

A Comparison of the First and Second Versions of the Decretal *Ad conditorem canonum*

Texts from: Gál and Flood (1996, 83–88); and Tarrant (1983, 228–54). — The first version of this bull was published (*ACC*¹) on 8 December 1322; John republished the bull in a longer form the following year (*ACC*²), but kept the original date. Translations of both versions do exist. An almost complete translation of the first version, which omits only the paragraph that has little to do with poverty, can be found in Armstrong, Hellmann, and Short (1999–2002, 3:784–89). John Kilcullen, meanwhile, translated (and lightly annotated) the second version as it is found in a seventeenth-century edition of the *Corpus iuris canonici* (Lyons, 1671), which he compared with a version of *ACC*² as it is found in the standard modern edition of the *Corpus iuris canonici* (i.e., Friedberg 1959, 2:1225–30). (I would argue that Tarrant’s edition of the *Extravagantes Iohannis XXII* supersedes Friedberg’s.) Please note that I have added the numbers in square brackets: they do not relate to the numbers of the Lyons edition of the text (which I have not looked at) except accidentally. *Italics* are used in the Latin columns to indicate differences and/or additions in otherwise “parallel” paragraphs.

The tenor of the first constitution “Ad conditorem” against which the procurator of the order, Brother Bonagrata, appealed

Tenor primae constitutionis “Ad conditorem” contra quam frater Bonagrata, procurator ordinis appellavit

Constitutio ne de cetero fratres minores sub nomine Romane ecclesie aliqua bona mobilia petant ad eam spectantia sine apostolice sedis licentia speciali

A constitution so that, under the name of the Roman Church, the Friars Minor no longer seek any movable goods belonging to it without a special licence from the Apostolic See

For a perpetual record of the deed. There is no doubt that it pertains to the author of the canons to make provision that things are no longer able to cause harm when he sees that the statutes published by himself or his predecessors do harm rather than good.

Accordingly, some time ago, our predecessor of blessed memory, Pope Nicholas III, attending carefully that it is contained in the rule of the nourishing confessor, namely blessed Francis, that the professors of his order are to appropriate nothing to themselves, not a house, not a place, nor any other thing;¹ and considering diligently that it was declared by Pope Gregory IX of pious memory and several other of his [Nicholas’s] predecessors that this ought to be observed both

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[2] Dudum siquidem felicis recordationis Nicolaus papa III, praedecessor noster, attente prospiciens in almi confessoris, beati videlicet Francisci, regula contineri quod nihil sibi approprient, neque domum, neque locum, nec rem aliquam aliam sui Ordinis professores, ac considerans diligenter quod per piae recordationis papam Gregorium IX et nonnullos alios praedecessores eiusdem fuerat declaratum hoc debere servari tam in speciali quam etiam in com-

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¹ *Regula bullata* 6.1 (231).

individually and in common; and considering and attending even that many were disparaging those very same brothers, attacking that they were not observing the rule and such declarations; and, piously desiring to shut the mouths of those barking against the brothers, and to provide for the consciences of those same professors: he ordained and sanctioned, among other things, that, of all the utensils, books, and movable things—both present and future—, of churches also, and oratories and cemeteries, both present and future, as well as of other things bought from the various alms, offerings, or things granted to the said brothers in which the offerers or granters thought to reserve nothing unto themselves, the ownership and lordship pertained to himself and the Roman Church fully and freely: receiving them unto himself and the earlier said Church, with a use of fact to the things and such goods only being reserved to the said brothers.

And because it is sometimes expedient that the above-mentioned books and other movable things be sold or even exchanged, he granted to those brothers in the same ordination that they could freely exchange the very things for other things of which the use it was allowed for them to have, provided that the authority of their General or Provincial Ministers exist, jointly or separately.

But because their rule strictly forbids the brothers to receive money themselves or through another, he

muni; necnon et considerans (et) attendens nonnullos fratribus ipsis detrahere, inpingentes eisdem quod regulam et declarationes huiusmodi non servabant; pieque desiderans ora contra praemissos fratres oblatantium claudere ac professorum ipsorum conscientiiis /84/ providere, inter alia ordinavit et sanxit quod omnium utensilium et librorum rerumque mobilium praesentium et etiam futurarum, ecclesiarum quoque et oratoriorum ac cimiteriorum, tam praesentium quam futurorum, necnon et aliorum emptorum de elemosynis diversis et oblatarum seu concessarum dictis fratribus in quibus tamen offerentes seu concedentes ipsi nihil in ipsis sibi ducerent reservandum, proprietatem et dominium plene ac libere ad se et Romanam Ecclesiam pertineret, ipsa in se et ante dictam Ecclesiam recipiens, usu facti dumtaxat in rebus et bonis huiusmodi dictis fratribus reservato.

[3] Et quia nonnunquam libros et alia mobilia supra dicta vendi expedit seu etiam commutari, fratribus ipsis in eadem ordinatione concessit ut res ipsas, cum rebus aliis quarum usum habere licet ipsis fratribus, dummodo generalis et provincialium ministrorum, coniunctim vel divisim auctoritas intercederet, possent libere comutare.

[4] Sed et quia fratribus ipsis pecuniam per se vel per alium recipere ipsorum regula districtius interdicit,

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[3] Et quia nonnunquam libros et alia /231/ mobilia supradicta vendi expedit seu etiam comutari, fratribus ipsis in eadem ordinatione concessit, ut res ipsas cum rebus aliis quarum usum habere licet ipsis fratribus, dummodo generalis et provincialium ministrorum coniunctim uel divisim auctoritas intercederet, possent libere comutare.

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vidually and in common; and considering and attending even that many were disparaging those very same brothers, attacking them that they were not observing the rule and such declarations; and, piously desiring to shut the mouths of those barking against the brothers, and to provide for the consciences of those same professors: he ordained and sanctioned, among other things, that, of all the utensils, books, and movable things—both present and future—, of churches also, and oratories and cemeteries, both present and future, as well as of other things bought from the various alms, offerings, or things granted to the said brothers in which the offerers or granters thought to reserve nothing unto themselves, the ownership and lordship pertained to himself and the Roman Church fully and freely: receiving them unto himself and the earlier said Church, with a use of fact to the things and such goods only being reserved to the said brothers.

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wished and conceded that if movable things should happen to be sold for a agreed-upon price, that such a price ought to be received by the procurator from the aforesaid See, or from the Cardinal Protector of the same order, [and] ought to be spent by the same procurator on some licit thing of which the use is permitted to the brothers of the same order—with this added: that the brothers themselves can make arrangements inside or outside the order regarding movable things of little or equal value for consideration of piety or devotion, or for another honest and reasonable cause, after having obtained the licence of their superiors for this matter.

Now, although these things were ordained in pious consideration by our aforesaid predecessor, we have not noticed that they have benefitted the said brothers thus far, but have instead caused them and others harm. In fact, the reservation mentioned above could in no way have benefitted them so far as concerns the state of perfection.

For, since the perfection of the Christian life consists principally and essentially in charity, which is called the chain of perfection by the Apostle,² and which unites or joins a man to his end in some way, to which a

voluit et concessit quod si vendi contingeret res mobiles ante dictas pretio aestimato, quod huiusmodi pretium per procuratorem deberet recipi a praefata Sede vel a cardinali gubernatore eiusdem Ordinis deputandum, expendendum per procuratorem eundem in rem licitam aliam cuius usus eiusdem Ordinis fratribus est permissus; hoc adiecto quod de vilibus rebus mobilibus vel parum valentibus possent fratres ipsi, pietatis seu devotionis intuitu vel pro alia honesta causa et rationabili, obtenta superiorum suorum licentia intra vel extra dictum Ordinem ordinare.

[5] Quamquam autem pia consideratione a praedecessore nostro praedicto haec fuerint ordinata, ipsa tamen hactenus profuisse dictis fratribus non percepimus, sed potius ipsis et aliis multipliciter obfuisse. Ipsis quidem prodesse quantum ad statum perfectionis nequaquam potuit reservatio supra dicta.

[6] Cum enim perfectio vitae christianae principaliter et essentialiter in caritate consistat, quae ab Apostolo perfectionis vinculum dicitur et quae unit seu iungit aliquantulum hominem suo fini, ad quam per contemptum

voluit et concessit quod, si vendi contingeret res mobiles antedictas pretio extimato, quod huiusmodi pretium per procuratorem deberet recipi a praefata sede vel a cardinali gubernatore eiusdem ordinis deputandum, per procuratorem eundem in rem licitam aliam cuius usus esset permissus eiusdem ordinis fratribus expendendum, hoc adiecto quod possent de vilibus rebus mobilibus vel parum valentibus fratres ipsi pietatis seu devotionis intuitu vel pro alia /232/ honesta causa et rationabili, obtenta tamen superiorum suorum licencia, intra vel extra dictum ordinem ordinare.

[5] Quamquam autem pia consideratione motus *predecessor noster ordinaverit supradicta, illa dicto ordini extimans profutura*, ipsa tamen *attento modo utendi fratrum ipsorum ac dicte ecclesie subsecuta patientia circa ipsum non profuisse*, sed potius tam ipsis fratribus quam multis aliis obfuisse, *subsequens magistra rerum experientia noscitur declarasse*. Ipsis quidem *fratribus*, quantum ad statutum perfectionis, nequaquam profuit reservatio domini supradicta.

[6] Cum enim perfectio vite Christiane principaliter et essentialiter in caritate consistat, quae ab apostolo perfectionis vinculum dicitur, et quae unit seu iungit aliquantulum hominem suo fini, ad quam per con-

wished and conceded that if movable things should happen to be sold for a agreed-upon price, that such a price ought to be received by the procurator from the aforesaid See, or from the Cardinal Protector of the same order, [and] ought to be spent by the same procurator on some licit thing of which the use is permitted to the brothers of the same order—with this added: that the brothers themselves can make arrangements inside or outside the order regarding movable things of little or equal value for consideration of piety or devotion, or for another honest and reasonable cause, yet after having obtained the licence of their superiors for this matter.

Now, although our predecessor ordained the abovesaid things in pious consideration, thinking they would benefit the said order, yet with the mode of the brothers' using considered, and the tolerance of the church concerning this mode having followed, subsequent experience, the mistress of events, is known to declared that they have not been beneficial, but that they have instead harmed the brothers themselves and many others. In fact, the reservation mentioned above could in no way have benefitted those brothers so far as concerns the state of perfection.

For, since the perfection of the Christian life consists principally and essentially in charity, which is called the chain of perfection by the Apostle,² and which unites or joins a man on his journey to his end in some

²Col. 3:14

way is arranged by a contempt of temporal goods and the expropriation of them through this especially: that the anxious preoccupation, which temporal things demand in the acquiring, conserving, and managing [of them], [and] which very often turns away from an act of perfection, may be cut short; it remains that, if the same anxious preoccupation perseveres after such an expropriation as had been present beforehand, such an expropriation can confer nothing on perfection.

It is agreed, however, that, after the retention of lordship was made, the brothers of the earlier said order were not less but more preoccupied than the other mendicant orders (who say that they have some things in common) are preoccupied with those things in the acquiring and conserving of those goods than they were beforehand, both in court and without—just as experience, the mistress of events, makes clear, all things rightly considered.

Now, it is evidently clear from the following that the retention of lordship described above harmed those brothers. In fact, because of the retention, the brothers began to boast hollowly about the highest poverty, which they imprudently claim for themselves ahead of all other mendicants chiefly from this: that in the things which they obtain they assert that nothing pertains to them of ownership or lordship, but only a bare use of fact. Surely, if they wish to attend more to the reality than the words

bonorum temporalium et ipsorum expropriationem via disponitur per hoc praecipue quod sollicitudo quam ipsa temporalia in acquirendo, conservando et administrando exigunt, quae plerumque ab actu /85/ caritatis retrahit, amputetur, restat quod si sollicitudo eadem post expropriationem huiusmodi, quae ante ipsam inerat, perseveret, ad perfectionem huiusmodi talis expropriatio valeat nil conferre.

[7] Constat autem quod fratres Ordinis ante dicti post factam retentionem dicti domini non minus, sed satis amplius quam ante ipsam, in acquirendis bonis ipsis ac conservandis, tam in iudicio quam extra, fuerunt solliciti, quam sint alii mendicantes circa illa solliciti, adserentes se habere aliqua in communi, prout haec nota magistra rerum, experientia, cunctis recte considerantibus evidentius manifestat.

[8] Quod autem retentio domini supra dicta fratribus ipsis obfuerit, patet ex sequentibus evidenter. Occasione siquidem retentionis eiusdem fratres ipsi de paupertate altissima coeperunt inaniter gloriari, quam sibi prae cunctis mendicantibus aliis ex eo praecipue vindicant imprudenter quod in his quae obtinent nihil ad se proprietatis vel domini, sed solum nudum usum facti adserunt pertinere. Profecto, si rem plus quam verba vel lent attendere et veritati acquiescere, ut deberent, attento utendi ipsorum

temptum bonorum temporalium et ipsorum expro/233/riacionem uia disponitur, per hoc praecipue, quod sollicitudo quam temporalia in acquirendo conseruando et *dispensando* exigunt, que plerumque ab actu caritatis retrahit, amputatur, restat quod si sollicitudo eadem post expropriationem huiusmodi que ante ipsam inerat perseueret, ad perfectionem huiusmodi talis expropriatio ualeat nil conferre.

[7] Constat autem quod post *ordinationem predictam* non fuerunt in acquirendis ac conseruandis bonis predictis in iudicio et extra minus solliciti quam *ante illam* fuerant fratres ipsi quamque sint religiosi mendicantes alii habentes aliqua in communi.

[8] *Adhuc nec utique profuit dictis fratribus ordinatio supradicta quantum ad hoc, quod propter carentiam talis domini se pauperiores dicere ualeant quam si res ipsas cum illo quo carere se dicunt /234/ dominio obtinerent. Licet etiam predecessor noster predictus dominium earum rerum que ipsis fratribus offerri seu conferri aut alias obuenerit contigerit, quarum tamen usum facti habere licet ordini uel fratribus antedictis, usu facti simplici predictis fratribus reseruato, in se et Romanam ecclesiam recipiendum duxerit, ac libere pertinere*

way, to which a way is arranged by a contempt of temporal goods and the expropriation of them through this especially: because the anxious preoccupation, which temporal things demand in the acquiring, conserving, and arranging [of them], [and] which very often turns away from an act of perfection, is cut short; it remains that, if the same anxious preoccupation perseveres after such an expropriation as had been present beforehand, such an expropriation can confer nothing on perfection.

It is agreed, however, that, after the aforesaid ordination, the brothers themselves were not less preoccupied in the acquiring and conserving of the aforesaid goods, in and out of court, than they were before it [the ordination], and [less preoccupied] than other religious mendicants who have some things in common.

And the abovesaid ordination has still not profited the said brothers regarding this: that they are able to say that they are more poor because of this lacking of such lordship than if they obtained those same things with the lordship which they say they lack. Although our aforesaid predecessor decided that the lordship of those things which are offered or conferred on the selfsame brothers (or otherwise happens to come to them), of which things the order is, or the aforesaid brothers are, allowed to have a

and acquiesce to the truth (as they ought), having considered the mode of using those things and the patience of the Roman Church regarding it, they would affirm the complete opposite: namely that the use left to them is not bare, but that the lordship held by the Roman Church is.

For who will be able to call a user bare who is allowed to exchange, sell, and give away a usable thing? Without doubt these things are known to exceed the nature of use; nor are they known to pertain to a user, but rather to the lord. These things evidently prove that such a user would hardly be bare, which indeed the brothers themselves do with no few movable things, asserting that this was granted to them through such an ordination.

modo et Ecclesiae Romanae patientia circa illum, totum contrarium affirmarent, videlicet quod non relictum eis usum, sed retentum Ecclesiae Romanae dominium esse nudum.

[9] Quis enim nudum usuarium poterit dicere cui rem usariam licet permutare, vendere ac donare? Procul dubio haec naturam usus noscuntur excedere, nec ad usuarium sed ad dominum potius pertinere. *Haec evidenter arguunt talem usuarium minime fore nudum, quae quidem de rebus nonnullis mobilibus fratres ipsi faciunt, adserentes sibi per ordinationem huiusmodi hoc concessum.*

decreuerit, ut superius est expressum, attempto tamen ipsorum fratrum utendi modo et eius effectu ac patientia circa modum ipsum Romane ecclesiae subsecuta non ipse usus fratrum dici debet sed potius Romane ecclesiae dominium esse simplex.

[9] Quis enim *simplicem* usuarium dicere poterit, cui rem usariam licet permutare uendere ac donare? Proculdubio hec *nature repu/235/gnare* noscuntur, nec ad usuarium pertinere, que *tamen* de rebus mobilibus antedictis faciunt fratres ipsi.

[9a] Quod autem dominium Romane ecclesiae reseruatam simplex censeretur debet ex hoc patet, quod ex illo nullum eidem ecclesiae temporale obuenti hactenus comodum, nec speratur quod obuenire debeat in futurum, cum nec intencio reseruantis nec fratrum ipsorum fuerit quod ad quemcumque alium quam ad fratres dictarum rerum perueniret compendium, quod proculdubio modus utendi fratrum ipsorum et Romane ecclesiae subsecuta patientia euidentius declarauit. Et quod talis intencio fuerit ordinantis eciam ex

use of fact, with a simple use of fact reserved to the aforesaid brothers, should be received in himself and the Roman Church, and he decreed it freely pertains [to himself and the Church], as it was said above. Yet, having considered the mode of the brothers' using and its effect, and the subsequent tolerance of the Roman Church regarding the mode, the use of the brothers ought not be called simple, but rather the lordship of the Roman Church ought to be said to be simple.

For who will be able to call a user bare who is allowed to exchange, sell, and give away a usable thing? Without doubt these things are known to be opposed to nature, and are known to not pertain to a user, which yet the brothers themselves do with the abovesaid movable things.

Moreover, that the lordship reserved to the Roman Church ought to be considered simple is clear from this: that no temporal advantage has yet come to the same Church from it, nor is it hoped that it should come in the future, since it was neither the intention of the reserver nor the intention of the brothers themselves that any sort of profit from those things come to someone other than to the brothers, which, without doubt, the mode of using of the brothers themselves and the subsequent patience of the Roman Church declared

But it is clearly declared that they are not bare users in things which are consumed by use; to say in these things that a use of right or of fact could be established separate from lordship is opposed to law and reason. Nor does it seem to have been the intention of our predecessor to reserve the lordship of such goods to the Roman Church. For who of sound mind could believe that it was the intention of so great a father [that] the lordship of one egg, one loaf or crust of bread, which are often conferred upon the brothers, be acquired for the Roman Church?

Or, if it was his intention, who will be able to defend that such a retention

[10] Quod autem non sint nudi usuarii in rebus quae usu consumuntur, evidentius declaratur, in quibus dicere quod usus iuris vel facti a dominio separatus possit constitui iuri repugnat et etiam rationi. Nec praedecessoris nostri praedicti fuisse videtur intentio Romanae Ecclesiae talium bonorum dominium reservare. Quis enim sanae mentis credere poterit quod intentio fuit tanti patris unius ovi seu casei aut unius panis seu frusti, quae saepe fratribus conferuntur, dominium Romanae Ecclesiae adquiratur?

[11] Aut si eius fuit intentio, quis defendere poterit quod non realis fue-

hoc patet, quod illarum rerum sibi et ecclesie Romanae dominium dumtaxat retinuit quarum usum facti liceret habere ordini uel fratribus antedictis.

[9b]³ Talis autem dominii carencia re in presenti ac spe in futurum omni modo denudati, quo ad paupertatem temporalem quam altiore pre mendicantibus aliis in communi /236/ habentibus sibi uendicant dicti fratres, pauperiorem non efficit non habentem.

[10] Quod autem *quo ad res que usu consumuntur non sint censendi usuarii fratres ipsi ex sequentibus liquet satis*. Dicere *siquidem quod in talibus rebus usus iuris uel facti, separatus a proprietate rei seu dominio possit constitui repugnat iuri et obuiat* rationi, nec praedecessoris nostri predicti fuisse uidetur intentio Romanae ecclesiae talium bonorum dominium reservare. Quis enim sane mentis credere poterit quod intentio fuerit tanti patris, unius ovi seu casei aut frusti panis et aliorum usu consumptibilium, que sepe fratribus *ipsis ad consumendum e uestigio conferuntur, dominium Romanae ecclesiae et usum fratribus retinere?*

[11] Profecto probabile non uideatur, presertim cum illorum bonorum

more clearly. And that such was the intention of the ordainer is also clear from this: that he retained only the lordship of those things to himself and the Roman Church of which a use of fact the order, or the aforesaid brothers, was allowed to have.

Moreover, the lacking of such lordship, denuded in every way of the thing in the present and hope [for it] in the future—regarding the temporal poverty that the said brothers claim for themselves as higher, ahead of all other mendicants having [things] in common—does not make the one having [the lack of such lordship] poorer.

But it clear enough from the following that the brothers are not to be considered simple users regarding things which are consumed by use. Indeed, to say that a use of right or of fact, separate from the ownership of the thing or the lordship could be established in such things is opposed to right and obviates reason. Nor does it seem to have been the intention of our aforesaid predecessor to reserve the lordship of such goods. For what person, sound in mind, could believe that it was the intention of so great a father to retain the lordship for the Roman Church of one egg, or cheese, or crust of bread, and of other consumables (which are often conferred upon the selfsame brothers for consuming then and there), and the use for the brothers?

It certainly does not seem probable, especially since he reserved only

³Compare [13] below.

of lordship was not real, but verbal, and that it is not to be thought of as true, but fictive?

Still, be it granted that a use could be established in such things, it nonetheless could not at all be called bare, since the use of a usable consumable thing does not differ from the use of the one who holds full lordship. This is clear because anyone's use totally consumes the thing. But it is agreed that the use of one who has full lordship can hardly be bare. Hence it seems to follow that their use is hardly to be considered bare.

rit talis retentio dominii sed verbalis, quodque non vera sed ficta potius sit censenda? /86/

[12] Adhuc, esto quod usus in talibus possit constitui, nudus tamen nullatenus posset dici, cum usus rei consumptibilis usuarii non differat ab usu plenum dominium obtinentis. Quod patet, quia usus cuiuslibet totaliter rem consumit. Constat autem usum habentis plenum dominium minime fore nudum. Ex quo sequi videtur quod eorum usus nudus minime sit censendus.

dumtaxat dominium prefate ecclesie reseruarit quorum simplex usus facti pertinere potest ad fratres /237/ dicti ordinis, quod nequaquam potest in rebus usu consumptibilibus reperiri, in quibus nec ius utendi nec usus facti, separata a rei proprietate seu dominio possunt constitui uel haberi.

[12] Et quod de talibus rebus non intellexerit euidenter ostendit, dum respondet legi dicenti non posse usumfructum a dominio perpetuo separari, ne dominium dominis semper absedente usu inutile redderetur. Que quidem lex de rebus illis intelligitur quarum penes unum usus rei et penes alium dominium possit licet inutile remanere, quod nequaquam in rebus usu consumptibilibus potest esse, cum in illis per usum uel abusum usuarii substantia talis rei esse desinat et per consequens proprietates eiam inutilis non subsistat.

[12a] Cum enim usufructus prout est ius in re constitutus, qui seruitus dicitur personalis et /238/ pro quo reales competunt acciones, nichil sit aliud quam ius utendi fruendi, nec usus, qui eiam personalis est seruitus, sit aliud quam ius tantum utendi rebus alienis substantia salua rei, id est, ius percipiendi fructus et utilitatem aliam in totum uel pro parte suo nomine qui possunt ex re in qua usufructus seu usus constituitur prouenire, propter quod proprietates reputatur inutilis a qua perpetuo usufructus seu

the lordship of those goods to the aforesaid Church of which a simple use of fact can pertain to the brothers of the said order, which can by no means be found in things consumable by use, in which neither a right of using nor a use of fact can be established or had separate from the ownership or lordship of the thing.

And that he did not understand [this] of such things he clearly showed when he responded to the law saying that there cannot be a usufruct perpetually separate from lordship, lest the lordship of the lord be rendered useless with the use always absent. This law is indeed understood about those things of which the use of a thing can be in one person's power and the lordship in another person's power is allowed to remain useless, which can in no way exist in things consumable by use, for the substance of such a thing ceases to be in them through the use of the abuse of the user, and, consequently, even useless ownership does not [still] subsist.

For, since usufruct, just as it is established as a *ius in re*, which is called a personal servitude, and for which there belong real actions, is nothing other than a right of using [and] enjoying, so neither is use, which is a personal servitude, nothing other than only a right of using someone else's things with the substance preserved; that is, a right of receiving the fruits and other utility, in whole or in part in his own name, which can come from the thing in which the usufruct or use is established. On

But the lordship reserved to the Roman Church can be seen to be bare, verbal, and mathematical from this: that no advantage has come from it to the Church thus far, nor is it hoped that it ought to come to it in the future since it is neither the intention of

[13a] *Dominium autem Romanae Ecclesiae reservatum ex eo videri potest nudum, verbale et mathematicum, quod ex illo nullum eidem hactenus obveniret commodum, nec speratur quod obvenire debeat in futurum, cum nec intentio reservantis*

usus constitui in rebus ex quibus ipsi-stantibus usufructuario seu usuario nulla posset utilitas provenire, patet quod ad hoc, quod talis usufructus uel usus in re aliqua constitui valeat, requiritur quod ex re illa possint fructus uel utilitas alia salva ipsius rei substantia ad fructuarium uel usuarium peruenire. /239/ Quod si nulla ad ipsos posset ex re ipsa utilitas salva rei substantia peruenire, quales res constat esse usu consumptibiles; nequaquam posset in rebus ipsis cuiquam usufructus uel usus constitui uel a quoquam haberi.

[12b] *Adhuc nec ius utendi, quod nec est ius in re, nec servitus personalis, sed mere ius personale, pro quo reales acciones non competunt, in rebus talibus uel rebus ipsis utendi potest constitui uel haberi, cum et ius tale exigat quod ex re ipsa quae ad utendum conceditur tali modo ad usuarium peruenire posset utilitas aliqua ac cum usu permanere usuarii substantia salva rei, quod nequaquam potest sicut ad sensum potest percipi in rebus usu consumptibilibus reperiri.*

this account, an ownership is considered useless from which a usufruct or use can be perpetually established in things from which no utility can come to the usufructuary or user, is clear from this: in order for such a usufruct or use to be able to be established in some thing, it is required that the fruits or other utility can come to the fructuary or user from it, with the substance of the thing itself preserved. But if no utility can come to them from it with the substance preserved, it is agreed that such things are consumable by use. By no means can a usufruct or use be established for anyone in those very things, or be had by anyone.

Besides, nor can a right of using—one which is neither a *ius in re* nor a personal servitude, but is a purely personal right of using, for which there do not belong real actions—be established or had in such things, or by such things, since such a right also demands that some utility can come in such a way from the thing which is conceded to the user, and to remain with the use of the user, with the substance of the thing preserved: which, just as it can be perceived by the senses, can by no means be found in things consumable by use.

⁴See [2] for the second version, above.

the reserver, nor the intention of the brothers themselves that the things pass into the profit of anyone other than the brothers themselves. But it is agreed that such a lordship made neither the one having it richer nor makes the one not having it poorer. Hence it is clear that they imprudently claim the highest poverty for themselves before the other mendicants due to the aforesaid retention.

Additionally, the abovesaid retention harmed the brothers since schisms have arisen among the brothers of the same order because of it, [and] detrimental dangers have followed; to which an end has not been able to be given, nor is it hoped that it will be able to be attained while the retention endures.

nec fratrum ipsorum fuerit quod in cuiusquam alterius quam fratrum ipsorum compendium cederent res praedictae. Constat autem quod tale dominium nec habentem ditioem constituit nec pauperiorem efficit non habentem. Ex quibus liquet quod imprudenter propter retentionem praedictam prae aliis mendicantibus sibi vindicant altissimam paupertatem.⁴

[13b] Nocuit insuper dictis fratribus retentio ante dicta, cum eius occasione inter fratres eiusdem Ordinis periculosa suborta fuerint schismata, dispendiosa pericula subsecuta, quibus hactenus dari finis non potuit nec speratur quod ad illum ipsa durante valeat perveniri.

[13a] Rursus nec simplex usus facti qui nec est servitus nec pro illo competit ius utendi in talibus rebus potest constitui uel haberi. Cum enim uti re aliqua nihil sit aliud proprie quam fructus rei seu utilitatem aliam in solidum uel pro parte recipere, qui ex ea possunt salua rei substantia provenire, restat quod re illa uti quis nequeat /240/ ex qua eius salua substantia nulla sibi provenire potest utilitas, quales res usu consumptibiles esse constat. Ex quibus patet quod nec usus, qui est servitus personalis, nec ius utendi, quod non est servitus sed mere ius personale, nec actus ipse utendi sine iure aliquo possunt in rebus usu consumptibilibus constitui uel haberi, cum quodlibet premissorum exigat quod ex re ipsa salua rei substantia possit habenti ius utendi seu utenti ex

In turn, neither can a simple use of fact, which is neither a servitude, nor a thing for which a right of using belongs, be established or had in such things. For, since using some thing is properly nothing other than to receive the fruits or the thing or some utility in whole or in part, which can come from it, with the substance of the thing preserved, it remains that someone is unable to use that thing from which no utility can come to him [the user] with its substance preserved: of what sort, it is agreed, things consumable by use are. It is clear from these considerations that neither use, which is a personal servitude, nor a right of using, which is not a servitude but only a personal right, nor the act itself of using can be established or had in things consum-

re ipsa utilitas aliqua prouenire, quod utique in rebus nequit usu consumptibilibus reperiri.

[13b] Nec obuiat supradictis quod idem predecessor noster in ordinatione predicta eciam illorum que ad uite sustentacionem pertinet sibi et Romane ecclesie dominium reseruarit. Hoc enim de rebus illis dumtaxat debet intelligi que usu non sunt consumptibilia sine quibus humana uita non est sustentabilis, que utique non sunt pauca.

[13c] Licet autem in rebus usu consumptibilibus nec ius utendi nec ipsum /241/ uti possit constitui uel haberi, ipsis tamen poterit ius abuti. Abuti autem dum tractatur de rebus usu consumptibilibus, pro rei consumptione sumitur quod ei opponitur quod est uti. Vti quidem presupponit quod cum usu salua rei substantia maneat, sed abuti exigit quod cum actu huiusmodi rei substantia consumatur, cum abuti nichil aliud quam contra naturam usus uti in hac materia proprie possit dici. Licet autem quis re uisibili absque iure utendi aliquo uti possit, ipsum tamen uti eciam in re tali absque iure utendi, separato a dominio uel coniuncto, nec ab aliquo potest constitui nec a quoquam haberi. Et quod talis usus constitui nequeat ex hoc patet, quod dare uel constituere quod suum non

able by use, since any of the aforesaid demand that some utility can come from the thing itself (with the substance preserved) to the one who has a right of using, or from it to the user—which is certainly not able to be found in things consumable by use.

Nor does it oppose the aforesaid that our same predecessor reserved the lordship to himself and the Roman Church even of those things which pertain to the sustainment of life in the said ordination. For this ought to be understood only of those things which are not consumable by use (without which human life is not sustainable), which are certainly not few.

Now, although neither a right of using nor using itself can be established or had in things consumable by use, a right to ab-use them can exist. “To ab-use”, when it is being treated of things consumable by use, is taken for the consumption of a thing, which is opposed to what it is to use. Indeed, “to use” presupposes that the substance of the thing remains with the use, but ab-using demands that the substance of the thing be consumed with such an act: for ab-using can properly be called nothing other than using against the nature of use in this matter. Moreover, although someone can use a visible thing without a right of using, nevertheless the using itself cannot be established by anyone or had by anyone in such a thing (separate from or conjoined to lordship) without a

est nec ad se pertinet nemo potest, licet interdum illud dare possit aliter quam sit suum.

[13d] Actus autem ipse utendi ad utentem pertinet in quantum quis /242/ suorum actuum per liberum arbitrium et uoluntatem dominus dicitur, cum per hoc illos non exercere ualeat uel eciam exercere. Non autem actus ipse utendi ad eum pertinet qui concedit alii quod in re sua actum illum ualeat exercere, quod utique nichil est aliud quam quod actum suum ad rem concedentis ad actum suum utens ualeat applicare, sicut qui equum suum alicui comodat non actum illum in equo suo ualeat exercere, quod non est utique actum utendi simplicem concedere sine iure, cum hoc concedere nichil sit aliud quam concedere ius utendi, quod quidem ius utendi sepa/243/ratum a proprietate seu dominio in rebus que usu consumuntur nequit constitui, ut patet manifestius ex predictis.

[13e] Preterea quod simplex usus, id est, sine iure utendi, a proprietate seu dominio separatus, eciam in re usibili haberi nequeat sic probatur. Si enim posset haberi usus talis, aut ante actum ipsum aut in ipso actu aut post completum actum huiusmodi habeatur. Quod autem hoc nequeat fieri ex hoc patet: quod non est haberi nequam postest. Patet autem quod actus

right of using. And that such a use cannot be established is clear from this: that no one can give or establish what is not one's own, nor pertains to him—although sometimes he might sometimes be able to give a thing otherwise than what is his own.

Moreover, the act of using itself pertains to the user in how much someone is said to be the lord of his actions through free choice and free will, since he is not able to perform, or even does perform, those things through this. Moreover, the act of using itself does not pertain to the one who grants to another that he may perform that act with his own thing—which is certainly nothing else than that the user can apply his own act to the thing of the one allowing for his act: just as he who loans his horse to someone does not perform that action on his horse (which is certainly not to grant a simple act of using without a right), since to grant this is nothing other than to grant a right of using: which right of using, indeed, cannot be established in things which are consumed by use separate from ownership or lordship, as is quite manifest from the aforesaid.

In addition, that simple use (that is, without a right of using) is unable to be had separate from ownership or lordship even in a usable thing, is proved in this way. If such use could in fact be had, it would be had before the act itself, in the act itself, or after such an act had been completed. Now, that this cannot take place is clear from this: that which does not

ipse antequam exerceatur aut etiam dum exercetur aut postquam perfectus est in rerum natura non est; ex eo sequitur quod haberi minime potest. Licet enim ante actum ipsum quis facultatem illam habeat exercendi, per hoc tamen actus ipse in rerum natura nisi in po/244/tencia non existit. Cum autem actus est in fieri, nec adhuc quod ipse actus in rerum natura sit potest dici, licet de eo quod sit in fieri dici possit. Quod enim de actu, qui est in fieri, preterit uel futurum est iam non est in rerum natura, sed in memoria uel apprehensione tantum est; quare nisi prout in memoria uel apprehensione est haberi nequaquam potest. Quod autem in presenti fit momentaneum seu instantaneum est, quod utique magis intellectu quam sensu percipi potest, unde nec est haberi pro tunc nisi pro momento illo seu instanti in quo sic potest dici actum. /245/ Post actum completum, licet si ex facto ipso producta res aliqua fuerit, res ipsa facta haberi ualeat, factum tamen ipsum quod iam transiit nisi in memoria prout supradictum est non habetur.

[13f] Preterea si simplex usus absque iure utendi haberi posset aliquo, constat quod non iustus esset actus utendi huiusmodi reputandus, cum ille usus fuerit cui ius non com-

exist can in no way be had. It is clear, moreover, that the act itself does not exist in reality before it is done, or even while it is being done, or after it has been completed; from this it follows that it can scarcely be had. For although someone may have the faculty of doing [something] before the act itself, the act still does not exist in reality except in potency. Moreover, when the act is in the process of being done, it still cannot be said that the act itself exists in reality, although it may be said of it that it is in the process of being done. For that which has passed of an act that is in the process of being done, or is in the future, does not now exist in reality, but exists only in the memory or understanding; for this reason it can in no way be had except just as it exists in the memory or understanding. Moreover, that which takes place in the present is momentary or instantaneous, which certainly can be perceived more by the intellect than the senses; hence it is not had at that moment except for that moment or instant in which it can so be called an act. After the completed act, although a produced thing can be had if something were produced from that deed, the deed itself, which has already passed away is not had except in the memory (as said above).

In addition, if simple use could be had without some right of using, it is agreed that such an act of using would be considered non-just. Such use, namely a non-just use, pertains

⁵Cf. Tarrant's apparatus.

petebat utendi. Talis autem usus (sci)licet⁵ non iustus ad perfectionis statum nequaquam pertinet nec perfectioni aliquid adicit, sed sibi repugnare potius ac detrudere noscitur manifeste. Quod autem usum non iustum conditor canonis fratribus ipsis intellexerit reseruare nequaquam debet aliquis sapiens extimare, immo quod de iusto intellexerit ex eo potest euidentius apparere, quod in eadem ordinatione curauit adicere quod illarum rerum dumtaxat in se et ecclesiam Romanam recipiebat dominium quarum usum facti liceret habere fra/246/tribus seu ordini antedictis, subiungens nichilominus quod non rerum omnium usum habere debeant fratres ipsi.

[13g] Quantum enim ad fratres differentia est censenda. Sic enim uti de facto possunt prohibitis et permissis. Quare premissa rerum distinctio ad illum usum facti potius est referenda, pro quo ipsis competit fratribus ius utendi. Quarundam enim usus fratribus ipsis prohibitus noscitur et quarundam permissus. Ex quo sequitur quod usus facti, de quo ordinatio loquitur, de tali intelligi debeat qui iustus sit, id est, pro quo competat ius utendi. Ex hoc conditor ipse canonis exprimit euidenter, cum in eadem ordinatione adiecerit quod moderatus usus in expressis prius rebus ipsis fratribus est concessus.

[13h] Pre/247/terea si in rebus consumptibilibus possit usus consti-

in no way to the state of perfection, nor adds anything to perfection, but is manifestly known to oppose and even detract from it instead. No wise man ought even think that the establisher of the canon meant to reserve a non-just use to the brothers; rather, it can more evidently appear from this that he understood it of a just use: that he cared to add in the very same ordination that he received in himself and the Roman Church the lordship of only those things the use of fact of which the aforesaid brothers or order were allowed to have, subjoining nonetheless that the brothers themselves ought not have the use of all things.

For a difference ought to be considered as regards the brothers. For, they can, de facto, use prohibited and permitted things in this way. Hence, a distinction of the aforesaid ought rather be referred to for that use of fact for which a right of using belongs to those brothers. For the use of some things is known to have been prohibited to the brothers, and the use of some other things permitted to them. From this it follows that the use of fact of which the ordination speaks ought to be understood, is just, for which a right of using inheres. By this, the establisher of the canon expresses clearly, when, in the same ordination, he added that a moderate use was conceded to the brothers themselves in the things expressed above.

In addition, if a use could be established or had in consumable things, it

Again, the reservation has not only harmed the brothers themselves, but it has also diminished and damaged—not lightly—the honour of the sacrosanct Roman Church. Is not the honour of the aforesaid Church detracted from if it is necessary to litigate, now in the ecclesiastic court, now in the secular one, sometimes also before petty judges, and very often for small and worthless things? Yet, we continue to see that this occurs because of the aforesaid ordination, for of those things which are given, offered, or otherwise acquired for the brothers (unless the donors or grantors should reserve the lordship to themselves) the lordship is reserved to the Roman Church; On account of this, all cases touching upon the order are pursued—by taking action or defending—by the procurators established by the ministers of the order in the name of the Roman Church; and what is to be considered worse, the aforesaid procurators are said to harass many, and disturb them in many ways in

[14] Rursus, nedum fratribus ipsis dicta reservatio obfuit, sed et honori sacrosanctae Romanae Ecclesiae non leviter detrahit et detraxit. Numquid non praefatae Ecclesiae derogatur honori si ipsam oporteat nunc in foro ecclesiastico nunc in saeculari, interdum quoque coram pedaneis iudicibus et plerumque pro rebus parvis et vilibus litigare? Hoc tamen occasione ordinationis praedictae fieri continue cernimus, cum eorum quae dantur, offeruntur vel alias adquiruntur dictis fratribus, nisi dantes vel offerentes sibi dominium reservarint, sit dominium dictae Romanae Ecclesiae reservatum, propter quod per procuratores constitutos a ministris dicti Ordinis nomine sanctae Romanae Ecclesiae agendo vel defendendo causae omnes contingentes dictum Ordinem agitantur, et quod gravius est censendum, procuratores praedicti multos vexare dicuntur indebite et in suis iuribus multipliciter perturbare. Quae omnia noscuntur in notam et iniuriam dictae Ecclesiae redundare.

tui uel haberi nequaquam simplex, nec a rei substantia proprietate seu dominio separatus usus huiusmodi posset dici, cum per talem usum, id est, utendi actum et in ipso actu et cum ipso actu res consumatur huiusmodi, ac in ipsius rei exerceatur substantia, nec sine ipsius rei consumptione esse ualeat usus talis. Ex quo patet quod usus talis nec simplex nec separatus a dominio potest dici.

[14] Rursus nedum fratribus ipsis *ordinacio predicta non profuit*, sed et *occasionaliter* honori sacrosanctae Romanae ecclesie non leuiter detrahit et detraxit. Numquid non praefate ecclesie derogatur honori, si ipsam oporteat nunc in foro ecclesiastico nunc in saeculari interdum quoque coram pedaneis iudicibus et plerumque pro rebus paruis et uilibus *con/248/tinue* litigare? Hoc tamen *notum est fieri, cum occasione retentionis dicti domini omnes cause occurrentes* agendo uel defendendo *pro bonis huiusmodi nomine Romane ecclesie uirtute cuiusdam privilegii a felicitis recordationis Martino papa iiii. predecessore nostro concessi super hoc* agitentur, et (quod grauius est censendum) procuratores *causarum huiusmodi* multos uexare dicuntur indebite, licet *potestas attributa procuratoribus talibus per priuilegium antedictum quo ad administracionem bonorum premissorum dudum seruata non fuerit nec seruetur*, que omnia in notam et iniuriam *sancte Romane ecclesie non est dubium* redundare.

could in no way be called simple, nor could such use be said to be separate from the substance, ownership, or lordship of the thing: since through such use (that is, the act of using, in the act itself, and with the act itself) a thing of this kind is consumed, and it is done on the substance of the thing itself; nor can such a use exist without the consumption of the thing itself. Hence it is clear that such use can be called neither simple nor separate from lordship.

Again, the aforesaid ordination has not only not benefitted the brothers themselves, but it has even occasionally diminished and damaged—not lightly—the honour of the sacrosanct Roman Church. Is not the honour of the aforesaid Church detracted from if it is necessary to litigate continuously, now in the ecclesiastic court, now in the secular one, sometimes also before petty judges, and very often for small and worthless things? Yet, this is known to happen, since, because of the said retention of lordship, all the arising cases are pursued, by taking action or defending, on the strength of the privilege granted on this matter by our predecessor of blessed memory, Martin IV; and (what must be considered worse) the procurators of such cases are said to unduly vex many people, although the power allotted to such procurators through the abovesaid privilege for the management of the aforesaid goods has not been preserved and is not being preserved. There is no doubt that all of these things redound

their own rights. All of these things are known to redound upon the reputation of and in injury to the Church.

Still, the abovesaid ordination is shown to be a grave and excessive nuisance to the prelates, rectors and many others of the churches. Can it be a non-grave thing for the aforesaid [prelates] that they need to oppose themselves to the Roman Church, which is known to be their mistress and teacher, and to litigate assiduously with it by taking action or defendending, or yield their right? Yet it is necessary for them to do this since in many things the brothers are said to be injurious to the aforesaid [prelates], just as the clamorous insinuation of many prelates and rectors of the different provinces still living in the curia maintain, who strive to palliate and defend their deeds through the procurators established by them in the name of the holy Roman Church.

And so we, with the points adduced in an examination of correct consideration, wishing to oppose such evils and make provision for the consciences and state of the brothers, as well as to the honour of the Roman Church, and even for the sureties of others, ...

[15] Adhuc, ordinatio ante dicta ecclesiarum praelatis et rectoribus et multis aliis gravis existere nimium et molesta monstratur. Numquid non grave praemissis potest existere quod ipsos oporteat se opponere Romanae Ecclesiae quae ipsorum domina noscitur et magistra, ac cum ea agendo vel defendendo litigare assidue vel cedere iuri suo? Hoc tamen oportet illos facere, cum et in multis dicti fratres praedictis existere dicantur iniurii, sicut clamosa multorum praelatorum et rectorum diversarum provinciarum adhuc in curia existentium habet insinuatio, qui facta sua palliare nituntur et defendere per procuratores ab ipsis dictae sanctae Romanae Ecclesiae nomine consitutos.

[16] Nos itaque praemissis in scrutinio rectae considerationis adductis multorumque clamoribus excitati, volentes tantis malis occurrere ac conscientii et statui dictorum fratrum necnon honori dictae Romanae Ecclesiae praelatorum quoque atque rectorum et aliorum indemnitate providere, ...

[15] Adhuc ordinatio antedicta ecclesiarum praelatis et rectoribus grauis existere nimium et molesta monstratur. Numquid non graue premissis potest existere, quod ipsos oporteat se opponere *sancte* Romanae ecclesie, que ipsorum /249/ *capud* noscitur et magistra, ac cum ea agendo uel defendendo litigare assidue uel cedere iuri suo? Hoc tamen oportet illos facere, cum in multis dicti fratres predictis existere dicantur *iniuriis*,⁶ sicut multorum praelatorum et rectorum diuersarum prouinciarum adhuc in curia existentium habet insinuatio, qui *quidem fratres facta sua per procuratores* nituntur defendere *antedictos*.

[16] Nos itaque, qui *ueritatem tenemur colere uelud ille qui illius qui ueritas noscitur, licet immeriti, uicem tenemus in terris, illa uolentes in sancta Dei ecclesia non que uerbo tantum obtinent sed que re potius obseruari*, premissis in scrutinio recte considerationis adductis, *ac deliberacione cum fratribus nostris et multis aliis prehabita diligentia, dignum arbitantes et congruum professores dicti ordinis non uerbis tantum non /250/ simulatis actibus sed operibus claris, ueritate suffultis, perfeccioris status ac alcioris paupertatis sibi prerogatiuam pre aliis mendicantibus uendica-*

to the reputation and injury of the Church.

Still, the abovesaid ordination is shown to be a grave and excessive nuisance to the prelates and rectors of the churches. Can it be a non-grave thing for the aforesaid [prelates] that they need to oppose themselves to the Holy Roman Church, which is known to be their head and teacher, and to litigate assiduously with it by taking action or defending, or [else] yield their right? Yet it is necessary for them to do this since in many things the brothers are said to be injurious to the aforesaid [prelates] (just as the insinuation of many prelates and rectors of the different provinces still living in the curia maintains), which brothers indeed strive to defend their deeds through the abovesaid procurators.

And so, we, who are bound to cultivate truth, just as we, although unworthy, hold the place on earth of him who is known to be truth, wishing those things to be observed in the holy Church of God (not only what they obtain in word, but rather what they obtain in fact), with the aforesaid points having been brought forward into the scrutiny of correct consideration, and with a diligent deliberation had with our brothers and many others, we, thinking it worthy and fitting that the professors of the said order claim for themselves, not with words

⁶Reading *iniurii* for *iniuriis*, as it printed in the first version, and in many of the extant mss. of this version.

... [and] who wish, according to the counsel of our brothers, that the most holy Roman Church lack rather than have the so very useless and pernicious lordship, we decree, by this perpetually valid edict, that the Apostolic See has no more right in the goods that are conferred in the future, or offered, or in some way happen to come to the brothers or order; and lordship or some right is not acquired in them or for them by the Church other than what it has and has acquired in the goods or for the goods that are acquired in some way for the brothers of the other mendicant orders.

[17] ... de fratrum nostrorum consilio *sacrosanctam Romanam Ecclesiam tam inutili tamque pernicioso dominio carere potius quam ipsum habere volentes*, hoc edito in perpetuum valituro censemus quod in bonis praeditis quae in posterum conferuntur vel offeruntur vel quomodolibet aliter obvenire contingeret fratribus seu Ordini supra dictis, non plus iuris in illis Apostolica Sedes habeat nec in ipsis seu pro ipsis sibi dominium seu ius aliquod aliud adquiratur quam quod habet sibi acquiratur in bonis vel pro bonis quae fratribus aliorum mendicantium Ordinum quomodolibet adquiruntur.

re, ac nichilominus honori sacrosanctae Romanae ecclesiae, cuius obnubilari posset gloria, si tam peruerse simulacioni, que profecto et ipsis simulantibus officit et aliis scandali materiam subministrat, dissimulando illi occurrere consentiret, ac insuper uolentes indemnitati prelatorum et rectorum salubriter super hoc prouidere, nolentes quod imposteriorum sub pretextu seu pallio talis domini temporalis uerbalis nudi ac enigmatici tanta bona quanta dicti fratres faciunt infici ac fomentum tantis malis /251/ quanta procedunt ex simulacione huiusmodi ministrare, ...

[17] ... de fratrum nostrorum consilio hoc edito in perpetuum ualituro *sanximus* quod in bonis que imposteriorum conferuntur uel offeruntur aut *alias quomodolibet* obuenire contingeret fratribus seu ordini supradictis, *exceptis ecclesiis oratoriis officinis et habitationibus ac uasis libris et uestimentis diuinis officiiis dedicatis uel dedicandis que ad ipsos obuenient in futurum ad que se non extendunt adeo inconuenientia supradicta propter quod constitutionem istam ad illa extendi nolumus, nullum ius seu dominium aliquod occasione ordinacionis predictae seu cuiusuis alterius a quocunq[ue] predecessorum nostrorum super hoc specialiter edite sanctae Romanae ecclesiae* acquiratur, *sed quo*

alone, not with feigned acts, but with clear deeds, girded with truth, the prerogative of a more perfect state and higher poverty before the other mendicants, nonetheless we, wishing to provide for the honour of the sacrosanct Roman Church (whose glory could become darkened if it were to consent to run alongside so perverse a dissemblance by concealing it, which surely both impedes those pretenders and supplies the material for scandal to others), and wishing additionally to provide salubriously for the security of the prelates and rectors on this matter, and not wishing that as many good deeds as the brothers do in the future become tainted under the pretext or cloak of such a verbal, bare, and enigmatic temporal lordship, nor to provide the kindling of as great an evil as proceed from such a dissemblance, ...

... we sanction according to the counsel of our brothers in a perpetually valid edict that no right or any lordship by reason of the aforesaid ordination or any other one specially published by any of our predecessors is acquired by the Holy Roman Church in the goods which are conferred, offered, or in some other way happen to come to the abovesaid brothers or order in the future (with churches, oratories, workshops, habitations, vases, books, clothing dedicated [or to be dedicated] to the divine offices excepted), which shall come to them in the future, to which the abovesaid inconveniences do not extend (on account of which we do

And, additionally, establishing that no procurator for the receiving, seeking, demanding, defending, or managing the aforesaid goods may henceforth be established by anyone in the name of the high pontiff or aforesaid holy Roman Church except by his special licence and mandate, we revoke by mandate any and [such] all things by whomever they were established; [and] we judge it useless and empty if it should otherwise be attempted by anyone, notwithstanding some privileges by Pope Martin IV of blessed memory, or other predecessors of ours, granted under any formula or expression of words to the same brothers or order.

[18] Ac insuper statuentes quod pro bonis praedictis recipiendis, petendis, exigendis, defendendis seu administrandis nullus a quoquam procurator constituatur a modo nomine summi pontificis vel praefatae sanctae Romanae Ecclesiae, nisi de ipsius speciali licentia et mandato revocamus quoscumque a quibusvis taliter constitutos, decernentes irritum et inane si secus a quocumque fuerit attemptatum, non obstantibus quibuscumque privilegiis a felicitis recordationis Martino papa <IV> vel aliis praedecessoribus nostris eisdem fratribus vel Ordini sub quacumque verborum forma seu expressione concessis.

ad hoc habeantur prorsus ordinationes huiusmodi /252/ pro non factis. Per hoc autem in hiis que absque dictis ordinationibus in bonis predictis ad dictam ecclesiam provenire uel pertinere quomodolibet poterant uel debebant nullum eidem parari preiudicium uolumus, sed illa sibi expressius intacta et inuiolata seruamus.

[18] *Et quia praefatum Martini pape predecessoris nostri predicti priuilegium dudum seruatum quo administracionem bonorum premissorum non extitit nec seruatur, ac ipsorum procuratorum officium qui nominantur a ministris et custodibus dicti ordinis ecclesie Romanae iniuriosum ac multis aliis molestum noscitur et eciam onerosum, disticcus inhihemus ne deinceps pro recipiendis petendis exigendis defendendis seu administrandis bonis, que imposterum fratribus uel ordini predictis offerri uel /253/ conferri seu alias obueneri continget, quisquam nominetur a quoquam seu constituatur a modo nomine sancte Romanae ecclesie procurator, nec occasione cuiusuis priuilegii apostolici quicunque administracionem quorumcunque bonorum, que obueneri fratribus ipsis uel ordini continget imposterum, in iudicio uel extra, agendo defendendo supplicando uel alias quomodolibet assumere uel exercere dicte ecclesie nomine audeat, nisi de sedis apostolice licentia speciali, decernentes irritum et inane si secus a quoquam imposterum contigerit attemptari, non obstantibus quibuscumque priuilegiis a Martino papa predicto uel aliis predecessori-*

not want that constitution to be extended to them); but, as far as this is concerned, let such ordinations be held as if absolutely not made. Now, by this we do not wish any prejudice to be produced for them in these things, which could or ought in some way come or pertain to the Church without the ordinations in the aforesaid goods, but we observe them even more expressly intact and inviolate.

And because the aforesaid privilege of own predecessor, Pope Martin, observed for a long time, does not exist, nor is observed regarding the administration of the said goods, and it is known that the office of those procurators, who are nominated by the ministers and custodians of the said order, [and who are] injurious to the Roman Church, is a nuisance and even onerous, we firmly prohibit that no one be named procurator by anybody, or be established procurator from now on in the name of the Holy Roman Church (or because of any sort of apostolic privilege), for the receiving, seeking, demanding, defending, or managing of the aforesaid goods that shall happen to be offered to, or conferred upon, the brothers or order in the future, or otherwise happen to come to them. Nor may he dare to assume or exercise in the name of the Church the management of any goods that shall happen to come to the brothers or the order, in court or out of it, by taking action, defending, or supplicating—except by special licence from the apostolic See: declaring it void and invalid if it should

However, by this we do not intend in any way to diminish either the rule of the order or the privileges granted by the Apostolic See to the brothers or their order except so far as the aforesaid is concerned, or things touching upon them: rather, we wish that they endure in their own strength.

Dated in Avignon on 8 December 1322, in the seventh year of our pontificate.

[19] Per hoc autem non intendimus nec regulae dicti Ordinis [*sic*] nec privilegiis fratribus ipsis seu eorum Ordini ab Apostolica Sede /88/ concessis, nisi quoad praemissa et praemissa tangencia, in aliquo derogare, quinimmo ea volumus suo robore permanere.

[20] Datum Avenione, 6 Idus Decembris, pontificatus nostri anno 7, 1322.

bus nostris ipsis fratribus uel ordini sub quacunque forma uel expressione uerborum concessis.

[19] Per hoc autem dicti ordinis regule in aliquo non intendimus derogare nec priuilegiis fratribus ipsis seu eorum ordini ab apostolica sede /254/ concessis, nisi dumtaxat quo ad premissa et premissa tangencia, *preiudicium aliquod generare*.

[19a] Nulli ergo omnino hominum liceat hanc paginam nostre sanctionis uoluntatis reseruacionis inhibitionis constitutionis et intencionis infringere uel ei ausu temerario contraire. Si quis autem hoc attemptare presumpserit, indignacionem omnipotentis Dei et beatorum Petri et Pauli apostolorum eius se nouerit incursum.

[20] Datum Avenione vi. idus decembris pontificatus nostri anno septimo.

happen to be attempted by someone in the future—with certain privileges of Pope Martin notwithstanding, or by other of our predecessor brothers, or granted to the order under a certain form of expression of words.

However, by this we do not intend to diminish by this the rule of the said order in anyway, nor do generate any prejudice for the privileges of the brothers themselves, granted to them by the Church—except only as concerns and touches on the aforesaid matters.

Therefore, absolutely no man is allowed to infringe upon this page of the sanction of our will, reservation, prohibition, constitution, and intention, or to go against it with rash daring. If someone should presume to attempt this, let him know that he will incur the indignation of the omnipotent God and his blessed apostles Peter and Paul.

Dated in Avignon on 8 December 1322, in the seventh year of our pontificate.

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