investitures gave up the *assent* in the elections of prelates; which is a very convincing proof, that the *assent* formerly required, has nothing in common with the *Exequatur Regium* always retained, and never interrupted.

\* Reg. de Ponte MS. Giur. de Reg. Exequatur, num. 22.

† Menoch. Tract. de Juris. lib. 1. cap. 19.

‡ Van Espen, De Placit. Reg. pars 2. s. 1 & 2.

§ Argentr. lib. 2. Hist. cap. 14.

|| Fabro, Cod. lib. 7. tit. de Appellat. abusu.

¶ Cutello ad L. Federici, not. 46. & L. Martin. not. 64.

\*\* Angel. cons. 23.

†† Amato, tom. 2. resolut. 28. & 82. num. 28. Jac. de Grassis, lib. 4. decis. aurearum, &c. Super. explicat. Bul. In Cœn. Dom. cap. princ. 18. num. 20.

## APPENDIX L.

*Suppression of a Papal Bull in France by the Parliament of Paris.*

Quand le Pape voulut faire publier en France la Bulle *in œna Domini*, qui est remplie d'un grand nombre de décisions contraires au droit des Souverains, le Parlement de Paris rendit un Arrêt en 1580, sur la requisition du Procureur-Général, par lequel il ordonna à tous les Baillis et à tous les Senechaux de son ressort, d'empêcher la publication de cette Bulle. Le même Arrêt leur enjoit, en cas que cette publication ait été faite, de faire citer au Parlement les Archevêques, Evêques et Grands-Vicaires par l'ordre desquels elle auroit été publiée, pour comparoître, et repondre aux conclusions que le Procureur-Général prendroit contr'eux ; et cependant de saisir leur temporel. Le 18 Septembre, 1641, le Parlement de Paris rendit *un Arrêt, pour ordonner la suppression d'une Bulle*, qui donnoit une nouvelle autorité à celle qui se publie à Rome tous les Jeudis-Saints, et pour défendre à tous les Evêques de la publier, *sous peine d'être déclarés rebelles au Roi, et criminels de leze-Majesté*. Il y a un grand nombre d'autres exemples de même nature. C'est au soin que les François ont eu d'observer cet usage, que nous sommes redevables de la conservation de nos Libertés. Parlà nous conservons encore la pratique d'un grand nombre d'anciens Canons, malgré les changemens qui se sont introduits dans la discipline. — *D'Hericourt, Lois Ecclesiastiques de France*. E. xv. s. vii.

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## APPENDIX M.

*Answer given by Command of the Emperor Joseph the Second, to a Note of the Nuncio of the Pope, by Prince Kaunitz-Rietberg. December 19th, 1781. Extracted from the "Storia del' Anno, 1782," printed at Venice in 1783, with the approbation of the Inquisitor General and of the Senate.*

The lord high chancellor Prince Kaunitz-Rietberg has thought it his duty to lay before his Imperial Majesty the note addressed to him by the apostolic nuncio *Garampi*, on the 12th instant; and his Majesty having seen the repeated offers of the Holy Father to contribute in every possible way to whatever might give satisfaction to his Majesty in the regulation of the ecclesiastical concerns of his Majesty's empire, desires your Excellency to present to his Holiness his sincere acknowledgments; his Majesty reserving to himself to make use of his Holiness's offers in the proper time and place.

His Imperial Majesty has at the same time observed, to his great surprise,

1. That the Nuncio of the Pope has thought proper to qualify the resolutions successively published by his Majesty in various matters concerning the clergy, and especially in those which regard the suppressions which may be ordered of religious houses in his Majesty's dominions, as regulations prejudicial alike to religion, to the Church, and to the spiritual good of souls, and even contrary to the pretended laws and pretended usages prescribed by religion.

2. That the said Nuncio supposes the extinction of regular institutions of religious houses solemnly approved of by the Church to have been determined upon.

3. That the said Nuncio, by making use of the expression, "*none of the many princes of the extensive German empire who continue in the Catholic communion,*" and of the following unguarded sentence, "*that there never was among them any who durst exceed their power,*" &c. has explicitly advanced, by the inverse of his proposition, that whoever undertook any-

thing of that kind, could not be considered as a Roman Catholic sovereign.

4. That the said Nuncio rather wished to insinuate the possibility of circumstances in which subjects might be authorised to disobedience.

5. And lastly, that the said Nuncio asserts, that his Imperial Majesty had disposed of rights exclusively belonging to the Pope in the government of the universal Church, by wishing to attribute them regularly to the bishops.

These aforementioned assertions are, no doubt, very serious, and yet his Imperial Majesty would perhaps have excused them, as not having been put forth by orders of the Holy Father, and as being simply the effect of the over-abundant zeal of the said Nuncio, had they been reserved only for the knowledge of his Majesty; but his Imperial Majesty having been informed that the said Nuncio, without awaiting an answer to his before-mentioned note, has thought proper to communicate the contents of it to some bishops, subjects of his Majesty and others, his Imperial Majesty, with the sole view that the Nuncio's communication might not make the sinister impressions which it appears designed to make, has enjoined his Chancellor briefly to answer the note of the said Nuncio, in the name of his Majesty as follows, viz. :

1. *Ad Primum*, That far from any prejudice accruing to religion from the reform of the abuses which have been successively introduced in matters of church discipline, such a reform can only turn, on the contrary, to the general benefit and edification.

That there were none of these abuses in the doctrine of Jesus Christ, propagated by his apostles, such as it has been adopted by the princes of the earth, since it unquestionably would not have been admitted, had there been any of the abuses successively introduced, either to the injury of sovereign power, or contrary to the maxims of all good government.

That the reform of abuses which do not concern *dogmatical or merely spiritual points*, cannot be dependent on the will of the Pope, who, excepting those two objects, has no authority whatever in the state.

*That this authority belongs exclusively to the sovereign who alone commands, and alone has the right to command, in the state.*

That to this authority belongs, without any exception, whatever relates to the external discipline of the clergy, and especially of religious orders, without which the Church would still be what it has notoriously been for the space of so many centuries, if those orders had not been successively more or less admitted by Christian princes in their dominions.

That religious orders are absolutely strangers to the essentials of faith and religion.

That *they have notoriously been always indebted*, and are still indebted for their existence in the dominions of princes, in which this or that order is actually established, to *the free concession of those princes.*

That his Imperial Majesty consequently had the right, nay, that it was his Majesty's duty to enact, whatever has been enacted with regard to those religious orders, by *virtue of the rights inherent in the supreme sovereign power, which is exclusive with relation to all that is not merely dogmatical and spiritual.*

And lastly, that there can be no question about the necessity of repairing the damages done to religion and the Church, with regard to the objects alluded to by the said Nuncio, since they are perfectly imaginary, and without foundation.

2. *Ad secundum.* To injure the lawful rights of any other person, is so very contrary to his Imperial Majesty's known equity, that his Majesty never had it in contemplation to enact any laws respecting the extinction of religious institutions solemnly approved of by the Holy See; nor ought the supposition to have been harboured by the said Nuncio, if he had considered that it must be perfectly indifferent to his Imperial Majesty, whether the institution of religious orders, suppressed in the dominions of his Majesty, continues or not in the dominions of other princes.

But as his Majesty, on his part, never will interfere in the exercise of the well-grounded and legitimate jurisdiction of the Pope, or of the universal Church, in *dogmatical and purely,*

*spiritual points*, neither will his Majesty suffer any interference in resolutions which are, or will incontestably be found to *belong exclusively to the supreme power of sovereigns, which power comprises, without any exception, whatever is of human institution in the Christian Church*, and has been introduced in the same by the *express or tacit concession of the supreme power*, whose concessions of that kind, like all other laws and grants, can, and indeed ought, to be modified by the legislative power, and even entirely abolished, as often as reasons of state, abuses, or any circumstances of the times, may require their modification or abolition.

3. *Ad tertium.* His Imperial Majesty flatters himself that, after mature reflection, the said Nuncio will say to himself whatever could be observed on this article.

4. His Majesty promises himself as much with regard to the fourth article; but finds himself under the necessity of making this additional observation, that his Majesty being incapable of commanding any of his subjects *to do any thing that might be found fundamentally contrary to their conscience, his Majesty will know how to make himself obeyed by all*, leaving, however, full liberty to all who may fancy that they cannot yield obedience to his Majesty consistently with their conscience, *to remove out of the dominions of his Imperial Majesty, whithersoever they choose.*

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## APPENDIX N.

*Allocuzione di Gregorio P. P. XVI. al Sagro Collegio nel Concistoro segreto del 22 Luglio, 1842. Seguita di Documenti. Roma, 1842. Numero lxxi. pp. 149, 150.*

Risposta data dal S. Padre il 7 Aprile, 1841, in cui annunziando la sua adesione a due domande Imperiali esprime i motivi che ve l'hanno indotto, e torna a raccomandare in modo particolare i Greci-uniti.

Magna cum animi voluptate parique observantia accepimus litteras ab Imperiali et Regia Majestate Tua ad nos missas



die 3 Decembris superioris anni per alterum ex Imperii Consiliariis, quem immatura morte in hac urbe sublatum nuper indoluimus. Cumque una simul allata fuerit epistola, qua Ven. Fr. Ignatius Ludovicus tunc episcopus Megarensis doctrinæ suæ integritatem, præcipuamque Nobis et Apostolicæ Sedi devotionem profitebatur, nil amplius distulimus, quin ipsum ad metropolitanam ecclesiam Mohiloviensem promovendum decerneremus: quod reapse in subsequuto mox consistorio calendis Martii perfectum est. Modo vero scripsimus ad Ven. Fr. Joannem Marcellum episcopum Podlachiensem, hortantes nimirum ac suadentes, ut ecclesiam suam sponte dimittat. Ita porro consentaneus ex parte nostra respondit exitus votis Majestatis Tuæ *peculiari* semel atque iterum *missione patefactis*. Hinc autem jure confidimus fore, ut vota item nostra pro Catholicis Imperiali ac Regiæ Tuæ dominationi permagno numero subjectis eum consequantur effectum, de quo data ipso Tuo nomine fides dubitare non sinit. Et sane cogimur hoc loco, Serenissime ac Potentissime Imperator et Rex, hærentem cordi nostro amaritudinem angoresque gravissimos, quibus indesinenter hujusmodi de causa divexamur, Majestati Tuæ aperte significare. *Licet in ea conditione molestissime simus, ut nec aliquem istic habeamus qui nostram Sanctæque hujus Sedis personam gerat, nec facultas detur cum Episcopis vastissimæ ditionis Tuæ circa Ecclesiæ negotia libere communicandi*, minime tamen nos latet quot quantisque ibidem malis Catholica religio jamdudum prematur. Id quidem pro ea, quam gloriæ Tibi ducis, æquitate animique magnitudine voluntati Tuæ prorsus alienum arbitramur. Attamen, ne singula per-censeamus, id unum dicimus, Potentissime Imperator, quod aliunde exploratum satis est, talem nempe in variis dissitisque Imperii ac Regni provinciis agendi rationem adhiberi consuevisse, quæ certe Catholicæ Ecclesiæ incolumitati ac commodis plurimum adversatur. Hæc profecto ratio ut expectatum tamdiu nobis finem quantocius habeat, vel unico supremæ auctoritatis Tuæ nutu vales efficere. Atque huc omnino spectant curæ, postulationes, precesque etiam nostræ, quibus apostolici ministerii sollicitudine impulsus apud Imperialem et Regiam Majestatem Tuam majorem in modum vehementer instamus. Præ ceteris autem miserrimos Græci

ritus Catholicos justitiæ ac clementiæ Tuæ studiosissime commendamus. Movet enim nos planeque conturbat asperrima eorum conditio unde in proximum discrimen adductam sentiunt suam in Catholica unitate constantiam. Illud tantummodo, Serenissime Imperator ac Rex, efflagitamus, ut libera ipsis et integra stet ejus fidei professio, in qua nati sunt atque instituti; cuique hactenus adhæserunt absque ullo detrimento externæ tranquillitatis et concordiæ, quæ ad Imperii bonum maxime confert. Merito proinde ab excelsa benignitate Tua validissimum præstolantur præsidium, quo ab tanta calamitate liberentur. Hanc et nos fiduciam de re, quæ in primis animum nostrum urget, ultro foventes, sane non prætermittimus multas Majestati Tuæ habere gratias pro desponso nobis studio, quod utique maximi facimus, ad temporalium nostrarum ditionum integritatem tutandam. Quod superest, Deum suppliciter obsecramus, ut Te, Potentissime Imperator et Rex, amplioribus augeat largitatis suæ donis, perfectaue nobiscum caritate conjungat.

Datum Romæ apud S. Petrum, etc.

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## APPENDIX O.

*Extract from Le Moniteur Belge, Journal Officiel de Samedi,  
16 Novembre, 1850.*

Speech of the Minister of Foreign Affairs in the Séance de la  
Chambre des Représentans, du 15 Novembre 1850.

Messieurs, l'honorable M. de Perceval m'a adressé une interpellation pour savoir quelle a été l'attitude du gouvernement à la suite de l'allocution prononcée par le Saint-Père le 20 Mai dernier. Je crois ne pouvoir mieux répondre à la demande de l'honorable préopinant qu'en donnant lecture à la chambre de la dépêche qui a été adressé le 14 Juin dernier à notre chargé d'affaires à Rome avec invitation d'en remettre la copie au cardinal prosecretaire d'Etat, suivant les usages diplomatiques.

Le gouvernement ne pouvait accepter l'appréciation qui avait été faite dans l'allocution, de l'état des choses en Belgique, appréciation si peu conforme à la réalité. Il a cru de son devoir de protester immédiatement.

Voici le texte de la dépêche qui a été adressée à notre chargé d'affaires :

“ Bruxelles, le 14 Juin, 1850.

“ Monsieur le Chargé d’Affaires,

“ Le journal Français, *l'Univers*, publie, et plusieurs de nos journaux reproduisent l'allocution prononcée par notre Saint-Père dans le consistoire secret du 20 Mai, 1850, allocution dont le texte Latin vient de me parvenir avec votre lettre du 25, numéro d'ordre 72.

“ Ce document a naturellement appelé l'attention du gouvernement du Roi ; j'ajouterai qu'il a excité à un haut degré sa surprise.

“ Assurément, il n'entre pas dans ma pensée d'ouvrir une controverse qui serait presque impossible, aucun fait précis n'étant articulé. Je dirai plus : Si les paroles du Souverain Pontife ne devaient être entendues que de la Belgique, le gouvernement pourrait se référer à ce qui est ici de notoriété publique ; mais ces paroles sont destinées à avoir un grand retentissement dans beaucoup de pays où la situation de la Belgique n'est peut-être pas suffisamment connue ; dès lors, il n'est pas permis au gouvernement Belge de garder le silence ; et une explication est devenue nécessaire.

“ Voici ce qu'on lit dans l'allocution de Sa Sainteté :

“ “ Nous ne pouvons maintenant nous défendre dans notre sollicitude paternelle envers l'illustre nation des Belges, qui s'est toujours fait remarquer par son zèle pour la religion Catholique, de témoigner publiquement notre douleur à la vue des périls qui menacent chez elle la religion Catholique. Nous avons la confiance que son Roi sérénissime, et tous ceux qui, dans ce royaume, tiennent le timon des affaires, réfléchiront dans leur sagesse combien l'Eglise Catholique et sa doctrine servent à la tranquillité et à la prospérité temporelle des peuples ; qu'ils voudront conserver dans son intégrité

la force salulaire de cette même Eglise et considérer comme leur tâche la plus importante celle de protéger et de défendre les saints prélats et les ministres de l'Eglise.'”

“ La nature des allégations dirigées contre la Belgique, allégations tout à la fois si graves et si vagues, peut nous autoriser à n'y voir qu'une première impression, et non pas une opinion définitive. Cette impression, on peut l'expliquer par le langage et l'attitude de la presse et d'une partie des orateurs de l'opposition en Belgique; mais elle ne saurait résister à un examen quelque peu sérieux.

“ On parle des *périls* qui menacent parmi nous la *Religion Catholique*; on espère que le Roi et son gouvernement s'appliqueront à *protéger et défendre les saints prélats et les ministres de l'Eglise*. Mais ces périls, où sont-ils? Comment et par qui la religion Catholique est-elle menacée? Comment, pourquoi et contre qui y a-t-il lieu de défendre et de protéger les saints prélats et les ministres de l'Eglise? La Belgique a-t-elle cessé d'offrir l'exemple d'un peuple chez lequel la Religion ne rencontre que des sympathies et du respect? A-t-elle cessé d'assurer à l'Eglise ces libertés et au clergé ces garanties morales et matérielles, que ne leur donne assurément au même degré aucune des autres nations dont il est parlé avec tant d'éloges dans l'allocution pontificale? La discussion récente de la loi sur l'enseignement moyen, n'a-t-elle pas prouvé combien le gouvernement a sincèrement à cœur les intérêts de la religion, la dignité et l'autorité morale de ses ministres?

“ Les chambres, à leur tour, ne se sont-elles pas montrées animées des mêmes sentiments? N'ont-elles pas voté à une imposante majorité cette loi toute constitutionnelle?

“ Qu'on ne perde pas de vue que celle-ci a uniquement pour but de régler l'instruction publique donnée aux frais de l'Etat; et que tous les établissements privés, laïques ou religieux, restent complètement libres et en dehors de son action. Loin d'exclure ou de restreindre l'enseignement religieux dans les établissements publics, elle doit avoir, au contraire, pour effet d'en assurer et d'en étendre, en ce qui les concerne, la bienfaisante influence.

“ Dans la situation actuelle des choses, les établissements

publics de la plupart de nos villes manquent d'enseignement religieux. Désormais, en vertu de l'art. 8. de la nouvelle loi \* il dépendra du clergé que cette regrettable lacune soit comblée; et ce n'est assurément pas du gouvernement que viendront les obstacles à l'accomplissement de sa mission.

“ En tous cas, dans les opinions diverses qu'on peut se former relativement à tel ou tel point d'une loi particulière, y a-t-il des motifs fondés pour concevoir et pour propager des craintes sur la situation générale d'un pays où règne, sous le régime le plus libre et le plus tolérant, une tranquillité profonde, et qui, comme le rappelle si justement Pie IX., *s'est toujours fait remarquer par son zèle pour la Religion Catholique?*

“ Ajoutons que les institutions du pays, loin de les contrarier, se trouvent en harmonie complète avec ses mœurs et ses sentiments.

“ La société religieuse y est complètement indépendante de la société civile. Aucune espèce d'entrave ne gêne la liberté de l'Eglise dans aucune de ses manifestations.

“ Oublie-t-on, en effet, qu'en Belgique l'Etat n'intervient ni dans la nomination ni dans l'installation des ministres des cultes? Que ceux-ci jouissent de l'indépendance la plus absolue dans leurs relations avec leurs supérieurs? Ne sait-on pas que l'Etat n'exerce aucun contrôle, aucune surveillance, soit sur les établissements laïques d'instruction dirigés par le clergé, soit sur les établissements religieux, même lorsqu'ils sont subsidiés par le trésor public? La liberté d'enseignement n'est-elle pas illimitée en Belgique? La moindre atteinte a-t-elle été portée à ces principes constitutionnels? Le trésor public ne s'ouvre-t-il pas libéralement pour assurer les traitements et pensions du clergé, pour l'entretien du culte et la splendeur de ses édifices?

“ Dans cette situation, je dois vous inviter, M. le Chargé

\* Art. 8. “ L'instruction moyenne comprend l'enseignement religieux. Les ministres des cultes seront invités à donner ou à surveiller cet enseignement dans les établissements soumis au régime de la présente loi. . . Ils seront aussi invités à communiquer au conseil de perfectionnement leurs observations concernant l'enseignement religieux.”—*Moniteur Belge*, No. 153, du 2 Juin, 1850.

d’Affaires, à voir sans retard Mgr. le Cardinal Antonelli et à déclarer à Son Eminence que *nous en appelons au Saint-Père, mieux informé*, et que nous avons l’espoir fondé que ce ne sera pas en vain. Déjà la Cour de Rome, *dans sa haute impartialité, a fait justice de certaines opinions erronées* qui avaient été répandus sur les hommes et les choses de la Belgique.

“Vous ajouterez, M. le Chargé d’Affaires, que le gouvernement du Roi se voit à regret dans l’obligation de protester, dès à présent, contre des allégations en complet désaccord avec la réalité des faits.

“Je vous autorise, M. le Chargé d’Affaires, non-seulement à donner lecture, mais à laisser copie à Mgr. le Cardinal des présentes instructions.

“Agréez, M. le Chargé d’Affaires, les assurances de ma considération très-distinguée.

“Le Ministre des Affaires Etrangères,

“C. D’HOFFSCHMIDT.”

Notre Chargé d’Affaires a reçu, dans le mois de Juillet, une réponse du Cardinal Secrétaire d’Etat. Cette réponse a été présentée sous la forme de note verbale ; mais la Chambre n’ignore pas qu’une note verbale, quoique non signée, a une valeur tout à fait officielle :

*Note verbale de M. le Chargé d’Affaires de Belgique.*

“Le paragraphe de l’allocution relatif à la Belgique présente dans ses dernières lignes une traduction inexacte. Le Saint-Père dit : . . . . *ac sacros ipsius ecclesie antistites et ministros eorumque optimam operam tegere ac tueri studeant* ; et non pas . . . *celle de protéger et de défendre les saints prélats et les ministres de l’Eglise.*” Cela ne peut certainement pas passer sans observation. L’allocution ne parle donc que des périls qui menacent la Religion Catholique. Le Saint-Père a vu ces dangers principalement dans la loi sur l’enseignement moyen que l’on discutait alors dans les Chambres.

“Les inconvénients que l’on pouvait craindre, ont été signalés dans la discussion même de cette loi, et les apprè-

hensions sérieuses que l'on éprouvait au sujet des dommages qui pouvaient en résulter pour l'Eglise, ont été indiquées dans les plaintes et les réclamations de l'épiscopat de Belgique.

“Après cela, qu'y a-t-il d'étonnant que le Saint-Père ait épanché ses craintes dans l'allocution ?

“Du reste, il est certain que la religion jouit en Belgique d'une grande liberté, et que la loi en question a encore été en partie améliorée par la manière dont elle a été expliquée par le ministère ; mais les dangers qui peuvent en résulter pour la religion, pour la foi de la nouvelle génération sont pourtant à craindre.

“Cependant, malgré ces craintes, le Saint-Père n'a pas laissé d'exprimer encore son espoir de voir ces dangers écartés, et il attend surtout de la sagesse de S. M. le Roi des Belges et du bon esprit de la nation, que les espérances qu'il a conçues répondront au résultat désiré.”

Messieurs, le Gouvernement *n'ayant pas cru que cette réponse fût suffisante a déclaré qu'il persistait dans les termes de la dépêche du 14 Juin.*

Ces explications répondent suffisamment, je pense, à l'interpellation qui nous a été adressée par l'honorable Préopinant.



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# NEW WORKS

IN

## MISCELLANEOUS & GENERAL LITERATURE,

PUBLISHED BY

MESSRS. LONGMAN, BROWN, GREEN, AND LONGMANS,  
PATERNOSTER ROW, LONDON.

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